



**The Family Inclusion Network of
VICTORIA INC.**

**Inquiry into the Children, Youth and Families Amendment
(Restrictions on the Making of Protection Orders) Bill 2015**

**Submission by
Family Inclusion Network (Victoria)
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Terms of Reference

That the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 be referred to the Legal and Social Issues Committee for inquiry, consideration and report by 4 August 2015, and in particular the Committee examine the extent to which the Bill along with current legislation will protect vulnerable children.

Introduction

The Family Inclusion Network Victoria Inc. (FIN Victoria) is an incorporated association, currently run by volunteers. Our management committee, and membership base, consists of parents involved with Child Protection, community members, and sector professionals, who collectively believe parents and family members must no longer be marginalised in having a voice and a role in system improvement and better outcomes for children.

At a conference about vulnerable children in Melbourne earlier this year, an international speaker presented about care drift. There was much discussion about children languishing in the care system and how the recognition of this has informed legislative reform toward permanency planning within tight timeframes, including the push for more adoptions from care.

Absent from these discussions was consideration of what is happening for parents and families whilst their children languish in the care system. What we know from our direct experience, and what the research shows, is that parents are often languishing in a similar system drift. Parents are dealing with a society that is becoming more individualist, where natural supports are being eroded with the effect of neo-liberalist policies and practices. At the Child Protection level they experience constantly shifting goalposts, complying with Child Protection demands only to find more things added to their to do list, or a lack of monitoring of their progress in addressing issues and completing tasks asked of them. Parents are also dealing with constant turnover of case workers, leaving them disempowered and confused as they churn through a cycle of destructive hope (Harries & Anglicare 2008, Hinton 2013, Hamilton & Braithwaite 2014).

As Martin Foley MP pointed out during his Second Reading speech for the currently proposed Bill:

“The amendment act (Permanent Care and Other Matters) introduces tighter time lines for making a decision about future permanent care arrangements for children in out-of-home care, either by reunifying those children with their families or by finding an alternate permanent care family for them.

This is a significant change to the child protection system.

It is clearly desirable to make timely decisions and avoid harmful 'drift' in care arrangements where children are subjected to lengthy periods of uncertainty

about their future care. However, this has to be balanced by a strong emphasis on timely service provision.

It would not be fair to say to families that changes have to be made within one or two years and then not ensure they are provided with the assistance they may need to make those changes.”

A strong emphasis on timely service provision must be accompanied by a strong emphasis on access to effective advocacy to ensure service system accountability. As the case studies in our submission demonstrate, we see how advocacy can help parents make impressive breakthroughs in their cases, from increased contact, moving from supervised to unsupervised contact, through to full reunification. In a recent case there has been full reunification for one mum and her child who had been in care for seven years.

The original purpose of considering placement drift, and therefore the need for the system to respond in a timely manner, was about what happens to children once caught in an under-resourced out-of-home-care system. However, what is happening with legislation, and its implementation at family level, is the continued ignoring of systemic failures. Moreover, options for childhood that are normal and can produce healthy childhoods, are being denied to those children caught up in the Child Protection system. Issues of what constitutes reasonable service provision need to be addressed. Failure to ensure independent and external oversight of Child Protection decisions and failure to acknowledge that appropriate family support can prevent a myriad of problems and social costs for the child, the family and society as a whole, must be addressed immediately.

Background of Family Inclusion Network (FIN)

The Family Inclusion Network (FIN) is a formal voice for families caught in child protection systems in Australia. With branches in most states FIN has been described as part of an international “geography of hope” (Mary Ivec, 2014; M. Ivec, Braithwaite, & Harris, 2012).

The Family Inclusion Network Australia (FINA) Inc. was established in 2010 to:

... represent member Family Inclusion Networks from throughout Australia when aiming to support and advocate for the rightful place of parents, family and community as key stakeholders when children are involved in the child protection system.

