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Strategic and Business Development  
Court and Tribunal Services  
Department of Justice  
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Dear Chair

## **A THERAPEUTIC APPROACH (PILOT COURT) FOR PROTECTION & CARE IN THE CHILDRENS COURT OF WA**

Community Legal WA (**CLWA**) welcomes the opportunity to provide a response to the Discussion Paper issued by the Department of Justice (WA) and other key stakeholders (**Discussion Paper**) in relation to the above. Whilst we have chosen not to provide a detailed submission, we would be obliged if this letter could be accepted by way of response.

### **About Community Legal WA**

Community Legal WA is the peak body for Community Legal Centres in WA. Located throughout the state, Community Legal Centres (**CLCs**) are independent, non-profit organisations which provide legal services to disadvantaged and vulnerable people or those on low incomes who are ineligible for legal aid. There are existing CLCs that are:

- specialist, and relate the needs of specified client cohorts such as women, youth, CALD communities; and people with disabilities;
- specialist, and relate to particular areas of law;
- generalist, servicing areas of the Perth metropolitan region, or regional WA; and
- Aboriginal Community controlled and managed.

CLWA auspices a number of networks that have an important role in bringing together workers. In particular, the Family Violence Legal Network (**FVLN**) provides support for lawyers and other workers who operate within the space of family and domestic violence (**FDV**), mainly in victim- survivor services but sometimes in relation to perpetrators. The FVLN maintains a knowledge of up to date information, policy and practice and provides a forum for discussion of practice and for consideration of research and strategic advocacy in law reform.

### **Family and Domestic Violence (FDV)**

In 2018-19, 43% of all clients of CLC's in WA were families with dependent children, with 32% of all clients experiencing or at risk of FDV. We recognise that FDV is a key driver behind the over-



representation of children in child protection matters and are of the view that the high level of family violence and significant increases in reported incidence in WA correlates with the increase in children being taken into care.

This is particularly so for Aboriginal families, and we emphasise that initiatives to reduce the number of children in care should be included within all those being developed in relation to FDV under the WA Government's 10 year Strategy against FDV.<sup>1</sup>

Whilst a number of CLCs assist with FDV, some workers are experienced operators within the child protection space and some CLC's are, therefore, providing their own submissions. CLWA has no hesitation in endorsing the submissions of:

- Youth Legal Service WA (**YLS**);
- Djinda Services; and
- Mental Health Law Centre (**MHLC**).

We also support the submissions of:

- Aboriginal Legal Service WA (**ALSWA**);
- the Alliance of Lawyers Practicing in Protection and Care (**ALPPACA**); and
- Family Inclusion Network of WA (**FINWA**).

We also recognise the concerns expressed in the Letter from Aboriginal Family Law Services dated 17 February 2020.

### **Proposal in the Pilot Discussion Paper**

CLWA gives credit to the President of the Children's Court for recognising the gravity of the escalation in numbers of children in care, and for investigating ways in which these numbers can be reduced. This needs to be done properly and designed in a way that meaningfully assists those for whom it is intended.

We particularly support the following points, made in the submissions that we have endorsed:

- a therapeutic court needs to provide **all** the supports to families that they need in a wraparound manner with easier access and rapid referral pathways to services such as housing and rehabilitation, with no delays in waiting times;
- there must be careful consideration and adequate consultation regarding the practicalities when it comes to considering the operations of any new Court;
- there must be recognition of the impact of colonialism on Aboriginal families, with any new Court providing an opportunity to do away with outmoded structures and appearance, or any environment or practice that fosters perceptions of power imbalance and paternalism;

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<sup>1</sup> See <https://www.communities.wa.gov.au/wa-have-your-say/family-and-domestic-violence-strategy/>

- the design of any Court with a focus Aboriginal families should only occur through input from relevant Aboriginal groups, and should be heavily advised by those organisations whose specific focus is upon Aboriginal clients; there needs to be an Aboriginal Reference Group and Aboriginal evaluation;
- that whilst the appointment of an Aboriginal liaison officer is welcomed, the staffing of the Court by Aboriginal people needs to go well beyond this; there needs to be a wide range of Aboriginal persons to connect to the Court, including elders and significant others. Only in this way will there be full utilisation, the requisite degree of cultural competency and an appropriate trauma informed approach;
- that the fundamental aim of the Court should be to achieve reunification between children and their families;
- there is an essential need for consistency in Magistrates and in decision making;
- there is a need for particular consideration regarding the environment and conduct of proceedings where FDV is an element; and
- we agree with observations regarding diversity in regional circumstances and the inappropriateness of a court situated in Perth only dealing with matters that are distributed throughout Western Australia.

We also support MHLC's suggestion that the Court would do best to focus on a defined population in the manner suggested at pages 3-4 of that submission.

### **The need for legal representation**

We are gravely concerned that the Discussion Paper does not outline any intention to address (or invite comment on) the problem of lack of legal representation for families in child protection matters. We are concerned at the already inadequate representation for parents whose children are taken into care, and for those children.

We agree absolutely with MHLC that "the funding of legal services should not be considered as sitting under a pilot court umbrella." Given the gravity of consequences for parents and children (and the community) through the high rate of separation of families as a result of the escalating rate of children in care, adequate funding is urgently needed *per se*. But it is, of course, also essential to the success of any new Court that adequate representation be provided to families in relation to that Court.

