



**Submission:**

**Consultation on Adoption Reform:  
dispensing with parental consent**

**March 2019**

# About ACTCOSS

ACTCOSS acknowledges Canberra has been built on the land of the Ngunnawal people. We pay respects to their Elders and recognise the strength and resilience of Aboriginal and Torres Strait Islander peoples. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) represents not-for-profit community organisations and advocates for social justice in the ACT.

ACTCOSS is a member of the nationwide COSS Network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' vision is for Canberra to be a just, safe and sustainable community in which everyone has the opportunity for self-determination and a fair share of resources and services.

The membership of the Council includes the majority of community-based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

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## Acronyms

ACT	Australian Capital Territory
ACTCOSS	ACT Council of Social Service Inc.
ADACAS	ACT Disability, Aged and Carer Advocacy Service
AMC	Alexander Maconochie Centre
MACW	Ministerial Advisory Council on Women
NSW	New South Wales
OOHC	out-of-home care
WWDACT	Women with Disabilities ACT

## Introduction

The ACT Council of Social Service (ACTCOSS) has made a submission on the Discussion Paper *Consultation on Adoption Reform: dispensing with parental consent* because this issue is of significant concern to ACTCOSS and our members. As well as being of particular interest to our members working with children, young people and families impacted by out-of-home care (OOHC) policies, procedures and services, ACTCOSS engages with this issue because it is relevant across many key population groups, particularly Aboriginal and/or Torres Strait Islander people, people with a disability, and people who are serving custodial sentences in the criminal justice system.

ACTCOSS approaches this submission, and the issue of adoption reform, as an extension of our advocacy on the need to improve resourcing for parent support programs in the ACT and to address structural reasons for the overrepresentation of some families and groups in the OOHC system. While acknowledging issues for adoptive parents, we cannot support reform in favour of dispensing with parental consent at this time.

ACTCOSS notes that adoption reform is not the primary priority for reform or government action from the perspective of services supporting children and young people in OOHC. Instead, the ACTCOSS members who have knowledge and experience relevant to OOHC believe attention needs to be given first to various other policy settings, procedures and service provision issues that would enhance permanency and stability for children and young people at risk of entering and/or in the OOHC system in the ACT. This submission lists some of these issues in greater detail and concludes that in general there is a greater need for early supports in OOHC before adoption reform is considered.

This submission is based on feedback from:

- ACT Disability, Aged and Carer Advocacy Service (ADACAS)
- ACT Ministerial Advisory Council on Women (MACW)
- ACT Office of Disability
- ACT Women's Health Service
- Advocacy for Inclusion
- CARE Financial Counselling
- CREATE Foundation ACT
- Domestic Violence Crisis Service
- Families ACT
- Gugan Gulwan Youth Aboriginal Corporation
- Karinya House for Mothers and Babies
- Marymead ACT
- Our Booris Our Way Steering Committee
- Parentline ACT
- Red Cross
- SHINE for Kids
- Tjillari Justice Aboriginal Corporation

- Women with Disabilities ACT (WWDACT)
- Women's Centre for Health Matters (WCHM)
- Youth Coalition of the ACT.

We recommend the Working Group consult with these services and organisations in the next phase of its consultation.

## Proposed model

ACTCOSS supports the aim of increasing permanency and stability for children and young people in the OOHC system. However, ACTCOSS has heard from services that there are more immediate concerns in the ACT to enhance permanency and stability. The sector does not think focusing on dispensing with parental consent is urgent. The order of reform is important in this area – weakening parental consent without addressing key issues in placement entry and stability could have unintended and even harmful consequences.

Current matters of concern are:

- interstate adoption – allowing carers to adopt children who are on orders in a different jurisdiction, for example, carers in the ACT who are caring for a child under a NSW order
- support for carers, particularly kinship carers – providing more support practitioners to act as points of contact for kinship carers
- sibling co-placement – ensuring siblings are placed together when they enter the out-of-home care system.

CREATE's 2013 report card *Experiencing Out-Of-Home Care in Australia: The Views of Children and Young People*, CREATE mentions a series of actions that can increase placement stability:

- services to foster children
- placement-matching
- recruitment of foster parents
- services and support to foster parents
- training; consultation and collaboration
- collaborative team approaches
- involvement of biological parents
- prevention.<sup>1</sup>

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1 JM Blakey et al., 'A review of how states are addressing placement stability', *Children and Youth Services Review*, vol. 34, 2012, pp.369-378., in J McDowell, *Experiencing Out-Of-Home Care in Australia: The Views of Children and Young People: The views of children and young people*, Sydney, 2013, CREATE, p. 83.