FIN Victoria is the most recently launched branch of FIN. We are a non-profit, non-government organisation, empowering families and communities affected by the child protection system to contribute to better child protection outcomes. We work under the principles of a people’s organisation (Cox, 2006) rather than as a traditional government or community service organisation that tend to adopt a power-over approach to service provision and development.

FIN Victoria is part of an 'international geography of hope' that engages with those affected by child protection services and their institutional responses that currently dehumanise and disempower...engagement and inclusion of those affected...is the only way forward. (Ivec, 2014 personal correspondence).

Learning from the Past

The placement of any child in out-of-home care must be viewed as a failure on society's part. History shows that when we act on ideology alone or in circumstances that prevent us from considering the intended and unintended outcomes of our actions, we get it wrong. All changes made to the Child, Youth and Families legislation made by the previous government mirror the altruistic but poorly informed systemic approaches of the past, including the Stolen Generation, the Lost Innocents and the Forgotten Australians. Many systemic and legislative changes are required to address these problems. However, it is vital that the currently proposed section 17 amendments be passed to ensure comprehensive and timely support is provided to vulnerable children and families.

All law and policy makers are respectfully reminded that their work at macro-level has a direct impact on the well-being of communities at the exo-level, and on services, families and children at the meso and micro-levels of our society (Bronfenbrenner & Morris, 2006; Palareti & Berti, 2009). There are numerous inquiries and research that show that poverty, mental health, misuse of alcohol and other drugs are involved in the majority of child removals. There is also a great deal of research evidence to show that these issues are often a result of disadvantageous legislation and policy.

There is now a vast amount of research that shows that the purist adoption of a market-forces approach to general society is destructive to, and divisive of, communities, families and children (Bessant, 2012; Hancock, 2004; Soldatic & Pini, 2009). Rather than dealing with what neo-liberalism does at the macro-level, the system has created ways to remove children more often and without regard for what child removal does to the child, family and community at the micro-level. Further, this neo-liberal ideology at macro-level has ensured that welfare practitioners are prevented from providing the practical, flexible and on-going supports that some families and communities need to prevent child removal at the micro-level. The percentage of spend on intensive family support services versus out-of-home care illustrates this (see discussion of costs section).

Families lack access to independent support and advocacy to assist them to understand and navigate complex, and often unpredictable, systems and processes. This is also at a time of vulnerability and distress, leaving them disadvantaged in working effectively with services to prevent their child being taken into care and/or achieving reunification.

Consultation with individuals, families and communities affected by removal of children from the home

“It’s bigger than the Child Protection system.....there are families that for too long.....across more than a generation have been seen as an underclass – they don’t feel like part of the community....they don’t feel like their [sic] being included as part of the community. On the whole we aren’t inclusive..... those families for whom Child Protection is a revolving door feel so excluded that they don’t care what Child Protection or the rest of us think about them because they see that the rest of the community doesn’t really care about them – it’s a whole of community issue – people need to feel valued and part of the community before they can change...” (Berry Street Staff Metro Region, cited in Berry Street, 2011)

Since the formation of the first branch of FIN in Queensland in 2006 there have been a number of Australian studies of parents’ experience of the child protection system (Ainsworth & Berger 2014) as well as studies into community worker perspectives. These studies have been conducted throughout Australia in Queensland, Western Australia, New South Wales, Australian Capital Territory and Tasmania (Ainsworth & Berger 2014). Consistent themes have emerged in these studies published between 2007 and 2014 and are further supported by international and specific interest research such as parents with disability.

Parents associated with FIN Victoria consistently report issues already noted in the research literature:

- Disparity in levels of support provided to parents versus foster parents (Harries & Anglicare, 2008, p. 8).
- Systemic abuse (Booth & Booth, 2004, p. 14)
- Feeling powerless (Ainsworth & Berger, 2014).
- Lack of clear, transparent information and guidance to navigate complex systems and processes; lack of ability to self-advocate or understand relevant law and processes (Ainsworth & Berger, 2014; Fitt, 2010).
- The relentlessness of hurdles, shifting standards, an increasing list of things to do, manipulative and arbitrary nature of case workers (Ainsworth & Berger, 2014; Booth & Booth, 2004; Harries & Anglicare, 2008; Hinton, June 2013).
- High worker turnover leading to lack of consistency, trust and relationship.

