

# **GENERAL PURPOSE STANDING COMMITTEE NO. 2**

## **Inquiry into Child Protection**

**At Sydney on Tuesday 16 August 2016**

### **CORRECTED PROOF**

**The Committee met at 10:00 am**

### **PRESENT**

The Hon. G. Donnelly (Chair)

The Hon. P Green

The Hon. M. Mason-Cox

The Hon. D. Mookhey

The Hon. Dr. P. Phelps

Mr D. Shoebridge

The Hon. B. Taylor



**The CHAIR:** Good morning, everybody, and welcome to the first hearing of the General Purpose Standing Committee No. 2 inquiry into child protection in New South Wales. Before I commence I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay my respects to the elders past and present of the Eora nation and extend that respect to other Aboriginal people who might be present or viewing the proceedings on the internet.

The inquiry is examining the procedures, practices and systems that operate in the area of child protection. Due to the sensitivity of this inquiry, particularly in terms of the nature of the matters that are before the inquiry, it is important that individuals including children are not named or easily identified in evidence. Any examples or case studies should be presented in a generalised form. Today we will hear from a number of witnesses including Barnardos Australia; Women's Legal Services; Legal Aid NSW; Women's Domestic Violence Court Advocacy Service NSW; Aboriginal Child, Family and Community Care State Secretariat; Grandmothers Against Removals NSW; NSW Children's Guardian; CREATE Foundation; Anglicare; and CatholicCare Sydney.

Before we commence I would like to make some brief comments about the procedures of today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, so I urge witnesses to be careful about any comments they make to the media or to others after they have completed their evidence as such comments would not be protected by parliamentary privilege if another person decided to take any action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. I remind everyone that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. While it may be helpful to hear in a generalised sense about examples or cases, we also wish to protect people's privacy. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages for Committee members should be delivered through the Committee staff. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

**DEIRDRE CHEERS**, Chief Executive Officer, Barnardos Australia, sworn and examined:

**The CHAIR:** I welcome our first witness, Ms Deirdre Cheers from Barnardos Australia. Ms Cheers, we have received your submission. Thank you and Barnardos for that very detailed submission. You can take it as read, so you do not need to specifically take us through it. I invite you to make an opening statement, if you wish. That will be followed by questions from Committee members, if you are okay with that.

**Ms CHEERS:** Thank you for the opportunity. Barnardos Australia, as the Committee would be aware, is a non-government organisation [NGO]. We are a large organisation. We provide predominantly foster care in New South Wales for more than 500 children each year and each year we care for more than 1,000 children in New South Wales and the Australian Capital Territory [ACT]. We are the only agency that specialises in care outcomes with a program focus—by that I mean we provide very specific programs based on particular placements based on designed child outcomes. We believe the recent changes to the current system over the last five years or so have been positive. However, there are some important issues that require attention to ensure children get the care they need and deserve.

We need the system to be built around the needs of children rather than adults. We are very clear that child protection is not a one-size-fits-all proposition. We need faster and better decisions for children at risk. We need to avoid double handling, particularly inside our government departments. We believe very strongly that there is no such thing as general foster care. We fund our foster care systems according to definitions such as "general foster care", but Barnardos' strong belief is that we need to be child outcome focused rather than funding focused and we need to be very clear about the outcomes we want for child placement. If we get the placement choice right then the child outcome will be good. That is our strong experience. We really believe that NGOs such as Barnardos have a crucial role in providing services precisely because we are not a statutory department. Families trust us. We know the children. We have a skilled workforce that we know is capable of delivering high-quality care through accredited services.

**The CHAIR:** Thank you very much for that opening statement. With us today are members of the Government—Liberal Party members and National Party members. We have representatives from the Christian Democratic Party in the form of our Deputy Chair, the Hon. Paul Green. The Hon. Daniel Mookhey is from the Opposition and there is a representative from The Greens who will join us a bit later this morning. If you are okay with it, do you mind if the questions flow across?

**Ms CHEERS:** That is fine.

**The CHAIR:** Perhaps we will get under way.

**The Hon. Dr PETER PHELPS:** I only have two questions that are about two things you have raised but have not elaborated on and which are of particular interest to me. You mention the assessment process. You believe that the assessment is inadequate and Barnardos has MyStory.

**Ms CHEERS:** That is correct.

**The Hon. Dr PETER PHELPS:** Could you please elaborate on that? It is mentioned in passing, saying, "The current assessment process is not as good as we would like and we have a better one," but then you do not tell us what it actually is.

**Ms CHEERS:** MyStory is what we call a guided practice case management system. It is a computerised system that guides workers through assessments of both families and children. It includes two components. One component is for children who are still living with their own families, and that is called Supporting Children and Responding to Families [SCARF]. That is the front end of the system. Then we have a second component that is designed for children in care. It is a system that actually uses standardised tools but also guides workers through what questions and components of child development they need to consider. That is linked, of course, to outcomes, because you need to measure what the outcomes are as you are going along. The statutory system relies heavily on standardised tools that are based on assessment of risk, and the research evidence on those tools is mixed. They do get good results but they have more of a tendency to be a one size fits all, so they do not necessarily take account of individual child or family circumstances.

**The Hon. Dr PETER PHELPS:** Just to get this correct, the fundamental difference is that they are both essentially purportedly objective systems with some subjective analysis within those objective criteria but in the one case the government system is a risk-based one and yours is a child-outcome-based one.

**Ms CHEERS:** That is correct.

**The Hon. Dr PETER PHELPS:** The second thing goes to adoption, which you raised in the report. I am sure that in the process of this we are going to hear a lot of comments about adoption, favourably and unfavourably. You seem to be in the camp of pro-adoption. Could you explain why Barnardos has taken that position?

**Ms CHEERS:** Barnardos has been an adoption agency in New South Wales for over 30 years and we have throughout that time provided for open adoptions. The legislation in New South Wales is progressive and has been—

**The Hon. Dr PETER PHELPS:** It is just that no-one uses it—sorry, that is unfair; 70 people a year use it.

**Ms CHEERS:** The issues around adoption are that there is a strong legacy of the past around negative outcomes of adoption and, particularly throughout the areas of closed adoption and forced adoption, it is the case that people have very strong divided opinion about whether or not they think it is a good idea. Barnardos' experience of open adoption for over 30 years is that it echoes the international research evidence that adoption actually gets the best outcomes for children who cannot ever return home, but open adoption is a different adoption—and I am talking here of non-Indigenous children—in that the adoptive carers actually embrace the child's family in order to preserve the child's birth identity. Our experience, and very proactive experience, of adoption is that those good outcomes can be achieved and that whilst the parents of a child may not wish to consent to that adoption, many do not oppose the adoption because they have a connection with their child's adoptive parents and can see that their child actually is being parented well.

**The Hon. Dr PETER PHELPS:** Would it be fair to say that with the parents that you have interacted with, in those situations where it is impossible for the child to return home, that the parents themselves are more in favour of open adoption than they are of long-term placement in care?

**Ms CHEERS:** I think it is very difficult for any parent to admit to having not given the best care for their child or to give their consent. Some parents do consent but not many. Our experience is that when parents can have a relationship with the adoptive family then the child is the one that benefits overall.

**The Hon. Dr PETER PHELPS:** But that leads me to the next problem, and that is if there has been an assessment that the birth family is never going to be able to provide the outcomes for the child, why are they still involved in their life other than as a matter of, if you like, adding a bit of sugar to the medicine? If you have made the assessment that these people are fundamentally unable to be proper caregivers to the child, why then do they have an interest, a say, a permanent relationship with the adoptive family?

**Ms CHEERS:** There are two prongs to that answer that I would like to use, one based on child development and what we know about personality and identity and the other about the ability of adults to change their lives and parent other children. We see both in New South Wales and we have seen some recent examples just in the last couple of months. If I go first to child development and developmental time frames, there are some children—many children, in fact—who enter the care system now under the age of three who have never lived with their families. So for those children one might well say what is the point of establishing that relationship?

But psychological research and identity, and Barnardos has commissioned some research in this area quite recently, indicates that children's needs for information change over time, and so a very small child will need most of all the security of attaching themselves to a family so that they can feel psychologically safe, but as they grow—and the history of forced adoption shows us this as well—in adolescence a child's need will be very, very different around questioning who they are, where they belong and where they fit in the world. If I refer in lay person's terms to the crisis of identity that many adolescents have and that members would be aware of, many adolescents go through that stage of "I don't belong to you. You're not my parents. You're telling me what to do"; it is exacerbated for children who are not the birth children of a family. That is one component.

The second component is around the ability of adults to both recognise and take ownership of the personal issues and problems that they may have in their lives and also change those aspects of their lives. So parents who have been through our care and protection system, through the Children's Court, where there may have been a long-term order for parental responsibility made for their child, some parents in fact do turn their lives around, but that may not be in line with the developmental needs of the child. It is always very sad when we see parents who have actually made significant changes, which may take some years down the track, go on to have other children and successfully parent them, those children not being removed, but for the child in care, who may have been there since birth or aged one or two, time has moved on and it is important that those children have a secure future with open adoptive parents.

**The Hon. Dr PETER PHELPS:** So how do you avoid the problem of alternative nodes of authority; for example, a rebellious teenager might say, "You're not my parents, you're only my adoptive parents. My birth mother, who lives a slightly more dissolute and wild lifestyle—the sort of lifestyle I would like to adopt as a teenager is a more appropriate node of authority"—of course, they will not say "node of authority", they will just say, "Get stuffed. I'm going to live with mum"? How do you resolve that situation in an open adoptive relationship where there might be an alternate node of authority which a rebellious person could look up to and say, "I want to go that way"?

**Ms CHEERS:** Here it depends on the strength of the relationship as with non-adoptive families and the work that has gone on right from the word go to establishing the child in the open adoptive family as a child of the family, because they are a child of the family—adoption is a legal, permanent form of care—unlike foster care; we see many adolescents in our care and protection system in foster care and adolescence who do, in fact, self-restore to their families because they have never achieved permanency and strong attachments, they have moved from foster home to foster home, they do not belong to any family. This is what open adoption avoids.

**The Hon. DANIEL MOOKHEY:** I also have two questions, one which is specific to your submission and one which arises from your opening statement. I will go to the one specific to your submission. You say on page two that "It would be helpful if FaCS had a greater interaction or communication with the agency making the report so that there can be shared understanding of the motivation of making the report and perhaps a shared understanding of the action and decision-making in relation to screening and assessment". That statement somewhat implies that either that is lacking, it is not happening quickly or, alternatively, it is not happening at all—perhaps not to the level that is required if you adopt an outcome-based approach or a risk-based approach. Would you expand on what, contextually, has given rise to your conclusion about that need. What is going on with respect to that, and how can it be improved?

**Ms CHEERS:** I will start my answer by saying that I understand and am aware that the Department of Family and Community Services [FACS] is currently looking at helpline reports and reporting processes and doing some research into who reports and why. When a report is made to the helpline by a non-government organisation that is already working with a family, they have additional information compared to someone who is making a report cold, who may or may not know what interventions have taken place. For that reason, in some of our Barnardos centres—and particularly our Children's Family Centres, where there are many different sorts of interventions happening, for reasons of family violence, sexual assault, homelessness and childcare—we make a report based on the fact that we have already done a lot of work with that family. That report is assessed and screened in the same way as any other report, using standardised tools. We would like the ability to have a greater degree of dialogue on that or to have those assessments quarantined in some way so that it can be acknowledged that we have already done a lot of the work that the helpline assessment might indicate is needed.

**The Hon. DANIEL MOOKHEY:** The idea would be to create a structure that differentiates according to the capability of the person who is making the report?

**Ms CHEERS:** Yes. That could be a relevant thing to do.

**The Hon. DANIEL MOOKHEY:** That would provide the ability for FACS to align its processes or for you to align yours with the FACS processes in some form of pre-clearing mechanism. Barnardos would apply prior to anything happening, have its capability assessed and then have a different differentiated structure. Is that the type of thing you mean?

**Ms CHEERS:** Yes. We work closely with FACS. Our centres work very closely at the local level. The helpline is a centralised reporting line. There are always tensions when you have a centralised system as well as the local system.

**The Hon. DANIEL MOOKHEY:** So the pre-existing relationships that you have at a local level are not being replicated at the central level?

**Ms CHEERS:** It is not appropriate to replicate them. You want to work closely at the local level. In any community, the workers on the ground, whether government employees or non-government employees, know the families who are in trouble and need help.

**The Hon. Dr PETER PHELPS:** As long as they talk to each other.

**Ms CHEERS:** Yes.

**The Hon. DANIEL MOOKHEY:** I have a question that arises from your opening statement. You said that Barnardos is more trusted than a statutory agency. Would you expand on that? What are the origins of the different sources of trust? Why is it important? In moving children, restoring them to their families or putting them into care arrangements, the importance of trust as a dimension of the complicated sociology of

child protection would be really helpful to understand. Why is it important to look towards nurturing and supporting more organisations like yours to go further, rather than engaging FACS? Why is trust the key dimension in child protection on the front line?

**Ms CHEERS:** There are a couple of prongs to this answer. When I say that non-government agencies are trusted, the very core of that is that we are not the social police. We do not have the ability to take a child away, apply to the Children's Court and say that we think a care application should be made for this child. We cannot say that a court should consider whether a parent can provide good enough parenting for a child and, if not, that a care order should be made, in line with the current legislation and the permanency hierarchy. Compare that to other situations. There is a difference between the police knocking on your door when you have broken the law and you knowing that the police are there because they know you have broken the law. There is a difference between being pulled over by the traffic police and someone in the next lane yelling at you because you have cut them off. We need both systems. We need a statutory system and we definitely need to work closely together.

The non-government sector, by and large, enjoys the trust of families because they know and we know that we do not have the ability to take anyone's child away. That is an important distinction. It is a reason for us all to work closely together and to trust each other, as well as for the families to trust the agencies. At the front end of the system we want to return to their families the children who are before the court, if they can be safe, and we want to prevent children from coming before the Children's Court and care applications being made. We want families to be able to develop relationships with workers where they can be open and honest about the problems they have and make contractual relationships with social workers to change their behaviour. Those changes in behaviour are dependent on both the skill of the workforce and the personal decision-making and the circumstances of the families involved.

**The Hon. DANIEL MOOKHEY:** That makes a lot of sense. Is it the case that if you adopt an outcomes based approach the absence of coercive power facilitates greater cooperation amongst parents to nurture who otherwise would return to behaviour that would put them outside the scope of the protection? Is that the point?

**Ms CHEERS:** It is about the relationship that a worker makes with the parent or the person. If you go to the doctor, the doctor says you need to change your lifestyle and you choose not to do it then you might remain ill. The relationship, whether with a statutory worker or a non-statutory worker, is incredibly important, but the ability to take a legal application to the Children's Court is definitely a coercive power. Barnardos' experience would be that when it is used coercive it does not get the best out of people. It is always better to work on the relationship.

**The Hon. PAUL GREEN:** On page 3 of your submission, under the heading "Helpline reports for children in OOHC", you say that Barnardos believes that closer examination is required in relation to potential overlap of some areas. Would you draw to the Committee's attention the overlap or duplication issues?

**Ms CHEERS:** This has been an issue since the transition of out-of-home care to the non-government sector, which is not complete. Care is not provided solely by the non-government sector. A considerable amount of care is still provided by the government agency. Barnardos has seen some occasions when a child in our care has been reported to the helpline and we may not know about it. It may take some months for that report to come out the other end and back to the agency. That may be because the report has been screened out. The structured decision-making tools used may indicate that it is not a serious report, rightly or wrongly. It takes a while for it to come from the helpline to the local FACS office and then back to us.

One of the difficulties for us is that as an accredited care agency we have reporting obligations to other government departments, specifically the NSW Ombudsman and the Office of the Children's Guardian. While that helpline call may not be of substance, we are required to report to the Ombudsman, for some categories of abuse allegations, the Office of the Guardian. That delay then impedes us from doing that. There are time frames for reporting once we know, so it is not an issue there. We want to keep children safe and we want to avoid duplication. Some of those reporting requirements are duplicated. Some of the things we report to the different government departments are the same. We would very much like to see that data reported to government departments is shared between departments rather than us having to provide it two or three times to different people.

**The Hon. PAUL GREEN:** Is making contact or communication with the appropriate bodies broken, for example, when the first and second phone call do not get through? Is the system frustrated like that?

**Ms CHEERS:** I think Barnardos' experience broadly would be that at the local level we put a lot of effort into developing local relationships. When we are able to do that we do not have those issues. Similarly at

the senior level we have very good relationships. We do not always agree at the senior level but our FACS department is very good at engaging and communicating with their partnership agencies. I think it is always a matter of knowing the right people to talk to at the local level when there are changes in staff and staff turnover. Restructures, of course, do not help but mostly we maintain good strong communication.

**The Hon. PAUL GREEN:** Is there much restructuring that you have to engage with, given the high turnover?

**Ms CHEERS:** There have been numbers of changes within FACS, and many of those are to do with the National Disability Insurance Scheme and some downsizing that the department is doing at present.

**The Hon. PAUL GREEN:** I would imagine it is all mandatory reporting. If a person cannot get through or get the information you need it must be hard to report those mandatory instances.

**Ms CHEERS:** It is not hard to use the helpline system in the sense of mandatory child abuse reporting. The systems are very clear and there are tools that assist non-government agencies to do that. Knowing who to call about what, outside that system can, of course, be difficult when there are staff changes. But the helpline system is very clear.

**The Hon. PAUL GREEN:** And that is 24/7?

**Ms CHEERS:** Yes.

**The Hon. PAUL GREEN:** I draw your attention to page 10 of your submission where you state, "Barnardos notes with extreme concern the ongoing high rate of Aboriginal children with unsubstantiated abuse and neglect." Will you walk the Committee through some of those comments? Earlier you said that adoption is hard for Aboriginal children who are not embraced as easily as other children.

**Ms CHEERS:** Sure. I will start by saying that we strongly believe that adoption is not an appropriate option for Aboriginal children. We are very concerned about the high number of Aboriginal children coming into the care system. We understand that our current Minister is also very concerned about that, and he spoke of that yesterday in opening our child welfare conference that is happening this week as I speak. Barnardos has partnerships with Aboriginal agencies in the out-of-home care area and we work very closely with them to be self-determining in making placement decisions for their children. We support the principles of our Aboriginal Secretariat for Children in Care that Aboriginal children should be placed with Aboriginal carers in Aboriginal agencies.

We also have a number of services for Aboriginal families, particularly in the regional and rural areas of the State. We work closely with those communities. We employ a large number of Aboriginal staff, and our current corporate plan and our board strategies are very, very focussed on supporting Aboriginal families to look after their own children. That said, we do find it difficult to access funding for those services. We rely heavily on corporate and non-government support to actually fund things like our Aboriginal learning centres, which we provide in three parts of the State at present. We have programs such as Parents as Teachers, which is not a specific program for Aboriginal families but one that we have done some work on to customise and tailor to Aboriginal families. Our ability to fund intervention programs very locally, community based, employing Aboriginal staff is difficult.

**The Hon. PAUL GREEN:** It seems we are changing how we do that again. I hear that resources are strained, as per usual in Family and Community Services. Is the process for dealing with Aboriginal children broken or cracked? If so, where?

**Ms CHEERS:** It is always the principle of self-determination that actually can get in the way of delivering those programs because it is very important, given our past, that Aboriginal communities are able to deliver the services that are suitable to them on their terms, and are able to keep their children safe in ways that they see as culturally acceptable.

**The Hon. PAUL GREEN:** What does self-determination mean?

**Ms CHEERS:** Making decisions about their children on country and in their own community.

**The Hon. PAUL GREEN:** That is not only their parents, but it could also be the elders, aunts and uncles?

**Ms CHEERS:** Absolutely. We work closely with elders in the communities we work in.

**The Hon. PAUL GREEN:** So it is a roundtable self-determination but with the national country?



**Ms CHEERS:** Yes. Very recently we co-operated with one of the major universities with a PhD student who presented her groundbreaking work yesterday to the child welfare conference on what Aboriginal communities want and expect in relation to child protection for their children.

**The Hon. PAUL GREEN:** Is there an increase in the overall number of Aboriginal children coming into care? Is there substantial evidence that that is drug related, for instance, to ice in regional areas?

**Ms CHEERS:** I do not have factual information about particular causes of entry to care in relation to particular drug use. But my belief is that the numbers of Aboriginal children coming into care are continuing to increase, and they are high.

**The Hon. BRONNIE TAYLOR:** I acknowledge the incredible work done by Barnardos on the ground. I understand good work is being done in recognising a lot of the matters you just raised. We have next of kin notifications that parents fill out for their children before they start at school so the school can ring the parents. In relation to Aboriginal children it is all about finding those people of country and of same belief. They may not be 10 kilometres down the road, it may be an aunt some way away, but that cultural significance is still the same. We are looking at doing that better.

**Ms CHEERS:** The department has very recently brought out an expert on family finding—I do not think that is the phrase they have used—and it is exactly that. We find in our own Aboriginal care team that they will find family very quickly, or extended kin far more quickly than any non-Aboriginal worker could do. I think a great deal of work needs to be done in that area. When Aboriginal children are before the court, it is often harder for non-Aboriginal workers to do that family finding work or they may find family that is not necessarily the family that the Aboriginal community themselves would choose.

**The Hon. BRONNIE TAYLOR:** We are taking a step in the right direction and in this particular sphere we need to connect.

**Ms CHEERS:** Absolutely.

**The Hon. BRONNIE TAYLOR:** The Hon. Daniel Mookhey asked what I wanted to ask and I take it as a compliment that our brains might be on the same level. I refer to page 2 of your submission. I feel very strongly about service co-ordination, something that is raised on every inquiry I am a part of. In your opening statement you referred to double handling, being child outcome focused and communicating well with the agencies. To me it is a little bit different. You also talk about the trust that Barnardos has, and the immense respect with which your name is held in the community and is known by everybody. You said you can build that trust because you do not end up making the decision to take a child away, which I thought was really powerful. What I want to know is when we have all these issues coming up and your caseworkers are involved in looking at these families, how is Barnardos reaching out to make that coordination of services and communication better if, indeed in this submission, you are noting it is a real issue?

**Ms CHEERS:** I think perhaps something that encapsulates that—that is a very multi-pronged question.

**The Hon. BRONNIE TAYLOR:** Sorry, I tend to do that.

**Ms CHEERS:** Systems cannot care for children; only people can do that. It is all very well to say we need to create child protection systems where everyone communicates and everyone knows everything and we are all on the same page. The sense that systems cannot care for children, people do that, means that we have to somehow set up systems that allow people to get on with the job, and the most important people to get on with the job are the adults who are looking after the children day to day. Social workers go home, so they make plans, they convene meetings, they take things to court, but at the end of the day they go home. It is the carers, whether it is the child's parent or a foster parent, or for a child who can never go home and who is not Aboriginal an adoptive parent, they need systems around them that actually let them get on with the job, but also do that on the child's terms not the adults' terms.

So if we create systems of communication that are based on finding a bed for the child, so, for instance, it is 5 o'clock on a Friday afternoon, the helpline report has been made and the social worker needs to go home or they want to go home because it is the weekend, even though they are a well-intentioned social worker, we need programs for the children or places that actually do not only provide a bed but are a system that let the people who are going to look after that child do it on the child's terms not their terms. To do that well the communication or everyone being on the same page needs to be agreed, but also to have a way of doing that that means that people communicate well and regularly in order to actually let the child go and let the people who are looking after the child get on with the job. It is described well by an American academic who was here some years ago who said that when a family is in crisis and a child may be coming into the care system through the

front door, you need the back door open within a designated period of time. So do not bring them in unless you know what is going to be the best outcome going out, rather than bring children into care and leave them there interminably.

**The Hon. BRONNIE TAYLOR:** Which is a given, really. It has to be child-focused, but it cannot be child-focused if everyone is not sharing that information to get the best outcome for the child. If reports are taking two or three months, or things are being duplicated. Surely it is about people saying a report has been notified, but we have the back end, and we are doing that together.

**Ms CHEERS:** Yes, putting all that together.

**The Hon. BRONNIE TAYLOR:** People are doing great work on the ground in their areas of expertise, but it is not just one thing. I think that is what you are saying here, but I am trying to look for solutions to that because we talk about problems.

**Ms CHEERS:** We have very good legislation that puts time frames around children, particularly very small children. Sometimes it is the case that our court processes are extended through no-one's fault to do with other legal processes, but having a child-focused system is certainly the most important thing.

**The CHAIR:** Ms Cheers, on the bottom of page one there is a paragraph about re-reporting. I know that matter has been touched on by you this morning, but to go back to it the last sentence in that paragraph says:

Our crisis foster care programs report that they are regularly referred children needing care who have had a high number of Risk of Significant Harm [ROSH] reports made, and who by the time they are removed into care have suffered significant trauma.

They are strong words. I gather there is a basis for saying that. I am wondering, can you explain what evidence you have in your experience at Barnardos to make such a statement?

**Ms CHEERS:** Yes. I think this is particularly the case when looking at child neglect. Just late yesterday the conference key note was a presentation on child neglect and on those decisions around when to remove a child. The point that visiting academic made was that children in need, so children where there is neglect but not active physical abuse, are often provided with family support and social workers decide they are going to support the family but not assess it as a child protection matter. Whereas an active abuse, a physical abuse or a sexual abuse is seen very clearly black and white and child protection intervene, but over time neglect, and again for very small children, is very damaging. So a child who is left hungry, unsupervised, alone, or exposed to high levels of violence may not be physically hurt themselves will, in fact, be damaged over time. The trauma research and the work that is currently being done in a number of places in Australia and overseas indicates that both those decisions are very difficult for workers to make, but they are also very damaging for children.

**The Hon. DANIEL MOOKHEY:** My question arises from a paragraph on page 5 of your submission in which you make the point that there is an abnormally high number of people aged 12 and under who are in residential care in New South Wales. Can you present a theory as to why there has been a spike? Why is that not being reduced naturally and what are the specific harms that arise because of the capacity constraints or at least the overproportion of people aged 12 and under in residential care?

**Ms CHEERS:** Sure. I might start that answer by highlighting that I have worked my whole career in the non-government sector, specifically in care and protection. I have worked closely with Government to close residential institutions in the nineties, particularly—large and small institutions—that had all ages of children. Residential care can be a bed and when you have got a residential unit with a bed in it, it is always a ready option when it is 5 o'clock in the afternoon, so that would be some of the reasons that some children are in residential care if they are under 12. It is also the case that there are sibling groups or children whose behaviours are such there just is not a foster carer. I alluded in my opening statement to there not being a one-size-fits-all answer and that we fund according to categories of general foster care, intensive foster care, general residential care, so on and so forth. My strong experience is that it is possible to create an individual placement for any aged child, provided you recruit to the child's need but also pay the carer sufficiently—

**The Hon. DANIEL MOOKHEY:** When you say "individual placement", you mean out-of-residential care?

**Ms CHEERS:** Out-of-residential care, but you need to plan for what the child needs, not for the bed, and you need to pay the person who is caring for that child enough to provide the support that needs. A very concrete example is: A child who is excluded from school for either part of the day or all of the day for a set period of time and you have a carer who works, whether that is a few hours or a lot of hours, then you need to be able to buy in some educational support to meet the child's needs.

**The Hon. DANIEL MOOKHEY:** Is residential care cheaper than putting a person into an individual placement for the system?