According to one service working with ACT children and young people in OOHC, their biggest barrier to permanency is that children cannot be adopted cross-border. ACTCOSS was given the example of one child in care who has severe health issues, so the family live near vital health services. To go through with adoption, his carers are considering moving interstate, but this can cause instability; it would cut ties with the current health services, school and friends.

These examples of pressing permanency issues in the ACT lead us to conclude that a focus on adoption reform is misdirected. Currently, more pressing and appropriate priorities are for better care and support for children, young people and families in the ACT.

## Early support

In addition to noting other supportive factors to placement stability, community organisations have continued to advocate for more resources for early support. As we noted in our 2018 submission to the ACT Early Childhood Strategy:

more work must be done to facilitate greater collaboration between early childhood education and care facilities and community-based support and assistance services... Improved relationships and communication between the sectors [establishes] a better opportunity for prevention and early-intervention.<sup>2</sup>

This should include consistent, high quality training to people in the education and health sectors to increase workers' skills to identify families at risk of coming to the attention of care and protection services and provide warm referrals to appropriate services.

ACTCOSS members have also noted that during pre- and post-natal stages, the ACT Government should do much more to support families. Responses to the recent Inquiry into Maternity Services in the ACT reflect this, as stated by MACW and WWDACT. We note this section of the MACW's submission:

As experienced by a medical professional from the MACW board, a high-risk patient with diagnosed schizophrenia was managed through the PEP (Parenting Enhancement Program) team up until the birth of her baby. There is currently no official handover which occurs between the trauma team and the hospital prior to or up until the birth. The patient experienced a major psychosis whilst still on the ward after birthing her baby. Continuity in care may have flagged the patient as high risk for a potential psychosis resulting in preventative practices being initiated. This could have further prevented the patient's distrust in the system and unfortunate circumstances that led to the removal of her baby.<sup>3</sup>

There is major work to be done to offer effective support for families and carers in the ACT. This includes improving integration of services across the life

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2 ACTCOSS, *Submission to the ACT Early Childhood Strategy*, ACTCOSS, Canberra, 2018, p.19.

3 ACT Ministerial Advisory Council on Women, *Inquiry into Maternity Services in the ACT*, ACT Ministerial Advisory Council on Women, Canberra, 2019, p.2.

course and communication between and within directorates. There are extensive gaps in providing early support to families.

Services we spoke with repeatedly noted that there is simply not enough resourcing for family unification, and this must be looked at before the last-resort option of adoption without parental consent.

## Sequencing of reform

This Review does not align with these early support asks. Instead, it explores change at the very final stage, shifting focus from the crucial steps we can take to respond to families in a way that respects their human rights and lessens the need to dispense with parental consent.

As one service noted to ACTCOSS:

Loosening the ability to dispense with parental consent is a slippery slope for a jurisdiction (the ACT) that hasn't done its duty of providing care to the appropriate level.

Another service we consulted with felt that this Review shows a lack of government investment in support for carers, parents and families. They noted that:

Adoption is an 'easy solution' as it takes the child from the OOHC system, which clears the government of its need to resource family reunification and care.

We also note that adoption is not the answer for every child, particularly for Aboriginal and/or Torres Strait Islander children. ACTCOSS echoes concerns of Aboriginal advocates and services that dispensing with parental consent could be very damaging. It mirrors the stolen generations and is out of step with the Aboriginal Child Placement Principles.

ACTCOSS seeks clarification on how the Working Group has thought about the recent changes to adoption in NSW. These changes are concerning due to the possibility that a child or young person under an ACT order could have a sibling under an NSW order. The Working Group could not provide ACTCOSS with information on how the recent NSW legislation has been considered in relation to the ACT.

## Families who will be disproportionately impacted by adoption reform

ACTCOSS notes that there are families who will experience greater harm from adoption reform related to dispensing with consent, because some population groups in the ACT are overrepresented in the OOHC system.

