

INQUIRY INTO CHILD PROTECTION

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SUBMISSION TO NSW PARLIAMENTARY INQUIRY INTO CHILD PROTECTION

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The Hon. Greg Donnelly
Chair, Legislative Council
General Purpose Standing Committee No.2
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: gpsc2@parliament.nsw.gov.au

Dear Mr Donnelly,

I thank you for the opportunity to submit my views.

By way of brief background, I am a registered Clinical and Forensic Psychologist under the Australian Health Professionals Regulatory Agency (AHPRA) and am a member of the Australian Psychological Society's College of Clinical Psychologists and the College of Forensic Psychologists. I hold graduate and post-graduate degrees in Psychology and Clinical Psychology (UWA), a Fellowship in Medical Hypnosis and a Doctorate from the Faculty of Medicine, UNSW. Following completion of my Clinical Master's degree, and work at the Princess Margaret Hospital for Children (WA), I have continued to assess and develop intervention programs for children at risk of harm for more than 29 years. In addition to a number of other clinical positions, I have been appointed as an Authorised Clinician to the NSW Children's Court Clinic since its inception in 2001. I have conducted in excess of 1200 assessments of children and young people whose long-term care has been under review by the

Children's Court as referred by the NSW Children's Court Clinic, or from the Department of Family and Community Services or the Crown Solicitor's to provide independent assessments for the District Court for appeals in relation to Care matters.

I wish to draw the attention of the Inquiry to the following issues within the specific Terms of Reference:

a) The capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm

Mandatory reporters seeking to file a NSW Family and Community Services (hereafter FaCS) risk of significant harm (ROSH) report are presented with two options: for non-imminent reports, they may file online via eReporting; for imminent reports they must call the designated hotline. The process is cumbersome - reporters attempting to file via the eReporting service encounter difficulties if not using particular Internet browsers, computers or versions of Adobe software. When I or other clinicians have called the hotline we often encounter wait times of 30-45 minutes or more, making notifications of harm difficult. This continues to be an ongoing source of contention among clinicians, and may thwart those who wish to make notifications.

While clinicians and other mandatory reporters may find the process inordinately time-consuming, our inconvenience pales in comparison to the fact that the reporting process is completely out of reach to young people experiencing domestic violence and abuse themselves. Making this process more accommodating - perhaps by providing a specific helpline or online chat process for young people wishing to report their own domestic violence or abuse concerns - increases the opportunity for young people to establish their own narrative within incredibly complex situations, and may be of assistance to caseworkers, the courts and clinicians. A secure online chat especially may serve to assist young people in overcoming anxieties about coming forward to make a report, and encourage those who may not have the courage, or may not have a trusted person to make a report where they otherwise may not have.

Recommendation: a 24-hour helpline for children and young people who are experiencing domestic violence and abuse (not dissimilar to Kids Helpline), or online chat alternative (similar to or linked with the secure online counselling provided by eHeadSpace).

b) The adequacy and reliability of the safety, risk and risk assessment tools used at Community Service Centres

There is growing peer-reviewed literature regarding the benefits of risk assessment and actuarial tools, though usually accompanied by salutary warnings associated with naïve or ill-considered application of these measures. Clinically, risk assessments tools are an important element to a comprehensive assessment for the Children's Court, but must also be accompanied by a detailed interview and assessment of the parties involved, review of independent third party evidence and scrutiny of the bundle of FaCS documents provided. Use of these tools in isolation and/or by young, inexperienced case-workers is not dissimilar to asking a medical resident undertake complex surgery or an architecture graduate to design a bridge. We simply would not make such a request.

There needs to be a substantive review process of the use of tools such as the SARA and SDM as the risks of over-zealous application bring with it the likelihood of a child being unjustifiably removed from his or her family; and conversely applied to conservatively, increases the risk of a child being left in an environment of significant risk.

If FaCS were to release the validation study of their own risk assessment tools, it would be of enormous benefit to private practitioners undertaking assessments of children in the Children's Court. Such data would allow practitioners to make comparisons between their own findings and Departmental risk assessment statistics. This would increase transparency and reliability of clinician assessment of risk.

***Recommendation:** FaCS make available the validation studies and data pool for the risk assessment tools such that approved clinicians and researchers are able to incorporate these into assessment reports for the Children's Court and research studies advancing the reliability of these measures.*

c) The amount and allocation of funding and resources to the Department of Family and Community Services for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care

i. Employment of FaCS Caseworkers

Child protection is without doubt incredibly demanding work, and this remains fact irrespective of the level of resources provided. Well-placed resources however, would go a long way in improving the effectiveness of caseworkers and their managers casework. It is my experience, and the experience of the administrative staff at my practice that there is little consistency in terms of caseworkers and their cases - a significant amount of time is lost during each assessment as a new caseworker takes over and spends time familiarising themselves with the intricacies and past history of each case. In my experience, this is invariably compromised as a result of competing priorities, understaffing and chronically high levels of staff turnover within FaCS. This also means that external clinicians assessing cases expend significant time trying to track down the correct caseworker, or alternatively need to contact the manager casework, who is already over-burdened with unnecessary administrative tasks. The sheer quantum of meetings and administrative tasks appears also to consume a significant portion of caseworkers' days, as attempts to contact them often result in days of missed calls and/or email messages. But the equation is simple, for every hour a caseworker spends in administration an hour is lost not directly conducting face-to-face evaluations of ROSH reports.

