REPORT ON PROCEEDINGS BEFORE

COMMITTEE ON CHILDREN AND YOUNG PEOPLE

CHILD PROTECTION AND SOCIAL SERVICES SYSTEM

At Room 814-815, Parliament House, Sydney on Friday, 12 August 2022

The Committee met at 9:30.

PRESENT

Mr Peter Sidgreaves (Chair)

Legislative Council	**Legislative Assembly**
Ms Abigail Boyd	Ms Melanie Gibbons (Deputy Chair)
The Hon. Chris Rath	Ms Jodie Harrison

PRESENT VIA VIDEOCONFERENCE

Legislative Council	**Legislative Assembly**
	Mr Nathaniel Smith

* Please note:
[inaudible] is used when audio words cannot be deciphered.
[audio malfunction] is used when words are lost due to a technical malfunction.
[disorder] is used when members or witnesses speak over one another.

The CHAIR: Good morning, and welcome to today's public hearing of the Committee on Children and Young People's inquiry into child protection and the social services system. My name is Peter Sidgreaves and I am the member for Camden. I am Chair of the Committee of Children and Young People. I am joined by my colleagues Ms Melanie Gibbons, who is the member for Holsworthy and Deputy Chair; Mr Nathaniel Smith, the member for Wollondilly, who is joining us online; Ms Abigail Boyd, a member of the Legislative Council; Ms Jodie Harrison, the member for Charlestown; and the Hon. Chris Rath, a member of the Legislative Council. We have an apology from the Hon. Greg Donnelly, who also is a member of the Legislative Council.

I would like to start by noting that there have been a number of impacts on the timeline for this inquiry. Due to the short period of time before the end of the Fifty-Seventh Parliament, the Committee has decided to focus today's hearing on cross-jurisdictional issues between the state child protection system and the Federal Circuit and Family Court of Australia, and other related matters.

Before we commence, I acknowledge the Gadigal people, who are the traditional custodians of the land on which we meet here in Parliament. I also pay my respects to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginal and Torres Strait Islander people who are present or who are watching proceedings on the parliamentary website.

Ms RENATA FIELD, Manager, Policy, Advocacy and Research, Domestic Violence NSW, affirmed and examined

The CHAIR: Thank you for appearing before the Committee today. Can you confirm that you have been issued with the Committee's terms of reference and information about the standing orders relating to the examination of witnesses?

RENATA FIELD: Yes, I have.

The CHAIR: Would you like to make a brief opening statement before we commence with some questions?

RENATA FIELD: I would, thank you. Thank you for that introduction, and thank you for inviting Domestic Violence NSW [DVNSW] to present to the Committee today. I am really pleased that this hearing is being held, and that the issues facing children and young people are being addressed. I would like to also acknowledge that we are meeting on the land of the Gadigal people of the Eora nation, and pay my respects to Elders, past, present and emerging.

I am here on behalf of Domestic Violence NSW. We are the peak body for specialist domestic and family violence services in New South Wales, with over 120 member services including refuges, Aboriginal-controlled organisations, specialist refugee and migrant organisations, legal services, court support services and health centres. In drafting our submission, we reviewed recommendations from previous research, reports and inquiries; conducted a survey with our members; held interviews with key stakeholders; and were provided with a series of case studies. We note that, since submissions were received for this inquiry, there has also been additional research available.

Based on this data we present five key issues and five key solutions to the Committee today. Research demonstrates that infants, children, and adolescents who witness or experience domestic and family violence can experience significant lifelong impacts, including psychological behavioural issues, neglect, health issues and negative impacts on wellbeing and development. Exposure to violence may include physical injury as a result of assault, or as an indirect consequence of an assault against their protective parent, usually the mother.

For children, witnessing harm to a parent is as significant as harm to themselves. The Edwards family inquest report from last year provides a devastating example of the intersection between domestic and family violence and child protection. Between 1993 and 2011, a period of 18 years, a series of child protection reports, police events and assault charges were laid against the father, John Edwards. Jack's and Jennifer's father made admissions about the domestic violence alleged by Olga and her children. He was charged for assault and had multiple apprehended violence orders [AVOs] taken out in that period. We know from the inquest findings that the New South Wales police neglected their duty of care in this case, and that there were child protection issues overridden by the Family Court.

Despite the evidence, the Family Court judge took "a leap of faith" ordering contact arrangements with the father. As we know, shortly after the hearings came to a close, John Edwards waited for Jennifer at the train

station in a borrowed car, so she would not recognise him. He followed her home and shot both children multiple times as they cowered in their room. I am sorry for being emotional. Although we know the story of these children, and the multiple children across New South Wales, it still is so upsetting that we are not providing the best quality care that we need to for children. I believe we owe it to these and other children and young people at risk of significant harm, to learn from the failings of the system.

Our first recommendation is to recognise that the child protection system and the supporting domestic violence sector need substantial government investment in order to achieve the Premier's Priorities. Over a third of these priorities, to break the cycle of disadvantage, are directly relevant to the effectiveness of the New South Wales child protection system. However, they are not adequately represented in the proportion of the New South Wales budget. We've seen the introduction of the women's statement to the budget. In some international jurisdictions there's also a children's wellbeing statement, which allows transparency to the funding and support provided.

We know that children and young people who are provided support, following incidents of trauma, are significantly more likely to recover. However, unfortunately, we don't have that quality of care in New South Wales. In 2020-21, there were about 178,800 children and young people in Australia receiving child protection services, yet almost half of these children were not subject to an investigation. You will see from the figures in our submission, as well, that the level of inquiry into risk of significant harm [ROSH] reports is quite low, in our opinion. The Edwards family inquest also demonstrates systemic issues that protection orders, regarding older children, are often de-prioritised in our overstretched system.

Our second recommendation is to recognise that prior reports and inquiries into the system have well-evidenced recommendations. In particular, we point to the 125 recommendations in the Family is Culture report. While scrutiny and accountability are extremely necessary for the child protection system, resourcing is also needed to ensure that we actually implement the recommendations. We have a full list of the relevant inquiries in our submission. We recommend that the Committee track and report all outstanding recommendations from these former reports in New South Wales. We also note progress reports in Family is Culture and, in particular, note that the majority of recommendations have been actioned. However, we believe that additional oversight is necessary from Aboriginal and Torres Strait Islander experts to ensure that that is being implemented to the highest standard.

Our third recommendation is recognising that the highest priority should be placed on addressing the devastating impacts of the child protection system on Aboriginal and Torres Strait Islander communities. We know that Aboriginal and Torres Strait Islander children are over-represented in the child protection system, with out-of-home care rates 11 times the rate of non-Aboriginal children. Evidence shows the best outcomes are when Aboriginal communities lead and co-design the solutions. So, we are failing Aboriginal children if we do not prioritise their wellbeing.

Our fourth recommendation is to recognise that children and young people are victim-survivors of domestic and family violence in their own right. Therefore, all actors in the child protection system should be responding to children as clients. I quote one of the workers in our survey, "Change will only occur once it's recognised that children are people too." In the case of the Edwards family, the children's requests not to spend time with their father were overridden and seen as the work of an anxious and interfering mother. We believe more can be done to ensure the agency of children and young people, including improved communication with children about their rights and their involvement in the process; sufficient support services so that each child receives support and has their own individual case planned; and, for Aboriginal children, ensuring that culture and kinship ties are central and prioritised.

Our fifth recommendation is for New South Wales to meet its responsibilities to protect children and young people who meet the risk of significant harm threshold, ROSH, regardless of whether or not there is a Family Court order. The Edwards family murders are an example of the collision between state and federal jurisdictions producing inconsistencies in way too many cases, and failing to see children and young people protected. There are numerous reports and inquiries demonstrating issues with the Family Court where child safety is not centred. While it is not the role of this inquiry to make recommendations in the federal jurisdiction, we do believe that the state government retains duty of care over children at risk of significant harm, and should continue to seek protection of children whose parents and guardians are in the Family Court.

Our state requirements guide parents to manage risk, to be protective where there is domestic violence, and to ensure that children have a voice. Our members are reporting that when directed by child protection to keep children safe, they can be later seen as oppositional to a relationship with the non-protective parent, when they go to the family law jurisdiction, which falsely presumes that contact with both parents is in the best interest of the child. The Edwards case shows an example of this, where both Jennifer and Jack had not only experienced

personal harm from their father but had witnessed this harm to their mother. They were forced against their will to have ongoing contact with the father. The Family Court failed to fully appreciate the evidence of domestic violence in the notice of risk, with lawyer Debbie Morton saying of the apprehended domestic violence order [ADVO] at the coronial inquest in 2016, "I knew it was relevant but it was historical."

We recommend that an agreement is reached with the Federal Family Court and Federal Circuit Court to stay proceedings, if there is a ROSH report determined by child protection in New South Wales, until a safety clearance is provided. We also recommend that the NSW Department of Communities and Justice [DCJ] do not defer to the Family Court to assess risk, as they do not actually have investigative powers. We see this as the role of the New South Wales department. DCJ also requires sufficient resourcing to be able to respond where children are in Family Court, and provide the necessary evidence. We've heard anecdotally from our members that, unfortunately, this is not always the case. Finally, we recommend that the New South Wales Attorney General review the memorandum of understanding between the Family Court and DCJ to ensure that protective parents who follow the instructions of our state legislative requirements are not disadvantaged in family law matters. Thank you.

Ms ABIGAIL BOYD: Thank you very much for your continued work in the area, and for coming along today, and so very clearly setting out what these issues are, when it comes to this conflict between New South Wales' obligations to look after children and the family law regime getting in the way. I think it's easy for federal and state governments to look to each other to actually solve an issue like this. But you've put out very clearly in your recommendations what we could be doing right now. In terms of your recommendation, in relation to if there's a risk of significant harm, that DCJ should still be treating that as their responsibility, regardless of the Family Court – how does that work in practice? What is it that they could do, other than staying orders?

RENATA FIELD: I guess it certainly relates to my comments around sufficient funding. We believe that, if there is a ROSH assessment and that a family is in Family Court, a case manager should be assigned to that family, and they should have sufficient time and availability to support that family and those children. As I noted, it's best practice for each child to have their own case plan. There need to be supports for the additional therapies, access to services that people might require, as well as, of course, the general basics of safe housing et cetera, which, unfortunately, is not available to all families in New South Wales. Additionally, as I said, we do find, anecdotally, that DCJ are not always attending Family Court and providing the evidence necessary to that court. Again, we see this as insufficient funding available to that department, so that they can actually meet the requirements of them, to sufficiently support those families.

Ms ABIGAIL BOYD: Can I just pick up on two of those issues, then? When we're talking about support for young people through the family law, Family Court process, I often hear about independent children's lawyers. Can you tell us a bit about what they are, who appoints them, and are there any problems with them?

RENATA FIELD: Independent children's lawyers are appointed through the Family Court. Unfortunately, they're seen by the court to have the children's best rights at heart; however, in practice, we find that that's not always occurring. Personally, when I was working in a refuge, there was a family there, where the two eldest children were over 12. They decided not to spend time with the father. However, the youngest child was 10. She was ordered to attend contact with the father. She was given a card by the ICL after doing an interview. She emailed this person and said, "I don't want to see him." Weekly she said, "I'm scared. I don't want to see him." In court, this was offered as evidence that the mother was coaching the child and that she was being told to say particular things.

Frequently, numerous inquiries have found that domestic and family violence is not taken at adequate level of weight in the Family Court, or by independent children's lawyers. That particular case is an example of the child being told that this is a service for her, to represent her, but the lawyer never made contact again with that child. She, despite reaching out constantly, saying, "I don't feel safe. I don't want to see him", was never again contacted by the ICL. A report is given that she should see the father against her wishes, and that's what she was forced to do.

Ms ABIGAIL BOYD: Do these lawyers have any other specific training in relation to representing children, or are they just lawyers?

RENATA FIELD: Not to my knowledge, but I know that there are other witnesses appearing today who can provide additional evidence on that.

Ms ABIGAIL BOYD: The other thing I wanted to quickly pick up on, before I hand over, is this point about DCJ not always turning up to the Family Court, giving evidence. I've heard stories of really quite horrific reports and evidence, that the DCJ would have, simply never been seen by a judge in the Family Court. How does that happen? Is there not an obligation on DCJ to turn up and do that?

RENATA FIELD: One would imagine. As I said, I can only imagine that the issue is resourcing—that the department has the best interests of children in mind, and they've had to triage and have deprioritised that situation. That's all I can imagine. But, anecdotally, and in the experience of our members, you're correct that, unfortunately, the evidence is not always provided as it should be.

Ms MELANIE GIBBONS: Question number one for the department.

RENATA FIELD: It is one for the department.

Ms JODIE HARRISON: Thank you, Ms Field, for being here today. I want to reiterate the thanks for the support that you provide in the space of domestic violence, and supporting families and children, in particular. You mentioned the Edwards inquiry in your evidence and in your submission. You mentioned that there were child protection issues in that case that weren't taken into consideration by the Family Court. Are you able to identify what they were? It's been a while since I've gone through that inquiry.

RENATA FIELD: To some extent. There were child protection claims made by both parties, by John and Olga. But there were also significant risks identified by child protection to the court. Of course, as we stated in our submission, domestic and family violence is frequently not seen at a level of threat that, we believe, it should be considered by the Family Court jurisdiction, but also by New South Wales child protection. We know that there are huge, lifelong impacts of domestic and family violence, yet the evidence that demonstrated that that had been occurring, in that family, was not taken as sufficient evidence to suggest that in the contact order arrangements that should be taken into account.

Ms MELANIE GIBBONS: Your recommendations that you mentioned at the end—I caught the second and third. Can you just go through the first one?

RENATA FIELD: In relation to the last four recommendations, the first recommended that an agreement is reached with the Family Court to stay proceedings where there is a ROSH report, until there's a safety clearance. The second is to recommend that DCJ do not defer to the Family Court, because they simply do not have investigative powers. We find that, unfortunately, there is a deferral to the higher court, which is understandable. However, we believe that it is the New South Wales jurisdiction's responsibility to continue to ensure the safety of children and young people. Thirdly, we were recommending that that sufficient resourcing is available to respond and, finally, that the New South Wales Attorney General review the memorandum of understanding between the courts.

Ms MELANIE GIBBONS: I think that'll give us a good guide for the day, actually.

Ms ABIGAIL BOYD: Do you think that the people employed in this area within DCJ have the requisite understanding of family and domestic violence, in order to be responding appropriately? When you talk about triage and risk, do you think it might not just be resourcing but also a lack of understanding and training?

RENATA FIELD: Yes. You would have seen within our submission a number of quotes from DVNSW members that outline these issues. For example, we are waiting until women and children are often irretrievably harmed before interventions are made available, that we need to have trained workers who are interacting with the family, and that DCJ staff often do not understand domestic and family violence. We have seen some positive work in the training model Safe and Together, which we believe has had some positive improvements within the department. But, unfortunately, we are not seeing across the board the level of training necessary to comprehensively understand domestic and family violence and its complexities. Also, continuing to monitor—one thing is to train a workforce and another thing is to monitor and evaluate how that is being implemented, and that people's understandings are actually shifting so that they are correctly identifying risk, and understanding patterns of behaviour and harm.

Ms ABIGAIL BOYD: Do you think that there is an element of an old-fashioned understanding of domestic and family violence as being simply some sort of an interpersonal disagreement between parents, that is then holding back people understanding, properly, the impact that domestic and family violence has on the entire family unit? Is that part of the puzzle here?

RENATA FIELD: Certainly I would suggest that some of the research which demonstrates the impacts to children, as I said, on witnessing violence and experiencing violence over the life course are potentially not taken into account into a risk assessment. But I do believe that within DCJ, but also within the community at large, there is a large amount of victim blaming. For example, we often say, "Why didn't she leave?" where the question should really be "Why did he not stop harming her?" These ideas are pervasive, and even in well-meaning people who are trained as social workers, there are challenges to dispelling some of those myths that are quite prevalent in the community.

Ms ABIGAIL BOYD: In your view, even in the absence of evidence of direct violence or family violence towards children, is it ever safe to leave children with a known perpetrator of domestic violence? If there has been this situation of domestic violence between two parents, is it ever okay to say that that is an isolated bit of violence and that that person is still a fit parent? Is that what we are doing in a lot of these court decisions, assuming that the children are still safe because they weren't the direct victims?

RENATA FIELD: I certainly concur that the research, that demonstrates that harm towards the protective parent is considered by a child to be as harmful as harm to themself, is not considered. But I think that family and domestic violence are complex, and there are so many forms of it. There is financial abuse, coercive control, spiritual abuse. I do not know that we can apply a blanket rule to say that someone engaged in domestic violence is not a sound parent, but I think we can say that where children are involved, where children have witnessed violence, where there are significant patterns of violence and we also know that there are significant risk factors—for example, strangulation, harm to animals, or harm when someone is pregnant. There are risk factors, which are evidenced, which we know that we can utilise to assess the level of harm.

Ms ABIGAIL BOYD: As a lawyer, often your initial response, when you hear of something that doesn't appear to have a just outcome is to say, "Why didn't you appeal or why haven't you?" Clearly, if there is a proven risk to a child, and that child has then been put by the Family Court with the person who is causing the risk, that is a miscarriage of justice. The natural inclination from years of law school is, "Well, that's fine. There are other avenues to contest that." What is your experience with that? These are not isolated incidents. How likely is it that someone can appeal and can end up overturning something like this?

RENATA FIELD: It is complex. We know that there are also significant costs involved. The Family Court sends families into millions of dollars of debt and it's very protracted over many, many years. These are substantial barriers to families being able to participate in that system. It's not as easy as saying, "Everyone has equal access to appeal." That is simply not the case. People don't have access to legal advice; people don't have access to supports. We know from the evidence of inquiries that the family court system also has demonstrated unsafe decisions on appeal, as well as initial decisions, so we can understand where families may choose not to go down that road. But, certainly, the financial implications are a huge barrier, firstly, as well as the systemic abuse which can occur within that system. So, sometimes appeals can be put into place by the non-protective parent, as a way of continued systemic abuse and financial abuse.

