Report on the outcomes of public consultation on the child protection legislative reforms discussion paper 2012
THANK YOU

In November 2012 I invited you to contribute your views about new policy and legislation which will transform the way child protection is done in NSW.

Your response to the Child Protection Legislative Reforms discussion paper has been considered and informative – both at the public briefings held around the State and via your written submissions. Your responses reflect the passion felt to do whatever it takes to keep children and young people in NSW safe.

This report provides an account of what you told us about the reforms the government is proposing. I am particularly proud of the insights children and young people who have experience in the care system gave us to help improve the lives of their peers.

This consultation report also outlines the government’s policy direction for each of the 29 reforms that were originally canvassed in the discussion paper. The government has genuinely listened to what you have said and has incorporated much of your feedback in the final reform package to be implemented.

Your support for Family Group Conferencing, better involvement of parents in adoption proceedings, greater permanency for children and young people who cannot live at home safely and a contact regime that is more flexible and child-focused was loud and clear and these reforms will be a central component of the legislative amendments I will introduce into Parliament.

There are other proposals which really challenged the way you thought about the service system and where we need to move public debate in order to meet the contemporary challenges facing NSW families. The Government is committed to creating a more child-focused child protection system and these reforms are vital if we are to truly achieve this change.

I am passionate about continuing to make improvement to the way in which we improve children’s lives in NSW. This reform package is about placing at the heart of our decision-making and our work with families the need for children and young people to be safe and have a permanent and nurturing ‘home for life’.

I thank you again for your contribution to this ongoing debate.

The Hon. Pru Goward MP
MINISTER FOR FAMILY AND COMMUNITY SERVICES
MINISTER FOR WOMEN
November 2013
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<tr>
<td>AbSec</td>
<td>Aboriginal Child, Family and Community Care State Secretariat</td>
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<td>ACWA</td>
<td>Association of Children’s Welfare Agencies</td>
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<td>Adoption Act</td>
<td>Adoption Act 2000</td>
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<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>ADT</td>
<td>Administrative Decisions Tribunal</td>
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<td>Care Act</td>
<td>Children and Young Persons (Care and Protection) Act 1998</td>
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<td>CREATE</td>
<td>The CREATE Foundation</td>
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<td>FACS</td>
<td>the Department of Family and Community Services</td>
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<td>FGC</td>
<td>Family Group Conference/Family Group Conferencing</td>
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<tr>
<td>NGO</td>
<td>non-government organisation</td>
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<td>OOHC</td>
<td>out-of-home care</td>
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<tr>
<td>PCO</td>
<td>Parenting Capacity Order</td>
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<tr>
<td>PRA</td>
<td>Parent Responsibility Agreement</td>
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<tr>
<td>PRC</td>
<td>Parent Responsibility Contract</td>
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<tr>
<td>ROSH</td>
<td>risk of significant harm</td>
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SECTION 1: THE STORY SO FAR

CASE FOR CHANGE

Statutory child protection services can and should only be a small part of a system to protect children. The 2008 Special Commission of Inquiry into Child Protection Services in New South Wales identified that responsibility for the safety and wellbeing of children and young people beyond the core and unique role of statutory child protection must be addressed by a far wider group, including families and communities, other government agencies and non-government organisations (NGOs).

Investing in early intervention to divert families to services earlier is fundamental to ensure children and young people are able to grow up at the very least unharmed by their social, economic and emotional circumstances and are supported to do so by their parents. Where this is not able to happen statutory child protection services need to be in a position where they can step in and fill the gap in a responsive way that will preserve the safety of those children and young people and improve their life outcomes.

However, many children and young people in out-of-home care (OOHC) are still experiencing a revolving door of placements which affects their education, health and general wellbeing. This is not good enough.

The aim of the NSW Government’s child protection reform agenda is to create a child protection system that ensures children and young people at risk of significant harm (ROSH) are safe and those children that do need to be in OOHC are on a pathway to having a home for life and a good and productive future that enables them to move into adulthood with the same opportunities and prospects as their peers.

To achieve this, significant change is required in the way government, non-government agencies and communities go about their work. This means legislative, policy and cultural change across the sector to make our system more flexible, responsive and innovative. The proposed legislative changes represent an important step in reforming the child protection system so it serves children and young people better.

At the heart of these reforms is placing children back at the centre of the child protection system. This will require us, as a community and sector, to really focus on children’s rights and parental obligations. Vulnerable children and young people need us to be proactive and timely in making this transition.

We need to make sure parents understand the great value our community places on their role in raising children – but also that there may be consequences when they place their children at risk of significant harm. Parents also need to understand that they will be held accountable when they fail to meet their responsibilities as parents. We accept that change is hard for many families, particularly those with entrenched intergenerational parenting issues. For these families, increasing parental accountability will take time and a seamless co-effort from the Department of Family and Community Services (FACS), the non-government sector and other government agencies to direct the change children in these families need.

While NSW invests in early intervention, secondary and statutory child protection services, there is room to improve how these services work together to support children and their families earlier and more effectively. There are a group of families who are currently not receiving the help they need –
those who are beyond voluntary family support and on the cusp of statutory intervention and having their children removed from their care. A strong service system for these families will improve the safety, welfare and wellbeing of children and young people and increase the rate of family preservation and decrease the number of children entering OOHC. If we do not help this group of families, the numbers of children and young people entering OOHC will continue to rise and they will continue to have poorer outcomes in education, health and general well-being than their peers.

The reform agenda offers numerous opportunities for doing things differently. We have the opportunity to make greater use of less legalistic diversionary interventions such as the use of Family Group Conferencing (FGC) to engage families and their extended supports to keep children safe.

We can improve permanency arrangements for children in OOHC. Children and young people in OOHC need and deserve early decisions made about their permanent care arrangements – they cannot wait and drift between temporary placements while the adults in their lives decide what is best for them.

The Government’s overriding goal for children and young people in care is that they are restored to their families who are able to provide long term safety and care. But, for those children entering OOHC where there is no realistic possibility of restoration, a permanent arrangement is needed. They need a family that provides them with a certain and stable future and a sense of belonging. If a suitable relative or kinship placement is not available, an open adoption may be their best chance of long term security. For these children, adoption orders need to be made as soon as possible to provide the stability, security and certainty that children need. It is acknowledged, however, that adoption is not considered a culturally accepted practice for Aboriginal children and, as such, decisions on providing such stability, security and certainty for Aboriginal children in OOHC will only be made in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in the Children and Young Persons (Care and Protection) Act 1998 (Care Act).

The proposed legislative reforms to the child protection system are one integral part of a larger change agenda that will make the NSW child protection system less adversarial and more child and family centred. The Government is also progressing a number of other related existing policy and practice initiatives in the child protection sector.

Local solutions to improving outcomes for children

There are significant opportunities with the recent establishment of 15 FACS Districts which seek to place individuals, families and local communities at the centre of everything that FACS does. Localised planning, decision-making and improved links between senior service delivery management and frontline staff complements and supports early and effective service responses based on shared responsibility. Localisation will give child protection practitioners in NSW communities the ability to make decisions about child protection resources and services for their district based on the needs of their local community and the risks children and young people face in their area.

Changing statutory child protection practice

There is currently a trial in some Community Service Centres aimed at implementing a new model for child protection service delivery called Practice First, which is promoting stronger casework and changing FACS’ culture and the way caseworkers partner with families to achieve real change. Practice First is introducing new evidence-based innovative practices grounded on what works in child protection and is freeing up caseworker time from administration.

Its key goals are:
1. To work differently with families to gain a more rounded understanding of their strengths and difficulties and to engage them better in the process to increase their motivation for change
2. To improve risk management through more support for critical reasoning, and
3. To increase caseworkers’ skills in helping families tackle their problems, with the possible consequence of reducing the numbers of children removed from their families.

The Government has commenced transitioning the management of OOHC placements to the non-government sector. This was a recommendation of the Special Commission of Inquiry into Child Protection Services in NSW undertaken by the Hon Justice Wood in 2008. This is freeing up Community Services to focus on its statutory child protection responsibilities.

**CHILD PROTECTION LEGISLATIVE REFORMS DISCUSSION PAPER**

On 22 November 2012, the Minister for Family and Community Services, the Hon Pru Goward MP, released the Child Protection Legislative Reforms discussion paper which proposed 29 wide-ranging legislative and practice changes to improve the NSW child protection system, reduce the number of children and young people at risk of significant harm and provide permanency and a ‘home for life’ for those children who cannot live at home safely. A number of specific reforms were also proposed to make the NSW child protection system more child-focused – a key goal of the child protection reform package.

The discussion paper and accompanying fact sheets were made available on the FACS departmental webpage, FACS Community Services webpage and the NSW Government’s Have Your Say website. An electronic feedback form was also published for stakeholders to use to record their views. This form made it easy for stakeholders to record as much or as little feedback as they wished to about each of the reform proposals. Stakeholders were able to email or post their feedback to FACS or lodge the feedback form electronically through the Have Your Say website.

The consultation period formally closed on 8 March 2013, however a two-week extension until 22 March 2013 was given to stakeholders who requested additional time. A total of 7,541 hits by 3,128 visitors were made on the Have Your Say website in relation to the child protection legislative reforms. The discussion paper and associated documents were downloaded 1,891 times and 231 written submissions were received. A list of stakeholders that provided a written submission is provided at Appendix 2.

Not all of the feedback and submissions received addressed all 29 proposals in the discussion paper. Some submissions focused on particular proposals that were relevant to the respondent’s area of interest, experience or expertise.

This Consultation Report outlines the findings of the consultation process and the Government’s proposed policy direction for each of the reforms, which take into account the feedback received during the consultation process.

The Government is continuing to develop the operational detail of each proposal in the reform package and for those proposals that require legislative amendments, legislation to enact the reforms will be introduced into Parliament.

Some submissions included suggestions for miscellaneous legislative amendments and policy and practice reform that fall outside the focus of the proposals in the discussion paper. While these

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suggestions are not addressed in this report, the Government will give consideration to whether they are necessary at a later stage.

External Consultation

The discussion paper was open for public consultation for over three months. Over 500 external stakeholders received a letter from the Minister announcing the release of the paper and inviting feedback. Submissions were also invited from all interested parties, including children, young people, parents, carers, services providers, government agencies, the legal community, NGOs, and the wider community.

In total, 287 people participated in the public stakeholder briefings from 140 organisations. A list of the organisations represented at the public events is provided at Appendix 1.

Stakeholders who provided feedback included the legal community, OOHC and early intervention service providers, government agencies and peak bodies/representative groups as well as the general public. Stakeholder briefings were held around the state in Sydney on 12 December 2012 and 13 February 2013, in Dubbo on 8 February 2013, and in Shellharbour on 12 February 2013. These events were facilitated by an independent facilitator. Videoconferences were also held with stakeholders in Ballina, Coffs Harbour, Grafton, Lismore, Kempsey and Tweed Heads on 14 and 15 March 2013.

One-to-one meetings and larger consultation roundtables were also held with key stakeholders, government agencies and any organisations or individuals who requested a face-to-face meeting with FACS to discuss the reforms, including:

- **The legal community** – Legal Aid NSW, the Children’s Court, the Crown Solicitor’s Office NSW, NSW Bar Association, Law Society of NSW, and the Aboriginal Legal Service

- **Regulatory bodies** – NSW Ombudsman and the Children’s Guardian

- **Human services and justice academics**

- **Representatives from Aboriginal and Torres Strait Islander communities** – Greater Sydney Family Pathways Network – Aboriginal Family Law Pathways and the Closing the Gap Subcommittee, Wirringa Baiya Aboriginal Legal Centre, Kari Aboriginal Resources Inc and the Aboriginal Child, Family and Community Care State Secretariat (AbSec) Board which includes representatives from Burrun Dalai Out of Home Care and Family Support Service, Great Lakes/Manning Aboriginal Children’s Service, Coffs Harbour Aboriginal Family Community Care Centre, Miyagan Aboriginal Development Association, Myimbarr/Illawarra Aboriginal Corporation, South Coast Medical Service Aboriginal Corporation, Ngunya Jarjum Aboriginal Child and Family Network, Allira Aboriginal Child Care Centre, Wundarra Services and Wandiyali ATS

- **Early Intervention Council** – which includes AbSec, the Association of Child Welfare Agencies (ACWA), Bega Valley, Burnside, The Benevolent Society, Care South, Casino Neighbourhood Centre, CatholicCare, Child Wellbeing Unit (SESIABS), Connect Child and Family Services, Consort, Neighbourhood, Kari Aboriginal Resources Inc, KU Children’s Services, Metro Migrant Resource Centre, Mission Australia, NSW Family Services, NSW Ministry of Health, Family Relationships Australia, Samaritans, Salvation Army, SDN Children’s Services, Smith Family, Wandiyali, Wesley Mission and Westnet
- Multicultural Advisory Committee – which includes ACWA, NAVITAS, the Community Relations Commission of NSW, Ethnic Child Care; Family and Community Services Co-op, Ethnic Communities’ Council of NSW; Ethnic Minorities Action Group, Refugee Network, Multicultural Communities Council of Illawarra, Immigrant Women’s Speakout Inc., Migrant Resource Centre Forum, NESB Women’s Housing Scheme, NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, The Smith Family, Women’s Refuge Movement, Youth Accommodation Association, Youth Action and Policy, FACS Community Services Multicultural Reference Group, and FACS Community Services Hunter, Metro South-West, Metro-Central and Metro West regions

- Community Services and Carers stakeholder forum – which includes Connecting Carers, Grandparents as Parents Again, Council on the Ageing, Foster Care Association NSW, AbSec, Aboriginal Statewide Foster Carer Support Service and the Lebanese Muslim Association

- Other non-government organisations (NGO) – Barnardos Australia; Hubworks and the ACWA Board which includes representatives from Centacare Broken Bay, UnitingCare Burnside, Youth Off The Streets, CatholicCare Sydney, Barnardos Australia, Wesley Mission, Karitane, Anglicare – Diocese of Sydney, Care South, AbSec, NSW Family Services and Life Without Barriers, and

- Other jurisdictions – the Standing Council of Community and Disability Services, which comprises the Community and Disability Services Ministers of all Australian states and territories and the Commonwealth, the Standing Council’s Research Working Group, the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs, the National Framework for Child Protection Implementation Working Group, and the Family Court of Australia.

Voice of young people

The CREATE Foundation (CREATE) was commissioned to conduct specific consultation sessions with young people with experience in the OOHC system to obtain their views on the proposed reforms. These occurred in January and February 2013 with ten young people participating. In addition, CREATE received feedback on the discussion paper from 52 young people via its website. CREATE submitted the feedback it obtained to FACS via a comprehensive report.

Internal consultation with Community Services staff

A series of focus groups and videoconferences were also held with the FACS Community Services Practitioners Advisory Group, FACS Community Services caseworkers and other regional staff to obtain their direct views. All staff were invited to participate. Videoconference and focus group locations included Ballina, Armidale, Coffs Harbour, Lismore, Tamworth, Sydney, Parramatta, Ashfield, Tweed Heads, Goulburn, Queanbeyan, Moree, Wagga Wagga, St Marys, Nowra, Wollongong, Newcastle, Liverpool and Ingleburn. Approximately 62 staff participated in these consultation forums.

Consultations were also held with various FACS Community Services executive groups including the Community Services Operations Executive, the Director Child and Family Forum, the Director Practice Standards Forum, the Director Partnerships and Planning and Manager Regional Strategy Forum, the Child Protection Steering Committee, the Northern Region Managers Meeting and the Senior Executive Forum. These groups include senior officers from both Community Services’ regional offices, Community Services Centres and Community Services’ Head Office.
SUMMARY OF DISCUSSION PAPER PROPOSALS

The discussion paper proposed 29 legislative and practice reforms which were categorised into three main themes:
1. Promoting good parenting
2. Providing a safe and stable home for children and young people in care
3. Creating a child-focused system

Section 1: Promoting good parenting

Section 1 of the discussion paper outlined ways in which parents’ accountability for providing their children with a safe and nurturing home will be improved and how they can be supported and enabled to build their capacity and ability to do so. It proposed measures to strengthen the Parent Responsibility Contract (PRC) scheme in Care Act and better use effective parenting capacity programs and other therapies to equip parents with the skills they need to keep their family together and avoid the need for child protection intervention.

Section 1 proposals included:
- Introducing stand-alone Parenting Capacity Orders (PCOs) to require parents to attend a parenting capacity program or therapeutic treatment or other service
- Strengthening the PRC scheme by:
  - Introducing PRCs for use in early intervention programs to support disengaged parents
  - Extending the maximum duration of a PRC from six to twelve months to enable parents to attend intensive parenting courses or therapeutic treatments and demonstrate abstinence from substance misuse so their children can safely stay at home with them
  - Introducing PRCs relating to unborn children who are at risk of being placed in OOHC once they are born, to help parents improve their parenting capacity in preparation for the birth of their child
  - Requiring FACS Community Services caseworkers, in appropriate matters, to attempt to use PRCs with parents prior to commencing care proceedings
- Considering the suitability of FGC for care matters to better engage families to resolve child protection concerns
- Introducing an enforcement regime for prohibition orders to ensure the safety and protection of children and young people in the care system
- Improving the way in which we prevent and respond to serious abuse and neglect of children and young people by introducing alternative sentencing options (apart from fines) to community services orders and attendance at therapeutic services/rehabilitation for child abuse and neglect offences.

