

INQUIRY INTO CHILD PROTECTION

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Submission to the NSW Upper House Inquiry into Child Protection

Overview

I thank the Upper House for conducting this Inquiry into Out-of-home care in NSW.

This submission is not intended to be a reflection on the current Government, nor on those who have been working hard from a policy perspective to ensure an effective social services system and protection for children at risk. The purpose of this submission is to highlight some general and systemic issues with the current out-of-home care system and FACS processes that I have identified in my capacity as a volunteer advocate for families, women and children, and to offer some suggestions as to potential ways to address these issues for consideration to ensure a fair and effective system.

I acknowledge the vital work that FACS undertakes in NSW protecting children who are at high risk of abuse or neglect. There must be sufficient powers and protections in place for this good work must continue. I also acknowledge the hard and emotionally demanding work that front line case workers and managers are faced with on a regular basis. There are some children that need to be in out of home care for their protection, safety and well-being.

However in NSW there also appears to currently be some material deficiencies in the system resulting in children who are not at high risk of abuse or neglect being taken into out-of-home care, at a significant cost to these families and our State socially and economically. Once in the system, even wrongly, the present deficiencies also mean that in many cases it can be impossible or near impossible for these children to be restored to their families. There currently appears to be a big disconnect between well intentioned legislation and policy on one hand, and what is actually happening at the grass roots for families affected by the system.

There also appears to be some abuse of powers occurring by some FACS workers, including the bullying and disgraceful treatment of some parents and foster carers, who have done nothing to deserve such treatment. I have personally been shocked to see first-hand some of what is happening, which most people would never imagine would or could be happening in our democratic State and Nation, but it is.

There are a number of key aspects of the out-of- home care system that need to be reviewed and addressed. New policies and procedures need to be developed and implemented, or existing ones enforced, and the culture in some parts of FACS needs to be refreshed.

1. There needs to be a clear policy for restoration, and current blockers preventing restoration need to be removed. In 2015 the Auditor General found that the number of restorations had decreased. This submission highlights a number of factors which may be contributing to this, and preventing restoration, including the changes to Legal Aid in recent years limiting parental access to funding to have their children restored and lack of a restoration policy, as well as a number of other potential deficiencies in the system.
2. Whilst children need to be protected from danger, the extreme anti-risk culture is resulting in wrongful placement of children in care. There needs to be clear policy and better checks and balances around removal of children from families for reasons other than serious abuse or

serious neglect, particularly in relation to removals due to ‘mental health’, ‘poverty’ and ‘disability’.

3. Where qualified health experts provide a reasoned opinion that a child is not at risk and/or that parents are able to look after their children, such opinions should be relied upon, not overridden by FACS officers, unless exceptional circumstances exist.
4. There needs to be a new evaluation of the Brighter Futures Program to ensure that it is meeting its objectives for keeping children out of foster care, and is not now facilitating them into it.
5. There needs to be a specific independent FACS oversight body established, equivalent to the Police Integrity Commission or the Inspector General of Taxation or Inspector General of Intelligence, to ensure cultural issues are addressed, to ensure improper or illegal conduct by FACS officers is investigated and deterred, and to ensure that no child is taken or left in care that shouldn't be. Whilst the costs such a body would be material, they would be dwarfed by the annual costs of children currently being kept in out-of-home care who shouldn't be there.
6. The current system for complaints, including the Ombudsman's Office, is ineffective, and is resulting in significant retribution for some complainants, and no action to investigate or address valid complaints.
7. There also needs to be a review of sections 245C and section 29 of the Act, and stronger policy and protections around their use, to ensure natural justice and that these highly unusual powers are not abused by FACS officers. At present there is concern that they are.

Since the Upper House Enquiry has been announced, it appears that some FACS offices in different parts of the State are suddenly moving to identify and are finally taking some action on unresolved and uninvestigated complaints, have offered to pay outstanding funding that has been withheld as retribution, are removing children who have been in danger and finally are suspending a certain FACS officers, who have potentially acted improperly, whilst their conduct is being investigated. Whilst it is good that there is finally some action on these long standing matters, the timing suggests it is only happening because of the Inquiry. This clean-up is welcomed, long overdue, and must continue.

This does not make up for what families have been forced to suffer for making valid complaints or because their complaints were not investigated until now or their money withheld or their children have been left in unsafe environments, or their children have been taken without what appears to be sufficient grounds in the first place. The clean-up must be more than a tokenistic cover-up and action must be taken against those officers who have acted improperly, where there is evidence they should not just be allowed back to work when the Inquiry is over. This response action by FACS (and the numerous actions being taken as part of it), demonstrates the high need for the establishment permanently of an independent body regulating FACS on an ongoing basis.

I note that the examples used in this submission are not isolated into one area or office, they come from metro Sydney, outer metro Sydney, and regional and country NSW.

The majority of the matters raised in this submission fall under 1.i of the Terms of Reference.

**Stephanie Croft
North Sydney Citizen of the Year 2013
26 June 2016**

Contents

Submission to the NSW Upper House Inquiry into Child Protection	1
Overview	1
Statutory Provisions and FACS Policy re Removal of Children into Out-of-home Care	4
1. Children are being taken into Out-of-Home Care seemingly contrary to the Provisions of the Legislation and stated FACS policy	5
2. Difficulties of getting children out of care once they are in	15
3. The FACS Current Complaints System is fundamentally flawed and results in severe retribution rather than review, rectification and resolution of complaints:	19
4. Some current FACS approaches are destroying rather than maintaining and developing family relationships and are unreasonable, particularly for low risk families where children have been removed for reasons other than abuse.	23
5. FACS Officers are Disregarding, Overriding, Improperly Influencing and misrepresenting Expert Advice	28
6. Other Potential Issues including Legislation, Policy and FACS Code of Ethical Conduct issues	31
7. Aboriginal Children	40
8. Carers	42
Appendix A	44
Appendix B	46
Appendix C	47
Appendix D	49
Appendix E	50

Statutory Provisions and FACS Policy re Removal of Children into Out-of-home Care

Under The Children and Young Persons (Care and Protection) Act 1998 ('The Act'), children can be taken from their families if there is concern for their safety, welfare and well-being. Section 8(a) provides that children and young person's receive such care and protection as is necessary for their safety, welfare and well-being, having regard to the capacity of their parents or other persons responsible for them. Section 23 provides the circumstances that must exist for a child to be considered at risk of significant harm (refer Appendix A).

The FACS Brochure "What if a complaint is made about me?" states "Mostly, children stay with their family throughout Community Services involvement. However where there is a high risk of harm or injury to your child, Community Services may have to move them to a safe place."

The FACS Annual Report 2011/2012 at page 29 states "Placing a child in OOHC is a last resort, but is necessary when children experience serious neglect and abuse, cannot live at home safely or have families unable to care for them."

1. Children are being taken into Out-of-Home Care seemingly contrary to the Provisions of the Legislation and stated FACS policy

FACS plays a vital role in NSW in protecting some children from abuse, neglect and danger, however with the current deficiencies in the system, anti-risk culture, and in some cases, poor conduct or sub-optimal actions from FACS officers, there are also some children who are not at 'significant risk of harm' who are now in out-of-home care and who appear to have been incorrectly taken from their loving and caring families due to flimsy evidence, reasons that don't meet the statutory circumstances for removal (ie no abuse, serious safety risk or neglect), false complaints or fabrication by caseworkers of incriminating evidence against birth families (which the families are not informed of).

Any child incorrectly placed in care results significant social and emotional consequences for the family members, and also a significant annual cost to the State, not just in terms of the direct costs of paying the carers, but through legal fees, and health costs and other long term social costs, as such an event can have a devastating life-long impact of the child and other family members.

Suggestions regarding what is needed for the System in general

- **Review of existing policies:** There needs to be a review of existing policies and procedures for both removing children and placement of children.
 - Very stringent procedures need to be implemented around verifying the reasons any removal of children, and the verification and approval should take place by an independent panel as internal single reporting line signoffs just involve every level believing whatever the level below tells them. It can't simply be a matter of "signing off on it". Checks and balances need to be in place.
- **Compliance with existing policies:** If the existing procedures and policies are considered adequate, then there appears to be a significant compliance issue, and this should be reviewed and addressed. Any review should include input from families whose children have been taken. Any deficiencies identified through this process need to be addressed.
- **Independent Oversight Authority:** The lack of a robust internal complaints system, and the number and nature of complaints necessitates the establishment of such an authority. The Ombudsman is not adequate under the existing arrangements and practices that are occurring. (See 3.8 below.) There needs to be an independent, properly funded and resourced oversight authority established to oversee FACS operations and decisions, equivalent to the Police Integrity Commission for the Police Force and along the lines of the Inspector General of Taxation or Inspector General of Intelligence Services. This oversight authority should:
 - Have trained staff to undertake independent audit/review of each case where children are placed into foster care, within a set time of the children's removal, including speaking to the families and relevant witnesses;
 - Consider whether any removed children meet the 'serious risk' threshold, whether the reasons and evidence for the removal are sufficient, and meets statutory requirements, and investigate when evidence is contrary to other relevant evidence provided by the parents and witness statements. They should also consider whether there could be support services provided that would negate the need to remove the children.
 - Investigate material complaints about FACS officers and poor conduct.

- Provide an appeal mechanism, and if it is found that there is suitable evidence, circumstances and grounds, facilitate FACS and parents working together to get appropriate changes in court orders made, including restoration of children if considered appropriate, rather than parents trying to find funding and legal representation to take matters back through the courts themselves (which is often hard for disadvantaged people to obtain legal aid and assistance to take matters back to court if their circumstances change or they become aware of new evidence to strengthen their case.)
- **Additional Temporary resources provided for the independent authority to review and investigate the many existing cases of children already in out-of-home care:** where parents are still desperately fighting to have their children returned because they believe they were taken contrary to the legislative requirements and/or poor conduct of staff, and/or based on insufficient or incorrect evidence. The cost of running such an Authority and conducting such a preliminary review will be low compared to the ongoing costs to the State of having children wrongly in care.
- There needs to be a change of culture and recognition for caseworkers who achieve restoration of families through good practice, so there is not a perverse incentive implicit in the system for caseworkers to put children into care to gain recognition from their superiors for their ‘good’ work and to boost their own careers.
- Where foster carers dislike parents and are clearly doing things to discourage any relationship, FACS officers need to be impartial and encourage the relationship between children and their birth parents, not facilitate carers preventing parents having access.

