

General Purpose Standing Committee No. 2

Child protection

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Terms of reference

That General Purpose Standing Committee No. 2 inquire into and report on the role of the Department of Family and Community Services in relation to child protection, including:

- (a) the capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm
- (b) the adequacy and reliability of the safety, risk and risk assessment tools used at Community Service Centres
- (c) the amount and allocation of funding and resources to the Department of Family and Community Services for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care
- (d) the amount and allocation of funding and resources to non-government organisations for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care
- (e) the support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers
- (f) the structure of oversight and interaction in place between the Office of the Children's Guardian, Department of Family and Community Services, and non-government organisations regarding the provision of services for children and young people at risk of harm or in out of home care
- (g) specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people
- (h) the amount and allocation of funding and resources to universal supports and to intensive, targeted prevention and early intervention programs to prevent and reduce risk of harm to children and young people, and
- (i) any other related matter.

The terms of reference were self-referred by the committee on 12 May 2016.

Committee details

Committee members

The Hon Greg Donnelly MLC	Australian Labor Party	<i>Chair</i>
The Hon Paul Green MLC	Christian Democratic Party	<i>Deputy Chair</i>
The Hon Daniel Mookhey MLC*	Australian Labor Party	
Mr David Shoebridge MLC*	The Greens	
The Hon Matthew Mason-Cox MLC	Liberal Party	
The Hon Dr Peter Phelps MLC	Liberal Party	
The Hon Bronnie Taylor MLC	The Nationals	

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* The Hon Daniel Mookhey MLC substituted for the Hon John Graham MLC for the duration of the inquiry.

* Mr David Shoebridge MLC substituted for Dr Mehreen Faruqui MLC (until 8 March 2017) and Ms Dawn Walker MLC (from 9 March 2017) for the duration of the inquiry.

Chair's foreword

Be gentle with the young.

- Juvenal 55-127 AD

In the most recent report of the NSW Child Death Review Team entitled *Child death review report 2015* it states on page 7:

“The families of half (4) of the eight children who died in circumstances of abuse had a child protection history, including two children who were placed in care at the time of their death. Children with a child protection history also have a much higher rate of death from fatal abuse than children from families with no such history.”

On any given day the state has to try and find a safe roof to place over the heads of approximately 20,000 children and young people. That is each day, every day, every week, every month and every year. Close your eyes and imagine that number; 20,000 children and young people who tonight will be living somewhere other than with their parents because it is not safe to do so. For a number their little, and in some cases not so little, lives are in peril.

This inquiry report into child protection in New South Wales makes for bitter reading. It raises issues, indeed existential issues, about the ability of the principle government department which has responsibility for child protection, the Department of Family and Community Services, to fully comprehend, plan and execute its mandate. However, as the committee came to appreciate as it studied the evidence that came before it, the malaise that exists in child protection is not the result of the actions of a single minister or government. It has got itself into this position over a number of decades. No politician or political party can claim any moral high ground with respect to child protection in this state. The major political parties have all served in office over recent decades, and in this policy area have little to be proud of.

The crass reality is that child protection has been, and is treated as a political football game; a game where the objective is to take out one's political opponent. This sometimes makes for entertaining political theatre, but in the end is a sideshow. Tragically those who should be at the centre of everybody's attention, our vulnerable and neglected children and young people, are caught up in the political gamesmanship.

The citizens of this state have every reason to ask the following question. Why can't our political parties and politicians work together co-operatively to address this situation before us? Surely, if there was ever a policy area that is screaming out for such an approach, it is child protection. Why for example should the NSW Premier and Minister for Family and Community Services not initiate bi-annual formal discussions with relevant party leaders, including the Opposition Leader and Shadow Minister for Family and Community Services, to discuss child protection related matters. Surely we owe this to current and future generations of children and young people in this state.

However, notwithstanding what can be characterised as a manifest failure of politics and the bureaucracy to deal with the issue of child protection in New South Wales, none of us can escape the obvious question. How can it be that in 2017 in a country as fortunate as Australia, with all its material wealth and prosperity, so many children and young people are in harm's way every day of their lives? How and why has it got to this point? What are the societal and cultural forces in play that have created or helped create this situation? Unless and until we as a society make a determined effort to find and examine the reasons behind why so many children and young people need protection provided by the state, we will not have started to come to terms with what is before us, let alone find ourselves in a position of developing policy responses that will work.

On behalf of the committee I would like to thank all those who have participated in this inquiry. We are particularly grateful to those who have shared their first hand experiences. I would also like to acknowledge and thank my committee colleagues for their contributions, and the secretariat staff who have supported this inquiry.

A handwritten signature in black ink that reads "Greg Donnelly". The signature is written in a cursive style with a large, stylized 'G' and 'D'.

The Hon Greg Donnelly MLC
Committee Chair

Recommendations

- Recommendation 1** **37**
 That the NSW Government ensure that future funding contracts for evidence based prevention and early intervention services are provided for a minimum of five years, provided that the contracts incorporate specific termination provisions that may be activated if key performance indicators, incorporated into the contract, are not achieved.
- Recommendation 2** **38**
 That the NSW Government provide a specific one off injection of additional funding for evidence based prevention and early intervention services, including targeted client services and programs that operate in regional, rural and remote areas.
- Recommendation 3** **38**
 That the NSW Government establish a cross-sector body to direct the injection of additional funding for evidence based prevention and early intervention services, as provided for in recommendation 2, with this body to be comprised of key stakeholders including the NSW Children’s Guardian, the NSW Ombudsman, the President of the Children’s Court of NSW, senior representatives from the NSW Police Force, Health and Education, as well as independents with relevant commercial experience.
- Recommendation 4** **62**
 That the NSW Government commission an independent review of the Department of Family and Community Services’ screening and assessment tools and processes, to identify how they can be improved to enhance objectivity within child protection assessments.
- Recommendation 5** **63**
 That the NSW Government benchmark funding levels for men’s behaviour change programs in other state and territory jurisdictions, to ensure an adequate level of funding is allocated to these programs in New South Wales.
- Recommendation 6** **63**
 That the Department of Family and Community Services develop, in consultation with the NSW Ombudsman and stakeholders, a framework that focuses on the needs of vulnerable young people, to ensure they are not overlooked within the child protection system.
- Recommendation 7** **79**
 That the NSW Government amend the *Children and Young Persons (Care and Protection) Act* 1998 to include a specific provision requiring the Department of Family and Community Services to clearly provide strength based evidence when presenting its case in care and protection proceedings.
- Recommendation 8** **79**
 That the NSW Ombudsman undertake an annual audit of the Department of Family and Community Services’ compliance with its obligations to provide strength based evidence to the court.

- Recommendation 9** **80**
That the NSW Government amend the *Children and Young Persons (Care and Protection) Act* 1998 to include a specific provision requiring the Children’s Court of New South Wales to consider the known risks of harm to a child on being removed from their parents or carer and placed into care, together with the risks of leaving the child in their current circumstances, when making a decision on potential child removal in care and protection proceedings.
- Recommendation 10** **80**
That the Department of Justice, in consultation with the Children’s Court of New South Wales and stakeholders, review the systems and processes that operate in the Children’s Court, to identify any opportunities that may exist to address the challenges and sense of power imbalance that parents may feel in care and protection cases.
- Recommendation 11** **81**
That the NSW Government provide the Children’s Court of New South Wales with funding for the appointment of at least three additional Children Magistrates, to ensure that all care and protection matters in New South Wales are presided over by a specialist Children’s Magistrate.
- Recommendation 12** **107**
That the NSW Government make legislative amendments to extend the performance audit function of the Auditor-General to include audits of all non-government organisations who have been provided with state funding to deliver child protection related services.
- Recommendation 13** **108**
That the NSW Government, in consultation with stakeholders, develop additional resources, training and support for carers.
- Recommendation 14** **118**
That the *Children and Young Persons (Care and Protection) Act* 1998 be amended to provide a clear, non-discretionary responsibility on the Minister to provide ongoing support for young adults up to at least age 21, where that young person requests support.
- Recommendation 15** **119**
That the NSW Government improve leaving care planning and supports by:
- developing and implementing financial penalties for out of home care providers that fail to develop and action leaving care plans
 - establishing a designated team within the Department of Family and Community Services to develop, monitor and implement leaving care plans and supports for young people
 - changing the focus and name of ‘leaving care plans’ to ‘transitioning care plans’
 - developing a specific strategy to create three year transition plans, with a sliding scale in the level of support to be provided from ages 18 to 21.
- Recommendation 16** **119**
That the NSW Ombudsman undertake regular audits of the Department of Family Community Services’ compliance with its legal obligations to provide leaving care plans and supports to young people transitioning out of care.

- Recommendation 17** **140**
 That the Minister for Family and Community Services provide bi-annual reports to NSW Parliament about the progress of the Independent review of Aboriginal children and young people in out of home care, with this report to include:
- the number of individual cases reviewed and the review methodology
 - the number of cases where remedial or corrective action has been or may be taken as a result of a review
 - any key findings and trends that emerge as the review progresses.
- Recommendation 18** **140**
 That the NSW Government commit to working across NSW with Aboriginal communities, as well as Aboriginal organisations such as Grandmothers Against Removals, to provide a far greater degree of *Aboriginal* self-determination in decisions on supporting families, child protection and child removals.
- Recommendation 19** **153**
 That the Department of Family and Community Services, in consultation with the Public Service Association and staff, set caseload targets for caseworkers, taking into account the complex nature of child protection work.
- Recommendation 20** **154**
 That the Department of Family and Community Services, in consultation with the Public Service Association, change workplace systems to improve the health, safety and wellbeing of its staff, given the challenging nature of child protection work.
- Recommendation 21** **159**
 That the Minister for Family and Community Services commission an independent investigation into the internal complaint mechanisms within the Department of Family and Community Services.
- Recommendation 22** **159**
 That the NSW Government amend the *Ombudsman Act 1974* to provide the NSW Ombudsman with the power to investigate complaints relating to child protection matters, where appropriate, even if a matter may be before the courts.
- Recommendation 23** **167**
 That the Department of Family and Community Services develop, in partnership with stakeholders, a broader workforce training and development framework for staff working with vulnerable children, young people and families.
- Recommendation 24** **170**
 That the NSW Government review the provisions of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*, to improve information sharing across jurisdictions for child protection matters.
- Recommendation 25** **178**
 That the Department of Family and Community Services fully funds the Central Coast Multi-Agency Response Centre model and implement this model in those areas of the state with greatest need.

Recommendation 26**179**

That the Department of Family and Community Services publish a plain English policy position on how parents and carers can work towards restoration of their children, including a clear internal review process for parents and carers who have been denied restoration.

Recommendation 27**179**

That the Department of Family and Community Services develop a specific strategy to improve opportunities for children and young people in out of home care to be restored to their families, where appropriate.

Recommendation 28**180**

That the Minister for Family and Community Services provide a report to the NSW Parliament by the end of August 2018 on the NSW Government's progress in implementing the recommendations in this report.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 12 May 2016.

The committee received 139 submissions, 13 supplementary submissions and one pro forma submission (see Appendix 2 for a list of submission authors).

The committee held three public hearings at Parliament House in Sydney. It also undertook a site visit to the Central Coast Multi-Agency Response Centre on 9 September 2016.

The committee also conducted a private consultation with Indigenous community members, as part of a joint initiative with the Law Society NSW, on 8 September 2016.

A private roundtable discussion was undertaken with selected stakeholders on 13 February 2017.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents, answers to questions on notice and a brief summary paper from the Indigenous consultation.

A glossary is included at Appendix 1.

Chapter 1 Overview of the child protection system

This chapter provides an overview of the structure of the child protection system, including its core components: early intervention, statutory child protection services and out of home care. It also highlights the number of children currently at risk and in out of home care. Lastly, it outlines the policy and context framework for child protection in New South Wales, including many of the significant reforms and reports which have shaped the system that exists today.

Structure of the system

- 1.1** Protecting vulnerable children and young people is the collective responsibility of families, communities, governments, along with non-government organisations and carers. While the primary responsibility lies with a child's family, including in the Aboriginal community the extended kinship structure, everyone has a role to play to ensure that all children feel safe, loved and nurtured.
- 1.2** Although the responsibility is shared, the Department of Family and Community Services (FACS) is the key government agency that oversees, provides and coordinates services that protect children and young people in New South Wales. Essentially, its services are divided into three streams:
- early intervention services, which are support services that intervene early to prevent escalation into and within the child protection system (discussed in chapter 2)
 - statutory child protection services, which include the assessment and investigation of reports of risk of significant harm against children and young people (reporting and investigations is discussed in chapter 3)
 - out of home care services (discussed in chapter 5), which is largely being transitioned to the non-government organisation sector, providing support for children and young people who cannot live safely at home - including foster care, kinship care, residential care and adoptions.¹
- 1.3** FACS is also responsible for operating the NSW Child Protection Helpline, a statewide service that takes reports 24 hours a day seven days a week about children and young people suspected to be at risk of significant harm.² It also operates 82 Community Service Centres, across 15 districts.³
- 1.4** Other government agencies, such as the Departments of Health, Juvenile Justice and Department of Education, along with the NSW Police Force, all have an important role in keeping children safe.⁴

¹ Submission 70, Department of Family and Community Services, p 11.

² Submission 70, Department of Family and Community Services, p 6.

³ Department of Family and Community Services, *FACS community service centres*, <<http://www.community.nsw.gov.au/about-us/contact-us/facs-community-services-centres>>

⁴ Submission 70, Department of Family and Community Services, p 5.

- 1.5 In 2016-17 the budgeted expenditure for FACS for the provision of child protection related services was approximately \$1.9 billion, which included approximately:
- \$319,041,000 for early intervention services (17 per cent)
 - \$492,834,000 for statutory child protection work (26 per cent)
 - \$1,079,159,000 for out of home care services (57 per cent).⁵
- 1.6 Funding was allocated to non-government organisations to provide contracted statutory child protection, out of home care and early intervention services. In 2016-17, \$670 million was allocated to non-government organisations for statutory child protection and out of home care services, whereas \$280 million was allocated to early intervention services.⁶

Legislative and policy framework

- 1.7 The child protection system in New South Wales is underpinned by a range of state based legislation, policies and practices. The *Children and Young Persons (Care and Protection) Act 1998* is the key piece of legislation, although there are other Acts that are also relevant to child protection matters.⁷
- 1.8 Many of the key principles guiding the legislative and policy framework in New South Wales are embodied in the *United Nations Convention on the Rights of the Child* (1989), including early intervention and the participation of children and young people in decision making.⁸
- 1.9 Also relevant to the legislative and policy framework operating in New South Wales is the *National Framework for Protecting Australia's Children 2009-2020*, which was developed by the Council of Australian Governments to ensure children's interests are placed at the centre of all policy and legislative development.⁹

The Children and Young Persons (Care and Protection) Act 1998

- 1.10 The *Children and Young Persons (Care and Protection) Act 1998* is the primary legislative instrument governing the administration and operation of child protection services in New South Wales. The primary purpose of the Act is to ensure that:
- children and young people receive such care and protection as is necessary for their safety, welfare and wellbeing, taking into account the capacity of their parent(s) or carer(s)

⁵ Submission 70, Department of Family and Community Services, pp 11-12.

⁶ Submission 70, Department of Family and Community Services, pp 11-12.

⁷ Other Acts which have provisions relevant to child protection include the *Child Protection (Offenders Registration) Act 2000*, the *Crimes Act 1900*, the *Commission for Children and Young People Act 1998* and the *Ombudsman Act 1974*.

⁸ Convention on the Rights of the Child, opened for signature 20 November 1989m 1577 UNTS 3 (entered into force 2 September 1990).

⁹ Australian Institute of Family Studies, *Australian child protection legislation* (August 2014), <<https://aifs.gov.au/cfca/publications/australian-child-protection-legislation>>

- the primary means of providing safety, welfare and wellbeing is through the provision of long term, safe, nurturing, stable and secure environments through permanent placement
- all those responsible for providing child protection services do so in an environment that is free from violence and exploitation and provide services that foster their health, developmental needs, spirituality, self-respect and dignity
- appropriate assistance is provided to parents and others responsible for children and young people in the performance of their child rearing responsibilities in order to promote a safe and nurturing environment.¹⁰

1.11 Two key principles embodied within the legislation are the *Permanent placement principles*, which set out the preferred order of permanent placement for a child or young person, and the *Aboriginal and Torres Strait Islander Placement Principles*, which sets out the preferred order for placement for Aboriginal and Torres Strait Islander children.¹¹ These principles are further defined in the glossary at Appendix 1.

The National Framework for Protecting Australia’s Children 2009-2020

- 1.12** *The National Framework for Protecting Australia’s Children 2009—2020* is a high-level long-term national approach to ensuring the safety and wellbeing of Australian children. It includes a range of outcomes and strategies that governments and others can take to achieve a substantial reduction in child abuse and neglect in Australia.¹²
- 1.13** The framework is based on a public health model, and was developed by the Australian Government, with cooperation from states and territories. While it aims to deliver a more integrated response to the issue of child protection, states and territories retain primary responsibility for statutory child protection.¹³
- 1.14** The third three year action plan produced under the framework, which operates from 2015-2018, focuses on strengthening the abilities of families and communities that are known to have high levels of contact with the child protection system, particularly Aboriginal and Torres Strait Islander families. It is also informed by the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (discussed at 1.61).¹⁴

¹⁰ *Children and Young Persons (Care and Protection) Act* 1998, s 8.

¹¹ *Children and Young Persons (Care and Protection) Act* 1998, ss 10A and 13.

¹² Department of Social Services, *National Framework for protecting Australia’s Children 2009-2020*, <<https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>>

¹³ Department of Social Services, *National Framework for protecting Australia’s Children 2009-2020*, <<https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>>

¹⁴ Department of Social Services, *Driving change: Intervening early*, Third three year action plan 2015-2018, <https://www.dss.gov.au/sites/default/files/documents/12_2015/pdf_third_action_plan_for_protecting_australias_children.pdf>

Oversight mechanisms

- 1.15** Both the NSW Ombudsman and Office of the Children’s Guardian have oversight responsibilities in relation to child protection in New South Wales.
- 1.16** The NSW Ombudsman also has a broad range of functions relating to the delivery of child protection services in New South Wales. Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and Part 3A of the *Ombudsman Act 1974*, the Ombudsman:
- promotes and assists with the development of standards for the delivery of community services, including an education role in relation to these standards
 - monitors and reviews the delivery of community services and related programs
 - inquires into matters affecting the delivery of services
 - receives, assesses, resolves and investigates complaints related to community services (complaints are discussed at 8.70)
 - reviews the situation of individual children or groups of children in out of home care
 - reviews the causes and patterns of child deaths, to identify preventative or reduction strategies.¹⁵
- 1.17** The Office of the Children’s Guardian is an independent statutory office that reports directly to the Minister for Family and Community Services and to Parliament. It’s oversight role mainly relates to the out of home care system, with responsibility for:
- the accreditation and monitoring of out of home care providers, including statutory and voluntary out of home care organisations
 - the NSW Carers Register, a centralised database of persons who are authorised, or who apply for authorisation, to provide statutory or supported out of home care
 - administration of working with children checks, to ensure that people who pose a risk to the safety of children and young people do not have clearance to work with them.¹⁶

Statistical snapshot

- 1.18** According to the Australian Institute of Health and Welfare, there were 59,092 children and young people receiving child protection services in New South Wales in 2014-15, which includes children the subject of a child protection report or order, or children or young people placed in out of home care. This number represented the second highest rate per 1,000 children in the population when compared to other Australian states and territories.¹⁷
- 1.19** In New South Wales, in 2014-15, 43,574 children were the subject of a child protection investigation or notification, 20,506 where the subject of care and protection order and 21,426

¹⁵ Submission 74, Ombudsman NSW, p 1.

¹⁶ Submission 75, Office of the Children’s Guardian, p 4.

¹⁷ Only the Northern Territory had a higher rate per 1,000 children. Australian Institute of Health and Welfare (2016) *Child protection Australia 2014-15*, p 11.

were in out of home care. There is some overlap in this data though, given that children may receive a combination of services.¹⁸

1.20 FACS also provided the following recent statistics to the committee:

- 196,874 reports were made to the Child Protection Helpline in 2015-16, in relation to 278,521 children and young people¹⁹
- 8,979 reports to the Child Protection Helpline were referred to the Joint Investigation Response Team in 2015-16, of which 4,500 were accepted as requiring a response²⁰
- 25.5 per cent of the children and young people who had their case plan closed for any reason were re-reported at risk of significant harm within 12 months.²¹

1.21 FACS also advised the committee that the total number of risk of significant harm reports has been steadily increasing from 2010-11 to 2014-15. The number of children and young people at risk of significant harm with a completed face to face assessment has also increased, although it currently sits at only about 30 percent (this issue is discussed further in chapter 3).

1.22 The rate of children in out of home care as at 30 June 2015 was 9.9 per 1,000 children aged 0-17 years. FACS advised the committee that this rate is similar to Queensland, Western Australia, South Australia and Tasmania. The Australian Capital Territory and Victoria have slightly higher rates than New South Wales, whereas the Northern Territory has the highest rate of children placed in out of home care.²² As discussed in chapter 5, there has been a steady rise in the numbers of children being placed in out of home care over the last decade.

1.23 Recognised to be a significant issue not just for New South Wales, Aboriginal and Torres Strait Islander children and young people remain overrepresented within the child protection system. According to FACS, as at 30 June 2015, 6,472 of the 17,585 children and young people in out of home care in New South Wales were Aboriginal and Torres Strait Islander children.²³ This overrepresentation is discussed in chapter 7.

Recent child protection reforms and context

1.24 There have been multiple state, territory and federal child protection related inquiries, reviews and reforms over the last decade. Many of these have driven substantial changes to the New South Wales child protection system. The most significant of these reviews are considered below.

¹⁸ Australian Institute of Health and Welfare (2016) *Child protection Australia 2014-15*, p 11.

¹⁹ Answers to questions on notice, Department of Family and Community Services, 27 October 2016, p 12.

²⁰ Answers to questions on notice, Department of Family and Community Services, p 8.

²¹ Answers to questions on notice, Department of Family and Community Services, p 7.

²² Answers to questions on notice, Department of Family and Community Services, p 6.

²³ Answers to supplementary questions, Department of Family and Community Services, 27 October 2016, p 5.

- 1.25 Also relevant in this context is the Premier's 12 key priorities, of which one is about protecting vulnerable children, with a specific target to decrease the percentage of children and young people re-reported to be at risk of significant harm by 15 per cent.²⁴

The Special Commission of Inquiry into Child Protection Services in NSW

- 1.26 In 2007 the New South Wales Governor commissioned the Hon. James Wood AO QC to conduct an inquiry to determine what changes within the child protection system were required to cope with future levels of demand. The report from this inquiry (referred to throughout this report as 'the Wood Report') was released in November 2008.
- 1.27 The report was influential in directing a series of legislative and structural reforms to the child protection system to enable the department (now FACS) to better focus resources on investigating and assessing vulnerable children and young people who were most at risk of serious harm.²⁵ Underpinning its recommendations was the principle that child protection is the collective responsibility of the whole of government and of the community.²⁶
- 1.28 A few of the key findings of the Wood Report, which are pertinent to issues covered in this report, were that:
- New South Wales had one of the lowest thresholds in Australia for reporting children and young people at risk of harm, which was contributing to the Child Protection Helpline being overwhelmed with reports about children who needed support but did not require statutory intervention
 - Aboriginal communities were overrepresented in the child protection system, culturally appropriate interventions were not widely available, and that building the capacity of Aboriginal organisations to play a greater role was essential to addressing this overrepresentation
 - non-government organisations were better equipped to provide the types of supports that children in care and their carers require, and that non-government organisations should play a key role in the delivery of out of home care services.²⁷

Keep them safe: A shared approach to child wellbeing

- 1.29 The NSW Government's response to the Wood Report was the *Keep them Safe: A shared approach to child wellbeing*. Published in early 2009, this document set out the government's commitment to better protect and support children, young people and families. A \$750 million funding package was announced to reform the system in the 2009-10 budget, which included allocations for:

²⁴ NSW Department of Premier and Cabinet, *Protecting our kids*, <<https://www.nsw.gov.au/improving-nsw/premiers-priorities/protecting-our-kids/>>

²⁵ Submission 70, Department of Family and Community Services, p 6.

²⁶ Hon. James Wood AO QC (November 2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW, Volume One*, p v.

²⁷ Hon. James Wood AO QC (November 2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW, Volume One*, pp iii, iv and vii.

- enhanced prevention and early intervention services
- improving services for Aboriginal children and young people
- enhanced acute services (for example intensive family preservation)
- changes to the child protection system and services
- out of home care.²⁸

1.30 More than 40 per cent of the funding package was allocated to non-government organisations, reflecting their enhanced involvement in the delivery of child protection services, as was recommended in the Wood Report.²⁹

1.31 The Action Plan provided by *Keep them safe* focused on several key elements, including the development of a universal service system, stronger early intervention and community based services, improved protection for children at risk, effective referral systems and practices between government and non-government agencies and a stronger partnership with the non-government organisation sector.³⁰

The Ombudsman's 2011 review: Keep them safe?

1.32 In August 2011, the Ombudsman provided a special report to Parliament reviewing the progress made under the Keep them safe reforms. The report, entitled *Keep Them Safe?*, examined whether Community Services' capacity to adequately respond to children assessed as being at risk of significant harm had improved as a result of the changes to the child protection system introduced through *Keep them safe*.

1.33 In the report, the Ombudsman found that despite raising the threshold for child protection reports, FACS was conducting face to face assessments in relation to only one fifth of all children and young people assessed at being of risk of significant harm.³¹

1.34 Although the Ombudsman acknowledged that face to face assessments for children identified at risk of significant harm is 'not the only indicator of whether a child protection system is functioning effectively', it stressed that an efficient child protection system must be able to identify those children most at need in order to direct appropriate resources.³²

²⁸ Media release, NSW Government, '\$750 million investment to keep NSW children and young people safe in response to Wood Inquiry', 16 June 2009; NSW Government, *Keep Them Safe: A shared approach to child wellbeing*, <http://www.keepthemsafe.nsw.gov.au/__data/assets/pdf_file/0004/57145/Keep_Them_Safe.pdf>, p i-iv.

²⁹ Media release, NSW Government, '\$750 million investment to keep NSW children and young people safe in response to Wood Inquiry', 16 June 2009.

³⁰ NSW Government, *Keep Them Safe: A shared approach to child wellbeing*, <http://www.keepthemsafe.nsw.gov.au/__data/assets/pdf_file/0004/57145/Keep_Them_Safe.pdf>, p iii-iv.

³¹ Submission 74, Ombudsman NSW, p 2.

³² Submission 74 Ombudsman NSW, p 2.

- 1.35** The Ombudsman made a series of recommendations aimed at improving capacity and accountability including improved public reporting on responses to risk of significant harm reports and:
- the filling of positions in rural and remote areas, setting average caseload and case completion targets, enhancing caseworkers supervision and support, and lifting the staff of morale
 - developing more meaningful reporting on productivity and/or efficiency outcomes achieved, and staff vacancy and retention rates
 - developing a reporting tool that could rapidly generate consolidated child protection history reports, and
 - with key partners, adopting and implementing an ‘intelligence driven’ child protection system.³³
- 1.36** The Ombudsman reported that FACS supported these recommendations and ‘acknowledged that its capacity to respond to children at risk of serious harm was inadequate’. FACS reportedly had plans to maximise caseworker time in the field, improve information technology systems and develop other measures to improve overall productivity.³⁴

The Ombudsman’s 2014 review: Are things improving?

- 1.37** In 2014, the Ombudsman presented a follow up report to Parliament entitled, *Are things improving?* In this report, the Ombudsman ‘examined progress made by FACS in lifting the ROSH [risk of significant harm] response rate and filling [of] caseworker vacancies’. It also discussed a number of other issues, including the quality of intra and interagency child protection practice.³⁵
- 1.38** While this review acknowledged some progress and improvements made by FACS since the 2011 review, it also reported:
- that there was still a significant ‘gap to bridge’ before the risk of significant harm response rate was at an acceptable level
 - the number of cases being closed due to ‘competing priorities’ had increased, from 25 per cent in 2011 to 39 per cent in 2014, although the Ombudsman acknowledged explanations provided by FACS about this and recommended that FACS enhance its capacity to record and report on the actual nature of responses, not just those that result in a face to face response
 - improvements in the transparency of caseworker numbers and vacancy rates
 - the need to expand the role of other agencies, including the non-government sector, to improve the response to risk of significant harms reports and vulnerable families more generally

³³ Submission 74, Ombudsman NSW, pp 2-3.

³⁴ Submission 74, Ombudsman NSW, p 3.

³⁵ Submission 74, Ombudsman NSW, p 3.

- the need to embrace more innovative approaches and develop robust quality assurance frameworks for non-government organisation practice.³⁶

1.39 FACS indicated its support for the recommendations and agreed to report on the progress made in implementing them, with its first progress report published in 2015. This report addressed both policy and practice concerns identified by the Ombudsman and also introduced changes referred to as the *Safe Home for Life* reforms.

The Safe Home for Life reforms

1.40 In 2014 the NSW Government introduced the *Safe Home for Life* reforms, a package of changes which reflected the significance of a safe, stable and permanent home to children and young people.³⁷

1.41 Under these reforms, the *Permanent Placement Principles* were introduced. These are principles that guide decision making about what is a safe and stable home for children and young people. Where restoration of a child to their family is not possible, the changes set out the preferred order for the permanent placement of a child or young person, including guardianship, adoption, care under the Minister and placement in foster care.³⁸

1.42 The *Safe Home for Life* reforms also introduced specific tools to work with parents, including an increased focus on alternative dispute resolution. The reforms also embraced co-design approaches to child protection, which enabled districts to develop solutions to their local needs rather than having a one-sized fits all approach.³⁹

1.43 One of the significant changes introduced as part of this package, which remains ongoing, is the replacement and upgrade of frontline technology systems within FACS, with over \$49 million invested in a new system called *ChildStory*.⁴⁰

The Auditor General's 2015 report on transferring out of home care services to non-government organisations

1.44 Arising from a recommendation in the Wood Report, FACS began transitioning statutory out of home care services to the non-government sector in March 2012. With these arrangements underway, the Auditor General conducted an audit to determine how the department was performing in managing the transfer of these services.⁴¹

1.45 Overall, the Auditor General found that the department was progressing well towards its goal of transferring all children in statutory care to non-government organisations, although found

³⁶ Submission 74, Ombudsman NSW, pp 3-4.

³⁷ Submission 70, Department of Family and Community Services, p 16.

³⁸ Submission 70, Department of Family and Community Services, p 16.

³⁹ Submission 70, Department of Family and Community Services, p 17.

⁴⁰ Submission 70, Department of Family and Community Services, p 17.

⁴¹ NSW Auditor-General, *Transferring out-of-home care to non-government organisations: Performance audit report for the Department of Family and Community Services*, September 2015, p 2.

it was difficult to assess whether this was resulting in improved outcomes for children in care.⁴²

- 1.46** Importantly, the Auditor General noted that the department needed to finalise its identification of well-being measures which would help to determine whether the transfer arrangements were resulting in improved outcomes for children and young people. It noted that a quality assurance framework was being developed by the department.⁴³ (Discussed at 5.23)
- 1.47** Other relevant recommendations from this review were that FACS should:
- improve predictions of demand for out of home care places and better match funded places to that demand
 - develop, in collaboration with the Aboriginal community, a clear strategy for delivering out of home care services for Aboriginal children
 - restructure its funding models to promote placement stability rather than permanency outcomes.⁴⁴

The Tune Review

- 1.48** In November 2015, the NSW Government commissioned Mr David Tune AO PSM to conduct an independent review of the out of home care system in New South Wales (referred to as the *Tune Review*). The review was commissioned in response to the growth of the out of home care population and continuing poor outcomes for the most vulnerable families and children.⁴⁵
- 1.49** While the full findings of the review have not been published, the NSW Government recently released a document entitled *Their Futures Matters: A new approach*, which includes a summary of the review's findings and reform directions for the child protection system.⁴⁶
- 1.50** Overall, the systemic issues identified by the review were that:
- the current system is not client centered but designed around programs and service models instead of the needs of vulnerable families
 - vulnerable children and families have needs that cross the boundaries of government agencies, yet the approach to shared responsibility has not achieved improvement in the outcomes for children and families with complex needs

⁴² NSW Auditor-General, *Transferring out-of-home care to non-government organisations: Performance audit report for the Department of Family and Community Services*, September 2015, p 2.

⁴³ NSW Auditor-General, *Transferring out-of-home care to non-government organisations: Performance audit report for the Department of Family and Community Services*, September 2015, p 2.

⁴⁴ NSW Auditor-General, *Transferring out-of-home care to non-government organisations: Performance audit report for the Department of Family and Community Services*, September 2015, p 4.

⁴⁵ NSW Government, *Their Futures Matter: A new approach*, <https://www.facs.nsw.gov.au/_data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf>, p 2.

⁴⁶ NSW Government, *Their Futures Matter: A new approach*, <https://www.facs.nsw.gov.au/_data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf>

- FACS holds primary accountability for very vulnerable families with little influence over the drivers of vulnerability or the levers for change
- expenditure is crisis driven, not well aligned to the evidence and does not effectively target clients.⁴⁷

1.51 The NSW Government acknowledged that ‘as a result of these systemic issues, the current service response is not focused on improving life opportunities for vulnerable children and families’. Noting that the current ‘siloed approach’ is not effective, the NSW Government said that the ‘dependence on goodwill for coordination across agencies and multiple programs is not adequate to tackle these problems’.⁴⁸

1.52 In response to these issues, the NSW Government expressed their commitment to:

- introduce tailored support packages for vulnerable children and their parents
- apply an investment approach to service delivery, to help drive change in the current system and ensure support packages are effectively tailored
- shift investment to evidence based services and interventions
- develop an outcomes framework for vulnerable children and families, including wellbeing indicators to help focus effort, investment and accountability on improving the effectiveness of interventions
- identify current funding for vulnerable children and families across government agencies.⁴⁹

1.53 In response to increasing pressure on the child protection system, including the high number of reports made to the Child Protection Helpline and face to face response rates, the NSW Government also announced its commitment to redesign the intake, assessment and referral system. It said that current levels of reporting are too high and that there are opportunities to ‘reduce re-reporting through improvements to triaging’ and more effective responses to the needs of families.⁵⁰

The Auditor General’s 2016 performance audit report

1.54 In November 2016 the Auditor General released its audit report on the financial performance of FACS. A number of recommendations from this report are relevant to the roles of FACS in delivering child protection services.

⁴⁷ NSW Government, *Their Futures Matter: A new approach*, <https://www.facs.nsw.gov.au/__data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf>, pp 3-5.

⁴⁸ NSW Government, *Their Futures Matter: A new approach*, <https://www.facs.nsw.gov.au/__data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf>, p 5.

⁴⁹ NSW Government, *Their Futures Matter: A new approach*, <https://www.facs.nsw.gov.au/__data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf>, pp 8-11.

⁵⁰ NSW Government, *Their Futures Matter: A new approach*, <https://www.facs.nsw.gov.au/__data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf>, pp 13-14.

- 1.55** Most significantly, the Auditor General recommended that FACS develop a consistent process to audit the performance of non-government organisations, considering \$2.8 billion in government funding was provided in 2015-16 to non-government organisations to deliver services to people with disability, children and young people and social housing.⁵¹
- 1.56** The Auditor General noted that ‘NGOs [non-government organisations] are heavily dependent on government funding without being directly accountable to the NSW Parliament for how these funds are spent’. Although FACS has the power to audit how well non-government organisations use the funding, the Auditor General highlighted that there is limited independent assurance of these arrangements, with the Auditor General lacking ‘follow the dollar’ powers:
- In other jurisdictions, Auditors-General are able to provide independent assurance about service delivery outcomes and financial accountability of arrangements with NGOs [non-government organisations]. This is often referred to as ‘follow the dollar’ powers. New South Wales legislation does not currently provide the Auditor-General with such powers.⁵²
- 1.57** The Auditor General noted that the current process only requires the service provider to self-assess its own performance and provide financial acquittals annually. While contract managers at FACS review these submissions, limited audits have been undertaken and inconsistencies exist between different districts and different funding activities.⁵³
- 1.58** The Audit office also highlighted that three of the department’s Community Service Centres were not meeting the required out of home care service standards, resulting in only interim accreditation from the Children’s Guardian.⁵⁴ This issue is further discussed at 5.33.

The Senate Inquiry into Out of Home Care

- 1.59** On 17 July 2014, the Senate referred an inquiry into out of home care to the Community Affairs References Committee. The committee’s role was to examine why so many children and young people, particularly from Aboriginal and Torres Strait Islander communities, were entering out of home care. It also wanted to explore how children and young people could be better supported to remain with their families, where possible.⁵⁵ The report was tabled on 19 August 2015.
- 1.60** Key recommendations from the report, many of which were suggested to be included as measures in the third action plan for the *National Framework for Protecting Australia’s Children 2009-2020* (discussed at 1.12), were that:

⁵¹ NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, pp 6 and 27-28.

⁵² NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, pp 27.

⁵³ NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, pp 27-28.

⁵⁴ NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, p 29.

⁵⁵ Community Affairs References Committee, The Senate, *Out of home care* (August 2015), p 2.

- the Council of Australian Government develop and implement nationally consistent powers for independent child commissioners and guardians
- states and territories increase resources to fund therapeutic models of care, based on evidenced-based evaluations of existing and proposed models
- a nationally consistent approach to permanency planning should be developed
- a nationally consistent framework should be developed for young people transitioning from care, with a focus on improving health outcomes, access to higher education, employment options and access and support for securing stable housing
- states and territories raise the age to which young people continue to receive ongoing post-care support to 21 years of age
- a nationally consistent family support framework be developed, to address universal services, secondary interventions and respite services and shared care models of support
- there be nationally consistent mechanisms, such as independent bodies, for managing complaints from families and investigation of individual cases
- a national framework be developed for the accreditation and registration of child protection workers, including those employed by government and non-government agencies
- state and territory governments review the overrepresentation of Aboriginal children and young people in care as a matter of priority and provide additional support services to address the causes of social disadvantage
- a nationally consistent strategy should be developed to support and accredit foster carers to improve recruitment and retention issues.⁵⁶

The Royal Commission into Institutional Responses to Child Sexual Abuse

- 1.61** The Royal Commission into Institutional Responses to Child Sexual Abuse was established to investigate how institutions like schools, churches, sports clubs and government organisations have responded to allegations and instances of child sexual abuse. The Commissioners were appointed on 11 January 2013.⁵⁷
- 1.62** In addition to holding public hearings to hear evidence about child sexual abuse within institutions, the Royal Commission has undertaken significant research and policy work. Its interim report was released on 30 June 2014, followed by two other reports – one on civil litigation and redress and the other on working with children checks.⁵⁸

⁵⁶ Community Affairs References Committee, The Senate, *Out of home care* (August 2015), pp xvii-xxv.

⁵⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *About us*, <<http://childabuseroyalcommission.gov.au/about-us>>

⁵⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (2015); Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report*, Volumes 1 and 2 (2014).

- 1.63** In March 2016, the Royal Commission released a consultation paper focused on institutional responses to child sexual abuse in out of home care. This focus stemmed from concerning data about sexual abuse in out of home care, including evidence the Royal Commission had received through private sessions, public hearings and consultation work:

To date we have held over 4,700 private sessions, in which OOHC [out of home care] was the largest category of institutions identified, constituting over 40 per cent of all reports of child sexual abuse.⁵⁹

- 1.64** The outcomes of this consultation are likely to help inform recommendations of the Royal Commission for its final report, due December 2017.
- 1.65** A number of other relevant papers have also been produced by the Royal Commission, including a paper on best practice in responding to complaints of child sexual abuse in institutional contexts.⁶⁰

Independent review of Aboriginal children and young people in out of home care

- 1.66** On 19 December 2016 it was announced by the former Minister of Family and Community Services, the Hon. Brad Hazzard MP, that Professor Megan Davis from the University of New South Wales will head a committee of Aboriginal leaders to review the case files of 1200 Aboriginal children and young people in out of home care.⁶¹
- 1.67** The announcement of this review followed a Ministerial Forum held in early 2016, *Our Kids our Way: Hearing the Voices of Aboriginal People*, where Aboriginal community members shared their experiences and concerns regarding the over representation of Aboriginal children and young people in care.⁶²
- 1.68** FACS advised the committee that this review is in its planning stages. It expected, given the number of cases to be reviewed, that the process will take a minimum of two and half years to complete.⁶³ This review is further discussed at 7.83.

⁵⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care* (March 2016), p 4.

⁶⁰ Papers are accessible on the reports page of the website. Royal Commission into Institutional Responses to Child Sexual Abuse, *Our reports*,
< <http://www.childabuseroyalcommission.gov.au/about-us/our-reports>>

⁶¹ Media release, Department of Family and Community Services, 'NSW to review cases of Aboriginal kids in care', 19 December 2016, <https://www.facs.nsw.gov.au/about_us/media_releases/nsw-to-review-cases-of-aboriginal-kids-in-care>

⁶² Media release, Department of Family and Community Services, 'NSW to review cases of Aboriginal kids in care', 19 December 2016, <https://www.facs.nsw.gov.au/about_us/media_releases/nsw-to-review-cases-of-aboriginal-kids-in-care>

⁶³ Answers to supplementary questions, Department of Family and Community Services, p 2.

Committee comment

- 1.69** The committee recognises that the child protection system in New South Wales has faced significant reform over the last decade. From the Wood Inquiry in 2008 to more recent reviews, effective child protection policy and practice continues to be a priority for all governments, which is unsurprising given how important it is for us to protect the most vulnerable individuals in society – our children.
- 1.70** The current system is failing vulnerable children and families. It is overwhelmed and operates predominantly in crisis mode. It is reactive not proactive and apparently incapable of adequately addressing the systemic issues that review after review have identified over the last decade. Accountability for outcomes is poor and often non-existent – the victims are the vulnerable children and families whom the system is meant to be assisting. Can we do better? Business as usual is just not acceptable. FACS and the political system must be held accountable for this failure to protect the most vulnerable in our communities.
- 1.71** The sector is fatigued from reform, tired of ad hoc trials, poorly served by underfunded and incomplete programs, losing talent and experience due to short term contracts and delivered a disservice by constant political scapegoating. This committee, indeed all of Parliament, needs to not only make recommendations but see that they are implemented, properly funded and given time to work. In the modern political cycle, and especially given the highly emotive subject matter of child protection, this is a challenge that most governments and parliaments have failed in the past. We need to do better.
- 1.72** To this end, we hope that the recommendations in this report will be considered alongside the findings of previous reviews, to help shape future changes within the child protection system in this state. At the end of the day, we all want a child protection system that not only aspires to but actually delivers on the ground protection for vulnerable children and young people.

Chapter 2 Early intervention and prevention services

This chapter explores the benefits of prevention and early intervention services for vulnerable children and young people, families, communities and governments. It discusses a number of barriers which may be affecting individuals' engagement with these services. It also outlines stakeholders' views about how the service system should be shaped in the future, including the importance of providing targeted services to vulnerable community groups.

Defining early intervention

- 2.1** Generally, early intervention services are those services that are funded to provide support to vulnerable children, young people and families to help avoid abuse, neglect or entry into care. They can include services provided by both government and non-government organisations, and other community groups.
- 2.2** According to the Department of Family and Community Services (FACS), 'early intervention is both intervening early in age and early in the course of an issue'. Along with preventing an issue from manifesting in the first place, prevention and early intervention is about limiting the impact or preventing the entrenchment of adverse behaviours. The goal is to prevent the escalation of serious issues that require more intensive responses, such as statutory child protection or the involvement of the justice system.⁶⁴
- 2.3** Examples of early intervention and prevention services that are currently available include:
- Child, Youth and Family Support - a program funded by FACS and delivered by non-government organisations and local councils. The service aims to deliver less intensive intervention services to children, young people and families that fall below the threshold for statutory child protection intervention.
 - Brighter Futures – a program funded by FACS but delivered by non-government organisations across New South Wales. It delivers services to families with a child aged under nine years, or families expecting a child, where the child is at risk of entering the statutory child protection system. Services provided under the program include case management, home visiting, parenting programs and quality childcare.
 - Intensive Family Preservation Program – a high-intensity placement program operated by non-government organisation providers targeting families where a child under 15 years of age has been the subject of a risk of harm report is at risk of being removed and placed in out of home care.
 - Families NSW – a program that aims to meet the needs of vulnerable children up to eight years old and their families by providing support to parents during the early years of a child's development. Services the program provides include supported playgroups,

⁶⁴ Department of Family and Community Services, *Targeted Earlier Intervention Programs: Sector Consultation Paper* (August 2015) <http://www.community.nsw.gov.au/__data/assets/pdf_file/0005/335165/CS_TIER_consultation_paper.pdf>, p 11.

parenting programs, family workers, community capacity building, partnerships and network projects.⁶⁵

The value of early intervention services

2.4 It is widely accepted that intervening early can prevent children, young people and families from coming in to contact with the child protection system. The support provided through early intervention services can deliver a number of benefits, including

- greater stability in the home environment
- avoidance of crisis situations
- minimisation of the impacts of trauma
- reduction in the risk of harm to children and young people
- reduction in the number of children and young people going into out of home care
- improvement in children and young people's outcomes across a number of arenas, such as education and employment.⁶⁶

2.5 FACS also recognises the benefits that can be delivered through early intervention and prevention services. It has acknowledged that such services can improve family functioning and social cohesion, lead to reduced poverty and crime and higher productivity. It can also contribute to sustainable economic growth, enhanced social values and increased social justice and better societal health. FACS has stated that 'conversely, a lack of intervention in a disadvantaged community can further entrench disadvantage and reduce a community's quality of life, cohesion and economic opportunities'.⁶⁷

2.6 Emphasising the value of early intervention services, FACS has also acknowledged that 'the consequences of not intervening can be significant and far reaching for individuals, families, communities and governments', with long term costs to government and consequences for communities if there is a lack of intervention.⁶⁸

2.7 Service providers in the sector also recognised the need for and value of prevention and early intervention services in addressing child protection concerns. According to Fams, there is clear evidence that early intervention works and that prevention rather than responding to crisis delivers better outcomes for children.⁶⁹ Consistent with this view, the Association of

⁶⁵ Submission 70, NSW Department of Family and Community Services, pp 18-20.

⁶⁶ Submission 68, NSW Council of Social Service, pp 6-7; Submission 73, Women's Legal Service NSW, p 29; Submission 76, Uniting, pp 33-35; Submission 131, Care Leavers Australasia Network, p 8; Submission 90, Ms Trish Doyle MP, pp 15-17.

⁶⁷ Department of Family and Community Services, *Targeted Earlier Intervention Programs: Sector Consultation Paper* (August 2015) <http://www.community.nsw.gov.au/__data/assets/pdf_file/0005/335165/CS_TIER_consultation_paper.pdf>, p 11.

⁶⁸ Department of Family and Community Services, *Targeted Earlier Intervention Programs: Sector Consultation Paper* (August 2015) <http://www.community.nsw.gov.au/__data/assets/pdf_file/0005/335165/CS_TIER_consultation_paper.pdf>, p 11.

⁶⁹ Submission 64, Fams, pp 7-9.

Children's Welfare Agencies stated that 'early intervention is a critical part of the support some families need to avoid [a] crisis'.⁷⁰

2.8 Highlighting how critical early intervention services are, Uniting explained that it is 'vital' such services are available to assist families instead of responding when child abuse and/or neglect has occurred.⁷¹ Cara House said that 'early intervention is the key to identifying at risk children and promoting safety and healthy development'.⁷²

2.9 Not only has the value of early intervention services been recognised in previous reviews and reforms, including the Wood Report and the *National Framework for Protecting Australia's Children 2009-2020*⁷³, studies have also demonstrated the positive effects of such services.

2.10 Professor Gwynnyth Llewellyn, Director of the Centre for Disability Research and Policy at the University of Sydney, highlighted the outcomes of international research and literature on the effectiveness of early intervention services:

The evidence in the international literature and from research in Australia clearly points to prevention rather than 'cure' as the most effective, long term approach to preventing and reducing risk of harm to children and young people.⁷⁴

2.11 Relationship Australia NSW also pointed to longitudinal studies which have showed that therapeutic interventions are delivering positive results:

Longitudinal studies show that therapeutic interventions that focus on the family as a whole and that empower parents to implement more effective parenting practices and improve family functioning can deliver positive change in up to 60% of cases.⁷⁵

Recent service system findings and the current reform program

2.12 Challenges associated with the delivery of effective early intervention and prevention services have featured in many of the child protection related reviews over the last decade. In particular, the Wood Report highlighted the challenge of sufficiently resourcing flexible prevention and early intervention services so as to reduce the numbers of children and young people who require the state to step in and keep them safe.⁷⁶

2.13 In the 2010 final evaluation report of the *Keep Them Safe* reforms it was recognised that prevention and early intervention had the most significant impact on reducing the rate of children reported to be at risk of significant harm. However, significant issues associated with the service delivery system were identified. In particular, the evaluation highlighted that:

⁷⁰ Submission 94, Association of Children's Welfare Agencies, p 24.

⁷¹ Submission 76, Uniting, p 34.

⁷² Submission 51, Cara House, p 6.

⁷³ Submission 68, NSW Council of Social Service, pp 6-7.

⁷⁴ Submission 81, Professor Gwynnyth Llewellyn, p 4.

⁷⁵ Submission 93, Relationships Australia NSW, p 8.

⁷⁶ Hon. James Wood AO QC (November 2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Volume One, p i.

- prevention, early intervention and child protection remains focused on the ‘front end’ of the system, rather than delivering holistic multi-agency interventions
- families with lower needs may not be receiving as much support because those with higher needs are given priority access to early intervention services
- some services do not feel confident in supporting families with higher needs, and are worried about risking poor outcomes
- there is ambiguity about what services would most benefit children near the risk of significant harm threshold, and who should provide such services.⁷⁷

2.14 Additional service delivery issues have also been identified in recent reviews of particular early intervention programs, for example, evaluations of the Brighter Futures and Intensive Family Preservation Programs. Notable themes were that:

- the system is fragmented and program-centered, contributing to adverse outcomes for vulnerable young people
- existing practice is often limited to managing crisis situations
- current services lack capacity, flexibility and access that would provide an adequate response for vulnerable young people
- there is lack of planning of services and a siloed nature to organisations and programs
- there are gaps in services for medium-risk families
- service provision needs to be more targeted to suit the needs of clients
- there is variability in services across locations.⁷⁸

2.15 The Auditor General’s 2015 report into transferring out of home care to the non-government sector also identified the need for better targeted early intervention to prevent children escalating through the risk spectrum and entering the statutory child protection system.⁷⁹ This report is discussed at 1.44.

2.16 Recognising that improvements are needed to the early intervention and prevention framework, FACS commenced its *Targeted Earlier Intervention Reform Program* in mid to late 2015. It is working with its clients, service providers, other government departments and related organisations to redesign the system so that it is more flexible, locally responsive, evidence based, adaptive and client centred.⁸⁰

⁷⁷ Department of Family and Community Services, *Targeted Earlier Intervention Programs: Sector Consultation Paper* (August 2015) <http://www.community.nsw.gov.au/__data/assets/pdf_file/0005/335165/CS_TIER_consultation_paper.pdf>, pp 13-14.

⁷⁸ Department of Family and Community Services, *Targeted Earlier Intervention Programs: Sector Consultation Paper* (August 2015) <http://www.community.nsw.gov.au/__data/assets/pdf_file/0005/335165/CS_TIER_consultation_paper.pdf>, pp 14-15.

⁷⁹ NSW Auditor-General, *Transferring out-of-home care to non-government organisations: Performance audit report for the Department of Family and Community Services*, September 2015, p 5.

⁸⁰ Department of Family and Community Services, *Targeted Earlier Intervention Program Reform*, <<https://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/targeted-earlier-intervention-reform>>

- 2.17** FACS released a consultation paper in August 2015 seeking feedback from service providers in the sector about what is working well in terms of targeted early intervention and what can be improved. In this document, FACS acknowledged the important role non-government organisations play in early intervention.⁸¹
- 2.18** In terms of its reform goals, FACS noted the importance of:
- creating a service system continuum grounded in evidence-based best practice, with measurable outcomes and substantial reductions in the factors that place children and families at risk of poor outcomes
 - targeting resources to those with the greatest needs
 - facilitating local decision making in the design and delivery of local services, to improve flexibility and effectiveness
 - ensuring clients are at the centre of the system.⁸²
- 2.19** The committee received positive feedback from inquiry participants about the direction of these reforms. The Association of Children’s Welfare Agencies said that these reforms provide an ‘opportunity for redesign of the targeted services provided to families’ and encouraged continued consultation with the sector on the reform agenda.⁸³ Similarly, Youth Action expressed the view that the reforms are an ‘important juncture in the ongoing provision of support for young people’.⁸⁴
- 2.20** However, there were some concerns raised in regards to funding changes under the reforms. Good Shepherd Australia New Zealand noted that although the reforms have shifted the focus to early intervention, the funding approach under the program ‘is causing great concern and uncertainty within the community sector’ due to the risk of organisations needing to make submissions for additional funding to fill the gaps, putting further strain on resources and capacity.⁸⁵ In addition, Ms Trish Doyle MP advised that services within her electorate fear that under the current reforms funding will be removed from already under-resourced organisations and be diverted to targeted services.⁸⁶
- 2.21** Ms Julie Hourigan Ruse, Chief Executive Officer, Fams, emphasised that the reform agenda will need a period of transition, given the funding changes that can affect services:

One of the outcomes that is being sought from that reform is to realign services to target those in the greatest area of need. Given that we have traditional funding arrangements, it will not happen easily overnight to pull money out of a district in central Sydney and move it to Bourke. That is because there are services that rely on a

⁸¹ Department of Family and Community Services, *Targeted Earlier Intervention Programs: Sector Consultation Paper* (August 2015) p 6, <http://www.community.nsw.gov.au/__data/assets/pdf_file/0005/335165/CS_TIER_consultation_paper.pdf>

⁸² Department of Family and Community Services, *Targeted Earlier Intervention Programs: Sector Consultation Paper* (August 2015) <http://www.community.nsw.gov.au/__data/assets/pdf_file/0005/335165/CS_TIER_consultation_paper.pdf>, pp 18-19.

⁸³ Submission 94, Association of Children’s Welfare Agencies, p 24.

⁸⁴ Submission 71, Youth Action, p 6.

⁸⁵ Submission 89, Good Shepherd Australia New Zealand, pp 17-18.

⁸⁶ Submission 90, Ms Trish Doyle MP, p 16.

combination of funding streams. To move money from one area to another would require a period of transition for services to either work out how they as current providers can continue to operate but operate in a different geography to expand their reach, or whether services say they are not going to be able to survive in this new world order and they need to transition to close, they need to transition clients so that we do not have people falling through gaps, and then money could be realigned.⁸⁷

- 2.22** Overall, Ms Hourigan Ruse voiced her support for the reforms, as they will ensure services are targeted to those most in need: ‘There can be no argument that when we have very vulnerable communities we need to be targeting services to those most in need, but in order to make those decisions we need very sound data about where the need is and what the need is’.⁸⁸

Barriers affecting access to early intervention services

- 2.23** Although the value of early intervention services was widely recognised, stakeholders identified a number of barriers which are affecting individuals’ engagement with such services. Firstly, there were concerns that some families may not engage with early intervention services provided by FACS due to the investigative and authoritative role the department has in child removal. Secondly, there were a number of concerns relating to funding and resource constraints for such services within the sector.

The tension between the department’s support and statutory functions

- 2.24** Under the current structure of the system, FACS plays a key role in both early intervention and the removal of children considered at risk of significant harm. However, a number of inquiry participants highlighted how the tension between these roles can affect whether vulnerable families, children and young people access support services.
- 2.25** The Law Society of New South Wales noted the potential conflict in FACS as the investigative and removal body and the key referrer to therapeutic services.⁸⁹ Likewise, the Aboriginal Child, Family and Community Care State Secretariat advised that given FACS’ role as the statutory body, there are increased challenges for the department to also deliver effective early intervention, family support and family reunification and restoration services, whilst at the same time maintaining its core function.⁹⁰
- 2.26** Seeking help from FACS when it has the authority to remove a child can prevent individuals from engaging with services. Ms Moo Baulch, Chief Executive Officer, Domestic Violence NSW, attributed this to an ‘entrenched fear of child protection, police and government intervention, which she noted ‘may prevent people from accessing services’, particularly

⁸⁷ Evidence, Ms Julie Hourigan Ruse, Chief Executive Officer, Fams, 26 September 2016, p 33.

⁸⁸ Evidence, Ms Hourigan Ruse, 26 September 2016, p 33.

⁸⁹ Submission 96, The Law Society of New South Wales, pp 3-4.

⁹⁰ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 6.

certain communities.⁹¹ Aboriginal and Torres Strait Islander peoples were noted by the Law Society of NSW to fear engagement and cooperation with FACS, given ‘historical distrust’.⁹²

- 2.27** Conversely, Ms Deidre Cheers, Chief Executive Officer of Barnardos Australia, provided evidence about the benefits of the non-government sector working with families, given the trust and rapport that can be developed because these services lack the level of authority that FACS has:

The non-government sector, by and large, enjoys the trust of families because they know and we know that we do not have the ability to take anyone’s child away. That is an important distinction. It is a reason for us all to work closely together and to trust each other, as well as for the families to trust the agencies.⁹³

- 2.28** Ms Cheers highlighted that the exercise of ‘coercive’ power does not necessarily produce desired outcomes for FACS, whereas the building of relationships and rapport can have a more positive effect:

The relationship, whether with a statutory worker or a non-statutory worker, is incredibly important, but the ability to take a legal application to the Children’s Court is definitely a coercive power. Barnardos’ experience would be that when it is used coercive[ly] it does not get the best out of people. It is always better to work on the relationship.⁹⁴

Funding and resource constraints

- 2.29** Funding and resource constraints were noted to be affecting the availability of early intervention services. Overall, there was a strong consensus that the sector would benefit from additional funding in this area, given high demand, long wait lists and a lack of services in rural, regional and remote areas. Existing funding and contractual arrangements were also argued to be an issue, with short contracts suggested to be affecting the capacity of services to provide effective early intervention work with vulnerable families.

The need for greater investment

- 2.30** The committee received overwhelming evidence on the lack of resources and funding for prevention and early intervention services, with many inquiry participants calling for additional investment in this area.⁹⁵

⁹¹ Evidence, Ms Moo Baulch, Chief Executive Officer, Domestic Violence NSW, 26 September 2016, p 22.

⁹² Submission 96, The Law Society of New South Wales, pp 3-4.

⁹³ Evidence, Ms Deidre Cheers, Chief Executive Officer, Barnardos Australia, 16 August 2016, p 5.

⁹⁴ Evidence, Ms Cheers, 16 August 2016, p 5.

⁹⁵ Submission 43, Women’s Domestic Violence Court Advocacy Service NSW, pp 10-12; Submission 51, Cara House, pp 9-10, 16 and 18; Submission 58, Anglicare Sydney, p 9; Submission 64, Fams, p 10; Submission 68, NSW Council of Social Service, pp 6-7; Submission 71, Youth Action, pp 8-9; Submission 73, Women’s Legal Service NSW, pp 2-3; Submission 76, Uniting, pp 33-35; Submission 77, Nepean Community and Neighbourhood Services, p 3; Submission 89, Good Shepherd Australia New Zealand, p 10; Submission 90, Ms Trish Doyle MP, pp 15-17; Submission

- 2.31** FACS acknowledged the issues around resourcing and funding, with Ms Deidre Mulkerin, Deputy Secretary of the Northern Cluster, questioning whether the department currently has ‘the right emphasis, the right focus and the right investment’. She suggested that much more investment in early intervention to prevent any interaction with a statutory service would be a better outcome for families and children.⁹⁶
- 2.32** In addition, Ms Mulkerin said that there needs to be greater consideration of what works in early intervention – that is evidence based early intervention programs and services. She contended that this information should be used to inform the allocation of resources, along with people’s experiences of the system, as this can help to ‘lead and drive’ decisions on resourcing programs that work.⁹⁷
- 2.33** Mr Steve Turner, Assistant General-Secretary, Public Service Association of New South Wales, said that one of the main issues currently in the system is that there is not enough resources to respond to families during their first contact with the child protection system. Highlighting how this can influence family outcomes, he explained that ‘the earlier you visit and intervene, the more chance you have of working with the family and resolving issues ... to keep the family together’.⁹⁸
- 2.34** Several non-government organisations like Youth Action, the Women’s Legal Service NSW and the Council of Social Services NSW also emphasised that there is a lack of resources for early intervention and prevention, with existing resources not able to meet current levels of need.⁹⁹
- 2.35** The Women’s Domestic Violence Court Advocacy Service NSW suggested that non-government organisations in this sector are ‘significantly underfunded’ and given the benefits of early intervention and support for families advised that it is ‘essential’ that these services are provided with ‘long-term, ample funding’.¹⁰⁰
- 2.36** Others also highlighted the inadequacy of funding in this area, including Fams and Uniting who called for a focus on resourcing in early intervention as a matter of priority.¹⁰¹ Similarly, the Aboriginal Child, Family and Community Care State Secretariat indicated that overall there needs to be more focus on early intervention and support ‘that seek to divert children and families from more intensive interventions such as child removal and out of home care’.¹⁰²

92, The Benevolent Society, p 8; Evidence, Ms Hourigan Ruse, 26 September 2016, p 31; Evidence, Judge Peter Johnstone, President, Children’s Court NSW, 27 September 2016, p 42.

⁹⁶ Evidence, Ms Deidre Mulkerin, Deputy Secretary, Northern Cluster, Operations, Department of Family and Community Services, 27 September 2016, p 67.

⁹⁷ Evidence, Ms Mulkerin, 27 September 2016, p 78.

⁹⁸ Evidence, Mr Steve Turner, Assistant General-Secretary, Public Service Association of New South Wales, 27 September 2016, p 25.

⁹⁹ Submission 71, Youth Action, p 29; Submission 73, Women’s Legal Service NSW, p 20; Submission 68, NSW Council of Social Service, pp 6-7.

¹⁰⁰ Submission 43, Women’s Domestic Violence Court Advocacy Service NSW, pp 7, 10-11.

¹⁰¹ Submission 64, Fams, pp 7-9; Submission 76, Uniting, pp 33-35.

¹⁰² Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 11.

- 2.37** A number of inquiry participants highlighted particular cohorts of vulnerable children, young people and families that need increased funding. For example, the NSW Council of Social Service suggested that funding be targeted to groups experiencing the greatest level of need, such as Aboriginal and Torres Strait Islander peoples, and regions that have historically received limited funds.¹⁰³ Southern Youth and Family Services indicated that services are needed urgently to target young people between the ages of 12 to 16 years old who are unable to return home ‘to prevent and reduce the number of children in this cohort becoming homeless and living itinerant lifestyles characterised by service system neglect’.¹⁰⁴
- 2.38** Fams explained that any additional investment in early intervention services would ‘give the sector the best chance of achieving a long term sustainable reduction [in] the number of substantiated ROSH [risk of significant harm] reports’.¹⁰⁵ In addition, the Women’s Legal Service NSW expressed the view that ‘there is a moral, social and economic imperative’ for investing in such services and programs.¹⁰⁶
- 2.39** A number of inquiry participants felt that funding is currently geared more towards the out of home care sector rather than early intervention services, with this not necessarily helping to prevent the contact vulnerable children, young people and families have with the child protection system.
- 2.40** Uniting said that ‘the majority of funding is for programs which provide support for families who have already had contact with the child support protection system’.¹⁰⁷ The Benevolent Society also noted the heightened focus of funding in the out of home care area and commented that as the number of children taken into care has increased each year the funding for prevention and early intervention has declined over time.¹⁰⁸ The NSW Council of Social Service also suggested that New South Wales is currently spending significantly more on child protection and out of home care than any other state or territory in Australia.¹⁰⁹
- 2.41** Mr Andrew McCallum, Chief Executive Officer, Association of Children’s Welfare Agencies, and Ms Hourigan Ruse, Chief Executive Officer, Fams, advised that to improve the sustainability of the system, concurrent funding of both the out of home care system and early intervention is required, with Mr McCallum suggesting a double funded approach:

The reality is, if you are ever going to actually be dinkum about putting the resources into both providing the best service for kids who are in care and trying to have a realistic diversionary process, you have to double fund the system for quite a period of time because you cannot dismantle one without creating the other. You have to have some parallel processes happening here.¹¹⁰

¹⁰³ Submission 68, NSW Council of Social Service, pp 6-7.

