**PARLIAMENT OF VICTORIA**

Legal and Social Issues Committee

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

Parliament of Victoria
**Legal and Social Issues Committee**

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# Chair's Foreword

On behalf of the Legal and Social Issues Committee ("the Committee"), I present the first report of the Committee for the 58th Parliament.

The Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 amends section 276(2) of the *Children, Youth and Families Act 2005*. This section was previously amended in 2014, with a commencement date of 2016.

The Committee heard that a range of factors can prevent children moving from temporary to permanent care, from poor planning to a lack of people willing to be permanent carers. The Committee also heard that more support could be offered to carers.

The area of child protection is one in which all Members of the Committee would like to see the best possible outcomes achieved.

To that end I am pleased that the Committee has been able to make a contribution to informing debate in the Legislative Council on the Bill.

I thank all those who provided evidence to the Committee, both through written submissions and by appearing at the Committee's public Hearings for this Inquiry, particularly given the relatively short timetable for the tabling of this Report.

I would also like to thank my colleagues on the Committee, Ms Nina Springle, Ms Margaret Fitzherbert, Mr Cesar Melhem, Mr Daniel Mulino, Ms Fiona Patten, Mrs Inga Peulich and Ms Jaclyn Symes for their work on the Inquiry.

Finally the Committee's thanks go to the staff, Ms Lilian Topic, Committee Secretary and Mr Anthony Walsh, Research and Legislation Officer whose work enabled the Committee to meet its tight deadline.

I commend the Report to the House.

**EDWARD O'DONOHUE MLC**
**Chair**

# 1 Inquiry Process

The Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 is a technical Bill that amends the *Children, Youth and Families Act 2005*.

This Bill Inquiry commenced prior to introduction of the Bill into the Legislative Council. This has allowed the Committee to review the legislation without delaying consideration of the Bill by the Council.

The Committee received 27 written submissions, including pro-forma submissions from five members of Grandparents Victoria (see full list in section 5 and 6). The Committee also conducted two public hearings on 19 June 2015 and 24 June 2015 with seven organisations (see full list in section 7). The Committee is grateful for all contributions to the Inquiry, particularly given the relatively short timeframe within which this Inquiry was conducted.

This Report provides an overview of the key issues raised at the hearings and in written submissions. Full copies of the transcripts are attached to this Report, and written submissions can be found on the Committee's website (www.parliament.vic.gov.au/lsic).

# 2 Referral of the Bill



On 10 June 2015, the Legal and Social Issues Committee resolved:

> That the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 be referred to the Legal and Social Issues Committee for inquiry, consideration and report by 4 August 2015, and in particular the Committee examine the extent to which the Bill along with current legislation will protect vulnerable children.

On 11 June 2015, the President advised the Council that the Committee was undertaking the Inquiry. As discussed previously, the Bill had not been introduced into the Council at this stage, however, it was introduced and the second reading commenced later that day.

# 3 Provisions of the Bill



The main purpose of the Children Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 is to amend section 17 of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*. Section 17 of the 2014 Act has a commencement date of 1 March 2016.

The Bill currently before the Parliament will have the effect of retaining oversight by the Children's Court of service provision by the Secretary of the Department of Health and Human Services (DHHS) when making a protection order. The Bill also amends terminology for consistency with amendments made in 2014. It does this by replacing the term 'custody' with the term 'care' in section 276(2) of the *Children, Youth and Families Act 2005*.

# 4 Evidence Received

The evidence received by the Committee is considerably broader than the subject matter of this Bill. Consequently most of the evidence received by the Committee generally relates to the *Children, Youth and Families Act 2005*, and to the amendments enacted in 2014 (but with a commencement date of 1 March 2016).



## 4.1 The *Children, Youth and Families Act 2005*

When enacted in 2005 the *Children, Youth and Families Act 2005* updated and combined the *Children and Young Persons Act 1989* and part of the *Community Services Act 1970* to create an integrated child protection and child and family support system.

This sector has been reviewed a number of times in recent years. Reports include:

- *Own motion investigation into the Department of Human Services Child Protection Program* (Victorian Ombudsman, November 2009)
- *Protection Applications in the Children's Court* (Victoria Law Reform Commission, November 2009)
- *Report of the Child Protection Proceedings Taskforce* (2010)
- *Protecting Victoria's Vulnerable Children* ('Cummins Report', 2012)
- *Victorian Auditor-General's Report into Residential Care Services for Children* (2014)
- *Victorian Auditor-General's Report into Early Intervention Services for Vulnerable Children and Families* (May 2015).

The Committee notes that in 2010 the Legislative Council Standing Committee on Finance and Public Administration conducted an investigation into the performance of the Department of Human Services' Child Protection program, receiving evidence from both the Department of Human Services and the Ombudsman.

## 4.2 The *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*

The *Children, Youth and Families Act 2005* has undergone a number of amendments, most notably in 2014. The *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* changed a number of

existing orders and introduced a suite of new Children's Court orders, including the introduction of mandated timelines to achieve reunification of children placed in out of home care.[1]

In evidence to the Committee, the DHHS advised that the 2014 amendments were principally in response to the findings and recommendations of the Cummins Report.[2] In the Second Reading speech the Minister stated:

> The [Cummins] inquiry report was tabled in Parliament in February 2012 and made strong and compelling findings and recommendations for reform. The recommendations included the simplification of Children's Court orders; focusing the Children's Court's role on a narrower range of matters; simplifying case planning processes; and examining the delays in achieving permanency for children.
>
> A major finding of the inquiry was that it takes too long to achieve alternate permanent care for children when it is recognised that there is little possibility of family reunification.[3]

The DHHS advised that the Cummins Report resulted in further inquiries being undertaken into various aspects of child protection services:

> The recommendations arising from the Cummins Inquiry were critically examined over the course of the following years. They were further informed and considered in light of the permanent care and stability project that was undertaken in 2012-13. One considered the inquiry recommendations as a starting point and then consulted far more broadly with a range of stakeholders — including permanent carers, foster carers, academics, community service organisations and legal stakeholders — about the merits of those particular recommendations.[4]

The DHHS advised the Committee that prior to enacting the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*, it engaged in a further program of extensive stakeholder consultation.

> The consultation period that informed the development of the amendment act was quite extensive. There was a significant amount of consultation starting with the Cummins Inquiry. So the submissions, the information provided to the Cummins Inquiry, informed the development of the permanency amendments, and as I noted there was further consultation during the development of the stability planning and permanency care project. ... The department also initiated consultation with the Children's Court in December 2013, and in respect to developing the actual permanent care act, consultation was had with the Children's Court of Victoria; the Commission for Children and Young People; the office of the privacy commissioner; Aboriginal community controlled organisations; the Family Law Court; the Victorian Aboriginal Child Care Agency; the Create Foundation; the Foster Care Association of Victoria; Permanent Care and Adoptive Families; the Mirabel Foundation; various academics, including Dorothy Scott, who was part of the Cummins Inquiry; the Centre for Excellence in Child and Family Welfare; Anglicare Victoria; Berry Street;

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1 Submission 23, Children's Court of Victoria.

2 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*.

3 MaryWooldridge, *Parliamentary Debates* Legislative Assembly, 7 August 2014, p 2657.

4 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*.

> MacKillop Family Services; OzChild; and other community service organisations. A consultation session was also held with the Law Institute of Victoria and the Victorian Aboriginal Family Violence Prevention and Legal Service.[5]

In evidence to the Committee the CFECFW said:

> In 2014 DHS provided a confidential briefing on the proposed legislative amendments on stability planning and other matters to the centre and other community services organisations and members of the centre. The reforms were based on previous inquiries, such as the Cummins report and the stability and permanent care project report, and future directions of permanent care and adoption, ...[6]



However a considerable number of witnesses and submissions questioned the adequacy of the consultation process prior to the enactment of the 2014 amendments.[7] At the Committee's hearing the Law Institute of Victoria (LIV) stated:

> The Law Institute was invited to a single meeting with the Department in June 2014. Joe and I attended personally. We were given a slide show presentation of what was coming and we were told to keep it in confidence. To say that that is consultation is certainly extending the definition.[8]

In their written submission the Children's Court Private Practitioners Association expressed similar concerns:

> The CCPPA is extremely concerned that the 2014 legislative reforms to the Principal Act, the most significant to the child protection framework in 25 years, arose without open and substantive consultation with significant stakeholders.[9]

Liberty Victoria also commented on the level of public consultation in their submission:

> Liberty Victoria takes this opportunity also to make comment on the lack of public consultation afforded prior to the *Children, Youth and Families (Permanent Care and other Matters) Amendment Act 2014* and the impact of those legislative amendments particularly on Victoria's most vulnerable community members.[10]

However, the Committee is aware of views about the extent to which the findings of the Cummins Report have been implemented. The Committee notes that the Cummins Report, an extensive inquiry that considered evidence from a comprehensive range of sources, made 90 recommendations, 21 of which recommended changes to legislation. Of those, 14 recommendations related to the *Children, Youth and Families Act 2005*.

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5 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*.

6 Deb Tsorbaris, Centre for Excellence in Child and Family Welfare, *Transcripts of Evidence*.

7 Submission 11, Family Inclusion Network Submission; Submission 13, Children's Court Private Practitioners' Association; Submission 21, Aboriginal Family Violence Prevention and Legal Service Victoria; Submission 22, Victorian Aboriginal Childcare Agency; Submission 24, Parents with a disability, Submission 26 Berry Street; Submission 27, Liberty Victoria.

8 Fleur Ward, Law Institute of Victoria, *Transcripts of Evidence*.

9 Submission 13, Children's Court Private Practitioners Association.

10 Submission 27, Liberty Victoria.

The Centre for Excellence in Child and Family Welfare (CFECFW), which represents nearly 100 community service organisations in the Victorian child, youth and family services sector, believes that the 2014 changes reflect the recommendations of the Cummins Report.

> We had the Cummins Inquiry, as you know. The previous government had a very substantial inquiry in this space and it made lots of recommendations. The changes to legislation mirrored the recommendations of the Cummins Inquiry....[11]

A number of witnesses focussed on recommendations that they contended had not been implemented to date or that have been only partially implemented.[12] The Children's Court Private Practitioners Association (CCPPA) noted that the amendments do not accord with the recommendations of the Cummins Report in the areas of appropriate remedies/reunification, contact/access, length of Orders, and permanency.[13]

A representative of Berry Street also noted:

> 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 ...[14]

The Minister in their Second Reading speech for the 2014 Act stated that the amendments would:

> - ensure more timely and better integrated case planning and decision-making;
> - create a simpler range of Children's Court protection orders that promote timely resolution of protective concerns;
> - clarify the rights and responsibilities of the secretary, parents and carers to make decisions regarding a child's care.[15]

The Committee notes that once the *Children, Youth and Families and Amendment (Permanent Care and Other Matters) Act 2014* comes into effect it will:

- Simplify the number of Protection Orders which the Children's Court can make
- Amend DHHS's obligation to work towards reunification of the child with their parents 'to the fullest extent possible'
- Create a cap of four contacts that the Court can order between children and their natural parents
- Impose a time limit on reunification efforts, being one year or two years in exceptional circumstances

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11 Deb Tsorbaris, Centre for Excellence in Child and Family Welfare, *Transcripts of Evidence*.

12 Submission 2, Professor Judith Bessant and Professor Rob Watts; Submission 13, Children's Court Private Practitioners Association.

