MARCH 2013

Submission to the NSW Government on proposals for legislative reform in child protection

www.benevolent.org.au

benevolent SOCIETY

Contact:

Anne Hollonds

Chief Executive Officer

T: 9339 8000

E: anne.hollonds@benevolent.org.au

The Benevolent Society

Level 1, 188 Oxford St

PO Box 171

Paddington NSW 2021

www.benevolent.org.au

Table of Contents

1	Introduction	4
2	About The Benevolent Society	4
3	General comments	4
4	Promoting good parenting	5
5	Providing a safe and stable home for children and young people in care	10
6	Creating a child focused system	16

1 Introduction

Thank you for the opportunity to provide feedback on the discussion paper, *Child protection: Legislative reform, legislative proposals.* Our submission is informed by the latest research as well as our own experience of delivering services for vulnerable children and families in high need communities.

2 About The Benevolent Society

The Benevolent Society is Australia's first charity, operating since 1813. We educate, support and advocate for personal and societal change, to create a fair society where everybody thrives. The Benevolent Society helps the most vulnerable people in society, and supports people from all backgrounds including Aboriginal and Torres Strait Islanders and people from culturally and linguistically diverse communities. We believe that building stronger communities will lead to a fairer Australia.

Snapshot

- The Benevolent Society is a secular non-profit organisation with 870 staff and 720 volunteers who, in 2011/12, helped 61,000 children and adults in New South Wales and Queensland.
- We deliver services from 64 locations with support from local, state and federal government, businesses, community partners, trusts and foundations.
- We support people across the lifespan – delivering services for children and families, older people, women and people with mental illness, and through community development and social leadership programs.
- Our revenue in 2011/12 was $84 million, with 81.4% of our income from government sources.
- The Benevolent Society is a company limited by guarantee with an independent Board.

3 General comments

The discussion paper proposes a range of legislative reforms to:

- promote good parenting
- provide a safe and stable home for children and young people in care
- create a child-focused system.

The Benevolent Society strongly supports these aims. It is important, however, that legislative reform is considered in the context of the entire service system. To achieve change, and in this case reduce the number of children entering out-of-home care, reform must also address such things as service models,

practice and workforce issues. It is also essential to consider child protection services in the context of the whole system of services that impact on children and families. Better outcomes for children and families will only be achieved if the full range of government agencies, community and non-government organisations including health, education, early childhood education and care, housing, and police are included in a whole-of-system response to children's safety, welfare and well-being.

The discussion paper focusses specifically on the tertiary end of the child protection system. However, as the child protection system struggles to cope with demand, it is essential that governments increase investment in services and supports that identify and address problems in families early, rather than wait until they develop into more complex issues and families reach crisis point.

The Benevolent Society believes that one of the best ways to support vulnerable families, is through integrated child and family centres. We recommend that the NSW Government explores the establishment of these centres, particularly in areas of disadvantage. Child and family centres offer families 'soft' entry points and seamless access to a range of universal and targeted services. The centres should be developed in collaboration with the local community and tailored to address their specific needs. Strong partnerships are an important feature as is active outreach to vulnerable families, particularly in areas that have poor transport and service infrastructures.

The Benevolent Society currently runs three of the four Early Years Centres in Queensland, covering nine sites plus mobile outreach. The Centres are one-stop shops supporting the health, wellbeing and safety of families who have young children pre-birth to eight years.

Some of the services we deliver through the multidisciplinary teams in Early Years Centres include:

- Baby and toddler health clinics
- Playgroups and supported playgroups
- Parenting groups – Triple P, The Incredible Years
- Home visiting family support
- Family and individual counselling
- Peer mentoring
- Pathways to education and employment initiatives.

We recommend the NSW Government investigates the benefits of the QLD Early Years Centre model and considers establishing similar centres in NSW.

4 Promoting good parenting

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

Question 1a: 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?

It is unclear from the discussion paper which early intervention programs are being referred to and whether Brighter Futures is included. While parenting capacity orders may be appropriate at the tertiary end of the child protection spectrum, we do not believe that parenting capacity orders are appropriate in an early intervention context.

The success of early intervention programs is dependent upon building trust with families. The voluntary nature of these programs means that parents who participate are motivated to change. Mandating some clients to attend would change the very nature of the programs and jeopardise their effectiveness with this group.

In cases of escalating risk, the first step should be to undertake a comprehensive assessment of the family to identify their needs and link them with appropriate supports.

If the decision is made to mandate attendance, it is important that non-government organisations are provided with the resources and training to ensure they have the skills to successfully engage and partner with non-voluntary clients.

