

# Modifying children's court care plans to acknowledge poverty and disadvantage

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## Abstract

This think piece suggests that Children's Court Care Plans should include a new section that documents poverty and social disadvantage, especially of Aboriginal and Torres Strait Islander families, when they are under investigation for child abuse and neglect. New South Wales in Australia is used as the exemplar state, but this suggestion may find an echo elsewhere.

## KEYWORDS

Aboriginal and Torres Strait Islander children, child abuse and neglect, poverty, social disadvantage

## 1 | THE INCIDENCE OF CHILD PROTECTION IN AUSTRALIA

From July 2020 to 2021, there were approximately 46,200 children in out-of-home care (OOHC) in Australia (AIHW, 2022). In that period, the number of Indigenous children in OOHC was 19,480, reflecting the long-term over-representation of Indigenous children in OOHC, given the low percentage of Indigenous children in the Australian population—a fact that was highlighted in the 'Bringing them home' report that was presented to the federal parliament in 1997 (HREO, 1997), but which remains largely untouched.

Children from geographically remote areas, inevitably Indigenous children, were also more likely to be the subject of a substantiation of abuse or neglect or be in OOHC care than those from major cities (AIHW, 2022). Importantly, in New South Wales (NSW) the remote local government (LA) areas that are reported by the Australian Bureau of Statistics (ABS, 2018) as having the highest level of social disadvantage are Brewarrina, Claymore, Lightning Ridge, Walgett, Wilcannia, and Windale. These LA areas have a substantial Indigenous population and hence have a

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high incidence of Indigenous children receiving child protection services. Indeed, in these communities, poverty and social disadvantage are written large, and this underlines the proposition contained in this think piece that poverty and social disadvantage (commonly referred to as social and economic circumstances), not just parental dysfunction, should be considered whenever parents are the subject of child protection proceedings in the NSW Children's Court or any other Children's court. Importantly, 'poverty' is not neglect and 'surveillance' is not support (Cocks, 2018).

This personal think piece reflects the author's long-term observation of Children's Court proceedings, as a Court-appointed official, details of which will be found later.

## 2 | CARE PLANS

NSW Care Plans, prepared for a hearing in the NSW Children's Court by the Department of Communities and Justice (DCJ), about whether a child or young person should be placed in the care of the Minister, do not contain information about the parents' social and economic circumstances. The Ainsworth and Hansen (2017) study of section 106A of the *Children and Young Persons (Care and Protection) Act 1998* confirmed this observation. This study involved the author reading over 100 Children's Court files. None of the files contained information about the parents' living circumstances, that is, disadvantaged neighbourhood, public or private housing rental or ownership, and source and level of income (of both parents, as may be the case), that is, employment or welfare benefits. The net result was a de-contextualising of the families' living circumstances. The other result was that the Children's Court was inadequately briefed for a hearing, since the circumstances that surrounded the alleged case of child abuse and neglect (CAN) were not presented by DCJ to the Court. The DCJ's focus is on deficits in childcare, in line with a parental deficits model of child protection, a position that is now under serious question (Bywaters et al., 2022; Doebler et al., 2022; FIJ Quarterly, 2022; Lonne et al., 2019), although not yet in NSW or indeed in the rest of Australia. These authors also treat these matters as reflecting the wider political issues of inequality and a lack of social justice.

## 3 | SOCIAL ASSESSMENTS

In every case, where it is alleged that parents have neglected or abused a child the first requirement must be a comprehensive assessment of the life circumstances of the family, in question. This assessment must cover the biological/economic and social circumstances of the family, including identification of family strengths, not just deficits. This must include information about the availability and source of weekly income, food security, family clothing, well-maintained housing, and furniture including white goods, at levels parallel to other members of these disadvantaged communities. Only when this assessment has been completed, including the sharing of the assessment with the family under investigation, is an accurate picture of this family's capacity to change, to look after their children safely, is the case clear, and a Children's Court hearing is a reasonable line of action, but not before.

## 4 | APPLICATION INITIATING CARE PROCEEDINGS

An application initiating care proceedings in the Children's Court is not a social assessment. It is a product of a visit to a family home, probably because of a ROSH (Report of Serious Harm) report that has been made to the DCJ 'Helpline.' The home visit is made by two child protection caseworkers (one to ask questions of parents and the other to record responses) and is investigative and forensic in purpose. The visit seeks to identify if there are circumstances that warrant an application of the above type, being made to the Children's Court. The application is to support a finding that the children in the household that was visited are in need of care and protection. The application is accompanied by an affidavit from one of the caseworkers, which details the findings from the home visit. It may also contain personal information about the parents and their extended families.

If because of this application a finding is made that the child is 'in need of care and protection' and the case is 'established', then an Interim Care Order (ICO) will be granted that places the child in the care of the Minister for DCJ. This means placement in kinship care (with an approved extended family member) or in unrelated family foster care, pending a full Court hearing.

