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Policy and Learning Directorate  
Department for Child Protection  
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Dear Fiona Lander,

## CONSULTATION ON PERMANENCY PLANNING

The Aboriginal Legal Service of Western Australia (ALSWA) is writing to you to provide comments and feedback on the Department of Child Protection's draft Permanency Planning policy and revised versions of existing Reunification and Contact policies.

We apologise for the delay in the response and hope that it is useful in the development and finalisation of these important policies.

If you would like to discuss this submission further, please contact our Family Law Unit Managing Solicitor, Ms. Mary Chape of this Office on 9265 6661.

Yours faithfully,



**DENNIS EGGINGTON**  
Chief Executive Officer

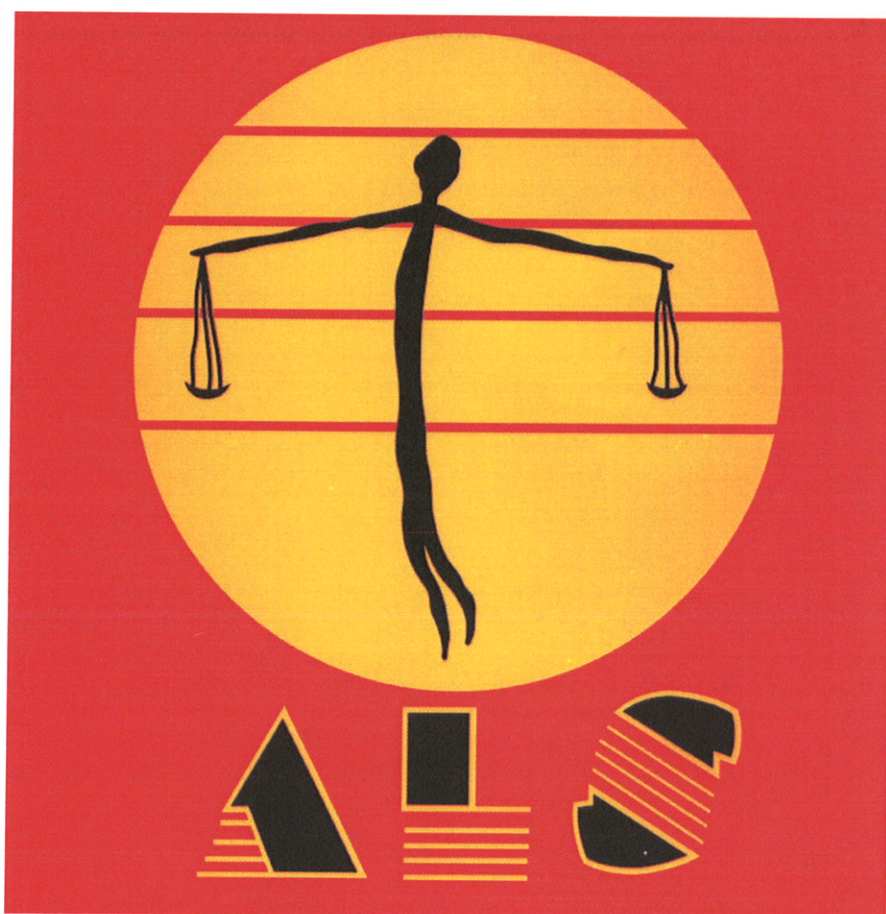


# ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA (INC.)

WA Department for Child Protection

Consultation on Permanency Planning

June 2010



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## 1. Introduction and scope of the ALSWA Response

ALSWA prepared this response at the invitation of the Executive Director of Policy and Learning in the WA Department for Child Protection (DCP). The request for feedback was presented to ALSWA, along with the draft Permanency Planning Policy, draft Reunification Policy and draft Contact Policy on 28 April 2010.

Mary Chape, Managing Solicitor of the Family Law Unit contacted the DCP and sought an extension of time to reply to the consultation.

ALSWA notes that in responding to the draft policies of the DCP, it attempts only to represent the organisation's views as a provider of legal advice and representation to Aboriginal peoples<sup>1</sup> on matters of family law.

## 2. About ALSWA

ALSWA is a community based organisation that was established in 1973. ALSWA aims to empower Aboriginal peoples and advance their interests and aspirations through a comprehensive range of legal and support services throughout WA.

