

# CORRECTED VERSION

## STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

### Inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015

Melbourne — 24 June 2015

#### Members

Mr Edward O'Donohue — Chair

Mr Daniel Mulino

Ms Nina Springle — Deputy Chair

Ms Fiona Patten

Ms Margaret Fitzherbert

Mrs Inga Peulich

Mr Cesar Melhem

Ms Jaclyn Symes

#### Participating Members

Mr Gordon Rich-Phillips

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Secretary: Ms Lilian Topic

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#### Witnesses

Mr Julian Pocock, director, public policy and practice development, and

Ms Trish McCluskey, director, Berry Street;

Ms Katie Hooper, chief executive officer, and

Ms Krysia Rozanska, board member, Foster Care Association of Victoria.

**The CHAIR** — I welcome Mr Julian Pocock and Ms Trish McCluskey from Berry Street, and from the Foster Care Association of Victoria, Ms Katie Hooper, the chief executive officer, and Ms Krysia Rozanska. Thank you very much for making yourselves available.

I again declare open this public hearing of the Legislative Council legal and social issues committee. This hearing is in relation to the inquiry into the children, youth and families amendment bill. All evidence taken at this hearing, I caution, is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore the information you give today is protected by law. However, any comment repeated outside this hearing may not be so protected. All evidence is being recorded. You will be provided with proof versions of the transcript in the next couple of days.

We have provided an hour for your joint presentation. I invite both respective organisations to make a brief submission, and after that we will have questions. And, as I have said to other witnesses, the committee does appreciate your preparedness to join us at this time of the evening and at such short notice. Thank you.

**Mr POCOCK** — I think we have just haggled at the table, and Berry Street is going to go first. Members of the committee would no doubt be aware Berry Street is a large, independent child welfare agency in Victoria. It has been operating since 1877 and is the largest provider of residential care services. We also provide family violence, family support, foster care and kinship care services.

In relation to the substantive matters before the committee, we very much support the reinstatement of section 276 into the act. We view that as a necessary, but not sufficient, reinstatement of a number of provisions of the act which were the subject of legislation late last year. More broadly, we are interested in ensuring that vulnerable children and the lives of vulnerable children, particularly those kids in child protection and out-of-home care, that there is sufficient and vigorous oversight of what is happening to those kids. So that is partly about reinstating a range of powers to the Children's Court. It is also about other things, though.

I know there has been discussion through the committee about the notion of consultation and what consultation constitutes and whether agencies like Berry Street were consulted. Our view is that in relation to the fundamental change to the law in relation to vulnerable children, to meet the test of consultation there would need to be an exposure draft of a bill and all of the stakeholders would need significant opportunity to comment on the provisions of that bill but also to comment on the things that are not in the draft bill. There are many, many reforms required to our law as it pertains to vulnerable children which the previous government's amending bill was silent on. It is not just about what provisions were in there, which we might amend. It is also about things that were not in there, which do need, in our view, to be addressed.

We also note that there has been considerable discussion about whether or not the amendments that were passed last year were consistent with the Cummins inquiry recommendations. I would have to say in relation to Cummins — and I have been involved in the child welfare space across all jurisdictions in Australia over the past 20 years — that I think it is the only inquiry a government has had into child welfare where the government that called the inquiry never produced a report which went through recommendation by recommendation and said which recommendations it supported and which ones it did not. That does not aid our discussion now in terms of assessing whether the legislative change that was passed last year is consistent with Cummins.

Just briefly, and then Trish is going to talk particularly about the needs of siblings in care. Just briefly, if you go to Cummins — I have brought copies of the report along — and if you look at the summary recommendations, recommendation 41, which is about amendments to the act, not implemented; recommendation 42, not implemented; recommendation 43, not implemented; recommendation 44, not implemented; 47, not implemented; 50, not implemented; 51, not implemented; 53, one part of the recommendation was implemented, to restrict the rights of children to have legal representation in the court. Recommendation 63 goes specifically and exactly to the question of the structure of orders under the act, and recommendation 63 contains no detail that supports the restructuring of orders that last year's bill passed. Recommendation 65, not implemented; and recommendation 66, not implemented.

I think the suggestion that the legislation that was carried was consistent with the Cummins inquiry is a very, very, very difficult suggestion to sustain, because there is no evidence that it is. I will hand over to my colleague Trish to talk about the particular needs of siblings.

**Ms McCLUSKEY** — I would like to reiterate Julian's point that Berry Street supports absolutely the minister's recommendations to section 276. As he has also said, there are a number of other issues related to the act which are very concerning.