13 Submission 13, Children's Court Private Practitioners Association.

14 Julian Pocock, Berry Street, *Transcripts of Evidence*.

15 MaryWooldridge, *Parliamentary Debates* Legislative Assembly, 7 August 2014, p 2657.

- Confer on the Secretary of the DHHS the discretion to revoke registration of a community service organisation if considered appropriate.

## 4.3 Reinstatement of section 276 in the *Children, Youth and Families Act 2005*

The Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 is currently before the Parliament and according to the Minister's Second Reading Speech:

> This Bill will have the effect of retaining the existing requirements of section 276 of the *Children, Youth and Families Act 2005* when the amendment act comes into effect on 1 March 2016.[16]



Section 276 requires the Children's Court to be satisfied that reasonable steps have been taken by the Secretary of the DHHS to provide services in the best interests of the child before the Court can make a protection order.

A significant number of witnesses expressed support for the 2015 Bill.[17]

> The Court considers the reinstatement of this provision is consistent with the legislative framework of protecting children and young people who are at risk by providing community services and supports to children and their families.[18]

With respect to retaining the 'all reasonable steps', requirement the Child Safety Commissioner notes:

> I believe this requirement will improve transparency and accountability and better ensure that services reasonably required are offered to parents and that parents are encouraged and supported to access them. The amendment will enhance public confidence in the system.[19]

The LIV raised concerns about reducing judicial oversight of DHHS decisions in relation to child protection orders.[20] The LIV identified situations that have arisen in the past where judicial oversight would have ensured a more favourable outcome.

> If you have the power to remove children, there must be proper oversight. … We have had this specialist court being able to determine these matters and suddenly all that decision making power is relegated to an administrative body with a vested interest.[21]

This was also raised by for example, Berry Street and VACCA.[22]

16 Jenny Mikakos, *Parliamentary Debates* Legislative Council, 11 June 2015, p 1824.
17 Submission 22, Victorian Aboriginal Childcare Agency; Submission 26, Berry Street.
18 Submission 23, Children's Court of Victoria
19 Bernie Geary OAM, Commission for Children and Young People, *Transcripts of Evidence*.
20 Andrew McGregor, Law Institute of Victoria, *Transcripts of Evidence*.
21 Fleur Ward, Law Institute of Victoria, *Transcripts of Evidence*.
22 Submission 22, Victorian Aboriginal Childcare Agency; Submission 26, Berry Street.

## 4.4 Outstanding Concerns and Future Directions

The Committee notes that the majority of submissions to this Inquiry focused on the 2014 Act, and indicated that they believed additional important concerns remain to be addressed.[23]

The DHHS advised the Committee that there is a review scheduled for six months after the provisions in the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* come into effect on 1 March 2016:

> It is correct that the Minister has announced a review six months following the introduction of the Permanent Care Amendment Act and is very keen to understand the implications and impact of implementation, including any unintended consequences, of the Act.[24]

Although supportive of the review, some stakeholders raised concerns with regard to timing of this review and that commencing six months after the amendments take effect may be too soon. Mr Andrew Jackomos, the Commissioner for Aboriginal Children and Young People noted:

> I understand that the Minister may be doing a review within six months to see. I think that might be a bit early. I think it might need to be over 6 to 12 to 18 months to do it. So I am not entirely happy or assured, but I am prepared to say let us look at the review.[25]

This review may provide an opportunity for stakeholder consultation on areas that were outside the scope of this Inquiry.

## 4.5 Services and waiting times

In most circumstances the Children's Court cannot make a family reunification order after a child has been in out-of-home care for two years. The DHHS advised that this two year period is cumulative from the most recent report.

> If, for example, a child has been in out of home care between the ages of one or two, the Department closes the case and the child is reported again at eight years of age, the clock would only start ticking from eight. It does not go back. When I say 'cumulative', it is from this most recent report. It does not go back in time if there have been previous episodes of care that have resulted in the department exiting the family's life.[26]

Some witnesses raised concerns with the Committee that family reunifications may consequently be delayed or prevented due to waiting times for support services. The LIV noted:

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23 Submission 1, Grandparents Victoria; Submission 2, Judith Bessant and Rob Watts; Submission 8, Victorian Stakeholders Network Permanent Care and Adoption; Submission 10, Emeritus Professor Terry Carney AO; Submission 22, Victorian Aboriginal Childcare Agency.

24 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*, p 4.

25 Andrew Jackomos PSM, Commission for Children and Young People, *Transcripts of Evidence*.

26 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*.

> In our experience, waiting lists for services can vary from three weeks to six months, depending on the region. ... there is much evidence in the community, apart from the experience that we have as practitioners every day, that there are not services that are readily available; and these new provisions — the family reunification orders — do not permit the court to take that into account. Therefore doors to reunification are being shut without the court being able to take that into account.[27]

However the Committee notes that DHHS advised that the Children's Court may postpone making a final decision if there has been a delay in the provision of required support services.

> If in fact a waiting list meant that families could not receive the services that were required, the court could utilise section 276 and it would be prohibited from making a final order because of the lack of services. It would be unusual, however, that a service could not be provided within 12 months or 24 months.[28]



## 4.6 Care orders

At any given time there are a significant number of children subject to interim, protection and permanent care orders in Victoria. The DHHS advised that:

> In Victoria there are approximately 7000 children in out of home care, by which I mean placed either with kinship, foster, residential or permanent care, and on 30 June 2014 there were just over 9000 children on interim, protection or permanent care orders in the state of Victoria.[29]

The previous Government and the DHHS advised that the 2014 amendments were intended to promote permanency of care for children subject to care orders.[30] The Committee received a personal account from a foster carer about a child who had been placed with at least 10 different carers in the first five years of his life.[31] She also spoke about the importance of permanent care from the child's perspective, and the importance of knowing they will not be moved on to yet another foster carer.

> 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' ... In my humble opinion, and I am not the expert, we have got to find permanent homes.[32]

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27 Fleur Ward, Law Institute of Victoria, *Transcripts of Evidence*.

28 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*.

29 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*.

30 Beth Allen, Department of Health and Human Services p 3; MaryWooldridge, *Parliamentary Debates* Legislative Assembly, 7 August 2014, p 2657.

31 Krysia Rozanska, Foster Care Association of Victoria, *Transcripts of Evidence*.

32 Krysia Rozanska, Foster Care Association of Victoria, *Transcripts of Evidence*.

The Foster Care Association of Victoria indicated its support for reforms that would provide stability and permanency for children in care. They believe that stable and permanent care was not being delivered because of poor planning issues and those issues may not be resolved by the amendments.

> The 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.[33]

The Centre for Excellence informed the Committee that it had an expectation that the 2014 amendments would help "drive practice" within the DHHS.[34] However, the Committee also received written submissions that expressed concern about placing emphasis on permanent placement of children outside of their birth family rather than on the support and rehabilitation of vulnerable families. In its written submission, Berry Street emphasised that it shared the goal of increased permanency, but warned that the 2014 Act:

> … will not in and of itself significantly improve permanent care arrangements for children in need of protection, and that this package of amendments contains many poorly conceived amendments which are not in the best interests of vulnerable children.[35]

Several witnesses expressed concern about the requirement for the Court to make a permanent protection order after two years. The DHHS advised that the two year timeframe for a permanent order was in response to the findings of the Cummins Report[36]. The Inquiry found that in 2012 it took an average of five years from the time a child (who was unable to return home) was first reported to child protection authorities to the time that a permanent care order was made for that child. However the Committee notes that the Cummins Report recommended removing barriers to permanency, but did not recommend that a legislative time limit be placed on reunification efforts. The DHHS advised that the requirement for a decision within two years about permanent care should prevent children drifting between care arrangements and provide them with stable and certain care.

> The Amendment Act acknowledges that it is very important that enduring care arrangements for vulnerable children are settled as quickly as possible and that ideally permanency, wherever possible, is provided by the child's own parents … The Amendment Act establishes a reasonable time frame to be 12 months or, where based

33 Katie Hooper, Foster Care Association of Victoria, *Transcripts of Evidence*.

34 Deb Tsorbaris, Centre for Excellence in Child and Family Welfare, *Transcripts of Evidence*.

35 Submission 26, Berry Street.

36 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*.

> on evidence that progress is being made by parents to seek and pursue reunification within that first 12 months, that a further 12 month period up to a total of two years be provided to achieve reunification.[37]

## 4.7 Resourcing

The Committee received evidence that the lack of those willing to be permanent carers can result in children remaining on temporary orders rather than being subject to a permanent order.

> 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.[38]

Several submissions and witnesses noted the contributions of successive governments to increases in funding for child protection services.

However the Committee received evidence that these funds need to be targeted more effectively to provide carers with the support and services they need. The Commissioner for Children and Young People noted that:

> Resources are an issue, but, as I said before, I think a more strategic dispensing of the funding that happens now would be a really sensible thing to do. As I said, I do believe we throw a lot of money at residential care that could be better used. I went to Kilmore and had a meal with a kinship care couple in their 70s who are caring for three children. Grandma just said, 'Look, I would just like somebody to come three times a week to help me with shopping, or to ask if they could take the kids to school, or just to talk about current day parenting issues'. That is the sort of support that people need. If we supported people in the community in that way — and it is simple — we would have fewer children in residential care.[39]

The Committee received evidence that increased support for carers continues to be a requirement. Foster carers receive approximately $5000 per year to care for a child, however the Committee heard that it costs significantly more.[40] Also any support provided to carers stops when a permanent care order is made. Berry Street advised:

> … 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….[41]

37 Beth Allen, Department of Health and Human Services, *Transcripts of Evidence*.

38 Julian Pocock, Berry Street, *Transcripts of Evidence*.

39 Bernie Geary OAM, Commission for Children and Young People, *Transcripts of Evidence*.

40 Katie Hooper, Foster Care Association of Victoria, *Transcripts of Evidence*.

41 Julian Pocock, Berry Street, *Transcripts of Evidence*.

The Committee was advised that the process to obtain permanent care can be costly for carers, both financially and emotionally. A foster parent advised the Committee that it had taken over a year and a half of court appearances and legal expense, including hiring a barrister, to gain permanent care of the child placed with them.[42]

> 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. ...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.[43]



## 4.8 Conclusion

The primary purpose of this Inquiry has been to examine issues relating to the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015. The substance of the Bill relates to retaining the role of the Children's Court and other technical amendments.

During this Inquiry, a number of issues were raised with the Committee at both public hearings and in written submissions. This Report does not discuss every issue raised; rather it highlights key issues identified from evidence to the Committee. Information about these broader concerns can be found in the transcripts of evidence for the Inquiry, which have been attached to this Report, and written submissions, which can be found on the Committee's website.

