



Family &
Community
Services

Shaping a Better Child Protection System

Report on the outcomes of consultations

October 2018

Minister's Foreword

I am pleased to report on the outcomes of consultations following release of the *Shaping a Better Child Protection System* discussion paper.

I appreciate the efforts of the many organisations and individuals across NSW that took the time to share their views on how we can improve the lives of vulnerable children and their families. The consultation generated rich feedback through over 100 submissions and face-to-face consultations undertaken across metropolitan and regional areas.

The NSW Government and its partners are continually striving to find new ways to secure better outcomes for vulnerable children, young people and their families. We are working towards transforming the child protection system to improve prevention services to keep children safely at home with their families and restore children to their families when it is possible to do so. When this is not possible, we will work to secure a safe and loving home for children through guardianship and open adoption.

NSW leads the nation in the number of open adoptions for children from out-of-home care (OOHC). NSW has also recently recorded a reduction in the number of children entering care. The reforms currently underway will further improve the safety, permanency and wellbeing outcomes of vulnerable children and families.

The responses outlined in this report will support recent reforms and further contribute to reducing the number of children and young people in OOHC and improve outcomes for children and young people in care.

The proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998* (Care Act) and the *Adoption Act 2000* (Adoption Act) are directly informed by the valuable feedback provided in response to the discussion paper.

I look forward to the ongoing conversation with the community as the NSW Government continues to improve its ability to respond to the needs of vulnerable children and families.

The Hon. Pru Goward MP

MINISTER FOR FAMILY AND COMMUNITY SERVICES

October 2018

Introduction

The NSW Government is committed to systemic reform to improve life outcomes for vulnerable children and families. Securing the safety, permanency and wellbeing outcomes of children and young people is a significant area of responsibility for the Government.

The overarching vision of the Department of Family and Community Services (FACS) is for all people in NSW to be empowered to live fulfilling lives and achieve their potential in inclusive communities. For vulnerable children and young people with limited control over their circumstances, achieving this vision requires that FACS does more than simply ensure their safety.

The 2016 independent review of OOHC by David Tune AO PSM highlighted the need for a comprehensive response to the needs of vulnerable children and families to disrupt intergenerational cycles of abuse and neglect. The NSW Government has committed to *Their Futures Matter*, a coordinated approach and long-term strategy to improve life outcomes for vulnerable children and families. Under the reform, services will be evidence-based, delivered to meet individual needs, and aligned to long term outcomes driven by an unprecedented level of strategic partnership across NSW Government agencies.

Shaping a Better Child Protection System is part of the NSW Government's commitment to the ongoing process of review and improvement. The legislative measures support the implementation of the Permanency Support Program (PSP), the new service and funding model to reduce the number of children in OOHC and improve the quality of services.

The discussion paper

In October 2017, the NSW Government sought comments, feedback and ideas on the changes outlined within the *Shaping a Better Child Protection System* discussion paper. The discussion paper proposed amendments to the Care Act and Adoption Act to support broader Government reforms and initiatives to improve safety, permanency and wellbeing outcomes for vulnerable children and families.

The consultation process

FACS invited submissions from a diverse range of stakeholders through the NSW Government's *Have Your Say* website. Stakeholder engagement with the discussion paper was strong. Over 100 written submissions were received from a range of government agencies and public offices, non-government agencies, peaks and other sector and industry groups, academics and members of the public. See Page 18 for the list of individuals and organisations that provided a submission.

FACS also held seven stakeholder workshops across NSW during November 2017, targeting key government agencies, regulatory and accountability bodies, legal and civil rights groups, adoption peak bodies and nominated member organisations, Aboriginal peak bodies and key Aboriginal organisations.

The consultation report

Stakeholder feedback has been critical in planning the way forward and this report seeks to document the feedback as accurately as possible. The report provides a summary of overall feedback from stakeholders in relation to key areas.

Shaping a Better Child Protection System – report on the outcomes of consultations communicates the NSW Government's position in response to each recommendation presented in the discussion paper following consideration of feedback received during the consultation process. This report should be considered in conjunction with the *Shaping a Better Child Protection System* discussion paper.

Discussion paper theme/question	Feedback	Government response
Earlier family preservation and restoration		
Permanent Placement Principles – the concept of restoration		
<p>What does the concept of ‘restoration’ mean? How could the Care Act be amended to better reflect the breadth of family systems and structures within our community? If the Care Act was amended to better reflect the breadth of family systems and structures within our community what additional safeguards should be required to ensure children and young people are protected?</p>	<p>Most written submissions defined ‘restoration’ as the return of a child or young person to their natural parent(s) or to the person who had parental responsibility immediately before the statutory intervention.</p> <p>The submissions revealed mixed responses for a broadening of the concept of restoration beyond a child’s biological parents and adoptive parents. Stakeholders who held this view could see no clear gain to children and young people from broadening the concept of restoration beyond what is contained within the existing legislative framework.</p> <p>Most Aboriginal stakeholders did not support the proposal. The Aboriginal Child, Family and Community Care State Secretariat (AbSec) noted that the placement element of the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles establishes a clear placement hierarchy for Aboriginal children and young people. AbSec also noted that the Permanent Placement Principles already prioritise preservation with parents, then placement with family and kin.</p>	<p>The NSW Government is not recommending that an amendment be made to the Care Act to redefine the concept of restoration.</p> <p>The NSW Government has been consistent in its position, that the proposals will not impact or change the Permanent Placement Principles or the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles.</p>

