

GENERAL PURPOSE STANDING COMMITTEE NO. 2

Consultation with Indigenous community members

A joint initiative with the Law Society of New South Wales

8 September 2016

*Inquiry into
child
protection*



On 8 September 2016 General Purpose Standing Committee No. 2 conducted a consultation with Indigenous community members as part of the inquiry into child protection. The consultation was a joint initiative with the Law Society of New South Wales's Indigenous Issues Committee.

The discussion was facilitated by Mr Rick Welsh and Ms Bobbi Murray, members of the Indigenous Issues Committee. Counsellors from Link-Up NSW were also present to provide support to participants, if required. Sixteen participants attended the consultation, held at the Law Society's premises in Phillip Street, Sydney.

During the consultation a number of issues were discussed, including:

- the problems Indigenous community members experience when they have contact with the child protection system, including contact with the Department of Family and Community Services
- access to early intervention and support services for Indigenous families, and whether such services are culturally appropriate
- Indigenous children in out-of-home care, including the challenges faced by Indigenous families in having children restored to their parents
- ways the child protection system can be improved to better protect Indigenous children.

Support and early intervention services

There was a strong consensus amongst participants that more support and early intervention services are needed for Indigenous families. A number of participants spoke about how they had not been provided with any support prior to the removal of their children, with one participant stating that families often 'just need help'. One individual reflected on the fact that the Department of Family and Community Services ('the Department') spends considerable time and resources obtaining evidence from schools, police and other services, when instead they could be providing support to the families who need it, so as to avoid the need for children being removed.

Further, once court proceedings are commenced, participants suggested that contact between the Department and parents significantly declines, especially once restoration of a child back with his or her family is ruled out.

One participant told of her difficulties in accessing support during her contact with the child protection system. A mother of four children, who had been diagnosed with Autism Spectrum Disorder, advised the committee that before her children were removed she did not get any support to help her address the Department's concerns about the children, and what steps she could take to prevent their removal.

Following the removal of her first three children, due to the state of her home, this mother engaged with a number of services, including the Intensive Family Based Service and Aboriginal Family Planning Service. At this time she was pregnant with her fourth child and was informed by the Department that these services would assist in her being able to keep her baby. This

mother was also referred to a number of non-government organisations who helped to renovate and clean her house, with a total spend of around \$20,000. The participant explained that the Department made contact every four to six weeks, where they attended the house for 10 minutes 'to tick the box'. The fourth child was still removed at birth.

This participant was granted legal aid and had a legal aid lawyer conduct her case. Her grant of aid was conditional on her signing a charge over her property to pay legal aid the fees. Once she lost the children she could no longer afford her mortgage and had to sell her home. The small amount of money she will receive from selling the home will go towards paying her legal fees. This also meant that she had to move to a small rental unit in a rural town. The participant advised that in the end she was 'pushed to the limit' and just agreed to the children being taken into care. This mother felt that, if she was given adequate support early, it may have allowed her family to have stayed together.

Jurisdictional differences

The NSW care and protection system and the Federal family law system operate under different pieces of legislation. The Federal Circuit Court of Australia deals with family law disputes under the Family Law Act 1975 (Cth), which may have different legislative tests regarding the care of children, as compared to the NSW child protection system.

One participant struggled to understand how there could be two completely different outcomes regarding her two grandsons, with the Federal Circuit Court allowing her to care for one of the children, but the Department of Family and Community Services, operating under the state's child protection system, believing she is unsuitable to care for the other child.

The eldest grandson was removed from his mother, the participant's daughter, at three months of age and placed in care. The grandmother joined the care proceedings, but the Department opposed her grandson being placed in her care. Instead, the child was placed with his great aunt, although this grandmother was provided with supervised visits.

The mother of this child then became pregnant again, and an arrangement was made by the Department that would allow the parents of these boys to find their own home and settle with the new baby. The Department also recommended that the eldest child be restored to the parents, based on certain conditions, however, the grandmother was concerned about this and did not think the children would be safe. After a domestic violence incident between the parents, the grandmother made an application in the Federal Circuit Court for the youngest grandchild to live with her. The child was placed in the grandmother's care by the Federal Circuit Court.

The care of the eldest grandson was a matter that was dealt with by the Children's Court. The grandmother, who felt pressured by the Department and was concerned about losing her other grandson, reluctantly agreed for the eldest grandson to be placed in her sister's care. The grandmother is unhappy that the siblings are not living together. She told the committee that she could not understand how she can be considered good enough in one court to care for a child but not good enough in the other. The great aunt accepted the care of the child to avoid him

going into foster care. The aunt did not participate in the proceedings opposing the child's placement with the participant.

Proof of Aboriginality

A number of participants were concerned that the Department of Family and Community Services are not accepting proof of Aboriginality, even when the appropriate documentation is presented to them. For example, one individual had presented a proof of Aboriginality certificate from 1987 to the Department but this was not accepted and was later contested in court.

Another participant advised the committee that out of his seven kids currently in care, only two have been accepted as Aboriginal. The impact of this was problematic, as one child, who was not recognised as being Aboriginal, was interested in learning about Aboriginal culture but was not provided with opportunities to do so.

During the discussion, it was also highlighted to the committee that currently there is no funding given to services to provide proof of Aboriginal documents, which impacts on Indigenous individuals and families who need these documents to access services. Further, several participants felt that the Department is deliberately redefining Indigenous children as non-Indigenous, so as to avoid their legislative obligations when dealing with Indigenous children, for example, to provide culture support plans. This raised concerns around how Aboriginal children are maintaining their connection to country and culture.