I have worked in child protection myself in a statutory setting for 25 years, and in the non-government sector. My concerns are in particular that this legislation — a number of points in particular are out of step with current legislation that has already been enacted in a number of states in the US, in particular New York, where most of the 500 000 children who are in care in that country are legislated for, and recent changes to the Children Act 1989 in the UK, which makes provision very differently from the sort of legislation that we are looking at now.

In particular, section 10(3)(q) talks about children's best interests. This is the part of the act that really underpins how it is understood, how it is enacted and the spirit of the act. This talks to that all decisions in the act must be made in children's best interests. However, if you have the time to look at that, you will see that their best interests are very ill-defined — very. So what happens, particularly in a system that is stressed, with a high turnover of staff and with often inexperienced or new workers, is that the interpretation of what children's best interests are, in the absence of that being spelled out adequately in this section, relies on the idiosyncratic interpretation of whoever and under what resource constraints that day needs to be deciding what they are. That section of the act, in my opinion, needs much greater definition.

My concern is that in that part of the act in particular but also in the lack of provisions in the making of permanent care orders, in the making of long-term orders and care to the secretary orders — which again are totally contrary to new legislation that has been created over the last 5 to 10 years everywhere else — there is no provision for mandated access to siblings. What happens in Victoria and has with previous permanent care legislation where magistrates were not compelled — they may make provision for sibling contact — is that the severing of parental rights has meant often the severing of sibling affiliation and rights. There is no current definition in Victoria about what, if any, sibling rights exist at law. What one can only conclude from that is that when the rights of the parent are dispensed with so are the siblings.

I have done extensive research with siblings who have been in out-of-home care, as part of a doctoral thesis. Those children have told me over 10 years of research that often their primary attachment in life, having come from homes of abuse and neglect, was their siblings. For all of us, whether we are from backgrounds of abuse or neglect or not, the longest relationship of our lives — sometimes we wish it was not — is with our siblings. When Victorian children leave out-of-home care at 18, often the person they will turn to when they go home to what is very loosely called family is in fact their sibling. The greatest buffer that most of them will have against the loneliness, the alienation and the complete and utter being out in the world by themselves, often very ill-equipped, is a sibling.

But that relationship will only have the strength to tide each other through if it is honoured and enshrined in the sort of legislation that has happened in the US. For instance, Barack Obama has recently stated himself, when putting through the adoption act in the USA recently, that they have finally got it — his words — in the US about the importance of brothers and sisters and their need to be together.

There is nothing in this act that suggests that siblings must be co-placed, not that it is a matter of resources. In the US the strongest presumption at law — it is a rebuttable presumption but it is a presumption — is that it is in siblings' best interests always to be placed together, and they have managed that in the absence of resources, having had a global financial crisis and then a housing crash and everything. They have not tied children's best interests to resources. There is nothing in this act that compels siblings not only to be co-placed but to be allowed to see each other when they come into out-of-home care. As previous people who have presented to you tonight have said, in Victoria, for the fourth year in a row, we are losing more foster parents than we are able to recruit, so the likelihood of finding carers for sibling groups unless it is mandated and the resources follow — that is unlikely to happen.

Just one last note is that in the USA in most states what they have now done is compelled the equivalent of the department of human services to return to the court on a monthly basis so that there is judicial oversight of the efforts that have been made if siblings cannot be placed together immediately to ensure that eventually it happens, not that they are separated one day in care and never see each other again. Thank you.

**Ms HOOPER** — Thanks for the opportunity. My name is Katie Hooper. I am in the role of the CEO at the Foster Care Association of Victoria, the peak body for foster carers and the voice of foster carers in Victoria. I

was a carer with Berry Street for 12 years, but since moving house and my children from that time growing older, I am now a carer with Wesley. Briefly to celebrate my children. The eldest is currently at the police academy, hoping to be a police person, and the youngest, who is now 19, is doing a cabinetry apprenticeship, and he is doing terrifically. I am proud of them both.

I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to elders past and present. It is important to the Foster Care Association that Aboriginal children are focused on, especially Aboriginal children placed in non-Aboriginal care. If these children are left without tight planning, the consequences for the children and the non-Aboriginal carers, who love the children, can be devastating.

Foster Care Association supports reform that stops children and young people remaining on orders with plans that do not offer them stability and permanency. The Foster Care Association believes that the old 2005 act was fine and that it could give children stability and permanency. The Foster Care Association saw occasions when case planning was not tight, when plans were not made with clear expectations, and if these expectations were not met, recommendations regarding higher orders or plans for permanency in alternative placements or care were not made. This is frustrating for foster carers.

