



Law Council
OF AUSTRALIA

Establishment of an Accreditation Scheme for Children's Contact Services

Attorney-General's Department

10 May 2021

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About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2021 Executive as at 1 January 2021 are:

- Dr Jacoba Brasch QC, President
- Mr Tass Liveris, President-Elect
- Mr Ross Drinnan, Treasurer
- Mr Luke Murphy, Executive Member
- Mr Greg McIntyre SC, Executive Member
- Ms Caroline Counsel, Executive Member

The Chief Executive Officer of the Law Council is Mr Michael Tidball. The Secretariat serves the Law Council nationally and is based in Canberra.

Acknowledgement

The Law Council of Australia is grateful to its Family Law Section for assisting in the development of this submission. It also acknowledges input received from the following Constituent Bodies:

- The Law Society of South Australia;
- The Queensland Law Society; and
- The Bar Association of Queensland.

Executive Summary

1. The Law Council of Australia welcomes the opportunity to contribute to the Attorney-General's Department (**AGD**) consultation in relation to the establishment of an accreditation scheme for Children's Contact Services (**CCSs**).
2. CCSs operate to enable children to have contact with the parent they do not live with, in the event parents (or other caregivers) are unable to manage contact arrangements. The services also provide a safe place for the changeover of children between parents, in situations where doing so in the usual way may lead to conflict.
3. The Law Council supports the creation of an accreditation process for both CCSs and for those staff who provide services within a CCS. However, it observes that one potential consequence of the imposition of accreditation standards may be a reduction in the number of CCSs in operation. The Law Council therefore strongly encourages the AGD to consider this unintended outcome when determining the requirements of the accreditation process. The Law Council is aware of the substantial demand for CCSs and existing long waitlists, and is conscious of the potential that an accreditation process may further reduce the number of CCSs available to families.
4. To be meaningful, any accreditation program must be properly maintained – a process which may require regular engagement with the regulatory body, adding an additional administrative burden that may be beyond smaller, rural or remote agencies or providers.
5. However, on balance, the Law Council views accreditation as an important step to promoting the safety of families engaged in the family law system. Accreditation, if implemented effectively, will strengthen the capabilities of staff to manage the challenges of working in the CCS environment and to act protectively and authoritatively in the event that a child is deemed to be at risk.
6. The Law Council is generally in agreement with the principles and service components as set out in the Consultation Paper, however, has provided some further suggestions and recommendations in this submission with the view to ensuring that CCSs deliver their services appropriately.
7. Finally, the Law Council supports a publicly available centralised register of CCSs that provides details of each service available, the extent of services they are able to provide, as well as applicable fees. In addition to identifying the services offered by the particular CCS and costs, consideration should also be given to listing the qualifications of the staff undertaking the supervision, when the CCS was most recently accredited, and wait times for both intake sessions as well as the wait time for the first supervised time session.
8. The Law Council would welcome the opportunity to continue to engage with the AGD on the development of an accreditation framework for CCSs, with the view to creating a scheme that will promote consistency and safety for families and children who require supervision in the community.

Introduction

9. The Law Council acknowledges that CCSs provide a crucial service within the family law system to facilitate child-focussed full and partial supervised contact services and handovers. This allows for a safe, impartial and conflict free environment for children and families, particularly in circumstances where a family is experiencing family violence or risk issues.
10. As noted in the Consultation Paper, in March 2019 the Australia Law Reform Commission (**ALRC**) recommended amending the *Family Law Act 1975* (Cth) (**Family Law Act**) to provide for an accreditation system for CCSs.¹ Under this proposal, accreditation would be required of all organisations offering CCSs and it would be a criminal offence to provide a CCS without accreditation.
11. The Law Council supports the accreditation of CCS in principle, however, notes the potential for delay and cost barriers to access CCS services should the accreditation process be unduly onerous. In this regard, the Law Council understands that there are significant demands upon the existing CCS, with continuing challenges with respect to adequate funding, delays for families to access their services, and cost barriers for users in the private/user pays services.
12. The ALRC reported that stakeholders had raised concerns about the safety and quality of unregulated CCSs and on this basis, provided its support for accreditation of the sector.² While the Law Council acknowledges these concerns, it is important to also acknowledge that many CCSs provide quality and important services to families, and steps to regulate the sector must avoid being over-prescriptive to a point where there is no choice but to increase cost to families accessing the services. Even a relatively modest increase in cost would make accessing the service prohibitive for many families.
13. Noting these primary observations, the Law Council addresses each of the AGD's consultation questions in turn below.

