



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLIC/IIC:BMsh110324

11 March 2024

Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
Sydney NSW 1240

By email: ipart@ipart.nsw.gov.au

Dear Sir/Madam,

Review of Out-of-Home Care cost and pricing

The Law Society thanks the Independent Pricing and Regulatory Tribunal for the opportunity to provide feedback on the draft terms of reference for its *Review of Out-of-Home Care cost and pricing (Review)*.

The Law Society's Children's Legal Issues and Indigenous Issues Committees contributed to this submission.

Objective of the Review

We note that the Review is to be undertaken in the context of a broader Government objective "to improve the performance and financial sustainability of the out-of-home care system". We suggest that in undertaking this Review, IPART should be guided by the objects and principles set out in Chapter 2, Part 1 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**Care Act**).

Specifically, a guiding principle should be that a child or young person (**CYP**) who interacts with the out-of-home care (**OOHC**) system receives such care and protection "as is necessary for their safety, welfare and well-being",¹ not merely for their sustenance or basic needs. This includes:

- providing a safe, nurturing, stable and secure environment for the CYP;²
- ensuring the CYP's freedom from violence and exploitation, and access to services that foster the CYP's health, developmental needs, spirituality, self-respect and dignity;³
- support for parents and others responsible for the CYP;⁴
- observance of the principle of participation;⁵ and
- that due regard is had to the culture, disability, language, religion and sexuality of the CYP, and if relevant, those with parental responsibility for the CYP.⁶

¹ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 8(a).

² Section 10A.

³ Section 8(b).

⁴ Section 8(c).

⁵ Section 9(2)(a).

⁶ Section 9(2)(b).

The objects and principles set out in the *Care Act* also require, in taking action to safeguard or promote the safety, welfare and well-being of a CYP, making “active efforts” to prevent the CYP from entering OOHC, to restore the CYP to their parents, or, where that is not practicable, to place a CYP with family, kin or community.⁷ We suggest Terms of Reference should specifically refer to the “active efforts” principle.

Needs-based model

Notwithstanding that task 2 concerns developing benchmarks for the costs of providing OOHC, we agree that the costing model overall should be needs-based. Benchmarking the costs of providing OOHC that ensures the safety, welfare and well-being of CYPs should include consideration of factors such as whether the CYP:

- is experiencing social / economic disadvantage, whether arising through their location, family or care provider;
- is part of an Aboriginal or Torres Strait Islander community;
- has a cultural or linguistically diverse background;
- is experiencing disability;
- is experiencing, or at risk of experiencing, violence, exploitation, homelessness, or disconnection from education; or
- lives in a regional, remote, or rural location where the cost of living or of obtaining services is higher.

Leaving care

We suggest draft tasks 1 and 2 should also include, at least, the costs of supporting CYPs through the leave planning process (typically at ages 15-18), leaving care process (typically at 18 years), and, potentially, in the post-care period (typically at ages 18-21). While OOHC leavers have poor social, employment, housing and health outcomes overall, there is evidence to suggest that consistent post-care support from former carers may improve life stability, and help care leavers to access services and navigate life challenges.⁸

System context

We note that the draft terms of reference focus mainly on determining the efficient costs of, and pricing structures for, providing OOHC services under the status quo, rather than on the OOHC system’s structure or operation.

While we appreciate that a comprehensive review of the care and protection system in its entirety is beyond the scope of this Review, we suggest, that ideally, the terms of reference should permit consideration of context of the care and protection system as a whole, including, for example, the NSW foster care system. Foster care remains an integral part of the NSW OOHC system. A key challenge facing the foster care system is a critical shortage of foster carers,⁹ due to factors including the affordability of providing foster care within a volunteer-based model, and a lack of training and support for carers.¹⁰ Another challenge is the increasing risk of foster care arrangements breaking down, due to carers finding themselves

⁷ Section 9A(2).

⁸ ACT Government, *Next steps for our kids 2022-2030* (ACT strategy for strengthening families and keeping children and young people safe), Appendix B – Review of Contemporary practice in out of home care, 2022, p 46, https://www.communityservices.act.gov.au/__data/assets/pdf_file/0007/2009563/APPENDIX-B-Review-of-Contemporary-Practice-in-Out-of-Home-Care.pdf.

⁹ H Wilkinson and A C Wright, *Barriers and motivations to recruiting carers for children and young people in care aged 9+ years*, 2019, p 4, <https://www.myforeverfamily.org.au/wp-content/uploads/2022/10/Recruitment-Literature-Review-FINAL.pdf>.

¹⁰ *Ibid*, p 14.

ill-equipped to manage the complex and challenging nature of providing care to CYPs with complex needs.¹¹

These problems can increase the need for further care proceedings, conferencing and supervision, and greater reliance on cost-intensive forms of OOHC such as Emergency Placements, Intensive Therapeutic Care placements and independent living arrangements. In this way, the instability of the foster care system can impact the performance and sustainability of the OOHC system as a whole.

Thank you for the opportunity to contribute to this review. Questions at first instance may be directed to Sue Hunt, Senior Policy Lawyer, at sue.hunt@lawsociety.com.au or 9926 0218.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a long horizontal stroke extending to the right.

Brett McGrath
President

¹¹ Ibid, p 15.