Issues contributing to children not at risk of serious neglect or abuse being put into Out-of-home Care long term

Section 29 of The Act (refer Appendix A) allows for FACS to act on confidential complaints and to keep the nature of the complaint and identity of the complainant confidential. Whilst this provision is presumably to encourage reporting of children at risk and is necessary in some circumstances, there are also some issues that need to be addressed through better processes, policy, checks and balances, and action against those found to be abusing the system.

1.1 False complaints: Section 29 is also creating a system where parents can have their children removed on the basis of a false or factually incorrect complaint, and the parents are not provided with details regarding the nature of complaints against them, and so are unable to address them or provide any evidence to demonstrate that the complaint is not true, fictitious, based on evidence out of context, or is unsubstantiated. This means that in some circumstances children are being taken from their families into care for reasons that are not true, and under the current system it can be impossible to get children out again.

1.2 Complaints Under Section 29 made by those with a serious financial conflict of interest are accepted at face value: even when contrary to the statements of respected and reliable witnesses such as neighbours and professional counsellors that have known the family closely for years and who attest that the children have been well cared for on an ongoing basis. In one example a family that had only known the family taken into care for a short period, and who were gaining significant financial benefits from caring for them whilst their mother was in hospital, appear to have made certain complaints to FACS that the children were not being properly cared for, so the children were not returned to their mother when she came home from hospital. Meanwhile, those responsible for the complaint immediately became the children's permanent carers and now receive thousands of dollars from the State each fortnight.

Suggestion

- Where material financial or other conflicts of interest exist, there needs to be clear guidelines and thresholds regarding when a child is at risk, and information needs to be thoroughly verified and corroborated.

1.3 Section 29 prevents natural justice: Further to the above, it has been indicated to me by parents who have dealt with the system, that when a case based on a secret complaint goes to court, FACS presents this part of the case to the judge confidentially so parents do not know exactly what has been alleged, nor what evidence has been provided, and therefore do not have the opportunity to present evidence to demonstrate that the complaint or allegations are not true.

If this is correct, it means NSW today is just like a 1970s communist country, where children can be taken from parents with no reason provided. It is also noted that in such cases, if children have been taken, there tends to be an automatic assumption that FACS only acts if there is substance, so parents are usually presumed guilty, and it can be hard for vulnerable families to obtain advocates in such circumstances or to get funding to take the matter back to court.

The Australian legal system is supposed to be based on the premise of 'innocent until proven guilty' and that all defendants have natural justice. Section 29 affords power, as it extends beyond any other legislation in Australia, in that it overrides rights and prevents natural justice. Such a provision needs to be used by FACS sparingly, with extreme care and appropriate checks and balances, and not be abused because it can have such serious consequences. There also needs to be effective, independent oversight. There is concern that these protections are not currently in place.

Suggestions

- **An independent review of the Act and evaluation of the operation of Section 29 Confidentiality of Complaints provisions are needed:** including how this section has been operating, how many times FACS has used these provisions, what the outcomes have been, and whether the provisions have been operating as intended or need some additional protections or improved policies to accompany them, whether there is natural justice protections for parents and to ensure that children are not taken into care based on unsubstantiated information.

1.4 Evidence of FACS Officers Falsifying Evidence or presenting it in a misleading way: Section 253 of The Act makes it an offence to provide false and misleading information in relation to any application under The Act. It is also contrary to the FACS Code of Ethical Conduct. A number of parents, advocates and support people who have been dealing with FACS in relation to children now in out-of-home care have indicated that they have experienced FACS officers fabricating evidence to the court or on file, or of presenting evidence in a misleading manner.

In one example, a kinship carer of one child, asked to be assessed to be the kinship carer of another Aboriginal child from her family, by a different case worker in the same office but was refused. When case management transferred to another branch she discovered that the caseworker who refused to assess her had alleged secretly she had information about the sexual abuse of a child disclosed to her and that she hadn't believed or acted on it. If someone else had checked the records it would have shown the child in question was placed with her by FACS because she was the only one who believed her. And by the time they placed her with her she had, under her own efforts, already removed the child's three siblings from the house under the guise of a holiday until FACS could investigate. The caseworker's lie, unknown to the carer at the time of the court proceedings (from which she was excluded), held throughout proceedings and resulted in the child, and subsequently a sibling, being placed disregarding the Aboriginal Placement Principles for Aboriginal children. They were placed with a non indigenous biological relative, with the Placement Principle being manipulated and wilfully misunderstood to exclude the Aboriginal family. In response to complaints the case manager insisted the placement was correct because the children were with biological family (even though FACS knew they had hostile feelings toward the Aboriginal family and community). To get around this in the matter of the second child, the partner of the biological carer claimed Aboriginality, though it was never mentioned for the first child. A caseworker specialist later wrote that this partner knew nothing of Aboriginal culture, used derogatory terms about the children (e.g. half castes) and claimed Aboriginality by virtue of a distant dead relative.

One kinship carer reports having minutes presented in court by FACS that they had never seen before in which they were misquoted so as to mean the opposite of what they actually said and make them sound like an idiot. In subsequent minuted conversations, including a warning with legal implications, the carer was refused the minutes.

Others have provided me with examples where FACS officers have fabricated evidence in their situations, and in my role as a support person for a single mother with a disability. I have been to a 2 hour meeting in a FACS office discussed and agreed a range of outcomes (and confirmed each of these at the end of the meeting), made detailed notes, and following the meeting FACS officers have put out minutes showing completely opposite outcomes, and have acted on their new version which does not relate to the meeting attended, nor what was agreed.

There is no hope for families of a fair outcome if employees of the State are documenting false evidence and information on their files and/or presenting it in court. This in itself suggests that the initial evidence the caseworkers had to hand may have been insufficient to put the children

in out-of-home care and to get the court decision they sought. Alternatively they are contravening FACS policy, court orders or statutory requirements and need to do this to cover up the conduct.

At the moment there is no effective complaints mechanism, no effective independent oversight, no resourcing or investigation of complaints other than physical abuse of children (and even some of these are not being investigated) and some FACS officers who are doing the wrong thing know there is little risk of consequences so the poor conduct continues. (see Section 3 below) . Meanwhile whilst parents who raise such issues have the matters referred back directly to those involved in the conduct, who can doctor more evidence and files, and who embark on retribution against those making the complaint, resulting in further injustice.

I am not sure why FACS officers would embark on such conduct, whether to impress superiors, cover up mistakes, or because it makes them feel powerful, however evidence suggests that such practices are occurring in NSW, and the current system has inadequate controls and protections to detect, address, rectify and prevent such conduct.

Such conduct not only has had a terrible impact on a number of lives, children wrongly placed in foster care also costs the State significant amount annually, and under the current system, circular complaints system and retribution from case workers or more senior staff, affected parents have few options. Particularly as there is always the presumption by the Courts, by other FACS officers, by the Ombudsman and the general public that the FACS officer is independent, truthful, will be complying with the FACS Code of Ethical Conduct, and will be making decisions based on sound evidence.

Suggestions

- There needs to be a properly resourced, independent complaints and investigation process so families can safely and confidentially report breaches of FACS policy, false reports provided, illegal conduct by FACS officers, and all material complaints against FACS officers fabricating information must be properly investigated.
- There needs to be appropriate consequences for FACS officers responsible for material contraventions of policy, the Act or the FACS Code of Ethical Conduct, and action taken to undo the damage done by these contraventions.
- In this age of modern technology there should be electronic recording of all meetings and phone calls between FACS officers and the affected families, and the recordings retained for a period (eg 1 year) so if there is a discrepancy in versions when the minutes come out, these can be quickly checked and resolved. This will hopefully ensure that meeting minutes are accurate, and also act as a deterrent against misleading or incorrect record keeping by FACS officers.
- There needs to be a strong electronic document control system for all casefiles, so that there is a clear audit trail of who put which documents on file, if other documents were created later and who they were created by, and to ensure that documents on file are not subsequently removed or tampered with.
- There needs to be strong whistle-blower protections implemented in practice, not just in theory, and strong senior level support for whistle blowers, to enable and encourage other employees

to report issues. At the moment some are too scared as they have seen the ruthless consequences of doing so.

1.5 There are examples where very different approaches have been taken by FACS for children within the same family and circumstances and as to whether they are put in out-of home care or not.

Suggestion

- Policies and procedures should be in place such that where circumstances are the same or very similar, there should be a consistent approach by FACS officers, no matter where the child or family is based in NSW.

1.6 Children removed into permanent out-of-home care despite a parent only having a temporary mental health incident and the permanent removal being contrary to expert opinion: Mental health reasons are one of the reasons that FACS removes children. However there does not appear to be a clear policy in this regard, and families are being torn apart and children are being removed into permanent out-of-home care due to temporary mental health issues and contrary to the advice of medical and other experts who opine that the parents are able to properly care for their children and that the children are not at risk.

It appears that some FACS case workers are in practice acting on the implicit assumption that all mental health issues put children at high risk and children should be removed, and that once a parent has had a mental health issue, no matter how temporary it is nor what expert opinion is, there should not be restoration. Such an approach would be contrary to State and Federal anti-discrimination legislation (refer appendix B).

Mental health is an increasing issue for communities in NSW. For example a material portion of new mothers on Sydney's North Shore are being diagnosed with post-natal depression and medicated. If everyone had their children taken for such diagnosis the system would be unable to cope, and there would also be huge social costs as well as the financial ones.

I can provide an example where one mother with a disability had a temporary mental health issue (a breakdown) after her husband suicided and she was left with her four children, three of who are on the autism spectrum. Whilst she was in hospital, her children were being cared for by their now carers, who persuaded her to give up her rental property to save on rent and encouraged her to get another when she came out. Unbeknownst to her, as soon as she did this, the hospital was unable to release her because she had a mental health issue and no home to return to.

FACS took no steps to help her get a home when she was finally released (even though they are able to under the Act), and advised her that she could not have her children back until she had

established a home and had attended some parenting courses. Although she subsequently met these conditions, and she:

- had expert reports from her doctor, community worker and counsellors saying she was capable of looking after her children and should be restored;
- had not needed or been on any medication for any mental health issues for a considerable period; and
- had long term family friends and neighbours saying she had always ensured her children were fed and well cared for, with clean clothes etc,

FACS produced a new list of reasons that she could not have her children back, and told the court there was no prospect of restoration, so the children were put into permanent out-of-home care.

What should have been a maximum few months in temporary care for these children has now been years, and will continue to be for many more. Because of the high needs of a number of the children, this one family of children unnecessarily in care is alone directly costing the State hundreds of thousands of dollars each year, and anecdotally there are many more families with a similar experience.