**Ms CHEERS:** Residential care is the most expensive form of care of its kind. Foster care is not necessarily the cheapest form of care, but for most children it is a much more cost effective form of care, as well as the form of care that is going to get the best outcome for your child.

**The Hon. DANIEL MOOKHEY:** When you say you are deeply concerned about the high numbers that are in residential care, is the origin of that concern or what is causing that deep concern is that, for want of a better term, a person has been placed out of residential care but has not been moved out of it fast enough?

**Ms CHEERS:** That is correct.

**The Hon. DANIEL MOOKHEY:** That is creating whatever harm is being caused to the child by the inability of that process to continue.

**Ms CHEERS:** For children over 12, there are some children who have had traumatising experiences both pre-care and then in the care system so that, when they enter residential care, they really need to stay with those relationships—and they might be rotating shift worker relationships—for the duration of their adolescence, particularly if they are an older adolescent, 14 or 15. It may be that their needs are better served by retaining those relationships until independence. But for children under 12, placing them in a residential situation where there are rotating shift staff, it means they are not able to form attachment relationships with those staff. Those staff change not only just on shift but over time. They are also sometimes exposed to the behaviours of older children who actually are very inappropriate. The royal commission itself has highlighted for all of us the issue of peer-on-peer abuse. For children under 12, this is a significant risk.

**The Hon. MATTHEW MASON-COX:** I have a couple of questions that you might like to take on notice, Ms Cheers.

**Ms CHEERS:** Sure.

**The Hon. MATTHEW MASON-COX:** I am just interested in the children family centres, specifically where they are located and some information about the services from each of those services. You also made comments in relation to the Aboriginal programs, specifically the after-school programs. You said you have some centres providing that, one of which was at Queanbeyan, my hometown, which I was not aware of.

**Ms CHEERS:** Yes.

**The Hon. MATTHEW MASON-COX:** I would be interested to understand the level of demand for those services. You mentioned that there is a level of unmet demand. I would like to understand what the waiting list situation is and what you see is your need for funding in that area; what you currently spend and what you think is the appropriate level of expenditure, and the results that you have found in relation to those programs you have been servicing from those areas. Lastly, I wanted to ask you about your recommendation—let me call it a recommendation—that the New South Wales Government provide integrated and co-located geographically based family centres to provide a whole range of services. Where would you recommend those family centres be located? What range of services would be provided from them? You do list some here, but I would invite you to be expansive in that regard and that might be useful.

**Ms CHEERS:** Absolutely; will do.

**The CHAIR:** Ms Cheers, thank you very much for attending the hearing today. The submission was very good and your testimony today has added to that by tailoring the information, and we appreciate that very much. The Committee has resolved that answers to questions taken on notice be returned within 21 days. The secretariat will contact you in relation to the questions you have taken on notice and any others that members might have after hearing your evidence today. On behalf of the Committee, I thank you very much for coming along. I also think Barnardos very much for the outstanding work they do for some of the most vulnerable people in our State.

**Ms CHEERS:** Thank you, and thank you for the opportunity.

**(The witness withdrew)**

**(Short adjournment)**

**MARIA Le BRETON, Director, Women's Domestic Violence Court Advocacy Service New South Wales, affirmed and examined**

**KATRINA WONG, Senior Solicitor, Children's Civil Law Service, Legal Aid NSW, affirmed and examined**

**NICOLA CALLANDER, Solicitor in Charge, Child Protection Team, Legal Aid NSW, affirmed and examined**

**LIZ SNELL, Law Reform and Policy Coordinator, Women's Legal Service NSW, sworn and examined**

**The CHAIR:** Thank you for joining us. We have received submissions from your respective organisations. I thank you for the time taken to put them together. They are very detailed and thorough and contain a lot of useful information and points for us to reflect on in terms of, perhaps, reform and change. We will begin by inviting each person to make a short opening statement—not too long, just a few minutes—and then if you are okay we will open the hearing for questions from the Committee. On this Committee there are representatives from the Government—the Liberal Party and The Nationals; from the Opposition, the Labor Party; from the Christian Democratic Party, which is represented by my Deputy Chair, who is not far away; and a representative from The Greens, who will be joining us a bit later this morning. We have decided, if you are okay with this, that the way to deal with this is after your opening statements we will have questioning, but we will deal with it on a case-by-case basis of people putting forward a question and keeping it pretty fluid, which will enable us to get through what we would like to quiz you about.

**Ms LE BRETON:** The Women's Domestic Violence Court Advocacy Service [WDVCAS] New South Wales represents the 28 women's domestic violence case services statewide. They operate in regional, rural and metropolitan New South Wales. They are domestic violence [DV] specialist services that offer advice, court support and referral to women experiencing domestic and family violence. Our services are mandatory reporters. More than 60 per cent of our clients report having children under the age of 16 in their care. Our membership has unanimously reported concern about the under resourcing of Family and Community Services [FACS] and think that this could have negative consequences for vulnerable children and their families.

A specific concern of our membership is the perceived FACS practice of mother blaming whereby when domestic violence is identified as a safety concern for children, the mother's inability or lack of willingness to protect the children from the harm of the perpetrator is seen as the primary intervention by FACS. This practice can fail to hold the perpetrator accountable for their behaviour and places an undue and unrealistic expectation upon the mother to change the behaviour of the perpetrator. What our membership would suggest is consideration of the Safe and Together model, which is based on the perpetrator's behaviour and it is child focused. It is gathering an evidence-based, suggesting that when it is used here are fewer children that have to be placed in out-of-home care due to domestic violence.

Our membership also suggest that FACS staff be provided with greater training, specifically around the complex dynamics of domestic violence, including the many impediments that women face to leaving an abusive relationship. Our membership also suggests that FACS staff be encouraged and invited to draw upon the specialist resources of other services outside of FACS, such as domestic violence specialist services and men's behaviour change services, to assist the family with creating a safe environment for their children.

**Ms WONG:** The Children's Civil Law Service in Legal Aid is a specialist service that has only been recently started in 2013. It works with young people identified with having complex needs. We provide an intensive and holistic legal service through partnerships with criminal lawyers through the Children's Legal Service, the Aboriginal Legal Service, and the Shopfront Youth Legal Centre. A significant proportion of our clients are young people who are in the out-of-home care. A high proportion of those young people are those who reside in residential out-of-home care. Through our partnership with the piloted Youth Koori Court in the Parramatta Children's Court, we have also come into contact with a lot of young Aboriginal people who also have parental responsibility orders but who have had very little engagement with FACS.

I think the Children's Civil Law Service provides a very different view to the panel here in the sense that we essentially work with young people who are at the other end of the spectrum of their lives within the care and protection system. Within the continuum of care provided, these young people are often the ones who are forgotten. These are young people who are approaching the leaving care age and are provided with very little support as they transition to independence. In terms of the issues that we have experienced directly with our

cohort of clients, the barriers that we have identified include a lack of a therapeutic or trauma informed response to young people residing in residential out-of-home care services, particularly in relation to increased interaction with the criminal justice system through the use of police and through the use of apprehended violence orders as a way of managing the behaviour of these young people.

What we have also identified has been the inadequate support in leaving care planning and the provision of after-care services for young people. Through our experience with the Youth Koori Court, we also have identified significant issues around support provided to Aboriginal young people. That is widely discussed in our submission, so I will not go into it in much detail here other than to take some questions later on.

**Ms CALLANDER:** Legal Aid NSW provides legal advice and minor assistance to parents and young people involved in the care and protection system. Legal Aid does this through its early intervention unit and through free advice clinics at any one of its 24 offices throughout New South Wales as well as through funding community legal centres and the Aboriginal Legal Service. We also provide legal advice and minor assistance through numerous outreach services across regional and remote New South Wales. Those are the early intervention services we provide.

Legal Aid NSW also provides legal representation to parents and children in litigation and alternative dispute resolution processes in all of the Children's Courts throughout New South Wales. We do this through our in-house family litigation service and we fund private practitioners on specialist care and protection panels.

Just to give the Committee an idea, at the Children's Court at Parramatta, in addition to the several lawyers that provide an in-house service we also have 70 panel practitioners who just service that one court. Because Legal Aid NSW provides continuity of legal representation for young people and children whenever possible, it means a solicitor can have involvement with a family for several years—through successive children and also when applications are made to change or vary final orders. It is also not unusual for a child we represent to then seek us out when they themselves become a parent at age 15, 16 or 17. So we find ourselves assisting them—the people that we have represented as children—as parents in the child protection service.

This level of involvement with family in all aspects of care and protection gives Legal Aid NSW significant expertise and a very unique perspective of the capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm. In relation to terms of reference (a), (b) and (f), we have provided a submission including 24 case studies and making some 30 recommendations. Legal Aid NSW is concerned that the failures in the system identified in that submission continue to happen, as they have for decades. Legal Aid respectfully submits that any meaningful, sustained change will not happen in care and protection without consistent and effective consultation by the Department of Family and Community Services with other major stakeholders and without a very significant injection of funds to provide services to disadvantaged parents and children.

**Ms SNELL:** I begin by acknowledging the traditional owners of the land on which we gather—the Gadigal people of the Eora nation—and pay my respects to elders past, present and emerging. I thank the Committee for the opportunity to appear today. Women's Legal Service NSW is a community legal centre that aims to achieve access to justice and a just legal system for women. Amongst our specialist areas we provide specialist legal services relating to domestic violence, sexual assault, family law and care and protection. A vital component of our work is our Indigenous Women's Legal Program [IWLP]. Unfortunately, a representative from this team was not available to appear today but I am happy to take questions on notice regarding that work if I am unable to answer them.

We welcome the Committee's focus particularly on initiatives and outcomes for the risk of Aboriginal and Torres Strait Islander children and young people and the funding of prevention and early intervention. We are concerned by the over-representation of Aboriginal children in out-of-home care. There are concerns expressed by Aboriginal and Torres Strait Islander people that core values such as sharing, caring and respect have been fractured as a result of dispossession of land and country, and forced removal of children from their families through the stolen generations.

As a result of forced removals, many Aboriginal and Torres Strait Islander children did not have the opportunity to learn parenting skills from their own parents, aunties, uncles and grandparents. As a result of trans-generational traumas the cycle of removal of Aboriginal and Torres Strait Islander children from their parents continues. So, many children continue to miss out on learning parenting skills from watching and modelling their family members. It is therefore essential that parents have access to strength-based parenting skills and mentoring programs. We believe that through supporting parents you are also supporting children.

Given that Aboriginal people are incarcerated at the rate of 13 times that of non-Aboriginal people, and that Aboriginal women are the fastest growing group in New South Wales prisons, we are concerned that the

over-representation of Aboriginal and Torres Strait Islander women in prison is impacting on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. We are also concerned by the high numbers of children in out-of-home care who have interacted with the criminal justice system.

Child protection reform should not occur in isolation. It is imperative that it is part of a holistic response which includes a focus on justice re-investment; alternatives to custody for offenders who are primary care givers, particularly those who have committed non-violent offences; supporting parents suffering from the effects of trans-generational traumas and disenfranchised grief; and Government and community responses to ending violence against women and their children, such as the National Plan to Reduce Violence Against Women and their Children and the New South Wales jurisdictional plan *It Stops Here*.

While there has been some work undertaken regarding the intersection of child protection and domestic violence, there is so much more work that needs to be done with regards to the intersection of child protection, domestic violence, family law and access to safe and affordable housing. We further recommend the implementation of the "Bringing Them Home" report recommendations, particularly relating to self-determination, reparations and the Aboriginal and Torres Strait Islander child placement principles. We believe that there needs to be much greater commitment to prevention and early intervention. Such programs must be culturally safe, strength based, trauma informed and client centred. They should also be interdisciplinary. We advocate for a combination of free legal advice, access to support services and social workers, and support from a parent advocate who has been through the process. The Cornerstone model in New York is one example of this, and we recommend a similar model be adopted in New South Wales.

Through early legal intervention, parents and primary care givers can be assisted to better understand what the Department of Family and Community Services [FACS] or an NGO child protection service provider has identified as issues, and parents and primary care givers can discuss what are realistic and achievable ways to address the issues identified. Through early legal intervention, families can also be diverted away from the Children's Court to the Family Law Courts, increasing the likelihood that the child may stay with family members rather than going into care. Community legal education is also required so that parents and primary care givers can know about these different avenues. Our Indigenous Women's Legal Program team is involved in extensive community legal education with Aboriginal communities throughout New South Wales. Thank you

**The CHAIR:** Thank you very much for that, and for all of the opening statements.

**The Hon. DANIEL MOOKHEY:** I would like to ask a specific question of the Women's Domestic Violence Court Advocacy Service NSW and then a thematic question for the panel, which arises from all your submissions.

Ms Le Breton, you make the point on pages 3 and 4 of your submission:

This under-resourcing is evident to WDVCS NSW Inc. in the long waiting periods routinely experienced by WDVCS workers in making a report to the child protection helpline; the frequent lack of response received by WDVCS workers from Family and Community Services (FaCS) to reports made to the helpline and the apparent lack of further investigation ...

Are you able to expand on that and what gives rise to that concern and that experience.

**Ms LE BRETON:** Prior to constructing this submission I discussed with our membership what experiences they had at reporting concerns to FACS and what issues may arise. Our services are quite busy. They are inundated with clients and they make frequent reports to FACS. They find that the waiting periods can be between half an hour and one hour to make a report.

**The Hon. DANIEL MOOKHEY:** When you say "waiting period" you literally mean someone waiting on a phone.

**Ms LE BRETON:** I mean waiting on a phone with not-so-interesting music. That is the experience. Ordinarily when you make a report to FACS you will get back a letter saying, "This is what has happened to your report." They report that that frequently does not happen, so they do not receive any notification of what has happened with their report. They also report that, at times, they get notification that it has been referred to a CSC.

**The Hon. DANIEL MOOKHEY:** For Hansard, what is CSC?

**The CHAIR:** We need the acronyms so that Hansard can record the name of the organisation.

**Ms LE BRETON:** A CSC is a community services centre. A notification may be referred to one of those and then the worker will have ongoing concerns about the child. They may call to see if they can speak to

a case worker but it will not have been allocated, suggesting that it was a high enough risk to be referred but there have been competing priorities—or whatever the circumstance within FACS—so they have not even allocated a FACS worker.

**The Hon. DANIEL MOOKHEY:** Is the summation of that that the effectiveness of the process that is meant to happen is being diminished by the chronic delays which may or may not result from under-resourcing?

**Ms LE BRETON:** Yes.

**The Hon. DANIEL MOOKHEY:** I would like to ask my thematic question of the panel. Coming through a lot of your submissions is this view that the workers dealing with the residential and out-of-home care sector require a lot more professional development and training, and presumably, for want of a better term, upgrading of skills. Could that help deal with a lot of the issues that you are dealing with—like the mother-blaming issues, the ability to perceive or identify additional care needs of people who are about to leave care? Am I correctly summarising the submissions that have been presented? If that was an area that was to attract further investment by the Government why would that be an effective holistic response? Are there any savings that would be made later on by avoiding problems that currently occur for want of better training? If we were to say that that is a policy suggestion that we want to take up, can you explain to us the benefits, the costs and why that strategy should have preferences or priority over others that we could contemplate?

**Ms WONG:** Perhaps I could comment on that first. I am Katrina Wong from Legal Aid NSW. A high proportion of our young people live in residential out-of-home care. For the benefit of the Committee, these are young people who have transitioned through a variety of out-of-home care placements—so that is foster care placements or kinship placements—before they end up in residential out-of-home care. These are NGO-run group homes and they usually have four to five young people living in a group home and usually one or two workers on duty at one time looking after the young person.

Typically a young person who is in residential out-of-home care [resicare] will have had numerous placement breakdowns—we are talking about in excess of 10 placement breakdowns—by the time they get into resicare. These are young people who have experienced extreme trauma and as a result of that trauma and the numerous placement breakdowns they have what we would describe as challenging behaviours. As a result of those challenging behaviours they are not able to regulate their emotions and their coping mechanisms and that can often result in quite disruptive behaviour, leading to those placement breakdowns.

What you then have is the most complex needs young people in residential out-of-home care, so in terms of training it is absolutely imperative that there is further training, professionalisation and accreditation of workers that are in the residential out-of-home care sector. At the moment there has been a transition in the case management of residential out-of-home care services from the Department of Family and Community Services [FACS] into the NGO sector. That has occurred over the last few years. What we have seen is that there have been significant inconsistencies in the way young people are managed and looked after in various different group homes depending on each particular NGO. And of course the inconsistencies in the way that a young person might be dealt with are going to have a huge impact on the way that they might settle in to that home environment and whether or not they might consider that the placement is acceptable for them, and then another placement is made elsewhere. From the literature around numerous placement breakdowns we know they are also accompanied by significant change and more trauma.

If the Committee is of the view that putting more resources into training of carers in the residential out-of-home care environment, I think that would be a very well placed objective. In terms of savings, if you look at these young people having the most challenging behaviours, with Legal Aid in both our specialist Children's Legal Service that provides the criminal law representation in the Children's Court and within our specialist Children's Civil Law Service, we see that there is a higher proportion of young people in residential out-of-home care that appear before the Children's Court for what we would deem to be quite minor criminal offences. They might come in because there has been some sort of escalation of an incident that has happened in the group home.

This goes back to the issue about the carers who may not be very well briefed about the young person's history, they do not have very well developed behaviour management plans or are unaware of the behaviour management plans and cannot respond to the young person effectively and then the situation escalates. What then happens is you have workers who—and rightly so—will get very intimidated about some of these behaviours. Then instead of having the skills and capacity to de-escalate that, they will call the police. The police will be called and they will charge the young person with damaging property, for instance. Often young people will exhibit their frustration by damaging property. And there might be a charge of assault against a worker. And then on top of that there will be an apprehended violence order taken out against the young person and they go into the Children's Court.

The contrast to that is that if you had a young person that was residing in a stable home environment, these are the sorts of things that happen on a day-to-day basis with kids or adolescents, but the distinction is that that would be dealt in the home environment. Discipline and other actions would be dealt with in that home environment. It certainly would not be looking to the criminal justice system as a mechanism to manage behaviour. What I am saying in terms of savings is that if there were workers or professionals who worked with those young people that were better trained, that would limit their exposure to the criminal justice system. Again we know the literature about contact with police and what that means for young people's entry into the criminal justice system. That is going to have longstanding cost savings in terms of courts, prosecution, legal aid and of course the young person in terms of having another interaction with police, to whom they might already have a very complex and traumatic response due to their removal in the very first instance.

It is a sector that is looking for it, given the inconsistencies at the moment. In New South Wales there needs to be some sort of accreditation or standard around what we expect. If we say that these are our most complex needs young people, we need to recognise that the people that work with them also need to be particularly specialised and they need to be given the appropriate recognition for it and the appropriate pay. I know the workers get paid appallingly in these resicare environments. If there is the appropriate training that is involved with that then you will provide a more professionalised residential care sector and that will end up having far better outcomes for young people.

**The Hon. DANIEL MOOKHEY:** In respect of how the residential home care sector is organised, essentially, FACS lets contracts to not-for-profits—

**Ms WONG:** That is right.

**The Hon. DANIEL MOOKHEY:** —and the not-for-profits access funding according to that contractual framework.

**Ms WONG:** That is right.

**The Hon. DANIEL MOOKHEY:** And should those contracts not include enough money for those centres to invest in training or development of their staff—or, incidentally, also wages to be able to remunerate staff who are highly skilled—no such training can occur. If that is the case, were we to follow up your suggestion of an overhaul of the training, that responsibility would have to rest with FACS and not necessarily the not-for-profits because they do not have the funding resources or the ability to do more if they do not get more—is that correct?

**Ms WONG:** Yes. I would agree with that. I do not know the ins and outs in terms of the cost unit funding but certainly my impression has been that there is insufficient funding there in terms of training. I think that FACS having the highly developed skills set would be best placed to be providing that training.

**The Hon. BRONNIE TAYLOR:** This is not my area of expertise—it is yours—but out-of-home residential care is provided by the NGO sector as well as the government organisation [GO] sector, isn't it?

**Ms CALLANDER:** About 60 per cent have seen outsource to NGOs.

**Ms WONG:** Yes. That is right.

**The Hon. BRONNIE TAYLOR:** You made quite a point, Ms Wong, about inconsistencies. My question comes on the back of what was just said. If NGOs tender for the ability to provide out-of-home residential care, and within that tender process they say they can deliver certain things, if there are inconsistencies such as you are describing—I consider it quite alarming if some places are working really well and others are not—surely that is an issue for the NGOs that have tendered for that. You also talked about having some type of accreditation for them, which I find really interesting. They are tendering for that business. They are NGOs. They are taking taxpayers' money and telling the Government they are going to deliver that service as per their agreement. Some are delivering it well and some are delivering it not so well. Is it less about retraining everyone than about saying, "Look, these guys are doing a really good job here. They are delivering us really good outcomes. Shouldn't everyone be doing that?" If there are people who are not doing that, isn't that the issue?

**Ms WONG:** It is a good point in terms of role modelling those services that are already providing exceptional care for young people in resicare services. I think the issue is that you will have some NGOs that have very good governance mechanisms and they are quite big NGOs. You might have an NGO that is quite small and only has one house and may not be able to have all the facilities or the capacity to do all the other things that a much bigger NGO might be able to do. I think the positives or the benefits of having a streamlined professionalised specialisation around resicare work is that you have one standard that is consistent across the board. So while this particular agency can do exceptional work, this is the standard that has to apply across all



the agencies. I take your point about the contracts as well—yes, they tender for the contracts. There is some accountability. I should clarify that in terms of accreditation, all of the residential out-of-home care services need to be accredited by the Office of the Children's Guardian.

**The Hon. BRONNIE TAYLOR:** I understand that.

**Ms WONG:** I meant more about the training.

**The Hon. BRONNIE TAYLOR:** I am actually really excited about what you are saying. I think there is a lot of work being undertaken at the moment to do exactly that.

**Ms WONG:** There is.

**The Hon. BRONNIE TAYLOR:** I am really excited about what you have said and I am going to get it out of *Hansard* and send it to someone. I also think, instead of this conversation about people needing more resources and needing to be trained better, if there are people out there doing a real good job at this then let's commend them and tell them they are doing a terrific job and that everybody else needs to pull up and do the same thing.

**Ms WONG:** Yes. I think that is a great idea. But again that is pulling a standard that you consider to be exceptional. At this point in time there is a lack of exceptional—

**The Hon. BRONNIE TAYLOR:** But that might be coming.

**Ms WONG:** That could be coming if it comes out of the Committee.

**The Hon. BRONNIE TAYLOR:** I have to say that I disagree with what you said about the bigger agencies being more professional. I am from a rural and regional area and sometimes those really small ones do a terrific job too, but they are not really big entities.

**Ms WONG:** I should clarify that. I did not mean to infer that the smaller ones could not do the better care; it is just that our experience has been if you have got a bigger organisation they have got the policies down pat, the workers have a detailed training placement as opposed to one of our smaller—an example I can give you is a young person who was 12 years old who came into our service but prior to being in that resicare facility had been in foster care placements, and having been in that one resicare service had 76 interactions with police and had never had one interaction with police prior to moving into that facility.

**The Hon. BRONNIE TAYLOR:** It obviously did not suit that person, did it?

**Ms WONG:** That is right. So it is not a one-size-fits-all.

**The Hon. BRONNIE TAYLOR:** Ms Le Breton, you mentioned transition in your opening statement in terms of the fact that once someone reaches the point where they have been in care up to 16 then we do not have a lot of services for them.

**Ms LE BRETON:** That was Ms Wong. I would love to take credit.

**The Hon. BRONNIE TAYLOR:** I was just interested in someone from the panel, or you, Ms Wong, exploring that because it comes up in a lot of the submissions about that transition.

**Ms WONG:** We are unique in that we are working with young people who are on that precipice of turning 18. We have found significant issues with our young people in terms of even having a leaving care plan drafted. Under the Children and Young Persons (Care and Protection) Act the leaving care process is meant to start when a young person turns 15 and a lot of young people—our young people—leave without having a leaving care plan even in place. That leaving care plan is crucial because from the ages 18 to 25 that plan articulates the supports and the entitlements that a young person might have up until the age of 25.

If you do not have that then if I am 19 I might want to go to TAFE and I might want to use a laptop or pay for courses and I do not have recourse for that. Even though that is a statutory obligation for the department to prepare that or for the NGOs who have case managers to prepare that for the young person, we just found that there is a really woeful take-up of that. Again, in my opening statement I talk about these young people being the forgotten young people, and I think there is a lot taken into that safety; we will take you out of that danger and then we will put you in there and then we just leave you. For the next 10 years we do not know what happens to you until you turn 18.

**The Hon. BRONNIE TAYLOR:** So it should happen but it is not happening?

**Ms WONG:** It is not happening.

**The Hon. BRONNIE TAYLOR:** It is coming up a lot.

**Ms WONG:** It is, and our recommendations were to have some sort of uniform process where there is more accountability around the leaving care plan.

**The Hon. BRONNIE TAYLOR:** Then people doing the job they are meant to do.

**Ms WONG:** That is right and, particularly for our Aboriginal clients, there are woeful leaving care plans in terms of the cultural awareness planning and training. We have had one young person who was participating in NAIDOC activities and there was very little connection to kinship, to culture, and we had to really advocate hard with FaCS, who, to their credit, have come to the table with us, particularly with our youth clients, to develop something that is really nuanced to them. That leads me further on to talk about once they turn 18 what is there for the young person?

**The Hon. BRONNIE TAYLOR:** You have done all that work, you need to follow it.

**The Hon. DANIEL MOOKHEY:** I am going to piggyback off that line of questioning and I thank the Deputy Chair for allowing me to do so. In your submission, I think on page four, you suggest that the leaving care age should rise from 18 to 21. From your earlier answer to that line of questioning you say that for an outcomes-driven approach you need a leaving care age plan from presumably 15 to 25. Can you expand on that? Specifically, should we recommend that? Is it not the case that we would be creating a differentiated standard around reaching the age of majority for a person in care as opposed to a person out of care?

The old lawyer in me says that that is incredibly complicated if you have to carve out a group of young people from reaching the age of majority and prescribe or at least allow them to be subject to a set of legal powers that a person not in care would not be subject to and the tension between those two—which rights do they obtain at 18 and which ones do they not—could become incredibly fraught. I am not suggesting therefore that we should do it, I am just wondering whether you have got an answer as to how that could be constructed.

**Ms WONG:** That is a really good point in terms of legal entitlements or obligations once a young person becomes an adult at the age of 18. I think, for me, raising the leaving care age from 18 to 21, if it is constructed more in terms of the support of a young person who has been in out-of-home care, the issue is that at the time they turn 18 all support from FaCS, everything just goes, it is just an automatic "Yes, that's done". What we are talking about is a transition of a young person who has been in care who does not have the benefit of a supportive family or social supports to help navigate through their lives into independence. I think if you were to construct more in that sense as opposed to saying that you have to stay in care until the age of 21 and we will still have parental responsibility of you until 21, that is not what we are suggesting at all.

It is just that there will be access for the young person to, say, get support for housing—they can still go to their FaCS caseworker to get assistance with all that. If they want to get linked into some education or employment programs they are not left in the lurch to then self-refer to an after-care service, of which there are very few around in New South Wales, to try and get that assistance. So it is more about that transition. When we talk about transition I think of a graduated plan implemented over a long period of time, and at the moment the way we have it at the age of 18 it just does not leave room for it.