The pressure of competing priorities is also evident in reading FaCS case files where serious allegations have been made, but the case has been unallocated or simply closed as a result of insufficient resources and high caseloads. There is a need to substantially increase not only funding, but also efficiency of processes and training amongst frontline staff to ensure their ability to assess cases and manage risk adequately.

ii. FaCS Caseworker Experience

In my frequent interactions with caseworkers, it has become apparent that many are early career professionals, with little to no practical experience in trauma, attachment, or abuse, and equally little experience parenting or in dealing directly with children. This impacts their effectiveness in handling their heavy caseloads, in turn leading to higher caseworker attrition and less efficient service provision for children. The absence of parenting or experience in direct childcare experience brings with it an uninformed naiveté of the pressures and constancy of the child-care burden. Additionally, it is with worrying persistence that external clinicians find cases have not been managed with adequate efficiency - symptoms of emotional distress, mood disturbance and aggressive behaviour increase and consolidate while children wait for the system to catch up. It appears there are few caseworkers trained in specialist areas available - such as child sexual abuse, family domestic violence, mental health issues or substance abuse disorders problems. Increasing the number of specialist caseworkers is likely to be a more effective use of FaCS resources rather than hiring large numbers of lesser-qualified early career caseworkers.

iii. Follow-up of ROSH Reports

Also of concern is the rate of ROSH reports that are not followed up with face-to-face assessment. This is an issue that has plagued FaCS and though improvements are recorded, they are minimal. Efforts by FaCS to introduce greater transparency (as recommended by the Woods Inquiry (2008) and subsequent *Keep Them Safe?* resulted in the quarterly FaCS Caseworker Dashboard statistics report. The most recent of these (March 2016) reports a three per cent vacancy rate - the lowest since Q1 2013 - **yet only 28 per cent** of the 75,394 children at ROSH were assessed face-to-face by a FaCS caseworker. By any assessment this can only be considered a frighteningly low level, and this occurrence at a time when there is now record FaCS staffing level is completely unacceptable.

Greater resource allocation for existing caseworkers and managers casework is required to manage risk at an acceptable level. Implementation of measures to reduce high staff turnover must be made a priority. Additionally, greater levels of funding are required to secure frontline staff with more appropriate and more specialised training. Furthermore, the implementation of ongoing caseworker support, supervision and professional development is absolutely critical to the caseworkers and the children they manage. Due to time restraints and caseload demands, caseworkers from FaCS and NGOs report that they do not receive supervision or intensive review of their case plans or reports, unless the matter is particularly complex.

It is important that the Inquiry note these very same concerns about competing priorities, insufficient support and lack of resources have been made by various government reports and inquiries including but not limited to:

- the Wood Inquiry (2008)¹,
- the *Keep Them Safe?* outcomes review (2014)²,
- a NSW Ombudsman review of the child protection system (2014)³, and most recently

¹ Wood Inquiry (2008), recommendations 9.5, 9.6, 9.7, 16.14, 17.3, 20.1

² *Keep Them Safe* Outcomes Evaluation Report (2014), p.76.

³ Review of the NSW Child Protection System: Are things improving? (2014), p.3.

- the NSW Audit Office report (2015)⁴.

d) The amount and allocation of funding and resources to non-government organisations for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care

Case managers and caseworkers from OOHC NGOs are often not adequately trained in trauma, attachment and emotional wellbeing of children with complex trauma and abuse histories. This impacts on their capacity to educate and support foster carers when the children engage in internalising or externalising behaviours. Case managers and caseworkers are also often delayed in seeking external psychological support for children due to lack of awareness or understanding of the severity and implications of the children's past trauma. Many of the referrals received by myself and other Children's Court clinicians as well as other health professionals have noted that the children's emotional distress, escalating oppositional and aggressive behaviours, low moods and excessive anxiety levels could have been managed if the children were referred specialised intervention sooner. Too often, the referrals are made when the children's behaviours have escalated beyond control, have already had significant pharmaceutical intervention (i.e. trying to manage 'difficult' child behaviour via medication), resulting in placement breakdown or risk of breakdown, which not only impacts on the child in question but is also extremely destabilising for the other children placed in that care environment.