42 Krysia Rozanska, Foster Care Association of Victoria, *Transcripts of Evidence*.

43 Katie Hooper, Foster Care Association of Victoria, *Transcripts of Evidence*.

# 5 Submissions

1. Grandparents Victoria
2. Prof Judith Bessant and Prof Rob Watts, RMIT
3. Ms Maria Trombin
4. Mental Health for the Young and their Families
5. Adoptee Voices Australia
6. Ms Rosemary Higgins
7. Australian Psychological Society
8. Victorian Stakeholders Network Permanent Care and Adoption
9. Gatehouse Centre, Royal Children's Hospital and The South Eastern Centre Against Sexual Assault, Monash Health.
10. Emeritus Professor Terry Carney AO, University of Sydney
11. Family Inclusion Network (Victoria)
12. Office of the Public Advocate
13. Children's Court Private Practitioners' Association
14. Victoria Legal Aid
15. Law Institute of Victoria
16. Victorian Bar Council and Children's Court Bar Association
17. Members of Grandparents Victoria (Pro-forma)
18. Melbourne Law School
19. Powerful Parent Self Advocacy Group
20. Association of Relinquishing Mothers (Vic) Inc
21. Aboriginal Family Violence Prevention and Legal Service Victoria
22. Victorian Aboriginal Child Care Agency
23. Children's Court of Victoria
24. Parents with a disability
25. CREATE Foundation
26. Berry Street
27. Liberty Victoria

# 6 Pro-forma Submissions

1. Ms Dorothy Horbury
2. Ms June Smith
3. Ms Anke Kenter
4. Ms Kerry Doquile
5. Ms Catherine Rowan

# 7 Public Hearings

## Friday 19 June 2015

### Department of Health and Human Services

Ms Beth Allen, Assistant Director, Child Protection

Ms Kirsty Mcintyre, General Counsel and Chief Legal Officer

Ms Gwendolyn Ellemor, Manager, Service Development and Design, Child Protection Unit

### Commission for Children and Young People

Mr Bernie Geary OAM, Principal Commissioner

Mr Andrew Jackomos PSM, Commissioner for Aboriginal Children And Young People

### Centre for Excellence in Child and Family Welfare

Ms Deb Tsorbaris, Chief Executive Officer

Ms Mary Kyrios, Senior Policy and Project Officer – Research and Social Policy

## Wednesday 24 June 2015

### Law Institute of Victoria

Ms Fleur Ward, Chair, Children and Youth Issues Committee

Mr Andrew McGregor, Committee Member

Mr Joe Gorman, Committee Member

Ms Sarah Bright, LIV Policy Lawyer

### Victorian Council of Social Services

Mr Llewellyn Reynders, Policy and Public Affairs Manager

Ms Carly Nowell, Policy Advisor

### Berry Street

Mr Julian Pocock, Director Public Policy & Practice Development

Ms Trish McCluskey, Director

### Foster Care Association of Victoria

Ms Katie Hooper, Chief Executive Officer

Ms Krysia Rozanska, Board Member

# Appendix 1
# **Transcripts of Evidence**

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 — 19 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 |

Staff

Secretary: Ms Lilian Topic

Research officer: Mr Anthony Walsh

Witnesses

Ms Beth Allen, assistant director, child protection,

Ms Kirsty McIntyre, general counsel and chief legal officer, and

Ms Gwendolyn Ellemor, manager, service development and design, child protection unit, Department of Health and Human Services.

**The CHAIR** — I declare open this public hearing of the Legislative Council's Standing Committee on Legal and Social Issues. This hearing is in relation to the inquiry into the children, youth and families amendment bill 2015. I welcome from the Department of Health and Human Services Ms Beth Allen, assistant director, child protection; Ms Kirsty McIntyre, general counsel and chief legal officer; and Ms Gwendolyn Ellemor, manager, service development and design, child protection unit. Thank you very much for making yourselves available and making yourselves available at relatively short notice.

I caution that all evidence taken at this hearing 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, and you will be provided with proof versions of the transcript within the next couple of days.

We have allowed an hour for this session to ensure there is sufficient time for questions. The committee asks that any opening comments be kept to about 5 or 10 minutes. Finally, I remind you that this inquiry is to obtain evidence in relation to the children, youth and families amendment bill 2015 that is currently before the Parliament.

Thank you again for making yourselves available. We look forward to hearing your presentation and then there will be questions.

**Ms ALLEN** — Thank you for the opportunity to talk to the committee. With the approval of the chair, I would like to begin by giving a brief outline of the amendments in the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015. The bill under consideration by the committee concerns an amendment to section 276 of the Children, Youth and Families Act passed in the Parliament in September 2014. The bill seeks to retain section 276 of the Children, Youth and Families Act, which principally concerns vulnerable children and families and those children in need of protection. Specifically the act provides for community services to support children and families, provides for the protection of children and continues the Children's Court as a specialist court dealing with matters concerning children.

Significant elements of the act provide that the court, the secretary and community services must have regard to the best interest principles when making decisions in relation to children or taking any action. The act requires that the best interests of the child must always be paramount, and in determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, protect their rights and promote their development must always be considered. There are also numerous additional matters set out that must be considered where relevant to the decision or action. The secretary and community services are also required to consider several decision-making principles, with additional decision-making principles for Aboriginal children.

While the Children, Youth and Families Act provides the legislative framework to protect children, it is important to understand the context in which the legislative framework operates. It is of potential interest to the committee to know the context within which the legislation operates. Specifically, in 2013–14 the child protection program received just over 82 000 reports concerning Victorian children where professionals or members of the community felt children were subject to abuse or neglect. Of those 82 000 reports, approximately 25 per cent are directly investigated, meaning that child protection actually goes to the home generally and interviews the parents and the child, where that is possible. The remaining 75 per cent often receive further inquiries, where the child protection program will ring relevant professionals to garner further information, and they may refer the child and family for further services, specifically to family services or parenting advisory services.

Of all those reports that are directly investigated, approximately 60 per cent are substantiated, so the concerns regarding abuse or neglect are found to be evident in the investigation. Approximately 7 per cent of all reports — of the 82 000 reports — are taken to the Children's Court with the issuing of a protection application. My point here is that only 7 per cent of those 82 000 — so just over 5000 — are applications made to the Children's Court, being a very, very small number in the overall scheme of reports. Of those children who are subject to protection applications, an even smaller number are placed in out-of-home care and removed from their parents' care and custody. In Victoria there are approximately 7000 children in out-of-home care, by which I mean placed either with kinship, foster, residential or permanent care, and on 30 June 2014 there were just over 9000 children on interim, protection or permanent care orders in the state of Victoria.

You would be aware that the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act, which was passed in September 2014, included amendments to promote permanency of care for children. The amendment act amended section 276 of the Children, Youth and Families Act concerning the restrictions of the making of protection orders. These parts of the amendment act concerning permanency changes and section 276 are to commence on 1 March 2016, if not proclaimed earlier. So it is important to note that they are not yet in force.

Currently section 276(1)(b) of the Children, Youth and Families Act provides that the court must not make a protection order unless it is satisfied that all reasonable steps have been taken by the secretary to provide the services necessary in the best interests of the child. Section 276(2)(b) includes a similar restriction on the making of an order that prevents the removal of a child from parental care or custody unless such reasonable steps have also been undertaken. The amendment act passed in September 2014, as it stands currently, will amend section 276 (1)(b) to provide that the court must not make a protection order unless it is satisfied that the child cannot be sufficiently protected without a protection order.

Going to the bill that is currently before Parliament, the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill, this bill proposes to amend the 2014 amendment act. It will have the effect, once the amendment act commences on 1 March 2016, of retaining the current section 276 restriction on the making of protection orders — that is, that the court will continue to be prohibited from making a protection order unless it is satisfied that all reasonable steps have been taken by the secretary to provide the services necessary in the best interests of the child.

As the amendment act places time lines on achieving reunification, this bill, if passed, will ensure that adequate services are provided and that the court has oversight of the service provision when considering the making of a protection order for a child. Because of changes to terminology elsewhere in the act arising from the permanent care amendment act in 2014, the bill also makes a minor technical change to section 276 to ensure consistency of language by replacing the term ‘custody’ with the term ‘care’.

On the next page of the slide presentation we have attempted to set out the current state. In the far left-hand column section 276 of the Children, Youth and Families Act, as is the current provision, is set out for your review. The middle column outlines what the permanent care and other matters act of 2014 would have the effect of retaining and substituting if those amendments were to come into place on 1 March 2016, and finally, in the right-hand column, is what this bill before the Parliament seeks to do in terms of reinstating or retaining the current provisions that are outlined in section 276 of the current Children, Youth and Families Act 2005.

Finally, on the last page, to support your deliberations, there is a marked-up copy of what both section 17 of the permanent care and other matters act will have the effect of when implemented in March and then what the proposed bill seeks to do in terms of the restrictions on the making of protection orders bill 2015.

**The CHAIR** — Thank you, Ms Allen, for that concise presentation and some of the historical background to the bill that is currently before the house. Just in that context, can I ask you please to explain what section 17 of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 originally sought to achieve, and why was this change proposed in 2014?

**Ms ALLEN** — The change in relation to the restriction on the making of the protection orders sought to amend section 276 and did so in substituting those provisions to require that the court was to be satisfied that the child could not be sufficiently protected without a protection order.

**The CHAIR** — I suppose I am seeking: what was the policy rationale for that? Why was this change proposed in the first place in 2014?

**Ms ALLEN** — I am not at liberty to talk about the policy that went to the specific reforms but can only address the committee in relation to the specific amendments that are being considered in relation to this particular bill.

**Ms SPRINGLE** — Thank you. Also referring to the 2014 amendments, can you explain a little bit more about how permanency is affected simply by putting a time limit on how quickly permanency can be achieved?

**Ms ALLEN** — The bill before the Parliament is not related to the two-year time line. The bill before the Parliament seeks to retain the Children's Court oversight of the making of protection orders and the provision of services provided to children and families. The time frame in relation to reunification is set out elsewhere in the amendment act, and the bill that is under consideration does not affect those sections.

**Ms SPRINGLE** — I do understand that, but I suppose what I am getting at is that there has been a lot of feedback from the sector that there was no consultation around the initial amendments, so I am trying to understand a little bit more about how time limits per se — because I do not think you can look at things in isolation — are a means to an end, I suppose.

**Ms ALLEN** — Given that the specific question is not connected to the bill that is before the Parliament at the moment in relation to 276, I respectfully request clarification from the chair of the committee as to whether or not elements beyond 276 contained in the permanent care amendment act from 2014 are in scope for this review.

**The CHAIR** — Thank you, Ms Allen. Yes, they are. What has given rise to this inquiry is clearly the bill that is before the house at the moment, but of course that cannot be looked at in isolation of the legislative change that took place last year or indeed of the 2005 act, so I request that you answer the question.

**Ms ALLEN** — Thank you. To go to the question, the permanent care amendment act of 2014 will have the effect of introducing a two-year time line for achieving reunification of children to their families when the act commences in March 2016. Because of the introduction of the two-year time frame, the relationship of those amendments with section 276 is important in that it allows the court to retain oversight of the services provided to children and families in the pursuit of reunification.

**Ms PATTEN** — Thank you, Ms Allen. In relation to this, I am interested if you can give me a breakdown of the children currently in out-of-home care. When you say kinship, foster, residential and permanent, can you give me some idea of what percentage are in kinship compared to permanent care?

**Ms ALLEN** — I would need to take that on notice, other than to say in very broad terms that the vast majority of children who are placed in out-of-home care are placed in kinship care.

It is approximately 60 per cent. I can provide detailed data if that is required, but approximately 60 per cent are placed in kinship care, with relatives or close family friends, excluding children placed on permanent care orders. The vast remaining number of those children are then placed in foster care, with very, very small numbers placed in residential care at any point in time.

**The CHAIR** — Do you require further information?

**Ms PATTEN** — No, that is fine, thank you.

**Ms SYMES** — I am just interested in the review that the minister announced in relation to the permanency provisions, that I understand will be within six months of the March 2016 date. I am just after some information on what you think that review will cover.