Section 2: Providing a safe and stable home for children and young people in care

Section 2 of the discussion paper outlined how the Government plans to provide more children and young people in OOHC with safe and stable homes to improve their life outcomes. Reforms focused on removing barriers to adoption when it is in a child’s best interests, improving supported care placements and introducing new long-term guardianship orders to support permanency and stability for children, particularly those in relative and kin placements.
Section 2 proposals included:

- Achieving greater permanency for children and young people in OOHC by:
  - Incorporating permanency into the objects of the Care Act and including a preferred hierarchy of permanency, being:
    1. Family preservation/restoration
    2. Long-term guardianship to relative or kin
    3. Adoption
    4. Parental responsibility to the Minister
  - Legislatively that the Court can only make an order for parental responsibility to the Minister if long-term guardianship and adoption have been considered inappropriate
  - Requiring permanency plans not involving restoration to include a proposal for pursuing guardianship or adoption (as appropriate) or a reason as to why these will not be pursued
  - Legislating timeframes for decisions about the feasibility of restoration – within six months for children less than two years old and within twelve months for children older than two years
  - Enhancing supported care arrangements by:
    - Introducing the self-regulation of supported care arrangements with a court order to limit the involvement of FACS in stable relative and kinship placements
    - Introducing a two-year cap on the duration of supported care arrangements without a court order, after which decisions are to be made about the permanent placement of the child or young person
  - Providing permanent care to children and young people when adoption is not in their best interest by:
    - Introducing long-term guardianship orders
    - Repealing current under-utilised provisions of the Care Act for sole parental responsibility orders
    - Introducing concurrent planning to support timely permanent placements for children in OOHC by either streamlining the assessment of authorised carers and prospective adoptive parents or creating a new category of ‘concurrent carer’ who is authorised as both a long-term carer and prospective adoptive parent

- Making the adoption of children and young people in OOHC easier and quicker by:
  - Conferring on the Children’s Court jurisdiction to make adoption orders where there are child protection concerns
  - Amending the Adoption Act 2000 (Adoption Act) to better recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant
  - Enhancing the capacity of non-government services to implement permanency planning policy and principles by merging the NSW Standards for Statutory OOHC and the NSW Adoption Standards
  - Amending the Adoption Act to improve the involvement of birth parents in planning for the adoption of their child, including allowing non-consenting parents to be parties to an adoption plan, and greater use of Alternative Dispute Resolution (ADR) in adoption proceedings so that parents are fully engaged in planning for matters such as contact arrangements
  - Amending the Adoption Act to provide for additional grounds for dispensing with parental consent including grounds where:
- The parent is unable to care for and protect the child, for example, the parent is incarcerated for an offence against the child, or the parent repeatedly refused or neglected to comply with parental duties and responsibilities and reasonable efforts have failed to correct these conditions
- A parent cannot be located, despite having given an undertaking to keep FACS informed of their whereabouts
- There is no realistic possibility that the parent will be able to resume full-time care of the child or young person because reasonable efforts have failed to correct the conditions leading to the child or young person’s placement in OOHC and it is in the best interest of the child or young person to make a timely decision
  - Limiting the parent’s right to be advised of an adoption application when they cannot be located within a specified time period where:
    - Their child is over twelve years of age and has given their sole consent to the adoption, or
    - When the Children’s Court has taken away parental responsibility for that parent in care proceedings and found that there is no realistic possibility of restoration.

**Section 3: Creating a child-focused system**

Section 3 outlined a number of proposals to create a child-focused system that promotes stronger outcomes and better lives for vulnerable children and young people. They covered a broad range of issues that affect children and young people such as contact arrangements between children and young people in OOHC and their birth families, the misuse of social media, special medical treatment for children and young people and improving Court orders.

Section 3 proposals included:

- **Focusing on contact arrangements by:**
  - Enabling designated agencies to make contact arrangements as part of case planning where there is no possibility of restoration
  - Developing a common framework about contact arrangements between children and young people and their birth families to guide designated agencies when making decisions about contact
  - Improving the resolution of contact disputes by requiring ADR to be used to settle contact disputes and introducing a review mechanism for contact disputes either in the Children’s Court, the Administrative Decisions Tribunal (ADT) (which will be known as the NSW Civil and Administrative Tribunal (NCAT) as of 1 January 2014) or the Family Court where ADR has been unsuccessful
  - Giving the Children’s Court the power to enforce contact orders and arrangements

- Establishing a comprehensive legislative framework for the use of ADR in the child protection sector that would include a range of matters including definitions, role, obligations and protections of convenors, confidentiality of ADR processes, and the limitations on the admissibility of information or documents disclosed in the course of ADR

- Clarifying and consolidating in the legislation the provisions relating to the regulation of special medical treatment for children and young people

- Minimising the improper use of social media in a child protection context by strengthening provisions in the Care Act to prevent the unlawful publication of names and images of children and young people on social media sites and to prevent the publication of offensive or derogatory material about FACS Community Services workers which is intended to harass
• Simplifying the current scheme of parental responsibility orders by:
  o Streamlining parental responsibility orders that may be made by the Court to make it easier to identify who holds which aspect of parental responsibility for a child or young person
  o Introducing a ‘self-executing’ order whereby parental responsibility is with one person for a period of time and then passes to another at the end of the period
• Allowing supervision orders to be extended for a further twelve months where the original order has expired and no report has been filed by FACS for the Court’s consideration
• Enabling the Aboriginal Child, Family and Community Care State Secretariat (AbSec) and CREATE to have access to information to permit fulfilment of their objectives
• Enabling private medical professionals to share personal and health information about children, young people and families with other relevant agencies without client consent where this relates to the safety, welfare and wellbeing of a child or young person
• Requiring Government to report on the deaths of children and young people known to FACS Community Services, and
• Clarifying the reporting requirements regarding children living away from home without parental consent.
SECTION 2: A SAFE HOME FOR LIFE

OVERVIEW

Many stakeholders who responded to the discussion paper were of the view that the current child protection system is overly legalistic, adversarial and process-driven. Most young people interviewed indicated that it is also too parent-focused. The need for greater parental accountability and consequences for poor parental behavior was a strong message coming from young people who provided feedback.

Promoting good parenting

The parenting reforms proposed in the discussion paper suggested a shift, to some extent, in the roles of NGOs and the legal system to ensure a seamless system that will better meet the needs of vulnerable families on the cusp of statutory intervention who are currently falling through the gaps. The effectiveness of introducing PCOs and PRCs in early intervention in particular was questioned by many service providers and peak representative bodies. There were concerns expressed about the capacity of the non-government sector to undertake legal or quasi legal functions that may arise from introducing PCOs and PRCs.

Many submissions acknowledged that this shift will be difficult for some service providers, particularly those in the early intervention sector, whose focus is on supporting voluntary clients who are not yet at the threshold of statutory intervention. For some stakeholders, the proposed reforms blur the lines between voluntary and mandatory programs, and the non-government and government statutory system. However, to provide a seamless service system that is child-focused and prevents risk in families escalating to crisis point, this is a shift we need to make.

There was widespread support for strengthening the PRC scheme in child protection rather than in the early intervention context, the enforcement of prohibition orders and the introduction of alternative sentencing options which are seen as likely to be more effective at addressing offending behaviour and more child-focused. Every opportunity will be taken by the Government to help parents build their capacity and address their parenting concerns rather than acting punitively.

FGC was very strongly supported by stakeholders as it is seen as taking pressure off the legal system, engaging the family’s own support systems and allowing caseworkers to carry out their duties more effectively to resolve issues with families at the local level.

Providing a safe and stable home for children and young people in OOHC

Stakeholders agreed that children and young people in OOHC need and deserve early and permanent decisions made about their long term care arrangements. The Government’s overriding goal for children and young people is that they live with their families if it is safe for them. This was also strongly supported in the submissions received.

The most debated of the proposed reforms were those relating to adoption. In the discussion paper it was proposed that adoption be included in the proposed permanent placement hierarchy before allocating long-term parental responsibility to the Minister. This means that before it is proposed that parental responsibility for a child or young person be allocated to the Minister, adoption be first considered and ruled out as not practicable and not in the best interests of the
child or young person. As noted in the discussion paper, international research has found greater advantages to adoption compared to long-term care in terms of placement stability, emotional security, sense of belonging and general well-being.

Young people interviewed as part of the consultation process (who had had experience of OOHC but not adoption) indicated that they preferred the option of adoption over long-term foster care. However, many private individuals and community members opposed adoption in any form given the destructive consequences of the Stolen Generation and past forced adoption policies and practices.

The terrible and destructive impacts of the Stolen Generation continue to impact the community deeply and the submissions received were clear on this issue. A number of specific one-to-one meetings and forums FACS held with Aboriginal groups also revealed a great level of fear in these communities that the proposed parenting and permanency reforms herald a return to past policies of Aboriginal and Torres Strait Islander children and young people being adopted by non-Aboriginal and Torres Strait Islander carers. They are fearful that the reforms could result in a new generation of children removed from their families, communities and culture. Some stakeholders also indicated that the idea of ‘permanency and stability’ with one carer as presented in the reforms is a western model of care and child-rearing that does not acknowledge that Aboriginal and Torres Strait Islander people have an extended family system, and that stability and permanency can be achieved by children and young people being cared for by a number of relative and kin at different times.

The Government and its non-government partners are deeply committed to supporting Aboriginal and Torres Strait Islander children living with their parents where it is safe to do so. The Government is not seeking to impose adoption on the Aboriginal and Torres Strait Islander community. Where Aboriginal and Torres Strait Islander children and young people cannot live with their parents, the Government is committed to and will still require the application of the Aboriginal and Torres Strait Islander placement principles.

The Adoption Act specifically recognises that adoption is a concept that is absent in customary Aboriginal child-rearing arrangements. As part of the final reform package, the Care Act will recognise that for Aboriginal and Torres Strait Islander children who cannot live with their parents, adoption is not a preferred placement option any decision about permanent placement is subject to the application of the Aboriginal and Torres Strait Islander Children and Young Person Placement Principles.

A key concern expressed by Aboriginal and Torres Strait Islander stakeholders is that children and young people are not always identified as Aboriginal and Torres Strait Islander when decisions about permanent placements are being made. With the proposed changes to adoption, stakeholders expressed the view that this could result in increased numbers of Aboriginal and Torres Strait Islander children and young people being mistakenly adopted to non-Aboriginal and Torres Strait Islander carers.

The Government is seeking to introduce a number of important reforms to ensure this does not occur. For example, greater use of FGC will improve casework, the identification of relatives and kin and engagement of families prior to the making of decisions about permanent placement.

The Government is also working hard with Aboriginal OOHC agencies to build their capacity. The transfer of OOHC to NGOs will increase the number of Aboriginal children and young people who are placed with Aboriginal carers, supported by Aboriginal caseworkers and managed by Aboriginal NGOs. These services will not be required to also be accredited to provide adoption services.
The Government will also work closely with AbSec and other key Aboriginal and Torres Strait Islander stakeholders during the implementation of the final reform package.

One of the issues that arose specifically out of the meetings and forums held with Aboriginal and Torres Strait Islander groups was the role that the federal family law jurisdiction could play in resolving parenting issues in Aboriginal and Torres Strait Islander families. Stakeholders reported that families should be encouraged to obtain parenting orders in the federal jurisdiction at an earlier stage, before the level of risk escalates and more intensive involvement from FACS is required. FACS is considering this suggestion and how it may be progressed.

Many other submissions supported the policy of promoting the adoption of children and young people in OOHC where it is in their best interests. Support for how to streamline adoption processes was mixed. Some members of the legal and NGO sector expressed concern about principles of natural justice, particularly in relation to proposed changes to parental involvement in adoption proceedings. The transfer of the adoption jurisdiction from the Supreme Court to the Children’s Court was generally not supported.

The introduction of guardianship orders and giving carers greater autonomy in day-to-day decision making were widely supported. Appropriate cultural support will be provided for these placements involving Aboriginal and Torres Strait Islander children and young people, including obtaining the views of the child’s or young person’s Aboriginal and Torres Strait Islander family and community as part of the planning process.

Creating a child-focused system

The reforms proposed to make the regulatory system less legalistic and less adversarial were widely supported. Reforms to encourage contact decisions to be made through case planning rather than through the Court were well received by most stakeholders, although the proposal to limit the Children’s Court’s powers to make contact orders was contested by the legal community.

Proposals to simplify many aspects of the legal and regulatory system, such as orders allocating parental responsibility, the administration of special medical treatment to children and young people in care, the reporting of homelessness and the increased use of ADR, were also well supported.

Whilst many stakeholders agreed that social media was a policy area fraught with child protection challenges and in need of reform, there were mixed views about how this could occur, how effective any measures could be and whether existing legislative provisions are sufficient. The majority of submissions on this point did not support new legislation to prohibit sex offenders from using social media, noting that existing criminal sanctions are sufficient in this area.

**FEEDBACK AND FUTURE POLICY DIRECTION FOR EACH INDIVIDUAL PROPOSAL**

This section of the Consultation Report summarises the feedback received from stakeholders to each of the proposed reforms and outlines the Government’s future policy direction for each proposal.

Each proposal begins with a description of the proposal contained in the discussion paper and the questions posed for feedback. The feedback from the consultation process is summarised to provide an overview of the main themes, followed by the Government’s response.
Quotes have been included, particularly from the interviews conducted by CREATE with children and young people with experience in OOHC to communicate how children and young people feel about the proposals.

The majority of individuals and community members who provided submissions requested that their submission not be made public. For this reason, the views of stakeholders are discussed in groupings according to the part of the child protection sector to which they belong and in a manner that does not identify individual stakeholders with any particular submission. A list of the stakeholders who provided written submissions is included at Appendix 2.

**PROPOSAL 1: CREATE MANDATORY PARENT CAPACITY ORDERS**

Introduce stand-alone PCOs to require parents to attend a parenting capacity-building or education course.

**Question 1 (a):**
Do you think PCOs would be an effective mechanism to address escalating risk in both an early intervention and child protection context? Are there other mechanisms that might be equally or more effective?

**Question 1 (b):**
What factors do you think the Court should consider before making a PCO?

**Question 1 (c):**
What should be the consequences for failing to comply with a PCO?

**Stakeholder feedback**

**Question 1 (a)**

The submissions revealed mixed support for the introduction of PCOs – there was limited support for the introduction of PCOs in early intervention, but strong support for their use in statutory child protection.

Children and young people who provided feedback strongly supported the introduction of PCOs and PRCs (Proposal 2). Comments from young people suggested that they understood that the purpose of the orders and contracts was to help parents develop their parenting skills and prevent young people from entering the care system. However, the young people said that the parenting orders or contracts would only be effective if parents were motivated and had the capacity to change:

“It’s a good idea cause [sic] some parents think they don’t need any help but they do. They might not even know what areas they need help with. I mean which specific areas. Early intervention is the best, when the kids are young. Especially if the kids are at risk – the kids need to be protected, that is the most important thing really, not looking after the parents” – female, aged 21 years

“I 100% agree with these, you need to give them a chance, the parents at least. At least give them a bit of a chance. I think making it more formal and official would work better. Make it less laid back, then people would take it heaps more seriously.” – male, aged 18 years
“A parenting contract could have been effective. Parenting contracts, so like a duty of care contract, so they are signing off to say that they know what their responsibilities are and are prepared to [be] oblige[d] to them. Then they take the necessary steps to avoid being in a situation where their kids may be taken away from them. Definitely. So just cutting a deal with the Government, yeah. I 100% agree with having a contract in place. You look at the amount of children (7 of us) and every one is now in care. A contract could have prevented that – or changed that.” – male, aged 21 years

Early Intervention

Of the respondents who commented on this proposal, 67 per cent opposed the use of PCOs in early intervention, 18 per cent supported the proposal, 10 per cent provided qualified support, while 5 per cent were undecided. Of those who supported the proposal, the majority were from the legal community, anonymous submitters or identified individuals. Some respondents felt that PCOs would be a useful casework tool, while expressing some concern about their use in an early intervention context and struggled to reconcile how a voluntary program would cope with parents attending via a mandatory order. The strongest opposition came from early intervention service providers.

The majority of respondents who did not support PCOs in early intervention thought that they would be inconsistent with the voluntary nature of early intervention work, and counter-productive to the aims of that work. There was a concern that PCOs would result in a reluctance by families to engage with early intervention services and seek the help they need to reduce risks to their children. This might ultimately undermine the goal of reducing the number of children and families entering the tertiary service system. There was also concern that significant training and support would be needed for NGO staff to engage with what were perceived to be legal functions that would flow from the use of PCOs.

A frequently expressed concern about the use of PCOs was that there is insufficient evidence to conclude that such compulsory client engagement measures are effective in achieving improved parenting outcomes.

Amongst those who did support this proposal, a majority noted that sufficient culturally appropriate support services must be available to support the parent to comply with the order. One service provider suggested that such services should be provided by agencies that are able to manage families with complex issues on a holistic way. A legal stakeholder submitted that there needs to be a mechanism for priority of access to ensure parents with children at risk are able to secure access to government funded services where the service will assist to address risk of harm issues.

Statutory Child Protection

There was significant support for the use of PCOs in statutory child protection. The majority (65 per cent) of respondents to this proposal supported the introduction of PCOs in child protection, 27 per cent opposed the proposal, while 8 per cent were undecided or unclear in their views.

Most stakeholders considered that PCOs, when used in statutory child protection, could be a useful mechanism for setting clear and practical expectations for parents and ensuring that the removal of a child is a measure of last resort. Some stakeholders recommended that they could be used in response to ROSH reports where a safety plan indicates that a child may remain safely in the

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2 A safety plan is a casework tool that caseworkers complete with a family to resolve or mitigate any identified dangers in the immediate period once a home visit has been conducted.
home if certain conditions are met by the parent. Other stakeholders suggested that a PCO may be appropriate where there have been attempts to engage the parent with an identified service (for example, through a PRC) and those attempts have been unsuccessful, either because the parent has refused to engage, or has agreed to engage (for example, as a condition of a PRC) but their engagement is intermittent or tapers off.

Some stakeholders suggested that PCOs may be a useful tool particularly in the Strengthening Families program and before matters escalate into high end statutory child protection. It was also acknowledged by some stakeholders that a PCO should not negate the benefits and importance of building strong and respectful relationships with families and being informed by a holistic assessment. Comments were made that sustainable change through PCOs was most likely to occur with parents who had insight into the risk issues facing their family.

**Question 1(b)**

A consistent message in the submissions was that the threshold test for making a PCO needed to be higher and more specific than a simple “need to improve parenting”, as proposed in the discussion paper. Suggestions for more specific threshold criteria included “there is a risk to the child or young person that is likely to be reduced by a parent or primary caregiver engaging with an identified service or program” and “the primary caregiver is unlikely to engage in that service or program without an order being made”.

Sections of the legal community suggested that it is important to have a threshold test for PCOs separate from that for establishing the need for care and protection of a child or young person in care proceedings. They proposed that PCOs should be sought before the circumstances reach a point where a child might be found to be in need of care and protection under section 71 of the Care Act (Grounds for care orders), otherwise the value of a PCO as an intervention strategy to prevent removal of a child or young person would be lost.

Many of the legal submissions also suggested that a PCO should be available following the commencement of care proceedings, as long as the making of a PCO did not compromise the timely management of the substantive application. Further, such orders should only be available in care proceedings as a condition for a child to remain with, or be restored to, the care of a parent.

**Question 1 (c)**

There were mixed views about whether there should be consequences for breaches of a PCO, and if so what they should be. Many stakeholders recommended that the consequences should be determined on the basis of the individual circumstances of a family. How compliance would be measured (i.e. via attendance to a program or outcome of having attended such a program), was a particular focus of thought for many stakeholders and there was general agreement that any consequences needed to be strengths-based and utilise positive reinforcement. One legal stakeholder considered that NGOs should not be able to make an application for a PCO or for a breach of such an order before the Court, rather they should provide information about a breach of a PCO to FACS to pursue in the courts.