**The Hon. DANIEL MOOKHEY:** So is a correct summation therefore that your recommendation is no aspect of any FaCS program delivery, exclude a person over the age of 18, but FaCS does not retain legal parental powers between the ages of 18 and 21?

**Ms WONG:** Yes, that would be what I would be recommending.

**Ms SNELL:** Could I just make a further comment to that to draw the Committee's attention to the out-of-home care inquiry of the Senate committee and its report in 2015? Their recommendation 22 was exactly on this point. They said, "The committee recommends that states and territories raise the age to which young people continue to receive ongoing post-care support to 21 years of age".

**Ms WONG:** And I also think that there has been some really positive work that has been done in discrete areas of FaCS at the moment looking at leaving care and after care. So I think if we can build on the pilots that they are looking at at the moment, and that is reframing leaving care. I think leaving care for a young person, once you say at 15, "We're going to talk about you leaving care", the focus is on a negative of "Okay, we are going to drop you"; it is more about, "Okay, look it is past watching you turn 18. Look at what we can do to help support you when you become independent".

**The Hon. DANIEL MOOKHEY:** But the presumption is that a person might take on that phase of the care departure voluntarily?

**Ms WONG:** Yes, voluntarily, that is right.

**Ms SNELL:** May I also just answer the training question that was asked before?

**The CHAIR:** Please proceed.

**Ms SNELL:** With respect to training, we would certainly see training and education as being an important part, not just for out-of-home care providers; we want to see it much broader than that. We certainly see that being an important part. We also think there needs to be training for carers and, in particular, what we are finding is, in the experience of our clients, resistance when NGOs and carers do not want there to be an ongoing relationship with families. So if there could be some training and support for carers so that they can better understand their role to support ongoing contact with families, we certainly see that as being a positive. We would also echo WDVCS's concerns about mother blaming and the need to address that.

We know that there has been some training that FaCS has provided through their research seminar programs and they have brought David Mandel and Allan Wade out as part of that. Currently the Australia's National Research Organisation for Women's Safety [ANROWS] has commissioned a project called the PATRICIA Project which is PATHways and Research In Collaborative Inter-Agency working and that research project is about the intersection of child protection, family law and domestic violence. In part of the research to practice that they are doing they have also been working with David Mandel and with one of the FaCS offices to work out how they can change their practices. It would be great if that could be expanded further.

**The Hon. BRONNIE TAYLOR:** To work together for the client.

**Ms SNELL:** That is right, absolutely.

**Ms CALLANDER:** Can I also respond to the training question from an earlier perspective still? We mention in our submission that the 2014 reforms brought in a number of early intervention tools that were available through the legislation to the department. There has been very little uptake in relation to those early intervention tools. Our view is that there needs to be significant training of caseworkers at that very, very early interface with families so we do not end up in out-of-home care and we do not need to consider transition programs because they do not end up in care in the first place because there is effective early intervention work done at the first interface with the family when they come to the attention of Family and Community Services. Our view is that with the 2014 reforms when there have been attempts to, from Legal Aid's point of view, work with the department there is a lack of information that is being provided to caseworkers about those available tools.

That training needs to start very early. We note in our submission that there is a different standards in casework in early interventions. You will see it when a matter is filed in court. From some documentation it is clear that there has been very effective, considered and consistent early intervention with the family. In other cases it is completely absent. Caseworkers need training in how to interface with a family early on. A lot of skills and training are missing at that first point of contact.

**The Hon. BRONNIE TAYLOR:** So some non-government organisations are doing that really well and some are not and you are seeing that evidence in court. Is that what you are saying?

**Ms CALLANDER:** The non-government organisations are not involved at that stage.

**The Hon. BRONNIE TAYLOR:** So now you are specifically saying—

**Ms CALLANDER:** Yes, this is departmental caseworkers.

**The Hon. DANIEL MOOKHEY:** Are you saying that there is a need for a whole-of-sector training strategy?

**Ms CALLANDER:** Yes.

**The Hon. DANIEL MOOKHEY:** Is this in the category of: "It is an absolute necessity. This is a disaster. It has not happened before"? Or is it something it would be nice to have or a second order consideration when there is more money, against all the first order considerations?

**Ms CALLANDER:** From my point of view it is fundamental that caseworkers are well equipped to intervene effectively with families when they first come into contact with them. That means making appropriate referrals, being skilled in identifying the risks and making effective interventions. Across the sector we have been somewhat surprised at the take-up of the parent responsibility contracts that are available in the legislation. Since October 2014 about 60 have been negotiated. There have been about two parent capacity orders. That is an order by the court to compel parents to undertake specific courses and training to improve their parenting skills. There has been no uptake by the department. Our understanding is that there has been insufficient training of caseworkers in using those early intervention tools.

**The Hon. MATTHEW MASON-COX:** Are you sure there are not other reasons? Can you think of other reasons that they may not be using those tools?

**Ms CALLANDER:** Our understanding from being involved with the department in redrafting the parent responsibility contract is that it was an unwieldy document. The caseworkers said that it did not fit. There is a protocol, for want of a better word, between intervening with a family and then needing to file in the Children's Court. They said it did not fit into their casework steps.

**The Hon. MATTHEW MASON-COX:** Their toolkit.

**Ms CALLANDER:** It did not fit. Those tools were not an effective fit and they were often responding to crisis.

**The Hon. MATTHEW MASON-COX:** It is a more considered sort of situation when you are sitting down and working through that, rather than dealing with the crisis.

**Ms CALLANDER:** That is right, yes. We are also aware that a lack of training and information has been provided. Legal Aid NSW entered into partnership with 22 community legal centres across the State to provide that advice and assistance because we anticipated that those early intervention tools would start to be used. We contracted with 22 community legal centres across New South Wales to skill them up, to provide that advice, and we simply did not see the work coming through. We then tried to make the links by going to the Family and Community Services centres and introducing the community partners to the department caseworkers. They did not know that those tools were available.

There was a lack of information coming down through the department. I do not know if that is about resources or that they have to meet different priorities. I do not know enough about their organisational structure. There is a lack of information going to the frontline caseworkers. It is fundamental that they are well informed and well skilled. We talk about savings. With litigation there are 70 private practitioners on one panel to service the Parramatta Children's Court. If that early intervention work is done well, is well funded and good services are provided, one cannot estimate the savings in preventing that litigation.

**The Hon. PAUL GREEN:** Ms Snell, I draw your attention to page 13 of your submission. At item number 78 you talk about kinship care. The inquiry's terms of reference go to support, training, safety and monitoring. Your submission mentions a concern that kinship carers are not entitled to or are unable to get help even though they provide the same care as foster carers. Would you like to comment on that?

**Ms SNELL:** It was the experience of members of our Aboriginal Women's Consultation Network. They made the observation that there may be differences in support. We understand from FACS that guardians should receive the same financial support as foster carers, but we are unclear about where informal kinship carers stand. It is about making sure that there is parity for all carers.

**The Hon. PAUL GREEN:** Is the overall care in a kinship situation more likely to succeed than the other types? Is the evidence that someone in kinship care is more likely to thrive than if they were in out-of-home care?

**Ms CALLANDER:** I think that is right. I think the outcomes are better.

**The Hon. PAUL GREEN:** My point is that it would be worthy of investment, to make sure that we do everything we can to sustain that system.

**Ms SNELL:** That is right. One of the recommendations that we made in our submission to this inquiry and to the Senate inquiry into grandparent carers was the importance of ensuring that there is access to respite. A recommendation of the Senate inquiry into out-of-home in 2015 was that that there should be funding to allow for respite as well.

**The Hon. PAUL GREEN:** That brings me to my next question, which goes to point 90 of your submission, which says:

Grandparent carers are typically part of the ageing population and may be more likely to suffer some health issues that may have an impact on the full-time care of their grandchildren.

Obviously that is a concern for the longevity and consistency of care. Would you like to make a comment on that matter?

**Ms SNELL:** If there can be other supports such as respite, and if other family members can assist with that, that is certainly one avenue where assistance can be provided.

**The Hon. PAUL GREEN:** Respite care is tough to get into, I would imagine. It is not easy for people to just walk in, is it?

**Ms SNELL:** No.

**The Hon. PAUL GREEN:** Would anyone on the panel like to talk about your experience of the availability of respite?

**Ms SNELL:** Just on that issue, that is why we would advocate that, if there are other family members who could offer respite, they be able to do so and there be some financial support to assist them with that.

**The Hon. PAUL GREEN:** Would anyone else like to comment on the current situation with respite?

**Ms CALLANDER:** I have heard anecdotally that it is often suggested and is seen as an ideal part of a care plan—the care plan being the final recommendation that the department makes about care arrangements for children when court orders finish. It very rarely happens because of the limited resources available. As the Committee would be aware, the current out-of-home care services are so stretched. There are not enough. Respite is the icing on the cake, really. It requires additional resources.

**The Hon. PAUL GREEN:** I think that is why kinship care should be promoted.

**Ms CALLANDER:** Yes.

**The Hon. PAUL GREEN:** I draw your attention to case study number one on page 20. It shows the importance of early engagement with families and mothers who are giving birth. The last line in the last line paragraph of that case study says that no-one had ever told Jacque that they were concerned about where the baby would be living. Would you like to elaborate on that? If that is the process, it is quite a concern.

**Ms SNELL:** As this case study highlights, there have been circumstances where there has not been any prior engagement with FACS and the baby has been assumed at the hospital. That obviously causes great trauma to the family and, we would argue, to the child. In that case there was a period of time before the mother and child were reunited. That obviously had an impact on attachment. This is why we are very strongly advocating for a much better focus on early intervention. It is also why we advocate very strongly, along with Legal Aid NSW, for early legal advice. I would like to pick up on the point that was made earlier about parental responsibility contracts and why we are not seeing them used very well. We think there are a range of factors causing that. We suspect that one is because they cannot be entered into unless the programs that mum or dad or other primary caregivers have been asked to enter into are available and accessible. There is such a lack of availability of programs which is another key factor in why parental responsibility contracts are not being used. Training is certainly important but you also need the services to exist so that parents can engage in those services to address the issues that have been identified.

**The Hon. PAUL GREEN:** Would you take on notice to provide additional information on parental care contracts which were a very big part of Minister Pru Goward's initiative and which we worked very closely on. If they are failing I would be very interested to know why because they were meant to give an opportunity for children to go home to be with their parents.

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

**The Hon. PAUL GREEN:** The Committee would appreciate receiving further information on that matter.

**Ms SNELL:** Recently we began meeting more regularly with Family and Community Services [FACS] as Nicola has been referring to. Now there are more regular meetings with the Department of Family and Community Services, with Legal Aid, with Community Legal Centres and Aboriginal Legal Service. We basically went to FACS saying "We are not seeing the PRCs, PCOs. Can we work together on this?" This is part of the work that is being developed but yet to see it play out further.

**The Hon. PAUL GREEN:** You say you are now having more regular meetings, but for how long has that been going? Did you initiate that?

**Ms SNELL:** Yes, we initiated that. I would have to go back and check when it started.

**Ms CALLANDER:** I think there have been three monthly. I think about June.

**Ms SNELL:** Yes, about six to eight weeks we meet. It really was coming out of the fact that we were not seeing the parental responsibility contracts happening. Also the other big push that we have been doing, and certainly FACS has been involved in some co-design work, as you may have heard, and one of the co-design

areas has been south-western Sydney. That started in October 2014, I think. Women's Legal Services, along with South West Sydney Legal Centre were involved in that process. One of the things we were advocating very strongly throughout the process was the need for early legal advice and not waiting until it escalates to the Children's Court but getting in much earlier.

Out of that in the south western Sydney district we have developed a range of flyers. One is a general flyer, one is a specific Aboriginal and Torres Strait Islander flyer and one flyer has been translated into a number of languages, the intention being to explain how parents or primary care givers can access free legal advice. The intention is—and we are currently doing some training with FACS staff—that FACS staff and non-government child protection service providers will hand that flyer out when they go and meet with the parents with the idea being that parents can then contact a free legal service to find out a bit more about why it is they are engaging with FACS, what the issues are and how they can work to address those issues.

**The Hon. PAUL GREEN:** Did the department approach you about its concerns of the lack of number of PRCs?

**Ms SNELL:** We approached the department about that.

**The Hon. PAUL GREEN:** I have read your very detailed submission but I do not think fathers are mentioned. We talk about good role modelling. We also understand the statistics in relation to males. Why do you not mention the part that fathers can play, given Her people, Her people? Your paper refers to having good role models of manhood, or fathering better or education. Why is there a lack of that in your paper given that it is probably part of the solution?

**Ms SNELL:** Certainly being Women's Legal Services and working with women we primarily are talking about the experiences of women—mothers, grandmothers, aunts. We did refer to the importance of David Mandel's work which we see as being important. We note the gendered nature of violence perpetrators tends to be male. So in David Mandel's work he is saying that the perpetrator needs to be visible in the process so we certainly see that as being an important area as well.

**The Hon. PAUL GREEN:** I take that as being an indicator that solutions will be sought in that area.

**Ms CALLANDER:** I think it also goes back to that question of resources. Some of the challenges faced by men in the demographic that we are dealing with in care and protections, the courses available to them such as anger management and parenting are so shallow in terms of meeting the needs that a six weeks course will not resolve an inter-generational, anger, impulse difficulty. It is going to have to be much more substantial. Those resources are simply not available.

**The Hon. PAUL GREEN:** That is exactly my point. If 90 per cent is a result of violence perpetuated by males why is there not one reference about good role modelling or successful courses?

**The CHAIR:** Ms Breton, on page 6 of your submission you talk about mother blaming that is prefaced by, "WDVCAS workers have also raised concerns regarding the perceived FACS practice of mother blaming". What is the basis of the claim that mother blaming is occurring?

**Ms LE BRETON:** Just through our experience of working with women, so women we work with live in domestic family violence situations. I say it is perceived because it is anecdotal. They report that all the pressure is put on them to protect their children from the father and then the blame is placed on the mother, "You are not protecting the children. You are not doing what it takes to keep your children safe." However, she is not necessarily in the position to keep her children safe from him. So again that engaging fathers, working with men to improve their behaviour so that they can take responsibility because they are, in fact, the only ones who can change their behaviour; the mother cannot.

So putting the responsibility onto the perpetrator to change their behaviour, instead of putting the responsibility onto the mother to change her circumstance or the behaviour of the perpetrator when they are not, in fact, able. They may have financial restrictions and all sorts of different restrictions. Family law may keep them in contact with the perpetrator. So it is just looking to place the responsibility where the power lies. So the change lies with the perpetrator so placing that responsibility with the perpetrator.

**The CHAIR:** I would have thought that the average FACS caseworker would have an intimate understanding of the power dynamic that is operating in these domestic situations.

**Ms LE BRETON:** They may well.

**The CHAIR:** As a general statement. I am surprised that much is being said by a typical FACS caseworker, if I can describe them as such, that is imposing such a perspective on the person.

**Ms LE BRETON:** Some of it can also come down to a difficulty to engage the father, the difficulty to engage men. So if they are not able to engage the father then they do then just focus on the mother because she is present; she is the primary carer. So then father is then kind of excluded. It is just this risk lurking on the outside that they do not tend to address, placing all of the responsibility on the mother.

**The CHAIR:** And focus, yes.

**Ms LE BRETON:** I think they could use a little more training into the complex dynamics because it is a very, very complex area. But that is not saying that they lack training altogether.

**Ms CALLANDER:** In terms of the maturity, I think that those sorts of dynamics in dealing with and interfacing with them really effectively requires a certain maturity. I know there is quite a high turnover of caseworkers in the past because the work is so very, very difficult and stressful. We often see very young social workers involved in the removal of children.

**The CHAIR:** How young?

**Ms CALLANDER:** Straight out of university, and no disrespect to them at all. None of this is intended to be disrespectful. The reality is they have a very limited life experience and they are interfacing at that really critical time dealing with the sorts of dynamics that we have been talking about, and one questions whether that is a particularly good fit at that point.

**The Hon. Dr PETER PHELPS:** One criticism that is not ostensibly made in the submissions but which I have heard from people who have dealt with FACS in the past is that FACS caseworkers are too young, too white, too middle class and too theoretical. Is that your experience in your interactions with them?

**Ms CALLANDER:** Not all the time. There is no doubt, I imagine, there is some of that across most service provision.

**The Hon. Dr PETER PHELPS:** That came to me from an Aboriginal woman who said, basically, "You are applying a set of North Shore standards to our living conditions here."

**Ms CALLANDER:** Yes, there is no doubt.

**The Hon. Dr PETER PHELPS:** For example, the absence of a substantial amount of wholesome food from a particular house does not necessarily mean the child is not getting wholesome food. They might be getting it from an aunty, grandmother, whatever. It is tick a box for justification for removal.

**Ms CALLANDER:** Yes.

**The Hon. Dr PETER PHELPS:** Ms Snell, would you comment on that?

**Ms SNELL:** Yes. Certainly people have raised with us the concern that people are bringing in their own—

**The Hon. Dr PETER PHELPS:** Idea of what a good family should be.

**Ms SNELL:** Thank you, that is right. Certainly there needs to be awareness about safety and to be cognisant of that, but given one of the main reasons that Aboriginal and Torres Strait Islander children are removed from their families is due to neglect, and how that might be perceived by a western standard without looking at other key important factors like cultural identity, wellbeing of the child, and other factors, we would certainly see that, in fact, cultural competency training is certainly essential.

**The Hon. Dr PETER PHELPS:** Within that, you recognise Maslow's hierarchy of needs presupposes that physiological needs and safety are met, and then and only then you start talking about self-actualisation, esteem and things like that. My concern is that, yes, we all agree, but at what point upon the spectrum is intervention justified? You may well have plenty of cultural experience in a particular household, but if you do not meet the basic physiological and safety requirements, surely that is—I do not know, maybe it is not.

**Ms SNELL:** We are certainly cognisant that safety must be addressed. What I am trying to say is, as you have said, if you open the fridge and it is not packed with food that does not necessarily mean that the child is not receiving food. It may be, as you have said, that they are having a meal at an aunty's place.

**The Hon. Dr PETER PHELPS:** But we do not want to get to the stage that we prioritise the cultural experience over those two lower levels of the hierarchy of need—physiological need and safety.

**Ms LE BRETON:** Could I please comment?

**The Hon. Dr PETER PHELPS:** Yes.

**Ms LE BRETON:** It is also important because culture is vitally important. That cannot be minimised. We have seen the impacts of removing children from their community; it is devastating. I think that does need to be prioritised. Resource-based things can be provided, such as assistance. I think a lot of assistance should be given to families to provide that need. Instead of trying to find a quick fix when children are taken out of their family of origin because there is a lack of resource, we need to address providing resources, helping the family to provide the resources to the child so that the child has everything and they do not have to choose between the physiological basics and the cultural necessities.

**The Hon. PAUL GREEN:** The Hon. Dr Peter Phelps is right. Failure to thrive happens before any of that. It comes down to belonging, love, food and oxygen. You need those things to happen in those first moments out of the womb for the bond, and when those things are strengthened, the Hon. Dr Peter Phelps is suggesting they can be brought in on top of that.

**Ms LE BRETON:** I am not entirely sure I understand, but I would think they all need to come in as the same package. A baby cannot be born then placed on its own without a family and given food. It will not thrive. Even science has shown that does not work.

**The Hon. PAUL GREEN:** They need love.

**Ms LE BRETON:** They need love, they need connection, plus the food, plus the home, plus the lack of violence. It all needs to be there, not one or the other. I know Maslow's hierarchy is referred to a lot and it is very sound, but I do not necessarily think you provide a safe situation just by having the absence of violence. Safety is a sense of belonging and a sense of connection. I think that is required for safety.

**The Hon. PAUL GREEN:** That is right. Exactly my point.

**The CHAIR:** To Ms Wong and Ms Callander, in your submission on page 4, specifically points one, two, and four, you respectively use the phrases "nationally consistent", "national therapeutic framework" and "national standards". Bearing in mind that we are a Committee of State Parliament, how do you envision the role of New South Wales in advancing the cause and articulating this argument for national consistency?

**Ms WONG:** I think that in New South Wales and the other States and Territories everyone is starting to rethink the way in which they care for young people who are in out-of-home care, and that is that emphasis on therapeutic care. What we envisage around the therapeutic care framework and what the Committee can do is provide an example led by New South Wales of what we are prioritising. My understanding is that there is a national child protection framework that could have the capacity to look at advocating for this on a more consistent framework across all the States and Territories.

In similar vein to what I was discussing before with Ms Taylor, what I think is missing is the lack of a standard to refer back to in respect of how we might want to deliver care to young people. At the moment it is residential care. Kids go into a group home, they are provided care by care givers. A lot of them have a good trauma-informed response, but we do not have a basic standard to compare all service delivery to. I know that FACS and the Association of Children's Welfare Agencies [ACWA], the peak body for child welfare agencies, have been working on that quite strongly. They have come up with a definition of it.

**The CHAIR:** A definition of therapeutic care?

**Ms WONG:** Of therapeutic care. That has been settled only recently.

**The CHAIR:** In fact, that was my next question. Was there an understanding of the meaning of that term.

**Ms WONG:** There is a defined meaning of it now, which I do not have, so I might take it on notice to provide that information. We are at the very early beginnings of saying this is an important way in which we have to deliver residential care or out-of-home care to young people. If that is prioritised then that becomes the underpinning framework for everything. The flow-on effects will ultimately benefit young people, whether that be in leaving care, behaviour management within the out-of-home care environment, education, all of that sort of stuff. The basis of therapeutic care is about providing intensive services in a trauma-informed way to a young person, taking into account the various impacts they have had with trauma and how you might develop more positive relationships for that young person in that supportive environment. If you have that as a basis, then the sector that is working with young people will be able to consistently care for a young person up until the point where they do leave care.

**The CHAIR:** My final question is to Ms Snell. In your submission on page three at 10.11 you state:

Better community education about FACS' prenatal caseworkers and expand the number of caseworkers in these roles and ensure prenatal caseworkers are available across all districts.



Can you give us an overview of what you understand the current framework is with respect to the work of prenatal caseworkers and if you have identified gaps or deficiencies in the coverage, where are they?

**Ms SNELL:** It is our understanding that there are only three prenatal caseworkers across New South Wales. There may be more but we are not aware of others. In our experience of working with them, it can often be a positive result, so it would be useful if that could be expanded. In respect of when interaction happens, it can happen when pregnant mums are in prison and Corrective Services are involved and Family and Community Services are involved. In respect of gaps, often we suspect that because of a resourcing issue FACS cannot always be involved in early planning for what will happen when the child is born. So there may be a period of time when the child is removed from the care of the mother but then may later be restored to the care of the mother. For example, there is a correctional centre in Emu Plains where they have a Jacaranda House and mums and bubs can live together there. Our suggestion would be that, if there could be better resourcing, it could mean that plans could be put in place at a much earlier time when a child is born in prison so that the child can remain where it is appropriate to be immediately without having this gap, which again impacts on attachment. That is just an example.

**The CHAIR:** Thank you for that. Is the coverage, to the extent that it is, in place for women who are incarcerated? Is there no other program that reaches out to women who are outside incarceration?

**Ms SNELL:** There may well be. We see clients when we have run some outreaches to women in prison. That is where we are experiencing this but, yes, I suspect it would be much—

**The CHAIR:** Perhaps that is a question better directed to the Department of Family and Community Services [FACS].

**The Hon. DANIEL MOOKHEY:** I have a question for Ms Le Breton. In your submission at page three or page four, you say that a child living in Mount Druitt may not be assessed at high-enough risk to be allocated a caseworker and that, if the family were to move to the Northern Beaches, they may be considerably more likely to be allocated a FACS caseworker.

**Ms LE BRETON:** Yes.

**The Hon. DANIEL MOOKHEY:** Firstly, can you expand on that example? Secondly, can you give other examples of regional, for want of a better term, discrimination on the basis of what is perceived to be the normative behaviour in that area? How big a problem is this? Where else is it occurring? Why is it occurring?

**Ms LE BRETON:** Again, I do not have factual information on this. I have anecdotal evidence from our members, but what they were saying is that in some areas—for example, Mount Druitt—the level of risk faced by a child will have to be significantly higher than other areas to attract the attention and intervention of FACS. I am not sure how much more to say about it. It is just a perceived flaw.

**The Hon. DANIEL MOOKHEY:** Is it perhaps because in that area or others the level of presentations with factors that are similar are concentrated in one geographical area, and that is therefore considered to be the normative behaviour of that area?

**Ms LE BRETON:** Yes, I would say so.

**The Hon. DANIEL MOOKHEY:** Should those same or identical circumstances afflicting a family in one area replicate themselves in another area which is lacking the same volume, it is therefore deemed to be exceptional to the normative behaviour of that area.

**Ms LE BRETON:** Yes. I agree.

**The Hon. DANIEL MOOKHEY:** That has been reported to you anecdotally from?

**Ms LE BRETON:** Yes, from our members.

**The Hon. DANIEL MOOKHEY:** That is because necessarily the reporting is happening to a local FACS office in that area.

**Ms LE BRETON:** Yes.

**The Hon. DANIEL MOOKHEY:** Therefore, over time, that FACS office may be acclimatising according to what it considers to be a risk.

**Ms LE BRETON:** Yes, that is the assumption—that matters in that community services centre basically have to compete with each other, from what I understand, to be allocated a caseworker. If a lot of the reports coming through are really quite high risk, then it is likely that they will have to be put to the side and just absolute crises dealt with; whereas, in another area where the overall level of dysfunction—I do not know if I

can use that type of terminology—is slightly lower, the risk faced by a family in order to get child protection intervention will be lower.

**The Hon. DANIEL MOOKHEY:** That risk assessment process that is applied at a local level is also a rationing exercise, is it not?

**Ms LE BRETON:** Yes.

**The Hon. DANIEL MOOKHEY:** Therefore, should a local service find itself under a lot of pressure, the rationing aspects gets a lot tighter. You are nodding.

**Ms CALLANDER:** I am nodding.

**The Hon. DANIEL MOOKHEY:** We cannot take down nodding in *Hansard*. Feel free to talk.

**Ms CALLANDER:** I am nodding violently because I am just following. You are absolutely correct. I would have used Dubbo as another area where we see, when matters are filed in court, significantly greater risk over a longer period of time before, for whatever reason, action is triggered and children are removed than we would see in Parramatta.

**The Hon. DANIEL MOOKHEY:** Is it the case therefore that the objective risk assessment tools, which of course as a member mentioned earlier include subjective elements, are afflicting the subjective judgements that people are placing in the objective tools?

**Ms LE BRETON:** I do not know, sorry.

**The Hon. DANIEL MOOKHEY:** Let me rephrase. Are the risk management procedures, which either are created or at least mandated centrally, that are applied at the local level being affected in the way in which you are suggesting it is because of a lack of resources—

**Ms LE BRETON:** Yes.

**The Hon. DANIEL MOOKHEY:** —which is not necessarily addressed by a lack of training because we have already gone through the training, but it could be a mitigation aspect to that problem: Or is it something far more fundamental about the FACS workers? Are they inherently discriminatory?

**Ms LE BRETON:** I would think it comes down largely to resourcing. If in a community services centre they are forced—because of capacity—to weigh up different cases against each other, whereas if they had more caseworkers available they could allocate a caseworker to the different matters, I do not know if it is an assessment tool issue or whether it is primarily a resourcing issue. The risk is identified but then it cannot be allocated a caseworker because of the lack of resources.