Our commentary focuses on families who have high and high-risk contact with the OOHC system, often due to a lack of support. **Further detail is at**



**Attachment A.** We outline these examples to highlight that the Working Group should specifically consider these people in its research, planning, setting criteria for assessing the impacts of changes to consent and during the next phase of consultations. The list of population groups is not exhaustive, but ACTCOSS has identified them as having specific needs, and being overrepresented in the OOHC system.

We have provided specific commentary below about Aboriginal and/or Torres Strait Islander children and young people, children and young people of disabled people and children and young people whose parents are serving custodial sentences.

ACTCOSS recommends the Working Group also considers the views and experiences of families affected by domestic and family violence, families experiencing poverty, and more generally, families currently in contact with the OOHC system.

We note that families and individuals do not always have the time or the capacity to respond to formal consultation processes, therefore the Working Group should take more proactive steps to engage with families. As a first step, we suggest contacting services working with clients in the ACT who can support and facilitate lived experience voices being incorporated into consultations – with appropriate timeframes and consultation processes that do not overburden services and resources to support people with lived experience to have their say in a safe way.

## **Aboriginal and/or Torres Strait Islander children and young people**

Aboriginal and/or Torres Strait Islander children and young people are up to twelve times more likely than non-Indigenous children and young people to be in OOHC.

It is essential that the Working Group consider the specific needs of Aboriginal and/or Torres Strait Islander families within this context. There are a range of issues including:

- the history and intergenerational trauma associated with previous child removal policies and practices
- a lack of adequate support for kinship carers
- barriers to interstate adoption
- the unresolved need for work to incorporate culturally appropriate and ethical practices in relation to adoption of Aboriginal and/or Torres Strait Islander children
- the lack of clarity on how Aboriginal and/or Torres Strait Islander children and young people will be considered in this reform process.

ACTCOSS seeks immediate clarification on how Aboriginal and/or Torres Strait Islander children and young people will be considered in this reform process. As per the Discussion Paper, the Working Group informed us that Aboriginal and/or Torres Strait Islander children and young people will 'generally' not be considered within the dispensing with consent process. This language is not prescriptive enough, and leaves room for individual discretion at the possible detriment of Aboriginal and/or Torres Strait Islander children, young people and families.

**It is vitally important that Aboriginal and/or Torres Strait Islander children should be formally excluded from any loosening of parental consent within the adoption process.**

## Children and young people with an incarcerated parent/s

Children and young people with parent/s serving custodial sentences are overrepresented in the OOHC system. We urge the Working Group to consult with services working with children with incarcerated parents, and services working with women in the Alexander Maconochie Centre (AMC).

ACTCOSS and others in the sector have repeatedly stated that programs for women in the AMC, and upon release, are severely lacking to the point of compromising their ability to live safely outside prison.

ACTCOSS works closely with organisations offering support in the AMC, and we hear that an important issue for many of the women is regaining custody of their children. However, there are few channels to facilitate or support this.

As SHINE for Kids note:

There needs to be a greater emphasis on, and investment in, early intervention. Programs aimed at keeping families together can be very cost effective both in the short term and long term.<sup>4</sup>

## Children and young people with parents with disabilities

Children and young people with parents with disabilities are likely to encounter the OOHC system – particularly mothers with intellectual disabilities and/or mental illness. This is often because child protection services are likely to target these families due to ableist perceptions that children should have able bodied parents with able bodies and no cognitive or psycho-social disability, because disabled parents are inadequate carers.

Attachment A includes compelling accounts of 'hypervigilance' about parents with disabilities and the pathway to inappropriate or problematic child removals.

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<sup>4</sup> SHINE for Kids, *NSW Adoption Laws – Position Statement*, SHINE for Kids, 2018, accessed 19 February 2019, <<https://shineforkids.org.au/nsw-adoption-laws-position-statement/>>.

ACTCOSS believes that the Working Group should not pursue adoption reform in favour of expanding mechanisms to dispense with parental consent until we can be sure that families are not being broken up due to a lack of adequate resourcing to fix the inadequacies and failures of parent support services and/or the OOHC system.

## Whole of government dialogue and coherence

It is unclear how the Adoption Reform proposals have considered or consulted with concurrent processes and working groups considering the needs of children, young people and families in contact with the OOHC system in the ACT.

ACTCOSS has found that neither the Our Booris Our Way Steering Committee, nor the ACT Office for Disability have been consulted. In fact, when we made contact with them, neither were aware of this consultation.