Key legal stakeholders also considered it imperative that a parent who is subject to a PCO have access to legal representation given the potential for breach consequences. Further, if such matters proceed to a Dispute Resolution Conference, the parties should continue to be legally-assisted. The provision of legal advice to parents would ensure they understood the nature and effect of the order and the consequences which might flow from a breach. This would serve to stress to the parent the importance of complying with an order.
Nearly half of the young people interviewed identified that any intervention needed to take into account the severity of the situation the child was in and the nature of the abuse and neglect the child was experiencing. Young people suggested that if a parent breaches a PCO or PRC, each case should be reviewed individually as every family’s situation is different. Some young people recommended a warning system where parents receive one or a number of warnings first, followed by sanctions:

“Two strikes and your [sic] out I reckon. Give them a warning first, and then remove the kids because if the parents are not going to change then they are not going to change.” – female, aged 18 years

“There should be a time limit for them to get things sorted out. Because if they don’t have the best mindset then they shouldn’t be looking after the kids anyway.” – female, aged 16 years

“Well I think there should at least be a warning system, like a 1, 2, 3 strikes and you’re out system. Like for a first warning you may have to do a small amount of community services, or join a group session with other mothers [and/or fathers who] have also done a first strike. And be instructed on where they are going wrong and where they can pick up. The second one would be like: ok you’re pushing it now this is what you need to do, you have one more chance and then your child may possibly be taken...” – male, aged 21 years

Many young people who provided feedback felt that the ultimate consequence for a parent who has failed to fulfil their obligations in a PCO or PRC would be to have their child removed. The young people articulated clearly that this would need to be a consequence of the parent’s failure to create a safe home environment. The young people felt that the safety of the child should be the paramount concern when assessing the consequences of failed parental contracts.

“Worse case scenario would be for DOCS to take away the kids. If they have signed the contract and they haven’t followed through with what they agreed to do then the kids should probably not be around them.” – male, aged 18 years

**Future policy direction**

**Policy direction – proceed as described in the discussion paper**

A PCO will be a stand-alone order which requires a parent or primary care-giver of a child or young person to attend or participate in a program, service or course or engage in therapy or treatment aimed at building or enhancing his or her parenting skills. As PCOs represent an important component of creating a child-focused system, the option for practitioners and service providers to use stand-alone PCOs both in early intervention and child protection will be made available in legislation.

_Early Intervention PCOs_

The Government notes that a number of concerns were raised in submissions about the use of PCOs in early intervention. PCOs in early intervention, while not precluded under the legislation, will not be rolled out until further consultation occurs with stakeholders to resolve operational and legal concerns.

In the future, PCOs in an early intervention context have the potential to assist in increased service provision for that cohort of families who fall into the gap between early intervention services and the statutory child protection system.
The issue of whether NGOs should have legal standing to bring PCO applications before the courts, or whether FACS brings these applications, needs to be further explored. For now, it will only be the Director-General who will be able to bring an application for a PCO. As with any proceedings before the Children’s Court parents will be entitled to be legally represented where there is an application for a PCO.

**Statutory Child Protection PCOs**

Based on the feedback received from stakeholders, PCOs in a statutory child protection context will contain the following elements:

- **When a statutory child protection PCO could be used** – a statutory child protection PCO could be considered when other options such as a PRC (Proposal 2) or a prohibition order (Proposal 4) have not addressed identified parenting deficiencies nor reduced the risk of significant harm posed to a child or young person. A PCO may be appropriate where there have been attempts to engage the parent with an identified service and those attempts have been unsuccessful. Given the specific, targeted nature of a PCO, such an order will only be able to be sought (or made by the Court) when there are specific services available for a parent or primary care-giver to attend to address the particular parenting deficiency identified.

- **Threshold criteria** – as requested by legal stakeholders, the threshold criteria for a PCO will be separate from that for establishing the need for care and protection under section 71 of the Care Act. It will include:
  - There is an identified deficiency in parenting capacity of the parent or primary care-giver that has the potential to place the child or young person at risk of significant harm and it is reasonable and practicable to require the parent or primary care-giver to comply with the order, and
  - The parent or primary care-giver is unlikely to undertake or engage in that program, service, course, therapy or treatment unless the order is made.

- **Terms of a statutory child protection PCO** – while the legislation will not prescribe the contents of a PCO, it is proposed that a PCO will only be made in precise terms and be focused on specific identified parenting concerns so as to ensure the order is targeted and effective. As suggested in many submissions, the expectations and minimum outcomes of a parent’s participation in the program service, course, therapy or treatment prescribed in the order will need to be clearly stated.

- **Variation or revocation of a PCO** – a PCO will be able to be varied or revoked on application by either the Director-General or a parent where there has been any significant change in relevant circumstances since the order was made.

**PROPOSAL 2: PARENT RESPONSIBILITY CONTRACTS**

Strengthen the PRC scheme by:

(a) Introducing a new modified PRC for use in early intervention programs to support disengaged parents

(b) Extending the duration of a PRC from six to twelve months to enable a parent to attend intensive parenting courses or therapeutic treatments and demonstrate abstinence from substance misuse so children can stay at home with them safely

(c) Introducing PRs for parents with an unborn child at risk to help improve their parenting capacity in preparation for the birth of their child

(d) Requiring FACS to attempt to use PRCs with parents prior to commencing care proceedings in appropriate matters.

**Question 2 (a):**
Do you think there is a place for PRCs in early intervention programs?

*Question 2 (b):*
If so, what should the consequences of a breach of a PRC in an early intervention context be?

*Question 2 (c):*
Do you agree that PRCs will be improved by extending timeframes, broadening their scope to include unborn children and mandating their use prior to commencing care proceedings in appropriate matters?

*Question 2 (d):*
Are there any other ways that PRCs may be improved to help parents keep their children out of OOHC?

**Stakeholder feedback**

*Questions 2(a) and 2(b)*

While stakeholders expressed strong support for the use of PRCs in statutory child protection, there was less support for their introduction in early intervention. There was a widespread view that in early intervention, voluntary parental engagement offers the best chance of success, and that parents need to be genuine partners in the development of any plans or agreements. There was very limited support for the introduction of a court-lodged contractual scheme in early intervention for a number of reasons, including the:

- Punitive way that they would be viewed by parents
- Fact that engagement with court processes would be a new role for NGOs, and
- Perceived increased costs to Legal Aid NSW flowing from these changes.

However, there was widespread support for introducing a non-Court registered ‘agreement’ for use in early intervention, with this option having different consequences to a statutory child protection PRC. Such an agreement would be able to be used as a casework tool to clarify what parents need to do to improve their parenting and prevent their children from entering the statutory child protection system.

*The majority of stakeholders supported including a requirement in the Care Act that the Director-General consider using a PRC prior to care proceedings,* rather than a mandatory requirement that PRCs be attempted in all cases. Further, stakeholders suggested that the use of a PRC could be used as evidence of prior alternative action under section 63 of the Care Act (Evidence of prior alternative action).

*Question 2 (c)*

There was strong support for both extending the duration of a PRC from six to twelve months and introducing PRCs for parents with an unborn child at risk to help deliver sustainable long-term parenting change and increase family preservation. Many stakeholders noted that both these proposals would result in increased demand for appropriate support services and require additional ongoing casework and monitoring.

*Question 2(d)*

A number of suggestions were made about additional reforms that might be made to the current PRC scheme with a view to focusing the scheme more on family preservation and restoration. These included:
• Changing terminology to remove the word ‘contract’ and replacing it with ‘agreement’ to better reflect the aims of a PRC in an early intervention context
• Amending the breach provisions to increase incentives for parents to enter into PRCs, so that a breach can be used as evidence in the determination of whether a child is in need of care and protection rather than leading to an automatic prima facie presumption to that effect, as is currently the case
• Mandating the provision of legal advice to parents in relation to PRCs
• Improving the way in which PRCs are drafted to ensure consistency and measureable outcomes, including ensuring they are drafted in a culturally appropriate way, and
• Ensuring better collaborative work between FACS and Legal Aid NSW to increase understanding about the purpose and intent of PRCs (similar to the collaborative work which has occurred as part of the Family Preservation and Restoration Pilot3).

Future policy direction
Proceed in an amended form to that described in the discussion paper

**Early intervention PRAs**

Based on stakeholder feedback, a new modified Parent Responsibility Agreement (PRA) will be introduced for early intervention clients. This will not be a Court registered ‘agreement’ and will be easily distinguished from PRCs used in statutory child protection. The term ‘contract’ will be replaced with ‘agreement’ as suggested by stakeholders. A PRA will be able to be made for any length of time and be varied as progress is made.

PRAs will be a tool for NGO caseworkers to apply in instances where risks to child wellbeing have escalated or parents are disengaging from service provision. Service providers will be trained to draft a PRA with clearly set out conditions and realistic goals in plain English to maximise a parent’s ability to implement the agreement successfully.

As requested by stakeholders, the consequences of a breach at this early stage will be minimal as parents will be encouraged to own the planning, directions and outcomes elicited through the tool. FACS can, however, use a breach as evidence if care proceedings are commenced at a later time, as is currently the case with any intervention that occurs with a family. Parents will not be required to seek legal advice given a PRA will not be legally enforceable.

If, following the development of a PRA, risks continue to escalate or the parents further disengage from services, the NGO caseworker will be required to reassess the circumstances and if necessary make a ROSH report to FACS. This may see the matter escalated into the child protection system and information about the PRA may be provided to FACS as evidence of the NGO service provider’s prior action with the family.

**Statutory child protection PRCs**

As supported by stakeholders, the duration of statutory child protection PRCs will be extended from six to twelve months. PRCs will be extended to apply to expectant parents whose unborn child has been the subject of a pre-natal report to the Director-General. In these situations, the PRC will be aimed at improving the parenting skills of the prospective parents and reducing the likelihood that the child will be at risk of significant harm after birth.

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3 A recent pilot program, known as the ‘Family Preservation and Restoration Pilot’, or ‘Short Term Court Orders Pilot Project’ in FACS, introduced new practices to focus caseworkers on preservation and restoration with placement of a child in OOHC as a last resort. This pilot showed a greater use of PRCs occurs when positioned within a targeted scheme to help children stay at home or return home.
A PRC, and the refusal of a parent or primary care-giver to enter a PRC, may be used as evidence in care proceedings of an attempt to resolve a child or young person’s need for care and protection without bringing a care application before the Court.

Court-registered PRCs will continue to be used by caseworkers with parents who are engaged with the statutory child protection system. As requested by stakeholders, the consequences of breaching a PRC will be modified to encourage greater uptake of PRCs as a pre-court diversionary tool. A breach will now be used as evidence in the determination of whether a child is in need of care and protection rather than leading to an automatic prima facie presumption to that effect. This will allow the Court to determine the weight that should be given to any such breach having regard to the particular facts of the case. Parents will continue to be able to seek legal advice before signing a PRC.

**PROPOSAL 3: FAMILY GROUP CONFERENCING**

Consider the suitability of FGC for care matters to better engage families to resolve child protection concerns.

**Question 3 (a):**
Should there be an obligation upon FACS to refer care matters to a FGC prior to commencing care proceedings and, if so, what should be the nature of this obligation?

**Question 3 (b):**
Should the Court be able to refer parties to FGC in addition to or in place of a dispute resolution conference?

**Question 3 (c):**
What kinds of matters do you think would be appropriate for FGC in the context of care proceedings?

**Stakeholder feedback**

There was wide support for the increased use of FGC, particularly during casework. The use of FGC was one of the most supported proposals canvassed in the discussion paper.

Many stakeholders saw great value in FGC as an early intervention strategy to engage parents and extended family in addressing care and protection concerns, with a view to diverting the case from the Children’s Court. Some stakeholders also welcomed parents taking more ownership for the child protection concerns and extended family being involved through FGC. The greater use of FGC was also seen as consistent with section 37 of the Care Act (Alternative Dispute Resolution).

Aboriginal and Torres Strait Islander stakeholders in particular supported the use of FGC as a more culturally appropriate process than traditional statutory casework. These stakeholders did however note that it was important that any model used is culturally appropriate.

FACS is currently participating in the Care Circle project at Nowra and Lismore and is acutely aware of the benefits of a culturally appropriate model for resolving issues between families and FACS in the child protection arena. What is learnt from the Care Circle project will be invaluable in devising future methods of culturally appropriate FGC for Aboriginal and Torres Strait Islander families.
Many stakeholders noted that it was important that FGC be properly resourced, such as by having trained facilitators, adequate preparation time for the family, access to support services, and adequate support provided after the conference. This includes ensuring parents with a disability are adequately supported throughout the FGC process. Stakeholders suggested that any FCG model needed to be highly responsive to referrals so that a time lag in intervention with the family did not occur.

A large proportion of the young people who were interviewed believed that it would have been beneficial for their family to participate in FGC. This was because they felt that the meetings could have potentially provided their parents with some much needed support from members of their extended family and trained counsellors:

“**Yes! Someone would then have been alerted to the fact that my mum needed a whole bunch of support for me to stay out of the system...**” – female, aged 23 years

“**Yep – it might have been effective if my family members stepped in and more or less tried to help my mother rather than just watching her become a train wreck... Aunts, uncles, grandparents, the department, police, umm a counsellor, psychiatrist. That would have been perfect...the parent as well...the Government should decide on their behalf who should be at the meeting.**” – male, aged 21 years

A small number of young people interviewed stated that FGC would probably not have benefited their family’s situation or prevented them from entering OOHC. They identified their parents’ lack of motivation to take responsibility for and change their behaviour as a major obstacle to this type of intervention. In several cases, the young people identified that their extended family was a major part of the problem.

**Question 3(a) and 3(c)**

The majority of submissions on this proposal expressed the view that there should be an obligation to **consider** referring a matter to FGC during casework, rather than an obligation to refer all matters to FGC. This is because not all matters were considered appropriate for a FGC.

Many stakeholders suggested that the suitability of a matter for FGC should be determined on a case-by-case basis, and could include factors such as the level of risk to the child, the willingness of parents or extended family to attend the FGC, and the proximity of the parents’ residence to the extended family. The types of cases that stakeholders saw as not appropriate for FGC were those:

- Requiring immediate statutory intervention
- Involving issues of intergenerational sexual abuse
- Involving a high degree of family violence, and
- Where families are very small or highly dysfunctional.

Overall, stakeholders felt that the individual facts of the case should be considered in determining whether it is appropriate for FGC, rather than implementing a rigid set of eligibility criteria.

**Question 3 (b)**

Most stakeholders were also supportive of the use of FGC during court proceedings, and felt that a having range of ADR options available during Children’s Court proceedings was positive.

Some key legal stakeholders felt that FGC should not be used routinely during court proceedings and should be considered in light of the existing ADR programs in the Children’s Court. Concerns were raised about any potential time delay during court proceedings if a matter were to be
referred to FGC. This was because the recent evaluation of the FGC pilot in NSW by the Australian Institute of Criminology demonstrated that FGC typically takes longer to arrange than a court-ordered DRC.

**Future policy direction**

**Proceed in an amended form to that described in the discussion paper**

As requested by stakeholders, caseworkers will consider the suitability of referring a family to FGC during casework, rather than being obliged to refer all families to FGC prior to commencing care proceedings.

This change to casework practice recognises stakeholders’ views that FGC should be used as early as possible, and that not all matters will be suitable for FGC.

Although the Children’s Court has the power to refer a matter to FGC during care proceedings, FGCs will primarily take place prior to the commencement of care proceedings.

A steering committee will be established to further develop the model of FGC to be used, particularly in light of the recommendations of the recent evaluation report and stakeholder suggestions. This steering committee will specifically consider the appropriateness of FGC for Aboriginal and Torres Strait Islander families, families from other cultural backgrounds, and for parents with a disability.

While no specific amendments are required to be made to the Care Act to facilitate the greater and earlier use of FCG, a new chapter will be introduced into the Care Act establishing a framework for ADR generally. Confidentiality protections during ADR will be extended to all ADR processes conducted under the Care Act, including in FGC.

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**Question 4:**
What measures should be introduced to enforce prohibition orders under the Care Act?

**Stakeholder feedback**

More than half the submissions received on this proposal supported making prohibition orders enforceable. Greatest support for this was expressed by the legal community and government agencies, whilst the non-government sector was split. Those who opposed the proposal did so principally on the grounds that introducing punitive measures for already vulnerable people exacerbated disadvantage, and criminalised parents. They said that emphasis should be on support not punishment.

**Question 4**

In terms of consequences, many stakeholders believed that fines were not an appropriate sanction. The preference was for the use of good behaviour bonds, possibly with conditions...
attached, requiring the person to attend a rehabilitation program designed to address the underlying issues causing the offending behaviour, or to attend a parenting program. However there was concern about the availability of suitable services and programs. There was also some concern about how compliance would be monitored for any courses or programs a person was required to attend as a result of a breach of a prohibition orders.

A small number of submissions considered imprisonment should be available for serious or persistent breaches. It was also suggested that the Children’s Court should retain discretion not to impose a penalty or other order in circumstances where, for example, reasonable excuse for the breach was shown, or the breach was considered to be minor.

Future policy direction

Proceed as described in the discussion paper

Alleged breaches of prohibition orders will be brought to the attention of the Children’s Court in the same way as the Court is notified of alleged breaches of other orders. If, after giving parties an opportunity to be heard on the allegations, the Children’s Court finds that the prohibition order has been breached, the Court can make any order it considers appropriate in the circumstances. This could include varying the terms of the original prohibition order, withdrawing the prohibition order, or making another order, such as a supervised contact order with conditions. The Court will also have the option of making a PCO requiring the person to attend a parenting, counselling, rehabilitation or other therapeutic program, or it may make no further order.

This approach brings the matter back to the attention of the Children’s Court where the focus is on the safety, welfare and well-being of the child or young person and on how parents can be supported to address this paramount consideration, rather than criminalising and punishing the parents.

PROPOSAL 5: GIVING BROADER SENTENCING OPTIONS THAN JUST A POWER TO FINE

Introduce alternative sentencing options (other than fines) to child abuse and neglect offences such as community service orders and educative and therapeutic services or rehabilitation.

Question 5:
Do you agree that there should be alternatives to fines for the child abuse and neglect offences under the Care Act and, if so, what type of orders would be appropriate?

Stakeholder feedback

The overwhelming majority of stakeholders who provided feedback on this proposal agreed that fines were an inappropriate and ineffective sanction for child abuse and neglect offences. They exacerbate the often existing socio-economic disadvantage, have an adverse impact on the child and the family, and do not address underlying issues causing the offending behaviour (especially if those issues are related to poverty and isolation). It was noted that fines are rarely used for this reason.