¹⁰⁴ Submission 91, Southern Youth and Family Services, p 22.

¹⁰⁵ Submission 64, Fams, p 10.

¹⁰⁶ Submission 73, Women’s Legal Service NSW, p 21.

¹⁰⁷ Submission 76, Uniting, p 33.

¹⁰⁸ Submission 92, The Benevolent Society, p 8.

¹⁰⁹ Submission 68, NSW Council of Social Service, p 3.

¹¹⁰ Evidence, Mr Andrew McCallum, Chief Executive Officer, Association of Children’s Welfare Agencies, 27 September 2016, p 55; Evidence, Ms Hourigan Ruse, 26 September 2016, pp 34-35.

- 2.42** Mr McCallum added that this approach may not be cheap, but is the only way in the long term to reach a good outcome. He said that until the financial priorities are adjusted ‘we will continue to grow a system that is unsustainable and not in the best interests of a lot of children’.¹¹¹
- 2.43** The Aboriginal Child, Family and Community Care State Secretariat also recommended a surge of funding in the ‘short to medium term to boost the system’s capacity to intervene as early as possible and prevent entries into care’. It went on to say that this initial investment will create future savings due to the reduction of the rate of children entering the system, who once entered will cost a much higher rate over time for care.¹¹²
- 2.44** Youth Action claimed that although a shift of focus by the NSW Government on prevention and early intervention seems to have occurred this has not been backed up by the funding, with the most recent budget announcement for 2016-17 indicating no ‘significant shift in funding to early intervention, rather a reduction’.¹¹³

Lack of services in rural, regional and remote areas

- 2.45** Inquiry participants suggested that in rural and regional areas there are too few services, and that at times these services lack the same quality and funding of services in metropolitan areas.
- 2.46** The Australian Services Union advised that families in rural, regional and remote areas are often a greater distance from support services, as well as childcare and other community services. It also said that less job opportunities and inadequate public transport ‘can increase the vulnerability of families’ to family violence. It provided a number of compounding factors that make it difficult for families in these areas to access services, including:
- geographic isolation
 - lack of public transport
 - lack of telecommunication technology and infrastructure
 - lack of crisis accommodation and other services
 - lack of financial support
 - fears of breaches of confidentiality if family violence is disclosed.¹¹⁴
- 2.47** Women’s Legal Service NSW, MacKillop Family Services and Fams all reported longer waiting lists in regional locations with a high density of need. Further, the Public Service Association of NSW indicated that although the needs of children are identified ‘we do not have a hope in hell of providing what they need, particularly in regional locales’.¹¹⁵

¹¹¹ Evidence, Mr McCallum, 27 September 2016, p 55.

¹¹² Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 11.

¹¹³ Submission 71, Youth Action, p 36.

¹¹⁴ Submission 78, Australian Services Union, p 28.

¹¹⁵ Submission 66, Public Service Association, p 27; Answers to supplementary questions, Women’s Legal Service NSW, 14 September 2016, pp 1-2; Submission 86, MacKillop Family Services, p 12; Evidence, Ms Hourigan Ruse, 26 September 2016, p 33.

- 2.48** Uniting and Ms Suellen Tighe, Grandmothers Against Removals, both commented on the lack of community support and services particularly for Aboriginal and Torres Strait Islander people in regional areas.¹¹⁶ Further, the Catholic Education Commission NSW advised that in regional areas there is a shortage of Aboriginal case workers and culturally appropriate services and ‘a lack of engagement of intervention agencies with the broader Aboriginal community’.¹¹⁷ These issues are explored further in chapter 7.
- 2.49** When questioned on the current barriers to providing more effective early intervention services, Ms Kate Alexander, Executive Director, Office of the Senior Practitioner, FACS, advised that in her opinion the two biggest obstacles are ‘demographic challenges’ and the quality of staff doing the work, given ‘it is incredibly hard and skilful work’.¹¹⁸
- 2.50** A number of suggestions were put forward to improve access and the quality of services in regional and remote areas. Both Uniting and MacKillop Family Services recommended additional funding to services in regional and rural areas to address the geographical gaps and ensure families living in these areas receive the same level of services and supports as those in metropolitan locations.¹¹⁹
- 2.51** The Australian Services Union provided a number of additional recommendations, including:
- additional funding for community transport services that reflects the distances and difficulties of transportation in these areas
 - additional support for foster carers, out of home carers and workers in these communities, including support for networking between government and non-government organisations
 - increased opportunities for foster carers, out of home carers and workers to undertake regular training and upskilling.¹²⁰

The nature of existing funding arrangements

- 2.52** Evidence was also received about the current system’s approach to contractual and funding arrangements and the barriers this has created in providing appropriate responses to those who need assistance within the child protection system.
- 2.53** Mr McCallum, Chief Executive Officer, Association of Children’s Welfare Agencies, emphasised that ‘we have to get contracting right’ and raised several issues with the committee around the current contract arrangements, including it being output focused rather than outcome focused and lacking of a quality framework. He also raised concerns about the short length of contracting periods and the competitive environment amongst services.¹²¹

¹¹⁶ Submission 76, Uniting, p 40; Evidence, Ms Suellen Tighe, Grandmothers Against Removals NSW, 16 August 2016, p 36.

¹¹⁷ Submission 67, Catholic Education Commission NSW, p 24.

¹¹⁸ Evidence, Ms Kate Alexander, Executive Director, Office of the Senior Practitioner, Department of Family and Community Services, 27 September 2016, p 78.

¹¹⁹ Submission 76, Uniting, p 8; Submission 86, MacKillop Family Services, p 12.

¹²⁰ Submission 78, Australian Services Union, pp 28-29.

¹²¹ Evidence, Mr McCallum, 27 September 2016, pp 51-54

- 2.54** When questioned further on what should be an appropriate length of contracting period, Mr McCallum suggested that contracts should be for a period between three and five years, preferably the latter, given the time it can take to build the appropriate infrastructure and skilled workforce:

If you are going to get organisations to invest in the infrastructure necessary to provide these services—and people have to remember that this is not just about money for the protection of kids; organisations have to be quality assured in their own way. They have to have quality buildings, they have to have quality staff training, they have to have quality staff and they have to have quality infrastructure. You cannot actually just build that overnight and then dismantle it if you lose your funding in 12 months' time.¹²²

- 2.55** Ms Baulch, Domestic Violence NSW, agreed that there should be longer contracting periods, stating that the government, in developing a sustainable, well-resourced sector, needs 'to commit to long-term, dedicated funding for specialist family and domestic violence services for minimum 5 year contract periods'. Ms Baulch suggested that the current 6 to 12 month funding contracts are insufficient to bring about effective change.¹²³

- 2.56** Ms Natalie Lang, Branch Secretary, Australian Services Union, spoke about the nature of competitive tendering and how it 'is incredibly destructive for the community sector and for the quest for best practice and best outcomes for children and young people'.¹²⁴ Ms Lang also emphasised that the insecure nature of funding arrangements undermine what could be achieved with the current allocation of funding across the system.¹²⁵

- 2.57** Ms Lang explained how organisations in the community sector feel the pressure of continually writing tenders to secure funding for services. She also highlighted how organisations are affected by roll-over funding, which means they often do not find out until very late in the contract whether or not funding has been secured for another period. Stressing how this can affect planning and service delivery, Ms Lang stated:

That causes significant issues for the community sector. It affects their ability to do planning in terms of service delivery, investment in work with the community and having certainty for their employees. It is very difficult to attract and retain skilled employees that we know are working in the community sector if those employees are not guaranteed job security or even security around their entitlements. This is a largely female dominated workforce who do not have portable long service leave currently in New South Wales. When you are talking about short-term funding contracts, a lot of these workers are prejudiced in their later years, and in their retirement savings, because of arrangements like that.¹²⁶

Resource and funding impacts on eligibility for services

- 2.58** Insufficient funding to meet high levels of need was also argued to be influencing eligibility requirements for programs, with services prioritised for families that are considered high risk

¹²² Evidence, Mr McCallum, 27 September 2016, p 53.

¹²³ Evidence, Ms Baulch, 26 September 2016, pp 26-27.

¹²⁴ Evidence, Ms Natalie Lang, Branch Secretary, Australian Services Union, 26 September 2016, p 42.

¹²⁵ Evidence, Ms Lang, 26 September 2016, pp 44-45.

¹²⁶ Evidence, Ms Lang, 26 September 2016, p 42.

and/or complex. Families that do not fall into these categories were suggested to be missing out on the benefits of ‘early intervention’.

- 2.59** The Council of Social Service of NSW reported that when some families attempt to access support services they are finding they are not eligible or have to be placed on a long wait list or referred to another services. It suggested there is a gap in the system for families who are trying to access preventative support services in the pre-crisis stage.¹²⁷
- 2.60** Similarly, Uniting raised a concern that programs already funded to provide early intervention services are increasingly working on high-risk, complex cases and providing a level of support above what they are funded for. It indicated that these programs were ‘no longer providing genuine early intervention’ and in turn had created a gap in care for the families with a lower level of need, where opportunities to intervene early to reduce the risk are being missed.¹²⁸
- 2.61** The Benevolent Society suggested that service providers are restricted in providing ‘individualised case management and targeted support to parents’ who are pro-active in trying to seek support and assistance themselves following removal of their children. Often only generalised support is offered which may not provide adequate support to address the issues within the family environment.¹²⁹
- 2.62** The Family Inclusion Strategies in the Hunter suggested that there is ‘role confusion’ in the sector in relation to entry criteria for some parenting programs and low risk support services. It argued that some services ‘exclude the very families that need them the most’, including families who have had children previously removed or who are deemed to be at high risk.¹³⁰
- 2.63** Youth Action also indicated that in general many early intervention services felt that they worked more intensively than contracted with high needs young people who were not receiving an adequate statutory response, rather than providing the early intervention work for which they were originally contracted. It suggested that this was due to:
- the nature and complexity of relationship-based work
 - the limited referral options
 - receiving referrals for complex clients, rather than early intervention clients
 - services providing support to young people who have been removed from risky environments, with no statutory response and significant entrenched issues.¹³¹
- 2.64** The Women’s Domestic Violence Court Advocacy Service NSW suggested that FACS ‘be adequately resourced and prioritised to support all high risk cases, allowing non-government agencies to be able to support medium, low risk and early intervention cases’.¹³²

¹²⁷ Submission 68, NSW Council of Social Service, pp 6-7.

¹²⁸ Submission 76, Uniting, pp 34-35.

¹²⁹ Submission 92, The Benevolent Society, p 7.

¹³⁰ Submission 102, Family Inclusion Strategies in the Hunter, p 7.

¹³¹ Submission 71, Youth Action, p 23.

¹³² Submission 43, Women’s Domestic Violence Court Advocacy Service NSW, p 12.

The future of prevention and early intervention services

2.65 Although FACS is currently undertaking its *Targeted Early Intervention Reform Program* (discussed at 2.16), this section will outline a number of key attributes which stakeholders suggested are important in ensuring effective early intervention practice. It also explores the need to target services to particularly vulnerable communities, including Aboriginal and Torres Strait Islander peoples and families that have parents or children with a disability.

The timeliness of ‘early intervention’

2.66 A number of stakeholders emphasised the importance of ensuring that intervention and support services are provided early on, before problems escalate. Ms Jackie Palmer, Executive Manager, Out of Home Care Services, Anglicare Sydney, asserted that ‘early intervention should be happening earlier’ and that currently intervention is occurring too late so it is ‘not really early anymore’.¹³³

2.67 Ms Dylan Kennedy, a caseworker with The Benevolent Society, advised the committee that she often sees cases where intervention is provided many years after concerns have arisen, by which time such issues may have become entrenched within the family. She noted the additional challenges this can present for a caseworker trying to work with family who ‘have been living that experience for...years without any support or help’.¹³⁴

2.68 Ms Kennedy suggested that caseworkers should be building up each families own support structures, and linking them to universal services, to ensure they are less likely to fall back on FACS or related intervention services ‘when they experience stress or another crisis’.¹³⁵

2.69 Ms Maree Walk, Deputy Secretary of Programs and Service Design with FACS, suggested that there should be a focus on the first thousand days to ‘really start to do some generational, turn-the-curve work’. She said that if all services worked hard to keep the child bonded at home at these early stages ‘we would really turn the curve’.¹³⁶

2.70 Mr McCallum suggested an even earlier opportunity to intervene - at the point of children leaving care, given data shows that the likelihood of these individuals having contact with the child protection system regarding their own kids is greater:

If we are talking about getting on at the ground floor with the next generation of kids who are likely to come into the system, and we know they will be kids who had parents in the system, we need to get to them early and we need to make sure that they have a lifelong learning experience that we can track them through.¹³⁷

¹³³ Evidence, Ms Jackie Palmer, Executive Manager, Out of Home Care Services, Anglicare Sydney, 16 August 2016, p 62.

¹³⁴ Evidence, Ms Dylan Kennedy, Team Leader, Brighter Futures Program, The Benevolent Society, 27 September 2016, p 14.

¹³⁵ Evidence, Ms Kennedy, 27 September 2016, p 18.

¹³⁶ Evidence, Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services, 27 September 2016, p 78.

¹³⁷ Evidence, Mr McCallum, 27 September 2016, p 51.

- 2.71** To intervene early and effectively, some stakeholders suggested using soft entry points within the system, for example, playgroups. Ms Hourigan Ruse, from Fams, suggested that these ‘soft entry points’ help to engage families that would otherwise be missed in the system.¹³⁸
- 2.72** The Nepean Community and Neighbourhood Services also emphasised the importance of families having access to and building relationships with service providers outside their case work, through activities such as playgroups and tutoring, given they can ‘support participation in the wider community life’.¹³⁹
- 2.73** The Australian Services Union, when discussing the benefits of playgroups, noted that they provide a ‘soft entry opportunity for referral and crisis intervention where necessary’.¹⁴⁰ Soft entry service provision was also argued to be critical in terms of child protection and domestic violence matters. One member of Domestic Violence NSW commented that ‘soft entry points are crucial because of the isolating nature’ of domestic and family violence to women and children.¹⁴¹

A holistic, client centred and flexible system

- 2.74** Several inquiry participants described the qualities of effective early intervention practice, and discussed how the service system should be structured to better help vulnerable children, young people and families.
- 2.75** Fams said that the ‘service system should be built around the safety, health and wellbeing of children, young people and families’, with the importance of prevention and early intervention being a key focus.¹⁴²
- 2.76** Women’s Legal Service NSW suggested that effective early intervention ‘needs to be client centred, strength based, trauma informed, domestic violence informed and culturally responsive’.¹⁴³ Barnardos Australia indicated that the service system also needs to be ‘comprehensive, responsive and flexible’, to enable an adequate response and implementation of early interventions.¹⁴⁴
- 2.77** A number of inquiry participants spoke about the support systems that need to be in place to prevent families coming in to contact with the system. For example, Ms Natalie Lang, Branch Secretary, Australian Services Union, and Family Inclusion Strategies in the Hunter, both strongly emphasised the need for investment in a holistic support system.¹⁴⁵

¹³⁸ Evidence, Ms Hourigan Ruse, 26 September 2016, p 35.

¹³⁹ Submission 77, Nepean Community and Neighbourhood Services, p 3.

¹⁴⁰ Submission 78, Australian Services Union, p 11.

¹⁴¹ Submission 72, Domestic Violence NSW, p 8.

¹⁴² Submission 64, Fams, pp 7-9.

¹⁴³ Answers to supplementary questions, Women’s Legal Service NSW, p 1.

¹⁴⁴ Submission 57, Barnardos Australia, p 4.

¹⁴⁵ Evidence, Ms Lang, 26 September 2016, pp 40-41; Submission 102, Family Inclusion Strategies in the Hunter, pp 7-10.

- 2.78** In addition, Family Inclusion Strategies in the Hunter noted evidence from overseas where families who have been provided with ‘a support person are more likely to engage successfully with statutory agencies’ and in turn achieve better outcomes for the family and their children.¹⁴⁶ In relation to this, Ms Liz Snell, Law Reform and Policy Coordinator, Women’s Legal Service NSW, suggested families be provided with a support person who has been through the process to advocate on their behalf, as well as free legal advice and access to general support services and social workers.¹⁴⁷

Focusing support on higher needs groups

- 2.79** The committee received evidence about the importance of focusing support on groups that are particularly vulnerable and disadvantaged within the child protection system, including Aboriginal and Torres Strait Islander peoples and families with disability.

Aboriginal and Torres Strait Islander peoples

- 2.80** Several inquiry participants raised concerns about the lack of early intervention and preventative support provided to Aboriginal and Torres Strait Islander families and communities, including the Aboriginal Child, Family and Community Care State Secretariat and MacKillop Family Services.¹⁴⁸ Ms Tighe, Grandmothers Against Removals, also told the committee that there is not enough early intervention services for Aboriginal people and that currently ‘it is just a knee-jerk reaction of going in and removing kids’.¹⁴⁹
- 2.81** MacKillop Family Services emphasised that to ‘address entrenched discrimination, poverty and marginalisation’ and to solve the over-representation of Aboriginal children and young people in the system there needs to be more than just reform but a greater investment in early intervention services.¹⁵⁰
- 2.82** The Law Society of New South Wales highlighted a ‘historical distrust’ between Aboriginal and Torres Strait Islander people and FACS that was causing families to fear cooperation when FACS does intervene.¹⁵¹
- 2.83** Similarly, Ms Snell explained how the past history of forced removals and the trans-generational trauma amongst Aboriginal communities has impacted Aboriginal families, including the impact on parenting skills which have contributed to the ‘cycle of removal’ continuing. She explained how important it is for strength-based parenting and mentoring programs to be easily accessible, as ‘through supporting parents you are also supporting children’.¹⁵²

¹⁴⁶ Submission 102, Family Inclusion Strategies in the Hunter, p 9.

¹⁴⁷ Evidence, Ms Liz Snell, Law Reform and Policy Coordinator, Women’s Legal Service NSW, 16 August 2016, p 12.

¹⁴⁸ Answers to questions on notice, Aboriginal Child, Family and Community Care State Secretariat, 27 September 2016, p 2; Submission 86, MacKillop Family Services, p 18.

¹⁴⁹ Evidence, Ms Tighe, 16 August 2016, p 29.

¹⁵⁰ Submission 86, MacKillop Family Services, p 18.

¹⁵¹ Submission 96, The Law Society of New South Wales, pp 3-4.

¹⁵² Evidence, Ms Snell, 16 August 2016, p 11.

- 2.84** In relation to what is currently available for Aboriginal families and communities, the Ombudsman provided a number of examples of Aboriginal-specific programs delivered by FACS or non-government organisations, such as Aboriginal Child and Family Centres and the Protecting Aboriginal Children Together Program. The Ombudsman explained that some of these programs were implemented following the Wood Report (discussed at 1.26).¹⁵³
- 2.85** Yet, despite some specific Aboriginal targeted programs being available, there were concerns about referrals to such programs needing to occur via FACS, which is a problem given the historical lack of trust and engagement Aboriginal people have for government services.
- 2.86** Ms Tighe stressed that the early intervention services that are available can only be entered into via a referral by FACS: ‘You have to be on the books of FACS to access this service’. She added that this prevents individuals from being proactive and seeking help and assistance via other services.¹⁵⁴
- 2.87** The Law Society of New South Wales also indicated that although these services do exist, access is restricted due to FACS often only making referrals once the children have been removed and not before removal. It also advised that given the historical distrust ‘the effectiveness of this service is significantly reduced by removing the ability of Indigenous-community controlled organisations to make referrals’.¹⁵⁵
- 2.88** Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat, also raised concerns about whether caseworkers were following appropriate referral pathways:
- At times the evidence would show us that referral pathways to the non-government sector tend to be blocked by local community service centres and, therefore, families do not get the support that they need at that point in time...It does leave you wondering about the kinds of supports that should be put in place for Aboriginal people and families and whether caseworkers have the ability to work through or navigate that.¹⁵⁶
- 2.89** As also outlined later in this report, in chapter 7, the committee received a number of recommendations focused on addressing the lack of early intervention and preventative support for Aboriginal and Torres Strait Islander families and communities. In particular, the Aboriginal Child, Family and Community State Secretariat recommended:
- additional investment in Aboriginal programs, developed by Aboriginal people for Aboriginal families and communities
 - implementation of an Aboriginal strategy for delivering holistic Aboriginal child and family services across New South Wales

¹⁵³ Submission 74, Ombudsman NSW, pp 42-44.

¹⁵⁴ Evidence, Ms Tighe, 16 August 2016, p 36.

¹⁵⁵ Submission 96, The Law Society of New South Wales, pp 3-4.

¹⁵⁶ Evidence, Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat, 16 August 2016, pp 33-34.

- implementation of a reinvestment approach across Aboriginal organisations to utilise available funds in the out of home care system for early intervention services.¹⁵⁷

2.90 The Australian Services Union also called for additional investment in culturally appropriate, Aboriginal community controlled early intervention services.¹⁵⁸ The Law Society of New South Wales suggested that there also be meaningful and collaborative engagement with Aboriginal service providers on early intervention services.¹⁵⁹

2.91 The Aboriginal Child, Family and Community State Secretariat noted that by focusing on investment in early intervention, Aboriginal families and communities will be diverted away from the statutory system and that this will ‘drive significant future savings’.¹⁶⁰

Families with disability

2.92 Similar to the overrepresentation of Aboriginal children and young people in the child protection system, the committee received evidence that children, young people and parents with disability are also overrepresented.¹⁶¹

2.93 The Australian Services Union noted that families with disability are at a ‘substantially higher risk of violence and neglect than those who do not have a disability’ and this is compounded when other risks exist, such as poverty, homelessness, isolation and a ‘lack of access to community based support services’.¹⁶²

2.94 Several inquiry participants commented on the lack of access to appropriate support for such families. Ms Lisa Townshend, New South Wales State Coordinator, CREATE Foundation, told the committee that despite being recognised as a vulnerable group in the child protection system ‘there are still various barriers to ensuring they receive the services that they need’.¹⁶³

2.95 The National Ethnic Disability Alliance expressed the opinion that this inability to access appropriate early intervention services leads to a ‘greater chance of these children being taken into care’.¹⁶⁴

2.96 In addition, Uniting advised that families with disability often have little to no access to informal supports and community supports in times of need, such as ‘housing, health, drug and alcohol therapy and domestic violence support’.¹⁶⁵

¹⁵⁷ Answers to questions on notice, Aboriginal Child, Family and Community Care State Secretariat, p 2.

¹⁵⁸ Submission 78, Australian Services Union, p 24.

¹⁵⁹ Submission 96, The Law Society of New South Wales, pp 3-4.

¹⁶⁰ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 22.

¹⁶¹ Submission 15, CREATE Foundation, p 11; Submission 105, National Ethnic Disability Alliance, p 20; Submission 81, Professor Gwynnyth Llewellyn, pp 4-5; Submission 74, Ombudsman NSW, p 10.

¹⁶² Submission 78, Australian Services Union, pp 26-27.

¹⁶³ Evidence, Ms Lisa Townshend, New South Wales State Coordinator, CREATE Foundation, 16 Augusts 2016, p 51.

¹⁶⁴ Submission 105, National Ethnic Disability Alliance, p 20.

¹⁶⁵ Submission 76, Uniting, pp 39-40.

2.97 Similar to the Aboriginal and Torres Strait Islander population, the Intellectual Disability Rights Service advised that FACS do not offer appropriate early intervention services to families with disability, but instead offer this once the child(ren) is removed, resulting in increased child removal outcomes:

This means that families are given little time to build their parenting capacity, leading to high rates of child removal that could potentially be lowered by a more pro-active approach to early intervention.¹⁶⁶

2.98 The Intellectual Disability Rights Service said that training is needed for caseworkers to assist with communicating and effectively intervening with families with disability at an early stage.¹⁶⁷ Uniting supported this, advising that there is 'insufficient skilled professionals' who are able to support 'vulnerable and high-risk families with disability'.¹⁶⁸

2.99 In relation to the available support services for children and families with disability, Uniting raised concerns that the current programs, which provide crucial support, are at risk of losing funding under the National Disability Insurance Scheme and this would result in a 'greater risk of contact with the child protection system'.¹⁶⁹

2.100 The Intellectual Disability Rights Service suggested that many of the 'current early intervention programs are not adjusted for parents with intellectual disability' and often a failure of these parents to participate is seen by FACS as an inability to learn new skills, leading to the justification of child removal. It went on to suggest modification of disability-specific and mainstream early intervention services to cater to families with disability, with support provided for group training and follow up support provided following the program.¹⁷⁰

2.101 Recommendations put forward to the committee included funding for additional community based early intervention programs and support services for children, young people and families with disability.¹⁷¹ Others included the recruitment of specialists and training of existing caseworkers on the communication and intervention appropriate for families with disability.¹⁷²

Committee comment

2.102 The committee recognises that prevention and early intervention services are vital to supporting vulnerable children, young people and families. Not only do such services allow child protection concerns to be addressed early, they can help prevent serious issues from escalating or becoming entrenched. Support services may also help families to stay together,

¹⁶⁶ Submission 88, Intellectual Disability Rights Service, pp 2-3.

¹⁶⁷ Submission 88, Intellectual Disability Rights Service, pp 2-3.

¹⁶⁸ Submission 76, Uniting, pp 39-40.

¹⁶⁹ Submission 76, Uniting, pp 39-40.

¹⁷⁰ Submission 88, Intellectual Disability Rights Service, pp 8-9.

¹⁷¹ Submission 78, Australian Services Union, pp 26-27; Submission 76, Uniting, pp 39-40; Submission 81, Professor Gwynnyth Llewellyn, pp 4-5; Submission 15, CREATE Foundation, p 11.

¹⁷² Submission 78, Australian Services Union, p 27; Submission 88, Intellectual Disability Rights Service, pp 2-3 and 6; Submission 105, National Ethnic Disability Alliance, p 29.

which can help to avoid the need for children to be removed from their families in certain situations.

- 2.103** Given this, we acknowledge that early intervention services can deliver positive outcomes for both families and communities, as well as long term savings for the government. We understand the difference such services can make to those most in need, and we support the government maintaining a strong and continued focus, commitment and investment in this area.
- 2.104** The committee believes that greater investment is needed in evidence based early intervention services and programs. While a significant amount of funding must be allocated towards the out of home care sector, as outlined in chapter 5, so too must there be significant investment in services and programs that help support vulnerable children, young people and families before they are drawn into the child protection system. It was a repeated theme in submissions the committee received that the system should be focused on keeping families together, helping families at the earliest stages to resolve troubles and keeping children safe in their homes.
- 2.105** Unfortunately though, it is clear that a number of prevention and early intervention services in the sector are feeling pressure. Many are trying to meet high demands placed on their services, in the face of limited resources and funding. We acknowledge that this is impacting on the capacity of many organisations to deliver effective services, which in turn is affecting whether or not families are able to access the support they vitally need, particularly in the pre-crisis or preventative stages.
- 2.106** The list of FACS early intervention services at paragraph 2.3 of this report, each of which has limited scope in terms of the families and children they can access, regions where they can operate, times they will operate for and outcomes they are designed to achieve, is evidence of how piecemeal early intervention programs are in New South Wales. That piecemeal approach is clearly not addressing the systemic need for early intervention in child protection.
- 2.107** Long wait lists and a lack of services in rural, regional or remote areas is also affecting access to prevention and early intervention services. High risk and complex cases are often being prioritised, which is leaving many who are trying to be pro-active turned away. The value of early intervention services lies in being able to work with families early on, before a problem starts or escalates. The committee is concerned by the fact that this may not always be possible due to funding and resource constraints. Clearly, if more vulnerable children and families had access to effective support services early, the chances of a child being removed would be reduced.
- 2.108** The committee is also concerned about the impact of short term funding arrangements on the capacity of services to undertake effective early intervention work. Longer contract periods will help services to plan more effectively and build stronger relationships with clients, which is why we would support funding contracts for such services to be provided for a minimum of five years. We must move away from short contracts that fail to truly allow a service to deliver effective outcomes for children and families. Therefore, the committee recommends that the NSW Government ensure that future funding contracts for evidence based prevention and early intervention services are provided for a minimum of five years, provided that the contracts incorporate specific termination provisions that may be activated if key performance indicators, incorporated into the contract, are not achieved.

Recommendation 1

That the NSW Government ensure that future funding contracts for evidence based prevention and early intervention services are provided for a minimum of five years, provided that the contracts incorporate specific termination provisions that may be activated if key performance indicators, incorporated into the contract, are not achieved.

- 2.109** The committee also acknowledges that there needs to be additional and better services targeted towards vulnerable groups in the community, including families with disability and Aboriginal and Torres Strait Islander families. Both of these groups are overrepresented within the child protection system, which is troubling to the committee given that many of these families simply need greater support.
- 2.110** Given this, we believe that there needs to be a greater focus on developing more initiatives and programs that are targeted towards helping these vulnerable groups. This needs to be done in consultation with key stakeholders in the sector, so as to ensure that such programs suitably meet the needs of those they are trying to help.
- 2.111** Especially for Aboriginal communities the historical and ongoing distrust with FACS (or as almost all Aboriginal witnesses still call it 'DOCS') means that simply rolling out additional caseworkers will almost certainly fail to deliver results. The ground breaking work of the Grandmothers Against Removals who are focused on far greater levels of Aboriginal involvement and Aboriginal self-determination in the child protection system sets out the most hopeful path yet for reducing Aboriginal child removals and keeping Aboriginal children safe in their extended kinship structures and on their traditional country. We will address this further in chapter 7 of the report.
- 2.112** Of course it is not just Aboriginal communities that respond to FACS officers and caseworkers with distrust and reticence. It is an unmistakable fact that many families will oppose having any involvement with FACS for fear that once they disclose their problems to a FACS worker this will be used as evidence in support of child removal. For this reason innovative solutions are needed to access families in need of early intervention. Just spending more money on the traditional case-worker model is unlikely to deliver the results needed. Part of the answer may well lie with innovative co-design approaches such as those considered in Chapter 9 of this report.
- 2.113** Overall, the committee recognises that prevention and early intervention services are vital in supporting vulnerable children, young people and families. More broadly, the benefits delivered by these services to the community, economy and government cannot be underestimated. Therefore, the committee recommends that the NSW Government provide a specific one off injection of additional funding for evidence based prevention and early intervention services, including targeted client services and programs that operate in regional, rural and remote areas.
- 2.114** The focus must be on expanding evidence based and cost effective services and programs – those that deliver positive outcomes for children and young people, and families. We must ensure that the investment in this area achieves results – results that can be monitored and measured. A one off injection of additional funding is expected to help the front end of the system to cope with the high demand it is experiencing. It is also expected to help reduce the

number of children being placed in out of home care, which in turn can deliver savings to the government. While the amount and timing of the injection will be subject to budgetary considerations, the committee believes the amount should be significant and done as soon as possible.

- 2.115** There is a simple reason why this committee proposes a one-off injection of funds into early intervention, we see it as the only viable way to break the existing child protection cycle. Currently the lack of early intervention is allowing more families to fall into crisis with more children in need of care and more children being removed. As more children move into care the process of removing them from their families and keeping them in out of home care is extremely resource intensive. Currently the child removal and out of home care part of the system takes 83 per cent of the overall state government resources. This leaves just 17 per cent of state resources to be applied to the early intervention work that is so essential.
- 2.116** Given the current situation no government could in good conscience simply remove funding from case workers and the out of home care sector and divert it to early intervention. This would leave many vulnerable children who are either in the system or at serious risk of harm, exposed to abuse or neglect. What is needed then is a serious fresh commitment of resources into early intervention. It will also require those resources to remain in place for at least five years to break this unvirtuous cycle. Done properly this will keep more families together, and over time reduce the need for crisis intervention and child removal. This will then progressively free up existing resources from the crisis part of the system to be transferred to the early intervention work and produce a, hopefully sustainable virtuous cycle in child protection. We make this call for investment in families knowing full well that it will be a significant call on resources. However we see investment in families and children as every bit as important, if not more so, than investment in roads, railways and hospitals.
- 2.117** The committee believes that this additional funding should be directed not just by the Department of Family and Community Services but by a cross-sector body, with clear accountability measures. This body should include representatives from government agencies, including police, health and education, in addition to representatives from non-government organisations and other key bodies.

Recommendation 2

That the NSW Government provide a specific one off injection of additional funding for evidence based prevention and early intervention services, including targeted client services and programs that operate in regional, rural and remote areas.

Recommendation 3

That the NSW Government establish a cross-sector body to direct the injection of additional funding for evidence based prevention and early intervention services, as provided for in recommendation 2, with this body to be comprised of key stakeholders including the NSW Children's Guardian, the NSW Ombudsman, the President of the Children's Court of NSW, senior representatives from the NSW Police Force, Health and Education, as well as independents with relevant commercial experience.

Chapter 3 Risk of harm reporting and investigations

This chapter considers several issues related to the assessment and investigation of child safety concerns, including the low number of face to face assessments being conducted by FACS and the number of cases closed due to insufficient resourcing. It also outlines some concerns associated with the screening and assessment tools used by departmental staff to assess risk of significant harm to a child or young person. In addition, this chapter examines examples where there have been inadequate, inconsistent or poor responses to risk of harm reports.

Reports to the Child Protection Helpline

- 3.1 Anyone that has reasonable grounds to suspect that a child or young person is at risk of significant harm can make a report to the NSW Child Protection Helpline. People in certain professions, such as teaching, health care and children's services, also have a legal obligation to report suspected risk of harm, as 'mandatory reporters'.¹⁷³
- 3.2 'Risk of significant harm', is defined in section 23 of the *Children and Young Persons (Care and Protection) Act 1998* to include any concerns for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of certain circumstances, for example, domestic violence, physical or sexual abuse or psychological harm.¹⁷⁴
- 3.3 In 2015-16 the Helpline received 196,874 contacts (including calls, faxes, eReports and emails) in relation to 278,521 children and young people.¹⁷⁵
- 3.4 Of the total number of reports made to the Helpline in 2015-16, 78,186 were identified as children at risk of significant harm. Only thirty percent (23,609) of these children received a face to face assessment. The table on the next page outlines the number of children at risk of significant harm by district and those who received a face to face assessment, for the period 1 October 2015 to 30 September 2016.¹⁷⁶

¹⁷³ *Children and Young Persons (Care and Protection) Act 1998*, ss 24 and 27.

¹⁷⁴ *Children and Young Persons (Care and Protection) Act 1998*, s 23.

¹⁷⁵ Answers to questions on notice, Department of Family and Community Services, 27 October 2016, pp 12-13.

¹⁷⁶ Department of Family and Community Services, *FACS Caseworker Dashboard – December 2016 quarter*, <http://www.community.nsw.gov.au/__data/assets/file/0008/402596/Caseworker-Dashboard-December-2016-quarter-v2.1.pdf>

Table 1 Children at risk of significant harm and receiving face to face assessments, by district, 2015-16¹⁷⁷

FACS District	Children at risk of significant harm	Children assessed face to face	Percentage of children assessed face to face (%)
Central Coast	4,482	1083	24
Far West	775	230	30
Hunter New England	1,4952	3321	22
Illawarra Shoalhaven	5132	1729	34
Mid North Coast	3404	980	29
Murrumbidgee	5037	1513	30
Nepean Blue Mountains	5655	1901	34
Northern NSW	4422	1282	29
Northern Sydney	2501	709	28
South Eastern Sydney	3599	1276	35
South Western Sydney	9816	3022	31
Southern NSW	2617	1024	39
Sydney	2833	1196	42
Western NSW	6238	2277	37
Western Sydney	6724	2066	31
District subtotal	78,186	23,609	30

Source: Department of Family and Community Services, FACS Caseworker Dashboard – December 2016 quarter

- 3.5** The average wait time for callers to contact the Helpline was 7 minutes 39 seconds in April 2016, 11 minutes 21 seconds in June 2016 and 9 minutes 14 seconds in September 2016.¹⁷⁸
- 3.6** Stakeholders reported, however, much longer wait times when contacting the Helpline. Ms Maria Le Breton, Director of the Women’s Domestic Violence Court Advocacy Service NSW said that the ‘waiting periods can be between half an hour and one hour to make a report’.¹⁷⁹
- 3.7** The Women’s Domestic Violence Court Advocacy Service NSW argued that long waiting times to report matters to the Helpline is evidence of a child protection system that is ‘significantly under-resourced’, as its capacity to receive and investigate reports regarding children at risk of significant harm is limited.¹⁸⁰ Uniting agreed that the Helpline is ‘still unable to cope with demand’, given ‘long wait times are common’.¹⁸¹

¹⁷⁷ Department of Family and Community Services, FACS Caseworker Dashboard – December 2016 quarter, <http://www.community.nsw.gov.au/__data/assets/file/0008/402596/Caseworker-Dashboard-December-2016-quarter-v2.1.pdf>

¹⁷⁸ Answers to questions on notice, Department of Family and Community Services, p 12.

¹⁷⁹ Evidence, Ms Maria Le Breton, Director, Women’s Domestic Violence Court Advocacy Service NSW, 16 August 2016, p 13.

¹⁸⁰ Submission 43, Women’s Domestic Violence Court Advocacy Service NSW, p 3.

¹⁸¹ Submission 76, Uniting, p 10.

- 3.8** These concerns were reiterated by the Public Service Association. It noted that call wait times to the Helpline had increased to one to two hours during peak times and that there has been a ‘marked increase in the abandonment rate of callers’.¹⁸² One individual commented that ‘callers having to wait long periods to have their information taken are statistically more likely to abandon their call’.¹⁸³
- 3.9** The Catholic Education Commission NSW also advised that ‘it is not uncommon for principals at schools to be waiting on hold for significant lengths of time’ when attempting to make risk of significant harm reports. Not only does this impact on the time principals have for schooling duties, it said that it also ‘adversely impacts on the potential effect of the report’.¹⁸⁴

Response to child protection reports

- 3.10** This section will consider a number of issues related to how the department responds to risk of significant harm reports. Firstly, it will explore whether existing screening and assessment tools are adequate in triaging matters, particularly when assessing risk in domestic and family violence matters and Aboriginal families and communities.
- 3.11** Secondly, it will look at the low number of face to face assessments being conducted by the department, and the number of cases closed due to insufficient resources. Thirdly, it will outline some concerns related to what stakeholders have suggested are inconsistent, inadequate or poor responses by the department to child protection reports.

Adequacy of screening and assessment tools

- 3.12** A number of screening and assessment tools are used at different points in the child protection system, including the:
- Screening and Response Priority Tool, which is used by staff on the Child Protection Helpline to assess whether reported concerns meet the risk of significant harm threshold and if so, how quickly the investigation or assessment should commence
 - Safety and Risk Assessment, which is used by staff at FACS Community Service Centres to determine what action should be taken to protect a child who has been the subject of a risk of significant harm report. This tool has three components: a safety assessment tool which concentrates on identifying factors that represent imminent danger to the child, the family risk assessment tool with incorporates factors that represent the future risk or likelihood of abuse and neglect, and the family risk reassessment tool, which brings information together to evaluate a family’s progress towards case plan goals
 - Mandatory Reporter’s Guide, which assists mandatory reporters to decide whether to report their concerns to the Child Protection Helpline.¹⁸⁵

¹⁸² Submission 66, Public Service Association of NSW, p 11.

¹⁸³ Submission 9, Name suppressed, p 2.

¹⁸⁴ Submission 67, Catholic Education Commission, p 14.

¹⁸⁵ Submission 70, Department of Family and Community Services, pp 7-8.

- 3.13** Tools such as these were developed by the Children’s Research Centre in the United States, but have been customised for the New South Wales context. They rely on actuarial science and research into factors known to be most relevant to the safety and welfare of children and young people.¹⁸⁶
- 3.14** As noted by the Aboriginal Child, Family and Community State Secretariat, ‘reliable safety and risk assessment practice is critical to an effective child protection system’. It suggested that safety and risk assessment tools and practice should build on family strengths:
- Good safety and risk assessment work also identifies the steps needed to address the risks and build on family strengths to achieve safety for children and young people within their family networks, and is therefore critical to achieving better outcomes for children and young people.¹⁸⁷
- 3.15** The Aboriginal Child, Family and Community State Secretariat also highlighted how complex safety and risk assessment can be given that the process ‘attempts to provide some predictability in the context of significant uncertainty’. It emphasised the role of other factors to this process, such as accurate information about the family being available, the child’s lived experienced, and the practitioners ability to properly understand and assess the information presented.¹⁸⁸
- 3.16** Similarly, the Association of Children’s Welfare Agencies and Intellectual Disability Rights Service noted that the skills of the assessor are important to the adequacy and reliability of assessments.¹⁸⁹
- 3.17** The Intellectual Disability Rights Service noted that actuarial tools, which it said are based on statistical methods to determine the level of risk to a child, are acknowledged as having better validity and reliability but can be inaccurate if they are generalised and based on one population. It raised a concern about such tools as they are being used to work with vulnerable groups, such as people with a disability and people from culturally and linguistically diverse backgrounds.¹⁹⁰
- 3.18** Similarly, Domestic Violence NSW, the peak body for specialist domestic and family violence services in New South Wales, noted that existing tools may not be ‘necessarily reflective of safety, welfare and well-being for some high-risk groups...’.¹⁹¹
- 3.19** Ms Deidre Cheers, the Chief Executive Officer of Barnardos Australia, agreed with this view, explaining that standardised tools do not effectively cater to all circumstances:

The statutory system relies heavily on standardised tools that are based on assessment of risk, and the research evidence on those tools is mixed. They do get good results

¹⁸⁶ Submission 70, Department of Family and Community Services, p 8.

¹⁸⁷ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 9.

¹⁸⁸ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 9.

¹⁸⁹ Submission 94, Association of Children’s Welfare Agencies, p 8; Submission 88, Intellectual Disability Rights Service, p 5.

¹⁹⁰ Submission 88, Intellectual Disability Rights Service, pp 4-5.

¹⁹¹ Submission 72, Domestic Violence NSW, p 11.

but they have more of a tendency to be a one size fits all, so they do not necessarily take account of individual child or family circumstances.¹⁹²

3.20 In particular, the Intellectual Disability Rights Service suggested that ‘actuarial tools developed for one population must be used cautiously on a different population which may have different characteristics...’. It questioned whether the current tools have been adjusted to take into account parental intellectual disability.¹⁹³

3.21 Two areas in which existing screening and assessment tools were argued to be inadequate were in domestic and family violence matters where child protection concerns have been raised, and in matters involving Aboriginal families.

Assessment of risk in domestic and family violence matters

3.22 Several stakeholders contended that existing safety and risk assessment tools and practices are inadequate in dealing with child protection concerns in the context of domestic or family violence. This is relevant, given domestic and family violence ‘is a substantial driver of children and their families coming into the child protection system’.¹⁹⁴

3.23 In particular, there were concerns that the tools promote ‘mother blaming’, whereby all the responsibility for protecting the child or young person is placed on the non-offending parent (usually the mother) in domestic or family violence situations. Both Domestic Violence NSW and the Women’s Domestic Violence Advocacy Service NSW reported this to be an issue.

3.24 The Women’s Domestic Violence Court Advocacy Service NSW said that this approach focuses on the ‘mother’s received lack of willingness or ability to protect the child from the harmful behaviour of a perpetrator’. It argued that this practice places unrealistic responsibilities on the mother:

Such a focus fails to hold the perpetrator responsible for their behaviour and places an undue and unrealistic responsibility upon the mother to control the actions of the perpetrator.¹⁹⁵

3.25 This is evident by the pressure mothers feels to protect their children. Ms Le Breton, the Director of the Women’s Domestic Violence Court Advocacy Service NSW, noted that many clients who are mothers have felt ‘pressure’ placed on them to protect the children from the father, the perpetrator of violence.¹⁹⁶

3.26 Domestic Violence NSW similarly noted that existing practices focus on the mother’s capacity to provide the child with a safe environment, whereas the perpetrator of the violence is not subject to the same scrutiny:

... in cases where the father is an alleged perpetrator of domestic or family violence and has access visits, the focus is largely on the mother's capacity to provide a safe environment but there is little emphasis on the perpetrators responsibility for using

¹⁹² Evidence, Ms Deirdre Cheers, Chief Executive Officer, Barnardos Australia, 16 August 2016, p 2.

¹⁹³ Submission 88, Intellectual Disability Rights Service, p 5.

¹⁹⁴ Submission 40, No To Violence Men’s Referral Service, p 3.

¹⁹⁵ Submission 43, Women’s Domestic Violence Court Advocacy Service NSW, p 6.

¹⁹⁶ Evidence, Ms Le Breton, 16 August 2016, pp 20-21.

violence or coercive control tactics. A perpetrator of violence doesn't have to show any ability that they can provide a safe environment or be a safe person for the child to be around. This reinforces a dangerous and unrealistic expectation that a victim can influence a perpetrator's behaviour.¹⁹⁷

- 3.27** Barnardos Australia emphasised that this approach deflects responsibility away from the perpetrator of the violence, as the mother is viewed as the 'lynchpin to child safety in domestic violence' which is an 'unrealistic solution' resulting in child entry to out of home care.¹⁹⁸
- 3.28** As an alternative, the Women's Domestic Violence Court Advocacy Service NSW said that FACS should engage the perpetrator of the violence to assist them in addressing their behavior, while also working with the mother to help increase her safety and the safety of her children.¹⁹⁹ Ms Le Breton acknowledged that this can be a difficult task, as it can sometimes be difficult to engage fathers and men.²⁰⁰
- 3.29** Ms Callandar from Legal Aid NSW noted that the resources available to assist men, including perpetrator programs, and anger management and parenting programs, are often limited.²⁰¹ In fact, Ms Moo Baulch, Chief Executive Officer of Domestic Violence NSW, advised that there are currently only four government funded men's behaviour programs in New South Wales, compared to 30 government funded programs operating in Victoria.²⁰²
- 3.30** The No To Violence incorporating the Men's Referral Service, the Victorian peak body for community-based men's behaviour change program providers, outlined the value of men's perpetrator programs in increasing perpetrator accountability:

For men's behaviour change program (MBCP) providers, perpetrator accountability is often seen as a process of each individual man's potential journey towards taking responsibility for his behaviour, through non-cooperation with predominant violence-supporting masculinities, and through being accountable to the experiences and needs of those affected by his use of violence. Rather than being a response, it is seen as a process of men being accountable towards staying on a journey of nonviolence, of ultimately being accountable to what they set out to do when on this journey.²⁰³

- 3.31** It also highlighted that New South Wales has a lack of men's behavioural change programs, such that outside of the 'four pilot sites', 'there are huge swathes of the state' without any coverage. It suggested that the state work towards the UK model, where approximately one third of all referrals into such programs arise in the context of child protection. Further, the No To Violence incorporating the Men's Referral Service recommended that there be greater investment in these programs in New South Wales, via the Men's Behaviour Change Network,

¹⁹⁷ Submission 72, Domestic Violence NSW, p 8.

¹⁹⁸ Submission 57, Barnardos Australia, p 4;

¹⁹⁹ Submission 43, Women's Domestic Violence Court Advocacy Service NSW, p 6.

²⁰⁰ Evidence, Ms Le Breton, 16 August 2016, p 21.

²⁰¹ Evidence, Ms Nicola Callander, Solicitor in Charge, Child Protection Team, Legal Aid NSW, 16 August 2016, p 20.

²⁰² Evidence, Ms Moo Baulch, Chief Executive Officer, Domestic Violence NSW, 26 September 2016, p 23.

²⁰³ Submission 40, No To Violence incorporating the Men's Referral Service, p 5.

which is the secretariat for men's behaviour change programs in the state. It explained the importance of directing funding to these services:

Developing a community of practice, supporting providers to meet minimum standards, developing policy and translating current research into practice guidance cannot be done by government alone. Given the highly challenging and complex nature of perpetrator intervention work, without a sufficiently resourced network or peak body to support the safe development of the sector, the potential for government investment in MBCPs [Men's Behaviour Change Programs] to do more harm than good is significant.²⁰⁴

- 3.32** Ms Dylan Kennedy, a caseworker from The Benevolent Society emphasised that without men's behaviour change programs, 'it is very difficult for an entrenched issue like domestic violence to be redressed, where dads can be in the home safely'.²⁰⁵
- 3.33** Domestic Violence NSW called for greater accessibility to 'trauma-informed, evidence-based initiatives that hold perpetrators to account and support the ongoing safety of families'.²⁰⁶
- 3.34** It also suggested that the intersection between child protection and family violence needs to be better addressed, so that they do not operate in silos:

DVNSW [Domestic Violence NSW] draws to the attention of the committee the siloed approaches in the child protection and domestic and family violence systems that has led to the development of two parallel systems that intersect poorly.²⁰⁷

- 3.35** Highlighting disparities between the definitions and tools used in the child protection and family violence systems, Domestic Violence NSW contended that the 'lack of common language across sectors means that there is often confusion between assessments and supports systems'. It added that this leads to the 'disruption of timely, accurate and detailed information sharing', in turn increasing the likelihood of 'a delayed or inadequate response'.²⁰⁸

Assessment of risk in Aboriginal families and communities

- 3.36** Stakeholders also argued that existing safety and assessment tools and practice have not been developed to take into account Aboriginal culture, making them culturally inappropriate to effectively assess child protection concerns involving Aboriginal families and communities.
- 3.37** The Aboriginal Child, Family and Community Care State Secretariat said that safety and risk assessment processes 'are derived from a westernised view of the world, and do not account for the perspective and expectations of child safety, welfare and wellbeing within Aboriginal communities. Given this, it said that there were concerns about the 'reliability' and 'validity' or safety and risk assessments as they were not developed within a framework for Aboriginal families and communities'.²⁰⁹

²⁰⁴ Submission 40, No To Violence incorporating the Men's Referral Service, pp 10-11.

²⁰⁵ Evidence, Ms Dylan Kennedy, Team Leader, Brighter Futures Program, The Benevolent Society, 27 September 2016, p 5.

²⁰⁶ Submission 72, Domestic Violence NSW, p 10.

²⁰⁷ Submission 72, Domestic Violence NSW, p 9.

²⁰⁸ Submission 72, Domestic Violence NSW, p 9.

²⁰⁹ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 9.

3.38 It argued that there should be specifically designed tools for the safety and risk assessment of Aboriginal families, ‘reflecting the expectations of community and validated within that context’. It explained that this is highly relevant to developing an appropriate child protection system for Aboriginal children and families as it will increase community confidence ‘while also informing the development of community-based responses to address perceived risks’.²¹⁰

3.39 Mr Tim Ireland, the Chief Executive Officer of the Aboriginal Child, Family and Community Care State Secretariat, emphasised that culture should be embedded within all facets of the child protection system, including risk assessment processes and tools:

We are saying that culture should underpin the way the system operates. More to the point, the tools that are applied to Aboriginal communities and Aboriginal people should be developed based on the expectations of Aboriginal people and communities. That is at the heart of self-determination... It is not saying that safety is not a concern within Aboriginal communities and families. It is saying that the expectations of Aboriginal people and families should be at the heart of any tools or risk assessment processes applied to Aboriginal families.²¹¹

3.40 Mr Ireland and Ms Suellyn Tighe, from Grandmothers Against Removals, contended that ‘endemic racism’ within FACS is manifesting itself in subjective assessments of risk of harm.²¹² As an example, Ms Tighe noted how subjectivity is applied by caseworkers when considering issues of neglect, which she referred to as a ‘nebulous term’:

That becomes subjective, in that the morals and judgements of the caseworker have an impact on the decision. They do not move with the times. They could go into a household that may not have what the caseworker would deem a suitable amount of food. They may not understand that the family relationship means that the family, each night, goes to the grandparents' house to eat their meal. The caseworker may not understand that cultural way of maintaining family relationships. They may not understand how Aboriginal communities work. They may not understand that society now is a takeaway society. Families may be in a situation where they purchase their meals each night, rather than buying food to cook each night in their home.²¹³

3.41 This issue is further discussed in chapter 7. Mr Ireland suggested that the media has contributed to the development within FACS of an organisational culture ‘that is risk averse and highly risk averse’.²¹⁴

3.42 To help address some of these issues, the NSW Council of Social Service agreed that culturally appropriate assessment tools are needed, to support and improve decision making in relation to safety and risk assessments.²¹⁵ The Association of Children’s Welfare Agencies also emphasised the importance of risk assessments incorporating culture.²¹⁶

²¹⁰ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 9.

²¹¹ Evidence, Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat, 16 August 2016, p 31.

²¹² Evidence, Mr Ireland, 16 August 2016, p 31.

²¹³ Evidence, Ms Suellyn Tighe, Grandmothers Against Removals NSW, 16 August 2016, p 32.

²¹⁴ Evidence, Mr Ireland, 16 August 2016, p 32.

²¹⁵ Submission 68, NSW Council of Social Service, p 10.

²¹⁶ Submission 94, Association of Children’s Welfare Agencies, p 9.

- 3.43** The committee notes that FACS has, in its *Working with Aboriginal People and Communities – A Practice Resource*, acknowledged that Aboriginal and Torres Strait Islander cultures ‘are very different, with their own unique histories, beliefs and values’. This document, designed to assist workers in their practice, also acknowledges the overrepresentation of Aboriginal children and young people in the out of home care system, along with the historical issues which have led to grief, trauma and mistrust of welfare based agencies. The resource also provides communication and practice tips for workers, to help them engage in a culturally appropriate manner with Aboriginal peoples.²¹⁷

Failure to consider cumulative harm

- 3.44** Existing risk assessments and practice were also argued to inadequately deal with cumulative harm, that is, a series of acts or omissions that, when viewed separately may not indicate significant risk, but when viewed together suggest a pattern of significant harm.²¹⁸
- 3.45** The Benevolent Society suggested that the current system is failing to pick up patterns which indicate cumulative harm. Noting that when matters are reported in isolation they can appear less significant, it suggested that issues should be considered cumulatively, as it builds ‘a more complete and more concerning picture of a child or young person’s everyday experience’.²¹⁹
- 3.46** Barnardos Australia also argued that existing risk assessments are mostly focused towards the assessment of risk due to an incident or imminent/immediate crisis.²²⁰ Domestic Violence NSW agreed, stating that the child protection system is ‘solely crisis focused’.²²¹
- 3.47** It noted that reports of physical abuse generally get a better response rate, whereas common issues relevant to domestic and family violence, like emotional or psychological abuse, or parental alienation, cannot be adequately prioritised by FACS or given an appropriate response. Domestic Violence NSW stressed that these factors ‘can be just as damaging to the development of children and young people’.²²²
- 3.48** Likewise, Ms Cheers from Barnardos Australia, noted the damage that can be caused to small children experiencing issues of neglect. Reflecting on the research about cumulative harm, she acknowledged that decisions in these circumstances ‘are very difficult for workers to make’ but stressed that they are also ‘very damaging for children’.²²³
- 3.49** Ms Kennedy argued that the ‘big gap in the system at the moment is the absence of recognising cumulative harm’, which she argued if identified earlier would allow support to be provided to families ‘before the crucial points turn into a crisis point’.²²⁴

²¹⁷ Department of Community Services (2009) *Working with Aboriginal People and Communities – A Practice Resource*, < http://www.community.nsw.gov.au/__data/assets/pdf_file/0017/321308/working_with_aboriginal.pdf>

²¹⁸ Submission 92, The Benevolent Society, p 5.

²¹⁹ Submission 92, The Benevolent Society, p 5.

²²⁰ Submission 57, Barnardos Australia, p 4.

²²¹ Submission 72, Domestic Violence NSW, p 8.

²²² Submission 72, Domestic Violence NSW, p 8.

²²³ Evidence, Ms Cheers, 16 August 2016, p 8.

²²⁴ Evidence, Ms Kennedy, 27 September 2016, p 9.

- 3.50** Ms Sophie Trower, Policy Manager at Domestic Violence NSW, pointed out that the existing mandatory reporter guide fails to adequately consider cumulative harm, particularly for matters involving domestic and family violence:

As mandatory reporters, which is what many of our members are, if they are making reports and they can see that domestic and family violence is a cumulative harm or is abuse on a child or young person in that family, that may not cross this bar [the risk of significant harm threshold] in order to have a cumulative effect. Whereas we know that the effect of trauma and abuse and even witnessing violence has the same impact on a child or a young person, particularly among infants where it really changes their brain development.²²⁵

- 3.51** Ms Trower hoped that this issue may be considered in the next review of the mandatory reporter guide.²²⁶

- 3.52** Cara House also noted that ‘children often disclose in fragmented manners, across time and in multiple forms to multiple people’. It explained that this can lead to reports not meeting the threshold for risk of significant harm but still indicate cumulative harm:

This is an issue as the cumulative risk of harm status will not be met at the Helpline and no follow up can occur. As disclosures are often so fragmented, reports to the Helpline often not allocated and numerous reports are needed before a child’s safety can be assessed and intervened upon. This means the very frontline system in place to identify and assess child safety is not adequate to support reporters, child development factors or identify risk early.²²⁷

- 3.53** It noted that every time a child moves to a different area, a different community service centre is engaged, which can lead to loss of cumulative harm knowledge and rapport.²²⁸

Number of face to face assessments and cases closed due to ‘competing priorities’

- 3.54** A significant issue which has arisen in previous reviews, and which was highlighted during this inquiry, is the low number of face to face assessments provided by FACS to children and young people reported to be at risk of significant harm, and the number of cases closed due to insufficient resourcing or ‘competing priorities’.

- 3.55** Relevant to both of these issues is the threshold for reports, which was raised from ‘risk of harm’ to ‘risk of significant harm’ following the Wood Report, to better focus resources on investigating and assessing children and young people most at risk of experiencing serious harm.²²⁹

- 3.56** This was in light of the fact that too many reports were being made to FACS which did not ‘warrant the exercise of its considerable statutory powers’. The Wood Report noted that this was resulting in significant costs and effort to manage such reports, which impacted the ability

²²⁵ Evidence, Ms Sophie Trower, Policy Manager, Domestic Violence NSW, 26 September 2016, p 25.

²²⁶ Evidence, Ms Trower, 26 September 2016, p 25.

²²⁷ Submission 51, Cara House, p 7.

²²⁸ Submission 51, Cara House, p 8.

²²⁹ Submission 70, Department of Family and Community Services, p 6.

of FACS to assess cases, such that some cases were being closed because of competing demands (insufficient resources).²³⁰

3.57 Despite the threshold for reports being raised, the number of risk of significant harm reports has continued to increase, from 98,100 in 2010-11, to 104,800 in 2012-13 and 126,100 in 2014-15.²³¹ Moreover, the number of face to face assessments being conducted for children reported to be at risk of significant harm is only about 30 per cent.²³²

3.58 In fact, for the period 1 July 2015 to 30 June 2016, there were 76,574 children identified as being at risk of significant harm but only 22,462 received a face to face assessment, which equates to only 29 per cent.²³³

3.59 In explaining the data, Ms Deidre Mulkerin, Deputy Secretary, Northern Cluster, Operations, FACS said that there were 139,000 risk of significant harm reports in 2015-16, 60 per cent of which 'received some response', including those that had a face to face assessment:

Up to 60 per cent, though, of the total number, received some response and some service. The 30 per cent is a subset of the 60 per cent, if you like. A portion of other ROSH [Risk of Significant Harm] reports were subject to, for example, a direct referral to a support agency or we might have convened an interagency case discussion where we get the relevant support agencies together and work out that, in fact, what might be the best response for this family might be a direct referral to a support agency, as opposed to the full statutory child protection response.²³⁴

3.60 In terms of the remaining 40 per cent of reports, Ms Mulkerin explained that these matters are 'closed due to competing priorities'.²³⁵

3.61 Decisions relating to whether a face to face assessment is conducted are made at 'workload allocation meetings' at community service centres. Mr Ray Wilton clarified that before these meetings are held, the report has been triaged by the Helpline and triaged within the community service centre.²³⁶

²³⁰ Hon James Wood AO QC (November 2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Volume One, <http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0008/33794/Executive_Summary_and_Recommendations_Special_Commission_of_Inquiry_into_Child_Protection_Services_in_New_South_Wales.pdf>.

²³¹ Submission 70, Department of Family and Community Services, p 10.

²³² Department of Family and Community Services, *FACS Caseworker Dashboard - September 2016 quarter*, <<http://www.community.nsw.gov.au/about-us/community-services-caseworker-dashboard>>.

²³³ Department of Family and Community Services, *FACS Caseworker Dashboard - September 2016 quarter*, <<http://www.community.nsw.gov.au/about-us/community-services-caseworker-dashboard>>.

²³⁴ Evidence, Ms Deidre Mulkerin, Deputy Secretary, Northern Cluster, Operations, Department of Family and Community Services, 27 September 2016, pp 59-60.

²³⁵ Evidence, Ms Mulkerin, 27 September 2016, pp 59-60.

²³⁶ Evidence, Mr Ray Wilton, Child Protection Casework Manager, Department of Community Services, and Regional Organiser, Public Service Association of NSW, 27 September 2016, p 25

- 3.62** While all of the 40 percent of cases closed due to competing priorities have met the threshold for risk of significant harm, the committee asked Ms Mulkerin whether they are considered to be less urgent cases, given the other 60 per cent have received a response. Ms Mulkerin acknowledged that some cases ‘are more serious than others’, although she reiterated that ‘they are all significant matters’.²³⁷
- 3.63** Ms Mulkerin emphasised the importance of caseworkers and managers exercising good judgment when determining how cases are allocated:
- The reality for our managers and our workers is that we ask them to provide a judgement call. Of the 10 matters they have in front of them they might have the capacity to allocate six. We ask them to use their best possible judgement based upon guidance and their professional judgement and shared decision-making with other managers about which are the right ones to allocate.²³⁸
- 3.64** It is at this point that some cases are closed due to ‘competing priorities’. Mr Wilton explained that this occurs where cases cannot be allocated due to resourcing:
- Of the most serious work coming to us, where we have no capacity to allocate those cases we hold on to them for no longer than four weeks and then we close them because we cannot provide a response, even when there have been multiple reports made on that child or those children.²³⁹
- 3.65** Highlighting that this is a resource issue, rather than a caseworker deciding a face to face assessment is not necessary, Mr Steve Turner, Assistant General-Secretary, Public Service Association, said: ‘It is not necessarily true that people make a decision that they [the child at risk] should not be visited, it is that resources do not allow the visitations to occur’.²⁴⁰
- 3.66** Many stakeholders involved in this inquiry were concerned about the low number of face to face assessments being conducted by FACS and the increase in cases being closed due to ‘competing priorities’, including the Aboriginal Child, Family and Community State Secretariat, Jannawi Family Centre, Uniting and Catholic Education Commission.²⁴¹
- 3.67** Dr Gary Banks, a Clinical Psychologist and Authorised Clinician with the NSW Children’s Court Clinic, also voiced a concern about these issues, stating that they have ‘plagued FACS’ since the 2008 Wood Report.²⁴²
- 3.68** Domestic Violence NSW agreed that these issues are ‘of grave concern’, and while it acknowledged that FACS had made some improvements, it did not think the issues could be addressed by raising the threshold for risk of harm again:

²³⁷ Evidence, Ms Mulkerin, 27 September 2016, pp 68-69.

²³⁸ Evidence, Ms Mulkerin, 27 September 2016, pp 68-69.

²³⁹ Evidence, Mr Wilton, 27 September 2016, p 23.

²⁴⁰ Evidence, Mr Steve Turner, Assistant General-Secretary, Public Service Association of NSW, 27 September 2016, p 23.

²⁴¹ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 6; Submission 100, Jannawi Family Centre, p 2; Submission 76, Uniting, p 10; Submission 67, Catholic Education Commission, p 14;

²⁴² Submission 121, Dr Gary K. Banks, p 3.

