Submission to Department of Family and Community Services

Child Protection Legislation Reform Discussion Paper

21 March 2012

About the Commission

The NSW Commission for Children and Young People (the Commission) was established in 1999 as an independent statutory authority within Government under the Commission for Children and Young People Act 1998.

The Commission works with NSW Government and non-government agencies providing policy advice, undertaking research, supporting the development of child-safe organisations and monitoring the NSW Working with Children Check. The Commission reports to a Parliamentary Joint Committee.

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SECTION 1 PROMOTING GOOD PARENTING

The Commission supports practice which provides clarity for parents about why and how they need to take action to improve parenting in their children’s best interests. In relation to Proposals 1 and 2, which relate to new mandatory Parenting Capacity Orders and strengthening of existing Parent Responsibility Contracts, our view is that both the nomenclature and the scope of each of these mechanisms is unclear. The similarity of the titles of these tools with each other and with Parental Responsibility (another concept altogether) is potentially confusing for parents and for caseworkers. It would be helpful to rename these tools so that their distinctive features are clear.

The variety of orders and contracts under discussion is also confusing. It would also be helpful to clarify where each proposed tool/mechanism sits on a continuum of escalating seriousness and consequence and how they fit with other casework tools such as case plans and legislative tools such as Supervision Orders and other Court Orders. In principle, the Commission does not object to clear, written contractual conditions for parents so that they understand what is required of them to assure their child’s safety and wellbeing and avoid clearly specified consequences.

If there is to be a difference between voluntary and mandatory conditions parents are subject to, this needs to be explicit. Parents need to be clear about how their involvement in and
responsiveness to identified issues will impact on decisions about removal, restoration and their child’s short and longer term future. Part of this clarity should be about understanding the timeframe in which decisions are made by statutory child protection services to align with children’s developmental needs.

In addition to clarifying the suite of tools available to caseworkers and the Court, guidance should be provided for caseworkers, based on evidence, about where and when use of each tool is best targeted.

PROPOSAL 1:
Introduce stand-alone parenting capacity orders to require parents to attend a parenting capacity-building or education course

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

Question 1 (b):
What factors do you think the Court should consider before making a parenting capacity order?

Question 1 (c):
What should be the consequences for failing to comply with a parenting capacity order?

While the element of Court compulsion envisaged in stand-alone Parenting Capacity Orders (PCOs) may have a positive impact on attendance and re-engagement by parents, the consequences of non-compliance will need to be carefully considered and understood, particularly in the early intervention context. The administrative burden of applying for a Court order and likely adverse impact on relationships between caseworkers and parents needs to be weighed against the expected benefits.

Resources to support early intervention would need to be in place before orders were made. This applies to both availability of services to which parents can be referred and support to facilitate parent’s attendance at services such as child care and assertive outreach. Particular support would be required where unreasonably long distances may be involved or attendance may hinder capacity to work.

In addition, dedicated casework resources would need to be earmarked not only to monitor attendance but to document outcomes to the satisfaction of the Court. The discussion paper notes the need for workforce development to expand capacity to deliver intensive parenting programs. Appropriate quality standards are of equal importance.

The Court should consider the extent to which the foundation issue requiring the order will be amenable to change as a result of parental attendance at a course, together with the parents’ willingness and capacity to change and why a voluntary approach would not be effective. Setting ‘the need to improve parenting’ as the sole relevant factor, potentially establishes a low bar for
imposition of a Parenting Order. It would be important to ensure that a single legislative tool does not replace thorough, holistic assessment.

Overuse, or routine use of orders may devalue the effectiveness of the mechanism. As the effectiveness of Parenting Orders would appear to hinge on quality services, targeted use, and adequate workforce capacity, it may be suggested that effective case planning and casework, referral to relevant programs and ongoing monitoring of risk, could achieve a similar result.

In the child protection context, where Parent Responsibility Contracts may now be used both before and after a child is at risk of significant harm, there is potential for confusion about where and when it would be appropriate to use a PRC or a Parenting Order. According to the Discussion Paper, a PCO would require a parent or primary caregiver to attend a parenting capacity program or other treatment, therapy, course or program...aimed at building their parental capacity and addressing safety risks to their child or young person.

A PRC is aimed at improving the parenting skills of the primary caregiver/s, the parent-child relationship and encouraging parents to accept greater responsibility for the care of their child or young person.

It is understood that the PRC will address issues relating to both the child and parent, e.g. the parent must undertake to take the child to school every day, whereas the Parenting Order is focussed more on the expectations placed on the parent, e.g. attendance of parenting courses. Nevertheless, there appears to be considerable overlap between the two and potential for confusion. Notably, the Discussion Paper also proposes use of PRCS in the early intervention context for periods up to 12 months. This would appear to create, two similar mechanisms for use across the spectrum of intervention. It would be important to clarify, for both caseworkers and parents the legal consequences of each measure.

Ultimately, the Commission’s concern is that measures support family preservation, wherever possible, and that the safety and wellbeing of the child remains the focus of attention following initial engagement with the family and/or ongoing assessment, whether or not the parent attends courses voluntarily or by court order.

In regard to escalation of risk, non attendance at a program, whether voluntary or court ordered, cannot be a proxy for assessment and monitoring of the child’s welfare. The consequences of non attendance, if the Court is required to be informed, may well create an additional administrative burden (and potential delay while the Court considers whether to impose additional orders, to require further assessment or efforts to support compliance) without the promise of greater benefits.
PROPOSAL 2:
Strengthen the PRC Scheme by:
(a) introducing a new modified PRC for use in early intervention programs to support disengaged parents
(b) extending the duration of a PRC from six to twelve months to enable a parent to attend intensive parenting courses or therapeutic treatments and demonstrate abstinence from substance misuse so children can stay at home safely
(c) introducing PRCs for parents with an unborn child at risk to help improve their parenting capacity in preparation for the birth of their child
(d) requiring FACS (CS) to attempt to use PRCs with parents prior to commencing care proceedings in appropriate matters

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

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

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

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

Enhancing parents’ understanding of and accountability for changes required to improve their children’s safety and wellbeing is desirable. Strengthening Parent Responsibility Contracts (PRCs) to provide for circumstances not currently contemplated by the legislation may have merit. However, contractual and contract-like options that require access to treatment programs to be realised should only be struck when services can be identified.