Foster carers are in the role as volunteer foster carers to these children due to their love for and commitment to children. When you see young people disappointed by their parents and the Department of Health and Human Services not making long-term decisions for these children and not taking adequate evidence to court to allow for timely decision-making and stability, foster carers wonder why they are doing what they are doing. Foster carers feel that they are left holding the baby. They are asked to care for, clothe, house, nurture and love the children that have had difficult experiences, and foster carers do not feel that the resources or planning are put into giving the children what they need, which is long-term, safe placements, hopefully at home, but if it cannot be, in long-term permanent places.

Like Trish said, in Victoria over the past four years we have lost more carers to the system than we have gained, and I feel that further resources are required to be put into the system to support foster carers. These resources can be financial or through case support or therapeutic support. It is around timely decision-making so that children in their care can get to final long-term or permanent — whichever it is — homes. The Foster Care Association feels that if children are not returned home and that if this has truly been attempted and is not going to happen, then children deserve to know stability in a timely manner.

**Ms ROZANSKA** — We have been foster parents for three years to a little boy who is now eight and a half years old. He has been in care almost since birth. At his birth child protection were present. He has got multiple court orders, IAOs and all those things on his file, so many that they are a huge amount to read through. He has had multiple placements, 10 we think, maybe 11 or 12, we are not sure. We know about 10, and that is not including family members. A significant kinship placement with people that I would not say should have been classified as kinship, who he thought were his mum and dad, broke down due to alleged sexual abuse of our little boy by an older child within the family. He was removed and until probably Saturday he did not know why.

He has been on a permanent case plan since October 2012, but he was placed with us, who were temporary, respite, emergency, foster parents, on that date. He arrived at our home, again removed with no notice to him and not told why, with his cardboard box full of broken toys, old clothes and a pair of trainers that were three sizes too big for him. He asked me within half an hour of being in my home, ‘Will this be my forever home?’.

In my opinion, everyone has supported the birth parents for eight-and-a-half years of my child’s life, even up to a nearly month ago. DHHS, agencies, legal aid, courts, magistrates, prisons, prison workers, drug workers, hospitals, housing, they have bent over backwards. That is the expression I would use for those people and those agencies. How was my child supported? Domestic violence, neglect, alleged sexual abuse, physical abuse and exposure to drugs and alcohol. He has been taken in the back of a social worker’s car so many times to everything: visiting his birth father, regularly in prison since he has been in nappies. When out of prison, the father has rarely attended contact with his child in eight years. Likewise, the mother’s contact is chaotic and rarely attended. The extended family have done their best but have shown little interest in their child. I always say to him, ‘Your parents, Mum and Dad, they love you’. I always say that, and it is true. But it reminds me of the romantic comedy, that film with Jennifer Aniston called *He’s Just Not That Into You*, that you have to remind yourself about so many times.

This child and thousands like him in the state of Victoria should have been moved into permanent care or adoption within two years — I would say even less — and been given a new life with his family. Foster care is temporary. A child's life goes so quickly.

If this bill forces the system to do its job, then I support it with all my heart. Our child should not be with us at eight and a half now. He should have been at two in a family where he would have just known a mum and a dad and he would have had contact with his family and they would have been another mum and dad. I am so jealous when I see children in the playground and they are so carefree and they are not like children in care.

Our child is now in our permanent care after we hired a barrister to fight for him. We spent probably a year and a half in court fighting for him, and from 27 May he is now in our permanent care, so he is safe and he is in a forever home.

**The CHAIR** — Thank you very much for sharing such a personal story. If I could perhaps ask, following on from that, can you describe to the committee what that court process was like and give us a bit more detail about what this process has been like for you to achieve that outcome you have just recently achieved?

**Ms ROZANSKA** — It was very, very, very difficult. It means that perhaps I have sacrificed my own family and my partner, you know, with the amount of time that it takes and the focus on that thing to achieve it. Then you just think it is not about you because it becomes about that child. What are you going to say every time that process is delayed? On 27 May we had actually discussed and we had decided if it was going to be adjourned again that we were not sure we could carry on financially and I suppose psychologically. I did not think I could go back to my child and tell him again.

**Ms HOOPER** — That the matter had been adjourned.

**Ms ROZANSKA** — That the matter was adjourned and that we would have to wait, or another excuse that I could try to make in a child-appropriate way of what was going on. He should not have to know those kinds of things. Other children do not. That is why I am here really: to try to say he is not unique, he is not the only one. There are thousands in this state and we have got to do something about it.