To this end, we also note the reference in the Discussion Paper to the Symposium held in March 2019 at Murdoch University that was organised by FINWA and the WA Council of Social Services, in response to a recognition of the existing crisis with lack of legal assistance available to parents and families in child protection proceedings. CLWA was also involved in this important initiative, which attracted a wide range of concerned professionals and is referred to in other submissions.

## **Community Legal Centres**

We also draw attention to the “serious gaps in legal representation and support available to parents and family members under Legal Aid WA’s current duty lawyer and panel grant practice” that MHLC refer to in their submission at page 7. Feedback from our members supports this observation.

Also highly relevant is the lack of specific funding provided to CLC’s for child protection matters. The complexity and sensitivity of child protection matters renders CLC’s, with their holistic and wraparound mode of service delivery and use of legal health checks, particularly relevant to and important within the child protection legal space. The specialisation of some CLC’s results in an appropriate level of assistance for particular client groups that larger organisations may not be able to achieve. The geographical location and specialised knowledge of generalist CLC’s results in their ability to offer services appropriate to and in close proximity to where clients reside, particularly in the regions.

Yet, CLC’s are required to find resources for this crucial service from their general funding, or from other streams. We therefore ask that particular consideration be given to the following:

1. The provision of sufficient funding for quality, holistic and continuous legal representation for families at risk of, and engaged in, child protection proceedings (and not confined to the limited number of families participating in the 18 month Therapeutic Court Pilot); and
2. specific financial support for initiatives in the CLC sector for provision of care and protection legal services, with a view to building capacity in the CLC sector over time to provide these services.

## **Community Legal Centre Children and Family Law Pilot - Victoria**

CLWA suggests that there are various ways in which provision of additional funding might be approached. We note, for instance, the reference by MHLC at page 8 of their submission to the Community Legal Centre Children and Family Law Pilot in Victoria, which saw Victoria Legal Aid (VLA) release funds in 2015 to the Women’s Legal Service Victoria (B) and Loddon Campaspe Community Legal Service (LCCLC), to pilot a salaried care and protection lawyer service.

Given the positive findings in the review of that pilot<sup>2</sup>, we suggest that a similar arrangement may be an alternative to existing arrangements that is worth considering. We note that the pilot also led to stronger working relationships between key legal and non-legal stakeholders in the care and protection system.

## **WA Council of Social Service (WACOSS)**

It is also worthy of note that the WACOSS 2020 Vision budget submission states that:

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<sup>2</sup> <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-evaluation-of-the-community-legal-centre-children-and-family-law-pilot.pdf>

“The continued decline in funding for legal assistance from the State Government has seen a significant tightening of criteria to access grants in a system that was already overstretched and under-resourced, with Legal Aid WA introducing new restrictions into its State Funding Guidelines in November 2017. WACOSS is concerned to learn that these restrictions are impacting on some of our most vulnerable groups seeking judicial support, including those involved in child protection and care matters.

Community legal services who are already overwhelmed with long waiting lists and stretched beyond capacity, are unable to respond to requests from desperate parents. Many WA families are now attempting to represent themselves before the Department and in the Children’s Court.

WACOSS asks for the immediate injection of funding, and an accompanying policy change that sees the mandated provision of legal assistance for families who have become involved with the child protection system. It is unacceptable that a family should be in the situation where they are unable to access legal assistance while the State is taking their children away.

*Recommendation: Ensure families can always access legal assistance and support in child protection cases. No parent has their child removed without legal advice and assistance. Legal services are resourced”<sup>3</sup>*

CLWA strongly supports this recommendation, with recognition of the particular need for funding of Aboriginal services, given the number of Aboriginal children in care.

## **Other pilots**

### **Koori Family Hearing Day or Marram-Ngala Ganbu Pilot**

We note the observations of ALSWA and Djinda Services regarding the success of this initiative as outlined in the Evaluation of Marram-Ngala Ganbu and note the emphasis on need for innovation, Koori led service and design, employment of Koori court staff, commitment to holistic service delivery and to a culture of connectedness and belonging. The evaluation provides evidence for the proposals that we have supported in this letter.

We note also the positives that have resulted from community based courts in WA such as Kalgoorlie Community Court, Jiji Nyirti Court and Bardinmalgu Court in Geraldton, as referenced by the submission of ALS at page 5, and agree that a visit and assessment of the workings of Bardinmalgu would be of value.

We thank you again for the opportunity to provide input to this important process. In conclusion, CLWA draws attention to the view expressed by ALPPACA in relation to the gravity of child protection proceedings, to the possible consequence of proceedings being that a child could be removed from their family for a substantial part of their life. The seriousness of such a consequence and the need for all parties to be adequately and equitably considered in the process can and should

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<sup>3</sup> <https://wacoss.org.au/wp-content/uploads/2018/10/State-Budget-Submission-2019-2020.pdf> at page 45

never be underplayed. We too draw attention to Article 9 of the UN Convention on the Rights of the Child.

Given that the existing disruption and adverse consequences to the community from the escalation of children in care may well now be exacerbated by the current COVID-19 crisis, the need to design and run any future new court in a manner that is conducive to maintaining family connectivity was never more imperative, with the provision of funding for adequate legal support within this process never more crucial.

We would be obliged if you could keep us informed of the process for addressing submissions and progressing this matter.

Please do not hesitate to contact the writer for further discussion of any points raised.

Yours sincerely,

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For **Sharryn Jackson**  
Executive Director  
Community Legal WA