Use of PRCs prior to care proceedings may be an appropriate last resort measure for family preservation, provided the system has the capacity to provide the required level of support. Their proposed use in early intervention requires further consideration. The legal consequences of a breach should not, arguably, be the same, or as stringent, as the consequences when the assessed risk level is closer to the ROSH threshold. A finding that the child is in need of care and protection/removal would not be a logical consequence of a breach when the child’s risk level is not significant or close to significant. It is very important that the nature of the risk level and type and range of issues that will be addressed in early intervention are clarified in order to inform the discussion about consequences if PRCs are to be used in this setting.

Extending the duration of PRCs from six to twelve months may improve their usefulness by allowing sufficient time for relevant programs (including drug and alcohol rehabilitation and intensive parenting capacity programs) to be completed and outcomes achieved and measured. However, the
time allowed to achieve set goals in each case should be considered in the light of what has happened before. If there have been multiple attempts, efforts and chances to change, it is questionable whether it would be appropriate to start again with a further 12 months and a PRC. If it is the last chance, and a measure of last resort, 6 months would seem more appropriate as children’s development is at stake if they continue for extended periods in an environment that is not conducive.

Longer timeframes may be more appropriate if the PRC is an early or first intervention. In either case, longer timeframes will not of themselves guarantee achievement of goals. Assessment of parents’ willingness and readiness to change should be a necessary precursor to use of a PRC as there will be some parents who are unable or unwilling to change, despite compulsion.

Having evidence-based programs readily available for those who are capable of change would be required to support behaviour change, regardless of whether parents volunteer or are compelled to change.

In relation to unborn children, PRCs may provide both clarity for expectant mothers and an opportunity to address harmful drug or alcohol use, health and other issues (that may impact on the unborn child or the child when born) and to develop appropriate parenting skills and connect with supportive networks before the child is born. There is a real opportunity to protect children at this vulnerable stage of development from risk of low birth weight, disability and Foetal Alcohol Syndrome. However, the use of PRCs in this context would require overriding evidence that required actions would be necessary to protect the unborn child in the light of a woman’s right to make decisions about her health and wellbeing. This is likely to be a sensitive area and while evidence is clear that there can be significant risk of harm to unborn children, feasible options for state protection, do not arise until the child is born. The scope and content of PRCs and the consequences of breaching will need to be carefully considered in this context.

PROPOSAL 3: Consider the suitability of FGC also for matters that are currently before the Children’s Court, where appropriate, to better engage families to resolve child protection concerns.

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

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

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

The Commission is supportive of actively engaging families, including children, in the development of strategies and case plans, including through Family Group Conferencing (FGC) and similar models. The Commission notes that the evaluation of FGC found a number of positive short-term outcomes.
in assessing the small-scale pilot and supports an ongoing role for FGC in light of these findings and the fact that FGC is the only Alternative Dispute Resolution program open to families outside of the court process. The Commission would, however, recommend a fuller evaluation of FGC after two years of broad implementation, and the consideration of other models that involve families, children and relevant community members and professionals in decision-making and accountability frameworks.

Where practical and appropriate, the child or young person should be encouraged to attend the conference. The Commission would also support the recommendation of the evaluation (recommendation 14) that there should be clearer guidelines around the circumstances in which the child/young person should not attend conferences and the measures that can be used to ensure that the child/young person is safe and comfortable during the proceedings.

Training and development for professionals facilitating and participating in conferences should include ways to make the process child-friendly, to convey information in a way in which the child or young person can understand and to take the views of the child or young person seriously in the decision-making process. The evaluation commented positively on the means by which facilitators took into account the views of children outside the conference if necessary.

The Commission supports imposing an obligation on caseworkers to consider referring families to FGC prior to commencing care proceedings, noting the that exceptions/ cases requiring alternatives would need to be taken into account in drafting guidelines or legislation. A requirement to give reasons if a family is not referred to FGC could be included. This could be enhanced by a broadening of referral pathways (including referral by families and organisations supporting families as was recommended in the evaluation) and by investing in work practice change, which will be required regardless, alongside legislative reform.

The evaluation noted little support for extending the eligibility criteria to include matters with current court proceedings and warns that expanding the eligibility criteria to this group may also create some duplication with Dispute Resolution Conferences. Families may be less willing to participate in FGC once the matter is before the Court and the matters which reach Court are those where FaCS has significant concerns which may be beyond the point of family management.

One view is that FGC may not be suitable for children placed in care, which makes up the majority of Court cases. The argument is that for FGC to be meaningful and empowering for families, referrals need to occur as early as possible to increase the chance of early engagement, service provision and success.

The Commission’s view is that there are many opportunities to capture benefits from FGC, wherever the family is still involved in the child’s life., for example, in OOHC short term care arrangements and contact disputes. Given that most children in care eventually return to their family, not involving the family where possible, is a missed opportunity.

Furthermore, it is important that some flexibility is maintained as to the kinds of matters covered outside proceedings, as there may be scope for FGC post-final orders in areas such as the continued development of cultural identity, noting that the evaluation found that FGC was more culturally appropriate than usual case planning processes.
PROPOSAL 4:
Incorporate sanctions for breaches of prohibition orders that include:

- fines
- community services orders
- compulsory attendance at parenting capacity programs, counselling or drug and alcohol rehabilitation

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

The Commission supports greater enforceability of prohibition orders to ensure the care and protection of children and young people. However as noted in the discussion paper, fines have a disproportionate effect on families who are socially or economically disadvantaged, open the door to further interaction with the criminal justice system, and can impose further hardship on the family, including the children.

Community Service Orders may provide an alternative to fines in the care and protection context and the Commission would be supportive of the use of community service orders or bonds with conditions for the compulsory attendance at parenting programs, counselling or drug and alcohol rehabilitation, as enforcement measures for prohibition orders under the Care Act. The only reservation in relation to Community Service Orders and compulsory attendance at programs is the availability of these options, particularly lack of specialist services common across the state. This would have to be taken into account in determining sanctions/imposing orders and further programs may need to be supported should there be a dramatic increase in prosecutions for the breach of prohibition orders.