**Ms PATTEN** — I have a thousand questions but I know I only get one. I was very interested in your comments about siblings, and very saddened. Obviously we are looking at a bill that is reinstating section 276 and looking at the effectiveness of that. Certainly in a lot of the evidence that we have heard a lot of people we have spoken to have suggested that it does not go far enough. With the siblings, it seems to me that we have never done that, so even if we were to reinstate the whole piece of legislation, we would not address the siblings. Am I correct in thinking that?

**Ms McCLUSKEY** — Absolutely correct. The only thing that is probably a bit worse now than it ever was — certainly in section 524 of this act — is the lack of legal representation for children under 10. In the case of the lady who has just presented, her eight-year-old has no legal representation in the permanent care order application about him.

**Ms PATTEN** — Who was Krysia fighting?

**Ms McCLUSKEY** — The system, I guess.

**Ms PATTEN** — The department?

**Ms HOOPER** — It was the department in that situation.

**Ms McCLUSKEY** — The child has no legal representation, so if there were siblings or what have you involved, there is no representation for that child's best interests or their wishes for children under 10, because that was dispensed with with other legislation before that, which is very unusual in a Western democracy. To go to the heart of your question, absolutely. In the existing legislation before this comes into force in 2016, you will see that in permanent care orders there are two conditions. One that is mandated: a magistrate is compelled and must make provision for access with a parent. Even if a parent does not want access, provision must be made for their access in the granting of a permanent care order, but in relation to siblings, they may make an order.

In the consultations with the department around this, my argument has been that in changing one word, from ‘may’ to ‘must’, we could change the trajectories of potentially the 7000 children who are in care in Victoria on any given night.

**Ms SYMES** — I know that in the budget there was some more money for foster carers, I think for emergency packages and support for permanent carers. Will that money help the people leaving the foster care system? In one sense, is money going to help? Is there a better way to use that money? Is there anything else that would in your view help us boost the foster care numbers and keep them and make them feel supported, in the context of the budget and anything else?

**Ms HOOPER** — The Foster Care Association still thinks that the reimbursement to foster carers is not adequate. Some of the work that Berry Street and the Foster Care Association has done says that the cost of caring — —

There are about 24 different rates that you can be reimbursed at, but the general rate of reimbursement is about half — you get about \$5000 per year to care for a child and it costs about double that. That is one of the things that is not in the budget. It is not addressed in that, but it is something that we think would assist in retention.

Another thing is therapeutic support and support for carers — ensuring that carers have adequate supports, particularly the sort of therapeutic ‘take two’ support for carers.

**Mrs PEULICH** — Is that an in-house term?

**Ms HOOPER** — Yes, sorry. In foster care I have a caseworker, but then also want a specialist who can give some support so that I am parenting in a way that supports the children in my care, so traumatised children. In the budget I guess I am not clear yet. There are a number of amounts and I am not clear exactly what they are going to and whether they will go directly to supporting the retention of carers.

**Mr POCOCK** — The things I would add to that, there has been reference to the permanency and stability project that the department undertook and from which we do still do not have a final report. Berry Street was part of that project and on the reference group for the project, so we do have some good information about what is in the draft report. That report identified a number of things which are preventing us achieving permanent care. Those things include that when someone goes from being a foster carer and accepts the permanent care of a child the reimbursement rate they receive drops to the lowest level within the system. Secondly, the support and assistance that is provided via a CSO, like Berry Street, is withdrawn because we are contracted to support foster carers, not permanent carers. If someone moves from there to there, they suddenly lose the support they get from the non-government agency and the permanent carers are left to manage contact arrangements with families by themselves.

One of the things we see in the system is that we have a declining pool of foster carers. Secondly, within that pool of foster carers they are asked, ‘Will you accept the permanent care of this child?’, and to do that they have to forgo the resources they need to care for that child. That is one of the significant impediments to permanent care that that project has identified. Those impediments were not addressed in this state budget and they need to be addressed.

**Ms FITZHERBERT** — First of all, thank you for raising that figure of 7000 — that is the number of children in care, so thank you for giving me two questions for one. I appreciate that.

Ms Rozanska, I was really interested in the evidence you gave and wanted to acknowledge your courage in sharing such a personal story, which I think was very useful for everybody. I certainly will not forget what you said for a very long time. I wanted, without being intrusive, to get a better understanding if I could of the process you have been through in terms of getting permanent care. How long did that process take? As I understand what happened, the department would have been the respondent in the legal action that you took. What were the reasons given for the delays and adjournments?