The majority of submissions agreed that alternative sentencing options that are more likely to be effective at addressing offending behaviour, and which take into account the socio-economic disadvantage faced by the majority of people likely to come before the courts on such charges, are desirable. However, a number of submissions from service providers opposed the proposal, taking issue with its punitive focus. Some submitted that these offences are already adequately
dealt with in the criminal law and do not support the further criminalisation of parents. Some did not believe the reforms would affect the rate of entry of children and young people into OOHC or achieve the desired positive impact of the proposal. Others were opposed on the grounds that compulsory attendance to such things as programs or services would not effect change and that caseworkers should be working with families and children rather than gathering evidence against parents.

Question 5
There was extensive support for the use of bonds, and orders requiring offenders to participate in an intervention program such as rehabilitation or therapeutic programs, and parenting courses that focus on developing parenting skills and working towards family preservation. Issues raised by stakeholders include the need to ensure that a spot is available in an appropriate and accredited program before magistrates make the order, and the need to set out clearly what needs to be completed or achieved to satisfy the order and expiate the fine. Some submissions suggested Work Development Orders and enforceable undertakings to improve parental capacity and accountability.

There was concern about the use of community service orders. A government stakeholder and a number of legal stakeholders considered that because these were alternatives to imprisonment, there was an element of punishment in community service orders which may be too high in terms of the seriousness and culpability of the offence, so community service orders should only be used for more serious offences.

Future policy direction
Proceeding outside the child protection legislative reform process

At the time of writing this report, the Attorney-General had tabled a report by the NSW Law Reform Commission on sentencing laws. The Government is yet to issue a final response to this report.

Progressing this proposal at a later stage, once the Government has developed a comprehensive response to sentencing reform, will ensure consistency in sentencing laws and therefore avoid the risk of needing to make further consequential amendments to the Care Act if sentencing laws are amended.

PROPOSAL 6: PERMANENCY FOR CHILDREN AND YOUNG PEOPLE IN OOHC

Achieve greater permanency for children and young people in OOHC by:

(a) Incorporating permanency into the objects of the Care Act including the preferred hierarchy of permanency, being:
   1. Family preservation/restoration
   2. Long-term guardianship to relative or kin
   3. Adoption
   4. Parental responsibility to the Minister

(b) Requiring that the Court can only make an order for parental responsibility to the Minister if adoption or long-term guardianship is not possible

(c) Requiring permanency plans not involving restoration to include the pursuit of guardianship/adoption or reasons why they should not be pursued.
Question 6:
Are there other measures for achieving greater permanency in the Care Act that should be considered?

Stakeholder feedback

All stakeholders were generally supportive of the need to achieve greater permanency for children and young people who are unable to live safely with their parents, but submissions varied in the way permanency might be reflected in the Care Act.

Young people who provided feedback were very supportive of increased permanency:

“Yes, a long term safe placement is the best, it is nice for kids to have someone to call "Mum" and "Dad".” – female, aged 23 years

“Yes I agree, long term situations are the best. They are better for the kids so they are not always constantly moving to different homes and families and having to get used to all that constantly” – male, aged 18 years

Key stakeholders across all sectors were generally supportive of the introduction of a permanency hierarchy in the Care Act. There was widespread support for family preservation and reunification as the primary goal of the care and protection system, as well as the first goal of casework and the first option considered by the Children's Court. Some comments were made that the introduction of the hierarchy will ensure greater attention is given to restoration and relative or kinship placements.

Placement with relative and kin was broadly endorsed as the second level of the hierarchy, with some submissions concerned that the level of ongoing support available to relative and kin would be a key factor in the uptake and acceptance of new guardianship orders (Proposal 9). While support was given for a focus on relative and kinship placements, caution was expressed that these placements require both casework and financial support to achieve placement stability. There was also general support from the Aboriginal and Torres Strait Islander community for the introduction of guardianship orders to relative and kin. This support was however conditional on ensuring that access to support and services, including financial support, would not be decreased. Aboriginal stakeholders were also concerned that guardianship should not allow for a change of name of an Aboriginal child who is the subject of such an order. Submissions also proposed that consideration should be provided to extending guardianship orders to non-relatives in certain circumstances.

The position of adoption in the hierarchy, placed above allocating parental responsibility to the Minister, drew mixed responses from stakeholders. Many submissions supported the placement of open adoption in the hierarchy. Others did not support adoption as a preferred permanent placement over allocating parental responsibility to the Minister, particularly for Aboriginal children and young people. A number of submissions argued that the evidence based on the benefits for children of adoption over a stable long-term foster placement is mixed and cited adoption breakdown rates in the United Kingdom and the United States. The destructive impacts of past forced adoption policies and practices and the Stolen Generation were also a significant concern for many individuals and community members and these stakeholders were opposed to adoption in any form.

There was an acknowledgement in some feedback that open adoption is very different to what has occurred historically and there is a need for education about open adoption and its benefits to children and young people. There were also concerns regarding the potential for Aboriginal
children and young people to be adopted before FACS had identified their Aboriginality, which highlighted the importance of high quality consultation practices. Concern was also raised about adoption being inappropriate for some other cultures (in addition to Aboriginal and Torres Strait Islander communities) – for example in the Muslim community, adoption is not generally supported.

Some members of the legal community strongly supported the increased use of open adoption but noted that the Court may lack sufficient information to determine that adoption is appropriate at the time it makes care and protection orders. One submission noted that:

“in certain cases, short term orders allocating parental responsibility to the Minister will remain the most appropriate orders to make because there will be a need to first obtain adequate evidence about the appropriateness of adoption or guardianship orders”.

A key concern expressed in many submissions was that the permanent placement hierarchy could cause children to be adopted where it was not in their best interests, and that placement options should be more flexible.

Young people interviewed agreed that the proposed hierarchy of permanent placement options seemed appropriate. The young people’s responses tend to suggest that the option of staying with family members in a relative/kinship placement is preferred but that, for some, being formally adopted by foster carers could also give them a sense of belonging and stability that foster and residential care don’t provide:

“I like that a lot. There were a few foster families that I wish adopted me but I never got that option. I’m actually still in contact with the very first foster home I was in and they’re a good family and I would have felt like I belonged. I would have felt that my birth parents will always be my birth parents but for whatever reason, they can’t look after me and it’s not safe. But if a family says to a 7 or 8 year old, ‘Your parents can’t look after you but I’d love you to be my child’ – that would make you feel like you belonged somewhere. Especially having the same last name…” – female, aged 23 years

Many young people identified potential complications with adoption, such as it may create a barrier to reunification and contact with birth parents, the lack of financial support for foster carers who may wish to adopt and the need to ensure the placement is stable:

“I don’t see many problems with it. Not really. Maybe just kids being adopted and it not working out? They should wait until the person is 17 or something and they’ve had them since they were a baby. Like to see if they are a fit with the family. There should be a span of time to just wait and see.” – female, aged 17 years

“I think it’s a good idea – if they have them long term they should adopt them. I can see problems though if the parents interfere and don’t want the kids to be adopted”. – female, aged 18 years

“It shouldn’t be like ‘ok, you’ve lived here for two years, you’re adopted now.’ It should be a choice”. – female, aged 23 years

Future policy direction
Proceed as described in the discussion paper
The Government has noted that while the majority of stakeholders support greater permanency for children and young people, there were questions raised about how the proposed hierarchy would apply in practice. There was also concern about the placement of adoption in the hierarchy and the impact this may have on Aboriginal and Torres Strait Islander families.

Central to providing permanency for children and young people in OOHC will be the introduction of the permanency hierarchy, to be known as the permanent placement principles. These principles, will guide all actions and decisions under the Care Act regarding the permanent placement of a child or young person. The permanent placement principles will establish a set of preferences for permanent placement of a child or young person in the following order:

1. Family preservation/restoration
2. Long-term guardianship
3. Adoption
4. Parental responsibility to the Minister

The permanent placement principles are not a fixed sequential model. Rather, they represent the preferred permanent outcomes for children in OOHC, with the allocation of long-term parental responsibility to the Minister as the last resort after family preservation/restoration, guardianship and adoption have been ruled out.

For many children and young people, the Children’s Court may determine that the allocation of parental responsibility to the Minister on a short term basis will be necessary while parents work towards restoration of their child or the assessment of relatives to care for the child where an order for guardianship is considered appropriate. The same will apply where adoption is being proposed.

Adoption is not customary practice for Aboriginal communities and adoption is not the preferred permanent placement option for Aboriginal children and young people. For placement decisions about Aboriginal and Torres Strait Islander children and young people, the Aboriginal and Torres Strait Islander Child and Young Persons Placement Principles will apply. Where it is safe, Aboriginal and Torres Strait Islander children and young people should have the best opportunity to remain in their communities with relative or kin or non-relative Aboriginal and Torres Strait Islander carers in their community.

The Government will also:

- Include reference to the permanent placement principles in the objects of the Care Act to recognise that the primary means of providing for the safety, welfare and well-being of children and young persons is by giving them a long-term, safe, nurturing, stable and secure environments through permanent placement in accordance with the permanent placement principles
- Insert a new principle in the Care Act requiring that the permanent placement principles are to guide all actions and decisions made under the Care Act regarding permanent placement of a child or young person
- Require permanency plans to be developed with particular regard to the permanent planning principles, and
- Make specific provision in the Care Act that the Court should give particular consideration to the permanent placement principles prior to making an order allocating parental responsibility.

Adoption

Adoption is now very different from the ‘closed’ system that existed until the mid-1980s, where the parents and adopted child had no contact with, or information about, each other. The
parents and adoptive parents did not get to know each other and there was a general atmosphere of secrecy. Forced adoption practices of the past had a profound impact on families which created a life-long legacy of pain and suffering as parents were separated from their children. There were limited services or supports available to assist parents in raising a child.

Adoption in NSW is now ‘open adoption’ and recognises the benefit for children and both their birth and adoptive families to remain in contact with each other after an adoption order has been made. Open adoption incorporates ongoing contact of between the parents, the adopted child and the adoptive parents. The form and frequency of contact is determined on an individual basis, with what is best for the child in the long term being the central focus. Contemporary adoption practice for children in OOHC is child centred, only considered after a comprehensive casework assessment that the parents are unable to safely care for their child, the Children’s Court has found that restoration is not a realistic possibility, and that care by relatives or kin is not practicable.

Placement instability is a key contributing factor to generally poor life outcomes commonly experienced by children and young people in OOHC. The link between the length of time spent in OOHC and the likelihood of multiple placements is very widely acknowledged, as is the negative impact of multiple placements and failed restoration on the emotional development of children and young people. To the extent that adoption provides greater emotional security, a sense of belonging and the prospect of permanency, it is regarded as a more viable long-term care option than allocating parental responsibility to the Minister and the child being placed in OOHC.

Concerns about adoption breakdown are legitimate, although, it must be noted that OOHC placements are also susceptible to breakdown. The timeliness of intervention and the quality of care play a pivotal role in the outcomes of both adoption and OOHC placements. The evidence suggests that placement instability increases with the age at which a child is placed – for both adoptive and OOHC placements. For some adolescents and young people, OOHC may indeed be a preferable option than adoption in terms of stability. For this reason, the permanent placement principles must be applied considering the individual needs and circumstances of each child and young person.

**PROPOSAL 7: TIMEFRAMES FOR DECISIONS ON RESTORATION**

Legislate restoration timeframes – within six months for children less than two years and within twelve months for children older than two years.

*Question 7:*
Do you agree with the restoration timeframes proposed?

**Stakeholder feedback**

There was consensus amongst stakeholders about the need for timely and quality decision-making about permanency planning and the feasibility of restoration. Support for how to achieve this, and the restoration timeframes proposed, was mixed.

*Question 7*

Many submissions supported legislating restoration timeframes, with key service providers and regulators agreeing that the proposed timeframes respect the attachment and development needs of children. One professional body suggested that the six month timeframe should be extended to children up to four years of age. The majority of young people
interviewed thought that there should be some sort of time limit on how long a child has to wait for a decision to be made regarding their long-term future.

Most submissions also supported the Children’s Court retaining discretion about the application of timeframes in individual cases. This discretion was seen as important to ensure that all decisions made are based on the particular needs of individual children, to allow due consideration of the needs of sibling groups and to allow the Court to extend timeframes where it is not satisfied that it has sufficient information. Some of those that provided feedback on this point also expressed the view that successful restoration of the child or young person were dependent on the capacity and ability of the service system to make family preservation and restoration work a priority within its demanding environment.

As mentioned, the majority of young people interviewed agreed that there should be some sort of time limit on how long a child has to wait for a decision about their long-term future. Nearly half of them mentioned that if the child was in an unsafe or abusive situation then a decision should be made quite quickly to minimise any further stress on the child. The time periods recommended by young people were all a lot shorter than those proposed in the discussion paper (for example, four to six weeks for a decision to be made to give children certainty) even though they acknowledged that their parents would not have been able to improve their parenting skills adequately within this time due to lack of motivation or drug addiction:

“There should be a time limit. It should be quick – to stop the kids from moving around. It is too much for a little kid to take in. All that moving around and staying with different people in different homes. If it’s an abusive situation and stuff then six weeks is a good time limit I think. If they are on drugs and stuff it will take them longer to sort themselves out. Basically I believe that if someone wants to change they will change”. – female, aged 18 years

“Yes, to put pressure on them. In my situation it would have been a very good motivational pressure for my parents. Then maybe things could have changed”. – female, aged 16 years

“Yeah, they shouldn’t have the kids in limbo. At one of my old placements, there was a little girl and they told her that she’d be going home. It went on for about a year and she thought she was going home for a year. She got really frustrated and angry about that and you can’t really get a kid’s hopes up like that. And you need to get a kid used to the lifestyle. Like if they’re sitting around for a year and not getting used to this foster family, it’s like ‘oh I’m not going to do this, I’m not going to do that because I’m going home’ and half the time they don’t. I think it would be good to let parents know that there is a time limit, and if they don’t comply, then goodbye”. – female, aged 17 years

Many stakeholders who opposed the timeframes did so on the basis that they were considered too short to take into consideration all necessary matters in the decision-making process on whether restoration was feasible. Others considered existing guidelines, for example the Children’s Court Practice Note No. 5 which prescribes time standards for the conduct of care proceedings, as sufficient to ensure timely decision-making. Some submissions highlighted the tension between decision making that is focused on child development and attachment timeframes versus the length of time it may take for a parent to develop the necessary skills to overcome drug and alcohol abuse or other measures to resume parental responsibility. There was also concern that strict compliance with legislated timeframes may push the Courts to prematurely restore the child, rule against restoration or push more children or young people into OOHC. Some Aboriginal and Torres Strait Islander stakeholders as well as some other respondents suggested that consideration be given to longer timeframes for Aboriginal families, with one organisation suggesting that a more realistic timeframe would be two to four years.
Future policy direction
Proceed in an amended form to that described in the discussion paper

The following timeframes will be mandated in relation to the Court making a decision about whether restoration of a child or young person to his or her parent is a realistic possibility:

- For children less than two years of age – within six months from the time that an interim care order is made by the Court allocating parental responsibility to a person other than a parent, and
- For children two years of age and older – within twelve months from the time that an interim care order is made by the Court allocating parental responsibility to a person other than a parent.

Some of those who provided feedback on this proposal appeared to misinterpret what was proposed in the discussion paper in that they interpreted the timeframes as setting the period in which children or young people are to be either restored to the care of their parent(s) or an order made for an alternative placement such as adoption. However, the purpose of these timeframes are to set the period in which the Court is to make a decision about the possibility of restoration, not the period in which the child or young person is to actually be fully restored to the care of his/her parent(s). That is, these timeframes will be used for the Court to make a decision as to the feasibility of restoration, not as a deadline for restoration to be completed.

Children exposed to trauma and neglect as infants face a major barrier to the development of secure and healthy attachment relationships, and this dramatically increases the risk of a child developing a range of emotional and behavioural disorders. The six-month timeframe for children under two years of age is evidence-based and reflects research on infant and brain development. The prevailing view in child psychology, both academic and practice, is that attachment relationships developed in infancy play a critical role in emotional and behavioural stability later in life. The first two years are considered the most critical for developing attachment relationships. Ensuring at-risk infants have at least one secure attachment relationship in this critical stage of development, either through family restoration or some other placement option represents the best chance of achieving long-term stability.

In supporting the proposals, stakeholders requested that the Court should have the flexibility to extend the timeframes where it is in the best interests of the child or young person. An additional amendment will be made to the Care Act to enable the Court to make a decision as to restoration outside of the prescribed timeframes, having regard to the circumstances of the case, and if the Court considers it appropriate and in the best interests of the child or young person.

**PROPOSAL 8: ENHANCING FAMILY INVOLVEMENT IN SUPPORTED OOHC**

Enhance supported care placements by introducing:

- Self-regulation of supported care placements by some supported carers to limit the intrusion of FACS in stable relative and kinship placements, and
- A two-year cap on the duration of supported care placements to achieve greater permanency and stability through permanent legal orders for these children and young people.

**Question 8 (a):**
Is ‘self-regulation’ of supported OOHC a positive step forward? Can you see any problems with this approach?
Question 8 (b):
What would be the key elements of the self-regulation model for supported OOHC?

**Stakeholder feedback**

**Question 8(a)**

**Stakeholder support for this proposal was mixed.** Stakeholders who supported the self-regulation of supported care arrangements considered that it would provide carers greater autonomy and less intrusion by the Government into the care arrangement. Further, they considered it would also avoid unnecessary scrutiny of supported care arrangements where the evidence shows that the placement is both stable and secure.

Many supporting submissions noted that there should be a gradual move towards self-regulation as part of case planning, particularly for supported care arrangements where there is no court order placing the child with the carer. It was suggested that guidance would be needed for caseworkers in order to determine which carers are suitable for self-regulation and for carers to ensure they are sufficiently skilled in self-assessment.

Stakeholders who did not support the proposal were concerned that self-regulation would result in a decrease of support and protection for children and authorised carers. Less monitoring of the placement was identified as a concern that could result in the erosion of cultural connections and contact with birth parents if there are poor family relationships, and a reduction in the provision of appropriate care.

There was concern that self-regulation was an inappropriate approach for carers of Aboriginal and Torres Strait Islander children and young people as there may be a need for appropriate and culturally sound support. An Aboriginal stakeholder suggested there may be a role for an Aboriginal peak organisation to work with Aboriginal relative carers to build capacity. It indicated that these organisations could play a valuable role in supporting and advising Aboriginal relative carers and devising care plans with them.