Ms ABIGAIL BOYD: Right. Because we have a process that is timely; it is incredibly costly. No-one wants to be in it. You can see that that would be ripe for systemic abuse. And, of course, systems abuse is another form of domestic and family violence.

RENATA FIELD: Absolutely.

Ms ABIGAIL BOYD: Do you think that the courts understand that?

RENATA FIELD: I think that there are certainly examples of vexatious behaviour noted by the court; however, it's not always recognised to its due course. I did also want to note, to your previous question, that there are cases of state protection, child protection authorities, taking cases to appeal as well. There is an example in this book in Western Australia of a child who had evidence of sexual violence perpetrated by the father and then the custody was given to him, and then the child protection agency of Western Australia did take that case to appeal, so that's another option.

Ms ABIGAIL BOYD: That is an excellent book. Could you tell us the name of that book for Hansard?

RENATA FIELD: This book is called *Broken: Children, Parents and the Family Courts* by Camilla Nelson and Catharine Lumby. It is an excellent book, and gives a really good personable and readable approach, but also very highly researched and evidence-based, to understand some of the failures of the family court system.

Ms MELANIE GIBBONS: Ms Field, through research I have done over the years and through this Committee, I have seen the fact that not only does sometimes the child get taken away from the protective parent—they may not end up with shared custody, but it may be that the child is taken away from the protective parent. How often are you seeing that happen, and why do you believe that shared custody wouldn't be the better arrangement, rather than not having the protection at all of the protective parent? Why do you believe that the court would be making those decisions?

RENATA FIELD: That's about 10 questions in there.

Ms MELANIE GIBBONS: Sorry.

RENATA FIELD: No worries at all.

Ms MELANIE GIBBONS: It is one that I have deliberated on for years.

RENATA FIELD: Yes, absolutely. I am happy to answer to my best ability. In terms of prevalence, I couldn't tell you particulars.

Ms MELANIE GIBBONS: Are you seeing them come through your organisation?

RENATA FIELD: Certainly, our member services do experience this frequently, in particular the Family Advocacy and Support Service, who are located in the Family Court, and the Women's Domestic Violence Court Advocacy Service [WDVCAS], who often deals with family contact and the AVO legislation. Certainly, these matters do arise frequently, and they are some of the most harrowing and challenging. We also know that there is lots of misidentification of domestic violence and perpetration in New South Wales, particularly by New South Wales police but also by other agencies, including child protection, which is why currently our Domestic Violence Safety Assessment Tool is being reviewed. We hope that that process can be sped along, because there are significant problems with that risk assessment tool.

To your question about the Family Court, and why they make decisions to take children away from a protective family member. I guess evidence in this book, *Broken,* and other research available, such as Jess Hill's book, suggests that the Family Court process – there are different pillars within Family Court that are at odds with each other, including shared parental responsibility and ensuring that children are not at risk of harm. Sometimes they clash with each other. Also, there is certainly sexism within that court system, and issues that I've mentioned earlier around victim blaming can be misconstrued. So, people who are having what is justified research-based and evidence-based reactions to prolonged abuse and trauma, such as mental health issues, drug and alcohol issues—

Ms MELANIE GIBBONS: Drugs.

RENATA FIELD: —homelessness, those things also can detract from people being assessed as a safe parent. It's really sad, but the same issues that have ensured that they are in that system in the first place can also be misconstrued, or accurately construed in some cases, as being the cause of them no longer being the protective family member. I do also believe that there are cultural issues in terms of some families not—it's also a very white system. The levels of neglect, for example, in Aboriginal families are seen as higher than in non-Aboriginal families, and that can be seen as a cultural issue of the people in child protection who are making those assessments, making that based on a white family lens.

Ms MELANIE GIBBONS: What do you find that outcome is then? Is it similar where the child may go to the non-protective parent?

RENATA FIELD: I guess, we know, in Aboriginal cases that there are higher levels of out-of-home care. So even though there are strong protocols for kinship carers, we also don't have sufficient places available in New South Wales, and groups like Grandmothers Against Removal will advocate really strongly that there are actually people available, but those protocols are not being sufficiently followed.

Ms JODIE HARRISON: You mentioned the domestic violence safety assessment tool and that it's currently under review. Is there any capacity for that to be used in family law decisions at all? Is it currently or could it possibly be used?

RENATA FIELD: I might need to take that one on notice, Ms Harrison. Certainly I believe that the current assessment tool is not a good quality tool, which is why it's under review. I would certainly be hesitant in its current form to suggest that. But I would be happy to take it on notice whether or not we would recommend an improved tool could be utilised. Certainly, we would very much recommend that any evidence from the New South Wales jurisdiction around AVOs, criminal cases, child protection risk, is provided to the Family Court as evidence. So it would make sense that the assessment risk is also provided. But, as I said, I'm happy to take that on notice.

Ms JODIE HARRISON: Is there something that's currently used in a risk of serious harm assessment, do you know?

RENATA FIELD: As far as I know, it is used for adult cases by the police and the WDVCAS and the child protection has a different ROSH threshold.

Ms JODIE HARRISON: You also mention, in your submission, the memorandum of understanding [MOU] between the Federal Circuit and Family Court, wherever we are at the moment, and DCJ.

RENATA FIELD: Yes.

Ms JODIE HARRISON: What's your understanding of what that MOU has in it, and what should be considered in a review if the Attorney General makes the representations that you are suggesting, or that's being suggested, in the submission?

RENATA FIELD: I have a number of things that I would suggest, but I would be happy to take that one on notice as well, if that is okay, just to ensure that I can discuss it with my colleagues.

Ms JODIE HARRISON: Yes.

Ms ABIGAIL BOYD: Could I just ask, you mentioned before the case in WA—

RENATA FIELD: Yes.

Ms ABIGAIL BOYD: —where the WA child protection department had appealed the decision. Is that something that the DCJ do? Do you have a recommendation whether they should be doing that more? Is there anything around that?

RENATA FIELD: I am not aware of the number of cases that are taken to appeal by DCJ in New South Wales, so I can't comment, unfortunately.

Ms ABIGAIL BOYD: I have never heard of it in the cases that I have heard on this issue, which is interesting. One for DCJ, I guess.

The CHAIR: Can I ask the question: You would like to see DCJ take those appeals to the Family Court in New South Wales?

RENATA FIELD: Could you repeat the question?

The CHAIR: You were stressing you don't have evidence.

RENATA FIELD: Yes.

The CHAIR: Is that something that you would like to see DCJ New South Wales doing more of?

RENATA FIELD: Our recommendations are that DCJ continue to hold carriage of the safety and welfare of the child, regardless; that they don't defer to the Family Court assessment of risk, because we believe that DCJ are in a better position to examine that risk. If they still continue to hold concerns about the risk to the child or young person, I believe, yes, that would be one avenue.

Ms ABIGAIL BOYD: Instead of just wiping their hands of it?

RENATA FIELD: Sort of watching.

Ms ABIGAIL BOYD: If they've already determined that a child is at risk and then a court decision is made that, on the basis of that risk assessment, would put the child at harm or at risk of harm, then you would expect that DCJ would have an obligation to appeal the decision?

RENATA FIELD: I would expect, yes. Particularly where there are decisions which are completely at odds with the recommendations previously made by the New South Wales department.

Ms ABIGAIL BOYD: Presumably you don't have the data, but in your view is that a common scenario? Are we talking one or two people or children who are put at risk through these decisions or are we talking 10, 20?

RENATA FIELD: We know that the percentage of domestic and family violence matters in the Family Court is high, sort of around 90 per cent, and we know there are large numbers of misidentification. We are talking in the hundreds, but I don't have the prevalence figures.

Ms ABIGAIL BOYD: Thank you, that's very interesting.

RENATA FIELD: It is certainly not an occasional case.

The CHAIR: Do members have any other questions?

Ms MELANIE GIBBONS: Just briefly. Do appeals then happen at all?

RENATA FIELD: It is a question for DCJ.

The CHAIR: Any further questions? Thank you very much for appearing today before the Committee. The Committee may wish to send you additional questions in writing, the replies for which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions, as well as replying to those matters that you have taken on notice?

RENATA FIELD: Absolutely.

(The witness withdrew.)

Ms JANE MATTS, Founder, Sisters in Law Project, affirmed and examined

Ms KERRIE THOMPSON, Member, and CEO Vocal, Sisters in Law Project, affirmed and examined

The CHAIR: Thank you both for appearing before the Committee today. Can you each confirm that you have been issued with the Committee's terms of reference, and information about standing orders relating to the examination of witnesses?

JANE MATTS: Yes, I have.

The CHAIR: Ms Matts, would you like to make a brief opening statement before the commencement of questions?

JANE MATTS: Firstly, I would like to say that part of our communication to you today is between Kerrie and I, and we've worked together with that, so we have a little bit of a process with dealing with that. We will switch between the two of us. Something about the Sisters in Law Project: We are really domestic violence survivors, mostly. We do have men and women within our group. We have some great supports, including Vocal, who have supported us with some of the women that are in our group—mostly women within our group. We started about a year ago, and we did some presentations, and we're moving slowly in a project-like manner to try to deal with changes that we see as needing to be made. One of them is around cross-jurisdictional conflict between the state and federal jurisdictions. I know that I have the paper that has been presented to you as submission number 60, which I will rely on today and expand, somewhat, on that. But I will now hand to Kerrie, who is going to talk through some points.

KERRIE THOMPSON: Victims of Crime Assistance League is an organisation that's been around for 30 years. We support all people—men, women and children—who have been impacted by violent crimes anywhere in New South Wales. Some 80 per cent of our work is related to domestic and family violence. We primarily see protective parents—being the mother—and children who have witnessed or experienced domestic abuse by their father. We are specialists in supporting women and children who have left domestic violence, who have made police reports, and then find themselves in the family court system, fighting for shared custody or sole parental responsibility.

It's common knowledge, through our professionals who work in the industry, that if a mother reports allegations that her child has been sexually violated by their father that she will lose custody. Solicitors in our region know that, so they advise women not to disclose allegations of sexual violence, because they will lose their children. This is not a new issue for VOCAL. We've been working with this for well over 20 years. Despite the advocacy that we try to do on an individual, case-by-case basis—all larger systemic issues—there is a large reluctance to believe survivors. Therein lays a dangerous belief, permeating through child protection authorities, specifically police, that mothers make up allegations of child sexual abuse to gain full custody in family courts.

Up until two years ago, it was standard practice that the NSW Department of Communities and Justice [DCJ] conducted interviews for children in the company of police, where allegations of sexual harm had been raised. DCJ caseworkers are more educated and skilled in interviewing children. They understand the acts of resistance and are holistic in risk and safety assessments, in comparison with police. But at the request of NSW Police this process changed, resulting in police now being the only ones to interview children. Feedback from DCJ practitioners to our service is that police are not adequately trained in interviewing children. They are not child experts. They do not have the skills or education in matters relating to domestic violence, child protection disclosures and safety risk assessments. It's my opinion that police are not trained in child development, so why are they interviewing children on matters relating to domestic and family violence, and sexual abuse?

The following that I will talk about is from a police report that we recently obtained through the Government Information (Public Access) Act [GIPAA]. It's taken from a police officer's report of a child under the age of five. It's a recent case. I have permission from the protective parent to share this. The police report states:

> The child was asked if they had any private parts that no-one was allowed to touch. The child nodded their head. The child was asked if anyone touches their private parts. The child nodded and said, "My daddy", and pointed to the private part on the chart. When asked how their father touched them, the child said, "He touches me with his finger." When asked why the father did that, the child replied, "I don't know." The child was not able to provide further clarification as to how the person of interest [POI] touched them. When asked, "Why did the touching stop?", the child could not provide a reason why it happened and why it stopped. Given the lack of contextual information provided by the child during this interview in regards to the allegations, there will be no police action.

The detective finished the report by saying:

> There is a longstanding family law custody disagreement between the victim's parents, and due to the time frames that these allegations were reported, being three reports in the past 12 months, police are of the opinion that they may be of a vindictive and fictitious nature on behalf of the mother.

In contrast to that, the DCJ caseworker's safety and risk assessment substantiated indicators for sexual abuse and viewed the mother to be protective. The difference between what police are saying, believing, and writing in their police reports, and what DCJ caseworkers are determining as risk—there is a huge gap. Both of these documents are then passed on to the Family Court, and it's up to that process to determine which one has more weight. In our experience, police reports have more weight.

JANE MATTS: Do you want to keep going?

KERRIE THOMPSON: Sorry, there's so much to say. There was a question that was asked of Renata Field about shared custody and, when there are allegations, why in our opinion the protective parent is cut out of the child's life altogether. In every case that I've seen, over the 10 years that I've worked at VOCAL, when a mother has raised allegations of child sexual abuse, the father has been awarded full custody with the mother having limited contact. In every decision the mother has been labelled "vindictive" and psychologically harming the child by raising the allegations of child sexual abuse. This is in cases where DCJ has said, "Yes, there's been harm to the child. Put the child in sexual assault counselling." Sexual assault counselling has occurred over many, many sessions and substantiated that, yes, the child or the children have been harmed. Those reports are dismissed by the Family Court, and full custody has been awarded to the father.

JANE MATTS: Just to keep going on that theme, I work within the Family Court environment providing direct support, especially to women, but not all women—this year I've worked with three fathers in relation to their family law matter. I guess the information I would like to provide the Committee is what I actually see. I'm a former university dean and have a strong university background. I'm also a change manager by trade, and a law student working in this environment. What I'm aiming to do, with some of these women, is also work with their materials, lawyers and timelines and talk to some of the issues that I see in this space.

I know that you would have my paper, so rather than go through it I'd just like to add to this. What I'm finding is the Lighthouse Project, which has been set up to deal with the issues of domestic violence within the Family Court—and with permission of the mother that this particularly involves, I'd like to inform you that the mother in this particular case was deemed to meet the risk level of the Evatt List, which is the highest possible risk. She was spoken to about what could be provided to her in relation to safety. They were concerned about the children involved in this particular matter, but after the assessment, she has heard no more. Nothing else has happened. She's trying to get more contact; the father has the most contact at the moment. The issues of coercive control and systems abuse, with a man who has got amazing amounts of money, and a mother who has nothing—she tries to appeal and was given a quote of $19,000 just for the transcripts.

This is a system that is geared not for women. This is a system that's geared towards people who have a lot of money. When people say to me, "Well, I would like to see equal shared parental responsibility removed," I just see that as a father with lots of money, as an opportunity for them to extend their power, because they can have the QC, they can have the first and second barrister. Some of the mothers don't have the resources. I guess if we're going to look at systems, and whether the Family Court would be saying, "Well, we've got the Lighthouse Project," I think we need to further investigate that.

It is also of concern to me within this space how many times children who are deemed to have issues are not given the psychological support, or it has been removed by the Family Court. It's in my paper, but I see that time and again and, unfortunately, it's quite a significant issue. In another particular instance a mother, who was also self-represented, with a father who had one of the best QCs, she was trying to get access to her DCJ file and the judge ruled that she couldn't see it, but everyone else could. There are things like this happening within the court system that are stopping mothers being protective and they're impacting children.

One other point that was mentioned, about the independent children's lawyer that came up about training, Abigail, they actually have a course that they do. I'm not aware of the content of that course but there is a formal training course. They are officers of the court; they are not the children's independent lawyer. Under the Family Law Act they're appointed under a particular provision, and within that provision they are supposed to be the voice of the child. It's my experience in recent matters, especially within New South Wales, that sometimes they don't like getting the voice of the child, because they're spending too much time with the mother and it's going to be biased, and I've heard that multiple times in the last year. If they're not getting the voice of the child, because they think that there's going to be a biased view, then I see that as a risk.

One other point, in the Lighthouse Project, they have risk-of-harm processes that they do as part of the Evatt List to determine whether they meet the Evatt List. On those risk processes in the legislation it says those risk reports are not to be put before the judge, and I'm happy to provide the Committee with updated materials

that explain how that works, legislatively. They're not to put risk assessments before the judge. They can have it for the registrar, but not when the matter goes before a judge. Other than that, most of my material seriously sits within this. I'm happy to take questions.

Ms ABIGAIL BOYD: Thank you to both of you for coming and for your continued advocacy in this area. I'd like to acknowledge that I first came across this issue through you, Ms Matts, and when I heard the first story that was presented to me, I thought that it was just a one-off, and then I heard the second and the third and the fourth. I believe I've heard perhaps 20 separate stories now of women who had proven risk to their children, then having that child taken away from them, and sometimes multiple children.

Can you tease out that sort of damned if you do, damned if you don't situation that these women are finding themselves in where they're being told by legal advice, "If you claim sexual assault by the perpetuator against your children, you will have your children taken away from you in the Family Court because that's just how it always ends up," versus the obligation under New South Wales law to make sure that your child is protected from harm? Can you just tease that out, and say how that works in practice for people?

KERRIE THOMPSON: It is a very tricky one. I've been in appointments with clients when solicitors have said that to them, and it really does put the responsibility back on the protective parent to navigate her way, often on her own, through these systems. A lot of people think that at a disclosure of harm the first thing to do is report to police. That's problematic in itself. We often talk to parents about, have they got GPs, have they taken the child to the GP, who else has the child disclosed to, because if the child has disclosed to a school counsellor or been seen by a GP or is already seeing a treating psychologist, their evidence is held higher than just a mother reporting child sexual abuse. So, we do have to encourage them to talk to their child about being able to speak to, essentially, strangers about something so intimate.