... when the majority of those reported cannot be followed up due to capacity issues we cannot just keep raising the bar to deal with the capacity of the system to work with the most high-risk families... we maintain that systems must be better resourced to deal with an increased number of families at risk rather adjusting a tool to capture a percentage that the system can process.²⁴³

- 3.69** The Public Service Association questioned whether the number of face to face assessments was actually less than the published data. Mr Wilton raised a concern that caseworker staff can record what looks to be a face to face assessment, when it has not actually occurred. He said ‘statistically it shows up as something it is not. It looks like a face to face contact has occurred but it has not’.²⁴⁴ Ms Mulkerin disagreed that this was occurring, based on a random sample that was conducted to look into the issue:

When the PSA [Public Service Association] raised that with me in the past I caused a random sample to be taken across locations, CSCs and records and we could see no evidence of that. I have asked the PSA if they have particular concerns about particular locations. I would be more than happy to receive that information. I again extend that offer. If the PSA has evidence this is happening it is not what we want or expect of our staff. I would be happy to look at it if the PSA has evidence of it.²⁴⁵

- 3.70** The Public Service Association also highlighted how these issues negatively affect caseworkers, who feel distressed about not being able to see children and young people at risk of significant harm. One member of the union said:

There are not enough caseworkers to respond to reports that are received of children at risk of significant harm. Therefore, children at risk are not being seen and this places emotional stress on caseworkers.²⁴⁶

- 3.71** Mr Wilton commented that it can be ‘one of the most soul destroying things’ as a manager to make a decision about which children and young people will not be able to be seen face to face due to limited resourcing.²⁴⁷

- 3.72** The Public Service Association said that the number of cases closed due to competing priorities is ‘clearly unacceptable’. It said that the ‘NSW Government must ensure that FACS is sufficiently resourced so that every risk of significant harm report is properly assessed in a timely fashion’. It called for benchmarks to be introduced in response to this issue:

The government has a statutory and moral obligation to each and every child at risk and in care, and needs to adequately resource Community Services to meet its obligations. The PSA [Public Service Association] encourages the government to set appropriate benchmarks for the achievement of this goal, and considers a target of conducting face-to-face assessments in response to a majority of ROSH [Risk of Significant Harm] reports within two years as desirable and achievable.²⁴⁸

²⁴³ Submission 72, Domestic Violence NSW, p 9.

²⁴⁴ Evidence, Mr Wilton, 27 September 2016, p 24.

²⁴⁵ Evidence, Ms Mulkerin, 27 September 2016, p 62.

²⁴⁶ Submission 66, Public Service Association, p 10.

²⁴⁷ Evidence, Mr Wilton, 27 September 2016, p 24.

²⁴⁸ Submission 66, Public Service Association, p 12.

- 3.73** Youth Action called for data to be published about the number of face to face assessments and cases closed due to competing priorities by breakdown in age. Referring to the 2014 review by the Ombudsman, which found that adolescents are less likely when compared with younger children to receive a face to face assessment, Youth Action stated:

Overall, data demonstrates a significantly lower proportion of responses in the system for young people. While a statutory response and/or removal from the family environment may not always be the best outcome for young people due to the lack of better options for placement, it is crucial that they receive a response and support in order to assist them to be safe, or to prevent escalation of need to a crisis situation. As it stands, data suggests that young people receive less intervention support across the spectrum, and at times receive no response.²⁴⁹

- 3.74** Good Shepherd Australia New Zealand also expressed concern about the response to risk of harm reports related to adolescents. It said that ‘children who require immediate intervention should be provided with services as a matter of priority to ensure their safety and protection’. It stated that this should not be age dependent. If the practice of FACS is to focus solely on younger children, on the presumption that younger children are at greater risk, it was argued that this should be communicated more broadly to the sector, so that adequate funding and resources can be provided to support younger people.²⁵⁰

- 3.75** Emphasising that these issues remain a significant problem for FACS, and more broadly the capacity of the child protection system to respond appropriately to reports of risk of significant harm, the Ombudsman stated:

Despite the improvements made by FACS to its own systems and practices, the caseworker response rate for ROSH [Risk of Significant Harm] reports remains unacceptably low at 29%. As of the last published data, even the best performing district was only able to provide a face-to-face response to 40% of the children reported to be at ROSH. And while there has been an increase over time in the number of children seen by FACS, this gain has been off-set by FACS having to deal with a 20% increase over the last two and a half years in the number of children reported to be at ROSH.²⁵¹

- 3.76** The Ombudsman also noted that even with lower vacancy rates for caseworker positions (as discussed in chapter 8), FACS has been unable to significantly lift the risk of significant harm response rate. The Ombudsman suggested it may assist to have more meaningful data about the nature of responses given to reports, in light of cases being closed due to ‘competing priorities’.²⁵²

Inconsistent, inadequate or poor responses to reports of harm

- 3.77** Generally, there were concerns that the department’s responses to risk of harm reports are often inconsistent or inadequate. In particular, it was suggested that there are often delays in getting a response, with the need for re-reporting of some concerns before intervention is

²⁴⁹ Submission 71, Youth Action, pp 19-20.

²⁵⁰ Submission 89, Good Shepherd Australia New Zealand, p 12.

²⁵¹ Submission 74, Ombudsman NSW, p 8.

²⁵² Submission 74, Ombudsman NSW, p 8.

provided. Some stakeholders also suggested that there are inconsistent responses to similar cases, which was particularly noticeable when comparing the responses provided by offices in different locations.

Lack of or delayed response and re-reporting

3.78 Several inquiry participants were concerned that it can take a number of reports before an appropriate response or intervention is provided by FACS. This was noted by Cara House and Legal Aid NSW.²⁵³ In fact, Legal Aid NSW said that ‘there can be as many as thirty, forty or fifty reports, over many years, without either effective intervention or children being removed’.²⁵⁴

3.79 Barnardos Australia questioned the effectiveness of the assessment of reports of harm, given its observation that re-reporting of matters is often necessary before intervention occurs:

We are concerned by the limited effectiveness of assessment of child abuse notifications and services available to children suffering chronic abuse and neglect and who are repeatedly re-reported to the FACS Helpline. Our crisis foster care programs report that they are regularly referred children needing care who have had a high number of Risk of Significant Harm (ROSH) reports made, and who by the time they are removed into care have suffered significant trauma.²⁵⁵

3.80 Drawing on statistics from the Australian Institute of Health and Welfare, Barnardos Australia noted that one in five children were the subject of multiple substantiations of abuse throughout Australia and 73 per cent of children receiving child protection services are repeat clients. In New South Wales, it highlighted that 17 per cent of children have three or more substantiations of abuse via re-reporting.²⁵⁶

3.81 The Benevolent Society also raised a concern in relation to the timeliness of responses to reports, stating that some reports ‘have taken several weeks to be processed’ or even been lost by the Helpline.²⁵⁷

3.82 The Catholic Education Commission noted that a lack of or slow response to reports can make it difficult for schools to deal with child protection issues, particularly when the matter may be escalating within the school community.²⁵⁸ In one particular example, it said that a report was made because a Year 7 child had disclosed to her year coordinator that she was sexually assaulted by her uncle but no action was taken by FACS as it was regarded as not a clear disclosure.²⁵⁹

3.83 Ms Tamara Hughes, Child Protection Team Leader, Catholic Schools Office – Diocese of Broken Bay, also highlighted the difficulties schools experience when there is a delay in receiving feedback about a report to the Helpline: ‘Sometimes there is a time delay in receiving

²⁵³ Submission 51, Cara House, p 7.

²⁵⁴ Submission 69, Legal Aid NSW, p 21.

²⁵⁵ Submission 57, Barnardos Australia, p 1.

²⁵⁶ Submission 57, Barnardos Australia, p 1.

²⁵⁷ Submission 92, The Benevolent Society, p 5.

²⁵⁸ Submission 67, Catholic Education Commission NSW, p 14.

²⁵⁹ Submission 67, Catholic Education Commission NSW, p 18.

that feedback of a couple of days, sometimes up to a week. During that time it is difficult to know how we can support a family at risk'.²⁶⁰

Inconsistent responses to similar cases

- 3.84** Stakeholders also expressed a concern about the lack of consistency apparent when assessing risk of harm in child protection matters, particularly when comparing similar cases. There were also concerns that these inconsistencies could be connected to a family's location, with suggestions that this may be attributed in part to resourcing issues in certain areas.
- 3.85** The Benevolent Society acknowledged the value of actuarial based safety and assessment tools, however it said that the way the existing safety and risk assessment tool is used by FACS to support assessments and critical thinking is inconsistent across the state as it has observed different responses to similar cases.²⁶¹
- 3.86** Legal Aid NSW said that it was aware of cases in which only one report, or very few reports were made, but children were removed. Reflecting on these issues, it stated that it is 'difficult to objectively understand the difference in risk assessment in relation to a child or young person, when the risk of significant harm reports mostly contain details of similar risk issues', for example, neglect, domestic violence, drug and alcohol abuse or homelessness.²⁶²
- 3.87** Legal Aid NSW connected the 'apparent lack of consistency in risk assessments' to high caseworker turnover and the 'conflicted role' caseworkers experience when providing support to families while making decisions about risk.²⁶³
- 3.88** Anglicare Sydney advised of instances in which a child or young person was assessed as being at risk of significant harm on the Helpline, but subsequently assessed by a community service center as being at less risk, such that the child can go home. It said that 'these conflicting assessments can result in children being left in unsatisfactory family situations for much longer than necessary'.²⁶⁴
- 3.89** Ms Mary Moore, from the Alliance for Family Preservation and Restoration, argued that the inconsistencies occurring in cases is related to the differing experience and qualifications of caseworkers:

You have inconsistency in every case you come across. Some workers are not even qualified beyond TAFE qualification. I have gone to meetings and child protection workers have got a TAFE one-year diploma in welfare, and others have got higher qualifications. They could be psychologists or whatever but there is no consistency in standards. When you have got that inconsistency to start with, which I think has to be

²⁶⁰ Evidence, Ms Tamara Hughes, Child Protection Team Leader, Catholic Schools Office – Diocese of Broken Bay, 26 September 2016, p 51.

²⁶¹ Submission 92, The Benevolent Society, p 6.

²⁶² Submission 69, Legal Aid NSW, p 21.

²⁶³ Submission 69, Legal Aid NSW, p 23.

²⁶⁴ Submission 58, Anglicare Sydney, p 5.

sorted first, then you look at the objectiveness or subjectiveness of what determines what is a significant risk of harm.²⁶⁵

3.90 There were also concerns about differing levels of intervention and support provided by FACS depending on a family's location.

3.91 The Women's Domestic Violence Court Advocacy Service NSW said that they had anecdotal evidence that children and young people in one location may not be assessed at high enough of a risk to be allocated a caseworker, whereas in another location there would be an entirely different response:

This is seen by WDVCS workers to be a potential result of community services centre's (CSC) in some areas experiencing a higher percentage level of risk of significant harm reports than other CSC's. For example, a child living in Mount Druitt may not be assessed at high enough risk to be allocated a caseworker by FACS and their case may be closed due to competing priorities within the CSC, yet if the family were to move to the Northern Beaches, they may be considerably more likely to be allocated a FACS case worker.²⁶⁶

3.92 Similarly, Ms Nicola Callander, from Legal Aid NSW, agreed that this type of difference could be observed, when comparing for example child removals in Dubbo and Parramatta:

I would have used Dubbo as another area where we see, when matters are filed in court, significantly greater risk over a longer period of time before, for whatever reason, action is triggered and children are removed than we would see in Parramatta.²⁶⁷

3.93 Putting forward a possible explanation for this, Ms Maria Le Breton, suggested that different FACS offices could be acclimatising to what is considered a high risk situation:

If a lot of the reports coming through are really quite high risk, then it is likely that they will have to be put to the side and just absolute crises dealt with; whereas, in another area where the overall level of dysfunction—I do not know if I can use that type of terminology—is slightly lower, the risk faced by a family in order to get child protection intervention will be lower.²⁶⁸

3.94 Mostly though, Ms Le Breton assumed this was occurring due to resourcing.²⁶⁹ Ms Callander agreed, although she said it can be attributed to a number of factors, including high turnover of caseworkers and acclimatisation to high levels of risk in certain locations:

It is about resourcing; it is about high turnover of caseworkers, so you do not have that experience and people are re-learning all the time how to assess risk and you are losing and moving around your very experienced caseworkers; and think it is cultural as well. We all get inured to some extent if you are in an area such as Mount Druitt or

²⁶⁵ Evidence, Ms Mary Moore, Convenor, Alliance for Family Preservation and Restoration, 26 September 2016, p 13.

²⁶⁶ Submission 43, Women's Domestic Violence Court Advocacy Service NSW, p 4.

²⁶⁷ Evidence, Ms Callander, 16 August 2016, p 24.

²⁶⁸ Evidence, Ms Maria Le Breton, Director, Women's Domestic Violence Court Advocacy Service NSW, 16 August 2016, pp 23-24.

²⁶⁹ Evidence, Ms Le Breton, 16 August 2016, p 24.

Dubbo where you have high-level risk a lot. I think the subjective threshold is lower. I think that is just human nature to some extent. I think it is a combination of factors.²⁷⁰

3.95 Ms Kennedy suggested that some of the response differences by community service centres can also be attributed to what she regarded as ‘culture’. Explaining this, she said that some centres can be child focused, whereas other centres where the workload may be untenable ‘children are not being sighted, [and] safety assessments are being half completed’.²⁷¹

3.96 When questioned in relation to these locational inconsistencies, Ms Mulkerin clarified that the assessment of reports about risk of significant harm occurs by the Child Protection Helpline, which is centralised, whereas the discretion as to what action is taken in relation to these reports occurs at each office.²⁷²

3.97 As to why individuals are twice as likely to have a face to face assessment on a risk of significant harm report in Sydney when compared with the response provided to a risk of significant harm report on the Central Coast, Ms Mulkerin explained that the response can depend on the capacity of the office:

Some of that will go to the capacity of the office. Some of that will go [to] the system ... [and] what other services are available. It might be that there is a decision made locally about these types of matters are best referred to this particular agency over here. I think you heard evidence this morning from a worker from Brighter Futures and intensive family support services. Where those services exist, our workers will be making decisions about referring some of the face-to-face matters—the ROSH [Risk of Significant Harm] matters—to those early intervention services because of the nature of the case and the presenting issues. The decision that a service, a non-government organisation [NGO] that who is able to stick with the family over 12 months, might in fact be that it is the best response for this particular family.²⁷³

3.98 Ms Walk also stressed that ‘some of the ROSH [Risk of Significant Harm] reports...are already open cases with non-government agencies’. She explained that some of these matters have had to be reported because ‘they are statutory’ and ‘an incident occurred’, such as domestic violence. In some instances, a decision may even be made not to conduct a safety and risk assessment as ‘it is already an open case’.²⁷⁴

Shifting of statutory responsibility?

3.99 In some examples provided to the committee, it was argued that FACS did not respond appropriately when it expected reporters to investigate or manage the safety concerns themselves. There was a suggestion that FACS was trying to shift its statutory responsibilities.

3.100 The Catholic Education Commission NSW advised the committee of a number of cases in which, following a report to the Child Protection Helpline, FACS expected the school to

²⁷⁰ Evidence, Ms Callander, 16 August 2016, p 24.

²⁷¹ Evidence, Ms Kennedy, 27 September 2016, p 15.

²⁷² Evidence, Ms Mulkerin, 27 September 2016, p 72.

²⁷³ Evidence, Ms Mulkerin, 27 September 2016, p 72.

²⁷⁴ Evidence, Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services, 27 September 2016, p 73.

undertake aspects of statutory casework, for example, to interview a child after a disclosure of sexual assault was made, as outlined in the case study below.²⁷⁵

Case study: Alleged sexual assault of an 11 year old girl²⁷⁶

The Catholic Education Commission NSW advised the committee of a case in which an 11 year old girl had disclosed to a friend that she was raped by her brother. The friend did not know what the word ‘rape’ meant and clarified it with her mother. When the mother asked why she wanted to know, the friend told her mother what the 11 year old girl had said. This then led to the mother advising the school about the allegations.

The Principal of the school immediately made a report to FACS. The Helpline assessed the matter as requiring a response within 72 hours, despite the girl having contact with her brother during this period as it was over a weekend.

Ms Hughes, Child Protection Team Leader, said that ‘she would have expected an immediate response’ because this student had contact with her brother on the weekend. She expected a call over the weekend about the case but this did not occur. After following up the report on the Monday, she was advised the matter had been referred to Joint Investigation Referral Team, a team of police, FACS and Health staff.

Ms Hughes outlined the request that she received back from the Joint Investigation Referral Team, which was to ‘ask the student what her understanding of rape is?’.

Ms Hughes advised the team that the Principal could not undertake this function, however as the team still wanted this questioning to occur, she arranged for a child protection officer who was experienced in undertaking such interviews to speak to the child. The young girl made a full disclosure of rape.

Highlighting concerns with this approach, particularly in terms of the vulnerability of the disclosure as evidence to be put forward before a court, Ms Hughes noted that ‘as the initial disclosure is now not undertaken by the child abuse squad, there is not an audio-visual interview.’ The Catholic Education Commission said that Principals are not trained to elicit this type of information without contaminating evidence.

3.101 The Catholic Education Commission also highlighted the response provided by FACS to a report made about a 15 year old student who was being physically abused by her mother. After making the initial report, the student arrived at school with further injuries from the abuse. A second report was made to FACS, but the school was advised to go to police to obtain an apprehended violence order and to develop a safety plan for the student. Concerned with this approach, given that it shifts responsibility from FACS, the Catholic Education Commission said:

²⁷⁵ Submission 67, Catholic Education Commission NSW, p 20.

²⁷⁶ Submission 67, Catholic Education Commission NSW, p 20; Evidence, Ms Hughes, 26 September 2016, p 59.

Schools do not have the same statutory authority to address risk of significant harm issues with families and it was therefore inappropriate for FACS to require direct intervention by the school.²⁷⁷

- 3.102** Mr Peter Grace, State Coordinator – Student Wellbeing from Catholic Education Commission NSW, emphasised that the core function of a school is education, such that ‘school principals have neither the expertise nor the time’ to investigate risk of significant harm issues. Mr Grace noted that ‘schools are being asked to act outside their areas of expertise by responding to situations of children at risk when they have no statutory authority to do so’. He said that successful child intervention requires the development of a realistic interagency model which fully acknowledges the particular roles and skills base of each agency.²⁷⁸
- 3.103** Mr Grace called for more of a collaborative approach, with shared responsibility:

We are not shying away from fulfilling our duty of care but we feel there must be more of a shared responsibility and a collaborative approach if we are to achieve the best outcomes for our most vulnerable students.²⁷⁹

High risk birth alerts and removals

- 3.104** Prior to the birth of a baby, FACS may work with a woman during her pregnancy to address any safety concerns. In some cases, a high risk birth alert can be made by FACS to NSW Health or any private facility/hospital, usually in circumstances where a high risk pregnant woman has not engaged with services, been resistant to support and intervention or is transient.²⁸⁰
- 3.105** If a risk of significant harm report is made to the Child Protection Helpline concerning a child, FACS will assess the level of risk to the child using the structured Safety and Risk Assessment Tool. If FACS identifies a danger to the child, FACS can make a decision to assume or remove the child under section 43 or 44 of the *Children and Young Person (Care and Protection) Act* 1998.²⁸¹
- 3.106** Assuming the care responsibility of a child shortly after birth allows FACS to take legal responsibility for the child without removing the child from its actual location, for example, the hospital. FACS is still required, however, to initiate proceedings in the Children’s Court in these cases. Parents are informed about these decisions, and the case is usually heard by the Court within 72 hours.²⁸²
- 3.107** If a baby has been removed at birth, FACS will develop a case plan involving the parents that could include referrals to counselling or support services. The plan will also consider the most

²⁷⁷ Submission 67, Catholic Education Commission NSW, p 19.

²⁷⁸ Evidence, Mr Peter Grace, State Coordinator – Student Wellbeing, Catholic Education Commission NSW, 26 September 2016, p 50.

²⁷⁹ Evidence, Mr Grace, 26 September 2016, p 50.

²⁸⁰ Answers to questions on notice, Department of Family and Community Services, p 18.

²⁸¹ Answers to supplementary questions, Department of Family and Community Services, 27 October 2016, pp 34-35.

²⁸² Answers to supplementary questions, Department of Family and Community Services, pp 35-36.

suitable permanency option for the child, which FACS said could include restoration to the parents.²⁸³

- 3.108** The Alliance for Family Preservation and Restoration raised serious concerns in relation to the removal of newborns from mothers, often at the hospital. It provided a number of examples in which it suggested that FACS had not followed appropriate procedures to remove a newborn child, or in which the mother was not provided with any support to address concerns that may have been present. In some of these examples, it also questioned whether the risks of harm concerning the child were assessed appropriately.²⁸⁴
- 3.109** When the committee met with Aboriginal community members, during a private consultation facilitated by the Indigenous Issues Committee of the Law Society of NSW, concerns were also raised about the impacts of removals at birth. Questions were raised about the capacity of women to sign legal documents at the hospital immediately after they had given birth. There were also concerns about how birth removals are affecting the primary attachment bond between a child and mother.²⁸⁵

Vulnerable young people

- 3.110** Some inquiry participants argued that the existing child protection model focuses more on protecting younger children, and less on addressing concerns related to young people aged between 14 and 17 years old.
- 3.111** Ms Katie Acheson, Chief Executive Officer of Youth Action, painted a picture of how young people feature in the child protection system:
- We know that there are 2,582 young people aged 15 to 17 in out-of-home care right now in New South Wales. We know that those aged 14 to 17 make up a large proportion of reports—19 per cent of concern reports and 11 per cent of ROSH reports. We also know that they are least likely to receive child protection services and are well over represented in residential care and independent living compared to family out-of-home care and family group homes. We also know that there are a high number of reports of adolescents receiving no response at all.²⁸⁶
- 3.112** Youth Action advised of an investigation by the Ombudsman in 2014, which showed that a higher level of priority was being accorded to younger children requiring immediate intervention, whereas a higher proportion of reports about adolescents often received no response.²⁸⁷
- 3.113** Ms Hughes suggested that there is a view that ‘adolescents can self-protect’, for example, because they can leave a home where danger is present or call for help from a mobile phone.²⁸⁸

²⁸³ Answers to supplementary questions, Department of Family and Community Services, p 38.

²⁸⁴ Answers to questions on notice, Alliance for Family Preservation and Restoration, 24 October 2016.

²⁸⁵ General Purpose Standing Committee No. 2, NSW Legislative Council, *Consultation with Indigenous community members*, Inquiry into child protection, 8 September 2016, pp 4-5.

²⁸⁶ Evidence, Ms Katie Acheson, Chief Executive Officer, Youth Action, 27 September 2016, p 30.

²⁸⁷ Submission 71, Youth Action, pp 19-20.

²⁸⁸ Evidence, Ms Hughes, 26 September 2016, p 55.

3.114 Youth Action referred to this cohort as the ‘forgotten’ young people. It said that the ‘systems set up to protect and support young people in NSW place this age cohort as a low priority’ and that responses to vulnerable young people can be improved.²⁸⁹

3.115 In particular, Youth Action argued that ‘young people often are not receiving a statutory child protection intervention when it is needed’. It added that support is lacking for both young people assessed at risk of significant harm and those who fall below the threshold:

The systemic responses are not adequate to provide a proportionate level of support, and mechanisms are lacking to trigger support for young people both at Risk of Significant Harm (ROSH) and below ROSH.²⁹⁰

3.116 Acknowledging that there is research showing the ‘impact of the first years of life on lifelong health and wellbeing outcomes’, Youth Action emphasised the growing evidence suggesting the ‘opportunity adolescence provides to achieve positive outcomes and redirect adverse life trajectories’. This tension, it said, is not well addressed in the New South Wales child protection system.²⁹¹

3.117 Ms Acheson emphasised that young people between 15 and 17 years ‘are at a pivotal time in their lives and intervention actions makes a massive difference’. She said that ‘this time is second only to the early years of life’.²⁹²

3.118 It should be noted that a number of previous reviews have highlighted the need to improve the response provided to older children and adolescents. Examples include the 2008 Wood Report and several reviews conducted by the NSW Ombudsman (all of which are discussed in chapter 1).

3.119 In fact, the Ombudsman, in its 2014 *Review of the NSW Child Protection System: Are things improving?*, concluded that there is no overarching framework to focus on the needs of older children and young people:

In the absence of an overarching framework, the system will continue to be characterised by piecemeal service responses that result in young people continuing to get lost in the system.²⁹³

3.120 The Ombudsman advised that it had been arguing for a framework to drive a whole of government response to vulnerable adolescents since 2012. It noted that the recently released *NSW Strategic Plan for Children and Young People* also did not specifically address this issue, even though FACS had advised the Ombudsman it was working with the NSW Child and Youth Advocate to develop a whole of government plan to deliver more effective services to vulnerable adolescents.²⁹⁴

²⁸⁹ Submission 71, Youth Action, p 7.

²⁹⁰ Submission 71, Youth Action, pp 7-8.

²⁹¹ Submission 71, Youth Action, pp 10-11.

²⁹² Evidence, Ms Acheson, 27 September 2016, p 30.

²⁹³ Submission 71, Youth Action, p 15.

²⁹⁴ Submission 74, Ombudsman NSW, pp 70-71.

- 3.121** Youth Action stressed that the lack of a framework focused on improving the response to older children and adolescents ‘has resulted in some very stark service gaps for young people’ and that funding issues have contributed to a focus on people just in crisis.²⁹⁵
- 3.122** One particular issue of concern was young people who experience homelessness but are not identified as meeting the threshold of risk of significant harm.
- 3.123** YFoundations raised a concern with unaccompanied homeless children in specialist homeless services who are not always meeting the risk of significant harm test and being allocated a response. It said that the FACS policy for unaccompanied children and young people who are accessing specialist homelessness services does not propose solutions in instances where the report is not allocated a response but the service cannot provide safe shelter:
- In this situation ‘games of chicken’ can occur where SHS [specialist homeless services] providers and FACS both pressure each other to take responsibility – this is clearly not in the best interests of the vulnerable child.
- Homelessness is not only an outcome, it is a primary indicator of further risk of significant harm. There should be an assumption that any unaccompanied child receiving accommodation from the SHS system would meet the threshold. Cases where children are homeless should be assisted by FACS as a matter of priority.²⁹⁶
- 3.124** The Ombudsman advised that work is currently being undertaken to improve these issues. It recently reviewed a district-level interagency protocol FACS developed which further supports their approach towards unaccompanied homeless children and specialist homelessness services. The Ombudsman said it ‘will be examining the extent to which the new policy and related protocol address the need to provide adequate support to vulnerable unaccompanied children in homelessness services’.²⁹⁷

Committee comment

- 3.125** The committee acknowledges that the child protection system is currently under enormous pressure from a number of difficult and challenging issues, particularly relating to the systems, processes and procedures in place for reporting and investigations. We recognise that despite the threshold for reports being raised to risk of significant harm, following the Wood Report, there has still be an increase in the overall number of child protection reports over the last few years. Although the department has managed to fill many of its vacant caseworker positions, it has still not been able to significantly increase its ability to undertake face to face assessments for many of those children reported to be at risk of significant harm. While the number of face to face assessments has slightly increased, it is still at an unacceptable low rate of about 30 percent. One has to question what is happening with the remaining number of children who are simply not being seen, those cases that are simply closed due to ‘competing priorities’.
- 3.126** It seems that decisions about which cases will be investigated or allocated appear to be based more on resource and capacity issues of the department, rather than on the outcomes of a safety assessment. While we accept that these are complex and difficult issues, we believe that

²⁹⁵ Submission 71, Youth Action, p 38.

²⁹⁶ Submission 97, YFoundations, pp 6-7.

²⁹⁷ Submission 74, Ombudsman NSW, p 73.

the system needs to work far more effectively and intelligently to ensure that all children identified at risk of significant harm receive an adequate response from the department.

- 3.127** Unfortunately we heard a number of cases during this inquiry where the department's response to a child protection report was either inconsistent or inadequate. While we understand that the department is using various screening and assessment tools to triage cases, we question how effective these tools are given concerns they are not suited to a wide variety of factors and circumstances, for example, to assess risk in Aboriginal families and communities or to assess child protection concerns in the context of domestic or family violence. It appears that existing tools may also be inadequate in assessing cumulative harm, which is troubling, given the long term damage such harm can cause to a child.
- 3.128** We support the need to have objective tools and frameworks to assess risk in the child protection context, but we recognise the need for such tools to be tailored in certain circumstances. The committee acknowledges that getting the balance right is a difficult exercise, but we need to look at how we can do it better, given assessments are the trigger for any child protection investigation or response that may follow.
- 3.129** In the committee's view, there needs to be greater objectivity within the risk assessment process. Responses should not vary significantly simply because of where a family is geographically located or resource constraints. The department needs to adopt more effective and intelligent approaches to managing its limited resources, and needs to consider new and innovative solutions to these problems.
- 3.130** While there were many calls for more resources in this part of the system we do not see this as the solution to the systemic problems in child protection in New South Wales. The evidence before the committee makes it clear that additional resources are needed most desperately in early intervention. When it comes to risk of harm and reporting the most critical needs are for greater objectivity, better systems to pick up cumulative risk, and greater consistency in outcomes.
- 3.131** Taking all of these issues into account, the committee recommends that the NSW Government commission an independent review of the Department of Family and Community Services' screening and assessment tools and processes, to identify how they can be improved to enhance objectivity within child protection assessments. We would suggest that this review should also examine any lessons learnt from tools used in other jurisdictions.

Recommendation 4

That the NSW Government commission an independent review of the Department of Family and Community Services' screening and assessment tools and processes, to identify how they can be improved to enhance objectivity within child protection assessments.

- 3.132** The committee is also concerned that there is a lack of funding being directed to men's behaviour change programs. Based on the evidence received, it appears there are only four of these programs operating in New South Wales, which is in stark contrast to the thirty operating in Victoria.

- 3.133** While we of course need to prioritise women and children who are affected by domestic violence, we also need to better address the needs of perpetrators. Men's behaviour change programs can help in this regard, as they promote greater perpetrator accountability and can help men to address other issues such as anger and drug and alcohol addiction.

Recommendation 5

That the NSW Government benchmark funding levels for men's behaviour change programs in other state and territory jurisdictions, to ensure an adequate level of funding is allocated to these programs in New South Wales.

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- 3.134** In terms of high risk birth alerts and removals, the committee acknowledges that these situations can be highly distressing to those involved, particularly mothers who have their newborn babies immediately removed from them at the hospital due to child protection concerns. While we understand that there are some concerns about whether the department is following the correct procedures or policy in these cases, we have not received sufficient evidence to indicate any systemic failures in this regard.
- 3.135** In many of these cases, the children are removed pursuant to a court order, usually because there are circumstances which have highlighted genuine safety concerns for the child. Young children and infants are very vulnerable, and if child protection concerns exist, the department has a responsibility to act to ensure that child's safety.
- 3.136** We accept, however, that the department should be working more effectively with these families to identify whether support services can be provided to address child protection concerns after they have been identified. In this regard, there should be a focus on identifying whether restoration of that child is possible, assuming any safety concerns are adequately addressed.
- 3.137** In terms of young people, we recognise that they may often be overlooked in the child protection system, given the focus may be on those who appear less likely to be able to 'self-protect'. Although we appreciate that the demands on the system are high, we agree that young people need greater attention and focus, given how pivotal this is in helping them to secure positive outcomes in their life. As the Ombudsman has previously identified, there is clearly a need for a framework to protect vulnerable adolescents. Therefore, the committee recommends that the Department of Family and Community Services develop, in consultation with the NSW Ombudsman and sector, a framework that focuses on the needs of vulnerable young people, to ensure they are not overlooked within the child protection system.

Recommendation 6

That the Department of Family and Community Services develop, in consultation with the NSW Ombudsman and stakeholders, a framework that focuses on the needs of vulnerable young people, to ensure they are not overlooked within the child protection system.

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- 3.138** With so many of the current risk of significant harm reports being left unaddressed and without any face to face follow up the system is providing a false sense to those who put in

risk of significant harm reports that something will be done to protect the children who are the subject of the report. However in many cases the only response will be to open a file, because of resource constraints perform no work on it, and then close it after four weeks if no additional report is received. This is an extremely troubling systemic response and very obviously causes many caseworkers to feel a sense of responsibility and concern when they are powerless to help so many children in need.

- 3.139** Providing reporters with information about resources that families and carers under stress could be directed to would clearly be beneficial. This is not to suggest that statutory responsibility should then pass on to reporters, but it will be a step towards the community resuming part of its overall responsibility to look out for children at risk.

Chapter 4 The court process

This chapter examines care and protection proceedings in the Children’s Court of New South Wales, including a number of concerns about the legal process, including how evidence is considered, the lack of strength based evidence presented by the department and the pressure placed on parents to consent to orders. It also looks at concerns related to the lack of legal assistance afforded to parents.

The chapter also considers the effectiveness of parent responsibility contracts and orders, particularly as an ‘early’ alternative option in the court. Finally, the chapter also outlines some of the jurisdictional tensions that arise between the state care and protection system and federal family law system.

The Children’s Court of New South Wales

- 4.1** The Children’s Court of NSW has jurisdiction under the *Children and Young Persons (Care and Protection) Act* 1998 to determine matters involving concerns about the care and protection of a child or young person.
- 4.2** The Children’s Court of NSW is comprised of a President, being a District Court Judge, and specialist Children’s Magistrates. There are currently 16 specialist Children’s Magistrates in New South Wales, including at Parramatta, Lismore, Broadmeadow, Woy Woy, Glebe, Campbelltown and Port Kembla.²⁹⁸
- 4.3** Children’s Magistrates also conduct regular circuits that cover the mid-north coast, the Hunter region, the north western district and the Riverina. In other parts of New South Wales, Local Court Magistrates exercise the jurisdiction of the Children’s Court.²⁹⁹

Overview of process

- 4.4** According to Judge Peter Johnstone, the President of the Children’s Court of NSW, there are typically four stages involved in a care and protection matter:
- the initial interim hearing
 - the establishment hearing
 - final orders
 - restoration or placement determination.³⁰⁰
- 4.5** During the interim order stage, which occurs after a child is removed and within five days of that removal, the Court can ‘[make] an order allocating parental responsibility generally to the Minister on an interim basis’.³⁰¹

²⁹⁸ Evidence, Judge Peter Johnstone, President, Children’s Court of New South Wales, 27 September 2016, p 38; Submission 80, Children’s Court of New South Wales, pp 1-2.

²⁹⁹ Submission 80, Children’s Court of New South Wales, pp 1-2.

³⁰⁰ Evidence, Judge Johnstone, 27 September 2016, p 39.

³⁰¹ Evidence, Judge Johnstone, 27 September 2016, p 39.

4.6 To do this, the Court needs only to be satisfied that it is not in the best interests of the safety, welfare and well-being of the child or young person that he or she should remain with his or her parents on a temporary basis. Judge Johnstone explained the assessment undertaken during this stage of proceedings:

In practice there is usually limited information presented to the Court to assess the risk and the vast majority of applications for interim orders are not contested by parents. This may be because the legal practitioner has advised their client not to present evidence to the Court that cannot be substantiated at that time or might later be contradicted. That is, the legal practitioner may have assessed that it is not in their client's best interests to contest the application for an interim order. The Court is therefore often assessing risk on the basis of the information presented by the Department and in a context where the removal has already taken place.³⁰²

4.7 After this occurs, usually within a month, 'an investigation is undertaken and an interim case plan called the summary of proposed plan is presented to the Court' during an establishment hearing. Judge Johnstone explained that during this hearing, the threshold for finding that a child is in need of care and protection is a 'very low threshold':

It is not the final test that you see in final care proceedings where the test of restoration or unacceptable risk of harm is applied. It is a very low threshold, which is basically saying to those parents that these children, in our view, need to be looked after while we find out in more detail what we need to do next.³⁰³

4.8 During the next stage, which involves the determination of final orders, the Children's Court will consider what is in the best interests of the child. In some cases, a dispute resolution conference may be conducted by a children's registrar. If parties can reach an agreement during this conference, orders may be made 'by consent', provided the judicial officer also agrees that the order is in the best interests of the child.³⁰⁴

4.9 In other cases, prior to determining final orders, the Children's Court Clinic will be engaged to provide an independent expert clinical assessment of the child or young person, and/or the capacity of parents and others to carry out parental responsibility. This report is undertaken by an 'Authorised Clinician',³⁰⁵ and can take up to six weeks to finalise.³⁰⁶

³⁰² Answers to questions on notice, Judge Peter Johnstone, Children's Court NSW, 31 October 2016, p 2.

³⁰³ Evidence, Judge Johnstone, 27 September 2016, p 39.

³⁰⁴ Children's Court, *Care and protection cases*,

<http://www.childrenscourt.justice.nsw.gov.au/Pages/typesofcase/care_protection/care_protecti on.aspx>

³⁰⁵ An Authorised Clinician is usually a professional who has expertise in psychiatry, psychology or social work. The Sydney Children's Hospital Network, *Authorised Clinicians*, <<http://www.schn.health.nsw.gov.au/health-professionals/departments-clinics-and-units/childrens-court-clinic/authorised-clinicians>>

³⁰⁶ The Sydney Children's Hospital Network, *Children's Court Clinic*, <<http://www.schn.health.nsw.gov.au/health-professionals/departments-clinics-and-units/childrens-court-clinic>>; Evidence, Judge Peter Johnstone, President, Children's Court of New South Wales, 27 September 2016, p 39.

- 4.10** Gathering these reports helps the Courts to ‘weigh up the risk to the child against the benefit to the child of staying with the family’. Generally, this part of the assessment process will consider the impact of the child on entering into or remaining in out of home care on an ongoing basis.³⁰⁷
- 4.11** When determining final orders, Judge Johnstone outlined that the ‘unacceptable risk of harm’ test is applied, with ‘the threshold question then to be determined is... can we restore this child to these parents’. If restoration is not possible, the ‘next step is for the Secretary to prepare a Care Plan, which decides where the child should be placed in out of home care’.³⁰⁸
- 4.12** The committee was advised by Judge Johnstone that 81 per cent of care and protection cases in the Children’s Court in 2015-16 were finalised within 9 months, 10.2 per cent finalised within 9 and 12 months, and 8.8 per cent finalised after 12 months.³⁰⁹

Nature of proceedings

- 4.13** Care and protection matters in the Children’s Court of NSW are conducted with as little formality and legal technicality as possible. They are not supposed to be conducted in an adversarial manner, and are not bound by the rules of evidence. In all children’s court proceedings, the standard of proof is based on the balance of probabilities.³¹⁰
- 4.14** Subject to a child’s age and developmental capacity, the Children’s Court also takes all measures practicable to ensure that each child or young person has an opportunity to be heard and participate in proceedings.³¹¹
- 4.15** Judge Johnstone explained that the nature of the process and conduct of the court is child-focussed and set by legislation:

...the Act requires us to act in a non-adversarial process. In fact, we do operate in a way that has adversarial processes to some extent but one of the things I have been keen to do, and we are doing more and more, is to take a less adversarial approach. We do not call it inquisitorial as much as what I call the therapeutic approach. We try to conduct ourselves in a way that is more focused on the children who are coming before the Court.³¹²

³⁰⁷ Answers to questions on notice, Judge Johnstone, p 3.

³⁰⁸ Evidence, Judge Johnstone, 27 September 2016, p 38.

³⁰⁹ Answers to questions on notice, Judge Johnstone, p 1.

³¹⁰ *Children and Young Persons (Care and Protection) Act* 1998, s 93.

³¹¹ Children’s Court, *Care and protection cases*, <
http://www.childrenscourt.justice.nsw.gov.au/Pages/typesofcase/care_protection/care_protection.aspx>

³¹² Evidence, Judge Johnstone, 27 September 2016, p 38.

Concerns with the legal process

- 4.16** A range of concerns were raised in relation the legal process for care and protection matters in the Children’s Court. One of the concerns was that the Court is not bound by the strict applications of the rules of evidence. There were also concerns about the lack of strength based evidence presented to the Court by the Department of Family and Community Services (FACS).
- 4.17** Another issue raised was that parents often feel pressured into ‘consenting’ to orders in the Children’s Court, often without understanding the implications of doing so. There were also claims that the Children’s Court is not necessarily scrutinising cases sufficiently, and in most instances are just approving the applications made by FACS. The committee also heard concerns about how difficult it is to apply for restoration of a child after an order has been made for their removal.

Application of rules of evidence

- 4.18** Section 93 of the *Children and Young Persons (Care and Protection) Act* 1998 specifies that the Children’s Court is not bound by the rules of evidence unless it decides otherwise.³¹³ In the absence of these rules, inquiry participants argued that evidence presented by FACS to the Children’s Court is often untested, which enables decisions to be made based on evidence which is hearsay, circumstantial, or even false.
- 4.19** Dr Helen Hayward Brown, a medical anthropologist/sociologist, argued that the rules of evidence should be applied in the Children’s Court. Without such rules, she suggested that there can be ‘hearsay ... false and misleading evidence, cherry-picking of evidence, misinterpretation and error, and circumstantial evidence’ all being admitted.³¹⁴
- 4.20** Ms Stephanie Croft expressed the same view, noting that because the rules of evidence do not apply, evidence ‘put forward by FACS may not be tested for accuracy or refuted by parents’.³¹⁵
- 4.21** Dr Hayward Brown, the National Ethnic Disability Association and the Alliance for Family Preservation and Restoration, all called for the rules of evidence to be applied to care and protection proceedings in the Children’s Court.³¹⁶
- 4.22** Dr Hayward Brown explained that this is necessary to ensure that assessments by the Court as to whether a child is at risk of significant harm are based on ‘hard, objective and substantial evidence’:

In order to avoid injustice and assure that removal of children is based on facts rather than fiction, **rules of evidence need to be applied**. There needs to be **hard, objective and substantial evidence for ‘risk of harm’**. The continued use of often

³¹³ *Children and Young Persons (Care and Protection) Act* 1998, s 93. According to this provision, the rules of evidence do not apply unless the Children’s Court determines otherwise.

³¹⁴ Submission 56, Dr Helen Hayward-Brown, p 7.

³¹⁵ Submission 32, Ms Stephanie Croft, p 16.

³¹⁶ Submission 56, Dr Helen Hayward-Brown, p 7; Submission 105, National Ethnic Disability Alliance, p 10; Submission 44, Alliance for Family Preservation and Restoration, p 10.

‘fictionalised’ accounts by child protection workers in order to successfully remove a child from a family, places the department at risk of much higher costs and destruction of families.³¹⁷

Lack of strength based evidence presented to the Court

- 4.23** While the role of FACS is to protect children and make applications to the Children’s Court where a child’s safety or wellbeing is at risk, there were criticisms about the lack of strength based evidence being put forward by FACS during court proceedings.
- 4.24** The committee heard of instances in which parents or individuals involved in care and protection proceedings felt that important evidence about the strengths of the family or positive steps that had been taken to reduce risks to the child were not presented by FACS to the Court.³¹⁸
- 4.25** The Alliance for Family Preservation and Restoration argued that FACS caseworkers should be ‘mandated to focus on the strengths of families not just their weaknesses when doing family assessments, reports and writing their affidavits’. In its opinion, ‘family strengths are rarely if ever mentioned’.³¹⁹
- 4.26** This proposition was supported by one individual, who in his personal experience, advised the committee that the department just presented one side to the Court, suppressing ‘anything that [was] not going to support their cause’. In this individual’s case, he said he kept records of everything, which allowed him to show that the department had made what he referred to as ‘complete fabrications’.³²⁰
- 4.27** Two caseworkers from FACS that gave evidence to the inquiry explained that their role in preparing court documents, such as affidavits, is to ‘focus on the risks’, although it was argued that this is not to the exclusion of the strengths.³²¹
- 4.28** Both caseworkers asserted that it is an inherent part of their approach to casework to recognise and utilise the strengths of the family. Given this, one of the FACS caseworkers explained that the family’s strengths are likely to appear in a number of documents which would be attached to the court application: ‘We usually attach as annexures the case plan meeting, our records of case plans and what was discussed and I believe that in some of the documents some of the strengths would be acknowledged’.³²²
- 4.29** However both caseworkers acknowledged that the emphasis of evidence presented to the Court by FACS is on the risks assessed in relation to the child. As one caseworker explained:

³¹⁷ Submission 56, Dr Helen Hayward-Brown, p 7 (bolding in original).

³¹⁸ General Purpose Standing Committee No. 2, NSW Legislative Council, *Consultation with Indigenous community members – Inquiry into child protection*, 8 September 2016, p 6.

³¹⁹ Submission 44, Alliance for Family Preservation and Restoration, p 12.

³²⁰ *In camera* evidence, Witness A, 26 September 2016, p 9, published by resolution of the committee.

³²¹ Evidence, Witness G, Caseworker, Department of Family and Community Services, 27 September 2016, p 6.

³²² Evidence, Witness F, Caseworker, Department of Family and Community Services, 27 September 2016, p7.

What we present to the Court is the risk, section 79. We do not present a case to the Court where we are working with the family. We present to the Court the cases where actually a removal has taken place. In that sense, we have to show to the Court what the risks were and what work we have conducted with them, which includes the strengths, and from that perspective.³²³

4.30 This caseworker's colleague explained that it is a caseworker's responsibility to 'present the grounds for why a child was removed'. This individual added: 'When we go to Court we have to have reasonable, truthful grounds, reasons why a child was removed. That is part of our evidence, which risks were involved with the child'.³²⁴

4.31 Ms Deidre Mulkerin, Deputy Secretary of the Northern Cluster of Family and Community Services, explained that a range of things are presented to the Court depending on the family's circumstances:

The evidence that is presented to Court is about the particular care matter that is in front of the Court. Then the assessments that might occur during the course of the court matter will weigh up all of the factors around this child, so both the risks and the dangers, the factors that relate to their families, and also what other factors are relevant for that child; for example, disruption of their schools, disruption of their relationships, where are their siblings.³²⁵

4.32 In its response to a question taken on notice about this issue, FACS stated that they 'regularly present evidence of the strengths in families and parents in addition to evidence of the risks when presenting cases to the Children's Court'. Further, it said that 'as a model litigant FACS ensures that all relevant evidence is filed and service on parties to the proceedings'.³²⁶

4.33 Importantly, the committee noted that while caseworkers at FACS have responsibility for preparing affidavits for court proceedings, managers are responsible for briefing solicitors on cases.³²⁷ As one of the FACS caseworkers stated: 'I do not have the power to tell which questions the solicitor or legal representatives are going to ask'.³²⁸

Parents being pressured to consent to orders

4.34 Several individuals involved in the inquiry argued that parents feel pressured by legal representatives into agreeing to orders (referred to as 'consenting without admissions'), without understanding the implications.

4.35 Mrs Stephanie Croft said that it is 'commonplace' for 'lawyers to tell parents who have just had their children taken to 'consent without admission' because it will make the court

³²³ Evidence, Witness G, 27 September 2016, p 7.

³²⁴ Evidence, Witness F, 27 September 2016, p 7.

³²⁵ Evidence, Ms Deidre Mulkerin, Deputy Secretary, Northern Cluster, Operations, Department of Family and Community Services, 27 September 2016, p 80.

³²⁶ Answers to supplementary questions, Department of Family and Community Services, 27 October 2016, p 3.

³²⁷ Evidence, Witness F, 27 September 2016, p 17.

³²⁸ Evidence, Witness F, 27 September 2016, p 8.

processes much quicker. Mrs Croft explained that parents will often consent to such orders, as they are vulnerable, inexperienced and trusting:

Vulnerable parents with no experience of the system, who trust their legal aid lawyers, and who have no understanding of that this means do exactly that, only to later find that they have unknowingly given FACS unlimited power to take their children into care with no hearing.³²⁹

- 4.36** Dr Helen Hayward Brown also highlighted this issue, stating that ‘parents repeatedly claim that they are placed under duress to sign ‘consent’ documents, agreeing without admissions that ‘their child was at risk’. Dr Hayward Brown explained the pressure and duress some parents have experienced in this regard:

Parents report that they are advised that they will never see their children again, or access will be reduced, if they do not sign this document. Some parents are also advised that ‘only guilty parents need a lawyer.’³³⁰

- 4.37** The Alliance for Family Preservation and Restoration also expressed concerns about parents being pressured to agree to orders.³³¹ Mrs Eleanor Hansen contended that the ‘consent without admissions’ process should be reviewed, as families are often strongly ‘encouraged’ or even threatened to consent, without being informed of the consequences.³³²

Consideration of evidence by the Children’s Court

- 4.38** A number of issues were raised in relation to the determination of care and protection cases in the Children’s Court. There were concerns that the impacts caused by removal are not taken into account during decisions and that the Court is in effect ‘rubber stamping’ a high number of cases without making independent decisions.
- 4.39** Ms Mary Moore, from the Alliance for Family Preservation and Restoration, contended that the Children’s Court ‘is just a rubber stamp for what the department wants’.³³³ Another individual expressed the same view, stating that ‘It is almost like the Children’s Court is a rubber stamp for the department’s position’. This individual attributed this issue to the fact that the Court is a closed court to the public and media. While privacy was acknowledged to be important, given matters involve children, this individual said that ‘has come at the expense of having a vigorous and proper process’.³³⁴
- 4.40** Relevant to this issue is the proportion of cases where removal occurs. Judge Johnstone, the President of the Children’s Court, said that during the initial stage, parental responsibility is allocated to the department in about 99 per cent of cases, whereas it is about 90 per cent during the establishment phase:

³²⁹ Submission 32, Mrs Stephanie Croft, p 16.

³³⁰ Submission 56, Dr Helen Hayward Brown, p 11.

³³¹ Submission 44, Alliance for Family Preservation and Restoration, p 5.

³³² Submission 108, Mrs Eleanor Hansen, p 3.

³³³ Evidence, Ms Mary Moore, Alliance for Family Preservation and Restoration, 26 September 2016, p 14.

³³⁴ *In camera* evidence, Witness D, 26 September 2016, p 8, published by resolution of the committee.

At that initial stage the allocation of parental responsibility tends to be about 99 per cent, and at the establishment phase, probably about 90 per cent of the children who have been reviewed and removed are found to be in need of care and protection.³³⁵

4.41 In terms of more specific data, Judge Johnstone was unable to provide statistics on the number of cases over the last five years where the Children’s Court had not endorsed the decision of FACS. The committee was advised:

The Children’s Court is unable to provide the particular data requested. Court data is collected manually and only records the type of application made and the type of order made whereas the outcomes in care and protection proceedings are far more nuanced by the making of supplementary orders and the approval of the permanency plan as set out in the care plan.³³⁶

4.42 Information was, however, provided on the number of section 79 applications and orders made in the Children’s Court over the last five years, with applications for parental responsibility under s 79 being the most common application made to the Children’s Court.³³⁷ The table below shows that in 2015/16 there were 2867 new applications made for parental responsibility and 2351 orders for parental responsibility granted.³³⁸

Table 2 Applications and orders for parental responsibility in the Children's Court of NSW³³⁹

	2011/12	2012/13	2013/14	2014/15	2015/16	Totals
s 79 New	2303	2204	2548	2682	2867	12604
s 79 Finalised	2219	2258	2344	2044	2351	11216

Source: Answers to supplementary questions, Judge Peter Johnstone, Children’s Court of New South Wales, 31 October 2016, p 4.

4.43 The committee was advised to exercise caution in interpreting this data, for the following reasons:

- matters counted in one year may be finalised in the following year
- the data does not ‘fully reflect the number of matters where restoration is found to be appropriate of where a placement with a family member is approved under a care plan’, because parental responsibility orders can be made with respect to the Minister, one or both parents or another suitable person
- orders for parental responsibility can also be structured in a way to provide for restoration to a parent over a period of time but would be counted as a finalised order under section 79.³⁴⁰

³³⁵ Evidence, Judge Johnstone, 27 September 2016, p 40.

³³⁶ Answers to supplementary questions, Judge Peter Johnstone, Children’s Court of New South Wales, 31 October 2016, pp 3-4.

³³⁷ Answers to supplementary questions, Judge Johnstone, p 4.

³³⁸ Answers to supplementary questions, Judge Johnstone, p 4.

³³⁹ Answers to supplementary questions, Judge Johnstone, p 4.

³⁴⁰ Answers to supplementary questions, Judge Johnstone, p 4.

4.44 Judge Johnstone was questioned by the committee as to whether in fact the Children's Court is effectively 'rubber stamping' a high number of applications by FACS for removal. Judge Johnstone denied that this was the case and argued that removal was often justified:

... we believe ourselves to be sufficiently experienced to know when we think a child is at risk. As I have said, in the large majority of cases I see I believe the removal has been justified on what I have read in the report.³⁴¹

4.45 When Judge Johnstone appeared before the committee, he advised that at the initial stage the allocation of parental responsibility is awarded in approximately 99 per cent of cases, whereas in the establishment phase about 90 per cent of children who are reviewed and removed are found to be in need of care and protection.³⁴²

4.46 While Judge Johnstone acknowledged that there may be a perception that the Court is just approving FACS applications without independent determinations, he said that 'the other side of the coin would suggest it means that by and large we believe that the caseworkers and the department are doing their job appropriately and adequately'.³⁴³

4.47 The Judge explained that the role of the Court is to independently determine, on the basis of evidence presented to the Court, whether a child is in need of care and protection:

The Court's role effectively is to be a supervisor, if you like, of departmental action. We do not initiate the proceedings, we do not remove the children. All we do is adjudicate on whether it has been appropriate to remove them; adjudicate on whether or not we believe that child, with all the evidence having been gathered, is in need of care and protection; and then adjudicate on whether the care plan that the department brings to us is appropriate and adequate.³⁴⁴

4.48 There were concerns, however, that more value is being placed on the evidence of FACS than others. One individual said 'it is my experience that the Children's Court gives the greatest weight to opinions from FACS'.³⁴⁵

4.49 Judge Johnstone acknowledged that the opinion of experienced caseworkers and casework managers is valued by courts, given the expertise these officers possess:

Insofar as whether or not we consciously or unconsciously defer to the opinions of FACS, we would like to think that we are sufficiently experienced and objective to be able to get to the nitty-gritty of what is happening in individual families. Nevertheless, when it comes to a hearing, a trial, sometimes caseworkers and casework managers are people whose opinions we do value because of their level of experience in these areas and their knowledge on these sorts of matters. That is just a natural deference to what you might call expert evidence or quasi-expert evidence.³⁴⁶

³⁴¹ Evidence, Judge Johnstone, 27 September 2016, p 41.

³⁴² Evidence, Judge Johnstone, 27 September 2016, p 40.

³⁴³ Evidence, Judge Johnstone, 27 September 2016, p 41.

³⁴⁴ Evidence, Judge Johnstone, 27 September 2016, p 46.

³⁴⁵ Submission 114, Name suppressed, p 4.

³⁴⁶ Evidence, Judge Johnstone, 27 September 2016, pp 38-39.

4.50 As to whether the Court considers the damage and trauma caused to a child if it is removed, alongside evidence of the risks to the child as assessed by FACS, the committee was advised that it is a legislative requirement for the Court to consider a range of factors, several of which would take into account the impacts of removal:

... when making decisions in care and protection cases, including applications for interim orders, the Children's Court must apply the principles of general application under s9 of the *Children and Young Persons (Care and Protection) Act 1998*. Underpinning these principles is an acknowledgement that removal of a child from a parent may damage a child or young person. For example, Section 9(2)(c) provides that in deciding what action is necessary to protect the child or young person from harm the least intrusive intervention in the child's life and his or her family must be followed. Section 9(2)(d) also acknowledges that removal of a child or young person, whether temporarily or permanently, involves a deprivation of his or her family environment. Additionally, the paramount principle under s9(1) refers not just to the safety of the child or young person but also to their welfare and well-being. That is, the Court is required to take into consideration the impact on the child, including the detriment to the child, when making an interim or other order.³⁴⁷

4.51 Further to this issue, it was emphasised to the committee by the President of the Children's Court that Magistrates are very experienced individuals who have a detailed knowledge of the damage caused by removal, just as they have knowledge about the damage that can be caused if a child is left at risk. Judge Johnstone said:

Our magistrates know from experience the damage that can occur to a child by removal. But they also know, from their reading and their knowledge and their experience, the damage that can be done to the children if they are left in an environment where they are being subjected to those influences like domestic violence, like drug abuse, like physical violence. So we know from our experience how to weigh those risks up against each other.³⁴⁸

Restoration applications

4.52 If a child is placed in permanent out of home care according to final orders, a parent can make an application under section 90 of the *Children and Young Persons (Care and Protection) Act 1998* for restoration of the child. This type of application can only be made with leave of the Children's Court, which may only be granted if the applicant can show that there has been a significant change in circumstances since the order was made or varied.³⁴⁹ As Judge Johnstone explained:

Leave needs to be granted, but basically to be successful in a section 90 application you have to show, firstly, that there has been a significant change in circumstances and, secondly, that the issues that led to the removal of the children have been addressed to the point where that child would no longer be at risk of harm in your care.³⁵⁰

³⁴⁷ Answers to questions on notice, Judge Johnstone, p 2.

³⁴⁸ Evidence, Judge Johnstone, 27 September 2016, p 46.

³⁴⁹ *Children and Young Persons (Care and Protection) Act 1998*, s 90.

³⁵⁰ Evidence, Judge Johnstone, 27 September 2016, p 40.

- 4.53** The committee was also told that restoration applications can be made by both FACS and parents, when circumstances have changed for the child.³⁵¹
- 4.54** Several inquiry participants raised concerns about how difficult it is to make a successful restoration application. Ms Stephanie Croft said that ‘many vulnerable parents don’t have the knowledge, experience or finances to do this, even when they have a valid case and evidence to do so’.³⁵²
- 4.55** Another individual argued that ‘restoration is almost impossible even when it is viable and preferable’. This individual argued that FACS has ‘phenomenal powers to remove and “place” children,’ but that there is ‘no clear path or policy for restoration, leaving many children in permanent care who do not need to be there’.³⁵³
- 4.56** Restoration applications for Aboriginal families were, in particular, noted to be challenging: ‘Aboriginal families who are under resourced and beaten down by a harsh and unsympathetic system they don’t understand, have no hope of raising a section 90’.³⁵⁴
- 4.57** This view was consistent with feedback the committee received during a consultation with Indigenous community members. Several participants in the consultation were critical of how difficult it is to successfully apply for restoration, particularly when permanent care and protection orders are often made without parents being provided with an appropriate amount of time to make changes to demonstrate that they are able to appropriately care for their child.³⁵⁵
- 4.58** The Alliance for Family Preservation and Restoration also commented on the difficulties associated with restoration applications. It said that ‘Legal Aid rarely will even fund a section 90 application’ and the process is ‘near impossible’.³⁵⁶ Ms Mary Moore, Convenor of the Alliance, acknowledged that section 90 is intended to ensure stability for the child, although she said that the ‘path to get a section 90 is very difficult’, which is problematic in her view given ‘establishment is just gifted without admissions’.³⁵⁷
- 4.59** Judge Johnstone explained that legal aid is likely to only be available for a section 90 applications if there are ‘real prospects of success’.³⁵⁸
- 4.60** For foster carers, who have had children placed with them pursuant to an order in the Children’s Court, it was highlighted how restoration applications can be ‘unsettling’ for the child:

³⁵¹ Evidence, Judge Johnstone, 27 September 2016, p 40.

³⁵² Submission 32, Mrs Stephanie Croft, p 15.

³⁵³ Submission 114, Name suppressed, pp 1-2.

³⁵⁴ Submission 114, Name suppressed, p 2.

³⁵⁵ General Purpose Standing Committee No. 2, NSW Legislative Council, *Consultation with Indigenous community members – Inquiry into child protection*, 8 September 2016, p 5.

³⁵⁶ Submission 44, Alliance for Family Preservation and Restoration, p 6.

³⁵⁷ Evidence, Ms Mary Moore, Convenor, Alliance for Family Preservation and Restoration, 26 September 2016, p 18.

³⁵⁸ Evidence, Judge Johnstone, 27 September 2016, p 42.

The other issue in long term foster care is section 90's, this is where at any time during the long term fostering can parents apply to have the children back. This is very unsettling for children and for foster carers. There needs to be a time limited option for birth families to be able to apply for this.³⁵⁹

Lack of access to legal assistance

- 4.61** Legal Aid NSW provides legal advice and minor assistance to parents involved in care and protection matters in a number of ways, including through its early intervention unit and through its free advice clinics across the state. Legal Aid NSW also provides legal representation to parents through its funding of private practitioners who are on specialist care and protection panels.³⁶⁰ As Ms Nicola Callander, Solicitor in Charge, Child Protection, Legal Aid NSW, noted, there are 70 panel practitioners who service the Children's Court at Parramatta alone.³⁶¹
- 4.62** Despite this assistance, a number of inquiry participants reported that parents and carers involved in care and protection proceedings often find it challenging to access legal advice and representation, including representation through Legal Aid NSW.
- 4.63** Ms Moore explained that it is becoming increasingly difficult for parents to access a solicitor through legal aid.³⁶² The National Ethnic Disability Alliance also said that accessing legal aid is 'difficult and highly rationed'. It highlighted the disadvantage faced by middle income earners who cannot afford lawyers but are denied legal aid on the basis of assets they have:
- Those on middle incomes may have difficulties affording legal services because of the value of their assets. They may have considerable material assets, but limited cash assets.³⁶³
- 4.64** One witness involved in the inquiry, a grandmother involved in a care and protection case involving her grandchildren, explained that she did not qualify for legal aid but could not afford a solicitor and had to represent herself.³⁶⁴
- 4.65** Mrs Eleanor Hansen, an advocate who assists families involved in care and protection matters, argued that although Legal Aid NSW provides a duty lawyer at the Children's Court, this lawyer is not always available. Further, Mrs Hansen suggested that the duty lawyer is often unable to assist due to a conflict of interest, as the lawyer has been or is representing another party involved in the case.³⁶⁵ The President of the Children's Court, Judge Johnstone, expressed a different view, stating to the committee that 'in the Children's Court every family is represented, usually by Legal Aid'.³⁶⁶

³⁵⁹ Submission 37, Ms Kelly Samways, pp 1-2.

³⁶⁰ Evidence, Ms Nicola Callander, Solicitor in Charge, Child Protection, Legal Aid NSW, 16 August 2016, p 11.

³⁶¹ Evidence, Ms Callander, 16 August 2016, p 11.

³⁶² Evidence, Ms Moore, 26 September 2016, p 14.

³⁶³ Submission 105, National Ethnic Disability Alliance, p 16.

³⁶⁴ *In camera* evidence, Witness B, 26 September 2016, p 8, published by resolution of the committee.

³⁶⁵ Submission 108, Mrs Eleanor Hansen, p 6.

³⁶⁶ Evidence, Judge Johnstone, 27 September 2016, p 38.

- 4.66** With difficulty accessing free or reduced cost legal services, some parents and carers are forced to pay for a private solicitor or to represent themselves. Legal fees can be expensive, which was highlighted to be additional challenge. One grandparent told the committee that they spent over \$50,000 on legal costs, even though they were ultimately unsuccessful in their case.³⁶⁷ Another family spent ‘over \$70,000 fighting in court’.³⁶⁸
- 4.67** Ms Robin Turner highlighted the disadvantaged faced by vulnerable parents in accessing legal assistance. She stated: ‘Young parents have no court experience or the money to employ lawyers’.³⁶⁹
- 4.68** Ms Moore argued that the legal representation available to parents is ‘totally inadequate’, and that ‘unless you are very well off and can afford a good legal team, you have got no chance of getting your child back’.³⁷⁰ The sentiment of this was captured by one father who said he was ‘pretty lucky’ as he was on a fairly high income which allowed him to secure ‘really good lawyers’.³⁷¹
- 4.69** Impacting the capacity of parents to obtain legal advice and representation prior to court is late notice of the proceedings, with court documents often served only a few days or even the day before court. The Alliance for Family Preservation and Restoration reported that some parents are not served with documents before court, or are served documents as they are entering the court room.³⁷² A number of other inquiry participants advised that they personally were served with documents the day before court.³⁷³
- 4.70** In this context, the value of early legal advice or assistance should be noted, as was emphasised by Legal Aid NSW and Women’s Legal Service NSW. Ms Liz Snell, Law Reform and Policy Coordinator from Women’s Legal Service NSW, highlighted that their organisation is advocating for ‘early legal advice and not waiting until it [cases] escalate to the Children’s Court...’.³⁷⁴
- 4.71** Ms Snell highlighted the work Women’s Legal Service NSW have been doing to promote how parents and carers can access free legal assistance, including the design of flyers targeting different cultural and community groups, including Aboriginal and Torres Strait Islander peoples:

Out of that in the south west Sydney district we have developed a range of flyers. One is a general flyer, one is a specific Aboriginal and Torres Strait Islander flyer and one flyer has been translated into a number of languages, the intention being to explain how parents or primary care givers can access free legal advice. The intention is—and we are currently doing some training with FACS staff—that FACS staff and non-

³⁶⁷ Submission 4, Name suppressed, p 1.