Although the mother recovered from her temporary mental health issue and has not been on any medication for depression or any other mental health issue for a number of years now, FACS officers and the children's carers have continually represented to the children since then that their mother has an ongoing mental illness, including in written reports provided to the children, and that the children would not be safe to be alone with her and that if she comes to any special events she may have emotional outbursts. The children therefore refuse any unsupervised contact or her attendance at events. This conduct by FACS officers in relation to a past temporary mental health issue is likely in breach of the anti-discrimination legislation and contrary to expert opinion they have been provided with, whilst presenting this misleading and factually inaccurate information to the children would likely breach the FACS Code of Ethical Conduct.

Suggestions

- There needs to be a strong, clear policy on FACS approach to mental health issues in parents, and when it is appropriate to remove children, and when it is not, and this policy should also provide a clear process for restoration when circumstances improve or are resolved, subject to appropriate protections for children, and in line with expert advice.
- Expert advice from health experts, particularly those who know and have treated their patients for some time, needs to be relied and acted upon and not disregarded by FACS caseworkers.
- There needs to be a review of all cases of children currently in out of home care where mental health is involved and consideration given as to whether the statutory thresholds for removal of children were met, and whether children should actually be in care.
- There needs to be training for FACS officers on appropriate handling of cases involving parents recovering from mental health issues and clear procedures in place to restore children to their

families if and when mental health issues are resolved to a level approved by health experts, not keep families separated forever on the basis of a short term issue.

- The needs to be an adequate complaints and investigation process where such matters can be properly investigated.

1.7 Discrimination against Mothers with Disabilities: There appears to be a similar discriminatory approach to parents with a disability, with some children being removed from mothers who have a disability, because there is an assumption they will not be able to properly care for their children, and even though some have a track record of caring for them properly.

An ABC media report ‘Child Removals from Intellectually Disabled parents ‘inhumane’¹’ on this issue indicates that this has been the approach. I am personally aware of situations where only mild intellectual disabilities are involved and where neighbours and/or family members have been providing a good support network and keeping a close eye and attest that children have been properly cared for, but that the children have been taken from their mothers anyway. In one mother’s case, one of the reasons that FACS gave to the court for placing the children in long term care was ‘there was high support without any sign of improvement’. The mother and 3 of her children are on the autism spectrum, this type of disability is not an illness that can be cured! In addition, this family had recently suffered the loss of their father to suicide and the mother was recovering from a temporary breakdown. The evidence FACS used to support this reason included a conversation with the co-ordinator of the triple P parenting course, who advised that the mother was so focussed on the issue of not having her children she was unable to focus on the parenting course!

There are also other practices by some FACS caseworkers in relation to their treatment of birth parents with disabilities that need to be addressed including providing complex written and verbal instructions and warnings that are hard for the parent with an intellectual disability to understand, or warning them in relation to behaviours that are related to their disability, and then punishing them with reduced contact with their children for not complying (when non-compliance was related to their disability), not allowing them to bring a support person to meetings, and even threatening them for wanting to bring a support person!

Suggestions

- **Need for FACS policy in relation to removal of children from parents with a disability:** Whilst the safety of children is paramount, there needs to be a clear FACS policy which provides transparent guidelines regarding removal of children of intellectually disabled parents, which complies with both the statutory thresholds for removal of children and anti-discrimination legislation, and also take into account the level of disability and of capability of parents, existing support networks, and other alternative support options besides removal.

¹ <http://www.abc.net.au/news/2012-10-23/calls-for-changes-to-child-removals-from-disabled-parents/4329772> by Emma Renwick

- **There also needs to be training for case workers in respect to common** disabilities so that parents are not being punished for behaving in ways consistent with their disability, whilst FACS punishments are escalating as a consequence.
- **Checks and Balances:** Individual case workers currently have too much power and there currently are not sufficient checks and balances. This is resulting in poor outcomes for families.

1.8 Brighter futures Program ('BFP') may now be resulting in some children being fast-tracked into care instead of providing support to families in need of help. The BFP is marketed as an early intervention program to help and support families, offering home visits, parenting programs and quality support services². Considerable Government Funding has been allocated to this Program. BFP was established in 2003 and for 4 years was being evaluated by the Social Policy unit at University of NSW and was found to be effective at that time.

There are now concerns that in recent years there has been a change in approach to BFP, and that in practise, rather than being an early intervention program supporting parents, it is now being used in some places as a fast track into care for many children, with claims that online forms being completed by parents seeking a bit of support are being used as a self-referral for children to be taken into care, exactly the opposite of the Program's marketing and objectives.

I am aware of the case of a single mother who just needed some support who had her children taken and took years to get them back, and there are many stories online of parents warning not to use BFP. I have also had a community worker experienced with the system tell me that she only tells people to complete the Brighter Futures online form if she suspects their children have been abused because she knows that with how the program is currently operating the children will be automatically removed. She warns parents who just need some support not to fill the on-line form in.

Suggestions

- **Review and evaluation of the Brighter Futures Program:** If there has not been one done in the last three years, there needs to be a new review of the Brighter Futures Program to ensure that it is meeting its objectives and is not being used by some FACS officers as a self-referral system to remove children instead of providing a support service for struggling families. If there are issues found they must be addressed with improved procedures and training of staff.
- **The wording of the Brighter Futures on line form** needs to be reviewed and amended so parents can fairly indicate what issues they have and help they need without answering tricky questions which could be interpreted a number of ways, and cannot be used as a self-referral process to wrongly remove children by inexperienced or overzealous FACs officers.

² The BFP brochure: http://www.community.nsw.gov.au/docswr/_assets/main/documents/brighter_futures_fact.pdf

1.9 Creating new reasons for removal if initial ones are proven insufficient: A number of parents have also reported FACS continually changing reasons for the children being in care as soon as the initial ones are proven invalid or resolved. One mother reported that FACS provided 15 new reasons over a 2 year period every time she resolved one reason they created a new reason her children should be in care. If the initial evidence was not sufficient or resolved the children should be immediately restored, FACS should not be able to create a whole new suite of reasons.

The new reasons are often fictitious and distorting good conduct by parents to make it appear as poor conduct. I can provide two examples where reasons provided for removal were that the mothers were too focused on their children's health and took the children to the doctors too often (whereas neglect is usually not getting sufficient medical attention for children). In both cases, the children had high disabilities and a number of other health issues, so it was appropriate to be seeking regular treatment.

Suggestions

- When the specific reasons that FACS removed children for are resolved, then a restoration process should commence except in exceptional circumstances. There should be very tight checks and balances preventing FACS caseworkers from shifting the goal posts and creating a new set of reasons when the original ones are met.

2. Difficulties of getting children out of care once they are in

Many research studies have found that the best place for children is with their family. In NSW, although there is a clear and swift path into care, where FACS has unlimited power, and although it is seen as important to reduce the number of children in out-of-home care, there is no clear path out of care even when restoration is appropriate or preferable, leaving children in care who don't need to be there, and very limited power to remove children from unsatisfactory carers.

2.1 No FACS Policy on Restoration: Although FACS carries a positive fact sheet on its website written by the Association of Children's Welfare Agencies titled 'Getting my children back home: Information for Parents', FACS itself does not appear to have a policy for restoration of children to their families, and many who have had direct experience can testify that the current system deficiencies are such that once children are placed in care, even without sufficient cause, it can be almost impossible or impossible to get them restored back home to their families. This destroys families, causes ongoing social and welfare and mental health issues with family members including the children affected, and also is extremely costly for NSW in terms of their annual care costs, and with the other social and health issues on an ongoing basis.

Suggestion

- 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.
- If it has not already done so, FACS needs to have a clear policy and robust, transparent processes, and support mechanisms for poor, uneducated and otherwise underprivileged families), for restoration of families, with transparent processes and guidelines, and staff trained to know that this is a priority to be worked towards in all circumstances where children will not be at significant risk.
- There needs to be a comprehensive review of the system to ensure that there are fair, fast and efficient ways that it can be fast tracked for children to get out of out-of-home care in certain circumstances without requiring costly legal processes, and that parents are not prevented from getting their children back by cost and lack of access to the legal system, and complex legal processes.
- There needs to be recognition within FACS for officers that identify or develop effective strategies and approaches to facilitate restoration.

2.2 Deficiencies with Court Processes: To get children out of care once they are in always requires a return to court to get the facts reviewed and orders changed under section 90, based on new evidence provided or where circumstances have changed.

2.2.1 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;

- 2.2.2 When the matter goes to court the FACS legal juggernaut pulls out all stops, even when the case officers might be supportive of a return;
- 2.2.3 Quite a few lawyers in the system who do legal aid work also do a large amount of work for FACS, so there is a material conflict of interest. It is commonplace for these lawyers to tell parents who have just had their children taken to ‘**consent without admission**’ because it will make the court processes much quicker. 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. Every court hearing after that is just about contact and access and not restoration as a result.
- 2.2.4 Rules of evidence do not apply in the Children’s Court, so ‘evidence’ put forward by FACS may not be tested for accuracy or refuted by parents.
- 2.2.5 There are examples where health experts have provided expert advice that the parent is not a risk and that it is safe for the children to live with them, but FACS officers who are not experts disregard their evidence, and provide a contrary view to the court.(Refer section 5. below)

Suggestion

- There needs to be consideration of a radical rethink of the system and whether the whole process going through the court system is the optimal and fairest approach, given then massive difference in size, knowledge and power between the parties involved (ie billion dollar Government department versus vulnerable individuals.) An independent tribunal may be cheaper, fairer, and enable parents better access to be able to present information and evidence, achieving better outcomes.
- Expert advice from expert health professionals should be relied and acted upon except in rare circumstances, not overridden by FACS officers who are not qualified health experts. Where there are rare circumstances there needs to be accountability and a high level approval process to override.

2.3 A major impediment is lack of access to Legal Aid for any review or appeal process: Legal Aid funds are limited, and also Legal Aid rules have changed in recent years and it now has a rule that it can’t represent a parent if any of their children has been represented by Legal Aid because it is a conflict of interest, even if it is a different Legal Aid office. This means that the parent has to find their own legal representation who has relevant expertise and is willing to take the matter on, and have them apply for Legal Aid funding, which often is refused and high prices outside the realm of possibility are quoted for taking on the case without legal aid. This leaves parents with no options and no justice, and children not restored in cases where there are grounds for them to be.