PROPOSAL 5:
Introduce alternative sentencing options (other than fines) to child abuse and neglect offences such as community service orders and educative and therapeutic services or rehabilitation

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

The Commission supports the introduction of alternative sentencing options such as community service orders and educative and therapeutic services or rehabilitation for abuse and neglect offences. The impact of fines on marginalised sections of the community is well documented and there is no compelling case for reintroducing imprisonment. Alternative sentences more focussed on rehabilitation are cost effective and may allow the family unit to be maintained while protecting children from harm, as well as stemming the potential intergenerational repercussions.
SECTION 2: PROVIDING A SAFE AND STABLE HOME FOR CHILDREN AND YOUNG PEOPLE IN CARE

The Commission strongly supports efforts to promote permanency for children and young people in Out of Home Care. Meticulous long term planning must underpin permanency planning to support sustainable futures and promote positive outcomes. Any decisions pertaining to this must be centred on the best interest of the child.

PROPOSAL 6:
Achieve greater permanency for children and young people in OOHC by:

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

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

(c) requiring permanency plans not involving restoration to include the pursuit of guardianship/adoptions or reasons why they should not be pursued

Question 6:
Are there other measures for achieving greater permanency in the Care Act that should be considered?

The Commission is generally supportive of the proposed hierarchy to achieve permanency for children and young people in OOHC. A sense of permanency can provide children and young people with a sense of belonging and security and the research shows this leads to other positive outcomes. The Commission would argue that a child or young person must be as involved where practicable when making decisions about placement options. A sense of ownership of such decisions and the knowledge that their views and opinions were given proper consideration will encourage greater investment in the placement. While it is understood that placement options may be limited in some situations, this should not be a barrier to consulting with the child or young person at the centre of the decision-making.

The Commission supports the emphasis placed on guardianship or kinship care as the second placement option. All efforts should be made to pursue kinship options before non-family placements are considered. Maintaining a sense of identity and belonging is important to a child’s wellbeing and kinship care also promotes the retention of cultural heritage where relevant.

In relation to adoption, we consider that this proposed major systemic shift requires consideration of the range of evidence in different jurisdictions and on outcomes for all age groups. Harriet Ward CBE, Research Professor of Child and Family Research and Director of the Centre for Child and Family Research at Loughborough University in the U.K, spoke at a recent Barnardos and University of Sydney Symposium on a Systemic Approach to Admissions to Care. She noted that while there is one study that shows good outcomes for adoption, there is a lack of data on recent adoptions in the UK, which has a proactive adoption policy.
Professor Ward noted that babies placed before their first birthdays are more likely to be securely attached to their adoptive carers (some research suggests this is the case up to three years) but said placement before the first birthday is a rarity in England. She observed that the UK government is working to expedite and increase the number of adoptions from care, with targets and benchmarks for early decision-making. However, while strongly supporting better understanding of children’s developmental needs and timely permanency decisions, she cautioned that adoption may be suitable only for a limited number of children and that adoptive parents may need long term support. It is worth noting Professor Ward’s view that “All long term entrants to care will need stable, supportive, placements that endure until adulthood, and at least 70% will require intensive specialist services.” In addition carers require continuing and accessible specialist support.

The Commission cautiously supports the pursuit of adoption as a preferable placement alternative to parental responsibility to the Minister, where there has been a thorough examination of the circumstances and a detailed best interests determination which is supported by the caseworker and the Court. Adoption may provide greater stability and promote greater carer commitment and attachment than foster care. However, more research is needed to determine the frequency and consequences of adoption breakdown.

Varying care and protection legislation, so that the Court can only make orders for Parental Responsibility to the Minister if adoption or long-term guardianship is not possible, is a feasible option. There is no reason, in principle, that long term foster care could not provide permanency and associated benefits to the child, given the right matching of carers and children and appropriate and timely supports. Ultimately it will come back to caseworkers to pursue orders which are in the best interests of the child as investigations in relation to adoption and guardianship are ultimately a casework function. However, the Commission is not opposed to holding the statutory system accountable for investigating all options before Permanent Responsibility to the Minister is ordered, including through constraining Court Orders. The Commission would also support the requirement that permanency plans not involving restoration include the pursuit of guardianship/adoption or reasons why they should not be pursued.

If the proposed permanency hierarchy were to be enshrined in legislation, it would be critical that strong emphasis on adoption does not lead to a loss of focus on achieving positive outcomes for children and young people for whom adoption is not feasible. This group is likely to be particularly vulnerable and emphasis should be retained on providing permanency and appropriate supports to this cohort, including maintaining sibling connections.
**PROPOSAL 7:**
Legislate restoration timeframes – within six months for children less than two years and within twelve months for children older than two years

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

The Commission is supportive of measures to expedite timely decision-making about the realistic possibility of restoration for children and young people involved in the care and protection system, to minimise intrusion and destabilisation. It should be noted however, that decisions on such matters involve diligent consideration of a range of complex factors, which will vary in each case. While structured decision-making tools should assist in supporting decisions, a risk in legislating timeframes is additional pressure on caseworkers resulting in incomplete evidence gathering, rushed assessments and potentially flawed outcomes.

The Commission’s support for timely decision-making (noting the link to positive permanency and attachment outcomes) is tempered by the suggestion that flexibility needs to be built into the system.

Currently, the proposed timeframes are offered as a guide or target that workers should try to achieve. Additional accountability could be provided by requiring that the Department report regularly and publicly on the percentage of cases in which targets are met and reasons for exceptions. Some consideration should be given to the extent to which this kind of public accountability could promote adherence to the timeframes.

If timeframes are to be prescribed, consideration could be given to an additional legislated provision to allow for an extension on the timeframe in some circumstances, or a review/revisiting of the realistic possibility decision prior to the final arrangement for whichever permanency option is being pursued. This would be feasible as there is commonly elapsed time between the realistic possibility decision and the final arrangement.

The interaction of the proposed legislated permanency timeframes with the proposed legislated permanency hierarchy could see some babies and children removed, a determination made on no realistic possibility of restoration, and adoption achieved within a very short space of time - with attachment and developmental needs then dictating no possible return to family even if circumstances radically altered. Reversal of circumstances within a timeframe that would not compromise a child’s development may be uncommon but may require special consideration.