³⁶⁸ Submission 108, Mrs Eleanor Hansen, p 5.

³⁶⁹ Submission 13, Ms Robin Turner, p 1.

³⁷⁰ Evidence, Ms Mary Moore, Convenor, Alliance for Family Preservation and Restoration, 26 September 2016, p 14.

³⁷¹ *In camera* evidence, Witness A, 26 September 2016, p 9, published by resolution of the committee.

³⁷² Submission 44, Alliance for Family Preservation and Restoration, p 4.

³⁷³ Submission 107, Name suppressed, p 3; Submission 109, Name suppressed, p 1.

³⁷⁴ Evidence, Ms Liz Snell, Law Reform and Policy Coordinator, Women’s Legal Service NSW, 16 August 2016, p 20.

government child protection service providers will hand that flyer out when they go and meet with the parents with the idea being that parents can then contact a free legal service to find out a bit more about why it is they are engaging with FACS, what the issues are and how they can work to address those issues.³⁷⁵

4.72 However, the Australian Services Union, who represents workers in the community legal sector and the Aboriginal Legal Service, highlighted the impacts of 'looming funding cuts' to legal assistance services, including community legal centres, Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and the Legal Aid Commission.³⁷⁶

4.73 The Union also noted that the Productivity Commission, in its 2014 *Access to Justice Arrangements report*, recommended urgent additional funding of \$200 million per annum for legal assistance services.³⁷⁷

4.74 Given the challenges associated with accessing legal assistance, Mrs Hansen suggested that there be more resources available for parents regarding the legal process:

If parents are given easy to understand information including timelines, consequences, rights and terminology explanations at the same time they received the removal order, it would make their understanding of the process fairer. This pamphlet does not need to contain all the information, but a brief overview with webpages and phone numbers for further information.³⁷⁸

4.75 Ms Stephanie Croft recommended that there be 'a radical rethink of the system' to determine whether it 'is the optimal and fairest approach, given then massive difference in size, knowledge and power between the parties involved'.³⁷⁹

Committee comment

4.76 This inquiry highlighted a number of concerns about care and protection proceedings in the Children's Court. One of the concerns the committee has is the degree to which strength based evidence is presented to the Court on behalf of the department. We heard a number of stories where individuals had taken positive steps to address child protection concerns, without this information ever having been presented to the Court. While we understand that the department's case is based on presenting the risks to the child, as required by the legislation, we question how the Court can make an informed and balanced decision if all the relevant information is not presented to it.

4.77 Data from the Children's Court itself appears to show that there are only a small number of cases in which the decision of the court is different to the recommendation of the department. In light of this, and the fact that many parents feel that their true circumstances are not being put forward in their entirety, it is hardly surprising that there is a perception by some in the

³⁷⁵ Evidence, Ms Snell, 16 August 2016, p 20.

³⁷⁶ Submission 78, Australian Services Union, p 23.

³⁷⁷ Submission 78, Australian Services Union, p 24.

³⁷⁸ Submission 108, Mrs Eleanor Hansen, p 4.

³⁷⁹ Submission 32, Ms Stephanie Croft, p 16.

community that the Children's Court is simply rubber stamping the department's decisions. The figures from the Court give this position credibility.

- 4.78** The committee believes that there should be a greater onus on the department, and its solicitors, to ensure that strength based evidence is always presented to the Court, if it exists. While we had caseworkers tell us that this information is usually included in other documents attached to the case file, we do not accept that this means it is being presented in a manner that accurately explains to the Court what the risks are and what the parents have been doing to address them. Nor do we accept that the Court always has sufficient time to thoroughly probe into whether the department has presented a completely balanced case.
- 4.79** It is the committee's view that there needs to be an additional onus or obligation on the department to ensure that it submits strength based evidence to the Court. There also needs to be regular checks as to whether or not this is occurring. Therefore, the committee makes two recommendations aimed at improving this aspect of the process. Firstly, we recommend that the *Children and Young Persons (Care and Protection) Act 1998* be amended to include a specific provision requiring the Department of Family and Community Services to clearly provide strength based evidence when presenting its case in care and protection proceedings.
- 4.80** Secondly, the committee recommends that the NSW Ombudsman have oversight of the department's obligations in this regard. We believe it would be beneficial for the NSW Ombudsman to undertake a regular audit of the department's compliance with providing strength based evidence to the Court.

Recommendation 7

That the NSW Government amend the *Children and Young Persons (Care and Protection) Act 1998* to include a specific provision requiring the Department of Family and Community Services to clearly provide strength based evidence when presenting its case in care and protection proceedings.

Recommendation 8

That the NSW Ombudsman undertake an annual audit of the Department of Family and Community Services' compliance with its obligations to provide strength based evidence to the court.

- 4.81** While we accept that Children's Court magistrates have deep experience in their jurisdiction and are given training on the impacts of child removal, the fact remains that no evidence was able to be presented to the committee that showed how magistrates took these factors into account. There were no expert reports presented to the committee that showed the effect of child removals such as the statistic that once a child is taken into care then they are ten times more likely to have their own child removed into care when they become a parent. Then there are the other known impacts of child removal on educational performance, substance abuse, work opportunities and life expectancy. Child removal decisions should be made by the Court based on all the evidence about the risk of harm to a child if they remain with their parents or carers, together with the known damage that removal will do. Of course, all of this should be

considered by the caseworker at earlier stages of the process. This imbalance needs to be addressed. By not directly and openly considering this body of evidence the system cannot be producing results that are in the best interest of children.

Recommendation 9

That the NSW Government amend the *Children and Young Persons (Care and Protection) Act 1998* to include a specific provision requiring the Children's Court of New South Wales to consider the known risks of harm to a child on being removed from their parents or carer and placed into care, together with the risks of leaving the child in their current circumstances, when making a decision on potential child removal in care and protection proceedings.

4.82 We understand that there were other concerns about the court process as well, including the pressure parents feel to consent to orders and in some instances the lack of legal assistance available. The committee recognises that parents often feel powerless when going up against the department, particularly when documents are served a few days before court, and parents feel unable to adequately prepare. We believe that more should be done to help address the challenges that parents feel when participating in care and protection proceedings. This could be achieved via a range of initiatives, including the development of additional resources for parents about the court process or training programs for lawyers appearing in care and protection matters.

4.83 As the Children's Court of New South Wales falls within the Department of Justice, we recommend that the department, in consultation with the Court and stakeholders, review the systems and processes that operate in the Children's Court to identify any opportunities that may exist to address the challenges and sense of power imbalance parents may feel in care and protection cases.

Recommendation 10

That the Department of Justice, in consultation with the Children's Court of New South Wales and stakeholders, review the systems and processes that operate in the Children's Court, to identify any opportunities that may exist to address the challenges and sense of power imbalance that parents may feel in care and protection cases.

4.84 Relevant to the effectiveness of proceedings in the Children's Court is the specialist role of a Children's Magistrate, who preside over care and protection matters. While there are currently 16 of these positions in New South Wales, the committee is concerned that care and protection matters in certain geographic locations (particularly in rural and regional areas) are not presided over by a Children's Magistrate. Given the disproportionate number of Aboriginal children the subject of care proceedings, all practical efforts should be made to ensure that Aboriginal representation in the Children's Court of New South Wales is achieved.

4.85 We believe it is critically important for specialist magistrates to oversee all care and protection matters, and would support this to occur through an expansion of the existing circuit court approach. Therefore, we recommend that the NSW Government provide the Children's

Court of New South Wales with funding for the appointment of at least three additional Children Magistrates, to ensure that all care and protection matters in New South Wales are presided over by a specialist magistrate.

Recommendation 11

That the NSW Government provide the Children's Court of New South Wales with funding for the appointment of at least three additional Children Magistrates, to ensure that all care and protection matters in New South Wales are presided over by a specialist Children's Magistrate.

Parent responsibility contracts and orders

4.86 As part of the *Safe Home for Life* reforms introduced by FACS in 2014 (discussed at 1.40), changes were made to parent responsibility contracts, and the new instrument of parent capacity orders was created. Both of these options have the potential to be used as a mechanism to address safety concerns that FACS may have, thus avoiding the need for removal of the child.

Definitions

4.87 A parent responsibility contract is a contract between FACS and parents or primary caregivers setting out details of how certain risks to the child can be addressed. The contract aims to improve parenting skills and to encourage parents to accept greater responsibility for the care of the child. In the contract, there are details about how FACS will support the parents or primary caregivers and how the contract will be monitored.³⁸⁰

4.88 As The Shed, Western Sydney University noted, parent responsibility contracts can include requirements for the parents to undertake actions such as counselling, and treatment for drug and alcohol or other substance abuse.³⁸¹

4.89 A parent responsibility contract can, however, only be made if a parent or primary caregiver agrees. It is a binding agreement that is registered with the Children's Court. Any breach of the agreement can lead to a contract breach notice being filed with the Court.³⁸²

4.90 By contrast, a parent capacity order is an order that can be made by the Children's Court requiring the parent to participate in a parenting capacity program, service, course, therapy or treatment. It is aimed at enhancing parenting skills to reduce the risk of harm to a child. The

³⁸⁰ Department of Family and Community Services, *Safe Home for Life*, October 2014, <http://www.facs.nsw.gov.au/__data/assets/file/0013/302431/3355_FACS-SafeHomeForLife_ParentingResources.pdf>

³⁸¹ Submission 137, The Shed, Western Sydney University, p 3.

³⁸² Department of Family and Community Services, *Safe Home for Life*, October 2014, <http://www.facs.nsw.gov.au/__data/assets/file/0013/302431/3355_FACS-SafeHomeForLife_ParentingResources.pdf>

Court can make a parenting capacity in response to an application from FACS or alternatively it can impose such an order on its own.³⁸³

Parent responsibility contracts – an underutilised option?

- 4.91** There was general agreement among stakeholders that parent responsibility contracts are an underutilised option, limiting their capacity as an ‘early intervention’ approach.
- 4.92** Legal Aid NSW, the Women’s Domestic Violence Court Advocacy Service and Women’s Legal Services all reported low use of parent responsibility contracts by FACS.³⁸⁴ The Shed, University of Western Sydney, also highlighted this issue to the committee,³⁸⁵ as did Judge Johnstone from the Children’s Court, who observed that ‘there has not been a significant increase in the use of these options in casework’.³⁸⁶
- 4.93** Ms Callander, Legal Aid NSW, said that she is only aware of about 60 parent responsibility contracts being negotiated since October 2014. She attributed this to ‘no uptake by the department’ and ‘insufficient training of caseworkers in using those early intervention tools’.³⁸⁷
- 4.94** Ms Callander argued that ‘there was a lack of information going to frontline caseworkers’ about the option of parent responsibility contracts, with this affecting the savings that could be achieved by using such contracts as an early intervention tool.³⁸⁸
- 4.95** Ms Callander said that caseworkers had reported that parent responsibility contracts do not fit into their ‘protocol’ for ‘intervening with a family’.³⁸⁹ Another factor limiting their use is the lack of availability of programs. As Ms Liz Snell from Women’s Legal Service NSW highlighted: ‘training is certainly important but you also need the services to exist so that parents can engage in those services to address the issues that have been identified’.³⁹⁰
- 4.96** The Shed, Western Sydney University, suggested that caseworkers are relying more on safety plans, which it said were ‘not accompanied by the safeguards’ that parent responsibility contracts are. It noted that safety plans:
- are not required to be registered with the Children’s Court
 - do not require a reasonable opportunity for parents to obtain independent advice
 - have less clarity and certainty in terms of their parameters and the circumstances in which may lead to the removal of children.³⁹¹

³⁸³ Department of Family and Community Services, *Safe Home for Life*, October 2014, <http://www.facs.nsw.gov.au/__data/assets/file/0013/302431/3355_FACS-_SafeHomeForLife_ParentingResources.pdf>

³⁸⁴ Evidence, Ms Callander, 16 August 2016, p 19; Evidence, Ms Snell, 16 August 2016, p 19;

³⁸⁵ Submission 137, The Shed, pp 4-5

³⁸⁶ Submission 80, Children’s Court of New South Wales, p 5.

³⁸⁷ Evidence, Ms Callander, 16 August 2016, p 17.

³⁸⁸ Evidence, Ms Callander, 16 August 2016, p 18.

³⁸⁹ Evidence, Ms Callander, 16 August 2016, p 18.

³⁹⁰ Evidence, Ms Snell, 16 August 2016, p 19;

³⁹¹ Submission 137, The Shed, Western Sydney University, p 4.

4.97 The Shed, Western Sydney University, expressed support for the use of parent responsibility contracts, although it suggested that FACS ‘carry out extensive education of its staff’ in this regard. It said that ‘the use of PRCs [parent responsibility contracts] should be extended and strengthened to create a significant tool of therapeutic jurisprudence in the NSW child protection system’.³⁹²

4.98 The committee was informed of the work being undertaken to promote greater use of parent responsibility contracts in the sector. In particular, it noted that Legal Aid NSW has been working with FACS on redrafting the ‘unwieldy contracts’. Ms Callander said:

Legal Aid has been working very closely with the department to improve the parent responsibility contract. The document itself and the letter to organisations has been done. That contract has been pared right back to a much more workable document and a pilot is currently being run out in Western Sydney and the Blue Mountains with a lot of resources being put in by the department to ensure more effective uptake of the parent responsibility contract.³⁹³

4.99 Women’s Legal Service NSW also reported that FACS had agreed to attach a list of all legal assistance services available in each FACS local district to each parent responsibility contract. It hoped this will ‘increase awareness of parents/primary caregivers being able to access free legal advice so as to better understand the reason for the contact with the child protection services, identify issues that need to be addressed’ and discuss how to address these issues.³⁹⁴

Committee comment

4.100 The committee was surprised to hear that parent responsibility contracts have only had minimal usage. We believe that they have potential to be used in early intervention, before a child is removed, to allow parents the opportunity to participate in programs, counselling or other services.

4.101 We acknowledge that Legal Aid NSW and Women’s Legal Service NSW have been working with the department to improve and promote the use of parent responsibility contracts. We would encourage the department to identify new ways of increasing the use of these contracts, given the potential benefits that they can deliver.

Relationship between the federal and state court systems

4.102 The tension between the state care and protection system and federal family law proceedings was raised as an issue during the inquiry. In particular, the gaps between both systems were highlighted, as were the challenges faced by courts when dealing with complex care and protection issues alongside family law matters, particularly involving issues of family violence and divorce.

4.103 The National Disability Ethnic Alliance noted that the child protection and family law systems can overlap. It said that ‘the Family Court may make a direction concerning the welfare of

³⁹² Submission 137, The Shed, Western Sydney University, p 4.

³⁹³ Evidence, Ms Callander, 16 August 2016, p 19.

³⁹⁴ Answers to supplementary questions, Women’s Legal Services, 14 September 2016, p 5.

children in a relationship’ and ‘the child protection system may take an alternative if not a contrary perspective on the same set of circumstances’.³⁹⁵

4.104 During a consultation the committee held with Indigenous community members, examples were provided of families that had been struggling with the differences between the state and federal systems. In one case study provided, a grandmother successfully applied to the Federal Circuit Court for an order pertaining to the care of her youngest grandchild, yet the eldest grandchild has been placed with another relative under care and protection proceedings in the Children’s Court.³⁹⁶

4.105 There were other issues raised in relation to the capacity of the Family Court to effectively deal with care and protection concerns. The National Child Protection Alliance were concerned about the number of cases where the care and welfare of a child is determined by the Family Court, even where a child is at a high risk of abuse by a parent. It quoted Chief Justice Diana Bryant who said ‘the Family Courts do not have the statutory powers, nor the expertise, nor the resources to investigate allegations of child abuse and domestic violence’.³⁹⁷

4.106 It further noted that Chief Justice Bryant ‘has admitted that the Family Courts are in a state of chaos and turmoil in regard to examining allegations of child abuse and the future risk factors to children and young people’. As the Chief Justice reportedly said:

The Family Courts are currently overwhelmed by urgent applications regarding children in which allegations of violence are raised and lack adequate resources to deal with them in a thorough way, pending a complete and final hearing.³⁹⁸

4.107 The National Child Protection Alliance noted that there is a legislative basis for proceedings to be referred to a state child protection authority, although it noted that this only happens in a small number of cases.³⁹⁹ Legal Aid NSW also noted that the Family and Federal Circuit Courts can invite the Secretary of Family and Community Services to intervene in cases where there is no safe placement or ‘live with’ option available for a child in federal proceedings. In its view, when this occurs, better outcomes for the child are available:

... the options available to the Court in relation to children can be significantly enhanced because of the casework resources and safety mechanisms that can be offered by FACS. Without the intervention by the Secretary the Federal Court is left with compromises in relation to placing children at risk.⁴⁰⁰

4.108 Serious concerns were also raised about the systems operating in silos. CatholicCare argued that the state child protection and federal family law systems operate so independently, such that ‘the vulnerability of children to family violence, neglect and other risk factors’ may not be communicated or addressed. It also noted that in a large proportion of cases it is involved in, through its contact service, domestic violence is a factor, and that parent victims are

³⁹⁵ Submission 105, National Ethnic Disability Alliance, p 19.

³⁹⁶ General Purpose Standing Committee No. 2, NSW Legislative Council, *Consultation with Indigenous community members – Inquiry into child protection*, 8 September 2016, p 3.

³⁹⁷ Submission 42, National Child Protection Alliance, p 9.

³⁹⁸ Submission 42, National Child Protection Alliance, p 10.

³⁹⁹ Submission 42, National Child Protection Alliance, pp 10-11.

⁴⁰⁰ Submission 69, Legal Aid NSW, p 32.

compelled to facilitate contact with the perpetrator, even when a child is showing fear or signs of trauma.⁴⁰¹

4.109 CatholicCare acknowledged that they may not have full ‘visibility of the interactions and communications between state authorities and the federal family law system’, however it expressed concern about the ability of the family law system to manage situations where domestic and family violence is present. It argued that the family law system is hampered by two factors:

- insufficient skills and knowledge possessed by decisions makers in the area of domestic and family violence, particularly in terms of understanding the impact and trauma on children exposed to violence
- the lack of timely and comprehensive information from state child protection authorities about the presence, frequency, severity and impact of domestic and family violence.⁴⁰²

4.110 Relevant to these issues are two reports which have considered the relationship between the federal family law and state child protection systems. In 2010, the Australian Law Reform Commission highlighted two key gaps that exist between the family courts and the child protection system, as noted in its *Family Violence* report:

- the fact that Family Courts have no investigatory arm to provide them with independent investigations in cases involving child abuse
- a ‘jurisdictional gap’ where the Family Court wishes to make an order giving parental responsibility to the child protection agency because the Judge considers that there is no viable option for the child.⁴⁰³

4.111 To address these gaps, it recommended that federal, state and territory governments make arrangements for child protection agencies to provide investigatory and reporting services to family law courts in cases involving children’s safety. Further, there was a recommendation that there be a limited reference from the states and territories to the Commonwealth of powers to enable the courts to make orders giving parental rights and duties to a child protection agency where there is no other viable and protective carer for a child.⁴⁰⁴

4.112 The Australian Law Reform Commission also recommended that protocols be developed between federal family courts and state and territory child protection agencies for dealing with requests for documents by courts. Sitting alongside such protocols should also be ‘ongoing training and liaison arrangements’ to ensure the protocols are actively and effectively implemented.⁴⁰⁵

4.113 A more recent report by the Family Law Council also looked at the intersection of the family law and child protection systems for families with complex needs. While the Family Law Council noted that it had received submissions highlighting ‘successful cross-jurisdictional

⁴⁰¹ Submission 48, CatholicCare Sydney, p 7.

⁴⁰² Submission 48, CatholicCare Sydney, pp 7-8.

⁴⁰³ Submission 41, Australian Law Reform Commission, pp 1-2.

⁴⁰⁴ Submission 41, Australian Law Reform Commission, pp 1-2.

⁴⁰⁵ Submission 41, Australian Law Reform Commission, p 2.

collaboration and information sharing arrangements', there was also evidence of the different systems and courts operating in silos, often 'without knowledge of orders or reports from previous proceedings'.⁴⁰⁶

- 4.114** The Family Law Council recognised that there are benefits to enabling the family law courts to exercise the powers of state and territory children's courts, although it noted that there are significant challenges with this proposal, including constitutional barriers.⁴⁰⁷

Committee comment

- 4.115** The committee recognises that there are very complex tensions in proceedings involving children in the state child protection and family law systems. We also acknowledge the gaps and interactions that exist across these jurisdictions in the context of domestic and family violence.
- 4.116** We can appreciate that families are often caught in between these jurisdictional issues, or in some cases trying to pre-empt matters by filing applications in certain courts. The committee believes that given its terms of reference for this inquiry, and the relatively limited evidence it received on this particular matter, it should not make any specific recommendation. Clearly, there is the opportunity to improve the interface and interaction between the state child protection and federal family law systems. The states and territories, and the Commonwealth, should be looking for these improvement opportunities through their regular Council of Australian Governments engagements.

⁴⁰⁶ Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, Interim Report – June 2015, p 26, <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Interim-Report-Terms-1-and-2.pdf>>

⁴⁰⁷ Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, Interim Report – June 2015, p 102, <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Interim-Report-Terms-1-and-2.pdf>>

Chapter 5 Out of home care

This chapter examines the out of home care sector in New South Wales, including current statistics and the transition of out of home care service delivery to the non-government sector. It will also consider accreditation issues for the Department of Family and Community Services (FACS). Finally, this chapter will reflect on a number of key issues relevant to the out of home care sector, including support and training for carers, parent and sibling contact and residential care.

The out of home care population in New South Wales

- 5.1** As at June 2016, there were 18,659 children and young people in out of home care in New South Wales. These children and young people were in relative or Aboriginal kinship care placements (48 per cent) and foster care placements (43 per cent). There were 681 children and young people (4 per cent) in residential care.⁴⁰⁸
- 5.2** More than one third of the children and young people in out of home care are Aboriginal.⁴⁰⁹ The overrepresentation of Aboriginal children in the child protection system generally, and in out of home care specifically, is discussed in further detail in Chapter 7. The Ombudsman has also reported that children and young people with a disability are overrepresented in the out of home care sector, with recent sampling indicating that around 12 per cent of children in out of home care have a disability.⁴¹⁰
- 5.3** There are increasing numbers of children and young people being placed in out of home care in New South Wales. Looking at the short term increase, the figures in 5.1 represent a 6.1 per cent increase in the total number of children in out of home care compared to the same quarter in the previous year (June 2015).⁴¹¹
- 5.4** The long term trend also indicates a steady rise in the numbers of children being placed in out of home care. Between 2004-2005 and 2014-2015 the number of children placed in out of home care increased from 9,230 to 16,843 – an increase of some 82 per cent.⁴¹²
- 5.5** The Audit Office discussed these trends in its 2016 audit of the financial performance of FACS (discussed at 1.54). The report detailed several factors that have contributed to the increase in children entering out of home care, including drug and alcohol abuse, domestic and family violence and increased community awareness of child protection issues. The

⁴⁰⁸ The remaining five per cent of children and young people were in other placement types such as support accommodation or independent living. Department of Family and Community Services, *Quarterly Statistical Report on Services for Children and Young People, March (Quarter 4) 2015-16*, <<https://www.facs.nsw.gov.au/facs-statistics/children-and-young-people-quarterly-report>>

⁴⁰⁹ Department of Family and Community Services, *Quarterly Statistical Report on Services for Children and Young People, June (Quarter 4) 2015-16*, <<https://www.facs.nsw.gov.au/facs-statistics/children-and-young-people-quarterly-report>>

⁴¹⁰ Submission 74, Ombudsman NSW, p 10.

⁴¹¹ Department of Family and Community Services, *Quarterly Statistical Report on Services for Children and Young People, June (Quarter 4) 2015/2016*, <<https://www.facs.nsw.gov.au/facs-statistics/children-and-young-people-quarterly-report>>

⁴¹² Submission 86, MacKillop Family Services, p 2.

Auditor General also stated that ‘children have also been staying in out of home care longer with fewer being returned to families’.⁴¹³

- 5.6 This observation was consistent with evidence provided by the National Children’s Commissioner to the Senate Community Affairs Committee in its 2015 inquiry into out of home care. The Commissioner identified three main drivers for the increased numbers of children in out of home care - domestic violence, substance abuse and mental health issues, which accounted for ‘80 to 90 per cent of all cases’.⁴¹⁴

Comparing New South Wales to other jurisdictions

- 5.7 New South Wales has the second highest rate of children in out of home care in Australia, with only the Northern Territory having a higher rate. Table 1 below, published by the Australian Institute of Health and Welfare, outlines the rates of children in out of home care for other jurisdictions in Australia. It shows that the rate of children in out of home care in New South Wales is 9.9 per 1,000 children. This is compared to the national rate of 8.1 per 1,000 children.⁴¹⁵

Table 3 Rate of children in out of home care by state and territory, 30 June 2015⁴¹⁶

State/territory	Rate of children in out of home care
New South Wales	9.9 / 1,000 children
Victoria	6.6 / 1,000 children
Queensland	7.5 / 1,000 children
Western Australia	6.7 / 1,000 children
South Australia	7.9 / 1,000 children
Tasmania	9.3 / 1,000 children
ACT	7.7 / 1,000 children
Northern Territory	16.0 / 1,000 children
Total	8.1/ 1,000 children

Source: Australian Institute of Health and Welfare, Child Protection Report 2014-2015, p 54

- 5.8 The Alliance for Family Preservation and Restoration also presented statistics comparing the number of children in out of home care in Australia to a series of comparative countries. The

⁴¹³ NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, p 31.

⁴¹⁴ Submission 86, MacKillop Family Services, p 2; Community Affairs References Committee, The Senate, *Out of home care* (August 2015), p 64.

⁴¹⁵ Australian Institute of Health and Welfare, *Child Protection Report 2014-2015*, p 54, <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>>

⁴¹⁶ Australian Institute of Health and Welfare, *Child Protection Report 2014-2015*, p 54, <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>>

Alliance's analysis positioned Australia as the country with the highest rate of children in out of home care per head of population.⁴¹⁷

- 5.9** However, FACS has advised that benchmarking New South Wales against other Australian jurisdictions is not possible as 'data is not comparable due to different legislation, policy and practice'. Furthermore, FACS said that 'comparability issues are further compounded when comparison is made to other countries'.⁴¹⁸

Outcomes for children in out of home care

- 5.10** It is widely recognised that the long-term outcomes for children who have been placed in out of home care are poorer to those of their peers, particularly in terms of education, employment, standards of living, emotional wellbeing and interpersonal relationships.⁴¹⁹
- 5.11** Children and young people who have been in care are also overrepresented in the juvenile justice and adult correction systems.⁴²⁰ Moreover, the CREATE Foundation stated that 'an alarming rate of children and young people have experienced some form of abuse whilst in care. The occurrence of sexual abuse, assault, neglect and psychological harm inflicted by trusted adults is 'distressingly high' in the out of home care' sector.⁴²¹

Transitioning out of home care services to non-government organisations

- 5.12** One of the most significant reforms to the out of home care sector in recent years has been the transfer of statutory out of home care to non-government service providers. The transition was announced by the NSW Government in 2011, following a recommendation of the Wood Report, discussed at 1.26.⁴²²
- 5.13** As noted by the Audit Office, the rationale for this arrangement was that non-government organisations would be able to deliver higher quality out of home care services. At that time,

⁴¹⁷ Answers to questions on notice, Alliance for Family Preservation and Restoration, 24 October 2016, Attachment 1, p 1.

⁴¹⁸ Answers to questions on notice, Department of Family and Community Services, 27 October 2016, p 6.

⁴¹⁹ Council of Australian Governments, *Protecting Children is Everyone's Business, National Framework for Protecting Australia's Children 2009-2020*, p 8; Alexandra Osborn and Leah Bromfield, *Young people leaving care* (2007), Australian Institute of Family Studies, <<https://aifs.gov.au/cfca/publications/young-people-leaving-care>>.

⁴²⁰ Submission 96, The Law Society of New South Wales, p 11.

⁴²¹ Submission 15, CREATE Foundation, p 14. As noted at 1.63, the Royal Commission into Institutional Responses to Child Sexual Abuse identified concerning data relating to the prevalence of child sexual abuse in out of home care.

⁴²² Hon. James Wood AO QC (November 2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, p v; NSW Government, *Keep Them Safe: A shared approach to child wellbeing* (March 2009), <http://www.keepthemsafe.nsw.gov.au/__data/assets/pdf_file/0004/57145/Keep_Them_Safe.pdf>

non-government organisations had access to lower casework ratios than the government and were perceived to have better community links.⁴²³

- 5.14** FACS started the transfer of out of home care services to non-government organisations in 2012, leading to about 57 per cent of children and young people in of home care being placed with and managed by non-government designated agencies.⁴²⁴ FACS is aiming to transfer all children and young people in statutory care to the non-government sector by 2022.⁴²⁵
- 5.15** In September 2015, the Auditor General released a performance audit report entitled *Transferring out-of-home care to non-government organisations*. This report concluded that FACS had invested ‘considerable effort into developing the out of home care sector and is progressing well towards its goal of transferring statutory care to non-government organisations’. However, the report noted that ‘it was difficult to assess whether outcomes for children in care have improved on account of the department not yet having determined what outcomes it wants to achieve’.⁴²⁶
- 5.16** In this regard, the report acknowledged the work underway by FACS to develop a quality assurance framework for out of home care.⁴²⁷ This framework is discussed at 5.23.

Contracting arrangements for non-government service providers

- 5.17** Current contracting arrangements between FACS and non-government organisations are due to expire on 30 June 2017. Final evaluation and negotiation of the new contracts is scheduled for March 2017, with a view to awarding new contracts by June 2017 for the period up until June 2020.⁴²⁸
- 5.18** Currently, service providers delivering out of home care placement services are ‘funded on an all-inclusive unit price, based on the identified needs of a child’.⁴²⁹ The unit price for each child is determined by the placement type, which is determined by the FACS Child Assessment Tool. This unit price covers the range of placement and support services to be purchased by the service provider.⁴³⁰

⁴²³ NSW Auditor-General, *Transferring out-of-home care to non-government organisations: Performance audit report for the Department of Family and Community Services*, September 2015, p 5.

⁴²⁴ Submission 70, Department of Family and Community Services, p 12.

⁴²⁵ Submission 74, Ombudsman NSW, p 11.

⁴²⁶ NSW Auditor-General, *Transferring out-of-home care to non-government organisations: Performance audit report for the Department of Family and Community Services*, September 2015, p 2.

⁴²⁷ Submission 74, Ombudsman NSW, p 11.

⁴²⁸ Department of Family and Community Services, *Extension of current out-of-home care contracts* (February 2016), <http://www.community.nsw.gov.au/__data/assets/file/0011/356654/Information-sheet.pdf>

⁴²⁹ Submission 70, Department of Family and Community Services, p 13.

⁴³⁰ Department of Family and Community Services, *Contracting arrangements and business rules*, <http://www.community.nsw.gov.au/__data/assets/pdf_file/0016/320911/contracting_arrangements_and_business_rules.pdf>

- 5.19 FACS has indicated that the re-contracting process will ‘aim to reward service providers for improving child wellbeing and seeking the best permanency outcomes for children and young people; seeking value for money; and enabling a viable and sustainable service system’.⁴³¹
- 5.20 The Ombudsman has voiced support for this approach, although cautioned on the need to ensure that ‘the operating framework is both rigorous and reliable’ and that the respective roles of FACS and the Children’s Guardian are clear.⁴³²
- 5.21 Several concerns were raised about the approach used to determine funding for out of home care service providers. MacKillop Family Services suggested that existing funding models were impacting its ability to achieve positive outcomes. In providing therapeutic residential care and foster care, where children may have experienced significant trauma or have complex needs, it noted that ‘it is increasingly difficult to provide adequate services, and achieve positive outcomes, on base funding levels...’.⁴³³
- 5.22 While supportive of a needs-based funding model, MacKillop Family Services identified a number of other concerns, including:
- the inability of the model to provide for immediate supports if required
 - delays in obtaining Child Assessment Tool reviews and negotiating changes, and difficulties in collecting information to inform a review, largely on account of the timeframes
 - inconsistent approaches to classifications across districts and personnel
 - that current arrangements for funding exceptional placements creates uncertainty and leads to negative impacts on the quality of service and workforce planning.⁴³⁴

A quality assurance framework for the delivery of out of home care services

- 5.23 FACS is currently developing a quality assurance framework for the out of home care sector. The aim of the framework is to identify and measure specific wellbeing outcomes for children and young people in out of home care, and give caseworkers access to reliable and comprehensive information about the safety, permanency and wellbeing of children in statutory of home care.⁴³⁵
- 5.24 Currently, a large amount of data and information relating to safety and permanency is collected by FACS and non-government organisations. However, wellbeing information is ‘often limited to anecdotal evidence and/or is not systematically collected or communicated’.

⁴³¹ Submission 70, Department of Family and Community Services, p 13.

⁴³² Submission 74, Ombudsman NSW, p 13.

⁴³³ Submission 86, MacKillop Family Services, p 3.

⁴³⁴ Submission 86, MacKillop Family Services, pp 8–11.

⁴³⁵ Department of Family and Community Services, *Quality Assurance Framework – An overview*, <<http://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/quality-assurance-framework>>

The quality assurance framework will seek to address this issue and provide a central point where data for each child will be held.⁴³⁶

- 5.25** A draft quality assurance framework has been developed and is currently being trialled with a small number of non-government organisations. The trial commenced in September 2016 and is expected to run for at least 12 months. The findings will inform the next steps regarding the framework's roll out more widely.⁴³⁷
- 5.26** The Ombudsman explained the value in implementing a quality assurance framework, stating, 'if the QAF [quality assurance framework] is successfully implemented, it has the potential to make a significant contribution towards driving better outcomes for children in care, and greater accountability for FACS and NGOs [non-government organisations] involved in delivering care'.⁴³⁸
- 5.27** Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Commissioner, further explained that 'it is essential that the framework is properly in place as part of the re-contracting process so the government can be in the informed position to know whether they are providing quality care'.⁴³⁹ While FACS can measure performance, through existing contractual arrangements, Mr Kinmond noted that as these arrangements are based on the provision of outputs, there is limited opportunity to ascertain 'whether the quality of care is adequate'.⁴⁴⁰ He further stated that 'the fact that we do not have a quality assurance framework at this point in time is not adequate'.⁴⁴¹
- 5.28** Despite the value of having a quality assurance framework in place, a number of non-government organisations raised concerns about how it would be implemented. Barnardos Australia argued that this work was 'duplicating the accreditation and auditing work of the Office of the Children's Guardian, which already comprehensively assesses the performance of agencies in meeting standards of care'.⁴⁴² This opinion was shared by Southern Youth and Family Services, who also questioned the need from the framework given the existing role of the Office of the Children's Guardian:

SYSF do not support the introduction of a Quality Assurance Framework by FACS and believe that any work on accreditation and the development of relevant quality systems and standards should be led by the Office of the Children's Guardian to

⁴³⁶ Department of Family and Community Services, *Quality Assurance Framework - Questions and Answers*, <http://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/quality-assurance-framework/questions_answers>; Department of Family and Community Services, *Quality Assurance Framework - An overview*, <<http://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/quality-assurance-framework>>.

⁴³⁷ Department of Family and Community Services, *Quality Assurance Framework - Trial Sites*, <<https://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/quality-assurance-framework/trial-sites>>.

⁴³⁸ Submission 74, Ombudsman NSW, p 13.

⁴³⁹ Evidence, Mr Steve Kinmond, Community and Disability Services Commissioner, Deputy Ombudsman, 26 September 2016, pp 5-6.

⁴⁴⁰ Evidence, Mr Kinmond, 26 September 2016, p 5.

⁴⁴¹ Evidence, Mr Kinmond, 26 September 2016, p 6.

⁴⁴² Submission 57, Barnardos Australia, p 6.

reduce duplication and avoid more work red-tape for NGOs [Non-government organisations].⁴⁴³

- 5.29** Both the NSW Children’s Guardian and NSW Ombudsman acknowledged that the implementation of a quality assurance framework raises the potential for duplication.⁴⁴⁴ The Office of the Children’s Guardian called for the clarification of roles and responsibilities in this regard:

While the Office of the Children’s Guardian acknowledges that the measurement of long term outcomes has long been a need in this sector, there is a need to clarify the roles and responsibilities between the Office of the Children’s Guardian and FACS in this space ... to ensure that they are complementary in nature.⁴⁴⁵

Limited independent assessment of funding for non-government organisations

- 5.30** Unlike other jurisdictions in Australia, the NSW Auditor-General does not have the legislative power to provide independent assurance about service delivery outcomes and financial accountability of arrangements with non-government organisations.⁴⁴⁶

- 5.31** Under existing arrangements, service providers are required to self-assess and provide financial acquittals annually. Contract managers at FACS review these submissions and identify appropriate courses of action. The Auditor-General has argued that this approach provides limited independent assessment of non-government organisation funding. The latest audit report for FACS stated that ‘limited audits have been undertaken and inconsistencies can exist between different districts and different funding activities’.⁴⁴⁷ Given these issues, and as noted in 1.56, it was suggested that the Auditor-General be given ‘follow the dollar’ powers.

- 5.32** The Auditor General also outlined the findings of a recent internal audit on existing contract arrangements within FACS, including the following concerns, that:

- program level agreements outlining the services non-government organisations agree to provide varied significantly for the same programs in the same district
- most measures and unit costs defined in the program level agreements are irrelevant and not meaningful, resulting in the actual service provided not being comparable with service levels provided in the agreements
- there was weak correlation between payments and contracted service levels
- FACS relies on non-government organisations to collect reliable data on service delivery to self-assess performance.⁴⁴⁸

⁴⁴³ Submission 91, Southern Youth and Family Services, p 5.

⁴⁴⁴ Submission 74, Ombudsman NSW, p 13.

⁴⁴⁵ Submission 75, Office of the Children’s Guardian, pp 13-14.

⁴⁴⁶ NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, p 25.

⁴⁴⁷ NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, p 28.

⁴⁴⁸ NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, p 25.

Accreditation of FACS

- 5.33** A compulsory accreditation scheme for statutory out of home care service providers was introduced in 2003 to better regulate the industry. As noted at 1.16, the scheme is managed by the Office of the Children’s Guardian.⁴⁴⁹
- 5.34** Under the *Children and Young Persons (Care and Protection) Act* 1998, only accredited government and non-government agencies (referred to as designated agencies) may arrange the provision of statutory or supported out of home care.⁴⁵⁰
- 5.35** The accreditation process focuses on the policies, procedures and practices of the delivery agency over time in order to assess the efficacy of an agency’s systems. The Office of the Children’s Guardian also monitors agency practices over the course of the defined accreditation period.⁴⁵¹
- 5.36** FACS is the only government provider of out of home care services in New South Wales. Despite its significant role in the child protection sector, the committee was advised at its hearing on 16 August 2016 that three of FACS’ 15 districts, including the Western District, Mid-North Coast District and Murrumbidgee District, had not met the *NSW Child Safe Standards for Permanent Care* (the standards).⁴⁵² Ms Coe, Director, Child Safe Organisations, Office of the Children’s Guardian, estimated that approximately 1,200 children were in out of home care in these affected districts.⁴⁵³
- 5.37** These three districts were, however, provided with interim accreditation from the Children’s Guardian until 1 December 2016.⁴⁵⁴ The committee understands that on 1 December 2016 these districts were given 12 months accreditation from the Office of the Children’s Guardian.⁴⁵⁵
- 5.38** Notwithstanding the current 12 month accreditation period, the committee was advised by the Children’s Guardian, Ms Kerry Boland, as to why these districts had not received accreditation initially:

These districts did not receive accreditation due to the lack of consistent District-wide quality practice and a lack of effective continuous improvement systems in place. The assessment indicated across the three districts, there was inconsistent practice in relation to most of the standards. While all districts were compliant with the standard

⁴⁴⁹ Submission 75, Office of the Children’s Guardian, p 5.

⁴⁵⁰ *Children and Young Persons (Care and Protection) Act* 1998, s 138.

⁴⁵¹ Submission 75, Office of the Children’s Guardian, p 6.

⁴⁵² Answers to supplementary questions, Office of the Children’s Guardian, 13 September 2016, p 2.

⁴⁵³ Evidence, Ms Louise Coe, Director, Child Safe Organisations, Office of the Children’s Guardian, p 48.

⁴⁵⁴ See, NSW Auditor-General, *Volume six 2016: Report on Family and Community Services*, November 2016, p 25; Answers to supplementary questions, Office of the Children’s Guardian, p 9.

⁴⁵⁵ Media release, Department of Family and Community Services, ‘FACS achieves full Out-of-Home-Care accreditation’, 1 December 2016, <https://www.facs.nsw.gov.au/about_us/media_releases/facs-achieves-full-out-of-home-care-accreditation>

relating to confidentiality and privacy, there were gaps in practice and a lack of evidence to indicate minimal compliance with the remaining standards.⁴⁵⁶

- 5.39** Reflecting on this issue further, the Children’s Guardian noted that despite a transition period of over 10 years, accreditation of these districts had been affected by two key issues - the size of the organisation and leadership:

I think there are two issues there. The first one is they are a large organisation and therefore they have a scale that the smaller organisations do not have. The second one is in terms of commitment and leadership to get there, in terms of what is required for accreditation, and in fairness to the department I would say that for the last number of years they have made monumental progress towards accreditation.⁴⁵⁷

Carers

- 5.40** This section will focus on a number of key issues relevant to carers, including the shortage of available carers to foster children, assessment and monitoring systems and the levels of training and support available to carers.

Shortage of carers

- 5.41** The committee was advised that there is a critical shortage of foster carers to meet the existing and increasing demand for foster care placements.
- 5.42** The Public Service Association NSW advised that this shortage is resulting in the poor matching of children to foster carers, and the inappropriate placement of children in temporary accommodation, including FACS Community Service Centres and motels:
- ...the effects of this ‘critical shortage’ of suitable placements is that children are having to ‘spend more time in CSCs (Community Service Centres) and are often needed to be placed and supervised in motels and similar types of non-home based emergency accommodation’.⁴⁵⁸
- 5.43** The union argued that the inappropriate placement of children and young people in non-home based emergency accommodation is exacerbating the trauma experienced by children and young people in need of care.⁴⁵⁹
- 5.44** The Public Service Association also highlighted how a shortage of carers is resulting in caseworkers having to spend considerable amounts of time trying to secure placements, taking them away from working effectively with children.⁴⁶⁰
- 5.45** Anglicare Sydney were also concerned that children in out of home care were not being matched to appropriate carers based on their specific needs. In particular, it noted that there

⁴⁵⁶ Answers to supplementary questions, Office of the Children’s Guardian, p 8.

⁴⁵⁷ Evidence, Ms Kerry Boland, NSW Children’s Guardian, 16 August 2016, p 44.

⁴⁵⁸ Submission 66, Public Service Association, p 13.

⁴⁵⁹ Submission 66, Public Service Association, p 23.

⁴⁶⁰ Submission 66, Public Service Association, p 24.

are difficulties with finding placements for children classified as needing additional or intensive supports, children over 5 years of age and Aboriginal children.⁴⁶¹ In order to address the shortage of carers, Anglicare stated that ‘as a matter of urgency’ funding is needed to better promote and support the work of carers and increase the pool of available carers.⁴⁶² This need was echoed by the Public Service Association, who stated that ‘Community Services should be funded to develop and test new evidence to extend the pool of foster care families’.⁴⁶³

Assessment and monitoring mechanisms

- 5.46** In New South Wales, the Children’s Guardian is responsible for the accreditation and monitoring of statutory out of home care providers. Agencies accredited by the Children’s Guardian to provide such services are known as ‘designated agencies’.
- 5.47** Non-government out of home care providers must be accredited in order to receive funding to provide out of home care services. Designated agencies are required to demonstrate to the Children’s Guardian that they meet the *NSW Child Safe Standards for Permanent Care*, which are standards that were introduced in 2003 to support the accreditation scheme.⁴⁶⁴
- 5.48** It is the responsibility of a designated agency to undertake the assessment process for accreditation. This includes ensuring that carers, prospective carers and their other household members have a working with children check clearance.⁴⁶⁵
- 5.49** As part of the accreditation processes, the Children’s Guardian undertakes a compliance and monitoring program, which includes on site assessments and a review of an agencies compliance with the standards.⁴⁶⁶
- 5.50** In June 2015, the Children’s Guardian established the NSW Children’s Register, a centralised database of persons who are authorised, or who apply to be authorised, to provide out of home care in New South Wales. The register is designed to assist designated agencies to ‘share information about the suitability of carer applicants and household members’ and to ‘prevent unsuitable carers moving from agency to agency’. The register effectively operates as a licensing tool and does not permit a carer to be fully authorised until the designated agency certifies that all required checks and assessments have been satisfactorily completed.⁴⁶⁷
- 5.51** Inquiry participants raised a number of concerns in relation to the assessment and monitoring of carers. In particular, there were concerns about the consistency of assessment approaches and the cultural appropriateness of processes, as well as the increasing administrative burden placed on agencies to meet regulatory standards.

⁴⁶¹ Submission 58, Anglicare Sydney, p 6.

⁴⁶² Submission 58, Anglicare Sydney, p 8.

⁴⁶³ Submission 66, Public Service Association, p 5.

⁴⁶⁴ Submission 75, Office of the Children’s Guardian, p 5.

⁴⁶⁵ Submission 75, Office of the Children’s Guardian, p 9.

⁴⁶⁶ Submission 75, Office of the Children’s Guardian, p 6.

⁴⁶⁷ Submission 75, Office of the Children’s Guardian, pp 9-10.

- 5.52** MacKillop Family Services stressed the importance of having a consistent approach for the assessment of carers across the state. It also questioned the cultural appropriateness of assessment procedures, particularly for kinship carers. Additionally, it called for greater clarity regarding the respective roles and responsibilities of regulatory agencies in the out of home care sector.⁴⁶⁸
- 5.53** Uniting also contended that there was a lack of consistency in the assessment and monitoring procedures for prospective carers. Acknowledging that the *NSW Child Safe Standards for Permanent Care* required that ‘appropriately skilled and experienced carers...are selected through fair and consistent process’, it noted the intake processes can differ considerably between agencies.⁴⁶⁹
- 5.54** In terms of the cultural appropriateness of existing assessment procedures for Indigenous carers, Uniting referred to a study by the Australian Institute of Family Studies which found that standard assessment procedures are problematic in assessing Indigenous carers for a variety of reasons including that:
- they are based on western parenting practices and living standards, which means they do not account for cultural differences in things like family structures and living arrangements
 - they may unfairly exclude some adults with a criminal record (for example, those with juvenile records or those who have committed minor offences)
 - they do not effectively determine a person’s suitability to care for an Aboriginal or Torres Strait Islander child
 - they use a communication style which is not well suited to the way Aboriginal and Torres Strait Islander peoples communicate.⁴⁷⁰
- 5.55** Consequently, Uniting argued that ‘there was a real risk that Aboriginal and Torres Strait Islander people who would make good carers are being prevented from doing so’.⁴⁷¹
- 5.56** The administrative burden posed by complying with the various accreditation and oversight mechanisms including the working with children check, and other accreditation and monitoring requirements, was also highlighted. The Office of the Children’s Guardian acknowledged that these requirements can place ‘strain’ on the sector:

Service providers have raised the issue of the increasing compliance burden being placed on them by the combined requirements of the OCG [Office of the Children’s Guardian] through its accreditation and monitoring of compliance with accreditation, and by the NSW Ombudsman in relation to reporting and oversight requirements. These place additional strain on the sector, with the risk being that valuable resources may be diverted from frontline service delivery.⁴⁷²

⁴⁶⁸ Submission 86, MacKillop Family Services, p 13; Submission 94, Association of Children’s Welfare Agencies, p 19.

⁴⁶⁹ Submission 76, Uniting, p 20.

⁴⁷⁰ Submission 76, Uniting, p 20.

⁴⁷¹ Submission 76, Uniting, p 20.

⁴⁷² Submission 75, Office of the Children’s Guardian, p 13.

- 5.57** Barnardos Australia also argued that the administrative burden of complying with accreditation standards is resulting in the removal of resources away from frontline service delivery. It illustrated this by detailing what a non-government organisation is required to do if it is faced with an allegation of abuse in care:

An NGO [non-government organisation] receiving an allegation of abuse in care must report to the Ombudsman and in addition may have to make three separate notifications to the Office of the Children’s Guardian depending on the nature of the allegation. Separate reports may need to be made to the accreditation section, the WWCC [working with children check] section, and the carer register. This process requires considerable time and resources and we believe there should be only one process.⁴⁷³

- 5.58** MacKillop Family Services called for greater streamlining of regulatory requirements. It advised that the volume of data collected and maintained by staff has increased dramatically in recent years, stating that, ‘we believe that more can be done to streamline these requirements’.⁴⁷⁴
- 5.59** Finally, a number of participants also expressed the need for greater clarity regarding the respective roles and responsibilities of the various agencies involved in accreditation and regulation.⁴⁷⁵ Uniting called for greater clarity of roles stating that it ‘can be difficult for NGOs [non-government organisations] to communicate and comply with their responsibilities’.⁴⁷⁶

Training and support

- 5.60** Carers face many challenges in caring for children who have experienced separation and trauma. The provision of ongoing training and support is crucial to not only ensuring the safety and wellbeing of the children and young people in care, but to also equip carers with the necessary skills to confidently undertake what can be a challenging role.
- 5.61** As Uniting outlined, research has shown that effective foster care ‘depends on the quality of the carers’. Therefore, it is essential that ‘good carers are recruited’, that ‘ineffective ones are counselled out, and that the natural commitment of carers is enhanced by high quality training’, supervision and support.⁴⁷⁷
- 5.62** A range of training resources and supports are currently provided to foster carers. These include *Shared Stories Shared Lives*, which is an initial training package for pre-authorised foster carers. Used widely by service providers, this training covers a broad range of topics.⁴⁷⁸ The Association of Children’s Welfare Agencies advised that it is currently updating this training package, anticipating it will be finalised in 2017.⁴⁷⁹

⁴⁷³ Submission 57, Barnardos Australia, p 8.

⁴⁷⁴ Submission 86, MacKillop Family Services, p 16.

⁴⁷⁵ Submission 76, Uniting, p 26.

⁴⁷⁶ Submission 76, Uniting, p 26; Submission 75, Office of the Children’s Guardian, p 3.

⁴⁷⁷ Submission 76, Uniting, p 20.

⁴⁷⁸ Submission 70, Department of Family and Community Services, p 33.

⁴⁷⁹ Submission 94, Association of Children’s Welfare Agencies, p 18.

- 5.63** A number of other resources and support is provided to carers, including:
- various support services that connect carers and advice-givers, including peer support groups, family camps, a 24 hour support line and access to support teams
 - a range of carer resources and publications and targeted training sessions
 - *Fostering NSW*, a website that provides online resources for carers
 - the *Alternative Care Clinic*, which is a range of mental health programs implemented by NSW Health to support children in out of home care and their carers
 - ongoing contact with FACS psychologists and caseworkers.⁴⁸⁰
- 5.64** Additional resources are also provided specifically for Aboriginal kinship carers, including *Raising Them Strong*, a ‘train the trainer’ package delivered to Aboriginal caseworkers to coach Aboriginal carers on a range of topics including health, education, grief, loss, trauma and challenging behaviours. There is also the *Winangay Aboriginal Kinship carer resources*, which were developed to assist practitioners with their engagement and assessment of prospective Aboriginal kinship carers for children and young people in out of home care. This was a FACS pilot that commenced in 2015 and has been recently extended.⁴⁸¹
- 5.65** Despite the range of supports available, a common theme within the evidence was the need for more tailored training and support for carers. The Aboriginal Child, Family and Community State Secretariat said that ‘there is a growing need for additional support for kinship and foster carers who open their homes and their hearts’. Further, it called for additional resources for carers on issues such as mental health, education and culture:
- ... those who care for children and young people consistently called for greater specialised supports to assist and in providing the highest quality of care – including mental health, behavioural supports, education supports and family and cultural connections.⁴⁸²
- 5.66** The importance of ensuring that carers are adequately supported was explained by Uniting: ‘one of the primary reasons that carers cease fostering is because of perceived lack of support’. It went on to describe the types of supports that were valued by carers, which included regular casework and visits and the ability to contact someone from the agency at any time, as well as support groups.⁴⁸³
- 5.67** Limited funding in this area was considered to be a barrier to ensuring that adequate training and support to carers is provided. As outlined by MacKillop Family Services:
- In its current form, the unit costing is not commensurate with the degree and rigour of ongoing support and development required to properly equip, monitor and retain staff and foster carers to provide trauma informed therapeutic care’.⁴⁸⁴

⁴⁸⁰ Submission 70, Department of Family and Community Services, p 33.

⁴⁸¹ Submission 70, Department of Family and Community Services, p 35.

⁴⁸² Submission 59, Aboriginal Child, Family and Community State Secretariat, p 14.

⁴⁸³ Submission 76, Uniting, pp 21-22.

⁴⁸⁴ Submission 84, MacKillop Family Services, p 14.

- 5.68** The Association of Children’s Welfare Agencies identified a series of gaps in the provision of training and support, such as carers having limited or no respite, babysitting or breaks. It also argued that carers are often given incorrect or inadequate information, and that they have few support mechanisms available when allegations arise. The Association also suggested that carers do not always have the skills to deal effectively with the complex, difficult and challenging situations they are expected to manage.⁴⁸⁵
- 5.69** Uniting and Cara House expressed concern that while service providers are required to demonstrate certain standards in training in order to receive accreditation, there were inconsistent practices and considerable variations across the state. Both organisations advised that there is little guidance provided as to what training should involve or what form it should take.⁴⁸⁶
- 5.70** Cara House called for the Office of the Children’s Guardian to ‘mandate a particular level of ongoing training of foster carers in NSW’.⁴⁸⁷ Reflecting on the nature of the standards required, Cara House said:
- The experience of being a foster carer can be very different to idealised perceptions. Thus, better and more universal standards of ongoing training about topics such as being a foster carer, working with agency workers, children with trauma and abuse histories, life story work, working with birth families is required and needs to be addressed by the Children’s Guardian.⁴⁸⁸
- 5.71** Similarly, Uniting suggested that a framework should be developed which could set out minimal standards for pre-authorized training.⁴⁸⁹
- 5.72** Uniting also raised the need for service providers to be mindful of a range of barriers that can impact a carer’s ability to access training. It acknowledged that while carers will often value training, they will not always be able to participate in it for reasons such as timing, cost and travel requirements.⁴⁹⁰
- 5.73** On a similar theme, the need for equitable access to support services was raised, particularly for carers in non-metropolitan areas. The Australian Service Union stated that ‘many foster carers and out of home care providers working in rural, regional and remote communities care for high need children without the support that would be available in metropolitan communities’.⁴⁹¹
- 5.74** The need for culturally appropriate training was also raised. Reflecting on a study by the Australian Institute of Family Studies, Uniting stated:

There is a particular need for training that meets the needs of Aboriginal and Torres Strait Islanders. An AIFS [Australian Institute of Family Studies] study found that

⁴⁸⁵ Submission 94, Association of Children’s Welfare Agencies, p 19.

⁴⁸⁶ Submission 76, Uniting, p 21; Submission 51, Cara House, p 14.

⁴⁸⁷ Submission 51, Cara House, p 14.

⁴⁸⁸ Submission 51, Cara House, p 14.

⁴⁸⁹ Submission 76, Uniting, p 21.

⁴⁹⁰ Submission 76, Uniting, p 21.

⁴⁹¹ Submission 78, Australian Service Union, p 29.

carers want training that is culturally relevant, and that Aboriginal and Torres Strait Islander carers do not always feel comfortable attending mainstream training. When they do attend such training tension can arise because of differing values around child rearing.⁴⁹²

Contact with birth parents and siblings

- 5.75** This section will look at the contact children and young people in out of home care have with their families, including their parents and siblings.

Contact with parents

- 5.76** Mixed concerns were raised during the inquiry about the contact children in out of home care have with their birth parents and families. On the one hand there were concerns that contact is too limited, and on the other hand there were concerns that too frequent contact can be unsettling for the child or young person in care.

- 5.77** The Alliance for Family Preservation and Restoration expressed a concern about the lack of contact children in out of home care have with their birth parents and the impact that this has on the effective restoration of children with their families:

...contact following final orders is standard 4 time[s] a year for 2 hours and if you are lucky, you get that that, some only get 2 and others get 0 making it impossible [to] maintain a real relationship with their children and any chance of restoration near impossible.⁴⁹³

- 5.78** Legal Aid NSW also raised a concern about the approach taken by FACS in determining contact arrangements, suggesting that it does not necessarily take into account what is in the best interests of the child:

It is the experience of Legal Aid NSW that the approach taken by FACS and NGOs [Non-government organisations] to contact for children with parents, siblings and extended family is formulaic and rarely based on expert opinion on the nature of the contact that would be in the best interest of the child or young person in the particular case.⁴⁹⁴

- 5.79** Legal Aid NSW recommended that extensive research be undertaken ‘to inform decisions about contact for children, with a focus on adopting a case by case model’.⁴⁹⁵

- 5.80** As discussed in earlier sections, the safety, welfare and wellbeing of children and young people is reportedly improved by giving them long-term, nurturing, stable and secure

⁴⁹² Submission 76, Uniting, p 21.

⁴⁹³ Submission 44, Alliance for Family Preservation and Restoration, p 6.

⁴⁹⁴ Submission 69, Legal Aid NSW, p 24.

⁴⁹⁵ Submission 69, Legal Aid NSW, p 26.

environments.⁴⁹⁶ Foster carers play an important role in this regard, and as such the department has maintained that children need to be provided with an opportunity to bond and attach with their new carers.

- 5.81** Ms Kelly Samways, a previous manager and long term foster carer, advised of significant concern within the foster care community regarding the amount of contact that birth families were awarded. She suggested that the amount of contact normally provided to birth families can be unsettling for foster care families:

The overwhelming complaint by foster carers was the amount of birth family contact. For a lot of foster carers monthly and bimonthly visits seem to be the latest norm handed down by the magistrate plus special occasional visits...This can work to be up to 15 times a year...Many long term foster carers look at children as 'one of their own', 'part of the family'. How can a child settle into a family when so much contact is given to birth families.⁴⁹⁷

- 5.82** To address this issue, the Association of Children's Welfare Agencies recommended that there be improved training for carers on effectively working with birth families in relation to contact visits and restoration.⁴⁹⁸

Sibling placements and contact

- 5.83** Some inquiry participants also called for a greater commitment to the maintenance of placement and contact with siblings and other family members when a child is placed in out of home care.
- 5.84** The CREATE Foundation explained that such arrangements resulted in 'improved outcomes for children and young people including increased stability, fewer placement disruptions and more successful reunifications, compared with those who are separated from their siblings'.⁴⁹⁹
- 5.85** A CREATE Foundation survey of 236 children undertaken in 2015 provided some insight into the extent of sibling placements and contact, finding that only 34% of the children surveyed lived with all their siblings.⁵⁰⁰
- 5.86** Current FACS policy on this this matter is set out in the *Placement of siblings in out of home care policy*. This document sets out guidance for caseworkers making decisions about the placement of siblings. The policy aims to ensure that the needs of siblings to be placed together is balanced against the imperative to maintain stable placements where positive

⁴⁹⁶ Department of Family and Community Services, *Permanent placement principles*, October 2014, <http://www.facs.nsw.gov.au/__data/assets/file/0018/302472/3355_FACS-_SafeHomeForLife_PermPlacePrinciples.pdf>

⁴⁹⁷ Submission 37, Ms Kelly Samways, p 1.

⁴⁹⁸ Submission 94, Association of Children's Welfare Agencies, p 28.

⁴⁹⁹ Submission 15, CREATE Foundation, p 18.

⁵⁰⁰ Submission 15, CREATE Foundation, p 19.

attachments have been formed in the decision making process. The policy directs staff to place siblings together, wherever possible.⁵⁰¹

5.87 A series of measures to improve sibling placements and contact were put forward by the CREATE Foundation. It suggested the need to:

- improve the capacity of carers to care for sibling groups and facilitate sibling contact
- recognise sibling co-placements in the permanent placement principles
- have policy requirements for the management of sibling groups by the same agency
- empower children and young people to maintain sibling contact.⁵⁰²

5.88 The impact of losing contact or being separated from siblings was illustrated by the following quotes from young people who were in care, as provided by the CREATE Foundation:

When you go into care...the only thing you have control over is your conversation with your siblings if they're there. If that gets taken away, you pretty much have nothing. Once you break that bond, it's hard to get that back (Female, 22).⁵⁰³

I felt alone. For the first time in my life, I didn't have anyone by my side. My brother was my protector (Female, 16).⁵⁰⁴

Stability in care

5.89 The committee received evidence highlighting that there is often a lack of stability with placements for children and young persons placed in out of home care. Multiple placements are associated with 'poorer outcomes for children and young people that extend into adulthood'.⁵⁰⁵ Legal Aid NSW explained that 'the stability and number of placements that a young person experiences is indicative of the likelihood of the young person engaging in criminal behaviour', with 'transitioning between placements ... known to increase the risk of post-placement offending'.⁵⁰⁶

5.90 In relation to the extent of this issue, FACS stated that approximately 60 per cent of children and young people in care have experienced fewer than three placements in their current care period.⁵⁰⁷

⁵⁰¹ Answers to questions on notice, Department of Family and Community Services, 27 October 2016, p 4; NSW Department of Family and Community Services, *Placement of Siblings in Out-Of-Home Care*, p 1, <http://www.community.nsw.gov.au/__data/assets/pdf_file/0015/322260/POLICY_SIBLING_PLACEMENT.PDF>.

⁵⁰² Submission 15, CREATE Foundation, p 9.

⁵⁰³ Submission 15, CREATE Foundation, p 19.

⁵⁰⁴ Submission 15, CREATE Foundation, p 19.

⁵⁰⁵ Submission 125, Ms Karleen Gribble, Western Sydney University, p 2.

⁵⁰⁶ Submission 69, Legal Aid NSW, p 11.

⁵⁰⁷ Department of Family and Community Services, *Quarterly Statistical Report on Services for Children and Young People, June (Quarter 4) 2015-16*, <<https://www.facs.nsw.gov.au/facs-statistics/children-and-young-people-quarterly-report>>

5.91 However, a number of inquiry participants referred to situations where children and young people had experienced many more placements. By way of example, Ms Karleen Gribble stated that ‘a substantial proportion [of children and young people] may have more than half a dozen placements over a five year period’.⁵⁰⁸ Aunty Glendra Stubbs and Ms Elizabeth Rice referred to a young person who had experienced 32 separate placements in care.⁵⁰⁹ Likewise, Ms Lisa Townshend, NSW State Coordinator, CREATE Foundation, contended that ‘sometimes young people in care have 20 to 60 placements’.⁵¹⁰

5.92 The evidence identified a series of factors which can contribute to placement breakdowns. One of the most prominent issues was a lack of specialist and highly trained staff working with children and young people who had experienced trauma, which was noted to be a significant issue for the residential care sector. As Ms Wong, Senior Solicitor at Legal Aid NSW explained:

Typically a young person who is in residential out of home care, will have had numerous placement breakdowns – we are talking about in excess of 10 placement breakdowns by the time they get into resicare [residential out of home care]. These are young people who have experienced extreme trauma and the numerous placement breakdowns they have what we would describe as challenging behaviours. As a result of those challenging behaviours they are not able to regulate their emotions and their coping mechanisms and that can often result in quite disruptive behaviour leading to those placement breakdowns.⁵¹¹

5.93 Other factors included the ‘highly casual’ nature of the workforce, which meant that workers had a limited knowledge and understanding of the young person’s individual needs. Furthermore, a constant turnover of staff meant that children and young people were less likely to create stable relationships.⁵¹² Challenges associated with the recruitment and retention of caseworkers is discussed further from paragraph 8.14.

