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Dr James Popple
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Law Council of Australia
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By email: natalie.cooper@lawcouncil.au

Dear Dr Popple,

ESTABLISHMENT OF AN ACCREDITATION SCHEME FOR CHILDREN'S CONTACT SERVICES

Thank you for the opportunity to contribute to the Law Council's submission to the Attorney-General's Department (**AGD**) on the establishment of an accreditation scheme for Children's Contact Services (**CCSs**). The Law Society's Family Law, Children's Legal Issues and Indigenous Issues Committees contributed to this submission.

Given the serious work undertaken by CCSs, and the suite of risks that CCSs are attempting to address, the Law Society supports implementation of an Accreditation Scheme which ensures that CCS businesses and practitioners are able to provide contact supervision which is physically, psychologically and culturally safe to all participants, and that there is consistency in the quality of CCS provided across service providers. We support the introduction of accreditation criteria at the organisational and individual practitioner level. However, any consideration of development of the Accreditation Scheme must take into account the costs and viability of the Scheme in an already under-resourced sector. In our view, moderate-level regulatory regime, set out in Option 3 of AGD's Consultation Impact Assessment, requiring certain standards to be met at both the organisational level and the individual practitioner level appropriately balances these two competing considerations.

Background

CCSs provide supervised contact between children and parent(s), whom they do not live with, when a child's parents have separated and are unable to manage their own contact arrangements. Use of CCSs often occurs where there are identified risks to either the child or one of the parents, such as where there are concerns about domestic and family violence (**DFV**), child abuse, alcohol and substance misuse, mental health issues or parental incapacity. Additionally, CCSs provide reports which are a 'written objective account of a family's time at a service compiled from the file notes recorded by CCS staff' at each supervised session.¹

¹ Commonwealth Attorney-General's Department, 'Children's Contact Services: Guiding Principles Framework for Good Practice' (October 2018) ('Guiding Principles').

These reports are prepared for the court at the request of either parent, their legal representative or a court-appointed expert, and can be used as evidence in proceedings.

There are two types of CCSs: those that are funded by the Australian government, and those which are privately run. Government-funded CCSs are bound by the 'Children's Contact Services: Guiding Principles Framework for Good Practice' published by the AGD (**Guiding Principles**) and the Department of Social Service's 'Family and Children Activity Administrative Approval Requirements' (**Approval Requirements**).² The Guiding Principles require that practitioners undergo a police check and a Working With Children Check, and comply with professional codes of conduct.³ They also require that all staff have 'a high level of existing skills relevant to the services provided',⁴ but do not specify specific qualifications that CCS practitioners must have. Private CCSs which do not receive government funding are not subject to any regulatory oversight or accreditation scheme, other than the requirement that service providers comply with State and Territory requirements for working with children or vulnerable people.

This gap was recognised by the legislature, resulting in the inclusion of subsections 10A(1)(ba)–(bb) of the *Family Law Amendment Act 2024* (Cth) (**FLA**) as the framework for the establishment of Accreditation Rules for CCS practitioners and businesses.

Nature of the work undertaken by CCSs

CCSs are often required to supervise contact for families experiencing serious and complex challenges. DFV is a common concern for families accessing CCSs. In a study conducted by the Australian Institute of Family Studies (**AIFS**) which used both data reported by government-funded CCSs from 2019–2022, as well as surveys of CCS service management, supervision staff and professionals, professionals referring families to CCSs, and clients, approximately 4 in 10 clients were identified as needing assistance with "family functioning" and more than 1 in 10 required assistance with personal and family safety.⁵ Parents and carers surveyed in the study reported a range of complex issues, including issues associated with emotional abuse and anger (46%), mental health issues (40%), violence or dangerous behaviour (39%) and alcohol or substance abuse (30%).⁶ Almost half of parents and carers surveyed reported that two or more of these issues were present in their families' circumstances.⁷ Additionally, Aboriginal and Torres Strait Islander people are overrepresented as CCS clients; in the AIFS study, approximately 1 in 10 clients of government-funded CCSs aged 0–17 years, and 8% of clients aged 18+ years were Aboriginal and Torres Strait Islander people.⁸

Issues affecting the CCS sector

In the experience of our members, there are significant wait times for both private and government-funded CCSs. This is particularly so for government-funded CCSs, and also for all CCSs in regional and rural areas,

² Department of Social Services (Cth), 'Families and Children Activity Administrative Approval Requirements' (2014).

³ Commonwealth Attorney-General's Department, Guiding Principles (n 1), 10.

⁴ Ibid 28.

⁵ Australian Institute of Family Studies, 'Evaluation of the Children's Contact Service Activity: Final Report' (Research Report, December 2023) 130.

⁶ Ibid 140.

⁷ Ibid.

⁸ Ibid.

where there may be a small number of CCSs in a region. Additionally, private CCSs are often costly, charging anywhere between around \$200–\$450 per hour, making private services unaffordable for people from mid to lower socio-economic backgrounds, and compounding the demand on government-funded services. There is a risk that by establishing accreditation rules which are comprehensive, the increased costs of running CCSs will be passed onto clients which may, in turn, place further demand on the already overburdened government-funded CCSs.