It's devastating that the police response and child protection response is so disbelieving of mothers when we know through findings of the royal commission that a child is only going to disclose child sexual abuse when they feel it is safe to do so, and to someone that they trust, and we know that in these cases it's the mother. But even those findings through the royal commission are not being taken on by police. They're not being applied to in the child protection area. There is that bias that mothers make up these allegations.

Ms ABIGAIL BOYD: In your experience, are mothers choosing not to disclose the risk to their child in order to maintain custody?

KERRIE THOMPSON: In some instances, yes. They are having to look at other protective measures, safety assessment with the child, depending on the age of the child, of course. For children that do have a voice and that are able to speak to school counsellors, independent psychologists, things like that, we really encourage them to do that to get that evidence, but often, yes, there are parents that for fear for exactly the same reason that Jane said. They've got no money. If they go through court, they're going to lose everything and that's often a threat by the father too—"I'll drag you through court and you'll lose everything." They have to weigh that up. It's a case-by-case basis, but many women do not put that in their affidavit on advice of solicitors, because it's just going to create more problems.

JANE MATTS: Can I add to that? There was a report by Daryl Higgins in 2006 in relation to the Magellan list, and this is reason why they really need to not say too much. A judge actually stated verbatim in this report at page 99:

> I have a sense that in the overwhelming majority of cases, abuse is not confirmed. And probably in not many cases is there found to be an unacceptable risk. I don't have the stats, so it's probably silly of me to quote stats, but I'm talking of probably upwards of 70 or 80% where the relationship with the father is restored. Which in itself is a worry if that is true.

If we're doing that within the Family Court, they're obviously getting things wrong. That's a judge making a statement. We need to think, if the reason why mothers can't say things is because we know—it's actually being called a "mad mothers club", the Magellan list. Because what they do is they say, "The mothers go off for an assessment, and they've never known that they've had this amazing mental health problem and all of a sudden they've got"—what's the one that they used recently?

KERRIE THOMPSON: Factitious disorder.

JANE MATTS: Yes, that's right. They're bipolar, or they are things that they've never known of—it's magic, and it's impacted the way that their children have interpreted their own child sex abuse. I think this Magellan list, in fact, should sit within a state. If there is an issue of risk of significant harm, and we've got a Magellan or a Magellan-like matter, why is the Family Court hearing that as an issue of a marital cause, when child sex abuse is at the centre of it? Because we have an adversarial system, and we have an inquisitorial system at the state. Surely, an inquisitorial system will be far more effective than an adversarial one where the fathers can be lawyered up.

Ms ABIGAIL BOYD: I have one final question. It's shocking to imagine that, if I was in a situation as a mother trying to protect my children, and I was trying to get custody of those children to protect them, I can imagine that the way I might present to the court might look a little bit mad. I might be a little bit traumatised, and have gone through quite a significant thing. How is anybody supposed to present themselves in a way that doesn't make them look like they are either vindictive or—

KERRIE THOMPSON: You're damned if you do, and damned if you don't, because if you come across as composed and together, then they're going to judge you one way, and if you're ranting and raving and getting visibly upset, you've got a mental health issue.

JANE MATTS: The other side of that too, Abigail, is that no-one is believing them, and then you ramp it up that much more, and then we'll say to your children, "They're not believing you. They're not believing you," and then that anxiety is transferred, and then it escalates. What do you do in that whole system? It's terrible.

Mr NATHANIEL SMITH: In your opening statement, you also suggested that the courts would take a police report over just about anything else. Can you give some examples of that, where child psychologists who have got, obviously, years of experience have been overruled by a police report?

KERRIE THOMPSON: It happens a lot, right down from the AVO level, right up to these child protection reports that we see. Even if a woman makes an application or police take out an AVO, the Family Court—we have had instances that they've put proceedings on hold until there has been an outcome in the state court, whether the AVO has been granted or whether the criminal charge has been proven beyond reasonable doubt. Now that, to us, doesn't—why is the Family Court waiting for a decision from a state magistrate? There has got to be a lot of evidence for a matter to get to a court anyway, so police have to meet the briefs and the elements of a crime before they put a matter to court. So, whether the state court outcome is guilty or not guilty, there is evidence that harm has been done to a woman or a child. I don't know why police reports are held in such high regard. It is problematic, from what we see.

A lot of psychologists' reports that try to get into the Family Court, and DCJ reports that have been subpoenaed, are heavily redacted, and to the point where we've seen it and we've gone, "What's the point of even having this document submitted?" So DCJ have submitted reports in one case and most of it is redacted, and the report is pointless. So, if there are allegations of risk and DCJ has substantiated there is a risk of harm, we would like to see full reports being put in—whether it's for the judge's eyes only, but the full information has to be made aware to the Family Court, if they're making determinations of risk with regard to children. The police report is just one element of it and, as we know and have seen over many, many years, sometimes the interviewing styles of police are minimising child disclosures. They are not educated in how to get these disclosures and how to effectively interview children, and a lot of kids are being put at risk for that.

JANE MATTS: Can I just add that, in some of the research that I have been doing in relation to the Magellan protocol and the Magellan manual, we've tried to get hold of the Magellan manual from the Family Court under GIPAA, in previous proceedings, and they won't allow us to have it. So, we can't see where DCJ are supposed to be reviewing and checking to see whether there are Risk of Significant Harm reports, and how they're being taken in the Magellan reports. I see that as a significant risk and something that, really, the state needs to look at quite carefully.

Ms MELANIE GIBBONS: That's a key point. If I may, you mentioned that DCJ may put a child into sexual assault counselling. Is that done without a police report being made, sometimes? I'm trying to see why having a child in sexual assault counselling would be dismissed by the court as not being significant, as not being proof?

KERRIE THOMPSON: I don't know why it's dismissed by the court, but in this particular case the child had disclosed. The police had not substantiated it, but DCJ had that there—"something has happened to this child"—and recommended the child go into sexual assault counselling, and then that was dismissed by the court. I have been in Family Court matters, sitting in the back of the court, where the judge has ordered that the child stop counselling.

JANE MATTS: Sadly, it is common.

KERRIE THOMPSON: It's very common.

JANE MATTS: Especially a child sex assault, in relation to that, they see that as reconfirming the child's sex assault has happened and they haven't even tested the evidence at final trial, and they're still ceasing this intervention to help assist these children.

Ms JODIE HARRISON: You talked about the fact that protective parents are often informed by their solicitor to not report sexual abuse of a child, because it's likely that they would lose custody of the child. Is there

any chance that a mother of a child who is likely to inform the independent children's lawyer that abuse has occurred can try to coach that child to not disclose abuse?

JANE MATTS: They will.

KERRIE THOMPSON: I haven't had many. The people that I've worked with—the youth that I've worked with, that have had independent children's lawyers, have been teenagers, and they haven't been ones that have disclosed sexual abuse. The cases that we have have younger children who wouldn't be speaking to independent children's lawyers [ICL], in the cases I have. The question before about ICLs—in the cases that I've had, like Jane and Renata said, the teenagers have reached out and said, "I'm scared of Dad. Dad does this. I've got evidence on video of Dad doing XYZ", and they don't want to know. The ICLs are saying, "I'm not looking at that video. I'll just make my determination and put it to the court." So we know that there are problems with ICLs in that space, but the children that are disclosing are—the cases that I have—seven years and under, and they haven't got contact with ICLs.

When you're talking about DCJ having more responsibility in risk assessment, and when disclosures have been made, in one case, a young girl, there was a lot of medical evidence that something had been happening. Every time she had come back to her father's there was physical signs and things that there was an issue, which had been documented by the medical practitioners. DCJ did substantiate that there was a risk of harm, and the mother had withheld the child from seeing the father and just said, "Until we sort out what's going on, you're not going to see the child anymore". Then DCJ said, "Yes, that's perfect, the child's safe", and closed the case.

So, when it gets into the Family Court, the judge goes, "Why isn't DCJ involved?" They've just said they've closed the case—but they closed the case because the mother's protective—"The child is not in danger." So, there needs to be more looking holistically and, yes, DCJ can close the case because the child is not in contact with the abuser, but then what? It gets to the court and the court goes, "Well, the child needs to see both parents", so then they put the child right back in that harm. I think there needs to be a full review of those two processes and how they work together, because at the moment they're not.

Ms ABIGAIL BOYD: In your experience with the parents that you've been working with, does DCJ ever get involved in appeals?

KERRIE THOMPSON: No. I have never seen that, ever.

JANE MATTS: Never.

Ms ABIGAIL BOYD: It sounds like it would be helpful if they did?

KERRIE THOMPSON: Yes.

JANE MATTS: Yes.

Ms MELANIE GIBBONS: Perhaps if information is listened to in the first place, too.

JANE MATTS: I work with mums who then become self-represented, because they've got no money left. They might have final orders and I'll say, "Go and have a look in your file. Go and check your file." There will be convictions, possibly of domestic violence, something that's happened and they will find things in that file like Risk of Significant Harm reports that were never tabled in the Family Court. I see that as common practice, in some of these matters where there's domestic violence and child sex abuse. And mothers, when they're—and Kerrie's point is so important. They go in, they check, "Well, Dad's not really on the scene, but Mum's looking after the child. Case closed", and then there's no more intervention.

One thing that was mentioned by Renata and it's really important is that when people come into the court, when parents come into the court, everyone must do what's called a "notice of risk". They need to do a parenting application and, with the Lighthouse Project, they do a screening test for those that are actually—that's available to. So in these notices of risk, since the Edwards matter there has been a change in the form, and it's been a good change. We really need to acknowledge that, I think, that we've moved forward since my original submission. One of the big things is that I don't see much more action from the DCJ perspective. I've had mothers who have done update notices of risk where there have been convictions of stalking, and it's crickets. So while the Edwards matter certainly did trigger a change in review, it is my lived experience working with mothers that they're not doing much with notices of risk, still.

Ms ABIGAIL BOYD: Are parties in these Family Court matters ever prevented from speaking? Are there any gag orders put on parents? Can you talk about that?

KERRIE THOMPSON: After the orders have been made?

Ms ABIGAIL BOYD: Yes.

KERRIE THOMPSON: Yes, so many of the women that I've worked with that have lost their children have been ordered to have no contact with the child for at least six months. So, the child's taken from the primary caregiver, being the mother, put in care with the father and there's no contact, no phone, no email, no nothing with the child. And then in, I would say, most of the cases that I have, the mother has been ordered not to make any more child protection reports. And if they do need to make a child protection report, they need to produce the Family Court orders that say the mother has a psychological disorder and she is putting the child at risk by continuing making reports.

JANE MATTS: I've seen this multiple times. Multiple times.

Ms ABIGAIL BOYD: Hang on. Let me get that straight.

Ms MELANIE GIBBONS: We can't.

Ms ABIGAIL BOYD: No, I can't. But they've lost custody, but they're told that they are not allowed to put in a request to protect the child when they see them at harm because they've been deemed to be—

KERRIE THOMPSON: Vexatious.

Ms ABIGAIL BOYD: Vexatious. So every time, then, that they try and get the—"My child is being harmed," they can't actually get anywhere.

KERRIE THOMPSON: They can't do anything about it.

JANE MATTS: I have a mother at the moment, with permission—she has mentioned that I can mention this today—not from this state, but for the next five years she is not to go to police or child protection without producing her orders saying that she basically shouldn't be making these types of claims, and that she's an unreliable witness, even though she has had two AVOs that have been fully tested.

Ms ABIGAIL BOYD: Is there anything we can do at a state level about that?

JANE MATTS: There is under the Family Law Act, 68R; they can vary some of the things. But the magistrates, I'm finding, when I'm working across these jurisdictions, are not applying variation because they don't want to tread on the toes of the Family Court or federal jurisdiction, unless they really know what they're doing. And I don't think there's enough education. I sat with a senior sergeant and a Director of Public Prosecutions [DPP] representative about four weeks ago, and I said, "Do you know about this provision within the Family Law Act?", and they said no. And they read it and they just said, "Oh, I didn't know that was available." So there is some education, I think, that needs to sit in that space.

And the big problem with AVOs is, obviously, the family law side of things can now do protection orders, but it's slow. And sometimes the police defer to the family court system, and it could take six weeks, five months, four months before you can get to some form of safety process. So, really, it's clunky and it's not safe for women. If you've got mothers who are trying to get a protection order, there are children most of the time, so children are impacted by that.

The CHAIR: Thank you again for your time and for appearing before the Committee today. The Committee may wish to send you some additional questions in writing. Your replies to these will form part of your evidence and will be made public. Would you be happy to provide a written reply to any further questions?

KERRIE THOMPSON: Yes.

JANE MATTS: Yes.

The CHAIR: Great. I thank you again for your time. We are going to take a short break until 11.30 a.m.

(The witnesses withdrew.)

(Short adjournment)

Ms KATIE KELSO, Deputy Director Family Law, Legal Aid NSW, before the Committee via videoconference, affirmed and examined

The CHAIR: Would you like to make a brief opening statement before we commence with questions?

KATIE KELSO: No.

Ms ABIGAIL BOYD: Thank you very much for attending. I'm interested to know a bit more about these independent children's lawyers [ICLs]. I understand that Legal Aid assigns those. I'm curious about what that process is and how much involvement you have with those.

KATIE KELSO: When you say "independent children's lawyer", that's a terminology that we use in the federal jurisdiction. Do you mean independent legal representatives and direct legal representatives in the Children's Court?

Ms ABIGAIL BOYD: Yes, I believe I do. I'll take your word for it. I think so.

KATIE KELSO: I just thought I would check that. Yes. That is essentially the responsibility of Legal Aid NSW. In all matters that come before the Children's Court, Legal Aid NSW appoints child representatives for children. They would be independent legal representatives for children that are under the age of 12, and direct legal representatives for children over the age of 12. On those first return dates, when matters come before the court, there is always a child representative appearing either in the interests of the child, or on direct instructions from a child.

Ms ABIGAIL BOYD: Are there ever any cases where that representative is not assigned by Legal Aid? Is there some sort of privately paid for system as well, or not?

KATIE KELSO: No. Essentially, all applications are served on Legal Aid NSW, and it's our responsibility, in conjunction with the Aboriginal Legal Service, to determine who represents those children. We do have in-house legal representatives, but we also have lawyers who do our work for us. There is that aspect of it.

Ms ABIGAIL BOYD: Do the parents or guardians of these children have any say in which lawyer gets appointed?

KATIE KELSO: No. I should say that it's also our responsibility to make sure that parents receive legal assistance on the first occasion, as well.

Ms ABIGAIL BOYD: What are the training requirements for these lawyers before they are assigned to represent these children?

KATIE KELSO: Essentially, lawyers who wish to appear for children or parents in the care and protection jurisdiction need to satisfy criteria. That criteria is that they need to have five years of experience in working in the child protection system; they need to be able to provide referees to say that they have that five years of experience; and they need to have completed what is called the Lawyer Education Series, which is a series of videos, podcasts and papers that they need to submit and certify to Legal Aid NSW that they have done that. Additionally, in order to be able to represent children, they need to satisfactorily complete a child representation workshop.

Ms ABIGAIL BOYD: Is that child representation workshop an online thing or an in-person thing?

KATIE KELSO: It's an in-person day of training.

Ms ABIGAIL BOYD: Is there any test at the end or is attendance sufficient?

KATIE KELSO: No, attendance is absolutely not sufficient. You need to actively participate in the training throughout the day and, essentially, they are assessed against criteria, including their understanding of the role, their understanding of the law and also essentially their ability to represent children. It's not a tick-a-box exercise. That's the statement that I make at the beginning of the day. There are occasions where we do not put people through that training, because we do not think that they have met the necessary requirements to represent children.

Ms ABIGAIL BOYD: When you say five years' experience in—did you say in child protection?

KATIE KELSO: In care and protection work.

Ms ABIGAIL BOYD: What sort of work is that? What counts towards that?

KATIE KELSO: It would be the running and carriage of matters in that jurisdiction.

Ms ABIGAIL BOYD: Is it in terms of representing the child in that case, though, or just being involved in matters that involve child protection?

KATIE KELSO: No. It will just be the representation, really, of parents or guardians or other family members that might have been joined to proceedings. But they are not able to represent children unless the work is delegated to them by us. For them to be able to do that work, they have to have gone through the training.

Ms ABIGAIL BOYD: Is there any training for understanding family and domestic violence, and things like that, that go as part and parcel of that training?

KATIE KELSO: Yes, there are definitely aspects where we look at a mix of all those. There is also the Lawyer Education Series that we have developed, just about family and domestic violence, that is available to practitioners. That is not mandatory, but it is available for practitioners to use. Aspects of the training that we look at for child representatives do focus on domestic and family violence.

Ms ABIGAIL BOYD: In terms of what that training looks like, and the prerequisites for becoming a person who can represent children, is that part of those online training modules you were talking about?

KATIE KELSO: No. The face-to-face course actually works through—not a real case; it's a case that I made up. It involves a relationship and a breakdown of a relationship and removal of children in circumstances where one of the significant concerns is domestic and family violence.

Ms ABIGAIL BOYD: Is that part of that one-day course?

KATIE KELSO: It is, yes.

Ms ABIGAIL BOYD: Do you think that that is sufficient for a practitioner to then understand the complexities of family and domestic violence, sufficiently, to be able to represent children adequately?

KATIE KELSO: The training package that we have put together is of a similar vein to the package that independent children's lawyers in the federal jurisdiction would have to complete, to be able to represent children there. It is the same style of training. I think that it certainly involves significant exploration of issues that relate to the dynamics of domestic and family violence. It explores issues [audio malfunction] for perpetrators and also victims. It certainly equips people with skills. If I was able to have more training for practitioners to do, specifically, on domestic and family violence—I think that that is something that practitioners need to continue to learn, and continue to evolve, and develop those skills.

Ms ABIGAIL BOYD: I'm sure it is in line with what they do in the Federal Court, but I would ask whether having it as part of a one-day course could be described as significant training. If you had a magic wand and infinite resources, how long do you think it would take to have training for these lawyers that would adequately prepare them to represent children, in circumstances where they have been victims of, or exposed to, family and domestic violence?