5.94 In terms of residential care, Legal Aid NSW also advised of inappropriate client mixes in the allocation of placements, with little account being taken of the particular needs and vulnerabilities of the young person. It was Legal Aid NSW’s experience that ‘a client is not so much matched to a placement, but allocated to the only placement that might be available because of limited resources in the sector’. Illustrating the impact of such approaches, it stated:

For example, a twelve year old being placed in a house with seventeen year old youths with criminal histories. This increases the risk of further trauma being caused by conflict with, or victimisation by, other young people living at the service.⁵¹³

⁵⁰⁸ Submission 125, Ms Karleen Gribble, Western Sydney University, p 2.

⁵⁰⁹ Submission 95, Aunty Glendra Stubbs and Ms Elizabeth Rice, p 7.

⁵¹⁰ Evidence, Ms Lisa Townshend, NSW State Coordinator, CREATE Foundation, 16 August 2016, p 57.

⁵¹¹ Evidence, Ms Wong, Senior Solicitor, Legal Aid NSW, 16 August 2016, p 14.

⁵¹² Submission 69, Legal Aid NSW, p 12.

⁵¹³ Submission 69, Legal Aid NSW, p 12.

- 5.95** Inappropriate geographical placements were also identified as a contributing factor to placement breakdowns. In these cases, it was noted that many young people ‘abscond’ from placements in order to seek more familiar areas and contacts.⁵¹⁴
- 5.96** In order to enhance placement stability, CREATE Foundation recommended that children and young people must be more heavily involved in decision making regarding their placements:
- ... the care system itself must have measures in place which ensure children and young people themselves are involved in the decisions which affect their lives, are listened to and are consulted when placement decisions are made. To do this, it is critical for caseworkers to have the skills to develop meaningful relationships with children and young people.⁵¹⁵

Residential care

- 5.97** Residential care is a placement option for children and young people that have challenging behaviours and high support needs. Generally, residential care units are small community-based residences supported by residential care staff.
- 5.98** At June 2016 there were 681 children and young people in residential care in New South Wales. This equated to approximately 4 per cent of all children in out of home care and represented an increase of over 120 children since the same quarter the previous year.⁵¹⁶
- 5.99** The residential care sector has undergone significant change in the last decade. Ms Walk, Deputy Secretary of FACS, explained that comparatively, New South Wales has a very small population of children placed in residential care. This is largely as a result of the state closing down many of its residential services in 1998-1999.⁵¹⁷ Most children and young people who would have previously been in residential care have been transitioned to other types of care, including foster care.
- 5.100** Despite this history, evidence to the inquiry outlined serious concerns about the increasing numbers of children being placed in residential care, and in particular, those children aged 12 years and under.⁵¹⁸ According to Barnardos Australia, approximately 25 per cent of children in residential care are under the age of 12.⁵¹⁹
- 5.101** Reflecting on the reasons why it is inappropriate to place children under 12 in residential care, Barnardos Australia reported:

⁵¹⁴ Submission 69, Legal Aid NSW, p 12.

⁵¹⁵ Submission 15, CREATE Foundation, p 4.

⁵¹⁶ Department of Family and Community Services, *Quarterly Statistical Report on Services for Children and Young People, March (Quarter 4) 2015/2016*, Dashboard 4, <<https://www.facs.nsw.gov.au/facs-statistics/children-and-young-people-quarterly-report>>

⁵¹⁷ Evidence, Ms Maree Walk, Deputy Secretary, Programs and Services Design, Department of Family and Community Services, 27 September 2016, p 64.

⁵¹⁸ Submission 57, Barnardos, Australia p 5; Submission 74, NSW Ombudsman, p 19; Submission 94, Association of Children’s Welfare Agencies, p 26.

⁵¹⁹ Submission 57, Barnardos Australia, p 5.

Our experience as an accredited provider is that it is not adequately safe for children for children under 12 to be in residential care. They are at a higher risk of systems abuse via a lack of opportunity to form long term continuing relationships with adult carers, and also at risk of contamination of behaviour as a direct result of being placed with older and potentially disturbed children in care.⁵²⁰

- 5.102** Mrs Cheers, Chief Executive Officer, Barnardos Australia, elaborated on why residential care is not suitable, drawing on the findings to date of the Royal Commission into Institutional Responses to Child Sexual Abuse:

... for children under 12, placing them in a residential situation where there are rotating shift staff, it means they are not able to form attachment relationships with those staff. Those staff change not only just on shift but over time. They are also sometimes exposed to the behaviours of older children who actually are very inappropriate. The royal commission itself has highlighted for all of us the issue of peer-on-peer abuse. For children under 12, this is a significant risk.⁵²¹

- 5.103** The Association of Children's Welfare Agencies expressed similar concerns. Whilst acknowledging that in some instances, and under the right conditions, residential care can be entirely appropriate, it noted that for children under 12 years 'there are unacceptably high risks for this extremely vulnerable group in residential care ... This includes high possibility of being exposed to child on child sexually harmful behaviour'.⁵²²

- 5.104** The issue of 'peer on peer' sexual abuse was also identified by the Ombudsman as an issue, who advocated for the extension of the reportable conduct scheme to provide for the oversight of these cases.⁵²³

- 5.105** In response to these concerns, the Ombudsman has started discussions with the Office of the Children's Guardian and FACS to collectively examine the main drivers for the increasing use of residential care for children under 12 and to identify whether sufficient suitable options are available for these children. It is also understood that the former Minister for Family and Community Services, the Hon Brad Hazzard MP, intended to prioritise reforms aimed at children under 12 in residential care.⁵²⁴

Committee comment

- 5.106** There will always be children who need and rely upon the care and protection offered by out of home care providers, however, the committee is concerned about the increasing numbers of children and young people that are being placed in out of home care in New South Wales. The statistics speak for themselves. They show a significant upward trend over the last decade in the number of children and young people being placed in out of home care, many of these Aboriginal children or children with a disability, with these two groups continuing to be

⁵²⁰ Submission 57, Barnardos Australia, p 4.

⁵²¹ Evidence, Ms Deirdre Cheers, Chief Executive Officer, Barnardos Australia, 16 August 2016, p 9.

⁵²² Submission 94, Association of Children's Welfare Agencies, p 26.

⁵²³ Submission 74, Ombudsman NSW, pp 18-19.

⁵²⁴ Media release, Department of Family and Community Services, 'Kids in care at centre of reform', (November 2016) <https://www.facs.nsw.gov.au/about_us/media_releases/kids-in-care-at-centre-of-reform>

overrepresented. These trends continue despite the various reforms and reviews that have taken place.

- 5.107** During this inquiry, the committee was particularly concerned to hear that three districts of FACS were not accredited as out of home care providers. While this has changed recently, with the announcement that these three districts have gained 12 months accreditation, the committee finds it astonishing that the key child protection agency in this state could not meet the same standards other non-government providers could. The committee believes that the department, like other non-government service providers, must work towards securing 5 year accreditation for those districts that have not met this standard.
- 5.108** While the committee notes the department's progress in transitioning out of home care services to the non-government sector, it is clear that there is room for improvement to existing contracting arrangements. The committee considers it important that the government learn from findings of the Auditor-General, and feedback from the wider sector, and develop a contracting model that supports better outcomes for children and young people in out of home care. Enhanced visibility of these outcomes and the 'quality' of services actually being delivered is critically important. In this regard, the committee agrees that implementation of a quality assurance framework will be instrumental for both government and non-government providers in the future. Putting that quality assurance framework in place must be made a first order priority.
- 5.109** The committee also agrees that currently there is limited independent oversight of the funding directed towards the non-government sector. We therefore fully endorse the Auditor-General's suggestion for additional 'follow the dollar' powers, which will enable it to scrutinise the performance of all non-government organisations that perform out of home care functions on behalf of the state.

Recommendation 12

That the NSW Government make legislative amendments to extend the performance audit function of the Auditor-General to include audits of all non-government organisations who have been provided with state funding to deliver child protection related services.

- 5.110** The committee acknowledges the significant role carers play in looking after children placed in out of home care. We recognise the invaluable work undertaken by carers, who are often required to care and protect vulnerable and traumatised children in complex and challenging circumstances. The committee wishes to both acknowledge and thank them for all that they do.
- 5.111** Effective care depends on the quality and capability of carers. They must be recruited, trained and supported accordingly, to enable them to effectively take on what can often be a difficult role. We are concerned that many feel inadequately supported and trained under the current system, and recommend that the Department of Family and Community Services address these concerns by developing additional resources, training and support for carers.

Recommendation 13

That the NSW Government, in consultation with stakeholders, develop additional resources, training and support for carers.

- 5.112** The committee is concerned by the increasing number of children entering residential care in New South Wales, particularly those who are under 12 years old. It is clear from the evidence that younger children are at particular risk when placed in these facilities, and that urgent steps must be taken to protect this vulnerable group. The committee is therefore supportive of the government's commitment to prioritise reforms aimed at reducing the number of children under 12 years old in residential care.

Chapter 6 Leaving care and after care support

This chapter focuses on leaving care planning and after care support, which is critical for young people who are transitioning from care to independent living. It highlights key issues in this area, including the failure to provide leaving care plans to some vulnerable young people, as required under the legislation. It also outlines arguments for increased financial support and an increase in the leaving care age. Finally, this chapter discusses some reforms which may help to support young people leaving care, to help ensure they have the best possible opportunities and outcomes in life.

Current requirements

- 6.1** Section 165 of the *Children and Young Persons (Care and Protection) Act* 1998 states the Minister is to provide or arrange such assistance for children of or above the age of 15 years and young persons who leave out-of-home care until they reach the age of 25 years, as the Minister considers necessary having regard to their safety, welfare and well-being.⁵²⁵
- 6.2** Appropriate assistance may include:
- provision of information about available resources and services, and
 - assistance based on an assessment of need, including financial assistance and assistance for obtaining accommodation, setting up house, education and training, finding employment, legal advice and accessing health services, and
 - counselling and support.⁵²⁶
- 6.3** Under this provision, the Minister has discretion to continue to provide or arrange appropriate assistance to a person after he or she reaches the age of 25 years.⁵²⁷
- 6.4** In addition, the out of home care agency who has supervisory responsibility for the young person is required to prepare a leaving care plan, in consultation with the child or young person.⁵²⁸
- 6.5** As Legal Aid NSW explained, the leaving care plan ‘must include specific supports and assistance to the young person across a range of areas, including health assistance, education, employment, housing and legal assistance’.⁵²⁹
- 6.6** The Department of Family and Community Services (FACS) advised the committee that in case managed placements, leaving care planning commences at age 15, and initial planning focusses on the development of independent living skills. A checklist with these skills is

⁵²⁵ *Children and Young Persons (Care and Protection) Act* 1998, s 165.

⁵²⁶ *Children and Young Persons (Care and Protection) Act* 1998, s 165.

⁵²⁷ *Children and Young Persons (Care and Protection) Act* 1998, s 165.

⁵²⁸ *Children and Young Persons (Care and Protection) Act* 1998, s166.

⁵²⁹ Submission 69, Legal Aid NSW, p 14.

provided to assist the young person, caseworker and carer to identify areas for further development and what actions can be taken to achieve these skills.⁵³⁰

- 6.7** FACS said that it provides certain resources to a young person in care when they reach 15 years, such as *Your Next Step*, a brochure about the leaving care planning process and supports and services after leaving care, in addition to an independent living skills checklist.⁵³¹
- 6.8** As the young person moves closer to leaving care, the plan will be developed which will include ‘concrete actions relating to income, accommodation, health, education and training, employment and any legal matters’.⁵³² The young person is also provided with details about the Care Leavers Line, a support service, and a mobile app called *Resolve*.⁵³³

Findings from previous reviews

- 6.9** In 2009, following concerns about inadequate leaving care planning highlighted by the Office of the Children’s Guardian and the 2008 Wood Report, the Ombudsman conducted a review to determine whether FACS and other agencies were meeting their obligations to assist care leavers in their transition to independence. The review found a significant proportion of young people had left care without an endorsed plan and that ‘where plans were developed, they often lacked an adequate assessment of the young people’s needs’. The Ombudsman also found that inadequate after care support was being provided. In particular, there were issues with young people with high support needs not being supported, for example, Aboriginal young people and young people with a disability.⁵³⁴
- 6.10** Following this review FACS implemented new case planning guidelines, a new case plan template and revised procedures and training to improve service delivery to care leavers. However, as FACS was unable to tell the Ombudsman whether leaving care practice had improved, the Ombudsman initiated a further review in 2013 to focus on ‘establishing whether there has been a discernible improvement in practice in relation to young people having a leaving care plan at the time of exit from care’.⁵³⁵
- 6.11** Overall, the 2013 review highlighted similar issues to what the Ombudsman had found in its earlier review, including that 22 per cent of young people had left care without an endorsed leaving care plan.⁵³⁶ The Ombudsman reported:

⁵³⁰ Answers to supplementary questions, Department of Family and Community Services, 27 October 2016, p 15.

⁵³¹ Answers to supplementary questions, Department of Family and Community Services, p 15.

⁵³² Answers to supplementary questions, Department of Family and Community Services, p 15.

⁵³³ Answers to supplementary questions, Department of Family and Community Services, p 16.

⁵³⁴ Ombudsman NSW, *The continuing need to better support young people leaving care*, August 2013, p 2, <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0017/10880/The-continuing-need-to-better-support-young-people-leaving-care-web.pdf>; Submission 74, Ombudsman NSW, p 20.

⁵³⁵ Ombudsman NSW, *The continuing need to better support young people leaving care*, August 2013, p 2, <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0017/10880/The-continuing-need-to-better-support-young-people-leaving-care-web.pdf>

⁵³⁶ Submission 69, Legal Aid NSW, p 14.

We found leaving care planning was characterised by delays in commencement and referrals, and extensive variations in the level of consultation with young people, and on the degree of detail in the plans. For a significant minority of care leavers, there was no planning whatsoever.⁵³⁷

- 6.12** The Ombudsman also found significant delays by FACS in lodging claims for victims' compensation for young people leaving care.⁵³⁸ A number of recommendations were made to FACS, including that it address the need for a uniform system across the out of home care sector in terms of leaving care planning.⁵³⁹
- 6.13** In 2014 FACS advised the Ombudsman that it had commenced a comprehensive review of its procedures to ensure they met the NSW Charter of Victim Rights and any application requirements for those seeking assistance from Victims Services. FACS also informed the Ombudsman that it was specifically developing and implementing practice guidelines, tools and monitoring processes on leaving care for both FACS and non-government organisation out of home care providers.⁵⁴⁰
- 6.14** Despite this, the Ombudsman expressed concerns about how leaving care planning would be improved, especially in the context of the transfer of out of home care responsibilities to the non-government organisation sector:

While FACS has indicated that it expects the transfer of OOHC [out of home care] to the NGO sector [non-government sector] will lead to enhanced capacity to meet the leaving care standards, we are yet to be advised of how FACS intends to implement a uniform sector-wide system to monitor and report on performance in leaving care practical and victim support. It is therefore timely for FACS to take stock of the practical suggestions put forward by stakeholders in various submissions and research, and look at developing a best practice framework for leaving care planning and aftercare support.

- 6.15** Reflecting on the importance of strengthening leaving care planning and support, the Ombudsman said:

If OOHC [out of home care] agencies fail to adequately prepare young people in their care so that they have the best chance at a healthy and productive life, then the consequences for the young person involved and the cost to the community, are likely to be significant.⁵⁴¹

⁵³⁷ Ombudsman NSW, *The continuing need to better support young people leaving care*, August 2013, p 34, <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0017/10880/The-continuing-need-to-better-support-young-people-leaving-care-web.pdf>

⁵³⁸ Submission 74, Ombudsman NSW, p 20.

⁵³⁹ Ombudsman NSW, *The continuing need to better support young people leaving care*, August 2013, p 36, <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0017/10880/The-continuing-need-to-better-support-young-people-leaving-care-web.pdf>

⁵⁴⁰ Submission 74, Ombudsman NSW, p 20.

⁵⁴¹ Submission 74, Ombudsman NSW, p 21.

Current issues

- 6.16** Despite the existing processes in place for leaving care planning, and the Ombudsman's previous reviews and recommendations, the committee received evidence highlighting ongoing concerns in the sector about the lack of support provided to young people leaving care.

Absence of or inadequate leaving care plans

- 6.17** Legal Aid NSW, the CREATE Foundation and YFoundations all raised concerns about inadequate planning and support provided to young people leaving care. Each of these organisations said that they were aware of instances in which a young person had not been provided with a leaving care plan,⁵⁴² with YFoundations stating that 'leaving care plans are often inadequate or non-existent'.⁵⁴³
- 6.18** The CREATE Foundation highlighted results from its 2013 report card which found that only 67 per cent of the 325 respondents aged 15 to 17 years were aware of having a formal leaving care plan in place and only 47 per cent claimed to be involved in its preparation.⁵⁴⁴
- 6.19** Even where leaving care plans are developed, the committee was told that they are often rushed, completed to simply 'tick the box'. Ms Lisa Townshend, the New South Wales State Coordinator from the CREATE Foundation, said:

Anecdotally, I can very honestly tell you that a lot of young people say to us that the leaving care plan was rushed—often two weeks, or two or six months before they leave care. It is often a very rushed process. So the leaving care plans have become—or are becoming—a tick-a-box process rather than the formal consultation process.⁵⁴⁵

- 6.20** Some leaving care plans are also not appropriately tailored to the young person's circumstances. Legal Aid NSW reported that this was an issue they have observed:

Where our clients have a LCP [leaving care plan], the vast majority are template plans developed with limited or no participation from the young person and bare little relevance or resemblance to their needs or circumstances.⁵⁴⁶

- 6.21** Legal Aid NSW also reported other 'systemic issues' related to leaving care plans, including issues with timeliness in the preparation of leaving care plans and inconsistencies in the approaches to such plans across agencies. It said that 'in some cases, there appears to be motivation to close files quickly which has compromised the planning process and had a detrimental impact on the care leaver'.⁵⁴⁷

⁵⁴² Submission 69, Legal Aid NSW, p 14; Submission 15, CREATE Foundation, p 5; Submission 97, YFoundations, p 2.

⁵⁴³ Submission 97, YFoundations, p 2.

⁵⁴⁴ Submission 15, CREATE Foundation, p 22.

⁵⁴⁵ Evidence, Ms Lisa Townshend, New South Wales State Coordinator, CREATE Foundation, 16 August 2016, p 54.

⁵⁴⁶ Submission 69, Legal Aid NSW, p 14.

⁵⁴⁷ Submission 69, Legal Aid NSW, p 15.

- 6.22** Ms Katrina Wong, senior solicitor from Legal Aid NSW, noted that leaving care plans are ‘crucial because from the ages 18 to 25 that plan articulates the supports and the entitlements that a young person might have up until the age of 25’.⁵⁴⁸
- 6.23** Ms Townshend also emphasised the importance of the leaving care plan being a tailored high quality document appropriately designed to suit the young person: ‘We have to think that it is not just a bureaucratic document. This is a really important document for young people’.⁵⁴⁹
- 6.24** Ms Carole Brewer, a young woman who had been in out of home care for a significant portion of her life, provided information about the lack of support she felt when leaving care:
- Prior to leaving care I was in a residential placement for six months. That was through an NGO [non-government organisation]... My transition from that was them getting me to ring around refuges to find a place to stay upon turning 18 due to lack of funding. In terms of a leaving care plan, mine was one of those rushed cases. It was not indicative of any sort of future that I had imagined for myself or conveyed to the workers that I aspired to have.⁵⁵⁰
- 6.25** Ms Brewer added that her ‘leaving care plan had nothing for [her] education, nothing for health’. She said that she felt her leaving care plan was ‘more about ticking the boxes’. Capturing how she felt during the process, Ms Brewer said that her ‘transition’ was ‘more like falling off a cliff’.⁵⁵¹
- 6.26** The CREATE Foundation suggested that young people leaving care be provided with high quality leaving care plans as part of accreditation standards administered by the Office of the Children’s Guardian.⁵⁵²
- 6.27** Legal Aid NSW also called for improvements in leaving care planning for Aboriginal young people, given leaving care plans should also be culturally appropriate.⁵⁵³

Insufficient financial assistance

- 6.28** One element of support young people need when they leave care is financial assistance. There were concerns, however, that the current Transition to Independence Allowance, a federal payment of up to \$1500 to help young people cover some basic costs as they leave out of home care,⁵⁵⁴ is insufficient to meet their financial needs.

⁵⁴⁸ Evidence, Ms Katrina Wong, Senior Solicitor, Children’s Civil Law Service, Legal Aid NSW, 16 August 2016, p 15.

⁵⁴⁹ Evidence, Ms Townshend, 16 August 2016, p 53.

⁵⁵⁰ Evidence, Ms Carole Brewer, Young Consultant, CREATE Foundation, 16 August 2016, p 53.

⁵⁵¹ Evidence, Ms Brewer, 16 August 2016, pp 53- 55.

⁵⁵² Submission 15, CREATE Foundation, pp 10-11.

⁵⁵³ Submission 69, Legal Aid NSW, p 16.

⁵⁵⁴ Department of Social Services, *Transition to Independent Living Allowance* (9 September 2016), <<https://www.dss.gov.au/our-responsibilities/families-and-children/benefits-payments/transition-to-independent-living-allowance-tila>>

- 6.29** The CREATE Foundation advocated in favour of an increase to this allowance, to take into account the costs of living. It also called for the procedure in terms of accessing these entitlements to be reviewed.⁵⁵⁵
- 6.30** Uniting noted the difficulties some young people experience in accessing this payment if they do not have an ‘endorsed’ leaving care plan, which was an issue highlighted by the Ombudsman in its previous reviews.⁵⁵⁶

The need to increase the leaving care age

- 6.31** Despite the existing legislative requirement for support to be ‘available to care leavers at least until they reach 25 years’,⁵⁵⁷ several stakeholders called for the leaving care age to be increased, either to enable an extension of statutory responsibility for young people beyond the age of 18 years, or to ensure support continues well into young adulthood.
- 6.32** The CREATE Foundation said that the leaving care age is not commensurate with the capacity for independent living. It reported that young people felt ‘extreme anxiety’ associated with the ‘unrealistic pressure to grow up fast and make decisions’, without the benefit of parental guidance, financial support and ongoing assistance, which is provided to young people without a care history.⁵⁵⁸
- 6.33** The CREATE Foundation called for an extension of the statutory responsibility to young people who exit out of home care to 25 years of age. It said that this could be achieved by amending the definition of a young person in the legislation to be defined as person who is aged 16 to 25 years, given it currently defines a young person as being between 16 and 18 years old.⁵⁵⁹ It supported an increase in the age for leaving care to 21 years nationally, and increasing supports for young people leaving care until they reach 25 years.⁵⁶⁰
- 6.34** The Association of Children’s Welfare Agencies also suggested that consideration be given to lifting the age that young people can stay in care. It noted that several international jurisdictions had taken this step, including England, Scotland and parts of the United States of America.⁵⁶¹
- 6.35** Relevant to this issue were the outcomes of the 2015 Senate inquiry into out of home care, where the Senate Standing Committee on Community Affairs recommended that states and territories raise the age to which young people continue to receive ongoing post-care support to 21 years of age.⁵⁶²

⁵⁵⁵ Submission 15, CREATE Foundation, p 23.

⁵⁵⁶ Submission 76, Uniting, p 38.

⁵⁵⁷ Answers to supplementary questions, Department of Family and Community Services, p 19.

⁵⁵⁸ Submission 15, CREATE Foundation, p 22.

⁵⁵⁹ Submission 15, CREATE Foundation, p 23.

⁵⁶⁰ Submission 15, CREATE Foundation, p 5.

⁵⁶¹ Submission 94, Association of Children’s Welfare Agencies, p 16.

⁵⁶² Community Affairs References Committee, The Senate, *Out of home care* (August 2015), p 284.

- 6.36** Legal Aid NSW also supported an increase in the leaving care age, from 18 to 21 years.⁵⁶³ However, Ms Wong, a Senior Solicitor in the Legal Aid NSW Children’s Civil Law Service, clarified that this suggestion relates to the support that is provided to young people when leaving care. Her view was that raising the leaving care age from 18 to 21 years would enable the young person to still contact their FACS caseworker for assistance at any point during that time, for example, if they wanted to get support for housing, or ‘linked into some education or employment programs’. She stated that the transition from out of home care should be based on a ‘graduated plan implemented over a long period of time’, whereas ‘at the moment the way we have it at the age of 18 it just does not leave room for it’.⁵⁶⁴
- 6.37** MacKillop Family Services also argued for support to be provided to a young person leaving care until the age of 25 years, although they said that ‘out-of-home care providers must be resourced to meet the responsibility to be available to offer support to young people should they need to return’.⁵⁶⁵
- 6.38** Ms Katie Acheson, Chief Executive Officer of Youth Action, supported a client centred model for leaving care and after care support, a model not necessarily dependent on age:

I think it is crucial that we are looking and putting the person at the centre of this, whether they are 14 and not in out-of-home care but maybe they should have more intensive support or whether they are 21 and have just left out-of-home care, we need to look at what they need from their perspective and who is best placed to do that. If it is an 18-year-old and they do not want FACS following them for the next seven years that is fine but what else do they need and who are they going to get it from?⁵⁶⁶

Lack of identification or supporting documentation

- 6.39** The committee also received evidence that young people leaving care often lack adequate identification or supporting documentation, which affects their ability to obtain financial assistance, employment and other opportunities.
- 6.40** Legal Aid NSW highlighted that this is a barrier to young people accessing Centrelink allowance or obtaining a drivers licence.⁵⁶⁷

The need to improve support to enhance outcomes

- 6.41** A number of stakeholders emphasised the importance of supporting young people leaving care, especially in light of evidence indicating the significant accommodation, employment and educational challenges experienced by those who were once in out of home care.
- 6.42** The CREATE Foundation noted research which has shown that young people leaving care ‘experience significantly reduced life outcomes compared to their peers who do not have a

⁵⁶³ Submission 69, Legal Aid NSW, p 20.

⁵⁶⁴ Evidence, Ms Wong, 16 August 2016, p 16.

⁵⁶⁵ Submission 86, MacKillop Family Services, p 12.

⁵⁶⁶ Evidence, Ms Katie Acheson, Chief Executive Officer, Youth Action, 27 September 2016, p 36.

⁵⁶⁷ Submission 69, Legal Aid NSW, p 15.

care history'. In particular, it highlighted that young people leaving care are more likely to be homeless, young parents and involved in the criminal justice system, and less likely to have completed year 12 or to be employed.⁵⁶⁸

6.43 Legal Aid NSW, the CREATE Foundation and YFoundations all called for increased support to be provided to young person's leaving care.⁵⁶⁹ YFoundations was concerned about the lack of support currently provided, given their member services had reported that many people leaving out of home care 'are not financially or socially or emotionally prepared to live independently'.⁵⁷⁰

6.44 Without adequate leaving care planning in place, YFoundations emphasised the challenges young people leaving care may face:

Without adequate planning and preparation prior to exiting care a young person is likely to transition into homelessness, such as inappropriate or unsafe vulnerable couch surfing options, leaving them at increased risk of experiencing drug and alcohol misuse issues including drug dealing/running and other criminal activities or sexual exploitation.⁵⁷¹

6.45 Mr Andrew McCallum, Chief Executive Officer, Association of Children's Welfare Agencies, noted the value of providing support during the leaving care phases, in order to 'break intergenerational attachment' to the system:

I like to look at leaving care as the most critical part of early intervention if you are looking at intergenerational attachment to the system. If you want to break that intergenerational attachment to the system you have to deal with the kids who are leaving the system now. There is ample evidence to suggest if you increase a few key elements within this, if you can stop young women from being pregnant by six months or 12 months, you increase their likelihood of not being attached to the system in some way, or if you give them some access to tertiary education of some sort. We need to raise our expectations around this.⁵⁷²

6.46 Uniting noted that 'helping young people in out of home care to thrive in adulthood' is a key priority under the Third Action Plan for the *National Framework for Protecting Australia's Children* (discussed at 1.12). It agreed that greater support and investment needs to occur to help young people transition from out of home care into stable housing and employment. It highlighted the long term savings this can produce the government:

By providing good support to young people as they transition from care we can reduce their progression into prolonged use of high cost services. As CREATE argues, 'A relatively small investment now will save a huge social and economic cost in the future'.⁵⁷³

⁵⁶⁸ Submission 15, CREATE Foundation, p 22.

⁵⁶⁹ Submission 69, Legal Aid NSW, p 14; Submission 15, CREATE Foundation, p 22.

⁵⁷⁰ Submission 97, YFoundations, p 14.

⁵⁷¹ Submission 97, YFoundations, p 14.

⁵⁷² Evidence, Mr Andrew McCallum, Chief Executive Officer, Association of Children's Welfare Agencies, 27 September 2016, pp 50-51.

⁵⁷³ Submission 76, Uniting, p 37.

Suggested reforms

- 6.47** In addition to addressing a number of the key issues outlined above, there were other suggestions put forward to improve leaving care outcomes and support.
- 6.48** Legal Aid NSW suggested that there be the development of a uniform system across the residential out of home care sector for the leaving care planning process, including monitoring of leaving care planning by the Office of the Children’s Guardian. It also said that the Ombudsman should receive an official notification when a young person leaves care without having a leaving care plan in place.⁵⁷⁴
- 6.49** Other suggestions provided by Legal Aid NSW included:
- greater reporting on leaving care outcomes achieved by residential out of home care services and FACS, including the participation of young people in the process, and the rates of culturally appropriate plans developed for Aboriginal young people
 - the establishment of a separate leaving care team within FACS to advise on the development of leaving care plans and after care support
 - designated caseworker positions to support young people leaving care within each agency that has case management of a young person in statutory out of home care.⁵⁷⁵
- 6.50** Legal Aid NSW and Uniting agreed that there needs to be more investment and resourcing of after care services – services that can provide intensive case management for young people transitioning from out of home care.⁵⁷⁶
- 6.51** In particular, Uniting recommended the NSW Government increase funding of the Aboriginal Aftercare State-wide Service, a service that is funded by FACS for two caseworkers to assist Aboriginal young people across the state who are transitioning out of care.⁵⁷⁷ This recommendation was supported by the Association of Children’s Welfare Agencies.⁵⁷⁸
- 6.52** The CREATE Foundation suggested that young people leaving care be provided with priority access and support to attend and sustain higher education, including fee-free programs, subsidies, campus accommodation and scholarships. It also suggested that young people leaving care be eligible for priority social housing.⁵⁷⁹
- 6.53** Another aspect of the transitioning process from care which requires attention is the leaving care planning process for young people with a disability, as indicated by the Ombudsman.
- 6.54** The Ombudsman noted previous concerns voiced by the Public Guardian about the lack of action taken by FACS to identify young people with a disability who require the appointment of a guardian or substitute decision maker. While FACS agreed to develop a protocol to help address these concerns, in consultation with the Guardianship Tribunal and Public Guardian,

⁵⁷⁴ Submission 69, Legal Aid NSW, p 4.

⁵⁷⁵ Submission 69, Legal Aid NSW, p 4.

⁵⁷⁶ Submission 76, Uniting, p 37; Submission 69, Legal Aid NSW, p 17.

⁵⁷⁷ Submission 76, Uniting, p 38.

⁵⁷⁸ Submission 94, Association of Children’s Welfare Agencies, p 16.

⁵⁷⁹ Submission 15, CREATE Foundation, p 10.

further concerns were raised in September 2013 about the disparity between the number of young people with a disability in the leaving care program and low numbers of applications to the tribunal for the appointment of a guardian.⁵⁸⁰

Committee comment

- 6.55** Despite reviews since 2008 highlighting that young people are provided with inadequate leaving care planning and support, it still remains a significant issue to this day. This is of concern to the committee, given the difference it can make to how supported a young person feels when transitioning to independence, and the opportunities they can then embrace in adulthood.
- 6.56** Young people leaving care are clearly more vulnerable than most peers of their same age. Many have experienced a lack of continuity in placement or support, which disadvantages them in preparing for life on their own. The department has clear legislative responsibilities in this regard, but in some cases, it is failing to provide the level of planning and support that is required.
- 6.57** We had a courageous young woman appear before us who told us she felt like her leaving care and transition process was like ‘falling off a cliff’. This young woman, despite all adversity, had fought hard for her achievements, and we commend her commitment and will to do so. For other vulnerable young people though, the lack of support and planning provided may have a significantly adverse outcome on their lives, which is what we need to avoid.
- 6.58** However it should not be so hard. These are children who the state, through the Minister, has assumed parental responsibility for. The fact is that parenting responsibilities now extend well beyond the age of 18 and include ongoing help and support while young adults find their first home, take on tertiary education or secure their first serious job. This should be recognised more directly in the *Children and Young Persons (Care and Protection) Act* 1998 by a clear additional statutory responsibility on the Minister to provide this support for children who have been in care, at least until age 21, where that young person requests that support.

Recommendation 14

That the *Children and Young Persons (Care and Protection) Act* 1998 be amended to provide a clear, non-discretionary responsibility on the Minister to provide ongoing support for young adults up to at least age 21, where that young person requests support.

- 6.59** Therefore, given effective leaving care planning and support is critical to giving vulnerable young people the best chance they can have in transitioning out of care to independent living, we recommend that the NSW Government improve leaving care planning and supports through a range of measures, including the development and implementation of financial penalties for out of home care providers who fail to develop and action leaving care plans and the establishment of a designated team within FACS to assist, monitor and implement leaving care plans and supports. The focus and name of leaving care plans should also be changed to transitioning care plans, and there should be a specific strategy to create three year transition

⁵⁸⁰ Submission 74, Ombudsman NSW, p 21.

plans, with a sliding scale in the level of support to be provided. We further recommend that the NSW Ombudsman continue to audit the department's compliance in this area.

Recommendation 15

That the NSW Government improve leaving care planning and supports by:

- developing and implementing financial penalties for out of home care providers that fail to develop and action leaving care plans
- establishing a designated team within the Department of Family and Community Services to develop, monitor and implement leaving care plans and supports for young people
- changing the focus and name of 'leaving care plans' to 'transitioning care plans'
- developing a specific strategy to create three year transition plans, with a sliding scale in the level of support to be provided from ages 18 to 21.

Recommendation 16

That the NSW Ombudsman undertake regular audits of the Department of Family Community Services' compliance with its legal obligations to provide leaving care plans and supports to young people transitioning out of care.

Chapter 7 Aboriginal children and young people

Aboriginal children and young people⁵⁸¹ are overrepresented in the child protection system. This chapter looks at current statistics and factors contributing to this overrepresentation. It also considers some specific issues, including the adequacy of cultural care plans for Aboriginal children and young people placed in out of home care, and compliance with the Aboriginal and Torres Strait Islander Placement Principles.

Lastly, the chapter will look at the importance of self-determination for Aboriginal peoples, in addition to the newly announced Independent Review of Aboriginal children and young people in out of home care.

Current statistics

- 7.1** The Human Rights and Equal Opportunity Commission's 1997 *Bringing them home* report documented high rates of Aboriginal and Torres Strait Islander children and young people in care. To address this problem, it made a number of recommendations, all of which recognised the importance of family, community and culture for Aboriginal and Torres Strait Islander children and the need for this to be taken into account when decisions are being made about children's care.⁵⁸² Yet, despite it being nearly 20 years since the *Bringing them home* report was released, Aboriginal children and young people remain overrepresented in the care and protection system in New South Wales.
- 7.2** It is important to note that this trend is not limited to the child protection sector. Aboriginal children and young people are also overrepresented in the criminal and youth justice systems, hospital admissions for injuries and assault, and homelessness data.⁵⁸³
- 7.3** Statistics from the Australian Institute of Health and Welfare show that in New South Wales Indigenous children are nearly 7 times more likely to become part of the child protection system than non-Indigenous children, as shown in Table 1.⁵⁸⁴ According to this research, 16,607 Indigenous children and young people received child protection services in New South Wales in 2014-2015.⁵⁸⁵

⁵⁸¹ Throughout this report, the committee has used the term 'Aboriginal' to refer to the original people of Australia and their descendants, including those from the Torres Strait, unless referring directly to evidence provided by an inquiry participant. The committee acknowledges that the use of the terms 'Indigenous' vs 'Aboriginal' can vary depending on the context and people's preferences. The committee has, to the best of its ability, endeavored to be culturally appropriate and respectful in its use of these terms throughout the report.

⁵⁸² For example, recommendations 44 -52 and 54, Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1997) <https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>

⁵⁸³ Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015* (2016) p 27. The overrepresentation of Aboriginal children and young people in the youth justice system was also noted in submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 17 and submission 95, Aunty Glendra Stubbs and Ms Elizabeth Rice, p 5.

⁵⁸⁴ Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015* (2016) p 69.

⁵⁸⁵ Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015* (2016) p 69.

- 7.4 This table also shows that the overrepresentation of Indigenous children and young people is a trend across all Australian jurisdictions. However, there is some variation in the rate ratios⁵⁸⁶ presented which range from 2.5 in Tasmania to 11.8 in Western Australia. The Australian Institute of Health and Welfare reported that these variations may be due in part to higher proportions of children with unknown Indigenous status in those states.⁵⁸⁷

Table 7.4 Children receiving child protection services, by Indigenous status, across various jurisdictions, 2014-2015⁵⁸⁸

State/ territory	No. of children	Number per 1,000 children			
	Indigenous	Indigenous	Non-Indigenous	All children	Rate ratio Indigenous / non-Indigenous
NSW	16,607	181.0	26.0	35.0	7.0
Vic	4,109	195.7	23.1	26.0	8.5
Qld	9,020	103.4	16.2	24.2	6.4
WA	5,773	155.4	13.1	27.0	11.8
SA	1,908	118.7	12.2	17.6	9.8
Tas	468	43.8	17.2	22.4	2.5
ACT	383	157.2	15.1	19.8	10.4
NT	4,645	173.9	31.0	91.5	5.6
Total	42,913	146.4	20.5	28.6	7.1

Source: Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015* (2016), p 69.

- 7.5 In terms of out of home care, data from the Australian Institute of Health and Welfare also highlighted that 6,210 Indigenous children and young people were placed in out of home care in New South Wales, as at 30 June 2015.⁵⁸⁹ This was fairly consistent with recent data from the Department of Family and Community Services (FACS) which showed that as at June 2016, there were 6,968 Aboriginal children and young people in out of home care.⁵⁹⁰
- 7.6 The Aboriginal Child, Family and Community Care State Secretariat and Aboriginal Justice Support Group both expressed concerns about these trends. The Aboriginal Child, Family and Community Care State Secretariat stated:

⁵⁸⁶ The rate ratios are calculated by dividing the unrounded rate of Aboriginal and Torres Strait Islander children who were the subject of substantiations by the unrounded rate of non-Indigenous children who were the subject of substantiations, as noted in Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015*, 2016, p 69.

⁵⁸⁷ Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015* (2016) p 69.

⁵⁸⁸ Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015* (2016) p 69.

⁵⁸⁹ Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015* (2016) p 54.

⁵⁹⁰ Department of Family and Community Services, *Quarterly Statistical Report on Services for Children and Young People, March (Quarter 4) 2015/2016*, <<https://www.facs.nsw.gov.au/facs-statistics/children-and-young-people-quarterly-report>>

The rate at which Aboriginal children and young people in out-of-home care has increased significantly in NSW from 26 Indigenous children per 1,000 in 1993 (*Bringing them home* report) to 67.4 per 1,000 by 2014/2015.⁵⁹¹

- 7.7 The Aboriginal Justice Support Group referred to the words of the Australian Rights Commissions' Social Justice Commissioner who stated that this is 'one of the most pressing human rights challenges facing Australia today'.⁵⁹²

Is there entrenched cultural bias within the system?

- 7.8 There are a variety of complex factors contributing to the overrepresentation of Aboriginal children and young people in the child protection system. As outlined in the *Bringing them home* report, the legacy of past policies of forced removal, inter-generational effects of previous separations from family and culture, socioeconomic status, and perceptions arising from cultural differences in child rearing practices have all been acknowledged as contributing to this issue.⁵⁹³

- 7.9 One of the contributing factors is poverty in Aboriginal communities, and the connection between socio-economic factors and child removals. On this matter, MacKillop Family Services noted that the 2015 Senate *Inquiry into out of home care* found:

...the reasons why children enter and remain in care are complex and closely linked to social disadvantage, particularly for Aboriginal and Torres Strait Islander children. The committee acknowledges that Aboriginal and Torres Strait Islander communities face significantly higher levels of social disadvantage than non-Indigenous communities, contributing to the overrepresentation of Aboriginal and Torres Strait Islander children and young people in OOHC [out of home care]. The committee acknowledges that to properly address the increasing numbers of children in OOHC [out of home care] means addressing a broad range of social issues, particularly family violence, alcohol and drug abuse and mental health.⁵⁹⁴

- 7.10 Aunty Glendra Stubbs, an Aboriginal woman of the Wiradjuri people and former Chief Executive Officer of Link-Up NSW, and Dr Elizabeth Rice, academic and co-author of the *Bringing them home scorecard*, acknowledged the impact of structural factors in Aboriginal communities, including poverty and neglect. They suggested that the current system does not address such factors well, noting that they can 'become codified as risk factors which are sometimes used to "red flag" families'. They warned of the serious implications that can flow from such an approach:

...if these red flags are applied without proper, skilled, culturally competent examination of the particular circumstances, the results for children and young people,

⁵⁹¹ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 4, citing data from the Australian Institute of Health and Welfare.

⁵⁹² Submission 79, Aboriginal Justice Support Group, p 2.

⁵⁹³ Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1997) <https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>

⁵⁹⁴ Submission 86, MacKillop Family Services, pp 2-3.

families and communities are disastrous. This approach also undermines child protection aims, as it draws resources away from identifying, examining and responding to the causes of the ‘red flags’.⁵⁹⁵

7.11 The Australian Institute of Health and Welfare identified that on a national level, neglect and emotional abuse were the most common types of substantiated abuse⁵⁹⁶ for Aboriginal and Torres Strait Islander children. This research showed that neglect and emotional abuse each accounted for around 38 per cent of substantiations. This was compared with 21 per cent for neglect and 46 per cent for emotional abuse for non-Indigenous children.⁵⁹⁷

7.12 Ms Suellyn Tighe, Grandmothers Against Removals, reflecting on the issue of neglect, stated it was a ‘nebulous term’, and that despite significant effort, she could not find a definition of ‘neglect’ as it related to child protection:

...we are not lawyers, but we have looked at legislation in every possible place we can think of and we cannot find a definition of ‘neglect’ as it sits within the framework of care and protection. People’s own morals, values and judgement come into what they bring to the table when defining neglect.⁵⁹⁸

7.13 Ms Tighe went on to illustrate to the committee the types of circumstances that were resulting in determinations of neglect, for example, Aboriginal children not wearing shoes or wearing the same clothes to a day care centre:

Children were being removed because a report was made to the report line that the children were outside playing without any shoes on that that was termed and deemed neglect. Those children were subsequently removed. It is those types of things.

...

There is another narrative where a report was made for a child who was attending a local day care centre who had attended the local day care centre four days a week but was attending with the same four sets of clothes, so on Monday they wore a particular set of clothes and on Tuesday and so on they wore different sets of clothes. A report was made from that mandatory reporter that the child was attending with those sets of clothes each day of those four days. That was then deemed as neglect.⁵⁹⁹

7.14 Mrs Tighe further stated that ‘it is neglect that is predominantly used as a form of removal’. She added that ‘it is these types of things that are being put forward in documentation that goes through to the courts and it goes unquestioned’.⁶⁰⁰

7.15 The Alliance for Family Preservation and Restoration raised a similar point, noting the different cultural values and judgments that are applied when determining what constitutes ‘neglect’:

⁵⁹⁵ Submission 95, Aunty Glendra Stubbs and Ms Elizabeth Rice, pp 11-12.

⁵⁹⁶ The term ‘substantiated abuse’ is used refer to where there were sufficient reasons, following investigation, for the department to take steps to ensure the safety of the child.

⁵⁹⁷ Australian Institute of Health and Welfare, *Child Protection Australia 2014/2015* (2016) p 28.

⁵⁹⁸ Evidence, Ms Suellyn Tighe, Grandmothers Against Removals, 16 August 2016, pp 32 and 35.

⁵⁹⁹ Evidence, Ms Tighe, 16 August 2016, pp 35-36.

⁶⁰⁰ Evidence, Ms Tighe, 16 August 2016, p 36.

In the cases of removal for neglect we noticed perceived poverty was the main cause so instead of helping these families out of perceived poverty many of whom are Indigenous and have different cultural values to FACS workers their children were just forcibly removed. Judgments based on every child must wear shoes and have their own room which is inconsistent with some indigenous lifestyles is not sufficient reason to forcibly remove children as we have seen documented by FACS as neglect.⁶⁰¹

- 7.16** Like ‘neglect’, Aunty Glendra Stubbs and Ms Elizabeth Rice, explained that there is little understanding among non-Indigenous people about Aboriginal ‘children’s independence and overcrowding, which also can be misunderstood as forms of neglect:

...if a non-Aboriginal person simply observes the behaviours of Aboriginal children, families and communities without understanding the child rearing regime to which they are tied, they may interpret the behaviours as indicating neglect, rather than understanding that they are part of a move, under multiple sets of eyes, towards supported independence.⁶⁰²

- 7.17** These issues were summed up by Aunty Glendra Stubbs and Ms Rice, who stated ‘Indigenous child rearing practices, particularly those maintained by the more remote communities, have many different characteristics from those in the non-Indigenous community, an issue about which the non-Indigenous community is just beginning to learn’.⁶⁰³

- 7.18** In light of these issues, inquiry participants suggested that there is inherent racism and cultural bias within the child protection system. Mr Tim Ireland, the Chief Executive Officer of the Aboriginal Child, Family and Community Care State Secretariat, along with Ms Tighe from Grandmothers Against Removals, both suggested that racism continues to be a contributing factor to the overrepresentation of Aboriginal children in the system.⁶⁰⁴

- 7.19** Ms Tighe suggested that this racism is also demonstrated by the way in which child removals are conducted, for example, with greater levels of force and police presence:

...what drives the systematic and forced removals of Aboriginal children and the over-representation is racism...in north-western New South Wales, children were removed from a family with the equivalent of the riot squad present, in full helmeted gear and with guns drawn. That is how racism develops.⁶⁰⁵

- 7.20** She also contended that cultural bias and racism is entrenched within the FACS workforce. Ms Tighe commented that despite the good intentions of some young caseworkers, managers, having worked for a longer time, could override practice intentions:

There is an inordinate number of young caseworkers working in the field. Well intentioned they may be, but because their managers are older and have worked for

⁶⁰¹ Submission 44, Alliance for Family Preservation and Restoration, p 7.

⁶⁰² Submission 95, Aunty Glendra Stubbs and Ms Elizabeth Rice, p 10.

⁶⁰³ Submission 95, Aunty Glendra Stubbs and Ms Elizabeth Rice, p 11.

⁶⁰⁴ Evidence, Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat, 16 August 2016, p 33; Evidence, Ms Tighe, 16 August 2016, p 34.

⁶⁰⁵ Evidence, Ms Tighe, 16 August 2016, p 32.

longer in a system that has operated with a cultural bias and with racism, those younger ones may be overridden by their case managers.⁶⁰⁶

- 7.21** Similar concerns were echoed by the Women’s Legal Service NSW, who suggested that there is poor cultural competence within FACS about how an Aboriginal child is raised in their community. It said that it is not appropriate to use western standards to determine Aboriginal child wellbeing:

Placing western standards on Aboriginal and Torres Strait Islander community and family is not appropriate or helpful. There are many things to consider in determining what is best for the child including issues such as identity, belonging, community, country connection and wellbeing. Within the parameters of safety from harm essential for all children, a nuanced approach to judgment about child wellbeing should be applied. Care needs to be given around judging an established culture by a different culture’s standard.⁶⁰⁷

- 7.22** To address this issue, Mr Ireland called for greater training, including ‘more on-the-job training in Aboriginal communities’.⁶⁰⁸ Cultural competence training is discussed more broadly in chapter 9.

- 7.23** The committee notes that the department has acknowledged the importance of considering cultural differences when working with Aboriginal children, young people, and families. In particular, FACS has a resource guide entitled *Working with Aboriginal People and Communities*, which provides tips on how to respectfully and sensitively communicate with Aboriginal communities, taking into account the different cultural values, protocols and beliefs. This guide also highlights that cultural bias can lead to poor outcomes:

Cultural bias influences our actions as our perceptions are shaped by our own cultural context and experiences. When working cross culturally it is easy to misinterpret what is going on within families; such misinterpretation leads to poor outcomes. For this reason, we need to actively recognise and monitor our own cultural bias and behaviour.⁶⁰⁹

⁶⁰⁶ Evidence, Ms Tighe., 16 August 2016, p 32.

⁶⁰⁷ Submission 73, Women’s Legal Service NSW, p 5.

⁶⁰⁸ Evidence, Mr Ireland, 16 August 2016, p 31.

⁶⁰⁹ Department of Community Services (2009) *Working with Aboriginal People and Communities – A Practice Resource*, p 27, < http://www.community.nsw.gov.au/__data/assets/pdf_file/0017/321308/working_with_aboriginal.pdf>

Key issues affecting Aboriginal children, young people and families

7.24 Inquiry participants identified a number of issues relating to the provision of care and protection services to Aboriginal children and their families. Issues included limited access to prevention and early intervention services, compliance with the Aboriginal and Torres Strait Islander Principles, as well as inadequate cultural care planning and culturally appropriate resources.

Lack of access to prevention and early intervention services

7.25 There are a number of specific prevention and early intervention services for Aboriginal and Torres Strait Islander families. For example:

- programs under the Aboriginal Child, Youth and Family Strategy – an early intervention and prevention strategy designed to provide Aboriginal children with the best possible start in life, for example, through supported playgroups and parenting programs
- services under the Aboriginal Maternal and Infant Health Strategy – a NSW Health initiative that aims to improve the health of Aboriginal women during pregnancy and reduce mortality rates for Aboriginal babies, for example, antenatal and postnatal care and home visits
- Aboriginal Child and Family Centres – purpose built centres providing a range of services in the areas of early childhood education and care, maternal and child health, parent and family support, and other relevant childhood supports.⁶¹⁰

7.26 As highlighted in chapter 2, prevention and early intervention services are critical to improving outcomes for vulnerable children, young people and families, including Aboriginal children and families. However, inquiry participants identified a number of barriers which prevent Aboriginal peoples from accessing such services.

7.27 Both the Aboriginal Child, Family and Community Care State Secretariat and the Law Society of NSW stated that low levels of trust and engagement between Aboriginal communities and government authorities was leading to a situation where Aboriginal communities would not readily seek the use of early intervention and support services for ‘fear’ that it would trigger reporting mechanisms that would eventually result in the removal of their child.⁶¹¹ The Aboriginal Child, Family and Community Care State Secretariat stated:

Unfortunately, there remains significant distrust of FACS across our communities, which undermines these relationships both with individual families and across the wider Aboriginal community. We continue to hear from families who seek support for challenges they face, only to have their children permanently removed from their care, or who seek to engage with FACS and address the risk concerns, only to have the goalposts move or have further unreasonable expectations placed on their compliance.⁶¹²

⁶¹⁰ Submission 70, Department of Family and Community Services, pp 26-28.

⁶¹¹ Submission 96, The Law Society of New South Wales, p 3; Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 7.

⁶¹² Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 7.

- 7.28** In order to address this issue, the Aboriginal Child, Family and Community Care State Secretariat called for a ‘more participatory approach, that engages local communities and their families, and links families with Aboriginal child and family services that are able to help them navigate the systems, understand the concerns raised and work collaboratively to address them’.⁶¹³
- 7.29** Ms Tighe, Grandmothers Against Removals, said that ‘from a domestic violence point of view, we are finding now that people are not reporting domestic violence incidences because of fear of removal of their kids’.⁶¹⁴ Similarly, the committee was informed by Women’s Legal Service NSW that even grandparents share this concern, as they ‘are reluctant to disclose health issues for fear their grandchildren will be assumed into care’.⁶¹⁵
- 7.30** Evidence suggested that this issue is also affecting people’s decisions about whether to become kinship carers in Aboriginal communities. The Law Society of New South Wales reported that trust issues can make family members reluctant to nominate as carers, as it will lead to FACS becoming involved in their own family affairs.⁶¹⁶
- 7.31** As outlined in chapter 2, there were calls for increased funding of universal and targeted early intervention support services. For Aboriginal children and their families, it was considered important that any such services be needs based and delivered through Aboriginal communities and their organisations.⁶¹⁷ Other barriers affecting Aboriginal peoples’ access to services, such as geographic location, are discussed more generally at 2.23.

Compliance with the Aboriginal and Torres Strait Islander Child Placement Principles

- 7.32** Where an Aboriginal child or young person is placed in out of home care, FACS is required to comply with section 13 of the *Children and Young Persons (Care and Protection) Act* 1998. This provision specifies an order regarding how placement decisions are considered. In order of priority, an Aboriginal child or young person is to be placed with:
- a member of their extended family or kinship group
 - a member of the Aboriginal or Torres Strait Islander community to which they belong
 - a member of some other Aboriginal or Torres Strait Islander family residing in the vicinity of their usual place of residence
 - a suitable person approved by the Secretary after consultation with members of the child’s or young person’s extended family or kinship group, and, such Aboriginal or Torres Strait Islander organisations as are appropriate to the child or young person.⁶¹⁸
- 7.33** These principles do not apply where emergency placements and placements of short duration (less than two weeks) are required, although FACS must consult with the appropriate

⁶¹³ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 7.

⁶¹⁴ Evidence, Ms Tighe, 16 August 2016, p 42.

⁶¹⁵ Submission 73, Women’s Legal Service NSW, p 15.

⁶¹⁶ Submission 96, The Law Society of New South Wales, p 3.

⁶¹⁷ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 22.

⁶¹⁸ *Children and Young Person (Care and Protection) Act* 1998, s 13.

Aboriginal or Torres Strait Islander community as soon as practicable after the safety of the child is secured in these circumstances.⁶¹⁹

- 7.34** The *Aboriginal and Torres Strait Islander Child Placement Principles* are designed to enhance and preserve Aboriginal children's connection to their family, community, sense of identity and culture, where the child or young person is removed from the family unit and placed in out of home care.
- 7.35** Illustrating the positive outcomes delivered by the Principles, Winangay Resources Inc referred to the Queensland Commissioner for Children and Young People and Child Guardian, who stated that 'children in Indigenous care demonstrate the same, or better outcomes across every measure of family and community contact and experience greater opportunities to participate in cultural activities and events'.⁶²⁰
- 7.36** Despite the benefits of these principles, there were concerns about their inappropriate and/or inconsistent application, and in particular the placement of Aboriginal children and young people with non-Aboriginal carers.
- 7.37** The Aboriginal Child, Family and Community Care State Secretariat stated 'there appears to be a trend emerging over the last decade that sees more Aboriginal children placed with non-Aboriginal carers'. To address this issue, it called for 'stronger frameworks...including participation of Aboriginal families and communities in the decision making about Aboriginal children, and greater oversight and monitoring of the implementation of the Aboriginal Child Placement Principles by Aboriginal people'.⁶²¹
- 7.38** Ms Tighe expressed a similar concern, emphasising that in cases where the *Aboriginal Child and Torres Strait Islander Child Placement Principles*, either in part or their entirety, were not being implemented was denying Aboriginal peoples their human rights:
- It actually denies Aboriginal people, and therefore their families and their children in particular, their human rights and their social justice. FACS has been operating outside legislation and policy. We have many narratives from across Australia and indeed, New South Wales mainly, where that has been the case.⁶²²
- 7.39** With specific reference to the practices of non-government organisations, Mr Steve Turner, Assistant General-Secretary, Public Service Association, said that there was anecdotal evidence which suggested that 'non-government organisations are not taking those steps to place Aboriginal children within their community and kinship arrangements'.⁶²³
- 7.40** A number of concerns were also raised by inquiry participants about the transparency, robustness and appropriateness of statistics collected relating to the application of the *Aboriginal and Torres Strait Islander Child Placement Principles*.

⁶¹⁹ *Children and Young Person (Care and Protection) Act* 1998, s 13.

⁶²⁰ Submission 82, Winangay Resources Inc, p 8.

⁶²¹ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 15.

⁶²² Evidence, Ms Tighe, Grandmothers Against Removal, 16 August 2016, p 29.

⁶²³ Evidence, Mr Steve Turner, Assistant General-Secretary, Public Service Association, 27 September 2016, p 22.

- 7.41** As noted by the Aboriginal Child, Family and Community Care State Secretariat, statistics published by the Australian Institute of Health and Welfare suggest that compliance with the *Aboriginal Child and Torres Strait Islander Child Placement Principles* in New South Wales is actually relatively high, with figures from 2014-15 showing that 80 per cent of Aboriginal children were placed with relatives/kin or with Aboriginal carers.⁶²⁴
- 7.42** However, the Aboriginal Child, Family and Community Care State Secretariat were sceptical of this data, raising the two following concerns:
- that compliance rates do not demonstrate if, or to what extent, Aboriginal and Torres Strait Islander organisations and families have participated in decision making about the placement of their children
 - the statistics do not reflect the eventual outcomes of the Aboriginal children and young people to which they refer.⁶²⁵
- 7.43** It called for a stronger framework for the full implementation of the Aboriginal Child Placement Principles, including greater oversight and monitoring by Aboriginal People.⁶²⁶ The Women's Legal Service NSW argued for an independent audit of adherence to the principles, with a view to improving compliance and reporting.⁶²⁷
- 7.44** The committee noted that this issue was also addressed recently in the *Inquiry into reparations for the Stolen Generations in NSW*. General Purpose Standing Committee No.3 recommended that FACS commission an independent audit of adherence to the *Aboriginal and Torres Strait Islander Child Placement Principles*, with a view to improving compliance and reporting. In its response, the NSW Government accepted this recommendation, stating that:

The NSW Government will introduce a new client management system, Child Story, to support caseworkers in implementing the Aboriginal placement principles and, as part of the Improving Aboriginal Child Protection and Out-of-Home Care Outcomes research project, test frontline worker understanding of the Aboriginal Child Placement Principles and review systems/procedures. The NSW Government will also work with the Secretariat of National Aboriginal and Islander Child Care to implement a national reporting and compliance framework.⁶²⁸

Lack of recognition of Aboriginality

- 7.45** Relevant to the effective implementation of the *Aboriginal and Torres Strait Islander Child Placement Principles* were concerns about the late identification or lack of identification of Aboriginality. In some cases, this was despite proof of Aboriginality being provided to FACS.

⁶²⁴ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 14.

⁶²⁵ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 15.

⁶²⁶ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 15.

⁶²⁷ Submission 73, Women's Legal Service NSW, p 8.

⁶²⁸ Correspondence from The Hon Leslie Williams, MP, Former Minister for Aboriginal Affairs, to the Clerk of the Parliaments, providing government response to the Inquiry into the Reparations for the Stolen Generations in New South Wales: Unfinished Business, 2 December 2016, p 16.

7.46 As noted by Uniting, Aboriginal and Torres Strait Islander children will only benefit from the *Aboriginal and Torres Strait Islander Child Placement Principles* if their Aboriginality is identified in a timely manner: ‘When this does not occur, Aboriginal and Torres Strait Islander children may not be placed with appropriate carers or receive suitable cultural planning and support’. To illustrate the extent of this issue, Uniting referred to information published by FACS:

In the majority of NSW cases where Aboriginal children in out of home care have been adopted since 2011, their Aboriginal heritage became known after placement and during the adoption process and/or the children were of an age to give consent to their own adoption.⁶²⁹

7.47 This issue was also raised during a consultation the committee held with Indigenous community members, facilitated by representatives of the Indigenous Issues Committee with the Law Society of NSW.

7.48 The committee heard concerns that FACS was deliberately ‘re-defining’ Aboriginal children so as to avoid their legislative obligations. The impact of this on keeping Aboriginal children connected to country and culture was noted. The committee was also advised of a case in which FACS had not accepted proof of Aboriginality for a number of Aboriginal siblings, despite relevant documentation having been presented.⁶³⁰

7.49 Uniting suggested that the lack of a reliable process to accurately identify Aboriginal children upon entry to the child protection system was leading to such issues. Poor quality information received at points of referral and limited access to information held by FACS on its client information database were also identified as contributing factors.⁶³¹

7.50 When the committee sought further information from FACS to clarify processes regarding the identification of Aboriginal children, FACS advised that documentation to prove Aboriginality is not required and ‘most commonly, FACS accepts a person as Aboriginal through the person or family’s self-identification’.⁶³²

7.51 FACS also noted that staff are required by legislation and the FACS *Aboriginal Consultation Guide* to consult widely in gathering information about a child or young person’s Aboriginality. Consultation is also required if a change in a child’s cultural identity is an issue.⁶³³

Inadequate cultural care plans

7.52 Where Aboriginal children are placed in out of home care, there is a legislative requirement for a cultural care plan to be developed. This plan is intended to increase a child or young

⁶²⁹ Submission 76, Uniting, p 30.

⁶³⁰ General Purpose Standing Committee No.2, *Inquiry into child protection, Consultation with Indigenous community members*, 8 September 2016, p 4.

⁶³¹ Submission 76, Uniting, p 30.

⁶³² Answers to supplementary questions, Department of Family and Community Services, 27 October 2016, p 30.

⁶³³ Answers to supplementary questions, Department of Family and Community Services, p 31.

person's opportunity to learn, understand and appreciate their cultural background despite being removed from the family unit.⁶³⁴

- 7.53** Notwithstanding this requirement, several organisations expressed dissatisfaction about the adequacy of cultural care plans being developed and their implementation. Uniting expressed strong concerns, arguing that cultural planning and support is 'inadequate'. It added that 'cultural plans are often poor or non-existent'.⁶³⁵
- 7.54** Uniting also referred to a national survey that was conducted by the CREATE Foundation in 2013 which found that appropriately 30 per cent of Aboriginal and Torres Strait Islander participants who were in out of home care reported that they had a poor knowledge of, and connection to, their family history.⁶³⁶
- 7.55** Concerns about this issue were shared by Winangay Resources Inc who suggested that care plans are often completed with 'little or no consultation' with the children for which they are prepared.⁶³⁷
- 7.56** The Law Society of NSW also expressed the importance of effective cultural care plans, stating that 'cultural connection is vital for an Indigenous child's resilience' and that it had the 'strong view that cultural contact plans should be made as part of court-ordered arrangements'. Acknowledging that some out of home care providers run their own internal 'cultural contact programs', The Law Society cautioned that such an approach 'is neither culturally safe nor sufficient as culture is nurtured within culturally appropriate, lived experiences'.⁶³⁸
- 7.57** It is also important to note that the adequacy of cultural care planning was also addressed in the 2016 *Inquiry into reparations for the Stolen Generations in NSW*. General Purpose Standing Committee No.3 recommended that FACS review the quality and effectiveness of cultural care planning for Aboriginal children and young people placed in out of home care.⁶³⁹
- 7.58** The NSW Government accepted this recommendation, noting that FACS was reviewing a newly re-designed care and culture plan one year after its implementation and would develop a monitoring and evaluation framework.⁶⁴⁰
- 7.59** The committee noted that FACS has recently undertaken a review of their approach to Aboriginal cultural care plans. In fact, the committee was advised that the new plan was to be co-designed 'following extensive engagement with Aboriginal stakeholders, with formal

⁶³⁴ Submission 70, Department of Family and Community Services, p 29.

⁶³⁵ Submission 76, Uniting, p 30.

⁶³⁶ Submission 76, Uniting, pp 30–31.

⁶³⁷ Submission 82, Winangay Resources Inc, p 24.

⁶³⁸ Submission 96, The Law Society of New South Wales, p 6.

⁶³⁹ General Purpose Standing Committee No. 3, NSW Legislative Council, *Inquiry into reparations for the Stolen Generations in New South Wales: Unfinished Business* (2016), p 195.