The discussion about the interaction between the hierarchy of permanency options and permanency planning timeframes should be informed by transparent information about possibility of application for future rescission so that limitations and possibilities are fully understood. Parents should also be informed of this.
PROPOSAL 8:
Enhance supported care placements by introducing:
- self-regulation of supported care placements by some supported carers to limit the intrusion of FACS (CS) in stable relative and kinship placements
- a two-year cap on the duration of supported care placements to achieve greater permanency and stability through permanent legal orders for these children and young people

Question 8 (a):
Is ‘self-regulation’ of supported OOHC a positive step forward? Can you see any problems with this approach?

Question 8 (b):
What would be the key elements of the self-regulation model for supported OOHC?

The Commission supports practices to minimise intrusion in the life of a child in OOHC. It is agreed that intervention should only occur when necessary and the Commission is supportive of mechanisms to encourage families’ self-determination and independence from state intervention, where this is in the best interest of the child. It is understood that certain routine processes such as home visits and development of care plans may not be necessary or appropriate for some children, including those in a settled family/kinship placement where their needs are fully met and where no risks exists or are likely to exist. For this reason, the proposal to allow some families to self-regulate supported care placements is agreed to in principle.

However, such care arrangements involve a twelve month gap between commencement and reassessment of the placement, an onus on the carer to provide FaCS with noteworthy information and an assumption that regular home visits will not take place. The Commission suggests that implementing this approach will require a firmly embedded, positive and trusting relationship between the carer and the department.

The Commission appreciates that some carers may consider state intervention intrusive, unwarranted and a breach of their right to private family life and it is unrealistic to expect all family/kinship carers to fully support the involvement of FaCS in the lives of their family. The Commission considers that a proven, cooperative relationship should be a condition of self-regulation, together with a minimum requirement that carers demonstrate an understanding of the needs of the child, commitment to meeting these needs and an understanding of the reasons for FaCS’ involvement. A graduated move towards self-regulation should be embedded in the caseplan and there should be guidance for caseworkers on how to determine that carers are demonstrating appropriate understanding and capacity.

In addition, self-regulated care arrangements require that the carers can be entrusted to manage family relationships, address any emerging risks and adhere to agreements such as those pertaining to contact between the children and parents. This firm understanding that the best interests of the child must be the paramount consideration is necessary, to ensure that the needs of the child are prioritised over the needs of others, and to prevent issues of concern such as collusion between family members.
It is also recommended that in such cases, links between the children’s schools and other services in place be established. This will ensure that those who have regular contact with the child or children can act accordingly, should issues or concerns arise.

**Proposal 9:**
Provide permanent care to children and young people when adoption is not in their best interest by:
(a) introducing long-term guardianship orders
(b) repealing section 149 of the Care Act that provides for sole parental responsibility orders as this provision is underutilised

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

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

As with Proposal 8, the Commission is supportive of provisions to establish permanency and minimise intrusion in the lives of children. Guardianship Orders are a means to allow children to remain with their family with safe and supportive living arrangements and minimal departmental involvement. The Commission emphasises that the child or young person should participate to the greatest extent possible in the making of these arrangements and their opinion be valued in the decision-making process. Ideally, the carers and young person should have the same or similar access to counselling prior to the Guardianship decision as is provided in pre-adoption cases.

As with self-regulated placements, a trusting relationship between the carer and FaCS must be established and it is recommended that FaCS remain involved at a proportionate level until this relationship is established. The Commission agrees with the circumstances in which Guardianship Orders would apply, but highlights a number of concerns, chiefly that “because the child or young person is part of a family there will be no leaving care or after care arrangements.”

The proposal that neither financial assistance nor after/leaving care support or services will be available to the young person, assumes that the young person will have the skills to live independently, has the means to provide for themselves financially or that the family will provide support to the young person. Transition into independent living is a critical part of a person’s life, regardless of their background, and support may be more crucial at this time than at any other. It must not be assumed that when a person does turn 18, he/she is fully equipped financially, emotionally and physically to live independently. The Commission is concerned that the termination of support and absence of any leaving/after care assistance could significantly disadvantage a young adult with a history of neglect or abuse.

The issues that people entering into independent living face (further education, employment, housing, development of life skills such as cooking and budgeting) are complex. While it is hoped that the young person’s carer would continue to provide some level of support, as would generally
be the case with other families, the absence of any other leaving care support compounded by withdrawal of financial support could place such young people in vulnerable positions. While it may be assumed that children and young people who are subject to a Guardianship Order are settled, safe and supported, the possibility exists that residual issues remain which may impact on a person’s ability to transition into adulthood. The Commission therefore recommends that cases be re-visited prior to expiration of a Guardianship Order to assess the need for any support or services, such as those provided by the CREATE Foundation and agencies providing after care services. The Commission supports the development of a Leaving Care Plan for all children and young people in OOHC, regardless of the type of Order they are subject to.

It is noted that Guardianship Orders may include conditions regarding family contact. As with Proposal 8, carers would be required to manage often complex family dynamics and relationships to ensure that agreements such as those relating to contact were adhered to and not affected by collusion of family members. Further, children and young people’s needs and wishes relating to contact change as they grow, and more flexible arrangements may be necessary as a child gets older. While some families may be in the position to take a more flexible approach to contact, which is often preferable due to the normalising effect that this can have on a child, carers must be well equipped to deal with any pre-existing or emerging issues which may arise as and when circumstances change. The carer must also be entrusted to communicate any concerns which would be of interest to FaCS.

Finally, the discussion paper provides limited information on what the ‘annual check’ would entail, stating simply that this is to check that the placement is ongoing for payment purposes. To reiterate the previous point, any measures to minimise intrusion in a child’s life are supported, where this is in the best interests of the child. However it is recommended that the annual check involves seeing and speaking to the child, reviewing the case plan, and undertaking any other checks deemed necessary. This should also include a welfare check with schools and other relevant services which, as highlighted previously, would necessitate a pre-existing relationship with such services.

**PROPOSAL 10:**
Introduce concurrent planning to support timely permanent placements for children in OOHC by either:

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

OR

b) creating a new category of “concurrent carer” who is authorised as both a long term carer and prospective adoptive parent

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

**Question 10 (b):**
Are there other options that could be implemented to avoid the occurrence of multiple placements?
The Commission supports the dual authorisation of adoptive applicants as foster carers for the purpose of concurrent planning. This process of streamlining will reduce delay, minimise disruption and will allow a child or children to remain under the care of a person with whom they may have an established attachment, all of which will promote the child’s permanency. At this time it will be important to enhance selection, training and support of carers and potential carers to effectively manage the potential uncertainty of these arrangements.