KATIE KELSO: Certainly, in submissions that we have made to other inquiries in related jurisdictions—I think it's relevant to the answer that you are asking me now—is that we certainly suggested that it should be an essential component of the continuing professional development [CPD] that lawyers are required to do each year. There are certain mandatory requirements the law says we have to do each year, and it has certainly been Legal Aid NSW's position that there should be a mandatory domestic and family violence component of that each year, because it is something that needs to continually be addressed, and looked at, and evolved.

Ms ABIGAIL BOYD: Don't you think, though, that if you are working with children in particular, you would then get additional training? I think pretty much the whole of society needs training on family and domestic violence. I agree that it should be part of the core training for lawyers. But in terms of children's representatives in particular, do you think that there needs to be much more fulsome training given before they are allowed to work for children?

KATIE KELSO: Do I think that there should be? Well, yes. I think that there should be. There is always room for practitioners to learn more, particularly in relation to domestic and family violence.

Ms ABIGAIL BOYD: Do you get many complaints about the work of lawyers who have been assigned as children's representatives?

KATIE KELSO: I think I would probably have to take that question on notice. It's not within the scope of my role to manage those complaints. Those complaints are managed by our Private Lawyer Quality Standards

Unit. But I could certainly take that question on notice, and get some data as to the number of complaints that we receive in relation to child representation for care and protection matters.

Ms ABIGAIL BOYD: That would be really useful, thank you. It would be helpful if you could also tell us what the process is, if you feel aggrieved by the conduct of the children's lawyer that has been assigned to you, and what a parent or guardian's rights would be to get that person changed. Is there any way for them to intervene, or is it just a [disorder] the end?

KATIE KELSO: No, I think it depends on when the issue is raised. During the course of the proceedings, if it was to be the case that a parent or any party, for that matter, or even the court, was of the view that a child representative was not discharging their responsibilities, then the court would have the ability to essentially discharge that lawyer and seek the appointment of another lawyer. There are some cases where that has occurred. It could be that the parent makes an application within the course of the proceedings. If they choose not to do that, for whatever reason, then post final orders being made, they could then make a complaint to Legal Aid NSW, and there would be a process that would facilitate in investigating that complaint, and seeing whether that complaint could be substantiated.

Ms ABIGAIL BOYD: Is there an obligation for the assigned children's lawyers or children's legal representatives to meet the child that they are representing?

KATIE KELSO: Yes.

Ms ABIGAIL BOYD: Can you explain what that obligation is? Are they obliged to meet and interview the child? How does that work? What is the process when they are first assigned?

KATIE KELSO: I would say that there are two reasons that they are obliged to do that. One reason is the legislation itself, and the expectations under section 99D, I think it is, that sets out the role of the legal representative. Part of the role of both the independent legal representative, and the direct legal representative, is to ensure that the views of the children are placed before the court. Secondly, our quality standards, which set out the expectations for panels doing our work, provide that it is the expectation of Legal Aid NSW that children school age, essentially, are to be met with. Breaches of our quality standards can result in an investigation and decisions made as to whether they can continue to do the work, in simple terms.

Ms ABIGAIL BOYD: We have heard this morning some stories of people's experiences where the legal representative has not necessarily appeared to effectively voice the views of the child that they are representing. Is there a process for reviewing the file notes taken, or is there some sort of proactive process in place to ensure that these representatives are acting in accordance with their obligations? Or is it simply a matter of waiting for someone to complain?

KATIE KELSO: No, I don't think it is simply a matter of waiting for somebody to complain. It's certainly within the realm of appearance of the secretary, or of the court, to ask, and often this occurred [audio malfunction] ask what the views of children are, whether the children have been met with. That is something that parents, through their legal representatives can certainly do.

It's really important to note that the relationship between the child and their legal representative does have confidentiality attached to it. Really, that is so that children can feel as though they have got a safe space to be able to speak to their lawyer, without necessarily that information being provided to anybody else. That's a very important part of the role and that relationship. It won't always be the case that children want to express views. It certainly is the case that often they do. Sometimes there are things that they want to express just to their legal representative, and just for their legal representative to know.

Sometimes they are happy for you to share certain information, but one of the things that I think is really important is to know that when you share information about children's wishes, or what they might like, that you have to share it with everybody. So it's shared with the court, it's shared with parents and it's shared with all of the parties. Children are often mindful of the fact that that can be very difficult information for parents to hear, for caseworkers to hear. Sometimes they feel as though they want to keep everybody happy, or they might not want to make somebody sad, and that's a consideration as well. Often children will just want to say to you, "This is what I want, but I don't want you to tell anybody." It's quite a nuanced role and quite a complex thing to manage all those competing priorities.

Ms ABIGAIL BOYD: Do you have any suggestions for regulatory reform that would make the job of the children's representative more effective? Are there any hurdles in the way? Is there anything that you would recommend the Committee look into, in terms of making that process more effective?

KATIE KELSO: In terms of making sure that voices of children can be heard?

Ms ABIGAIL BOYD: Yes. Is there anything that you believe, from the New South Wales regulation perspective, that could be improved to ensure that the interactions between the lawyer and the child can most accurately result in—most effectively result in the voice of the child being heard?

KATIE KELSO: I think one of the difficulties for ensuring that the wishes of children [audio malfunction] the wishes of the court being put forward by lawyers is not really necessarily evidence. I am sorry there is a fire alarm that is going off in the venue that I am in. I am just trying to manage that I need to be leaving the building. But one of the issues is that sometimes the most appropriate way to put forward the wishes of children before the court is by way of a social worker or a psychologist talking to a child, who can then write a report. And the benefit of that is that, not only do you get the wishes of the children, but sometimes [audio malfunction] how much weight should be placed on these issues. There are limitations under the current Act in terms of how we can access the children's [audio malfunction] and so the issue with reports like that that are not able to be accessed. I don't know if you can hear me, but we are actually being evacuated.

Ms ABIGAIL BOYD: We can still hear you—just. I am sure I have had many nightmares about the situation you are in right now. Why don't you evacuate.

The CHAIR: Ms Kelso, thank you for appearing briefly. Given the situation, would you be happy to take any questions in writing?

KATIE KELSO: I'm very sorry, I'm actually being walked out of the building now. This is actually my worst nightmare too.

The CHAIR: Thank you very much. We will let you go and stay safe.

KATIE KELSO: I am happy to take any further questions on notice. I do apologise.

(The witness withdrew.)

(Short adjournment)

Dr RAE KASPIEW, Research Director, Systems and Services, Australian Institute of Family Studies, before the Committee via videoconference, affirmed and examined

Dr RACHEL CARSON, Executive Manager, Family Law, Family Violence and Elder Abuse, Australian Institute of Family Studies, before the Committee via videoconference, sworn and examined

The CHAIR: I now welcome Dr Rae Kaspiew and Dr Rachel Carson, representatives from the Australian Institute of Family Studies, who are joining us via videoconference. I thank you both for joining us today. Can you each confirm that you have been issued with the Committee's terms of reference, and information about the standing orders relating to the examination of witnesses?

RAE KASPIEW: Yes.

RACHEL CARSON: Yes.

The CHAIR: Dr Kaspiew, would you like to make a brief statement at this time?

RAE KASPIEW: No, I have no statement to make.

The CHAIR: Dr Carson, would you like to make a statement?

RACHEL CARSON: No, I have no opening statement.

The CHAIR: Okay. We will open questions to Committee members.

Ms ABIGAIL BOYD: Thank you to both of you for coming today, and giving us the benefit of your experience. I might ask you, Ms Carson: we keep hearing about the involvement of the family report writers, different legal experts and people involved in this process in a family law perspective. What is their training experience, and can you give us a bit of insight into what their obligations are, when it comes to looking at what has happened under state law and bringing that information to the court?

RACHEL CARSON: I will have to preface my comments by saying that isn't an area that we have researched. What I can say is that family report writers are a key avenue in the family law space, for matters in relation to children's best interests, including [inaudible] express views [inaudible] before the court. The family report writers may be employed directly by the courts as court child consultants, or they may be single experts who are appointed to undertake independent family reports, to be presented by the court in family law proceedings. They are usually either of a psychology or a social work background. That is my understanding of their qualifications.

Ms ABIGAIL BOYD: In terms of the legal representatives that are assigned by Legal Aid to represent children, we heard a little bit just before the session about the kind of training that they go through. What's your opinion on the extent of that training and whether it's sufficient?

RACHEL CARSON: It's been some time since the institute has undertaken research, specifically, investigating the training of independent children's lawyers [ICLs]. We did undertake research, commencing in 2012, that examined the extent to which independent children's lawyers involved in family law matters improved the outcomes of children and young people. There were a range of different independent children's lawyers' practices that we examined, on the basis of both quantitative and qualitative data from independent children's lawyers themselves, but also from judicial officers and non-independent children family lawyers—family lawyers acting in family law matters, but not in the capacity as independent children's lawyers. The research also involved non-legal family law professionals—including family consultants, which we just spoke of—as well as parents and children who had been involved in family law matters that had an ICL, or independent children's lawyer, appointed in their matter.

We understood from that research that, overall, assessments as to effectiveness of independent children's lawyers' practice was generally positive among judicial officers and independent children's lawyers themselves, but there were less positive assessments from non-legal professionals, from family lawyers who were not acting in the capacity as an independent children's lawyer, and from parents and children who participated in our study. Although, I would say that the [inaudible] aspects where we were able to gain those views from children and parents were qualitative interviews, and there was a [audio malfunction], but that may not be reflective of the majority of experience of parents and children engaging with independent children's lawyers.

More recently, we undertook the "Children and young people in separated families" study, which investigated the experiences of children and young people whose parents had separated and the family had in some way accessed the family law system services, to see whether the family law system met all of their needs. It was focused primarily on the views of the children and young people participating. In that particular study,

I saw [audio malfunction] of independent children's lawyers, where one such group that were identified by children and their parents as services that they had accessed. In relation to independent children's lawyers, specifically, most children who could recall accessing the independent children's lawyer in their case reported that they'd met them. They could recall meeting them. Almost half of them indicated that the independent children's lawyer acknowledged their views and experiences.

Ms ABIGAIL BOYD: Sorry, almost half?

RACHEL CARSON: Almost half indicated that they acknowledged their views and experiences. Again, we interviewed 61 children and young people for that study. There were 14 who could recall that they had access to an ICL, and almost half of that number indicated that they had their views acknowledged by the independent children's lawyer.

Ms ABIGAIL BOYD: I know it's just numbers, but we could put that another way, couldn't we, and say over half of those children did not think that the representative had understood and acknowledged—or whatever the language was—and had actually reflected their voice? Would that be [disorder].

RACHEL CARSON: It may be best, to characterise it, to say that they didn't express a view on that. These were qualitative, semi-structured interviews. For example, if a child had limited recollection of an independent children's lawyer and their interaction, they may not really have been in a position to definitively answer that question. It is still a little bit difficult to be more specific, I guess.

Ms ABIGAIL BOYD: When the ICLs are meeting with children is there anyone else there, or is that a private meeting? Do you know?

RACHEL CARSON: It can vary. In some jurisdictions—for example, in Queensland—independent children's lawyers will often and, in fact I think almost always, meet with a family consultant present. In other jurisdictions it will depend on the individual practices of the independent children's lawyer themselves.

Ms ABIGAIL BOYD: We heard that in New South Wales, before you're allowed to become an ICL, you effectively need five years of experience, generally, in child protection matters. You do some online courses and then there's a one day face-to-face workshop. I've just looked at the description of the workshop and the things that it covers. I can't see here any explicit mention of domestic and family violence. Do you think that there needs to be more training for ICLs in relation to general child protection, and domestic and family violence issues, before they're allowed to be ICLs? And how does that differ in New South Wales to other jurisdictions?

RACHEL CARSON: I couldn't speak specifically to the courses provided in each jurisdiction. When we undertook the independent children's lawyer study some years ago, as I mentioned, we did have insight into training provided by National Legal Aid, but I wouldn't be in a position to speak confidently about the current circumstances. I also must add that the reflections that I'm making are in relation to independent children's lawyers who are acting in the family law jurisdiction, not in the child protection jurisdiction. My research does not extend to those.

Having said all of that, our "Children and young people in separated families" study did suggest that there was a need for training, not only in relation to domestic and family violence, but also in child-inclusive approaches; so, how to engage with children and young people, to help those professionals to engage in a developmentally appropriate way with the children with whom they were engaging, and to engage in what children and young people described as effective professional practice.

I think it's important to note that, from the children's perspective, they told us about how it's very important to have that opportunity to safely communicate their views. When they spoke about that, they were speaking about having an emotionally and physically safe space to communicate their views. They wanted to be kept clearly and accurately informed about the legal process that they were engaged in, the progress of their particular matter and also of the outcome. Participation for the children and young people that we spoke to in the "Children and young people in separated families" study were not only focused on that opportunity, to express views where they wished to do so, but also to have that opportunity to be kept informed by an independent person, who could clearly and accurately convey that material to them.

As I mentioned, child-inclusive practice and having expertise in engaging with children—often with very significant needs—is important, and taking a proactive and protective approach to the children that you're representing. Where children have disclosed concerns and experiences which suggest that arrangements need to be made, to accord with their best interests, being proactive about that, and raising those concerns in the context of the decision, they do [inaudible]; and doing so in a way where you can establish a relationship with a child. Children often commented, when we were engaged with the [inaudible] research, both in this "Children and young people in separated families" study but also in our *Independent Children's Lawyers Study*, they needed an

opportunity to develop a relationship with the person with whom they're sharing these views and, so, having that trust and rapport built up over time. Professionals need to be supported to understand how best to do that, and how best to engage with children in this way.

In that context, it's important to think about the fact that overall—and not specifically referring to independent children's lawyers, but across the board with family law system professionals as a whole—around two-thirds of the children and young people who participated in our "Children and young people in separated families" study indicated that they wanted the family law system professionals to listen more effectively to their views and experiences. That suggests to us that we need to develop capacity across the board. Independent children's lawyers are professionals engaging with children in the family law system space, so that they can ensure safe and effective participation.

Some of our research suggested, for example, that we learnt a bit about—children are telling us that they want safe space, both emotionally and physically. How can you, in the words of my colleague Briony Horsfall, scaffold that participation process for them? This is particularly important when children have experienced significant harm during the course of their parents' relationship, for example, and Katie Tisdall talks about, particularly, agency around those children who are particularly vulnerable, to ensure that they too have the capacity to participate in the decision-making process. This suggests that we want to ensure that professionals are adequately skilled to enable them to provide that scaffolding, or that figure of agency of those children to participate in, socially.

Definitely, from our other research looking at our *Evaluation of the 2012 family violence amendments*, we identified across the board a lack of trauma-informed practice in this space. For example, in the survey of recently separated parents component of the *Evaluation of the 2012 family violence amendments*, around more than 30 per cent of parents indicated that they were not asked about family violence or child safety concerns when they were with family law system professionals, and just over half of those parents indicated that they felt that the family law system needed to consider how better to protect children's safety, and around half of the professionals who engaged in our survey of professionals, as part of that evaluation, reported that the legal system did not have sufficient capacity to screen and deal with family violence and child abuse.

Since that time, there have been some changes made in the courts, for example, in terms of the Lighthouse Project, which you may have had information about previously, and also one would hope that given our research has been out there since 2015, that changes in terms of educational and training opportunities, in professional development for family law system service practitioners, has been [inaudible] to the deficiencies that we identified in the research.

The Hon. CHRIS RATH: How do you think COVID over the last two years has changed the child protection system? What are some of the new challenges maybe that we would face now compared to two or three years ago?

RACHEL CARSON: We wouldn't be able to answer that on the basis of the research that we've undertaken, I'm afraid, given that we haven't undertaken research in the child protection space.

Ms ABIGAIL BOYD: Please tell me if I'm way out here, but I find it quite gobsmacking that we have such an important role such as an ICL, who is relied on by the court to voice what the children think in a circumstance where, otherwise, you've got parents sort of both accusing each other of things, and the courts trying to work out whether or not a mother is being vindictive or whether she's being protective, where her anxiety is coming from. They ask the ICL to express the child's view. It would strike me that that would be an incredibly important role, and yet from what we heard before, we have people who have no experience necessarily of dealing with children themselves.

Given the complexity of domestic violence and trauma, and just children in the first place, as you said, at the developmental stages, I can't imagine how those ICLs can have any capacity to accurately work out what the views of the child are. Am I way out or is this a fundamental flaw in our system, that we are relying on people without significant understanding of trauma and family relationships and dealing with children, to then represent those children in cases where we could end up with them being put with someone that they're at risk of harm from?

RAE KASPIEW: If I may just address that point on the basis of findings from our *Independent Children's Lawyers Study*, the study points to first of all a lack of role clarity, in that respect, in the system, in terms of the formulation of the independent children's lawyer role and the formulation of the family consultant role, and so there are basically three aspects of an ICL role. There's the aspect of the honest broker who manages the litigation; there's the aspect of the court's forensic assistant, in terms of their evidence-gathering capacity, which involves them collecting evidence about the child and presenting it to the court; and then there's a

participation support role, which goes to the role of explaining to the child the proceedings, gathering information about their views, if the child wishes to express a view, and putting that before the court. On the other hand, there's the family consultant role, and that role also entails speaking with the children, and those professionals are generally thought to have the ability to assess trauma and assess family violence.

One of the findings of the research into independent children's lawyers was that ICLs did need more training in family violence and trauma. There needed to be more role clarity in terms of the expectations placed on them and, as Rachel has already pointed out, one of the findings of the *Evaluation of the 2012 family violence amendments* was there needed to be more family violence and trauma-informed practice across the system. The point that emerges from the research is that there is a lack of role clarity about which professional it is that's actually charged with understanding the child's experience, from the point of view of trauma and family and domestic violence.

