

6 November 2019

Committee Secretary

Standing Committee on Health, Ageing and Community Services

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

By email: LACommitteeHACS@parliament.act.gov.au

Dear Committee,

Inquiry into Child and Youth Protective Services: Part Two – Information Sharing under the Care and Protection System

The Women's Legal Centre ('WLC') is pleased to have the opportunity to contribute to the inquiry into the ability to share information in the care and protection system in accordance with the Children and Young People Act 2008 ('CYP Act').

The ACT Human Rights submission to this enquiry sets out an excellent summary of the information sharing and secrecy provisions in the CYP Act. The WLC supports and endorses the ACT HRC submission and has drawn on that summary in preparing this correspondence.

Who We Are

The WLC is committed to providing high quality legal services to vulnerable women and their children. We also assist government to improve policy, legislation and implementation. We do this through making constructive, solutions-oriented submissions based on evidence and draw on our front-line experience in our legal and social work practices in the ACT.



What We Do

The WLC regularly provides advice to, and advocates for women in the ACT who have interactions with the child protection system. The child protection system disproportionality affects the most vulnerable, including those who are financially, culturally and socially marginalised, and, particularly in the ACT, Aboriginal and Torres Strait Islander people are affected by care decisions at alarmingly high rates.

Our work is often focused on supporting women at an early intervention stage and helping them to negotiate the complex and sometimes impenetrable child protection to prevent their children from being removed.

Our Experiences

In our experience working in this area, the information sharing and secrecy provisions in the CYP Act are often relied upon by child protection staff to limit the ability of women to understand and respond to child protection concerns. When a series of concern reports are made, child protection staff rely on the secrecy provisions to justify keeping the detail or contents of those reports secret. **This prevents women from understanding what the concerns are and the basis of these concerns.** Further, women are then prevented from correcting the false assumptions or providing further context about the information on which these reports are based.

Jane's Story

Jane is a young, Aboriginal woman with two children. She is contacted by CYPS and told a series of child concern reports have been made. Before Jane contacted the WLC, she was asked to sign an appraisal agreement by a CYPS caseworker. She told the caseworker she didn't understand what the concerns were or what an appraisal meant, because she was a good mother. She was told some reports had been made about her parenting and CYPS needed to investigate further. One report related to an incident which allegedly occurred at the children's school on a particular day. Jane is confused because she was travelling interstate with the children on that date and they did not attend school. She and her lawyer have asked CYPS for more details about that report, but have been told those details cannot be disclosed.

Jane and her lawyer have asked CYPS what actions they will be taking during the appraisal period but they do not receive a response.



The Flow-On Effect

A decision not to release sensitive information about a child, presumably because CYPS has assessed that it is not in their best interests, has a flow on effect. When incorrect assumptions or facts relating to, for example, an appraisal period, are subsequently included in CYPS internal documents, such as reports or assessments, a body of ‘evidence’ develops informing a chain of decisions about a child, without allowing the woman to understand or respond.

Often, the mistakes and false assumptions which underpin child protection decisions are not revealed to the mother until an affidavit is filed in the Children’s Court, following emergency action to remove her children. By this stage, action has been taken based on assumptions or weak evidence, and it requires a costly, stressful and damaging court process to correct the record. This is clearly not in the client’s, child’s or public interest.

The WLC appreciates that the information and documents generated in relation to child protection matters are sensitive, and that the identity of reporters should be kept confidential. Relying however on provisions such as section 851 of the CYP Act to prevent women from understanding the issues and explaining their position raises serious access to justice issues and is not in the best interests of the children to whom the information relates.

The lack of information sharing about child protection concerns, justified by the secrecy provisions of the CYP Act can have a devastating impact on our clients and their families. This impact is further compounded by the lack of transparency in CYPS decision making generally. The WLC’s submission in response to the ‘Review of Child Protection Decisions in the ACT’ discussion paper provides a more detailed examination of the impact for our clients of the current lack of internal or external review mechanisms for CYPS decisions. We refer the Committee to that submission, a copy of which is **attached**.

Jane’s Story

Jane cooperates with her CYPS caseworker during the appraisal period. She is referred to a counsellor because she discloses to the caseworker that she suffered abuse as a child, however she cannot afford to attend all the sessions. The caseworker interviews the children at school and raises concerns about the level of supervision during their weekly visits to their father, based on this interview. Jane and her lawyer request more information about these disclosures, because Jane has had concerns about their father’s behaviour in the past. CYPS tells them this information cannot be disclosed but will be summarised in the letter provided to Jane when the appraisal is finalised.



The current provisions provide that the Director General *can* release sensitive information if doing so is in the best interests of a child. WLC has observed that CYPS does not often engage with the facts of the situation at hand when exercising the discretion conferred by section 851, and rather appears to adopt a ‘blanket rule’ that the release of information is not in the best interests of children. Given these decisions are not reviewable, the secrecy provisions block the effective administration of justice in many child protection matters.

Access to Justice

The WLC’s work in early intervention care matters has demonstrated numerous times that both law reform and cultural changes are required to facilitate access to justice for children and families impacted by the child protection system. Reforms to the information sharing and secrecy provisions will not correct the access to justice issues in isolation. Any proposed reforms need to be accompanied by the exercise of true discretionary decision-making, based on individual circumstances, in relation to the release of information. Finally, ensuring the availability of true external review of CYPS decisions supports the appropriate exercise of the Director General’s discretion in a range of areas, including in relation to information sharing.

Thank you for the opportunity to contribute to this discussion.

Your Sincerely,

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