Responses to consultation questions

Question 1: Accreditation

14. The Consultation Paper asks why an accreditation scheme for CCSs, capturing both staff and the service itself, should not be established. Consideration of this question requires a balancing of the identified benefits from imposing an accreditation scheme, against any identified burdens that might flow (in particular, for users of CCSs) if such a scheme were to exist.
15. The Law Council agrees that families using CCSs would be reassured by the knowledge that the service they are using has achieved and maintained identified standards and has an active accreditation certification. The process of accreditation, however, may result in additional staffing, training, administrative and cost burdens for the CCS, which may act as a disincentive to entry into and retention within the system.

¹ Attorney-General's Department (Cth), *Establishment of an Accreditation Scheme for Children's Contact Services* (Consultation Paper, 2021), 2.

² Australian Law Reform Commission, *Family Law for the Future: An Inquiry into the Family Law System*, Report No 135 (2019) 417-8.

16. Additional administrative or oversight processes may lead to smaller, private agencies leaving the field. It follows that there is a risk that this process may result in greater costs to users of the CCSs (if private paying) given additional costs that may be passed to the consumer should more onerous compliance obligations be imposed, or fewer CCS become available. On the latter point, the risk of a reduction in services being available must be weighed carefully given the acute presently unmet need for these services.
17. On balance, the Law Council views accreditation as an important step to promoting the safety of families engaged in the family law system, and the Law Council supports the introduction of an accreditation scheme for organisations offering CCSs.
18. As noted throughout this submission, the accreditation framework should include as a requirement, the implementation of consistent, safety-oriented processes and procedures across CCSs, as well as appropriate facilities and relevantly qualified staff. CCSs work with clients in highly complex parenting matters, often involving alleged or substantiated substance abuse, child sexual abuse or domestic and family violence. Providing such services requires sophisticated knowledge of a range of issues, including:
 - the Australian family law system;
 - domestic and family violence;
 - childhood development;
 - child abuse and neglect;
 - substance use issues;
 - psychological disorders;
 - safety screening and whether individuals are suitable to work with children;
 - report writing practices; and
 - the ability to work with clients with complex issues and needs.
19. Organisations offering supervised contact who do not have appropriately qualified staff are less likely to be able to respond appropriately to challenging behaviours, recognise subtle manifestations of abuse between parties or toward children and overall provide a safe, neutral environment.
20. In light of the above, the establishment of an accreditation system is likely to be the most effective way of ensuring a high standard of practice.

Questions 2 and 3: Principles for operating a CCS

21. The Law Council notes the Consultation Paper's reference to Guiding Principles, which set out the minimum requirements and practice principles expected of CCSs.³ Currently, all Australian Government funded CCSs are contractually obligated to deliver their services accordingly. The relevant consultation questions subsequently provide for consideration as to whether the Guiding Principles Framework is appropriate, and whether alternative principles should be considered.
22. The Law Council generally supports the principles enunciated in the Consultation Paper, however, considers that 'accountability' ought to be added as a key principle.

³ Attorney-General's Department (Cth), *Establishment of an Accreditation Scheme for Children's Contact Services* (Consultation Paper, 2021), 6.

Particularly, adherence to accountability as a guiding principle, would include the keeping of adequate records and notes of contact sessions.