⁶⁴⁰ Correspondence from The Hon Leslie Williams, MP, Former Minister for Aboriginal Affairs, to the Clerk of the Parliaments, providing government response to the Inquiry into the Reparations for the Stolen Generations in New South Wales: Unfinished Business, 2 December 2016, p 16.

approval from the Aboriginal Child, Family and Community Care Secretariat'. The committee was informed that this plan was to be implemented late 2016.⁶⁴¹

- 7.60** The new arrangements also included mandated training for staff on cultural planning. There will also be state wide monitoring and evaluation, which has not been possible previously. In order to ensure that cultural care plans are being implemented by carers, FACS has committed to review the plans 12 months after implementation. FACS is also developing indicators to measure the impacts and outcomes of cultural care plans.⁶⁴²
- 7.61** MacKillop Family Services recently reviewed a draft FACS cultural support plan template. It supported the draft version, stating that it was 'good' and in their opinion 'would improve the quality and consistency of cultural support planning across the state'.⁶⁴³

Lack of consultation with Aboriginal communities

- 7.62** The *Children and Young Persons (Care and Protection) Act 1998* requires that Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities participate in decisions concerning the placement of their children and young persons in out of home care.⁶⁴⁴ The committee received numerous reports of inconsistent or inadequate practices in this regard.
- 7.63** In 2008, the Ombudsman reported concerns relating to the extent to which meaningful and consistent consultation with Aboriginal communities regarding placement decisions was occurring. However, the Ombudsman went on to state that, 'since then, FACS has shown a strong policy commitment to strengthening the connections of Aboriginal children in care to their culture and community'.⁶⁴⁵
- 7.64** Of particular note is the preparation of the *Guiding Principles for strengthening the participation of local Aboriginal communities in child protection decision making*. These principles were developed on a collaborative basis by Grandmothers Against Removals, FACS and the Ombudsman.⁶⁴⁶ Launched in November 2015, the document creates a set of guiding principles for FACS and local Aboriginal communities to work together on child protection matters.⁶⁴⁷

⁶⁴¹ Answers to supplementary questions, Department of Family and Community Services, pp 31-32.

⁶⁴² Answers to supplementary questions, Department of Family and Community Services, pp 31 and 33.

⁶⁴³ Submission 86, MacKillop Family Services, p 19.

⁶⁴⁴ *Children and Young Persons (Care and Protection) Act 1998*, s 12.

⁶⁴⁵ Submission 74, Ombudsman NSW, pp 44-45.

⁶⁴⁶ Grandmothers Against Removals and Department of Family and Community Services, *Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making*, (August 2015).

⁶⁴⁷ Grandmothers Against Removals and Department of Family and Community Services, *Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making*, (August 2015) pp 5-6.

7.65 The document is not intended to bind local communities; rather it aims to support Aboriginal self-determination by presenting a template that has been endorsed by relevant stakeholders and can be adapted accordingly.⁶⁴⁸

7.66 Mrs Tighe, Grandmothers Against Removals, explained these principles and the roles and responsibilities envisaged for local community advisory groups:

The document clearly states that family meetings need to be held in the first instance...From that you have the local groups [local community advisory groups] who can then say, 'Have you had a family meeting?' So it is giving a say to the Aboriginal community; they actually participate in the decision-making around what is happening in their communities with their local children and within their families...The next level is a state advisory body which all the local advisory bodies will then feed up into a state body, which then correlates that information and then feeds that on to the Minister.⁶⁴⁹

7.67 While the development of these guiding principles has been welcomed, some concerns were voiced about the lack of progress with their implementation and roll-out across the state. Ms Tighe reported a 'resistance' from FACS and some local districts, stating 'it is the implementation and the application of that document [the Guiding Principles] that FACS is not delivering on'. She added:

We are finding that there is resistance in FACS in implementing the guiding principles. I can only surmise that it is because it has come from the grassroots community. It is not being put forward by the Department of Family and Community Services out to the regions. It was not until I made a formal complaint to the Ombudsman's Office about the lack of roll-out...that we began to see any movement on it. As it sits now we have not heard of a community that has rolled it out [to].⁶⁵⁰

7.68 Mrs Tighe also noted that agreements between regional offices and local communities were being rolled-out instead of implementation of the Guiding Principles.⁶⁵¹ However, information provided by FACS outlined that some local protocols, such as the Aboriginal Community Protocols in Dubbo and Bourke, were developed before the principles were actually formulated, although FACS stated that these protocols are consistent 'with the intent of the Guiding Principles'.⁶⁵²

Lack of culturally appropriate resources, tools and training in the sector

7.69 A number of inquiry participants raised concerns about the cultural appropriateness of processes and tools used to assess and support kinship carers in Aboriginal communities. It was purported by inquiry participants that such limitations were leading to sub-optimal

⁶⁴⁸ Grandmothers Against Removals and Department of Family and Community Services, *Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making*, (August 2015) p 6.

⁶⁴⁹ Evidence, Ms Tighe, 16 August 2016, p 30.

⁶⁵⁰ Evidence, Ms Tighe, 16 August 2016, p 39.

⁶⁵¹ Evidence, Ms Tighe, 16 August 2016, p 39.

⁶⁵² Submission 70, Department of Family and Community Services, p 31.

outcomes for the Aboriginal children, their families and communities and was potentially limiting access to kinship carers for those in need.

- 7.70** Winangay Resources Inc stated that ‘workers do not have an appropriate and relevant Aboriginal kinship carer assessment tool’. Furthermore, ‘case workers were often left to adapt existing resources, designed to assess non-Aboriginal carers without a familial relationship’. Winangay Resources strongly believed that the use of generic resources failed ‘to capture the complexities of Aboriginal kinship care, are culturally insensitive and are predicated on an erroneous assumption that the child is not known to the carer and is a stranger to the kinship carer’.⁶⁵³

A self-determined approach to child protection

- 7.71** The *Children and Young Persons (Care and Protection) Act 1998* includes broad legislative principles which relate to self-determination and the role of Aboriginal and Torres Strait Islander people’s participation in decision making.⁶⁵⁴ Despite these principles, Aboriginal representatives called for greater participation in child protection matters affecting their children, in line with the principle of self-determination. This was also a theme raised during the recent *Inquiry into reparations for the Stolen Generations in NSW*.⁶⁵⁵

- 7.72** Reflecting on the importance of self-determination for Aboriginal peoples, the Aboriginal Child, Family and Community Care State Secretariat stated that:

Aboriginal people are best placed to make decisions for our families and children. We recommend significant reform to empower Aboriginal communities and enhance their participation in the child protection system, from universal community supports through to out of home care and leaving care services. There is a need for greater focus and investment on empowering Aboriginal people through community controlled organisations, to design, develop and deliver the strategies to give Aboriginal children and young people the brightest start to life.⁶⁵⁶

- 7.73** This view was shared by the Aboriginal Justice Support Group, who stated that while recent efforts to address the overrepresentation of Aboriginal children in out of home care were welcomed, they would ‘not be sufficient to halt and reverse the trend in removals of Aboriginal children and young people in NSW’ as they ‘did not embed the level of self-determination required for Aboriginal people in NSW to be able to achieve the priority...of “Keeping our kids safe and connected to their mob”’.⁶⁵⁷

- 7.74** Numerous stakeholders provided evidence about the importance of developing an Aboriginal community controlled sector to provide the continuum of child protection services. The Aboriginal Child, Family and Community Care State Secretariat stated:

⁶⁵³ Submission 82, Winangay Resources, p 9.

⁶⁵⁴ *Children and Young Persons (Care and Protection) Act 1998*, ss 11-12.

⁶⁵⁵ General Purpose Standing Committee No. 3, NSW Legislative Council, *Reparations for the Stolen Generations in New South Wales – Unfinished Business* (2016) pp 203-207.

⁶⁵⁶ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 1.

⁶⁵⁷ Submission 79, Aboriginal Justice Support Group, p 3.

Empowering communities to develop and deliver culturally sound universal and targeted interventions will contribute to the development of a comprehensive, state-wide safety-net of Aboriginal community controlled organisations that are embedded with the communities they service, leading to a community-wide response that will support Aboriginal families to keep children safe and connected to their families, communities, culture and Country.⁶⁵⁸

- 7.75** The recent expansion of the Aboriginal out of home care sector to accommodate the transition of case management of Aboriginal children was acknowledged and welcomed as an important step towards self-determination. The Ombudsman reported that this ‘provides a valuable opportunity for children to remain connected to their kin and country, while offering the safeguards and rights as other children in out of home care’.⁶⁵⁹
- 7.76** However, the Ombudsman cautioned that the ‘significance and rapidity of the growth [of the sector] presents inherent risks’. The Ombudsman added that there is a need to enhance the capacity of the Aboriginal out of home care sector as it continues to grow, to ensure that the sector has the capacity to identify and adequately respond to allegations of child abuse.⁶⁶⁰
- 7.77** The committee noted the range of initiatives that had been completed by the Ombudsman’s office in this regard, such as activities which promote awareness of the reportable conduct scheme and tailored employment related child protection workshops for Aboriginal out of home care service providers.⁶⁶¹
- 7.78** The Office of the Children’s Guardian also noted its strong commitment to assist Aboriginal community controlled agencies to develop practices that meet the *NSW Child Safe Standards for Permanent Care*. Noting that only 13 of the 74 designated agencies are Aboriginal agencies, the Office of the Children’s Guardian stated that ‘this is a particular priority given that that majority of Aboriginal children in out of home care remain in FACS care, pending transition to the non-government organisation sector’.⁶⁶²
- 7.79** A collaborative child protection service delivery model was proposed by Aboriginal Child, Family and Community Care State Secretariat, as shown in Figure 1 (next page). This model positions FACS as steward of the system, allocating funding to the Aboriginal sector to deliver agreed outcomes.⁶⁶³
- 7.80** Under this model, FACS districts and local offices would remain responsible for their statutory responsibilities under the *Children and Young Persons (Care and Protection) Act 1998*, however they would engage with local Aboriginal bodies, termed ‘Aboriginal Community Child Safety Governance Groups’ and Aboriginal community controlled agencies to improve service delivery and collaboration at the local level and develop and deliver a range of tailored, local services. These entities would be represented by the Aboriginal Child, Family and Community Care State Secretariat, which would provide support services such as practice, policy and workforce development and advocacy activities. Regulatory bodies such as the

⁶⁵⁸ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, p 5.

⁶⁵⁹ Submission 74, Ombudsman NSW, p 49.

⁶⁶⁰ Submission 74, Ombudsman NSW, p 49.

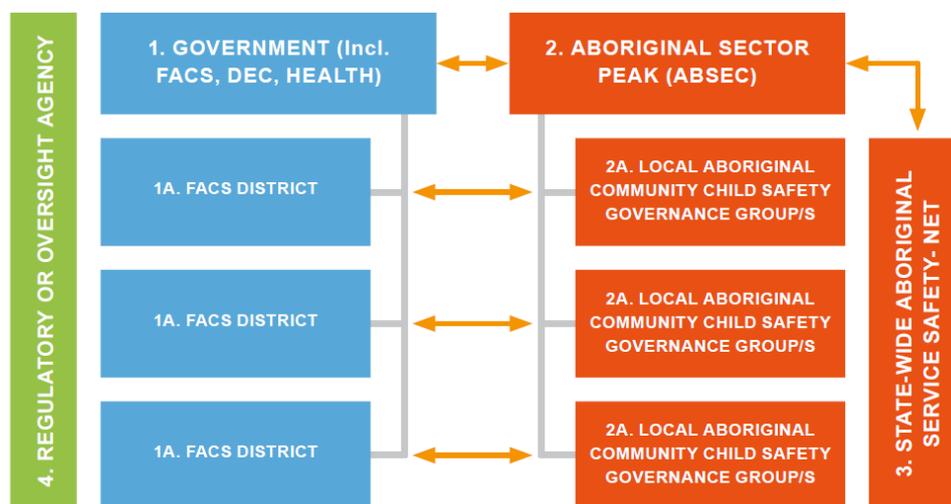
⁶⁶¹ Submission 74, Ombudsman NSW, p 49.

⁶⁶² Submission 75, Office of the Children’s Guardian, p 8.

⁶⁶³ Submission 59, Aboriginal Child, Family and Community Care State Secretariat, pp 18-20.

Office of the Children’s Guardian and the Ombudsman would continue in their statutory roles, working with the Aboriginal sector.⁶⁶⁴

Figure 1 Proposed collaborative model for child protection services



Source: Submission 59, *Aboriginal Child, Family and Community Care State Secretariat*, pp 18-20.⁶⁶⁵

7.81 On a similar note, the Aboriginal Justice Support Group recommended that a system of Aboriginal community controlled organisations be developed to address the over-representation of Aboriginal children and young people in the system. It recommended that:

The New South Wales Government investigate the options for full implementation of the Recommendations 43a-53b of the *Bringing them home* report which would essentially establish an Aboriginal community controlled child wellbeing system for Aboriginal children in this State.⁶⁶⁶

7.82 Further to this suggestion, the Aboriginal Justice Support Group recommended that the NSW Government engage with initially, and at a minimum, the following stakeholders: Grandmothers Against Removals, the Aboriginal Child, Family and Community Care State Secretariat, the Secretariat of National Aboriginal and Islander Child Care, and the Social Justice Commissioner of the Australian Human Rights Commission.⁶⁶⁷

⁶⁶⁴ Submission 59, *Aboriginal Child, Family and Community Care State Secretariat*, pp 18-20.

⁶⁶⁵ Submission 59, *Aboriginal Child, Family and Community Care State Secretariat*, p 20.

⁶⁶⁶ Submission 79, *Aboriginal Justice Support Group*, p 3.

⁶⁶⁷ Submission 79, *Aboriginal Justice Support Group*, p 4.

Independent review of Aboriginal children and young people in out of home care

- 7.83** As discussed in paragraph 1.66, in December 2016, the former Minister of Family and Community Services, the Hon Brad Hazzard MP, formally announced that a review would take place of ‘every Aboriginal child taken into out of home care during the past year’.⁶⁶⁸
- 7.84** It was announced that this review will be headed by Professor Megan Davis, University of New South Wales, who will lead a committee of Aboriginal leaders to review the case files of 1200 Aboriginal children and young people.⁶⁶⁹
- 7.85** While the committee has not seen a terms of reference for this review,⁶⁷⁰ it is understood that the committee will ‘initially focus on Aboriginal children and young people who entered care [in 2016], and will look at restoration options, as well as learnings that will help reduce the overall number of Aboriginal children entering care’.⁶⁷¹
- 7.86** FACS has advised that it expects that this process will take a minimum of two and half years to complete.⁶⁷²
- 7.87** Referring to this review, Mr Ireland and Ms Tighe both emphasised the need for independence and transparency in the review process.⁶⁷³ Both argued that the review should be conducted by an independent body. Ms Tighe said:

GMAR [Grandmothers Against Removals] takes the position that the review needs to be independent of FACS. To have transparency it needs to be independent of FACS. GMAR’s stance is that it should not involve any organisations affiliated with FACS...There needs to be representation from people at the grassroots because they are the victims of the system and they need to have a voice in the review process...Otherwise it will not be a fair and equitable process and it will not be transparent...Transparency is a huge concern for us...A paper or a desktop review will not address the issues. It will not address the over-representation in care. It will merely restate what we already know.⁶⁷⁴

⁶⁶⁸ Media Release, Department of Family and Community Services, ‘NSW to review cases of Aboriginal kids in care’, 19 December 2016,

<https://www.facs.nsw.gov.au/about_us/media_releases/nsw-to-review-cases-of-aboriginal-kids-in-care>

⁶⁶⁹ Media Release, Department of Family and Community Services, ‘NSW to review cases of Aboriginal kids in care’, 19 December 2016,

<https://www.facs.nsw.gov.au/about_us/media_releases/nsw-to-review-cases-of-aboriginal-kids-in-care>

⁶⁷⁰ The Department of Family and Community Services advised that the terms of reference will not be determined until the Chair has been appointed and contributed to their development. Answers to supplementary questions, Department of Family and Community Services, p 2.

⁶⁷¹ Media Release, Department of Family and Community Services, ‘NSW to review cases of Aboriginal kids in care’, 19 December 2016,

<https://www.facs.nsw.gov.au/about_us/media_releases/nsw-to-review-cases-of-aboriginal-kids-in-care>

⁶⁷² Answers to supplementary questions, Department of Family and Community Services, p 2.

⁶⁷³ Evidence, Ms Tighe, 16 August 2016, p 33; Evidence, Mr Ireland, 16 August 2016, p 32.

⁶⁷⁴ Evidence, Ms Suellyn Tighe, Grandmothers Against Removals, 16 August 2016, p 33.

7.88 While the recent announcement confirmed an independent Chair, the committee has not received confirmation as to the remaining membership of this body. It does, however, understand that the review committee will be made up of representatives external to FACS, including representatives of Grandmothers Against Removals.⁶⁷⁵

7.89 In response to supplementary questioning by the committee about when the review will be completed, FACS stated:

The project is in the planning stage. It is proposed that FACS undertakes the review of Aboriginal children in out-of-home care, and sources external personnel. FACS caseworkers will not review their own cases...The review will be overseen by a Committee made up of external representatives and an independent Chair.⁶⁷⁶

Committee comment

7.90 The committee is deeply concerned by statistics that show that Aboriginal children and young people are overrepresented in the care and protection system. It notes in particular, the high numbers of Aboriginal children and young people in out of home care, and the fact that these numbers are increasing annually. The committee finds it confounding that despite the range of policy initiatives designed to address these trends, there appears to be no evidence that the situation is improving. To be frank, the figures show that the current approach has failed.

7.91 In particular, the committee is concerned about claims that culturally inappropriate judgments are being used to determine matters relating to the safety and wellbeing of Aboriginal children, particularly in relation to issues of neglect. Given the high rates of Aboriginal children and young people in out of home care, it is worrying that some of these children may have been removed on a basis that was not well founded.

7.92 The committee therefore agrees that steps must be taken to address the overrepresentation of Aboriginal children and young people in the care and protection system, given they are 7 times more likely than their non-Indigenous peers to enter the child protection system and 10 times more likely to be in out of home care.

7.93 We acknowledge that it is important for Aboriginal communities to be involved in the decision making related to the protection of Aboriginal children and young people. We commend the collaborative efforts of various stakeholders such as the Aboriginal Child, Family and Community Care State Secretariat and Grandmothers Against Removals, in taking steps to design and advocate for practices which enhance self-determination for Aboriginal peoples.

7.94 In terms of cultural care planning and compliance with the *Aboriginal and Torres Strait Islander Child Placement Principles*, the committee acknowledges that the department is taking steps to improve its performance in these two areas. In addition to these strategies, we would encourage the department to continue working towards improving the cultural competence of its staff, as part of a broader workforce training strategy, addressed in recommendation 23.

⁶⁷⁵ Answers to supplementary questions, Department of Family and Community Services, p 3.

⁶⁷⁶ Answers to supplementary questions, Department of Family and Community Services, p 2.

- 7.95** The committee welcomes the recent announcement of an independent review of Aboriginal children and young people entering out of home care, although it notes that independence and transparency of the review process will be crucial to its overall success. Given it is early days, and there is limited information available about the review process, we consider it is important that this review to be monitored by the NSW Parliament over the coming years. We would especially like to see this review consider how the issue of neglect has been used as a basis to remove an Aboriginal child or young person from their family.
- 7.96** We note, however, that this review is expected to take place over two and a half years, and find that this timeframe is unacceptably long. The review should be completed as a matter of urgency with bi-annual updates until it has been completed.

Recommendation 17

That the Minister for Family and Community Services provide bi-annual reports to NSW Parliament about the progress of the Independent review of Aboriginal children and young people in out of home care, with this report to include:

- the number of individual cases reviewed and the review methodology
 - the number of cases where remedial or corrective action has been or may be taken as a result of a review
 - any key findings and trends that emerge as the review progresses.
-

Recommendation 18

That the NSW Government commit to working across NSW with Aboriginal communities, as well as Aboriginal organisations such as Grandmothers Against Removals, to provide a far greater degree of *Aboriginal* self-determination in decisions on supporting families, child protection and child removals.

Chapter 8 The Department of Family and Community Services

This chapter focuses on some issues relevant to the Department of Family and Community Services (FACS), including resourcing, recruitment and retention. It also discusses various workload and welfare concerns, and public perceptions related to organisational culture within the department. Lastly, it will outline some concerns relating to the department's internal complaint mechanisms.

Resourcing, recruitment and retention

8.1 FACS is comprised of a significant number of caseworkers – staff that work with vulnerable children, young people and families, in a range of areas including early intervention and out of home care. This section will explore concerns related to whether FACS has a sufficient number of caseworkers to meet demand, in addition to ongoing recruitment and retention challenges the department faces.

The number of funded caseworker positions

8.2 According to the most recent *Caseworker Dashboard* statistics, a quarterly report published by FACS, the number of funded full time equivalent caseworker positions is 2,128, which includes both general caseworker and specialist caseworker positions.⁶⁷⁷ Of the total, approximately 240 are Aboriginal caseworkers.⁶⁷⁸

8.3 When comparing these figures with previous quarterly reports, it is evident that the number of funded caseworker positions has remained fairly consistent in the department over the last two years. In fact, in the June quarter of 2014-15 there were 2,128 funded caseworker positions reported, which was an increase of 60 positions from the June quarter of 2013-14.⁶⁷⁹

⁶⁷⁷ Specialist caseworkers are caseworkers that provide direct, practice-based support and development to casework managers and caseworkers and are often involved in more complex cases. Department of Family and Community Services, *FACS Caseworker Dashboard – June 2016 quarter*, <http://www.community.nsw.gov.au/__data/assets/file/0020/380108/Caseworker_Dashboard_June_2016_quarter.pdf>

⁶⁷⁸ Evidence, Ms Deidre Mulkerin, Deputy Secretary, Northern Cluster, Operations, Department of Family and Community Services, 27 September 2016, p 63.

⁶⁷⁹ Department of Family and Community Services, *Community Services Caseworker Dashboard – June 2015 quarter*, <http://www.community.nsw.gov.au/__data/assets/file/0005/335795/3141_cs_dashboard.pdf>; Department of Family and Community Services, *Community Services Caseworker Dashboard – June 2014 quarter*, <http://www.community.nsw.gov.au/__data/assets/file/0019/335800/caseworker_dashboard_june2014.pdf>

- 8.4 Of the 2,128 existing funded caseworker positions, FACS reported that only 55 of those positions were vacant as of June 2016. This equated to a 3 per cent vacancy rate, which was consistent with the department's previous quarterly report.⁶⁸⁰
- 8.5 While the vacancy rate for caseworkers has generally remained steady across the state, and is the lowest recorded rate since 2009-10,⁶⁸¹ there are certain offices or sections of the department which account for a significant proportion of the vacancies, including:
- Murrumbidgee, which had 10 vacant caseworker positions
 - Illawarra Shoalhaven and South Western Sydney, which had 5 vacant caseworker positions each
 - the Helpline and the Joint Investigation Response Team, which had 18 and 11 vacant caseworker positions respectively.⁶⁸²

Is the department under resourced?

- 8.6 Several stakeholders were concerned that FACS is under resourced and that this is affecting its capacity to provide support to vulnerable families and to investigate and respond appropriately to risk of harm reports. In particular, there was a view that there are an insufficient number of caseworker positions within the department.
- 8.7 The Public Service Association argued that FACS is under resourced and that more casework staff are needed. It noted that risk of significant harm reports have increased, as has the number of children in out of home care, yet caseworkers numbers 'have simply not kept pace'.⁶⁸³
- 8.8 The Public Service Association suggested that the number of funded caseworker positions within FACS has actually decreased since the 2008 Wood Report. Reflecting on the statistics included within the 2008-9 *Community Services Annual Report*, it noted that there were 2,187 caseworker positions at that time, with this figure excluding an additional 80 specialist caseworker positions.⁶⁸⁴
- 8.9 Concerned that there is already an insufficient number of caseworkers within the department, the Public Service Association raised a concern about the loss of 56 full time positions from statutory child protection as revealed in the 2016-17 NSW Budget papers.⁶⁸⁵ Noting the negative impacts this will have on existing staff, the union said:

⁶⁸⁰ Department of Family and Community Services, *FACS Caseworker Dashboard – June 2016 quarter*, <http://www.community.nsw.gov.au/__data/assets/file/0020/380108/Caseworker_Dashboard_June_2016_quarter.pdf>

⁶⁸¹ Submission 70, Department of Family and Community Services, p 13.

⁶⁸² Department of Family and Community Services, *FACS Caseworker Dashboard – June 2016 quarter*, <http://www.community.nsw.gov.au/__data/assets/file/0020/380108/Caseworker_Dashboard_June_2016_quarter.pdf>

⁶⁸³ Submission 66, Public Service Association, p 12.

⁶⁸⁴ Submission 66, Public Service Association, p 12.

⁶⁸⁵ Submission 66, Public Service Association, p 12.

This is clearly a failure of adequate resourcing and it places unrelenting and unsafe pressure on casework staff to try and see more and more children at ROSH [risk of significant harm] and in OOHC [out of home care] through increasing caseloads. The government has a statutory and moral obligation to each and every child at risk and in care, and needs to adequately resource Community Services to meet its obligations.⁶⁸⁶

- 8.10** Mr Steve Turner, Assistant General-Secretary of the Public Service Association, suggested that not only did the department need additional caseworkers, it also needed additional funding for other staff like administrative support staff, psychologists and specialists.⁶⁸⁷
- 8.11** Other stakeholders also argued that there are an insufficient number of caseworkers currently employed by the department. Both The Benevolent Society and Uniting contended that there are not enough caseworkers to meet demand.⁶⁸⁸ Uniting stated that FACS is ‘significantly understaffed and under resourced’, resulting in caseworkers having high caseloads.⁶⁸⁹
- 8.12** Several signs that FACS may require additional resourcing and staff were suggested to be:
- long wait times on the Helpline, with the Women’s Domestic Violence Court Advocacy Service, Uniting, Catholic Education Commission NSW and Public Service Association noting that the time waiting to make a report to the Helpline can be lengthy⁶⁹⁰, even one to two hours in peak times⁶⁹¹
 - delays in getting a response from the department after a report to the Helpline has been made, which was noted by the Catholic Education Commission NSW and Relationships Australia⁶⁹²
 - the significant proportion of cases (approximately 70 per cent in the last quarterly report)⁶⁹³ which do not receive a face to face assessment by a caseworker⁶⁹⁴
 - the number of cases closed on the basis of ‘competing priorities’ (many of these issues are discussed in chapter 3).⁶⁹⁵

⁶⁸⁶ Submission 66, Public Service Association, p 12.

⁶⁸⁷ Evidence, Mr Steve Turner, Assistant General-Secretary, Public Service Association, 27 September 2016, p 26.

⁶⁸⁸ Submission 92, The Benevolent Society, p 7; Submission 76, Uniting, p 15.

⁶⁸⁹ Submission 76, Uniting, p 15.

⁶⁹⁰ Submission 43, Women’s Domestic Violence Court Advocacy Service NSW, p 7; Submission 66, Public Service Association, p 11; Submission 76, Uniting, p 10; Submission 67, Catholic Education Commission NSW, p 14.

⁶⁹¹ Submission 66, Public Service Association, p 11.

⁶⁹² Evidence, Ms Tamara Hughes, Child Protection Team Leader, Catholic Schools Office – Diocese of Broken Bay, Catholic Education Commission NSW, 26 September 2016, p 51; Submission 67, Catholic Education Commission NSW, p 14; Submission 93, Relationships Australia, p 3.

⁶⁹³ Department of Family and Community Services, *FACS Caseworker Dashboard – June 2016 quarter*, <http://www.community.nsw.gov.au/__data/assets/file/0020/380108/Caseworker_Dashboard_June_2016_quarter.pdf>

⁶⁹⁴ Submission 100, Jannawi Family Centre, p 2; Submission 66, Public Service Association, pp 10-11; Submission 76, Uniting, p 10; Submission 78, Australian Services Union, p 29.

⁶⁹⁵ Submission 67, Catholic Education Commission, p 14; Submission 71, Youth Action, p 28; Submission 76, Uniting, p 10; Submission 43, Women’s Domestic Violence Court Advocacy Service NSW, p 4; Submission 66, Public Service Association, p 11.

- 8.13** Ms Tamara Hughes, Child Protection Leader, Diocese of Broken Bay, Catholic Education Commission, asserted that ‘the department is obviously under-resourced’, as it ‘cannot respond to the referrals being received’.⁶⁹⁶

Recruitment and retention challenges

- 8.14** Two key challenges faced by FACS, both relevant to resourcing, are the recruitment of staff to vacant caseworker positions, and how experienced caseworkers can be retained by the department.

- 8.15** In terms of recruiting caseworkers, the department noted that it is working to fill all of its budgeted caseworker positions and has targeted recruitment strategies underway to increase caseworker numbers in hard to fill locations, for example, rural, regional and remote areas. The recruitment strategies being undertaken include:

- the promotion of rural and regional student placement opportunities to social work students at relevant universities
- the development and implementation of strategies to increase caseworker capacity, including a caseworker paraprofessional role that supports caseworkers with casework related tasks and administration
- having a dedicated caseworker recruitment web page, and targeted marketing and social media recruitment campaigns.⁶⁹⁷

- 8.16** Despite these strategies helping the department to fill vacant positions, certain criticisms were raised by inquiry participants in relation to the profile of people being recruited as caseworkers. In particular, concerns were expressed about ‘young’ caseworkers being recruited, who may lack life and professional experience.

- 8.17** Relationships Australia claimed that the ‘majority of FACS caseworkers have been very young, white and middle class women’. It suggested that the department is attracting new graduates who lack the necessary life experience and maturity to deal with the wide variety of complex issues that can affect families:

FACS has appeared to function as an entry level position for new graduates from social work or equivalent qualifications. With the range of complex circumstances impacting families, including domestic violence, mental illness, alcohol and other drugs usage, poverty etc., this work requires more experienced and mature practitioners who are well supported and have training and experience working with complex issues.⁶⁹⁸

- 8.18** Ms Nicola Callander, Solicitor in Charge of the Child Protection Team at Legal Aid NSW, was also of the view that many caseworkers are straight out of university, often lacking the necessary maturity to deal with complex issues:

⁶⁹⁶ Evidence, Ms Hughes, 26 September 2016, p 57.

⁶⁹⁷ Submission 70, Department of Family and Community Services, p 15.

⁶⁹⁸ Submission 93, Relationships Australia, pp 4-5.

I know there is quite a high turnover of caseworkers in the past because the work is so very, very difficult and stressful. We often see very young social workers involved in the removal of children... The reality is they have a very limited life experience and they are interfacing at that really critical time dealing with the sorts of dynamics that we have been talking about, and one questions whether that is a particularly good fit at that point.⁶⁹⁹

- 8.19** Similarly, Cara House, a centre that works with families and children affected by trauma and abuse, said that the workforce of the department is ‘becoming younger and less experienced’. It noted that many specialist roles within the department are rarely advertised to the wider community, which ‘reduces the recruitment pool to the already shrinking and younger workforce within FACS itself’.⁷⁰⁰
- 8.20** FACS, however, challenged these ‘common misconceptions’. Ms Deidre Mulkerin, Deputy Secretary of the Northern Cluster, explained that the average age of caseworkers within the department is 41, and that ‘more than half of the workforce is over 35’.⁷⁰¹ Addressing concerns that caseworkers are often new graduates, Ms Mulkerin added that ‘less than 15 per cent of our workers are in their first year’.⁷⁰²
- 8.21** In terms of the challenges associated with retaining experienced staff, a number of stakeholders raised concerns related to the high turnover of staff within FACS.
- 8.22** One submission author suggested that there is a lack of incentive for experienced caseworkers to remain with the department, particularly when there is no incremental salary increases past a certain point. This individual also suggested that any acknowledgment of the importance of staff experience by the department ‘appears tokenistic and almost patronising’.⁷⁰³
- 8.23** Other stakeholders had a different view, suggesting that FACS has a greater ability to attract caseworkers as it provides a higher salary than what non-government organisations can offer. Ms Lisa Townshend, State Coordinator – New South Wales, CREATE Foundation, stated that ‘NGOs [Non-government organisations] do not pay as much as FACS. They do not have the money’. She suggested that FACS has a greater ability to attract experienced caseworkers given the pay differences and funding available for training.⁷⁰⁴
- 8.24** Ms Jackie Palmer, Executive Manager of Out of Home Care Services with Anglicare Sydney, noted that the difference can be as much as \$20,000 in pay, with remuneration of caseworkers in the non-government organisation sector being based on the *Social, Community, Home Care and Disability Services Award*. While Ms Palmer highlighted that this difference does not affect the quality of workers available in the non-government organisation sector, she acknowledged that

⁶⁹⁹ Evidence, Ms Nicole Callander, Solicitor in Charge, Child Protection Team, Legal Aid NSW, 16 August 2016, p 22.

⁷⁰⁰ Submission 51, Cara House, pp 10-11.

⁷⁰¹ Evidence, Ms Mulkerin, 27 September 2016, p 63.

⁷⁰² Evidence, Ms Mulkerin, 27 September 2016, p 77.

⁷⁰³ Submission 9, Name suppressed, p 5.

⁷⁰⁴ Evidence, Ms Lisa Townshend, State Coordinator – New South Wales, CREATE Foundation, 16 August 2016, p 58.

‘they are more likely to have new graduates’, although supported with ‘excellent training and development’.⁷⁰⁵

8.25 Both the CREATE Foundation and Cara House argued that the government needs to address the turnover of caseworkers within the department, given the impact this has on the remaining staff who are faced with higher workloads, as well as clients.⁷⁰⁶

8.26 Cara House attributed the high turnover of caseworkers to inadequate resourcing within the department, which leads to staff having to work longer hours to manage their workloads:

Workplace conditions related to resource and staffing struggles can result in a high turnover of staff and the FACS workforce is constantly in crisis and becoming younger with less experienced. People practising in this field must be able to work long hours, including long hours of overtime, at the same time as holding off burn-out and vicarious trauma.⁷⁰⁷

8.27 It also noted that high turnover of caseworkers affects the relationships families, children and young people develop with FACS, thereby undermining consistency and communication: ‘This high turnover then impacts negatively on the clients as consistency, relational rapport and transmission of information is lost frequently’.⁷⁰⁸

8.28 Uniting were also of this view, suggesting that the high turnover of caseworkers affects whether strong and positive relationships can be built between the department and families, and between the department and non-government organisations:

If caseworkers only work with families for short periods of time, it is unlikely that they will have enough time to develop meaningful connections with them. High staff turnover also impedes relationship building, information sharing and communication flow between FACS and NGO [Non-government organisation] staff.⁷⁰⁹

8.29 The CREATE Foundation also argued that high turnover is having an ‘extreme’ and ‘detrimental’ impact on the relationships children and young people are able to develop with their caseworker. Ms Townshend highlighted this issue in the context of traumatised young people who experience multiple placements in out of home care:

Sometimes young people in care have 20 to 60 placements and it is not uncommon for them to have 20 or more caseworkers. If you are trying to create stability for a child who has been traumatised, that is not the best way to do it. Frequently changing caseworkers has a massive impact. What is a traumatised young person to do? How are they supposed to trust that person if they do not know them?⁷¹⁰

8.30 Highlighting the impacts caused by regular turnover of caseworkers, one individual told the committee that she had experienced at least 20 caseworkers during her time in care:

⁷⁰⁵ Evidence, Ms Jackie Palmer, Executive Manager, Out of Home Care Services, Anglicare Sydney, 16 August 2016, p 63.

⁷⁰⁶ Submission 15, CREATE Foundation, p 6; Submission 51, Cara House, p 10.

⁷⁰⁷ Submission 51, Cara House, p 10.

⁷⁰⁸ Submission 51, Cara House, p 10.

⁷⁰⁹ Submission 76, Uniting, p 15.

⁷¹⁰ Evidence, Ms Townshend, 16 August 2016, p 58.

Caseworkers last a maximum of six months, so there is no continuity in terms of getting to know carers and the foster family and how that family works and operates. There is no ability to develop a relationship with the child and truly understand the child. That is where good decision-making comes from. They are in the business of knowing people. If you do not have any longevity in the job there is no relationship built and therefore no good decision-making occurs.⁷¹¹

- 8.31** Emphasising this point further, Ms Townshend suggested that young people will ‘disengage from the system’ if caseworkers frequently change. She reiterated that this ‘is a critical point and shows why the high turnover of caseworkers is so detrimental to the wellbeing of children in care’.⁷¹²
- 8.32** A former employee of the department emphasised the negative impact caused by regular changeover of caseworkers working with families, stating that ‘client frustration with these types of changes often hinders progression of positive change’.⁷¹³
- 8.33** The Benevolent Society suggested that staff turnover is a broader issue within the child protection sector. It noted that it is difficult for non-government organisations to attract and retain staff, particularly when they ‘are unable to compete with the government in terms of salaries’.⁷¹⁴

Committee comment

- 8.34** The committee acknowledges that the department has taken concrete steps to fill its vacant caseworker positions. We can appreciate that it is difficult to recruit in rural, regional and remote areas, and notes that the department has implemented recruitment strategies in this regard.
- 8.35** We acknowledge that the nature of child protection work itself can make it difficult to retain experienced staff over time. Clearly, workers see some of the most distressing and traumatic situations involving vulnerable children, and we acknowledge that this can impact on a worker’s physical and mental health, and contribute to high turnover rates within the workforce.
- 8.36** We understand that the department, and perhaps even some organisations in the sector, are recruiting graduates to caseworker positions. While this is to be expected, we have concerns about whether graduates have the necessary life experience, knowledge and training to be able to work with very vulnerable children, young people and families. There is a level of sensitivity and maturity needing to be applied in child protection matters, coupled with strong professional skills, experience and training. We would encourage the department to consider further whether graduate caseworkers are provided with sufficient support, training and skills to carry out their role effectively, even if they only comprise a small percentage of their workforce.

⁷¹¹ *In camera* evidence, Witness D, 26 September 2016, p 12, evidence published by resolution of the committee.

⁷¹² Evidence, Ms Townshend, 16 August 2016, p 58.

⁷¹³ Submission 9, Name suppressed, p 5.

⁷¹⁴ Submission 92, The Benevolent Society, p 7.

Caseworker workloads and welfare concerns

- 8.37** In the context of increasing risk of harm reports (discussed in chapter 3), and questions about whether FACS is adequately resourced, stakeholders also raised concerns about caseworkers having high workloads and the impact this has on workers' physical and mental health.

Caseloads

- 8.38** The NSW Council of Social Service highlighted the critical role frontline workers play in supporting vulnerable children, young people and families. It noted, however, that workers are faced with increasingly complex cases and insufficient resources, and high caseloads, thereby affecting the amount of time a worker can spend on each individual case.⁷¹⁵
- 8.39** Uniting also argued that FACS caseworkers have high caseloads, which it suggested is 'putting children at risk' and leading to burnout experienced by staff. Acknowledging that the caseworker to child ratio has improved since 2012-13, when it was one caseworker for approximately 25 children, Uniting suggested that the ratio still remains well above the 1:12 ratio recommended in the 2011 NSW Ombudsman's *Keep Them Safe* report.⁷¹⁶
- 8.40** However, it was not clear to the committee as to whether the department sets formal caseload targets for its workers. When the committee questioned two caseworkers who work for FACS about their caseloads, both witnesses were unable to confirm whether there are mandated targets. One caseworker noted they could be allocated anywhere between eight and ten cases, depending on the circumstances and whether there are multiple children in the family.⁷¹⁷
- 8.41** The other caseworker said that in the out of home care sector, a caseworker may have between 12 and 15 cases. However, this worker noted that caseloads vary depending on a variety of factors, which are taken into account when each caseworker meets with their managers to discuss their workload:

It all depends on complexity of cases, on issues that we face, which support we have to put in place for families, how many children and their ages... We do not have the formula [of] how many cases will be allocated to each caseworker... we have monthly workload planners with managers when manager[s] discuss every task, each individual task, that we need to complete [for] each famil[y]. Each task has set up hours of time and in accordance [with] that the manager is able to decide how many cases will be allocated to individual caseworker.⁷¹⁸

- 8.42** The average caseload figures provided by these caseworkers were consistent with the evidence provided by Mr Ray Wilton, a former casework manager of FACS who is currently seconded to the Public Service Association. Mr Wilton advised the committee that in out of home care, caseworkers may have about 13 cases, whereas they would generally have between six and

⁷¹⁵ Submission 68, NSW Council of Social Service, p 13.

⁷¹⁶ Submission 76, Uniting, p 15.

⁷¹⁷ Evidence, Witness G, Caseworker, Department of Family and Community Services, 27 September 2016, p 10.

⁷¹⁸ Evidence, Witness F, Caseworker, Department of Family and Community Services, 27 September 2016, p 10.

eight cases if they were involved in statutory child protection work. However, Mr Wilton noted, like the other departmental caseworkers, the allocation of cases will vary depending on the ‘degree of complexity in cases’.⁷¹⁹

8.43 The Public Service Association, which has members that are departmental caseworkers, raised the following concerns relevant to caseworker workloads:

- benchmarks are unrealistic and arbitrary, as caseworkers are allocated work regardless of capacity, and that some staff have been the subject of disciplinary proceedings that were initiated for not completing work within unrealistic timeframes on the basis that they were ‘not adhering to departmental policy’
- court work and administrative work is a significant burden in terms of time and resourcing
- caseworkers are working excessive unpaid hours, as noted by 80 per cent of respondents in a recent workload survey the union conducted
- large numbers of staff still have excessive leave balances, despite recommendations by the Auditor General in 2015 that initiatives be developed by the department to address this issue
- flex time is often being forfeited by staff, and that there is no central record of flex time being kept by FACS which was identified as an issue by the Auditor General in 2010 but which has remained unaddressed.⁷²⁰

8.44 The union, who was particularly concerned about the impact of high workloads on staff wellbeing, said that caseworkers ‘are being stretched to near breaking point in responding to their overwhelming workloads’.⁷²¹

8.45 Interestingly, Ms Townshend from the CREATE Foundation, suggested that ‘across the board caseworkers are overworked’ and that they ‘have too many cases and are often dealing in crisis situation[s] as opposed to business as usual’.⁷²²

8.46 To assist caseworkers in managing and controlling their workload, the Public Service Association has developed a workload planner. Mr Turner told the committee that the planner was developed about 20 years ago, although it has now been modernised, and that the Secretary of the department, Mr Michael Coutts-Trotter, has agreed for the planner to be rolled out to staff.⁷²³

8.47 Mr Wilton explained that he had a ‘cynical’ view as to why the department did not provide its own workload planner, as it would enable the department to allocate more cases than workers could manage:

⁷¹⁹ Evidence, Mr Ray Wilton, Casework Manager, Department of Family and Community Services and secondee to the Public Service Association, 27 September 2016, pp 20-21.

⁷²⁰ Submission 66, Public Service Association, pp 13-17.

⁷²¹ Submission 66, Public Service Association, p 14.

⁷²² Evidence, Ms Townshend, 16 August 2016, p 56.

⁷²³ Evidence, Mr Turner, 27 September 2016, p 27.

I actually think that the absence of a workload planner makes it possible for the organisation to make the opportunity for people to do more than they can handle. A lot of our newer caseworkers who just want to impress and want to make a career put their own health and safety at risk. They will take on more cases than they should.⁷²⁴

Staff health and wellbeing

8.48 As noted by the Public Service Association, child protection work is ‘by its very nature traumatic and hazardous’. Combined with high caseloads and inadequate resourcing, the union highlighted the negative impacts being experienced by staff in FACS including high amounts of sick leave, increased workers compensation claims and increased cases of vicarious and secondary trauma.

8.49 In terms of the nature of the work, the Public Service Association noted that ‘the abuse and neglect that our members encounter in their daily work is frequently distressing’. Referring to the Wood Report, the union highlighted that the amount of sick leave taken at FACS is higher than average, and that there is a larger amount of workers compensation claims for psychological injuries.⁷²⁵

8.50 Concerns were also expressed about the increased risk and incidence of vicarious and secondary trauma for casework staff, however, the Public Service Association claimed that ‘Community Services has failed to acknowledge this problem or do anything to address it’.⁷²⁶

8.51 Cara House contended that the child protection system is ‘in a current state of crisis’, with staff health and wellbeing being affected by increasing demands placed on workers, as well as high turnover rates. It noted that this can often lead to staff experiencing burnout and vicarious trauma:

The demands on the workers to protect and house children, complete comprehensive risk assessments, compile court documents and complete a number of other extraneous and important tasks is increasing while funding and resourcing is decreasing. This leads to burnout or vicarious trauma for workers resulting in high turnover rates and a younger and more inexperienced workforce.⁷²⁷

8.52 The Public Service Association suggested that the department is not meeting its legislative work health and safety obligations as they are failing to provide systems that are designed to manage and prevent vicarious and secondary trauma associated with child protection practice. In particular, the union noted that the department does not:

- have a policy specific to secondary and vicarious trauma

⁷²⁴ Evidence, Mr Wilton, 27 September 2016, p 28.

⁷²⁵ Submission 66, Public Service Association, p 13.

⁷²⁶ The PSA defines vicarious trauma as the emotional residue of exposure that casework staff have from working with people who are traumatised or have witnessed trauma, and secondary trauma as the emotional duress that results when an individual hears about the firsthand traumatic experience of another, as outlined in submission 66, Public Service Association, p 15.

⁷²⁷ Submission 51, Cara House, p 3.

- raise awareness about vicarious and secondary trauma in staff inductions, training, professional development or via supervision.⁷²⁸

8.53 One member of the Public Service Association, who said that they ‘strongly believe’ that ‘staff have high levels of unmanaged vicarious trauma’, was of the view that ‘management isn’t concerned and keeps prioritising more work that is becoming increasingly difficult to manage with policy changes and dwindling resources’.⁷²⁹

8.54 In the 2014 *Review of Practice First*, conducted by Professor Munro, there was a specific recommendation that FACS ‘consider how to make more support available to caseworkers to help them cope with the increased psychological challenges of working’ in child protection. However, the Public Service Association asserted that this recommendation has not been actioned by the department. It stressed the importance of FACS taking steps to support its ‘most valuable resources’ - its staff:

The committed and professional workers at Community Services are the government’s most valuable resource in protecting vulnerable children and it is time for Community Services to develop new ways of working for caseworkers that reduce stress, burn-out and unsafe working conditions.⁷³⁰

8.55 Mr Turner advised the committee that he had recently visited eight FACS offices, where in seven of those offices he encountered workers who were ‘crying from the stress of the work and what is going on’. He explained that there is an increase in staff ‘suffering from extreme vicarious and secondary trauma because of reporting or not being able to deal with reports’. Mr Turner argued that there needs to ‘be better resourcing, more resourcing of staffing and support facilities’.⁷³¹

8.56 While Mr Turner said that he had met with the Secretary of FACS about these issues, he did ‘not think it is being addressed well enough to limit the trauma that is occurring to staff within FACS’.⁷³²

8.57 The Public Service Association suggested that consideration be given to strategies used overseas that have improved staff wellbeing in fields characterised by high rates of staff illness, depression and poor work and life balance. It noted that a Swedish retirement home reduced its nurse’s shifts from eight hours to six hours, with the same wage, to help improve staff wellbeing and the quality and efficiency of their work. While additional staff were hired, the Union said that the Swedish trial was a success and staff wellbeing was better, as was the standard of care they provided.⁷³³

⁷²⁸ Submission 66, Public Service Association, p 15.

⁷²⁹ Submission 66, Public Service Association, p 13.

⁷³⁰ Submission 66, Public Service Association, pp 13 and 15.

⁷³¹ Evidence, Mr Turner, 27 September 2016, p 26.

⁷³² Evidence, Mr Turner, 27 September 2016, p 29.

⁷³³ Submission 66, Public Service Association, pp 15-16.

Organisational culture and public perceptions

8.58 A number of stakeholders suggested that the high turnover of caseworkers within FACS was linked to poor organisational culture.

8.59 Dr Helen Hayward-Brown, a medical anthropologist/sociologist, argued that the high turnover of staff in FACS can be attributed to ‘dysfunctional culture’:

There is also a high level of turnover of staff, due to a dysfunctional culture. Former child protection workers across Australian states report being bullied into lying about parents and events at supervised access visits. This staff dysfunction and high turnover leads to excessive training costs.⁷³⁴

8.60 Another individual, Mrs Eleanor Hansen, who has worked with a number of families involved in child protection matters, acknowledged that the high turnover of staff is likely to be connected to the nature of child protection work, however she suggested it was also related to the culture of the department:

I understand the industry would be one with a high turnover, yet when speaking to ex-employees there is a constant message – the culture of the place is not one that cares for the child.⁷³⁵

8.61 Another submission author, who has worked for FACS in a variety of different roles, said that ‘the current culture and state of constant change within FACS has a significant and negative influence’ on caseworkers and is affecting morale.⁷³⁶

8.62 Acknowledging that workloads and turnover of staff is affecting organisational culture, the Public Service Association also reported that morale in the department is being affected by management’s focus on statistics, targets and benchmarks. The union said that ‘this is driving casework practice backwards’, resulting in ‘an acute fall in staff morale’ and ‘erosion of staff dissatisfaction in their work’. One member of the union commented:

The system is too process driven, often seems to lack common sense, and is not child focused despite all the rhetoric. It has become all about stats and not about quality. There is too much emphasis on tasks that merely make the stats look good. Morale is low and there is sense of helplessness and frustration in dealing with our own organisation.⁷³⁷

8.63 There were also several individuals involved in this inquiry who made serious allegations about the organisational culture, performance and behaviour of staff within FACS. While many of these individuals expressed these views based on their own experiences within the child protection system, there were two key concerns raised in a number of submissions:

⁷³⁴ Submission 56, Dr Helen Hayward-Brown, p 13.

⁷³⁵ Submission 108, Mrs Eleanor Hansen, p 6.

⁷³⁶ Submission 9, Name suppressed, p 11;

⁷³⁷ Submission 66, Public Service Association, pp 20 and 28.

- bullying and retribution by caseworkers, often after complaints had been made⁷³⁸
- inclusion of false or misleading information in FACS documents and evidence.⁷³⁹

8.64 However, it is important to recognise the difficult, emotional and complex work undertaken by caseworkers. The Public Service Association acknowledged the skills, professionalism and dedication of its members in providing a valuable service to vulnerable members in the community. Recognising that child protection work is ‘intrinsically stressful’, the union argued that structural impediments and administrative obstacles are preventing casework staff from working more effectively with children and families.⁷⁴⁰

8.65 Ms Mulkerin also commended the complex and challenging work undertaken by caseworkers:

Our workers face these challenges on a daily basis and the complexity of this task cannot be understated. We are very proud of the work that our workers do and our partners in the non-government sector in their unfailing commitment to improve the lives of children and their families and their communities, and the support staff who assist them to undertake their role professionally and empathically.⁷⁴¹

Committee comment

8.66 The Public Service Association reported that it had ongoing concerns with high caseworker workloads, which they suggested was resulting in high amounts of sick leave and workers compensation claims, burnout, stress and vicarious trauma. The committee is concerned about these reports, given the very nature of child protection work itself.

8.67 While there was concern from the union about an increasing focus on statistics and benchmarks, the committee could not understand why it appears that the department has not set formal caseload targets for its staff. We appreciate that each case is different, but it is not unusual in various industries and sectors to set caseload targets.

8.68 Setting caseload targets may help to ensure a better allocation of resources and workloads between different offices. We support further consideration of this issue by the department, in consultation with the union and staff.

Recommendation 19

That the Department of Family and Community Services, in consultation with the Public Service Association and staff, set caseload targets for caseworkers, taking into account the complex nature of child protection work.

⁷³⁸ Submission 29, Name suppressed, p 1; Submission 32, Mrs Stephanie Croft, pp 1 and 34-35; Submission 63, Name suppressed, p 2; Submission 109, Name suppressed, p 1; Submission 114, Name suppressed, pp 2-3;

⁷³⁹ Submission 32, Mrs Stephanie Croft, p 5; Submission 107; Name suppressed, p 1; Submission 108, Mrs Eleanor Hansen, p 2; Submission 114, Name suppressed, p 2; Submission 136, Name suppressed, p 12.

⁷⁴⁰ Submission 66, Public Service Association, p 18.

⁷⁴¹ Evidence, Ms Mulkerin, 27 September 2016, p 57.

- 8.69** We acknowledge that child protection work is by its very nature some of the most difficult work staff can undertake. We agree that the department needs to do more to ensure that the health and safety of its staff is always protected. To this end, we recommend that the Department of Family and Community Services, in consultation with the Public Service Association, change workplace systems to improve the health, safety and wellbeing of its staff, given the challenging nature of child protection work.

Recommendation 20

That the Department of Family and Community Services, in consultation with the Public Service Association, change workplace systems to improve the health, safety and wellbeing of its staff, given the challenging nature of child protection work.

Complaints

- 8.70** This section will outline some concerns related to how internal complaints are managed within FACS and limitations associated with getting a complaint resolved by the Ombudsman.

Internal complaints process

- 8.71** Complaints lodged internally with FACS are managed in accordance with various pieces of legislation, including the *Community Services (Complaints, Reviews and Monitoring) Act* 1993, the *Children and Young Persons (Care and Protection) Act* 1998, and the *Ombudsman Act* 1974.
- 8.72** Public information on the complaints process is set out on the FACS website. There is a three staged approach, where complainants are encouraged to:
- firstly, discuss the matter with the person involved
 - secondly, raise the matter with the relevant manager or direct the complaint to the Enquiry, Feedback and Complaints Unit
 - lastly, if unable to resolve the matter, refer the complaint to the relevant external body (for example, the Ombudsman, the NSW Civil and Administrative Tribunal or Independent Commission Against Corruption).⁷⁴²
- 8.73** According to the department, most complaints are resolved on first contact with a complaints officer.⁷⁴³
- 8.74** In terms of the internal policy and procedure for complaints, this is set out in the *Enquiry, Feedback and Complaints Unit Procedure Manual*,⁷⁴⁴ which does not appear to be publicly available on the FACS website. This policy was developed in consultation with the Ombudsman.⁷⁴⁵

⁷⁴² NSW Department of Family and Community Services, *Client Complaints*. <<http://www.community.nsw.gov.au/about-us/contact-us/client-complaints>>

⁷⁴³ Answers to supplementary questions, Department of Family and Community Services, 27 October 2016, p 23.

⁷⁴⁴ Answers to supplementary questions, Department of Family and Community Services, pp 50 – 94.

- 8.75** All formal complaints are triaged to determine the most appropriate action for resolution. For serious matters, further consultation maybe required with the Manager of the Enquiry, Feedback and Complaints Unit. This may result in a referral to a more specialised unit (for example, the Joint Investigation Referral Team, Reportable Conduct Unit or Professional Conduct, Ethics and Performance Unit).⁷⁴⁶
- 8.76** Once a complaint is logged with the FACS' Enquiry, Feedback and Complaints Unit, it is typically resolved by a designated complaints officer, or referred to the appropriate district or business unit for resolution. In cases where it is not appropriate for complaints to be managed at the local or district level, a complaints review function exists, which requires the input of central management.⁷⁴⁷
- 8.77** Inquiry participants called for enhanced independence of the complaints process. A number viewed the current arrangement as problematic due to the fact that case workers and managers are often required to investigate matters raised about their own actions.
- 8.78** One submission author said that the complaints department sends complaints to the 'accused' caseworkers or managers to investigate themselves:

The Complaints Dept [Department] simply re-writes complaints and sends them straight back to the Branch that has already received them (and delivered penalties). And the 'accused' CW's [caseworkers] and MCW's [Manager Caseworkers] are asked to investigate themselves with plenty of opportunity to tamper with files. I have evidence of a case where this happened and responses to an official complaint from two branches of FACS included a) blatant lies and b) answers that didn't address the complaint. The Manager of the Complaints Dept apologised to the complainant stating she couldn't understand why two MCW's had sent such inappropriate responses without running them by the Complaints Dept first...⁷⁴⁸

- 8.79** Reflecting on the perceptions of children and young people, the CREATE Foundation stated that the lack of an independent internal complaints system was a factor which exacerbated the vulnerability of young people in care. It noted that young people in residential care were dissuaded from making an internal complaint because they felt the process was biased:

Children and young people see complaints systems located in departments as biased or compromised...CREATE found that young people in residential care were the largest group wanting to complain but 54 per cent chose not to raise the issue because of concerns about negative outcomes.⁷⁴⁹

- 8.80** A number of stakeholders expressed similar concerns. Mrs Stephanie Croft, a volunteer advocate for families, women and children, stated 'it is a major conflict of interest for action areas to be reviewing and responding to complaints about their own conduct with no accountability or adequate monitoring of controls'.⁷⁵⁰ Likewise, another inquiry participant

⁷⁴⁵ Answers to supplementary questions, Department of Family and Community Services, p 25.

⁷⁴⁶ Answers to supplementary questions, Department of Family and Community Services, p 24.

⁷⁴⁷ Answers to supplementary questions, Department of Family and Community Services, pp 23 and 25.

⁷⁴⁸ Submission 114, Name suppressed, p 3.

⁷⁴⁹ Submission 15, CREATE Foundation, p 14.

⁷⁵⁰ Submission 32, Mrs Stephanie Croft, p 19.

stated 'FACS only has an internal complaints line which feeds directly back to the manager about whom the complaint has been made, opening the door to abuse of power and removing the children as 'punishment'.⁷⁵¹

8.81 In terms of retributive action being taken against those that make complaints, Mrs Stephanie Croft stated:

The complaints system in FACS is deficient and ineffective, and birth parents and carers who have complained have found that they have been subjected to swift and significant, unchecked retribution by those officers handling their cases.⁷⁵²

8.82 Commenting on the prevalence of such actions, Mrs Croft added 'this appears to be a widespread issue, not limited to a few rouge officers in a particular area'. Furthermore, she noted that the current culture and an apparent lack of accountability or consequence of non-compliance with internal policies were contributing to this reprisal by departmental workers.⁷⁵³

8.83 A number of examples of retributive actions following complaints were provided to the committee by Mrs Croft. Such actions included: reduced access arrangements, financial penalties as a result of having to make late changes to contact visits, 'threats to remove children...if they [the complainants] continue to speak out about policy breaches' and reluctant or limited communication from FACS.⁷⁵⁴

8.84 In fact, Mrs Croft provided an example of a situation in which she felt that retribution had been taken against a mother after a complaint had been made. After the complaint was lodged, the mother drove over an hour and a half to have supervised contact with her children, not being informed by FACS that the visit had been cancelled. Mrs Croft stated that 'this is disgraceful but mild compared to the unchecked retribution some other families have been subjected to'. She added that 'there is no one to complain to about the retribution or it only leads to further retaliation action'.⁷⁵⁵

8.85 Another individual alleged that his children were removed as a direct result of a complaint he had made to FACS: 'I don't see how removing a child can be considered an appropriate response to a complaints resolution process, nor is removing a child to punish the parents for insubordination...'⁷⁵⁶

8.86 The Alliance for Family Preservation and Restoration also expressed concerns about retributive actions being taken against complainants, suggesting that the internal complaints process is a 'frustrating waste of time for children and families'. In terms of the resolution of complaints, it reported that most people 'are just ignored or receive a letter informing them that they need to work with the very caseworkers that they are complaining about'. It added that 'children and families are then punished by the worker they have made the complaint about, most commonly by reduced contact'.⁷⁵⁷

⁷⁵¹ Submission 63, Name suppressed, p 5.

⁷⁵² Submission 32, Mrs Stephanie Croft, p 19.

⁷⁵³ Submission 32, Mrs Stephanie Croft, p 19.

⁷⁵⁴ Submission 32, Mrs Stephanie Croft, p 19.

⁷⁵⁵ Submission 32, Mrs Stephanie Croft, p 20.

⁷⁵⁶ Submission 63, Name suppressed, p 3.

⁷⁵⁷ Submission 44, Alliance for Family Preservation and Restoration, p 4.

- 8.87** These concerns were echoed by another individual, who stated that ‘the culture of reprisals in response to complaints is systemic’. This individual said that they could provide evidence of this across four different branches of FACS. The types of reprisals taken were reported to include cessation of contact with children in care, ostracism by FACS and termination of funding for Aboriginal families to attend contact when their children are placed significant distances away from them.⁷⁵⁸
- 8.88** Mrs Eleanor Hansen, who advocates on behalf of families, also noted issues related to internal complaint management processes at FACS. She reported instances of where families had been told by FACS staff that ‘if you make a complaint we will have you arrested’. She also said that many parents who make complaints just get the response ‘the decision was heard in court’. She argued that this ‘is not addressing the culture of bullying and adverse risk management’ within FACS.⁷⁵⁹
- 8.89** Relevant to this issue is section 47 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, which states that it is an offence for anyone to take retribution against a person making a complaint.⁷⁶⁰
- 8.90** On the issue of inconsistent or inappropriate application of internal policy and procedures, Mrs Croft also suggested that the department has inadequate record keeping and untimely responses and poor communication. She also alleged that there is manipulation of complaint key performance indicators by FACS employees.⁷⁶¹
- 8.91** On a broader level, there were concerns that the department lacks transparency and accountability, such that there were calls for the establishment of an independent authority or entity which would hold responsibility for investigating complaints relating to the provision of child protection services.
- 8.92** The CREATE Foundation argued in favour of an accessible independent complaints mechanisms, similar to what was recommended by the Senate in its inquiry into out of home care. It said that ‘an ideal complaint mechanism is independent of the providers of out of home care, easily accessible either online or face-to-face, provides for a support person and individual advocacy services and gives timely responses and progress updates’.⁷⁶²
- 8.93** The Alliance for Family Preservation and Restoration also recommended that an independent complaints unit be established that children and families can approach with evidenced complaints of misconduct, corruption, crimes and abuses of children in care. It suggested that this unit have full investigative and prosecutorial powers.⁷⁶³
- 8.94** Another inquiry participant also called for an independent complaints body. This individual felt that such a body was necessary because of the department’s lack of accountability and the

⁷⁵⁸ Submission 114, Name suppressed, p 3.

⁷⁵⁹ Submission 108, Mrs Eleanor Hansen, pp 2 and 7.

⁷⁶⁰ *Community Services (Complaints, Reviews and Monitoring) Act 1993*, s 47; Answers to supplementary questions, Department of Family and Community Services, pp 23-24.

⁷⁶¹ Submission 32, Mrs Stephanie Croft, p 20; Submission 109, Name suppressed, p 1.

⁷⁶² Submission 15, CREATE Foundation, p 7.

⁷⁶³ Submission 44, Alliance for Family Preservation and Restoration, p 10.

inadequacy of existing complaints processes. Having petitioned the former Minister for Family and Community Services in relation to this, the individual called for the independent body or panel to be comprised of reputable caseworkers, youth workers, carers and children and young people who have been through the system.⁷⁶⁴

Complaints to the Ombudsman NSW

8.95 In accordance with the *Community Services (Complaints, Reviews and Monitoring Act)* 1993, complaints about the department or a provider of community services can also be made to the Ombudsman NSW. While the Ombudsman has a broad range of functions under this Act,⁷⁶⁵ it is excluded under the *Ombudsman Act* 1974 from operating in areas which relate to a ‘public authority where proceedings are a) before any court, including a coronial inquiry and comital proceedings before a magistrate or b) before any other person or body before whom witnesses may be compelled to appear and give evidence’.⁷⁶⁶

8.96 Although the role of the Ombudsman in providing independent oversight was acknowledged by inquiry participants, concerns were raised about the limitations of the Ombudsman’s office in dealing with complaints where legal proceedings were underway.

8.97 The Alliance for Family Preservation and Restoration noted that this can prevent the Ombudsman from being involved in many complaints, given child protection issues are often before the court:

...the Ombudsman uses a part of their legislation that says they cannot investigate any matter that is before the court and every case where a child has been forcibly removed in before the court. Then once the court matter has ended the Ombudsman responds that it won’t investigate any issue over 12 months old so it is too late.⁷⁶⁷

8.98 Similarly, Mrs Stephanie Croft, felt that the level of oversight provided by the Ombudsman was limited because of this legislative restriction:

...current processes, powers and resources appear totally ineffectual. If parents or other parties complain to the Ombudsman the response is usually ‘the matter is currently before the courts’, or the ‘matter is being considered by the courts’ so they take no further action.⁷⁶⁸

8.99 One individual suggested that if an independent body is established to deal with complaints against FACS, it should be given the power to investigate FACS operations even when a matter is before the courts.⁷⁶⁹

⁷⁶⁴ *In camera* evidence, Witness E, 26 September 2016, p 6, evidence published by resolution of the committee.

