



REBALANCING THE SCALES

Access to justice for parents in the
Tasmanian Child Safety system

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One of the most significant powers exercised by Australian state and territory governments is that of removing children from their parents due to concerns about their safety. Across Australia, including Tasmania, increasing numbers of children are being removed into the out-of-home care system because it has been identified that they are experiencing or at risk of experiencing neglect and abuse. These decisions about whether or not to separate a child from their family are taken in the Children's Court and have a life-long impact on families.

This report documents the experiences of 36 Tasmanian parents in the Court and legal processes associated with the Child Safety system. It also documents the experiences of 45 lawyers who have represented parents in care proceedings. The research examines parents' participation in decision-making and the impact of these processes on the ability of Child Safety and the Justice system to implement the intent of the legislation – promoting family preservation and reunification.

Drawing from a review of reforms in Child Safety and Justice systems across the world, the report makes a series of recommendations about how to improve the experiences of Tasmanian parents and their ability to preserve their family and be reunited with their children.

They didn't tell me to go to a lawyer. To be completely honest, I didn't understand very much. I wasn't as bright as I am now, I couldn't read. I was like what do I do. I don't know what to do in Court, I didn't even know what Court even is. I couldn't read any documents, I had no family support. It was just me and my kids. I didn't even know what a lawyer was properly. I had no idea. I didn't even know I needed a lawyer.

– PARENT

What did the research find?

- **Demand is increasing.** Like elsewhere in Australia, the number of Tasmanian children and young people entering the out-of-home care system (OOHC) is growing. This is placing increasing demand on the Child Safety and Justice systems. Only a proportion of families involved with Child Safety cross over into the Justice system, but applications for Child Protection Orders to the Court have risen year on year, with a 27% increase since last year. This impacts on the workload of both the Child Safety and legal systems and puts pressure on the ability of the Court to deal with cases efficiently, effectively and fairly.
- **Access to legal representation is problematic.** There is an underlying public assumption that entering an adversarial legal system where vulnerable people are facing prosecution by the state requires legal representation. However, parents and lawyers described shortfalls in access to legal advice at a time of family crisis when a child has been, or is about to be, removed from their care. A lack of awareness that legal advice is needed, a reluctance to seek it, not understanding how to find it and/or difficulties in being granted adequate levels of Legal Aid funding commonly leave families accessing advice late in proceedings and/or attending Court unrepresented. Representing birth parents is a specialised area of the law and Tasmania has a core of highly skilled lawyers practicing in this area. However, demand on the Legal Aid funding pool directly impacts on the quality of legal advice available to parents. This has a significant impact on outcomes for families in the Child Safety jurisdiction.
- **Going to Court is commonly described as isolating, stressful and lonely.** The physical environment, the brevity of many Court appearances, discouragement from speaking directly to the Magistrate and few opportunities for support during the process or debriefing afterwards confuses and confounds parents' expectations and marginalises them from their own case. At the same time, sympathetic treatment from a Magistrate who acknowledges their circumstances and their presence in the courtroom can have a major impact on parents, encourage behaviour change and promote a sense that they have had a fair hearing and justice has been done.

What I went through, a mother who just felt like she was being kicked and kicked. It's so important to be listened to and to have support. Child Safety don't do that. They're acting on behalf of the children, which is great. But give parents a voice. We should be able to stand up and say what we want to say as a parent and to defend ourselves, defend any evidence that is not actually true. Having a lawyer speak for you, no one can express the way someone feels like a parent can. They are all negative, all about what you have done wrong. You can't say this didn't happen, and then that sticks to you, and you can't say how you feel. The legal system needs to change. When it comes to the lawyers, the system, the judge. They are judging us in a manner where we don't get voice, we don't get to say anything. The most important thing is to have a voice.

