



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our Ref: RBG587905

2 March 2012

Ms Maree Walk  
Chief Executive  
Review of the Children and Young Persons (Care and Protection) Regulation 2000  
Legal Services, Legislative Review Unit  
Department of Family and Community Services, Community Services  
Locked Bag 4028  
ASHFIELD NSW 1800

Dear Ms Walk,

**Review of the Children and Young Persons (Care and Protection) Regulation 2000**

The Law Society's Juvenile Justice Committee (Committee) is very concerned about the escalating problem of the criminalisation of children in out of home care (OOHC). Committee members have reported that children of increasingly younger ages are appearing in court charged with matters that would never be dealt with in the criminal jurisdiction if these children were in the care of their families.

The Committee believes it is very important that the Code of Conduct contained in the *Children and Young Persons (Care and Protection) Regulation 2000* put in place provisions to deal with this issue, and to divert these OOHC young people away from the criminal justice system.

Committee members have reported many incidences, both in Sydney and in regional areas, where workers with children in OOHC are attending court and asking Magistrates for bail conditions that will assist in managing the child, such as 'obey reasonable directions of carers'. The Committee has examples where carers have called police to have a child's bail breached where the child was refusing to eat his dinner and another where the child refused to go to bed. In both cases the children were breached and spent time in custody.

Only as recently as the February meeting of the Juvenile Justice Committee, members discussed a case where a 10 year old boy from the Grafton area had already been charged a number of times for offences including malicious damage and assault, based on his behaviour in OOHC towards property and his carers. It appeared that workers were waiting on his 10<sup>th</sup> birthday to arrive, so that they could call for a police response, rather than deal with his behaviour some other way. At the time of police first being called by carers for this boy he was in the fourth grade at the local primary school.

The taking out of Apprehended Domestic Violence Orders (ADVO) by workers is also a very serious concern, and provisions in the Code of Conduct as to when action is appropriate would be a positive step. When an ADVO is in place, breaches can be established for very minor problematic conduct such as swearing and voice raising as well as for further property damage.

Many of the OOHC children brought into the criminal justice system in this way build up extensive criminal histories, with all of their offences being related to their behaviour in OOHC and interactions with workers. Committee members report that often the problematic behaviour arises in situations where the child's behaviour management plan was not adhered to, and yet rather than internally examine the shortfalls of the service provision to the child, the police are called.

The Committee would support provisions being included in the Code of Conduct dealing with issues such as when police should be involved, when ADVOs should be applied for, and checks to be observed before either of these actions occur.

The Committee would be very pleased to be involved in any consultation about how this could be achieved by provisions in the Code of Conduct.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Justin Dowd', written in a cursive style.

**Justin Dowd**  
**President**