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# **NSW Child Protection Reforms** Discussion Paper

**Labor**

Authorised by Luke Foley MP, Parliament House, Macquarie Street, Sydney.

## A message from the Leader of the Opposition.

There is no higher duty for the state than to protect our children. It is my strong belief our child protection measures need to change.

That is why NSW Labor is launching this discussion paper to propose a change to the law to ensure that a parent or guardian with a previous conviction for a serious violent offence against their own child will automatically have future children removed from them.

The Shadow Minister for Family and Community Services and I recently met with the mother of Ikicia Leach, who was murdered at seven weeks old by her own father. We also met with the maternal grandparents of Bailey Constable, who was killed by his stepfather Nathan Forrest, at four years of age.

Speaking with these grieving families has convinced me of the need for this reform.

Parents who have taken a young life – either through murder or neglect – simply should not be given the chance to commit violence upon another innocent child.

For the perpetrators of these crimes there should be no second chances.

I freely acknowledge that this reform will be considered controversial. Removing the right to a fundamental human experience, like being a parent, is not a change that should be taken lightly.

But I do believe that the rights of the child must prevail over the rights of those parents or guardians that cause serious violent harm to their children. Our laws must ensure those who have ended the life of a child will be prevented at all costs from destroying the life of another.

Yours faithfully,



Luke Foley MP  
Leader of the Opposition



Tania Mihailuk MP  
Shadow Minister for Family  
and Community Services

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## Labor's Child Protection Reform Discussion Paper

The purpose of this discussion paper is to focus a conversation on what action could be taken to improve child protection measures in the state of New South Wales.

This discussion paper will consider two areas of reform:

- ▶ The need to remove a child from the care of a parent or guardian with a previous conviction for a serious violent offence against their own child; and
- ▶ The provision of a restraining order against any person (not the parent) with a previous conviction for a serious violent offence against their own child, to prevent them residing with any future children.

Labor is committed to consulting with specialists and stakeholders working with children and young people in order to develop a policy to strengthen existing child protection measures in New South Wales.

## Consultation and Roundtable

Labor will consult with a range of stakeholders, interest groups and child protection experts in relation to the reforms proposed in this discussion paper.

NSW Labor will also convene a Child Protection Roundtable to discuss other potential reforms to the child protection system in New South Wales.

## Written Submissions

This discussion paper will consider a range of options to strengthen child protection legislation in New South Wales to ensure that children are safe from harm.

We are seeking written submissions in response to these proposals. Your submission can be emailed to [Bankstown@parliament.nsw.gov.au](mailto:Bankstown@parliament.nsw.gov.au) with the subject title "Child Protection Reforms Discussion Paper".

We may publicly release your submission. Please indicate the words "Confidential and Private" on each page if you do not wish for your submission to be publicly released.

Please contact the office of Ms Tania Mihailuk MP, Shadow Minister for Family and Community Services, on 9708 3838 if you have any queries about the process.

Submissions will close on 17 July, 2015.

## Hon. Justice Wood Special Commission: Inquiry into Child Protection in NSW

Following the shocking deaths of two children, the Special Commission of Inquiry into Child Protection Services in NSW was established on 14 November 2007. The New South Wales Government issued a commission for a major inquiry to determine changes needed to improve the situation of vulnerable children in New South Wales.

The Hon James Wood AO QC conducted the Inquiry and handed down the findings on November 24, 2008. The Wood Report contained 111 recommendations, including the gradual transition of out of home care services to the non-government sector over the following three to five years.

The findings of the Inquiry reflected the need to reduce the burden on the statutory child protection system and provide support to vulnerable children, young people and their families before it becomes necessary to remove a child. The Wood Report recommended the need for a culture change that involves better collaboration between agencies and non-government organisations.

The Government accepted 106 of the 111 recommendations.

## Labor's Child Protection Reforms in NSW

The NSW Labor Government launched its response, *Keep Them Safe: a shared approach to child wellbeing*, to the Wood Report in March 2009. *Keep Them Safe* was a five-year action plan that contained the following reforms:

- ▶ Establishing Child Wellbeing Units in NSW Health, NSW Police, the Department of Education and Training, and Department of Human Services to advise mandatory reporters on the new statutory reporting threshold of 'risk of significant harm' and to assist in responding to matters which do not meet this criteria;
- ▶ Authorising certain agencies to exchange information concerning the safety, welfare and well-being of children and young persons and to co-ordinate the services those agencies provide, and to make a number of changes in relation to care proceedings in or before the Children's Court and the making of care orders by the Court;
- ▶ Extending the circumstances when a child or young person is at risk of significant harm to include when a child was not receiving an education as required by the Education Act 1990;
- ▶ Expanded Community Services investigation powers and new mechanisms to address noncompliance with the Act and the regulations;
- ▶ Increased probity checking of those people who control, operate and/or manage a children's service;

- ▶ Increased use of alternative dispute resolution in care proceedings in the Children's Court;
- ▶ Expanding services and a focus on prevention and early intervention through various measures including expanding Brighter Futures and extending intensive family preservation services;
- ▶ Creating stronger partnerships with the non-government sector to support families and children, including an enhanced role for non-government organisations in out-of-home care service delivery; and
- ▶ Significant streamlining of the licensing process, reducing the administrative burden on providers of children's services and on Community Services as the regulator.