This has raised concerns that the Adoption Reform work is being performed in isolation, and we stress that the Working Group must do more to engage and consult with the Our Booris Our Way Steering Committee and the ACT Office for Disability.

## Our Booris Our Way

Our Booris Our Way is a review of the 350 Aboriginal and/or Torres Strait Islander children and young people currently engaged with ACT child protection services, including reviewing systemic and placement issues. ACTCOSS is highly concerned that the Our Booris Our Way Steering Committee has not been consulted in this process, and echo the concerns of the sector that this is a significant oversight.

Further – it is unclear if the Working Group has considered the Steering Committee’s work at all, as we cannot see evidence that the Our Booris Our Way process aligns with or has been considered by the Working Group.

### **We seek clarification on how the Our Booris Our Way process aligns with the Adoption Reform proposals being considered.**

It is important the Working Group consider the recommendations that have already been put forth by the Steering Committee, and the examples and cases that are referenced. As one service noted, opening the possibility of making it easier to dispensing with parental consent ‘smacks of the reason we needed to have Booris Our Way’.

We draw your attention to the following recommendation made in August and December 2018 and urge the Working Group to consult with the Our Booris Our Way Steering Committee, and closely consider all the recommendations they have so far put forth:

### Our Booris Our Way Recommendation 3: Revision of Policy and Practice

That Child and Youth Protection Services (CYPS) immediately commence revision of policy and practices to ensure that the Aboriginal and Torres Strait Islanders Child Placement Principle are explicitly designed into policy and practice. Children must be valued in a process that holds cultural rights as central to their identity and safety. We believe that this will hold children as central and valued within the child protection process and demonstrate closer alignment to our cultural rights as described in the ACT Human Rights Act 2004 [Section 27 (2)]. We note that Minister Stephen-Smith has already signed up to the Family Matters commitment which includes the application and implementation of Aboriginal and Torres Strait Islander Child Placement Principle (September 2017).<sup>5</sup>

## Disability Justice Strategy

The Disability Justice Strategy is located in the ACT Government Office for Disability. It was established to investigate justice systems changes that will ensure people with disabilities are treated equally and have their rights upheld in a whole of ACT Government context. Given the previously outlined ways that parents with disabilities are targeted by the OOHC system, we encourage the Working Group to engage with the Office for Disability to ensure the adoption reform aligns with the Disability Justice Strategy.

We also draw the Working Group's attention to the *What we heard* report, based on several extensive consultations hosted by the Office for Disability. The report highlights key insights from the community on necessary changes to the justice system, including:

- The justice system needs to change how it treats people with disability;
- Early provision of supports and services would prevent the need for contact with the justice system
- Tools are needed to allow the justice system to hear and respond to people with disability.<sup>6</sup>

## Consultation process

Finally, ACTCOSS notes that the consultation process the Working Group has undertaken is disappointing and has not enabled comprehensive engagement from the sector and people with lived experience of the OOHC system. We recommend the following actions to strengthen the consultation process.

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5 Our Booris Our Way Steering Committee, *Interim Report*, August 2018, Canberra, Our Booris Our Way Steering Committee, p. 3.

6 ACT Government Office for Disability, *Disability Justice Strategy: Report on What We Heard*, n.d., p.2, accessed 20 February 2019, <[https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/7915/4354/6653/What\\_We\\_Heard\\_report\\_Disability\\_Justice\\_Strategy.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/7915/4354/6653/What_We_Heard_report_Disability_Justice_Strategy.pdf)>

## Lived experience

There is no evidence that the Working Group has consulted with any children or young people with experience of the OOHC system. This is not acceptable.

The Youth Coalition of the ACT has a useful model for consultation, outlined in their 2019-2020 Budget submission. As part of 'Step Up for Our Kids', the Youth Coalition, CREATE, and others worked with the Community Services Directorate to establish a series of roundtables, which 'aim to directly hear young people's views and experiences, in order to inform policy and service development in statutory child protection'.<sup>7</sup>

Also, one service working with women and children noted to ACTCOSS that the Working Group should consider that many mothers who are currently dealing with child protection themselves experienced the OOHC system. The Working Group should consider this aspect of parents' experience and how it might impact on their ability to contribute their insights and advice on dispensing with consent in the adoption process.