ALSWA aims to:

- deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples throughout WA;
- provide leadership which contributes to participation, empowerment and recognition of Aboriginal peoples as the Indigenous people of Australia;
- ensure that Government and Aboriginal peoples address the underlying issues that contribute to disadvantage on all social indicators, and implement the relevant recommendations arising from the Royal Commission Into Aboriginal Deaths in Custody; and
- create a positive and culturally-matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is a representative body with 16 executive officers<sup>2</sup> elected by Aboriginal peoples from their local regions to speak for them on law and justice issues. ALSWA provides legal

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<sup>1</sup> ALSWA refers to Aboriginal peoples and Torres Strait Islander peoples as Aboriginal peoples in this submission.

<sup>2</sup> There are two Executive Officers for each of the former eight ATSIC regions (Metropolitan, Central Desert Region, Murchison/Gascoyne Region, Southern Region, Pilbara Region, Goldfields Region, West Kimberley Region and East Kimberley Region). They are elected by Aboriginal peoples every three years.

advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, and human rights law. ALSWA also provides support services to prisoners and incarcerated juveniles. Our services are available throughout WA via 17 regional and remote offices and one head office in Perth.

### **3. Comments and Feedback**

ALSWA welcomes the development of the policies and many of the principles included therein. ALSWA concurs that early planning on issues such as contact, reunification and permanent care arrangements is integral to the health and wellbeing of children in care.

ALSWA recalls with disappointment a matter in which DCP had taken minimal action over a period of six years to facilitate reunification between a daughter taken into care under the Child Welfare Act at the age of nine months and her mother. After the lapse of six years, DCP are supporting the Family Court application of the relative carers for the child to remain with them on the basis that it would be too emotionally traumatic for the child to leave her now long-term carers and live with her mother and siblings. This situation is unacceptable and, in the opinion of ALSWA, was wholly avoidable had there been greater efforts to promptly reunify the child with her mother.

While commending the development of the policies, ALSWA notes the importance of effective implementation. Based on the exposure ALSWA has had to some DCP interactions with ALSWA clients and others, ALSWA recommends that further to the development of the policies, DCP staff training is developed to educate staff about the policies and encourage a more supportive attitude of DCP staff towards parents.

The feedback below is limited to substantive practice considerations rather than discussion of the clarity of the purpose or background sections of the policies.

The majority of the comments offered below relate to issues common to all three policies and therefore apply to some extent to the permanent planning, contact and reunification policies.

#### **3.1 Ensuring reunification is not overlooked**

ALSWA applauds the recognition in the policy that "At times, more than one permanent option may need to be considered through the application of parallel planning". ALSWA strongly believes that minimising delays in developing permanent care arrangements is vital. However, while engaging in parallel planning, it is important that DCP prefer safe reunification options wherever possible. Often, alternate care arrangements with relatives or others can provide easier options with greater short-term stability. Consequently, these may be espoused as in the best interests of the child when, in fact, reunification and reconnection with immediate family and parents, after they have taken appropriate steps to address any previous issues, would likely better serve the child's interests.

### 3.2 Timeframes

ALSWA has some concerns about the timeframes proposed in the policies. The current draft policies state that decisions about whether reunification with the child's birth family is a realistic and appropriate possibility must not take longer than 12 months for children under two years of age and not longer than 24 months for all other children and young people.

ALSWA is concerned that these timeframes will be viewed by DCP staff as formulaic deadlines that legitimise delays in the reunification process. ALSWA proposes that the policy be re-worded to stipulate that DCP must act immediately to assess the willingness and potential capacity of parents for reunification purposes with the timeframe solely serving as an outside time limit on the process.

Given the acceptance that positive and supportive parents provide the best outcomes for their children and the right of a child to, as far as possible, know and be cared for by his or her parents,<sup>3</sup> ALSWA believes that the policy should be re-phrased to establish a primary onus on DCP to identify the willingness and capacity of parents for reunification and to assist parents to develop their capacity to care for their children while maintaining contact.

**ALSWA Recommendation 1:** That the policies include the following statement regarding timeframes:

"Following the removal of a child or young person from their family, the DCP will attempt, as a matter of urgency, to:

- ascertain the willingness of the child/ren and parent/s for reunification;
- identify the barriers that prevent such reunification;
- assist parents to meet necessary outcomes to overcome the identified barriers;
- regularly review the advancement of parents in overcoming the barriers and their improved capacity and consequent progression towards reunification; and
- facilitate the reunification of the child or young person with their family as soon as appropriate.