**Ms ALLEN** — It is correct that the minister has announced a review six months following the introduction of the permanent care amendment act and is very keen to understand the implications and impact of implementation, including any unintended consequences, of the act. While we have not yet scoped the detail of that review, what is very likely to be in the scope is a review of data around the types of applications being brought, the outcomes for children and whether or not the objectives of the amendments have been met, à la that permanency outcomes for children have been improved.

**Mrs PEULICH** — I have a couple of questions if I may. If you could perhaps very briefly outline the differences between the different types of care. Obviously kinship is self-evident but foster, residential and permanent care and the types of family structures and the contexts in which those children are placed. Secondly, by replacing section 17 in the 2014 act with a new 17, what will occur instead and what are the implications for children as a result of that change?

**Ms ALLEN** — Going to the first part of your question in terms of the description of the types of care, kinship care, as you indicated, is self-evident and means that the child, when a court makes a decision that the

child is to be removed from parental care, is placed with extended family and/or significant persons known to the family. We generally refer to that as a kith or kin placement. The amendment act in 2014 makes that explicitly the preferred choice of placement for children, which has been previously in place through practice.

Foster carers are specially recruited, selected and trained members of the community not formerly known to the child, who have been recruited to care for unknown children for certain periods of time. Typically foster carers are approved to care for perhaps certain ages of children or for certain lengths of time, and they could be caring for children for anywhere from overnight up to several years at a time or indeed until they attain 18 years of age. Permanent care in the — —

**Mrs PEULICH** — You will deal with the family structure across those — the family contexts?

**Ms ALLEN** — The types of families — —

**Mrs PEULICH** — The family structure of foster carers.

**Ms ALLEN** — of foster carers? Foster carers come in all shapes and forms. They can be two-parent families, they can be single parents, they can be married or unmarried. Gender is not a barrier, nor is age. We recruit foster carers from all socio-economic groups and across all spectrums of life.

**Mrs PEULICH** — But the interests of the child are paramount in the placement?

**Ms ALLEN** — That is right. Careful matching goes into ensuring that the child's needs in terms of what they require from their care arrangement are factored in in terms of who they are ultimately placed with. Potentially, as an example, we may not place a newborn infant with an elderly foster carer who may not have the energy to care for such a child. That is one such example.

You asked also about residential care. Residential care is provided in literally homes in the community but staffed with residential carers who are recruited for the purposes of professional employment. Residential carers do not require a formal qualification at the current time, but many will have children, youth and family certificates or diplomas while others may not. Typically, residential care would consist of three or four children within a home in the community. It is provided primarily for adolescent children.

In terms of permanent care, permanent care is generally supported by permanent care orders in which the court will make an order for the child to be placed with specifically nominated, approved and screened carers in a way that they care for the child until the child reaches 18 and/or beyond, but the order lasts until the child is 18, and the permanent carers become the child's parents to the exclusion of all others. When a permanent care order is made the department closes the case, so the secretary no longer has a role in that child's life.

**Mrs PEULICH** — My second question?

**Ms ALLEN** — The second question I think was the implications of section 17 — —

**Mrs PEULICH** — The implications for children, yes.

**Ms ALLEN** — For children. The retention of section 276 will ensure that families receive the necessary supports before a final order is made. Retaining the court's oversight of service provision is considered necessary given the new time lines prescribed in the amendment act for achieving reunification. Section 276 will allow the Children's Court to make an interim accommodation order rather than a protection order if it is not satisfied that all reasonable steps have been taken by the secretary to provide services in the best interests of the child. However, that is a matter for the Children's Court, and in doing so they must consider that that is in the child's best interest. Keeping a child on an interim accommodation order rather than placing them on a final order must be carefully considered by the court in terms of the child's best interests. In cases where the secretary disagrees with the court's decision, it is open to the secretary to appeal that decision.

**The CHAIR** — The department has completed a stability, planning and permanent care project. What did that project say about the role of the courts in contributing to permanency decisions regarding children in care?

**Ms ALLEN** — That report is currently in draft, and I would need to take the question on notice.

**The CHAIR** — Could you please provide the committee with a copy of that report?

**Ms ALLEN** — The report is in draft, and I would need to take that question on notice.

**The CHAIR** — I appreciate that you will take that on notice, and the committee would appreciate a copy of that report.

**Ms ALLEN** — Thank you.

**Ms SPRINGLE** — Coming back to the issue of permanency, which appears to be the main objective of the 2014 amendments, how does a time limit ensure permanency, particularly when we know that even the best placements can break down, and what evidence is that proposed vehicle to permanency based on?

**Ms ALLEN** — The permanent care amendment act places a greater emphasis on the importance of permanency for children, noting that one of the critical findings of the Protecting Victoria's Vulnerable Children Inquiry in 2012 was that it took on average five years from the time a child was first reported to child protection to achieve a permanent care order for that child where it was determined they were not able to return home.

The inquiry noted that the legislative reforms that were undertaken back in 2005 and now are embedded in the Children, Youth and Families Act that referred to the desirability of pursuing stability for children had been largely unsuccessful in terms of achieving greater permanency for children in terms of those children unable to return home.

Essentially what we know is that children who are subject to drift in their care arrangements, and particularly those who have suffered trauma as a result of abuse or neglect, are adversely impacted throughout their childhood and later in life as a result of instability and uncertainty about their care arrangements. That is acknowledged in the best interest principles contained in the Children, Youth and Families Act that acknowledge that delays in decision-making can be harmful for children.

The amendment act acknowledges that it is very important that enduring care arrangements for vulnerable children are settled as quickly as possible and that ideally permanency, wherever possible, is provided by the child's own parents. Family preservation is noted in the amendment act to be given the utmost priority. Where it cannot be achieved and we are unable to reunify a child with their parents within a reasonable time frame, it is critical for the child's developmental needs that an enduring alternate permanent care arrangement is made for the child to take them into adulthood while maintaining the child's relationship and connection with their birth family and culture.

The amendment act establishes a reasonable time frame to be 12 months or, where based on evidence that progress is being made by parents to seek and pursue reunification within that first 12 months, that a further 12-month period up to a total of two years be provided to achieve reunification.

The permanent care amendment act allows that in exceptional circumstances even after that two-year period the secretary may pursue a permanency objective of family reunification, so may in fact reunify the child with their parents even though a child may have been in out-of-home care for longer than two years. The court is required to consider a disposition report, and the secretary is required to include the case plan in the disposition report. Under any circumstances where the secretary is seeking to change the permanency objective for a child, the court will be informed and an application seeking the most appropriate, relevant and aligned order to the case plan will be sought.

**Ms SPRINGLE** — Further to that, you have mentioned the report from the Protecting Victoria's Vulnerable Children Inquiry and the 2014 amendments to adopt some of those recommendations but not all of them, so I am curious to know how it came about that you took some recommendations and did not take them all.

**Ms ALLEN** — The recommendations arising from the Cummins inquiry were critically examined over the course of the following years. They were further informed and considered in light of the permanent care and stability project that was undertaken in 2012–13. One considered the inquiry recommendations as a starting point and then consulted far more broadly with a range of stakeholders — including permanent carers, foster carers, academics, community service organisations and legal stakeholders — about the merits of those particular recommendations.

As you rightly point out, some of those recommendations were implemented as part of the amendment act while others were slightly modified, one such example being the recommendations in relation to the inquiry recommending that the suite of Children's Court orders be simplified. That has been achieved through the permanency amendments; however, the ultimate suite of orders varies slightly to that recommended by the inquiry.

**Ms PATTEN** — You mention that you are looking at progress being made by parents within that 12-month or in some cases 24-month period. Who makes the decision about progress? Is it the department or is it the courts that decide on that?

**Ms ALLEN** — The court will need to determine that. At the end of the 12-month period of a child being in out-of-home care the court will be required to consider the progress that has been made. The court will be assisted in its inquiries by disposition reports provided by the department about the progress being made, but the court is ultimately at liberty to make inquiries of any persons or parties about the services that have been provided and will seek evidence to that effect to determine whether progress has been made and whether it is appropriate to allow a further 12 months to pursue reunification, therefore making a further reunification order.

**Ms PATTEN** — Some of the concerns people have raised with me about this are about the lack of services out there for parents, particularly around alcohol and drug issues. Do you think this concern is warranted? We are hoping that parents make progress, but we do not actually have the services to assist them in that progress. Is this a concern the department would also have?

**Ms ALLEN** — There are many funded services that the department funds to assist families in terms of addressing concerns that would bring them to the attention of child protection, including drug and alcohol services and parenting services.

**Ms PATTEN** — So the waiting times would not concern you?

**Ms ALLEN** — The current wait times may vary across services. If in fact a waiting list meant that families could not receive the services that were required, the court could utilise section 276 and it would be prohibited from making a final order because of the lack of services. It would be unusual, however, that a service could not be provided within 12 months or 24 months.

**The CHAIR** — Do you have a database of current wait times for access to services that you can provide to the committee?

**Ms ALLEN** — No, the department does not hold a database that measures wait times.

**Ms SYMES** — Just following on from what Ms Patten has asked, I am interested in a clearer understanding of the effect of the proposed amendment, particularly on vulnerable children and families, and in that answer if could you provide examples of how the court might actually use the proposed new section 276.

**Ms ALLEN** — In terms of the impact of the bill on vulnerable children and families, the retention of section 276 will ensure that all reasonable steps have been taken by the secretary to provide the services necessary in the best interests of the child before the court can make a protection application. In addition it will ensure that before an order has the effect of removing a child from their parents' care that the secretary has taken all reasonable steps to provide the services necessary to enable the child to remain in their parents' care. The effect of the bill therefore on vulnerable children would be that the court would be restricted from making a protection order or a protection order removing a child from parental care without being satisfied that those reasonable steps had been taken.

**Ms SYMES** — Are there practical examples? Ms Patten referred to drug and alcohol services. I understand there are additional funds in the recent budget that might allow us to look at that issue holistically.

**Ms ALLEN** — An example might be that if the court determined that the parents required mental health treatment services or drug and alcohol services and those services had not been made available, perhaps for 12 months, at the return to the court at the 12-month mark the court may determine that it is not going to make a protection order and it would place the child — assuming the child needed to stay in home care — on an interim accommodation order in that circumstance and it would be prohibited from making a final order.

**Mrs PEULICH** — I have a couple of questions if I may. On a point of clarification, you said that when children are placed into permanent care it is to the exclusion of all others. Does that mean total exclusion?

**Ms ALLEN** — Parental responsibility is provided to the permanent carers to the exclusion of all others. I should add that in the permanent care amendment act there is a new condition being added to all permanent care orders that requires that the permanent carer must maintain the child's relationship with their birth family, their connections to their birth family, their identity and culture unless it is not deemed to be in the child's best interests. So it is correct that the permanent care order gives parental responsibility to the new permanent carers to the exclusion of all others, but it does not allow for the child's identity or their family connections to be eroded over time, unless that was determined to be in the child's best interest.

**Mrs PEULICH** — And the decision would be made by the court?

**Ms ALLEN** — That is right. The court in very rare circumstances may state on a permanent care order that the child is to have no contact with their parents. That is extremely rare and is only used in the most severe cases where a parent may pose a severely unacceptable risk to a child.

**Mrs PEULICH** — My other question is: how many of the children who are removed from their parents are returned within 6, 12, 18 or 24 months time frames and how many are returned after two years?

**Ms ELLEMOR** — The majority of children are returned within six months and the vast majority within two years now. That has been true for quite a long period of time. We do not see any reason why that would change. It might improve as a result of the focused efforts at reunification.