## 5 | THE NEXT STEPS

Prior to a full Children's Court hearing there will be a series of Court mentions and directions about actions that the Court considers necessary. The DCJ Care Plan must set out how a permanent living arrangement will be achieved for the child, if the Children's Court is to make a finding that there is no realistic possibility of restoration to the parents.

Response from parents, who can contest the Care Plan, will be called for. There may also be a Court ordered dispute resolution conference (DRC), before a hearing, where the parties, DCJ and the parents, try to narrow the issues in dispute. Parents invariably have legal representation (provided at no cost by NSW Legal Aid) for a DRC and a full Court hearing.

## 6 | THE CONTENTS OF CARE PLANS

One of the documents, in addition to the draft Care Plan, presented to a Children's Court hearing will be a summary of the proposed plan for the child or young person. This plan may set out the conditions that DCJ expect parents to meet, if restoration of the child to either parent, is to be possible at some point, in the future. The requirements often include

- mental health counselling,
- conformity with prescribed medication regimen,
- conformity to an AV order that addresses the issue of intimate violence,
- remaining free of drug use and accepting regular referral to drug testing services, and
- completion of a parenting program.

Response to these requirements may have been partially achieved before a full case hearing, and in that event the parents' legal representative may place this information before the Children's Court. Legal representatives for a child, either as a direct legal representative (DLR)

or an independent legal representative (ILR), can also question, if necessary, aspects of the Care Plan.

What is worth noting is that the DCJ Care Plan may include graphic descriptions of a neglected and chaotic household (including photographs). This is the *only* occasion any evidence about a family's social circumstance is provided to the Court. The rest of the Care Plan is about parental psychological dysfunction.

Even parenting capacity reports ordered by the Children's Court do not including information about parents' socioeconomic standing, as if social disadvantage and poverty have no impact on parenting capacity, when this is clearly not the case (Ghate and Hazel, 2002).

## 7 | A PROPOSED NEW SECTION

Earlier in this think piece it was noted that a DCJ Care Plan does not contain information about the socioeconomic circumstances of parents. Given the local and international evidence that child abuse and neglect (CAN) may be triggered by social disadvantage and poverty (Ainsworth, 2021; Bywaters, 2022; Doidge, 2017), the proposal is that in the future Care Plans include a section that sets out in detail the parents' socioeconomic circumstances.

This will include the following:

- Australian Bureau of Statistics (ABS, 2018) rating of social disadvantage for the neighbourhood in which the parents live.
- The status of the family home in terms of public or private ownership and the weekly rental or mortgage cost.
- Information about the source of family income (both mother and father and any other persons living in the household), that is, welfare benefits or employment, including dollar amounts.
- Any assets, that is, motor vehicle, e-bike or dingy with a dollar value.
- Bank account details and balances plus any outstanding debts in dollar terms.

Child protection service cannot just be about investigation and substantiation of suspected cases of child abuse or neglect (CAN). Nor should surveillance be seen as family support. DCJ will also have to detail how they have supported the family with resource finding activities that might include improved housing, at less cost than the current rental. In doing so, DCJ will acknowledge that resource finding and concrete help to families suspected of CAN is part of what child protection services need to do.

At no point does this proposal support a lower standard of care for ATSI children than for others. On the contrary, the emphasis on concrete services is designed to ensure that ATSI children have full access to 'goods' and services that they need for a safe, abuse and neglect free, healthy childhood.

## 8 | COST SAVINGS

As noted earlier, in the year July 2020 to 2021 there were approximately 46,200 children in OOHC in Australia. It is possible to estimate the cost savings if the number of children in OOHC was reduced by taking the issues of poverty and social disadvantage seriously. Ainsworth (2020) at an earlier point in time did this for the year 2018–2019 and produced figures that suggested that for

NSW a saving of one-third of the OOHC budget might be possible. Monies should not be seen as government savings, but as monies to fund support services for the communities identified above to reduce poverty and social disadvantage, and thereby reduce the number of children, especially Indigenous children, who are removed from parental care.

## 9 | CONCLUSION

The new section in the Care Plan will be DCJs first full acknowledgement that poverty and social disadvantage, not just parental dysfunction, can be a precipitating factor in CAN (Blumenthal, 2021). For the Australian Indigenous community, this as a vital acknowledgement, as too many Indigenous children are in state care, because their parents live in socially disadvantaged communities and experience deplorable levels of poverty.

This acknowledgement is a step forward that has the potential to reduce the number of children in care. Indeed, Doidge et al (2017) in their South Australian study estimated that 27% of the cases where a child was placed in the care of the state were the result of the socioeconomic disadvantage of parents. The need for this type of new section in Care Plans no doubt applies to other Australian states and territories.

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## CONFLICT OF INTEREST

The author declares no conflict of interest.

## DATA AVAILABILITY STATEMENT

There are no empirical data associated with this think piece.

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## STATUTES

*Children and Young Persons (Care and Protection) Act 1998*.