**Ms CALLANDER:** I would say it is resourcing and I would say it is a number of factors. It is about resourcing; it is about high turnover of caseworkers, so you do not have that experience and people are re-learning all the time how to assess risk and you are losing and moving around your very experienced caseworkers; and think it is cultural as well. We all get inured to some extent if you are in an area such as Mount Druitt or Dubbo where you have high-level risk a lot. I think the subjective threshold is lower. I think that is just human nature to some extent. I think it is a combination of factors.

I think also there is political sensitivity, clearly, about intervention with Aboriginal and Torres Strait Islander families. I think we are reticent and with good reason and I think that that plays into it as well, particularly in areas such as Dubbo where there are a lot of Aboriginal and Torres Strait Islander families. Caseworkers are a lot more reluctant to intervene because of the history. I think there are a lot of things impacting on that question, but I think your point about the rationing is absolutely valid.

**The Hon. BRONNIE TAYLOR:** I have another question, but just following on from that questioning, you are saying that there is a tool that is used to decide whether someone is at risk and they get reported. It is a standard tool but it is being applied differently in different places. Do you have evidence of that, or is this anecdotal? Are we being subjective? I think there are some fairly serious things being said here.

**Ms LE BRETON:** It is concerning—definitely concerning.

**The Hon. BRONNIE TAYLOR:** Do you have some proof of where that is happening?

**Ms LE BRETON:** We do not have actual hard proof. We only have anecdotal evidence. I think what we are saying is the same. There is the Mandatory Reporter Guide and everybody uses that. All non-government organisations [NGOs] use that. Then FACS has their safety assessment and risk assessment tools that I assume are applied across the board. But I think what we are saying is that there may be more cases in certain areas that compete against each other—so more high-risk cases in certain areas that compete against each other for FACS

resources. It is not necessarily that the people are being discriminatory. Maybe people are becoming used to a certain level of risk in certain areas and so it is taking more to push it over the edge. I am not suggesting that it is a deliberate thing at all but perhaps just a circumstantial and a resourcing-type issue. That would be my perspective.

**The Hon. BRONNIE TAYLOR:** But that is anecdotally what you are hearing?

**Ms LE BRETON:** Anecdotally, yes.

**The CHAIR:** That is from page three and page four of your submission. That is the reference.

**Ms LE BRETON:** Good.

**Ms CALLANDER:** To some extent it is great. From our point of view in litigation it is more than anecdotal because we see when an application is filed the accompanying report. I think I give a case example that was actually a Coffs Harbour case where there were a number of risks of harm over a number of years before those children were removed. By the time they were removed they were exhibiting quite extreme difficulties. The reports happened over the years. It was "not allocated", "not allocated—competing priorities", "not allocated", and then the risk would become higher.

**The Hon. BRONNIE TAYLOR:** Competing priorities?

**Ms CALLANDER:** Competing priorities.

**The Hon. BRONNIE TAYLOR:** You are saying that that meant that there were competing priorities in terms of workload.

**Ms CALLANDER:** That is what we assume.

**The Hon. BRONNIE TAYLOR:** Do we know that, because this is kind of serious?

**Ms CALLANDER:** You ask whether we know it, but we know it in the sense that we see it written in documentation provided to us in support of the applications that are filed in court. We can only assume that what it means is that there were other priorities pulling on the department's resources at that time.

**The Hon. BRONNIE TAYLOR:** You are assuming.

**Ms CALLANDER:** Yes, and there was a lack of intervention.

**The Hon. BRONNIE TAYLOR:** I will return to the other question that I wanted to ask before I pursued that matter. You talked about mother-blaming in your submission. You elaborated on this with the Chair. I know that this is anecdotal—it is what you hear from your members. We have talked about mother-blaming and parenting but I want to get back to the child, which is what the inquiry is about. Are you saying that children are being removed because they are seen to be at risk because of a domestic violence situation, yet the victim—is that the terminology?—or the person who is having the violence perpetrated against them, is going to be left in that situation? Are the children removed even though they are quite capable of looking after them and they should all probably be removed, or should they remove the perpetrator?

**Ms LE BRETON:** We would encourage FACS to work with the perpetrator to remove that risk. Sometimes domestic violence will be the primary safety issue facing children. They may be removed because of that because the mother is seen to be not able or not willing to protect them from that violence. We would suggest that FACS should focus attention upon working with the perpetrator to change their behaviour so that the children do not have to be removed from what would otherwise be a mother who is able to care for them.

**The Hon. Dr PETER PHELPS:** Does FACS have any ability to enforce or to mandate behavioural change or attendance with the fathers?

**Ms LE BRETON:** They do. It is not the parental responsibility contract; it is a parenting capacity order. FACS could order a father to undertake that type of intervention.

**The Hon. Dr PETER PHELPS:** If he refused?

**Ms LE BRETON:** I suppose then it could come down to offering more support. There are a lot of barriers facing a women trying to escape domestic violence, so I suppose it would come down to FACS really supporting that woman.

**The Hon. Dr PETER PHELPS:** Yes, I agree. I am just wondering what happens if a domestic violence perpetrator just says no.

**Ms LE BRETON:** Yes, that could happen.

**The Hon. Dr PETER PHELPS:** What happens then? What is then left for the caseworker other than removal in that situation?

**Ms LE BRETON:** I suppose it would be to provide as much support as possible to the mother.

**The Hon. Dr PETER PHELPS:** Yes, but there are some partners who are just complete and utter bastards who will not change.

**Ms LE BRETON:** Yes, definitely.

**The Hon. DANIEL MOOKHEY:** Is there evidence that supports that men's behavioural change programs work?

**Ms LE BRETON:** They are looking into that at the moment. It is an exciting area. There is not a decent evidence base at the moment.

**The Hon. PAUL GREEN:** There are not enough of them.

**Ms LE BRETON:** There are not enough of them, they are not standardised, but that is being looked at a national level.

**The Hon. PAUL GREEN:** They are not recorded. A lot of work needs to be done.

**Ms LE BRETON:** Yes, an awful lot of work.

**The Hon. DANIEL MOOKHEY:** My question arises from a question asked by Dr Phelps. There are two issues—getting people to do it and, should you succeed in doing that, will it work?

**Ms LE BRETON:** Yes.

**The Hon. DANIEL MOOKHEY:** And are both risks worth taking or should we suggest that there is no evidence base therefore we ought not adjust things on the basis of a feeling that it might work? It is quite a risk to take, and maybe it is the case that removal or other forms of separation are needed until the evidence is clear that people will participate in them or that they work. I understand that there is a pilot program happening in Western Australia and that that is seeing things but is this in the category of saying, "Gee, it would be great if this stuff did work but we are not sure," and therefore we should not change things yet, or are we throwing the ball in the air and hoping it will work?

**Ms LE BRETON:** I think that taking some action is definitely better than sitting idly by, because we know that removing children has really horrible consequences for the children down the track, in every single regard, which then impacts on financial costs for the community. So it cannot hurt. Trying to work with fathers and trying to engage fathers—

**The Hon. DANIEL MOOKHEY:** But it can hurt, can't it? If a person has obtained the requirements and completed successfully a men's behavioural change course—we understand that these may take six weeks, four weeks or even two weeks despite the fact that you made the point earlier that you are trying to overcome intergenerational trauma—they may find themselves back in a circumstance where they have care responsibilities or parental responsibilities. But they may revert to previous behaviours. That is the No. 1 risk in domestic violence always, as I have understood it.

**Ms LE BRETON:** I would hope that FACS would not take the completion of a course alone to mean that person is safe to be around children. They still have their safety and risk assessment tools in place. They can still utilise those but I think effort needs to be made to engage fathers more. There is clearly a lack of engagement.

**The Hon. Dr PETER PHELPS:** But this is part of a broader problem. In many instances FACS caseworkers are damned if they do and damned if they do not. You can have all the objective criteria set out as to what is acceptable and what is not but ultimately it comes down to a subjective assessment, normally by a person who thinks they know what they are doing. In many instances that person not only has no idea about whether the criteria of self-actualisation, cultural esteem, love and belonging, safety or physiological conditions are being met. It is a situation where, in many instances, caseworkers will find themselves in situations where they ask themselves, "I have to make a binary decision: the child stays or the child goes, and I am falling down one side of the line." Another caseworker, faced with exactly the same decision will make a subjective assessment based on the objective criteria, that this person goes. In a lot of instances in this day and age, the residual legacy, particularly of the stolen generations, mitigates in favour of non-removal of Aboriginal children. Isn't that a problem in that ultimately it comes down to a subjective assessment, and caseworkers are never going to be able to have a purely objective assessment about whether a child should be removed or should stay?

**Ms CALLANDER:** I think what you say is correct. What is important is that the processes that are in place are well understood and transparent so that every decision that is made along the way is—

**The Hon. Dr PETER PHELPS:** Reviewable and appealable.

**Ms CALLANDER:** No.

**The Hon. Dr PETER PHELPS:** You do not think review and appeal is important?

**Ms CALLANDER:** I would prefer that it was consultative, well-considered and well-informed.

**The Hon. Dr PETER PHELPS:** Between whom? Between colleagues or between—

**Ms CALLANDER:** Both: the family and their colleagues—

**The Hon. Dr PETER PHELPS:** But it is rare that a family will say, "Please take my child away from me."

**Ms CALLANDER:** so that they are not reacting to crises but, rather, they are making considered interventions wherever possible. That is where it comes back to the conversation we had about training and maturity and good decision-making in those very early stages. I think what you said is absolutely correct: in some instances they are damned if they do and they are damned if they do not. But if there are good processes in place, if there is good supervision for caseworkers and if they are well-informed and well-trained they are likely to make better decisions.

**The Hon. Dr PETER PHELPS:** I agree there, but there is no guarantee that that will take place.

**Ms CALLANDER:** No, but it assists significantly and it will mitigate risk.

**The CHAIR:** In light of the time, I might draw this to a conclusion. I thank you all for coming along today. It has been very enlightening. We have spent a good hour and a half and covered a great deal of territory. I found it very valuable. I am sure other members of the committee have. So thank you, most sincerely, for coming along and making yourselves available today.

The Committee has resolved that if there are questions on notice—I think there are some and there might be some that arise from the hearing today which committee members might draft and have them forwarded to you—you have 21 days to address those questions on notice. The secretariat will contact you with regard to those questions on notice and provide any assistance or advice that is required.

Ms Le Breton, Ms Wong, Ms Callander, and Ms Snell, thank you sincerely for coming along, for the submission and for the great work that you do advocating for some of the most vulnerable people in the State.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**TIM IRELAND**, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat [AbSec], affirmed and examined:

**SUE-ELLEN TIGHE**, Grandmothers Against Removals NSW, affirmed and examined:

**JENNIFER SWAN**, Grandmothers Against Removals NSW, affirmed and examined:

**The CHAIR:** Welcome.

**Mr IRELAND:** Thank you.

**The CHAIR:** Thank you very much for coming along this afternoon and for your submission. It proved to be most helpful and the Committee will ask questions about it. Joining us this afternoon on the Committee are members of the Government—members of the Liberal Party and the National Party—members of the Opposition, members of the Christian Democratic Party and members of The Greens. What we have decided, and I hope you are okay with this, is that we will not ask questions in a rigid manner of a set time per person but rather share the questions around and let the questions progress down particular lines of consideration. Are you okay with that?

**Mr IRELAND:** Yes.

**The CHAIR:** Would any or all of you like to make an opening statement? Please limit your statement to a few minutes to enable the maximum time for questioning.

**Mr IRELAND:** I would like to start by acknowledging the Gadigal people of the Eora nation. I pay my respects to elders past and present. As a member of the Bundjalung community I would like to also acknowledge the stolen generations who never returned home and also acknowledge my colleagues and friends from the Grandmothers Against Removals and other Aboriginal people here in the room. In addition to our submission I will make a brief statement. We know that Aboriginal children and young people continue to be overrepresented in the New South Wales child protection and out-of-home care system, with Aboriginal children seven times more likely to be involved with child protection services and 10 times more likely to be in out-of-home care.

Furthermore, the rate of Aboriginal children and young people in out-of-home care has increased significantly in New South Wales from 26 per 1,000 in 1993 to 67 per 1,000 in 2014-2015. The number of children in out-of-home care has increased dramatically since the Bringing Them Home report with the number of Aboriginal children in out-of-home care in New South Wales increasing from 829 at that time to 6,210 in 2015. This is more than a 600 per cent increase. These statistics are alarming for our families and communities. Therefore it is clear that innovative reform is needed to address the unacceptable overrepresentation of Aboriginal children and young people in out-of-home care. Better supports must also be put in place for Aboriginal families and communities to keep Aboriginal children safe and maintain connection to their family and communities.

In addition to our submission we have put forward a recommendation for how that change should occur, from our perspective, embedding greater self-determination for Aboriginal people and communities and defining the roles of the Aboriginal community control sector and the other regulatory roles and statutory roles within the system—particularly that FACS is to be seen as a steward of the system in that they are able to perform their statutory function of child protection, risk and assessment and enable the Aboriginal community control sector to better support Aboriginal children and families through policy and funding environments that enable them to do so on a localised scale. I might leave it there.

**The CHAIR:** Thank you. That was very helpful. Ms Tighe, do you have an opening statement you would like to present?

**Ms TIGHE:** Yes, we do. We would also like to acknowledge the country that we are on today, but we would like to pay special tribute to that by doing it in our traditional language. Guwaabal nhalay Wirraadhuraaydhi, Gamilaraaydhi. Winangaylanha ngiyani bigan, dhuwi. Dhingaa, dhulu, guba, gaawaa, murrun ganungawu. Dhina ngiyani Wayamaa winangaylanha, Wayamaa murrun, guuguu. Giirr ganagu ngiyaningunda giirruwan.gaan dhiirraldanha. Burrulaa ngiyani winangaylanha mari, wandagu manumaldaay. Guwaabal ngiyani ganungu winangaylanha, walindjaldanha ngiyani, ganunga gagilba-ldaay. Warranggal ngiyani, bamba ganunga nguwalay warraylandaay. Bamba ngiyani nguwalay guurramaldanha birralii manumaldaay, winangaylanha ngiyani ganungawu, guurramaldhiindaay manumaldaay Gamil yalaguwaay

gigigu. Mari yanangindaay maraga milanda ngiyaningunda mari dhurraldaay maraga ngaragaydha ngiyaningunda.

**Ms SWAN:** These stories were gathered on the sovereign lands of the Gamilaroi and Wiradjuri nations. We pay respect to the spirits and laws of these lands, the Dreaming ancestors, the animals, trees, mountains, rivers and all other nature-life. We pay respect and acknowledge the footprints of all elders past and present. We hold sacred the lessons they teach us. We remember the many generations of Aboriginal and Torres Strait Islander children who have been stolen since European invasion. We honour their stories, we grieve for their suffering and we draw strength from their survival. We are fighting to stop ongoing stolen generations today, remembering the struggles of the past and fighting to prevent this same struggle into the future. We hold our past generations in one hand and our future generations in the other.

I have just got some facts. More Aboriginal children have been forcibly removed by child welfare agencies now than ever before in Australia's history. Almost 17,000 Indigenous children are in out-of-home care nationwide. Almost 6 per cent of the national Indigenous child population has been forcibly removed—more than 10 times the non-Indigenous rate. In New South Wales, one in 10 Aboriginal children have been taken from their families. The Bringing Them Home report in 1997 found that racism and assimilationism in child protection was still a primary cause of many forced child removals. Since 1977 the numbers of children being stolen has increased five-fold.

**Ms TIGHE:** We would like to also continue our submission further by saying that for Grandmothers Against Removals the safety of our children is paramount and that our children can be safe in their culture and their families. We would also like to highlight to this inquiry the Aboriginal placement principle and the lack of the implementation of that. Through that, consultation and self-determination, as in the Children and Young Persons (Care and Protection) Act, when those are denied to us, either in all of those capacities or individually, it actually denies Aboriginal people, and therefore their families and their children in particular, their human rights and their social justice. FaCS has been operating outside legislation and policy. We have many narratives from across Australia and, indeed, New South Wales mainly, where that has been the case.

So to address the unprecedented numbers of Aboriginal children in care, there needs to be, as my friend next to me said, innovative measures. We cannot be thinking and doing the same things that we have been doing for the last 10, 20, 30, 40, 50 years or longer that have not worked. World research says that child removal does not work, so why keep doing it? So the challenge from the Grandmothers Against Removals to this inquiry today is be innovative and dare to make change, because it is desperately needed and our Aboriginal families and communities are crying out for that. Thank you.

**Mr DAVID SHOEBRIDGE:** Thanks to each of you for coming—Sue-Ellen and Jen, in particular, for taking the trip down. Tim, thanks for the work your organisation has been doing. Ms Tighe and Ms Swan, perhaps first to you: Can you explain the role of Grandmothers Against Removals in terms of the role that you are currently undertaking within child protection and your relationship with FaCS?

**Ms TIGHE:** We initially began by raising awareness of what was happening, particularly within our region in north-western New South Wales, but we have moved forward from there, moving forward to now, through the rally process. Now we are beginning to meet with particular sections of FaCS to try and bring about change. We have also sat down with the Ombudsman's office and produced a document called "The Guiding Principles", which has been shortened down to the guiding principles and it is quite long. We were hoping for that to be rolled out across the State but we are finding resistance for that from particularly FaCS and local districts.

What we are about is making sure that the issue of the unprecedented numbers in care is put first and foremost in the front of people's minds and that there needs to be change. We want that to change and bring about keeping families together. It is about changing the system, highlighting what is wrong in the system and, in particular, not operating from a deficit model, which is the removal of children. There is not enough early intervention done in terms of FaCS with Aboriginal families and communities; it is just a knee-jerk reaction of going in and removing kids. Through that we have been made aware of recently the process of paperless removals under the guise of respite. It is concerning that these events are beginning to become apparent and we have been made aware of those across several districts within FaCS.

It is about the illegalities and the way that FaCS has been operating; they are not operating within legislation, they are operating outside of legislation; they are using FaCS policy to supersede legislation. An example of that would be they use the sibling placement policy to override the Aboriginal placement principle. They are just examples. We are about bringing about change, and part of that change is legislative change. We also raised the issue of mandatory reporting, that mandatory reporting is a system that is not functioning as it should be and as it was intended; it has become a vehicle of revenge.

**Mr DAVID SHOEBRIDGE:** FaCS is a multi-headed hybrid; it has different departments and there are different districts of FaCS. But you have had some direct communications with the Minister. In fact, I think the Minister signed off and launched the "Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making" in November of last year. Have you got a copy of that there?

**Ms TIGHE:** I have got a copy of this, which I was going to submit to you.

**Mr DAVID SHOEBRIDGE:** Would you mind tendering that for the Committee?

**Document tabled.**

That is Minister Hazzard, Minister for Family and Community Services?

**Ms TIGHE:** Yes. Minister Hazzard has signed off and officially launched that on 9 November 2015 in Tamworth.

**Mr DAVID SHOEBRIDGE:** And that document is something you worked on with the Indigenous Affairs Committee of the Law Society, the Ombudsman and a number of other officers including agencies such as the Aboriginal Child, Family and Community Care State Secretariat (NSW) [AbSec], and that really distils the principles that you would like to see FaCS adopt, is that right?

**Ms TIGHE:** Yes. It does distil those facts like you were saying, but also that document is an early intervention document; it is not a document that is only to be used on imminent removal of children. So that document is a three-tiered document where you have a local community advisory group that sits down along with other members of the community and services within that community and FaCs as well and will then question, "Have you had a family meeting? How did you contact family?" So that is the role of the local advisory committee.

**Mr DAVID SHOEBRIDGE:** Just stopping you there—we might break this down in steps. The local advisory committee is effectively a local group of elders and grandmothers and community leaders who can actively engage with FaCS before a child is removed and find other options to help and support the child?

**Ms TIGHE:** Yes. This document clearly states that family meetings need to be held in the first instance. It clearly states that it is family meetings. From that you have the local groups who then can say, "Have you held a family meeting?" So it is giving a say to the Aboriginal community; they actually participate in the decision-making around what is happening in their local communities with their local children and within their families. That is like one level of it. The next level is a State advisory body which all the local advisory bodies will then feed up into a State body, which then correlates that information and then feeds that on to the Minister.

**Mr DAVID SHOEBRIDGE:** Mr Ireland, what do you make of the model that is established in this guiding principles document? Do you see that as a good model, the best model, or are there other models?

**Mr IRELAND:** I would say that we are supportive of it. At the time of the launch I had the pleasure to be there and respond on behalf of the Aboriginal community-controlled sector in support of the guiding principles. I would say that within our submission that we put forward to this Committee we articulated that it needed to go a bit further in terms of these local Aboriginal community groups having a say over the resources that are allocated in community and being able to design with the Aboriginal community-controlled sector what services should look like to be able to address disadvantage in families and child safety concerns and the like.

**Mr DAVID SHOEBRIDGE:** On the matter of greater resourcing, one of the initiatives that the Minister is working through now is a statewide review of Aboriginal child removals, looking at children who have been removed in the past 12 months. A commitment has been given that the review will be independent and that there will be Aboriginal involvement. Mr Ireland, would you like to make any observations about that? What involvement, if any, have you had? I ask the same of Ms Tighe and Ms Swan. What Aboriginal involvement do you think is necessary and what does "independent" mean?

**Mr IRELAND:** From our perspective, "independent" means independent from the government agency that oversees the child protection function. It is unclear how the operations of the review or inquiry would be enacted and whether the review will be genuinely independent or will be an internal review overseen by an independent committee. The independent committee would need to have an Aboriginal majority. We have put out statements recently to say that, operationally, the review should be conducted by an independent statutory office, such as the NSW Ombudsman or similar.

The Department of Family and Community Services [FACS] would have a role to play in providing information to the review process. From our perspective, the review should have two key objectives. The first is



to look at the practice of child removal that is occurring in Aboriginal communities, to identify how the practice can be improved at the front end. The second is to look at better outcomes for Aboriginal children who are in care. That may mean returning them to country and to family, where possible, or putting in place additional support mechanisms that might be needed for that child to achieve lifelong wellbeing.

**Ms TIGHE:** Grandmothers Against Removals NSW [GMAR] takes the position that the review needs to be independent of FACS. To have transparency, it needs to be independent of FACS. GMAR's stance is that it should not involve only organisations affiliated with FACS—that is, statutory bodies with oversight functions. There needs to be representation from people at the grassroots because they are the victims of the system and they need to have a voice in the review process. Otherwise, it will not be a fair and equitable process and it will not be transparent. Transparency is a huge concern for us. A paper review or a desktop review will not address the issues. It will not address the over-representation in care. It will merely restate what we already know. It needs to be a comprehensive and independent review that looks at stopping child removals within the system.

**The CHAIR:** Ms Swan, do you have any comment to make?

**Ms SWAN:** I wrote all that down for Ms Tighe to say.

**The CHAIR:** Good on you.

**Ms TIGHE:** I feel like a puppet!

**The CHAIR:** That is all right.

**Mr DAVID SHOEBRIDGE:** You did it very well.

**The Hon. Dr PETER PHELPS:** Mr Ireland, in your report you say:

A system of tools developed outside of the Aboriginal context are unlikely to demonstrate adequate reliability and validity with respect to the safety and risk assessment of Aboriginal children and young people or provide clear strategies for safety planning and addressing risk.

Are you saying that risk has a cultural component to it?

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

**The Hon. Dr PETER PHELPS:** Are you saying that the current risk assessment tools, which purport to be objectively neutral, are in fact culturally loaded?

**Mr IRELAND:** We are saying that they are not reflective of the views of Aboriginal people and communities.

**The Hon. Dr PETER PHELPS:** I raised a question with the previous witnesses about concerns that FACS caseworkers are, in many instances, too young, too theoretical and too white. Is that something that you would agree with?

**Mr IRELAND:** It supports an entrenched culture within the department.

**The Hon. Dr PETER PHELPS:** What is that culture? Ms Tighe mentioned a sort of endemic racism. Are you also alleging endemic racism within the department?

**Mr IRELAND:** Yes.

**The Hon. Dr PETER PHELPS:** Considering that social workers are probably the most left wing and progressive students you could possibly find at university, how do you account for that racism? Is it a legislative racism or is it a racism within the subjective assessments of the caseworkers themselves?

**Mr IRELAND:** It could be the subjective assessments of the caseworkers themselves, within a management framework. Long-term managers within the organisation instruct newly appointed caseworkers to perform their role. Greater training needs to take place, including more on-the-job training in Aboriginal communities.

**Mr DAVID SHOEBRIDGE:** They are working in an organisation that has been removing Aboriginal children in one form or another for more than a century.

**Ms SWAN:** Since colonisation.

**Mr DAVID SHOEBRIDGE:** That is the organisation they are working for. Is that part of the issue?

**Mr IRELAND:** Yes.

**The Hon. Dr PETER PHELPS:** Ms Tighe, do you have anything to add?

**Ms TIGHE:** It is subjective. I can best illustrate that through a narrative, based on our conversations with thousands of people across New South Wales and Australia. There is an inordinate number of young caseworkers working in the field. Well-intentioned they may be, but because their managers are older and have worked for longer in a system that has operated with a cultural bias and with racism, those younger ones may be overridden by the their case managers.

**The Hon. Dr PETER PHELPS:** How does that racism manifest itself?

**Ms TIGHE:** It manifests in the manner in which Aboriginal children are being removed. A great number of forced removals of Aboriginal children are done in the presence of police. In north-western New South Wales children were removed from a family with the equivalent of the riot squad present, in full helmeted gear and with guns drawn. That is how racism develops. It also develops in the non-application of particular sections of the Act, such as the Aboriginal placement principle, where Aboriginal children are removed and placed with non-Aboriginal foster carers. Aboriginal family members are disregarded. They are deemed unsuitable.

**The Hon. Dr PETER PHELPS:** Presumably, when caseworkers seek to remove children from family situations they are basing the decision on objective standards—namely, that there is domestic violence in the house or inadequate food or something of that nature. Would that not be the case?

**Ms TIGHE:** That comes under the banner of neglect, which is a nebulous term.

**The Hon. Dr PETER PHELPS:** I agree.

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

**The CHAIR:** I do not think the Hon. Dr Peter Phelps meant to put words in your mouth, but there was an implication of systemic racism, and you acknowledged that it was something you had implied. To be clear so that your words are not his, do you want to clarify that matter?

**Ms TIGHE:** The position of GAR is that what drives the systemic and forced removals of Aboriginal children and the over-representation is racism.

**The Hon. PAUL GREEN:** Do you not think that the overall 24/7 media cycle of scrutiny put on the Government and those performing those functions is a high driver of the way that they react to your community? If something goes wrong in relation to Aboriginal communities or if there is implication from the community that a matter has not been dealt with they are virtually taken to the cleaners. Is it from scrutiny of the department and politics rather than racism?

**Mr IRELAND:** I think that creates an organisational culture that is risk averse and highly risk averse.

**The Hon. PAUL GREEN:** Is it risk averse?

**Mr IRELAND:** Yes.

**The Hon. Dr PETER PHELPS:** In that instance, if it is more risk averse in relation to the removal of Aboriginal children why are more Aboriginal children in out-of-home care now than in 1993?

**Mr IRELAND:** Because it is risk averse.

**The Hon. Dr PETER PHELPS:** So it is risk averse the other way.

**The Hon. PAUL GREEN:** That is my point. Will you recite the increase in numbers you quoted in your opening statement? You said it was a 600 per cent increase.