**Ms ROZANSKA** — We were new foster carers so when we took this child I did not even really know what permanent care was. Foster care to me meant something temporary, that you are restored to something. If something happens to you, there is a plan. You are going to go back to somebody and we are going to help with that and do lots of nice things and it is going to be all wonderful. I suppose we were quite naive in that sense of

understanding the system. It took us a while to realise what permanent care was and that this child was never going back to this family ever. Then we were going to access, no, access did not happen — chaotic. We did not like decisions that were made about him.

I suppose we became the difficult people to deal with because we were questioning everything that happened to him and we kept records. We are both professionals. My partner is the managing director of a global company and he was always, ‘What about this? What about that?’, so we were difficult to deal with in that sense. But we questioned a lot of things that were happening. It was like he was forced to go and see these people he did not really want to go and see. Then if they did not turn up or it was in McDonald’s — you could write a huge book, a tome, about it.

Then we found out about permanent care and because of our visa status we were told we were legally not allowed to go for permanent care, which was not true.

**Ms HOOPER** — Krysia and Doug are both on 457 visas.

**Ms ROZANSKA** — That was not the case. I think it was more that we were difficult and had questioned the system. We had gone to Minister Wooldridge to get a passport. We were promised a passport because we said, ‘We travel, so we will take the child with us’. It took nine months, and that was only because Minister Wooldridge stepped in to get a passport for this child, and that was with the consent of the parents. It was not even an issue that the parents did not agree. The parents were turning up for everything.

You felt like you were in treacle or you were in some twilight zone of normal life, of normal civil behaviour that you could not get out of. It felt like you were in some other world. You would say your friends or your colleagues and they would say, ‘No, can’t believe it’ and come up with suggestions to try and help. But we were very isolated. We became part of that world with the jargon and what is ‘therapeutic care’. I did not even know what that was. So it became a battle with the department, and it was only when we became party to proceedings and turned up without telling anybody that we were turning up with our barrister and we had the support of our barrister to go forward to fight for permanent care.

And the DHS has all those cases. I do understand their point of view. It will take years because, as long as he is safe — he is safe, isn’t he, in long-term foster care? — that is fine, so it could have carried on until he was 18 in long-term foster care. For them it is too much. You need a lot of resources to take that to court to get permanent care. And I can understand the reason for DHS thinking this will never happen, but it should have happened a lot earlier. He should not really be with us now. Sorry, am I talking too much?

And then going through the court process. I had never been in a court. Then you get different people each time, so the only consistent person is Krysia and Doug and our barrister. And then that really helped it, because then we have got all the files. You know, we have got our little trolleys with all our files. We know everything about all the case. Our barrister rounds up parents’ barristers. I give them everybody’s phone numbers. I chase the parents. That is how we got there, and still the parents had a fantastic legal team — the best team. Very aggressive, even when you think there is no hope for this.

**Mrs PEULICH** — So they wanted to deny you the application for permanent care, the parents?

**Ms ROZANSKA** — Yes, a month ago. Even though we have good relationships with all of the family, the extended family and the birth parents. They are both incarcerated now, so they both appeared in court from prison. You know, they came from prison. So even when you have got nothing, you have not turned up for anything, you have not done anything, you are not really — —

**Ms ROZANSKA** — When he is out of prison the boy’s father does not make any contact. Because, you know, he is delivered. The child is delivered in his nappies and we take him. And in my opinion I am somebody who is not for the state to take anyone’s rights. But I feel with the children it is so short. It happens so quick, and then it is all about the parents. It is all about somebody else. It is all about the DHS. It is all about an agency. It is all about somebody else, and it is never about the child.

So even though as foster carers I have always said to Katie I felt like we were at the bottom, so there is everybody else in the system. We are there, but the child is right under us. He is right under there, the child is there at the bottom. You see everybody is concerned for children, and you think, ‘It’s not true. It’s not true’.

And how do you explain to children when they understand all those things? They know what is going on. How do you explain? He was always worried. Every day he said to me, 'I'm worried I'm going to be moved.'. Even when I stopped worrying about it, because I could not anymore, he would say, 'I think about it every day'.

**Mr MELHEM** — Would you say then there should be a specified time or period where the court must decide, when the application is lodged for permanent placement that there should be a time frame? Would that help?

**Ms HOOPER** — Foster carers see that drift that we talk about, and however that drift is stopped — I mean, it could be stopped through case planning and correct evidence taken to court, but also legislated that the drift does not occur. The Foster Care Association would say that we need to really work hard at that so that the drift does not occur.