## **Further Reform**

Following on from the substantial child protection reforms in the last Labor Government, the current Labor Opposition proposes to strengthen and extend the legislative framework that helps to protect our children.

One area of potential reform is the protection of children at risk from parents or guardians with previous convictions for serious violent offences against their own children.

In light of recent tragic cases (discussed below) NSW Labor seeks to initiate a community dialogue to discuss what reasonable restrictions should be placed on those parents previously convicted of life-threatening or murderous crimes against their own children.

## Case Study: Ikicia Leach (NSW)

In 2007 Benjamin Leach was convicted of the manslaughter of his seven week old daughter Ikicia. Leach was sentenced to four years and seven months prison but served less than four years.

Following his release from prison Leach changed his name and settled with a new partner, without disclosing his crime to her. A short time later Leach and his partner had a child together.

Two years later, Leach's ex-partner Jannice (Ikicia's mother) discovered Leach's new life by chance while chatting on Facebook.

Jannice was horrified to think that the man convicted with the manslaughter of his first child could begin a new life and father another child so easily without any legal restrictions.<sup>1</sup>

Under existing NSW legislation there is no specific provision which states that a child born to or in the care of a person with a previous conviction for a serious violent offence against their own child such as Leach, would pose a significant risk of harm to that child.

## Case Study: Bailey Constable (NSW)

In 2013 Nathan Forrest pleaded guilty to the manslaughter of four year old Bailey Constable. Forrest was sentenced to a maximum eight years jail, to serve a non-parole period of six years.

Forrest was the de facto partner of Bailey's mother, Jessica Constable. At trial the court heard that Bailey had told his maternal grandmother of Forrest's repeated physical abuse of him.<sup>2</sup>

Under the existing NSW legislation there is currently no specific provision that prevents a person (not the parent) who has a previous conviction for a serious violent offence against their own child such as Forrest, from residing with another child in the future.

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<sup>1</sup> *The Sunday Telegraph*, July 7 2013, p7: 'Child killers find loophole to keep their violent history secret' by Caroline Marcus.

<sup>2</sup> *The Sydney Morning Herald*, April 20 2013, p2: 'Six years for fatally bashing girlfriend's son' by Stephanie Gardiner.

## NSW Statistics - Crimes Against Children (Crimes Act 1900)

### Lower Court Sentences:

Conviction	Number
S 43 – expose or abandon child under 7 years	3 - (Jan 2011 – Dec 2014)
S 43A(2) – fail of person with parental responsibility to care for child	5 - (Jan 2011 – Dec 2014)
S 44 – refuse to provide necessities of life, endanger life/injure health	2 - (Jan 2011 – Dec 2004)

## NSW Statistics - Crimes Against Children (Crimes Act 1900)

### Higher Court Sentences:

Conviction	Number
S 19A – murder: child victim	17* - (Jan 2008 – Sep 2014)  *10 sentences were delivered against a parent or carer of the child victim
S 22A – infanticide: murder of a child under 12months	1 - (Oct 2007 – Sep 2014)
S 24 – manslaughter (age of victim not specified)	240 - (Oct 2007 – Sep 2014)
S 43A(2) – fail to provide for child cause danger of serious injury or death	4 - (Oct 2007 – Sep 2014)

## Case Study: Chloe Valentine (SA)

In 2012, four year old Chloe Valentine was tragically killed after being repeatedly forced by her mother and her mother's partner to ride and crash a 50 kg motorbike.

At the time of her death, Chloe Valentine had been the subject of 20 child protection notifications to Families SA (the equivalent of FACS in South Australia).

The Coronial Inquest into the death of Chloe Valentine examined the circumstances of Chloe's life and death.

Chloe Valentine's tragic death highlighted the manner in which the child protection authorities in South Australia mishandled her case and that there was a need for reform of existing measures.

The South Australian State Coroner made a total of 21 recommendations to prevent other children suffering from the kind of neglect and harm as Chloe Valentine did at the hands of her carers.

The South Australian Labor Government has indicated full support for 19 recommendations, in principal support for one recommendation, and one recommendation subject to further investigation.

On 6 May 2015, the South Australian Labor Government became the first State or Territory Government in Australia to propose a bill - *Children's Protection (Implementation of Coroner's Recommendations) Amendment Bill 2015 (SA)* - that would allow the automatic removal of a child from a parent or guardian with a previous serious violent conviction against their own child.

