



**Coalition for  
Children in Care**

Time to Care

## **A New and Appropriate Approach to Contracting**

### **Coalition for Children in Care Contract review sub committee**

#### **Principle 1. The contract must take into account and reflect the nature of the service provided**

The current form of agreement operates as a provider/purchaser agreement similar to outsourcing or service agreements. The current form does not have regard to the actual service environment within which a NGO participant delivers. The current contract form is prescriptive and does not reflect the style of work or the nature of activity or recognise the human element of the services being delivered. It is impractical and ill-considered to consider the arrangement of a child or young person to be reflected in a contract similar to an outsourcing model or a services agreement.

It is **recommended** Community Services recognize and foster a genuine working relationship with the NGO participant with the shared goal of the best interests of a child or young person. Mechanisms must be brought into place in the contract and the contracting process which:

- accommodate the nature of the service namely meeting the needs of a child or young person over time;
- take into account periods of funding matching the desired outcomes e.g. a three year contract does match an outcome of stability and consistency for a child young child placed with an agency carer until the age of 18yrs;
- accommodate the potential for variable costs based on the changing needs of a child and young person and that money is available at the time the needs need to be met – no deficit funding.

#### **Principle 2. The contract must reflect the partnering arrangement advocated by Community Services and NGO participant**

Community Services advocates a partnering arrangement with each NGO participant. The contract issued by Community Services operates on a purchaser/provider model is inconsistent with a partnering arrangement.

It is **recommended** that the contract issued by Community Services reflect the spirit of a partnering arrangement and a collaborative working relationship with the NGO participant. The partner agreement should accurately reflect the role and responsibilities of each partner as well as provide for relevant and appropriate allocation of risk applicable to each contract party.

### **Principle 3. A fair contracts policy must be adopted.**

Many NGO participants feel the contract currently issued by Community Services is one-sided providing sole protection for Community Services.

In preparing/revising the contract we would **recommend** Community Services adopt a more contemporary view of a 'fair contracts' approach (such an approach is being adopted by the consumer/commercial arenas). Such an approach would ensure a contract comprises:

- Fair and reasonable terms reflecting of a contract party's role and responsibilities as outlined in the agreement
- A balanced view of the rights and obligations of each contract party
- Well-understood mechanisms for exercising rights under a contract
- Appropriate risk allocation and management relevant to the roles and responsibilities of the contract party
- An adoption of "full cost recovery principle" (referring to necessary overhead costs over and above those included in a unit cost). It is neither fair nor reasonable that NGO participants carry costs for what is essentially a Ministerial responsibility to provide care and service to children placed with an agency under the auspice of the Minister.

### **Principle 4. Fair Dealing**

In practice, Community Services has unilaterally amended terms and made commitments on behalf of NGO participants with external parties without prior consultant or consent of the NGO participants. The current environment does not foster an environment which permits NGO participants to exercise their rights under their contracts or in fact, have a 'voice'.

We **recommend** Community Services impose a duty upon both parties of fair dealing in their performances of the contract.

Mechanisms need to be brought into place to ensure NGO participants have equal bargaining power and can pursue rights under their contracts. Currently there is grave fear amongst NGO participants to exercise their rights for fear such action will impact funding.

A robust and equitable dispute resolution process is required in the contract and in practice.

### **Principle 5. Recognizing the value of the non government sector and a fair playing field**

We are concerned that Community Services' dual role of being the funder and participant/provider of the services.

It is **recommended** that the contract bear the test of "would Community Services sign it?" and could Community Services meet the requirements as long as it remains a provider of the same service. A contract and process that reflects the capacity and willingness of the sector on a fair and equal playing field to Community Services to provide quality services is required.