## Communication with the sector

Many services and organisations who work with and/or advocate for families involved in the OOHC system were completely unaware of this Adoption Reform process, despite it being significant to their work. It is unacceptable that ACTCOSS should be delivering this information to so many stakeholders, and we urge the Working Group to adopt a more proactive approach in its forthcoming consultations.

This process should give services substantial time to provide meaningful feedback. One service in the sector was so frustrated with the lack of communication around this process that they explained they would not dignify it by engaging.

ACTCOSS hopes the Working Group will not ignore many important service sector stakeholders in the ACT due to their lack of capacity to respond in writing to the call for submissions.

## Legislative examples

The Discussion Paper is limited in its use of examples of dispensing with consent processes, which ACTCOSS feels has limited the opportunity for stakeholders to develop informed positions on possible reforms in the ACT.

In particular, the Paper offers a UK example (as one of the two examples offered), which is inappropriate given the UK does not have an indigenous

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<sup>7</sup> Youth Coalition of the ACT, *Submission to the ACT Budget 2019-20*, Youth Coalition of the ACT, 2018, accessed 19 February 2019, <<https://youthcoalition.net/youth-coalition-of-the-act-submission-to-the-act-budget-2019-2020/>>

population, and yet Aboriginal and/or Torres Strait Islander children and young people are a central concern in dispensing with consent legislation.

### **Recommendations**

- ACTCOSS recommends that the Working Group not pursue adoption reform in favour of expanding mechanisms to dispense with parental consent until we can be sure that families are not being broken up due to a lack of adequate resourcing to fix the inadequacies and failures of parent support services and/or the OOHC system
- The Working Group must acknowledge the impact of previous child removal policies and practices to Aboriginal and/or Torres Strait Islander children and young people, and the intergenerational trauma caused by these, and on this basis not consider dispensing with consent
- This Review must consult with people with lived experience including children and young people
- There must be a presumption against removing consent from parents confronting discrimination, barriers and service system failures who are already overrepresented in out-of-home care
- Reform must carefully and closely consider the specific impacts on each of the identified population groups, and how reform to dispensing with consent will intersect with their individual and group circumstances. The Working Group should consider that many population groups are overrepresented in the OOHC system due to inadequacies of current processes, and adoption reform would further exacerbate their risk of overrepresentation
- There must be strong and appropriate alignment with concurrent processes in the ACT, such as Our Booris Our Way and the Disability Justice Strategy
- The consultation process must be robust and work to maximise opportunities for community organisations and services, families, parents and carers, and children, being able to contribute. The Working Group should consider the way it communicates and engages with the people and organisations in the community with knowledge and involvement with the OOHC system, including the materials and models it offers to inform decision making in this important area
- The Working Group must consult directly with children and young people.

# Attachment A

## Family groups at risk of perverse outcomes

### Aboriginal and/or Torres Strait Islander families

Aboriginal and/or Torres Strait Islander children and young people are significantly overrepresented in the ACT OOHC system; they are up to twelve times more likely than non-Indigenous children and young people to be in OOHC. It is essential that the Working Group consider the specific needs of Aboriginal and/or Torres Strait Islander families within this context. The Working Group should immediately remedy its lack of engagement with community-controlled organisations, community members, and affected families.

In its *Interim Report*, the Our Booris Our Way Steering Committee noted that reducing the high rates of removal of Aboriginal and/or Torres Strait Islander children and young people and improving their opportunities to exit care requires several systems changes. The Steering Committee noted:

- The child protection system is complex and opaque
- There is a need to fund independent cultural advice and advocacy
- The Steering Committee aims to increase opportunities to exit care through family reunification
- The ACT Government must work more closely with the Aboriginal community
- The ACT Government should facilitate access to culturally appropriate early support programs.<sup>8</sup>

As well as these issues, ACTCOSS hears that a significant issue hindering the best care for Aboriginal and/or Torres Strait Islander young people and children in the ACT is a lack of adequate support for kinship carers. Aboriginal community-controlled organisations also told us that the child protection system, and more specifically this Review, is not culturally appropriate for Aboriginal and/or Torres Strait Islander families. Indeed, ACTCOSS cannot see evidence of meaningful Aboriginal community design over this Review. It is alarming that we have spoken to organisations and services working with Aboriginal and/or Torres Strait families, including families involved in OOHC, who were completely unaware of this reform process.

