

Mr Mark Follett
A/Executive Director
Policy, Reform and Legislation Branch
Department of Communities and Justice
By email: policy@justice.nsw.gov.au

Attn: Ms Pritha Zaman, Legal Officer, Policy Reform and Legislation Branch
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Dear Mr Follett

Families, Communities and Disability Services Portfolio Miscellaneous Amendment Bill

Thank you for your letter of 22 January 2021 seeking feedback from key stakeholders on proposals your department has received for possible inclusion in the Miscellaneous Amendment Bill. Thank you also for providing an extension of time for us to do so.

As you are aware, ACWA is one of the leading peak bodies in NSW representing non-government community organisations delivering services to vulnerable children, young people and their families. In preparing this submission, ACWA has consulted with and prepared the following observations and comments on behalf of its member agencies.

Table of proposed amendments

Proposal 1

Amend the *Ageing and Disability Commissioner Act 2019* to allow ADC to provide information about outcomes of a report to a reporter and other interested parties, where disclosure of the information is consistent with the objects and principles of the Act.

[ACWA supports this amendment and notes that appropriate safeguards and governance will need to be established to guide decision-making and implementation.](#)

Proposal 2

Amend the *Ageing and Disability Commissioner Act 2019* to make it an offence for an employer to take detrimental action against an employee or a contractor who provides assistance to the ADC with respect to reports about abuse, neglect or exploitation of an adult with disability or an older adult.

[ACWA supports this amendment.](#)

Proposal 3

Amend section 76 of the *Children and Young Persons (Care and Protection) Act 1998* to allow the Court to continue to extend the term of a supervision order in exceptional circumstances, notwithstanding the late filing of a report about the progress of a supervision order made under s.76(1).

ACWA supports this amendment. However, we note that a potential impact of this amendment is additional delay in decision-making about supervision. In this regard, we suggest consideration be given to setting a timeframe for providing 'late reports' in circumstances where the matter has been deemed 'exceptional'.

Proposal 4

Amend section 82 of the *Children and Young Persons (Care and Protection) Act 1998* to allow the Children's Court to continue to make orders in relevant care proceedings in exceptional circumstances, notwithstanding the late filing by a party of a report about the suitability of parental arrangements for the child.

ACWA supports this amendment. However, we note that a potential impact of this amendment is further delay to decision-making about achieving the appropriate permanency outcome for a child. In this regard, the child's age and developmental stage should be key considerations, and should not be seen as secondary to adult-driven timeframes.

Proposal 5

Amend section 82(2) of the *Children and Young Persons (Care and Protection) Act 1998* to extend the period that a court may require a report about the suitability of arrangements for a child's care and protection to be provided to the Court from 12 months to 24 months.

ACWA supports this amendment aimed at aligning the relevant provisions. However, we would note that once again, the age, developmental stage and bonding and attachment needs of the child the subject of the care proceedings should be a central consideration when extending the period for requiring a report about the suitability of arrangements for their care and protection, particularly for children younger than 5 years old, whose permanency outcomes are more likely to be achieved at an earlier stage.

Proposal 6

Amend the Adoption Act to provide that if a person applies for access to information under Chapter 8, the person may, if he or she has ever been in out-of-home-care, access information to which he or she would be entitled to access under sections 168 and 169 of the Care Act.

ACWA supports this amendment.

Proposal 7

Amend the Adoption Act to provide that information held by DCJ that is also contained in records of proceedings in the Court that relate to the person may be released to the person that they would otherwise be entitled to under Chapter 8 of the Act may be provided to the person.

ACWA supports this amendment.

Proposal 8

Amend the *Children and Young Persons (Care and Protection) Act 1998* to provide that a designated agency must keep carer records and transfer them to DCJ if it ceases operations and closes down.

ACWA supports this amendment. However, further clarification is required regarding the inclusion of designated agencies' corporate and administrative records about carers, and the types of records that are intended to be captured by the requirement to maintain and transfer them to DCJ if the agency ceases operating.

Proposal 9

Amend the *Adoption Act* to provide that the prohibition on access to records under section 194 does not prevent records being produced to a court or other authority in response to a subpoena or other compulsory process.