Discussion paper theme/question	Feedback	Government response
Response timeframes		
<p>Should there be mandated timeframes for responses to ROSH reports by FACS or other agencies? If so, why? If not, why not?</p> <p>What would you consider to be an appropriate timeframe for assessments to be conducted, a case plan to be developed and appropriate support services to be put in place to keep the family together?</p> <p>What benefits and risks for families may arise from mandating response timeframes?</p>	<p>Stakeholders considered that some action should be taken in respect of every report. While there was support for the need to increase the rate of face-to-face assessments conducted in respect of ROSH reports, most stakeholders opposed the introduction of mandated timeframes.</p>	<p>The NSW Government is not recommending that mandatory timeframes for responding to ROSH reports be included in the Care Act at this time. FACS is working towards the goal of providing a face-to-face assessment, accompanied by a referral to the most suitable service pathway, for all children and young people at risk of significant harm. Reforms currently underway, including Access System Redesign under <i>Their Futures Matter</i>, are expected to increase the number of children and young people who receive an appropriate response.</p>
Actions taken before court proceedings		
<p>What are your views about strengthening the obligation for FACS to always consider the use of Alternative Dispute Resolution (ADR) where there are child protection concerns?</p> <p>Does the Care Act provide enough clarity in relation to the use of ADR at various stages of the child protection process? If not, how could it be improved?</p> <p>What measures could be implemented to improve support for participants in the FGC process?</p> <p>In what circumstances do you consider the use of ADR to be appropriate or inappropriate?</p> <p>What is sufficient prior alternative action before taking action to remove a child from their family?</p>	<p>Stakeholders put forward a range of ways in which improvements could be made. Some of the suggested improvements included increased access to legal advice and representation for participants, better monitoring of services provided by facilitators, extension of FGC to extended family and kinship networks, capacity building and increased resources.</p>	<p>The NSW Government is recommending that the Care Act be amended to provide that if a child or young person is assessed as at ROSH, their family must be offered ADR before care orders are sought from the Children’s Court, except where it would not be appropriate due to exceptional circumstances or may compromise criminal proceedings or a police investigation.</p>

Discussion paper theme/question	Feedback	Government response
Service provision		
<p>How can FACS more effectively access the capabilities of other government agencies and funded NGOs to provide services to vulnerable children and families?</p> <p>Are the current ‘best endeavours’ provisions adequate to ensure timely service provision for vulnerable children and families?</p> <p>What changes could be made to the ‘best endeavours’ provisions to align with a whole of government approach to service delivery to vulnerable children and families?</p>	<p>Most stakeholders agreed that timely service provision for vulnerable children and families, where the statutory threshold has been met, is needed. Stakeholders considered that:</p> <ul style="list-style-type: none"> • steps should be taken to ensure that FACS can more effectively access the capabilities of other government agencies and funded NGOs to provide services to vulnerable children and families. • the current provisions are limited, vague and do not reflect a whole of government approach to service delivery to vulnerable children and families, and there is no enforcement mechanism within the provisions. <p>The submissions provided several possible remedies, such as amending the legislation to include a prioritisation mechanism or amending the legislation to require a mandatory response from all referral services. Some concerns were raised about the effect that such prioritisation would have on service provision to current and future families that did not meet the statutory threshold for risk of significant harm.</p>	<p>The NSW Government is recommending that an amendment is made to the Care Act to extend the obligation of government agencies and government funded NGOs to cooperate in the delivery of services to children and young persons (where applicable), for the provision of prioritised access to services to children and young persons at ROSH and their families. In relation to the provision of health services, this will not override functions in clinical decision making or responsibilities under the Medicare Principles and Commitments in the provision of public hospital services.</p> <p>The issues that families present to the health, education and justice systems are often associated with child protection risks. When these presenting issues are a risk factor for children, the Government believes that agencies need to prioritise these families for services and intervention.</p> <p>This is in keeping with the approach under <i>Their Futures Matter</i> Reform to ensure that effort and funding across government is focused on interventions that will improve the long-term outcomes for children and families at the earliest opportunity.</p>
<p>Should ‘children’s services’ be limited to education and care services for the purposes of</p>	<p>Stakeholders agreed that the ambiguity in relation to the definition of ‘children’s</p>	<p>The NSW Government is recommending that ‘children’s services’ in the Care Act, has an</p>