The role of internally and externally employed clinical psychologists or registered psychologists within OOHC NGOs are often undermined, whereby case managers and caseworkers may disregard recommendations made by psychologists due to a multitude of reasons. These include:

- Lack of training: Case managers, caseworkers, and other stakeholders may not have training, education and knowledge of the impact of complex trauma on a child.
- Hierarchy: Internally employed psychologists within the NGOs are placed below case managers and caseworkers, in spite of their expertise and experience. Case managers and caseworkers make ultimate decisions in regards to the child's care plan, regardless of the psychologists' recommendations.
- Funding: resources may not be allocated to particular children/foster families due to their level of funding, even when the child is in need of service provision
- Personal relationships: placement may be maintained even when it has detrimental impacts on the child or that foster family (i.e. exposure to further risk of harm factors, inadequate supervision, poor parenting skills, difficulties managing the child's behaviour, unable to meet the child's needs), due to established personal relationships between the NGO and the particular foster carer or;
- Financial gain: placements may be continued in contravention to the best interests of the child based on the level of funding allocated to the child or young person

There are a small group of highly disruptive and behaviourally challenged children who are unable to be maintained in the OOHC system. Current models of residential care for such children poorly meet the children's needs (e.g. placing children in flats with round the clock workers). There is a need to increase funding and support to a special group of foster carers who can provide intensive

⁴ Auditor-General's report on Family and Community Services Agencies (2015), Chapter 5: Service Delivery.

foster care management of disruptive children. The initiative of Sherwood House for example, needs to be expanded beyond its limited base to regional areas and to not just provide assistance to young females but similar small-scale intensive residential support facilities also need to be available for young males at risk.

The more recently developed approach of NGOs playing a bigger part in child protection particularly managing out of home care does not appear to be a positive way forward for vulnerable children. While acknowledging that there are some very skilled and experienced NGOs providing a variety of innovative programs, some of the newer providers appear to have very inexperienced managers and front line workers. There also appears to be poor or even wholly absent quality assurance processes. FaCS reliance on new agencies should be approached with great care and even greater regulation, and the communication links between the Community Services offices and external agencies need to be formal and transparent. My impression however is that links between the NGOs and Community Services Centres are limited and distant.

e) The support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers

The current approach by the Office of Children's Guardian to disqualify kin carers of children on the basis of Working with Children Check (WWCC) issues needs to be reviewed. Many of the issues raised, such as historical charges, charges not related to children, charges or allegations that have not been tested in Court, have the impact of denying children care by loving family members. There needs to be a better way to assess risk and to arrive at a balance between perceived risk and real risk. At the moment Tribunal decisions are heavily swayed by arguments that do not reflect the current accepted professional standards about what constitutes appreciable risk. Appealing the decisions is financially prohibitive and emotionally draining, resulting in many kin carers withdrawing from providing care when it is in the child's best interests for the kin carer to provide such care.

The provision of foster-care to a child or young person - whether provided by authorised carers or kinship carers is demanding and difficult. These people are asked to do the impossible - support and care for children and then hand them back. The carer, possibly quite long-term carers, subsequently has limited or no say in their ongoing involvement with the children. These people are expected and encouraged to form attachments to the children to promote their wellbeing. From my experience the authorised carers appear to be able to accept this limited involvement/detachment more than kinship carers. The arguments for kinship care are the children are placed with people they know (hopefully) and these placements are less stigmatising and more stable. Paradoxically though, many kinship carers feel unsupported by FaCS and feel unsure or unable to act as FaCS expects with the biological parents. The kinship carer is often expected to supervise contact and then gets criticised if the contact arrangement alter without them informing FaCS. Many kinship carers are elderly (Grandparents required to be parents) and are not in the best of health; they become involved as they do not want children from their family to be cared for by strangers.

***Recommendation:** Provision of more extensive training and support for kinship carers beyond just 'parenting programs'. This should include, but not be limited to communication*

skills and assertiveness training, conflict resolution and specialised behaviour management skills to manage challenging child behaviour.

Minimal training is also provided to foster carers in some OOHG NGOs. Foster carers for FaCS are often not provided any training following their authorisation to become carers. There is also minimal supervision of the carers' parenting and providing care to the children following allocation. Some NGOs i.e. Barnados, to their credit, provide ongoing support and training for their carers, including trauma workshops, managing children's anxiety etc. Other NGOs may provide training but do not make attendance mandatory for carers, whilst some NGOs do not provide any training at all. Some foster carers show little improvement or skill development over their years of caring for children and by virtue poor parenting practices may be inadvertently causing harm to the foster children.

Some OOHG NGOs utilise minimal screening tools and interviews during assessment of potential foster carers. Due to the shortage of foster carers, standards are significantly relaxed and the assessment process becomes very informal and may only involve filling out forms for demographic information and a follow up interview that are more akin to 'chats' than a clinical interview. There does not appear to be psychological assessment involved in the assessment of foster carers, yet the assessment process for potential adoptive parents appear more stringent, intensive and routinely includes extensive psychological assessment.