There is clearly a need for significant, genuine and transparent work to incorporate culturally appropriate and ethical practices in relation to adoption of Aboriginal and/or Torres Strait Islander children. As recommended by Tjillari Justice Aboriginal Corporation, ACTCOSS urges the Working Group to

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<sup>8</sup> Our Booris Our Way Steering Committee, *Interim Report*, Our Booris Our Way Steering Committee, Canberra, August 2018, pp. 2-4.



undertake meaningful consultations and meetings with a range of stakeholders, including Aboriginal-led organisations and services, but especially affected families and community members. Organisations to consult with include: Tjillari Justice, the United Ngunnawal Elders Council, Gugan Gulwan Youth Aboriginal Corporation, Winnunga Nimmityjah Aboriginal Health and Community Services, Mulleun Mura (Women's Legal Centre), Aboriginal Legal Service (NSW/ACT), ACT Aboriginal and Torres Strait Islander Elected Body, Koori Preschool Program, and the ACT Nannies Group. It is also imperative the Working Group speak to families. ACTCOSS has been advised that they should be reached through a community meeting to inform how the Working Group will:

- make the decision on any reforms
- follow the Placement Principles
- ensure Aboriginal and/or Torres Strait Islander children and young people will have continuity of culture.

### **Children and young people with an incarcerated parent/s**

Children and young people with parent/s serving custodial sentences are overrepresented in the OOH system.<sup>9</sup> Indeed, ACTCOSS works closely with organisations offering support in the AMC, and we hear that a significant issue for many of the women is regaining custody of their children. However, there are few channels to facilitate or support this, and ACTCOSS and others in the sector have repeatedly stated that programs for women in the AMC, and upon release, are severely lacking to the point of compromising their ability to live safely outside prison. Women in prison often have many concurrent needs and require specialised support; as WCHM note:

Women who are or have been incarcerated represent one of the most marginalised groups in our community. Women's offending and imprisonment is often closely related to women's poverty, and they are disproportionately affected by homelessness, domestic violence, sexual assault, mental illness, substance abuse, and poverty. When women are released from prison they face the same barriers to re-entry as men—social stigmatisation; and few or no employment opportunities.<sup>10</sup>

Family reunification is therefore very difficult for families with previously incarcerated parents, and the Working Group must consider this in the context that incarcerated women in the ACT are significantly under-supported. There is far more that could be done to enable children with previously incarcerated parents to exit care – from early assistance to post-release support, such as providing housing and appropriate employment opportunities.

As SHINE for Kids note:

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9 SHINE for Kids, *NSW Adoption Laws – Position Statement*, SHINE for Kids, 2018, accessed 19 February 2019, <<https://shineforkids.org.au/nsw-adoption-laws-position-statement/>>.

10 Women's Centre for Health Matters, *Working with women in the AMC*, Women's Centre for Health Matters, 2019, accessed 19 February 2019, <<http://www.wchm.org.au/working-with-women-in-the-amc/>>.



There needs to be a greater emphasis on, and investment in, early intervention. Programs aimed at keeping families together can be very cost effective both in the short term and long term.<sup>11</sup>

In addition to this, one service working with children of incarcerated parents noted that authorities cite a lack of regular contact as a justification for child removal on extended orders. But incarcerated parents are physically unable to initiate contact with their children. And with few transport options for children to visit their parents, there may be a lack of regular contact between children and their parents not because of abandonment, but systemic barriers. This service noted that although they work to sustain connection between children and parents in the AMC, it is particularly difficult to maintain connections given that the AMC is unable to accommodate co-location of women and their young children.

At present, families with incarceration or previously incarcerated parents may present with complex OOHC situations with little scope for reunification; but this is a direct result of the failure of the ACT to offer effective parenting support to people leaving the AMC.

The number of women in the AMC is rising rapidly – particularly Aboriginal and/or Torres Strait Islander women -- and they have been sidelined in ACT justice reinvestment projects. Incarceration causes a temporary separation that often results in child removal. But sustained disconnection of families, is often due to a systemic lack of support for parents, particularly women, post-release. Changes in favour of dispensing with parental consent would therefore negatively affect families with incarcerated parents, and it would simply be bad policy to implement these changes in lieu of first responding to a lack of other supports that create complex OOHC arrangements.