I should also point out that the Institute has recently completed a piece of work on compliance with an enforcement of family law parenting orders. That was funded by Australia's National Research Organisation for Women's Safety, and it looked at issues around the operation of the enforcement regime in part 7, division 13A, of the Family Law Act. We looked at family law court files, we surveyed professionals and we also surveyed parents with parenting orders, about their experiences of compliance. Again the very clear finding that emerges from that research is that across the system there needs to be greater application of trauma-informed practice, because it was quite clear to us that the findings demonstrate that there is insufficient attention paid to dynamics of family violence and the complexity of children's needs, in that context, in the formulation of parenting orders, and so parents end up in situations where they have orders that aren't easy to implement, and in some circumstances, children choose not to cooperate with implementation because the orders aren't suited to their needs. Again, that's a finding from a more recent piece of research that, again, reinforces the need for greater emphasis on family violence and trauma-informed practice across the system.

Ms MELANIE GIBBONS: I have just been looking at your website and I notice you've got a media release from March 2020 where you talk about children's safety. In it, you state:

> When asked whether the family law system protects children’s safety, as it is required to do, barely half of mothers (53%) and fathers (48%) agreed.

Do you have any ideas on what the New South Wales Government can do to liaise with, or to help assist, children to feel safer whilst having a dealing with the Federal system?

RACHEL CARSON: I can tell you from our "Children and young people in separated families" study that over two-thirds of the children—of those who participated—said that they wanted to have professionals listen more effectively to their views and experiences. They also indicated to us that they wanted to be kept informed. So it's about—it's a dual role, allowing that opportunity to participate and to express views, but ensuring that children and young people are kept clearly and accurately informed. Then, as Rae mentioned, with our more recent compliance with, and enforcement of, family law parenting orders project, that was identified as a way of ensuring that orders adequately adapt to children and young people's changing needs and, indeed, encouraged compliance, if that involved their reflections or their views.

Ms MELANIE GIBBONS: Would more oversight through a body like DCJ assist?

RAE KASPIEW: I am not familiar with DCJ.

Ms MELANIE GIBBONS: Through our Department of Communities and Justice, liaising with the Federal system—do they need a greater partnership? I guess what I'm getting at is, the federal level seems to, obviously, need some overhaul there. At a state level, how can we assist to help children feel safer?

RAE KASPIEW: If your question concerns the intersection between the family law system and the child protection system—

Ms MELANIE GIBBONS: It does. That is exactly what I was trying to say.

RAE KASPIEW: Yes, thank you. One of the issues that's of significance, and has been for some time, which we looked at specifically a few years ago, in the context of the Victorian system – A pilot program where the Department of Health and Human Services worked with the family law court registries to have a child protection agency worker present, in the family law court registry, to facilitate the exchange of information about a family's engagement with the child protection system—that was one mechanism that was piloted and the evaluation was very positive. I can say, also, that that has been rolled out as a more extensive pilot in some family law court registries involving both child protection agencies and police. I understand there has been an evaluation; however, I have not seen it and I'm not familiar with it. I would suggest that it might be of benefit for the Committee, to try to gain an insight into that more recent piece of work that's been done in that area.

But, certainly, our research shows that greater information exchange between the family law system and the child protection system is critical in supporting, particularly the family law system, to understand what has been going on with a family and whether there has, in fact, been engagement with the child protection system and, if there has, the nature of that engagement. I should point out that in our research on compliance with and enforcement of family law parenting orders, in the sample of the family law court files that we looked at, more than one-quarter of the families that were involved in applications for enforcement had also had engagement with the child protection system. So it's a reasonably significant interface that occurs when you look at the breadth of the issues.

Ms JODIE HARRISON: Thank you for addressing the Committee today. I am interested in the "Children and young people in separated families" study that you've done. I actually haven't had a look at it, but you talked about the experience of children and what they reported in qualitative interviews, and that almost half indicated the independent children's lawyer acknowledged their views. There is also a figure that you referred to, in relation to the number of children who recalled actually having dealings with the independent children's lawyer. I'm interested in how old the children who were involved in that qualitative research were and, at that age, what was their memory capacity, ability to develop trust and all of those kinds of things?

RAE KASPIEW: I don't think—

RACHEL CARSON: It was [inaudible]. Yes, you've identified an issue because—and that's one of the reasons why, in addition to interviewing children, we interviewed at least one parent of the child to understand, from the parent's knowledge and recollection, what services had been engaged with. And so, other than interviewing the children, depending on the age, we would have to do some discussion to identify exactly which professional they were talking about when they were reflecting on their experiences. But, more broadly, the children that we interviewed were aged between ten and 17 years of age. The average age was 13 years and most were in that, sort of, 12 to 14 year age bracket—so, I would say, reasonable recall. I would also say that many children who had had quite significant engagement with some of the law system services, their recall about their experiences, was very detailed.

Ms ABIGAIL BOYD: Just coming back to these three separate roles of the ICL—and I think that was a really helpful analysis: the honest broker, the forensic assistant and then this kind of participation support role. Again, I want to come back to whether or not these lawyers are really in a position to effectively deliver those, without having a basis in trauma and domestic violence [DV] and all the rest of it. Should the independent representative be a lawyer? Should we be thinking a little bit outside the box, and going towards more of this family consultant role as being—yes, we need an independent representative who can be the voice in court proceedings for children, but should it be primarily somebody with the appropriate skills to do that, plus some knowledge of the law, or should it be a lawyer with some very limited knowledge of children and trauma?

RAE KASPIEW: That question raises some very complex issues. First of all—and the focus, I think, of the complexity is the fulfilment of the child participation role. So, in terms of honest broker and the forensic assistant, they are legal roles; that's quite clear. But there is debate in the academic literature about where responsibility should fall in relation to the child participation role and, also, the assessment role, in terms of trauma and family violence.

Again, a further complexity, that I would point out, is that the role of the family consultant is also a forensic one, in that the family consultant is charged with making an assessment of the family and the child and putting the evidence before the court. That is the nature of that role. In amongst all of those professionals that interact with children, none of those roles are explicitly focused on meeting the participation needs of the child, in the sense of understanding the nature of the proceedings. There is commentary in our report to that end and there is debate in the academic literature. I would not be able to comment on your specific question, from a thorough analysis of the evidence, because I haven't been able to undertake that at this point in time. But I certainly think that the point you raise is a significant and important one, and bears further thought.

Ms ABIGAIL BOYD: Thank you. As you say, the honest broker and forensic assistant roles are legal roles but they're not done in a vacuum. I'm not sure you can be a very effective forensic assistant, for instance, if you don't understand what it is that you're looking at. So, perhaps, again, we come back to if it is a legal role then you need to have significant training in understanding that side of things—asking lawyers to be almost half social workers and half lawyers at the same time. Sorry, I'll hand back.

RAE KASPIEW: Could I just make one further point? The findings from the independent children's lawyers showed that the independent children's lawyers who responded to our survey, who also had a role as separate representatives in the child protection system, they had a higher participation orientation. So the lawyers that worked both across the family law system and the child protection system—and the roles are configured differently in each of those systems; it's a best interests model in the family law system and, in the child protection

system, it's more of a direct instructions model, at certain ages. Where you have lawyers that did both of those roles, and so had the benefit of working in both of those systems, there was a tendency for them to place greater emphasis on the child participation role. So, I just make that point, to assist your further thinking.

The CHAIR: I am very interested in the project you spoke about earlier in Victoria. Are you aware of any other work that has been undertaken in other States or Territories that minimises the conflict between the family law and child protection systems?

RAE KASPIEW: I would suggest that it would be helpful for you to seek information about the situation in Western Australia because, in Western Australia, the Family Court is a state-based family court. I know, from my engagement at various times with different projects, but also from my role on the Family Law Council, in Western Australia, the exchange of information between the family law system and the state child protection and police agencies is much smoother because it is a state-based family court.

The CHAIR: Thank you very much. Any other questions? I'd like to thank you both for appearing before the Committee today. We appreciate your evidence that you've provided. If the Committee wishes to send you some additional questions in writing, your replies to these would form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

RACHEL CARSON: Yes.

RAE KASPIEW: Yes.

The CHAIR: Thank you very much for your time.

(The witnesses withdrew.)

Ms MICHELLE HAYWARD, Managing Solicitor, Family Law Practice, Aboriginal Legal Service (NSW/ACT), before the Committee via videoconference, affirmed and examined

Ms ZOE DE RE, Managing Solicitor, Care and Protection, Family Law Practice, Aboriginal Legal Service (NSW/ACT), before the Committee via videoconference, affirmed and examined

The CHAIR: I now welcome representatives from the Aboriginal Legal Service, who are joining us via videoconference. Thank you both for appearing before the Committee today. I ask you both, can you please confirm that you have been issued with the Committee's terms of reference, and information about the standing orders relating to the examination of witnesses?

ZOE DE RE: Yes, I can.

The CHAIR: Ms Hayward, have you been provided with that information?

Ms JODIE HARRISON: It sounds like she can't hear you.

The CHAIR: Ms Hayward, can you hear me?

Mr NATHANIEL SMITH: I think that there are some technical issues, Chair.

The CHAIR: Yes, there are. For the benefit of Ms De Re, we are going to pause to see if we can rectify this technical problem. Thank you.

Mr NATHANIEL SMITH: Chair, it might be best if they turn their cameras off. I've noticed that Webex can play up when it does video, unfortunately.

The CHAIR: We cannot communicate with her at the moment. Can you hear us, Ms Hayward?

ZOE DE RE: For the benefit of the Committee, I am messaging Ms Hayward via Teams and letting her know when the Committee can hear her and when they cannot.

MICHELLE HAYWARD: My apologies, I can hear you now.

The CHAIR: Fantastic. Ms Hayward, can I please confirm that you have been issued with the Committee's terms of reference, and information about the standing orders relating to the examination of witnesses?

ZOE DE RE: Yes.

The CHAIR: Would you like to make a brief opening statement before the commencement of questions from the Committee?

ZOE DE RE: I would like to make a very brief statement, yes. I would like to acknowledge the traditional owners of the land which I am appearing from, which is the Widjabul Wia-bal people of the Bundjalung nation. I live and work in the Lismore region. I would like to acknowledge Elders past, present and emerging. In addition to the Committee reading the submissions of the Aboriginal Legal Service, I would like to commend the Family is Culture review report to the Committee, and all 126 recommendations that that report makes. That is all that I wish to say, Chair.

The CHAIR: Thank you. Ms Hayward, would you like to make a brief opening statement?

MICHELLE HAYWARD: I don't wish to make a brief opening statement. Ms De Re has summed up that perfectly. I will refer to her and her expertise.

Ms ABIGAIL BOYD: Hello. Thank you for attending. We've heard a lot today about the way in which the child protection system in New South Wales is failing to continue its duty of care to children, once they're put within the family court system. Clearly, for children of Aboriginal and Torres Strait Islander families, the situation is always so much more complicated, because of the layers of systemic racism that is still within our society and most definitely within our police and judicial structures. I don't know if you heard the evidence that we've been listening to today. But I wondered if you had any reflections on the additional complexities when it comes to custody matters in the context of First Nations families. It's a very big question.

ZOE DE RE: I might firstly say I have heard some of the evidence that's given this morning and some of the questions that were asked of witnesses, and make that very clear distinction between the expertise of myself and Ms Hayward. My expertise is in child protection. It's within the Children's Court of New South Wales. It relates to the children and young people that are subject of care applications filed by the Department of Communities and Justice. Ms Hayward's expertise is clearly in the Federal Circuit and Family Court of Australia

[FCFCOA] and family law jurisdiction. Member Boyd, I think, if you're asking in relation to custody matters that relate to family law proceedings, I will defer to my colleague Ms Hayward. Her expertise lies there.

MICHELLE HAYWARD: It is a very big question. I have to say that my experience and expertise is working predominantly in the Aboriginal and Torres Strait Islander families list, which is a specialist list of the Federal Circuit and Family Court of Australia. Within those matters, this list has been able to set up a culturally safe environment for Aboriginal families. Through that list, when you say "custody", we're talking about—traditionally, people think of disputes between parents. We're really dealing, and tend to be dealing, with matters where there are family members involved. It may have been, say, the parent or, say, a family member who is looking at bringing an application for orders, before a court, which protect children or protect a child. And it's being used as a sort of early intervention [inaudible] looking at it within [inaudible] aspect, looking at it in preventing families from entering into the child protection system.

Ms ABIGAIL BOYD: We've been looking at the issue of independent legal representatives for children, their training, how appropriate they are. In the context of domestic and family violence cases, I personally am coming to the conclusion that they need a lot more of a requisite experience in trauma and understanding family violence. When it comes to First Nations children, to what extent do those independent children's lawyers come themselves from First Nations communities or have the appropriate skills and background in order to provide a truly safe environment for the children they're representing?

ZOE DE RE: I'm happy to respond to that question. I guess, firstly, the Aboriginal Legal Service Care and Protection, Family Law Practice does do independent legal representation and direct legal representation in the Children's Court and independent children's lawyer [ICL] work in the federal system. We take on that role—I heard, Member Boyd, you were asking questions about the legal aspect as well as the nonlegal aspects of that role, and the previous witnesses spoke about the separation with the three parts to that role. We take very seriously that community mandate we have as an Aboriginal community controlled organisation to hear from community about how we're doing. We speak to other people involved in children's lives, of course, maintaining confidentiality where we can, to ensure that we are speaking in the best interests of children. Where you're speaking directly to children and acting on their direct instructions, we're bound by those instructions. So, we have to be giving fulsome participation for those children.

I think it's important to add to the comments that have previously been made, about ensuring those solicitors are trauma informed and have an understanding of domestic and family violence, that they also have an understanding of forced removals and the historical issues that come with intergenerational trauma, for our Aboriginal and Torres Strait Islander children and their families. Some of the experiences I've had, acting for children, are far from textbook. With the job, you get a lot of job training on the job. So I don't know if it necessarily can be prescribed in a training manual. It's certainly, I think, important for there to be regular check-ins and supervision of the solicitors who are acting for Aboriginal and Torres Strait Islander children and young people, to ensure that they're getting appropriate training and culturally appropriate training.

The CHAIR: Would it be fair to say that you recommend that, potentially, the two roles, one being the ICL and another one being someone more skilled up on child protection—that, potentially, you'd have a second person being involved, as opposed to just the ICL, someone with experience in child protection?

ZOE DE RE: I think that's potentially a question for Ms Hayward, because those of us who are acting within the Children's Court have some experience in child protection, so I will leave that one for Ms Hayward.

MICHELLE HAYWARD: It is sort of a difficult question to answer, in that it's not a requisite that independent children's lawyers also have experience in child protection. But, saying that, you will find that they often do, or those that are more experienced there, appointed to those matters, are often coming from Legal Aid, who are required to do their open family jurisdiction and child protection jurisdiction, or lawyers who have worked both within the Children's Court and the family court system.

Ms JODIE HARRISON: I have a question about the independent children's lawyer. I think, Ms De Re, you commented that the independent children's lawyer, in your experience, takes direction from the child and is bound to comply with the child's wishes. We have heard from other evidence that a parent could potentially apply to have another lawyer provided to the child, if they disagree that the independent children's lawyer is doing the right thing. I am just wondering whether there is a danger there, from your experience, of that happening.

ZOE DE RE: Firstly, I wanted to make the distinction clear: Independent legal representatives for children in the Children's Court are up until the age of 12. I think Ms Katie Kelso from Legal Aid indicated that above the age of 12 they are direct legal representatives. That is the one that I was referring to, when I was talking about being bound by their instructions. We are not bound by the instructions of children under the age of 12. That is the assumption in the Act. In relation to the discharge of child representatives, the process is actually that

they are allocated by Legal Aid in consultation with the Aboriginal Legal Service. But ultimately the court appoints that person as the legal representative.

Any application can be heard by the court, or any party, about how that legal representative is discharging their role. So, ultimately a parent can raise that issue, but it would be the court that would be discharging the lawyer. It wouldn't be them privately raising an issue with Legal Aid. What Legal Aid does do, is take complaints about the conduct or the representation by lawyers of children, and then they investigate them through their own process. We don't investigate those processes. We just pass that on to Legal Aid if it is raised with our solicitors. But otherwise, the power to discharge the lawyer rests with the court in New South Wales in child protection matters.

Ms JODIE HARRISON: I have a question for Ms Hayward. Can you estimate how many cases you would take on in the family law system that would also have issues regarding child protection and/or domestic violence?

MICHELLE HAYWARD: I would say almost all the matters that we take on, very much, are in that grey area or the fine line between the federal family jurisdiction and the state welfare jurisdiction. We see quite a lot of significant overlap and [inaudible] matters which have been [inaudible] section of the Family Court into the Children's Court and vice versa [inaudible] needs to go back across the road to the Family Court. I apologise, I say "across the road". [Inaudible] the Children's Court and the Family Court were directly across the road. I haven't quite got the terminology when I think of the two. That hopefully answers that question.

Ms JODIE HARRISON: I think we have also heard that there is a bit of a hesitance to get involved or, with the overlap between family law and child protection, a bit of a hands-off approach from each. You mentioned that cases can go from the family law court to the Children's Court. Is that as a result of involvement of child protection?

MICHELLE HAYWARD: No. It's a very inconsistent response. Section 91B is the department, is invited to intervene. It is my experience that there is no consistent thing about whether they accept that invitation to intervene in matters. I would say, out of a practice of 15 years, about three have had the department involved in the family law jurisdiction. I have, since the Aboriginal list has commenced, seen a slight increase in the involvement and a little less of a challenge to be involved in the family law jurisdiction. [Inaudible] one application involved the department actually being the applicant, and commencing that application within the family law jurisdiction. The matter that is coming back—because there is no way to transfer a matter from the Children's Court jurisdiction, which is the state jurisdiction, into federal jurisdiction—involves a slight overlap. It involves getting the permission by law of the department under section 69ZK, because once it is a Children's Court proceeding, the Family Court no longer has jurisdiction, unless the permission of the department is given, and that's a fresh application to the family law courts, and the Children's Court application will then be withdrawn.