Some stakeholders also noted that the two-year cap could encourage more relative and kinship carers to seek more permanent options before the end of the two years which would support the well-being of the child. However it was also suggested that if decisions about permanency can be made sooner, rather than waiting for two years, then that would lead to much better outcomes for children and young people.

**Question 8(b)**

Stakeholders were divided on whether annual monitoring of supported care arrangements should take the form of a basic check for financial auditing purposes, or a comprehensive welfare check that includes caseworkers having direct contact with the child or young person. Some stakeholders were concerned that the key feature of the proposal – a self-assessment – would impose a considerable burden on carers, especially where those carers have poor literacy skills. These stakeholders considered that caseworkers will need to provide face-to-face assistance and training to carers in order to complete the self-assessment tool.

Stakeholders that responded to this proposal also called for further consultation if a self-regulation model for supported care arrangements was progressed. Key elements suggested were that a self-regulation model includes the need for carers to continue to receive information about entitlements and roles and responsibilities, as well as FACS maintaining discretion to
respond to the needs of the placement. It was also suggested that consideration should be given to engaging children and young people through a self-assessment process.

**Future policy direction**

**Proceed in an amended form to that described in the discussion paper**

In response to stakeholder feedback, supported care arrangements where there is a court order in place allocating parental responsibility to the carer (who is a relative or kin) and the placement is considered stable, will be eligible for self-regulation. This includes supported care arrangements where parental responsibility is held by a relative or kin by virtue of an order of the Children’s Court or a family law court. This will provide more autonomy to these carers as permanency has already been established for the children and young people in these placements.

A two-year cap will be placed on supported care arrangements involving relative and kinship carers where there is no court order regarding parental responsibility in place to encourage those placements to move towards a more permanent placement through either restoration or guardianship orders. Placements that require ongoing casework and support during this period will still receive it.

In moving forward, it will be important to consult with the sector on the development of the self-regulation model to ensure that any final model is not burdensome for carers to apply as this would undermine the concept of less Government intervention in otherwise stable placements. In particular, there is a need for appropriate and culturally sound support for Aboriginal and Torres Strait Islander carers.

**PROPOSAL 9: INTRODUCTION OF LONG-TERM GUARDIANSHIP ORDERS**

Provide permanent care to children and young people when adoption is not in their best interest by:

(a) Introducing long-term guardianship orders
(b) Repealing s 149, Care Act that provides for sole parental responsibility orders as this provision is underutilised.

**Question 9 (a):**
Do you agree with the circumstances to which guardianship orders would apply?

**Question 9 (b):**
Are there other matters that should be included in the proposed features of a guardianship order for NSW?

**Stakeholder feedback**

The proposal to introduce legislative provision for long-term guardianship orders was well supported. Guardianship orders were considered by most stakeholders to be a welcome addition to the range of permanency planning options provided for in NSW.

The majority of young people interviewed supported the introduction of guardianship orders and limiting the involvement of FACS in these placements.

Stakeholders who did not support guardianship orders suggested that parental responsibility orders are already available to relative or kinship carers in NSW and expressed concern that guardianship
orders will leave carers with minimal support or monitoring. Some stakeholders expressed concern that this may result in decreased cultural connection, contact with birth parents and a reduction in the provision of appropriate care for children and young people. These stakeholders requested a mechanism be included in the model to assess when the intervention of casework is needed and should be escalated. The term ‘guardianship’ was also opposed by some stakeholders on the grounds that the ‘parental responsibility’ should be retained in order to avoid confusion and preserve consistency across jurisdictions.

Questions 9(a) and 9(b)

Generally, submissions sought flexibility in the way that guardianship orders might be implemented. Many stakeholders requested that the provision of guardianship orders be extended to non-relative carers in order to ensure that a permanency option is available to those non-relative carers for whom adoption is not appropriate, especially if sole parental responsibility orders are no longer available. Stakeholders considered this would benefit:

- Aboriginal and Torres Strait Islander carers who are not relative or kin, but who are preferred placement providers for Aboriginal and Torres Strait Islander children under Aboriginal and Torres Strait Islander Child Placement Principles
- Children and young people who wish to retain ties with their birth family, such as unaccompanied humanitarian minors and those who enter care at an older age
- Where the parent has died and a non-related carer known to the family puts themselves forward as a long-term carer for the child or young person
- Where the parent has a terminal illness and parental responsibility orders allocated jointly are sought so that after the parent dies the non-related party has parental responsibility, and
- Multicultural communities who have religious or cultural concerns with adoption.

A number of peak bodies and key stakeholders recommended that in addition to financial support, all placements of children and young people subject to guardianship orders remain eligible for non-financial support and aftercare support. Reasons included the comparative socio-economic disadvantage of many relative and kinship carers, especially Aboriginal relative carers, and the additional support needs of children and young people with histories of serious abuse and neglect. These stakeholders cited findings in Australian and overseas jurisdictions that continued access to supports and services improves the take-up rate of guardianship orders and the stability of arrangements for children once the orders are made. Some respondents questioned who will be responsible for contact between children, young people and their parents or significant others under guardianship orders. The need for clearly defined roles and responsibilities was considered important if this proposal is to be of benefit to children and young people.

Rigorous initial assessments were highlighted by some stakeholders as key to successful implementation of guardianship orders. Some stakeholders recommended that the assessment process be subject to the scrutiny of the Children’s Court. A few stakeholders also expressed concern that birth parents’ consent would not be required before the orders were made.

No stakeholders that provided a response on this proposal supported a requirement that the agency that last case managed a placement of a child subject to a guardianship order provide consent to an application to vary or rescind the order. Rather, stakeholders expressed the view that the Director-General should instead be notified of any applications to vary or rescind guardianship orders as is currently required by s 90(3), Care Act, in order to consider any potential child protection concerns.
There was strong support for guardianship orders concerning Aboriginal and Torres Strait Islander children and young people being subject to consultation with the child’s or young person’s Aboriginal and Torres Strait Islander community. Some stakeholders also requested that the definition of ‘kin’ and ‘kinship’ and clarification of the minimum requirements of a cultural support plan be included in the Care Act.

**Sole parent responsibility orders**

Those stakeholders who commented on the repeal of sole parental responsibility orders (section 149 of Care Act) were generally not supportive of the proposal. Sole parental responsibility orders were seen to be of increased importance if guardianship orders were only available to relatives or kin, as they offered a permanent care arrangement other than adoption or the allocation of parental responsibility to the Minister or non-relative carers.

**Future policy direction**

**Proceed in an amended form to that described in the discussion paper**

Guardianship orders will be made available to relatives and kin and, in limited circumstances, other persons who are assessed as suitable by a designated agency. Guardianship orders will only be made on a long-term basis, that is until the child or young person reaches 18 years of age.

Casework, whether for care and protection matters or for adoption matters, must consider a child or young person’s identity, language, cultural and religious ties and these should be preserved as far as possible. This is in line with section 9(2)(d) of the Care Act (Principles for the administration of the Act) and section 8(1)(e) of the Adoption Act (Principles to be applied in making decisions about adoption).

The Care Act will be amended to ensure the Director-General is notified of any applications for a guardianship order to ensure any potential child protection concerns are considered. The Director-General will also continue to be notified of any applications to vary or rescind a final care order where there application involves a re-allocation of parental responsibility.

It is proposed that the Carers Register, currently under development, will enable the Children’s Guardian to monitor the assessment and authorisation of all carers including those who provide supported OOHC, carers of a child or young person subject to a guardianship order, and statutory OOHC.

Submissions from stakeholders revealed some confusion that financial and other support for authorised carers who transition to a guardianship order will cease. However, as noted in the discussion paper a feature of guardianship orders is that financial support for such placements will continue where it was being provided immediately prior to the order being made. Clear pathways to improved services and supports to authorised carers of children subject to guardianship orders will complement implementation of these orders. Carers in these care arrangements will be supported to access community-based family support services as a less stigmatising and less intrusive option for these placements where there are no current child protection issues.

The discussion paper noted that relative and kinship placements where guardianship orders are in place will not be eligible for aftercare financial support. This is consistent with existing policy for supported care arrangements. However, placements of children subject to guardianship orders would continue to be eligible for the non-financial information and supports currently provided to relative and kinship placements.
Section 149 of the Care Act (Orders for sole parental responsibility) will be repealed, given that the Children’s Court will have the power to make guardianship orders in respect of carers who are not relatives or kin and who have been assessed as suitable by a designated agency.

**PROPOSAL 10: CONCURRENT PLANNING AND DUAL AUTHORISATION OF CARERS**

Introduce concurrent planning to support timely permanent placements for children in OOHC by either:

a) Streamlining the assessment of authorised carers and prospective adoptive parents

   OR

b) Creating a new category of ‘concurrent carer’ who is authorised as both a long term carer and prospective adoptive parent.

**Question 10 (a):**
Would the dual authorisation of adoptive applicants as foster carers better facilitate concurrent planning in NSW?

**Question 10 (b):**
Are there other options that could be implemented to avoid the occurrence of multiple placements?

**Stakeholder feedback**

**Question 10(a)**

*Key NGOs, peak and carer representative groups were supportive of the introduction of concurrent planning through the dual authorisation of carers (option (a)).* Stakeholders who made a submission on this proposal generally acknowledged concerns about the detrimental impact on children and young people of multiple placements, and supported efforts to streamline the assessment of authorised carers and prospective adoptive parents on the basis that this would avoid duplication of assessment processes and delays in progressing with adoption of children in OOHC. Stakeholders identified that streamlining the process has the potential to reduce delays, minimise disruption and enhance the prospects for a child to remain under the care of a person with whom they have established an attachment.

It was noted by a carer representative group that the proposal can provide the opportunity for an unbroken continuum of care for children not restored to their birth parents, and attract another group of potential carers for children in OOHC.

However, as was the case with the closely related Proposal 12 (see below), many stakeholders expressed the view that dual authorisation should not come at the cost of a reduction in the reliability and integrity of an assessment of an authorised carer for adoption.

Most stakeholders did not support the creation of a new category of ‘concurrent carer’ with many noting multiple implementation difficulties. One such difficulty cited was that placing a child with a concurrent carer is only appropriate for a very small number of infants under twelve months of age where restoration to the care of their parents is highly unlikely. Stakeholders identified that having concurrent carers is resource-intensive and requires highly skilled workers to support carers and parents. Other concerns included caseworkers being able to manage the expectations of authorised carers who wish to adopt where there is a possibility of restoration. Many stakeholders considered that these expectations may result in higher levels of anxiety in carers and birth families and emotional difficulties for all parties involved. Concern was also expressed at the possibility that
rushing the process of matching appropriate carers to children would increase the likelihood of placement breakdown.

Question 10(b)

In presenting other options that could avoid the occurrence of multiple placements, stakeholders suggested:

- The need for consistent casework with optimal knowledge of child development, attachment needs and a long term vision for the child’s or young persons’ future wellbeing always being taken into account
- The provision of adequate resources, skilled and experienced workers, and a service system that supports restoration/family preservation
- Better assessment and training of carers, placement matching and consultation with the child or young person
- A greater focus of attention and resources on early intervention and family preservation services to prevent children needing to enter OOHC, and
- FACS and non-government staff working in a much more collaborative manner to achieve better placement matching and ultimately placement stability for children and young people.

The ‘concurrent placement’ model used by Barnardos Australia was suggested by some stakeholders as a possible model for consideration.

Future policy direction

Proceed with Option (a) as described in the discussion paper

In line with stakeholder feedback, dual authorisation will be introduced through amendments to the adoption legislation to streamline the process for authorised carers seeking to become prospective adoptive parents.

Central features of a dual authorisation model will include the development of a centralised program with strong partnerships between existing accredited adoption services providers and key OOHC services, and dual accreditation of agencies. The system would include training prospective adoptive parents (including through both the inter-country and local adoption programs) as authorised carers who wish to provide long-term care for a child or young person with a view to adoption.

FACS will consult with the Children’s Guardian, ACWA and the sector in the development of the central features of a dual authorisation model, building on existing training material. Dual authorisation will be voluntary and applicants will not be mandated to be authorised as both an authorised carer and a prospective adoptive parent. This is particularly relevant for relative and kinship authorised carers and non-related Aboriginal and Torres Strait Islander authorised carers.

A streamlined approach to the authorisation of prospective adoptive parents as authorised carers will not lessen the rigour of existing probity and assessment checks.

PROPOSAL 11: TRANSFER JURISDICTION FOR ADOPTIONS FROM THE SUPREME COURT TO THE CHILDREN’S COURT

That the Children’s Court be conferred jurisdiction to make adoption orders where there are child protection concerns.
Question 11:
Do you agree that there are benefits in conferring adoption jurisdiction to the Children’s Court?

Stakeholder feedback

Question 11

Of stakeholders that made submissions on this proposal, there were more stakeholders that opposed or only conditionally supported the transfer of the adoption jurisdiction for children where there are child protection concerns from the Supreme Court to the Children’s Court. These stakeholders included key stakeholders such as the legal sector, Aboriginal services providers, government agencies, NGO service providers and peak bodies. Of those who supported the proposal, reasons for such support included the Children’s Court Magistrates’ familiarity with child protection concerns, that permanency would be achieved sooner and that the adoption application would be considered in a child-focused court arena.

While there was recognition of some potential benefits of the Children’s Court having jurisdiction to make adoption orders, those who did not support the proposal expressed concerns about:

- The possible creation of a ‘two-tiered’ adoption system with adoption under the inter-country and local adoptions programs continuing to be heard in the NSW Supreme Court
- The capacity of the Children’s Court to manage adoption matters given its current workload and the lack of specialist Children’s Court magistrates in regional and remote areas
- The suitability and expertise of Local Court magistrates, when they preside over care matters, to deal with adoption applications
- A likely substantial increase in contested adoption matters and appeals, requiring a significant increase in resources to defend those matters and time delays
- Children’s Court magistrates facing applications to disqualify themselves from hearing adoption proceedings where they have determined that the same child cannot be restored, and
- Greater scope for inconsistencies in decision-making.

Some key stakeholders submitted that the Supreme Court has developed expertise and capacity in adoption matters, and that given the serious consequences that follow an adoption order, it is appropriate that jurisdiction continue to be held by a superior court of record.

Future policy direction

Not proceeding at this stage

The Government will not be pursuing the transfer of the adoption jurisdiction (for matters where there are child protection concerns) from the Supreme Court to the Children’s Court at this stage. This proposal will however be kept open to further public debate and consultation as a possible future action.

Whilst this proposal was not supported by stakeholders, the Government considers that there are many advantages to the jurisdiction for adoption being transferred from the Supreme Court to the Children’s Court for matters involving child protection concerns. Adoption proceedings also being able to be heard in the Children’s Court will increase the number of adoption matters able to be heard in the longer term. It could also provide a seamless legal pathway for children, young people and carers to have adoption applications considered by the Court experienced in their situation and better able to determine the most appropriate placement where a child cannot be reunited with his or her family.
**PROPOSAL 12: STREAMLINING PROCESS FOR EXISTING CARERS TO BECOME ADOPTIVE APPLICANTS**

Amend the Adoption Act to better recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant.

*Question 12 (a)*: What other elements should be fast-tracked for OOHC adoptive applicants? Are there particular requirements and restrictions on adoption that should be relaxed for OOHC adoptions?

*Question 12 (b)*: Are there other differences for OOHC adoptions that should be reflected in the Adoption Act?

**Stakeholder feedback**

*Question 12(a)*

There was broad support for the elimination of unnecessary duplication in the assessment of authorised carers as prospective adoptive parents. Most submissions recognised that there is some scope to reduce the duplication of elements common to both assessment processes and a modified adoption assessment process was supported.

Some stakeholders expressed concern and scepticism about terminology such as the ‘fast-tracking’ and ‘relaxing’ of adoption assessment processes. Most submissions took the view that there are significant differences between the roles of the authorised carer and the adoptive parent, and that approval as an authorised carer should not result in an automatic qualification as a prospective adoptive applicant. Some stakeholders expressed the view that an adoption assessment must be a requirement as it determines a carer’s ability to make the transition from authorised carer to adoptive parent.

Feedback from Aboriginal and Torres Strait Islander stakeholders raised significant concerns about the proposal, including that ‘fast-tracking’ would expedite the adoption of Aboriginal and Torres Strait Islander children, conflicting with Aboriginal and Torres Strait Islander Child Placement Principles and particularly where in light of the concerns that children may not be identified as Aboriginal or Torres Strait Islander before matters are progressed to adoption.

To streamline the authorisation process and reduce administrative burden, the following requirements were suggested by stakeholders as needing to be removed or changed:

- The carer to submit an Expression of Interest prior to assessment
- An authorised carer who has been allocated by a court order some or all aspects of parental responsibility for the child or young person in their care to give consent to adoption where they are the applicant
- An authorised carer with an established stable relationship with a child in their care to be resident or domiciled in NSW for a period of three months immediately before the day on which the applications was filed
- A child being adopted by their authorised carer to be present in NSW on the day the application is filed in Court
- The Director-General being required to keep a register of authorised carers approved as fit and proper persons to adopt a specific child in their care, and
- The requirement that the authorised carer submit an application to adopt after assessment and the Director-General has given approval to commence adoption action, where an authorised carer wishes to adopt a child already in their care.
**Question 12(b)**

Stakeholders also suggested the following issues be considered in relation to adoptions of children and young people in OOHC:

- That it will still be important to gain an understanding of the preparedness and indicators of the readiness of carers to undertake the parenting responsibilities of adoption
- An increase in adoption from OOHC may result in additional support needs for all parties involved in the adoption as these children and young people have more complex needs, and
- Training and education on adoption will need to be included as a module and offered to authorised carers
- It is important for prospective adoptive parents to understand the difference between foster care and adoption, and that with an adoption, the legal rights and responsibility for a child are transferred to the adoptive parent for rest of the child’s life, and
- That it is essential that the Aboriginal and Torres Strait Islander Child Placement Principles in the Care Act and the Adoption Act be applied rigorously before an adoption of a child or young person in OOHC is considered for an Aboriginal or Torres Strait Islander child.

**Future policy direction**

Proceed as described in the discussion paper

The adoption legislation will be amended to streamline the process for authorised carers who apply to adopt a child or young person in OOHC. This does not mean that approval as an authorised carer will result in an automatic approval as a prospective adoptive applicant. As noted above, the rigour of existing probity and assessment checks will be maintained.

Guardianship will be the preferred permanent placement option for Aboriginal and Torres Strait Islander children and young people where they are unable to live with their parents. This amendment is in recognition that adoption is not customary practice in Aboriginal communities.

