

Removal of new born babies, some case studies from GMAR advocacy

Case study one - baby dies in utero following threats of removal

An Aboriginal couple with three young children relocated from interstate. Arrangements for accommodation with family fell through and they found themselves homeless. They were staying in emergency accommodation, in a hotel, arranged by the Housing Department. FACS turned up to the hotel with police to remove the children without making any attempt to contact the couple and discuss their situation.

FACS made allegations that the couple's relationship involved domestic violence and that they were abusing alcohol. However, the main concern relied upon in the initial court documents to justify the children remaining in care was the homelessness situation.

A few weeks after the removal, the couple became aware that they were pregnant. They worked very hard with social services to secure public housing capable of housing all of the children, including the new baby. They completed parenting programs and drug and alcohol counselling. They undertook drug and alcohol testing and maintained a completely clean record throughout the pregnancy.

During this time, FACS lodged updated applications with the children's court, seeking orders to retain care of the children until they are 18 years of age. FACS workers had conversations with the couple indicating that the new born baby would most likely be taken into care. No formal meetings were held with the couple to discuss what steps might be taken to retain custody of their baby.

The daily routine demanded by FACS was very stressful for the expectant mother, both physically and emotionally. She was travelling long distances on public transport every day to keep appointments with various programs, visit the children and keep health appointments monitoring her pregnancy. She was incredibly apprehensive about the impending birth due to the threats to remove the newborn baby. She was also very stressed by reports by her children that they were being mistreated in foster care.

The mother presented to hospital when 35 weeks pregnant complaining of chronic abdominal pain. Two days later, the foetus died following a uterine rupture. The hospital has conceded in reports that she did not receive adequate medical care. Discussions with health professionals have also indicated that the physical stress placed on the pregnant woman through all the travel could have played a causative role in the tragedy that led to her losing her baby. The couple maintain a belief that the emotional stress they were under also played a causative role.

Despite going through this trauma and continuing to comply with all FACS requests, being completely clean from substances and having a big house for the children to live in, FACS are continuing with their applications to remove the children until they are 18 years of age.

Case study two - baby removed despite court order

An Aboriginal mother and her partner had four children removed from their care, with FACS obtaining orders to retain control of the children until they are 18 years of age. Approximately 18 months later the couple found out the mother was pregnant again.

The couple initially came to the attention of the department due to a history of drug use and continuing treatment. This was despite not using drugs for many years before having children and remaining clean throughout their time as parents. The children were removed for “emotional neglect”, following allegations that the children were not fed a healthy diet, were not paid sufficient attention by their parents and lived in an unclean environment. Many of the allegations raised were disputed by the parents, who believed they were providing a loving and safe environment.

The couple complied with all FACS requests in terms of behavioural change, including attending multiple parenting courses, emotional coaching and counselling. In their own words, “we did everything FACS asked of us and were working very hard to try and get our children back”.

During the pregnancy, FACS workers had raised with the parents the need for perinatal meetings to discuss what would happen with the care of the baby once it was born. However, only one such meeting was arranged, one month prior to the birth of the child. At this meeting, the possibility of removing the child was not put forward by FACS workers as the likely scenario, with other options including the couple spending an initial period after the birth with a Grandmother to receive extra support before returning home, or returning home immediately and having support from an intensive family service.

A few days after the baby was born, FACS delivered paperwork to the parents notifying them of an application that was to be imminently considered by the children’s court to remove the baby from their care. The FACS caseworker explained that they had “not had enough time” to properly assess the suitability of the parents and determine whether their lives had changed meaningfully from when their previous children were removed.

Despite still recovering from a caesarian, the mother attended the court case, along with the family. The President of the Children’s Court ruled that the baby should remain in the care of the parents. When the mother left the court and rang the hospital to advise that she was returning, hospital staff informed her that the baby had just been removed by FACS workers in her absence.

FACS appealed the Children’s Court decision to the Supreme Court and kept custody of the baby while waiting for the court appearance. The Supreme Court sat late at night and ruled that the baby should be returned to the parent’s care immediately while both sides properly prepared their cases for a hearing the following day.

Before the hearing, an arrangement was negotiated between the parties that would see the couple accept an "in home care" service, that have workers in their house full time to observe their parenting of the baby for a two week period, but retain custody of the child. It was stated openly by FACS that this would cost in excess of \$20,000. The case would then return to court to consider custody arrangements.

The couple retained custody of the baby and have successfully parented up until today. One other of their children has been returned to them now also. They desperately want the other three back, but have been told they will need to seek a s90 as FACS is happy with the orders until 18 years of age.