**The Hon. Dr PETER PHELPS:** It is on page 7 of their report.

**Mr IRELAND:** Increased from 829 as reported in Bringing Them Home to more than 6,000 in 2015.

**The Hon. PAUL GREEN:** We say it is risk averse. Is one of the drivers the increased use of drugs and alcohol in those communities? The Committee knows that rural and regional areas have an epidemic usage of the drug ice. Is that affecting those communities? Does that increased usage come through in that percentage?

**Mr IRELAND:** I would flip that and say there is a lack of support for addressing drug and alcohol abuse in the community, particularly done in a way that is tailored, in line with the submission that we have put forward, to the expectations of communities and how support should be delivered. If there is a high incidence of drug and alcohol then communities should be empowered to be able to address that in the way that they determine as appropriate for them on a localised level. In the same way as we talked about with the Hon. Dr Peter Phelps, risk assessment, systems and tools should be driven by the expectations of Aboriginal people and communities. It is embedding self-determination into the solution that should be put in place.

**The Hon. DANIEL MOOKHEY:** I want to explore the theme of systemic racism, particularly as it applies to each process of the child protection system in the context of your opening statement, which is perhaps a solution, that is greater Aboriginal control that would involve less FACS control—I get my Federal and State jurisdictions mixed up every now and then. The Committee has already explored the concept of whether the risk assessment process is appropriately culturally achieved. Do you have views about whether the early intervention work undertaken by caseworkers is culturally attuned as well as the special needs of indigenous people?

**Ms LE BRETON:** Would you repeat the question?

**The Hon. DANIEL MOOKHEY:** Moving beyond the risk assessment stage of the process, do you feel that the early intervention programs that are embarked upon by the department have the relative level of cultural sophistication required to succeed?

**Ms SWAN:** No.

**The Hon. DANIEL MOOKHEY:** What do they lack?

**Ms SWAN:** I don't like talking a lot.

**The Hon. DANIEL MOOKHEY:** Are there enough caseworkers? Are there enough indigenous caseworkers?

**Ms SWAN:** There are a lot of indigenous caseworkers, but in the local communities it is a conflict of interest automatically because we are all related.

**Mr DAVID SHOEBRIDGE:** So whenever there is an Aboriginal caseworker in an office who actually knows about the family and about what is going on they are excluded from action and excluded from working because of a conflict of interest.

**Ms SWAN:** Yes, they are excluded.

**Mr DAVID SHOEBRIDGE:** So the very people with the knowledge in the department are not being made use of?

**Ms SWAN:** Immediately.

**The Hon. DANIEL MOOKHEY:** If you want to take on notice any other criticisms and suggestions you might have about the early intervention stage it would be most welcome.

**Mr DAVID SHOEBRIDGE:** The first question might be: Is there any early intervention.

**The CHAIR:** Following the hearing the Committee will provide you with questions on notice. You are at liberty to take on notice questions that the Committee is posing now, which might give you time for more reflection and consideration. If you wish to do so, take them on notice. You can answer them now as far as you practically can and also take them on notice.

**Mr IRELAND:** I will make a comment on that. As we outlined within our submission, the focus of FACS seems to be getting lost a little bit and moving away from its statutory function of child protection, risk assessment and so on. The ability of caseworkers to engage face to face with families at the point of risk of significant harm is significantly reduced. I think it is just below 30 per cent that they would actually see face-to-face family as part of that assessment process, which leaves you concerned about the other 70 per cent that risk of significant harm is coming through. In terms of the early intervention work one would hope that a caseworker is equipped enough to be able to make referral to an Aboriginal community control organisation to deliver those early intervention supports for families.

**The Hon. DANIEL MOOKHEY:** Is there evidence that that is happening at the scale that is needed?

**Mr IRELAND:** At times the evidence would show us that referral pathways to the non-government sector tend to be blocked by local community service centres and, therefore, families do not get the support that they need at that point in time. We were talking about the assessment processes and tools being driven by a perspective that is not a perspective of Aboriginal people or communities. It does leave you wondering about the kinds of supports that should be put in place for Aboriginal people and families and whether caseworkers have the ability to work through or navigate that.

**The Hon. DANIEL MOOKHEY:** I refer to the different stages of the process and the extent to which that is reflective of the needs of Indigenous people. When we get beyond the point of removal, when we have the two forms of care—there are technically three, but we will concentrate on two—foster and residential, is it normal that when Aboriginal children are removed from Aboriginal families that they are placed with Aboriginal families?

**Mr IRELAND:** This is part of the Aboriginal child placement principles that ideally are part of the first step within that hierarchy that the Aboriginal child is placed with relative Aboriginal kin and then so on down the hierarchy whether it is Aboriginal people within the community, or their community of belonging, Aboriginal people they may know or share a cultural kind of experience or background and then non-Aboriginal foster care.

**The Hon. DANIEL MOOKHEY:** In terms of the volume, broadly speaking are you satisfied that those principles are being complied with for the majority of cases?

**Ms TIGHE:** No.

**The Hon. DANIEL MOOKHEY:** Is it your view that that policy tends to be overwritten by other policies and the net result is that Indigenous people are placed outside of Indigenous kinship?

**Ms TIGHE:** From our experience in talking to families from across New South Wales what is happening is that at the point of removal children are placed in non-Aboriginal foster care.

**The Hon. DANIEL MOOKHEY:** Right.

**Ms TIGHE:** The hierarchy that is within the Aboriginal placement principle is immediate to extended family to community to Aboriginal foster care and then moving into non-Aboriginal foster care. We are finding as a narrative from grassroots that Aboriginal children are being removed and placed with non-Aboriginal foster care.

**The Hon. DANIEL MOOKHEY:** Are you aware of any residential out-of-home care facility that caters predominantly for Indigenous children and is under the auspices of either an Aboriginal-controlled organisation or otherwise and, as a proportion of people in care—I do not want to use the term "market share", but what proportion of kids in residential care are in those types of organisations and how many are not?

**Mr IRELAND:** There are two Aboriginal community-controlled residential care providers in New South Wales. They are generally geographically based, so metro Sydney and North Coast, which leads to the placement of Aboriginal children in those settings as being off country, as we put it, because residential care is generally placed-based houses. The proportion overall for those two agencies would be a funded placement capacity up to 35. I would have to check that figure.

**The Hon. DANIEL MOOKHEY:** Is that 35 people?

**Mr IRELAND:** That is 35 placements, so for 35 kids at any one time.

**The Hon. DANIEL MOOKHEY:** It has been reported in this document that there are 6,000 Aboriginal children in out-of-home care.

**Mr IRELAND:** That is within out-of-home care and the residential care, so the whole system.

**The Hon. DANIEL MOOKHEY:** Either way, it is 35 out of thousands?

**Mr IRELAND:** For residential care.

**The Hon. DANIEL MOOKHEY:** Yes.

**Mr IRELAND:** I do not have a figure at the top of my head for residential care. It might be something that we can take away.

**The Hon. DANIEL MOOKHEY:** I will conclude this line of questioning. When you are talking about Indigenous self-determination as being a foundation principle around which the system should be organised, I presume you are talking about all those stages we just mentioned? Yes?

**Mr IRELAND:** Yes.

**The Hon. DANIEL MOOKHEY:** Is that an important principle because of the history of the department dating back 100 years, as was mentioned by my colleague, which used child removal, and that has led to manifest levels of distrust in Indigenous communities that it is not possible to remediate or otherwise adjust? It might be an extreme statement but I am putting it deliberately to say whether or not we should be working on the assumption that we have to have, as you put it, innovative reforms in this area and is that because of the levels of distrust between Indigenous communities and the department?

**Mr IRELAND:** I think we look at the disadvantage that is within Aboriginal communities and realise that after the many decades of services being provided in Aboriginal communities or statutory functions being delivered in Aboriginal communities that the data and the statistics continue to rise; Aboriginal children continue to be removed. When we look at other institutions internationally—Canada, for example—they would express that given greater self-determination for Indigenous communities better outcomes are being achieved for the Indigenous populations and that is being applied. Self-determination, when thinking about the Aboriginal child placement principle, the placement principles were not just a hierarchy. It dealt with a whole range of intent that was to provide as much self-determination as possible to Aboriginal people and communities. Decision-making and the guiding principles that the Grandmothers Against Removal have put forward are a good example of providing self-determination and decision-making authority and control over Aboriginal children and families in Aboriginal communities.

**Mr DAVID SHOEBRIDGE:** The Hon. Dr Phelps was asking questions about the criteria upon which children are being removed and whether it is objective or subjective. National data shows very clearly that 40 per cent of all Aboriginal child removals are based on the amorphous concept of neglect. The second largest number of child removals for Aboriginal children is based on emotional abuse. Can any of you confirm whether that is the data and perhaps provide it on notice. Also, does that confirm with your day-to-day experience that the subjective views and values of Aboriginal culture and people are informing child removals? Maybe you can answer, Mr Ireland, on the figures?

**Mr IRELAND:** I think from our perspective it confirms that policies and processes are driven by a perspective that is not necessarily Aboriginal people communities. The data is the data. I cannot dispute data that is being collected by national bodies or national statistics. I would say that rather than addressing these issues of concern around emotional neglect or abuse or the like, better support services should be put in place in local communities to work with families and communities to address that.

**Mr DAVID SHOEBRIDGE:** The figures I have, which I think came from the Productivity Commission and also the Commonwealth department in one of its most recent fact sheets, say that 40.6 per cent of substantiated reasons for removing Aboriginal and Torres Strait Islander children related to neglect whereas it was only 22.1 per cent for non-Indigenous children; emotional abuse was 42 per cent for non-Indigenous and 33 per cent for Aboriginal and Torres Strait Islander; for sexual abuse the rates almost double in non-Indigenous to Aboriginal and Torres Strait Islander, 15.3 per cent to 8.9 per cent. Similarly, a larger amount of physical abuse is being substantiated in non-Indigenous rather than Indigenous. This amorphous concept of neglect is the basis upon which children are being removed. Is that your experience?

**Ms TIGHE:** That is our experience. What we are finding from a grassroots level is that primarily, as the percentages indicate, it is neglect. But you need to understand, as I said earlier—amorphous is the term you use, I use the term nebulous because there is nothing solid in that term—we are not lawyers, but we have looked at legislation in every possible place we can think of and we cannot find a definition of "neglect" as it sits within the framework of care and protection. People's own morals, values and judgement come into what they bring to the table when defining neglect. I would like to add a narrative to that from a story that we have heard from across New South Wales. Children were being removed because a report was made to the report line that children were outside playing without any shoes on and that was termed and deemed neglect. Those children were subsequently removed. It is those types of things. It is the absurdness of a report being made and classified as neglect when there would not be a person in this room, I imagine, who has not played outside at some time in their childhood or adulthood without their shoes on.

**Mr DAVID SHOEBRIDGE:** The other example you gave was a FACS officer coming to the child's home, looking in the cupboard and finding no food, not realising they were fed at aunty's and grandma's place.

**Ms TIGHE:** Yes, not understanding the cultural practices or the cultural connections within families and communities. In terms of those percentages we are finding it is neglect that is predominantly used as a form of removal. Emotional abuse is high up there but the reasons they are stating for emotional abuse could be the fact that the children had no shoes. It is those sorts of things that are being put forward in their documentation that goes through to the courts and it goes unquestioned. No-one in the legal system is then questioning and saying, "Hang on, these children were removed on the basis that they were playing outside with no shoes on?" There is another narrative where a report was made for a child who was attending a local day care centre who had attended the local day care centre four days a week but was attending with the same four sets of clothes, so on Monday they wore a particular set of clothes and on Tuesday and so on they wore different sets of clothes. A report was made from that mandatory reporter that the child was attending with those sets of clothes each day of those four days. That was then deemed as neglect.

That is the absurdity of this mandatory reporting and the reasons why children are being removed. Those reasons are then put forward through the documentation to the courts, and the courts are not questioning those, which raises the issue then of why care and protection has a rule of evidence which says it can operate on hearsay.

**The Hon. DANIEL MOOKHEY:** Is that one of the consequences that could arise from the 70 per cent figure you referred to earlier of reports not checked by caseworkers?

**Mr IRELAND:** Potentially, yes.

**The Hon. DANIEL MOOKHEY:** Therefore, the documentary evidence goes forward.

**Mr IRELAND:** Yes.

**Mr DAVID SHOEBRIDGE:** Seventy per cent.

**The Hon. Dr PETER PHELPS:** I have just a couple of questions. You spoke about the failure of early intervention. Is it arguable that early intervention has failed because it is a very rarely used as people are afraid of reporting or saying, "I need help", at an early instance for fear that that is going to lead to removal?

**Ms SWAN:** Yes.

**Ms TIGHE:** Yes. That is definitely the case—what we are finding from on the ground. It is two-level; like, a two-tier way to address that problem or discuss that problem. One is that early intervention services that are out there, we are talking rural community, one. In rural communities there are too few of these early intervention services and they are spread across a wide field. But these early intervention services are also an arm of Family and Community Services [FACS] and they are funded by FACS, and they are directly reportable to FACS. Because of that there is only one way you can enter into that early intervention scheme and that is to be referred by FACS. You have to be on the books of FACS to access this service. Because FACS has to do the referral, you cannot be proactive and then present to a service and then seek help and seek assistance. You cannot because it is FACS-driven and you have to be referred by FACS.

**The Hon. Dr PETER PHELPS:** And presumably they have mandatory reporting requirements.

**Ms TIGHE:** Yes, and they have mandatory reporting requirements. What we know has happened when people have gone in good faith to a service after referral from FACS, they have gone into a service and they have said, "You know, we've had such a rough time this week. We had, you know, an electricity bill that was in excess of \$1,000. We had to pay our electricity bill so therefore there was money enough to buy food or pay the rent left." When they disclosed that to the service provider, the service provider then reported that back to FACS and then that became a part of the paperwork for referral—not for referral, but the paperwork that was presented before the courts. There was no context given—the fact that it was winter time, there was a \$1,000 electricity bill and there was a choice to be made.

**The Hon. Dr PETER PHELPS:** The second thing is: You are clearly not fans of FACS.

**Ms SWAN:** Ha, ha.

**Ms TIGHE:** Well, no.

**The CHAIR:** Do not put words in their mouths.

**Ms TIGHE:** I will have a drink of water.

**The Hon. Dr PETER PHELPS:** How would you envisage a system of, if you like, community—if not control, maybe you suggest community control—but certainly strong community input actually working? Would it be like, you know, 12 respected grandmothers, or something like that? If it is a community-based

solution, how do you avoid the situation which you mentioned earlier of potential conflicts of interest? In other words, we recognise that that child is not in a good state but because I know Doris, I do not want to take him away from her. How do you overcome that situation? I love community control and I love devolution as much as humanly possible. I do not like big government as, I think, everyone knows. How do you avoid potential conflicts of interest within what is, as you would know, quite a tightly knit community where everyone knows everyone else and there are repercussions for decisions?

**Ms TIGHE:** I think the fact that tight-knit Aboriginal communities because they know everybody—everybody knows everybody and everyone knows everybody's business—that is a positive.

**Ms SWAN:** Yes.

**Ms TIGHE:** Families know who best these children can be safe with and who can assume the care. That is the positive of that and I think that is something that has not been explored or investigated in terms of child removal. But it is also the fact that because these communities are close knit and they come together, it is the role of the family, which is what is being eroded away.

**The Hon. Dr PETER PHELPS:** "Family" being extended family, not nuclear family.

**Ms TIGHE:** Extended family, not nuclear family. It is great that you made that distinction because we find we have to do that quite often as well. It is the extended family that then plays this role of then looking at who best can assume the care of this child. It is also important with family that that family is also a support network. If there are issues within a family or within families and communities, it is that family, that very strength and that fabric of that close knit-ness.

**The Hon. Dr PETER PHELPS:** But there is also a danger in that you are effectively making a judgement on another family member. You are saying, "I'm sorry, Doris, but you can't look after your son." Is there the will there to actually say—is there a node of authority, if you like? Is that present within extended Aboriginal families to say, "No, you can't".

**Ms SWAN:** Yes, we do, and then FACS steps in and takes that away from us.

**Ms TIGHE:** Within the family dynamic within Aboriginal communities and families there are cultural roles and cultural expectations that come into play. I am not going to speak for Aboriginal communities across Australia or indeed New South Wales. It is just that I can speak from within our region and within our cultural network. To Western ears, this is going to sound really, really unusual, but is the grandmothers, in particular, who have more say about the child rearing and what happens with the children than even the parents. It is the grandmother. It is one of those things where, within our cultural framework and within our cultural fabric which is our families and everything, it would be the grandmothers. And in an instance like that—we have experience of this ourselves, Ms Swan and I—we would be the people, as grandparents, to say, "No, at this point in time you cannot be looking after your children." Either we assume the role of extended family, or immediate family.

**Mr DAVID SHOEBRIDGE:** And you would want FACS to be empowering you in that.

**Ms TIGHE:** Yes.

**Ms SWAN:** Yes.

**Mr DAVID SHOEBRIDGE:** Not just leaving you on your own, but also empowering you and helping those decisions being made.

**Ms SWAN:** Right. No screaming, either.

**Ms TIGHE:** In actual fact, FACS does, excuse the pun, but they do disempower that cultural support network and that cultural fabric. They do disempower that in actual fact. In cases across New South Wales in which Ms Swan and I are experienced, grandparents—in particular, grandmothers—have assumed the role of care of their grandchildren, knowing that their children may have issues. The grandparents have assumed the role of primary carers. What happens is if the parents come under the notice of Family and Community Services, the paper removal is from the parents, but the physical removal is from the grandparents, and FACS does not recognise that. There were already cultural protective measures put in place, which Family and Community Services then consistently ignore.

**Mr DAVID SHOEBRIDGE:** And the police and FACS turn up at a grandparent's door—

**Ms TIGHE:** Yes.

**Mr DAVID SHOEBRIDGE:** —to remove a child who is being taken care of in the first place.

**Ms TIGHE:** Yes, yes.

**The CHAIR:** What happens if there is a refusal to cooperate with that settled position about the grandmother's enhanced role to deal with this? What happens if the individual parent refuses to cooperate?

**Ms TIGHE:** Out our way there are cultural ways that that can be dealt with, but the difficulty we have is the European concept of what a family is—like mum, dad and the 2.3. The European way or model of family, or non-collective parenting, is that mum and dad through the law have the say. So in white man's law, it is mum and dad who have the say over kids. In cultural law, particularly for Gamilaroi out our way, it is that the grandmother, in particular, has the say over what is happening with the grandchildren. We have got the conflict in the dichotomy of two laws happening here. The European law does not acknowledge or support the cultural way of doing it.

**The Hon. BRONNIE TAYLOR:** Just very quickly, I have just been listening.

**Ms TIGHE:** Yes.

**The Hon. BRONNIE TAYLOR:** I cannot find the exact spot in your submission, but I really like your submission because you actually offer up some solutions, which is really refreshing. You talk about groups within local communities led by Aboriginal leaders, and I presume that is the grandmothers that would look at children. But I am thinking that it is not just a reactive thing in what you said in that the cultural intervention has already happened. We need to look at those groups as, say, having a primary help and primary prevention role as well as an actual consequence role, and then FACS and things like that would work with those specific groups, who would not only prevent that from happening but also would be responsible if it did happen to have a cultural intervention in terms of them living with their grandmother—or whoever that is in the extended family, to use a white person's term.

**Ms TIGHE:** Yes.

**Mr IRELAND:** In terms of the submission that we put forward, the groups that we describe are more around incidents and issues at a local level that will determine localised solutions, not necessarily individual family matters.

**The Hon. BRONNIE TAYLOR:** I have tried to listen to everything. You keep saying that we cannot keep doing the same thing and expect different outcomes. When you look at the data and statistics you realise that we have not been doing such a great job, but I think we should move forward. Let us be positive and try and look at the solutions. You are offering that here, but I think that it has to be a preventative thing. You have to buy-in to say, "This is not okay," and "This is what we are going to do to make it better." So it is two-fold.

**Mr IRELAND:** Absolutely.

**The Hon. MATTHEW MASON-COX:** We need more grandmothers, quite clearly. Can I just thank you for your testimony today. It has certainly been very enlightening for me personally and, I am sure, for the committee as a whole. Thank you to Mr Ireland, as well. I would like to ask you about these guiding principles which were released in November last year in Tamworth. I know that you are both from Gunnedah.

**Ms TIGHE:** No.

**Ms SWAN:** No.

**Ms TIGHE:** We will not shoot the messenger.

**The Hon. MATTHEW MASON-COX:** Someone has given me the wrong information.

**Ms SWAN:** Moree.

**Ms TIGHE:** Coonabarabran.

**Mr DAVID SHOEBRIDGE:** But a number of the grandmothers are from Gunnedah.

**Ms TIGHE:** There are grandmothers in Gunnedah.

**The Hon. MATTHEW MASON-COX:** There are grandmothers everywhere; I am glad to hear that. In terms of the implementation of these guiding principles, where is it all at? What now needs to happen if it has not happened already? Is there anything more than these guiding principles? I refer particularly to your comments, Mr Ireland about this not going far enough. You could perhaps elucidate that as well.

**Ms TIGHE:** There is now a guiding principles working group, and Grandmothers Against Removals are talking with the Department of Family and Community Services, particularly one branch.

**Ms SWAN:** Say the name.



**Ms TIGHE:** The name of the branch includes innovation, policy and safety and several other things. We are finding that there is resistance in FACS in implementing the guiding principles. I can only surmise that it is because it has come from the grassroots community. It is not being put forward by the Department of Family and Community Services out to the regions. It was not until I made a formal complaint to the Ombudsman's Office about the lack of roll-out of the guiding principles that we began to see any movement on it. As it sits now we have not heard of a community that has rolled it out. FACS needs to be putting it out there into the community and informing the communities. Grandmothers Against Removals have done the best we can with limited resources.

**The Hon. MATTHEW MASON-COX:** So you have run into the bureaucracy?

**Ms TIGHE:** Yes.

**The Hon. MATTHEW MASON-COX:** The Minister released this in November.

**Ms TIGHE:** Yes.

**The Hon. MATTHEW MASON-COX:** It has the Minister's endorsement.

**Ms TIGHE:** Yes. We have found resistance. We have had meetings with a few regional directors—I think that is their title—and we found opposition from one region. They said that they had their own system that they wanted to use.

**Mr IRELAND:** Where was that?

**Ms TIGHE:** That was Western District. They have their own local agreements between local FACS officers and local communities and they wanted to roll with those first. We said, "That is fine, but this has been endorsed by the Minister."

**The CHAIR:** Yes. It is formal.

**Ms TIGHE:** It is the formalised one; therefore, those local documents should come into line with that. We had no issue with them running it in parallel. That is from the grandmothers' perspective, but we found opposition in the fact that they wanted to run their local agreements rather than implement the guiding principles. It was not until after I made the complaint through the Ombudsman's Office about the roll-out that we got a meeting with the Design, Innovation, Safety and Permanency Branch to form a working group for the guiding principles.

**Mr DAVID SHOEBRIDGE:** But the Minister also held that roundtable at La Perouse, which I attended. It seemed to be a genuine by-in from the Minister and senior bureaucrats there. It reinforced the situation. That was only a couple of months ago. I think you spoke at that. Aboriginal who had been removed and put into care spoke at that meeting. I think you were there, Tim. I thought the Minister was trying to get some cultural change in the department but you are saying that it is not delivering on the ground yet.

**Ms TIGHE:** No, it is still bureaucratic. It is coming from up here, whereas that document is designed to be from the grassroots, so that communities can pick up that document.

**The CHAIR:** It is a question of implementation.

**Ms TIGHE:** Yes, it is the implementation and the application of that document that FACS is not delivering on.

**The CHAIR:** That is an important piece of evidence.

**The Hon. PAUL GREEN:** I want to put something on the record because it is feedback that I am getting, as a member of Parliament, from all communities. People are being visited by the authorities to check on the kids or something and eventually they write a report. Unfortunately, people are saying things that are not helpful and the report-writer is writing those into the report. The person does not realise that they are getting more and more deeply involved in a situation that will result in their children being removed.

**Ms TIGHE:** Yes.

**The Hon. PAUL GREEN:** Is that an issue?

**Ms TIGHE:** It is an issue, because we are finding that, socio-politically, there is a fear of authority. There is also a feeling—this is a blunt way to put it—that white is right. People—especially the generation that was brought up during the assimilation period—trust that what they are saying is not going to be used detrimentally or against them. It is a three-fold issue.

**The Hon. PAUL GREEN:** That is a very important point. Please excuse me, Chair, but this is very important for this whole inquiry and that was one of the reasons that contributed to my calling this. Trust is built on by the person visiting. The other person thinks they have that trust and pour our their heart, little knowing that they are building a whole case to remove their kids because of the safety issue. It works against them.

**Ms TIGHE:** Grandmothers Against Removals [GMAR] has been given a narrative about incidences of domestic violence within the family homes. People are ringing police and saying, "Person X is here, threatening." But, now, because of the situation with the Department of Family and Community Services, when people—the majority are women but we have to acknowledge that men are not only the perpetrators but victims of domestic violence—make a phone call to the police to come to their homes to remove a person for domestic violence reason it becomes a mandatory report which then goes through to FACS from the police because children are present.

But the way FACS then presents that information to the court system, through their affidavits and reporting mechanisms, means that the information will be that there are, for example, five incidences of domestic violence at that house. The person who has made the call may have taken protective measures for themselves and their children but the way that it is portrayed in the court system by the Department of Family and Community Services is only that police have had to attend the residence on five different occasions for domestic violence.

**The Hon. Dr PETER PHELPS:** Would it not be better if police, FACS, Health and Education all talked to each other so that they would not that, yes, there had been these five incidents but the incidents only happen under certain circumstances—for example, it may happen on a Friday night. Rather than have to take the children away they can just make sure the cops are patrolling the neighbourhood on a Friday night rather than let that happen.

**Ms TIGHE:** Yes. What you are saying—

**The CHAIR:** Without cutting you off, we have gone well over time and have been quite generous. Could you perhaps bring it all together and conclude?

**Ms TIGHE:** I will just conclude that one point. From that domestic violence point of view, we are finding now that people are not reporting domestic violence incidences because of fear of removal of their kids.

**The CHAIR:** It is counterintuitive, isn't it?

**The Hon. PAUL GREEN:** It is the perfect storm.

**Ms TIGHE:** What you are saying would be the commonsense thing to do but it is not reality.

**The Hon. DANIEL MOOKHEY:** This is a question on notice, particularly for you, Mr Ireland. Could you provide the Committee with some views about issues that we did not get to explore today that arise from the nexus between criminal justice and child protection—the extent, quality, calibre and cultural sensitivity of legal services that are provided to Indigenous families in need as well as the sensitivity of tribunals and the extent to which they are organised enough to acknowledge all the factors that you have referred to in your evidence?

**Mr DAVID SHOEBRIDGE:** This is also a question on notice about high-risk birth alerts. There has been a large rise in high-risk birth alerts, from what I can understand, in relation to Aboriginal parents and we have seen Aboriginal children being removed from their mothers two hours after they are born.