**Mr POCOCK** — I think something for us to hold in mind in relation to that point is if we do not have people available to put their hand up to be permanent carers — —

We can legislate that at two years time a permanent care order has to be considered, but if there are not people there to be the permanent carer, what will happen under this legislation that has been passed is those children will go on to long-term care orders.

**Mr MELHEM** — I am sorry to interrupt. I meant if a permanent carer is found, as in your case when you said, 'I put my hand up to be the permanent carer'. From that point onwards should we have a time limit where the case must be determined — that is, three months, six months?

**Ms HOOPER** — It should happen as soon as possible.

**Mr MELHEM** — That is my question: should we have something to mean that the department and the court have got to determine that matter when the application is made for a permanent carer? Would that help? Is that a solution?

**Mr POCOCK** — I think that could potentially help, and that is the sort of provision that it would have been good to be able to discuss by there being an exposure draft of the bill, so you could explore those sorts of options. But the point I was making is that if no-one is available to accept the permanent care of children, which is often the case, they will then go on to a long-term care order under the provisions that were passed.

So a kid who comes into the system at 1, the two years expires, there is no-one available to take them on permanently, they go on to a long-term care order until they turn 18. And there are no conditions on that order, and for the rest of that period of time from when they are 3 to when they are 18 there is no going back to the court. There is no judicial review. There is no oversight by anyone other than the Department of Health and Human Services.

**Mrs PEULICH** — Where would they be placed?

**Mr POCOCK** — They would most likely be in kinship care or foster care. That is what we alluded to earlier about sufficient oversight. We do not believe children in care should be in care for a decade or more with no oversight from anyone other than the department.

**Ms SPRINGLE** — Thank you for all of the testimony. It has been very illuminating. Just a question about your case study. I really appreciate you being able to come and tell your story. I want to get it clear in my head. There is obviously a lot of what we are calling drift in your case. What would you put that down to? Bringing it back to the legislation, because obviously that is what we are looking at here, in many of the testimonies we have seen, not just tonight but in our previous hearing, there has been talk about best practice as well and sometimes not so best practice. Do you think that in actual fact the legislation as it stands was exacerbating the problems that you were experiencing? I have a second part to this question, but I would like to hear your answer first.

**Ms HOOPER** — On reflection of a case such as Kryisia's, I would say a lack of support to kinship care. The child was placed for three years in kinship care with, I would say, limited support.

**Ms SPRINGLE** — Irrespective of the legislation that it was under? It did not matter? Okay.



**Ms HOOPER** — Case planning was not tight enough. We could have case planned for this child at any time. To be permanently planned we could have done an assessment that he was or was not going home to mum and dad and made decisions, and then court. I think there was a three-pronged failure in this situation: that we did not have resources into kinship, that the department's case planning was not tight enough, and court did not look at orders and question as to why is this little one still here.

**Ms PATTEN** — The court or the department?

**Ms HOOPER** — Both. It had gone back to court arguably at least eight years. It is both, I think, isn't it? I think the department's case planning needs to be tight, but court was seeing it as well.

**Ms ROZANSKA** — It was interesting in our case that last year when we were in court one of the magistrates did mention the legislation and used that to say, 'This legislation is coming through, come on. This is a child who has been on a permanent case plan for four years'. She did mention that and it was a bit encouraging. Having been through what you have to do and the arguments that are made, which are correct in a court of law, I suppose I would take up Julian's point about where are these permanent carers. We are losing foster carers because in the current state I would not recommend anybody to do this. But can you imagine if the system changes? Permanent care — here is a child; surely you have a room. You have got families, you can take one more.

**Ms PATTEN** — You will hardly notice.

**Mr POCOCK** — I think the problem with the way the current act — the 2005 act — is sometimes interpreted in terms of stability is that sometimes the system gets preoccupied with placements. Katie's point about the child being in a kinship care placement for three years — it might be stable but it might be a very, very poor quality of care that is being provided to the child. Sometimes the system gets overly concerned about the stability of the placement. There are some placements we do not want to be stable. There are some placements we want to end because the quality of care that is there is not actually sufficient. I think the focus of the legislation on stability sometimes in practice actually masks a proper discussion about what is actually stable here. Just because the kid is staying in that placement that may not actually be a good thing.

**Mrs PEULICH** — I have a series of small questions if I may.

**The CHAIR** — Let us keep it to just a couple and then Mr Mulino. If there is time, we will come back.

**Mrs PEULICH** — The 457 temporary skill visa — where is the future? What happens to you and what happens to the little boy?

