JESUIT SOCIAL SERVICES
RESEARCH POLICY AND ADVOCACY UNIT

SUBMISSION

Draft Care and Protection of Children (Therapeutic Orders) Amendment Bill 2012
Northern Territory
June 2012

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Introduction

Jesuit Social Services welcomes the opportunity to comment on the proposed Care and Protection of Children (Therapeutic Orders) Amendment Bill 2012. We support the range of reforms being undertaken by the Northern Territory government in response to Growing Them Strong, Together - the report of the Board of Inquiry into the Territory’s Child Protection System. In particular, we welcome investment in initiatives such as increased funding for out of home care, the provision of safe bed places in Alice Springs, and a commitment to building an Aboriginal Peak Body to work with Aboriginal child care agencies.

About Jesuit Social Services

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families and communities. Our service has its origins in work with disadvantaged young people involved with the youth and adult justice systems in Victoria.

We do this by intervening directly to address disadvantage and by influencing hearts and minds for social change. We strengthen and build respectful, constructive relationships for:

- **Effective services** - by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to life-long learning and development
- **Capacity building** – by refining and evaluating our practice and sharing and partnering for greater impact
- **Advocacy** – by building awareness of injustice and advocating for social change based on grounded experience and research.
- **Leadership development** – by partnering across sectors to build expertise and commitment for justice

Jesuit Social Services values every person and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential. Jesuit Social Services works where the need is greatest and where it has the capacity, experience and skills to make the most difference.

In the Northern Territory, we work with local Alice Springs communities to support Eastern and Central Arrente people to improve their situation and to have more control over their lives. This work started after local community and church leaders approached us for support.

Jesuit Social Services understanding of child protection comes from 35 years experience working with young people in the youth justice and adult corrections systems – many of whom have been involved in the child protection system. In Victoria, we support young people leaving the care system through the ‘Leaving Care Mentoring’ program. This program matches care leavers with mentors who provide consistent and stable relationships as they move from care into the community. Last year, Jesuit Social Services made a detailed submission to the Protecting Victoria’s Vulnerable Children Inquiry, which was acknowledged in the Inquiry’s findings.
1. How secure care relates to residential care reforms

Whilst we support the Northern Territory government’s reforms to child protection, we are concerned about how the proposed Secure Care Service and enabling legislation fits within the overall reform context. The Briefing Paper and Therapeutic Services System - Appendix A that were provided by the Department of Children and Families make it clear that the Secure Care Service will be part of a therapeutic service system for young people with complex needs and that this is being developed in response to Recommendation 66 in Growing Them Strong, Together. However, it has not been made clear precisely how the Secure Care Service fits within the context of reforms to residential care. In particular, we believe that there needs to be more detail provided as to how the Secure Care Service will fit within any review and subsequent reform of residential care that might take place in response to Recommendation 33 in Growing Them Strong, Together. In other Australian jurisdictions, secure care is a placement option for a small group of young people at extreme risk, and is linked into frameworks of less restrictive residential and therapeutic support services. The intense resources required to fund residential and therapeutic services was noted in Growing Them Strong, Together. At present, the precise level of resource that will go towards a reformed residential and therapeutic care service has not been made clear. Significantly, the funding for the Secure Care Service was provided through the 2009/10 budget which was before the release of Growing Them Strong, Together and resultant reforms to child protection. In light of this, we believe that it is important that details of reforms to residential care and therapeutic services be released. In the absence of this detail, it is difficult to understand how the Secure Care Service will fit within a reformed residential care system. We are concerned that inadequate planning and resourcing of residential care will result in poor outcomes for vulnerable and at risk young people and, in the absence of a fully articulated and resourced continuum of care, will be used as an emergency care option rather than an appropriately assessed placement of last resort for the most at risk.

Recommendation 1.1: Details of reforms to residential care and therapeutic services should be released before Secure Care Services Commence.

Recommendation 1.2: Secure care must sit within a fully articulated and resourced continuum of care.