**The CHAIR** — Are you able to provide perhaps particular numbers on that to the committee?

**Ms ELLEMOR** — I would have to take that question on notice. I am not sure how much of that is public, so I will take the question on notice.

**The CHAIR** — Information can also be provided to the committee on a confidential basis.

**Mrs PEULICH** — Lastly, of those 7000 children in out-of-home care, how many of them may be subjected to abuse in the settings in which they have been placed?

**Ms ALLEN** — The number — how many? That would be something that we would need to take on notice in terms of a number, noting that the department has a very, very clear regime for responding to allegations of abuse or neglect with children in terms of the guidelines on how that is to be responded to.

**Mrs PEULICH** — In providing the whole number, are you able to provide that, breaking it down to the various contexts — kinship, foster, residential and permanent care? It just goes to heart of the question of how effective the state's and the court's decision-making is.

**Ms ALLEN** — We can take the question on notice.

**Ms ELLEMOR** — I think it is in the annual report, the information you are seeking.

**Mrs PEULICH** — Then it will be easy to retrieve it.

**Ms ELLEMOR** — Yes, that is exactly right.

**The CHAIR** — Up-to-date information would be useful too. Ms Allen, just before I go to my question, I just want to clarify for me your evidence. In a previous question to you I asked about the department's stability, planning and permanent care project. You said that report is still in draft. In response to a question from Ms Springle, and correct me if I am wrong, you said that the Cummins inquiry response was informed by the department's stability, planning and permanent care project in 2012-13. Are they two separate projects, because if they are the same project, surely that report must have been concluded to inform the Cummins report, which would mean you are able to make — —

**Ms ALLEN** — Sorry. Following the Cummins inquiry, one of the recommendations arising from the inquiry was that the department undertake further research and examine the reasons for why children were not being placed in permanent care for up to five years, on average. As a result, government funded a 12-month

action research following the tabling of the Cummins report. It was that action research project, the stability and permanent care project, that considered the recommendations and findings arising from the Cummins report and further informed the legislation that was passed in September of last year. It occurred following the Cummins report.

**The CHAIR** — Yes, and informed the September 2014 legislation.

**Ms ALLEN** — That is correct.

**The CHAIR** — So how can it still be in draft form if it informed legislation that passed the Parliament nearly a year ago?

**Ms ALLEN** — The consultation and the work that contributed to that project informed the legislation without the report being finalised.

**The CHAIR** — When do you anticipate the report will be finalised?

**Ms ALLEN** — I would need to take that on notice.

**The CHAIR** — Okay. Going back to some of the questioning from other members, in response to Ms Symes you cited an example of how the court can order an interim accommodation order if services, for example, have not been provided with a 12-month period. Does that example not go to the heart of issue I think members have been asking about today? Really, this is about a resourcing issue. If services are available readily and in a speedy fashion, then resolution of these issues can be achieved within a reasonable period. Is that not the fundamental issue before us today, at the heart of the question?

**Ms SYMES** — The matter before us is the reference that we have, which is the — —

**Mrs PEULICH** — On a point of order, Chair, I think that there is no scope for interjections on questions being answered. It is inappropriate.

**The CHAIR** — Ms Allen, can you answer the question?

**Ms ALLEN** — Could you repeat the question, please?

**The CHAIR** — The timely resolution to issues is dependent on the resources available, and the timely provision of resources will lead to expeditious resolution of these issues. Would you like to comment on that or make your response to that proposition?

**Ms ALLEN** — There are a number of responses to that question. One is that the permanent care amendments passed in 2014 require that case planning will now occur at the point of substantiation. Following an investigation, child protection are required to make a decision about whether the concerns are evident and substantiated, and that occurs generally around the four to six-week mark of the investigation. Currently the legislation requires that case planning occurs six weeks after the making of a final order, which could take several months or even years to achieve. It means that often there is quite a long drift in terms of getting to the point of a case plan being developed. The fact that case planning will occur following substantiation and will now be a legislated requirement means that planning will occur much sooner and earlier and guide early identification and clarity for families about what the protective concerns are and what services are needed to bring about change for a family.

It means that around the six to eight-week mark we will be making those necessary referrals and pursuing those as vigorously as possible. One of the objectives of the legislation is to ensure that we are bringing services to bear as quickly as possible, and negotiations and discussions will be occurring with funded organisations to ensure that priority is given to children who are in out-of-home care so that we can bring services quickly, noting the amended time frames arising from the permanent care amendment act.

**Ms SPRINGLE** — You mentioned earlier that there had been extensive consultation with stakeholders. That is quite contrary to the feedback I have been given by a lot of organisations within the child and family welfare sector. Could you outline in more detail exactly who was consulted and in what sort of time frame before the legislation was introduced to the Parliament?

**Ms SYMES** — On a point of order, just for clarification: are you referring to 2014?

**Ms SPRINGLE** — Yes, I am.

**Ms ALLEN** — The consultation period that informed the development of the amendment act was quite extensive. There was a significant amount of consultation starting with the Cummins inquiry. So the submissions, the information provided to the Cummins inquiry, informed the development of the permanency amendments, and as I noted there was further consultation during the development of the stability planning and permanency care project.

That project was guided by a reference group consisting of a vast array of community service organisations, and consultation was had throughout that project with large caregiver groups, including permanent carers, to determine what the barriers were to achieving permanency for children.

The department also initiated consultation with the Children's Court in December 2013, and in respect to developing the actual permanent care act, consultation was had with the Children's Court of Victoria; the Commission for Children and Young People; the office of the privacy commissioner; Aboriginal community-controlled organisations; the family law court; the Victorian Aboriginal Child Care Agency; the Create Foundation; the Foster Care Association of Victoria; Permanent Care and Adoptive Families; the Mirabel Foundation; various academics, including Dorothy Scott, who was part of the Cummins inquiry; the Centre for Excellence in Child and Family Welfare; Anglicare Victoria; Berry Street; MacKillop Family Services; OzChild; and other community service organisations. A consultation session was also held with the Law Institute of Victoria and the Victorian Aboriginal Family Violence Prevention and Legal Service.

**Ms PATTEN** — I just want to seek a bit of clarification about an earlier statement that you made. My understanding was that these amendments have ruled out any family reunification orders by the court after a two-year period. I think earlier you said that the courts still would be able to make family reunification orders after a two-year period. I just want to clarify if I misunderstood.

**Ms ALLEN** — The Children's Court cannot make a family reunification order after the child has been in out-of-home care for two years.

**Ms PATTEN** — Is that consecutive or cumulative?

**Ms ALLEN** — It is cumulative from the time of the most recent report. If, for example, a child has been in out-of-home care between the ages of one or two, the department closes the case and the child is reported again at eight years of age, the clock would only start ticking from eight. It does not go back. When I say 'cumulative', it is from this most recent report. It does not go back in time if there have been previous episodes of care that have resulted in the department exiting the family's life.

Another way of describing that is that if we take the time period from the time of the child's most recent report, if they come into care for three months and go home for nine and then come back into care for another three, that would be a total of six months. The time that they spent at home is not included in the count, even though we have remained involved during that period of time.

**Mrs PEULICH** — Just a helicopter view, if we may: of the 7000 children placed in out-of-home care, what are the underlying reasons for their own families being unable to look after them? Are you able to give us a breakdown in terms of the contributing factors?

**Ms ALLEN** — The primary grounds for protection applications that lead to children being placed in out-of-home care relate to emotional and psychological harm in relation to children and most typically would involve parents with substantial abuse, mental health issues and family violence that impact on their ability to care for their children. That may or may not be associated with physical and sexual abuse. Physical and sexual abuse is a ground for bringing a protection application before the Children's Court; however, physical and sexual abuse in their own form are not as large a number as applications brought in relation to emotional harm for children. So generally they are captured through issues concerning family violence, substance abuse and parental mental illness.

**Mrs PEULICH** — Is there a breakdown in terms of proportion — mental health, substance abuse, alcohol and drugs?

**Ms ALLEN** — In relation to the reasons for protection applications being brought before the court there is data, and we could take that on notice.

**Mrs PEULICH** — If we could have that data, that would be great, thank you.

**The CHAIR** — Ms Allen, Ms McIntyre and Ms Ellemor, the committee thanks you very much for your presentation and your evidence this morning. As you are aware, the committee has a short reporting time of 4 August, so we would appreciate the production of the requested documents as quickly as possible, in the next week.

**Ms McINTYRE** — Mr O'Donohue, may I ask on that that we receive written confirmation, please, of the questions and the material that was required by the committee and the time frame? That would be good.

**The CHAIR** — We can provide a copy of the Hansard transcript, which will outline the requested materials, but I would also ask that you start searching for the requested information as quickly as possible, noting again the short time frame the committee has to respond to the reference that we have. Thank you.

**Witnesses withdrew.**

C O R R E C T E D   V E R S I O N

# 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 — 19 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 |

Staff

Secretary: Ms Lilian Topic

Research officer: Mr Anthony Walsh

Witnesses

Mr Bernie Geary, principal commissioner, and

Mr Andrew Jackomos, commissioner for Aboriginal children and young people, Commission for Children and Young People.

**The CHAIR** — I welcome Mr Bernie Geary, OAM, principal commissioner of the Commission for Children and Young People, and Mr Andrew Jackomos, the commissioner for Aboriginal children and young people. I caution that all evidence taken at this hearing 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 protected. All evidence is being recorded. You will be provided with proof versions of the transcript in the next couple of days. We have allowed 45 minutes for this session. To ensure that there is sufficient time for questions, the committee asks that any opening comments be kept to between 5 and 10 minutes.

Finally, I remind you that this inquiry is to obtain evidence in relation to the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 that is currently before the Parliament. Mr Geary and Mr Jackomos, the committee thanks you both very much for your time today in making yourselves available at relatively short notice. We look forward to hearing your opening comments and then we will have some questions.

**Mr GEARY** — Thank you. It is a privilege to be here. I would like to acknowledge the Wurundjeri people and pay my respects to their elders past and present.

Whilst this bill is a quite small bill, only three pages in length, it tackles, we believe, a very important issue, and at the Commission for Children and Young People we appreciate the opportunity to participate today. I am joined here today by Andrew Jackomos, the commissioner for Aboriginal children and young people, who will make some remarks shortly.

Holding inquiries such as this one provides an opportunity to receive and hear a range of views from experts in the community. This is all part of getting it right, we believe, for children and young people and we would like to see more opportunities for consultation on any proposed changes to legislation impacting on Victorian children and young people, but more so at early stages of legislative development. The earlier we can have that sort of consultation, the better, and I feel confident this committee's work will highlight the value of appropriate consultation and discussion on relevant changes to the Children, Youth and Families Act. Small changes to this legislation could have enormous consequences for individual children and young people. I know I am telling you what you know.

Today I am happy to say that the commission supports the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015. Keeping families together where it is safe and appropriate to do so — and I underline that — is in the best interests of children. To do so, it is important that the Department of Health and Human Services works to ensure that parents receive both timely and effective support to address the problems that have led to their children being placed in out-of-home care. Unfortunately, my long experience in this field leads me to the conclusion that this just does not happen consistently. I think there is a need for a safety net to be provided in regard to such serious decision-making and I therefore believe that the Children's Court plays an important role in providing a review of the efforts that the department has made.