The primary focus of FaCS and OOHG NGOs appears to be maintaining the new placement. Conversely, the concept of reunification is rarely considered or entertained. There is little support for natural parents of children who are placed in OOHG. Often, the only interactions natural parents have with OOHG NGOs are contact time. Natural parents report that they are not provided or assisted in psycho-education, rehabilitation, therapy, life skills such as employment, education or budgeting, housing, courses on domestic violence or parenting skills, and substance use. Reviews with natural parents following the removal of children are often characterised by natural parents feeling even more overwhelmed and helpless, experiencing profound grief and anger with minimal support from FaCS or the OOHG NGOs. Restoration of children remains highly unlikely as the natural parents are more likely to engage in greater risky behaviours and are not offered the opportunities to gain new skills.

f) The structure of oversight and interaction in place between the Office of the Children's Guardian, Department of Family and Community Services, and non-government organisations regarding the provision of services for children and young people at risk of harm or in out of home care

The presumption inherent in this Term of Reference warrants detailed consideration by the Inquiry. Oversight of services for children and young people at risk of harm or in out of home care are not and should not be conceptualised as being limited to the OCG and FaCS. Given the nature of this Inquiry, clearly Parliament has ultimate oversight and when systems fail as they invariably do, the parliament reaches for the judiciary as is currently happening in the current Commonwealth Royal Commission and that pending in the Northern Territory. The Inquiry needs to remain mindful that all systems require monitoring and oversight and that systems invariably perform better and more

reliably when oversight is even more robust. Regrettably as the Ombudsman's Child Death Review report presented to Parliament in October 2015 indicated

'The families of 101 children (21%) had a child protection history, a proportion that is consistent with previous years (my emphasis).⁵ Risk of significant harm reports were made to Community Services in relation to the child who died (56) or a sibling of the child (20). In addition, 25 children and/or their sibling(s) had been the subject of a report to a Child Wellbeing Unit (14), or a report to Community Services that did not meet the risk of significant harm threshold but related to concerns about risk (11). Thirteen children were in care at the time of their death'.

Prime Minister Malcolm Turnbull opined recently that 'when a child is abused we are all diminished as a community'. Well, words fail to adequately express what our community should say when 101 children have died who had a prior child protection history, and worse - that this is an annual rate.

The fact that this rate of child deaths remains consistent despite the numerous preceding reports and inquiries detailed earlier, leaves our community far below the concept of diminished and should be the pivotal aspect of this Inquiry's focus. It is only with far better resourced and far more rigorous oversight will substantive change be advanced.

The Ombudsman

The 2014 *Review of the NSW Child Protection System: Are things improving?* report makes for salutary if not depressing reading. The fact that more than six years has elapsed since the Wood Commission and multiple critical issues evidence little change. Indeed in comparing reviews conducted in 2011 and then in 2014, the Ombudsman stated:

"At the time we released Keep Them Safe?, the available data showed that only around one fifth of all reports assessed by Community Services as indicating risk of significant harm to children (ROSH) were receiving a face-to-face response.³

In relation to this issue, Community Services acknowledged that its capacity to respond to children at risk of significant harm was inadequate. In our 2011 report, we identified the need for Community Services to focus on improving its productivity, including by systematically collecting and utilising data to drive greater efficiency. We also highlighted the importance of ongoing transparency by Community Services in relation to its ROSH response rates and related issues, such as the filling of vacant caseworker positions."

(by 2014) '... only 21% of all ROSH reports were recorded as receiving a face-to-face response'.

The Office of the Children's Guardian

The oversight capacity of the OCG is largely associated with accrediting and monitoring the designated agencies that arrange statutory and voluntary out-of-home care (OOHC) and non-government adoption services providers. The OCG also authorises the employment of children under the age of 15, and administers the Working With Children Check (WWCC). Mention has already been made of the implications of a WWCC failure or renewal refusal, which then necessitates the kinship carer or foster-carer to appeal this to the (NCAT) Tribunal. In an effort to minimise the cost and stress associated with this, there could be facility made for the OCG to be able to request independent review with a structured risk assessment.

⁵ A child is reported as being from a family with a child protection history if the child, or their sibling, had been the subject of a report of risk of harm or risk of significant harm to Community Services, or the subject of a report to a Child Wellbeing Unit, within the three years before the child's death.

Family and Community Services

Presuming the child or young person is being directly case managed by FaCS, then the Department's (or Secretary's) oversight capacity is typically limited to ensuring the objectives of the Care Plan are met for the duration of the supervision period or duration of Parental Responsibility. At more recent Children's Court hearings in which I have been the appointed clinician, there appears to be an overriding imperative by FaCS to ensure the shortest period of supervision is stipulated with parental responsibility handed over as soon as possible to the Foster-Carers. Further, in the process of negotiating the Care Plan there appears to be a similar imperative to ensure the least frequent contact regime for the child or young person with the biological family. These 'contact periods' are of such short duration (often as little as two hours per two months) that do little to promote the child's relationships with any part of their family system, but enables FaCS and now the NGO providers to 'tick' boxes and say 'look the child is having contact'.