2. Consultation with remote Aboriginal communities

We acknowledge and welcome the Indigenous Specific Considerations in the Secure Care Therapeutic Framework – Appendix B as well as the provision of additional accommodation so that young people in secure care will be able to be accompanied by parents/carers/kin. However, we are concerned about the level of consultation with remote Aboriginal communities in developing the Secure Care Service. Through our work with remote communities we are aware of concerns within these communities for the welfare of vulnerable and at risk young people. There are concerns about

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the competency of service provision outside of communities to meet the needs of young people, in particular the retention of links to language, culture, and identity whilst using services outside of their community. In its response to *Growing Them Strong, Together*, the Northern Territory Government committed to involving the Aboriginal sector in key reform activities, including the review and reform of residential care services and the out of home care program. We acknowledge that consultation may have been made difficult by the fact that the Aboriginal Peak Body is still in its infancy, but we feel that greater effort could have been made to consult with leaders from remote communities. The need for consultation and ownership of any residential care model that requires removal of children and young people from family and community is particularly sensitive for Aboriginal people given their long and traumatic history with state welfare and forced removal. Comprehensive consultation and consensus is a necessity not an option.

**Recommendation 2:** Leaders of remote Aboriginal communities must be consulted about the proposed Secure Care Service.

### 3. The Scope of the Draft Bill

The Draft Bill, if enacted, will allow young people not currently in the child protection system to be admitted into secure care. No other Australian jurisdiction extends the power to place a young person into secure care beyond the child protection or youth justice systems.

We are concerned about the implications of this ‘net widening’ for young people who enter secure care. Research into residential care has demonstrated that in order to be effective residential programs need to be highly specialised and available for tightly defined groups of young people. We are concerned about the potential for ‘bracket creep’ through the blurring of support needs and accountabilities for child welfare, mental health and youth justice populations. Where residential programs end up with a diverse group of service users there is a high risk that negative peer group influences will develop and difficult behaviours will be copied. The broad nature of the draft legislation, coupled with the limited range of services for at risk young people in parts of the Northern Territory means that these risks are likely to be acute for young people under the proposed model. The level of risk is likely to be influences by the nature and extent of reforms to residential care which were canvassed in more detail at Point 1 of this submission.

**Recommendation 3:** The group of young people who will access secure care needs to be more tightly defined and safeguards to prevent and deal with bracket creep should be incorporated into the Draft Bill and Therapeutic Framework.

### 4. Protecting the rights of young people in Secure Care

Regardless of whether they are at risk, the decision to deprive a young person of their liberty for an extended period of time is significant. We believe that there is a need for strong legislative protections and oversight mechanisms so that decisions regarding Therapeutic Assessments and

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3 Frank Ainsworth, 2007, Residential Programs for Children and Young People – What we need and what we don’t need’ Children Australia Vol 32, No. 1, pg 33.
4 Ibid,
Orders are made in the best interests of young people. This need is particularly acute in light of the broad scope of the Draft Bill. For the most part, we believe the Draft Bill provides adequate protections and oversight mechanisms. However, we believe there are several areas where the Draft Bill can be strengthened:

- **Pathways into secure care** - In other jurisdictions, legislative requirements around child protection investigations, review of cases, and placement into accommodation ensure that only the most at risk young people end up being placed in secure care. We are concerned about the lack of clarity regarding the pathways into secure care for young people who are not part of the child protection system. In particular, it is not clear how the CEO will identify a young person as being potentially at risk and what the standard of ‘previous attempts to carry out assessment or provide treatment’ will be. We understand the need for legislation to provide a degree of flexibility to meet complex circumstances, however where the deprivation of a young persons’ liberty is at stake, we believe that a greater level of clarity as to the circumstances in which they will be considered for secure care is required.

- **Representation and consultation** - We believe that the requirements for legal representation (s.223C) and consultation where applications for secure care are made (s.224 & 225) should be clearer. The capacity to waive the requirement for legal representation in s.223C(2) of the Draft Bill is too broad. There should be a requirement where a decision is made without a legal representative that a review take place after time has been provided for legal representation to be obtained. We also believe that where care plans are made as part of an initial application for an order (under s.224 and s.225) there should be similar requirements to consult with relevant parties as there are where the CEO seeks to review or vary an existing care plan (under s.224H and s.225H).

- **Transition from secure care** - We are concerned that the legislation does not impose any duties on the CEO to ensure the welfare of a young person in secure care once a therapeutic order has expired. We believe that there should be legislative requirements for post-care planning and securing suitable accommodation for young people upon release.

**Recommendation 4.1:** The pathways of young people into secure care must be more clearly defined.

**Recommendation 4.2:** The right to legal representation and requirement that the CEO consult with relevant parties when applying for an order must be strengthened.

**Recommendation 4.3:** Duties should be imposed on the CEO to ensure that a young person is supported in their transition out of secure care.