23. If a new set of principles is to be determined, the Law Council has received a suggestion that these be comprehensive and encompass a wide range of ethical and professional issues, for example:
- confidentiality;
 - justice;
 - respect;
 - privacy;
 - competence;
 - record keeping;
 - use of interpreters;
 - suspension or termination of supervised contact;
 - screening;
 - reputable behaviour;
 - communication;
 - conflicts of interest; and
 - child resistance or refusal.
24. The Law Council has been provided with an example of a more expansive list of principles that may be of assistance during this consultation, namely the Australian Psychological Society's Code of Ethics.⁴ These principles are built on three general ethical principles; propriety, integrity and 'respect for the rights and dignity of people and peoples'.⁵ The Australian Psychological Society's 'Position Statement on Child Wellbeing After Parental Separation', may also be worthy of consideration when generating principles to underpin CCSs.⁶
25. The Law Council understands it is common for some children to refuse to spend time with parents they do not live with as a result of concerns they hold towards that parent. It is therefore suggested the current consideration of CCSs provides an opportunity to consider establishing a guideline as to how service providers respond to this difficult situation, which includes referral pathways to additional support for all members of the family. We note it may be necessary to revise the current CCS Guiding Principles to reflect this.⁷
26. Finally, the Law Council is advised of some ambiguity currently surrounding what specifically should be contained in CCS reports and understands they are usually limited to observations only. It is suggested, as above, the current consideration of CCSs provides an opportunity to clarify this issue, by potentially updating the CCS current Guiding Principles relating to reporting. This is particularly relevant given such reports may be relied on in proceedings.

⁴ Australian Psychological Society, *APS Code of Ethics* (September 2007).

⁵ *Ibid.*, 6.

⁶ Australian Psychological Society, *Child Wellbeing After Parental Separation: A Position Statement prepared for the Australian Psychological Society by the APS Public Interest Team* (Position Statement, July 2018).

⁷ Attorney-General's Department (Cth), *Children's Contact Services Guiding Principles Framework for Good Practice* (October 2018).

Question 4: Access to a Children's Contact Service

27. The Law Council supports a public centralised register of CCS providers.
28. The current system requires family law professionals and litigants to research the availability and extent of services in the area where time will be spent. This can be particularly difficult when attempting to locate private services and services interstate.
29. A centralised register that provides details of each service available and the extent of services they are able to provide (for example, handover and supervised contact), as well as applicable fees, would streamline this process and ensure information is available to stakeholders. In addition to identifying the services offered by the particular CCS and costs, consideration should also be given to listing the qualifications of the staff undertaking the supervision, when the CCS was most recently accredited, and wait times for both intake sessions as well as the wait time for the first supervised time session.
30. It is noted, however that any register, to be useful, will need to be maintained and updated regularly.

Questions 5 and 6: Legal mechanism for an accreditation system

31. The Law Council suggests a different title be given to workers in CCSs other than a 'Children's Contact Service Practitioner' to avoid any implication that the worker holds a specialist qualification that entitles them to practice in the area, which may provoke confusion as to their expertise and the duties they are qualified to undertake. The use of 'practitioner' elsewhere in the Family Law Act (for example 'legal practitioners' and 'family dispute resolution practitioners') suggests the practitioner holds a baseline, uniform qualification that entitles them to practice in that particular field. The Law Council suggests instead that CCS staff be referred to as a 'Children's Contact Supervisor/ Worker'.
32. The Law Council supports the mechanism for establishing accreditation of a CCS by expanding section 10A of Division 1 of the Family Law Act to allow for the Regulations to authorise persons to provide services on behalf of an accredited CCS.

Question 7: Minimum service components of a CCS

33. The Law Council supports the minimum service components outlined in the Consultation Paper, with the exception of 'regular feedback with families' (page 10) through which supervisors provide feedback to parents including strategies to engage with their child. In circumstances where the training, qualifications and experience of a particular supervisor cannot be assumed in all cases to include requisite knowledge in child development, the supervisor may not necessarily be qualified to provide advice about appropriate strategies to a parent or carer.
34. Where there are court proceedings on foot it is unlikely that staff will be aware of the full extent of allegations and issues in dispute, adding to the challenge of providing contextually relevant and appropriate advice. In litigated matters, the records of the CCS's engagement with the family may be obtained to review what has transpired at supervised sessions. Given staff's obligation to remain impartial and neutral, there are some risks that efforts to provide constructive feedback to one party may be seen by the other party as the provision of preferential support and assistance. Such a process risks undermining the confidence of users in the CCS. It is

preferable that instead, CCSs are encouraged to make referrals to other services (or if a government funded service, to a different section within the service that is 'firewalled') so that additional specialised support can be provided to families.

35. It is acknowledged that some supervisors who are qualified (such as psychologists) may be in a position to undertake this feedback role, however this ought to be removed as a minimum standard for all CCS staff.