Stringent planning, appropriate matching, carer training and consultation with the child/young person can support the avoidance of multiple placements. However it is understood that the Children and Young Person (Care and Protection ) Act 1998 may not be the appropriate medium through which to enforce this.

**PROPOSAL 11:**
That the Children’s Court be conferred jurisdiction to make adoption orders where there are child protection concerns

**Question 11:**
Do you agree that there are benefits in conferring adoption jurisdiction to the Children’s Court?

The Commission supports the proposal to confer jurisdiction to make an adoption order on the Children’s Court. The benefits would include reduced delay in making such orders, thereby promoting permanency. That the Children’s Court may have prior knowledge and understanding of the case may also be of benefit and the Children’s Court has substantial experience in determining the best interests of the vulnerable child. While these are serious decisions in the life of a child or young person, it is felt that the Children’s Court has the necessary expertise to adjudicate these matters.

Whichever Court has responsibility for making adoption orders, resources should be made available to ensure that judicial officers have sufficient knowledge of child development, attachment and permanency research literature to inform decision-making given the serious consequences these decisions have in the lives of children and their families.
PROPOSAL 12:
Amend the Adoptions Act to better recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant

Question 12 (a):
What elements should be streamlined for OOHC adoptive applicants?

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

The Commission supports the removal of unnecessary administrative burdens to fast-track OOHC adoption where a child has been living as part of the adoptive family for a long period. The Commission therefore supports the amendment of the Adoption Act to better recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant.

As with adoptions for step parents and relatives, the child should have established a relationship of at least 2 years’ duration with the authorised carers to facilitate adoption. In some cases where long-term carers separate it may be appropriate for the child to nonetheless be adopted by both carers which would require amendment of the Adoption Act. However, the complexities of adoption by separated carers and subsequent contact arrangements would need to be carefully considered as part of a best interest assessment prior to an adoption order being made.

There may be further changes to the Adoption Act and Regulations warranted in order to fast-track OOHC adoptions to more appropriately reflect the circumstances. This may result in a process more akin to relative adoptions, rather than the lengthy process required when a child is not known to the adoptive parents. This would appropriately recognise the pre-existing relationship of care between the prospective adoptive parents and the child. Fast-tracking will also be supported by merging standards, concurrent planning, training, and other streamlining of processes.

PROPOSAL 13:
Enhance the permanency planning capacity of non-government services by merging the NSW Standards for Statutory OOHC and the NSW Adoption Standards

Question 13:
How can the NSW Standards for Statutory OOHC be enhanced to better promote permanency planning, from restoration to adoption, for children and young people in OOHC?

While references to permanency planning can be found in the NSW Standards for Out of Home Care, there is currently no standard which focuses primarily on permanency. The objective of standard 12, Case Planning and Review states that a thorough assessment of the child or young person’s individual circumstances and best interests including education, stability, health care and social arrangements, the views of the child or young person and where appropriate their family are
considered when planning for permanency and Timely decision making about permanency is imperative to secure the future wellbeing of children and young people. Further, Standard 13, Case Work and Monitoring Placements states Carers and staff are supported to provide permanent and stable placements.

It is understood that placement changes are often inevitable and can occur for a range of reasons. It is also understood that children or young people must often be placed in short term care arrangements due to emergencies and unforeseen circumstances. However, it is recommended that permanency be given greater priority and emphasis in the Standards and wherever possible, be the placement goal. As stated in the current Standards, the views of the child or young person should be sought when identifying a permanent placement and the message that a particular placement is on a permanent basis must be conveyed clearly to the child or young person. Frequent placement changes convey the message to children and young people that each placement is a temporary arrangement that can be terminated whenever problems arise. Guidance should be provided in the Standards on ways to address emerging problems to avoid placement breakdown and sustain the current arrangements. This should include not only consultation, but more importantly negotiation with the child or young person, to provide them with a sense of agency, empowerment and personal responsibility. As stated previously, a child or young person will invest more readily in a placement if they feel that their views and opinions have been given equal weighting in the decision making process.

While the Commission does not object to merging of NSW Adoption standards and the NSW Standards for Statutory out of home care, standards should not be lowered in this merger. Merging of standards is most appropriate where a single agency carries out both the function of providing OOHC services to children and facilitating the process of adoption. It should be remembered, however, that there may be a group of children (those adopted from overseas) who have minimal contact with the care system.

PROPOSAL 14:
Amend the Adoption Act to improve the involvement of birth parents in planning for the adoption of their child including allowing non-consenting parents to be parties to an adoption plan and greater use of alternative dispute resolution in adoption proceedings so that parents are fully engaged in planning for matters such as contact arrangements

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

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

The Commission agrees that it is generally in the best interests of the child for the birth family to be a party to the adoption plan and that the Adoption Act should be amended to allow non-consenting parents to be a party to the adoption plan. This recognises the multitude of reasons and
circumstances in which parents may not consent to adoption and yet may wish to be involved in the planning.

The Commission also supports the use of alternative dispute resolution in adoption proceedings to more fully engage birth parents in contact arrangements and other issues. Lessons can be drawn from the recent evaluations of alternative dispute resolution mechanisms - an independent facilitator with knowledge of relevant law, children’s development and how to engage with children could add significant value to the process. The Commission is of the view that the participation of the child in adoption plans, including complex matters where there is a non-consenting parent, is of paramount importance and that whatever alternative dispute resolution mechanism is chosen, that the child’s right to meaningfully participate in decision-making is given a central focus. Contact arrangements are also likely to be respected and followed where both the child and non-consenting parent has had the opportunity to be heard and participate in the decision.

PROPOSAL 15: Amend the Adoption Act to provide for additional grounds for dispensing with parental consent, including grounds where:

(a) the parent is unable to care for and protect the child e.g. the parent is incarcerated for an offence against the child, or the parent repeatedly refused or neglected to comply with parental duties and reasonable efforts have failed to correct these conditions
(b) a parent cannot be located, despite having given an undertaking to keep FACS (CS) informed of their whereabouts
(c) there is no realistic possibility that the parent will be able to resume full-time care of the child or young person because reasonable efforts have failed to correct the conditions leading to the child or young person’s placement and it is in the best interests of the child or young person to make the decision now

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

The Commission appreciates the complexities and dynamics involved in OOHC adoptions. The proposal makes reference to ‘reasonable efforts’ that must be made to locate disengaged parents, for the purpose of involving them in the adoption process and in the pursuit of consent. The Commission considers that it should be clear to the child that attempts were made to locate his/her parents and it is recommended that failure of ‘reasonable effort’ should be an additional ground for dispensing with parental consent with specification of what constitutes reasonable effort.