Retaining the requirement that the court must be satisfied that all reasonable steps have been taken by the secretary to provide the services necessary to enable the child to remain in the care of their parents is a fair and reasonable requirement. I believe this requirement will improve transparency and accountability and better ensure that services reasonably required are offered to parents and that parents are encouraged and supported to access them. The amendment will enhance public confidence in the system.

As with all changes, there may be unintended consequences emerging over time, so I am pleased that the Minister for Families and Children has committed to reviewing the implementation of the changes after six months. The commission as an independent body would be pleased to support the minister in that endeavour. While I know that some have expressed concern that this change might result in delays in permanency planning and decisions for children, it is my belief that this should be a significant issue only if the Department of Health and Human Services is unable to show that it has made the reasonable efforts that one would expect of them. If that was the case, the problem would be with the service system in terms of practice and/or levels of resources, not with legislation.

I know that there are problems within the current child protection and out-of-home care systems, and changes to legislation will not address all of these issues. The issues go beyond legislation and some of the big challenges include overcoming inadequate levels of resourcing; the need for more skilled workers; the need to employ a workforce that is reflective of the client group, particularly with Aboriginal people; and the need for better and equitable support to carers, kinship carers and foster carers. This was something that was identified to me when I began as child safety commissioner 10½ years ago and we have gone nowhere with it — which is an indictment of us all, really, that we still have carers being inadequately resourced. They are also about the level of priority and commitment given to supporting and enhancing the lives of vulnerable children. Strong and independent monitoring of the system and of this amendment and other legislative changes helps with that.

I thank you for the opportunity to speak today. I hand now over to my colleague.

**Mr JACKOMOS** — Good morning. As a Yorta Yorta man, I too acknowledge the Wurundjeri people and their good neighbours the Bunurong, both of the greater Kulin confederation. I respectfully acknowledge their elders past and present. I also take the opportunity to pay my respects to and make mention of pastor Sir Doug Nicholls and Lady Gladys Nicholls, two great Victorians who are commemorated in the parliamentary gardens next to us.

As the principal commissioner has said, and I reiterate also, the commission endorses the amendment. Over the past 12 months I have been involved in a project called Taskforce 1000, in partnership with the Department of Health and Human Services, where we are critically reviewing the placement, plans and experiences of 1000 Koori children in out-of-home care. The task force was initially endorsed by the previous government and now the government of the day.

As you are aware, Aboriginal children are significantly over-represented in child protection, and the numbers continue to rise dramatically. Sadly, in the last financial year, we saw an increase of 42 per cent in the numbers of Koori children in out-of-home care in Victoria. These are staggering numbers for our community and for the state as a whole.

What I have seen in practice after reviewing around 500 Koori children across the state is that when decisions are being made about Aboriginal children and young people, their culture and identity, which are core to their wellbeing and their right, in many, many of the cases is not given the necessary focus that is due. I have seen many examples where a child's identity as an Aboriginal person is not established for many years after, and over the last couple of weeks, including yesterday, there have been cases of up to four, five, seven years. We need to know that the question as to whether the child is Aboriginal or Torres Strait Islander has been asked and more than once, and asked in the right way. Potentially and realistically we have seen Koori children processed through the child protection system, I believe, without being identified as Koori.

It is only by knowing a child's Aboriginal identity that the Aboriginal child placement principle, fundamental in the act, can be enacted. I want a check and balance to know that absolutely every effort and every avenue has been fully explored more than once for Aboriginal kin to place Aboriginal children with their kin and kinship carers and they are generally supported to fulfil this role. I want to be assured that for permanent care orders the child has been identified, been kept connected with their kin and that every effort has been made to support families with multiple and complex needs before a decision on permanent care rather than reunification is made. I want to know that the family, through Aboriginal family-led decision-making conferences, have been involved in an ongoing way, not just at a critical time. There are cases that I am seeing on a daily basis where Aboriginal family-led decision-making conferences are not happening until many years after they should have.

At the moment around about 70 per cent of our Koori children are placed with non-Koori carers in Victoria. And many have poor planning in place to keep these children connected to their family, their siblings, their kin. At a community meeting with carers in Bairnsdale last week I had carers saying to me, 'We need to have opportunities to take our kids to experiences to enjoy and make relations with other Koori kids'.

Most of our children in care are case managed by the department, and the department is not required to adhere to the accreditation standards as community service organisations who case manage children are. The amendment, along with the independent role of the commission, provides some external oversight of the process and the decisions relating to these children made by the department.

As Bernie has said, issues in child protection and out-of-home care go beyond legislation and go beyond one department. Government must work in partnership across with Aboriginal people and communities, and I particularly mention that it is not just the department and child protection, but also we need the department of justice, and the corrections part of justice, as well as the department of education. I see far too many of our children not engaged, expelled and suspended from schools, particularly vulnerable children. I am pleased that Ms Mikakos recently announced that she would call for a summit to look at the development of an Aboriginal children's forum to focus on issues and develop holistic solutions in partnership with the community and the community sector.

As the commissioner for Aboriginal children and young people, I look forward to my role in the independent oversight of the summit and the work that comes out of it. Thank you very much.

**The CHAIR** — Thank you, gentlemen, for your presentation this morning. If I could open up with questions and just perhaps ask you to provide a bit more detail around the issue of resourcing that you have both alluded to. If you could identify what would be the top of your agenda as far as additional resourcing to address some of the issues you have identified. Then perhaps as a follow-on to that, talk about timing. We have heard evidence from the department about what the Cummins inquiry found — the average of five years and all the rest of it. If you could provide feedback about what are the implications for children on interim accommodation orders for an extended period of time.

**Mr JACKOMOS** — If I could start off on the resourcing. A particular issue I have a concern with is resources for cultural planning, which is critical for children both in and also when they leave care. There had been a sum of money allocated, I believe about 10 years ago, of around half a million, and that was for Aboriginal children who were in guardianship. I think at the moment there might be around 250 Aboriginal children in guardianship. As of March next year that increases to all children — all Aboriginal children — who are in out-of-home care, which will be well over a thousand. My concern is that there is adequate money provided to enable all of the children who are in the care of the state not just to have a cultural plan but to have cultural experiences.

Also in respect of resourcing, I would love to have more resources for the commission, particularly in respect of Aboriginal programs to look at issues around health and education. We know that Aboriginal children in out-of-home care have poorer education outcomes than other Aboriginal children, and I am concerned about the level of disengagement, suspension and expulsion from schools, and it is one area that we need to do more work in.

**Mr GEARY** — I guess in respect of the changes in legislation with this bill my challenge is purely and simply around the fact that the requirement is that the court should be satisfied that all reasonable steps have been taken by the secretary to provide services necessary to enable the child to remain in the care of their parents. If that is a challenge around resources, we are not following up on our legislation. For mine, that is challenging the department to carry out legislation, and if children and parents are not properly brought together, that is the legislation not being followed. Legislation is not always followed. A good example, of course, is the Aboriginal child placement principle. There is a request in the legislation here that the department resources parents and families so that they can stay together, and that is the challenge.

I see in the out-of-home care system not necessarily a shortage of resources but an absolute hodgepodge of the way in which resources are provided. We spend more than a million dollars on each residential care unit — more than a million dollars — and it seems to me that if we spent that million dollars working to keep children in kinship care or foster care, it would be much better spent. I had a child say to me late last year that she did not feel special in anyone's eyes. Well, how can a child feel special in a residential care unit where the workers are in shifts and so on and they are tumbled together in their own misery and trauma? We need to spend the money properly, not reactively. We need to be thoughtful. We need to spend the money so that kids can stay in a situation where they are special.

**Mr JACKOMOS** — I acknowledge that there were recent funding announcements in the budget for out-of-home care. But a lot of it is about practice. A lot of it is that the majority of our children are not in Aboriginal placements and the majority of our Aboriginal children are not being case managed by Aboriginal organisations. Where I see we have the best outcomes are where we have Aboriginal organisations delivering children's services that have the right skills and the right support. I think very few — around about 600 — children are case managed directly by the department, then community sector organisations, non-Koori

organisations, are case managing our children. I think only about a quarter of our children are actually case managed by Aboriginal organisations, and I think that is an area where, if we can get more children case managed by Aboriginal organisations that have the right skills and the right expertise, we will get good outcomes for our children.

**Ms SPRINGLE** — You have both talked about responses not necessarily just being legislative but there needs to be resourcing and good planning around that.

**Mr JACKOMOS** — And good practice.

**Ms SPRINGLE** — And good practice. The recent VAGO report that came out last month highlighted the deficiencies in the department around analysis of an increased amount of services and also highlighted their reactive-based planning. I am curious to unpack this idea that there has to be a holistic approach across legislation and practice and how you feel that not just this bill but also the amendments that were introduced in 2014 impact on the sector practically and what you think the outcome of the 2014 reforms will be on the ground.

**Mr GEARY** — I think you will probably get a fairly good summary of how it impacts on the sector from some of the people who are speaking to you later on today. As I said, it is my observation that our resources are not channelled properly. I think that if there is anything a government or a Parliament can do, it is to work together to resource carers so that kids can stay at home. I think that is a fairly simple, basic question: why can't we pay foster carers? It is one of the most honourable things a person can do or a family can do — that is, open up their family to a traumatised child. Why can't we resource them properly? Why are they coming to me and kinship carers coming to me over and over again saying that they just cannot manage? If we paid them properly, we would probably get a better quality foster carer, and if we paid them properly and got that better quality foster carer, they would be more accountable and we would have a capacity to make them more accountable. You know, it seems to me to be fairly simple.

**Mr JACKOMOS** — In respect of a number of programs that are delivered in part by the department and in part by community, we have a number of programs that if they were running right, we should be able to get kids into permanency sooner — Aboriginal children. I talk, for example, the [inaudible] program and also Aboriginal family-led decision-making. A lot of these are based on good practice — not necessarily more money but good practice about identifying Aboriginal children as soon as they come into care and about linking them in and identifying potential kin that they can go to earlier. These are a number of programs that I believe either have not been reviewed or have not been for many years.

As I daily go out on Taskforce 1000 and review children, I am hearing where the access program, the [inaudible], has fallen down and also where AFLDMs are not happening for many, many years. These are fundamental to happen. I think in legislation AFLDMs are supposed to happen in 30 days. I hear of cases daily where they are not happening for years. These are programs that need to be reviewed. There is a commitment by the department to review these, I understand, in the next 12 months, but that needs to happen now because these are holding up permanency. If we can do this right — if we can identify good kin, preferably, to move into with under the Aboriginal child placement principle — we will be having children in permanency much earlier.

**Mrs PEULICH** — Is that the preferred model?

**Mr JACKOMOS** — Yes. That is my preferred model.

**Mr GEARY** — Yes, it is the commission's preferred model.

**Ms PATTEN** — That has been really informative for me. Thank you for everything you have said. The concerns that have been raised with me about the 2014 amendments to this act are the restrictions to the court's ability to extend time for family reunification and certainly limiting those orders to 12 months or 2 years. Is that a concern for the commission as well? Do you think that this may end up with more children being put into permanent care rather than us working towards family reunification?

**Mr GEARY** — As I said before, I do not think it is an issue of legislation; I think it is an issue of the department being able to comply with what the courts are asking. They are asking that families be resourced. I

do not think it is an issue around legislation. If it is not happening, I would want to know why the department is not providing that assistance.

**Ms SYMES** — You have covered off quite well a lot of my interest. I want to acknowledge your support for the children, youth and families amendment bill that is currently before the Parliament. You have spoken of your resources and your other ideas. I guess I just wanted to give you another opportunity if there is anything more you wanted to say in relation to the safeguard in the bill, in conjunction with the additional resources in the budget this year that Mr Jackomos has acknowledged, and how you think those combined might better protect vulnerable children.