Case study three - baby kept with mother after traumatic negotiations

An Aboriginal mother had her young child removed from her care after FACS allegations of "abandonment". She had taken the child to a distant relatives house to stay, following fears of FACS removal. She had provided a loving home for her child, despite the intense stress of fleeing a domestic violence relationship and spending extended periods in shelters. Shortly after losing custody of her child, the woman became homeless. She never received any court papers, could not challenge the allegations against her and fell into a deep depression.

Approximately one year later, the woman began to rebuild her life and start to advocate for herself to first obtain stable accommodation and then to start the process of getting legal support to win back custody of her child. During this time, she became pregnant. A few months into the pregnancy, the new partner became physically abusive and she secured an AVO against him. Further contact with the partner saw her badly beaten and he was taken into custody where he remained for the rest of the pregnancy. The mother expressed a clear desire not to see him again.

Perinatal meetings were held with a FACS caseworker, three in total before the birth of the child. These were incredibly stressful meetings for the young woman. Large numbers of professional staff were present, between 6-8 each time, from the hospital, support services and FACS. None of these people knew the mother at all, but all expressed opinions on her parenting capacity and whether or not she should be able to retain custody of her baby.

There is no doubt that the intense stress that the mother was placed under through this process would have effected the baby directly. Having large numbers of professionals debate whether she would be able take her baby home, right in front of her, when almost at term, was an incredibly traumatic and disempowering experience.

In the first two perinatal meetings and in smaller meetings around these, the caseworker said he could not guarantee he would not remove her baby, but would make a decision before the birth. The threat of domestic violence from the former partner was often discussed as being the primary concern. The mother felt like she was being punished

for the violence. The FACS caseworker openly indicated he did not trust her reassurances that she wanted to keep the baby away from the father.

The mother undertook regular drug testing, due to an admitted history of marijuana use. It was made clear that any indication of any marijuana use would result in a decision to remove the newborn baby.

The FACS caseworker took a number of months to bring himself up to speed with the allegations that had led to the removal of her earlier son. Only at about the 34 week mark did he come up with a list of issues arising from the previous case. Despite the intense trauma associated with the removal of the previous child, and the many hurtful allegations that the mother insisted were untrue, she was made to go through a process of responding to all the allegations and articulating how her life had changed. This stressful process would have been impossible to negotiate if it was not for the supportive, intensive and culturally sensitive advocacy that the mother was receiving.

At the final meeting, just prior to the due date, the mother was informed that the baby would not be removed if she would sign a parenting agreement and agree to supervision orders. This involved constant monitoring by FACS, the engagement of an intensive family support service and a range of other obligations. The negotiation of this plan stretched right up to and immediately following the birth, due to uncertainties from the FACS caseworker about the particular legalities around such agreements.

Through the process of negotiation, the violent former partner was released from custody. The FACS caseworker refused to try and locate the former partner (father of the child) to explain that he was not to try and make contact with the mother or explain that this contact could jeopardise her custody of the child. Despite making a consistent point through the meetings that this man was considered the main threat to the child, the caseworker took no steps at all to try and secure mother or baby from this threat.

The mother has successfully parented the baby up until this point and is in the process of applying for a s90 to return her other child to her care.

There have been several GMAR case reviews conducted in 2015- 2016 by the Office of The Senior Practitioner which is a department within Family and Community Services. It is strongly recommended that the NSW parliamentary Inquiry obtain these reports, which contain information on the poor practises. GMAR NSW feels that these case reviews also demonstrate how Family and Community Services operate outside of legislation and policies.

As a result of a GMAR case review conducted by the Office of The Senior Practitioner, a grandmother received a written apology. A redacted copy of this letter will be made available upon request from the Inquiry Panel.

The GMAR terms of reference are the same as the GMAR reviews and are in summary:

1. FACS not correctly following policies and procedures, deals with people unfairly, makes decisions not based on evidence.
2. There is insufficient early intervention/prevention work done prior to removing children.
3. Local children are not being placed with kin and there is insufficient consultation with extended family about placements. There are a range of impediments – including FACS requirements that grandparents “denounce” their own children in order to care for their grandchildren and misrepresentation to the court of family members’ preparedness to care for the children.
4. Families have not been provided with sufficient information about FACS processes (including court processes) the reasons for removal, placement details, the family’s rights and what needs to occur for the children to be restored back to family.
5. The manner of FACS removal practice is inappropriate. Children frequently removed on Friday afternoons limiting families’ ability to obtain legal or departmental advice. Families are traumatised by the presence of Police. FACS is often unwilling to consider or develop a plan that may facilitate restoration of the children to their parents care.
6. Concerns about contact arrangements, including location, requirements and an intrusive level of supervision and control by FACS at visits.
7. Family members have been subject to “bullying tactics” by FACS in order to force families to comply with unreasonable requests.
8. Children are being placed at risk in OOHHC. FACS does not adequately monitor placements or assess risk in an ongoing way and fails to address concerns when reported by families.