This Bill follows the recommendations from the Coronial Inquest into the death of Chloe Valentine.

The South Australian Government's Bill broadens the range of the qualifying offences proposed by the Coroner in his report to include the following 'serious harm' offences:

- a) an offence against section 23 of the Criminal Law Consolidation Act 1935 (causing serious harm);
- b) an offence against section 29(1) or (2) of the Criminal Law 5 Consolidation Act 1935 (acts endangering life or creating risk of serious harm);

The Bill proposed by the South Australian Government would also allow child protection authorities to apply for a restraining notice against an offender with a previous serious violent conviction against their own child, from caring for another child as follows:

A restraining notice may prohibit the offender (a person other than the parent) residing with the child from:

- ▶ Residing in the same premises as the child;
- ▶ Coming within a specified distance of the child's residence;
- ▶ Having any contact with the child except under supervision; and
- ▶ Having any contact at all with the child.

In light of the South Australian legislative response to the Chloe Valentine Coronial Inquest recommendations, there is an opportunity in New South Wales to reflect on our existing child protection legislation.

## Proposed NSW Reforms

### Parents with Previous Serious Convictions Against a Child:

NSW Labor proposes a change to the law so that a parent with a previous conviction for a serious violent offence against their own child will automatically have future children removed from them.

#### Suggested provision:

Protection from persons convicted of certain serious offences

Disqualifying offence means any of the following offences (whether committed before or after the commencement of this Part) where the victim was a child or young person and the offender was a parent or guardian of the child or young person:

- (a) murder,
- (b) manslaughter,
- (c) an offence under any of the following provisions of the Crimes Act 1900):
  - (i) section 22A (Infanticide),
  - (ii) section 25A (Assault causing death),
  - (iii) section 27 (Acts done to the person with intent to murder),
  - (iv) section 29 (Certain other attempts to murder),
  - (v) section 30 (Attempts to murder by other means),
  - (vi) section 33 (1) (Wounding or grievous bodily harm with intent),
  - (vii) section 35 (Reckless grievous bodily harm or wounding),
  - (viii) section 42 (Injuries to child at time of birth),
- (d) an offence under section 227 (Child and young person abuse) of this Act,
- (e) an offence constituted of an attempt to commit an offence referred to in a preceding paragraph,
- (f) an offence under the law of another jurisdiction that corresponds to an offence referred to in a preceding paragraph.

Parent, of a child:

- (a) includes the mother or father of a child, whether or not that mother or father has parental responsibility for the child.

Temporary guardianship instruments if child or young person residing with parent found guilty of disqualifying offence

- (1) If the Director-General becomes aware that a child or young person is residing with a parent of the child or young person who has been found guilty of a disqualifying offence (the offender), the Director-General must issue an instrument under this section (an instrument of guardianship) in respect of the child or young person.
- (2) If the Director-General issues an instrument of guardianship, the child or young person specified in the instrument will, for all purposes, be under the guardianship of the Minister during the guardianship period (subject to a care order of the Children's Court on an application under section 61AA)

## Discussion Points:

Should a parent or guardian with a previous conviction for a serious violent offence against their own child be subjected to the automatic removal of any future children in their care?

What appeal process should be in place to challenge an automatic provision to remove children from the care of a parent with a previous conviction for a serious violent offence against their own child?

Should this appeal process occur before or after the birth of a child?

## Proposed NSW Reforms

### Person (Other than the Parent) Residing with the child with Previous Serious Convictions Against a Child:

NSW Labor acknowledges that there may be a person that is not the parent of the child residing with them, who has a previous conviction for a serious violent offence against their own child who would not be caught by the proposed legislation.

The presence of a partner or other adult residing with the child's parent or guardian, who has a previous conviction for a serious violent offence against their own child, may pose a significant risk to the safety of the child that they reside with. In this instance NSW Labor proposes the issue of a restraining order against the convicted person concerned in order to protect the safety of the child.

#### Suggested provision:

Restraining notice to be issued if child or young person residing with, or about to reside with, person found guilty of disqualifying offence

- (1) If the Director-General becomes aware that a child or young person is residing, or is about to reside, with a person (not being the parent of the child or young person) who has been found guilty of a disqualifying offence (the offender), the Director-General must issue a notice under this section (a restraining notice) to the offender, unless the Director-General is of the opinion that it is inappropriate to do so in the circumstances.
- (2) A restraining notice may prohibit the offender from:
  - (a) residing on the same premises as the child or young person, or
  - (b) coming within a specified distance of the child or young person's residence, or
  - (c) having any contact with the child or young person (except in the presence of a specified person or person of a specified class of person), or
  - (d) having any contact at all with the child or young person.

#### Discussion Point:

Should a person (not the parent) who has a previous conviction for a serious violent offence against their own child, who resides with another child, be restrained from residing with that child and any other child in the future?