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Submission No. 36



**Submission to the Victorian Law
Reform Commission's review of the
*Guardianship and Administration Act
1986 (Vic)***

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relation to this submission contact:

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OVERVIEW

Berry Street welcomes the opportunity to provide a response to the Victorian Law Reform Commission's review of the *Guardianship and Administration Act 1986* (Vic).

As Victoria's largest independent child welfare agency we provide care and case management to a number of children and young people with disabilities who will transition from our services and require the support offered under the *Guardianship and Administration Act 1986*.

PROFILE OF BERRY STREET

Background

Established in 1877 as the Victorian Infant Asylum, Berry Street chooses to work with children, young people and families with the most challenging and complex needs, including those for whom we are often the last resort.

These children and young people have suffered great distress and significant harm growing up in families where violence, chronic neglect, substance abuse, mental illness, and poverty have prevented them from having a good childhood. Incorporated under the Associations Incorporation (Amendment) Act 1997 with a voluntary Board of Directors, Berry Street is now the largest independent not for profit child and family welfare organisation in Victoria.

Profile of Berry Street

All of Berry Street's services...

- Forge strong relationships with our clients and help restore a belief in themselves and the future - *because we know that learning to trust again is the essential step in healing.*
- Stick with these children, young people and their families - *because we know that in the past they have been let down far too often.*
- Help children and young people recover from the trauma of violence and neglect - *because we know that a good childhood is a vital prerequisite for the development of a healthy, functioning adult.*
- Build on strengths, looking beyond behaviour to the core issues - *because we know this works and is the best way to help children and young people recover from trauma.*
- Include family members and other significant people in planning and caring for children and young people - *because we know it is critical to strengthen connections and maintain positive relationships.*
- Are respectful of culture and religious affiliations - *because we know how important these are in developing identity.*
- Involve our clients in planning, decision-making and the way we help meet their needs - *because we know that having some control in their lives helps healing and builds resilience.*
- Promote a better understanding of the critical link between a good childhood and healthy adults - *because we know that a good childhood is every child's birthright, that it is the foundation of healthy adult development, and that this means a better society for us all.*

Berry Street provides an extensive range of services for children, young people and families across rural, regional and metropolitan Victoria. We work from 20 offices and a further 34 worksites, with the majority of services in the Gippsland, Hume, North & Western Metropolitan and Southern Metropolitan regions. Berry Street employs approximately 385 (EFT) staff and has the support of over 250 volunteer caregivers and in excess of another 200 other volunteers. The budget for 2007/08 is more than \$33 million. Our greatest challenges today arise from the dreadful impact on children and their families of domestic violence, substance abuse, mental illness, poverty and unemployment.

Our services cover 8 main service types:

COMMUNITY PROGRAMS

While we choose to work with clients with the most complex needs, we also look for opportunities to strengthen communities. We focus on the early years, financial inclusion and capacity building in rural communities.

DISABILITY SERVICES

Physical and intellectual disabilities and mental health issues are common for our children, young people and families. Although a relatively small part of our service mix, we run 2 very successful youth outreach programs for those young people who have an intellectual disability and very challenging behaviours.

EDUCATION

The development of our education service is a relatively new initiative for Berry Street and is a result of too many of our children and young people either being excluded from school or dropping out. We run an independent school, with campuses in Noble Park and Morwell, and an extensive range of education programs. We are also a Registered Training Organisation and work in mainstream schools.

FAMILY SERVICES

Our family services help parents manage their children better and help resolve conflict between them and their adolescents. We also play a lead role in the delivery of a comprehensive set of services for families suffering family violence, help women keep themselves and their children safe and provide a contact service for parents who cannot manage safe access arrangements for their children.

HOME BASED CARE

Home Based Care relies on the willingness of accredited foster carers, who want to help children and young people recover from the trauma of family violence and child abuse and neglect. These exceptional people are supported by our professional staff, who also work with the children and their families.

RESIDENTIAL CARE

Berry Street's residential care program is often the "last resort" for young people whose traumatic childhood means they can't be managed by other services. Trained staff live with and look after up to 4 young people in 20 houses across Victoria.

THERAPEUTIC SERVICES

We know that care alone is not sufficient to help children and young people recover from the trauma of family violence and child abuse and neglect. Through Take Two, and other

counseling programs, we work intensively with the distressed child or young person and often their carer, to help them understand their pain and learn to trust again.

YOUTH SERVICES

We know that adolescence is a “window of opportunity” to help young people recover from traumatic childhoods. Our youth services include counseling, outreach, life skills, mentoring, and accommodation and employment programs.

VISION AND VALUES

The Berry Street believes *all children should have a good childhood - growing up in families and communities where they feel safe, nurtured and have hope for the future*. The Strategic Plan 2010-2027 (available at www.berrystreet.org.au) includes a statement of beliefs and assumptions, the context within which we operate and our five values (and what they mean to us) of:

- Courage,
- Integrity,
- Respect,
- Accountability,
- Working Together.

The Strategic Plan articulates what makes Berry Street different: our choice of working with those children, young people and families who are hurting the most and who have the most complex needs; and our determination to restore hope and trust to the lives of the children in our care. The Plan also identifies what makes us successful: our people, skills and knowledge we have developed in caring for children since 1877 and our *culture* of being the best we can be, and being a positive advocate for change.