“...they need to have the same worker all the time. We had seventeen different supervisors that came to our house. That impacted not only us but the kids as well.” (Parent Western Australia cited in Harries 2008 p.33)

“...it’s ridiculous because when they change case workers they go back to the beginning. So you may be six months ahead and you’ll have to go right back to the beginning just so the new case worker can get used to your caseload. With one of my old caseworkers I was going to start overnight visits but because they had to change my case worker I had to go back to day visits. I was not happy. But as soon as they said I was changing case workers I knew it was going to happen. I was hoping it wasn’t.” (Parent Tasmania cited in Hinton 2013 p.46).

The outcomes for children in out-of-home care (including kinship care, foster care and residential care) versus staying in the home

Research shows, time and time again, that children in out-of-home care do not fare well in contrast to children who were not removed. The *Ombudsman Victoria’s Own motion investigation into Child Protection – out of home care (2010, pp. 91-92)* highlights poor outcomes at the micro-level such as:

- “Only approximately half the children were considered to be free of serious emotional and behavioural problems” (pp. 91-92),
- Ability to independently manage self-care,
- Family and social relationships,
- Educational outcomes particularly in the 15+ age bracket,
- Higher rate of delinquency than non-removed children,
- Lower contact with birth family members, and
- Possession of suitable clothes to wear (OM, 2010, pp. 91-92; see also Ryan, Herz, Hernandez, & Marshall, 2007; Ryan & Testa, 2005).

Outcomes for children in care are so poor, and cases of abuse in care appear so common, that parents and their supporters rightly wonder if a child will be more at risk in care than they would have been at home had appropriate supports been available.

Indeed, parents often lament the fact that alternative carers receive supports that would have helped them keep their children at home, had they been offered similar supports. For example; respite care, financial support, and access to specialists.

Children who grow up in residential care face a stark transition into adulthood. By the time the child reaches 18 relationships with the birth family are often strained or non-existent, yet the birth family is the only pre-formed network available to the child/adult. Further work needs to include families in therapeutic development to ensure that any reconnection is a productive one for all concerned.

While not specifically part of this Inquiry, the articulation in legislation that visitation with parents is to be capped at four times a year sets a dangerous precedent for many children, who could have enjoyed a healthy relationship with their birth and other families. If legislation is to set this damaging 'norm' for children in out-of-home-care, then we have a responsibility to ensure only those that such a decision will actually benefit reach that stage of the system. Such a system would prevent the positive outcomes of the following case example.

Case Example

Sandra's child was removed from her care 7 years ago due to environmental concerns and exposure to family violence. Sandra separated from her abusive partner and attended supervised access visits with her child. Sandra worked hard to comply with all requirements Child Protection set for her. When she first engaged with FIN Victoria Sandra was seeing her child once a month, supervised. Sandra continued to attend parenting education and therapeutic group work programs, however, Child Protection would not entertain discussions about increasing the amount of visits or allowing unsupervised visits. When her child's long term placement broke down FIN Victoria advocates began attending care team meetings with Sandra. Sandra was supported to build her case for her child to be returned to her care, rather than churn through successive temporary placements. When this was first flagged in a care team meeting the Child Protection worker immediately discounted the idea and commented that it was virtually impossible to have a child returned to a parent after more than 5 years in care. Sandra commenced taking her own notes and preparing her own agenda for every meeting and applied for a full case review. Whilst it took 2 months for the full case review decision, there was an immediate decision, made by senior staff conducting the review, that unsupervised contact be allowed. The final outcome of the review was a decision for reunification. Without initial involvement of advocates Sandra would have continued to comply with Child Protection and her child would have remained in the care system, churning through placements. The presence of advocates at meetings, and coaching and mentoring Sandra behind the scenes, levelled power imbalances and Sandra's confidence to demonstrate her personal growth, insight and capacity soared.