Discussion paper theme/question	Feedback	Government response
<p>mandatory reporting, or should the term have broader application? If so, why? If not, why not? What additional ‘children’s services’ should be captured for the purposes of mandatory reporting?</p>	<p>services’ should be clarified. There was support for this definition to be consistent with the definition in the National Law. Several stakeholders supported further expansion of the categories of mandatory reporters. A similar number of stakeholders opposed any further expansion, noting that the current categories are sufficient and increasing the number of reports may be counter-productive.</p>	<p>equivalent definition to that in the <i>Children (Education and Care Services) National Law (NSW)</i> and <i>Children (Education and Care Services) Supplementary Provisions Act 2011 (NSW)</i>. This is consistent with the NSW Government’s in principle acceptance of the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse to have nationally consistent mandatory reporter groups. The mandatory reporter scheme in NSW already includes the minimum mandatory reporter groups identified by the Royal Commission, except for people in religious ministry and registered psychologists who deliver services to adults. NSW will consider including all registered psychologists and people in religious ministry in the mandatory reporter scheme. Some persons in religious ministry are already captured by the NSW mandatory reporting scheme if they work with children in another capacity, for example a priest who is also teacher at a school.</p>
<p>Alternative pathway for mandatory reporters to make reports to FACS</p>		
<p>Should mandatory reporters be exempted from making a traditional report to the Child Protection Helpline where supports are in place to mitigate child protection risks? If so, what additional safeguards should be in place?</p>	<p>The submissions revealed mixed support for this proposal. Some stakeholders were generally supportive of the proposed exemption, provided safeguards were put in place. Some safeguards included the provision of extensive guidance and training</p>	<p>The NSW Government is not recommending that any legislative change be made to mandatory reporting requirements. FACS will continue to consider how to reduce the administrative burden on FACS and service providers, and free up resources for children</p>

Discussion paper theme/question	Feedback	Government response
	<p>to mandatory reporters, a review and monitoring function and the exemption only operating where a safety and risk assessment has been undertaken to ensure that risks are not escalating.</p> <p>Some stakeholders were directly opposed to the exemption. The reasons for the opposition included that it may cause confusion as to what is required to be reported, the benefit of multiple reports in the consideration of cumulative harm, and the exemption may result in serious new risks not being reported.</p> <p>Stakeholders generally supported the introduction of an electronic system which could streamline the making of re-reports.</p>	<p>and young people who are most at risk.</p>
<p>Streamlining court processes and orders</p>		
<p>Streamlining court processes</p>		
<p>Should the Care Act contain a specific provision enabling the Children’s Court to make guardianship orders by consent? If not, why not? If so, what safeguards should be put in place?</p>	<p>Most stakeholders supported the proposal for the Care Act to contain a specific provision enabling the Children’s Court to make guardianship orders by consent. Some of the necessary safeguards put forward by stakeholders included:</p> <ul style="list-style-type: none"> • the requirement for all parties and children to obtain independent legal advice • a requirement that appropriate assessments and checks have been carried out 	<p>The NSW Government is recommending that the Children’s Court be empowered to make a guardianship order by consent, where the suitability assessments around guardianship have been satisfied and all parties and children have received independent legal advice.</p> <p>The legislative protections in section 38 will continue to operate. Section 38 will be clarified to ensure that all parties, including children and young people, must obtain independent legal advice. The Children’s</p>

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	<ul style="list-style-type: none"> ongoing support services for children and guardians a monitoring mechanism to ensure that care plans for Aboriginal children are complied with. 	<p>Court may refuse to make a guardianship order under section 38 if it is not satisfied that these protections and requirements have been met.</p>
<p>Courts ability to vary interim orders</p>		
<p>Should all parties to care proceedings be able to apply for interim orders to be varied without making an application under section 90 of the Care Act? If so, why?</p>	<p>Most stakeholders supported an amendment enabling all parties to care proceedings to apply for interim orders to be varied without making an application under section 90 of the Care Act. It was acknowledged that an application under section 90 is an additional application that requires the court to grant leave which often lengthens care proceedings.</p>	<p>The NSW Government is recommending that all parties to care proceedings may apply to vary an interim order without the requirement for a section 90 application to be filed. This would shorten care proceedings and provide further procedural fairness to participants.</p>
<p>Shorter term court orders (STCOs)</p>		
<p>In what ways would STCOs better support realisation of permanency outcomes for children and young people? If not, why not? Will permanency outcomes be improved through greater use of STCO? If not, why not? Should the Care Act contain an explicit provision enabling the Children’s Court to make STCOs as a final order i.e. orders allocating parental responsibility to the Minister for FCS for shorter periods? If yes, should they be defined differently based on permanency case plan goal (restoration, guardianship, open adoption)?</p>	<p>Most stakeholders supported the position that an increased use of STCOs may result in improved permanency outcomes, provided that appropriate safeguards are implemented, and the orders are framed in a way to support the permanency goal. Some stakeholders considered that the current legislative framework already allows the Children’s Court to make shorter term court orders, with several stakeholders noting that the use of extended adjournments was a more effective method. Some stakeholders also considered that STCOs may lead to placement instability or</p>	<p>The NSW Government is recommending that where the Children’s Court approves a permanency plan involving restoration, guardianship or adoption that the maximum period for which an order may be made allocating all aspects of parental responsibility to the Minister is 24 months unless the Children’s Court is satisfied that there are special circumstances that warrant a longer period. <u>Realistic possibility of restoration</u> The NSW Government is recommending that, for section 83, ‘realistic possibility of restoration’ means a realistic possibility of the</p>

