

15 March 2024

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

By email: [ipart@ipart.nsw.gov.au](mailto:ipart@ipart.nsw.gov.au)

Dear Sir/Madam,

### **Review of Out-of-Home Care cost and pricing**

Legal Aid NSW 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)*.

We note that the stated objective of the Review is, “to improve the performance and financial sustainability of the out-of-home care system.” Legal Aid NSW draws the Tribunal’s attention to the Objects and principles at Chapter 2, Part 1 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the Act),<sup>1</sup> and submits that these Objects and principles must be the foundation of any review to “improve the performance and financial sustainability” of Out-of-Home Care (OOHC) and urges the Tribunal to ensure that they underpin and inform all investigations, assessments and recommendations.

Legal Aid NSW expresses concern at the outset about the development of “benchmark costs” and “pricing structures” that would inhibit the ability of OOHC to meet the individual needs of a child or young person, respond to the changing needs of a child or young person in OOHC, or to provide carers with the supports and resources necessary to provide care that meets the individual needs of the children and young people in their care.

Legal Aid NSW legal practitioners have significant experience working with children and young people in OOHC and with their families. In our experience the needs of children and young people in OOHC are often multi-dimensional relating to their physical, mental and emotional health: That their needs are highly individual, very complex and significant and can emerge and change over time. It is also our experience that their needs are not amenable to short term solutions. Legal Aid respectfully suggest that the Terms of Reference (TORs) of the Review should not have as their focus and be limited to, the costs of providing OOHC under the current system but rather should have as their focus and start with, the needs of the children and young people in OOHC and the costs associated with not only meeting those needs but providing the care and protection “necessary for their safety, welfare and well-being as required by the legislation.”

As a corollary to this, Legal Aid NSW argues that it is important that the Review considers the costs of properly supporting carers to meet the complex, often multi-dimensional needs of the children and young people in their care. We submit that identifying the needs of children and young people and the cost of what is required to meet those needs, must also include the costs of effectively supporting their carers.

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<sup>1</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 8 and 9.

Legal Aid NSW would welcome amendments to TORs 2 and 3 so that they make direct reference to the complex needs of the children and young people in OOHC and the costs associated with meeting those needs. It is also the case that the “relevant considerations” do not make reference to the needs of children and young persons, only to the complexity and length of casework required. Legal Aid respectfully suggests that to properly assess and cost the complexity and length of casework, first requires an assessment of the needs of the children and young people the subject of the casework and what is required to meet their needs.

On the basis of our significant experience working with children and young persons in OOHC, we are aware of many cases in which they are not receiving the care and protection necessary for their safety, welfare and wellbeing. And can point to many aspects of OOHC and associated child and protection services, that are not adequately funded from the perspective of the children and young people. Legal Aid NSW respectfully suggests caution in relying to any great extent, on the current model when consider benchmarks and pricing structures for OOHC.

## TOR 1

Legal Aid suggests that in addition to the matters raised in TOR 1, the following could be included;

1. The cost of recruiting caseworkers, the cost of the turnover of caseworkers, the cost of the training and education of caseworkers and the costs associated with stress and sick leave, complaints and associated litigation.

Legal Aid NSW accepts that these are not costs directly associated with the provision of OOHC, but because casework is provided to children in OOHC, some of these costs must be relevant and taken into account when assessing the cost of providing OOHC. It is not unusual for there to be one or more changes of caseworker during proceedings. This disruption results in more casework and legal resources being required to manage the transition of information and case management. It also has the potential to have a negative, qualitative cost on the provision of care and protection.

2. The cost of accreditation and on-going compliance, including the costs associated with the consequences of non-compliance. Legal Aid is aware of at least one out of home care agency that did not meet accreditation.
3. Legal Aid NSW considers that there would be benefit in 1(c) being further clarified to assist stakeholders to understand what administration and corporate needs are being investigated. For example, it is not clear from the TORs where consideration is to be given to the very significant resources and costs associated with the management of the separation of OOHC from the statutory authority responsible for care and protection in NSW. As a result of this separation, there are often multiple and varied casework and legal interactions between non-government care providers and DCJ for children and young persons in OOHC who are in the parental responsibility of the Minister. There is also a complex and layered matrixes of decision making and responsibility for casework and casework outcomes.
4. As a corollary to this, there are a number of cases where management and casework disagreements between DCJ and a non-government care provider have resulted in significant and costly litigation. There are also cases where DCJ has failed to comply with legislative imperatives due to competing DCJ policies, an example being the recent decision *Re Daisy Logan* [2023] NSWChC 16.

Legal Aid NSW suggests that these costs need to be investigated and reported on as part of the Review and consideration be given to how such litigation can be prevented. Such litigation has broader implications than the financial sustainability of OOHC, having the potential to negatively impact the children and young people the subject of the proceedings and their families. In addition to carers and caseworkers.

While Legal Aid NSW accepts that the costs associated with litigation are not costs directly associated with the provision of OOHC, we submit that they can occur as a direct result of the way OOHC is managed and provided. Including as stated above, as a result of the multiple and varied interactions between DCJ and non-government care providers and layered and complex matrix of decision making and responsibilities for casework and outcomes for children and young persons.

5. Legal Aid NSW respectfully suggests that at 1)(d) should also include the legal and casework associated with preparing reports pursuant to sections 76 and 82 post final orders, costs and casework associated with the provision of contact during proceedings, Family Group Conferencing during proceedings, the filing of Guardianship Applications and section 90 applications.
6. Legal Aid NSW also suggests that the costs of providing support for young persons both leaving care and post leaving care, is an important consideration, potentially providing a significantly cost benefit, and
7. Legal Aid NSW makes the same submission in relation to the cost of effective early intervention with families and suggests that investment in effective early intervention has the potential to reduce the number of children and young people in OOHC, reduce costs and increase sustainability.
8. Consideration could also be given to including the costs of post-adoption support services to adoptive parents which would have the potential to provide a positive cost benefit by reducing the breakdown of adoption, seeing children and young people returning to OOHC.

Legal Aid NSW argues that many aspects of OOHC in NSW are not working. The system is unsustainably expensive, while also not meeting the needs of the children and young people in it. Children and young people experience multiple placements and their outcomes on leaving OOHC are poor in a number of important respects. Legal Aid suggests that the Terms of Reference must have as their primary focus, the needs of the children and young people in OOHC and of the carers, who are relied on to provide for their day to day care.

Legal Aid NSW submits that any other approach to improving performance and looking at the financial sustainability of OOHC, risks not being properly informed so as to make sound recommendations about efficiently costing OOHC services.

Yours sincerely



Monique Hitter  
**Chief Executive Officer**