The CHAIR: As there are no further questions, I thank both witnesses, Ms De Re and Ms Hayward, for appearing before the Committee today. The Committee may wish to send you some additional questions in writing. Your replies to these will from part of your evidence and be made public. Are you both happy to provide written replies to any further questions?

MICHELLE HAYWARD: Yes, I would be happy to do that.

ZOE DE RE: Yes. I too would be happy to do that, Chair.

The CHAIR: Thank you again for your participation in today's hearing.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr ADAM WASHBOURNE, CEO, Fighters Against Child Abuse Australia, sworn and examined

Ms PIP RAE, Chair, National Child Protection Alliance of Australia, sworn and examined

Ms NICOLETTE NORRIS, Founder, National Child Protection Alliance of Australia, affirmed and examined

The CHAIR: I now welcome representatives from the National Child Protection Alliance. The Committee has also resolved to welcome Mr Adam Washbourne. Can I confirm that each of you have received the Committee's terms of reference, and information about standing orders relating to the examination of witnesses?

ADAM WASHBOURNE: Yes.

PIP RAE: Yes.

NICOLETTE NORRIS: Yes.

The CHAIR: Ms Norris, would you like to make a brief opening statement for answering questions from the Committee?

NICOLETTE NORRIS: I will hand back to my chair.

PIP RAE: I would like to preface this submission with the following statement: The case studies and information that we provide today may cause some distress, and they have been de-identified. The elements of each are sourced from original documents and victims, with their perpetrators of sexual violence and abuse, that have been redacted. What we want you to understand is that their accounts are the lives and lived experience of real children and their parents, who have demonstrated courage to share their story in the hope that other children will be protected and supported. But more importantly, those who choose to use violence are held accountable for the violation. They often demonstrate a gross negligence, a disturbing narrative, and a corrupt behaviour of those employed by some governments and officials who were engaged to protect them.

On that note, I would actually like to introduce Nicolette Norris, AM, who has chaired the National Child Protection Alliance [NCPA] for nearly two decades. She has lived experience, and she is a fierce advocate for child protection, in particular children who are sexually abused by their fathers. She has supported mothers, whose children have been sexually abused by their fathers, in navigating the complexities of the legal process, in criminal investigations, civil and child protection, as well as the Family Court of Australia. Nicolette Norris has been appointed as a member in the general division, AM, of the Order of Australia for her significant service to the community, particularly to the rights and protections and welfare of children. Over to you, Nic.

NICOLETTE NORRIS: I think I'll just open with a couple of very clear scenarios, which will give you a picture of what we are dealing with in the cases that have come to us over the years. We do have an example of this in the article and paper, which is evidence, which I can give you, and case histories. The first one I would like to present is that there are two children in the park and they told their mother there was a sexual perpetrator in the toilet block. When they came out they told her that and she went straight to the police. The police asked the children a couple of questions, asked them if they could name their perpetrator. The children could not name their perpetrator. From there, the counsellors came in. The child psychologists, child counsellors, the paediatricians, a counsellor for the mother, everything was taken care of. Full and proper investigations went wonderfully well. The helicopters came, the dog squad came, and a hundred police also combed the bush and two days later there was an arrest and charges were laid.

Two children in our cases, for one example, would come home from visiting their father and show the same signs—and quite severe signs—and cringe under the bed not wanting to go back. They told their mother similar stories. She went to the police, and they asked the children, "Did you know the man?" "Yes, it was Daddy." From then on, the investigation was minimal and the mother was seen to be coaching the child. That is the majority of our cases.

Pretty well every case that's come to us has been the meme that was prepared and marketed rather cleverly in 2006, 2007, 2008, by fathers' rights groups. That mothers lie and coach the child to lie has taken over, completely. It is an unshakeable meme, and we firstly have to think about how we can destroy that meme, because so long as that happens those children are not going to be believed, as children in the first case were believed and will continue to be believed, and will continue to get their rights in the Children's Court and the criminal courts, with a criminal level of investigation.

The children in our cases—once the police bring the alleged perpetrator in for a meeting and they say, "Look, a child has made this allegation", he will say something like, "Well, she's always been a problem" and so forth. At that point, he will realise that the child is disclosing. He will go and get a lawyer, and a lawyer knows

exactly where to go, and I would too: Go straight to Family Court, make an application for custody or visitation, and that's when the case literally leaves the state watch. From there on, every case we have with the police, they say, "Is it in the Family Court?" We say, "Yes." "Our hands are tied. We cannot act." A sergeant, direct quote: "We are not allowed to intervene in those cases." And I explained to him nicely that he is allowed to intervene in those cases; that is his statutory duty. If a child has disclosed to the police that this is happening, then so be it. That child needs to be heard and needs to be believed, as the three-year-old behind the screen in the criminal court and the Children's Court is given that right under the United Nations Convention on the Rights of the Child. Those children are being believed and those children are not being believed.

That is one of the big things we have to face here: the equality of protection levels for all children who are citizens of New South Wales, for example, Australia as well. Those are the two examples I really need to make clear, there. In the case, we have no investigation. The father, in one case, had seven computers. I was able to intervene in that case and we got the child out. The child had been sent by the courts, under orders, to stay with, and spend half holidays with, a sexual perpetrator, her father.

She named her father and his flatmate, and it was substantiated formally by the department, with no doubt that that man had sexually abused his daughter. Their notes and their assessment stated that if this child is left alone with this man, with the father, it is highly likely she will be subjected to the same kind of sexual abuse. There was no doubt. It was not a possibility; there is no doubt. It was highly likely she would be subjected to the same sexual abuse, recognising yet again that it did occur. In the court, that meant nothing. In the court, the father stood up—when he was outside the court, sorry, on his first book, he said, "DoCS, youse count for …", and used a word that I don't use. He also said, advising other fathers, "If it's on the Magellan list, that's even better."

That's the disregard they have for the NSW Department of Community Services [DoCS], or what is it now DCJ. That's where we are now. That's the level of regard that they have in that court. The expert witness called in by the judge, to take that on—because the judge is never really an expert witness in sexual abuse cases—even accused the detectives and the DCJ—it was Joint Investigation Response Teams [JIRT] then—of harrowing questioning of the child, forcing her to say what they wanted to hear. They put the detectives down, and they put the whole department down with those remarks, and it's written in. That's the scenario in every case we have. There is one more I must mention. There are a couple more actually. I can't remember where it was but I remember it. In the meeting rooms, the judge would say in these cases, "We advise your lawyers to take their parties into the meeting rooms to negotiate a parental agreement".

I have been in those meeting rooms. It's quite an horrendous experience because the pressure put on the mother to withdraw the charges, such as that one—she had to withdraw those charges. She had to say, "We no longer believe the father is of any concern", and allow that child—she was three and a half when she disclosed and she was nine when I got the case—was forced to go for four and a half years further, and see those two men and stay there with him. She was drugged. The detrimental effects are unbelievable. She would go into a state of catatonia in school. The teachers would ask the mother, "What is it we are doing to send her in?" She said, "Don't touch her head or her shoulders. She's been in the shower." You can imagine the rest. She's now 17. She's doing alright, but she's still on medication and she still sees a psychologist. The boy got out when the Crown stepped in. He was forced to live with his perpetrator for six years, when he fled at 13. He's still seeing his psychiatrist. They are the scenarios I wanted to give you now.

For the sake of the health of these children, having to believe these children is more important than anything. One boy took it to Brad Hazzard when he was Attorney General. Mr Hazzard asked what it was he could have done, had he been Attorney General at that time. The boy, who never lifted his head, said, "Just believe me." That's all he said. I will hand back over to Pip for now. If there's anything you need from me, I will pop it in somewhere along the line. But that's what we're dealing with. It's necessary that you believe these stories. Where police are good—and they are good—in all the cases of uncles, stepfathers, cousins, or it may be grandparents, they will step in and do something, and those men—usually men—will be imprisoned or suffer some kind of punishment, but not if the child names the father. The mother is the suspect and under the focus.

PIP RAE: On that note, I'd like to introduce Adam.

The CHAIR: I invite Adam to make an opening statement if he would like to do so, as well.

ADAM WASHBOURNE: Briefly, I'd just like to thank the Committee for the opportunity to speak and the National Child Protection Alliance for bringing me down today. As I'm sure you're all aware, the Federal Circuit and Family Court of Australia is riddled with issues. I could be here all day naming cases of horrendous decisions made by the Family Court, but I've restricted my scope to purely jurisdictional issues.

One case really jumped out and grabbed me. One of our survivors that we've been assisting at Fighters was a victim-survivor of kidnapping when she was younger. For some reason, that put her on the Family and

Community Services [FACS] radar, so when she had children herself she was already being quite stringently looked into. Her partner then started to domestically abuse her, and sexually abuse her. When she spoke out, he went to the Family Court and got an interim order of placement with himself. During that time he was able to take the children to Western Australia, completely cutting her off from all contact, even though it was against the agreement.

But that's actually one problem that we keep finding: Agreements made in the Family Court can override state-based child protection, and even criminal matters. These agreements aren't legally binding. He said that he was going to give the children to their mother on weekends, and he didn't; he took off to Western Australia. In this case, we stepped in right at that point. The children were then five and eight. When we stepped in, the mother had no contact whatsoever, which was contrary to the Family Court agreement, but because it wasn't a court order it couldn't be legally enforced. This is also contrary to child protection. This is also contrary to a domestic violence case that the husband was answering for in New South Wales.

Fast-forward three years and we finally get an avenue in, which is the fact that the mother no longer has to pay child support, because the father no longer has custody, because Western Australian child protection have taken the children from the father. Once again, the Family Court stepped in and gave them back because—I don't know why they superseded it. To cut a really long story short, eventually we were able to advocate on behalf of this mother. Eventually we were able to get the kids back.

Now, three years later, she's facing the problem that she has to give up custody of one of the children, because her son is so traumatised he has something called RAD, which is reactive attachment disorder. It is one of the worst trauma-based psychoses. He has threatened to stab his stepfather. He has repeatedly abused other children at school. Now she is faced with the very real possibility of having to give up custody. His sister has post-traumatic stress disorder, severe anxiety and severe depression as a result of the trauma endured while she was with the father, and also a lovely term called "secondary trauma" that she has now because of what her brother has done to her, because of his traumatised self.

All of this could have been avoided if the Family Court had listened to New South Wales child protection, NSW police and over a dozen experts who all testified that the father, in all likelihood, is abusive. The father had been convicted of abusing the mother, but not the children, so there was that. In the Family Court the father was awarded custody not once but twice, superseding child protection orders that were going on at the state level. That's the biggest problem that we see.

In terms of what can be done about it, to quote the Australian Law Reform Commission, the Family Court is "not fit for purpose". That's it in a nutshell. In terms of what can be done at a state level, we think that if 96 per cent of all Family Court matters that are decided through an agreement could somehow, firstly, be scanned for coercive control and, secondly, become legally binding in some way, so that police could then enforce the orders, that would go a long way to stopping this sort of problem of control from occurring.

The second major problem that we've seen—and this was largely due to the assistance of Amanda Gearing, who is an investigative reporter who specialises in Family Court matters—is that during the Leonard Warwick reign, which is the only way you can describe it—five years of Family Court judges from Parramatta having their houses blown up and being shot—there were a lot of decisions made that are now still used as precedent. To quote the ALRC again, they are "bad law". They are very poor choices made by the judges and, unfortunately, they are being used as precedent to see abusive fathers—often it is fathers—given custody of the children.

There are statements like, "Well, the father might have abused the 17-year-old but he's certainly not abusing the six-year-old, so therefore the six-year-old can go live with the father." These are statements that are made under the Leonard Warwick reign, is the only way to put it. We at Fighters Against Child Abuse Australia [FACAA] would like to see any precedents set during the Leonard Warwick reign removed, particularly at a state level, because all of the Leonard Warwick decisions were made in Parramatta family court and the subsequent High Court. If they could be removed as precedent, we believe that a logical precedent could be set, one with the children's rights at the very heart of it, which is what should be occurring from day one. I will hand it back to Pip.

PIP RAE: We'd like to give you some time for questions.

The CHAIR: I will just remind Committee members we have seven minutes left for questions. I know Ms Gibbons has a question.

Ms MELANIE GIBBONS: Adam, you've answered a lot of it, then, about what we can do. I appreciate you saying those parts. Nicolette, you and I met about 10 years ago when you raised this issue with me. I know you would have some solutions, surely, that have been brewing in your mind on how we can make a difference.

How can we stop the Family Court overriding child safety, and what can we do at a state level to ease that situation?

NICOLETTE NORRIS: Keep the cases open under the state watch. When the department closes a case because it's in the Family Court, and they believe that the welfare of the child is safe, they then close the case. Then we have to get fresh evidence, and that is the hardest thing to do. One very big reason is that the judges will have a clause, in those orders, stating that the mother is not permitted to take the child to any specialists—such as doctors, counsellors, hospitals, police—for any reason other than blood, and guts, and that sort of thing. She has to wait for that "almost dead" time before she can go. Otherwise, she has to get permission from the father and/or the court to be able to take that child or those children in for an examination of any sort, otherwise she has contravened the orders. By the time that gets to court, it could be three weeks, it could be five months. By then all evidence has faded, so getting fresh evidence is impossible. Even a child's hymen can heal. You can't expect fresh evidence. If you keep the cases open in the New South Wales department, then you won't have to go through that. That clause will mean nothing. You can go.

I have one case where the mother took the children to the doctor. He said, "They've got vaginal tearing. Go to children's hospital." She went. They looked at the joint report which had said no substantiation of child sexual abuse—at that time the kiddies were not reliable, whatever—and they checked their pulse and their ears, and sent them home after three hours' wait. Those children are now teenagers. As Melanie will know, all my children are now teenagers, and none of them have much direction. They're still seeing their psychologist. Those two, they're doing well; their mother is doing very well there on her own. But the others are still seeing psychologists and psychiatrists, and have no direction. Keeping them open would be massive. One more problem I was going to mention very quickly—I'm trying not to take time away from you people.

PIP RAE: No, you're good. This is it.

NICOLETTE NORRIS: Whenever I've questioned the detectives who have questioned children, about sexual abuse or having a child report sexual abuse, their usual answer is "We cannot get a conviction. The child is an unreliable witness. It cannot particularise." That doesn't happen with the children where they don't know their father. They're in the court with a comfort dog and everything else. It seems unfair that those children get that ability to speak in any court in the land, which is their right under the United Nations Convention on the Rights of the Child [UNCORC]; these children don't, yet they're suffering more, and more regularly.

They are definitely being sexually abused; there's no doubt about it. When you go to police and they say, "We can't get a prosecution or a conviction," I have explained that that's not what you do. You need to only have concerns that the child may be at risk of harm, not risk of significant harm [ROSH]—at risk. If there's a child at risk of harm, isn't that enough to step in for some kind of protection? Do we have to wait till it's bleeding, until so much harm has happened that it cannot be corrected? That's what I'm asking. If the department or the police have an inkling that there are concerns for this child, keep it open under the state watch.

Ms MELANIE GIBBONS: Ms Rae, how many protective parents, which is the term we're using today, are you looking after through your alliance?

PIP RAE: At the moment, we have about 16.

Ms MELANIE GIBBONS: How many a year would you see?

PIP RAE: We're referred hundreds, I would say, but we can't manage that, so we actually pass them on to the resources that are available across Australia. But because we are a national organisation, we are constantly seeing them. We are normally known for being referred the most complex and complicated matters, and we help them with their strategy as to how to deal with their mess—is what we call it. But, again, we are at the end tail; we are their last resort. We are quite often the ones that are supporting them to tell them they have to comply with the orders. In fact, I was telling someone this morning—she'd had her children removed yesterday, after a 10-minute interview with an ICL who decided that after five years of sole responsibility with the parent, the child should go and live with the father, and have no contact with the mother for the next 10 weeks.

Ms ABIGAIL BOYD: Can we talk about the ICL issue? We've heard a lot about these independent children's lawyers who are supposed to be basically providing the voice of the child to the court. What's going wrong and what can we do to make it better?

ADAM WASHBOURNE: Do you want a name?

PIP RAE: Can I just say, I know Nicolette has got a great example of this but, just quickly, it's the fact that the judiciary, so the judges, rely on a sole independent expert and there is no point of review.

NICOLETTE NORRIS: With these cases, the mothers usually have sold their house and lost all their money. That's one more point. You don't find a mother who's lying in court, and having sold their house to support a lie, so we can rule them out. We don't have anything other than real cases. But the ICLs, they're usually put on by Legal Aid, if the case gets to that level where they can get Legal Aid. They usually work with the expert witness and have a little chat and a conversation, probably, of agreement, which is sensible, I suppose, because they're trying to work together. We understand all that. In some cases it works well. In one particular case it worked very well. But normally the ICL is not going to stand up and say, "I argue with you and I'm going to create an argument," when the expert witness makes his or her assessment. They generally go with the flow. We're finding the ICLs, when they meet with the children—one was in his beach shorts; he'd come up from the beach. I don't know how old they are but he handed them a business card and said, "Call me anytime."

Ms ABIGAIL BOYD: Can I just pause you there because the Committee has not heard about the expert witnesses yet, and I think that's another very problematic issue.

NICOLETTE NORRIS: Very [disorder], yes.

