



A Coalition of Youth, Legal and Welfare Workers

Legal Services, Legislative Review Unit
Department of Family and Community Services, Community Services
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Dear Sir or Madam,

Thank you for the opportunity to comment on the review of the *Children and Young Persons (Care and Protection) Regulation 2000 (Care Regulation)*.

Background to the Youth Justice Coalition

The Youth Justice Coalition (YJC) is a network of youth workers, children's lawyers, policy workers and academics working to promote the rights of children and young people in NSW. The YJC primarily advocates in the area of juvenile justice.

Background to this submission

Broadly, in response to the review options, the YJC is of the view that there is a need for the Care Regulation, and it should be remade with amendments to reflect current legislative obligations, standards and practices.

This submission focuses on a narrow aspect of the review only, that is Schedules 2 and 3 (the Code of Conduct for Authorised Carers and the Code of Conduct for Residential Units), specifically the criminalisation of children in out of home care (referred to at page 60 of the consultation paper).

Juvenile justice and children in out of home care

Children and young people who reside in their family home may exhibit problematic behaviour, causing damage or threatening harm, however their difficult behaviour is generally dealt with within the family. By contrast, when a child is in care, staff or carers may call the police to help to manage their behaviour, especially where a behaviour management plan has not been successful.

As a result, it is well recognised that many children in care build up extensive criminal histories with offences relating to their behaviour in care, including their interactions with workers. This issue is of significant concern to many members of the YJC, including youth workers and children's solicitors.

The relationship between the child protection system and entry into the juvenile justice is well established (Wood Report (2008)¹, Noetic Report (2010)²). Children in out of home care generally have highly complex needs, and carers have a very demanding and challenging role to play.

The most common charge laid on a child in care is that of malicious damage, generally inflicted on property belonging to the care home where the young person is residing.³ A recently cited example is that of a young female who put several small holes in the wall of her room after an argument with her carer. Police were called in order to "teach her a lesson". She was subsequently charged with malicious damage.⁴

Another common charge is that of common assault resulting from conflict with another resident or a carer. Associated Apprehended Domestic Violence Orders (**ADVOs**) taken out by workers or other residents are particularly problematic as the young person is then at risk of breaching the order for minor misconduct, such as yelling or swearing (subject to the conditions).

In our experience, assault or property damage matters that have taken place in the care context often result in welfare-type bail conditions imposed on the young person by police or the court to "manage their behaviour". An example of this is the condition "to obey reasonable directions of carers". The young person is then in an extremely precarious position as any possible conflict with their carer puts them at risk of breaching their bail.

This overlap between care and juvenile justice is particularly concerning given the increasing number of children and young people in care. The Noetic Report noted that in 2006 there were 9,896 children in care across Australia, and by 2008 that number had risen to 13,566.⁵

The NSW Standards for Statutory Out of Home Care (which outline the minimum requirements for designated agencies to be accredited by the Office of the Children's Guardian) discuss behaviour support and management plans at Standard 14. The Standards however, in the YJC's opinion, do not provide practical advice on diverting low risk behaviour, or guidance as to when police should become involved.

1 Wood, The Hon James (2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW*

2 Peter Murphy & Anthony McGinness, *Strategic Review of the New South Wales Government into the Juvenile Justice System: Report for the Minister of Juvenile Justice, Noetic Solutions Ltd, April 2010*

3 McFarlane, K., 'From Care to Custody: Young Women in Out-of-Home Care in the Criminal Justice System', *Current Issues in Criminal Justice*, Volume 22 Number 2, November 2010, at p347

4 Note 3, at p348

5 Note 2, para 307

Recommendation

The YJC supports the suggestion that the Code of Conduct provide alternative ways of responding to children and young people with challenging behaviour, other than reporting them to police, to address the high rates of children in out of home care moving into the criminal justice system.

The Code of Conduct should address issues such as:

- When police should become involved in behaviour management; and
- When ADVOs should be applied for.

Adequate training and support for carers is also essential.

The YJC would welcome the opportunity to be involved in any consultation about how the Code of Conduct could achieve these aims.

If you have any questions in relation to this submission, please contact the YJC on 9559 2899, or at ylc@clc.net.au.

Sincerely



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