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**PROPOSAL 13: STREAMLINING AGENCIES TO OFFER OOHC AND ADOPTION SERVICES**

Enhance the permanency planning capacity of non-government services by merging the *NSW Standards for Statutory OOHC* and the *NSW Adoption Standards*.

**Question 13:**

How can the *NSW Standards for Statutory OOHC* be enhanced to better promote permanency planning, from restoration to adoption, for children and young people in OOHC?

**Stakeholder feedback**

**Question 13**

There was overwhelming support from peak bodies and key NGOs and service providers for the merging of the *NSW Standards for Statutory OOHC* and the *NSW Adoption Standards* but mixed support from some other stakeholders who made submissions on this proposal. A number of submissions noted that the *NSW Adoption Standards* often cite both the Adoption Act and the Care Act highlighting a number of commonly shared ideals.
Support for the merging of the two standards was conditional on the merging actually reducing duplication and ‘red tape’, but not eroding the standards applied to both OOHC and adoption service provision. Comments were made that the same standards should apply in relation to applications for authorisation as authorised carers and applications to adopt a child.

Stakeholders who opposed the proposal questioned the capacity of NGOs to take on the role of an adoption service provider or mistakenly interpreted the proposal that all agencies would be required to become OOHC and adoption service providers. Some comments noted that the standards needed to remain separate given adoption is such a highly specialised area.

**Future policy direction**

**Proceed as described in the discussion paper**

The NSW Standards for Statutory OOHC and the NSW Adoption Standards will be merged. Given the OOHC Standards are widely considered to reflect best practice, adoption provisions will be streamlined and incorporated into the OOHC Standards.

The merged standards will not require all agencies to provide both OOHC and adoption services, but core standards will apply in a number of areas, with additional OOHC/adoption specific standards provided where necessary. The Standards will apply differently, depending on whether an organisation provides OOHC, adoption services, or both. Aboriginal and residential OOHC service providers, for example, would be exempt from providing adoption services.

A Special Reference Group (chaired by the Office of the Children’s Guardian), comprising key government agencies, regulators and NGOs will be convened to finalise the merged standards.

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**PROPOSAL 14: IMPROVED FAMILY INVOLVEMENT IN ADOPTIONS**

Amend the Adoption Act to improve the involvement of birth parents in planning for the adoption of their child including allowing non-consenting parents to be parties to an adoption plan and greater use of alternative dispute resolution in adoption proceedings so that parents are fully engaged in planning for matters such as contact arrangements.

*Question 14 (a):*  
What is the optimum mechanism for non-consenting parents to be parties to an adoption plan?

*Question 14 (b):*  
How could alternative dispute resolution best work to engage parents in adoption proceedings?

**Stakeholder feedback**

*Question 14(a)*

This proposal was strongly supported by a wide range of stakeholders. The involvement of non-consenting birth parents in the development of adoption plans was considered by the majority of stakeholders who provided feedback on this proposal to be in the best interests of the child. One stakeholder from the adoption sector suggested that prior to involving non-consenting birth parents, the views of the child on that involvement should be considered. Another stakeholder had concerns that non-consenting birth parents may seek to dominate proceedings if involved. Some submissions suggested that parents could be involved early by engaging them supportively and addressing grief and loss issues.
Question 14 (b)

Many stakeholders who provided feedback on this point considered that greater use of ADR to facilitate improved involvement and engagement of birth parents was a positive initiative. This was particularly so in those areas where matters may be contested in relation to contact or in matter where the birth parents had consented to an adoption in the child’s best interests. It was acknowledged in some submissions that most disputes would be in relation to contact arrangements.

Some reservations were also expressed, particularly by Aboriginal and Torres Strait Islander stakeholders, on ADR being somewhat formal and adversarial and that FGC or another form of mediation was considered more appropriate. One stakeholder recommended that ADR should only be used if FGC was unsuccessful. These comments highlight that there is some confusion in the community as to what ADR is, given that mediation and FGC are forms of ADR.

Future policy direction

Proceed as described in the discussion paper

The Adoption Act will be amended to improve the involvement of birth parents by giving them the opportunity, as far as possible, to participate in the development of, and agree to, an adoption plan in relation to the child.

PROPOSAL 15: NEW GROUNDS FOR DISPENSING WITH PARENT’S CONSENT FOR ADOPTION OF A CHILD

Amend the Adoption Act to provide for additional grounds for dispensing with parental consent, including grounds where:

(a) The parent is unable to care for and protect the child e.g. the parent is incarcerated for an offence against the child, or the parent repeatedly refused or neglected to comply with parental duties and reasonable efforts have failed to correct these conditions

(b) A parent cannot be located, despite having given an undertaking to keep FACS informed of their whereabouts, and

(c) There is no realistic possibility that the parent will be able to resume full-time care of the child or young person because reasonable efforts have failed to correct the conditions leading to the child or young person’s placement and it is in the best interest of the child or young person to make the decision now.

Question 15:
What should be the additional grounds for dispensing with parental consent?

Stakeholder feedback

Of those who commented on this proposal, the majority either opposed or provided only qualified support for this proposal, with many stakeholders viewing the proposed amendments to dispense with consent as an infringement of a birth parent’s rights. These submissions highlighted:

- The need for adoption proceedings to focus on the best interests of the child and the prospective adoptive placement, rather than the faults of the birth parents who were subject to initial care proceedings
- The importance of procedural fairness and equity
- That the proposal conflicts with the concept of open adoption
- That the proposal is insensitive in light of the history and lessons of forced adoptions in this and other countries
• That the proposal contradicts the positive intentions underpinning Proposal 14 which aims to enhance birth parent involvement. It may further marginalise the birth parent and affect negotiation of future contact arrangements with the adoption plan, and
• The proposal is at odds with a number of international human rights conventions.

Many stakeholders also identified a number of operational challenges that may face the successful implementation of this proposal. A common view expressed in the submissions was that the current Adoption Act adequately provides for the circumstances in which the Court can, and should, be able to dispense with the consent of a birth parent to an adoption. They considered there was insufficient reason to duplicate and, to the extent the proposals do, expand on those provisions in the Care Act.

Some submissions raised the issue that the proposed additional grounds for dispensing with consent as identified in the discussion paper, relate to the past actions of the parents, and a determination would have already been made in earlier care proceedings. Some stakeholders expressed the view that this had the potential for the Supreme Court to re-open the child protection issues that were already the subject of initial care proceedings. Further, if this happened it was considered an unnecessary distraction during adoption proceedings where the stability of the relationship between the child and prospective adoptive parents and whether adoption is in the best interests of the child should be the primary considerations.

Support for dispensing with consent where parents cannot be located was limited, and was contingent on the need to clarify what was required by the term “reasonable attempts to locate”. Many stakeholders also identified practical impediments, including where a birth parent does not give any undertaking to keep FACS informed of their contact details. Some submissions noted that it may be an unreasonable burden on birth parents to keep FACS updated as to their address over time.

While adoption is not customary in Aboriginal society, it was noted in one submission that Aboriginal people could be ‘doubly penalised’ – through a history of forced removals and vulnerability potentially leading to higher rates of mobility, making continuous contact with FACS caseworkers difficult.

In contrast, a young person interviewed made the following statement about parental consent for adoption (when asked about adoption more generally):

“Such a confusing scenario isn’t it… if someone else is willing to take on that role they should be able to. I approve of being adopted. For example my 3 youngest siblings have been adopted by foster carers, now they have been there since birth so they are a part of that family. Changing diapers, first day of school… adopting those 3 girls has completely been justified because she has been the mother, not our birth mother. Age is important – the child will have strong ties to the parent as well, it is going to be hard for them to be able to accept the fact that they may be completely and solely under the control of someone else. [T]hen there is always that want and need to go back to that birth parent. There will still be that throughout the adoption because they have that experience to be with their birth family… Right now there are major issues with birth parents intervening in the adoption process and not allowing kids to be signed off, but, as I said earlier, if due to their own negligence the child has been taken from them, they do not have a say. A mother can say “I am a mother” but you actually have to be a mother to call yourself one.” – male, aged 21 years

Future policy direction

Not proceeding
The Government will not be seeking amendments to the Adoption Act to dispense with parental consent for an adoption of a child. Many stakeholders identified that the existing provisions were sufficient, providing a level of evidence to the Court that enabled more timely decisions to be made that were in the best interests of the child. It was noted that there had been an improved emphasis in casework practice around locating parents earlier in casework processes to streamline OOHC adoption processes.

**PROPOSAL 16: REMOVING A PARENT’S RIGHT TO BE ADVISED ON AN ADOPTION**

Limit the parent’s right to be advised of an adoption in the following circumstances:
(a) Where the child is over 12 years of age and has given their sole consent, or
(b) The Children’s Court has taken away parental responsibility from that parent in care proceedings and found that there is no realistic possibility of restoration.

**Question 16:**
Do you support limiting the role of parents in adoption proceedings in this way?

**Stakeholder feedback**

**Question 16:**

Of those who commented on this proposal, there was either opposition or only limited qualified support to this proposal. Dispensing with the obligation to notify birth parents of an application for the adoption of their child was generally seen by key stakeholders to be a contravention of natural justice, procedural fairness and the rights of the child. Stakeholders were concerned about the longer-term implications for children, that it could affect contact and identity issues in adolescence and throughout their later life.

Some submissions noted the legacy of both the Stolen Generation and people affected by past forced adoption practices and policies where children were removed and adopted without parental consent or their knowledge that adoption was to be progressed. Some Aboriginal and Torres Strait Islander stakeholders felt that this proposal would conflict with the Aboriginal and Torres Strait Islander Child Placement Principles and result in adoptions being progressed without proper consultation with the child’s extended family or community:

“This proposal creates fear among Aboriginal people that firstly their children may be removed and secondly because an agency can’t find them their child will be adopted and permanently removed from their family and culture without themselves, their family or community ever knowing about it”.

Some stakeholders noted circumstances in which dispensation may be appropriate, but the majority considered those circumstances to be narrower than those proposed in the discussion paper. Dispensing with a parent’s right to be notified of the adoption of a child over 12 years of age who has given consent for the adoption received the most support, but only if consent from the child was appropriately obtained. It was noted that the proposal to dispense with notifying birth parents who have had parental responsibility removed with no realistic possibility of restoration could potentially be applied to every child or young person in statutory OOHC. These submissions also noted the potential difficulty in implementing this proposal without first establishing time limits and a requirement to make all reasonable efforts in locating parents.

If enacted, additional safeguards sought in the submissions included:
Better identification, location and engagement of birth parents during initial stages of the consideration of adoption rather than when the application is ready to be filed

The development of guidelines outlining what constitutes ‘reasonable effort’ in locating and engaging parents in the adoption process

Improved information exchange with other government agencies to assist with locating birth parents, for example Centrelink, and

Better support for young people over 12 years of age to make an informed decision on providing sole consent.

Future policy direction

Not proceeding

The Government will not be seeking amendments to the Adoption Act to limit the right of a parent to be advised of an adoption. Many stakeholders identified that the existing provisions were sufficient, providing a level of evidence to the Court that enabled more timely decisions to be made that were in the best interests of the child. As noted above, there has been and will be more focus in casework practice around locating and engaging parents earlier in casework processes and decisions about permanent placement options for their child.

PROPOSAL 17: CONTACT ARRANGEMENT THROUGH CASE PLANNING

Where there is no possibility of restoration, contact arrangements are to be made through case planning.

Question 17:
Do you support contact arrangements being made through case work where there is no possibility of restoration?

Stakeholder feedback

Question 17

This proposal was strongly supported by NGOs, government agencies, individuals and community members, however many legal submissions voiced concerns over contact arrangements being made by case planning to the exclusion of the Children’s Court. Support from the legal community was conditional on the Children’s Court retaining at least some of its current power to make contact orders.

All young people who were interviewed supported this proposal. Over half expressed the view that their caseworkers were in a much better position than the Court to see and understand the negative impacts of contact and make decisions accordingly:

“I think it’s a good idea because if it’s worked out by the court the family has to keep going back to court to sort it all out and that can be a hassle. If it was arranged by the caseworker, how much the kids get to visit their parents and for how long, the caseworker knows the full situation. Instead of the court just making the decision without knowing the whole situation.”
– male, aged 18 years

“Generally if you have a good caseworker then they are more likely to understand your whole situation and what you want and what is best for you, so that would probably be better than a judge. That would be better, as you can build up a rapport with a caseworker – they are
much closer to the situation, it would be much better to let them decide about visitation.....” – female, aged 23 years

“At first that is a good idea. But if things are unstable, like with visitation, then the courts can intervene...” – female, aged 16 years

Stakeholders were supportive of contact arrangements being determined through casework wherever possible. This was based on the view that voluntary contact arrangements allow for a degree of flexibility, which is important when considering the changes that may occur in a child’s or young person’s circumstances over time.

Key concerns raised by stakeholders included:
• The potential for a lack of transparency in contact arrangements
• Parents not being able to adequately advocate for themselves in a negotiation process
• The potential for FACS and NGOs to be influenced by resourcing constraints when making contact arrangements, and
• The child no longer having a ‘voice’ in contact negotiations taking place after court proceedings have ended, given that they will no longer have separate legal representation.

Some stakeholders who expressed these concerns nevertheless acknowledged that there may be instances in which it is appropriate for contact arrangements to be made through case planning – for example, where a parent has disengaged, where there is no certainty around a parent’s circumstances and their ability to attend contact, where a child or young person is ambivalent about having contact.

Support amongst Aboriginal and Torres Strait Islander stakeholders and disability advocacy groups for this proposal was mixed. Support was contingent on safeguards such as minimum practice standards and guidelines around contact arrangements for children and young people in OOHC, including Aboriginal and Torres Strait Islander children. For Aboriginal and Torres Strait Islander children, the view was expressed that these standards and guidelines must be developed in consultation with Aboriginal and Torres Strait Islander peak bodies, agencies and communities. The concerns expressed by some disability advocacy groups primarily related to a power imbalance between parents and caseworkers, in terms of parents who may not be able to advocate on their own behalf and the absence of legal representation and advocacy support or assistance once court proceedings have ended.

**Future policy direction**

**Proceed in an amended form to that described in the discussion paper**

Contact arrangements will be made through case planning wherever possible, regardless of whether or not there is a realistic possibility of restoration of a child or young person to the care of his or her parents. This will be done through amending FACS’ existing policies and planning tools rather than through legislative change.

This proposal will be supported by an emphasis in the Care Act on flexible decision making in relation to a child’s contact arrangements with their birth family and significant others, through limiting the duration of initial contact orders where there is no realistic possibility of restoration to 12 months (Proposal 19) and enabling parties to vary the terms of any contact order by written agreement after a final contact order is made (Proposal 19).
This proposal will also be supported by the development of a common framework to guide contact arrangements (Proposal 18).

**PROPOSAL 18: CONSISTENT APPROACHES TO CONTACT**

Develop a common framework about contact arrangements between children and young people and their birth families to guide designated agencies when making contact decisions.

**Question 18:**
What should be the key elements of a common framework for designated agencies in determining contact?

**Stakeholder feedback**

There was overwhelming support from those that provided feedback on this proposal for the development of a common framework for contact arrangements.

**Question 18:**
It was acknowledged in many submissions on this issue that planning for contact is complex and requires skill and resourcing to ensure appropriate outcomes are achieved for the child or young person and the family.

Many agencies identified that the development of a common framework should be evidence-based with a ‘best practice’ approach that considers the best interests of the child, the child’s developmental needs, consideration of cultural issues and complexity of the parents’ needs. Stakeholders suggested that other areas the framework should cover include:

- Case planning and consultation in relation to frequency, length, purpose and type of contact
- Review and evaluation of arrangements
- Goal of permanency planning
- Flexibility, time, travel and resource implications
- Legislative requirements, Office of the Children’s Guardian standards and the UN Convention on the Rights of the Child
- Roles, responsibilities, enforcement and restrictions of workers, carers and parents
- Minimum standards for agencies, and
- Judicial oversight.

Some submissions noted that any framework developed needs to be child-focused and aligned to the NSW Standards for Statutory OOHC. Further, that a framework needs to be agreed upon by all agencies delivering statutory OOHC services as well as the Children’s Court and the legal community. It was suggested that the current FACS Community Services Contact Guidelines and the Children’s Court Contact Guidelines could be used as a starting point in the development of a common framework.

**Future policy direction**

**Proceed as described in the discussion paper**

In light of contact arrangements being determined in future through case planning (Proposal 17), a common framework will be developed to guide designated agencies, courts, solicitors, children,
young people, parents and other stakeholders with developing consistent practice when making contact decisions. The framework will be developed in consultation with key stakeholders.

PROPOSAL 19: RESOLVING CONTACT DISPUTES

Improve the resolution of contact disputes by:

(a) Requiring ADR be used to settle contact disputes, and
(b) Where ADR is unsuccessful, contact disputes will be resolved in the Children’s Court or the ADT or the Family Court.

Question 19 (a):
How should disputes about contact be resolved if they are not able to be resolved through ADR?

Question 19 (b):
If Model 1 is the preferred option and the Children’s Court retains the power to make final orders about contact where there is no realistic possibility of restoration, should such orders be of a limited duration? For what time period?

Question 19 (c):
If Model 2 is the preferred option and the Children’s Court does not retain the power to make final orders about contact where there is no realistic possibility of restoration do you agree that:

• Where the Minister or a designated agency has parental responsibility, the ADT be empowered to review the contact decision and make contact orders and
• The Family Court is the best forum for making contact orders if a third party has parental responsibility?

Stakeholder feedback

Question 19(a)
There was strong support amongst the majority of submissions on this proposal including those from NGOs and the legal community for all parties to attempt ADR once a dispute about contact has arisen. The submissions did not generally suggest particular models of ADR, but felt that there was significant benefit in having a choice of models to suit the individual circumstances of the case.

Opinions differed, however, about the appropriate method and body through which contact disputes should be resolved if ADR fails.

Questions 19(b) and 19 (c)
The majority of stakeholders across all disciplines supported the Children’s Court retaining its power to make contact orders, or at least contact orders for a time-limited duration. Some stakeholders did however note the potential inflexibility of long-term contact orders and the challenges practitioners face in complying with them.

The primary reasons for the preference for Model 1 were that the Children’s Court offers a level of transparency, credibility and enforceability. It was submitted that the Children’s Court has expertise in dealing with child protection and has the relevant history on matters it has heard.
A number of operational issues were also raised if the Family Court or the ADT made decisions in relation to contact disputes, particularly the potential for cases to take much longer to finalise; the lack of continuity of legal representation; and the effect this would have on regional and remote communities where there is limited access to the ADT, Federal Circuit Court or the Family Court.

Model 2 was therefore not favoured by the vast majority of respondents to the discussion paper.