Those who actually succeed in getting approval for Legal Aid funding and to use a legal aid lawyer also can suffer some bad experiences even when they have strong cases to put. Whilst some Legal Aid lawyers are outstanding, there are also a number who are at the opposite end of the spectrum, and for those relying on legal aid it can be pot luck. Some report that when they went to court, their legal aid lawyer was clearly friends with the FACS lawyer by the way they were relating, and just took the FACS side and agreed to everything without advocating for the family at all or putting the extra information they had that would have supported their case. Another person has told me that her lawyer had clearly not even read the information before representing her (badly!).

A number of parents and carers report being taken aside by their legal aid lawyer just before their case and presented with a FACS document that had terms that they did not agree with and did not wish to sign, but were threatened that if they did not sign the document FACS would immediately take their children or other serious consequences, and they were left no choice but to sign, and then the matter went before court as a *fait accompli* and they didn't get to present their case to the judge.

The current system is not working fairly and there is no justice when vulnerable people with no knowledge or experience of the legal system are being thrown in at the deep end and forced into a position such that even when they have a strong case, and they are legally maneuvered because they don't understand the system. This system as it is currently operating is resulting in children in care who shouldn't be.

Suggestion

- The Legal Aid system needs to be reviewed and changed such that different offices of Legal Aid can represent parents and children in out-of-home care cases.

2.4 Even if a family wins the case against FACS, FACS can still win the War: It can be a 'Lose/Lose' situation anyway because as I was personally advised by a FACS manager, under the current legislation, FACS can determine what the 'best interests' of the children are, and even if a parent wins a case against them and proves that either grounds that their child was put in care were not valid or sufficient, or that the situation has now changed and the reasons no longer are present, if the child has been in care for more than 6-12 months (a relatively short time considering the time some court cases take) FACS will make the call that in the 'best interests of the child' they need to stay with their current carer instead of being restored to their home and parents.

Suggestions

- It should be a mandatory policy of FACS that if it is found that children were removed incorrectly, unless there are rare and exceptional circumstances, they should be immediately restored to their parents. FACS officers should not be able to further bully families by claiming it

is more stable for them to remain in care for years to come. In most cases this is not good social or economic policy.

- If it is found that poor decisions or conduct of FACS officers was responsible for poor decisions, the staff concerned should be counselled and provided with appropriate training, and where breaches of the FACS Code of Conduct are found to have occurred, there should be appropriate action and consequences.
- It should also not be necessary to prove that the parents can provide better care than the foster carers, merely that they can provide adequate care on an ongoing basis.

3. The FACS Current Complaints System is fundamentally flawed and results in severe retribution rather than review, rectification and resolution of complaints:

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.

3.1 Only abuse cases are investigated: FACS only has investigation resources and policies to investigate cases of suspected physical or sexual child abuse and not other complaints, including those about potential misconduct of their own officers or breach of policies etc;

3.2 Not all abuse cases involving children in care are investigated: Even though there are policies for investigating abuse of children in care, many reports of disclosures and visible injuries, even reports by mandated reporters, are not taken seriously by FACS (including when it implicates foster carers). For example, I am aware of a case now of an Aboriginal child in out of home care who has had physical injuries consistent with abuse, where the carers were allegedly already known to FACS for their treatment of their own children, but FACS officers only investigated by interviewing the intellectually delayed, speech delayed pre-schooler, and failed to check the visible injuries to her buttocks, telling the person who made the report they couldn't check the injuries.

3.3 No accountability and material conflict of interest: It appears that current processes are that all other complaints, particularly those where officers have breached legislation, policy, court orders or behaved inappropriately, get referred back to the case officer, their team or line management to handle and respond. 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 and controls.

3.4 Serious Retribution Action Taken by FACS officers on Families who lodge a complaint: With the current culture within FACS, it appears that this lack of accountability or consequence is contributing to the flourishing of widespread non-compliance with policies and procedures, conduct contrary to FACS Code of Ethical Conduct, and retribution and lack of justice for those families affected by both the issue which resulted in the initial complaint and by any retribution action taken by the action officers because the complaint was lodged. Foster carers are also vulnerable to retribution if they report breaches of policy.

This appears to be a widespread issue, not limited to a few rogue officers in a particular area. Families in the system report severe retribution for lodging a valid and appropriate complaint. Actions include cutting of their access visits and contact with their children, and financial penalties (cessation of contact for birth families; cancellation of contact visits last minute, advising parents of the wrong date and/or time for contact visits and then making them feel stupid and as though it is their fault, financial penalties for foster carers, and threats to remove children they've grown to love if they continue to speak out against policy breaches).

On a matter I wrote to the Complaints unit on, two weeks later the mother drove 1.5 hours to her 1 hour supervised contact visit (one of only 9 per year even though she has no history of violence) and bought an ice cream cake to celebrate two of her children's birthdays out of her pension. FACS never brought the children to the visit and when she rang they said they had left a message on her phone that the visit was cancelled. There was no message or missed call, they would not make up the access visit, the money on the cake and the cake was wasted, and the mother had a 4 hour round trip for nothing. This is disgraceful but mild compared to the unchecked retribution some other families have been subjected to. There is no one to complain to about the retribution or it only leads to further retaliation action.

3.5 FACS retribution is resulting in children in care being put at risk: When the Aboriginal family member complained about funding being reneged upon for expenses already incurred, also the ceasing of the funding agreed on in court, she was then ostracised, with FACS officers refusing all communication from her. They continued to refuse contact even when one of the children in her care required medical assistance with an extreme temperature. Doctors were unable to provide assistance, and she could not obtain assistance for the child without the child's medical history, which she did not because she was being ostracised, and FACS officers would not answer her calls to provide the information urgently to medical staff.

3.6 The Complaints Unit breach their own protocols: As an advocate acting on behalf of an affected family, I have personal experience in observing the breaches of procedure. I wrote a comprehensive complaint on behalf of a disadvantaged single mother who I have known for some years. I was not sent an acknowledgement of the receipt of my complaint or the complaint reference number. When I rang after 2 weeks as I had not received any acknowledgement or the complaint reference number I was told that the complaint was on the Manager's desk as it was complex and he was handling it. It was advised that FACS had 4 weeks to review complaints and respond and it was still on his desk. After 4 weeks I rang to inquire on the progress of my complaint. I was advised that under their procedures they could take an additional week for complex matters and it was still on the manager's desk. I rang again after 5 weeks and was advised that for really complex matters they had 8 weeks to respond. I still had not received any written acknowledgement or the complaint reference number but on each time I rang, the officers were able to locate the complaint in the system.

After 8 weeks I rang again and the Manager handling the matter was on leave and the officer who answered the call and the relieving manager could not initially find the complaint in the system anymore, and then kept asking me if I was sure it had not been resolved. I advised I had received no response or formal acknowledgement. When they found it, I was asked if I could resend my letter to them again. From what went on it appeared to me that the manager had improperly finalised the matter in their system so that their KPIs appeared to have been met when the matter had not been handled at all. I said that it had taken me five months to write the letter and that I was not resending it, they had a copy and could action the one they already had. It appeared that they were asking me to resend it so their KPI target on 'days to resolve complaint' could return to zero as it would be treated as a new complaint.

This appears to be a regular practice with others telling me that they have also been advised that their complaints have ‘disappeared’ mysteriously and have also been asked to resend them, but they were unaware of the KPI issue.

3.7 Circular System: as indicated, there is a circular system for those who complain.

3.8 The Ombudsman is supposed to be the independent oversight authority for FACS complaints, however 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 has been considered by the courts’ so they take no further action, or alternatively, The Ombudsman’s office send the complaint straight to FACS to the very officers complained about to respond to, and they can then doctor the files and evidence, often accompanied by retribution for the family as indicated above.

3.9 Complaints to the Minister or Members of Parliament: these complaints go through the same circular process and directly to those being complained about. There is also the added complication referred to above that some members of Parliament do not want to tarnish their own name by supporting someone who has had their children taken raising concerns about improper processes, in case there is much more to the story. One mother wrote to her MP twice and both times the letter was lost, even though she rang his office and his staff ‘found’ it, it subsequently went missing again and was not pursued or acted on. This means that those whose children have been wrongly taken or had inappropriate action against them do not have advocates or support to get issues or conduct addressed, and the conduct continues unchecked.

I acknowledge here my gratefulness that the upper house members of Parliament The Honorable Fred Nile and Paul Green have taken forward serious complaints received, which has meant FACS has actually looked into them.

3.10 Tampering with files and evidence: Because of the current system of complaints, when a complaint is received and referred to the area responsible, there can be file tampering. In one example I am aware of, when the case file was moved to another office, the family found that a number of important pieces of correspondence and information were no longer on the file, and when a complaint was made, an officer from the former office came down to the new office and spent the day locked in a room unsupervised ‘reviewing the files’ and it is suspected the files were tampered with them to remove or create evidence.

3.11 Some other FACS employees who have seen such practices have on some occasions tried to assist the families concerned, however retribution or fear of retribution for them from the other employees, often including more senior officers, can be very significant.

Suggestions:

- An independent, properly resourced oversight authority needs to be established for FACS, equivalent to the Police Integrity Commission or the Federal Inspector General of Taxation, to independently handle, investigate and review complaints about FACS and FACS officer. It needs to have specially trained officers and powers and funding to properly investigate all material

matters, not just child abuse, to obtain evidence and examine records before those who are the subject of the complaint have time and opportunity to tamper with them, and to interview FACS officers and other parties.

- All complaints about children in care being abused must be properly investigated. Resources could be reallocated from the current unnecessary supervision of contact visits for parents who are not at risk of abusing their children.
- There needs to be serious consequences for any FACS officers found to have deliberately breached policy or procedures or the FACS Code of Ethical Conduct, who have inflicted retribution on any party as a result of them making a complaint, and/or who has falsely recorded minutes or meetings or provided false and/or misleading information to children, families, the oversight authority or members of parliament.

4. Some current FACS approaches are destroying rather than maintaining and developing family relationships and are unreasonable, particularly for low risk families where children have been removed for reasons other than abuse.

The FACS Brochure 'Is your child in care' states "Research shows that children who maintain regular contact with their families do better in foster care than those who lose ties with their families or other significant people in their lives." Many studies support this. However the current widespread practises within some parts of FACS are negative and appear to be designed to destroy any ongoing regular contact and relationships between birth parents and their children who have been put in out-of-home care. Some of the issues of concern are below:

4.1 Parents who have had their children removed due to reasons other than abuse, often due to poverty, mental health or disability, and who have not abused their children, pose no risk and love them dearly, are often treated the same way that parents that have physically abused their children are. Many are provided with only limited, fully supervised contact visits per year and little or no other contact, and are bullied and disrespected by some FACS officers, and treated by the system and others as though they have been serious abusers. This is reprehensible.