**Ms ROZANSKA** — Now that we have permanent care we are free to do — we can go anywhere. If we are moved because of our jobs, then we will move to another country or we might stay here.

**Mrs PEULICH** — In terms of the relationship with the parents, is the difference the exclusion of parents altogether?

**Ms ROZANSKA** — No, because we would have to come back for access, for contact. I know there are different words for it.

**Mrs PEULICH** — What sort of contact is mandated?

**Ms ROZANSKA** — Usually it is a minimum of four times a year. We have that in our conditions. Interestingly enough about siblings, we had to fight for that as well. It is not always so easy because the sibling does not have any court orders. It is a half-sibling and she lives with the maternal grandmother. It is an informal arrangement so there is no DHHS involvement in that. But the birth mother of my child is down as the only parent on the birth certificate, so she has control of that child if she wants to. Of course she does not in life, but she was not keen for that contact to take place. We put that in the court order, and it can happen any time. It could be every day. It is between us and the maternal grandmother.

**Ms HOOPER** — The kids Skype between St Kilda and Seaford at the moment.

**Ms ROZANSKA** — If you have permanent residency or your Australian nationality, if have permanent care of a child, you can go anywhere in the world afterwards. It is the same thing.

**Mrs PEULICH** — Julian, you read through a number of recommendations which were left unmet from the Cummins report, which was, from memory, in early 2012. You also spoke about how a more fulsome form of consultation would involve exposure drafts and the opportunity for the sector to make detailed comment and then obviously finessing that and amending it as per the consultation. The amended act came into force in 2014, which is a couple of years. How long do you think it would take for the recommendations out of the Cummins report to be fully considered, to be consulted, to be the subject of exposure drafts and to be implemented? What period of time do you think it would take?

**Mr POCOCK** — The longest I have seen that sort of fundamental reform take would probably be in New Zealand in the development of their Vulnerable Children Act. That was a two-year process. It was a process that involved posters on bus stops and they took the decision to involve the whole of the community in how do we protect vulnerable children. That was a very broad process. Towards the end of it it was about looking at an act, but at the start of it it was about a community conversation across New Zealand about how do we actually protect vulnerable children. That would be probably the maximum it would take. I am not recommending that. If you just went to the detail of what Cummins provided and used the resources of stakeholders who are presenting here, I think you could do it in 12 months.

**Mrs PEULICH** — Twelve months? Gee, you are optimistic, and could I say highly unrealistic. It would take 10 years to bed down reform.

**Mr POCOCK** — I thought the question was about how long would it take to construct the legislative bills.

**Mrs PEULICH** — Absolutely, and systemic — implement the recommendations.

**Mr POCOCK** — My commentary was specifically about the specific recommendations they made about specific pieces of legislation that should be amended.

**Mrs PEULICH** — I was talking cumulatively about the Cummins report and the period of time that would be required to unpack the recommendations, prepare responses, implement and so forth. Consult obviously was part of it.

**Mr POCOCK** — I think that would be upward of 2 years, but I certainly do not think it would be 10 years.

**Mrs PEULICH** — I said to bed down. I did not say to implement, but to bed down. So you think two years would do the trick?

**Mr POCOCK** — Yes.

**The CHAIR** — I will give Mr Mulino an opportunity and I will come to Mrs Peulich.

**Mr MULINO** — I have a two-part question. The first part — and thank you all for coming in to give evidence and for giving evidence so late — is that in particular I wanted to ask something about your evidence, Ms Rozanska. And thank you so much for that compelling story. So the move from the temporary status to permanent status must have meant a lot to you, because you would have comprehended it — you would have gone through that legal process and understood what that meant. I am just wondering what it meant to your child when you communicated it. Did you notice immediately that there was a different kind of comprehension? Did it mean something very profound, do you think, and lead to an immediate improvement?

Then, to anybody else, I just wanted to ask a question: is there evidence that this is something more widespread — that there is a material improvement more generally when children experience that move to permanency?