– PARENT

- **Administrative processes, procedures and timeframes erect barriers to a parent's ability to access justice and to achieving the goals of the legislation - family preservation and reunification.** The *Children Young Persons and their Families Act 1997* defines the procedures used in care proceedings, but the way in which these procedures are currently implemented can impact negatively on a family. The late serving of Child Safety affidavits, the nature and the quality of the evidence used to support them, a lack of legal representation, differences in judicial style, the operation of alternative dispute resolution opportunities and the delays endemic to care proceedings all conspire to impose additional pressures and costs on families, legal practitioners, Legal Aid funding and the Child Safety system. In addition, processes which are not standardised across the state and which are un-adapted to cultural difference or the needs of people with disability mean a post code lottery and lack of consistency which impacts on both children and their families.
- **There is a high level of dissatisfaction amongst parents and lawyers** about how far Child Safety and the legal system are able to implement the intent of the legislation. Surviving care proceedings, whether or not children are returned to their families, has wide-ranging longer-term negative impacts on families. which undermine the preservation of family relationships and the chances of children being reunified with their families. These impacts are underpinned by a lack of resourcing of the Child Safety system, the Justice system and the broader welfare sector, leaving parents trying to access support and treatment from services that are unable to effectively engage with them or meet their needs in a timely manner. This dissatisfaction is long-standing and fuels an appetite for change and a push to do things differently amongst parents, legal professionals, the judiciary and community support services.
- **Across the English-speaking world Child Safety systems are dealing with similar issues and introducing reforms to improve the experiences of families and reduce the numbers entering the OOHC system.** Through changes to legislation, policy and service delivery, initiatives have focused on diverting families from legal processes, improving access to skilled legal assistance and providing wraparound support for families, including support from their peers. Most significantly, moves from adversarial legal processes to more inquisitorial and therapeutic systems, which can resolve rather than exacerbate the problems vulnerable families experience, demonstrate concrete and promising results.
- **Tasmanian parents and lawyers outline a clear agenda for reform** to better implement the intent of the legislation. As well as improving Child Safety practice to divert more families from the Justice system, they proposed earlier access to legal advice and representation as a right and a spectrum of changes to Court processes. These include more opportunities to hear the voice of parents and collaboration across the Child Safety and Justice interface to ensure a more strategic approach to supporting families to sustain family relationships and/or to progress towards reunification. They call for specialist Magistrates, access to non-legal advocacy and peer support and improved information resources. They also call for a problem-solving and therapeutic approach to making decisions about families that is better adapted to addressing the complex problems which vulnerable families face. Any reforms require underpinning by leadership, cultural change and improved resourcing.

Recommendations

The report calls for a rebalancing of the scales in the relationships between children, families, the Child Safety system and the Justice system so that families become key players in finding solutions to the challenges they face and in making decisions about their future.

IMPLEMENTING THE INTENT OF THE LEGISLATION

Recommendation 1: That the Department of Communities, the Department of Justice and the Magistrates Court collaborate and ensure a strategic approach to family preservation and reunification across the Child Safety and Justice interface.

Recommendation 2: That the Department of Communities and the Department of Justice identify who has the duty of care towards parents to ensure a supportive infrastructure for those crossing the interface into the Justice system.

Recommendation 3: That the Department of Communities make further investment in pre-proceedings processes to divert families from the Justice system.

Recommendation 4: That the Tasmanian Government ensure that a right to legal representation in the Child Safety jurisdiction is embedded in the legislation and that the Legal Aid funding pool is expanded to meet this need.

Recommendation 5: That the Department of Communities, the Department of Justice and the Legal Aid Commission collaborate to increase the capacity of the legal assistance sector to support and respond to the particular needs of families in the Child Safety system.

Recommendation 6: That the Department of Communities, the Legal Aid Commission, the Department of Justice and the Magistrates Court make further investment in the ongoing professional development of their workforce in the Child Safety jurisdiction.

Recommendation 7: That the Tasmanian Government fully explore the potential for introducing a therapeutic, solution-focused court in the Child Safety jurisdiction.

With a 12 month Order we would hope to see movement towards reunification with measurable outcomes. Responsible representation would ascertain the plan, define measurable objectives, and then what in the system can promote the child being cared for by their parents. But often we see no action and no support for parents to initiate action and change. So we have spent 12 months in a holding pattern. Unless legal representation can keep the Department accountable, often nothing happens. Often once that Order is in place, reunification is just lip service and parents feel they are washed out of the back end of this system and left to fend for themselves. I would like to clarify whether or not they [Child Safety] really have an intention to facilitate reunification.

– LAWYER

PROGRESSING THE RECOMMENDATIONS

Recommendation 8: That the Tasmanian Government commission a high-level working group to explore a whole systems co-ordinated approach to addressing the needs of vulnerable families involved with the Child Safety system.

This is a frustrating and challenging area to engage with. It requires significant reform. Even as an early career practitioner, the cracks in the system are abundantly clear to me. I don't believe Child Safety will make the changes themselves. There is no question that they have a very difficult and underfunded area. However, this is not good enough for the parents and children who are caught up in this. Tasmania is a small place and has the opportunity to step up and be an example to the rest of the nation. Children and families who end up in this system are some of the most vulnerable people in our society and they deserve better than to have their lives crushed and run by a Department which is time and funding poor. It is imperative that change occurs.

– LAWYER

For more information

The full report, *Rebalancing the Scales: Access to justice for parents in the Tasmanian Child Safety system* by Teresa Hinton, is published by the Social Action and Research Centre, Anglicare Tasmania, in July 2020.

It can be downloaded at www.anglicare-tas.org.au/social-action-research-centre/



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