**Future policy direction**

**Proceed in an amended form to that described in the discussion paper**

Contact disputes will be resolved through ADR wherever possible.

A compromise has been reached that balances stakeholder preference for Model 1 with the need for flexibility in contact between the child and their birth family.

Where the Children’s Court has decided that there is no realistic possibility of restoration of a child or young person to the care of his or her parents, the maximum period for a contact order will be 12 months. At any time after a contact order has been made, parties will be able to vary the terms of the contact order by written agreement.

At the expiry of a contact order, or where no contact order was made in the initial care proceedings, parties will be able to make a subsequent application to the Children’s Court for a contact order if there has been a significant change in any relevant circumstances since a final care order was made. Before granting leave, the Court will be required to take into account whether the applicant for the contact order has attempted to reach an agreement with the other parties about contact arrangements by participating in ADR. For these applications, the Court will also have the power to order the applicant and other parties to attend a DRC.

These amendments will encourage parties to reach a consensual decision about contact before seeking a judicial determination. Where contact disputes cannot be resolved in the context of case planning or ADR, these disputes may be resolved by the Children’s Court.

**PROPOSAL 20: ENFORCING CONTACT ORDERS**

That the Children’s Court has the power to enforce contact orders and arrangements.

*Question 20:
Should there be mechanisms for enforcement of contact agreements or orders and what should these be?*

**Stakeholder feedback**

Questions 20

This proposal was well supported by the majority of stakeholders who provided feedback on this proposal, although some submissions raised concerns. Many saw value in providing the Children’s Court with the ability to enforce contact orders, expressing the view that it would aid compliance with contact orders and give parties a sense of security. Some also saw there being value in the Children’s Court having the power to enforce contact arrangements that are made through case planning without a court order. There was however little feedback as to how this could be achieved in practice.
Concerns were expressed in some submissions that historically, contact orders have been difficult to manage. For example, it is difficult to make a reluctant parent or relative attend contact. Similarly, it is challenging and potentially harmful for a child who does not want to attend contact to be forced to go.

Some NGOs and service providers considered the issues of whether the Children’s Court should be able to enforce contact orders against parents only, agencies only, or both. One stakeholder submitted that the proposal was only supported insofar as it provides for breach proceedings against agencies but not parents. Another felt that the Children’s Court should have the power to enforce contact orders, but recommended that breach proceedings against parents could occur only if there were circumstances such as a serious breach of contact conditions, harassment of agency staff, or serious personal or criminal misconduct during contact.

Submissions across different sectors recommended that the penalties for the contravention of contact orders should mirror those contained in the *Family Law Act 1975* (Cth).

**Future policy direction**

**Not proceeding at this stage**

The Government considers that current systems are sufficient to ensure compliance with contact orders, particularly when coupled with the changes that will be made to the Children’s Court under Proposal 19 (see above).

The focus on contact arrangements being made through case planning (Proposal 17) with reference to the common framework (Proposal 18) means that contact will be primarily determined in the course of case planning with the child or young person and the family. An increased focus on ADR to resolve contact disputes (Proposal 19) will likely lead to fewer contact disputes being determined by the Children’s Court. Contact orders will also be more flexible due to the time-limitation on them in the first instance, coupled with the option that parties will have to vary the terms of the order by written agreement.
## PROPOSAL 21: IMPROVING THE USE OF ALTERNATIVE DISPUTE RESOLUTION

Establish a comprehensive legislative framework for the use of ADR in the child protection sector dealing with a range of matters including definitions, role, obligations and protections of convenors, confidentiality of ADR processes, and the limitations on the admissibility of information or documents disclosed during ADR in any subsequent court proceedings.

### Question 21:
What key provisions do you think should be included in the legislative framework for ADR?

### Stakeholder feedback

The overwhelming majority of submissions that responded to this proposal supported it, including the majority of legal stakeholders, peak bodies, service providers, and NGOs. The major concern expressed in a few submissions that opposed the proposal was that it should not be assumed that ADR is appropriate for every child protection case. Concerns were expressed in some submissions about the logistics of accessing ADR processes in regional and remote areas where access to facilitators is low.

### Question 21
Stakeholders agreed that the matters listed in the discussion paper should be included in the legislative framework. Some stakeholders made additional suggestions, including that:

- ADR processes should be confidential but that information obtained during ADR should be disclosed where such disclosure is in the best interests of the child or young person
- ADR models should be culturally appropriate, and there should be more consultation with Aboriginal and culturally and linguistically diverse communities over the design of ADR models, and
- Children, young people and parents should be legally represented during ADR, to ensure its effectiveness.

### Future policy direction

**Proceed as described in the discussion paper**

A new chapter will be included in the Care Act dealing with ADR in the care jurisdiction. In particular, it will provide a broad definition of ADR which will include all forms of ADR conducted under the Care Act.

Existing ADR provisions contained in the *Children and Young Persons (Care and Protection) Regulation 2012* will be transferred to the Care Act, with a number of amendments to ensure sufficient protection and confidentiality of information disclosed during ADR (with appropriate exceptions). These amendments will enhance the integrity of ADR processes in the care jurisdiction.

Options such as having trained ADR practitioners attended rural and regional centres for block periods of time so as to conduct ADR sessions in a number of different matters will be investigated, to ensure people in such centres also have the opportunity to access ADR.
Clarify and consolidate in the legislation the provisions relating to the regulation of special medical treatment for children and young people.

**Question 22 (a):**
What additional safeguards, if any, should be in place for the provision of special medical treatment to a child in OOHC? Should these be required through legislation or through administrative arrangements such as guidelines?

**Question 22 (b):**
In relation to the administering of psychotropic medication to children in OOHC:

- Who should give consent and in what circumstances?
- Should there be a requirement for a treatment plan or behaviour management plan when the medication is being prescribed? If so, should such plans be required for all medical conditions or only for controlling behaviour?
- What kinds of alternative safeguards might be implemented in lieu of a legislative requirement for plans?

**Stakeholder feedback**

Amongst those that provided feedback, there was overwhelming support for legislation establishing an appropriate level of protection and clarifying the provisions on special medical treatment to children. Health sector stakeholders in particular expressed strong opposition to psychotropic medication for children and young people in OOHC currently being classified and regulated as ‘special medical treatment’ under the Care Act..

**Question 22(a)**
No submission on this proposal recommended that additional legislative safeguards are needed for the regulation of special medical treatment for children and young people in OOHC. Legal stakeholders expressed the view that there is a wealth of precedents available in relation to special medical treatment for all children in NSW and that safeguards should be well founded at common law and consolidated in the legislation rather than through administrative arrangements.

Practitioners and regulators were of the view that the current regulatory requirements in respect to the use of psychotropic medication for children and young people in OOHC should be simplified and made more transparent and are best regulated via clear, transparent consent procedures and evidence based guidelines.

Disability sector submissions recommended that FACS (Ageing, Disability and Home Care)’s policy and procedures on medical treatment for children and young people with disabilities be cross referenced or used as a guide.

**Question 22(b)**
There was general support and advocacy for the view that psychotropic medication should not be the primary behaviour support strategy used, particularly for a child with an intellectual disability, and that the delegate of the Minister (i.e. Principal Officer of the designated agency) should provide written consent for the use of a psychotropic drug as a form of treatment for children and young
people in OOHC with challenging behaviours.

There were mixed views about both who should give consent when psychotropic medication is prescribed to children and young people in OOHC, and the need for behaviour management plans. Some submissions noted that it should be sufficient if a medical practitioner had prescribed the medication, whilst other respondents felt that a behaviour management plan was required in all instances.

**Future policy direction**

**Proceed as described in the discussion paper**

As suggested by stakeholders the administration of psychotropic drugs to a child or young person in statutory OOHC for the purpose of controlling his or her behaviour will no longer be classified in the regulations as a category of ‘special medical treatment’.

It is proposed that a regulation making power will be inserted into the Care Act which will allow for regulations to be made in relation to the procedures to be followed by a designated agency in authorising, consenting and monitoring the medical examination, treatment and control of the behaviour of a child or young person in statutory OOHC. It is proposed that the regulations may also require a designated agency to carry out such procedures in accordance with publicly available guidelines prescribed by the regulations.

These amendments will clarify and consolidate the regulation of special medical treatment of children and young people in OOHC.

**PROPOSAL 23: MINIMISING THE IMPROPER USE OF SOCIAL MEDIA IN A CHILD PROTECTION CONTEXT**

Minimise the improper use of social media in a child protection context by strengthening provisions in the Care Act to prevent the unlawful publication of names and images of children and young people on social media sites and to prevent the publication of offensive or derogatory material about FACS Community Services workers which are intended to harass.

*Question 23 (a):*  
In what other ways can children and young people be protected from unlawful publication of information and images on social media sites?

*Question 23 (b):*  
Should it be an offence to publish offensive comments designed to harass child protection workers on social media sites?

*Question 23 (c):*  
Should it be an offence in the Care Act for a convicted sexual offender of children to use social media?

**Stakeholder feedback**

The submissions received generally acknowledged that the growing use of social media presents significant challenges to protecting the privacy of children subject to care proceedings and in OOHC, and for a range of people working in the area of child protection, including FACS Community Services caseworkers.
However, a number of submissions expressed the view that existing legislative provisions in the Care Act and elsewhere were currently adequate to meet those challenges. One legal stakeholder considered that section 105 of the Care Act (Publication of names and identifying information) did not require amendment, but rather more robust use of it. Those who opposed the proposal raised concerns about interference with civil liberties and free speech and the impact on children and young people publishing photos of themselves and their friends on social media sites (i.e. they could be the subject of prosecution).

The majority of young people who were interviewed supported creating an offence for adults to publish the names and pictures of children and young people online in a way that identifies they are in OOHC. The majority of young people also supported creating an offence for adults to say negative comments about FACS Community Services caseworkers on websites and social media that are intended to harass. They also supported consequences being given to children and young people in OOHC who engage in this type of behaviour:

“I agree 100%. Caseworkers... should not be slandered, on online forums where it’s biased decisions. Caseworkers do the best they can... It can be quite depressing, stressful and those are things they do not deserve to go through when they are getting paid to do the best that they can. The privacy of those young people in care must be protected especially where they are otherwise they may be at risk...” – male, aged 21 years

“....I think it should be an offence because it is very hurtful if someone says ‘Oh you’re in care. Your parents don’t care about you’. It’s very hurtful and I’ve had a couple of people say ‘Oh I find it funny that your parents abandoned you and that you’re in care’ and then other people that didn’t know find out and give you [removed] about it and you’re like ‘well it’s not my fault’. I think it should be addressed because it is very hurtful.” – female, aged 17 years

Questions 23(a)

A number of submissions suggested ways to protect children and young people from unlawful publication of information and images on social media sites. They included:

- Community education particularly to parties involved in the care jurisdiction, to make clear what the prohibition means and the consequences for breaching section 105 of the Care Act
- Issuing guidelines to agencies providing OOHC services
- Increasing the use of court orders restricting the use of social media, and
- Amending the legislation in line with various other Acts, for example, the Children (Criminal Proceedings) Act 1987 and the Adoption Act.

Question 23(b)

There were mixed views about making it an offence to publish offensive comments designed to harass child protection workers on social media sites. Of those who provided feedback, half supported and half opposed this proposal.

A recurring theme from those supporting the proposal was that any offence provision should cover all workers performing functions under the Care Act, not just FACS workers.

A key reason for opposing the creation of the offence was that there is sufficient legislation in place in the state and federal criminal jurisdictions to address the issue. Submissions also noted the significant challenges in obtaining sufficient proof to prosecute offences and that the creation of an offence is unlikely to eliminate or reduce the incidence of harassment.
One legal submission proposed an alternative offence modelled on section 60A of the Crimes Act 1900 (Assault and other actions against law enforcement officers other than police officers) which is an offence that gives specific and broader protection to law enforcement officers including prosecutors, sheriffs and correctional officers.

Question 23(c)

Views on the prohibition of convicted sex offenders of children to use social media were mixed. The introduction of an offence in the Care Act was largely opposed by agencies involved in the investigation and prosecution of criminal offences. The key reason for this opposition being that there are sufficient criminal sanctions to address these concerns. Further issues regarding detection and investigation were also raised.

There were mixed views amongst practitioners, NGOs and the legal community. Individuals and community members supported the proposal.

Future policy direction

Proceed in an amended form to that described in the discussion paper

Section 105 of the Care Act currently prohibits the publication of names and identifying information of children and young people involved, or reasonably likely to be involved, in the Children’s Court and any non-court proceedings. This will be amended to make it clear that ‘publication’ includes publication of information to an Internet website that provides for the opportunity for, or facilitates or enables, dissemination of information to the public or a section of the public.

As existing state and federal criminal offences are sufficient to address the online harassment of caseworkers there is no need to expand the offence provision in section 251 of the Care Act (Obstruction of persons).

Existing state and federal criminal sanctions are also sufficient to address the issue of child sex offenders using social media to exploit children and young people. In accordance with stakeholder views, introducing an offence making it illegal for child sex offenders to use social media will not be progressed.

PROPOSAL 24: SIMPLIFYING PARENTAL RESPONSIBILITY ORDERS

Simplify the current scheme of parental responsibility orders by:

(a) Streamlining parental responsibility orders that may be made by the Court to make it easier to identify who holds which aspect of parental responsibility for a child or young person

(b) Introducing a ‘self-executing’ order whereby parental responsibility is with one person for a period of time and then passes to another at the end of the period.

Question 24:

In what other ways do you think that parental responsibility orders can be improved?

Stakeholder feedback
The proposal to streamline parental responsibility orders was widely supported by those who provided feedback on this proposal. There was also general support for the proposal to introduce ‘self-executing’ orders. However, some stakeholders questioned whether it was necessary, given that the Court can already make such orders under the current legislation. A small number did not support a ‘self-executing’ order because it assumes, without any updated assessment, that there has been no change in the family’s situation.

Question 24

Few other suggestions to improve parental responsibility orders were given. Some submissions suggested that a review or assessment of a person’s suitability to be allocated parental responsibility for a child or young person should be undertaken at the time the shift in parental responsibility is to occur.

Future policy direction

Proceed as described in the discussion paper

The provisions in the Care Act (sections 79 and 81) dealing with orders allocating parental responsibility, or sharing aspects of parental responsibility among certain persons will be merged into a single consolidated and coherent section in the Care Act.

To remove any doubt, the Care Act will clarify the Court’s power to make consecutive orders, including orders allocating aspects of parental responsibility.

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<tr>
<th>PROPOSAL 25: IMPROVING SUPERVISION ORDERS</th>
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<td>Allow Supervision Orders to be extended for a further twelve months where the original order has expired and no report has been filed for the Court’s consideration.</td>
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Question 25: Should the maximum timeframe for supervision orders be 24 months? Why or why not?

Stakeholder feedback

There was significant opposition, particularly from the legal sector, to the automatic extension of supervision orders when a court-ordered report has not been filed during the life of the supervision order. The proposal was largely opposed on the grounds that it is inconsistent with the principles of the Care Act, and with the principles of procedural fairness and natural justice.

There was also considerable opposition to the automatic extension of supervision orders from Aboriginal and Torres Strait Islander groups and NGOs because it fails to consider the identified child protection concerns or the best interests of the child. Carer support groups were also opposed to this proposal.

Whilst stakeholders did not necessarily oppose an extension of a supervision order, most felt that the onus should be on FACS to show why the order should be extended. Views were expressed that if there is no evidence to support the extension of a supervision order, the order should expire.

Question 25

There were mixed views about the optimum duration of supervision orders. Several key stakeholders suggested that supervision orders should be able to be made for longer than 12 months, up to a maximum of 24 months, but giving the Court an additional power to terminate the order earlier, if
after an assessment of progress and outcomes of the supervision order, it considers it appropriate to do so.

Some submissions did not support the extension of supervision orders to 24 months. Feedback indicated that this timeframe was considered to be too long and should remain limited to 12 months as demonstrable change would need to be observed in this timeframe. Some submissions expressed the view that extending the length of supervision orders, would also mean, from a casework perspective, that matters would need to remain open and allocated for two years which would have an impact on service resources.

**Future policy direction**

**Proceed in an amended form to that described in the discussion paper**

As suggested by stakeholders, the Children’s Court will have the power to make supervision orders for longer than 12 months, to a maximum of 24 months, if it is satisfied that there are special circumstances that warrant the making of an order of that length and it is appropriate to do so. In addition, where a longer supervision order is made, the Children’s Court will have the power to revoke the order earlier where it considers there is no longer a need for supervision in order to protect the child or young person. The Children’s Court will retain its discretion to require a report at any time during this period.

It is noted that section 76(6) of the Care Act already permits the Court to extend a supervision order where it considers it appropriate. To ensure the child’s or young person’s safety, welfare and well-being, the Care Act will be amended to make clear that the total period that a supervision order may operate – even where it is extended – is 24 months.

**PROPOSAL 26: WORKING WITH ADVOCACY BODIES**

That AbSec and CREATE should have access to information to permit fulfilment of their objectives.

**Question 26 (a):**
Should AbSec and CREATE be prescribed to permit the release of otherwise information about carers and children to these bodies?

**Question 26 (b):**
Should peak carer advocacy groups have a similar ability to receive information as is being proposed to AbSec and CREATE?

**Stakeholder feedback**

**Questions 26(a) and 26(b)**

The majority of submissions on this point did not support or only provided qualified support to this proposal on the basis of privacy concerns. Many suggested that administrative solutions could address the issue.

Many who supported the proposal gave qualified support noting concerns that there be limits on the information provided and/or that consent of the child, young person or carer should be obtained first.
The views of young people who provided feedback on this proposal were mixed – some were satisfied with details being provided and others thought permission should be obtained before the information was provided.

**Future policy direction**

**Not proceeding at this stage**

This proposal will not proceed at this stage due to privacy concerns raised by the majority of stakeholders. Alternative options for providing information that take into account the privacy issues will be explored with the agencies.

**PROPOSAL 27: WORKING WITH PRIVATE HEALTH PROFESSIONALS**

Private health professionals be able to share with other relevant agencies personal and health information about children, young people and families without client consent where this relates to the safety, welfare and well-being of a child or young person.

**Question 27 (a):**
Should private health professionals be prescribed to permit them to share with other prescribed bodies personal information and health information about children and young people and their families where this will promote child safety, welfare and well-being?

**Question 27 (b):**
If so, should all or only some private health professional groups be prescribed in this way?

**Stakeholder feedback**

**Question 27(a)**
Amongst those that provided feedback on this proposal, there was overwhelming support for this proposal across all sectors, conditional on having clear guidelines and safeguards about how information sharing occurs.