Greater clarity is also needed around who would be responsible for 'policing' the parenting capacity order and how this would be done.

In relation to parenting programs, the discussion paper acknowledges that Level 5 Triple P is not widely available and the workforce would need to be trained and accredited in its delivery. We recommend that training is also provided in the delivery of programs discussed elsewhere in the paper, that is, Parent Child Interaction Therapy, 123 Magic and TIPS, so that all clients can have access to the program most appropriate to their needs, culture and circumstances.

In the United Kingdom, the use of Functional Family Therapy has had some success in reducing out-of-home care placements and should be considered.[i]

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

It is important that courts not only consider the risk factors present in a family, but also examine protective factors that can potentially ameliorate these risks. In doing this courts should look at what other services are already involved with these families and the supports available.

Importantly, there needs to be suitable programs available that can provide the intensive, long term assistance needed. Currently, this is often not the case. In the rural and remote areas in which we work there are often very few specialist services available to address families' needs.

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

The majority of parents who come into contact with early intervention services and the child protection system have multiple and complex problems. The focus must be on building a relationship with these parents and providing wraparound supports to address their needs, rather than on punishing parents for failing to comply with an order.

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 parents to attend intensive parenting courses or therapeutic treatments and demonstrate abstinence from substance misuse so children can stay at home with them 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 2a: Do you think there is a place for PRCs in early intervention programs?

While there may be merit in using parental responsibility contracts with families 'who are on the cusp of having their children or young person placed in OOHC' , we believe PRCs are not appropriate in the context of early intervention programs.

If they are introduced in an early intervention setting, it's important that the contracts are developed *in partnership* with the families and are binding on all parties, that is the service provider, Community Services and the parents. Families can face a range of barriers to accessing services and putting the onus on parents to overcome these may not be helpful.

Greater clarity is needed around who would be responsible for registering the Parent Responsibility Contract with the court. If this is the role of non-government service providers, it is essential that they can access the necessary legal expertise and that the time and cost implications are reflected in funding agreements.

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

As outlined in 1c, we do not believe punishing parents is the best way to promote positive parenting practices. Imposing consequences is likely to be counterproductive and undermine engagement.

Work with these families should instead focus on engagement, relationship building and providing wraparound supports to address their needs; such as drug and alcohol support, mental health and domestic violence services. For many families we work with, access to secure, stable and affordable housing is also increasingly becoming an issue.

If consequences are introduced we would recommend that, in the first instance, a risk assessment be undertaken to establish whether there were valid reasons for breaching the contract and whether the potential risk to the child has actually escalated as a result. If not, there should be no penalties or consequences.

Question 2c: 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?

Within the current legislative context, we support extending the timeframe of Parental Responsibility Contracts from 6 to 12 months and broadening their scope to include unborn children.

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

It is important that PRCs remain voluntary, are binding on all parties and emphasise the importance of partnerships. As well as strengthening the PRC scheme, as outlined in proposals 2b – 2d, the service system must be similarly strengthened to ensure there are wraparound support services to address families' needs.

Proposal 3: Consider the suitability of FGC for care matters to better engage families to resolve child protection concerns.

Question 3a: 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?

The Benevolent Society believes there should be an obligation upon Community Services to refer care matters to family group conferencing (FGC). It is important that parents, children and extended family are then supported to actively participate in the family group conference and decision-making. The use of technology such as video conferencing should also be explored so that all relevant parties can participate in decision-making and that distance isn't a barrier.

The Australian Institute of Family Studies has found that in most Australian jurisdictions conference outcomes are accorded a much lower status than in New Zealand, where the model originated.[ii] In order to

work effectively, it is therefore crucial that family group conferences in NSW reflect the principles underpinning the New Zealand model and that decisions made are binding.

Consideration should also be given to introducing the concept of 'recognised entities' as is the case in Queensland. Recognised Entities are individuals or organisations who provide culturally appropriate advice and support to Aboriginal and Torres Strait Islander families regarding child protection matters throughout the FGC process.

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

The Benevolent Society supports parties being referred to family group conferencing in place of, but not in addition to, a dispute resolution conference. The family group conference model, if done well, is more empowering as it encourages all family members to participate in the decision-making process.

For the model to be successful, it is essential that family group conferences are properly resourced and use highly skilled facilitators. It is also essential that a workforce strategy is developed to capture and address workforce issues across the sector, such as training needs.