Where the case management services are provided by NGOs there appears to be a concerning 'disconnect' between FaCS and the child or young person. Compounding this is where there are allegations of Risk of Harm or Risk of Significant Harm being made by the NGO. There appears to be a tendency for FaCS to abdicate responsibility to the NGO to review the risk issue. This leaves open the possibility that FaCS is not monitoring the NGO to ensure the risk issue has been effectively addressed and ameliorated. Further, in terms of long-term Care Plans, once management for these have been handed over to the NGO, it can almost be guaranteed that there will be no change to the child's involvement with the biological family, much less, optimistically hoping for increases of contact with any members of the biological family regardless of whether it is parent, grandparent or sibling, thereby almost guaranteeing there is no likelihood of the child ever to return to biological family.

It is noteworthy that this Parliamentary Inquiry is being conducted at a point in time when FaCS has delegated less than 25% of its total OOHC case-load to NGO providers and already there is concerning anecdotal evidence about the standard of foster-carers who are being authorised, about the limited or absent training provided and about the minimal quality assurance monitoring of either foster-carers and the respective NGOs responsible for the child's case management.

The extraordinarily high removal rate in NSW compared to other states in Australia has been reported elsewhere⁶. The number of children currently in long-term OOHC in NSW, now in excess of 18,000, which if current trends persist would suggest this to be in excess of 22,000 by 2018, but with a concomitant budgetary burden of more than \$1.5 billion in OOHC costs. Given the enormity of these statistics it is therefore unsurprising that FaCS is now strongly promoting adoption purportedly to improve long-term stability for the child, but logically also as a mechanism to reduce the cost burden on the government. In an era where case management is being handed over to NGOs, and a strategy of adoption is being promoted, the oversight ability of FaCS needs to be improved in this area – not reduced. FaCS needs to be charged with ensuring optimal contact arrangements for the child with their biological family, and to be monitoring when this should be increased, as NGOs will likely resist this due to the associated costs.

Another issue that warrants greater oversight is FaCS continuing to obtain assessments of children at risk or parenting capacity assessments without going through the Children's Court for an

⁶ Australian Institute of Health and Welfare. (2015). *Child protection Australia 2013-2014* (Child Welfare Series No. 61). Canberra: AIHW

Assessment Order. Acknowledging that as a clinician, I conduct assessments for both the Children's Court Clinic (CCC) and for FaCS, I routinely ensure that the Department can provide a sound rationale for not seeking an Assessment Order before I accept the referral. The critical issue here is the perceived loss of independence associated with FaCS funded assessments. It is the independence of these assessments that is fundamental for the Children's Court to make the best decision for the child's long-term care, and also why Assessments Orders and the Children's Court Clinic were embedded in the amended Children and Young Persons (Care and Protection) Act [NSW 1998].

The Children's Court

As noted elsewhere the NSW Children's Court was subject to considerable scrutiny during the Woods Inquiry and a number of significant positive changes were made including the appointment of a District Court Judge to be President of the Court and an increased emphasis on Dispute Resolution Conferences (DRC) to reduce the adversarial nature of the Court process, but to maintain effective oversight. That said, the Children's Court remains overwhelmed and under-resourced, with pressure to finalise cases of the 'docket list'. Its role in oversight of FaCS and increasingly NGO's is critical and more resources need to be directed to it to enable more intensive and ongoing monitoring of provider services. To his credit, the President of the Children's Court has introduced a specialised Koori Court to enable better managed and more focused intervention with ATSI children and young people in the criminal jurisdiction. In other jurisdictions, such as the Commonwealth Family Law Court, the Less Adversarial Trail system and the Majellan Systems have been implemented an effort to promote ongoing monitoring by the Court while promoting and increasing interagency collaboration. The Victorian Children's Court is currently running a pilot Family Drug Treatment Court (FDTC) to assist the restoration and reunification rate of children in substance-affected families. Notably there are more than 330 FDTC's of these established in the USA and more than 10 operating in the UK. **In NSW – there are none.** The NSW Children's Court must be provided with additional resources to develop such systems.

The Supreme Court

Under s.42 of the Adoption Act [NSW 2000], prospective adoptive parents are required to '*submit an expression of interest to the Secretary, or principal officer of an adoption service provider accredited to accept application to adopt.*' s.45 of the Adoption Act [NSW 2000] then states that the prospective adoptive parents '*must be assessed and must be approved by the Secretary or by principal officers*'. FaCS is required to allocate an external expert- a contracted adoption assessor to assess the suitability of the adoptive parents. Yet, there have been an increasing number of adoptions in NSW whereby internal clinicians or caseworkers from FaCS have conducted this suitability assessment, thereby removing independence or impartiality from this process. An added concern is that the majority of the contracted adoption assessors on the publically available FaCS list do not appear to have been accredited with the NSW Children's Court Clinic. This raises even further concerns about the level of independence and forensic credibility required to provide the Supreme Court with an adequate assessment of the viability of adoption whilst being mindful of the enormity of terminating the child's biological family's rights.

s.46(2A) of the Adoption Act [NSW 2000], states that '*a birth parent who has not consented to the adoption of a child (a "non-consenting birth parent") is, as far as possible, to be given the opportunity to participate in the development of, and agree to, an adoption plan in relation to the child.*' The ongoing restriction of access for children with their biological families once long-term

OOHC orders are made, means that relationships across entire family systems are strained if not broken, and that the capacity for birth parents and significant others is severely constrained. The transfer of case-load management to NGO's means contact with birth families will likely be further reduced due to cost constraints. All of these issues warrant considered assessment by the Court.