**Mr GEARY** — I think there is a degree of responsibility on this that comes back to the way we service children. We can play ping-pong with legislation. There are a lot of technicalities in the last legislation that came through, and this is only a very small piece here that we are talking about, but they certainly are aimed at keeping children safer and keeping children out of the system. My commission is in the process of presenting to Parliament an own-motion report on the harm that comes to children in residential care through sexual assaults, and that will land on Parliament in about a month's time.

**Mrs PEULICH** — Sorry, what was that? I just missed it.

**Mr GEARY** — It is an own-motion report that my commission will be landing on Parliament in about a month's time that reports on the harm that comes to children through sexual assaults — children who are in our care, state care, now. Not 20 years ago — now. I think that we need to look practically at the situation many of these kids are in and stop being lazy about the way that we place them. There are about 500 children in residential care, and in my opinion that could be halved and more.

**Mrs PEULICH** — Is that information captured by the terms of reference of the Royal Commission into Family Violence, or is it excluded from that?

**Mr GEARY** — It is separate from that, except that — —

**Mrs PEULICH** — Given that that is, for all intents and purposes, fulfilling the role of a — —

**Mr GEARY** — That commission will be touching on what happens in institutions and in government care, but this is specifically something that comes as a consequence of us getting category 1 incidents every week and fulfilling our obligations in this commission to ensure that we are best informing you as a Parliament as to what has happened.

**Mr JACKOMOS** — I think the amendments and the additional funding go in the right direction. More funds would be loved, but I think it is more about getting the right practice. From my side it is about getting better outcomes. It is about addressing upstream, working with young children, keeping my children in school and also about having the contact with family and community once they are in care. I think this is what will give us better outcomes at the end.

**Mr GEARY** — I will say that Andrew has taken on this incredible task of speaking individually to the families and workers of these children — 1000-plus children around the state. He has been doing that three days a week for the last four months and will be doing it for the next four months. This is the most fulsome work that has been done in relation to the services that are supplied or given to Aboriginal children and families. I think it is something we are very proud of.

**Mrs PEULICH** — I have a series of fairly simple questions that you may be able to answer very quickly.

**Mr GEARY** — Sure.

**Mrs PEULICH** — First of all, Mr Jackomos mentioned that 70 per cent of Indigenous children are in care in non-Indigenous settings or families.

**Mr JACKOMOS** — Yes.

**Mrs PEULICH** — Why is that?

**Mr JACKOMOS** — I think there are a whole range of reasons. One is the socio-economic status of a lot of Aboriginal families. I think there is cultural competency awareness that needs to go on with child protection. In my work, for each task force we are presented with a genogram of the family, and there are all these Aboriginal people on the genogram. In the middle you will have one or two non-Koori, and I bet I can tell you where those children will be placed. A lot of it is about working more with our current workforce, the child protection workforce, to make them more culturally competent. It is about getting more Koori workers into child protection, not just as workers but as managers. On our task force it is very rare to see a Koori worker. When I was in justice we had the same issue about trying to get Kooris into corrections. It is about creating the workplace; it is about creating a workplace that supports Kooris in those industries, in the sector.

It is also about kin, In Victoria there are three levels of remuneration — I cannot think of the correct term — for carers. Kinship carers get the lowest. While I am told that they are eligible for the other two, complex and intensive, as a general rule kinship carers will just get the base.

**Mrs PEULICH** — My follow-up question to Mr Geary is: in view of Mr Jackomos's comments, do the same comments apply to children from multicultural backgrounds — that is, are there children where those considerations are also taken into account when it comes to placement? Is there the same propensity towards acting as a foster carer amongst people from multicultural backgrounds? I suspect not. There probably is not in relation to adoption as well. Also, are there socio-economic factors that may impinge upon those decisions. Are you able to comment on that?

**Mr GEARY** — Yes. I have a group of people who come to my office once a month and talk about issues that relate to CALD children. In many ways CALD families suffer and have no history. The Aboriginal community has history and is still beleaguered in terms of people not trusting them as carers. In relation to a lot of the CALD families because they have no history, there is just nobody to help.

**Mrs PEULICH** — And there may be a distrust of the state?

**Mr GEARY** — There certainly is. Do you know — —

**Mrs PEULICH** — Given they have often been victims of authoritarian regimes.

**Mr GEARY** — I have talked to CALD groups. When they hear that I am a commissioner they sometimes freak out, because the terms from where they are and where we are are quite different. It is extraordinary.

**Mrs PEULICH** — My only suggestion is — and I appreciate the unique challenges facing children from Indigenous backgrounds — that there are some parallels with others as well.

**Mr GEARY** — Yes.

**Mrs PEULICH** — Your comment that maybe DHHS needs to be bound by the same service standard expectations as they impose on other providers is probably a good case in point.

On your comment in relation to resourcing, it is always interpreted as being about money. I am not a believer that money solves all issues. In fact sometimes we use the justification for reforming local government that if we paid councillors more, we would get better quality councils. I am not sure that that has been the case.

Coming back to resourcing, is it always a case of money, or is it actually a case of appropriate and effective services? Even where those are provided, say, if you are dealing with parents who suffer from mental health issues, which have been the drivers of family breakdown, can you comment or tease out the call for more resources? Is it just the money, or is it the appropriate services? Even where those are provided, does it always guarantee results that allows family reunification?

**Mr GEARY** — I can just imagine what my friends in the sector would say if I said that they did not need any more money.

**Mrs PEULICH** — But is it all just that?

**Mr GEARY** — Resources are an issue, but, as I said before, I think a more strategic dispensing of the funding that happens now would be a really sensible thing to do. As I said, I do believe we throw a lot of money

at residential care that could be better used. I went to Kilmore and had a meal with a kinship care couple in their 70s who are caring for three children. Grandma just said, ‘Look, I would just like somebody to come three times a week to help me with shopping, or to ask if they could take the kids to school, or just to talk about current day parenting issues’. That is the sort of support that people need. If we supported people in the community in that way — and it is simple — we would have fewer children in residential care.

**Mrs PEULICH** — So with effective, targeted and customised services, not just money thrown at them. We have thrown money at education over a 10-year period, and it has made no impact on the flat line of literacy and numeracy. It is about having those effective, efficient and targeted services.

**Mr GEARY** — I tend to look at it as I am driving to work in different ways. Sometimes I wish we would think about spending our resources on some of our more vulnerable children instead of worrying too much about getting to the airport 20 minutes earlier.

**Ms SPRINGLE** — I am curious to know how comfortable you are with the 2014 amendments that will remove the oversight powers of the courts in certain cases and remove the power in some cases to make orders that it considers to be in the best interests of the child.

**Mr GEARY** — Do you want to answer that?

**Mr JACKOMOS** — I am not 100 per cent comfortable, and I do not think anybody would be 100 per cent comfortable. I am prepared to see how it goes. I understand that the minister may be doing a review within six months to see. I think that might be a bit early. I think it might need to be over 6 to 12 to 18 months to do it. So I am not entirely happy or assured, but I am prepared to say let us look at the review. I know Bernie and I would be both eager to be involved in that review if possible to give it an independent look.

**Mr GEARY** — Yes.

**The CHAIR** — If I could follow up on that, Mr Jackomos, do you think the six-month review should be perhaps a 12-month review or there should be a subsequent review?

**Mr GEARY** — If it was a six-month review, it should certainly not just be a review and that is it; maybe it should be another review six months after that. Andrew and I have not really spoken about this, but my immediate reaction to the six months was that maybe it should be 12. If it was six months, it should be followed up immediately in another six months.

**The CHAIR** — Mr Jackomos and Mr Geary, thank you both very much for your time today and your preparedness to answer questions from the committee. We sincerely appreciate it. Thank you very much.

**Mr JACKOMOS** — Thank you very much for the opportunity.

**Mr GEARY** — Thanks a lot.

**Witnesses withdrew.**

# 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 — 19 June 2015

Members

Mr Edward O'Donohue — Chair

Ms Nina Springle — Deputy Chair

Ms Margaret Fitzherbert

Mr Cesar Melhem

Mr Daniel Mulino

Ms Fiona Patten

Mrs Inga Peulich

Ms Jaclyn Symes

Staff

Secretary: Ms Lilian Topic

Research officer: Mr Anthony Walsh

Witnesses

Ms Deb Tsorbaris, chief executive officer, and

Ms Mary Kyrios, Senior Policy and Project Officer, Centre for Excellence in Child and Family Welfare.

**The CHAIR** — I declare open this public hearing of the Legislative Council Standing Committee on Legal and Social Issues. This hearing is relation to the children, youth and families amendment bill. I welcome Ms Deb Tsorbaris, the chief executive officer of the Centre for Excellence in Child and Family Welfare, and Ms Mary Kyrios. Thank you both for being here. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and is 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 a proof version of the transcript in the next couple of days. We have allowed half an hour for this session. To ensure that there is sufficient time for questions, I ask you to keep your opening comments to between 5 and 10 minutes. Finally, I remind you that the inquiry is to obtain evidence in relation to the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 which is currently before the Parliament. I invite you to make your opening address.

**Ms TSORBARIS** — First of all, I am going to open by giving a few words about who we are as it makes it a bit more helpful when you are directing questions to us. I am Deb Tsorbaris from the Centre for Excellence in Child and Family Welfare. I am the CEO. This is Mary Kyrios, who is here to support me if there are any technical questions that you refer to me. She will be here to assist.

The Centre for Excellence in Child and Family Welfare, or the centre as I will refer to it in my presentation, is a peak body established to improve the lives of vulnerable children and their families. The centre was established with support from the Victorian government's Community Support Fund in 2003. Other significant donors were The Ian Potter Foundation, The William Buckland Foundation and the Helen Macpherson Smith Trust. So we are a very well-supported organisation. The evolution of the centre marked a natural progression for CWAV, as most of you may know, from a peak body that was set up in 1912 to a centre of excellence with a wider reach of valued members, an extended scope to form a new partnerships and a renewed mission to serve vulnerable children and young people in families across Victoria. The centre and its hundreds of members represent early childhood, child, youth and family support services, and out-of-home care services including kinship care, foster care, residential care and services providing children with support moving on from care. The centre works with these organisations and those employed in child and family services to strengthen the quality and capacity of services. It does this through workforce development and learning, policy development, research and advocacy for children and families.

The centre's objects are affirming that each child and young person has the right to security, nurture and relationships of continuing family life; and that each family, however constituted, has the right to support and protection within society. The objects of the Centre for Excellence in Child and Family Welfare shall be: to provide a means by which organisations in the child, youth and family welfare sector can work together in their mutual interests and for the benefits of the people they serve; to promote leadership and excellence in child, youth and family services; to actively represent the interests of members to government and the community; to develop and influence policies in child, youth and family welfare; and to promote ongoing research and evaluation in child, youth and family welfare. These are amongst many others; I am not going to go through all of them for you.

We have a small secretariat and a couple of my staff are here today. We provide a wide range of services on behalf of the department but also for our members in program development and policy direction. We are often represented on high-level committees across the sector and within government to provide advice on behalf of the sector. We provide a whole range of other activities and forums and of course, when appropriate, we work within media circles to improve the understanding in the community of the needs of these children. That often benefits both ourselves and government in trying to do this important work.