This case example highlights the need to ensure continuity of positive relationships for children in out-of-home care and flexibility to be responsive to changing circumstances and needs rather than being bound by inflexible legislative restraints.

Right to Fair Treatment

The current system and societal view of some parents in the out-of-home care system is that they are bad people who present a dark shadow over the child's life. This needs to change. Research indicates that compliance with workers, irrespective of financial, social or psychological barriers is a greater indicator of child removal than actual abuse (McConnell et al., 2011a, 2011b). Yet, once removed, and despite rhetoric of respectful and collaborative partnerships, many parents are not genuinely included once a move to permanent care has

been made. They are often alienated, ignored and belittled. They also withdraw as their public reputation with schools, doctors, community services and neighbours has been damaged. Further, development in family functioning and recovering from the trauma of having a child removed is often ad hoc and reliant only on the parents' ability to independently manage recovery while also needing to address the issues that led to the child being placed in care.

The binary positions encountered in the child welfare system such as care versus control, deserving versus undeserving, all services in or no services at all, must end. It is our experience (supported by national and international research) that very few children are in life threatening situations. It is acknowledged that a small percentage of children should be removed. However, power imbalances when creating 'a case' for child removal child must be addressed. Court dispositions or case summaries are written to sway courts or decision makers and do not reflect the strengths and weaknesses of the family in context. Current styles of documentation preclude family involvement. Brief consideration, if any, is given to the views of families and legal systems are not adequately resourced to ensure the parent view is included. Any comment on the parent view is written by the practitioner and not the parent. In reality parents are not given the opportunity to create a considered response to practitioners' perceptions or decision making. As a result it is rare to find any formal documents that do not minimise strengths and maximise weaknesses of the parent. It is also common to find evidence such as psychological reports and other evidence supportive of the parents' view to be omitted from files and reports. Any claim that the parent's legal representative is in a position to address this imbalance does not account for the reality of how current systems function.

Much of the literature in regard to out-of-home care refers to when it has been deemed that a child cannot return home. The implication of these statements is the societal assumption that every child in care has been abused and that the parent is guilty. Moreover, that no child, once in care, can or should return home. Once the matter has been through court this becomes a legal fact but does not become a fact based on the actual experience in many situations. Given our experience in advocacy this is problematic and a statement that needs to be reconsidered at every stage of intervention and care.

The work of advocates with the family is sometimes made problematic by child protection and agency staff. There are no approved and effectively supported advocacy systems. Workers, unless experienced, often see an advocate as a threat, do not always return calls, do not always provide information, are insulted when their practice or decisions are questioned and don't always understand the impact of what they are writing about families. Some families have been advised that they should not seek support from advocates. To address this situation referral without systemic fallout is required. Research shows that effective partnerships, where all parties are heard and valued, leads to best outcomes. However, families and advocates have noted defensive and hostile case practice towards families once an advocate has become involved. If we are truly to consider providing families with an equal voice we must consider the imbalance inherent within the system.

Staff have university degrees, access to transport, computers and systems that they don't have to pay for and professional and supportive supervision. Families have none of this.

Consideration must also be given to the time required to help a parent speak up about their situation. This may include:

- access to information in a timely manner, (on the day of court is not helpful),
- information about complaints systems and VCAT processes,
- information about court processes, and
- time to explore and translate into simple English, legal, child protection and community systems such as Child First and maternity services.

Case Example

Recently a family supported by FIN Victoria did not receive court dispositions in the mail until the day after the scheduled court date. The ramification of this is that Legal Aid solicitors could not submit applications for legal funding to represent the parent. The process of approval can take up to ten days and is never adequate to allow the lawyer time for comprehensive collation of documentation to understand the complexity of the case. The FIN volunteer worked with the parents to collate information into an understandable format, attend meetings to ensure the voice and views of the parent were given equal consideration and to undertake processes to collate relevant evidence for the case. There are very few situations in society where we would expect a person experiencing the trauma of losing a child to undertake such efforts independently.