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

Most matters would benefit from family group conferencing if it is done well. Family group conferences should bring together family, extended family, service providers and other support people/advocates in a forum that allows families to participate in planning for the protection of their children. It is important that family group conferences are culturally inclusive so that all parties can actively participate in decision-making. In Queensland, for example, Recognised Entities have a crucial role to play in providing culturally appropriate advice and support to Aboriginal and Torres Strait Islander families regarding child protection matters.

Throughout the process, it is important that the best interests of the child remain paramount and that children are not put in a position that results in further trauma. For example it may not be appropriate to use FGCs in cases of child sexual abuse or where there is family violence.

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?

We do not support enforcing prohibition orders under the Care Act as punishing or criminalising parents is not constructive nor is it appropriate in a civil court. Again, we strongly recommend that the service system

is structured in such a way that there is far greater emphasis on providing supports to families early rather than waiting until there is a child protection issue.

Further research about whether punitive approaches are effective is needed before such a proposal is considered.

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 Benevolent Society believes that child abuse and neglect offences should be prosecuted under the Crimes Act. We are concerned that the use of terms such as 'offences' and 'sentencing' in the Children's Court, which is a civil court, will result in the criminalisation of parents.

5 Providing a safe and stable home for children and young people in care

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/adoption 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?

In relation to the proposed hierarchy, we believe flexibility is needed so that the placement options considered reflect the best interests of the child or young person rather than following a sequential list. Keeping the child at the centre of decision making is key.

We do not support the repeal of Sole Parental Responsibility Orders, section 149 of the Care Act. If the concern is that it section 149 is being underutilised, the reasons for this should first be explored and addressed.

While we support open adoptions, in appropriate circumstances and with proper resourcing, sole parental responsibility orders should remain an option for carers who do not wish to adopt and/or do not have the financial means to do so. It is important that the best interests of the child remain paramount and the promotion of adoption is not undertaken as a cost-saving measure.

In relation to long-term guardianship orders and adoption, it is essential that ongoing financial and practical supports are available so that children and young people have access to opportunities that promote their social and emotional development as well as services to address the often complex needs.

If the proposed hierarchy is adopted, the elevation of adoption means that non-government out-of-home care service providers will increasingly play a role in adoption. To do so they must be trained and resourced accordingly, including being able to access legal advice.

We are concerned that these changes may result in NGO caseworkers being required to spend considerable time managing court work rather than working with families to create change.

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?

We agree that permanency planning is very important as is an efficient and effective court system. However we are concerned about putting the timeframes proposed into legislation. While we support working towards these timeframes, there needs to be flexibility in the system to respond to the differing needs of families. Restoration is a very complex process and , many families require long term, intensive support before children can safely be restored. It would be very difficult to make a decision about restoration within these timeframes. We recommend that instead these timeframes be incorporated into regulations and/or practice guidelines.

The timeframes would be particularly challenging for Culturally and Linguistically Diverse (CALD) and refugee families where there are often unique risk factors and challenges, including being unfamiliar with statutory role of the child protection system and accepted parenting practices in Australia.

Finally, clarification is needed around when the time period begins, the court's role, the court's ability to make timely decisions and the framework within which the decisions are made.

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 8a: Is 'self-regulation' of supported OOHC a positive step forward? Can you see any problems with this approach?

We support a self-regulation model.

In relation to the two year cap, there needs to some flexibility around the timeframe for cases where, for example, a parent may be in custody for over two years. We are also concerned that the proposed change will result in financial support ceasing after two years. In relation to grandparent carers, in particular, this could potentially lead to considerable financial hardship which will ultimately impact on the child. Greater clarity is needed around how this legislative reform will be reflected in practice.

Throughout the discussion paper Community Services is referred to in relation to out-of-home care. Given the current transition of out-of-home care to non-government service providers, it is important that the role of the NGO sector is acknowledged and understood.

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

It is essential that the model includes a thorough assessment of the needs of children and young people and that supports are identified to address these needs. It is crucial that the assessment also captures::

- carers' capacity to care for the children with less support
- carers' ability to ask for help
- carers' ability to care, in the longer term, should that be required
- carers' linkages to informal supports and assistance
- carers' ability to aid in the contact and transition back to the family of origin.

As part of the model, access to supports should be monitored – as should indicators of children's wellbeing – to ensure the placement is working well.

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

We support the introduction of long-term guardianship orders and the circumstances in which they apply. Relative and kinship carers must, however, still be able to access financial and practical supports to address the needs of children and young people in their care.

We do not, however, agree with section 149 of the Care Act being repealed. Long term sole parental responsibility orders should remain as a viable alternative to adoption. As discussed previously, flexibility is needed so that the most appropriate placement for the child can be pursued. Also, sole parental responsibility orders do not sever legal ties with the family which is often what children want and need, particularly older children.