4.2 Very limited contact for birth parents and their children: Those subjected to supervised contact visits are allowed only between 4 and 9 usually single hour visits per year. Four single hour visits PER YEAR is the standard contact for parents of children in long term care. With no other contact, this is not sufficient to maintain a close ongoing parental-child relationship.

For Aboriginal children being raised away from Aboriginal culture and community, 4 visits a year is impossible for the transmission of language and culture.

No one not associated with the system can imagine that in a democracy like Australia, the system exists such that if you are very poor, disabled or mentally ill, even though you dearly love your children and have been caring for them properly, and they love you, and even though your children have not been abused or neglected, they can be taken away and put in foster care, and you can only see them four times a year for a between 1 and 3 hours, and have no other contact in between. This is what is happening now in NSW and is a costly in terms of scarce FACS resources, damaging to family relationships and is a disgrace.

One case manager wrote to me and advised that four contacts a year is usual, and that 'The purpose of contact is for children to maintain their identity. Sometimes birth family has different needs or expectations. But our decisions are based on our assessment of the children's best interest not the parent's wishes.'

If research shows children who maintain contact with their families do better in foster care, why has FACS decided that contact 4 times a year (which most would say would not meet the definition of 'regular contact') as a standard is in the 'best interests' of most children in their care when it appears contrary to statements appearing on the FACS own webpage? Prisoners in gaol get visits with their children up to 52 times a year, and also can phone them, and yet

parents who have had their children removed for reasons other than serious abuse or neglect only get 4 times a year and some have no phone or other contact.

4.3 Unnecessary Supervised visits: In some circumstances supervised visits are necessary, but in other cases they are Big Brother gone mad. There needs to be clear policy and distinction to avoid the latter. Contact visits that are supervised by FACS officers are very inhibiting to families being able to relate well and maintain an ongoing happy, relaxed relationship. Where there is no or low risk of abuse or neglect, fully supervised visits are unnecessary, very destructive to family relationships, resource intensive and are a total waste of scarce FACS resources (organising the visit, travelling there, conducting the visit, writing up the notes). These resources could be better spent investigating complaints of serious abuse that are presently going uninvestigated rather than wasting time on unnecessary busy work. Supervised visits also imply to the child that it is dangerous to be alone with their parent, when in many cases there is no danger.

I can provide a number of examples where such supervised visits are occurring unnecessarily AND contrary to expert advice. In some cases these supervised visits appear to have been imposed as a form of bullying and unofficial retribution for a family making a valid complaint about a FACS worker.

4.4 Meeting venues: some contact visits are held in FACS offices, often in rooms with no windows, furniture screwed into the floor, insufficient seating, no toys or activities to facilitate child led play and where the children enter from one side and parent enters from the other. This environment is like visiting a prisoner in gaol, and many children respond by saying they do not want to attend. FACS wrongly attribute this to the child not wanting to see the parent, rather than the venue being unfriendly. In some cases it appears to be a deliberate strategy to make parent contact visits as horrible as possible for the children so they subsequently refuse to go. This is another method potentially used as a form of retribution for parents making a complaint about FACS.

4.5 Supervision of conversations: having someone present furiously writing down every word said is oppressive for both child and parent and severely inhibits conversations and hence relationships, particularly when not necessary.

4.6 Restricting Conversations: FACS often warns parents about what they consider was an inappropriate topic of conversation at a previous contact visit and advises that contact will be cut altogether if there is a repeat. Whilst this is appropriate in some circumstances with highly inappropriate topics, I can provide a copy of correspondence from FACS that warns a mother because she whispered 'Mummy loves you' to her son.

This is not an isolated example. I have been told of a number of examples of parents who were warned not to hug their children in contact visits or to tell them they love them or there would be no further visits. The parents complied with this direction, and when they went to court, the FACS officer who had been supervising their contact visits reported to the court that the parent did not demonstrate any warmth or love for her children. What hope is there for family

restoration when parents are being deliberately set up in this way, and there is no viable independent oversight of FACS that parents can go to or accountability on FACS officers?

In some cases vulnerable parents are provided with an exhaustive list of what they can and can't talk about and are so scared of saying the wrong thing that in the contact visit they are very stressed and their children sense this, and it ruins the visit. I can provide a copy of one of these letters from FACS, on a no names basis. I would find it very hard to maintain a conversation with my own children for an hour if I was trying to comply with this list and threatened with not seeing them again if I accidentally breach it. For those with learning difficulties it is even harder and more stressful. I can provide an example of one mother who kept doing the wrong thing accidentally because of the nature of her disability, but the FACS officers just kept escalating the punishments. It was right out of hand but no one had common sense, and to an outsider the series of correspondence looks like bureaucratic bullying. (Refer 6.5 below).

4.7 FACS placing higher priority on children's extra-curricular activities than the limited contact visits the children have with their mother: which is sending totally the wrong message and is damaging for ongoing parent-child relationships. For example, for one family that only had 9 single hour contact visits a year (despite no violence being involved) FACS gave precedence to one child attending chess club weekly after school, rather than missing less than one chess session per month for the contact visit he and his siblings had with their birth mother. The mother was told she was unable to see her son on a separate day, and that 'it is only for a term' and further, emotional blackmail was used as she was told by the FACS officer that she was being selfish for wanting him to attend the contact visit instead of chess or to make up the visit at another time.

4.8 FACS forcing vulnerable parents to choose between seeing their children and working: When one mother, a long term unemployed person with an Aspergers disability, managed to gain employment two days a week, which was a huge step forward for her. Her small number of contact visits a year were on one of her working days and she requested FACS to move her access visit to a different day. FACS told there was no other time and she had to choose between her job or seeing her children. Because she loved them dearly, she chose the children. This 'Schindlers List' type choice is a disgrace, and not good for the mother and her long or short term economic situation, or for her children or for the NSW economy.

4.9 Cancellations due to FACS: when a family's limited contact visits are cancelled because a FACS officer is unavailable to supervise due to illness or otherwise, in some cases FACS refuses to organise any replacement contact. Given the limited number of visits some families have per annum, and that the cancellation was due to factors outside their control, this is unfair and punitive. (This is another method that appears to be used by FACS officers as a form of retribution for lodging a complaint).

4.10 Unnecessary Restriction of Other Contact Methods: Despite the acknowledged importance of maintaining good birth family relationships, in addition to the severe restrictions on contact that some low risk families are unnecessarily subjected to, there are also severe restrictions on other forms of contact, whilst giving the pretence of facilitating contact. For example, one of the mothers referred to as an example in other parts of this paper:

- FACS does not allow her to phone her children or contact them via social media, the two main forms of communication for children and teens today.
- FACS allows her to write letters as long as they go through them.
- FACS has given her the ‘opportunity’ to contact her children on an unlimited basis by email, via an email account managed and intercepted by the foster parents. Writing coherent emails requires a certain level of skills, as does reading them. Many teens today use email sparingly just for education purposes and prefer easier forms of social media and short messages. The mother finds it hard to be able to write an email (and while she was homeless did not have access to a computer to do so) and she and 3 of her children also have learning disorders.
- Also, given the hostile approach the foster parents have taken to her since they complained to FACS and took her children, it is uncertain how many, if any, of the emails she has sent have even been seen by her children in recent years. In the past there has only been a small number of email replies each year. Whilst some carers do a good job fostering a relationship between children and their birth parents, others don’t. Where there is a quite hostile relationship, it is totally inappropriate in such circumstances that the children’s email contact is being managed through the foster parents.
- I note that the mother was initially told that the children could not correspond by email as they did not have internet access, however this subsequently was found to be not true.

4.11 Public Special events: When children have not been removed due to violence, in the interests of maintaining family relationships in line with FACS stated policies, birth parents should be allowed to attend special events for the child that are held in public places. These times are special and cannot be replaced. What is happening in practice is very different to what the stated policy is and in some cases what the courts intention is, and FACS officers appear to be far exceeding their legal or any other authority.

By way of example, I can provide a copy of letter from FACS to one mother advising her she was banned from visiting a local public shopping centre for a three day period, because her daughter’s dance ensemble was doing a public performance at the centre for an hour or so at an unspecified time during the three day period. So anyone on the earth was allowed to see her child publicly perform except her (despite the court orders envisaging her being able to attend such events!). What powers does FACS have to ban people from public places for three days? And what an unnecessary waste of public resources for FACS officers to be spending time on activities such as this for parents who pose NO risk when there are cases being referred to them where children are in danger which are not being followed up due to lack of resources.

The same mother went to her 18 year old son’s school graduation. He was outside FACS responsibility as he was 18, however she checked with the FACS officer and was allowed to attend if she had someone to accompany her. When she turned up at the graduation, the foster parents complained to the Principal and the mother was removed and unable to watch the graduation anyway. With her next child she received notification beforehand that she was not allowed to attend the graduation.

What is more disturbing is that the court orders when her children were placed in long term care specifically provided for this mother to be able to attend her children's special events, however she has not been allowed to attend any, and has specifically been directed by FACS not to attend on a number of occasions.

Suggestions

- There needs to be a clear, transparent FACS policy around contact that applies for parent/child contact with parents who have not physically abused their children and who pose limited or no or limited risk that affirms the importance of the birth parent/child relationship and of maintaining these relationships, and provides for:
 - Unsupervised visits (and the limited circumstances where supervised visits may be implemented);
 - Guidelines re number of visits per year and how this will be determined (it would be concerning if the 4 visits a year limitation is simply due to the level of resourcing involved to fully supervise them, in cases where supervision is unnecessary, rather than to 'child's best interests');
 - electronic and social media contact with appropriate boundaries and guidelines (ie the teenager should be deciding if their parent can be their 'friend' on Facebook, not FACS banning the mother so the child has no choice);
 - Phone call access and guidelines;
 - Attendance at special events guidelines;
 - And other relevant activities for maintaining and enhancing the family relationship.
- There should be an immediate review of the necessity of supervised visits for all low or no risk families by an independent party, particularly where there has been an experts report saying supervision is unnecessary, and deployment of these resources to areas of need such as investigating complaints of serious child abuse. This should be followed by immediate activation of unsupervised visits where possible and appropriate.
- It should be FACS policy that contact visits with parents, particularly for families limited to less than 12 per year should be a priority over weekly extra-curricular activities, and if there is a clash and FACS cannot make alternative arrangements, the children should miss their extra-curricular activity to see their birth parents.
- When families are on a limited number of fully supervised visits a year, it should be mandatory for FACS officers to **immediately** ensure that any visit missed should be made up, for the good of the children and the parent and the family.
- There needs to be specific training for all caseworkers to understand the common disabilities, and how to relate to parents with disabilities and that they should not be punished for perceived indiscretions that are associated with their disability. For example, Aspergers parents.
- As indicated at 6.3 below, there are examples where FACS officers are influencing 'childrens wishes, for example by telling them their mother has a mental health issue and is dangerous or prone to loud emotional outbursts, so they refuse to see her unsupervised, when she has no mental health issue.

