



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC/FIC/JFEvk:1064214

20 November 2015

The Hon Brad Hazzard MP
Minister for Family and Community Services
52 Martin Place
SYDNEY NSW 2000

By email: office@hazzard.minister.nsw.gov.au

Dear Minister,

Children and Young Persons (Care and Protection) Amendment (Protection from Serious Offenders) Bill 2015

I write on behalf of the Indigenous Issues Committee (IIC) and the Family Issues Committee (FIC). The Family Issues Committee represents the Law Society in the area of family law, particularly in respect of advocacy about the needs and family law rights and duties of people in NSW. The Indigenous Issues Committee represents the Law Society on legal issues as they relate to the needs of Indigenous people in NSW. Both Committees include experts drawn from the Law Society's membership, including judicial members, and members whose work is directly related to child protection.

The Committees are concerned about the Children and Young Persons (Care and Protection) Amendment (Protection from Serious Offenders) Bill 2015 ("Bill"), which was introduced into the Legislative Assembly on 12 November 2015 by Ms Tania Mihailuk. The Committees understand that the Government will need to determine its position on this Bill. The Committees do not support this Bill for the reasons set out briefly below.

The Committees note the Bill seeks to, among other things, require the removal a child from the care of a parent or guardian with a previous conviction for a serious violent offence against their own child, with certain exceptions such as significant mitigating circumstances.

The Committees are sensitive to the case studies that appear to have prompted the introduction of this Bill. However, it is not clear that the proposed reforms are necessary to achieve the policy aims, and would do so in a proportionate way. There is no evidence that the Department of Family or Community Services or the Children's Court have responded inappropriately to instances where a parent has previously treated a child in one of the way set out in the Bill.

The Committees consider that the existing mechanisms for the removal of children at risk currently operate to ensure that children are removed where they are at risk from serious harm. Specifically, section 106A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides this mechanism. The Committees are of the view that the removal of a child from the care and protection of a person should continue to be done on a case by case basis.

The Committees are concerned that the provisions of the Bill are incompatible with other legitimate policy aims, such as the rehabilitation of people who have been convicted of a criminal offence, and are therefore disproportionate in their impact.

For example, it is proposed that the prohibition of female genital mutilation (FGM) be considered a disqualifying offence. In this regard, the Committees note that the Human Rights Committee of the Law Society of NSW made a submission on 11 March 2014 to Attorney General Greg Smith SC opposing harsher criminal sanctions in respect of FGM. The Committees endorse the view taken by the Human Rights Committee that in respect of FGM offences it is appropriate to continue with the educative approach without recourse at this point to more stringent penalties. The evidence suggests that the issue is a cultural rather than criminal one, primarily affecting the African community.

The Committees are also concerned about how the proposed reforms would work in practice and how they would fit into the existing child protection legal framework. The Committees note that in NSW, it has been recognised that there is a "strong public interest in rehabilitation, both for the benefit of the community and the individual".¹

The Committees would be pleased to discuss the Bill in more detail with the Minister if this would be of assistance. If so, please contact Vicky Kuek, Principal Policy Lawyer, on 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,



Michael Tidball
Chief Executive Officer

¹ *R v Groombridge* (unreported, 30/9/90, NSWCCA), per Wood J at [8]-[9].