Ms ABIGAIL BOYD: Could you explain what the expert witness is and then we can explore perhaps more of this interaction between—

NICOLETTE NORRIS: The expert witness is supposed to be the expert on all the problems with the child. Many of them haven't been trained in sexual abuse. They don't recognise what the child's symptoms are or signs, so they have no expertise. In fact, we've had people question them severely in the stand when one mother kidnapped a child and took them overseas. You may remember it: Melinda Thompson and Ken—I've forgotten his name now. Ken Thompson and Melinda. She took him overseas and the father found the child and brought him back and he's got custody. He got custody and she was not allowed to see her child for nine years. Yet, the Crown, in the end, had their own defence there, of an expert witness who—Melinda was self-representing. She questioned that woman all day; she couldn't answer the questions.

Finally, the judge, at 6.00 p.m., asked the Crown if he would like to question his own witness. He just asked one question. He said, "How much experience have you had in this area of child sexual abuse?" For every question during the day, she'd taken 45 seconds to answer. She took another 45. He said, "Let me help you. Was it 200, 250, 100, 150? Let me help you. Was it more than two?" She waited a while and she said, "More than two." He said, "Well, where you do you get your answers from?" She said, "My colleagues; they have books." She was replacing—am I allowed to mention names of the doctors or not? Because one was replaced because he didn't have anything on the stand.

Ms ABIGAIL BOYD: Best not to.

NICOLETTE NORRIS: Best not to—I thought so. He was replaced because he didn't have anything in front of him, and he couldn't answer the questions as the mother was questioning him, so he was replaced by this doctor.

Ms ABIGAIL BOYD: These expert witnesses, what does that look like? My understanding is that they're appointed, but their fees are negotiable with the parties. Is that right?

NICOLETTE NORRIS: The woman I'm talking about who was dismissed, here, charged $37,000 to one mother for a couple of hours, I think it was.

PIP RAE: It can obviously be audited by the Family Court and the costs are split, so both parties have to contribute to that. So, it's supposed to be seen as an arbitrary system, but quite often we hear the judges say that they are the sole source of expertise they'll be relying on on this matter.

NICOLETTE NORRIS: One mother is still paying back $150,000 for the court problems that she had. She has MS. The children were sexually abused. It was the doctor who'd said that her children had scarring. Going back to those expert witnesses, if you don't mind, in the one where the child was sent for four and a half years longer to spend time with, he virtually said that the detectives were not doing their jobs properly, and that what they said meant little, yet he has not had the experience those detectives had in the JIRT department. It is being overridden. It was another MP—my local MP came to the police station with me, down there, and wanted to take out an AVO on behalf of a boy who'd fled. He didn't want to go back. And the police officer—I don't know why I'm bothering her. She was writing and doing it all. The court will overrule it.

The power of the Family Court has spilled over to make police think, "We can't touch this case. It doesn't matter." It is very, very difficult when you've got these sorts of things going on, and we're tackling police who say they can't intervene and they can't get enough evidence for a prosecution. That is not what they need. They're there to protect people. Children are told they can go there for protection. When the mother takes it in and they say,

"Mummy, what do I have to say?" "You just tell the detective and the policeman exactly what you told me," which the child does, so she's coaching the child to lie.

Ms ABIGAIL BOYD: So, sorry, just from a perspective—

The CHAIR: Sorry, Ms Boyd, I understand that we all have further questions, but we are restricted by time and I apologise for that.

NICOLETTE NORRIS: No, we apologise too for having weeks of information.

The CHAIR: Thank you to each of you for appearing today. I'm sure you'll receive written questions from Committee members because I'm sure that Ms Boyd and others are not finished. Your replies to those will form part of your evidence and will be made public. Can I confirm that you'd be happy to provide a written reply to any further questions.

NICOLETTE NORRIS: Yes, of course.

PIP RAE: Yes.

The CHAIR: I sincerely thank you for your time. I wish we had more time to afford the discussion but, unfortunately, we don't.

(The witnesses withdrew.)

Ms ZOE ROBINSON, Advocate for Children and Young People, Office of the Advocate for Children and Young People, before the Committee via videoconference, affirmed and examined

Ms LARISSA JOHNSON, Director, Out-of-Home Care Regulation, Office of the Children's Guardian, affirmed and examined

Ms JANET SCHORER, Children's Guardian, Office of the Children's Guardian, sworn and examined

Ms SIMONE CZECH, Deputy Secretary, Child Protection and Permanency, District and Youth Justice Services, New South Wales Department of Communities and Justice, affirmed and examined

Ms RACHAEL WARD, Director, Child Protection and Legal, New South Wales Department of Communities and Justice, affirmed and examined

Ms MELANIE GIBBONS: I now welcome representatives from the New South Wales Department of Communities and Justice. I also welcome the Advocate for Children and Young People, and representatives from the Office of the Children's Guardian. Thank you all for appearing before the Committee today. You have done this all before. Can you each please confirm that you have been issued with the Committee's terms of reference, and information about the standing orders relating to the examination of witnesses?

LARISSA JOHNSON: Yes.

JANET SCHORER: Yes.

SIMONE CZECH: Yes.

RACHAEL WARD: Yes.

ZOE ROBINSON: Yes.

Ms MELANIE GIBBONS: Lots of nods, thank you. Would anyone like to make an opening statement before we proceed with questions?

SIMONE CZECH: Yes, if I could, Ms Gibbons.

Ms MELANIE GIBBONS: Sure.

SIMONE CZECH: Thank you. I would like to begin by acknowledging the traditional custodians of the land on which this inquiry is being held, the Gadigal people of the Eora nation, and pay my respects to Elders past and present, and any Aboriginal people here today. I also thank members of the Committee for the opportunity for myself and my colleague, Rachael Ward, Director of Child Protection and Legal, to appear today to support this inquiry. The practice of the Department of Communities and Justice's child protection staff is guided by the NSW Practice Framework. The NSW Practice Framework brings together principles, capabilities and practice approaches to support the work with families. It provides practitioners with the knowledge, values and skills they need to support families to live in safety.

The NSW Practice Framework covers the spectrum of family issues that lead to a child being reported at risk of significant harm. While the framework itself is not specific to domestic and family violence, and child abuse, it is trauma-informed and includes approaches and resources that are specific to working with families where domestic violence and abuse exists—we know that as dignity-driven practice. The NSW Practice Framework keeps children at the centre of our work. It recognises that the best service that can be provided to a vulnerable child is one that supports them to grow up in safety, in the care of their parents wherever possible. It also recognises that child safety is fundamentally linked to the safety of the parent.

Protecting children and young people is a shared responsibility of families, communities, government and non-government agencies, and is supported by the sharing of relevant and transparent information. The Department of Communities and Justice is party to a longstanding memorandum of understanding with the Federal Circuit and Family Court of Australia, which acknowledges the overlap between the state and federal jurisdictions in matters involving children and young people, and the importance of two-way information exchange. The department is also an active member of the Commonwealth-led Family Violence Working Group, which is focused on strengthening the interaction between the federal family law, and the state and territory child protection and family violence, systems.

Through the Family Violence Working Group, a National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems*,* known as the national framework, has been introduced. This will become operational on 1 January 2023. The national framework aims to ensure a nationally consistent process for information-sharing between the family law courts and state and territory bodies

to promote the safety and wellbeing of adults and children affected by family violence and abuse. The national framework further aims to support informed and appropriate decision-making in circumstances where there is, or may be, a risk of family violence or child abuse.

We hope that this inquiry will identify opportunities to further strengthen the cross-jurisdictional relationship between the Department of Communities and Justice, and the Federal Circuit and Family Court of Australia. The New South Wales Government has an ongoing commitment to provide a child protection system which continuously drives better outcomes for vulnerable children and their families, and we welcome the opportunity not only to be here today but to answer any questions you might have. Thank you.

Ms MELANIE GIBBONS: Would anyone else like to make an opening statement?

JANET SCHORER: No, go ahead. I am happy with that.

Ms ABIGAIL BOYD: I have a lot of questions for DCJ, but I would like to start with Ms Robinson. We have heard a lot today about how we are not really hearing children's voices in these matters. I note the report that you released on Monday entitled *The voices of children and young people in out-of-home care 2021*. Thank you so much for the work you have done in preparing that report, for the very detailed recommendations and for really bringing the voices of children into the issues that impact on them so severely. Recommendation 2.3 states:

> Work in partnership with NSW Courts and NSW Legal Aid to enhance the participation of children and young people in legal proceedings. This includes ensuring that the views of children and young people are recorded in their own words, and, where appropriate, provided to the Court, included in protection proceedings, and considered in decision-making.

I wanted to ask you, when you were coming up with that recommendation and the work that you did on the report, what did you hear about these sorts of court proceedings that we are looking into today?

ZOE ROBINSON: Thank you for all of that, and for acknowledging the work that the team has done. I do want to note, obviously, that it is 99 children that we have spoken to, and we know that there are far more in the out-of-home care space. Part of what we want to do is continue to lift the voices of children in care. What we did hear throughout this report—and actually what I have heard previously in this space before I even did the report—is that children are often part of those proceedings in some capacity, but they don't necessarily feel like they have been heard or had the opportunity to convey things in their own words. We acknowledge that there are reasons for that. When you are talking about the legal system, it can be daunting. As a former lawyer I cannot imagine what it would be like going before courts as a six-year-old, a four-year-old or a 10-year-old. I was a 30-year-old going before courts. So, there are reasons for that. But one of the very clear things—not just in court proceedings, but broadly—it talked about is that they want it in their own words, and they want the opportunity in a safe way, to provide their own feedback and not necessarily have people talk for them.

Ms ABIGAIL BOYD: I am curious as to whether any of the children that you spoke to had been through the process of having an independent children's lawyer [ICL] appointed. Were any of those children in that category?

ZOE ROBINSON: I will take that on notice. I assume there will be, but I just want to make sure that I am representing that properly. I certainly spoke to one young person who had been part of an adoption process that started when they were 11, and they were 18 when we were speaking to them. That young person's view was that it had been such a long process for them and at the age of 18 they were thinking, "What's the point now?" But I will take on notice the first part of the question, about how many we spoke to who might have had an independent children's lawyer appointed to them.

Ms ABIGAIL BOYD: I will direct this question first to you, Ms Czech. We have heard quite a few recommendations around what we could do better in New South Wales, to make sure that we are not getting bulldozed by the family court system. One of the suggestions that was made is that a lot of the evidence that DCJ holds about children is not getting to the court. Can you explain to us what is the obligation at the moment, how involved is DCJ in those cases, where are the gaps and how can we plug them?

SIMONE CZECH: Of course. Thank you for that question. I may have to get my colleague to jump in in response to this question. I think the short answer to that question is that there are various means to provide that information to the Federal Circuit and Family Court. First and foremost, we need to be requested to actually be aware, if you like, that there is a matter on foot in order to provide that information.

Ms ABIGAIL BOYD: Sorry, who would request that?

SIMONE CZECH: The family court. I will get Ms Ward to respond to that.

RACHAEL WARD: The family court will make a formal request under section 69ZW. That is one of the main ways that we share information with the court—formally requesting. They send that request to DCJ

Legal and to the local office, if they are aware, and then we formulate their response with what they have requested in that. It's a snapshot of information, generally, around risk of harm reports and current assessments that we have. That gets redacted and sent to the court.

Ms ABIGAIL BOYD: Will they only send that if they know that that child has been through the system or is it for every—

RACHAEL WARD: Generally, there will be something within the evidence that leads them to suspect that we may learn something about the child, or it could be the ICL who raised concerns. There is a memorandum of understanding [MOU] between us and Legal Aid, as well, that we can proactively share information.

SIMONE CZECH: If I could also add, over the last two years—I could get the actual dates—we have been lucky enough to gain some funding from the Commonwealth to place child protection caseworkers in the family court. To date, that has been incredibly useful for a couple of reasons. They are a conduit between the parties in a matter, but also the judge in the courts, and they have access to our ChildStory system. In real-time, they can understand what information we hold and provide that to the court, as is appropriate. I heard bits and pieces of the evidence this morning. We obviously have the Magellan orders. They are orders that are given to us by the court. But that is certainly another means for us to provide the information that we hold by way of an assessment to the court.

Ms ABIGAIL BOYD: So when that request is made, that information is always given? There is no ability for them to move on without you having given—

RACHAEL WARD: It's a court order. We have to comply.

Ms ABIGAIL BOYD: If that evidence has not been looked at, that is a matter for the court as to why that is?

SIMONE CZECH: That is correct.

RACHAEL WARD: Yes.

Ms ABIGAIL BOYD: We heard about the Western Australian equivalent getting involved in helping appeals, where there has clearly been a child put in an unsafe situation. Does the DCJ ever get involved in appeals?

SIMONE CZECH: We do on occasion. We haven't got the information at hand right now, but we can take it on notice and provide the data to the Committee. What data we can provide is the number of appeals, the number of times that we have intervened in matters, the number of Magellan orders, and Ms Ward can speak to the actual legal provisions much better than I can. There is a raft of information we can provide the Committee, if that is helpful.

Ms ABIGAIL BOYD: Very much so. Are you able to provide us with the memorandum of understanding between DCJ and the family court?

RACHAEL WARD: Yes, it is a publicly available document.

Ms ABIGAIL BOYD: That might be useful to have that tabled. Do you know when that was last reviewed? Is it a living document?

RACHAEL WARD: It is a document that was signed quite some time ago. Late 2005 or 2006, is my guess. I will know when I table it. But it has not been reviewed for quite some time.

Ms ABIGAIL BOYD: What is the process for reviewing it?

RACHAEL WARD: We would have to make some representations to the Attorney General [AG].

Ms ABIGAIL BOYD: So it is up to the Attorney General.

RACHAEL WARD: It is. It's a document owned by the family court that we are a signatory to.

Ms ABIGAIL BOYD: So the Attorney General would need to go—

SIMONE CZECH: And the Commonwealth.

Ms ABIGAIL BOYD: Right, I see. Is there a provision in the MOU for how that happens, as in, "If you wish to amend this in the future, this is what would happen"? Is that built into the MOU, or is it simply a matter for them to talk to each other?

RACHAEL WARD: No—exactly.

Ms ABIGAIL BOYD: We heard a lot about the independent children's lawyer's training. Is the criteria for when someone becomes an ICL something that is overseen by DCJ?

RACHAEL WARD: It's not, no. It's managed by Legal Aid NSW.

Ms ABIGAIL BOYD: So, those criteria would then be under Law Society of New South Wales rules?

RACHAEL WARD: Yes, child representation principles. That is on the Law Society of New South Wales website, but I can also table that.

Ms ABIGAIL BOYD: That would be very useful, thank you. We heard about police now interviewing children—

Ms MELANIE GIBBONS: You stole my question.

Ms ABIGAIL BOYD: Sorry. DCJ used to be the ones interviewing. Are you able to shed any light on that?

SIMONE CZECH: Yes. I heard that evidence this morning, Ms Boyd. My response to it is that, in the first instance, we need to be aware that there is a risk of significant harm, so that we can act upon any concerns that might come through our Child Protection Helpline. We have, obviously, a workforce of child protection caseworkers that are adequately trained to interview children, which is what they do in response to a risk of significant harm report. In relation to police, where reports meet the criteria for serious sexual and physical harm, usually where there is a criminal element, we have got our Joint Child Protection Response Team.

That's a tripartite team that is police, health, and community services or child protection caseworkers, which has been evaluated over the last 10 years or so, at least twice, possibly three times, but has been proven to be incredibly effective in having a real focus on children's lives, participation, good interviewing technique and has been quite successful in not only substantiating concerns about physical and sexual harm, but also prosecution.

It is really threefold: us knowing about the concern in the first place. If that meets the criteria for a Joint Child Protection Response Team, then we will make a referral there. In the absence of that, of course, we have the ability to allocate it to a general child protection caseworker within one of our community service centres, all of whom are trained in a whole range of things, but particularly domestic violence. We also provide quite a bit of casework guidance around interactions with the Family Court or Federal Circuit. That's also in the caseworkers' mandatory training that we ask them to complete.

Ms ABIGAIL BOYD: Where does that leave us then? Are the police interviewing them in circumstances where they don't really need to, or are you just not aware that that is happening?

SIMONE CZECH: I couldn't comment on anything outside of my system, and what the police are or aren't doing.

Ms ABIGAIL BOYD: You are not aware of a formal change.

SIMONE CZECH: No, I am not aware of anything.

Ms JODIE HARRISON: Just picking on the Joint Child Protection Response Team, what's the criteria for a case to be referred to that?

SIMONE CZECH: All concerns about children in the first instance go through our centralised Child Protection Helpline. They are assessed at that point, whether they meet the threshold for risk of significant harm. There is a further assessment once they get past that threshold, whether there is serious physical and/or sexual assault. Then if there is a criminal element, so a potential for criminal prosecution, if it gets to that point down the track, we refer across to the child protection response team. Between police, child protection and health, they make a decision whether it meets the criteria. From that point, if it does meet the criteria and the matter is accepted, they will interview children in the first instance. It is all recorded, so there is an evidence bank. Of course, if we go to prosecution we need that evidence.

Ms JODIE HARRISON: That is the police doing the interviews?

SIMONE CZECH: That's a joint interview, typically, between police and a child protection caseworker, together. Like I said, it has been evaluated and is highly successful. We have tweaked it over the years. We most recently enhanced the criteria, I think it was in late 2020, from memory. I can provide the criteria to the Committee, if that's useful. We have got quite comprehensive information available on that unit. And they are statewide, so they are located around the state.

Ms JODIE HARRISON: We had some evidence provided saying that where police are interviewing a child, in relation to abuse undertaken by a parent, with a family law court matter underway, or there are orders, and the police say, "Sorry, it's family law court."

SIMONE CZECH: Again, I couldn't comment on what the police are or aren't doing. I know when something comes to us, we treat it with the utmost seriousness. Like I said, we have got a number of teams or resources available to respond to those reports. Particularly where there is that intersection with Family Court, we've got not only the information-sharing protocols with the court, but we've also got things like the Magellan orders that can come through, and the responses from—whether it is the joint child protection response team or our general casework staff as well.