5. FACS Officers are Disregarding, Overriding, Improperly Influencing and misrepresenting Expert Advice

5.1 Currently there appears to be a widespread practice of FACS officers routinely disregarding expert advice, including that of their own appointed experts, and enforcing the complete opposite of what the expert has recommended, which includes unnecessarily putting children in out of home care or preventing contact between children and at least one of their parents. Such actions by FACS officers, usually with no reasonable justification, are destroying families, placing families at considerable disadvantage, and resulting in significant unnecessary economic and social costs to the State and Nation.

Ensuring the safety of children is paramount. In this day and age of liability, experts provide their opinions carefully. When a credible expert provides their opinion on matters such as:

- that a parent is low or no risk to their children or themselves;
- that it is safe and in the best interests of the child to be restored to their family;
- that contact visits should be unsupervised;

This should provide FACS and the State with a level of comfort, and their advice should be accepted and acted on, except in rare and exceptional circumstances.

I can provide specific examples where FACS has taken actions to remove children directly contrary to the expert advice of health professionals that the parent is able to look after their children, that the children are safe and that they should not be removed. I can also provide other specific cases where experienced experts have recommended that unsupervised contact visits should be allowed, which FACS has routinely disregarded. FACS caseworker opinion should not override those of expert medical, psychiatrist and psychologist professionals. Some experts have indicated that they have been astounded by some of unjustified decisions made.

I also note that:

- Some experts have been threatened by FACS officers that they will not continue to get 'independent expert' work commissioned by FACS if they continue to support a particular client who is trying to get their family restored, and even without any threats, others feel concerned anyway of the potential impact on them, if they derive a considerable portion of their annual income from FACS work.
- In two cases I have heard of, overseas doctors working in Australia have advised single mothers they are unable to continue to support them with their opinions that she was capable of looking after her children because they had received a call from a FACS officer indicating that if the doctor continued to support for the mother then FACS would ensure that his license to practice in Australia would be withdrawn. In one case the doctor then provided an opinion totally contrary to previous ones he had provided. Threatening experts and influencing expert opinion is highly unethical and likely illegal.
- I am aware of another matter involving FACS but not children in out-of-home care, where after being provided with a number of psychologist reports which found that the father should be able to live at home with his children upon return from prison, FACS

hired a leading psychiatrist expert for around \$4000, who then assessed the family and also provided the same opinion.

FACs disregarded these opinions, including that of their own expert, and went to the Children's Court and got an order preventing the family living together for the next 15 years until the youngest child is 18. The father is now not even allowed phone contact at all with his children, and is only allowed 6 supervised contact visits a year with them. By forcing the family to live separately, it is much more costly for Australia in terms of pension/single mother support and hugely damaging to all members of the family. There was no basis for this decision, and FACS did not tell the court of the advice they had received. It was better for the family when he was in gaol because he could see them weekly and talk to them regularly on the phone. Cases like this must be investigated and reversed immediately. Because of the court system and FACS processes it is impossible for these vulnerable families to take action to get such things changed. This needs to be investigated and FACS needs to act where wrong decisions are discovered, whatever the reason or time frame involved.

5.2 FACS Officers potentially misleading the court in relation to the expert's opinion: I have an example where FACS case stated that one of the reasons for removal of children into long term care included "Issues in relation to (the mother)'s mental health identified in (The Expert's) report and subsequent negative impact arising from her mental health upon her ability to parent appropriately". The Expert's report stated a very different opinion and actually recommended restoration, opining that the mother had effectively sought psychiatric treatment, shows symptoms of post-traumatic stress disorder due to a history of abuse and the traumatic death of her husband, but that this diagnosis does not appear to have a negative impact on her ability to parent her children. The expert further stated that the expert does not have any current concerns that the mother may hurt herself or her children, and that her Aspergers syndrome and anxiety disorders do not prevent her from being a caring capable mother. Her expert opinion is stated as being "I would recommend unsupervised access and that the period of unsupervised access be increased with the aim of full restoration."

I note that such misrepresenting of an expert's opinion to the court could potentially also be a criminal offence under section 253 of the Act (refer Appendix B).

The mother's doctor and her long term psychologist both also provided reports that the mother is well, and capable of restoration of her children. Yet these were also disregarded by FACS, and contrary to the experts opinions, the mother had all four children placed in long term care. She was originally able to see them 9 times a year, however now has not seen them in 7 months, and the carers are moving to guardianship, which means she will then not get to see them until they are 18. Cases like these are the type being claimed as a part of a new 'stolen generation'.

Suggestion:

- **FACS should develop and implement a policy for case workers in relation to relying on expert's reports of qualified health professionals (doctors, psychiatrists, psychologists, professional counsellors should be relied and acted on** and should take precedence except in rare and exceptional circumstances. The rare and exceptional circumstances to override expert opinion should be clearly defined in the policy, and should require approval at a very senior level, or preferably by an independent tribunal, with sound evidence supporting the case, and the parents must be given the opportunity to input into this to ensure that FACS case is factual.
- **There should an independent authority** for FACS to enable parents to raise issues where FACS officers have disregarded expert advice or provided inaccurate information.
- There should be a specialist independent body, unit or team established to review all matters where children are in care for other than serious abuse or serious neglect, particularly if there has been complaints by parents that they have been wrongly taken. If the original evidence had expert's reports disregarded, then the case should be immediately revisited. There should be strategies developed to transition children out of care etc where it is found that the evidence used to put them in care was insufficient or not accurate, or where decisions were made to disregard expert's advice without a strong basis for doing so.
- Whilst there is an important role for independent Court appointed experts to assess parents in particular situations, there needs to be robust checks and balances on the system of appointing such experts to ensure that processes don't potentially impinge on their impartiality. For example, an 'expert' that derives a material portion of their annual income from undertaking FACS work, the potential loss of such a revenue stream could potentially impact on their 'opinion' in some circumstances.

6. Other Potential Issues including Legislation, Policy and FACS Code of Ethical Conduct issues

6.1 FACS Stated Policies in their policy documents are contrary to the law and/or FAC practises:

- 6.1.1 **Incorrect Legal Information in “Legal Matters“ chapter of FACS Policy book:** developed and distributed a 162 page bound book called “Caring for Kids” - A Guide for foster, relative and kinship carers’. But the policies are not enforced by FACS and routinely breached by FACs officers themselves and don’t reflect the law. For example, the chapter headed “Legal Matters” on page 137 states a name change will only be approved by FACs of the agency with parental responsibility if there is no sign the child is being forced into doing so and, they are twelve years of age or older and several other conditions being met such as psychological assessments etc. It also states that for changing the name of Aboriginal children, input will be sought “from community and cultural representatives.”

However I am aware of an example of one family where FACS itself changed the names of two Aboriginal children in care, who were aged 3 and 4 years at the time, and without meeting any of their own stated criteria and policy and against the written protests of the Aboriginal family. The family was advised by FACs that children like to have the same name as their carers, and referred the family’s protests to their Legal Department, and said they could change children's names without anyone's consent.

Births Deaths and Marriages subsequently advised the birth family that any carer who can show they've cared for a child for two years can change that child's name. Why has FACS spent so much money on producing and distributing a large document with blatantly incorrect information in it and why are they breaching their own stated policies?

Also failure to hold Aboriginal consultations at this and other important junctions in these children's lives, which is also in breach of FaCS own policy.

- 6.1.2 **Exclusion of birth Parents from key decisions affecting their children, contrary to FACS stated policy:** In the FACs brochure on “Birth Parents Rights”(Refer Appendix E), specific examples of the types of decisions that it is stated that the birth parents will be included in include:

- change of child’s school
- approval for enrolment in a private school

Another example of FACS policies being routinely ignored by FACs officers is birth parents not being included in the decisions that the FACS policy states they will be consulted on.

For example, one mother found out from her children’s friends not FACS, after the fact, that her children had been moved a few hour’s drive away. They had already been enrolled in and commenced at a new private school without any consultation with her

and one child was subsequently moved into the public system. Elsewhere in this paper I have also mentioned the example where Aboriginal's children's names were changed.

All FACS policies should be effective and complied with, not disregarded or worse, in place simply pretending that there is a consultation process involving birth parents that doesn't exist in practice.

As demonstrated throughout this submission, there are many examples where FACS policies which are explicitly stated in a manual or on the internet are overridden by FACS officers at will, but families also report that FACS enforce 'policies' which are not recorded anywhere.

Suggestions:

- All FACS brochures and policies relating to out-of-home care should be reviewed to ensure that the policies contained within are actually the FACS policies used in practice and that they also reflect the law.
- There also needs to be more policies produced by FACS relating to out of home care, or if they exist and are not in the public arena, these policies need to be displayed on its webpage as 'Open Access Information' under GIPA. The current information available in some respects appears woefully remiss, and is resulting in case workers in different parts of the State taking inconsistent approaches to the same matters, or making their own self determined 'policy' decisions with sometimes serious consequences. Robust, transparent policies will protect against children being wrongly taken into care, and ensure fair and consistent treatment for families and children who have been taken into care.

6.2 Contact still prevented by FACS for children over the age of 18

Although FACS tells parents that they will be able to have contact with their children when they turn 18, and say FACS no longer has responsibility for them, FACS officers still impose restrictions on parents that hamper or prevent them having contact with their adult children anyway.

For example, when the oldest son of one mother turned 18 and was legally able to have contact with his mother, she was advised by FACS she was not allowed to ring him to initiate any contact him, because he was still living with his siblings at the foster carers as FACS determined it will affect the other children. He is a young man with a disability, and he would not understand what his rights are in this regard, and the mother is unable to explain them because of the restricted contact and other children being present (and she has not been allowed any contact with any child at all for the last 7 months). When I became involved (as a support person for the mother), I was concerned at what I observed to be tricky wording and practices from FACS officers in relation to this matter, and called out what I saw was going on. The case manager then agreed to speak to the son and tell him he was able to have contact with his mother, should he wish to do so. It is uncertain what he was told, but regular contact has not ensued.