RESPONSE TO DISCUSSION PAPER

Berry Street is particularly conscious of the need for a streamlined interface between the *Children, Youth and Families Act 2005 (Vic)* and the *Guardianship and Administration Act 1986 (Vic)*.

As such our comments are confined to (a) a response to the concerns raised in Chapter 11 of the discussion paper: *Closing the gap between Child Protection and the adult guardianship systems* and (b) in Chapter 20 to the role and powers of the Public Advocate.

A.

It is broadly accepted that there is a potential service vacuum for young people with disabilities, particularly in the age cohort of 16-18 when Child Protection's legislative responsibility for children under either a Custody to the Secretary Order or Guardianship of the Minister (of Community Services) Order may lapse. These include:

- The Departmental choice or a clearly articulated position of the young person that they no longer consent to the extension of their order and sufficient evidence exists at the time that the young person is supported.
- This circumstance may also arise when a young person is at school but reaches 18 during the school year and Child Protection's statutory responsibilities end while a foster placement and school expenses are supported there is no effective guardian for the young person.
- A young person is missing or their circumstances do not warrant an extension of their order so the order lapses. Then aged 17 their circumstances change or they are located and in need of statutory support services and decision making. No new application or order can be made under the *Children, Youth and Families Act 2005* at 17 years old. Given that the *Guardianship and Administration Act 1986* allows only for applications from 18 years and older this may leave the young person vulnerable to homelessness, ill-health and exploitation.

Berry Street supports Option C of the discussion paper to:

Lower the age jurisdiction in the Guardianship and Administration Act 1986 (Vic) to 16 years and over and increase the age jurisdiction in the Children, Youth and Families Act 2005 (Vic) to 18 years.

Option C offers protection to young people who are in the care of Child Protection until the age of 18 rather than sometimes only until 17. Protection and care until age 18, including the capacity to grant new orders to young people aged over 17 is consistent with child welfare legislation both nationally and internationally. Notably the age of care is gradually being extended beyond 18 in recognition of the vulnerability and difficulties faced by all children and young people in care, but particularly so for those with a disability.

The lowering of the age of possible Guardianship Orders to 16 years allows for the cross-over and careful planning for young people exiting the child protection system rather than been done hastily when the young person becomes 18. This option also allows for a choice at 16 for a young person and their family to decide which legislation best meets their individual needs.

Question 54 asks: *Is there a risk that young people may not have access to the same services that are currently available if the Commission's proposal [option C] is adopted? What could be done to manage this risk?*

The adoption of Option C, lowering the age of eligibility for Guardianship orders to 16 and increasing the age of new Child Protection orders to between 17 and 18 years should not make access to services an either/or situation.

Berry Street supports the implementation of Option C to incorporate the advantages of both changes and a commitment to shared responsibility and resources. The adoption of an either/or approach would entrenched silo-ed thinking about the young person and potentially disadvantage or restrict their access to needed services. For example if guardianship transferred from Child Protection at 16 as the young person was living or wanted to live independently then this could happen only in the knowledge that should this not work out or the young person become at risk that the services of the child welfare and community services statutory system, particularly foster care, be made available until age 18 and beyond.

The *Children, Youth and Families Act 2005* is unambiguous in its articulated commitment to providing services until the age of 21 to young people who have been in state care. What these services are is unclear.

In implementing Option C it may be necessary for a definitive suite of services for young people who have disabilities be defined and resourced. This will need clarification regarding who is to provide what before the implementation of Option C, otherwise the young person aged 16-18 may unintentionally be disadvantaged.

The risks associated with Option C could be mitigated by:

- Definition of what "services" means in the Children, Youth and Families Act (Vic) in relation to service delivery and support to post-care young people
- Agreement between the Public Advocate and the Secretary, DHS regarding a protocol of "best interests" which ensures that any practice resulting from the division of statutory responsibility for young people aged 16-18 is predicated on what best suits the needs of the young person rather than agency resource implications or other demarcation.
- That in matters of definition of best practice or service "fit" that the Public Advocate's office and representatives determine this given the breadth of experience and particular experience and skills of that office.

B.

Response to Chapter 20: *The Public Advocate*

Berry Street supports the views expressed in issue 20.19 of the review *Community Responses and Other Views* which notes widespread support for the Public Advocate. Berry Street supports calls for an expansion of the functions, powers and duties of the Public Advocate.

While acknowledging the work of the Office of the Public Advocate, Berry Street echoes the sentiments of other stakeholders quoted in the review which notes the need for greater resources to be made available for the OPA to carry out its functions.

In particular Berry Street supports any changes to the *Guardianship and Administration Act 1986* (Vic) which:

- expands the role of the Public Advocate to include advocacy for all people with a disability, not limited to those people who require decision making intervention and support
- expands the role and function of the Public Advocate in systemic advocacy functions
- In matters of guardianship that the Public Advocate be granted power to delegate guardianship responsibilities without the requirement for VCAT approval and in line with the delegation powers of the Secretary of the Department of Human Services.
- If Option C is accepted and implemented then this delegation will be critical to effective and efficient service responses in a timely manner to vulnerable young people.

Conclusion

Berry Street welcomes the opportunity to provide a response to this consultation process. We believe that given the complexity of the issues under discussion and the implications for many of the young people in our care who have disabilities that the proposed changes are welcome.