These steps are to occur in the briefest timeframe possible which, at a maximum, is to be a period of not more than 12 months for children under two years of age and 24 months for all other children and young people, unless there are extenuating circumstances."

### 3.3 Development of Care Plans

Further to Recommendation 1, ALSWA proposes that care plans be accompanied by parent proposals / reunification plans that clearly outline the steps that parent(s) must take to enable reunification. ALSWA is developing a common practice of preparing such

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<sup>3</sup> Article 7(1), United Nations Convention on the Rights of the Child, 29 November 1989 GA Res 25 (xliv), UN Doc A/RES/44/25 (1989) 28 ILM 1457. Ratified by Australia in January 1991.

draft proposals for submission to the Children's Court which provide not only a plan for reunification but also a mechanism by which to assess the progress towards reunification. An example of a draft proposal is enclosed as **Appendix A**. Such a proposal details the roles and responsibilities of both the parent(s) and DCP and provides an incentive for parents to tackle the barriers that are preventing reunification by rewarding progress with increased contact with the child(ren).

**ALSWA Recommendation 2:** That DCP engage with parents in developing draft reunification proposals that provide incentives by establishing rewards for improvements and progress towards reunification and that DCP regularly monitor progress against the proposals.

Additionally, ALSWA believes that in the event of reunification plans such as those recommended being developed, reviews of care plans, particularly pertaining to contact and reunification, could become more regular. ALSWA notes that the current practice and draft policies recommend a reactionary review of care plans and parental progress once every six months for children under the age of two years and at least every 12 months for other children. However, if the care plans provide concrete outcomes which parents are to achieve every 4-6 weeks, assessments would be more easily and therefore more regularly completed and the progress towards reunification would avoid unnecessary delays.

### **3.4 Undue weight to carer's views**

ALSWA notes section 90 of the *Children and Community Services Act 2004* (WA) requires the DCP to have regard to any views expressed by the child, parent, carer or any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child in reviewing the care plan of a child in the CEO's care.

ALSWA recognises the importance of all these stakeholders in developing and reviewing care plans for children in the CEO's care. However, ALSWA has some concerns about DCP giving undue weight to the views of carers.

ALSWA accepts that a carer plays a vital role in informing DCP about the effects of contact on a child in care given that they are often the only people who can closely observe a child in the days after contact. However, anecdotal evidence indicates that disproportionate and undue weight is regularly credited by DCP to the views of carers. ALSWA notes from case work that carers can sometimes be oppositional to parents or there may be hostility between carers and parents, particularly in instances of relative carer placements. This results in a loss of objectivity in the carer's assessment of the situation and can result in harsh and unjustifiable outcomes if DCP rely disproportionately on the carer's views.

**ALSWA Recommendation 3:** That the policies be amended to alert DCP staff to the need to properly assess the relationship between the carer and parents and to seek corroborating evidence rather than relying indiscriminately on the views of carers. For example, the policies could include the phrase "in reviewing a child's care plan, regard



should be had, if appropriate and taking into account the nature of any relationship between the carer(s) and parent(s), the views of carer(s) which can be substantiated by information obtained from other sources.”

### **3.5 Support to birth parents**

ALSWA welcomes the recognition on page six of the draft Contact Policy for Children and Young People in the CEO's Care that contact can be a painful experience for birth parents whose children are not in their care. ALSWA applauds the pledge to “work in partnership with parents to help them cope with distress in order to promote positive contact with their child(ren).”

In the experience of ALSWA, the difficulties for parents associated with contact with their child(ren) in the CEO's care are often overlooked by DCP staff. Anecdotal evidence indicates that often emotional reactions of parents are considered by DCP staff to be inappropriate and not in the best interests of the child and consequently result in limited or delayed future contact.

ALSWA is hopeful that DCP will develop a greater commitment to working in partnership with birth parents to assist them to develop their capacity and promote positive contact with their children as indicated in the policy.

**ALSWA Recommendation 4:** That DCP staff training is developed to educate staff about the policy commitments to work collaboratively with birth parents and encourage a more supportive attitude of DCP staff towards parents.