When the mother tried to attend this son's High School graduation, when he was 19, she obtained permission from FACS to attend (subject to having a support person with her). This was the only event they had given permission for her to attend, and she was naturally very excited. However the foster parents complained to the school principal and she was evicted from the ceremony. She was very upset at this, and for a number of years since FACS have been telling the children she is prone to emotional outbursts in public places because she has a mental illness, so they are too scared to have unsupervised visits with her. However she does not have a mental illness, and the emotional outburst was instigated by the foster parents actions.

Suggestions:

- There should be clear FACS policy in relation to children turning 18 who remain with their siblings. Whilst in an ideal world, the FACS officer should be an independent party able to tell the new adult their rights and opportunities in relation to contact with their birth parents, given the conduct of some officers as outlined in this submission, they cannot always be trusted to do the right thing and provide the truth.
- The suggestions at section 4 above need to be considered and implemented or other appropriate ones, because if family relationships have been destroyed due to FACS actions such as limited or no contact, as outlined earlier in this report, there will be little likelihood of family restoration when the child turns 18 anyway, and serious implications for Aboriginal families and communities especially in light of recommendations in "Bringing them home".

6.3 FACS officers improperly influencing 'Children's Wishes': Whilst the legislation and policy require 'children's' wishes' to be taken into account, FACS officers in some circumstances appear to be improperly influencing 'children's wishes'. Examples include the situation with the leading questions outlined previously re the mother having a support person attending contact visits with her.

Another example would be that FACS has constantly represented the same mother to her children as mentally ill, and as being prone to loud emotional outbursts, and then ask the children if they want to have unsupervised visits or if she can attend their school concerts etc, and they say no because FACS then reports that they are scared of her having emotional outbursts. As indicated above, she had a temporary mental health issue 3 years before, and they are still printing in reports which are provided to the children that she has mental health issues. Aspergers is a disability not a mental health illness.

She never gets to talk to her children alone and has therefore been unable to demonstrate to them the truth, and now has not even had a contact visit for 7 months, whereas the FACS officers and foster parents are able to influence with misleading information and leading questions.

6.4 Breach of Care Plan requirements: The Care Plan had a number of aspects which FACS have disregarded:

Annual Reviews: There are also examples where it appears that the requirements in Court Approved Care plans are being disregarded, or over-ridden using ‘childrens wishes’ .

The FACS brochure for birth parents (refer Appendix E) states “As a birth parent, you can participate in decision-making by:

- attending conferences and meetings
- having a support person accompany you to a meeting or conference
- contributing agenda items for a meeting.”

The Court approved Care Plans of the children of the mother with aspergers I have previously referred to, who is not a risk to her children, required 12 month reviews. A number of the review meetings have happened well over the 12 month period.

The Care Plan review meeting is supposed to involve the FACS case workers, the carers, the birth parents and the children. However FACS and the carers exclude the mother from all such meetings. For the first meeting, FACS held a meeting with the carers and the children, and then after they left, met with the birth mother and her support person. The meeting minutes that were subsequently produced, gave the impression that the birth mother had been in the meeting with the carers and her children and that FACS policy had been complied with.

For the next review meeting, only the mother and her support person were there, and the Case Manager advised that the carers were unable to attend and the children had chosen not to. The minutes were not produced for many weeks after that meeting, and did not reflect the decisions that were agreed there. Clearly there was a second meeting held between FACS and the carers. With this case there have been numerous other matters upon which FACS has acted contrary to what was envisaged by the court approved care plan in relation to contact, and attending special events, although were each subject to ‘children’s wishes’ . As indicated at 6.3 above children’s wishes can be influenced by being provided with misleading information or manipulated with leading questions. Examples of this have been provided in this submission.

One wonders whether tricky wording was deliberately used to enable FACS to completely disregard what the court and the birth mother thought was going to happen, and if this practice is widespread. If it is, it must be stopped.

6.5 Bureaucratic Bullying: FACS officer efforts appear to go way beyond just protecting the children to destroying the mother and her reputation: When FACS officers make the decision to take children, some then appear to seek to also then try to destroy the birth parents even when the parents have done nothing wrong (ie reason for removal is poverty or mental illness not serious abuse or serious neglect). One mother I was supporting, who is a simple and kind person with a disability, who lived only for her children and their care after her husband suicided, and who was recovering from a breakdown and health issues, had the following things done to her by FACS officers when her children were taken. They:

- Banned her from attending their school and all school events;

- Banned her from her volunteer work, which was at the school;
- Banned her from attending her own church because the foster parents were taking the children there;
- Banned her from driving down the main street in her community (I have had other mothers from other parts of the State who had the same experience and direction on this);
- Due to FACS actions above, her whole ‘community’ was removed and destroyed and she was left completely isolated.
- When she addressed the issues that FACS advised her children had been taken for so should have been able to have restoration of her children, FACS then shifted the goal posts and produced a list of new reasons.
- She was also forced to move out of her community because of the bureaucratic bullying, and because the restricted contact with her children and bans placed on her wrongly suggested to others that she had harmed her children, so she was ostracised. When she moved from the community she was left homeless and couch surfed for many months.
- Changed her contact visits to being fully supervised, significantly restricted and then changed them to being fully supervised in unfriendly FACS offices.
- Banned her from going to a local shopping centre for three days because her daughter was dancing there for approximately one hour in the three day period;
- Banned her from phoning her children;
- Hounded her continually about what she could not say to her children on contact visits, her only contact, including written warning letters threatening no further contact visits for whispering “mummy loves you”;
- Banned her from attending any of her children’s special events such as concerts; even though it was envisaged by the court approved Care Plan.
- And many other examples as already indicated throughout this report plus more not mentioned.

A number of different parents and family members from different parts of Sydney and from other parts of the State have independently provided me with examples of what appears to be the same improper practices by FACS officers that either they or their friends have experienced. These consistent examples suggest that some of these practices may be widespread and systemic and need to be addressed by FACS management. These include:

- Deliberately providing birth parents with the wrong time for changed contact visits, and then threatening or actually cutting future contact visits because of their failure to turn up for the visit. This means the parents have an unnecessary trip and are left disappointed they have missed one of their limited contact visits per year, children are left with the impression that their birth parents don’t care, and there are long term negative impacts for these families when ongoing contact is cut.
- Banning parents from driving down particular major streets in their own local communities, as mentioned previously.
- Significant retribution in response to any complaint as outlined previously.
- Fabrication or misrepresentation or concealment of key information as outlined elsewhere in this document.

Suggestions

- As indicated previously, there needs to be a transparent, comprehensive policy for removing and restoring children where there are disabilities and/or mental health issues involving the parents and for ongoing contact between parent and children;
- Where children are removed for reasons other than serious abuse or neglect, there needs to be a clear policy for FACS to also support vulnerable birth parents who are in need, as they do for others in similar situations. There can be no viable option for restoration when FACS officers have broken and destroyed parents and their spirits and reputations through persistent hounding and bullying and isolating them from much needed community. Set appropriate boundaries, but don't destroy.
- As mentioned previously, there needs to be an independent, effective complaints and review process so that issues like these can be considered, and addressed where appropriate.

6.6 FACS Silencing Parents From speaking to anyone about their children

In another example of the bureaucratic bullying of parents occurring, the declaration that FACS officers attempted to get the vulnerable mother referred to above to sign included the following wording.

6.6.1 "I undertake not to attend the residence of (the children) unannounced, or any other place where the children may be for instance, school or church, unless agreed upon in prior consultation with Community Services."

6.6.2 Living in a small outer metro community this would mean she would be prevented from attending local shops, local parks or any local community events etc because there might be a chance the children may be there at any time and the mother would be in breach of this undertaking. Any requests the mother made were refused.

6.6.3 "I undertake not to discuss details with the community or general population of the children's child protection history, unless in a therapeutic environment or with a Community Services approved support person. "

Agreeing to such a clause would prevent her having her own support network for dealing with the suicide of her husband and the devastating impact of having her children taken as she would be prevented from speaking to any friends about what has happened to her, or from speaking to her Member of Parliament or anyone else about her situation or about the poor conduct of FACS. Poor people also don't have the money to be paying for a 'therapeutic environment'. I also note that FACS did not 'approve' any support person for this mother, and in fact tried to prevent her having a support person until they were called out on it, and any other request she put to FACS for approval was rejected.

Another example of what looks like extremist communist regime type conduct. Take your kids and silence you. Imposing such clauses on vulnerable parents is a further example of the FACS juggernaut orchestrated, bureaucratic bullying, by using powers and options intended for serious, high risk matters, to bully vulnerable parents who love their children and pose no threat.

In another example, a family member was only allowed contact with the children if she signed an onerous declaration. It included a clause preventing her from asking the children anything about what was going on in their foster home (where the foster parents had a previous history with FACS in respect to their treatment of their own children). When, without her asking, the children reported that they were being physically abused and she reported it to FACS, she received an official warning for breaching the declaration, and no investigation of the abuse has been undertaken. Such secrecy clauses that are working contrary to a child's safety and well-being should not be forced upon family members, particularly when both carers themselves separately allegedly had a previous history with FACS in respect to raising their own children.

There should be transparency.

This same carer also had to sign incriminating undertakings about drunkenness, domestic violence etc would not take place during contact, implying wrongly it would happen other times. Other parents have advised me of declarations that they have been presented with, without notice, in court and forced to sign under duress, with threats that if they do not sign, they will never see their children again.

Suggestions

- The FACS declaration process, including the wording of declarations and undertakings being forced on parents, needs to be independently reviewed.
- There also needs to be a clear, transparent policy around when such declarations are appropriate and are used.
- There needs to be an effective and accessible appeals process for parents where they consider they have been forced to sign declarations that are inappropriate.

6.7 FACS attempted to prevent a mother with a disability bringing a support person to contact visits: When one of the mothers referred to earlier in this document had ongoing issues with FACS warning her about what she said during her contact visits and things were escalating, I recommended that she take a support person along.

FACS said initially that because of 'children's wishes' she was unable to have any support person because they had asked the children 'would you like to share mummy with a friend or have her to yourself during access visits' and all the children said they wanted her alone. Every child asked such a leading question would give this answer.

The case manager also told the mother that if she could not cope with seeing the children on her own and needed to bring someone else to contact visits, they would interpret that as her not being able to cope with seeing the children unsupervised (not that they have allowed this anyway).