Discussion paper theme/question	Feedback	Government response
<p>What might be an appropriate upper time limit for a STCO?</p> <p>What would be appropriate matters for the Children’s Court to consider when making a STCO on the basis that there is a future possibility of restoration? e.g. parents demonstrate commitment to undergo counseling/therapy to address concerns that led to the removal of their children.</p> <p>Does the test of ‘realistic possibility of restoration’ need to be amended? If so, how? If not, why not?</p>	<p>children being left without appropriate supports, with the use of these orders potentially having a negative impact on foster care recruitment.</p> <p><u>Realistic possibility of restoration</u></p> <p>Stakeholders generally considered that the current law has been appropriately developed. However, the Children’s Court noted that there is some tension between the short-term court orders envisaged by FACS, and the legal test of ‘realistic possibility of restoration’, particularly the requirement for the decision to be made as at the date of hearing.</p>	<p>child or young person being restored to his or her parents within a reasonable period, not exceeding two years.</p> <p>This new statutory test overcomes the requirement for the Children’s Court to assess whether there is a realistic possibility of restoration at the date of hearing.</p>
<p>Report on suitability of care arrangements</p>		
<p>What should the role of the Children’s Court be if it is not satisfied that proper arrangements have been made for the care and protection of a child or young person?</p> <p>Should the Children’s Court be given the ability to re-list matters following receipt of a section 82 report where it forms the view that proper arrangements have not been made for the care and protection of the child or young person? In what circumstances should the Children’s Court be given this power? If not, why not?</p> <p>If a matter has been re-listed by the Court, what subsequent powers should the Court be given?</p> <p>Should the Court be able to request further evidence from a party about its efforts to</p>	<p>Most stakeholders supported an amendment enabling the Children’s Court to re-list a matter following receipt of a section 82 report where it forms the view that proper arrangements have not been made for the care and protection of the child or young person. There was also support for the Children’s Court being able to request further evidence from a party about its efforts to implement the care plan and its progress towards achieving a permanent placement, including any reasons for delay in achieving these goals. Stakeholders generally saw the proposals as a move towards increased accountability of FACS.</p>	<p>The NSW Government is of the view that the Children’s Court is the most appropriate body to oversee the implementation of care plans. The NSW Government is recommending that the Children’s Court be empowered to re-list a matter on receipt of section 82 report, where it is not satisfied that proper arrangements have been made for the care and protection of a child or young person. The NSW Government is also recommending that the Children’s Court be empowered to invite further evidence from a party about its efforts to implement the care plan and its progress towards achieving a permanent placement.</p>

Discussion paper theme/question	Feedback	Government response
implement the care plan and its progress towards achieving a permanent placement, including reasons for delay in achieving these goals?		
Contact orders and guardianship		
<p>What alternatives are available to overcome issues of contact supervision where an allocation of parental responsibility by guardianship order is being sought?</p> <p>How could the current contact order provisions be enhanced to better support guardianship?</p> <p>Should the Children’s Court be empowered to make contact orders for the life of a guardianship order?</p>	<p>There was a consensus among stakeholders that supporting contact with a child’s family is of critical importance. Some of the alternative options put forward by stakeholders to overcome the issues of contact supervision where a guardianship order is sought included:</p> <ul style="list-style-type: none"> • use of the Family Court • Alternative Dispute Resolution • Children’s Contact Centres • increased funding to NGOs to provide contact supervision. <p>The submissions revealed mixed support for empowering the Children’s Court to make contact orders for the life a guardianship order. While some stakeholders considered that this would provide certainty, those who were not in favour considered that such orders may not be flexible enough to deal with changed or individual circumstances and the wishes of children and young people regarding contact may evolve over time.</p>	<p>The NSW Government is recommending that an amendment to the Care Act be made, empowering the Children’s Court to make contact orders for more than 12 months duration for children and young persons who are the subject of a guardianship order, where it is in the best interests of the child or young person.</p> <p>Parties may agree to vary the contact orders by a contact variation agreement under section 86A in the light of a change in any relevant circumstances since the contact order was made or last varied. Contact variation agreements must:</p> <ul style="list-style-type: none"> • be in writing • be signed and dated by those parties to the proceedings in which the contact order was made who are affected by the variation and, if the contact variation agreement is made less than 12 months after the contact order was made, the legal representative of the child or young person • be registered with the Children’s Court by those parties within 28 days after the date on which the agreement was signed.