The Commission considers that legislated timeframes for location attempts may be overly prescriptive. However, timeframes may be a useful as a guide to support case management decision making. Caseworkers could demonstrate the efforts made to meet those timescales and report on the percentage of cases which were within target. Most importantly, the child should be able to have the assurance that reasonable efforts were made over a reasonable period if and when they
have an interest in this. However, sensitivity would also be required to ensure that anxiety about location of parents to gain consent does not disrupt the child’s sense of belonging and stability.

The Commission considers that the first ground a) is unnecessary and should be deleted as the inability to care for and protect the child appears to be captured under the wording of c). There will be no realistic possibility that the parent will be able to resume full time care if they have refused or neglected to comply with parental duties. This would appear to be part of failing to correct the conditions leading to the placement. The example of incarceration is not necessary or helpful and should not be included. A parent in prison for an offence against a child benefit from rehabilitation while in prison and it may be appropriate to reassess capacity to care post incarceration. If a) is deleted for the reasons suggested the example will not be an issue.

**PROPOSAL 16:**

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

**Question 16:**

Do you support limiting the role of parents in adoption proceedings in this way?

As suggested previously, efforts to locate parents must not override a child or young person’s right to permanency. The Commission agrees that there may be occasions where an adoption should proceed if the child’s biological parents cannot be located after reasonable efforts have been made to locate them. In these circumstances, the limited role of parents in adoption proceedings is supported.

The proposal details circumstances in which this limitation would be exercised, *(a) where the child is over 12 years of age and has given their sole consent, or (b) the Children’s Court has taken away parental responsibility from that parent in care proceedings and found that there is no realistic possibility of restoration.*

While the Commission advocates for the consultation and participation of children and young people on decisions that affect their lives, including important decisions on long term living arrangements and adoption plans, the sensitivity of such matters and the level of responsibility that such decisions carry must be considered.

It is suggested that the expectation that a young person provide sole consent, with the consequence that his/her parents’ right to be advised of an adoption be limited, might create considerable pressure and place unfair demands on the young person to show more loyalty to one set of parents at the expense of the other. It is therefore recommended that while the young person should be consulted and have input, they should not feel a disproportionate weight of responsibility due to the legal term “sole consent”. Given the sensitivity of the issue, it is suggested that if a young person is to consent, their consent be elicited in a way that minimises pressure and provides them with a safe space to express their true opinion.
SECTION 3 CREATING A CHILD FOCUSED SYSTEM

The Commission is supportive of the government’s intention to be more responsive to the needs of children and young people and changes in familial circumstances. Improved casework practice, better resolution of contact disputes and greater flexibility in court orders are positive steps to meeting this end.

PROPOSAL 17:

Where there is no possibility of restoration, contact arrangements are initially made through case planning and then only where this is not possible by a court order

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

The Commission supports the proposal to allow contact arrangements to be made via casework rather than court order, where there is no possibility of restoration. The importance of flexible and contact arrangements increases as child grows and their needs change. If at a certain age a child chooses to become involved in an extra-curricular activity which coincides with a contact session, court ordered contact arrangements and the delay associated with changing or varying an order, could potentially impact on the child’s access to this activity and result in unfair disadvantage.

As a child grows so does his/her ability to negotiate and vary their own contact arrangements. Case management would allow for fluid and flexible contact arrangements, while providing the oversight necessary to ensure arrangements remain in the child’s best interests.

However, where a child or young person disagrees with the casework decision, there should be provision to dispute the decision. This could be through the same process as other contact disputes, discussed in greater detail in Proposal 19. The child or young person should be advised that they can dispute the casework decision at any time and that the matter can be dealt with through ADR or through the Court as a last resort. This would support the child or young person to exercise agency in negotiating their relationship with their family and allow them recourse to a further avenue to be heard where they do not agree with the casework decision.

It may be that caseworkers are seeking to act in the best interests of the child by limiting contact where visits have appeared distressing to the child, however the child’s strong desire to have an ongoing relationship can be balanced against this by the Court in the case of disagreement, taking into account all available evidence. Obviously this would be an option of last resort, and seeking court intervention could be minimised by strong casework practise in listening to children, taking them seriously and explaining the reasoning behind decisions.
PROPOSAL 18:
Develop a common framework about contact arrangements between children and young people and their birth families to guide designated agencies when making contact decisions

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

The Commission would support use of the FACS Guidelines as a basis for development of a common framework for determining contact, with the principles listed in the Discussion Paper (p47) as an overarching guide. The Commission is particularly concerned that any framework that is adopted retain as core principles the principle relating to children and young people having an opportunity to voice their views and that which stipulates that all reasonable efforts be made for contact to preserve name, identity and cultural and religious ties of Aboriginal and Torres Strait Islander children and young persons and those from ATSI backgrounds.

These aspects of contact arrangements in particular should not be left to the discretion of agencies with varying degrees of commitment and skill. If there is scope to expand on these principles in whatever framework is adopted, the Commission suggests this would be beneficial.

In consulting with the child on his/her views and wishes regarding contact, caseworkers should explore a range of techniques commensurate with the child’s age. For example, verbal development will affect the ease with which a young child’s views on contact can be communicated, however this should not be a barrier in seeking the child’s views; if a child is unable to convey their views through speech, the worker should seek information on the child’s carer’s observations of behaviour prior to and following contact, to help determine the child’s views.

In making efforts to preserve the name, identity, cultural and religious ties of Aboriginal and Torres Strait Islander children and young people and those from Culturally and Linguistically Diverse Backgrounds, contact sessions could include attendance at relevant cultural and family events and involvement in certain activities, where this is in the child or young person’s best interests.
PROPOSAL 19:
Improve the resolution of contact disputes by:
(a) requiring ADR to be used to settle contact disputes
(b) introducing a review mechanisms for contact disputes either in the Children’s Court or the ADT where ADR has been unsuccessful

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

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

Question 19 (c):
If Model 2 is the preferred option and the Children’s Court does not retain the power to make final orders about contact where there is no realistic possibility of restoration do you agree that:
- where the minister or a designated agency has parental responsibility, the ADT be empowered to review the contact decision and make contact orders and
- the Family Court is the best forum for making contact orders if a third party has parental responsibility?