Question 8: Minimum practices to be provided by an accredited CCS

36. The Law Council supports the view that government funded CCSs should undertake the suite of practices detailed at pages 11-12 of the Consultation Paper. However, the Law Council does not support the position that all CCSs be mandated to provide these services. For non-government CCSs, there should not be a requirement that all practices identified in the Consultation Paper be offered to receive accreditation, however all services that are offered should be required to meet necessary standards.
37. The Law Council's Family Law Section has received anecdotal feedback from family law practitioners that a lack of availability of services can be extremely problematic, particularly in circumstances where court orders have been made for supervised contact to occur and there is no service available in the area. This can force families into the difficult position of locating a third party (often a reluctant family member or friend to provide an undertaking and supervise, and manage a tense family dynamic, who may even have concerns for their own safety). Requiring all services to provide all practices may result in some services having to close, further limiting options for vulnerable families.
38. Some private services may be able to offer facilitated changeover or supervised visits but are unable to offer secure technology to facilitate telephone/internet based supervision which is of particular concern in ensuring survivors of family violence are protected. The challenges for service providers in rural and remote locations may include limited or unreliable access to data to enable the provision of regular and predictable telephone/internet based services. The Law Council therefore suggests that the register of CCSs clearly details what services are available, to allow families to weigh their options and make an informed choice that suits their needs.

Questions 9 and 10: Minimum safety requirements for delivering a CCS

39. When considering the minimum safety requirements, the Law Council agrees that existing minimum safety requirements ought to continue. Further, the Law Council considers that the staff to client ratio ought to apply by reference to the number of clients and children present in the centre, rather than setting a minimum number of staff to be present, particularly at CCSs that supervise the time of multiple families at any given time.
40. Furthermore, incorporated within the obligation for personal disclosure statements from staff and the requirement that staff have the appropriate certification to work with children, the Law Council considers that people who are the subject of parenting orders which impose conditions of supervision on their time with children, or who are the subject of any findings by a court that they pose a risk of harm to children, ought not be permitted to act as service providers irrespective of whether they hold the relevant certification from the government department.
41. The Law Council generally agrees with an expectation that staff working at CCSs be appropriately qualified to do so. It notes, however, that a Certificate IV in Community

Services appears to take 12 months to complete plus an additional 120 hours of work placement. It may be appropriate that the manager of the relevant CCS, and at least one staff member engaged on each 'shift' possess this qualification, however this requirement may be considered too onerous by many staff who are currently employed by CCSs. This may, in turn, drive employees out of the sector and again, reduce the number of CCS available to the community.

Questions 11 and 12: Other requirements

42. The Law Council supports accountability and transparency in CCSs and endorses the establishment of an appropriate independent body to be established for dealing with complaints relating to CCSs and their staff.
43. This body would need to be appropriately resourced such that complaints and concerns could be actioned in a timely fashion while also taking into account jurisdiction/location specific resources, requirements and challenges (including culturally appropriate and trauma informed services).
44. To maintain accreditation, the Law Council recommends that CCSs are reviewed annually by a body tasked with monitoring their services and satisfy the requirements detailed at page 14 of the Consultation Paper (taking into account the process may lead to fewer businesses being prepared to continue to offer these services).

Questions 13 to 18: Qualification and ongoing professional development requirements for CCS staff

45. Persons employed by a CCS to perform duties which include oversight and/ or supervision of the service (including assessments of the suitability for children and families to participate in their services) ought to have as a minimum, specialist training in family violence risk assessment.
46. The Law Council agrees that CCS staff ought to be required to undertake and maintain up-to-date knowledge in topics such as those described in page 15 of the Consultation Paper, and in addition undertake training in relation to:
 - taking appropriate notes;
 - maintaining neutrality when speaking with parties;
 - state specific requirements (such as mandatory reporting obligations);
 - working with families experiencing domestic violence;
 - working with children with special needs; and
 - providing culturally appropriate services.
47. Attendance at the Australian Children's Contact Services Australia's biennial conference, for example, may satisfy many of these requirements.
48. The Law Council is of the view that there be a minimum requirement that staff are considered 'fit and proper' to be registered to work with children including ensuring they are not permitted to work if they have been convicted of any offence relating to a child.

Question 19: Consequences of non-accreditation

49. Noting the importance of a functional and maintained accreditation scheme on trust and confidence in the CCS system, the Law Council would support sanctions against those who provide CCS services that are not accredited.
50. It is further recommended that a review of this framework should take place in one year's time.