## **4. United Nations Convention on the Rights of the Child (CROC)**

ALSWA acknowledges the reference in the draft Contact Policy for Children and Young People in the CEO's Care to Article 9(3) of CROC and in the draft Reunification Policy for Children and Young People in the CEO's Care to Articles 3 and 12. However, ALSWA believes that there are additional articles of CROC which should be included in the policies to demonstrate the commitment of DCP to upholding the rights of children in care.

In particular, Article 7(1) which provides that a child “...shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents” (emphasis added).

Specifically in relation to Aboriginal children, ALSWA also supports the inclusion of Article 20(3) and Article 30. Article 20(3) provides that when deprived of their family environment and considering the type of care into which a child should be placed, “Due regard shall be paid to the desirability of continuing in a child's upbringing... to the child's ethnic, religious, cultural and linguistic background”. Article 30 states that the child should not be denied the right “...in community with other members of his or her group, to enjoy his or her culture, to profess and practice his or her religion, or to use his or her own language”.

**ALSWA Recommendation 5:** That Articles 7(1), 20(3) and 30 of CROC be included in the policies of DCP.

## 5. Conclusion

ALSWA commends DCP for developing the draft policies provided and engaging in consultation about them.

The policies in their draft form are largely supported however, based on the experience of the Family Law Unit of ALSWA, a few comments and recommendations have been provided to hopefully improve the policies and the practices that surround the management and arrangements for children in the care of the CEO.

Primarily, ALSWA promotes minimising delays in permanency planning and supporting reunification wherever appropriate. To so do, ALSWA recommends the development of achievable reunification plans that elucidate the roles and responsibilities of parents and DCP and provide the reward of increased contact for parents who successfully make progress towards reunification. ALSWA supports less reactionary and more regular reviews of care plans and more balanced consideration of carer's views. Importantly, ALSWA supports DCP's commitment to work with parents and support them in both contact and progressing towards reunification with their child(ren).

## 6. List of ALSWA Recommendations

1. That the policies includes the following statement regarding timeframes:  
'Following the removal of a child or young person from their family, the DCP will attempt, as a matter of urgency, to:
  - ascertain the willingness of the child/ren and parent/s for reunification;
  - identify the barriers that prevent such reunification;
  - assist parents to meet necessary outcomes to overcome the identified barriers;
  - regularly review the advancement of parents in overcoming the barriers and their improved capacity and consequent progression towards reunification; and
  - facilitate the reunification of the child or young person with their family as soon as appropriate.
2. That DCP engage with parents in developing draft reunification proposals that provide incentives by establishing rewards for improvements and progress towards reunification.
3. That the policies be amended to alert DCP staff to the need to properly assess the relationship between the carer and parents and to seek corroborating evidence rather than relying indiscriminately on the views of carers. For example, the policies could include the phrase "in reviewing a child's care plan, regard should be had, if appropriate and taking into account the nature of any relationship between the carer(s) and

parent(s), the views of carer(s) which can be substantiated by information obtained from other sources.”

4. That DCP staff training is developed to educate staff about the policy commitments to work collaboratively with birth parents and encourage a more supportive attitude of DCP staff towards parents.<sup>3</sup>
5. That Articles 7(1), 20(3) and 30 of CROC be included in the policies of DCP.

## 7. Appendix A

### Reunification

The s.143 Proposal for Child states that the overall goal is to reunify **A** (the child) with **B** (his parent), obviously pending the outcome of urine tests and counselling and the **B** continuing to engage with the DCP.

The DCP has outlined its timeframe for reunification in terms of how long supervised contact is required should all things continue to progress well.

The following Reunification plan is offered by **B** to outline the roles and responsibilities of **B** and the DCP and provide a mechanism for assessment of outcomes and progress.

Subject to **B** successfully submitting clean urine and engaging with counselling services as required, the following timeline will be adhered to. Should **B** fail to meet the above obligations, progress to the next stage of contact will be halted.

Weeks 1-8, supervised contact 2-3 times per week

Weeks 9-13 unsupervised contact for 4 hours at a time 2-3 times per week/weekend

Weeks 14-18 unsupervised contact twice during the week after school plus overnight each Friday afternoon to Saturday afternoon

Weeks 19-23 unsupervised contact 3 times during the week, plus every weekend Friday to Sunday

Weeks 24 onwards, **A** to live with **B**.

This resolution can easily be achieved on a Protection order (time limited) for a period of 12 months, pursuant to section 54 of the Act.