Discussion paper theme/question	Feedback	Government response
Applications to vary or rescind care orders		
<p>In what circumstances do you think that section 90 applications should be limited? Are there any circumstances where an exception might need to apply?</p>	<p>Most submissions were opposed to limiting the circumstances in which section 90 applications can be made as either:</p> <ul style="list-style-type: none"> • the current legislative provisions are adequate • there are mechanisms already in place for dealing with vexatious or unmeritorious applications • there is an absence of evidence that vexatious applications are a significant problem (in terms of volume). <p>Some stakeholders agreed that there were circumstances in which section 90 applications were a barrier to placement stability or the long-term security of the child or young person.</p>	<p>The NSW Government is recommending that section 90 be amended. The NSW Government is introducing primary and additional considerations that the Children's Court must consider before granting leave to vary or rescind a care order.</p> <p>The NSW Government is also recommending that a summary dismissal provision be included under section 90. The Care Act will be amended to provide the Children's Court with the discretion to dismiss an application for leave to vary or rescind a care order where the applicant has brought a series of past unsuccessful applications and the court finds that the current application for leave has no reasonable prospects of success or the application is frivolous, vexatious or an abuse of process.</p>
Who can make applications to Children's Court?		
<p>Should NGOs be able to bring an application for a guardianship order without the written consent of FACS? If not, why not? What other risks might arise from this change?</p>	<p>Most submissions were opposed to the proposal to allow NGOs to bring an application for a guardianship order without the written consent of FACS. Stakeholders generally consider that consent should always be sought from the Secretary before an application is made to allocate parental responsibility away from the Minister through a guardianship order.</p>	<p>The NSW Government is not recommending that the consent requirement for designated agencies seeking to make an application for a guardianship order under section 79B(1)(b) be removed.</p>

Discussion paper theme/question	Feedback	Government response
Streamlining adoption orders		
Transferring jurisdiction for OOHC adoptions from the Supreme Court to the Children’s Court		
<p>Should the Children’s Court be conferred jurisdiction to make adoption orders where there are child protection concerns? If so, why? If not, why not?</p>	<p>Most submissions (written and at the public consultation workshops) were opposed to the proposal to confer the jurisdiction to make adoption orders on the Children’s Court where there are child protection concerns. Some of the reasons provided by stakeholders included the absence of evidence that any delay is caused by the matters being dealt with in the Supreme Court and the higher level of scrutiny, rigour and evidence in the Supreme Court, which is necessary given the severity of the orders. Stakeholders also noted the undesirability of having two systems for adoptions – one court for children with child protection histories and another for other adoptions.</p>	<p>The NSW Government is not recommending the proposal to transfer the jurisdiction for OOHC adoptions from the Supreme Court to the Children’s Court currently.</p> <p>There is an absence of clear evidence that transferring jurisdiction for OOHC adoptions from the Supreme Court to the Children’s Court would result in either a decrease in adoption finalisation timeframes or result in adoption being considered in the range of permanency arrangements at an earlier stage in the placement.</p>
Dispensing with a parent’s consent for adoption of a child		
<p>Should the Adoption Act be amended to provide additional grounds for dispensing with parental consent? If so, what are the grounds upon which dispensing with a parent’s consent could be considered? If not, why not?</p>	<p>Most submissions were opposed to the proposal to provide the Court with any additional grounds for dispensing with consent. Stakeholders considered that section 67 provides adequate grounds upon which the Court may dispense with consent of a person.</p>	<p>The NSW Government recommends a change to the Adoption Act that extends this dispensation power to include applications for adoption by guardians. This will reflect the emerging practices and experiences of the child protection and OOHC context. This change was not flagged in the discussion paper but following the consultation process it was identified as an issue that could be</p>

Discussion paper theme/question	Feedback	Government response
		<p>addressed through this suite of amendments.</p> <p>The NSW Government is not recommending any other changes to be made in relation to additional grounds or circumstances for dispensing with parental consent.</p>
<p>Limiting a parent’s right to be advised of an adoption</p>		
<p>Should a parent’s right to be advised of an adoption be limited? If so, how? If not, why not?</p> <p>What is an appropriate period to wait for a <i>parent to be located</i>?</p>	<p>Most submissions were opposed to the proposal to limit a parent’s right to be advised of an adoption. Stakeholders considered that it is a fundamental human right of a parent to be informed that their child is being adopted particularly considering the serious nature of the orders.</p> <p>In relation to identifying an appropriate period to wait for a parent to be located, stakeholders submitted that the focus should be on exhausting all reasonable attempts rather than fixing an arbitrary period.</p>	<p>The NSW Government is not recommending any legislative changes that place any limitations (including time periods) on a parent’s right to be advised of adoption.</p> <p>The NSW Government is not recommending any amendments to impose a time for locating a parent.</p>
<p>Providing clear grounds for birth parents to rely upon when contesting an adoption</p>		
<p>Should the Adoption Act specify the grounds birth parents can rely on when contesting the adoption of a child under the parental responsibility of the Minister or a guardianship order? If yes, what should these grounds be? If not, why not?</p>	<p>Most submissions opposed the proposal to specify the grounds on which birth parents can contest an adoption. The importance that each application be determined on its own merits was identified as a key reason for not specifying grounds. Concerns were also raised that specifying grounds would contravene procedural fairness principles and that these types of limitations should not be imposed given the gravity of making</p>	<p>The NSW Government is not recommending any changes to the Adoption Act to specify the grounds birth parents can rely on when contesting the adoption of a child under the parental responsibility of the Minister or a guardianship order.</p>