ACWA supports this amendment and notes that it will provide clarification to agencies in a critical and sensitive area.

Proposal 10

Amend the *Children and Young Persons (Care and Protection) Act 1998* to provide that the Minister may approve a code of conduct for authorised carers.

ACWA supports this amendment.

Proposal 11

Amend section 245B(1)(b) of the *Children and Young Persons (Care and Protection) Act 1998* to clarify that the definition of 'prescribed body' includes classes of persons prescribed by the regulations.

ACWA supports this amendment.

Proposal 12

Include a specific power in section 79C of the *Children and Young Persons (Care and Protection) Act 1998* to authorise the Secretary to require a guardian of a child or young person who has received financial assistance to notify the Secretary if the child or young person has left the guardian's care.

ACWA supports this amendment.

Proposal 13

Amend section 137(2) of the *Children and Young Persons (Care and Protection) Act 1998* to clarify that the regulations may prescribe requirements to notify the Children's Guardian of a respite carer's details and incidents where a child is placed in out-of-home care with a respite carer for more than 90 days in any 12-month period.

ACWA supports this amendment.

Proposal 14

Amend section 137(2) of the *Children and Young Persons (Care and Protection) Act 1998* to provide that the regulations may authorise designated agencies to impose conditions on an authorised carer's authorisation and to vary and revoke those conditions.

ACWA supports this amendment.

Proposal 15

Amend the *Children and Young Persons (Care and Protection) Act 1998* to enable an authorised carer or person who resides at an authorised carers home to be required to undergo a medical examination and provide a report to designated agency.

ACWA supports this amendment in principle. However, we note that the same outcome could be achieved via amendments to the conditions that can be placed on a carer's authorisation and is worth considering.

We also note that for individuals residing in a carer's home (who are not carers), this requirement is somewhat intrusive, therefore it should be limited to circumstances where their health is having or is likely to have an impact on the care of the child/ren.

Proposal 16

Amend the *Children and Young Persons (Care and Protection) Act 1998* to allow the regulations to impose particular requirements on authorised carers in relation to the administration of their authorisation.

ACWA supports this amendment.

Proposal 17

Amend section 137(2)(e) of the *Children and Young Persons (Care and Protection) Act 1998* to include grounds that trigger automatic cancellation or suspension of an authorised carer's authorisation.

ACWA supports this amendment. Providing settled grounds for automatic suspension or cancellation across the sector to achieve greater consistency is welcome. However, we note that the explanation for the amendment is silent on whether or not any change to appeal rights in this context is contemplated, and if that is the case, we suggest that this proposed amendment should be the subject of sector consultation.

Proposal 18

Amend the *Children and Young Persons (Care and Protection) Act 1998* to provide for the Secretary to approve behaviour management practices for managing the behaviour of children and young persons.

ACWA supports this amendment as it provides additional safeguards for the cohort of children and young people covered by the proposed change.

Proposal 19

Include a power in the *Children and Young Persons (Care and Protection) Act 1998* for the Secretary to approve the form of documents for the purposes of the Care Regulation.

ACWA supports this amendment in principle, however, we suggest that consultation with agencies occurs regarding the form of any documents or templates relating to their areas of responsibility.

Proposal 20

Amend section 9A(1)-(2) of the *Children (Detention Centres) Act 1987* (CDC Act), relating to certain persons subject to arrest warrants who are not to be detained in detention centres, to provide that it also applies to those persons where they are subject to warrants of commitment to detention centres.

ACWA supports the intention of this amendment.

Additional comment – extending the age for OOHC

We note that a number of our member agencies have indicated the bill provides the opportunity to allow further consideration and debate to occur in relation to lifting the age for OOHC to 21 as is the case in other Australian jurisdictions. The '[Extending care to 21 years in New South Wales](#)' report, produced by Deloitte Access Economics provides compelling evidence of the social and economic benefits if NSW was to extend the age that young people leave out of home care from 18 to 21.

Thank you for the opportunity to provide a submission on these proposed amendments, and we would be happy to discuss our submission with you further.

Yours sincerely,

Steve Kinmond, OAM,
CEO, ACWA