**Ms SWAN:** Not even that long.

**Mr DAVID SHOEBRIDGE:** Could you please provide your views on that and how it is working in the Aboriginal—

**Ms TIGHE:** From a Grandmothers Against Removal [GMAR] perspective?

**Mr DAVID SHOEBRIDGE:** From both GMAR and AbSec.

**Ms TIGHE:** Ours will be anecdotal rather than empirical.

**The CHAIR:** That is fine.

**Mr IRELAND:** Just to finish up with that point, I will take that on notice but I refer the Committee to page 20 of the submission which starts to talk about that.

**The Hon. MATTHEW MASON-COX:** If you could expand on that, that would be great.

**The CHAIR:** The secretariat will liaise with you over the specific form of the question. I thank you all very much for coming along this afternoon. I am sorry that we appeared to be rushing you towards the end but we have some other witnesses to get through. Mr Ireland, that was a very detailed submission you made and it has provided a great opportunity for us to elucidate from that. Ms Tighe and Ms Swan, your frankness and clarity of your position is appreciated. The opportunity to speak to people who have firsthand knowledge and insight into these matters is most valuable for this Committee in its deliberations. We appreciate what you have done in terms of providing those this afternoon. Thank you also for the great ongoing advocacy work that you are all doing not only in coming and raising issues but putting forward ideas for us to consider to help address these matters. Thank you very much. Questions on notice will be provided to you with 21 days to respond.

**(The witnesses withdrew)**

**KERRY BOLAND**, NSW Children's Guardian, affirmed and examined

**LOUISE COE**, Director, Child Safe Organisations, Office of the Children's Guardian, sworn and examined

**The CHAIR:** Thank you again for joining us and, once again, I apologise for the delay in getting under way with our questioning. We have received your submission which stands as submission No. 75 to this inquiry. That can be taken as read. I will ask you in a moment whether either or both of you would like to make an opening statement. This Committee has representatives from the Government—the Liberal Party and the National Party—two members of the Opposition, the Deputy Chair is the Hon. Paul Green of the Christian Democratic Party and also in attendance is David Shoebridge from The Greens. We have decided—and we hope you are comfortable with this—that we will share the questioning between ourselves and run the questions out and try to move the issues along without having strict time limits. Are you comfortable with that?

**Ms COE:** That is fine.

**Ms BOLAND:** Yes.

**The CHAIR:** Would you like to make an opening statement?

**Ms BOLAND:** Unless the Committee would specifically like me to, I had not intended to give an opening statement. We have put together some substantial material with attachments and really I suppose the covering executive summary would suffice.

**The CHAIR:** Yes. Thank you Ms Boland. That will provide an additional opportunity for us to ask questions, which is appreciated.

**The Hon. DANIEL MOOKHEY:** Thank you for appearing today. I want to touch on an aspect of your submission that arises out of the interaction between your office, the NSW Civil and Administrative Tribunal [NCAT] and working with children orders. What is your view as to the relative sophistication of NCAT in being able to deal with child protection and these particular orders—specifically, are they appropriately sensitive to it, do they have the same set-ups to protect and preserve privacy, and are they able to discharge a function to the same level as the Children's Court?

**Ms BOLAND:** By way of background, the Working With Children Check legislation came in in 2013. It was quite a substantial change from the previous arrangements. The whole decision-making about a risk of a person to a child in designated workplaces and categories of work that work with children used to be a shared arrangement. Information used to go to the employer and the employer would make the final decision. In 2013, as you probably know, there was some bipartisan legislation that went through whereby that responsibility was given to our Office of the Children's Guardian. We make administrative decisions based on the legislation that we administer. Our role is either to bar a person because they are prohibited under the legislation from working with children or there is a trigger offence which requires us to risk assess. So I suppose there is a two-tiered system.

In relation to some offences whereby people are automatically barred they are allowed to appeal to the tribunal, which is NCAT. In relation to our risk assessments they are allowed to appeal in relation to those decisions also. NCAT is a tribunal, a court, and it makes its decisions according to the legislation that it administers. We have spent quite a lot of time on our risk assessments, as you would imagine, spent considerable time thinking about what risks are to children in the frame of the legislation and have got advice where we were required to get advice. We have made a number of changes over the course of the introduction of the legislation which I think have clarified a number of matters, which is a matter of policy. The Government has made a decision to not be appellable.

We also introduced another test into the system, which is referred to in other jurisdictions sometimes as the reasonable parent test; in other words, would it be reasonable for someone to assume that this person would be clear, for example. That legislation was introduced in November of last year and the cases that are coming through now are pre that legislation; so we would expect to see, I think, that test applied. As an administrative body we are clearly waiting to see how that is applied. The system is set up as one that balances the rights of people. It is a well-held principle of responsible government that you should be able to appeal administrative decisions, and I think that is how the legislation is set up.

**The Hon. DANIEL MOOKHEY:** In respect to the functioning of the appellate jurisdiction, are such claims heard in private when such appeals are undertaken or are they public?

**Ms BOLAND:** That depends on the discretion.

**The Hon. DANIEL MOOKHEY:** Is the default position that they are public?

**Ms BOLAND:** They are public, and certainly the decisions are made public.

**The Hon. DANIEL MOOKHEY:** Obviously not their names?

**Ms BOLAND:** The names are definitely suppressed. But, no, they are all available and I think some of the reporting that you have seen is due to having a look at what those decisions are.

**The Hon. DANIEL MOOKHEY:** The people who are hearing or otherwise presiding over the appeals, are they developing a particular expertise in these types of claims or is it general tribunal members who are allocated them on their lists in the course of the ordinary workings of the tribunal?

**Ms BOLAND:** I do not know if Louise can answer that. I should have said previously that in NCAT the appellate has always had a role in relation to the Working With Children Check. Even under the old system there was a role.

**The Hon. DANIEL MOOKHEY:** Yes, but there has been a change in their role.

**Ms BOLAND:** Yes.

**The Hon. DANIEL MOOKHEY:** In your role, which therefore means there are more administrative decisions being made.

**Ms BOLAND:** Yes.

**Mr DAVID SHOEBRIDGE:** Or are they members who used to be in the Guardianship Tribunal who are now primarily hearing these, because that was the intent when the NCAT was created, to bring in the expertise from other tribunals?

**Ms COE:** There are members on NCAT who have a child protection background or a legal background dealing with children in the child protection and Children's Court. Also, since November, the regulation was amended so that there is now a community member added to the tribunal, which helps with the implementation of the reasonable parent test.

**The Hon. DANIEL MOOKHEY:** Do they maintain a separate list for child protection claims or these types of claims, or is it in the general list? Does the tribunal have a general practice whereby if a certain claim for administrative review is brought to it in respect to the functions that you discharge, is that held out in any separate list or is it just another claim that comes and it is handled the way in which an ordinary general claim is handled?

**Ms COE:** I cannot say definitively. It would be up to NCAT to disclose their administration arrangements. But my understanding is there are about eight to 10 members that generally preside over our matters.

**The Hon. DANIEL MOOKHEY:** What is the percentage of your decisions that are appealed?

**Ms BOLAND:** I can get you the exact figure on that. I thought you were asking a different question.

**Mr DAVID SHOEBRIDGE:** The better question would be the percentage of cases where you refuse a Working With Children certification.

**Ms BOLAND:** That is the one I was ready for.

**The Hon. DANIEL MOOKHEY:** I was asking that question first and then I wanted to ask the second question.

**Ms BOLAND:** Could I take that on notice? We would have to have a look at the number. We will get that figure to you. It is all reported in our annual reports.

**The Hon. DANIEL MOOKHEY:** How much resources do you have to set aside in order to engage in the appellate jurisdiction? Volume of money would be great to know and, in addition, staff members, staff time. Would you like to take that on notice?

**Ms BOLAND:** Yes. What you are asking is what internal resources do we use? We have what we call an NCAT team, so we obviously have to go through a number of steps. I can give you information about our NCAT team. In relation to when it goes to the tribunal, clearly that is managed for us by Crown solicitors and we do have a role in relation to, obviously, briefing—

**The Hon. DANIEL MOOKHEY:** Do the Crown solicitors have to recover that cost from you or is it just general?

**Ms BOLAND:** I think it is in the general—

**Ms COE:** The core legal.

**Ms BOLAND:** The core legal it is called.

**The Hon. MATTHEW MASON-COX:** I wanted to ask you about the accreditation in relation to the role you play ensuring that organisations are accredited to meet the child safe standards for permanent care. In particular I wanted to ask about FaCS. You make a comment on page nine of your submission, in the second paragraph, that there are limited tools available to the Children's Guardian in responding to FaCS' progress with meeting accreditation requirements and that this has been an ongoing challenge, noting earlier on that FaCS is not accredited, or parts of FaCS are not accredited but are enabled by way of a regulation to be deemed to be accredited. Can you explain to me just where the challenges are and what issues you see causing problems within the future?

**Ms BOLAND:** I will not go into the background of the accreditation system because I think it is really comprehensively covered in a couple of the submissions. The then Government made a decision that the accreditation function of the Children's Guardian would apply to government and non-government providers. It was set up that there would be 10 years for people to move towards full accreditation and, in the meantime, they were in a quality improvement program. The NGOs, generally speaking, are smaller, more nimble, if you like, and were able to move through the accreditation scheme more rapidly than, say, a larger department. I do not want to give you the whole history, but, fundamentally, FaCS—or DoCS as it was—was an incredibly large provider of out-of-home care. That changed when a decision was made to move more care to the non-government sector. So we are running at about 50/50 or somewhere around that now of care, but with FaCS still being the largest single provider of out-of-home care in New South Wales.

The unique aspect of it is that there is a link in a legislation that says it is a prerequisite to be accredited or previously in the quality improvement program to gaining funding and, in fact, providing out-of-home care in New South Wales. It operates, if you like, as a licence and a bit of a quality and monitoring role as well; it has got two aspects to it. So if you fall short of accreditation you can lose your accreditation and you then subsequently cannot provide home care services in New South Wales. FaCS has been moving towards their accreditation now for over 14 years.

**The Hon. MATTHEW MASON-COX:** I just found it extraordinary that FaCS have not been accredited—partially accredited.

**Ms BOLAND:** Parts of the department have met the standards.

**The Hon. MATTHEW MASON-COX:** Perhaps I can ask you the question: Why have they not been accredited? Where have they fallen down?

**Ms BOLAND:** I think there are two issues there. The first one is they are a large organisation and therefore they have a scale that the smaller organisations do not have. The second one is in terms of commitment and leadership to get there, in terms of what is required for accreditation, and in fairness to the department I would say that for the last number of years they have made monumental progress towards accreditation. We did accredit all of the intensive support services [ISS] teams—there are five or six of those—we did accredit Sherwood, and then we entered into an arrangement with the department in relation to accrediting each of the various districts, as they were then—they are still called districts, I think

There are now three districts that have met the accreditation criteria.

**The Hon. MATTHEW MASON-COX:** Three out of how many?

**Ms BOLAND:** Three out of 15. Then there are nine that have substantially met the criteria. Ms Coe will explain the regulation. There are three that have not met the criteria.

**The Hon. MATTHEW MASON-COX:** That is 15. Did you say there were 16 districts?

**Mr DAVID SHOEBRIDGE:** It is unambiguously 15.

**Ms BOLAND:** It is 15 districts. That is the current situation, which is a substantial improvement. There were two challenges: the status of "interim accredited" and the reality of the children in care. Where do those children move to if they are not under the care of the department? We need to balance the best interests of children with the ability of organisations to provide care. We have worked diligently with the department to make sure that there is a level playing field. An issue in trying to ensure a level playing field is the fact that

FACS is the first and last provider of out of home care. Therefore, the balance sits against the regulation for accreditation.

**The Hon. Dr PETER PHELPS:** I want to raise a point about the provision of out of home care by non-government organisations [NGOs]. Do you have ongoing involvement with the NGO providers after accreditation to make sure that they are following through on their standards for accreditation, or do you rely on the fact that they will have to be re-accredited in five or eight years?

**Ms BOLAND:** One of the things that is not well understood about the accreditation system is that accreditation happens at a point in time but the monitoring continues throughout the period of accreditation.

**The Hon. Dr PETER PHELPS:** Is the monitoring undertaken by your organisation?

**Ms BOLAND:** Yes. There is continuous monitoring.

**The Hon. Dr PETER PHELPS:** Is that done proactively by your organisation or in response to complaints that have been lodged?

**Ms BOLAND:** It is proactive. There are also some triggers that would cause us to have another look at how the systems are operating. It is an intensive program in that we know pretty well how organisations are operating and what their particular issues are. At any point in time some of them may have improvement plans to implement or aspects that they need to improve. We follow that up. Before 2007 we had a paper based system where an application came in, it was ticked and flicked, and they were accredited and left alone. Although we had monitoring functions back then, they were geared to a compliance approach. That was substantially changed in 2007-08. We now visit agencies on a regular basis. On average, we make three visits a year. Some are visited more frequently.

**The CHAIR:** Are the visits random or are the agencies given notice?

**Ms BOLAND:** They are given notice.

**The Hon. Dr PETER PHELPS:** You spoke earlier about the "agile" nature of the smaller agencies. Presumably you occasionally find problems with the provision of service. Does it happen more with large agencies with multiple facilities or with the operators with a single facility?

**Ms BOLAND:** I do not think there is a single trend.

**The Hon. Dr PETER PHELPS:** You would expect the larger organisations to perform better because they have access to greater resources that they can move around as needed. That is what I guess intuitively, but is that what you have found? Were the bigger agencies better providers than the smaller agencies?

**Ms BOLAND:** You are right that they have the capacity to move resources from one place to another. There is no doubt about that. The smaller agencies do not have that kind of flexibility. On the other hand, while it is reasonably straightforward for agencies to have very good policies and practices in writing—

**The Hon. Dr PETER PHELPS:** It is always implementation, isn't it?

**Ms BOLAND:** there is a larger challenge the further away you are from the centre of those policies. The local adaptations of those central policies become prominent in larger organisations.

**The Hon. Dr PETER PHELPS:** Do you dig down to that level of detail? Do you go to a particular out of home care facility and point out that, according to the organisation's own standards, it is not meeting the requirements of point 379 (13)?

**Ms BOLAND:** We are probably not that prescriptive. We are very effective in that we are an organisation that sets standards but does not prescribe precisely how organisations do their work. It is not our job to direct their work. We say, "Here are the standards. Demonstrate to us how you implement them."

**The Hon. Dr PETER PHELPS:** They are your standards; they are not the organisation's standards.

**Ms BOLAND:** No. They demonstrate that to us by saying, "We have this policy. It is implemented this way." They show us evidence of that. We talk to the staff and management. Sometimes we speak to foster carers. We have spoken to children. We send out two people, which is good regulatory practice. The process is triangulated back in the office so that we do not fall into regulatory capture. Those assessments are tested back in the office, with internal oversight and decision-making.

**The Hon. Dr PETER PHELPS:** How do you find NGOs are performing, beyond the initial assessment, in meeting the required standards?

**Ms BOLAND:** The NGOs have historically performed reasonably well. They were challenged by the transition of more children to their care. We have put in another monitoring program to look at how they are managing that. In our submission we included a document highlighting the issues that we found and the challenges for the NGO sector in meeting the standards as they increased their capacity. We have seen that their readiness to be re-accredited is not where it would have been five years ago.

**The Hon. Dr PETER PHELPS:** Have the standards changed?

**Ms BOLAND:** The standards have changed. They changed last year. The standards are a reflection of the requirements of the legislation, but they are meant to reflect the general policy direction of out of home care. We have seen a great emphasis placed on child-centred care, looking at the child's needs. The approach is to supply services to the child rather than look at the available services and then supply them to the child.

**Mr DAVID SHOEBRIDGE:** That sort of child focus would be essential for an organisation to receive accreditation. Is that right?

**Ms BOLAND:** Indeed our first standard is about the rights of the child and the focus is directly on the child. I think the other thing is that the standards actually sit there with what we would call a child-safe organisation. We talked about the Working With Children check being one element of the child-safe organisation, but I think this system actually looks at "Is this a child-safe organisation?"

**Mr DAVID SHOEBRIDGE:** If they are child safe do they get accreditation?

**Ms BOLAND:** Yes.

**Mr DAVID SHOEBRIDGE:** Can you tell the Committee that FACS is a child-safe organisation?

**Ms BOLAND:** I can tell you that parts of it are.

**Mr DAVID SHOEBRIDGE:** You can quite comprehensively tell the Committee that at least three of the districts are not?

**Ms BOLAND:** They do not meet the standards, no.

**Mr DAVID SHOEBRIDGE:** Are those three districts child safe?

**Ms BOLAND:** We would say that they need substantial work to get to that point.

**Mr DAVID SHOEBRIDGE:** On notice will you advise the Committee the actual districts so that it can have an understanding of where FACS is failing. At least three have not met your standards in a substantial way. Nine of them are failing in some way and only three have actually met your standards. Do you find it disturbing as the Children's Guardian that the primary organisation responsible for child welfare cannot be accredited as a child-safe organisation?

**Ms BOLAND:** Yes.

**Mr DAVID SHOEBRIDGE:** If I were to look at your last annual report would that be highlighted?

**Ms BOLAND:** Yes, we have reported.

**Mr DAVID SHOEBRIDGE:** No, if I were to look again at your last annual report, which I looked at before this hearing, I could not find where it was highlighted. Will you identify where it was highlighted.

**Ms BOLAND:** Okay. Are you talking about last year's.

**Mr DAVID SHOEBRIDGE:** The year 2014-15. Was it highlighted in your report? Can you remember if it was mentioned?

**Ms BOLAND:** We would have reported on the progress of the Department of Community Services and accreditation.

**Mr DAVID SHOEBRIDGE:** In your annual report?

**Ms BOLAND:** I will check but I am pretty sure.

**Ms COE:** Yes, I think we were going through the assessment process at the time.

**Mr DAVID SHOEBRIDGE:** You cannot say you could not include it in that annual report because you are going through a 14 year long assessment process.

**Ms COE:** They had interim accreditation so we would have made comment about that and that they were currently being assessed under a program to meet the accreditation criteria.



**Mr DAVID SHOEBRIDGE:** I looked through your annual report, and maybe I missed it, but I could not find where you highlighted that there were at least three districts from FACS that were not anywhere near getting accreditation as being child-safe organisations. As the Children's Guardian you have a statutory role of ensuring the safety and wellbeing of children and young people, and that seems to me an extraordinary absence in your report.

**Ms BOLAND:** That was only a decision that we made very recently in terms of assessments because it has been an ongoing assessment.

**Mr DAVID SHOEBRIDGE:** When did you make these decisions?

**Ms BOLAND:** A week ago in terms of the final assessment.

**Mr DAVID SHOEBRIDGE:** This process has been 14 years long and your office has not told FACS which districts are failing, which districts are substantially complying, which districts are complying until one week ago. How has that happened?

**Ms BOLAND:** No. I think you are misunderstanding the process. I will get Ms Coe to go through the process. This has been a protracted process.

**Mr DAVID SHOEBRIDGE:** Fourteen years long.

**The Hon. Dr Peter PHELPS:** Please stop heckling the witnesses Mr Shoebridge.

**The CHAIR:** Ms Boland is entitled to answer the question. This is not budget estimates.

**Ms BOLAND:** No, it is fine. Can I ask Ms Coe to explain the process and how we have been going about looking at getting back to what we would call meeting the standard, recognising that under the legislation they have interim accreditation. In other words they can continue to provide care?

**Ms COE:** They had 10 years, as all other non-government organisations, to do the quality improvement program to meet the accreditation criteria. At the end of that 10-year program they remained in the quality improvement program because they could not demonstrate at that time that they met all the accreditation criteria. The interim accreditation was extended for, I think, a 12-month period, a two-year period.

**The Hon. MATTHEW MASON-COX:** When?

**The CHAIR:** Is there a timeline for this?

**Ms COE:** 2013.

**Ms BOLAND:** Ten years for everyone.

**The CHAIR:** I understand, but when that started?

**Ms COE:** Then they had a program to meet the accreditation criteria which they entered in for two years. The assessment process is a strength based assessment. We go to agencies and we say "How will you demonstrate compliance with the standards that you meet the minimum standard?" They will explain their systems to us. It is not a prescribed standard assessment, it is strength based. As Ms Boland said earlier, we look at the policies and procedures and the children's case files, and we talk to key staff. They entered a program for two years at the end of which they had nominated particular fiat community service centres to be assessed as meeting the criteria. At the end of that two-year assessment, while there were a number of community service centres that did meet the criteria, we were not convinced that it applied across all districts.

At that period of time the secretary of FACS wrote to the Guardian and asked to extend the interim accreditation for a further 12-months period while they entered a plan to deliver on accreditation. They were required to give administrative reasons as to why they had not met the criteria, and we had a list of those reasons provided to us. The Guardian decided at that point in time that a further 12 months was in the best interests of the number of children who were in out-of-home care that FACS did actually meet the minimum compliance with the standard and it was extended for a further 12-months, which is at the point that expired on 31 July 2016.

During that time we undertook a number of assessments of the different districts and the community service centres in that district. Following that the regulation allows us to accredit parts of an agency. Given the size of FACS we determined we were in a position where we could accredit 12 of those districts. There were three districts that did not meet minimum criteria. We are looking at the options in relation to the children in those districts at this point in time.

**Mr DAVID SHOEBRIDGE:** How many children are in districts that FACS does not meet your criteria and is not a child-safe organisation under your own terms?

**Ms COE:** My understanding, and I could be wrong, it is approximately 1,200 children.

**The Hon. Dr Peter PHELPS:** It is also on page 26 of the annual report, cunningly hidden under the title "Accreditation and the Department of Family and Community Services." It is in the report, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** From 2014-15? So 1,200 children are currently in the care of FACS about whom you cannot be satisfied are being looked after by a child-safe accredited organisation. What comfort can you give this Committee that those children are having their welfare properly protected by FACS?

**Ms BOLAND:** Are you looking at the practical details?

**Mr DAVID SHOEBRIDGE:** There are 1,200 children. This is a substantial matter. The organisation that is looking after them does not have accreditation as a child-safe organisation. How can this Committee be comforted that those children are being cared for?

**Ms BOLAND:** The way that the system is set up is that where criteria are not met then they need to be moved to an accredited agency or centre. What we are looking to do at the moment is where it is possible for FACS to do that. I have to say in relation to that, that it has to be looked at in the best interests of children—

**Mr DAVID SHOEBRIDGE:** I am not saying a wholesale removal. I know it is complicated.

**Ms BOLAND:** It is really an important point. We are talking about dislocation of children's placements and so forth, and huge upheavals. We have already heard significant information about that. There is a balance. The way the system works, we want a level playing field. We want everyone in accredited care. We want all children to come into the system or be in the system where they can be guaranteed a minimum standard of care. We are talking to the department about what are the options in relation to those children. That needs to be balanced against their best interests.

**The Hon. PAUL GREEN:** I have a case study and I will pose a question at the end of it. In order to answer the question, you may want to take it on notice. "As a family we were undergoing assessment to adopt a three- to five-year-old child, our speciality in terms of experience. We had told the agency that we wanted to home educate because we feel that early intervention is so important and children who have been damaged in relationships can only heal in relationships. School can take out too much time and just can't meet the needs of severely traumatised children. The whole adoptions team were really supportive and advocated strongly. The NGO realised that they did not have a policy and needed to develop one.

Their staff wrote documents strongly in support of them providing for children to be home educated where foster parents were appropriately resourced. The bosses determined that they could not support it, and so it is looking like they will have to withdraw. School fails severely traumatised children, both emotionally and educationally. But even this organisation, which is very impressive, cannot go so far as to make truly child-focussed decisions. As one of its staff said to me, "This decision is all about ticking boxes and not about children." Does the Office of the Children's Guardian make it difficult for NGOs when flexibility is needed in relation to a child, particularly if that child is home educated or homeschooled?

**Ms COE:** We have standards on education and children should have an individualised education plan. If homeschooling is in the best interests of that child, we would not have any issue with that. As I said, we are not prescriptive in the standards. It is about the best interests of that child and what happens for that child is individualised and tailored to their needs.

**The Hon. PAUL GREEN:** The feedback from the agency is that it is indicating it is afraid to suggest this, given the guidelines of the Office of the Children's Guardian. You would say it has no reason for that?

**Ms COE:** There would be no basis. I think we would be concerned if they took that approach.

**The Hon. PAUL GREEN:** So whether the child receives homeschooling or a public or private school education, it does not matter, the outcome should be in the best interests of the child?

**Ms COE:** As long as there has been a proper assessment of the needs of that child and they have an education plan, that is what we look for.

**The CHAIR:** Thank you both for coming along this afternoon and for providing us with an opportunity to ask questions relating to your submission, which contained a lot of detailed and valuable information. You will be expected to return any questions taken on notice within 21 days. The secretariat will liaise with you about those. Thank you for the work you do on behalf of the most vulnerable in our State.

**(The witnesses withdrew)**

**(Short adjournment)**

**CAROLE BREWER**, Young Consultant, CREATE Foundation, affirmed and examined

**LISA TOWNSHEND**, New South Wales State Coordinator, CREATE Foundation, affirmed and examined

**The CHAIR:** We have before us presently Ms Lisa Townshend and Ms Carole Brewer, who both are from the Create Foundation. We received your submission. Thank you very much. Submission No. 15 is a very big submission with a lot of detail, which is good to help inform our deliberation. I will ask you either singly or both if you wish to make an opening statement in regard to what you wish to put before us this afternoon and then we will open proceedings for questions. There are members of the Committee here this afternoon from the Government—the Liberal Party and The Nationals; the Christian Democratic Party, represented by the Deputy Chair, the Hon. Paul Green; the Labor Opposition; and perhaps a member of The Greens will be able to attend shortly. We have resolved to run the questions in a fluid way allowing questions to run down to the issues and we will share the time around. Are you okay with that?

**Ms TOWNSHEND:** Yes, that is fine.

**The CHAIR:** An opening statement, if you wish?

**Ms TOWNSHEND:** Before I give the opening statement, I have a document to table. This is an additional document of the submission.

**The CHAIR:** Is it a supplementary?

**Ms TOWNSHEND:** Yes, a supplementary.

**The CHAIR:** Perhaps you could hand that to the secretariat, who will take a look at it.

**Ms TOWNSHEND:** Yes, absolutely.

**Document tabled.**

**The CHAIR:** Is the proposition that this will become a supplementary submission? It sits behind your primary submission?

**Ms TOWNSHEND:** It does. It is a review of the key points in our submission. It does not add any new information. It is simply reiterating some key points. We were under the understanding that we could just submit something today that would be highlighting the key points that we would like the Committee to pay special attention to.

**The CHAIR:** We will have a look at that. That is fine. We have received that.

**Ms TOWNSHEND:** My opening statement is a brief summary of that. There are a few more details in there.

**The CHAIR:** That is fine. We will get some copies and circulate it.

**Ms TOWNSHEND:** I have nine copies.

**The CHAIR:** Please proceed.

**Ms TOWNSHEND:** Okay. As I said, I am the New South Wales State coordinator of the CREATE Foundation. Here with me today is one of CREATE's consultants, Carole Brewer, who also will be able to respond to queries from a young person's perspective. The Create Foundation welcomes the opportunity to respond to the inquiry of the General-Purpose Standing Committee into child protection in New South Wales. Furthermore, we respectfully think the Committee for the opportunity to give evidence regarding the inquiry and with regard to our submission. Firstly, the Create Foundation is the independent national peak consumer body for children and young people in out-of-home care. Our mission is to create a better life for children and young people in the care system.