The Parliamentary Inquiry should note the current paradox in that independent clinical assessments are to be provided to the NSW Children's Court to assist determinations about the best interests of the child, yet the NSW Supreme Court, with an expectation of the highest standard of independence is being asked to accept assessments provided by assessors directly engaged by the department putting forward the application to the court.

***Recommendation:** The Parliamentary Inquiry should recommend to that any Adoption application being put forward to the Supreme Court by FaCS, particularly in matters with non-consenting parents, can only be done so on the basis that there has been an Assessment Order conducted by a clinician approved under ss.58 of the Children and Young Persons (Care and Protection) Act [NSW 1998].*

Regrettably, FaCS's withdrawal of funding, resources and support of adopted children and their adoptive parents have resulted in the lack of supervision or monitoring of the quality of care of these adoptions.

In an appeal matter heard by the District Court, long-term OOHC orders were rescinded and the subject child was returned to the primary care of her natural father (and siblings), largely on the basis of an active, incremental contact regimen, which had resulted in the child developing positive familial attachment relationships.

76 "The well-being of Poppy, if the current arrangements were to remain, is directly affected by her need for self identity through her birth family, Mr Emery and his two children, the full siblings of Poppy. Dr Banks explained, in his evidence, the importance of Poppy being able to identify with her birth family and if the current care arrangements with the Upton family, (with contact with her birth family) were to continue, there was a long-term risk of psychological harm to Poppy, particularly as she reached her teenage years.

77 I therefore determine that Poppy be returned to the primary care of Mr Emery and that parental responsibility be allocated to him and to that extent, I set aside the decision of the Children's Court pursuant to s91(5) of the Care Act."

Judge R A Sorby
FaCS re Poppy [2012] NSWDC 281

There are multiple internally employed and externally contracted psychologists in NSW who report that once children or young people are placed with OOHC NGOs, there is very minimal (if any) interactions with FaCS or OCG, even when there has been multiple substantial risk factors and events that have occurred. Reviews of foster carer assessments referred by NCAT and the OCG, where foster carers have been de-authorised show that there is often a 5-6 year history whereby these risk factors have been prevalent. Yet, little is done by the NGOs and they often do not communicate this to FaCS until several other (Risk of Harm or Risk of Significant Harm) events have occurred, much to the detriment of children. Further, even when NGOs alert FaCS, there is often little involvement such as interventions, support or clinical advice from FaCS, other than phone calls or file notes. This then leads to escalation of risk of harm events precipitated and perpetuated by the foster carers, leading to the harm of children and de-authorisation of the carers.

Critically, neither the NSW Children's Court nor the Children's Court Clinic has been mentioned as providing any element of oversight to children and young people at risk or in OOHC. Yet ultimately if concerns were such from FaCS or the OGC, then logically the Children's Court is the ultimate body of oversight. To this end, there needs to be far greater resources directed to the NSW Children's Court such that more timely review, and where necessary, more active ongoing management is able to be provided. Similarly greater resources can and should be available for the Children's Court Clinic to be able to meet the demand for independent assessments for the Children's Court as it can provide far more robust oversight than either FaCS or the OGC does separately or in combination.

g) Specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people.

Based on my experience with such cases, I would like to raise a number of concerns. When children and young people are removed from their parents, and placed in OOHC, there is a real risk of them becoming disconnected from their cultural identity. In the event long term Orders are made allocating Care to the Minister, by virtue of the exclusion of Adoption, it means the child is consigned to the foster-care system until adulthood. The risk of this is not just disconnection from culture (despite being placed in kinship placements), but also long-term disconnection from their biological extended family.

When the matter is heard in Children's Court, the primary focus, appropriately, is on the child's safety and ensuring the most stable care placement. Often regrettably there is little focus on specifically detailing the steps of ensuring ongoing cultural connectivity within the Care Plan. In a case that I reviewed, I suggested the maternal grandmother be given Parental Responsibility for Cultural education and Identification.

Recommendation – While acknowledging that Care Plans usually have a section addressing cultural factors, additional effort should be exercised through engaging with or at least consulting an Aboriginal Liaison Officer to ensure all possible aspects of ATSI Cultural identity has been addressed.

Recommendation – where possible Parental Responsibility of Cultural education and identification should be allocated to a biological family member. Access to mentor programs should be specifically detailed, as well as additional time and resources that will be dedicated to ensuring the child has optimal engagement within their cultural community.