**Question 27(b)**
Those respondents who commented on which private health professionals should be prescribed for information exchange purposes generally suggested all private health professionals should be prescribed in this way.

**Future policy direction**

**Proceed as described in the discussion paper**

Certain groups of private health professionals will be prescribed in the regulation for information exchange purposes, including registered medical practitioners, registered nurses and midwives, and registered occupational therapists. Guidelines will be developed to guide the information exchange.

**PROPOSAL 28: REPORTING CHILD DEATHS**

That there be a legislative obligation to report on the deaths of children and young people in OOHC.
Question 28:
Do you think FACS should be required by legislation to table an annual report to Parliament on their involvement with the families of children known to FACS Community Services who have died?

Stakeholder feedback

Question 28

This proposal was largely supported by those who made submissions on this proposal.

Some legal stakeholders, NGOs and service providers welcomed an annual report on the deaths of children and young people in OOHC, however, they were of the view it shouldn’t be legislated because pertinent information relating to these deaths is already released in reports by the NSW Ombudsman’s Office and the Child Death Review Team. To a large extent, they agreed that an annual report on the deaths of children and young people in OOHC is a duplication of existing reports.

Future policy direction

Proceed as described in the discussion paper

The Care Act will be amended to require the Director-General to prepare an annual report to the Minister, which the Minister must table in the NSW Parliament regarding children and young people known to FACS Community Services who have died in the previous calendar year.

While this may result in some duplication with reports of child deaths by other agencies, the Government considers it vital to increase accountability and transparency in relation to the deaths of children and young people known to FACS Community Services to provide greater public scrutiny and opportunities to improve the way FACS supports families.

PROPOSAL 29: REPORTING OF CHILDREN LIVING AWAY FROM HOME WITHOUT PARENTAL PERMISSION

Amend the Care Act to:
(a) Clarify that section 122 of the Care Act (Mandatory reporting of child who lives away from home without parental permission) applies to funded residential providers and for-profit business only (not private citizens)
(b) Remove the penalty in section 122 of the Care Act.

Question 29:
Do you foresee any unintended consequences of clarifying these reporting requirements under the Care Act?

Stakeholder feedback

Sixty-one per cent of respondents supported this proposal. There was a general recognition that the proposal aligns with related provisions in the Care Act, and would not lead to any significant adverse impact on current practice.

Question 29

Of those that made submissions on the proposal, eight stakeholders (18 per cent of respondents) did not support the proposal on the basis that:
• It will limit information received by the Child Protection Helpline
• A parent has a right or should know the whereabouts of their child
• FACS already has sufficient discretion to deal with any similar matters appropriately, and
• It will lead to exploitation of section 122 of the Care Act.

One service provider suggested:

“clarification may be required that reporting should also be required for private arrangements whereby the care provider is a child protection or OOHC employee. This is to ensure there is no perception of a conflict of interest or inappropriate access to a child’s personal details beyond what they are entitled as the care provider”.

Future policy direction

Proceed in an amended form to that described in the discussion paper

A friend or relative of a child under 16 years of age who maintains a close personal relationship with the child, and who does not provide accommodation to the child wholly or substantially on a commercial basis, will no longer be required to report this to the Director-General.

The mandatory reporting requirements in section 122 of the Care Act, for private and funded residential providers will not change and the penalty prescribed in this section for not reporting, will be retained. The majority of funded residential providers and for-profit businesses that provide accommodation services are not otherwise mandatory reporters. It is therefore important to retain the penalty in this section to ensure compliance with these mandatory reporting provisions.
**SYDNEY attendees – 12 December (47 attendees excluding FACS)**

- AbSec
- ACON
- ACWA
- Barnardos Australia
- Centacare Broken Bay
- Commonwealth Department of Families, Housing, Communities and Indigenous Affairs
- Community Resource Network (CRN) Inc
- CREATE Foundation
- Department of Attorney-General and Justice
- Dunlea Centre
- Hubworks
- International Social Service Australia
- Key Assets Fostering (QLD)
- Legal Aid NSW
- Legal Aid Sutherland
- Life Without Barriers
- Link-Up (NSW) Aboriginal Corporation
- Macarthur Temporary Family Care Inc
- MacKillop Family Services
- NSW Children’s Guardian
- NSW Greens
- NSW Ombudsman (Official Community Visitor)
- NSW Parliament
- Sydney Girls High School
- The Smith Family
- The University of Sydney
- UnitingCare Burnside
- Wesley Dalmar
- Yfoundations
- Youth Off The Streets Ltd

**DUBBO attendees – 8 February 2013 (36 attendees excluding FACS)**

- ACWA
- Care West
- Challenge Children’s Services
- Connecting Carers NSW
- Department of Attorney-General and Justice (Juvenile Justice)
- Dubbo Neighbourhood Centre
- Emmanuel Care Centre
- Family Planning NSW

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4 As written by attendees on registration forms at each event
• Family Relationship Centre
• Forbes Women’s Refuge
• Interrelate Family Centre
• Little Diggers Preschool and Child Care Centre
• Life Without Barriers
• Parkes Neighbourhood Centre
• Playmates Cottage
• Samaritans
• Stuart House
• UnitingCare Burnside
• UnitingCare Children Young People and Families
• Warrumbungle Shire Council
• Youth Services Gilgarra

SHELLHARBOUR attendees – 12 February (67 attendees excluding FACS)
• AbSec
• Association of Children’s Welfare Agencies (ACWA)
• Albion Park Youth and Community Care
• Anglicare
• Anglicare NSW Southern Tablelands
• Barnardos
• Care South
• CareWays Community Inc
• Cassie’s Place Child Sexual Assault
• Child Protection Counselling Service (SNSWLMD)
• Cringila Community Co-op
• Department of Human Services (Centrelink)
• Euro Family Support
• Family Services Illawarra Inc
• Foster Care Association NSW Inc
• Goulburn Family Support Services Inc
• Illawarra Aboriginal Corporation Myimbarr
• Illawarra Aboriginal Medical Service
• Illawarra Forum
• Illawarra Multicultural Services
• Legal Aid
• Legal Aid Nowra
• Life Without Barriers
• Marymead Child and Family Centre
• Mission Australia
• Mission Australia AOD Youth Services
• Multicultural Communities Council of Illawarra
• North Kiama Neighbourhood Centre
• Nowra Anglican College
• Nowra Family Support
• Nowra Women and Children’s Refuge
• NSW Ombudsman (Official Community Visitor)
• Port Kembla Youth Project Inc
• Relationships Australia
• Shoalcoast Community Legal Centre
• Shoalhaven Community Legal Centre
• Shoalhaven Region Anglican Schools
• Shoalhaven Youth Accommodation
• Southern Youth and Family Services
• The Benevolent Society
• The Rail Neighbourhood Association Inc
• The Salvation Army
• Ulladulla Domestic Violence Support Services
• UniCentre Experience, University of Wollongong
• Warilla Neighbourhood Centre
• Warilla Women’s Refuge
• YWCA NSW

SYDNEY attendees – 13 February (102 attendees excluding FACS)
• Aboriginal Legal Service
• ACWA
• Anglicare Diocese of Sydney
• Australian Catholic University
• Australian Red Cross
• Barnardos
• Bega Valley Shire Council
• Campbell Page
• CatholicCare
• Cerebral Palsy Alliance
• Children’s Court
• Commission for Children and Young People
• CRN Inc
• Community Youth Development Project
• Compass Housing Service
• Council of Social Services of NSW (NCOSS)
• Department of Attorney General and Justice
• Dunlea Centre
• Commonwealth Department of Families, Housing, Communities and Indigenous Affairs
• Family Court
• Family Planning NSW
• Foster Care Association NSW Inc
• Goodstart
• Grands Raising Kids NSW Inc
• Intellectual Disability Rights Service
• James Cook University
• KARI Aboriginal Resources
• KU Children’s Services
• Legal Aid
• Life Without Barriers
• Mackillop Family Services
• Marist Youth Care
• Mental Health Coordinating Council
• Mission Australia
• Newcastle Legal Aid Office
• Northcott
• NSW Community Service and Health ITAB
• NSW Department of Premier and Cabinet
• NSW Family Services Inc
• NSW Ombudsman
• Relationships Australia
• Riverwood Community Centre
• Rosemount Good Shepherd
• Samaritans Foundation
• Sector Connect Inc
• Sutherland Shire Family Services
• St Vincent de Paul Society
• Sylvanvale Foundation
• The Benevolent Society
• The Bridge Youth Service Inc
• The Salvation Army
• UnitingCare Children Young People and Families
• Wesley Mission
• Youth Off The Streets Ltd

NORTHERN REGION VIDEOCONFERENCES – 14 and 15 March 2013 (35 attendees)
(Ballina, Lismore, Coffs Harbour, Kempsey, Grafton, Tweed Heads)
• Ballina District Community Services Association Inc
• Brighter Futures Early Intervention Program
• Casino Neighbourhood Centre
• Challenge Children’s Services
• Clarence River Women’s Refuge and Outreach Services
• Department of Attorney-General and Justice
• Department of Education and Communities
• Jubullum Village
• Mid Coast Communities
• Ngallingnee Jarjum Tabulam Preschool
• Northern Rivers Social Development Council
• NSW Health (Mid North Coast Local Health District)
• TAFE NSW
• The Ballina-Byron Family Centre
• UnitingCare Burnside
• Your Family Day Care

APPENDIX 2: LIST OF SUBMITTERS TO THE CHILD PROTECTION LEGISLATIVE REFORMS
DISCUSSION PAPER

The majority of individuals and community members who provided submissions requested that their submission not be made public. For this reason, the submissions received from these stakeholders have been de-identified.
1. FACS Community Services caseworker
2. FACS Community Services caseworker
3. Anonymous
4. Psychotherapist from the medical sector
5. Private individual
6. Private individual
7. FACS Community Services caseworker
8. Private individual
9. Private individual
10. Psychiatrist from the medical profession
11. Private individual
12. History of Adoption Project Team (Monash University, Australian Catholic University and RMIT University)
13. University of Western Sydney, School of Social Sciences and Psychology
14. Minister for Mental Health, the Hon Kevin Humphries MP
15. Counsellor and therapist from the medical profession
16. Private individual – long-term foster carer and inter-country adoptive mother
17. FACS Community Services caseworker
18. Private individual
19. Private individual
20. Carer-Support Manager in the non-government sector
21. FACS Community Services caseworker
22. Private individual – Forgotten Australian and eleven years experience in OOHC
23. FACS Community Services caseworker
24. Profession in the health sector
25. Commonwealth Department of Attorney-General (#1)
26. Private individual – foster carer
27. Private individual – foster carer
28. FACS Community Services Triage/Strengthening Families Team
29. FACS Ballina Community Services Centre
30. FACS Community Services caseworker
31. FACS Community Services Port Macquarie OOHC Team
32. Private individual
33. Private individual
34. The Blue Mountains Legal Research Centre
35. FACS Community Services Learning and Development
36. Grandparents, Relatives, Kinship Carers Association
37. Barnardos Australia (correspondence)
38. Private individual – kinship carer
39. NSW Committee for Permanent Care and Adoption
40. Private individual
41. Private individual – consultant social worker
42. Private individual - teacher
43. Australian Adoptee Rights Action Group
44. Nambucca Heads Aboriginal Lands Council
45. Campbell Page
46. FACS Community Services caseworker
47. Private individual – grandparent carer
48. Private individual
49. Chief Justice of the Family Court
50. Private individual
51. Grandparent Kinship Care
52. Private individual – foster carer
53. Challenge Children’s Services
54. Private individual
55. James Cook University
56. Family Inclusion Network
57. Private individual
58. FACS Community Services caseworker
59. Private individual – grandparent carer
60. Granville Multicultural Community Centre
61. Grandparents Raising Children, Mission Australia
62. Family Planning NSW
63. Private individual from the education and adoption sector
64. Private individual
65. Private individual
66. Private individual – foster carer
67. Private individual – long-term foster carer
68. Private individual
69. Children and Families Research Centre, Macquarie University
70. Private individual – grandparent carer
71. Families NSW (FaMS)
72. Royal Australian and New Zealand College of Psychiatrists (RANZCP)
73. NSW Bar Association
74. Shoalcoast Community Legal Centre
75. Sector Connect
76. Professional from education sector
77. Goulburn Family Support Service
78. Private individual – social worker
79. Private individual – foster carer
80. Private individual - advocate
81. Family Services Illawarra
82. Private individual
83. National Disability Services
84. Private individual
85. FACS Dubbo Community Services Centre
86. FACS Orange/Cowra Community Services Centre
87. National Adoption Awareness Week
88. Private individual – parent of carer, grandparent of child in OOHC
89. Professional from early intervention sector
90. FACS Wagga Wagga Community Services Centre
91. SydWest Multicultural Services
92. Orange Health Service
93. Foster Care Association
94. Director of Public Prosecutions
95. Private individual - mother affected by past forced adoption practices
96. CatholicCare Social Services Hunter-Manning
97. Hunter-New England Local District Health
98. FACS Community Services Metro South-West Partnerships and Planning Team
99. FACS Orana Community Services Centre
100. Save the Children Australia
101. Professional from the early intervention sector
102. Tweed Valley Kin Care Support Group
103. Private individual – foster carer
104. Luke’s Army
105. Private individual – foster carer
106. Australian Catholic University, Institute of Child Protection Studies
107. FACS Community Services Aboriginal Services Branch
108. Department of Education and Communities
109. Concord Centre for Mental Health
110. Anglicare Sydney
111. Catholic Education Commission
112. Mission Australia
113. The Salvation Army
114. Life Without Barriers
115. Bega Valley Child Protection Interagency Group
116. Children and young people interviewed by the CREATE Foundation
117. The CREATE Foundation
118. The NSW Greens
119. Private individual
120. Australian National Council on Drugs and the National Indigenous Drug and Alcohol Committee
121. FACS Community Services Parramatta Adoption Team
122. Local Community Service Association
123. FACS Community Services caseworker
124. FACS Community Services Intensive Support Services
125. Good Beginnings Australia
126. Care Leavers Australian Network (CLAN)
127. Information and Privacy Commissioner
128. Wirringa Baiya Aboriginal Women’s Legal Centre
129. CareSouth
130. Legal Aid NSW
131. Private individual – caseworker and adoptee
132. Community Relations Commission
133. Children’s Court of NSW
134. FACS Community Services Short-Term Court Orders Pilot
135. Karitane Connecting Carers
136. FACS Community Services Practitioner Advisory Group
137. Care Team OOH, Life Without Barriers
138. NSW Cross-Border Commissioner, NSW Trade and Investment
139. Anonymous
140. Private individual
141. Private individual – grandparent carer
142. Anonymous
143. Anonymous – grandmother
144. Anonymous – elderly carer
145. Anonymous
146. Anonymous
147. Anonymous
148. Anonymous
149. Anonymous
150. Anonymous
151. FACS Community Services Metro South-West Child and Family Referral Unit
152. Anonymous
153. Newcastle Law School, University of Newcastle
154. FACS Community Services Adoption and Permanent Care Services
155. Private individual – grandparent carer
156. Private individual – adoptive parent and long-term foster carer
157. Connecting Carers
158. Greater Sydney Family Law Pathways Network (feedback from face-to-face meeting)
159. Women’s Legal Service
160. Anonymous
161. Corrective Services NSW
162. NGOs from Northern NSW – feedback from videoconferences
163. FACS Community Services staff – feedback from videoconferences
164. Illawarra Forum
<table>
<thead>
<tr>
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<th>Name of Organization/Contact</th>
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<tr>
<td>165.</td>
<td>Private individual – foster carer</td>
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<td>166.</td>
<td>Australian Legislative Ethics Commission (Alecomm)</td>
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<td>167.</td>
<td>FACS (Ageing, Disability and Home Care)</td>
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<td>168.</td>
<td>CatholicCare Sydney and CatholicCare Wollongong</td>
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<td>171.</td>
<td>Sutherland Local Area Child Protection meeting</td>
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<td>Commonwealth Department of Attorney-General (#2)</td>
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<td>173.</td>
<td>The Benevolent Society</td>
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<td>Welfare Rights Centre</td>
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<td>Local Government NSW</td>
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<td>Department of Education and Communities (Aboriginal Affairs)</td>
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<td>180.</td>
<td>FACS Community Services staff – feedback from focus groups</td>
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<td>UnitingCare Children, Young People and Families</td>
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<td>Barnardos Australia (#2)</td>
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<td>NSW Commission for Children and Young People</td>
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<td>Premier Children’s Service</td>
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<td>185.</td>
<td>KARI Aboriginal Resources</td>
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<td>186.</td>
<td>Centre for Disability Research and Policy, University of Sydney</td>
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<td>Private individual – foster carer</td>
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<td>Ministry for Police and Emergency Services</td>
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<td>FACS Community Services Office of the Senior Practitioner</td>
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<td>192.</td>
<td>Aboriginal Family Pathways, Sub-Committee of the Greater Sydney Family Law Pathway</td>
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<td>193.</td>
<td>Youth Action</td>
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<td>Metro Migrant Resource Centre</td>
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<td>Mid North Coast Community Legal Centre</td>
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<td>197.</td>
<td>Australian Research Alliance for Children and Youth (ARACY)</td>
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<td>Hawkesbury Nepean Community Legal Centre</td>
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<td>NSW Women’s Refuge Movement</td>
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<td>205.</td>
<td>NSW Legal Assistance Prisoners Forum</td>
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<td>206.</td>
<td>NSW Law Society, Family Issues Committee and Indigenous Issues Committee</td>
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<td>207.</td>
<td>Macquarie Legal Centre</td>
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<td>208.</td>
<td>Wesley Dalmar Out-of-Home Care</td>
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<td>209.</td>
<td>Settlement Services International</td>
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<td>210.</td>
<td>NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)</td>
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<td>Department of Attorney-General and Justice</td>
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<td>Private individual</td>
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<td>213.</td>
<td>Association of Children’s Welfare Agencies (ACWA)</td>
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<td>214.</td>
<td>Western NSW Community Legal Centre</td>
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<td>215.</td>
<td>Community Legal Centres NSW</td>
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</table>
216. Private individual – long-term carer who would like to adopt
217. Council of Social Service of NSW (NCOSS)
218. Macarthur Legal Centre
219. Faculty of Law, University of Sydney
220. Aboriginal Legal Service
221. Macquarie University
222. Aboriginal Child, Family and Community Care State Secretariat (AbSec)
223. Private individual
224. Intellectual Disability Rights Service
225. Children’s Court Clinic
226. Australian Red Cross
227. YFoundations
228. Feedback from public stakeholder consultations
229. Children’s Guardian
230. Ministry of Health
231. NSW Ombudsman