There are more than 43,400 children and young people in out-of-home care nationally. There are 16,843 children and young people in care in New South Wales. Through CREATE's membership program, Club Create, the Create office in New South Wales is connected to 4,118 children and young people in care and 788 young people under the age of 25, who are what we term as in post-care arrangements. In our submission Create has specifically written to the issues, which concern children and young people in out-of-home care. To assist the Committee my opening statements focus on four key issues, which together form the key themes of our submission.

The first one is the overrepresentation of Aboriginal and Torres Strait Islander children and young people in out-of-home care in New South Wales. Create is of the opinion that this overrepresentation is unacceptable and of critical importance for this child protection inquiry. Create stands alongside its Aboriginal colleagues in supporting consistent calls for the return of Aboriginal children and young people to the care of Aboriginal communities, community controlled organisations and families.

The second issue is of placement and stability and permanence in out-of-home care. Create acknowledges that the task to improve stability for children and young people in out-of-home care is difficult and depends on various factors. However, astounding Create 2013 research shows that young people who experience fewer placement changes and good relationships with their carers and caseworkers reported more overall satisfaction with the care system. For this reason Create welcomed the findings of the Senate inquiry into out-of-home care, which is calling for a nationally consistent approach to permanency planning.

However, Create is of the view that permanence and stability for children and young people in care is derived from a connection to family, culture, tradition and community—a placement that contributes to the development of a young person's identity. The impermanence of a child or young person entering into the care system cannot be diminished by a legally permanent placement. In the light of this, Create urges the Committee to consider the quality of care provided to children and young people in the out-of-home care system in New South Wales, including the importance of kinship care placement.

Our third point is on the issue of children and young people with disability in out-of-home care as this group is widely recognised as a particularly vulnerable group in the care system. However, despite this, there are still various barriers to ensuring they receive the services that they need. One of those issues is the fact that in New South Wales, as in other jurisdictions of Australia, there is little data to accurately report on the proportion of children with disability in out-of-home care. Moreover, inconsistencies in the definition of disability also contribute to inadequate identification and service delivery to children with disability in care. So we are calling for more support to be extended to independent research bodies to fill the research gap and to streamline the delivery of services to children with disability in care.

Finally, the last issue is on leaving care. Young people leaving care are amongst the most vulnerable groups in our society. CREATE has completed extensive research and consultations with young people on this topic. Sadly, young people report poor outcomes when they leave care, and a lack of participation in the leaving-care process. CREATE is advocating for the extension of statutory responsibility to young people who exit out of home care to 25 years of age. This call is consistent with section 165 of the New South Wales Children and Young Persons (Care and Protection) Act.

Providing priority access to housing and other Government services to care leavers is equally critical to reducing the percentage of young people who experience homelessness upon leaving care. CREATE Foundation looks forward to hearing the outcome and the recommendations of the Committee's inquiry into child protection in New South Wales.

**The CHAIR:** Do you have any opening statement or any opening comments that you would like to make before we get questioning under way?

**Ms BREWER:** I did not plan to.

**The CHAIR:** That is fine. We will move to questions.

**The Hon. PAUL GREEN:** Thank you for that presentation. Obviously there are a lot of things that are of great concern, especially for kids with disability and out-of-home care. I think you are right. You are prophetic in guessing that there should be more work, coming after this inquiry, on that matter. We will wait and see.

Transitioning from out-of-home care after the age of 18 is a great concern because we seem to be losing a lot of people once they hit 18. We virtually say, "You are now an adult; you are not entitled to the services or after care or all the supports." Do you have a comment on that? What can we do better to address that process?

**Ms TOWNSHEND:** I am very glad that you asked that question.

**The Hon. PAUL GREEN:** So am I.

**The CHAIR:** We call it a Dorothy Dix question in Parliament: We ask you a question that you are dying to answer.

**The Hon. PAUL GREEN:** I had no knowledge of that.

**The CHAIR:** Please proceed.

**Ms TOWNSHEND:** As I said, this has been an area of extensive research and focus for the CREATE Foundation for approximately eight years. As you said, after young people leaving care turn 18 they are essentially lost. About 35 per cent of care leavers become homeless in the first year that they leave care. That is a statistic from our 2009 report card.

**The Hon. PAUL GREEN:** How many people would that 35 per cent represent?

**Ms TOWNSHEND:** I do not have the figures, but I could take it on notice to get the numbers of care leavers annually.

**The Hon. PAUL GREEN:** Was that just New South Wales?

**Ms TOWNSHEND:** That was nationally.

**The Hon. PAUL GREEN:** If you could get us those statistics it would be helpful.

**Ms TOWNSHEND:** Would you like the national statistic?

**The Hon. PAUL GREEN:** Both the national statistic and the New South Wales statistic, thanks. There is a bit of work to be done on that.

**Ms TOWNSHEND:** In answer to your question more broadly, that is an issue that we believe is of great concern. It is an area that Carole will also be able to speak to. CREATE is calling for more support for after-care services. This is because there are very few support services that are funded in New South Wales for after-care support. They are funded to deliver services to young people on a voluntary capacity. So young people will only get those services if they go and ask for the services.

This is because after 18 they are not children any more. However, we are of the opinion that these young people have been in the care of the Minister until the age of 18. There are various issues that they have with transitioning out of the care system. As I have said, a lot of the time they fall into homelessness but there are other issues that they have experienced whilst being in the care of the Minister. Therefore we believe that the Government has a moral responsibility to extend the statutory care, as I mentioned in my opening statement, to the age of 25 or, at least, the extension of services until the age of 21. That is something that we are calling for nationally.

**The Hon. PAUL GREEN:** Do you have any statistics of how many people are entering into some sort of plans on leaving care?

**Ms TOWNSHEND:** The leaving care plan?

**The Hon. PAUL GREEN:** How many go through that process as they approach 18, and how many are dropping out of that?

**Ms TOWNSHEND:** The leaving care plan?

**The Hon. PAUL GREEN:** Yes.

**Ms TOWNSHEND:** The leaving care plan is to be developed in consultation with the young person from the age of 15. The statistics are very mixed. I will have to get the specific statistics.

**The Hon. PAUL GREEN:** That is okay.

**Ms TOWNSHEND:** Here we go: CREATE's 2013 report card found that—

**The CHAIR:** Which page is this?

**Ms TOWNSHEND:** It is on page 22. CREATE's 2013 report card found that only 67 per cent of the 325 respondents—that is nationally—aged 15 to 17 were aware of having a formal leaving care plan. Only 47 per cent claimed to be involved in its preparation. That relates just to 2013. Anecdotally, I can very honestly tell you that a lot of young people say to us that the leaving care plan was rushed—often two weeks, or two or six months before they leave care. It is often a very rushed process. So the leaving care plans have become—or are becoming—a tick-a-box process rather than the formal consultation process.

**The Hon. PAUL GREEN:** If the process is broken—this is what the inquiry is about—what would you propose that could be a better process to deal with that?

**Ms TOWNSHEND:** The internal policy is that if young people are supposed to have consultation in developing this leaving care plan from age 15, that it is an ongoing process with the caseworker. It is imperative that there should be some type of measure in place where caseworkers need to demonstrate how they have

consulted meaningfully with the young person. It is one thing to say, "Here is your leaving care plan. There you go. See you later. Have a nice life." It is another thing for that young person to really contribute and to be able to verify that. At the moment we are unable to verify that a young person has a meaningful contribution.

The department may say, "We have this many leaving care plans completed." That is great, but if they have been completed the day before the young person leaves care it is not completing what they say that they will do.

**The CHAIR:** It is not really helpful.

**The Hon. PAUL GREEN:** I have an 18-year-old daughter that I am trying to do a leaving care plan with, and that is in a stable family environment. So how much more difficult would that be in a disruptive environment?

**Ms TOWNSHEND:** Exactly. Before I ask whether Carole has something to contribute I will add something about leaving care plans. As the Hon. Paul Green mentioned, young people leaving care are just like any other person's children. Today they may decide that they want to do hairdressing; tomorrow they might decide to be a lawyer.

**The Hon. PAUL GREEN:** Did you speak to my daughter?

**Ms TOWNSHEND:** I did not but I speak to a lot of young people. I have also been a young person, as has everyone here. We have to think that it is not just a bureaucratic document. This is a really important document for young people. The Minister has been that person's parent for no matter how many years. I think nowadays the average time is about 10 years.

~break/

So if they are in the care of a parent for that period of time, we need to be flexible. They are human. The leaving care plan needs to reflect that. It cannot be: "This is your document. You leave care." But if I change my mind the day after I leave care, "Uh-oh. We cannot change anything. You have to do hairdressing." Or, "You have to live here. You cannot move."

**The Hon. PAUL GREEN:** It should be that the core values of the leaving plan are the important bits and the other bits are flexible and moveable.

**Ms TOWNSHEND:** Yes. I might just see if Ms Brewer would like to contribute something.

**The Hon. PAUL GREEN:** That would be great.

**Ms BREWER:** Definitely. I will go back to the homeless part because I was homeless—I was one of the 35 per cent. Prior to leaving care I was in a residential placement for six months. That was through an NGO which I will probably not name unless you guys require. My transition from that was them getting me to ring around refuges to find a place to stay upon turning 18 due to lack of funding. In terms of a leaving care plan, mine was one of those rushed cases. It was not indicative of any sort of future that I had imagined for myself or conveyed to the workers that I aspired to have. I was—well, this is kind of under oath—

**The CHAIR:** It is not kind of under oath. It actually is under oath.

**Ms BREWER:** Sorry—it is under oath. I think Lisa can attest that people do perceive me as a relatively intelligent young woman.

**Ms TOWNSHEND:** Yes, that is right.

**The Hon. PAUL GREEN:** That is under oath. That is a good thing to be under oath for.

**The CHAIR:** You are doing well. Just feel comfortable. You are all right. Do not worry.

**Ms BREWER:** She attests that. As a young person of 17 years of age I did have plans for university. As a young person in care that is almost an insane goal. The statistics do not align with that, but that was my plan and I am achieving that now. But my leaving care plan had nothing for my education, nothing for health. I do not think there was much there. There was a camp I could go to. I do not actually have my leaving care plan on me. I can get that if you guys would like it.

**The Hon. PAUL GREEN:** If you would be willing to share that I would love to look at that.

**Ms BREWER:** I will, just because I do not want to—

**The Hon. PAUL GREEN:** It will help us think of other situations.

**The CHAIR:** I will just raise with you the fact that if you are willing to do so you could provide it to us and, subject to speaking to the Committee members, we could de-identify it—we could remove your specific name but just have it as illustrative of what a leaving care plan looked like. That is one possibility. The Committee would have to talk about it. It would certainly be informative to provide it if you are willing to do so.

**Ms BREWER:** Okay.

**The CHAIR:** You can consider doing that if you wish.

**The Hon. PAUL GREEN:** The secretariat will help you with that.

**Ms BREWER:** I felt my leaving care plan was, as Ms Townshend said, more about ticking the boxes. It was kind of: "We need to get this done so you can leave the system and we can move on to the next case."

**The Hon. PAUL GREEN:** How could it be done better, in your view?

**Ms BREWER:** There are so many ways—where to start?

**The Hon. PAUL GREEN:** Give us some.

**Ms BREWER:** A lot more flexibility in terms of the needs of a young person. You were talking about having an 18-year-old daughter and how she changes her mind about everything she wants to do. With the funding it needs to be more malleable in the ways it can be used and the age up to which it can be used.

**The Hon. PAUL GREEN:** So 18-25, for instance—is that what you are talking about with the age?

**Ms BREWER:** Yes, and maybe a little bit further. You need to keep in mind that we are dealing with children. I know we say 18 is the age of an adult but to be honest I am 23 and I am only just starting to feel less childlike. I think most of my friends who are my age would start to see themselves developing—

**The CHAIR:** As adults.

**The Hon. PAUL GREEN:** My wife still sees me as a child, so it makes a lot of sense.

**The Hon. MATTHEW MASON-COX:** We all do.

**The Hon. PAUL GREEN:** And all my colleagues as well.

**The Hon. MATTHEW MASON-COX:** It is his most redeeming feature.

**The CHAIR:** I know it is late in the afternoon, everybody, but this is important evidence. Please continue.

**Ms BREWER:** What was I saying?

**The Hon. PAUL GREEN:** You were talking about your maturity and at what age you can be funded to.

**The Hon. BRONNIE TAYLOR:** What would help? What would make it better? That was the train that you were on and you said, "There are so many things." But is there anything you could think of, as Paul said, to make us think, "If we could get that in place that would really help someone like you."

**Ms BREWER:** I guess money for counselling, for sure. Certain things that I can think of in my experience and across the board definitely include counselling, for one. You can say, "Oh, well, let's go to the public health system," but the reality is unless you have a mental illness like schizophrenia or severe type 1 bipolar you are not going to be able to access that. For dental health you can again say, "Let's go to the public system," but the reality is if you are somewhere like Western Sydney the waiting list is about six or seven years. I think you can get a check-up after two years—that is what I think it is. I am on the waiting list out there and it has been a couple of years.

I know that in the CREATE submission we have talked about priority housing. I do not like foster kids going back into social housing. I do not think that is a helpful or empowering model. I know personally after leaving the refuge I was in social housing for a couple of years whilst studying at TAFE before getting into uni. I know that that did impact on my post-traumatic stress disorder [PTSD]. I do not think that that has positive outcomes and it creates a lot more risk of negative outcomes.

**The CHAIR:** Was that accommodation in a shared arrangement or were you by yourself?

**Ms BREWER:** I was by myself in that situation. Flexibility in the funding would definitely help, as would something that articulates that this needs to be taken seriously—that leaving care plans are not just a "tick



the box so we can get this kid out" kind of thing—for NGOs and for FACS. I guess FACS does not deal with it as much now as NGOs do, but I know that a lot of NGOs kind of see this more as a flick—

**The CHAIR:** A pro forma job to do as opposed to a real blueprint for the person's future?

**Ms BREWER:** Yes.

**The Hon. BRONNIE TAYLOR:** It is fantastic hearing your story. You speak so well. You are so articulate. Good on you—what a fantastic example of someone that is going to nail it. In a lot of the submissions about transition, and as you described, when a person turns 18 they are left, to some extent. You described your own story. Would you support extending the age beyond 18 in order to get better transition? You mentioned health and dental, which are so important. Would it help if we had a better system that supported people like you so that instead of university not being a viable option, as you just mentioned, it absolutely is? We could perhaps do something positive by extending that age group combined with saying the transition is not good enough.

**Ms BREWER:** I think what currently happens, I would not call that a transition; I think that is more falling off a cliff, to be frank. I am not sure what the English model is but I definitely would support something like that, and I am sure CREATE can submit some information on the English one.

**Ms TOWNSHEND:** I can briefly speak to that. It is something that we have touched on in our submission, because it is place-based intensive kind of case management and an independent living program. They have a model where young people rather than, okay, now you are out of the care system you might move into somewhere where there is, say, independent living where you have got a caseworker that comes to visit you a certain number of times a week; that might be in social housing and then you might move into private rental, but you still have that support. So it is kind of like various different stages and at each stage a little bit of support drops off. A lot of young people who are in residential care often do want to be in independent living but with support because they may not want to be in a residential care facility, especially children aged over 16 or 17, and that is where we would say it would be truly a transition to independent living and a transition out of the system. We can try and get some more information on that for you.

**The Hon. BRONNIE TAYLOR:** It is definitely a gap.

**The Hon. DANIEL MOOKHEY:** Thank you for your appearance today. I just want to return to your primary submission. On page 12 you say that New South Wales was rated the lowest with regard to satisfaction with their relationship with their caseworkers. Can you provide us with information as to the source of that? Secondly, can you perhaps present a theory or otherwise as to why you think that is? Thirdly, do you have any suggestions about what can be done about it?

**Ms TOWNSHEND:** Are you looking at the bottom of page 12 where we are talking about caseworker relationships?

**The Hon. DANIEL MOOKHEY:** Yes. I should say by way of background, there was a theme earlier this morning that the capacity for care to be effective does depend on the quality of the relationships between the caseworkers and the people to whom they are giving care.

**Ms TOWNSHEND:** Absolutely. With regard to your first question: why is New South Wales rated as the lowest, I could take on notice the specific details about New South Wales and we could provide you with a breakdown of the data around what questions were asked of the young people and what percentage have contributed to that overall outcome. However, I cannot actually tell you why in New South Wales it is worse than in other States. But it is an interesting statistic given that New South Wales is the largest State in population with children in out-of-home care. But with regard to how we could improve the participation and improve relationships with children and young people, we know that the turnover of staff, both in FaCS and in general, is very high.

Also consistent across the board for everything in out-of-home care is that really there is too much that is left up to the caseworker; there is too much to the discretion of a caseworker. Just like getting the leaving care plan done on time, just like putting the right details in without enough checks and balances, the same with the development of a relationship with the caseworker. I do not know and I have not seen any indication of the fact that there are measures in place to demonstrate how caseworkers work meaningfully with young people, but participation in New South Wales, the participation of young people, has consistently been an issue.

**The CHAIR:** Sorry. What do you mean by "participation"?

**Ms TOWNSHEND:** The participation in young people in decisions which affect their lives, the meaningful participation of young people with the caseworker in trying to develop that relationship. That is because a lot of the time when we are measuring outcomes that is what people would see as a soft outcome.

How do you measure that? It is quite difficult to measure that. However, there are ways to measure how young people feel when they meet their caseworkers, how they feel about their caseworker, and then if those questions are asked what is being done about that.

**The Hon. DANIEL MOOKHEY:** Are those questions being asked? All the metrics to which you are alluding, are any of those metrics captured by the department at all in respect to the internal frameworks that they adopt in terms of their reporting? Are you aware of any data?

**Ms TOWNSHEND:** I would not know specifically of that detail; I do not have oversight or visibility of that. All I could say is that I do believe that in the quality assurance framework that will be implemented in New South Wales there are questions for caseworkers to ask of children's wellbeing and for them to ask young people about that. But, again, I would say that that is not enough. How can we prove that that is happening? That is what we need to know.

**The Hon. DANIEL MOOKHEY:** In your opinion, are there enough caseworkers in New South Wales?

**Ms TOWNSHEND:** No.

**The Hon. DANIEL MOOKHEY:** And in your opinion, the caseworkers that we do have, are they operating on a higher ratio of cases than other States or a lower ratio?

**Ms TOWNSHEND:** I do not have that statistic. I would not be able to comment on that, but I do think across the board caseworkers are overworked; they have too many cases and they are often dealing in a crisis situation as opposed to business as usual. Young people in out-of-home care are a vulnerable group of people; there are various issues, there are crises frequently with placement breakdown or other issues. So, yes, that is part of the job, but I do believe that if caseworkers are not getting the support they need by their employers that is why they cannot do the job effectively and spend the time that the children need with them.

**The Hon. DANIEL MOOKHEY:** Are they getting the support they need from their employers, in your opinion?

**Ms TOWNSHEND:** I would not think so, otherwise I think we would see better outcomes.

**The Hon. DANIEL MOOKHEY:** In respect to the effectiveness of various forms of intervention that the Committee could recommend, putting aside the obvious one of more caseworkers, in terms of the quality assurance failing, to which you alluded—feel free to tell me if any of this is addressed in that—in terms of a sector-wide investment and a professionalisation of caseworkers, accompanied of course with the consequent adjustments to their remuneration in the event of a skills increase, in your view is that likely to be an effective intervention compared to no intervention or as compared to the status quo?

**Ms TOWNSHEND:** There was recently some research done by the department. I listened to it last week and the research showed that caseworkers are highly qualified, they have —and often Masters degrees. You can do a social work degree, you can do a social policy degree and you could come out of that degree and have no idea how to work with a young person. By professionalising the degree, while I am of the opinion that they need to have qualifications and they need to have a social work degree, they need to have a type of degree that provides them with a very good structural understanding of the issues that cause young people to be abused in society.

However, the second step needs to be those soft skills: how do you work with a person; how do you actually speak to a child who has been abused? Caseworkers should have those skills. If they do not have those skills I would say that is a useful investment—not so much on the professional university qualifications but on qualifications or certifications or something in courses that demonstrate that they know how to actually work with young people. We are forever going to caseworker training and taking young consultants along with us and them telling caseworkers what they would like caseworkers to do. I am of the opinion that caseworkers find that illuminating and very useful. They wish that they could do more, but they do not know how to do it and they do not have the time to do it.

**The Hon. DANIEL MOOKHEY:** Is an educational institution the right place for that training to be provided or should it be provided in the workplace by an employer? What is likely to be most effective?

**Ms TOWNSHEND:** It would probably be university certification beforehand. Too many caseworkers go into the system ill-equipped to do the job. There are already caseworkers in the system who are responsible for training new caseworkers and who do not know how to include young people in decisions that affect their lives or how to talk to young people about issues that affect them. In-house training would not fix that because it would depend on other people who may not have the skills. A graduate certificate could support caseworkers to

learn how to work with young people and allow them to have an input. When we train caseworkers they often say that they do not know how to ascertain that they are having a meaningful input. That is very difficult to learn on paper. It needs to be learned in practice. I believe that it can be learned in a classroom, without having to go into a situation where someone might affect a child's life by making a critical mistake.

**The Hon. DANIEL MOOKHEY:** You made a point earlier about the struggle to retain workers, and that there is a disproportionately high turnover. Would you explain the consequences of low levels of retention on the relationship and trust between caseworkers and their clients? How does it affect the upgrading of their skills?

**Ms TOWNSHEND:** Carole might want to comment on the impact on young people. It is extreme. It is very detrimental. Young people who go into the care system have already experienced extreme trauma; otherwise they would not be there. If the person who is to protect them and look after them changes regularly it has an impact. Sometimes young people in care have 20 to 60 placements and it is not uncommon for them to have 20 or more caseworkers. If you are trying to create stability for a child who has been traumatised, that is not the best way to do it. Frequently changing caseworkers has a massive impact. What is a traumatised young person to do? How are they supposed to trust that person if they do not know them?

The second point is that the high turnover of caseworkers creates uncertainty even if the young person is in a stable placement with a very good carer—which does happen. Access to services is through the caseworker. Everything rests with the caseworker. If the carer and the young person do not know the caseworker because they frequently change then they do not know who to call. They do not know what to do, and they call us and ask us what to do. If caseworkers frequently change, gradually young people will disengage from the system that employs those caseworkers. It is unclear to the young people that those people care, because they keep leaving them. That is a critical point and shows why the high turnover of caseworkers is so detrimental to the wellbeing of children in care.

NGOs do not pay as much as FACS. They do not have the money. I have heard that the good caseworkers go to FACS. Some NGOs have very good training programs. The Association of Children's Welfare Agencies [ACWA] does very good training. There is support out there for some caseworkers. However, in a skewed system where NGO staff are not paid well, they want to move to FACS, where they can receive more training and support because FACS has more money. The majority of out-of-home care is outsourced to NGOs. Therefore, the majority of caseworkers who are looking after children in the care system are not as experienced because those agencies do not pay as much as FACS. The better caseworkers go to work for FACS, where they do not look after as many children because the care has been outsourced to NGOs.

**The Hon. DANIEL MOOKHEY:** Ms Brewer, how many caseworkers did you have while you were in care?

**Ms BREWER:** I would not know because I was in care from the age of 18 months. I would not be able to give a definite number without accessing my files. If you would like me to estimate, it would be more than 20.

**The Hon. Dr PETER PHELPS:** We heard earlier from Barnardos, which is a service provider. Because you represent the interests of clients—the relative advantages of adoption as opposed to out-of-home care?

**Ms BREWER:** What is the question?

**Ms TOWNSHEND:** What are the advantages of adoption over out-of-home care?

**The Hon. Dr PETER PHELPS:** You may think that adoption is less preferable than well-provided out-of-home care.

**Ms TOWNSHEND:** I am happy that you asked that question but I am not sure where it is going. While CREATE understands that permanence is very important for children in care, we do not believe that legal permanence leading to guardianship or adoption is the answer. What is the benefit? I do not think it is as simple as that. Overall, outcomes are better for children in kinship care than in broader foster care or residential care. We would support adoption if a young person were placed with a carer, the carer wanted to adopt them and the young person wanted to live there and be in their family. We know of cases where that has happened. We always wholeheartedly agree that if a carer wants to adopt a young person in their care—

**The Hon. Dr PETER PHELPS:** And the young person wants it.

**Ms TOWNSHEND:** —and the young person wants to go, that is a wonderful outcome that creates fantastic permanence for a child. It has that connection to family and community that is so important for creating

stability in a child's life. However, if we are moving towards a system where adoption is seen through the lens of legal permanence, we need to ask why. Is it really about quality of care and outcomes for children? Is adoption really going to be better if they do not have a connection to where they come from?

**The Hon. Dr PETER PHELPS:** I will refine the question. Excluding Aboriginal children, is adoption a better outcome than long-term out-of-home care?

**Ms TOWNSHEND:** It depends. Even for non-Aboriginal children I would not say that it would always be better.

**The Hon. Dr PETER PHELPS:** But my argument is the argument of the second wave feminists, that is, family is a social construct; it is not a biological function. If you give permanency to a child through the integration into that particular social construct you are providing them with a family. It might not be their biological birth mother, but you are providing them with a level of permanency that they could not otherwise get. My understanding is that out-of-home care in many instances is not permanent and that you change. It may even be every two years or 18 months that you change carer, depending on the stage of life that you are at. I am not sure how that could possibly be a better outcome than the presumptive creation of a family over a period of six, eight, 10 or 12 years.

**Ms BREWER:** For me as a kid if someone had explained adoption, say at age eight, after having been through—I am not sure how many places but it would have been a few—I still would not have been able to grasp that that would have been a permanent concept. One of the things as an adult that adoption does concern me for older children with stable placements where you would say, "Yes, adoption looks like a good idea" is if they do have trauma and those kind of needs, where maybe they need counselling and stuff, where would funding for that come from? Like, if they have had abuse and stuff, who is going to cover that cost?

**The Hon. Dr PETER PHELPS:** I was thinking more of a situation of children under eight, in particular.

**Ms BREWER:** If they have had significant abuse that can have an effect during their teenage years, during their adult years, and that is something that does definitely need to be considered when we look at permanent solutions.

**The Hon. Dr PETER PHELPS:** The Committee heard earlier about kinship arrangements. But in your report you also mention the importance of sibling placement. The Committee heard earlier from Aboriginal witnesses that in fact sibling placement is less advantageous than kinship placement. The Committee was told that sibling placement, outside a kinship arrangement, is less advantageous than non-sibling placement within a kinship arrangement. Would you like to comment on that?

**Ms TOWNSHEND:** Non-sibling placement within a kinship?

**The Hon. Dr PETER PHELPS:** For instance, a brother and sister going to a white family. In your report you place importance on maintaining sibling placement. The Committee heard earlier that that is less advantageous than maintaining a kinship arrangement, not necessarily with siblings being placed together. Would you comment on that? Again that is a situation of a grandmother saying something as opposed to the actual children, which presumably you are the voice of. It is just different perspectives. Of course, grandmothers would of course necessarily say kinship arrangements are fantastic and should be prioritised over sibling placement. If you are saying sibling placement is more important than kinship arrangements if a choice had to be made, that is an important distinction.