Pathways to Permanence for Vulnerable Children

The Law Institute of Victoria have raised a number of concerns regarding the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014 capping contact at four times per year under Permanent Care Orders and giving the Department of Health and Human Services (DHHS) "unfettered discretion" regarding contact under the new Care by Secretary Orders.

We are aware of cases where contact is already being reduced to four times per year to make children more appealing to potential permanent carers, who are put off by situations where parents have more regular contact. It has also been stated in meetings, in the presence of FIN Victoria representatives, that despite positive, regular contact the reduction to four times per year is desirable to avoid the children becoming confused about their identity.

This goes against emerging research and recommendations for policy and practice (Biehal 2014; The Care Inquiry 2013). Biehal (2014) has suggested:

"The quality of children's experience of long-term foster care, including their sense of belonging to their foster family as well as their birth family, should be

viewed an indicator of well-being as important as more objective markers such as placement stability...Helping children make sense of their location between two families and supporting their sense of belonging to their foster families as well as to their birth families should be a priority for social workers.”

The Care Inquiry (2013) in the UK speaks of relationships with people who care for and about them being the “golden thread in children’s lives”. There is an emphasis on creating “a care system that places at its heart the quality and continuity of relationships” as well as recognition that many children grow up with connections to various caregivers and manage to traverse and make sense of these complexities.

In one particular meeting, where a family were being notified that contact would reduce to four times per year, it was suggested that four times per year was much more practical for children where they might have sports or other out of school activities. The FIN Victoria representative pointed out that if these children were living with a separated parent the Court would support regular, ongoing contact with the non-residential parent and extra-curricular activities would need to be worked in around that. The Care Inquiry acknowledges that most children now grow up in a world of shifting family relationships and suggests we need to:

“take stock of why our approach to children in care is so different...Why do we persist in breaking children’s old relationships when we introduce them to future carers, despite knowing that so many children who do not happen to be in care manage to negotiate complex family relationships as they grow up?”

FIN Victoria have noted that when supports are put into place to encourage the fostering of a family, rather than only the child, long-term benefits can be achieved for all.

Case Example

Recently FIN Victoria were privileged to attend a meeting where it was decided that a child would return home. Child Protection, Family Services, the foster carers and the parents worked together in the planning with the needs of the child firmly at the centre of discussion. All participants maintained a genuinely respectful approach. Unlike many meetings attended by advocates, the parents and foster parents were noted to act as a team. The parent agreeing that the child might like to maintain contact with the foster parents and the foster parents agreeing to provide respite care as reunification progressed. Without the constraints of professional boundaries the advocate felt that it could have been possible that these foster parents would in fact foster the family to ensure that things progressed smoothly. However, FIN Victoria has in effect fostered this mother. The result has been that she is now an extremely competent person that is currently providing supports to other parents.

However, we also see examples of the system being an impediment. In a recent case a mother is willing to have her children’s current foster placement become a permanent care arrangement, and the current carers are passionate to care for the children permanently.

The two parties live only kilometres apart and maintain a good relationship. The children, aged 4 and 6 years, have already moved through two previous placements and have been with the current carers for almost two years. The children are settled, happy and thriving. DHHS reduced contact from monthly to four times per year (effective immediately) so alternative permanent carers could be found from a database. The purpose of moving to four times a year was therefore not to benefit the children but to benefit the system and to make the children more 'sellable' to permanent carers. The outcome is that a safe and secure situation for the children and working parental relationships are to be destroyed for the sake of a system. Legislators must remember that children are not goods and chattels for sale; they require a system that is adequately flexible and able to meet their individual needs.