We also note the CCS sector's challenges with staff recruitment and retention⁹ and are mindful that introducing Accreditation Rules which are too onerous for individual practitioners may perpetuate these challenges. For example, our members are concerned that prospective practitioners may be deterred from entering the sector and that current practitioners may choose to leave the sector if they are required to do further study to retain their employment. However, given the sensitivities and risks associated with this work, these concerns need to be appropriately balanced with concerns for safety and professionalism. As such, we support a moderate level of regulation, as set out below.

Support for moderate-level regulation proposed under Option 3

We support the centre and community-based accreditation criteria set out in the Consultation Impact Analysis at pages 27–28. We are of the view that these criteria are appropriate to ensure that CCSs provide safe services and that appropriate practitioners are undertaking this serious work. We do not perceive these criteria to be particularly onerous for implementation by the centres. We also support the establishment of a regulatory body to review and assess the suitability of an organisation's policies and risk frameworks before making an accreditation decision.

In relation to the individual qualifications of CCS practitioners, in light of the serious, complex issues often faced by families accessing CCSs, we are of the view that it is essential that CCS practitioners are properly trained to identify and properly respond to physical, psychological, social and emotional risks that may arise whilst contact is being supervised. Additionally, CCS practitioners should be provided training to address any internal biases which may affect their behaviour when supervising the contact and their report writing. General and Mental Health First Aid qualifications should also be required to be undertaken by practitioners.

We are also of the view that it is critical that CCS practitioners are trained to ensure a culturally safe environment in which the contact can occur. Further, noting that that Aboriginal and Torres Strait Islander people are overrepresented as clients of CCSs,¹⁰ we emphasise the need for CCS practitioners to be appropriately trained on cultural sensitivities and specific issues experienced by Aboriginal and Torres Strait Islander people. At present, CCSs may not be consistently ensuring that the environment for the contact is culturally safe. This has anecdotally been the experience of some of our members, which is supported by the results of the AIFS's survey of CCS service providers and referring professionals,¹¹ [66]. We suggest that there is scope for the development of Culturally Safe Standards with which CCS practitioners and organisations must comply. Additionally, we recommend that consideration be given to how Aboriginal Community

⁹ Ibid 74.

¹⁰ Ibid 7, 136–138.

¹¹ Ibid 6.

Controlled Organisations (**ACCOs**) could be more closely involved in providing CCSs, including by having specialist Aboriginal and Torres Strait Islander staff and support people from ACCOs at the CCS.

Our preference is for the regulatory body established under this model be funded to provide relevant training to individual practitioners rather than requiring CCS practitioners and organisations to bear the costs. Noting the challenges of staff recruitment and retention in the CCS sector, our view is that funded training would alleviate concerns that a costly and formal accreditation scheme will deter individuals from entering or remaining in the sector, or result in the cost of accreditation being passed on to CCS clients. It would also ensure consistency in the standard and quality of training provided to practitioners.

Accordingly, we support the option for moderate regulation in relation to CCSs as, in our view, it strikes the appropriate balance between ensuring that CCS businesses and practitioners are able to provide safe and appropriate contact services, and not being unnecessarily onerous so as to risk CCSs becoming too expensive to run as a business and unaffordable to clients.

Section 10KE, FLA

We also suggest that consideration be given to how the introduction of an accreditation scheme might interact with s 10KE of the FLA.

Section 10KE provides that a person who is or has been an “entrusted person” must not use or disclose “safety information” obtained by that person in their capacity as an “entrusted person”. An “entrusted person” includes a “CCS practitioner”, meaning “an individual who is accredited as a CCS practitioner under the Accreditation Rules”,¹² as well as a “CCS business”, “a person or entity accredited as such under the Accreditation Rules”.¹³

Under s 10KE(3), “safety information” is defined as follows:

- (3) Safety information is information that relates to the risks of harm to a child or a member of a child's family, or to the identification and management of such risks, if:
 - (a) children's contact services have been, are being, or will be, provided to the child; and
 - (b) the risks are those that may arise in connection with the use, facilitation or provision of the service.

In circumstances where an accredited CCS practitioner or business has observed information that relates to risks of harm to the child during a contact, as a result of s 10KE, they may be unable to include this information in a supervision report. The potential exclusion of safety information may affect the accuracy and utility of the report. In light of the importance of these reports in parenting proceedings, we suggest that this would be an undesirable outcome and support consideration be given to how “safety information” might be disclosed in CCS reports.

¹² *Family Law Act 1975* (Cth) s 10KC.

¹³ *Ibid* s 10KD.



THE LAW SOCIETY
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Thank you for the opportunity to comment. Questions at first instance may be directed to Ursula Paetzholdt, Policy Lawyer, at (02) 9926 0130 or Ursula.Paetzholdt@lawsociety.com.au.

Yours sincerely,

Jennifer Ball
President