⁷⁶⁵ *Community Services (Complaints, Reviews and Monitoring Act)* 1993, s 11.

⁷⁶⁶ *Ombudsman Act* 1974, sch 1 s 8.

⁷⁶⁷ Submission 44, Alliance for Family Preservation and Restoration, p 7.

⁷⁶⁸ Submission 32, Mrs Stephanie Croft, p 21.

⁷⁶⁹ Submission 33, Name suppressed, p 22.

Committee comment

- 8.100** Effective complaints handling is important. Not only does it help identify service deficiencies and provide for appropriate remedial action to occur, it can also act as an important mechanism to improve accountability and transparency in service delivery. While the committee acknowledges that the area of child protection is highly emotive, and one in which complaints may relate to complex, traumatic and difficult circumstances, the committee is concerned about the issues raised in relation to internal complaint management processes.
- 8.101** We are particularly concerned about reports that retributive action is being taken against those that make complaints. These allegations are very serious and warrant further independent investigation. Therefore, the committee recommends that the Minister for Family and Community Services commission an independent investigation into the internal complaint mechanisms within the Department of Family and Community Services. We would expect this investigation to consider claims of retribution against complainants.

Recommendation 21

That the Minister for Family and Community Services commission an independent investigation into the internal complaint mechanisms within the Department of Family and Community Services.

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- 8.102** The committee agrees that additional external oversight of the department's practices and procedures is warranted. Not only will this help to address concerns about the department's lack of accountability and transparency, it is expected that it will instil greater confidence in the department overall.
- 8.103** The committee believes that there may be circumstances in which it is entirely appropriate for the Ombudsman to investigate complaints which relate to the conduct of the department, despite a matter being before the courts. This would not place the Ombudsman in a position in which it would be able to question or override the decision of court, rather the Ombudsman would still be able to investigate a complaint about the administrative or executive practices of the department, which could help to identify broader systemic and administrative issues.
- 8.104** Of course, the committee appreciates that it would be up to the Ombudsman and the President of the Children's Court of NSW to agree in such cases that a complaint could be investigated by the Ombudsman's office even if legal proceedings were on foot. Therefore, we recommended that the *Ombudsman Act 1974* be amended accordingly to enable the Ombudsman to investigate complaints, where appropriate, even if a matter may be before the courts.

Recommendation 22

That the NSW Government amend the *Ombudsman Act 1974* to provide the NSW Ombudsman with the power to investigate complaints relating to child protection matters, where appropriate, even if a matter may be before the courts.

Chapter 9 Improving child protection practice

This chapter will focus on several themes which may help to focus future reforms within the child protection sector. Firstly, it will look at the need for a broader workforce strategy within the sector, to enhance the skills and experience of workers who assist vulnerable children, young people and families. Secondly, it will highlight the need for strong information sharing laws, to ensure that services are able to access highly relevant information about child protection concerns when needed. Finally, it will outline some broad ideas from inquiry participants about how the child protection system can be improved, including some new and innovative approaches to protecting children which are currently being trialed.

Building the capacity of the child protection workforce

- 9.1** Recognising the importance of child protection workers having strong skills, experience and knowledge in working with vulnerable children, young people and families, this section will detail the department's existing strategy for the training and development of its workers. It will also look at the role of the Office of the Senior Practitioner, a division of FACS.
- 9.2** Afterwards, it will outline the need for a broader workforce strategy, including the need to enhance child protection workers' skills in particular areas, for example, cultural competency and trauma. Further, it will look at whether child protection workers should be subject to professional registration and standards.

The department's approach

- 9.3** The Office of the Senior Practitioner, which was established within FACS in 2012, is focused on supporting, inspiring and elevating the role of practice in agencies. Ms Kate Alexander, Executive Director of this office, explained that one of its functions 'is the provision of training and skill development to... frontline caseworkers and managers'.⁷⁷⁰
- 9.4** Ms Alexander advised the committee of a number of training opportunities provided to practitioners, including podcasts, videocasts and practice conferences. While 600 frontline staff were able to attend a conference in September 2016, another 900 were able to watch online over the two days. Easy access to online training and papers is facilitated by caseworkers having smart phones.⁷⁷¹
- 9.5** Although these opportunities are available, Ms Alexander acknowledged that 'staff access training in different ways'. Other training and support mechanisms provided at FACS include group supervision forums, where learning is brought into group 'decision making in a real time way'. Ms Alexander noted that casework specialists or psychologists may attend group supervision meetings, which can allow for teaching and inspiration to enter via case discussions. She said that staff have reported positively about group supervision forums as a way of learning, as it occurs alongside the practice of managing child protection concerns.⁷⁷²

⁷⁷⁰ Evidence, Ms Kate Alexander, Executive Director, Office of the Senior Practitioner, Department of Family and Community Services, 27 September 2016, p 62.

⁷⁷¹ Evidence, Ms Alexander, 27 September 2016, p 62.

⁷⁷² Evidence, Ms Alexander, 27 September 2016, p 62.

- 9.6** The department also provides research and practice seminars four times a year, and in addition, operates a casework practice website which provides ‘practice mandates’, and policies and procedures in plain English. Ms Alexander explained that this site includes videos, practice advice and ‘how to’ questions.⁷⁷³
- 9.7** Ms Alexander acknowledged the challenges associated with sustaining skills development in the workforce, but spoke of her commitment to redesigning training and management strategies within the department:

At the moment we are doing some important work involving looking at a whole approach to skill development from the first day in the agency through to management. We are looking at redesigning our entry-level training and our management training to base it around skill development and staff needing support, and then developing their competencies in practice before they can graduate up through the system. That is the work of the child protection academy that we are working on.⁷⁷⁴

- 9.8** Ms Alexander acknowledged the ‘perennial challenge facing statutory child protection’ – the ‘consistency of the response of the frontline worker’. Recognising that the challenges are not unique to child protection, she outlined the important balance that must be achieved in child protection practice with the use of authority, skills, empathy and compassion, despite the inherent application of subjective judgments and assessment:

The heart of good child protection practice comes down to how we use our authority. There are times when the community and children need us to use our authority and there are other times where our compassion, skill and empathy with family is important. So where do we get our power to motivate change? Is it an overuse of statutory powers or is it an underuse? That is the perennial problem which comes down to the challenges of consistency, and how we work with that every day in trying to lift the standard of consistency is the point that you raise about subjective judgement. Because in our work, we would all acknowledge, it is not unique to New South Wales that there is subjective judgement and there is good research in other parts of the world that has shown that risk assessment is heavily influenced by things that are to do with subjective judgements of workers.⁷⁷⁵

- 9.9** Addressing these challenges, while aiming to improve consistency, is based on structures being in place like ‘group supervision, placement panels, rigorous individual supervision and continual exposure to research and thinking’. Ms Alexander provided evidence about the new rollout of leadership training within FACS, which will help managers to think about how they use their power and authority everyday, along with their subjective judgments.⁷⁷⁶

⁷⁷³ Evidence, Ms Alexander, 27 September 2016, p 62.

⁷⁷⁴ Evidence, Ms Alexander, 27 September 2016, p 62.

⁷⁷⁵ Evidence, Ms Alexander, 27 September 2016, p 73.

⁷⁷⁶ Evidence, Ms Alexander, 27 September 2016, p 73.

A broader workforce strategy

- 9.10** There was overwhelming agreement from inquiry participants about the need to build the capacity and skills of the child protection workforce, both in government and non-government organisations.
- 9.11** Dr Wendy Foote, Deputy Chief Executive Officer, the Association of Children’s Welfare Agencies, provided evidence about her organisation’s role in the development of a workforce strategy with FACS and other government departments, which will build pathways of learning and development via vocational education and training, including a graduate diploma in out of home care and specific training for foster carers.⁷⁷⁷
- 9.12** Dr Foote said that what is needed now ‘is the right expertise with adequate resources to work with complex cases, not just qualifications’ but internal structures that imbed learning and development, for example, supervision, staff meetings, clinical consultations and partnerships with stakeholders.⁷⁷⁸
- 9.13** Despite some of the work being undertaken in terms of training and development in the sector, the NSW Council of Social Service suggested that there is a lack of existing investment in capacity building and appropriate support for frontline workers. It recommended that a comprehensive workforce development strategy be introduced, which considers the personal and formal qualifications of staff and greater investment in capacity building, for example, in the area of cultural competency.⁷⁷⁹
- 9.14** Several other stakeholders pointed to the need for greater cultural competency within the sector. The Women’s Domestic Violence Advocacy Service specifically called for FACS workers to be trained in cultural safety, including increased awareness of the legacy of child removal and the Stolen Generations in Australia and the ongoing trauma and dislocation this had created in Aboriginal communities.⁷⁸⁰
- 9.15** Similarly, CASAC Inc. [Child and Adolescent Sexual Assault Counselling Inc.] called for compulsory training regarding culturally safe and sensitive practice with Aboriginal families, given the ‘lack of consistency, knowledge, appropriate and professional development in this important area’. It suggested that it should be a core component of all funded services.⁷⁸¹
- 9.16** Settlement Services International also supported the building of cultural competency within the prevention and early intervention service system. Suggesting that training is often limited to frontline workers, it called for a broader approach that focuses on ‘organisational, professional or systemic changes required to achieve culturally responsive services’.⁷⁸²

⁷⁷⁷ Evidence, Dr Wendy Foote, Deputy Chief Executive Officer, Association of Children’s Welfare Agencies, 27 September 2016, p 50.

⁷⁷⁸ Evidence, Dr Foote, 27 September 2016, p 50.

⁷⁷⁹ Submission 68, NSW Council of Social Service, p 13.

⁷⁸⁰ Submission 43, Women’s Domestic Violence Court Advocacy Service NSW, p 9.

⁷⁸¹ Submission 104, CASAC Inc NSW, p 10.

⁷⁸² Submission 45, Settlement Services International, p 10.

- 9.17** The Australian Services Union also advocated for greater investment in adequate training to build cultural competency within the child protection workforce.⁷⁸³
- 9.18** Another essential focus of future training and skill enhancement for the sector was argued to be in the area of domestic and family violence, given the intersection of these issues with the child protection system. The Australian Law Reform Commission previously recommended that there be regular and consistent education and training for all participants in the family law, family violence and child protection systems, particularly in relation to the nature and dynamics of family violence.⁷⁸⁴
- 9.19** The Women’s Domestic Violence Advocacy Service supported the need for this training, stating that due to the high levels of domestic and family violence in all Australian communities, ‘it is essential that FACS workers be trained to understand the complex nature of domestic and family violence’.⁷⁸⁵
- 9.20** CatholicCare Sydney stressed the need for caseworkers to be appropriately trained, resourced and supported to manage situations involving trauma and family violence, given the ‘difficult and unique challenges’ of complex child removal cases involving family violence. It said that this investment is ‘urgently needed and is essential to ensuring the safety and wellbeing of children’.⁷⁸⁶
- 9.21** Likewise, Domestic Violence NSW advocated in favour of an investment in appropriate workforce development on the impacts of domestic and family violence and complex trauma for frontline staff and management across all government departments but specifically in the child protection and justice systems.⁷⁸⁷
- 9.22** It is also important for child protection workers to develop trauma informed skills and practice. Fams said that workers need to be using evidence based practice including strengths based, trauma informed and child centred practice.⁷⁸⁸
- 9.23** Highlighting the importance of ongoing professional development for practitioners in the child protection sector, Fams stated that adequate funding needs to be provided for staff to access opportunities and current research and to engage in reflection, action learning and professional supervision. It said that this requires innovation and effective implementation:

The sector needs to explore innovative ways to build the capacity of the sector to ensure a focus and commitment to best practice. Innovative programs such as peer mentoring programs and reflective practice are cost effective ways to build a culture of best practice and lifelong learning.

Unfortunately, the best program in the world will not be effective if it is delivered poorly – investment in building the skills and knowledge of practitioners is imperative,

⁷⁸³ Submission 78, Australian Services Union, p 24.

⁷⁸⁴ Submission 41, Australian Law Reform Commission, p 5.

⁷⁸⁵ Submission 43, Women’s Domestic Violence Advocacy Service, p 10.

⁷⁸⁶ Submission 48, CatholicCare Sydney, p 4.

⁷⁸⁷ Submission 72, Domestic Violence NSW, p 10.

⁷⁸⁸ Submission 64, Fams, p 13.

particularly when more NGO's [Non-government organisations] are taking on highly complex families than ever before.⁷⁸⁹

- 9.24** A number of other stakeholders expressed support for building the skills and knowledge of the child protection workforce, including the CREATE Foundation and the Benevolent Society.⁷⁹⁰ The latter noted that caseworkers in regional areas have less training provided by FACS and are often required to travel to metropolitan areas for training at their own expense.⁷⁹¹
- 9.25** Ms Nicola Callander, from Legal Aid NSW, said that 'it is fundamental that caseworkers are well equipped to intervene effectively with families when they first come into contact with them', by 'making appropriate referrals, being skilled in identifying the risks and making effective interventions'.⁷⁹²

Professional standards and registration for caseworkers

- 9.26** A number of stakeholders expressed support for the introduction of professional standards and/or the accreditation and registration of child protection workers. This was consistent with one of the recommendations arising from the 2015 *Out of Home Care* inquiry by the Senate Standing Committee on Community Affairs.⁷⁹³
- 9.27** It was suggested that this would help to drive consistency in the training, qualification and skills of the child protection workforce. Legal Aid NSW noted the disparity that currently exists in the workforce on these aspects, particularly between the government and non-government sector. It observed these issues in the out of home care sector, particularly in relation to positions that work in residential out of home care services.⁷⁹⁴
- 9.28** Family Inclusion Strategies in the Hunter also highlighted the inconsistencies that exist in the professional standards and conduct of workers in a range of roles in the child protection and out of home care system, including in out of home care non-government organisations and community services. It said that the 'inconsistency in these skills and qualifications is of concern to the quality of care being provided'. It supported a national registration scheme for child protection and out of home care workers, with minimum qualification standards and requirements for ongoing training and development. The benefits of such a system would include greater professional accountability within the sector:

Such a registration system would make staff accountable to families and children for their professional conduct and give families a complaints mechanism that is taken for granted in other professions such as psychology and teaching. It may also incentivise professional and respectful behaviour towards children and families.⁷⁹⁵

⁷⁸⁹ Submission 64, Fams, p 17.

⁷⁹⁰ Submission 15, CREATE Foundation, p 13; Submission 92, The Benevolent Society, p 7.

⁷⁹¹ Submission 92, The Benevolent Society, p 7.

⁷⁹² Evidence, Ms Nicola Callander, Solicitor in Charge, Child Protection Team, Legal Aid NSW, 16 August 2016, p 17.

⁷⁹³ Senate Community Affairs References Committee, *Out of home care* (2015), recommendation 27.

⁷⁹⁴ Submission 69, Legal Aid NSW, p 12.

⁷⁹⁵ Submission 102, Family Inclusion Strategies in the Hunter, p 4.

- 9.29** The Alliance for Family Preservation and Restoration also called for the introduction of a mandatory national registration system for all child protection workers, to professionalise the sector and enhance accountability:

Unlike all other professions in Australia they have no Governing Body to establish and mandate codes of practice, conduct or even base levels of education and training. No external Board is monitoring their [caseworkers] performance to protect the public from the harm their opinions and misconduct are doing to children and families everyday. No one is holding these unregistered workers accountable... yet they have more power than any other profession.⁷⁹⁶

- 9.30** Ms Natalie Lang, Branch Secretary from the Australian Services Union, while supportive of workforce standards, expressed some caution with the notion that such standards will on their own be enough to improve and enhance consistency across the sector, particularly when many workers carry existing qualifications. If professional standards were to be introduced, Ms Lang contended that there needed to be holistic consideration of other issues, like ‘the industrial implications...[and] how we can recognise and reward professional standards and investment in all of the professional standards supports—things like professional supervision, professional development’.⁷⁹⁷

- 9.31** Ms Lang emphasised that this would require genuine government commitment to the resourcing of such a system:

If the Government is genuinely committed to professional standards, that commitment needs to be met with the resources to enable that to occur. That means supporting the workforce to be able to participate in professional development opportunities.⁷⁹⁸

- 9.32** Ms Lang acknowledged that standards regarding workforce development could be built into quality assurance frameworks for services, although she argued that the Australian Services Union would like to be involved in the development:

Absolutely we would support that but we would want to also be involved in its development because since 2009 the ASU [Australian Services Union] has had a position around accreditation and professional standards. It is not something that is new on our radar for the workforce but it needs to be developed properly so that it is real and meaningful in terms of service delivery and real and meaningful in terms of industrial outcomes for the workforce.⁷⁹⁹

Committee comment

- 9.33** The committee agrees that the sector would benefit from a broader framework for training and development of caseworkers and other staff that work directly with vulnerable children, young people and families. Given how critical it is for workers to be able to establish a rapport with clients, and to understand the drivers and complexities associated with child protection matters, we believe that the department should take a lead role in developing a comprehensive

⁷⁹⁶ Submission 44, Alliance for Family Preservation and Restoration, pp 2-3.

⁷⁹⁷ Evidence, Ms Natalie Lang, Branch Secretary, Australian Services Union, 26 September 2016, p 46.

⁷⁹⁸ Evidence, Ms Lang, 26 September 2016, p 44.

⁷⁹⁹ Evidence, Ms Lang, 26 September 2016, p 46.

framework for staff within the sector, including caseworkers within non-government organisations. In particular, caseworkers need to be provided with training on the implementation of the model litigant policy and with appropriate compliance and accountability measures.

- 9.34** As identified by a number of stakeholders, it is imperative that the capacity of the workforce be developed particularly in terms of cultural competence and working with Aboriginal communities. Workers also need to be trauma-informed and be able to deal effectively with the sensitivities and complexities associated with domestic and family violence in a child protection context.
- 9.35** While the committee recognises that the department has in place its own training and development strategies, led by the Office of the Senior Practitioner, we recommend that it develop, in partnership with stakeholders, a broader workforce training and development framework for staff working with vulnerable children, young people and families.

Recommendation 23

That the Department of Family and Community Services develop, in partnership with stakeholders, a broader workforce training and development framework for staff working with vulnerable children, young people and families.

Information sharing

- 9.36** Following the 2008 Wood Report, Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* was enacted to simplify information exchange between certain government agencies and other prescribed bodies, where information relates to the safety, welfare and wellbeing of children and young people.⁸⁰⁰ As noted by the Ombudsman, Chapter 16A enables information to be exchanged despite other laws that prohibit or restrict the disclosure of personal information, regardless of whether or not a child or young person consents to the information exchange.⁸⁰¹
- 9.37** The Ombudsman has been working consistently to raise agencies awareness of these provisions, and to ensure that agencies have appropriate policies and procedures in place to facilitate their use.⁸⁰²
- 9.38** Interestingly, New South Wales is the only jurisdiction with information exchange provisions as comprehensive as Chapter 16A, as the Royal Commission noted in its March 2016 *Consultation Paper – Institutional Responses to Child Sexual Abuse in Out-Of-Home Care*. As the Ombudsman highlighted in its submission, the Royal Commission referred to Chapter 16A as an ‘example model’, stating:

Unlike other jurisdictional information sharing arrangements which refer specifically to government contracted or funded organisations, Chapter 16A clearly and

⁸⁰⁰ Submission 70, Department of Family and Community Services, p 7.

⁸⁰¹ Submission 74, Ombudsman NSW, p 34.

⁸⁰² Submission 74, Ombudsman NSW, p 34.

comprehensively captures relevant organisations regardless of contractual arrangements or funding source.

.....

We heard that Chapter 16A enables information from a variety of sources to be easily gathered to better inform assessments of and responses for children at risk. We also heard that the operation of Chapter 16A has resulted in significantly more information being shared than was the case prior to its introduction.⁸⁰³

- 9.39** Despite the legislation in New South Wales, some concerns were raised in relation to the practical difficulties of exchanging information, particularly where matters cross other jurisdictions.
- 9.40** The Law Society of NSW reported that Indigenous services sometimes have difficulties in obtaining information from FACS.⁸⁰⁴ Uniting also reported challenges in this area arising from the transition of government services to non-government organisations. In some instances, Uniting has been denied information on the basis of ‘legal reasons’ or experienced delays in receiving information for children in its care.⁸⁰⁵
- 9.41** Ms Dylan Kennedy, a caseworker with The Benevolent Society suggested that collaboration in the system could be improved ‘if there was a greater knowledge around what the legislation can do to support information sharing and assessment and analysis of safety for children’.⁸⁰⁶
- 9.42** Mr James McTavish, the NSW Cross-Border Commissioner, noted that there are some ‘on the ground difficulties in sharing information cross border’. In particular, the Commissioner advised the committee that there are examples of ‘bottlenecks and unwieldy procedures in information exchanges between New South Wales and Queensland health, police, education and community welfare agencies’, impacting child welfare issues. He said that there appears to be ‘an inordinate amount of correspondence, telephone calls, emails and letters relating to single cases ... when seeking information, and requesting feedback’.⁸⁰⁷
- 9.43** One particular issue raised by the Cross-Border Commissioner related to mandatory reporting and the system of interstate information exchange. The Commissioner said that the existing information provisions do not allow for agencies to directly share information with agencies in other jurisdictions. Instead, the information must be reported via the NSW Child Protection Helpline, with FACS staff then becoming the reporter to the FACS equivalent in another state. In addition, New South Wales based agencies receiving requests for information from interstate agencies have had to receive the information via FACS. The Cross-Border Commissioner said that ‘this often causes response delays and the potential for harm or neglect to continue, or be exacerbated’.⁸⁰⁸

⁸⁰³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care* (March 2016), p 75, as cited in Submission 74, Ombudsman NSW, pp 34-35.

⁸⁰⁴ Submission 96, The Law Society of NSW, p 9.

⁸⁰⁵ Submission 76, Uniting, p 40.

⁸⁰⁶ Evidence, Ms Dylan Kennedy, Caseworker, The Benevolent Society, 27 September 2016, p 13.

⁸⁰⁷ Submission 85, Office of the NSW Cross-Border Commissioner, p 1.

⁸⁰⁸ Submission 85, Office of the NSW Cross-Border Commissioner, p 2.

- 9.44** While the Cross-Border Commissioner has discussed these issues with FACS, he called for the provisions of Chapter 16A to be reviewed and amended to include prescribed agencies from other states. The Cross-Border Commissioner noted that the Privacy Commissioner has indicated support for this proposal, subject to an independent assessment of the privacy impacts of such changes.⁸⁰⁹
- 9.45** MacKillop Family Services suggested that the value of 16A could be further enhanced by better resourcing of FACS (and other relevant agencies, for example, the NSW Police Force) to process and manage the exchange of information.⁸¹⁰ Uniting recommended that the NSW Government work with other jurisdictions to develop nationally consistent arrangements for information sharing, consistent it argued, with proposals from the Royal Commission and third action plan of the *National Framework for Protecting Australia's children*.⁸¹¹
- 9.46** Relevant also are recent recommendations from the Australian Law Reform Commission, which were aimed at improving information sharing between federal family courts and child protection agencies, and more generally from agency to agency. In particular, it recommended that:
- protocols be developed between federal family courts and state and territory child protection agencies for dealing with requests for documents and information by the courts, with ongoing training on these protocols provided to staff
 - state and territory child protection legislation expressly authorise agencies to use or disclose personal information for the purpose of ensuring the safety of a child or young person.⁸¹²

Committee comment

- 9.47** The committee is concerned that there may be a lack of knowledge in the sector about information sharing laws for child protection concerns. It recognises that the Ombudsman has been trying to increase awareness in this area, and would encourage this to continue, possibly through specific training that could be incorporated into a broader workforce training framework if it was developed, as outlined in recommendation 23.
- 9.48** The committee notes the concerns raised by the Cross-Border Commissioner about interstate information exchange and the delays and practical issues associated with the sharing of child protection information between jurisdictions.
- 9.49** Clearly, agencies require up to date and accurate information about child protection matters if they are to respond appropriately and effectively. Any delays or problems in accessing this information, whether cross jurisdiction or not, can impact a child's safety. Therefore, the committee recommends that the NSW Government review the provisions of Chapter 16A, with the aim of addressing concerns related to interstate information exchanges for child protection matters.

⁸⁰⁹ Submission 85, Office of the NSW Cross-Border Commissioner, p 3.

⁸¹⁰ Submission 86, MacKillop Family Services, p 16.

⁸¹¹ Submission 76, Uniting, pp 40-41.

⁸¹² Submission 41, Australian Law Reform Commission, pp 2 and 4.

Recommendation 24

That the NSW Government review the provisions of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*, to improve information sharing across jurisdictions for child protection matters.

Future reforms - what should the focus be?

- 9.50** This section will outline stakeholders' ideas about how the child protection system can be improved in the future.
- 9.51** Central to the Wood Report, and as acknowledged by several inquiry participants, 'child protection is the collective responsibility of the whole of government and of the community'.⁸¹³ Good Shepherd reiterated this position, when it stated that community commitment and whole of government responsibility is essential to keeping children and young people safe:
- ...we must remember that these children and young people are a part of a broader network of family and community. To keep children and young people safe, and to support them to live active and fulfilling lives, we must also work with families and communities alike, to build capacity and resilience at both an individual and societal level. This requires a whole-of-government and whole-of-community commitment and effort...⁸¹⁴
- 9.52** Fams equally recognised the importance of everyone working together to keep vulnerable children and young people safe. It said that 'this is about recognising that no one person or no one organisation solves the problems of vulnerable children and families on their own'. Highlighting the importance of collective responsibility, Ms Julie Hourigan Ruse, Chief Executive Officer, added: 'We all work together; we have a contribution to make and we make that contribution. We work together to solve the problems'.⁸¹⁵
- 9.53** While the child protection system has been subject to a number of reforms over the last decade, the Ombudsman has found that 'there is still more to be done', despite the government's increased focus on ensuring that early intervention and prevention services and out of home care deliver value for money.⁸¹⁶
- 9.54** The Ombudsman has also asserted, in light of increasing risk of harm reports and unsatisfactory face to face response rates, that capacity to meet 'ROSH [risk of significant harm] demand cannot be achieved by FACS initiatives alone'. The Ombudsman has expressed support for new initiatives including the co-design approach in the Central Coast (discussed in

⁸¹³ Hon. James Wood AO QC (November 2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, p v; Submission 89, Good Shepherd Australia New Zealand, p 22.

⁸¹⁴ Submission 89, Good Shepherd Australia New Zealand, p 22.

⁸¹⁵ Evidence, Ms Julie Hourigan Ruse, Chief Executive Officer, Fams, 26 September 2016, p 32.

⁸¹⁶ Submission 74, Ombudsman NSW, p 8.

the case study following 9.55) and other approaches like the Macarthur Intake Referral Service.⁸¹⁷

9.55 The Ombudsman has also called for:

- the examination of opportunities to better integrate structural components of the child protection system, for example, Family Referral Services
- the development of appropriate quality assurance systems for the non-government organisation sector, given the increased reliance on their role in child protection services
- further examination of interagency practice, as the non-government organisation sector expands.⁸¹⁸

Case study – Central Coast Multi-Agency Response Centre

The Central Coast Multi-Agency Response Centre is located in Wyong on the Central Coast and has been accepting child protection reports diverted from the Child Protection Helpline in the Gosford and Wyong local government areas since 2014. The centre is operated by FACS, NSW Health, the Department of Education and Family Referral Service caseworkers. The committee visited the centre on 9 September 2016.⁸¹⁹

The service is operating on a two year trial and is aimed at identifying and applying improved wrap around services to children at risk of harm through a multi-agency co-located and collaborative approach, ‘ensuring that children are receiving the appropriate response in a timely and connected way’.⁸²⁰

Ms Deidre Mulkerin, Deputy Secretary of the Northern Cluster, Operations, Department of Family and Community Services, noted that the centre ‘has been showing early promise’. She said that it has ‘helped the local staff prioritise those matters that only the statutory agency should respond to in a more urgent way’.⁸²¹

The Benevolent Society also expressed support for the collaborative approach provided under this model. It stated that this ‘approach will help provide the right service, for the right person, at the right time’. It highlighted other positive features of the centre, including its capacity to tap into local knowledge for more effective responses, and the capacity for local reports and staff to build knowledge

⁸¹⁷ A trial that commenced in October 2014, which aimed to reduce child protection reports and improve outcomes for children by creating an integrated local services network. Submission 74, Ombudsman NSW, pp 8-9.

⁸¹⁸ Submission 74, Ombudsman NSW, pp 8-9.

⁸¹⁹ Submission 70, Department of Family and Community Services, p 19; Department of Family and Community Services, *Central Coast co-design*, <<https://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/safe-home-for-life/designing-the-system-with-our-partners/central-coast-co-design>>

⁸²⁰ Submission 70, Department of Family and Community Services, p 19.

⁸²¹ Evidence, Ms Deidre Mulkerin, Deputy Secretary, Northern Cluster, Operations, Department of Family and Community Services, 27 September 2016, p 58.

of the local service sector. The Benevolent Society acknowledged that the Central Coast Multi-Agency Response Centre has won a prestigious award for Good Design in Social Innovation.⁸²²

Uniting were also positive about the benefits of the centre, although it expressed some concern about how the operations ‘may impact on the number of non-ROSH [risk of significant harm] referrals to NGOs [non-government organisations]’, and whether families who do not meet the threshold will be ‘pushed back’ onto other services. It stated:

We are concerned that the rest of the sector may be required to support an increasing number of families with increasingly complex needs, even though these may technically fall below the ROSH threshold. It is therefore critical to ensure that there are enough services available in the local area, and that they are sufficiently resourced, to meet increased demand, if the CC MARC [Central Coast Multi-Agency Response Centre] initiative is to result in a stronger service system overall.⁸²³

The Deputy Ombudsman, Mr Steve Kinmond, highlighted the NSW Ombudsman’s interest in co-design initiatives, given their previous observations that ‘meeting ROSH [Risk of Significant Harm] demand cannot be achieved by FACS alone’. The Ombudsman’s office acknowledged that the approach enables caseworkers to be freed up to deal with the most serious cases, which is important given nearly half of all the report received in the district do not meet the risk of significant harm threshold. These reports instead are managed through a collaborative approach facilitated by the co-location of services, enabling ‘services to support families to respond quickly and prevent them from having to tell their story multiple times’.⁸²⁴

The Ombudsman acknowledged that the ‘recent published data is too early to show the impact of these initiatives’, however stressed that ‘it will be critical that the key elements of these approaches are adapted for rollout elsewhere’ if they prove to be successful.⁸²⁵

The committee noted that the December 2015 report from the Legislative Council Standing Committee on Social Issues’ inquiry into service co-ordination recommended that the NSW Government evaluate the Central Coast co-design project. In response, the Government indicated that the Department of Premier and Cabinet would coordinate a review of the project which would inform a broader examination of how the Central Coast model could be adapted and rolled out in other locations.⁸²⁶

9.56 Several stakeholders in this inquiry also expressed various views about future child protection practice, including how the child protection system can be improved. Barnardos Australia emphasised the importance of focusing on the needs of children, and improved decision making for children identified at risk:

We need the system to be built around the needs of children rather than adults. We are very clear that child protection is not a one-size-fits-all proposition. We need faster

⁸²² Submission 92, The Benevolent Society, p 6.

⁸²³ Submission 76, Uniting, p 11.

⁸²⁴ Submission 74, Ombudsman NSW, p 9.

⁸²⁵ Submission 74, Ombudsman NSW, p 9.

⁸²⁶ Legislative Council Standing Committee on Social Issues, *Service coordination in communities with high social needs* (2015), pp 64–65.

and better decisions for children at risk. We need to avoid double handling, particularly inside our government departments.⁸²⁷

- 9.57** Fams argued for ‘new ideas and ways of working’, while ‘building on the strengths, expertise and innovative work already happening’. Ms Hourigan Ruse said that ‘we must strengthen our systems in practice to ensure fewer children are entering the statutory out-of-home care system, that fewer children are deemed at risk of significant harm and that more children are thriving and happy’.⁸²⁸
- 9.58** Fams also called for better service coordination, and less duplication of programs within communities. It said that the focus should be on ‘collective impact’, a framework that can increase and enhance cross sector collaboration. Expanding on this, Fams discussed their trial of two mechanisms – the *Results Based Accountability* Framework, which is an internationally recognised tool that helps to achieve collective impact, and the *Clear Impact Scorecard*, which supports service coordination, outcome focused service delivery, improved data collection and reporting and enhanced community strategic planning. Fams indicated its willingness to engage with the government on how these tools could be used to further inform targeted early intervention reforms.⁸²⁹
- 9.59** While there was general consensus from participants for greater investment in services to help vulnerable families, children and young people (discussed in chapter 2), Good Shepherd acknowledged that the failings within the system cannot be addressed alone by ‘simply injecting more and more additional resources into an already strained and stretched system’. Additional funding will not necessarily ‘guarantee improved outcomes for vulnerable children and young people, and their families’. It stated that an ‘effective and efficient system should provide a raft of integrated and streamlined services’ to address the multiple and unique needs of children and young people, in both areas of statutory support and primary prevention.⁸³⁰
- 9.60** While highlighting that child protection is not the sole responsibility of FACS or the Office of the Children’s Guardian, Ms Natalie Lang, Branch Secretary for the Australian Services Union, stated that the government must also address socio-economic issues which drive child protection concerns, like poverty, homelessness, mental health and drug and alcohol addiction:

Governments cannot be held responsible for many of the individual risk factors that exist for children and young people. Tragically, it is likely that there will always be a need for Government agencies to protect individual children and, in some instances, it will be necessary to remove those children from an unsafe place. However, in our view, the role and responsibility of Government in the protection of children is not only about crisis management. The role of a responsible Government is also to ensure, as far as possible, the absence or, at worst, the mitigation of the key risk factors defined by the Australian and international research, including poverty, homelessness, isolation, disability, mental health problems, alcohol and drugs of addiction, and access to support that place children and young people at risk of harm or death...⁸³¹

⁸²⁷ Evidence, Ms Deidre Cheers, Chief Executive Officer, Barnardos Australia, 16 August 2016, p 2.

⁸²⁸ Evidence, Ms Hourigan Ruse, 26 September 2016, p 31.

⁸²⁹ Submission 64, Fams, pp 9-10.

⁸³⁰ Submission 89, Good Shepherd Australia New Zealand, p 22.

⁸³¹ Evidence, Ms Lang, 26 September 2016, p 40.

9.61 In a similar manner, Women’s Legal Services called for a holistic approach to improving child protection practice, one that focuses on addressing broader societal issues like justice re-investment, transgenerational trauma, family violence and access to affordable housing. Ms Liz Snell, the Law Reform and Policy Co-ordinator, stated:

Child protection reform should not occur in isolation. It is imperative that it is part of a holistic response which includes a focus on justice re-investment; alternatives to custody for offenders who are primary care givers... supporting parents suffering from the effects of trans-generational traumas and disenfranchised grief; and Government and community responses to ending violence against women and their children...

While there has been some work undertaken regarding the intersection of child protection and domestic violence, there is so much more work that needs to be done with regards to the intersection of child protection, domestic violence, family law and access to safe and affordable housing.⁸³²

9.62 Domestic Violence NSW also supported an improved system that acknowledged and addressed the intersection between family violence and child protection. Ms Sophie Trower, the Policy Manager, said that ‘there needs to be a long term government commitment to bring child protection systems and domestic and family violence responses and expertise together’. She said that this will require ‘vision, resourcing and leadership from government’, and with significant consumer investment in services, will help to build a system that can meet the ‘immediate crisis needs to children, young people and families’, while also challenging ‘the roots of violence-supportive attitudes’. Ms Trower acknowledged that child protection work ‘is undeniably challenging’, but said that the ‘system needs to be more timely, sophisticated and reflexive’.⁸³³

9.63 Ms Moo Baulch, the Chief Executive Officer of Domestic Violence NSW, reiterated the need for a co-designed approach to child protection and domestic and family violence. Asserting that the ‘system is broken’, Ms Baulch noted that vulnerable people and families are trying to be fit into ‘programs, pilots and short term solutions that are ultimately failing in many cases...’.⁸³⁴

9.64 Also important to the success of future reforms is effective consultation. Legal Aid NSW called for improved consultation on reforms between FACS and the sector, in addition to ‘a very significant injection of funds to provide services to disadvantaged parents and children’.⁸³⁵

9.65 Ms Hourigan Ruse, Fams, also stressed the importance of having a child protection system in place that promotes ‘responding’ and not just ‘reporting’. In her view, the mandatory

⁸³² Evidence, Ms Liz Snell, Law Reform and Policy Co-ordinator, Women’s Legal Service NSW, 16 August 2016, p 12.

⁸³³ Evidence, Ms Sophie Trower, Policy Manager, Domestic Violence NSW, 26 September 2016, p 22.

⁸³⁴ Evidence, Ms Moo Baulch, Chief Executive Officer, Domestic Violence NSW, 26 September 2016, p 22.

⁸³⁵ Evidence, Ms Nicola Callander, Solicitor in Charge, Child Protection Team, Legal Aid NSW, 16 August 2016, p 11.

reporting system has created a culture of just reporting, which means that after a report has been made, reporters believe ‘in very strict terms, they have done what they needed to do’.⁸³⁶

- 9.66** Reiterating the importance of avoiding a risk averse culture and a culture that just reports but not responds, Ms Hourigan Ruse added:

Making a call to the helpline is not an outcome for a family. Given the tens of thousands of calls which are made and which are not receiving a response, it is becoming accepted within the sector that perhaps the pendulum has swung too far the other way. In trying to solve a problem, we have perhaps become overly cautious, and we need to come back to the middle and use our professional judgement to respond to the clients we see.⁸³⁷

- 9.67** One witness also stressed the importance of engaging with children on decisions and policies. This individual suggested that genuine consultation and engagement with children in this manner rarely takes place:

...a lot of policies and documents talk about engaging children in decision-making, the right of children to make decisions, the right to have input into case meetings, and case planning. But it just does not happen. If it does happen, it happens in such a superficial way that it has no effect.⁸³⁸

- 9.68** Finally, Mr Andrew McCallum, Chief Executive Officer of the Association of Children’s Welfare Agencies, emphasised that the focus must be on supporting our vulnerable and addressing the drivers of child protection concerns. Recognising that solutions are complex, Mr McCallum stated:

Solutions will not be found exclusively or, in fact, predominantly in more regulation and legislation. Child wellbeing is intricate and complex. It does not lend itself to meaningful community debate by sensational tabloid headlines, nor to be used as a battering ram for political advantage. We owe our most vulnerable better as the change we aspire to will take generations, not years.⁸³⁹

Restoration

- 9.69** One particular aspect which requires improvement is the capacity of the system to provide restoration. Stakeholders argued that the existing system lacks capacity to restore children back to their families in a timely manner after safety and welfare concerns have been adequately addressed.
- 9.70** As noted in chapter 4, restoration after a long term or permanent order has been made in the Children’s Court can be extremely difficult, as there has to have been a significant change in circumstances. However, even in matters where short term orders have been made, restoration was argued to be challenging, despite parents completing certain programs or addressing any safety concerns FACS may have required.

⁸³⁶ Evidence, Ms Hourigan Ruse, 26 September 2016, p 32.

⁸³⁷ Evidence, Ms Hourigan Ruse, 26 September 2016, p 37.

⁸³⁸ *In camera* evidence, Witness D, 26 September 2016, p 16, published by resolution of the committee.

⁸³⁹ Evidence, Mr Andrew McCallum, Chief Executive Officer, Association of Children’s Welfare Agencies, 27 September 2016, p 49.

- 9.71** Ms Fiona Hastings, General Manager of Families and Community at CatholicCare Sydney, argued that there is a piece of work missing ‘in the middle around restoration and preservation’. Comparing the system to an ‘hourglass shape with this small piece in the middle with these two other systems that are quite large either side’, Ms Hastings suggested that more work is needed to put in place things that will either increase or enhance safety so that a child can be returned home, or alternatively, enhance the family’s capacity to be maintained.⁸⁴⁰
- 9.72** This was noted to particularly be an issue when child protection matters intersect with domestic violence. Although a child may be removed due to immediate safety concerns because of violence in the home, the mother may then also remove herself from the violence, but there is a ‘reluctance of the system to assess the suitability of restoration’. Ms Hastings said that this does not take into the account the ‘primary attachment requirements of the child and the impact of the trauma on the whole family unit, or the mother-child relationship’. While removal may have been the right option at the outset, CatholicCare Sydney has seen cases where ‘mothers are still being prevented for having the child restored to their care’, with this continued separation being very traumatic for all.⁸⁴¹
- 9.73** Ms Jackie Palmer, Executive Manager of Out of Home Care Services at Anglicare Sydney, agreed that restoration within the system needs a greater focus and is often taking too long:
- I think that there is a focus on restoration only when a care application is made and then it takes too long for it to be resolved. It can take months. I am not quite sure if it is FACS workers or child protection workers who are perhaps more focused on care or what is happening and safeguarding the child, and often do not engage the parents in discussion with what they need to do. It is therefore left for too long....⁸⁴²
- 9.74** Ms Fiona Hastings, CatholicCare Sydney, also raised concerns about the timing of restorative work, particularly in domestic violent situations. Where children are ‘rightly removed from terribly violent situations’, she noted that restoration can be ‘delayed or denied because of an apparent reluctance of the system to update or review its understanding of the circumstances of the mother’.⁸⁴³
- 9.75** Winangay Resources Inc also expressed a concern about the lack of focus on restoration for Aboriginal children in out of home care. In its view, there is a ‘pressing need to develop restoration tools and models to allow these children to return home’. It had developed an Aboriginal Restoration Assessment tool, which was designed to enable workers and families to determine if Aboriginal children could be returned safely to family or kin.⁸⁴⁴
- 9.76** The Shed, Western Sydney University, also agreed that there should be specific Aboriginal intensive restoration programs. It noted successes with the Newpin Program, where ‘it ha[s] seen extraordinary results for Aboriginal families in this program’.⁸⁴⁵

⁸⁴⁰ Evidence, Ms Fiona Hastings, General Manager, Families and Community, CatholicCare Sydney, 16 August 2016, p 62.

⁸⁴¹ Evidence, Ms Hastings, 16 August 2016, pp 60-61.

⁸⁴² Evidence, Ms Jackie Palmer, Executive Manager, Out of Home Care Services, Anglicare Sydney, 16 August 2016, p 61.

⁸⁴³ Evidence, Ms Hastings, 16 August 2016, p 60.

⁸⁴⁴ Submission 82, Winangay Resources Inc, p 2.

⁸⁴⁵ Submission, 137, The Shed, Western Sydney University, p 7.

9.77 Ms Stephanie Croft said that there does not appear to be a FACS policy on restoration of children to their families, with this making it ‘almost impossible or impossible to get them restored back home to their families’. Ms Croft emphasised the importance of returning home to a child’s health and welfare:

For many children there is no place like home and their own family and being there is much better for their ongoing health and welfare. If it is safe to do so, and their families can provide adequate care, it should be a FACS policy priority for children to be returned to their home and family, no matter how long they have been in out-of-home care.⁸⁴⁶

9.78 FACS also recognised the importance of investing in the area of restoration. Ms Maree Walk, Deputy Secretary of Programs and Service Design, admitted that one of her main concerns is that ‘when children come into care they stay for very long periods of time’. She noted that the average term would be around 12 years.⁸⁴⁷

9.79 Ms Walk’s colleague, Ms Alexander, provided evidence about some research work currently being undertaken which is comparing 125 children at high risk who were not brought into care, to question assessments by workers and how support structures can be put into place to enable children to remain with families while the safety risks lower day by day.⁸⁴⁸

9.80 Ms Walk advised the committee that FACS will be focusing on more intensive family support and restoration over the next financial year, using evidence based programs from international jurisdictions.⁸⁴⁹

9.81 This was consistent with recommendations arising from the Tune Review (discussed at 1.48), as outlined in the department’s report *Their Futures Matter: A new approach*. The report states that the NSW Government has committed to the:

- reconfiguration and expansion of existing evidence based family preservation and restoration services to include therapeutic and clinical supports to reduce risk factors
- investment of an additional 900 places for families and children in family preservation and restoration programs.⁸⁵⁰

9.82 Also relevant to restorative work are innovative models that focus on reunification of a family. In Victoria, the Family Drug Treatment Court, which was established as a three year pilot program in the Children’s Court of Victoria, aims to help parents stop using drugs and/or alcohol while promoting family reunification. The focus is on providing services such as residential treatment, counselling or parenting or housing programs, with professionals working with the parents and the children to help the family to reunification.⁸⁵¹

⁸⁴⁶ Submission 32, Mrs Stephanie Croft, p 15.

⁸⁴⁷ Evidence, Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services, 27 September 2016, p 65.

⁸⁴⁸ Evidence, Ms Alexander, 27 September 2016, p 65.

⁸⁴⁹ Evidence, Ms Walk, 27 September 2016, p 74.

⁸⁵⁰ NSW Government, *Their Futures Matter: A new approach, Reform directions from the Independent Review of Out of Home Care in New South Wales*. 2016, p 12.

⁸⁵¹ Children’s Court of Victoria, *Family Drug Treatment Court*, <<http://www.childrenscourt.vic.gov.au/jurisdictions/child-protection/family-drug-treatment-court>>

Committee comment

- 9.83** Given the child protection system has been subject to a number of changes over the last decade, it is critically important that any future changes be in the best interests of those we are trying to protect – vulnerable children and young people. While the committee has made a number of recommendations throughout this report, we recognise the need to ensure children’s voices are included in any future discussion about reforms.
- 9.84** The committee also recognises that many of the issues raised in this inquiry are unlikely to be addressed through the addition of more funding or resourcing. Instead, innovative solutions will be required, including new approaches like the Central Coast Multi-Agency Response Centre. Initiatives such as these show promise, although the committee acknowledges that they need to be fully evaluated before being rolled out on a much wider scale.

Recommendation 25

That the Department of Family and Community Services fully funds the Central Coast Multi-Agency Response Centre model and implement this model in those areas of the state with greatest need.

- 9.85** In addition to this type of innovation, the committee believes that there must be stronger and more intelligent decision making in relation to resourcing. The department needs to be more sophisticated in its use of research and data to inform decisions about workload management and the funding of programs and services.
- 9.86** Further, we agree that there must be a shift in the sector to focus on ‘responding’ rather than just ‘reporting’. We accept that with increased public awareness of child protection issues, a culture may have developed that focuses just on simply making a report to the Helpline, without taking any responsibility for addressing the concerns. We must move to a system where those making reports feel comfortable to also respond – to have a greater sense of shared responsibility for protecting children. This applies particularly to mandatory reporters, and those who have greater capacity to respond within the sector.
- 9.87** We understand that mandatory reporters, like teachers and doctors, have their own professional duties and that providing an appropriate child protection response can be difficult within the context of their other work. However, we agree that collective responsibility is essential to an effective child protection system, and that moving to this approach will require further education and support within the community. We understand that this will take time, but we urge the department to consider how collective responsibility for child protection matters can be developed and encouraged.
- 9.88** In terms of restoration, the committee agrees that this too needs to be a focus for the department. There needs to be stronger restorative practices and policies in place to support children to return to their families when child protection concerns have been adequately addressed. While we understand that there has been an emphasis on creating stability and permanency for children placed in out of home care, this must be carefully balanced with the further trauma that can be caused by keeping children unnecessarily from their families where safety concerns have been addressed.

- 9.89** The committee heard many stories where families had taken all steps required by the department to address safety concerns, yet were still faced with long delays in having children returned. This is concerning to the committee, given the further trauma that can be caused by prolonged separations.
- 9.90** It was a consistent theme amongst parents and stakeholders that there was no clear policy available from FACs that set out how restoration was to be achieved. Much of the evidence focused on the individual discretionary powers of case workers who parents and carers felt were continually moving the goal posts and making restoration impossible. This should be addressed with a clear plain English policy position on restoration and an effective independent internal review process for parents and carers who have been denied restoration.

Recommendation 26

That the Department of Family and Community Services publish a plain English policy position on how parents and carers can work towards restoration of their children, including a clear internal review process for parents and carers who have been denied restoration.

- 9.91** While FACS have indicated that restoration work will be a focus over the next financial year, we recommend that the department develop a specific strategy to improve opportunities for children and young people in out of home care to be restored to their families, where appropriate. This could include the establishment of a specific team within FACS to focus solely on restorative work with families, if appropriate.

Recommendation 27

That the Department of Family and Community Services develop a specific strategy to improve opportunities for children and young people in out of home care to be restored to their families, where appropriate.

- 9.92** In addition, as addressed in chapter 2, the committee also recognises the importance of prevention and early intervention work in preventing child protection issues from developing and escalating. There must be greater attention placed on addressing the socio-economic drivers of child protection concerns, such as poverty, mental health issues, domestic and family violence and drug and alcohol addiction. As outlined in recommendation 2, the committee supports a strong focus on evidence based prevention and early intervention services and programs, to hopefully, over the long term, reduce the number of children and young people being placed in out of home care.
- 9.93** Lastly, given the importance of ensuring that many of the issues within this report are actioned appropriately, the committee recommends that the Minister for Family and Community Services provide a report to the NSW Parliament by the end of August 2018 on the NSW Government's progress in implementing the recommendations in this report.

Recommendation 28

That the Minister for Family and Community Services provide a report to the NSW Parliament by the end of August 2018 on the NSW Government's progress in implementing the recommendations in this report.

Appendix 1 Glossary

Aboriginal and Torres Strait Islander Placement Principles	The preferred order of placements for Aboriginal and/or Torres Strait Islander children and young people, as specified in section 13 of the <i>Children and Young Persons (Care and Protection) Act</i> 1998.
Adoption order	An order made by the Supreme Court to legally transfer all parental rights and responsibilities to a child or young person's adoptive parents.
Child Protection Helpline	A 24 hours a day seven days a week state wide call centre staffed by caseworkers to receive and screen all reports concerning children and young people at risk of significant harm.
Child protection report	A report from a mandatory or non-mandatory reporter that includes concerns about the safety, welfare or wellbeing of a child or young person. Reports are made to the Child Protection Helpline and assessed to determine whether they meet the threshold of significant harm.
Early intervention	Services that provide support to vulnerable children, young people and families, usually to avoid escalation of matters within the child protection system.
Foster care	A general term used to refer to the care of children or young people in out of home care by authorised and unrelated carers. Foster carers can provide short term or long term care, including respite and crisis care.
Guardianship order	An order made for a child or young people in statutory or supported out of home care in certain circumstances, where the guardian takes on full parental responsibility of the child or young person making decisions about their care until they reach 18 years of age
Joint Investigation Response Team (JIRT)	A team of professionals from the NSW Police Force, NSW Health and FACS, that provide services to children and young people in response to serious child protection reports which may involve a criminal offence, for example, child sexual assault.

Kinship/relative care Care provided by an extended family member, friend or person of significance to a child or young person. Aboriginal and Torres Strait Islander children and young people are often placed with relative or kin in statutory or voluntary arrangements, due to shared cultural, tribal and community connection recognised by that child's community. Relative care can be provided by a parent, grandparent, brother, sister, uncle, aunt or other relative.

Mandatory reporter A person who, as part of their professional or paid work (including as a manager/supervisor of someone undertaking such work), provides services to children and young people, and is required under section 27 of the *Children and Young Persons (Care and Protection) Act 1998* to make a report to FACS if they suspect that a child is at risk of harm.

Out of home care When a child or young person is unable to live at their usual home and is placed in another form of accommodation as it is necessary for their safety, welfare and wellbeing. The child or young person may be under the parental responsibility of the Minister or another person, as a result of a court order made in the Children's Court. There are three main types of out of home care: statutory out of home care, supported out of home care and voluntary out of home care.

Permanent Placement Principles Principles under section 10A of the *Children and Young Persons (Care and Protection) Act 1998* that guide the permanent placement of a child or young person. The order of preference for the permanent placement of a child or young person is: family preservation or restoration, guardianship, open adoption (for non-Aboriginal children) and parental responsibility to the Minister.

Residential care A placement option for children and young people who have challenging behaviours and high support needs. Generally, residential care units are small community-based residences supported by rostered residential care staff.

Restoration When a child or young person returns to live in the care of a parent or parents for the long term.

Risk of significant harm (ROSH)	Where there are concerns for the safety, welfare or wellbeing of a child or young person to a significant extent, warranting a response by a statutory authority. Reports made to the Child Protection Helpline must meet the threshold of 'risk of significant harm' to receive a response.
Statutory out of home care	Out of home care that is provided to a child or young person for a period of more than 14 days because parental responsibility has been transferred according to an order of the Children's Court, or the child or young person is considered a 'protected person', for example, a young person awaiting adoption or under the guardianship of the Minister.
Supported out of home care	Out of home care provided to a child or young person because the Secretary, FACS has formed the opinion that the child or young person is in need of care and protection, either with or without a court order. It can include kinship/relative care or other temporary care arrangements.
Voluntary out of home care	A voluntary arrangement made by parent(s) with a designated agency or carer registered with the NSW Children's Guardian, in circumstances where Community Services has no involvement in the placement.
Working with children check	A requirement for people who work or volunteer in child related work. It involves a national criminal history check and a review of findings of workplace misconduct. Individuals can either be provided with a clearance to work with children or alternatively barred from working with children.
Young Person	A person who is aged 16 years or above but is under the age of 18 years.

Appendix 2 Submissions

No	Author
1	Confidential
2	Confidential
2a	Confidential
3	Confidential
3a	Confidential
4	Name suppressed – partially confidential
5	Name suppressed – partially confidential
6	Confidential
7	Confidential
8	Ms Toni Grange
9	Name suppressed
10	Confidential
10a	Confidential
11	Confidential
12	Name suppressed
12a	Name suppressed
12b	Name suppressed
12c	Name suppressed
12d	Confidential
12e	Confidential
13	Ms Robin Turner
14	Name suppressed – partially confidential
15	CREATE Foundation
16	Confidential
17	Name suppressed
18	Confidential
19	Name suppressed – partially confidential
20	Name suppressed
21	Confidential
21a	Confidential
21b	Confidential
22	Confidential

No	Author
23	Confidential
24	Name suppressed
25	Confidential
26	Confidential
26a	Confidential
26b	Confidential
27	Name suppressed
28	Mr Ben Hills
29	Name suppressed
30	Confidential
31	Australian Adoptee Rights Action Group
32	Mrs Stephanie Croft
33	Name suppressed – partially confidential
34	Confidential
35	Name suppressed
36	Confidential
37	Ms Kelly Samways
38	Confidential
39	Name suppressed
40	No To Violence incorporating the Men's Referral Service
41	Australian Law Reform Commission
42	National Child Protection Alliance
43	Women's Domestic Violence Court Advocacy Service NSW Inc.
44	Alliance For Family Preservation and Restoration
45	Settlement Services International
46	Confidential
47	Metro Assist Inc.
48	CatholicCare Sydney
49	Name suppressed
50	Confidential
51	Cara House
52	Confidential
53	Confidential
54	Confidential
55	Confidential

No	Author
56	Dr Helen Hayward-Brown
57	Barnardos Australia
58	Anglicare Sydney
59	Aboriginal Child, Family and Community Care State Secretariat (AbSec)
60	Guardian Youth Care
61	Confidential
62	Wollongong West Street Centre
63	Name suppressed – name suppressed
64	FAMS - NSW Family Services Inc
65	Name suppressed
66	Public Service Association of NSW
67	Catholic Education Commission NSW
68	NSW Council of Social Service - NCOSS
69	Legal Aid NSW
70	Department of Family and Community Services
71	Youth Action
72	Domestic Violence NSW
73	Women's Legal Service NSW
74	NSW Ombudsman
75	NSW Office of the Children's Guardian
76	Uniting
77	Nepean Community and Neighbourhood Services
78	Australian Services Union
79	Aboriginal Justice Support Group
80	Children's Court
81	Professor Gwynnyth Llewellyn
82	Winangay Resources Inc
83	Fighters Against Child Abuse Australia – partially confidential
84	The Deli Women & Children's Centre
85	Office of the NSW Cross-Border Commissioner
86	MacKillop Family Services
87	Ms Tania Mihailuk MP
88	Intellectual Disability Rights Service
89	Good Shepherd Australia New Zealand
90	Ms Trish Doyle MP

No	Author
91	Southern Youth and Family Services
92	The Benevolent Society
93	Relationships Australia
94	Association of Children's Welfare Agencies
95	Aunty Glendra Stubbs and Ms Elizabeth Rice
96	The Law Society of New South Wales
97	Yfoundations
98	Name suppressed – partially confidential
99	Confidential
99a	Confidential
100	Jannawi Family Centre
101	Confidential
102	Family Inclusion Strategies in the Hunter
103	Mr George Potkonyak
104	CASAC Inc NSW
105	National Ethnic Disability Alliance – partially confidential
106	Mr Gavin Breen
107	Name suppressed – partially confidential
108	Mrs Eleanor Hansen – partially confidential
109	Name suppressed – partially confidential
110	Confidential
111	Dr Margaret Spencer
112	Mr Aldo Bayona
113	Confidential
114	Name suppressed
115	Charis Law
116	Name suppressed – partially confidential
117	Name suppressed – partially confidential
118	East Maitland Pine Tree "GAPS" Support Group
119	Confidential
120	Name suppressed
121	Dr Gary K Banks
122	Name suppressed
123	Confidential
124	Confidential

No	Author
125	Ms Karleen Gribble
126	Confidential
127	Confidential
128	Office of the Advocate for Children and Young People
129	Confidential
130	Confidential
131	Care Leavers of Australasia Network
132	Confidential
133	Name suppressed
134	Name suppressed – partially confidential
135	Confidential
136	Name suppressed – partially confidential
137	The Shed, Western Sydney University
138	Origins NSW – partially confidential
139	Confidential

Appendix 3 Witnesses at hearings

Date	Name	Position and Organisation
Tuesday 16 August 2016 Macquarie Room, Parliament House, Sydney	Ms Deirdre Cheers	Chief Executive Officer, Barnardos Australia
	Ms Maria Le Breton	Director, Women's Domestic Violence Court Advocacy Service New South Wales
	Ms Katrina Wong	Senior Solicitor, Children's Civil Law Service, Legal Aid NSW
	Ms Nicola Callander	Solicitor in Charge, Child Protection Team, Legal Aid NSW
	Ms Liz Snell	Law Reform and Policy Coordinator, Women's Legal Service NSW
	Mr Tim Ireland	Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat (AbSec)
	Ms Suellyn Tighe	Grandmothers Against Removals NSW
	Ms Jennifer Swan	Grandmothers Against Removals NSW
	Ms Kerry Boland	NSW Children's Guardian
	Ms Louise Coe	Director, Child Safe Organisations, Office of the Children's Guardian
	Ms Carole Brewer	Young consultant, CREATE Foundation
	Ms Lisa Townshend	New South Wales State Coordinator, CREATE Foundation
	Ms Fiona Hastings	General Manager, Families and Community, CatholicCare, Sydney
	Ms Jackie Palmer	Executive Manager, Out of Home Care Services, Anglicare
Monday 26 September 2016 Jubilee Room, Parliament House, Sydney	Witness A	Individual
	Witness B	Individual
	Witness C	Individual

Date	Name	Position and Organisation
	Witness D	Individual
	Witness E	Individual
	Mr Steve Kinmond	Community and Disability Services Commissioner, Deputy Ombudsman
	Ms Mary Moore	Convenor, Alliance for Family Preservation and Restoration
	Mr Greg Morris	Advocate for Children and Families, Alliance for Family Preservation and Restoration
	Dr Elspeth McInnes	Researcher Sociologist, Family Violence, Child Abuse and Child Protection Expert, University South Australia, and Member, Expert Advisory Panel, National Child Protection Alliance
	Ms Niki Norris	Vice President, National Child Protection Alliance
	Ms Moo Baulch	Chief Executive Officer, Domestic Violence NSW
	Ms Sophie Trower	Policy Manager, Domestic Violence NSW
	Ms Julie Hourigan Ruse	Chief Executive Officer, Fams
	Ms Lyn Bevington	Vice-President, Australian Services Union
	Ms Natalie Lang	Branch Secretary, Australian Services Union
	Ms Robyn Miller	Chief Executive Officer, Mackillop Family Services
	Mr Peter Grace	State Coordination – Student Wellbeing, Catholic Education Commission NSW
	Ms Tamara Hughes	Child Protection Team Leader, Catholic Schools Office – Diocese of Broken Bay
	Ms Roseanne Plunkett	Manager, School Student and Family Program, CatholicCare Wollongong

Date	Name	Position and Organisation
Tuesday 27 September 2016 Macquarie Room, Parliament House, Sydney	Witness F	Caseworker, Queanbeyan Community Service Centre, Department of Family and Community Services
	Witness G	Caseworker, St George Community Service Centre, Department of Family and Community Services
	Ms Dylan Kennedy	Team Leader, Brighter Futures Program, Benevolent Society
	Mr Steve Turner	Assistant General-Secretary, Public Service Association of New South Wales
	Mr Ray Wilton	Child Protection Casework Manager, Department of Community Services, currently on secondment to the Public Service Association as a Regional Organiser
	Ms Katie Acheson	Chief Executive Officer, Youth Action
	Ms Jacqui McKenzie	Policy and Advocacy Manager, Youth Action
	Judge Peter Johnstone	President, Children's Court of NSW
	Mr Andrew McCallum	Chief Executive Officer, Association of Children's Welfare Agencies
	Ms Wendy Foote	Deputy Chief Executive Officer, Association of Children's Welfare Agencies
	Ms Deidre Mulkerin	Deputy Secretary, Northern Cluster, Operations, Department of Family and Community Services
	Ms Maree Walk	Deputy Secretary, Programs and Service Design, Department of Family and Community Services
Ms Kate Alexander	Executive Director, Office of the Senior Practitioner, Department of Family and Community Services	

Appendix 4 Minutes

Minutes no. 14

Thursday 12 May 2016

General Purpose Standing Committee No. 2

Room 1136, Parliament House, Sydney at 1.10 pm

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Mr Amato (substituting for Mr Mason-Cox)

Ms Barham

Ms Cotsis

Dr Phelps

Mrs Taylor

2. Briefing on the National Disability Insurance Scheme (NDIS)

Resolved, on the motion of Dr Phelps: That the committee move immediately to Item 6 on the agenda, 'Briefing on the NDIS'.

The committee was briefed on the implementation of the National Disability Insurance Scheme (NDIS) by the following officials from the Department of Family and Community Services:

- Mr Jim Longley, Deputy Secretary
- Ms Samantha Taylor, Executive Director, NDIS Implementation.

3. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes no. 13 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 21 April 2016 – Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, to secretariat, suggesting potential sources of information on the prevalence of elder abuse
- 26 April 2016 – Mr John McKenzie, Legal Services Commissioner, to Chair, responding to a request for further information regarding the handling of complaints about lawyers
- 27 April 2016 – Mr John McKenzie, Legal Services Commissioner, to secretariat, agreeing to the committee's request to publish his correspondence dated 26 April 2016

Sent:

- 4 April 2016 – Chair to Mr Jim Milne, Deputy Commissioner (Complaints), Office of the Legal Services Commissioner, requesting further information regarding the handling of complaints about lawyers

The committee noted that the following correspondence was published by the committee following agreement via email: Mr John McKenzie, Legal Services Commissioner, to Chair, received 26 April 2016.

5. Inquiry into elder abuse

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 11c, 11d, 81a, 110a, 116a, 120, and 122.

5.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published under the authorisation of the resolution appointing the committee:

- Ms Helen Rogers, Executive Director, Participation and Inclusion, Department of Family and Community Services, received 27 April 2016.

Resolved, on the motion of Ms Barham: That attachment B2 (contract with Catholic Healthcare Ltd for the Elder Abuse Helpline and Resource Centre) to the answers to questions on notice and supplementary questions from Ms Helen Rogers, Department of Family and Community Services, be kept confidential at the request of the Department.