Discussion paper theme/question	Feedback	Government response
	<p>an adoption order.</p> <p>Additionally, if the amendment was pursued, it would still be necessary for a court to conduct a hearing to determine whether a parent can rely on any of those grounds in any event, therefore making it unlikely that such an amendment would result in an increased streamlining of the adoption process.</p>	
Changes to OOHC		
Facilitating restoration		
<p>Should the six-month time limit in section 136(3) be changed to 12 months? If so, why? If not, why not?</p> <p>What potential risks to the safety of children and young people are associated with this proposal?</p> <p>What would parents have to demonstrate to FACS before having their child/ren restored to them prior to the expiration of an order allocating parental responsibility to the Minister?</p>	<p>The proposal to extend the timeframe from 6 months to 12 months was well supported. Stakeholders considered that this proposal would provide greater flexibility and is consistent with the goals of STCOs and facilitates the restoration process. The increased period allows for flexibility to respond to the pace of the restoration process.</p>	<p>The NSW Government is recommending that the current time limit in section 136(3) be amended from 6 months to 12 months to enable greater flexibility in the restoration process.</p> <p>This recommendation is consistent with Government's commitment to ensuring that our processes encourage permanency to be achieved for children and young people as early as possible and supports the increased focus on family preservation and restoration.</p>
Supported OOHC		
<p>Should the Care Act be amended to remove supported care arrangements where there is no court order in place?</p>	<p>Most submissions were opposed to the proposal to remove supported care arrangements where there is no court order in place.</p> <p>Additionally, concerns were raised about families who entered supported care</p>	<p>Removing supported care with no order from the Care Act will align the legislation with current FACS practice and the Permanent Placement Principles and will ensure that children and young people in these situations are subject to the appropriate assessment</p>

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	<p>arrangements prior to 1 December 2016. There will be no changes for children and young people in supported care arrangements with no order prior to 29 October 2014, as to retrospectively change the arrangements for these children would be unfair or may cause unnecessary hardship to them and their carers.</p>	<p>process to ensure that safety and permanency are addressed adequately. The NSW Government is recommending that the Care Act be amended to provide that supported OOHC can be provided by relative or kin in situations where they have parental responsibility for a child or young person by virtue of a court order from the Children’s Court or the Family Court in proceedings where the Secretary was a party. The changes will support stability and security by ensuring all children in OOHC, and their carers, are supported by an order.</p>
<p>Better protection of children in OOHC</p>		
<p>Should the Care Act be amended to explicitly prohibit the publication of information identifying a child or young person as being under the parental responsibility of the Minister or in OOHC? If so, why?</p>	<p>Some stakeholders considered that the Court of Appeal decision should not be overcome by legislative change. Some stakeholders considered that children often disclosed this information themselves to friends and via social media. Other stakeholders considered this change may result in less transparency and oversight of the OOHC system. It was noted that children in care are entitled to lead a normal life and by creating secrecy around a child’s care status, this may increase the stigma and feelings of shame.</p> <p>However, most written submissions supported the proposal to explicitly prohibit the publication of information identifying a child or young person as being under the</p>	<p>The NSW Government is recommending that section 105 of the Care Act be amended to prohibit the publication of information identifying that a child or young person is under the parental responsibility of the Minister or in OOHC. The exceptions that are currently contained in section 105(3) will be retained, and exceptions will be introduced that allow for disclosure by the Coroner in relation to the identity of a child or young person whose suspected death is the subject of an inquest.</p>

Discussion paper theme/question	Feedback	Government response
	parental responsibility of the Minister or in OOHC.	
Care responsibility for children of guardians who have passed away		
<p>Should care responsibility for a child vest in the Secretary on the death of a guardian/s, or the death of a carer who has been allocated all aspects of parental responsibility? If not, what other legal arrangements might be in the best interests of a child whose guardian or carer has passed away?</p> <p>If so, should there be a time limit placed on the Secretary to undertake those assessments?</p>	<p>Most submissions supported the proposal to vest care responsibility for a child in the Secretary on the death of a guardian or carer who has been allocated all aspects of parental responsibility. Stakeholders submitted that it may not need to be an automatic process, the Secretary could have the discretion to resume care responsibility if there were no viable alternative options. Other key themes emerging included that if possible, guardians should put in place a plan for the child's care in the event of their death, and wherever possible the child should be placed with a suitable carer from within their own birth family or the guardian's family. Stakeholders agree that assessments should be carried out as quickly as possible.</p>	<p>The NSW Government is recommending that the care responsibility for a child vest in the Secretary for 21 days upon the Secretary becoming aware of the death of a guardian or carer who has been allocated all aspects of parental responsibility. This would address the uncertainty that may exist for children and families upon the death of a guardian or carer, until assessments are carried out to determine the most suitable arrangements for the child.</p>