Ms MELANIE GIBBONS: Just picking up when you are talking about the Magellan orders again, then, are they working? Are there changes that need to happen there?

SIMONE CZECH: I wonder if Ms Ward might like to answer this one.

RACHAEL WARD: There has been an evaluation done of the Magellan project. It was called a project, but is now program. I haven't seen it, but it has been in place for quite a number of years and it doesn't seem to be going anywhere. I think the premise of it has worked, as in pulling it from a generalised Family Court list and placing it before a specialised magistrate with particular expertise, in their view, of child abuse matters or issues of family violence—then, yes, it does, because it's not banked up behind all the other matters that are before the Family Court. So I would say, yes, for that instance. The reports that we provide do give the court a good balance of information about what we have got on our system, including whether or not we are going to intervene, and whether or not there is going to be any further assessments done in relation to the children.

The Hon. CHRIS RATH: Just one question to Ms Robinson. I was wondering about whether you thought that the voice of children and young people is being adequately heard within the family law system, at the moment.

ZOE ROBINSON: I think that the report that we released on Monday demonstrates that children and young people don't feel like they are being heard in the spaces where decisions are being made about them, again, noting that we would like to continue to do this work more, and we would like to speak to children and young people who are in a variety of parts of the journey. But I think the overwhelming theme that we got from our report was that children and young people don't feel like they're being adequately heard, especially when decisions are being made about them.

The Hon. CHRIS RATH: I think that's a theme we have picked up on today. Do you think that maybe the older they get, maybe they feel like they're being heard more, or is it at all ages—someone at 15 compared to say someone at eight, as an example? Is there anything you have picked up on in that regard?

ZOE ROBINSON: As you are probably aware our report did speak to someone as young as six. I have said this broadly: In the work that we do, and certainly before I took this role, often people would think it is trickier to speak to younger children about really complex things. What the report does say is that some children have incredible experiences where they are asked consistently along the way, about their views on various things. I think that it varies in terms of the experiences.

What we are asking for and what we are seeking from this report or, actually, what children and young people are seeking, is that consistency to make sure that they are heard about a variety of things, not just legal matters, but their education, how often they want to see their parents. One person spoke to us about the fact that they used to have casework meetings on their birthday. Whilst that might seem like a really simple thing for all of us, it was something that really stood out for them, in the fact that they felt like they weren't listened to, because every time they would have this meeting, it was on their birthday and they didn't want it on their birthday. So, I think it's about choice, and I think it's about providing avenues for consistent ways that children and young people can give feedback.

Ms JODIE HARRISON: I just have a quick question for Ms Ward, and then a question for Ms Schorer or Ms Johnson. You said that there had been a review done of the Magellan program. Who did that?

RACHAEL WARD: The Commonwealth.

Ms JODIE HARRISON: So, the Attorney General would have that?

RACHAEL WARD: Yes.

Ms JODIE HARRISON: In relation to the Office of the Children's Guardian, are there any particular cases that have come to your attention that have identified where children have been at risk, because of disparities between the family law court, and family law system, and our child protection system?

JANET SCHORER: Thanks for the question. I will ask Larissa Johnson if she has any reflections on that. My overarching comment is: Because of the nature of our role in the out-of-home care system, we are not often involved at an individual level to that depth, or at that stage of the decision-making, about the care of a child or young person. But in some instances, where we are looking at a particular file or looking into particular children and young people, we can see the path that they have been on. But often that's after the boat has sailed, as it were, and those sorts of decisions have been made. Ms Johnson, do you want to add anything further?

LARISSA JOHNSON: The vast majority of children in out-of-home care that we regulate are in the parental responsibility of the Minister. We don't have that visibility, if there were Family Court issues before they went through the court system to be in the parental responsibility of the Minister, if that makes sense. They're two different jurisdictions.

Ms JODIE HARRISON: Do you think there might be—

LARISSA JOHNSON: There could well be.

Ms JODIE HARRISON: —any possible role?

LARISSA JOHNSON: I thought you were going to say—sorry, I jumped your question. Any possible role in terms of regulatory oversight?

Ms JODIE HARRISON: Yes.

LARISSA JOHNSON: I don't really see how that would occur. It would be a very different kind of regulatory system, I think. It wouldn't be the kind that we apply in out-of-home care. But there could be a regulatory system to ensure that all the processes have been followed.

JANET SCHORER: Just to add to that, I suspect Ms Czech might have a view—in reflecting on what her comments have been so far—that because that part of the system is so interconnected with Commonwealth or police in other jurisdictions, oversight can get very complicated and tricky. That would be my observation.

SIMONE CZECH: I would concur with that. It's just, I suppose, another layer of complexity. It is important to work through how you might do that. I certainly don't have the answer, I don't think, but it would be complex.

Ms MELANIE GIBBONS: There is a thought that once the Family Court is involved, DCJ or a protective parent's hands are tied in making a complaint, or investigating a complaint. Is that something you experience?

SIMONE CZECH: Again, when I was listening this morning to the other witnesses I was intrigued about those comments. I think it was from more than one witness.

Ms MELANIE GIBBONS: There have been a few.

SIMONE CZECH: I have to say, on a personal level, I was quite alarmed about it. Working, obviously, under the care Act, anyone can make a report to the Child Protection Helpline, if they're concerned about the safety, welfare, or wellbeing of a child or young person. As I understand it, speaking to my colleague Ms Ward, there is capacity in the Family Court and Federal Circuit for them to actually make orders to that effect. That may be something the Committee may like to think about in terms of recommendations. But my advice would be that if someone is worried about the safety, and welfare, or wellbeing of a child, they should ring—or ask someone on their behalf to ring—the Child Protection Helpline. That, for me, and the department, is incredibly important, because unless we know about something, we can't actually act upon it.

Ms MELANIE GIBBONS: They could assume that the answer wouldn't be, "Sorry, you've got court orders. We're not going to investigate."

SIMONE CZECH: Yes, that's right.

Ms MELANIE GIBBONS: You document it by looking into it.

SIMONE CZECH: That's exactly right. Of course, for the statutory child protection system in New South Wales to act, we need a legal mandate. That legal mandate is the risk of significant harm report. As I mentioned, and it's a personal view—I just put that on the record—I have to say I was a little disturbed about that.

Ms ABIGAIL BOYD: Can you talk us through how that works? If you are one of these people who has been given an order that says that they're not allowed to report, unless they come to you with a thing that says that basically they're a vexatious person, is your advice to come to you anyway with those orders, that you will take them seriously? Will DCJ look at those orders?

SIMONE CZECH: Regardless of who is calling the helpline—whether it's a member of the public, a parent or a mandatory reporter—we treat all of that information with the utmost seriousness. We'll put it through the same what we call "screening tools". We've got a suite of structured decision-making tools that we use at the helpline, to assess whether something meets the threshold for risk of significant harm. My colleague, Ms Ward, may be able to speak to the question about when a court makes that particular order, and what can happen at that point, but certainly—I may get myself into trouble for saying this—I think they should be ringing the helpline, or someone on their behalf, I should say.

Ms ABIGAIL BOYD: Ms Ward, would you agree that effectively is what the order says, that you can call but you will have—

RACHAEL WARD: To show the orders, that's right. Secondly, the way that I know that some parties have dealt with it in the past, is that people will start making reports on their behalf or they go to see a doctor or a mandatory reporter, who has to make a report of such serious concerns.

Ms MELANIE GIBBONS: Just picking up on seeing a doctor, we were just hearing from the last witness about the fact that they are prevented from taking their children to the doctor under the orders, unless it is a case of needing to go for an emergency. What happens then? How can we get over that stumbling block of being able to take their child to the doctor to collect evidence, for want of a better term, versus the order stopping them from doing that? How can they show that there is an issue for you to then investigate, or look into?

RACHAEL WARD: We have actually been involved in a matter where the parent was prohibited from taking the child to a counsellor, and DCJ actually intervened in those proceedings in order to ensure that the counselling for the child happened, because we had independent evidence that the child needed counselling.

Ms MELANIE GIBBONS: You do have that ability to—

RACHAEL WARD: Absolutely. Under section 248, we can proactively seek and give the Family Court information. We don't have to be asked.

Ms MELANIE GIBBONS: Thank you.

SIMONE CZECH: If I could just add to that, we can provide that data to the inquiry or the Committee, if that's helpful, in terms of how often we have actually intervened and what types of intervention.

Ms MELANIE GIBBONS: That might make some parents feel more comfortable, knowing that it is possible.

SIMONE CZECH: Yes, of course.

Ms ABIGAIL BOYD: I think that would be useful. Could I just pick you up on your offer to return on notice the details of the appeals as well?

SIMONE CZECH: Of course.

Ms ABIGAIL BOYD: How many appeals and how many interventions, under whichever section or legislative authority, has DCJ made in these sorts of matters? Also, if you could let us know for both of those—the appeals and the interventions—the percentage of requests for appeal or intervention from protective parents that come to DCJ that you've either accepted or rejected?

SIMONE CZECH: Yes.

Ms ABIGAIL BOYD: That would be really useful to see as well.

Ms MELANIE GIBBONS: Definitely.

Ms ABIGAIL BOYD: Clearly, this is a longstanding issue. As the Deputy Chair said, it's something that's been around for at least 10 years, that people have been talking a lot about. I have spoken to many women of all different education levels, socio-economic statuses, et cetera, who have been through this and are telling us the same thing. They are trying very hard to comply with the DCJ and the general child protection principles in New South Wales by looking after their children, but then they're ending up with their children being taken from them. Given that this seems to be so systemic, what's DCJ's wish list, I guess, for being able to better protect these children? What can we recommend gets changed, in order to fix what's happening here?

SIMONE CZECH: You did say "wish list". I think in New South Wales, from my perspective—and, certainly, my colleagues may have some additional requests—the caseworkers in the courts today, funded by the Commonwealth, have been incredibly helpful. If we were able to bolster that resource, I think that would be useful as well. It doesn't go directly to safety, but there is something about being able to better capture the data that we've talked about today, particularly that we will provide on notice, so that we can understand what is happening in the

system and at what points we should or shouldn't intervene. I think that is certainly something that would be useful, from our perspective. One of the challenges at the moment, and the reason we weren't able to provide the data today, is we've got to extract it manually and go through it. Generally, resources are probably the thing that would be top of the wish list. I might just ask Ms Ward if she's got any, from a legal perspective in particular.

RACHAEL WARD: No. Just from experience, it would be nice to see more early intervention. DCJ as a whole, under our practice framework, is working towards early intervention. But I just think if we were there earlier at the table, before, particularly, Family Court proceedings started, I think parents and children would be far better off.

Ms ABIGAIL BOYD: In terms of that MOU, if there was to be a review of it, do you have a wish list of how you might change the MOU?

RACHAEL WARD: I haven't given a lot of thought to the MOU, actually. I think in terms of where we sit now, particularly with the court liaison officers sitting in the Family Court, there would be a lot more space for that free flow of information sharing. Even though it's there and everybody knows it in principle, to really ensure that happened in practice, if we had those co-located case workers in all courts would be really helpful, and have the MOU reflect that.

Ms ABIGAIL BOYD: Yes, okay, so the MOU to reflect the co-located case workers. Is there anything in relation to the ICLs that you think could be improved?

RACHAEL WARD: They've had a change recently, but they do go through quite a robust training process, and they do have to continue ongoing training every 12 months, but I'd be actually really interested to hear from Zoe after I read her report, because I think there's a lot of value in having children's voices before the court. If there's something that the ICL training can pick up in relation to that, then I think that's only going to enhance the system.

Ms ABIGAIL BOYD: I'm interested in your reflections on the training because it does strike me that, to be the representative of a child who is going through such a traumatic situation, all you need to have is have worked on those sorts of cases for parents, or for someone else for five years, so you've kind of been around but not working directly with the child, and then you do some online modules, and you have a one-day face-to-face course. I think anyone who knows anything about the complexities of domestic and family violence would think that that was quite inadequate. Do you think that there is a need to bolster the qualifications or training of these ICLs before they're given this role?

RACHAEL WARD: Is this a DCJ view or a personal view? If it's a personal view, then I would say absolutely. In other jurisdictions, particularly in the UK, there are robust systems having social workers involved with children very early on at the start of court proceedings. Legal Aid, however, do have social workers working within Legal Aid, and I know if you're an in-house Legal Aid solicitor, you can access that expert service and get an opinion with cases that you're working with.

Ms ABIGAIL BOYD: It is not quite the same, though. I didn't realise they did that in the UK; that's really good to have a social worker in the courts with the children. We spoke before that a lot of the role seems to be more of a social work style of role. I might ask Ms Robinson as well for your view on this in terms of—

ZOE ROBINSON: My wish list?

Ms ABIGAIL BOYD: Yes, your wish list, and also just how can we do better at helping children once they are part of this family law system? How can we help them to navigate it, and actually have their voice heard?

ZOE ROBINSON: Firstly, I want to pay credit to my colleagues who are there. Sorry I can't be there in person. In case you can't tell, I am unwell. But to have people like Simone and Ms Ward there, who are thoughtful in how they want to put safety and nurturing in this, is really incredible, and to have that in the Department. I do really want to acknowledge that. I think what we've asked for, and what children and young people have asked for, and it has actually been working in the UK, is to be able to have this.

My wish list is let's create the space and the tool, and I know ChildStory is there, but this is about children and young people themselves documenting their experience in care. They're not relying on somebody else to do that for them. They're not relying on incredibly qualified, but technical, people like psychologists and psychiatrists to just speak for them, so let's start by giving them the opportunity to record it. And there is that tool, and I know, Ms Czech, you've heard me talk about it too many times and I apologise, but there is a really successful tool that works in the UK which is where a young person can record it in their own words, and that has been used in court proceedings. I think that would be a really good thing to pilot and start with.

Noting what you've just talked about in terms of the ICLs, we would absolutely advocate for everyone who's working with children and young people to do the training that looks at child rights advocacy, and really that trauma-informed ability, because you are working with someone who has had many trusted adults in their life, being asked many various things that they need to respond to, and children and young people often say they want somebody who can talk to them in their words, who can explain it clearly to them, but also really understands their trauma, and you would have seen that throughout the entire report. They talk about the need for time, the opportunity to build trust with people and consistency, and the importance of those people who are caring for them. So, we would absolutely support further training around that space, but also let's pilot something where children and young people can start recording it in their own voices.

Ms ABIGAIL BOYD: Wonderful. Thank you.

ZOE ROBINSON: And early intervention and prevention, of course—wish list.

Ms MELANIE GIBBONS: Ms Czech, you've mentioned the national framework and that it's starting in 2023. What will that cover?

SIMONE CZECH: It has a heavy focus on greater information sharing between jurisdictions. There are some challenges at the moment in terms of—New South Wales and prescribed bodies under the care Act can share information with our counterparts in other states and territories, but it's not reciprocal at the moment. The National Framework will enable that information to come back as well, and families, as we know, move around other states and territories. I understand that's the main focus, but Ms Ward may like to comment further on that.

RACHAEL WARD: That is the main focus. New South Wales has been a signatory for quite some time, to be sharing information, but it hasn't been reciprocal.

Ms MELANIE GIBBONS: Will that be like a database style, or is it a case of just ringing and asking?

SIMONE CZECH: No, so it will be a database, and we actually have the database. It's called Connect 4 Safety and it has been a—

Ms MELANIE GIBBONS: I was wondering whether it was the same thing [disorder]—

SIMONE CZECH: Yes, so it's a portal. I'm not an IT expert, so I may not do a good job at explaining this, but it's a portal in which any child protection practitioner currently can log into and see, in the portal, if a child or a family is known in another state or territory. It doesn't provide what that information is. It's meant to be a trigger in order for the person who has seen that, to pick up the phone or email their counterpart in the other state or their own state and territory, and seeking that information under the relevant sections of the legislation. It has been in place for, I think, just over 12 months now, from memory. All states and territories have signed up to it, and we've got all of the respective states' and territories' information in that system now, so it's quite positive.

Ms MELANIE GIBBONS: Does the Family Court then have access to that?

SIMONE CZECH: Not that I understand, currently, but I understand there is a plan for that to be expanded over time. It's only, as I understand it, the state and territory child protection systems at the moment, but future plans for that to be available more broadly.

Ms MELANIE GIBBONS: What's the difference between the database and the framework? The framework is—

SIMONE CZECH: The framework is more about information sharing, generally, between anyone that might be involved in a matter that's before the Family Court or on the Federal Circuit. As I understand, it can include police and other stakeholders, not just the child protection agencies.

RACHAEL WARD: Exactly.

Ms MELANIE GIBBONS: Is the database working?

SIMONE CZECH: As far as I know.

Ms MELANIE GIBBONS: I don't mean is it active, but are people actually logging on and is it useful? That might be a better question.

SIMONE CZECH: Certainly the feedback I've had is that it is. I don't have any data with me, but I can take that on notice, and see what I can provide the Committee if that's [disorder]—

Ms MELANIE GIBBONS: I was wondering if it was being utilised.

SIMONE CZECH: Yes, certainly utilisation rates, what people are asking for—we might be able to provide that to the Committee.

Ms MELANIE GIBBONS: If you have it. I don't want you to—

SIMONE CZECH: Of course. I'll see what we've got, and we can provide what might be useful to the Committee.

Ms MELANIE GIBBONS: Thank you for your time. Is there anything else that you wanted to add?

RACHAEL WARD: I think I have to table, formally, my statement, if I could do that.

Ms MELANIE GIBBONS: Brilliant, thank you. Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing. Your replies to these will form part of your evidence and will be made public. Would you be happy to provide a written reply to any further questions?

SIMONE CZECH: Yes.

RACHAEL WARD: Yes.

Ms MELANIE GIBBONS: Thank you very much. That concludes our public hearing for the day.

(The witnesses withdrew.)

The Committee adjourned at 15:39.