**Ms TOWNSHEND:** First I would say that the grandmothers would be speaking from an Aboriginal context and in the Aboriginal context, although I am not Aboriginal, kinship arrangements are vastly important. It could be in that cultural context perhaps that is why they are saying that. However, our research does demonstrate that young people want to be placed with their brothers and sisters, Aboriginal or not, and that really your sibling relationship is the longest lasting relationship in your life for anyone. So it is advantageous to young people who are not placed with family as well to have that type of relationship because otherwise they really do not have anything. They do not have any connection to who they are at all, and that is what we would say.

I would not want to say that sibling placement is better than kinship care, or that kinship care is better than sibling. I actually would see them as two separate things but we would argue that it is very important, and should be added into the permanent placement principles that siblings need to be placed together as much as possible, and that ways should be found to place them together, and together with kinship, fantastic. I think then you would everything you could have. I would not want to choose.

**The CHAIR:** You have both given very engaging evidence this afternoon that will be very useful for the Committee. When responding to questions on notice you might be able to provide more reflective answers if you want. The Committee has resolved that answers to questions on notice will have a return date of 21 days. The secretariat will liaise with you in regard to the formulation of those questions and any clarifications you might seek. Is that acceptable?

**Ms TOWNSHEND:** Yes.

**The CHAIR:** Ms Townshend, you gave a very useful submission. Ms Brewer, it has been really great to hear from you just to lay it out and to put it the way it is. We certainly wish you well on your future endeavours and you are doing wonderful work advocating on behalf of young people who have had a very tough life. Your example shows to other young people in similar circumstances that there are possibilities and bright futures ahead of them if they turn their mind to it and look ahead.

**(The witnesses withdrew)**

**FIONA HASTINGS**, General Manager, Families and Community, CatholicCare, Sydney, sworn and examined  
**JACKIE PALMER**, Executive Manager, Out of Home Care Services, Anglicare, sworn and examined

**The CHAIR:** I confirm that the Committee has received your submissions and they can be taken as read. Do you want to make an opening statement?

**Ms PALMER:** No, it is not essential. I hope that there are some questions about permanency and, in particular, education. Anglicare Sydney is an accredited adoption agency, so I am happy to receive questions about adoption. I came in to hear some of the comments that the people from CREATE were making. I would like to say that generalisations are often difficult to make and just bear in mind that while we have foundational models and practices, it really is important to look at individual cases and individual children. The term "best practice" or "in the children's interests" can be bandied around a bit, but those are issues that need to be considered.

**The CHAIR:** Ms Hastings, would you like to make an opening statement?

**Ms HASTINGS:** I will.

**The CHAIR:** Please proceed.

**Ms HASTINGS:** Again, thank you very much for the opportunity to appear as a witness and the previous opportunity to provide the submission. CatholicCare, like Anglicare, is a provider of a range of child protection interventions, from early intervention through the intensive family preservation and restoration services, as well as out-of-home care and adoption, all of which are funded by Family and Community Services. Again, similar to Anglicare, we are also a provider of services in the family law space, which includes family dispute resolution, children's contact services, family relationship counselling, parent education, among others. These are funded by the Federal Department of Social Services. I bring that up, because as the Committee is aware, our submission focused on two themes, the first of which was looking at the present system's ability to adequately consider restoration of children to mothers where children have been removed as a result of domestic violence.

As illustrated in the cases we provided, we continue to come across children who were rightly removed from terribly violent situations, but for whom restoration has been delayed or denied because of an apparent reluctance of the system to update or review its understanding of the circumstances of the mother. The second theme of our submission is the gap that continues to exist between the Federal family law system and the State's child protection system. We continue to witness each system's overreliance on the other system's ability to respond to the needs of children where the risk of significant harm is brought on or exacerbated by acrimony between parents. The overreliance of community services on the family law system and vice versa opens up substantial gaps that children continue to fall through.

CatholicCare is part of the child protection system of New South Wales. We are acutely aware of the difficulties that the system faces when stepping in when families fail to provide adequate care and protection for their children. We strongly believe that the children need us—the child protection system—to be flexible, creative and hopeful. We need to look at each individual child's needs and circumstances and respond accordingly. We need to respond to changing circumstances and continually reassess the decisions that we make on behalf of children. We need to close the system gap so children are not left to battle alone and we need to offer hope for something better. We need to do that at every step in the child's journey.

**The Hon. PAUL GREEN:** Ms Hastings, can you run us through the recommendations in your submission on page 11. Out of everything you could have written, there are three recommendations.

**Ms HASTINGS:** What my staff and I are saying is that particularly in response to where children are removed as a result of domestic violence, we are seeing case after case where—and we are not disagreeing with the need to remove the children at the point that they are removed—there is then a failure to further assess the family situation after time has passed. We are finding cases where the mothers have removed themselves from the violence, there is no allegation against the mother in regards to the child but there seems to be a reluctance of the system to assess the suitability of restoration, not taking into account the primary attachment requirements of the child and the impact of the trauma on the whole family unit, or the mother-child relationship. That may or may not come down to greater training on domestic violence. It is as much about the capacity of the system to not anchor itself to a single solution at the outset. It was probably the right option at the outset but the need has changed or evolved.

**The Hon. PAUL GREEN:** For example, you are saying when someone comes to the house and sees that maybe the fridge is not full of food, the kid is in ragged clothes and is running around barefoot outside where it could be risky. They make assumptions, write it up in the report and basically the child gets removed based on those things when, in fact, the greater harm is the separation of the child from the parent.

**The Hon. Dr PETER PHELPS:** This is only in domestic violence situations.

**Ms HASTINGS:** I would suggest that children are removed with cause, for good reason. In the case of domestic violence that is the same. Children are being removed from scenes of terrible traumatic violence. It is after that violence has been resolved, either because the parents have separated or the perpetrator has been sent to prison—for whatever reason—we are seeing cases where the violence has been resolved through separation but the mothers are still being prevented from having the child restored to their care. It is in those situations. It is not necessarily arguing the need to remove the child in the first instance. It is the continued separation, which in itself is very traumatic.

**The Hon. BRONNIE TAYLOR:** Can I piggyback on your question. I have read your case studies. What do you think the problem is? Is it the capacity that is not there? There are always two sides to something.

**Ms HASTINGS:** Of course. Absolutely.

**The Hon. BRONNIE TAYLOR:** I do not understand why we are not going back and revisiting that. It makes your heart break. I do not understand; it is not this radical thing. Why is it not happening? How have we got to that point? Are decisions made and the perception is they do not want to go back. It does not make sense to me.

**Ms HASTINGS:** I can only speculate. There are as many different reasons. This is a human system, so it is open to the same human failings of any human system. What I tend to think happens is that the workers involved are very committed to children. I am not arguing that. They are seeing children who are enormously vulnerable in crisis situations where they are in danger—physically, mentally and in every which way. The workers need to take a position to respond to that need. That need then changes. I suspect it is anchoring to the home situation that was bad, we have rescued the child from it so how can we possibly put the child back again without recognising the evolution or the changes in the family situation that have taken place in the weeks and months following the removal of the child. If it is any comfort, at the same time that we were writing this submission, we were advocating very strongly in individual cases and in two of them we got the response that would seem logical and the cases were revisited. I understand the kids have been restored. It took a lot of advocacy on the part of our agency to do that.

**The Hon. DANIEL MOOKHEY:** My question also relates specifically to a point that was made in the submission from Anglicare. You say that more resources are needed for restoration, particularly in the interim order phase when a caseworker is being tasked with determining whether or not restoration is a realistic prospect. You say that more resources are needed to invest into case work to provide the maximum prospect of successful restoration. This morning we heard a lot about the need to switch resources from the back end, that is from the litigation phase and the criminal justice phase, to the front end. First, would you agree with that as an objective that we should raise? Secondly, can you give us an explanation as to why you think more resources are needed. What resources are lacking?

**Ms PALMER:** I think that there is a bit of a disconnect between legislation and practice operationally. I think that there is a focus on restoration only when a care application is made and then it takes too long for it to be resolved. It can take months. I am not quite sure if it is FACS workers or child protection workers who are perhaps more focused on care or what is happening and safeguarding the child, and often do not engage the parents in discussion with what they need to do. It is therefore left for too long or they send parents off to parenting programs that are inappropriate for the sort of people who are having their children removed—things like Circle of Security and Triple P and things like that, and it is not appropriate for some of them. I do not think the parents are getting enough input. I think it becomes adversarial quickly and the decision-making is taking too long. The workers do not establish that relationship with the parents that might facilitate that.

**The Hon. DANIEL MOOKHEY:** Just to unpack that a little, what you are saying is that the investigation around restoration is tied to litigation, that is, when a care application is made. That is when the investigation around the prospects of restoration is triggered, or tends to be triggered, as a practical matter. Is that the first point?

**Ms PALMER:** I suppose it depends on FACS's care plan and what they think is best at that point, but it can be contested. A parent will not want to lose their child. FACS is saying, yes, it is in the best interests of the child to be removed. I suppose in relation to the comment about early intervention, yes, of course, there needs to be a lot more happening before it gets to the point. Ms Hastings might know more about that area but

the work that is done by Brighter Futures, for example, has become more at the higher-risk end. There should be more family support type programs that are flexible, responsive, less threatening and that establish that relationship. For example, I know that from when we have playgroups that people can come to. The early intervention should be happening earlier. I think it has become a bit too far down the track so it is not really early anymore.

**The Hon. Dr PETER PHELPS:** But everybody thinks they are a good parent.

**The Hon. BRONNIE TAYLOR:** Yes.

**Ms HASTINGS:** Yes.

**The Hon. Dr PETER PHELPS:** Why would they voluntarily choose to intervene early?

**The Hon. DANIEL MOOKHEY:** No, we are talking about this specifically in the context of an interim order to assess the prospects of restoration.

**The Hon. Dr PETER PHELPS:** But by that stage you have missed early intervention.

**The Hon. DANIEL MOOKHEY:** Sure. Your question is valid, but the question I was asking was specifically about people who are in the interim order phase. They have been taken and whether or not they can be put back requires a great degree of investigation. I infer from your submission that there is either one of two things happening: In that phase, there is a lack of resources to enable that to happen early enough in that part of the care plan; or, alternatively, there are enough resources but it is not happening as a result of a policy principle or program practice. Am I inferring the wrong things out of all that?

**Ms HASTINGS:** I do not think so. I think in terms of the spectrum of services that exist from the universal that we all access all the time through to the kids already having long-term orders in out-of-home care, there are a lot of services and a lot of investment at both ends. There is a piece in the middle around restoration and preservation. It is almost like it is an hourglass shape with this small piece in the middle with these two other systems that are quite large either side, which is specifically around that last stop before the child is removed; that piece around intervening and resourcing and putting in place things that will enhance that family's capacity to be maintained; or, should that not be present in that moment the child is removed, to then invest back in the family to try to increase or enhance safety so that it is safe to return the child to the home.

**The Hon. DANIEL MOOKHEY:** You can take this on notice, if you will, but do you know as a percentage how many cases, when an interim order is made and we are past the point of removal, are reinvestigated by a caseworker for the purpose of deciding whether or not restoration is possible?

**Ms HASTINGS:** I would have to take that on notice. I do not even really have a sense.

**The Hon. DANIEL MOOKHEY:** Is it common practice at all, in your view? Is it something that is routine, or is it exceptional?

**Ms HASTINGS:** My instinct says that it is not routine and that it is somewhat exceptional. The department would be far better placed—

**The Hon. DANIEL MOOKHEY:** In the time continuum throughout this process, is that something in which we should be thinking about investing more? Is that something that is likely to lead to substantially different outcomes and therefore prevent the costs building up later in the system, if it is the case that we essentially bring those resources forward to that point in time?

**Ms PALMER:** I think the length of time a child can spend in interim care is too long. It can be still even 12 months, and that could be because the case has to be established. It will be contested. I think that is very difficult for the child to have that length of time in a non-permanent situation.

**The Hon. DANIEL MOOKHEY:** Ms Hastings, you are nodding but, sadly, we cannot record nodding.

**Ms HASTINGS:** Sorry. The Safe Home for Life reforms do require for a child under two a determination to be made within six months as to: Is this family appropriate for restoration to occur or, if not, then on a different pathway to guardianship, adoption, et cetera? They are questions that I am curious about. Who is responsible for making that assessment? Is it the same people who are pursuing or responding to the immediate needs of the child around their care? They are two different pieces of work. I would suggest that they perhaps need to be held differently. The FACS worker who is responsible for removing the child and responding to that child's immediate needs and pursuing the matter to the point where interim orders are granted—are they the same people who are responsible for assessing whether or not restoration is appropriate? I do not know the answer to that.



**The Hon. MATTHEW MASON-COX:** But you seem to be suggesting that they should be two different people.

**Ms HASTINGS:** That is my sense, yes. Likewise, at the non-government organisation [NGO] level, I have both a preservation and restoration team and I also have an out-of-home care and adoption team. I have gone back and forth in my own mind about the placement of those two teams under two different managers or uniting them under a single manager, and at the moment I am sticking with under two managers for that reason because, also at the same time when the child is in care, there is a massive task involved in ensuring the safety and the placement—recruiting and matching to the appropriate carers and responding to all the whole-life needs of that child. We need to resource that piece of work separately, I tend to think, around assessing and doing the work with the birth families because we just cannot put more onto the out-of-home care workers. They are just overburdened.

**The Hon. MATTHEW MASON-COX:** It would be a natural safeguard to have a separate person assessing that to ensure that we do not, if you like, have the original decision confirmed.

**Ms HASTINGS:** Yes.

**The Hon. MATTHEW MASON-COX:** There seems to be also a reference in your submission that there might be a culture of that happening within the agency, and there is not enough emphasis on the whole Safe Home for Life principles. Is that a fair assessment?

**Ms HASTINGS:** That is my sense, yes.

**The Hon. Dr PETER PHELPS:** It would be unfair, considering what was said by the previous witnesses, not to give you the opportunity to respond to the implication, or indeed the assertion, that there is somehow a lower quality of caseworker in the NGO sector because of a pay differential between the NGO sector and FACS. Firstly, is there a pay differential? If there is, does it result in a lower quality of caseworker?

**Ms PALMER:** Yes, there is a pay difference—a significant pay difference. No, I do not think it results in a lower—

**The Hon. DANIEL MOOKHEY:** Do you pay more than FACS?

**Ms PALMER:** No.

**Ms HASTINGS:** Substantially less.

**Ms PALMER:** Sorry. I thought there was—

**The Hon. DANIEL MOOKHEY:** No. We just have to spell it out. Forgive me for asking.

**Ms PALMER:** Sorry.

**The Hon. MATTHEW MASON-COX:** Is it 10 per cent, 20 per cent less?

**Ms PALMER:** It can be something like \$20,000, the difference between.

**The Hon. MATTHEW MASON-COX:** That is massive.

**Ms HASTINGS:** Yes.

**Ms PALMER:** We pay via the Social, Community, Home Care and Disability Services [SCHADS] Award. Public servants get higher remuneration but I do not think you can follow on by saying that the quality of the workers is impacted. The turnover of caseworkers in FACS—even though they are paid more—is very high. So in my experience you may think, "These people are managing casework already!" They are young workers.

Yes, I have a team that is fairly even, with young workers as well. When you do not pay a good salary you are more likely to have new graduates but we do have excellent training and development. There was a bit of an indication from the CREATE Foundation people that we do not have a high level of professional development but I have people on staff—part-time workers—who have stayed for 10 or 15 years and provide that continuity of casework to children and young people. So, I did flinch when I heard that comment.

**Ms HASTINGS:** I agree with everything we have just heard. There is a pay difference; it is substantial. There are individual cases where it would compel somebody to move from the NGO sector to FACS. That said, I do not agree with the statement about the standards. I think that we maintain high standards across the sector. We are used to working with newer graduates so we invest a lot in on-the-job training and support. One of the advantages of the NGO sector, in my observation, is that the caseworkers are less

constrained by the bureaucracy. My sense is that they tend to try different things and be more creative because they are less constrained with a lower caseload.

**Ms PALMER:** The caseloads of non-government agencies are usually lower. Non-government agencies are accredited and have to comply with standards. You cannot say that the workers are not good enough when we are accredited agencies.

**The Hon. DANIEL MOOKHEY:** Ms Hastings, can you please mesh that statement with the point you make in your submission about the urgent need to skill-up case workers.

**Ms HASTINGS:** In FACS?

**The Hon. DANIEL MOOKHEY:** In the sector. Perhaps I read your submission wrongly.

**Ms HASTINGS:** I thought we were referring to FACS in relation to domestic violence.

**The Hon. DANIEL MOOKHEY:** Right. In general, do you recognise that there is a need for sector-wide improvement of caseworker skills?

**Ms HASTINGS:** We are accustomed to working with younger, newer graduates. The work that we do is critically important so I would never argue with any attempt to enhance, build and further develop the skills of the sector.

**The Hon. DANIEL MOOKHEY:** Can you fund an expansion of skills training on your existing contracts?

**Ms HASTINGS:** Not in any substantial way, no.

**The Hon. DANIEL MOOKHEY:** So for you to invest more in staff training and caseworker skill development you would require an adjustment to the contracts and for the Government to pick up the cost and distribute it through the contracts. Is there any other funding source that you are aware of that could meet the needs that is not Government funds?

**Ms PALMER:** No, we are totally funded by FACS, but it depends on what programs we are asked to provide in the future, with the changes that are coming in the recommissioning. For example, we do not, at the moment, provide restoration through our foster care case managers. So, if we put up our hands and say, "Of course we can do that,"—I think we can—then we would have to recruit people with some experience or otherwise have them trained in that area. But at the moment I would say that Anglicare Sydney is sufficiently funded to train workers adequately. We have external consultation regularly. CCWT provide a broad range of—

**The CHAIR:** For the purposes of Hansard could you tell us what is CCWT.

**Ms PALMER:** It is the Centre for Community Welfare Training. It is a division of ACWA, which is the Association of Children's Welfare Agencies. That is just one organisation that provides training.

**The Hon. DANIEL MOOKHEY:** Your view is that, should the Government expect higher standards, they will need to pay for it.

**Ms HASTINGS:** Of course.

**The Hon. Dr PETER PHELPS:** I believe Ms Palmer mentioned that you are also an adoption agency. Is the same true for you, Ms Hastings?

**Ms HASTINGS:** That is right.

**The Hon. Dr PETER PHELPS:** You would naturally have multiple options available for children in your care—adoption, restoration and long-term out-of-home care. Following on from what the CREATE Foundation people said, to what extent do you seek input from the children in your care in relation to their preferred outcomes?

**Ms PALMER:** That depends on their age and development. I think adoption is the best outcome for children at a really early age who come into their permanent placement under the age of one or even under five years. That is something we are not seeing yet in terms of the Children's Court care plans.

**The Hon. Dr PETER PHELPS:** The statistics bear that out. I think there were 72 in an entire year.

**Ms PALMER:** I do not know that it has been mentioned in a care plan that adoption should be the ultimate, but we have always advocated for adoption for those children for whom it is appropriate. A lot of work now goes into working with birth families. It is case management that should occur from the time a child comes into care.

**The Hon. Dr PETER PHELPS:** Of course, restoration is the preferred option—that the child returns to the birth family.

**Ms PALMER:** In a timely manner.

**The Hon. Dr PETER PHELPS:** But there are some circumstances where restoration is never going to be possible. Surely in that instance the long-term benefit to the child rests with a policy of adoption rather than long-term out-of-home care. Is that a fair thing to say?

**Ms PALMER:** I think it is a fair thing to say, for most. But you do need to remember, as I said before, that there are individual situations where it may not be.

**The Hon. DANIEL MOOKHEY:** In general, how long should the window for restoration be open?

**Ms HASTINGS:** It depends on the age of the child and the circumstances. Any decision regarding a child can only be made individually.

**The Hon. DANIEL MOOKHEY:** What about if it is under eight?

**Ms HASTINGS:** Again it depends. An eight-year-old's needs and stages are very different to an infant's. I would suggest that the younger the child is, the shorter the window is.

**Ms PALMER:** You also need to consider the length of time in the long-term foster family and the age at which the child was placed. The child may not know or remember any other situation so those people are their psychological parents, and I would support the adoption.

**Ms HASTINGS:** The Safe Home for Life guidelines provide some clarity on that, which is that under two the decision needs to be made within six months. For children over two it is 12 months, I think. Sorry I would have to check that.

**The CHAIR:** Take it on notice.

**Ms HASTINGS:** At no point have I heard the sector saying, "This is not right; this is outrageous." These guidelines tend to be quite well supported but, as Jackie was saying, we have not seen that yet come through in the care plans.

**The Hon. Dr PETER PHELPS:** What is your view of restoration, not necessarily to the birth parent but to immediate kin as a viable alternative—adoption by one's own kin—as an outcome?

**Ms HASTINGS:** My understanding is that in those cases it would be more likely to be a guardianship scenario rather than adoption.

**The Hon. Dr PETER PHELPS:** Okay, but it would be a permanent relationship.

**Ms PALMER:** If the proposed carers have been trained and assessed. It is still a statutory care situation and they do need to meet the standards.

**Ms HASTINGS:** If it is in the individual child's best interests as assessed, then that is what should be supported.

**The Hon. Dr PETER PHELPS:** Following on from what you have just said, Ms Palmer, presumably that means you do not accept a lower standard of caring simply because kinship exists.

**Ms PALMER:** We do not, no.

**The Hon. Dr PETER PHELPS:** I will ask you to make a moral judgement. Should we accept a lower standard simply because kinship exists?

**Ms PALMER:** Not if it is statutory care.

**The Hon. BRONNIE TAYLOR:** I want to go back to what we were discussing about standards of care. Dr Phelps asked a question about a remark made about the different level of workers, and you were saying FACS paid more. I guess I will direct this to Ms Hastings as she was the last person to answer it. With the programs that your NGO tenders for, that you receive the tender from the Government for and that you provide, are you confident and assured that the care that your workers are providing is of the highest standard?

**Ms HASTINGS:** Yes.

**The Hon. BRONNIE TAYLOR:** And you are not seeing any big lack of education in a certain area in the programs that you are providing? I am just trying to clarify what was happening.

**Ms HASTINGS:** No. And you should feel reassured by the accreditation process that agencies go through, which is very rigorous.

**The Hon. BRONNIE TAYLOR:** Yes. And you are fully accredited in those services that you are providing, so you are providing them to a high standard of care.

**Ms HASTINGS:** Yes.

**The Hon. BRONNIE TAYLOR:** Thank you.

**The CHAIR:** And there are audits and there is reaccreditation and so on.

**Ms HASTINGS:** That is right.

**The Hon. BRONNIE TAYLOR:** I just wanted to clarify that.

**The CHAIR:** That was a very good question.

**The Hon. Dr PETER PHELPS:** To follow that up quickly, how did you deal with the recent changes? I understand the standards were increased.

**Ms PALMER:** Combined.

**The Hon. Dr PETER PHELPS:** Combined, was it?

**Ms PALMER:** Adoption standards and out-of-home care or foster care standards were combined. It is just one set of standards now. An agency can be accredited to provide both.

**The Hon. DANIEL MOOKHEY:** In terms of the people who hold government contracts by size of organisation, are you the two biggest?

**Ms HASTINGS:** No. Do you mean in terms of out-of-home care or in terms of the size of the organisation?

**The Hon. DANIEL MOOKHEY:** I am happy to ask both.

**Ms HASTINGS:** Well, no to both.

**The Hon. DANIEL MOOKHEY:** So where would you rank? Are you in the top percentile or the tenth or twentieth? Are you one of the bigger or one of the smaller ones in the sector?

**Ms PALMER:** We are probably in the middle. We only operate in the Anglican Diocese of Sydney whereas other agencies are statewide or even national.

**The Hon. DANIEL MOOKHEY:** Are there other Anglican bodies that operate in other Anglican dioceses that are on contracts?

**Ms PALMER:** Yes, but we are autonomous.

**Ms HASTINGS:** We are independent of each other.

**The Hon. DANIEL MOOKHEY:** Of course. If you were to aggregate all the ones that operate across your dioceses, would they be amongst the largest providers?

**Ms PALMER:** I do not know.

**Ms HASTINGS:** We would probably be up there and I imagine the same is true for Anglicare.

**The Hon. BRONNIE TAYLOR:** We can get that funding information on notice if that is the question.

**The Hon. DANIEL MOOKHEY:** In terms of the high standards that you adopt, to which you just referred—and congratulations, that is excellent practice—are you prepared to vouch for the smaller ones? To be fair, we heard that a lot of the sector's issues to do with retention of staff and quality of care arise from the very small providers that have one or two facilities in a residential part. Is that—

**Ms HASTINGS:** Honestly, I am not in a position to comment. I have no reason to be concerned about other providers in particular.

**Ms PALMER:** I think if you are a small agency you might not have the capital aside to cope with the late payments from FACS in certain areas. It is about being able to manage cash flow.

**The Hon. DANIEL MOOKHEY:** Are you able to provide us with the figure of the proportion of people in your care who are Indigenous? We have heard a lot of views, particularly from Indigenous people we

had the opportunity of hearing from earlier, as to whether or not the sector is attuned to their needs. Either now or on notice do you have any statement about what you are doing in that space? Any evaluations that you are doing or any views that you have would be most welcome.

**Ms PALMER:** I would say we probably have 10 out of 150 placements, but I would prefer to confirm that.

**Ms HASTINGS:** We would have a similar proportion. We probably have about five out of 75.

**The CHAIR:** Ms Palmer, can I ask you about that comment about late payments? What does that refer to? Late payments from FACS in regard to what?

**Ms PALMER:** I am not saying that from personal experience. I think it is in relation to exception placements. I probably should not have made that comment but I have heard people complain about late payments.

**The CHAIR:** Okay—it is second-hand information.

**Ms PALMER:** Yes.

**The CHAIR:** We will leave it at that. Are there any other questions from any Committee members?

**The Hon. PAUL GREEN:** I would like to add a quick comment to this. We were talking about the transition from care after a person turns 18 and up to the age of 25. I note that it was in your submission. Is there anywhere that you have seen that they do that really well across the nation or the globe? If so, please take the question on notice, in the light of the time.

**Ms PALMER:** I think Victoria have increased the age from 18 but I will check that.

**The CHAIR:** It has been very valuable to have you both come along this afternoon and provide us with an opportunity to ask you questions. Thank you again for the submissions which were very informative and for the testimony that you have given to us this afternoon.

**Ms PALMER:** Have you seen this? This was on my seat at the Association of Children's Welfare Agencies [ACWA] conference today and it seems excellent. It is about driving change—intervening early. It is the third three-year national action plan.

**The CHAIR:** Would you like to put that forward and we can table that as evidence?

**Ms PALMER:** Yes. I have only read the—

**The Hon. BRONNIE TAYLOR:** What bad timing on our behalf to have a hearing day because you are all wanting to be at your conference.

**Ms PALMER:** It is okay. There is an easy-to-read one pager.

**The CHAIR:** Thank you very much for that. With that in mind, we have resolved a return date of 21 days to respond to our questions on notice. Will that be okay?

**Ms HASTINGS:** Yes.

**The CHAIR:** The secretariat will liaise with you over the specific questions and any clarifications that you might have. Thank you to both of you for coming along this afternoon—

**Ms HASTINGS:** Thank you.

**Ms PALMER:** Thank you for the opportunity.

**The CHAIR:** —and, importantly, to both of your respective organisations that do some well-known, well-recognised and well-appreciated work for some of the most disadvantaged in New South Wales. Thank you very much.

**(The witnesses withdrew)**

**(The Committee adjourned at 5.06 p.m.)**