Acknowledgement

The NSW Government thanks the individuals and organisations listed below for participating in this important discussion by providing written submissions in response to the discussion paper. A total of 15 additional written submissions were received from parties that did not wish to be published.

The NSW Government also thanks the representatives of the organisations listed below who were involved in consultation workshops held in November 2017.

Your views are helping the NSW Government make important decisions to improve the lives of vulnerable children and their families and are helping shape a better child protection system in NSW.

Written submissions

Ref.	Individual/organisation	Date received
1	Andrew Puckeridge	20 October 2017
2	Karlene Beahan	20 October 2017
3	Kirsty White	21 October 2017
4	Paula Rice	21 October 2017
5	Sue	21 October 2017
6	Colleen Warburton	21 October 2017
7	Cassandra Purdon	22 October 2017
8	Bruce Thompson	23 October 2017
9	Maryellen Flynn	27 October 2017
10	Kata	27 October 2017
11	Lana Johnson, Aboriginal Policy Unit, FACS	3 November 2017
12	Frances Deed	3 November 2017
13	William Hammersley	5 November 2017
14	Katherine Karavelatzis	7 November 2017
15	Arif Sadiq, FACS Western Sydney District	9 November 2017
16	Petrina O'Brien	9 November 2017
17	Southern Youth and Family Services	11 November 2017
18	Kianey Harland	14 November 2017
19	Pauline Aconley	17 November 2017
20	Fiona Court	20 November 2017
21	Melinda Dixon	20 November 2017
22	Kim Nixon Consulting	20 November 2017
23	Jodie Jones	22 November 2017
24	Clare Thomas, Anglicare NSW South, NSW West and ACT	22 November 2017
25	Adrienne Warnock	24 November 2017
26	Kathryn Miklosi	25 November 2017
27	Kylie Shirdon	25 November 2017
28	Sharyn Fitzgerald	25 November 2017
29	Trevor Adams	25 November 2017
30	Dr Catherine Lynch JD, The Australian Adoptee Rights Action Group	25 November 2017
31	Greg Morris	25 November 2017
32	Lyn Stoker, Family Inclusion Strategies in the Hunter	26 November 2017
33	Michael Fogarty, OOHCA Adoption Team, Sydney, South Eastern Sydney and Northern Sydney Districts, FACS	27 November 2017

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34	Carolyn Feeney	27 November 2017
35	Greta Goldberg	27 November 2017
36	Dr Frank Ainsworth, School of Social Work and Community Welfare, James Cook University	27 November 2017
37	Patricia Hansen, Hansen Legal	27 November 2017
38	Cindy Izard	28 November 2017
39	Justine Flynn	28 November 2017
40	Jo Howard	28 November 2017
41	Stan Mikolajski	28 November 2017
42	Kaley Freeman	29 November 2017
43	Sharon Storr	29 November 2017
44	Children's Court of New South Wales	29 November 2017
45	Robin Turner	29 November 2017
46	Zoe Paleologos, Anglicare Sydney	29 November 2017
47	OzChild	29 November 2017
48	Edward Birt, The Disability Trust	30 November 2017
49	Janet Moriarty	30 November 2017
50	Vera Tiflides	30 November 2017
51	NSW Council of Social Service (NCOSS)	30 November 2017
52	Public Service Association of New South Wales	30 November 2017
53	FACS Office of the Senior Practitioner	30 November 2017
54	Elizabeth O'Keefe	30 November 2017
55	George Potkonyak	30 November 2017
56	Catholic Social Services NSW/ACT	30 November 2017
57	Community Legal Centres NSW	30 November 2017
58	Intellectual Disability Rights Service	30 November 2017
59	Liz Snell, Women's Legal Service NSW	30 November 2017
60	Melody Stack, Association of Children's Welfare Agencies	30 November 2017
61	Michelle Povah, Northern Beaches Child and Family Interagency	30 November 2017
62	Michelle Ridley, Network of Alcohol and other Drugs Agencies (NADA)	30 November 2017
63	Natalie Gale, Yfoundations	30 November 2017
64	Nick Halfpenny, MacKillop Family Services	30 November 2017
65	Patty and Renee Veliz-Lovell	30 November 2017
66	Rose Carter, Adopt Change	30 November 2017
67	Shaun Brockman, Youth Action and Policy Association (NSW)	30 November 2017
68	Susan Lindsay, The Benevolent Society	30 November 2017
69	Amy Conley Wright, Director, Institute of Open Adoption Studies, University of Sydney	30 November 2017
70	Tania Mihailuk MP, Shadow Minister for Family and Community Services, Bankstown Parliament	30 November 2017
71	Kathryn Freeman, Barnardos	30 November 2017
72	Katie Fox, Children, Families and Young People, Illawara Forum	30 November 2017
73	Grandmothers Against Removals Sydney	30 November 2017
74	CareSouth	30 November 2017
75	Kerry Grinning	1 December 2017
76	Kevin and Ann Sasse	1 December 2017
77	Aboriginal Legal Service (NSW/ACT)	1 December 2017
78	Legal Aid NSW	1 December 2017