One participant was concerned about the children who are not recognised as being Indigenous being put in 'white' families who do not allow the children to visit the communities they come from. One individual suggested that this practice is occurring to allow the Department to skew the statistics about the number of Indigenous children in out of home care.

Aboriginal cultural support plans

A related issue to the acceptance of Aboriginality for children in care is the effectiveness of Aboriginal cultural support plans. Participants agreed that many of these plans are 'worthless', and expressed concerns about foster carers not adhering to what is documented in the plans.

For example, one participant explained that, prior to having her children removed, they had attended the local Indigenous church every week, with the children participating in culturally focused activities, such as kids club, youth group and Sunday school. Following removal, a request for the children to continue attending this church and participate in the programs was included in the children's cultural support plans. Even though the carer at the time agreed to support this plan, 'the children have never actually attended the church'. One of the reasons for this was related to the activities at the church being held on a weekend, with the Department only able to support the activities between Monday to Friday. Members of the church also asked to visit the children where they currently live, however, this offer was refused.

Impact of removals at birth

Participants raised several concerns about babies being removed at hospitals immediately after a mother has given birth. One individual spoke about how she was provided with court papers to

sign regarding the removal of her baby son only three hours after giving birth, when she was not in a mental state to effectively deal with the situation. The participant questioned the validity of her assessed risk, given she was able to keep her son for a further 24 hours, as it was Christmas Eve, before he was actually removed.

Concerns were raised that this practice of removal was impacting on the primary attachment and bond between a child and mother. One participant told the committee that babies removed at birth were being deprived of a mothers 'smell and touch', which is so important to a child's attachment with their mother. She further added that removal at this critical stage goes against the custom and ways of Indigenous people. Another participant, highlighting the impact of this loss of attachment, stated that once children are removed from their parents at birth they 'never connect again'.

In addition, participants were concerned that mothers having children removed at birth were signing documents they did not understand, with significant and long term implications for them until the children reach the age of 18.

Challenges of getting restoration

Participants expressed a concern about how difficult it can be for parents to get their children restored back to their care, given permanent orders can be made before an appropriate amount of time is given for the parents to make changes. It was noted that some individuals feel that they were expected to make significant changes to get their children restored, but were not advised of what these changes were, nor were they supported during the process by the Department in any way.

One participant questioned why the Department places such a value on the loss of attachment a child may experience if they are removed from their carer and restored to the parents, given the Department places little value on the loss of attachment experienced when the child was first removed from the birth parents.

A number of participants identified issues around kinship carers using their role for financial gain, with some making vexatious risk of harm reports to the Department about the children's parents, with this influencing the decisions about whether or not children remain in care.

Assessment process for potential carers

Concerns were raised about the assessment process used by the Department to determine the suitability of carers. One participant, who was the father of a woman with an intellectual disability, spoke of his battle to obtain care of his now 14 month old granddaughter after she was removed from her mother (the man's daughter) at birth. Initially, the Department refused to assess whether he was suitable to be the carer – claiming he was too old. The man is currently 55 years old, and had raised his three children on his own after his wife had passed. The Department also felt no other family member was suitable to care for the child, despite there being no drug issues, domestic violence or other concerns.

When the matter went to court, the grandfather made a joinder application to join the court proceedings. This triggered the Department to conduct an assessment of the man's suitability to care for his granddaughter. The grandfather, along with his partner and son, were all assessed by a court clinician (a psychologist), who the family argued was biased. The clinician's report stated that the grandfather was 'beyond his years, short of stature and never able to care' for the child. The report said that the child's uncle, who was also assessed, was 'short statured, obese and balding'. The family members questioned the relevance of these comments to their capacity to care for the child. The grandfather's partner also raised concerns about the clinician asking inappropriate and irrelevant questions during the interview, such as questions about her sexual relationship with the grandfather of the child.

After this man gave evidence in the Children's Court, he said that the Department changed their position and put forward a plan for his granddaughter to come into his care via a six month transition plan. The conditions of this arrangement were that his partner was not to stay overnight and that his son was to move out, although the son was able to stay overnight for four days a week. The family did not understand why these conditions were needed.

Management of complaints

Several participants highlighted the challenges they had encountered when attempting to make a complaint about the Department of Family and Community Services. Two individuals said that they had tried to make a complaint via the Helpline but were told this was not possible. Both were not given any other options or advice about the complaints process. One person, who was able to ring the dedicated complaint line, explained that he never got a response back to his complaint.

Turnover and experience of caseworkers

There was also a concern about the lack of experience of some caseworkers, with several participants stating that caseworkers are young, often straight out of university and without life experience. The committee also heard concerns about the lack of continuity of caseworkers, with regular turnover of staff in the Department.

General suggestions for improvement

Participants put forward a number of suggestions to improve the child protection system, and in particular the contact Indigenous parents and families have with the Department. These suggestions included that:

- greater support and early intervention should be provided to parents and families, before children are removed
- the Department should be more direct with parents about the potential for a child to be removed if the parent does not make the necessary changes to address their concerns about risks of harm to the child/ren
- during assessments, greater consideration should be given to the positive changes parents make in their life, as well as the risks and negatives
- an independent advisory committee should be established in each local area, consisting of Indigenous community members who focus on the best interest of the child and review decisions of child removal and restoration.