Current cost of Australia's approach to care and protection

Research has proven that examples of community level, practical, non-judgemental and therapeutic approaches reduce the cost of out-of-home care considerably or on occasion to nil (Hinton, June 2013).

As evidenced in the Productivity Commission reports into government services (see chart below), only a small percentage of overall spend in child protection is directed to Intensive Family Services.

Number of children in out of home care at June 30, 2011								
NSW	VIC	QLD	WA	SA	TAS	ACT	NT	AUS
16,740	5,678	7,602	3,120	2,368	966	540	634	37,648
Spend on out-of-home care services 2010-11 (\$m)								
\$700.6	\$321.5	\$369.5	\$205.4	\$132.7	\$39.1	\$27.9	\$47.8	\$1844.5
Spend on intensive family support services 2010-11 (\$m)								
\$163.7	\$63.2	\$30.1	\$7.2	\$3.7	\$4.6	\$1.4	\$0.5	\$274.4
<i>Source: Productivity Commission Report on Government Services</i>								

(A Voice for Our Most Vulnerable - The Australian 14 January 2013, by Roseanne Barrett.)

There is a considerable amount of research that shows that effective family support saves long-term costs associated with out-of-home care. For example, David Tobis (2013) described how in New York a "movement of parents and their allies" contributed to a 72% decrease in the number of children in foster care between 1995 and 2012 (p.3). FIN Victoria's examples below demonstrate that this outcome is possible in Australia.

Victorian Case Examples

One new born child, marked for removal from hospital due to ill-informed views of intellectual disability (including from Disability Services) and no places available for residential parenting assessment. With advocacy, legal support and dedication from family services the child and family were kept together and all are doing well.

Savings = 18 years of out of home care and related costs.

One child removed and experienced 7 years of out-of-home care. The placement unexpectedly broke down and Child Protection moved to place the child in an alternative permanent care placement. At this point the mother, with advocacy support, intervened to have the child returned to her. The mother had maintained contact/relationship with the child. She had also addressed all protective concerns (a process of personal development) which would not have been deemed protective concerns in the first place if she had access to effective advocacy at the time of removal.

Savings = 8 years of out of home care and related costs.

The current situation of children churning through placements is problematic. At the point where a placement breaks down children are forced to move, create new relationships and begin life yet again. If protective issues have been addressed by the parent at this point it seems socially and economically irresponsible not to consider a safe return home.

Research shows that ongoing support is required whether the child remains in their home or is placed out-of-home (Jonson-Reid & Barth, 2000). Moreover, that greater life outcomes and reduced long-term societal costs are achieved when the child is supported with a therapeutic approach in their home. The current approach to family support where narrow, bureaucratically defined, short-term and crisis focussed support is considered appropriate for birth families, but long-term support is appropriate for foster families is illogical. This approach fails children and fails to uphold the rights of the child as noted in United Nations conventions. Honestly supporting the family supports the child and in turn creates stronger communities.

Recommendations

FIN Victoria supports the Child, Youth & Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015. This is an important step in retaining protection for vulnerable children and their families.

FIN Victoria strongly urges consideration of further amendments to address other areas of concern resulting from the Children, Youth and Families Amendment (Permanent Care and

Other Matters) Bill 2014. A range of concerns have previously been highlighted by the Law Institute of Victoria and include:

- No ability for Children’s Court to set conditions on the new Care by Secretary Orders giving DHHS “unfettered” discretion re: children’s contact with parents, siblings and other family members.
- New Permanent Care Orders restricting contact to “up to” four times per year.

Conclusion

This submission highlights the need to retain ongoing scrutiny and oversight of child protection matters by the Children’s Court to ensure greater protection of vulnerable children and their families. The submission further illustrates issues of fairness and system accountability that can only be addressed by effective advocacy.

It is not widely understood or appreciated just how often the system itself ends up getting in the way of better outcomes. The author Hanif Kureishi has said "People can be formed and also deranged by the stories others tell about them". In our advocacy work we empower families to re-author their story, leading to better outcomes for children.

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