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

While we are very supportive of streamlining the assessment process and dual authorisation may facilitate concurrent planning, it is important to recognise that foster carers and adoptive parents often have very different motivations and expectations.

There is also the potential for some foster carers who wish to adopt to be resistant to a child's restoration with their birth family.

It is unclear at what point a decision would be made that there is a significant risk that restoration is not feasible and placement with a concurrent carer made.

Question 10b: Are there other options that could be implemented to avoid the occurrence of multiple placements?

A more efficient and systematic approach to assessing carer suitability and readiness for committed and sensitive care-giving relationships would decrease the number of placement disruptions. It is important that, as part of the recruitment process, potential carers are made aware of the complexity of child trauma and the devastating affect it can have on children. They need to be realistic about the issues children in their care may be dealing with and the impact this is likely to have on their behaviour. Too often, foster carers underestimate the challenges of being a carer and the time and considerable patience needed to turns things around for these children.

There should also be a greater focus on targeting groups of potential carers that, through life experience and professional qualifications, already have an understanding of child development, children's needs and the impact of trauma. These could include teachers, social workers, nurses and psychologists.

Children's participation in decisions that affect their long-term welfare and wellbeing is crucial. A child's willingness to join a new family and the degree to which their wishes are heard and acted upon will affect placement outcomes and the risk of disruption.

It is important to recognise, however, that the best way to avoid multiple placements is for children not to be removed from the home in the first place. Greater resourcing of family preservation services is essential so that they are able to work intensively and long term, if needed, with families. More consideration should also be given to piloting alternative care arrangements, such as shared care, where parents and families are supported – practically, financially and emotionally – to care safely for their children in the family home. Current models are not always meeting children's needs, nor demand.

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?

We are concerned that giving jurisdiction for adoption to the Children's Court will create a two-tiered adoption process. If this proposal is adopted, it is essential that magistrates and other legal professionals receive appropriate education in relation to the Adoption Act to ensure consistence practice throughout the State.

It would be preferable for adoption to remain a Supreme Court matter. However issues around long timeframes and the costs involved must be addressed.

Proposal 12: Amend the Adoption Act to better recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant

Question 12a: What other elements should be fast-tracked for OOHC adoptive applicants? Are there particular requirements and restrictions on adoption that should be relaxed for OOHC adoptions?

The Benevolent Society believes that the assessment and authorisation of carers as a prospective adoptive applicant should be streamlined. Sound, consistent principles of adoption practices need to be developed that allow efficiencies in the system.

Greater clarity is needed, however, around what 'fast-tracked' would mean in practice.

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

OOHC adoptions are generally more complex due to the family history and the high likelihood that the child or young person will require ongoing additional supports. For some young children this may manifest later on in the form or physical and mental health issues or developmental delays. This should be reflected in the availability of ongoing support and resources to OOHC adoptions many years after the adoption, if needed.[iii]

In amending the Adoptions Act it is important that the Government remains mindful of past adoption practices and consult extensively, including with different cultural groups, to minimise unintended consequences.

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?

We support merging the NSW Standards for Statutory OOHC and NSW Adoption Standards to remove any duplication. It is important that this does not, however, negatively affect on the quality of either program.

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

We believe that birth parents should be involved in planning for adoption, through the use of alternative dispute resolution and highly skilled mediators. The process should also include identifying ways in which parents can continue to be involved in their children's lives post adoption.

With the transfer of out-of-home care to the non-government sector, NGOs will increasingly play a key role in the planning process. To ensure that NGOs are able to participate actively, appropriate training and resourcing will be important.

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 interest 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 Benevolent Society does not have the necessary expertise to answer this question however believes great caution is needed before deciding on additional grounds for dispensing with parental consent.

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?

We do not support limiting a parent's right to be advised of an adoption.

As it is currently worded, proposal (b) could apply to most children in out-of-home care. We are concerned that limiting a parent's right to be advised of an adoption, even where restoration is unlikely, runs counter to open adoption processes and is contrary to the stated objects and principles of the Adoptions Act, in particular Section 7(g) to encourage openness in adoption.[iii]

6 Creating a child-focused system

Proposal 17: Where there is no possibility of restoration, contact arrangements are to be made through case planning

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

The Benevolent Society supports this proposal.

It is important that children's wishes are taken into account when decisions are made about contact with their birth parents. As the UN Convention on the Rights of the Child (Article 12) states, children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.