The Commission supports Model 1 with the Children’s Court retaining the power to make final decisions in view of the Court’s expertise in dealing with these issues and potential superior pre-existing knowledge of the case. As indicated in the discussion paper, there may be limited demand for such a mechanism and as such, only a small number of cases would undergo this process. (There may be some benefit in communicating to all parties during the ADR process that failure to reach agreement would result in much more rigid and inflexible arrangements, which could impact negatively on the child or young person).

The Commission considers that the power of the Court to make contact orders should be limited to a maximum of two years in order to ensure that flexibility is built into the system to allow for changed circumstances and to empower those at the heart of care arrangements, including children, to make ongoing decisions about the appropriateness of contact regimes.
PROPOSAL 20:
That the Children’s Court has the power to enforce contact orders and arrangements

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

The Commission supports the use of mechanisms in the Children’s Court to enforce contact agreements and orders, as this would be administratively simpler than existing mechanisms involving the Family Court and the Supreme Court, which are not appropriate for more routine disputes. Any penalty proposed should be one that will not cause further disadvantage for children and families who are often already disadvantaged. It would be preferable to resolve contact disputes through ADR or other mechanisms before they escalate to require Court involvement.

PROPOSAL 21:
Establish a comprehensive legislative framework for the use of ADR in the child protection sector dealing with a range of matters including definitions, role, obligations and protections of convenors, confidentiality of ADR processes, and the limitations on the admissibility of information or documents disclosed during ADR in any subsequent court proceedings

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

The Commission is supportive of establishing a comprehensive framework for the use of ADR in the child protection sector and transferring provisions from the Care Regulations to the Care Act.

In terms of key provisions to be included, it will be important to reflect that children and young people can and should participate in decisions that affect their lives and be seen as partners with adults in the decision-making process. Children and young people are experts in their own lives and their views should be valued. Listening to children and young people is central to recognising and respecting them as human beings. There is also a responsibility to minimise any risk of harm to the child or young person where this arises and the process should be as child-friendly as possible to make participation of the young person safe and effective.

The Commission notes the intention to provide a definition broad enough to include all current models of ADR, including family Group Conferencing, external Court-ordered mediation and care circles and potential new models in future. As the Discussion paper states, ADR can be used as an early intervention strategy, a planning tool, as an alternative to a care application to the Children’s Court, or during the course of a care application. The Commission considers the broader focus and openness to new models an opportunity to reframe ADR to take the emphasis away from the legalistic terminology and adversarial connotations of dispute resolution.
The Commission suggests consideration of alternative models such as the Scottish tribunal model, which uses a panel of highly trained lay people to conduct hearings about child protection and juvenile justice matters and make decisions in the best interests of the child. The child and their family are central participants at the Hearing.

The Commission would support moves towards this type of approach because it is clearly focused on the best interests of the child, deals with the practical and contextual issues relating to the child’s needs and behaviours without employing legal rhetoric, directly engages with the child and their family, knits together the required community supports and holds local authorities to account for implementation. Furthermore, it formalises support and monitoring in the community, allows for restorative justice where this is considered to be in the best interests of the child and is generally supported by children, families and the wider community (Pratt, 1993).

The Commission for Children and Young People notes that this model was considered by the Wood Commission which did not favour a model that includes lay, volunteer panels, which Justice Wood’s report suggested “often lack the rigour and experience in decision making that is necessary in such a sensitive and complex area”. The Commission for Children and Young People suggests that the panel model could be reconsidered with the training required calibrated to the level required for the type of matters to be considered.

**PROPOSAL 22:**

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<tr>
<th>Clarify the provisions relating to the special medical treatment and the use of psychotropic medication for children and young persons in OOHC</th>
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<tr>
<td><strong>Question 22 (a):</strong> What safeguards should be in place for the provision of special medical treatment to a child in OOHC?</td>
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<td><strong>Question 22 (b):</strong> In relation to the administering of psychotropic medication to children in OOHC:</td>
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<td>• who should give consent and in what circumstances?</td>
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<tr>
<td>• should a treatment plan or behaviour management plan be required for all medical conditions or only when the medication is being prescribed to control a child behaviour?</td>
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<tr>
<td>• What kinds of alternative safeguards might be implemented in lieu of a legislative requirement for plans?</td>
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The Commission supports the consolidation of provisions relating to the special medical treatment of children and young people into the Act and measures to clarify the issue of consent in this context.

The Commission’s view is that in administering any medication to a child, this be understood by the child as fully as possible and wherever possible consented to by the child. This extends to the provision of special medical treatment to a child in Out Of Home Care. The Commission
acknowledges that there are situations where decisions need to be made on behalf of the child, particularly if consent cannot be obtained. However the Commission emphasises the importance of consultation as a minimum, prior to carrying out special medical treatments. It is suggested that the inclusion of a safeguard in relation to consultation and consent by the child should be included in legislation rather than in any administrative guidelines.

The Commission would support legislation that ensures that an authorised carer can only consent to the child being prescribed psychotropic medication for controlling behaviour where treatment forms part of a behaviour plan, as is currently set out in the Regulations. The Commission believes that the barrier to medical treatment this imposes could be bridged by interim evidence-based guidelines, but that an individual behaviour/treatment plan should be promptly developed, preferably within a month of prescription or placement. The Commission supports extending coverage of plans to all psychotropic medication given to children in OOHC whether it is for a physical condition, psychiatric condition or for controlling behaviour, to reduce stigma and provide clarity, however the content of the plans will need to differ accordingly.