When I advised the FACS case manager that as a vulnerable person with a disability, the mother was entitled to bring a support person, and wanted to do so because she didn't understand what she was doing and saying wrong each time that she kept getting warnings about, and wanted someone there as she trying to do the right thing, they agreed if it was only for that

reason. Given how knowledgeable the particular FACS officers were on other requirements it appeared this was a deliberate try-on and another example of the bullying that appears to have been occurring. FACS should have been facilitating this and not giving wrong advice, contrary to the requirements for people with disabilities, and hoping she did not know the requirements.

6.8 Obtaining and Using Parent's Medical Records against them without the Knowledge of the Parent

Chapter 16A, including section 245C, of The Act was incorporated into the statute in response to the recommendations of the Wood Royal Commission. This allows agencies to access information relevant to the safety, welfare and well-being of a child, and provides that the interests of the child take precedence over an individual's privacy.'

Whilst such powers have been recommended, given that they override normal rights of individuals, these powers should only be used with care, in limited appropriate circumstances, and with precautions to protect individuals from abuse of these powers, particularly when it relates to obtaining the confidential information relating to parties other than the children themselves.

Some parents and community workers have indicated that FACS officers may be using these powers routinely to access confidential medical information about birth parents from their doctors and specialists, without their knowledge, as a 'fishing exercise' and then using these records to blindside these vulnerable parents in court cases as a reason to justify removal of their children.

For example, mothers who have been diagnosed as depressed after having their children taken away without sufficient justification find in court that FACS is claiming they are unable to properly care for their children because of their depression, which was in fact caused by FACS actions in the first place. Or have their own abuse which they have told no one but their doctor or counsellor about publicly aired. Vulnerable parents cannot win against a billion dollar juggernaut Government agency who is routinely abusing powers meant for special circumstances and which override the rights all other Australians have.

Whereas I am aware of an example of two Aboriginal children who are with a brain damaged primary carer who suffers from depression, but it's not enough to remove them from that carer.

Some parents, who are on pensions, have been forced to pay full cash price to attend doctors or specialists so that there is no record in Medicare where they have attended, to avoid FACS accessing their medical records, or they are choosing not to get medical help at all.

Suggestion:

- there needs to be some strong policy put in place for FACS officers about the use of these powers, and other similar ones, and there needs to be some proper checks and balances, including the maintaining of electronic registers for when these powers are used for individuals

other than the children involved, including the reasons, and ensuring that there is already sufficient, factual evidence for removal of children, and that the powers are not being used as a fishing exercise.

6.9 Highly Improper Conduct: For one family, the day the mother came home from hospital from the birth of the new baby and was very sick bleeding and vomiting, the FACS worker turned up at their door at 10pm at night unannounced and without any paperwork and demanded that the husband leave immediately or he would take all three children. The mother pleaded with him as it was late and she was so sick and needed help herself and didn't want to be left alone with 3 young children including the newborn, however he insisted the father leave. Because the family was scared of his threats, the husband left, and the mother was left alone sick and bleeding with 3 children. The FACS worker did not help the mother himself, nor arrange help for the mother, and did not ring and check on her. Whilst the father's matter was before the courts, he had been charged months before, and the matter was a 30 year old one, and the family had not been known to FACS prior to the charges being laid. What happened was not justified with the particular circumstances of the case, and turning up at that time of night rather than day time, and leaving a mother sick and in distressed, and having no paperwork, and what appeared to be just a power crazed whim, appears to have been highly inappropriate conduct, and certainly not in the best interests of the children or mother.

Suggestion

- All FACS officers should receive training as to what is appropriate and inappropriate conduct, and there should be clear policy in this regard.

7. Aboriginal Children

7.1 Placement of Aboriginal Children contrary to the Statutory Requirements in The Act Section 11 of the Act provides the Aboriginal Placement Principles for Aboriginal children in out-of-home care (refer Appendix C), are treated by some FACS caseworkers as optional “guidelines” rather than statutory requirements, and are routinely disregarded.

In 2011 FACS has also issued the Aboriginal Consultation Guide to enable case workers to adhere to the statutory Aboriginal Placement Principles. These reflect the importance of self-determination, and require that caseworkers ‘must follow the general order of placement that is in the legislation’ page 18³.

For example, one family member of an Aboriginal child (a professional women) was refused for assessment to be the carer for one child by a case worker in one FACS office on the basis that she was not related, even though she was legally related by adoption, whilst at the same time she was able to be assessed by a different caseworker in the same office and found suitable to be the carer for another Aboriginal child in the family who was only related to her by marriage. The law refers to kinship, not biology. Because of this, and further fabricated evidence by the caseworker, one of the Aboriginal children was placed with a white family without consultation with the Aboriginal community, many hours’ drive away from their family and in complete disregard of the Placement Principles for Aboriginal Children, despite there be viable options available in the Aboriginal family community. Further, the family they were placed with was a risk because had already been known to FACS themselves because of their treatment of their own children. Subsequently when the children’s files moved to another office, it was found they did not contain any indication that these children are aboriginal. This is indicative of a deliberate contravention of the Principles and subsequent cover up.

In another case, a teenage Aboriginal girl was threatened by FACS with removal of her baby if her partner did not consent to a paternity test. To do this was illegal.

After he submitted to the test, FACS removed the baby on the basis that he was not the father however it came out later that the arrangements had been made prior to the child's birth regarding its Placement. This baby was placed contrary to the Aboriginal Placement Principles in section 13 of the Act, (see Appendix B) not with Aboriginal carers, not in their community, and without consultation with the Aboriginal community as required by the Act.

This mother never stood a chance even though her Aboriginal grandmother, her aunt and an Aboriginal social worker together had put effective systems in place to ensure the baby was well cared for and monitored, and its mother had consistent, daily support.

³ http://www.community.nsw.gov.au/__data/assets/pdf_file/0019/322228/aboriginal_consultation_guide.pdf

7.2 Contravention of Aboriginal Placement Principles is resulting in Aboriginal Families being unable to see their children: When Aboriginal children have been placed contrary to the Placement Principles, and are now living remotely from their families, it can be impossible for the parents and children to see each other, because the Aboriginal families often have no transport and frequently no money, and are offered no assistance to see their children.

7.3 FACS reneged on paying travel expenses for Aboriginal Family to Visit their children and then withdrew all other funding in what appears to be retribution when a complaint was made re the refusal to pay the initial funding: One case I am aware of, expenses for travel for respite care and family contact were pre-approved, however the expenses were reneged upon after the fact, leaving the carer out of pocket and destitute at Christmas, and when she complained she was told "we didn't ask for any of this contact with Aboriginal family".

As a result of her complaint (in apparent retribution), FACS officers then withdrew all the funding agreed in court (respite carers allowance and mileage) in addition to the Aboriginal family's travel and living expenses that had been offered by FACS later.

Bullying and retribution by FACS caseworkers are contraventions of the 'FACS Code of Ethical Conduct'. It's no use having a Code of Conduct and not enforcing it, nor even having a process to investigate potential contraventions. There needs to be an independent regulator and there needs to be action taken to stop this conduct from case workers.

In the case of Aboriginal families it is also impossible to share culture with children being raised away from theirs. At one Aboriginal consultation, the Aboriginal cultural advisor (who knew nothing of their Western desert culture), suggested the family send videos of themselves to the children as if that was a satisfactory substitute for real family contact.

Suggestions:

- Aboriginal Placement Principles need to be enforced.
- There needs to be an independent, properly resourced body that can consider complaints and appeals, outlined previously, to consider matters where parents allege the Principles have been contravened or other illegal or improper conduct, and who has powers to require FACS action where breaches or improper conduct are identified.
- There needs to be clear policy in relation to the removal of children.

8. Carers

8.1 The Assessment Process for Carers: Some would claim from personal experience that the assessment process for carers is flawed and grossly inadequate. For example, I have been advised of an example where two Aboriginal children have been placed in a home where the white carers have a history with FACS in relation to their own children, and when they could have stayed in their own community with their own people (in accordance with the Aboriginal Placement Principles) and been at less risk.

The children have subsequently had injuries and behaviour consistent with physical and psychological and emotional abuse, and a psychiatrist has indicated that one child who has regular contact with the displaced children is acting out abuse she has heard about from the other two, yet FACS have so far refused to investigate. The family concerned are of the view that this may potentially be because if any issues come to light it will result in the exposure of carers who were approved via a flawed assessment process without meeting the minimum requirements.

The benchmark for carers is set quite low, and training is minimal. There is no training at all for kinship carers, whereas parenting standards required of the birth parents is set high. For example, I have been advised by a family member of another Aboriginal child who has been placed with a primary carer who herself has a full time carer.

Suggestions:

- Any outstanding serious complaint about physical or sexual abuse of a child in care by their foster carer must be immediately and thoroughly investigated. (Resources could be diverted from the supervision of contact visits that are low risk and do not require supervision).
- There needs to be a review of the FACS policy, including minimum requirements for approval of and training of carers to ensure that current requirements are adequate and appropriate. The policy must include very strict guidelines in relation to anyone who has had a proven FACS history in relation to their own children or any others.
- There also needs to be a review of the processes to ensure that there is compliance with the policies and a consistent approach and standards being applied across the State.
- An audit of carers should be undertaken, with priority given to auditing ones there has been complaints about, to ensure that all meet at least the minimum the requirements to be a carer, and that there are no current carers who had a history with FACS in respect to their own children.
- There needs to be ongoing monitoring of and benchmarks for carers. At present children who are P.R to the Minister get monitored on an annual basis, including a 5 year in-home review, however for children where the carers hold partial P.R. get no ongoing monitoring or review. There are Aboriginal children in this position who are falling through the gaps because they are high needs and are not receiving any interventions or therapies, contrary to the aims of 'Closing the Gap' for Aboriginal children.

- There needs to be a review of all material complaints in relation to any foster carer. The review should include whether their initial approval as a carer process was undertaken in line with requirements.
- No person who has a full time carer themselves should be approved as, or allowed to continue as, the carer for a child. FACS should be immediately making new arrangements for all children in such a position.

8.2 Preferred Carers: Concerns have been raised with me about the alleged practice where ‘preferred carers’ have children placed with them instead of with their own families to maintain the Carers’ “quotas” (financial). As foster carers are not allowed to work full time, they need a minimum number of children in their care to make the job financially viable. To facilitate this, it is suggested that sometimes caseworkers have been known to construct damaging narratives about family members (who are given no right of reply) to prevent the children being placed with them.

Suggestions

- There needs to be a review and evaluation done to ensure that such practices are not occurring, and to establish or strengthen protocols and protections against such practices occurring, particularly in regional areas where there may be a less regular supply of children entering care to facilitate ‘quotas’. For the purpose of making full time foster caring financially viable.