It is also important that contact arrangements are sufficiently flexible to respond to the changing needs of the child. Ultimately, it is the quality of the contact, rather than the frequency and duration which is crucial to repairing or maintaining the relationship between the child and their parents.

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?

Decision-making about contact between children in long-term care and their birth parents is complex. The literature clearly recommends that decisions about contact be made on a case-by-case basis and reflect the unique features of the child and their overall circumstances (Lucey, et al., 2003).

A best practice framework should be developed in consultation with key stakeholders including Community Services, non-government agencies, CREATE Foundation, Children's Commissioner and the Office of the Children's Guardian.

Key elements of a common framework for determining contact should address the following:

- What is the purpose of contact? Is the goal reunification or not?
- How strong is the attachment/relationship between children and their birth parents?
- Are there risks to the safety of the child?
- Are children's wishes for and reactions to contact being taken into account?
- How old and at what developmental stage is the child?
- How supportive are the foster carers?
- How have the birth parents reacted to contact arrangements?
- Are there changes in the relationships and situations since last assessed?
- Will contact visits involve significant travelling and disruptions to the child's routines?
- Has contact with fathers and other family members been considered?
- Has indirect contact been considered?
- Where are the contact visits to take place? [iv]

Where reunification is a viable option, regular and frequent contact is important.

Proposal 19: Improve the resolution of contact disputes by:

a. requiring ADR be used to settle contact disputes
b. where ADR is unsuccessful, contact disputes will be resolved in the Children's Court or the ADT or the Family Court

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

The Benevolent Society supports model 1, that is, in circumstances where contact disputes are not resolved through Alternative Dispute Resolution (ADR), the Children's Court is the most appropriate forum for resolution.

Question 19b: 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?

There should be no set time periods. Rather, time periods should be flexible, in line with case management, so that they can be responsive to the child's changing needs.

Question 19c: 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?**

If this model is adopted in preference to model 1, then yes we agree with what is being proposed.

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?

Mechanisms for dealing with contact arrangements that are not complied with, should be developed as part of the common framework (proposal 18).

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 Benevolent Society supports this proposal. It is important, however, that the framework draws on the latest evidence around how ADR is working successfully in other jurisdictions.

Proposal 22: Clarify and consolidate in the legislation provisions relating to the regulation of special medical treatment for children and young people.

Question 22a: What additional safeguards, if any, should be in place for the provision of special medical treatment to a child in OOHC? Should these be required through legislation or through administrative arrangements such as guidelines?

As per the current legislation, the Guardianship Tribunal is a suitable safeguard for the provision of special medical treatment. We see no need for changing the Guardianship Tribunal's legislative role in this area. Any additional safeguards for a child in OOHC should be set in policy and guidelines.

We recommend that an ethical decision-making framework, including relevant guidelines, be developed in order to inform such important decisions. An ethics committee or panel may be useful for approvals and could also review and monitor implementation.[iii]

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 Benevolent Society supports streamlining parental responsibility orders so that there is greater clarity around which aspects of legal responsibility have been allocated to whom. We also support introducing a self executing order whereby parental responsibility passes to another at the end of a set period.

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 Benevolent Society does not support the proposal to extend supervision orders.

The Children and Young Persons (Care and Protection) Act 1998; section 82 (2a) states that a report must be provided to the Children's Court within 12 months and this timeframe should remain.

Families could potentially be penalised as a result of Community Services not fulfilling their obligations to work with the families and file reports in the set timeframes. Extending supervision for a further 12 months, where no new concerns have been raised, is likely to be very stressful for families.

Proposal 26: That AbSec and CREATE should have access to personal information to permit fulfilment of their objectives

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

We support this proposal, in principle. However greater clarity is needed around what information would be released. We would also recommend that providing personal information is subject to permission being given by the young person.

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 27a: 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?

The Benevolent Society supports private health professionals sharing information that promotes the safety, welfare and wellbeing of children and young people. This will assist in getting a comprehensive view of all the issues affecting children and young people, so that appropriate supports can be put in place.

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

All private health professional groups that have a direct role in promoting the safety, welfare and wellbeing of children and young people should be prescribed in this way.

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?

This proposal appears to duplicate reports already provided by the NSW Ombudsman's Office.

[i] Allen, G. (2011), *Early intervention: the next steps.*
[ii] Australian Institute of Family Studies, Child Abuse Prevention Issues No. 27 2008, *Family group conferencing in Australia 15 years on.*
[iii] ACWA submission
[iv] Community Services. (2005), *Is all contact good contact?*