Typically contact arrangements are reduced once long-term Orders are made. Contact episodes can be as frequent as once per month or as rare as once per three months. Due to the additional risks faced by children and young people of ATSI origin, the need for cultural and family connectivity should be need to be considered in a far more flexible manner and generous manner. In the case where I recommended the maternal grandmother have Parental Responsibility for Culture, care arrangements were also modified such that additional contact time was specified for the child to spend with the grandmother so as to be able to attend NAIDOC week and other cultural events of significance, such as Sorry Day and others.

Recommendation – Contact arrangements should be more generous and more flexible to ensure adequate time is quarantined for the child to actively attend cultural events, where possible with biological family.

Education of legal representatives about ATSI awareness is critical, particularly for Independent Legal Representatives (ILRs) and Direct Legal Representatives (DLRs), where possible these representatives should engage with ATSI Education officers regarding the review of Care Plans so as to ensure ATSI cultural factors have been addressed appropriately. Additionally there should be greater effort to ensure solicitors currently employed within the Aboriginal Legal Services are listed on the panel of Children's Lawyers so a greater proportion of indigenous solicitors represent children of ATSI origin. Similarly, there should be greater incentives to assist solicitors of ATSI origin to access the training and supervision necessary to achieve accreditation under the NSW Law Society as a Children's Law Specialist.

h) The amount and allocation of funding and resources to universal supports and to intensive, targeted prevention and early intervention programs to prevent and reduce risk of harm to children and young people,

The notes from FaCS that accompany an Assessment Order frequently comment that a notification has not been perused because of other priorities. It is only when several notifications have occurred and not been looked into that action takes place. I assume this failure to intervene results from a risk assessment process which prioritises incoming work. This limited action suggests there are either too few staff to undertake the volume of work coming to the various CSC and/or the risk assessment process needs to be revised. This late action suggests the concept of early intervention, support and prevention has little place in CS ongoing practices. The Ombudsman's reports 2011 and 2014 highlight that little has changed in face-to-face evaluation of ROSH reports – still at one in five despite the time elapsed since the Woods Inquiry. It is self-evident that without adequate direct investigation, there is little chance that effective targeted and/or early intervention services can be provided. Without being trite, the simplest solution is that the current evaluation rate of one in five ROSH investigations must be dramatically increased.

i) Any other related matter

The events surrounding the recent ABC Four Corners investigation into the Don Dale Youth Detention Centre⁷ highlighted that when systems of Institutional Care fail and the government departments charged with their oversight have more than likely already failed too, the key resource for true oversight remains with the Parliament which will then invariably reach for the judiciary to investigate and review systemic failures via Inquiry's and Royal Commissions.

The paradox however is that if the parliament does not ensure the judiciary, much less the relevant government department, is funded adequately, then oversight will inevitably fail.

⁷ "Australia's Shame" ABC Four Corners investigation into juvenile justice in the Northern Territory as accessed from <http://www.abc.net.au/4corners/stories/2016/07/25/4504895.htm>

When the amended Children and Young Person's (Care and Protection) Act [NSW 1998] was enacted to address the limitations of the Children's (Care and Protection) Act [NSW 1987], one of the fundamental changes was that assessment of child at risk of harm matters was removed from FaCS and placed firmly under the purview of the Children's Court. At the time, it was considered counter-intuitive for the department charged with identifying and remediating situations involving children at risk of harm, to also be required to independently assess the legitimacy of those decisions, much less assess the quality of evidence upon which these decisions had been based. As such the Children's Court Clinic (CCC) was conceived and embedded into the 1998 Care and Protection Act (s.58).

The primary function of the Children's Court Clinic (s.58) is to prepare and submit assessment reports of children and young people (s.53) and of Carers and Parents (s.54). In reviewing the adequacy of the Clinic's function, the Wood Inquiry also noted (Vol2, p.459):

11.310 The consistency and quality of reports is an important matter and the Inquiry is of the view that the work proposed by the Clinic is positive. However, since the clinician's report will normally constitute the only expert evidence before the Court it is critical that it be impartial, fair and correct (my emphasis).

Regrettably since the transfer of the Children's Court Clinic to NSW Health, its fundamental role of being 'impartial' has become irrevocably compromised. All staff of the Clinic - both administrative and clinical are now direct employees of Sydney Children's Hospital Network (SCHN). The issue this presents is that many cases of child abuse receive treatment through one of the Sydney Children's Hospitals and there is a risk – whether real or perceived that the hospital health-care professionals can exert influence over those engaged by the Children's Court Clinic.

As can be seen from other submissions to this Inquiry (see for example, submission #20 Dr Hayward-Brown), which regardless of the content contained, highlights concern within the community as to the now perceived lack of independence of the Clinic. This cannot be allowed to continue as it potentially threatens the integrity of the Children's Court process as well.

A recent case I assessed, now on appeal to the District Court was seriously jeopardised because the parents raised concerns about the independence of the appointed Court Clinician from the Director of the CCC who was known to be direct employee of the Sydney Children's Hospital where a number of allegations of Risk of Significant Harm originated.