79	Sharyn White, Adoptee Advocacy and Information Service, SA Inc. (in consultation with Dr Catherine Lynch JD, The Australian Adoptee Rights Action Group)	1 December 2017
80	Tadhg McMahon, Settlement Services International	1 December 2017
81	Law Society of New South Wales	1 December 2017
82	Aboriginal Child, Family and Community Care State Secretariat (AbSec)	1 December 2017
83	FACS Operations Executive Committee	4 December 2017
84	Secretariat of National Aboriginal and Islander Child Care (SNAICC)	4 December 2017
85	Uniting Centre for Research, Innovation and Advocacy, Uniting	4 December 2017
86	Life Without Barriers	5 December 2017
87	Office of the Children's Guardian	5 December 2017
88	People with Disability Australia	7 December 2017
89	NSW Committee on Adoption and Permanent Care Inc	8 December 2017
90	Guiding Principles Yarning Circle	11 December 2017
91	Prevention and Response to Violence, Abuse and Neglect Team, Ministry of Health	11 December 2017

Workshops

Date/Location	Participants
6 November 2017 Sydney	Office of the Minister for Family and Community Services and Social Housing, FACS, NSW Police, Department of Justice, Office of the Children's Guardian, Children's Court, NSW Ministry of Health
7 November 2017 Sydney	Institute of Open Adoption Studies, ACWA, Origins NSW (Inc.), Australian Red Cross Society, AbSec, Barnardos Australia, Australian Adoptee Rights Action Group, FACS, Stretch-A-Family Inc., Mission Australia, The Benevolent Society, Key Assets the Children's Services Provider, Care Legal, Life Without Barriers, Anglicare, NSW Families Services Inc., Catholic Care, NSW Committee on Adoption and Permanent Care, Lifestyle Solutions, South Coast Medical Service Aboriginal Corporation, Adopt Change, Connecting Carers NSW, Forced Adoptions Support Persons Consultative Group, Youth Action, Office of the Children's Guardian, Creating Links
8 November 2017 Sydney	Law Society of NSW, Crown Solicitor's Office New South Wales, Office of the NSW Advocate for Children and Young People, Wirringa Baiya Aboriginal Women's Legal Centre, Federal Circuit Court, Intellectual Disability Rights Service, Legal Aid NSW, Women's Legal Service NSW, NSW Children's Court, Office of the Children's Guardian, Office of the NSW Ombudsman, Aboriginal Legal Service, University of Sydney

<p>15 November 2017 Queanbeyan</p>	<p>Noah's Ark Centre of Shoalhaven Inc., Bega Valley Shire Council, Illawarra Aboriginal Corporation, Southern Youth and Family Services, FACS, Woomera Aboriginal Corporation, Anglicare, Southern NSW Local Health District, CareSouth, NSW Department of Education</p>
<p>20 November Newcastle</p>	<p>Office of the Minister for Family and Community Services and Social Housing, Allambi Care, Challenge Community Services, Family Support Newcastle, Eastlakes Family Support Service, The Canopy, Northern Settlement Services, Wesley Community Services, Barnardos Australia, FACS, Forced Adoption Support, Central Coast Family Support Service</p>
<p>21 November 2017 Coffs Harbour</p>	<p>Mid Richmond Neighbourhood, FACS, Mid North Coast Local Health District, Bellingen Neighbourhood Centre, Mission Australia, Warrina Women's and Children's Refuge Co-operative Society, Wesley Mission, Northern NSW Local Health, Uniting Care NSW/ACT, Boambee East Community Centre Inc., CASPA, OOHC Health, Warrina Specialist Domestic and Family Violence Services</p>
<p>29 November 2017 Sydney</p>	<p>FACS, South Coast Medical Service Aboriginal Corporation, Burrun Dalai Aboriginal Corporation, Barnardos Australia, SDN Child and Family Services, Winanga-Li Aboriginal Child and Family Centre, The Ted Noffs Foundation, AbSec, Katungul Aboriginal Corporation, Winanga-Li Aboriginal Child and Family Centre, Link-Up (NSW) Aboriginal Corporation, UTS Faculty of Law, Care South, KARI, Muloobinba Aboriginal Corporation</p>