ACTCOSS draws the Working Group's attention to SHINE for Kids' position statement on NSW adoption laws:

SHINE for Kids and international research refers to children of prisoners as 'invisible victims' of crime. Under these proposed changes once children are placed on guardianship orders or adopted, they are on their own, with no further review or oversight. They are no longer counted in the out-of-home care statistics and are further rendered invisible.<sup>12</sup>

We urge the Working Group to consult with services working with children with incarcerated parents, and services working with women in the AMC. This should contribute to a better understanding of the OOHC situations currently unsupported by the system, and further inform the Working Group of the significant concerns ACTCOSS and others in the sector have regarding the possible implications of this Review. These services include: SHINE for Kids, Tjillari Justice, Prisoner's Aid, Women's Legal Centre, and Women's Centre for Health Matters.

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11 SHINE for Kids, *NSW Adoption Laws – Position Statement*, SHINE for Kids, 2018, accessed 19 February 2019, <<https://shineforkids.org.au/nsw-adoption-laws-position-statement/>>.

12 *ibid.*

## Children and young people with parents with disabilities

Children and young people with parents with disabilities are likely to encounter the OOHC system – particularly mothers with intellectual disabilities and mental illness. This is often because child protection is likely to target these families due to ableist perceptions that children should have able bodied parents without any cognitive or psycho-social disabilities because disabled parents are stigmatised as inadequate carers.

As one service noted to ACTCOSS, the current mechanism to dispense with parental consent prescribes grounds that can often discriminate against parents with disabilities:

the physical or mental condition of the person is such that he or she is not capable of considering properly the question whether consent should be given.

The use of the term ‘capable’ within this context can often be very ableist; we should assume capacity and offer support to achieve it – not start from a deficits approach and measure capacity or capability from there.

ACTCOSS agrees with Advocacy for Inclusion’s response to this consultation, and we particularly highlight this section of their submission:

Despite research demonstrating that intellectual disability cannot be understood as an indicator for abuse and neglect, many removals are understood to be in the child’s ‘best interests’. In reflection to the *UN Convention on the Rights of the Child (CRC)* and the *Convention on the Rights of Persons with Disabilities (CRPD)*, both Conventions provide that children should not be removed from their parents unless determined by the Court or judicial review as ‘best interest’ to the child. While this may be correct, disability is not a justification for removal...

In our experience, for parents with intellectual or mental health/psychosocial disabilities, it is a common feature that parenting orders extending to eighteen (18) years is placed, without the parent with disability having the opportunity to engage in parenting supports to enable them to keep and form relationships with their child/ren.<sup>13</sup>

In addition to incorrect assumptions about the ‘best interests’ of children who have parents with disabilities, these families face risk of child removal due to a lack of appropriate responses for parents with disabilities who require support. One health service working with women with mental illness and/or intellectual disabilities noted instances where new mothers require support, but the Community Services Directorate has made no effort to bring in experts with an understanding of mental illness or intellectual disabilities. Few of these clients feel they have experienced wrap-around support, and indeed there is little comprehensive support available in the ACT.

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13 Advocacy for Inclusion, *Online Lodgement: Re: Submission in response to the Dispensing with Consent Discussion Paper*, Advocacy for Inclusion, 10 January 2019, <<http://www.advocacyforinclusion.org/wp-content/uploads/2019/01/Submission-to-Dispensing-with-Consent-FINAL.pdf>>.

In addition to this, a dedicated parent support service noted to ACTCOSS that dispensing with parental consent is currently being held over parents' heads in cases where they have mental illness and children currently in the OOHC system.

ACTCOSS was told of one client with a known history of mental illness and children being removed, who was offered little to no support before or after the birth of her child. Instead, her child was removed at early infancy. Dispensing with consent is now relayed to her as a threat, and she is often forced into situations to 'prove herself' to the system. The service noted that this case and others have led them to a strong view that the real missing link is for family support, particularly early support and parenting assistance programs. ACTCOSS supported this recommendation in our 2019-2020 ACT Budget submission.<sup>14</sup>

We draw these experiences to your attention to illustrate the current inadequacy of the OOHC system, which in many cases is setting people up to fail. For children with parents with disabilities, systems failure, outright discrimination and a complete lack of support are in many cases severing family ties.

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<sup>14</sup> ACTCOSS, *Submission on ACT Budget Priorities 2019-2020: Community Sector Priorities*, ACTCOSS, November 2018, <<https://www.actcoss.org.au/budgetsub2019-20>>.