It is the Commission’s view that a behaviour management plan should be prepared by a social worker or psychologist working in close consultation with a medical practitioner or other specialist, so as to cover both medical/pharmacological interventions and more holistic development. In the context of a strong, rigorous, well-informed plan (or as informed by interim guidelines) an authorised carer should be able to consent to the medical care and use of psychotropic medication envisaged by the plan, without further involvement of FaCS officers. This may be necessary where the young person cannot consent on their own behalf, because of age or incapacity. This minimises intervention and places an appropriate level of trust in the authorised carer. In addition, carers should be appropriately trained in relation to giving consent to any medication being administered to a child or young person in their care. There should be a system of regular monitoring and review of the treatment plan or behaviour management plan to accommodate changes in circumstances and to ensure that initial consent is not stretched to cover additional or different treatment options. This will also ensure that side effects are minimised and dosage levels are appropriate.
PROPOSAL 23:  
Minimise the improper use of social media in a child protection context by strengthening provisions in the Care Act to prevent the unlawful publication of names and images of children and young people on social media sites and to prevent the publication of offensive or derogatory material about FACS (CS) workers which are intended to harass.

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

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

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

Social media can be a positive outlet for children and young people but can also expose vulnerable children and young people to additional risk. However, the Commission does not favour strengthening the provisions in the Care Act as this may criminalise vulnerable young people and without necessarily impacting on behaviour. The Care Act already prohibits the publication of the names and identifying details of a child or young person who is the subject of care proceedings. Further education on these provisions would be a more appropriate response. Furthermore, requests can be made to social media sites where information in breach of this provision is found to remove the material and court orders issued where necessary.

Child protection workers are already protected by general harassment and defamation laws should offensive comments reach the level required. The creation of further offences is unlikely to stem this behaviour and may also criminalise vulnerable youth, should it be children and young people publishing the offensive comments or information. In the case of family members publishing offensive comments, the provisions of the criminal law are sufficient to target behaviour that constitutes harassment or defamation.

The Commission is not supportive of the Care Act prohibiting a convicted sexual offender of children from using social media. Laws relating to grooming behaviour are already in existence and social media captures such a wide scope of activities that prohibiting all social media use is unrealistic and not closely targeted to the protection of children. People on the Sex Offender Register are already closely monitored by police and have conditions imposed on them.

The Commission considers that effective education of children and young people and their carers in relation to the risks of social media, particularly in relation to sexual offences, and the enforcement of existing criminal provisions targeting sexual offenders, would be more appropriate than the proposal under consideration.
PROPOSAL 24:
Simplify the current scheme of parental responsibility orders by:

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

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

Question 24:
In what other ways do you think that parental responsibility orders can be improved?

The Commission supports streamlining parental responsibility orders to clarify who holds which aspect of parental responsibility for a child or young person. The Commission also supports making express provision for a self-executing order whereby parental responsibility lies with one person for a period of time and then passes to another at the end of the period. This should provide greater clarity to parties on the scope of their responsibilities which is in the best interests of the child or young person. However, this improvement in administrative simplicity will need to be accompanied by effective monitoring of children’s welfare and wellbeing, including appropriate and regular case planning and review.

PROPOSAL 25:
Allow Supervision Orders to be extended for a further twelve months where the original order has expired and no report has been filed for the Court’s consideration

Question 25:
Should the maximum timeframe for supervision orders be 24 months? Why or why not?

The Commission supports the maximum timeframe for supervision orders being extended from 12 to 24 months, under the proviso that the case is regularly reviewed and the need for supervision is reassessed at least at the 12 month mark, but preferably on a 6 monthly basis as part of case management standards. The risk is that foreknowledge that Supervision Orders can be extended embeds poor practice rather than allowing for extended monitoring to support case plan goals and pathways to restoration.

The difficulties associated with making a court order for extension and problems faced if the initial order lapses are recognised, but this needs to be balanced against the need for rigorous case monitoring and review in the best interests of the child. While there should not be legislative barriers to extension of supervision orders for 24 months or a need to apply to the Court in these circumstances, there should be a clear requirement that regular review and reporting is required to protect the child as part of supporting casework and this requirement should be a casework standard that is upheld, monitored and enforced.
PROPOSAL 26:
That AbSec and CREATE should have access to personal information to permit fulfilment of their objectives

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

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

The Commission agrees that AbSec and CREATE should be prescribed in order to permit the release of otherwise personal information about carers and children to these bodies but only with their consent in line with standard privacy provisions. This will allow better provision of information about the services provided. The extension of these rights to peak carer bodies should be considered on a case by case basis with appropriate consultation and risk assessment. (Consent could be facilitated by including a box for carer and child to tick on an appropriate form on entry to care or in regular mailouts/surveys.)

PROPOSAL 27:
Private health professionals be able to share with other relevant agencies personal and health information about children, young people and families without client consent where this relates to the safety, welfare and wellbeing of a child or young person.

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

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

The Commission agrees that private health professionals should be prescribed bodies to permit them to share with other prescribed bodies personal information and health information about children and young people where this will promote the safety, welfare and wellbeing of a child or young person. Private health professional groups should be included to the extent that public health professionals are included, or where they are likely to have significant exposure to children and young people and/or responsibility for responding to vulnerable children and young people in the course of their work.
Further, the Commission suggests that work be undertaken to determine whether there are other
groups who should be captured by information sharing provisions in order to better protect children.

**PROPOSAL 28:**
That there be a legislative obligation to report on the deaths of children and young people in OOHC

**Question 28:**
Do you think FACS should be required by legislation to table an annual report to Parliament on their involvement with the families of children known to FACS (CS) who have died?

The Commission agrees that FACS should be required to table an annual report to Parliament on their involvement with the families of children known to FACS who have died. This provides for a high level of public accountability and will contribute to a cycle of continuous learning and improving the way that children and young people are protected.

However, we note that reporting on the deaths of children known to FACS is a partial measure of system accountability and only part of the story of interaction between the child protection system and vulnerable families and children. Ideally, there should be a means of bringing the experiences of vulnerable children and families (both positive and negative) into the public domain and reporting transparently on the impact of the child protection system on how they are faring.

**PROPOSAL 29:**
Amend the Care Act to:
(a) clarify that section 122 applies to funded residential providers and for-profit business only (not private citizens)
(b) remove the penalty in section 122 of the Care Act

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

The Commission supports clarification of the requirement to report a child who is living away from home without parental consent, so that it applies to funded residential providers and for-profit business only (not private citizens). The Commission also supports the removal of the penalty units that apply for not reporting a child who is living away from home without parental consent to align with other reporting requirements under the Care Act. The Commission does not foresee any unintended consequences of clarifying these requirements which would impact negatively on the wellbeing of children and young people.