**Ms ROZANSKA** — I think because he had driven this whole thing anyway by saying, ‘Is this my forever home?’. ‘I don’t know!’ — ‘Yes, come in!’. He had had enough of moving. He had had 10 or 11 or more. We are very lucky that we have this life story work that Berry Street is supporting, and it is quite amazing. I was a bit sceptical about it at first, but it is really useful because we get to know the whole history, because somebody reads the files. That is why she — Elise, the expert who is guiding us through — went and looked at all the

orders, and she said, 'I got fed up of writing them all down in the end', because it was just too much. There were just so many. She had never seen — —

**Ms HOOPER** — So many court orders?

**Ms ROZANSKA** — Yes. And you think, 'It's a short little life. How can you cope with these things that happened?'. It is like he is very babyish and then he is a normal 8½-year-old, and then he is also like a 16-year-old in the sense of that seriousness. So he would always say, 'I want to know'. He does not want to know, 'Why didn't I live with my mum and dad?', but that is one of the questions, 'Why don't I live with my mum and dad?'. 'Why has this happened to me? Why have I had this life?'. Now he is in a secure place, or a place that we have this attachment very quickly, and it could be that it was luck. It was not our plan to have a permanent child. We were planning to carry on doing all our travelling and having a great life without children.

For me it was a bit of an anticlimax because it was such a bad day in court and I was so upset. Often we were in court where we would be there from like 8 o'clock until 6 o'clock, and sometimes one of us would have to run out to get to the school before they left them on the doorstep or something, because it would drag on, and then nothing would be resolved. The parents were allowed to turn up half an hour before with their great team and delay it for some reason and it would be postponed again. You would think, 'No, another day. We've got to go through this again and be all prepared'. Then it is a different magistrate, it is a different legal team, it is a different person from the DHS lawyer who would just get the paperwork and be going, 'What's this?'. They would not know anything about it but you would still be going into court.

I think for me it was a bit of an anticlimax because I was so upset. For him it has made a huge difference. It is a month, and I think in my assessment, for the first time in the nearly three years that we have had him he has expressed anger. He never showed any anger. At school he is sociable, fun. We like a laugh, we have fun, we have lots of friends, we have family. When I asked him about that, I said, 'It's great. It's a pity I didn't have a baseball bat, that it was just those things you threw down those stairs, that we couldn't really make a hole in the wall'. He said, 'Well, I thought then you wouldn't like me, if you saw it', and that we would say, 'Bye. Get your box, off you go. You'll like this new family'. So it has made a difference.

But I suppose if you think of yourself, how you would feel if you had to keep moving, be with strangers and pretend to be a new person. Nobody really knows anything about you — you do not know anything about them when they are delivered to you. I think it is important to know that it is a permanent home, that nobody can ask you to leave, that you can have rows like normal people, that you can be naughty. You could do something really bad but your parents are not going to call social services or say, 'I can't handle him any more', or, 'He's horrible', or, 'He's naughty'. Because that is what he had been told: 'You're going to end up like your dad. You're going to be this and that'. The things that he came out with a child could not have come up with — somebody had said that to him. In my humble opinion, and I am not the expert, we have got to find permanent homes. I think we will find those people if we can change the system, if we can fix the system.

**Mrs PEULICH** — I have a question perhaps for Julian. With children who have been placed in permanent care and reached the age of 18, is there any evidence or is there any data in relation to efforts to reunify with parents after that?

**Mr POCOCK** — There is. I would have to go and find some of it to give you the detail of it, but it is a very common experience, be it children who have been on permanent care orders and reached age 18 or on some other form of child protection order and reached that age. It is a very, very common experience that what they do is they seek out their birth family and their siblings. In the case of children who have not been on permanent care orders, they will often go back and reside with their family of origin and reconnect there. I think it may have been some of the representatives from the law institute who also made that point — that one of the valuable things about contact along the way is children. One of the values of the life story work that we do at Berry Street is it means that children actually build a complete picture of their family and their parents, rather than them being blinded to that and perhaps heading back to that family at age 18 and being disappointed.

**Ms HOOPER** — With my kids, who are now adults, at 15 the oldest one wanted to spend a night at his mum's place. Child protection said, 'That's not possible, no way'. I said, 'I'm sure it's possible. He's 6-foot tall already'. He was very clear about how he could manage that. I went down and stayed in Warrnambool and he had a clear plan. He never asked again. He enjoyed it, loved it, other than he said, 'She gave us dim sims for dinner'. I was like, 'You always want dim sims for dinner. Why aren't you delighted?'. He thought that was odd

and never asked again. He sees her a lot, has regular contact. Both of them have that. They both spent a lot of time with their father but post-care would never have dreamt for a minute of them spending a night in his house — he spent more time inside than out, being in jail. Both spoke at his funeral and were very connected, and to their older sister. They know they have two families. That was the way it worked for my kids.

**The CHAIR** — I am conscious of the time. If there are no other questions, we might end it there. I again thank the four of you for your presentation tonight and your evidence. Ms Rozanska, thank you very much for your personal story; it was greatly appreciated. I declare the hearing closed.

**Committee adjourned.**