But it is not just the impartiality of the Children's Court Clinic that has been compromised. The transfer across departments is actually contrary to what the Woods Inquiry recommended:

(Woods Inquiry) Recommendation 11.2:

"There should be a feasibility study into the transfer of the Children's Court Clinic to Justice Health that should also investigate its expansion to provide the services of the kind currently offered by Justice Health in the criminal jurisdiction, as well as an extension of the matters dealt with in the current assessments so as to provide greater assistance in case management decisions." (Vol.2 p.462).

To the best of my knowledge, no such feasibility study was carried out, or if so has not been made public. Contrary to the Woods Inquiry Recommendations – which were purportedly adopted fully by the then Rees government, the NSW Children's Court Clinic was NOT transferred to Justice Health, but instead was transferred to NSW Health, specifically under the auspices of the Sydney Children's Hospital Network. Since that time, the Clinic has been under-staffed, under-resourced

and continues to be overwhelmed with Assessment Orders. In 2015-16, the role of Director of the Children's Court Clinic was left vacant for almost nine months, and was then downgraded by NSW Health in terms of the classification and remuneration of the position.

Another deleterious aspect is that since the transfer of the Clinic from the auspices of the Attorney-General Dept to NSW Health has occurred, the Clinic is now required to 'rent' the office space (from AGD's) that it occupies in Parramatta and Broadmeadow Courts at a cost of almost 10% of its annual budget. This obviously then further restricts the number of assessments it currently conducts for the Children's Court and is ostensibly non-sensical for the Children's Court (and AGD) to be charging the Children's Court Clinic for something that is its own agency embedded in the Children's Court Act. The corollary of such an illogical cost-recovery model is that NSW Health should commence charging the Children's Court for the supply of Clinic Assessment reports.

Recommendation – That as the Woods Commission recommended - a review be undertaken regarding which government department should be responsible for the Children's Court Clinic, but that this should also include the possibility of a return to the Attorney-General's Dept. The review should also include determining the level of necessary funding to be able to meet current and future demand across the Children's Court Care and Protection Jurisdiction and the Criminal Jurisdiction.

Recommendation – That the recent downgrade by SCHN of the position of Director, NSW Children Court Clinic without consultation or reference to the President of the Children's Court, or the Children's Court Advisory Committee be reinstated to its former classification.

Despite the Woods Commission's recommendation, the Clinic is also yet to address the absence of clinical service provision to the Court in the criminal jurisdiction as it is barely able to manage demand (even with considerable gate-keeping filters), much less expand to cover criminal matters. Considering the rise of criminal matters involving young people engaging in extremist ideologically driven behaviour, there has never been a more important time for the Children's Court to have readily accessible a panel of clinicians able to conduct complex risk assessments involving young people.

A further deleterious implication of the transfer of the Children's Court Clinic from AGD's to NSW Health is that it is unable to have computerised access to 'Justice Link' – meaning all documents submitted to the Clinic must be on paper and all reports emanating from the Clinic are submitted to the Children's Court on paper. In an era of electronic portals and large scale efforts by government departments to reduce cost, minimise wastage and be more 'green', this is nothing short of ludicrous.

(Woods Inquiry) Recommendation 11.3

"Data in relation to all aspects of proceedings pursuant to the Children and Young Persons (Care and Protection) Act 1998 should be kept by DoCS and the Children's Court and made public (Vol.2 p.463).

Similarly, in the Government's response to the Woods Inquiry in the document 'Keeping them Safe' (2009), support was confirmed for this recommendation too, together with the stated intention that it **'will introduce legislation to implement this recommendation'**. Again to the best of my knowledge no additional resources have been provided to the Children's Court to enable data to be collected. It is ironic, though tragic that the government readily provides considerable funding to

the NSW Bureau of Crime Statistics and Research (BOCSAR) to maintain an extraordinarily large database of criminal court statistical data, prepare extensive research reports and papers, and yet there is still no database of Children's Court neglect and abuse statistics – issues which could be considered crimes against humanity, or more importantly crimes against children.

*Recommendation – That as promised by the government in 2009, additional resources are made available to the NSW Children's Court to enable databases to be developed and maintained associated with Care matters. This should include but not be limited to demographic details of children and caregivers, data sets on reasons the Care matter was established, risk assessments including actuarial data, reporting statistics, **re-reporting statistics**, Contact statistics – frequency of contacts and supervision periods.*

There is no point in the Parliamentary Committee discussing whether the Department or the Office of the Children's Guardian are adequately resourced if there are manifestly insufficient resources for the Children's Court and its clinical advisory body - the Children's Court Clinic.

I humbly thank the Standing Committee for the opportunity to submit my views – though ask that the confidentiality of these views be respected. Should the Parliamentary Committee require any further information, or alternatively should a verbal report also be required, please do not hesitate to contact me.

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Contributions from the following colleagues and other Authorised Clinicians is also gratefully acknowledged:

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