Resolved, on the motion of Dr Phelps: That the committee authorise the publication of the following answers to questions on notice and supplementary questions:

- Answers to questions on notice – Dr Sue Field – Adjunct Fellow – Western Sydney University – received 18 December 2015
- Answers to supplementary questions – Ian Day – Chief Executive Officer – Council on the Ageing NSW – received 18 December 2015
- Answers to questions on notice – Melissa Chaperline – Solicitor – Older Persons Legal Service – Seniors Rights Service – received 14 January 2016
- Answers to questions on notice – Tom Cowen – Manager – Legal Services – Seniors Rights Service – received 2 February 2016
- Answers to supplementary questions – Tom Cowen – Manager, Legal Services – Seniors Rights Service – received 2 February 2016
- Answers to supplementary questions – Kerry Marshall – Manager – NSW Elder Abuse Helpline and Research Unit – 16 February 2016
- Answers to questions on notice – Dr Jane Mears – Associate Professor, Western Sydney University – received 26 February 2016
- Answers to questions on notice – Paul Versteeg – Senior Advisor, Research and Advocacy – Combined Pensioner and Superannuants Association – received 4 March 2016
- Answers to questions on notice and supplementary answers – Lise Barry – Senior Lecturer – Macquarie Law School – received 18 March 2016
- Answers to questions on notice and supplementary questions – Professor Wendy Lacey – University of South Australia – received 18 March 2016
- Answers to questions on notice – Dr Anthony Brown – Australian Association of Gerontology – received 21 March 2016
- Answers to questions on notice – Loula Koutrodimos – A/Chief Executive Officer – Leading Aged Care Australia – received 30 March 2016
- Answers to supplementary questions – Loula Koutrodimos – A/Chief Executive Officer – Leading Aged Care Australia – received 30 March 2016
- Answers to questions on notice – Imelda Dodds – Chief Executive Officer – NSW Trustee and Guardian – received 1 April 2016
- Answers to supplementary questions – Imelda Dodds – Chief Executive Officer – NSW Trustee and Guardian – received 1 April 2016
- Answers to questions on notice and supplementary questions – Assistant Commissioner Denis Clifford – NSW Police Force – received 5 April 2016
- Answers to questions on notice – Illana Halliday, Chief Executive Officer – Paul Sadler, Director – Aged and Community Services NSW and ACT – received 5 April 2016
- Answers to questions on notice – Professor Susan Kurrle – University of Sydney – received 12 April 2016
- Answers to questions on notice and supplementary questions – Richard McCullagh – retirement village lawyer – received 11 April 2016

- Answers to questions on notice and supplementary questions – Professor Carmelle Peisah – President – Capacity Australia – received 15 April 2016
- Further answers to questions on notice – Dr Jane Mears – Associate Professor – Western Sydney University - Questionnaire – received 15 April 2016
- Answers to questions on notice and supplementary questions – Mr Nick O'Neill – Director – Capacity Australia – received 18 April 2016
- Answers to questions on notice and supplementary questions – Sarah Breusch – Solicitor – University of Newcastle Legal Centre – received 20 April 2016
- Answers to questions on notice and supplementary questions – Meredith Lea – Project Assistant – People with Disability Australia – received 20 April 2016
- Answers to questions on notice – Pam Suttor – Chair – Elder Law and Succession Committee – Law Society of NSW – received 9 May 2016

5.3 Indigenous consultation – summary report

Resolved, on the motion of Dr Phelps; That the committee authorise the publication of the summary report of key themes and messages arising from the consultation with Aboriginal Elders held on 7 March 2016, and conducted in collaboration with the Law Society of New South Wales's Indigenous Issues Committee.

5.4 Publication of 22 March 2016 *in camera* transcript

Resolved, on the motion of Dr Phelps: That:

- the committee authorise the publication of the redacted transcript of the witnesses who appeared in camera on 18 March 2016, and that the suppressed content remain confidential.
- any person mentioned in the transcript by implication may provide a submission in response.

6. Other business – consideration of terms of reference

The chair tabled a letter proposing the following self-reference.

That the General Purpose Standing Committee No. 2 inquire into and report on matters relating to child protection including:

1. That General Purpose Standing Committee No. 2 inquire into and report on the role of the Department of Family and Community Services in relation to child protection, including:
 - (a) the capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm
 - (b) the adequacy and reliability of the safety, risk and risk assessment tools used at Community Service Centres
 - (c) the amount and allocation of funding and resources to the Department of Family and Community Services for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care
 - (d) the amount and allocation of funding and resources to non-government organisations for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care
 - (e) the support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers
 - (f) the structure of oversight and interaction in place between the Office of the Children's Guardian, Department of Family and Community Services, and non-government organisations regarding the provision of services for children and young people at risk of harm or in out of home care
 - (g) specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people
 - (h) any other related matter.

Resolved, on the motion of Ms Barham: That the terms of reference be amended by inserting a new point after (g): the amount and allocation of funding and resources to universal supports and to intensive, targeted prevention and early intervention programs to prevent and reduce risk of harm to children and young people

Mr Donnelly moved that the committee adopt the terms of reference, as amended.

The committee divided.

Ayes: Ms Barham, Mr Donnelly, Mr Green, Ms Cotsis

Noes: Mr Amato, Dr Phelps, Mrs Taylor

Question resolved in the affirmative.

7. Conduct of the inquiry into child protection

7.1 Timeline

Resolved, on the motion of Ms Barham: That hearing dates be considered by the committee after the submission closing date. Further, that hearing dates be determined by the Chair after consultation with members regarding their availability.

7.2 Closing date for submissions

Resolved, on the motion of Ms Cotsis: That the closing date for submissions be 3 July 2016.

7.3 Stakeholder list

Resolved, on the motion of Mr Green: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide members with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

7.4 Advertising

Resolved, on the motion of Ms Barham: That in addition to advertising the inquiry via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales, the committee advertise in the Early General News section of *The Sydney Morning Herald*.

8. Adjournment

The committee adjourned at 2.25 pm, until 10.00 am Monday 20 June 2016.

Madeleine Foley
Committee Clerk

Minutes no. 15

Thursday 16 June 2016

General Purpose Standing Committee No. 2

Room 1136, Parliament House, Sydney, at 11.01 am

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Dr Phelps

Mrs Taylor

Ms Voltz (substituting for Ms Cotsis)

2. Apologies

Ms Barham (substituting for Dr Faruqi for the duration of the inquiry into child protection)

Mr Mason-Cox

3. Inquiry into child protection

3.1 Briefing by the Ombudsman's office

Resolved, on the motion of Dr Phelps: That the committee authorise the recording of the private briefing by the Ombudsman's Office, for the purpose of informing members and the secretariat, and that the recording be kept confidential.

The committee was briefed on the NSW Ombudsman's role with respect to child protection services and the outcomes of recent reviews they have conducted by the following officials:

- Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman
- Ms Julianna Demetrius, Assistant Ombudsman.

4. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes no. 14 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received

- 20 May 2016 – Email from Mr Frank Ainsworth, James Cook University, stating intent to provide submission and offer to provide evidence
- 20 May 2016 – Email from Ms Vicky Kuek, Law Society of NSW, offering to facilitate indigenous consultation
- 22 May 2016 – Email from Ms Teresa Knights, individual, requesting that the committee consider workers in other states
- 23 May 2016 – Email from Mr Michael Culhane, Department of Health, providing contact at the Department of Social Services
- 23 May 2016 – Email from Ms Jacqui McKenzie, Youth Action, requesting extension for submission
- 23 May 2016 – Email from Ms Elizabeth O'Mahony Department of Family and Community Services, advising contact for department submission
- 24 May 2016 – Email from Mr Dean King, individual, requesting the committee consider cases involving cultural insensitivity
- 24 May 2016 – Email from Ms Frances Deed, individual, outlining a complaint about FACS
- 24 May 2016 – Email from Mr Greg Morris, individual, requesting that the committee consider further matters
- 24 May 2016 – Email from Ms Niki Norris, National Child Protection Alliance, stating intent to provide submission and forwarding chairman's biography
- 24 May 2016 – Email from Mr Dallas Baumgartner, individual, offering to provide evidence to inquiry
- 24 May 2016 – Email from Ms Lisa King, individual, outlining issues with case worker and children's court
- 25 May 2016 – Email from Ms Yaping Wang, individual, requesting assistance with child protection matter
- 27 May 2016 – Email from Mr Wayne Barrass, individual, requesting that the committee consider further matters
- 30 May 2016 – Email from Ms Tallia Sillicka, individual, requesting that the committee consider further matters
- 30 May 2016 – Email from Ms Teresa van Lieshout, individual, forwarding prior correspondence with Minister Hazzard's office
- 30 May 2016 – Email from Ms Julianna Demetrius, NSW Ombudsman's Office, to secretariat, offering to provide a private briefing to the committee and requesting an extension to provide a submission
- 2 June 2016 – Email from Ms Jacqui Nash, Uniting, to secretariat, requesting an extension to provide a submission
- 6 June 2016 – Email from Ms Flora Carapellucci, Department of Social Services, advising that the department will not be making a submission to the inquiry
- 14 June 2016 – Email from the Ms Jan Barham secretariat, advising that she is substituting for Dr Mehreen Faruqi for the duration of the inquiry.

6. Inquiry into child protection

6.1 Alert on website

The committee noted that the following alert was placed on the committee's website:

'This inquiry is specifically focusing on the procedures, practices and systems that operate in the area of child protection in New South Wales. It will not be investigating or reviewing any individual cases. If you are involved in a child protection matter, this inquiry cannot influence the outcome of your case'.

6.2 Managing correspondence

The committee noted that:

- any correspondence which has been emailed to all committee members will be forwarded by the chair to the secretariat and that any emails addressed directly to members are to be forwarded to the secretariat
- upon tabling, all correspondence to the inquiry be kept confidential unless otherwise published by the committee.

6.3 Managing submissions

Resolved, on the motion of Dr Phelps: That the committee adopt the following approach to the publication of submissions to the child protection inquiry:

- submissions with an extensive amount of identifying/sensitive information or adverse mention be kept confidential
- submissions where it is practicable to redact sensitive/identifying information or adverse mention be made partially confidential, provided they relate to a broader policy issue
- the committee clerk be authorised to publish all partially confidential submissions.

6.4 Extensions

Resolved, on the motion of Dr Phelps: That the committee authorise extensions to be provided to stakeholders until 31 July 2016, and a note be placed on the committee's website advising that requests for extensions can be made to the secretariat.

6.5 Stakeholders who will not be making a submission

The committee noted that the Department of Social Services and the Department of Health have advised that they will not be making a submission to the inquiry.

6.6 Inquiry timeline

The committee noted that three to four hearings will be held at the start of August and the inquiry will be completed by the end of 2016. The secretariat will consult members regarding potential hearing dates.

6.7 Indigenous consultation

Resolved, on the motion of Mr Green: That the committee hold one consultation with Aboriginal community members, facilitated by the Law Society's Indigenous Issues Committee.

7. Adjournment

The committee adjourned at 12.13 pm until Monday 20 June 2016.

Sarah Dunn
Clerk to the Committee

Minutes no. 17

Tuesday 16 August 2016

General Purpose Standing Committee No. 2

Macquarie Room, Parliament House, Sydney, at 9.33am

1. Members presentMr Donnelly, *Chair*Mr Green, *Deputy Chair* (from 9.55am)

Mr Mason-Cox

Mr Mookhey (substituting for Ms Cotsis for the duration of the inquiry into child protection)

Dr Phelps

Mr Shoebridge (substituting for Ms Barham) (from 1.31pm until 3.15pm)

Mrs Taylor

2. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes nos. 15 and 16 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 15 June 2016 – Letter from Associate Professor Daryl Higgins, Australian Institute of Family Studies, to Chair, advising that the institute will not be providing a submission
- 21 June 2016 – Email from Ms Yaping Wang to secretariat, providing additional information
- 22 June 2016 – Email from Ms Jasmin Jarvis to committee, providing additional information relevant to the inquiry into elder abuse
- 24 June 2016 – Email from Mr Maxwell Roy Brazel to committee, providing further information to the inquiry
- 25 June 2016 – Email from Mr Maxwell Roy Brazel to committee, providing further information to the inquiry
- 30 June 2016 – Email from Ms Niki Norris, Vice Chair, National Child Protection Alliance, to committee, offering to appear as a witness
- 30 June 2016 – Email from Ms Yaping Wang to committee, providing additional information further to her submission, including three attachments
- 2 July 2016 – Ms Tuana Stapleton to committee, providing additional information further to her submission
- 6 July 2016 – Ms Carol O'Donnell to committee, providing information to the inquiry
- 13 July 2016 – Email from Ms Paula Hayden, Winangay Resoures Inc, to secretariat, providing background information about the experience of Aunty Sue Blacklock and their organisation
- 17 July 2016 – Email from Ms Joan Tuaoi to committee, providing information to the inquiry
- 19 July 2016 – Email from Ms Mary Moore, The Alliance for Family Preservation and Restoration, offering to appear as a witness at a hearing
- 20 July 2016 – Email from unknown individual to committee, providing information to the inquiry
- 25 July 2016 – Email from Ms Frances Deed, individual, providing comments for consideration by committee
- 25 July 2016 – Email from Ms Kay Bolling, providing information relevant to the inquiry
- 9 August 2016 – Email from the Hon Shaoquett Moselmane MLC, Opposition Whip, advising that the Hon Daniel Mookhey MLC will be substituting for the Hon Sophie Cotsis MLC for the duration of the inquiry
- 9 August 2016 – Emails from Mr David Shoebridge MLC, to secretariat, advising that he will substitute for Ms Jan Barham MLC on the 16 August and 8 September.

4. Inquiry into child protection

4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 5, 13, 15, 28, 31-32, 37, 40-45, 47-48, 51, 56-62, 64, 66-82 and 84-97.

4.2 Partially confidential submissions

Resolved, on the motion of Dr Phelps: That the committee keep the following information confidential, as per the request of the author or as per recommendation of the secretariat: names and/or identifying and sensitive information in submissions nos. 4, 5, 9, 12, 12a-12c, 14, 17, 19-20, 24, 27, 29, 33, 35, 39, 49, 63, 65 and 83.

4.3 Confidential submissions

Resolved, on the motion of Mr Mason-Cox: That the committee keep submission nos. 1, 2-2a, 3-3a, 6-7, 10-10a, 11, 12d-12e, 16, 18, 21, 21a-21b, 22-23, 25-26, 26a-26b, 30, 34, 36, 38, 46, 50, 52-55 and 61 confidential, as per the request of the author or as per the recommendation of the secretariat, as they contain identifying and/or sensitive information.

4.4 Attachments to submissions

The committee noted that attachments to submissions are available on request from the secretariat. Upon tabling of the report, all attachments to submissions will be made confidential, unless resolved otherwise.

4.5 Inquiry timeline

Resolved, on the motion of Mrs Taylor: That the Chair's proposed timeline for the inquiry be adopted, with the secretariat to canvass members regarding their availability for a report deliberative mid to late November.

4.6 Indigenous consultation

Resolved, on the motion of Dr Phelps: That the Indigenous consultation be recorded, subject to permission being granted by all participants, and that the secretariat draft a briefing paper outlining the key issues canvassed during the consultation.

Resolved, on the motion of Mr Mookhey: That a budget of up to \$5,000 be set aside to pay for participants' travel to the Indigenous consultation on Thursday 8 September 2016.

4.7 Request to film at the hearing

Resolved, on the motion of Dr Phelps: That Pursekey Productions be authorised to film representatives of Grandmothers Against Removals giving evidence to the committee at the hearing on 16 August 2016.

4.8 Public hearing

Resolved, on the motion of Mr Mookhey: That the sequence of questioning by members at the public hearing be directed by the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Ms Deirdre Cheers, Chief Executive Officer, Barnardos Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Liz Snell, Law Reform and Policy Co-ordinator, Women's Legal Services
- Ms Nicola Callander, Solicitor in Charge, Child Protection Team, Legal Aid NSW
- Ms Katrina Wong, Solicitor, Children's Civil Law Service, Legal Aid NSW
- Ms Maria Le Breton, Director, Women's Domestic Violence Court Advocacy Service NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat
- Ms Sue-Ellen Tighe, Grandmothers Against Removals NSW
- Ms Jennifer Swan, Grandmothers Against Removals NSW.

Ms Tighe tendered the following document:

- Grandmothers Against Removals NSW, *Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making*

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kerry Boland, NSW Children's Guardian
- Ms Louise Coe, Director, Child Safe Organisations, Office of the Children's Guardian.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Lisa Townshend, NSW State Coordinator, CREATE Foundation
- Ms Carole Brewer, Young Consultant, CREATE Foundation.

Ms Townshend tendered the following document:

- Ms Lisa Townshend, NSW State Coordinator, CREATE Foundation, *opening statement*.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Jackie Palmer, Executive Manager, Out of Home Care Services, Anglicare
- Ms Fiona Hastings, General Manager, Families and Community, CatholicCare Sydney.

Ms Palmer tendered the following document:

- Department of Social Services, *Driving change: intervening early, National framework for protecting Australia's children 2009-2020*

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

4.9 Future hearings

Resolved, on the motion of Mrs Taylor: That the proposed witness list, as amended, be adopted by the committee, and that:

- up to four individuals be invited to give *in camera* evidence as part of a panel, with their evidence to focus on what went wrong in the system, what could have been done better and recommendations for the future
- up to four caseworkers from the Department of Family and Community Services be invited to give evidence as part of a panel.

Resolved, on the motion of Mrs Taylor: That the committee undertake a half day site visit to the Central Coast Multi-Agency Response Centre, on a date to be canvassed with members by the secretariat.

Resolved, on the motion of Dr Phelps: That Ms Kate Alexander, Executive Director, Office of the Senior Practitioner, Family and Community Services, be invited as a witness when the Department of Family and Community Services appear before the committee.

4.10 Tendered documents

Resolved, on the motion of Mr Green: That the committee accept and publish the following documents tendered during the public hearing:

- Grandmothers Against Removals NSW, *Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making*, tendered by Ms Sue-Ellen Tighe, Grandmothers Against Removals NSW
- CREATE Foundation, *opening statement*, tendered by Ms Lisa Townshend, NSW State Coordinator, CREATE Foundation
- Department of Social Services, *Driving change: intervening early, National framework for protecting Australia's children 2009-2020*, tendered by Ms Jackie Palmer, Executive Manager, Out of Home Care Services, Anglicare.

5. Adjournment

The committee adjourned at 5.13 pm until 29 August 2016 (Budget Estimates hearing).

Tina Higgins

Clerk to the Committee

Minutes no. 22

Thursday 8 September 2016

General Purpose Standing Committee No. 2

Law Society of NSW, Level 2, Room 201-202, 170 Phillip Street, Sydney at 1.16 pm

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Mr Shoebridge (until 2.30pm)

Mrs Taylor

2. Apologies

Mr Mason-Cox

Mr Mookhey

Dr Phelps

3. Previous minutes

Resolved, on the motion of Mr Green: That draft minutes nos. 18-21 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 17 August 2016 – Email from Mr Gary Oliver, Chief Executive Officer, Aboriginal Legal Service, to the committee, offering to provide evidence to the committee
- 17 August 2016 – Letter from Hon Natasha Maclaren-Jones MLC, Government Whip, to committee, advising that the Hon Trevor Khan MLC will be substituting for the Hon Bronnie Taylor MLC at the hearing on 26 September 2016
- 19 August 2016 – Email from Mr Lo-Shu Wen, Senior Policy Advisor, Office of the Advocate for Children and Young People, to secretariat, advising that they will lodge their submission to the inquiry by 26 August 2016
- 22 August 2016 – Email from Mr Michael Hart to secretariat, requesting to appear as a witness at the upcoming child protection hearings

- 25 August 2016 – Email from Mr Greg Cameron to committee, regarding the Port of Newcastle
- 26 August 2016 – Letter from Hon Tania Mihailuk MP, Shadow Minister for Family and Community Services, to secretariat, regarding the inquiry

Sent:

- 22 August 2016 – Correspondence from Chair to Mr Coutts-Trotter, Secretary, NSW Department of Family and Community Services, regarding the department's involvement in the September hearings
- 6 September 2016 – Correspondence from Chair to Mr David Harris MP, Member for Wyong, advising of the committee's visit to the Central Coast Multi-Agency Response Centre.

Resolved, on the motion of Mr Green: That the Aboriginal Legal Service be invited to give evidence to the committee at the public hearing on 26 or 27 September.

5. Inquiry into child protection

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 100, 102-104, 106, 111-112, 118, 121, 125 and 128.

5.2 Partially confidential submissions

Resolved, on the motion of Mrs Taylor: That the committee keep the following information confidential, as per the request of the author or as per the recommendation of the secretariat: names and/or identifying and sensitive information in submissions nos. 105, 107-109, 114-117, 120 and 122.

5.3 Confidential submissions

Resolved, on the motion of Mr Green: That the committee keep submission nos. 99, 99a, 101, 110, 113, 119 123-124, 126-127 and 129-130 confidential, as per the request of the author or as per the recommendation of the secretariat, as they contain identifying and/or sensitive information.

5.4 Submission no.98

Resolved, on the motion of Mrs Taylor: That the committee authorise the publication of submission no. 98, with the exception of identifying and/or sensitive information and potential adverse mention (including the authors name), which are to remain confidential.

5.5 Indigenous consultation

The committee held a consultation with Aboriginal community members, facilitated by Mr Rick Welsh and Ms Bobbi Murray from the Indigenous Issues Committee, Law Society of New South Wales.

Four participants at the consultation tendered their personal statements.

6. Adjournment

The committee adjourned at 4.00pm until 10.00am Friday 9 September 2016 (site visit to the Central Coast Multi-Agency Response Centre).

Tina Higgins

Clerk to the Committee

Minutes no. 23

Friday 9 September 2016

General Purpose Standing Committee No. 2

Central Coast Multi-Agency Response Centre, Wyong, 10.01am

1. Members presentMr Donnelly, *Chair*Mr Green, *Deputy Chair*

Mr Mookhey (from 10.47am)

Dr Phelps

Mrs Taylor

2. Apologies

Mr Mason-Cox

Mr Shoebridge

3. Inquiry into child protection**3.1 Site visit to the Central Coast Multi-Agency Response Centre**

The committee visited the Central Coast Multi-Agency Response Centre, accompanied by representatives of the Department of Family and Community Services.

The committee agreed for Ms Anna O'Brien, Mrs Taylor's staffer, to be present during the site visit.

4. Other business**5. Adjournment**

The committee adjourned at 12.00pm until 8.45am Monday 26 September 2016 (public hearing).

Tina Higgins

Clerk to the Committee**Minutes no. 24**

Monday 26 September 2016

General Purpose Standing Committee No. 2

Jubilee room, Parliament House, Sydney at 8.50 am

1. Members presentMr Donnelly, *Chair*Mr Green, *Deputy Chair*

Mr Khan (until 12.30 pm, substituting for Mrs Taylor)

Mr Mason-Cox

Mr Mookhey (from 9.00 am)

Dr Phelps

Mr Shoebridge (from 8.55am, substituting for Dr Faruqi for the duration of the inquiry)

Mrs Taylor (from 1.30 pm)

2. Previous minutes

Resolved, on the motion of Mr Green: That draft minutes nos. 22 and 23 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 12 September 2016 – Email from Mr David Shoebridge MLC to the secretariat, advising that he was substituting for Dr Faruqi for the duration of the inquiry
- 13 September 2016 – Email from Ms Frances Deed to the Chair and Deputy Chair regarding the child protection inquiry
- 14 September 2014 – Email from Ms Alison Wheele, Executive Assistant to the Central Coast District Director, Department of Family and Community Services to the secretariat, attaching the performance report of the Central Coast Multi-Agency Response Centre.
- 22 September 2016 – Letter from Hon Brad Hazzard MP, Minister for Family and Community Services, Social Housing, providing answers to questions on notice and supplementary questions for the portfolios of Family and Community Services, Social Housing.
- 22 September 2016 – Letter from the Hon Duncan Gay MLC, Minister for Roads, Maritime and Freight, providing answers to questions on notice and supplementary questions for the portfolios of Roads, Maritime and Freight.
- 23 September 2016 – Letter from the Hon John Ajaka MLC, Minister for Ageing, Minister for Disability Services and Minister for Multiculturalism, providing answers to questions on notice and supplementary questions for the portfolios of Ageing, Disability Services, Multiculturalism.
- 23 September 2016 – Letter from the Hon Andrew Constance MP, Minister for Transport and Infrastructure, providing answers to questions on notice and supplementary questions for the portfolios of Transport and Infrastructure.

Sent

- 1 September 2016 – Email from Committee Director to the office of the Hon Brad Hazzard MP, Minister for Family and Community Services, Minister for Social Housing – attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions.
- 1 September 2016 – Email from Committee Director to the office of the Hon Duncan Gay MLC, Minister for Roads, Maritime and Freight – attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions.
- 2 September 2016 – Email from Committee Director to the office of the Hon John Ajaka MLC, Minister for Ageing, Minister for Disability Services and Minister for Multiculturalism – attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions.
- 2 September 2016 – Email from Committee Director to the office of the Hon Andrew Constance MP, Minister for Transport and Infrastructure – attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions.

4. Inquiry into child protection**4.1 Public submissions**

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 131.

4.2 Partially confidential submissions

Resolved, on the motion of Mr Mason-Cox: That the committee authorise the publication of submission no.133, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.

4.3 Confidential submissions

Resolved, on the motion of Dr Phelps: That the committee keep submission nos. 132 and 134 confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information.

4.4 Pro forma submissions

Resolved, on the motion of Mr Mason-Cox: That the committee publish one copy of pro forma submission A on its website, noting the number of copies that have been received.

4.5 Attachments to submissions

Resolved, on the motion of Mr Green: That the committee authorise the publication of the following attachments:

- attachments B and C to submission no. 64
- attachments 10 and 14 to submission no. 75
- attachments A and B to submission no. 103.

4.6 Indigenous consultation

Resolved, on the motion of Mr Green: That the committee keep the four opening statements tendered during the Indigenous consultation on 8 September 2016 confidential, as they each contain identifying and/or sensitive information.

4.7 Report deliberative

The committee noted that the report deliberative will be held on Monday 28 November 2016 at 10.00 am and that the Chair intends to table the report on 2 December 2016.

4.8 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from Barnardos Australia, received 12 September 2016
- answers to questions on notice and supplementary questions from Anglicare, received 12 September 2016
- answers to questions on notice and supplementary questions from Grandmothers Against Removals NSW, received 12 September 2016
- answers to questions on notice and supplementary questions from CREATE Foundation (excluding Attachment 1), received 13 September 2016
- answers to questions on notice and supplementary questions from Office of the Children's Guardian, received 13 September 2016
- answers to questions on notice and supplementary questions from Women's Legal Services, received 14 September 2016
- answers to questions on notice and supplementary questions from Women's Domestic Violence Court Advocacy Service, received 16 September 2016.

Resolved, on the motion of Dr Phelps: That Attachment 1 to the CREATE Foundation's answers to questions on notice and supplementary questions, received 13 September 2016, be kept confidential.

4.9 Additional information provided by the Central Coast Multi-Agency Response Centre

Resolved, on the motion of Dr Phelps: That the following documents provided by the Central Coast Multi-Agency Response Centre be kept confidential:

- Central Coast Multi-Agency Response Centre Performance Report dated June 2016, received 14 September 2016
- Service Delivery Reform reporting tool dated 22 September 2016, received 22 September 2016
- Service Delivery Reform Infographic document, received 22 September 2016
- Development of a reporting framework for the SDR initiative on the Central Coast, Final Report, dated 22 September 2016, received 22 September 2016.

4.10 *In camera* hearing

The committee previously resolved to take *in camera* evidence from a panel of individuals.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Tina Higgins, Ms Stephanie Galbraith, Ms Sarah Dunn, Ms Shaza Barbar and Hansard reporters.

The following witnesses were sworn and examined:

- Witness A
- Witness B
- Witness C
- Witness D
- Witness E.

Witness B tendered the following document:

- Extracts of documents relating to a complaint she had made against a non-government organisation.

Witness E tendered the following document:

- World Vision, *Policy Report, Accountability and Getting to Zero Violence against Children, Improving information and accountability for eliminating violence against children, 2015.*

The evidence concluded and the witnesses withdrew.

4.11 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witness was sworn and examined:

- Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Mary Moore, Convenor, Alliance for Family Preservation and Restoration
- Mr Greg Morris, Advocate for Children and Families, Alliance for Family Preservation and Restoration
- Ms Niki Norris, Vice Chair, National Child Protection Alliance
- Dr Elspeth McInnes AM, Researcher Sociologist, Family Violence, Child Abuse and Child Protection Expert, University South Australia and Member of the Expert Advisory Panel of the National Child Protection Alliance.

Ms Niki Norris tendered the following document:

- excerpts of court orders relating to medical constraints, and a news article.

The evidence concluded and the witnesses withdrew.

Mrs Taylor left the meeting.

Mr Khan joined the meeting.

The following witnesses were sworn and examined:

- Ms Moo Baulch, Chief Executive Officer, Domestic Violence NSW

- Ms Sophie Trower, Policy Manager, Domestic Violence NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Julie Hourigan Ruse, Chief Executive Officer, Fams

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Natalie Lang, State Secretary, Australian Services Union
- Ms Lyn Bevington, Coordinator, Mountains Outreach Community Service.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Robyn Miller, Chief Executive Officer, Mackillop Family Services
- Mr Peter Grace, State Co-ordinator – Student Wellbeing, Catholic Education Commission NSW
- Ms Tamara Hughes, Child Protection Team Leader, Catholic Schools Office – Diocese of Broken Bay
- Ms Roseanne Plunkett, Manager, School Student and Family Program, CatholicCare Wollongong.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

4.12 Tendered documents

Resolved, on the motion of Dr Phelps: That the committee accept and publish the following documents tendered during the hearings:

- World Vision, *Policy Report, Accountability and Getting to Zero Violence against Children, Improving information and accountability for eliminating violence against children*, 2015, tendered by Witness E during the *in camera* hearing
- excerpts of court orders relating to medical constraints and a news article, tendered by Ms Niki Norris, Vice Chair, National Child Protection Alliance.

Resolved, on the motion of Dr Phelps: That the committee accept the following document tendered during the *in camera* hearing but keep the document confidential:

- extracts of documents relating to a complaint made against a non-government organisation, tendered by Witness B.

5. Inquiry into Budget Estimates 2016-2017

5.1 Supplementary hearings

Resolved, on the motion of Mr Mookhey: That:

- the committee hold a further two hour hearing to consider matters relating to the Ageing and Disability Services portfolios on a date during the week of 4-7 October 2016, to be determined by the Chair in consultation with the members, and inviting Dr Jim Longley, Ms Samantha Taylor and Ms Leonie King to appear as witnesses.

6. Adjournment

The committee adjourned at 5.12 pm until 8.45 am, Tuesday 27 September 2016, Macquarie Room, Parliament House.

Stephanie Galbraith
Clerk to the Committee

Minutes no. 25

Tuesday 27 September 2016

General Purpose Standing Committee No. 2

Macquarie Room, Parliament House, Sydney at 9.05 am

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair* (from 9.06 am)

Mr Mason-Cox

Mr Mookhey (from 9.11 am)

Dr Phelps

Mr Shoebridge

Mrs Taylor

2. Inquiry into child protection

2.1 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Ms Dylan Kennedy, Caseworker, Benevolent Society
- Witness F, Multicultural Caseworker, Department of Family and Community Services
- Witness G, Caseworker, Department of Family and Community Services.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Steve Turner, Assistant General-Secretary, Public Service Association
- Mr Ray Wilton, Manager Caseworker, Regional Organiser, Public Service Association, seconded from Department of Family and Community Services.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Katie Acheson, Chief Executive Officer, Youth Action
- Ms Jacqui McKenzie, Policy and Advocacy Manager, Youth Action.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Judge Peter Johnstone, President, Children's Court of NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Andrew McCallum AM, Chief Executive Officer, Association of Children's Welfare Agencies
- Dr Wendy Foote, Deputy Chief Executive Officer, Association of Children's Welfare Agencies.

Mr McCallum tendered the following document:

- Andrew McCallum, *Protecting our children without the politics*, 23 July 2013.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kate Alexander, Executive Director, Office of the Senior Practitioner, Department of Family and Community Services
- Ms Deidre Mulkerin, Deputy Secretary, Western Cluster, Operations, Department of Family and Community Services
- Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

2.2 Tendered documents

Resolved, on the motion of Mr Shoebridge: That the committee accept the following document tendered during the public hearing:

- Andrew McCallum, *Protecting our children without the politics*, 23 July 2013, tendered by Andrew McCallum.

2.3 Transcript redactions

Resolved, on the motion of Mr Shoebridge: That the committee redact the Department of Family and Community Services caseworker names from the hearing published transcript of the 27 September 2016, as requested by the Department of Family and Community Services.

3. Adjournment

The committee adjourned at 5.06 pm *sine die*.

Stephanie Galbraith
Clerk to the Committee

Minutes no. 27

Monday 28 November 2016
General Purpose Standing Committee No. 2
Room 1136, Parliament House, Sydney, at 10.03 am

1. Members present

Mr Donnelly, *Chair*
Mr Green
Mr Mason-Cox (from 10.06 am)
Mr Mookhey
Dr Phelps
Mr Shoebridge
Mrs Taylor

2. Draft minutes

Resolved, on the motion of Mrs Taylor: That draft minutes no. 26 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 26 September 2016 – Email from Ms Cathy Murray to secretariat, regarding an individual child protection matter
- 29 September 2016 – Email from Ms Cathy Murray to committee, regarding an individual child protection matter
- 16 November 2016 – Email from Ms Sun-Jae An to committee, regarding the child protection inquiry

- 13 September 2016 – Letter from Ms Kerry Boland, NSW Children’s Guardian, to the secretariat, providing clarifications to evidence provided on the 16 August 2016
- 4 October 2016 – Letter from Ms Fiona Hastings, General Manager, CatholicCare, to Chair, regarding evidence she provided at the hearing on 16 August 2016
- 4 October 2016 – Email from Ms Niki Norris, Vice Chair, National Child Protection Alliance, to secretariat, regarding clarifications in relation to her responses at the hearing of 26 September 2016
- 31 October 2016 – Email from Ms Rosemary Davidson, Executive Officer, Children’s Court, to secretariat, regarding Judge Peter Johnstone’s transcript of the 27 September 2016
- 28 October 2016– Corrected transcript from Witness E clarifying evidence provided at the *in camera* hearing on 26 September 2016
- 22 November 2016 – Email from the Hon Shaoquett Moselmane, Opposition Whip, to secretariat, advising that the Hon Daniel Mookhey will substitute for the Hon John Graham for the duration of the inquiry into child protection.

4. **Inquiry into Budget Estimates 2016-2017 – Report deliberative**

Resolved, on the motion of Dr Phelps:

- That the draft report [as amended] be the report of the committee and that the committee present the report to the House;
- That the transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the Budget Estimates hearings be tabled in the House with the report;
- That upon tabling, all unpublished transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the Budget Estimates hearings, be published by the committee, except for those documents kept confidential by resolution of the committee;
- That the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- That dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- That the report be tabled on Friday 2 December 2016.

5. **Inquiry into child protection**

5.1 **Confidential submissions**

Resolved, on the motion of Mr Shoebridge: That the committee keep submission nos. 135 and 139 confidential, as per the request of the author, as they contain identifying and/or sensitive information.

5.2 **Closing date for submissions**

Resolved, on the motion of Mrs Taylor: That an alert be placed on the committee’s webpage advising that submissions to the inquiry are no longer being accepted as the report is currently being drafted.

5.3 **Answers to questions on notice**

The committee noted the following answers to questions on notice:

- answers to questions on notice and supplementary questions, Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, Ombudsman NSW, received 4 November 2016
- answers to supplementary questions, Ms Wendy Foote, Deputy Chief Executive Officer, Association of Children’s Welfare Agencies, received 4 November 2016
- answers to questions on notice and supplementary questions, Mr Steve Turner, Public Service Association of NSW, received 3 November 2016
- answers to questions on notice and supplementary questions, Judge Peter Johnstone, Children’s Court of NSW, received 31 October 2016

- answers to questions on notice and supplementary questions, Ms Natalie Land and Ms Lyn Bevington, Australian Service Union, received 27 October 2016
- answers to questions on notice and supplementary questions, Mrs Moo Baulch, Chief Executive Officer, Domestic Violence NSW, received 27 October 2016
- answers to questions on notice and supplementary questions, Department of Family and Community Services, received 27 October 2016
- answers to questions on notice, Ms Dylan Kennedy, Team Leader, Brighter Futures, The Benevolent Society, received 26 October 2016
- answers to questions on notice and supplementary questions, Mr Peter Grace, State Coordinator, Student Wellbeing, Catholic Education Commission, received 26 October 2016
- answers to questions on notice and supplementary questions, Ms Mary Moore, Convenor, Alliance for Family Preservation and Restoration, received 24 October 2016
- answers to questions on notice and supplementary questions, Ms Katie Acheson, Chief Executive Officer, Youth Action, received 21 October 2016
- answers to questions on notice from Ms Fiona Hastings, General Manager, CatholicCare Sydney, received 4 October 2016
- answers to questions on notice and supplementary questions from Ms Katrina Wong and Ms Nicola Callander, Legal Aid NSW, received 27 September 2016
- answers to questions on notice and supplementary questions from Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat, received 22 September 2016
- answers to questions on notice and supplementary questions from Ms Maria Le Breton, Director, Women's Domestic Violence Court Advocacy Service NSW, received 16 September 2016
- answers to questions on notice and supplementary questions from Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Services NSW, received 14 September 2016
- answers to questions on notice and supplementary questions from Ms Kerry Boland, NSW Children's Guardian, received 13 September 2016
- answers to questions on notice from Ms Lisa Townsend, NSW State Coordinator, CREATE Foundation, received 13 September 2016
- answers to questions on notice and supplementary questions from Ms Deirdre Cheers, Chief Executive Officer, Barnardos Australia, received 12 September 2016
- answers to questions on notice from Ms Suellyn Tighe, Grandmothers Against Removals NSW, received 12 September 2016
- answers to questions on notice and supplementary questions from Ms Jackie Palmer, Executive Manager, Anglicare, received 12 September 2016

Resolved, on the motion of Mr Shoebridge: That

- the answers to supplementary questions from Ms Julie Hourigan Ruse, Chief Executive Officer, Fams, received 11 November 2016, be published.

Resolved, on the motion of Mr Shoebridge: That

- Attachment 3 provided by the Public Service Association of NSW as part of their answers to supplementary questions be kept confidential, as it contains identifying and/or sensitive information
- the case study attached to the responses to questions on notice and supplementary questions provided by Domestic Violence NSW, be kept confidential as per the request of the author as it contains identifying and/or sensitive information.

5.4 Publication of in-camera transcript

Resolved, on the motion of Mr Mason-Cox: That the committee authorise the publication of the *in camera* transcript from 26 September 2016, excluding the redacted content which is to remain confidential.

5.5 Clarifications and corrections to transcripts

Dr Phelps moved: That the committee authorise the following corrections to transcripts:

- Judge Johnstone's evidence on 27 September 2016, be amended to replace 'that is at the interim phase' with 'that is at the establishment phase' on page 8 of the transcript, as requested by Judge Peter Johnstone, Children's Court NSW
- Witness E's evidence on 26 September be amended to omit 'sexually abused by her - ' and insert instead 'sexually abused by their older sibling during access that this carer had pushed for, believing they should have contact with them' on page 6 of the in camera transcript.

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That

- the transcript of Judge Johnstone's evidence on 27 September 2016 be amended to include a footnote which clarifies that his response 'that is at the interim phase' should have been 'that is at the establishment phase', as was requested by Judge Peter Johnstone, Children's Court NSW
- the transcript of Witness E's evidence on 26 September 2016 be amended to include a footnote which clarifies that the response 'sexually abused by her - ' should have been 'sexually abused by their older sibling during access that this carer had pushed for, believing they should have contact with them', as was requested by Witness E.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of correspondence from:

- Ms Kerryn Boland, NSW Children's Guardian, dated 13 September 2016, clarifying evidence she provided to the committee on 16 August 2016
- Ms Hastings, General Manager, CatholicCare, dated 4 October 2016, correcting evidence she provided to the committee on 16 August 2016
- Ms Niki Norris, Vice Chair, National Child Protection Alliance, dated 4 October 2016, clarifying evidence she provided to the committee on 26 September 2016.

5.6 Indigenous consultation summary report

The committee noted that the Indigenous consultation summary report was published by the committee clerk on the committee's webpage.

5.7 Roundtable discussion on potential recommendations

The committee discussed potential report recommendation themes.

5.8 Private round table discussion

Resolved, on the motion of Mr Green: That a private roundtable discussion be held with selected stakeholders on the 13 February 2016.

5.9 Report deliberative

The committee noted that the report deliberative meeting will now be rescheduled from 13 February 2017 to a date in March 2017.

5.10 Adjournment

The committee adjourned at 12.05 pm, until Monday 13 February 2017, Room 1254, Parliament House.

Stephanie Galbraith
Clerk to the Committee

Minutes no. 29

Monday 13 February 2017

General Purpose Standing Committee No. 2

Jubilee Room, Parliament House, Sydney at 10.06 am

1. Members presentMr Donnelly, *Chair*Mr Green, *Deputy Chair*

Mr Mason-Cox

Dr Phelps

Mr Shoebridge

Mrs Taylor

2. Apologies

Mr Mookhey

3. Inquiry into child protection**3.1 Private roundtable**

The committee conducted a private roundtable with: Ms Kerryn Boland, NSW Children's Guardian; Mr Steve Kinmond, Deputy Ombudsman; and Judge Peter Johnstone, President of the Children's Court of NSW.

Persons present other than the committee: Ms Tina Higgins; Ms Stephanie Galbraith; and Ms Shaza Barbar.

4. Adjournment

The committee adjourned at 12.20 pm until Friday 10 March, Room 1136, Parliament House (report deliberative - inquiry into child protection).

Stephanie Galbraith

Clerk to the Committee**Draft minutes no. 30**

Friday 10 March 2017

General Purpose Standing Committee No. 2

Room 1136, Parliament House, Sydney at 10.06 am

1. Members presentMr Donnelly, *Chair*Mr Green, *Deputy Chair*

Mr Mason-Cox

Mr Mookhey

Dr Phelps

Mr Shoebridge (substituting for Ms Walker)

Mrs Taylor

2. Draft Minutes

Resolved, on the motion of Dr Phelps: That draft minutes nos. 28 and 29 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

- 17 February 2017 - Letter from Judge Peter Johnstone, President of the Children’s Court of NSW to the Hon Greg Donnelly MLC, providing additional information regarding child protection matters
- 7 February 2017 – Email from the author of submission no. 134 to the secretariat, regarding the child protection inquiry and providing additional information
- 7 February 2017 – Email from the author of submission no. 134 to the secretariat, confirming agreement to publication of submission no. 134 as redacted
- 23 January 2017 – Email from the author of submission no. 134 to the secretariat, regarding proposed redactions to submission no. 134
- 13 December 2016 – Email from Ms Leesa King to committee, providing comments for consideration by the committee
- 25 November 2016 – Email from Mr Greg Andreson, Editor, Men’s Health Australia to secretariat, providing clarification to Barnardos Australia’s submission.

4. Inquiry into child protection

4.1 Partially confidential submission

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 134, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the submission author.

4.2 Answers to supplementary questions

The committee noted that the following answers to supplementary questions were published under the authorisation of the resolution appointing the committee:

- answers to supplementary questions from Mr Steve Turner, Acting General Secretary, Public Service Association, received 3 November 2016.

4.3 Consideration of the Chair’s draft report

The Chair submitted his draft report entitled *Child Protection*, which having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Shoebridge: That paragraph 1.1 be amended by omitting ‘Everyone has a role to play’ and inserting instead ‘While the primary responsibility lies with a child’s family, including in the Aboriginal community the extended kinship structure, everyone has a role to play’.

Resolved, on the motion of Mr Shoebridge: That the dot points in paragraph 1.5 be amended by inserting the following percentages at the end of each:

- ‘(17 per cent)’
- ‘(26 per cent)’
- ‘(57 per cent)’.

Resolved, on the motion of Dr Phelps: That the following paragraph be omitted:

‘What these reviews have all shown, however, is that the child protection system is faced with a number of very challenging and systemic issues, many of which are once again fleshed out within this report. It is these issues that we need to continue focusing on – to find more effective and innovative solutions.’

Resolved, on the motion of Mr Mason-Cox: That the following paragraph be inserted after paragraph 1.70:

‘The current system is failing vulnerable children and families. It is overwhelmed and operates predominantly in crisis mode. It is reactive not proactive and apparently incapable of adequately addressing the systemic issues that review after review has identified over the last decade. Accountability for outcomes is poor and often non-existent – the victims are the

vulnerable children and families whom the system is meant to be assisting. Can we do better? Business as usual is just not acceptable. FACS and the political system must be held accountable for this failure to protect the most vulnerable in our communities.'

Resolved, on the motion of Mr Shoebridge: That the following paragraph be inserted after Mr Mason-Cox's new paragraph after 1.70:

'The sector is fatigued from reform, tired of ad hoc trials, poorly served by underfunded and incomplete programs, losing talent and experience due to short term contracts and delivered a disservice by constant political scapegoating. This committee, indeed all of parliament, needs to not only make recommendations but see that they are implemented, properly funded and given time to work. In the modern political cycle, and especially given the highly emotive subject matter of child protection, this is a challenge that most governments and parliaments have failed in the past. We need to do better.'

Chapter 2

Resolved, on the motion of Dr Phelps: That paragraph 2.14 be amended by inserting 'Futures' after 'Brighter'.

Resolved, on the motion of Dr Phelps: That paragraph 2.63 be amended by inserting 'for which they were originally contracted' following 'rather than providing early intervention work', and deleting the quotation marks.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.104 be amended by inserting at the end: 'It was a repeated theme in submissions the committee received that the system should be focused on keeping families together, helping families at the earliest stages to resolve troubles and keeping children safe in their homes.'

Resolved, on the motion of Mr Shoebridge: That the following paragraph be inserted after paragraph 2.105:

'The list of FACS early intervention services at 2.3 of this report, each of which has limited scope in terms of the families and children they can access, regions where they can operate, times they will operate for and outcomes they are designed to achieve is evidence of how piecemeal early intervention programs are in NSW. That piecemeal approach is clearly not addressing the systemic need for early intervention in child protection.'

Resolved, on the motion of Mr Shoebridge: That the following paragraphs be inserted after paragraph 2.109:

'Especially for Aboriginal communities the historical and ongoing distrust with FACS (or as almost all Aboriginal witnesses still call it 'DOCS') means that simply rolling out additional caseworkers will almost certainly fail to deliver results. The ground breaking work of the Grandmothers Against Removals who are focused on far greater levels of Aboriginal involvement and Aboriginal self-determination in the child protection system sets out the most hopeful path yet for reducing Aboriginal child removals and keeping Aboriginal children safe in their extended kinship structures and on their traditional country. We will address this further in chapter 7 of the report.

Of course it is not just Aboriginal communities that respond to FACS officers and caseworkers with distrust and reticence. It is an unmistakable fact that many families will oppose having any involvement with FACS for fear that once they disclose their problems to a FACS worker this will be used as evidence in support of child removal. For this reason innovative solutions are needed to access families in need of early intervention. Just spending more money on the traditional case-worker model is unlikely to deliver the results needed. Part of the answer may well lie with innovative co-design approaches such as those considered in Chapter 9 of this report.'

Resolved, on the motion of Mr Shoebridge: That the following paragraphs be inserted after paragraph 2.111:

‘There is a simple reason why this committee proposes a one-off injection of funds into early intervention, we see it as the only viable way to break the existing child protection cycle. Currently the lack of early intervention is allowing more families to fall into crisis with more children in need of care and more children being removed. As more children move into care the process of removing them from their families and keeping them in out of home care is extremely resource intensive. Currently the child removal and out of home care part of the system takes 83 per cent of the overall state government resources. This leaves just 17 per cent of state resources to be applied to the early intervention work that is so essential.

Given the current situation no government could in good conscience simply remove funding from case workers and the out of home care sector and divert it to early intervention. This would leave many vulnerable children who are either in the system or at serious risk of harm, exposed to abuse or neglect. What is needed then is a serious fresh commitment of resources into early intervention. It will also require those resources to remain in place for at least five years to break this unvirtuous cycle. Done properly this will keep more families together, and over time reduce the need for crisis intervention and child removal. This will then progressively free up existing resources from the crisis part of the system to be transferred to the early intervention work and produce a, hopefully sustainable virtuous cycle in child protection. We make this call for investment in families knowing full well that it will be a significant call on resources. However we see investment in families and children as every bit as important, if not more so, than investment in roads, railways and hospitals.’

Resolved, on the motion of Mr Shoebridge: That recommendation 2 be amended by inserting ‘for at least a five year period’ after ‘additional funding’.

Resolved, on the motion of Mr Mason-Cox: That the secretariat draft and circulate via email an amendment to be inserted after paragraph 2.111 and an associated recommendation, referring to additional funding for evidence based prevention and early intervention services being directed by a cross sector body, with Mr Mason-Cox to provide the secretariat with the representatives to be included as members of this body.

Chapter 3

Resolved, on the motion of Mr Shoebridge: That the secretariat draft and circulate via email an amendment to be inserted after paragraph 3.4, which should include the number of children at risk of significant harm in each district and the number of children receiving a face to face assessment.

Resolved on the motion of Mr Mason-Cox: That the secretariat draft and circulate via email additional evidence to be included in the report about men’s behaviour change programs, including an additional committee comment and recommendation to be inserted before 3.128.

Mr Shoebridge moved: That the following paragraph be inserted after paragraph 3.126:

‘While there were many calls for more resources in this part of the system we do not see this as the solution to the systemic problems in child protection in New South Wales. The evidence before the committee makes it clear that additional resources are needed most desperately in early intervention. When it comes to risk of harm and reporting the most critical needs are for greater objectivity, better systems to pick up cumulative risk, and greater consistency in outcomes.’

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Green, Mr Mookhey, Dr Phelps, Mr Shoebridge, Mrs Taylor.

Noes: Mr Mason-Cox.

Question resolved in the affirmative.

Resolved on the motion of Mr Mason-Cox: That:

- (a) paragraph 3.126 be amended by omitting ‘and greater consistency from the department in terms of its response to reports’
- (b) paragraph 3.127 and recommendation 3 be amended by omitting ‘and allow for more consistent responses’ after ‘child protection assessments’.

Resolved, on the motion of Dr Phelps: That paragraph 3.129 be amended by omitting the following sentence at the end: ‘Failure to do so may result in tragic circumstances, which is a risk that just cannot be taken.’

Resolved, on the motion of Mr Shoebridge: That the following paragraphs be inserted after recommendation 4:

‘With so many of the current risk of significant harm reports being left unaddressed and without any face to face follow-up the system is providing a false sense to those who put in risk of significant harm reports that something will be done to protect the children who are the subject of the report. However in many cases the only response will be to open a file, because of resource constraints perform no work on it, and then close it after four weeks if no additional report is received. This is an extremely troubling systemic response and very obviously causes many case workers to feel a sense of responsibility and concern when they are powerless to help so many children in need.

Providing reporters with information about resources that families and carers under stress could be directed to would clearly be beneficial. This is not to suggest that statutory responsibility should then pass on to reporters, but it will be a step towards the community resuming a part of its overall responsibility to look out for children at risk.’

Chapter 4

Resolved, on the motion of Dr Phelps: That paragraph 4.13 be amended by inserting ‘supposed to be’ before ‘conducted in an adversarial manner’.

Resolved, on the motion of Dr Phelps: That footnote 313 be amended by inserting ‘(bolding in original)’ at the end of the footnote.

Mr Green left the meeting.

Resolved, on the motion of Mr Shoebridge: That the secretariat draft and circulate via email an amendment to be inserted before paragraph 4.4, referring to Judge Johnstone’s evidence that parental responsibility is awarded in 99 per cent of cases.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.76 be amended by:

- (a) omitting ‘that’ and inserting instead ‘the recommendation’ before ‘of the department’
- (b) inserting at the end: ‘The figures from the Court give this position credibility’.

Resolved on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 4.79:

‘While we accept that Children’s Court magistrates have deep experience in their jurisdiction and are given training on the impacts of child removal, the fact remains that no evidence was able to be presented to the committee that showed how magistrates took these factors into account. There were no expert reports presented to the committee that showed the effect of child removals such as the statistic that once a child is taken into care then they are ten times more likely to have their own child removed into care when they become a parent. Then there are the other known impacts of child removal on educational performance, substance abuse, work opportunities and life expectancy. Child removal decisions should be made by the Court based on all the evidence about the risk of harm to a child if they remain with their parents or

carers, together with the known damage that removal will do. Of course, all of this should be considered by the caseworker at earlier stages of the process. This imbalance needs to be addressed. By not directly and openly considering this body of evidence the system cannot be producing results that are in the best interest of children.'

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after recommendation 6:

'Recommendation x

That the NSW Government amend the *Children and Young Persons (Care and Protection) Act* 1998 to include a specific provision requiring the Court to consider the known risks of harm to a child on being removed from their parents or carer and placed into care when making a decision on potential child removal in care and protection proceedings, together with the risks of leaving the child in their current circumstances.'

Resolved, on the motion of Mrs Taylor: That paragraph 4.82 be amended by inserting '(particularly in rural and regional areas)' after 'certain geographic locations'.

Mr Mookhey moved: That paragraph 4.82 be amended by inserting at the end: 'Given the disproportionate number of Aboriginal children the subject of care proceedings, all practical efforts should be made to ensure that Aboriginal representation in the Children's Court of New South Wales is achieved.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mason-Cox, Mr Mookhey, Mr Shoebridge, Mrs Taylor.

Noes: Dr Phelps.

Question resolved in the affirmative.

Resolved, on the motion of Mr Mason-Cox: That recommendation 8 be amended by omitting 'magistrate' and inserting instead 'Children's Magistrate' after 'by a specialist'.

Chapter 5

Resolved, on the motion of Mr Shoebridge: That the secretariat draft and circulate via email evidence to be included in the report about the lack of stability of placements for children and young persons in out of home care.

Chapter 6

Resolved, on the motion of Mr Shoebridge: That paragraph 6.57 be amended by inserting at the end:

'However it should not be so hard. These are children who the state, through the Minister, has assumed parental responsibility for. The fact is that parenting responsibilities now extend well beyond the age of 18 and include ongoing help and support while young adults find their first home, take on tertiary education or secure their first serious job. This should be recognised more directly in the *Children and Young Persons (Care and Protection) Act* 1998 by a clear additional statutory responsibility on the Minister to provide this support for children who have been in care, at least until age 21, where that young person requests that support.'

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after paragraph 6.57:

'Recommendation x

That the *Children and Young Persons (Care and Protection) Act* 1998 be amended to provide a clear, non-discretionary responsibility on the Minister to provide ongoing support for young adults up to at least age 21, where that young person has requested that support'.

Mr Green joined the meeting.

Resolved, on the motion of Mr Green: That recommendation 11 be amended by:

- (a) omitting 'Minister for Family and Community Services' and inserting instead 'NSW Government' before 'improve leave care planning'
- (b) inserting the following two new bullet points at the end of the recommendation:
 - changing the focus and name of 'leaving care plans' to 'transitioning care plans'
 - developing a specific strategy to create three year transition plans, with a sliding scale in the level of support to be provided from ages 18 to 21.

Chapter 7

Resolved, on the motion of Mr Shoebridge: That paragraph 7.90 be amended by inserting 'deeply' before 'concerned by statistics'.

Resolved, on the motion of Mr Shoebridge: That paragraph 7.90 be amended by inserting at the end: 'To be frank the figures show that the current approach has failed.'

Resolved, on the motion of Mr Mason-Cox: That paragraph 7.95 be amended by inserting at the end:

'We note that this review is expected to take place over two and a half years and find that this timeframe is unacceptably long. The review should be completed as a matter of urgency with bi-annual updates until it has been completed.'

Resolved, on the motion of Mr Shoebridge: That Recommendation 13 be amended by omitting 'an annual report' and inserting instead 'bi-annual reports' before 'to the NSW Parliament'.

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after Recommendation 13:

'Recommendation x

That the NSW Government commit to working across NSW with Aboriginal communities, as well as Aboriginal organisations such as Grandmothers Against Removals, to provide a far greater degree of *Aboriginal* self-determination in decisions on supporting families, child protection and child removals.'

Chapter 8

Resolved, on the motion of Mr Mason-Cox: That recommendation 14 be amended by omitting 'explore whether it is possible to' before 'set caseload targets'.

Resolved, on the motion of Mr Shoebridge: That paragraph 8.69 and recommendation 15 be amended by omitting 'identify opportunities' and inserting instead 'change workplace systems'.

Chapter 9

Resolved, on the motion of Mr Mookhey: That paragraph 9.33 be amended by inserting at the end:

'In particular, caseworkers need to be provided with training on the implementation of the model litigant policy and with appropriate compliance and accountability measures'.

Resolved, on the motion of Mrs Taylor: That the following new recommendation be inserted after paragraph 9.84:

'Recommendation x

That the Department of Family and Community Services fully funds the Central Coast Multi-Agency Response Centre model and implements this model in those areas of the state with greatest need'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and recommendation be inserted following paragraph 9.89:

‘It was a consistent theme amongst parents and stakeholders that there was no clear policy available from FACs that set out how restoration was to be achieved. Much of the evidence focused on the individual discretionary powers of case workers who parents and carers felt were continually moving the goal posts and making restoration impossible. This should be addressed with a clear plain English policy position on restorations and an effective independent internal review process for parents and carers who have been denied restoration.

Recommendation x

That the Department of Family and Community Services publish a plain English policy position on how parents and carers can work towards restoration of their children, including a clear internal review process for parents and carers who have been denied restoration’.

Dr Phelps moved: That all recommendations in the report be deleted and the following new recommendation be inserted at the end of chapter 9:

‘Recommendation x

That the Department of Family and Community Services be abolished and associated new systems put in place.’

Question put.

The committee divided.

Ayes: Dr Phelps

Noes: Mr Donnelly, Mr Green, Mr Mason-Cox, Mr Mookhey, Mr Shoebridge, Mrs Taylor.

Question resolved in the negative.

Mr Mason-Cox moved: That the following new recommendation be inserted at the end of chapter 9:

‘Recommendation x

That the NSW Government transfer the child protection functions of the Department of Family and Community Services to a newly established statutory body, the Child Protection Commission, with the following key features:

- an independent statutory body with a Chief Executive Officer and Advisory Board appointed by, and accountable to, the Minister for Family and Community Services
- the Advisory Board to comprise key stakeholders including out of home care providers, the Children’s Guardian, the Ombudsman, the Chief Magistrate of the NSW Children’s Court, senior representatives from NSW Police, and the Health and Education departments, as well as independent directors with relevant commercial experience’.

Question put.

The committee divided.

Ayes: Mr Mason-Cox

Noes: Mr Donnelly, Mr Green, Mr Mookhey, Dr Phelps, Mr Shoebridge, Mrs Taylor.

Question resolved in the negative.

Resolved, on the motion of Mr Green that:

- a. The draft report [as amended] be the report of the committee and that the committee present the report to the House, subject to the committee agreeing to circulated amendments via email;
- b. The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- c. Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

- d. Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be kept confidential by the committee.
- e. The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f. The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g. Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h. That the report be tabled on 16 March 2017.
- i. That the Chair hold a press conference on 16 March 2017.

5. Adjournment

The committee adjourned at 2.05 pm, until *sine die*.

Stephanie Galbraith
Clerk to the Committee

Appendix 5 Dissenting statements

The Hon Dr Peter Phelps MLC, Liberal Party

It is a common fallacy that with “just a bit more money”, “a few more resources”, “a bit more service co-ordination”, “a fraction more goodwill”, that Government can solve any social problem. It cannot. In fact, governments are particularly bad at solving social problems, and generally any action they undertake only exacerbates foundational problems.

While this report means well, we should not judge any Governmental institution on its intentions, but its outcomes. The ‘child protection’ system in place in NSW does a piecemeal job of actually providing protection to children, and appears to display a lack of sympathy to non-middle class families.

The Committee repeatedly heard from witnesses who said that social workers and mandatory reporters are now so concerned about not reporting potential child abuse that deviations from middle class norms of parenting are the triggers for ROSH claims.

The truth is this: there *are* some parents whose amoral criminality is boundless. But this is hardly a new phenomenon. Hogarth’s famous image of ‘Gin Lane’ reflected a culpably deadly parenting evident among some sections of the working class. And yet, British society managed to survive the 18th Century, without the plethora of social workers, government busy-bodies, and NGOs sucking avariciously at the teat of public funding.

In 21st Century Australia, however, the societal responses to bad parenting have been usurped by the state and its hangers-on. Whereas a neglected or abused child might previously have been taken in by a relative, neighbour, friend, or private benevolent institution, the intimate but impersonal hegemony of the modern state so bureaucratises the system that any individual response is met with a wall of inertia and red tape.

Even worse, the current system is functionally incapable of improvement. There is an irreducible conflict between the ‘FACS worker as helper of dysfunctional families’ and ‘FACS worker as remover of children from dysfunctional families’. A parent or carer in a dysfunctional family must now undertake a terrible calculus before seeking any official help: “if I tell them something I might get help; but if I tell them too much them they might take away my children”.

Some members of the Committee have suggested that the role of FACS be clearly delineated: they are either social workers with no removal power; or they are the statutory agency tasked with removing children from ROSH situations. I agree – they cannot be both. But I go further and suggest that they should be neither.

The provision of social service to dysfunctional families can be provided by NGOs. Indeed, in my earlier 18th Century example, British society did not merely survive, but flourished, when the solutions to social problems were met by the very communities from which those problems sprang.

If, on the other hand, FACS simply becomes the enforcement mechanism for child removal, then it is surely redundant. The NSW Police already exists to protect the right of individuals – even from fellow family members – and could perform this role within the existing statutory framework.

Of course, this still leaves the vexed issue of removal for ‘neglect’. What one person may consider ‘neglect’ (from their class or cultural perspective) may seem absolutely reasonable from the perspective of the parent of the ‘neglected’ child. The Committee heard from multiple witnesses about this phenomenon and the particularly high incidence of this in relation to aboriginal communities.

Perhaps what a white, middle class, private-schooled, university-educated FACS social worker considers to be ‘neglect’ is nothing more than the cheerful make-do poverty of people in an institutionalised multi-generational non-working class of welfare recipients? Or, to put it another way: maybe children would be happier with their own terrible, poor, corporal-punishing parents, rather than a ‘better’ set of respectable bourgeois parents given to them by the government?

Nor do I see the need for government to step in when children have adequate – as defined by the children themselves – informal carers, whether they be kin, neighbours, or friends. Given the clear statistics on the higher probability of significant social dysfunction amongst forcibly-removed children, I am not sure that there is *any* level of bad parenting – below that of a criminal threshold – which would justify the removal of children by the State.

Sadly, not one of the submissions we received explicitly dealt with the matter of ‘shame’. It might be politically incorrect to seek to revive the concept of community reprobation, but it offers an important fulcrum in attempting to change bad behaviours. Truly horrible parents *should* be shamed, and they should be shamed by their peers. They should be reminded, by their peers, that they have a duty to raise their children and, if that comes into conflict with their own self-indulgent behaviours, then it is the latter which must be set aside, for the sake of the former.

I find it impossible to believe that a committee of local grandmothers, selected at random, could do a worse job of child protection than the current State bureaucratic system. Indeed, I suspect that they would do a much better job of support for (and criticism of) parents and, if ultimately necessary, the removal of children.

Unsurprisingly, that was *precisely* demonstrated by the practical evidence of the Lightning Ridge experiment. The fact that this model has not been adopted more broadly would astonish me, except for the fact that we all know that no bureaucracy ever willingly seeks to reduce its own power or authority.

Communities work – usually by their own initiative, but sometimes when they are forced to do so. Government interventions in this space serve merely to prop up the existing situation, and to allow communities to avoid the responsibility of fixing their own problems.

And, despite repeated questioning, there was no model, from anywhere around the world, which saw government performing any better in this field than was Australia. It is time for a radical change.

RECOMMENDATION 1

That the Department of Family and Community Services be abolished in its entirety, and all legislation and regulations that it administers be repealed.