This leads us to the permanent care reforms introduced last year. We would like to have acknowledged from the outset that child protection operates at the intersection of children's rights, parents' rights, siblings' rights, extended family members' rights, carers' rights, community values and the appropriate role of the state and courts. From our point of view it is really important to understand that at the outset. The matter of permanency planning for vulnerable children in particular triggers all of these rights, which in many ways relates in a highly contested space and may be a reason as to why we are all here today. From the centre's point of view, we think that a focus on early intervention for families that are caring for their children is a really important first premise. Getting to court is the last thing any of us want.

I am now going to give you a bit of background to the Child, Youth and Families (Permanent Care and Other Matters) Act 2014. I think it is important to talk about the history here. In 2014 DHS provided a confidential briefing on the proposed legislative amendments on stability planning and other matters to the centre and other community services organisations and members of the centre. The reforms were based on previous inquiries, such as the Cummins report and the stability and permanent care project report, and future directions of permanent care and adoption, which unfortunately we did not have access to in terms of these two reports. But it is important to say there is a long, long history of reports and inquiries that see a constant change and shift in legislation and service delivery that we all need to take notice of. Having said that, the issues for children in care are not new. They are well documented in Victoria and other jurisdictions nationally and internationally. However, these reports could provide the benchmark to measure future reforms.

The need for stability for all children, but particularly children in care, is critical. Following the briefing we had with the Department of Human Services, as it was then, the centre members expressed some reservations regarding aspects of the proposed measures, given that they were significant in nature and as such would merit further consideration. I will touch on those briefly. They included the redress elements, no contact conditions on orders, issues around sibling relationships and keeping siblings together, and the needs of Aboriginal children. Some of those things were addressed during the course of the consultation with the Department of Human Services and found their way into the legislation.

The main issue for our members turned out to be — because we did not actually see the bill until it appeared in Parliament — the revocation of registration, which we had not been alerted to during the briefings, and we have continued to advocate for changes to the wording to better reflect the intent and purpose, which was to revoke registration where organisations gave back the services to the Department of Health and Human Services. Unfortunately the time frames following the bill did not allow for detailed analysis to enable any other issues to be addressed. Despite this, the centre supported the reforms to ensure that vulnerable children and young people would experience improved stability and outcomes in care and we provided in-principle support prior to seeing the bill. I think it is very important to give you that history.

The Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 proposes to reinstate provisions that were removed in legislation passed last year in the Children, Youth and Families Amendment Act 2014. The provision relates to the powers of the Children's Court of Victoria to make a protection order based on reasonable steps taken by the secretary to provide the services necessary in the best interests of the child or to enable the child to remain in their parents' custody. We understand that Minister Mikakos is reinstating this provision following the Children's Court and legal stakeholders expressing a range of views, and they are best placed to comment on whether this new bill addresses their original concerns.

The role of the Children's Court, the Department of Health and Human Services and the sector are important elements of the child protection system, designed to ensure that children and young people's safety, wellbeing and best interests are met. Regular planning and discussion between all of these parties is critical and sometimes does not occur as often as it needs to. We hope the permanent care reforms align and drive more timely decisions to create a more stable and permanent environment for children and young people in either their parents' care or alternative care. At the centre we hope to continue to develop our new relationship with the Children's Court with the recent addition to our board of a now retired magistrate of the Children's Court, Greg Levine — I am sure he will not mind me telling you that — and with the new president, who has now started, when she gets an opportunity to meet with us. We have a very close relationship with the Children's Court, and we see that as important.

In terms of stability I want to also mention, because I did not mention it earlier — and I am sure the Department of Health and Human Services presented some of these things; or maybe they didn't — that for some of these children the drag of the drift on their lives is remarkable. It can be five, six or seven years. They are little children who could have 5 schools, 5 to 10 placements, 5 teachers, 5 caseworkers, 5 foster carers and 5 residential placements. So with this work in this area we will not get it perfect, but addressing it is important, and the work that the department has done, the previous government has done and the new government has done hopefully will lead to improvements for individual children.

Overall on the bill and the reforms, the legislation will be tested on its implementation, and we are encouraged that there will be a review six months following its implementation, in March 2016. How that occurs, whether there needs to be a longer period of time or whether it should start later, we will certainly be working closely

with the Department of Health and Human Services on that review. We look forward to contributing to the implementation and review of these reforms. At the centre we will be looking to see if it will improve stability for children in care, particularly Aboriginal children. If any of you have the opportunity to sit in the Children's Court and watch cases, we will be doing that as part of our interest in seeing how this works. It is a remarkable experience to actually sit there and listen to what is happening to these families and these children. It is probably the only way to do it.

We are encouraged also that there was fairly significant funding announced in this year's state budget. There is funding for Child FIRST and family services; early intervention services that target families before they reach crisis point and prevent them from entering the statutory child protection system and assist families to be reunited where they have been separated to ensure the child's safety; funding to remove barriers to permanent care by funding a team to undertake intensive case planning and support for children in care as they move to permanent care and enabling access to flexible funding to meet the costs of permanent care; and funding to improve the out-of-home care system and additional child protection workers to meet demand. As you can imagine, as a peak body excitement fills the air when there are more resources, and we will all work very hard to make sure we demonstrate the value of those resources in terms of outcomes for children.

In summary, we support this bill and hope that the reforms and funding will bring together change in order to make more timely decisions for children and their best interests. We hope that children's safety, wellbeing and best interests remain paramount in all decisions that we and the child protection system makes for them and that they are in stable placements, wherever that is with their parents, with kin or alternative care. We want children in care to be provided with timely services, which is not always the case now, to address the trauma that they have experienced in their families and to be provided with timely access to prevention and intervention services to ensure children are provided with the care and stability that allows them to meet their full potential. That is my 5 or 10-minute speech. Thank you.

**The CHAIR** — Thank you, Ms Tsorbaris, for that presentation and again for being here this morning. Could I take you to a couple of comments you made about the term 'drift' and the importance of stability? You also referred to the need for more timely decisions to give certainty. In that sort of context, can I get your feedback on the removal of the two-year time frame for decision-making. Going to your point about the intersection of so many different interests — those of the parents, the children, the state, the siblings and others — what is your view on the removal of the two-year time frame in the context of seeking timely decision-making? Also on the intersection of all those interests, in whose interests is the removal of that two-year time frame — the child, the parent or other stakeholders in the matrix you describe?

**Ms TSORBARIS** — Mary, would you like to answer? We did think about this while we were listening to the previous presenters.

**Ms KYRIOS** — I think currently the legislation has some time limits in section 170, and they are based on children's age and development. How I probably see this current bill changing that is that it drives practice a lot more, both by child protection and the Children's Court so that they are better aligned, so that there is not a drift in care or any delays in decision-making.

I think there are also lots of other provisions in legislation — other checks and balances as well — that ensure that decisions are made in children's best interests. There are the best interest principles that are designed not only for child protection but also for the Children's Court and the sector, and that makes us all responsible as the child protection system to make sure we make good decisions for children. I think that will drive decisions for the system and ensure that we are all working in partnership together to make sure that good decisions happen in a timely way, so we do not get that five years, five placements, five schools for the children.

**Ms TSORBARIS** — One hopes that a time frame does drive decision-making. We can talk two years, three years, but at the end of the day it does give much greater guidance to that, driving decisions — not just child protection, but the courts and the sector to try to get more timely decisions. It is important — and we are happy to provide more information about this — to understand the Victorian context within the globe. These are more moderate provisions than in most other jurisdictions. If we look at New South Wales, they are driving these decisions a lot harder; if you look overseas, they are driving these decisions even harder.

If you look at this in the spectrum of what the world is doing, these are much more moderate provisions than you would see in other places. Nonetheless we do want to see every stakeholder driving its agenda much harder

than we have been. Otherwise I do not know why we are all here, because really decisions around kids are drifting.

**The CHAIR** — Just to clarify for the record, when you say harder you mean more timely?

**Ms TSORBARIS** — More timely decision-making. Again, we have taken a child-centric focus in our presentation, because that from our point of view is important. As I said earlier, in such a contested space everybody has a view, but for these children, and some of them are very young, decisions are taking a very long time.

**The CHAIR** — I will just ask one brief follow-up. I think you may have heard the commissioner for children and young people talk about the 6-month review, and perhaps it will be useful to have a 12-month review, or a review at a subsequent time. Is that something that you would support as well?

**Ms TSORBARIS** — First of all, we do not know the scope of the review; we do not know what it is going to do. I think there would be a view that it is going to take a little bit of time to see what is going to eventuate in terms of all of our practice, not just the practice of the court. We would be providing advice in due course to the Department of Health and Human Services from our membership's perspective about whether we needed more time or whether we needed to delay the review and do it a bit later. Certainly, we are all focusing on it, so I am sure that many of us will be giving lots of advice about its scope, when it should start, when it should conclude, who should do it and how it should be done. We are not backward in coming forward in terms of providing that sort of advice, but we really do not know at this point what that advice will be.

**Ms SPRINGLE** — I have a question on this issue of time frames. Given that we heard from the department earlier that the vast majority of cases are dealt with within a 12-month to 2-year period, when we are getting to these cases that go beyond that, we are probably looking at highly traumatised children with very complex needs from very complex backgrounds.

**Ms TSORBARIS** — Yes.

**Ms SPRINGLE** — Given that and the fact that we know that the courts are overloaded and overworked and there are not enough resources there — we also know there is a lack of services on the whole, and the VAGO report from last month pointed that our quite clearly — I am curious to know what the evidence base around time limits and the use of a time limit as a mechanism for timely decision-making is. Is it based on an evidence base or is it just an assumption or what is that?

**Ms TSORBARIS** — I have not got it with me, but over the last 30 years there has been inquiry upon inquiry that gives us some evidence about what is happening for children in the existing court system and what we need to do. We had the Cummins inquiry, as you know. The previous government had a very substantial inquiry in this space and it made lots of recommendations. The changes to legislation mirrored the recommendations of the Cummins inquiry, which is why we have it.

**Ms SPRINGLE** — Some of them, yes.

**Ms TSORBARIS** — But prior to the Cummins inquiry we had inquiry after inquiry that actually indicated that we needed to continue to contemporise our legislation. That is the data source; that is the research source. Cummins is where you need to go if you want to look for that evidence.

**Ms SPRINGLE** — I have just one follow-up. You talked about checks and balances. Could you just outline what they are?

**Ms KYRIOS** — What I meant was that with the current legislation, section 170, it does not drive the practice. It gives some time lines, but the court orders are not aligned with them. I think what the current bill does is aligns the time lines with the court orders, so that once you get to the end of a court order there is a review about what the next court order should be and how that aligns with these reforms and permanency for children.

**Ms SPRINGLE** — Yes, great. Thank you for clarifying that.

**Ms TSORBARIS** — Could I just refer back to the comments about service delivery and what we need to corral around very vulnerable families who, if we do not the support them, either cannot be reunified with their children or they lose their children to the system. One of the exciting prospects that we have with a bit more money through Child FIRST and family services is to work with those families that we call 'heavy users of the system', who are already on that tipping point of losing their children or us wanting to reunify them. The new money will mean we can identify those families earlier but actually work more intensively with them. So there are some opportunities now with the other reforms that sit around this legislation for the sector to provide advice to the government about how to use that money. We are in those conversations now.

The other thing I would say is that for many birth families, they do need access to drug and alcohol and mental health services. Again, as a sector we will be driving that very hard with government around the question: are those services being brought to bear? The courts are saying these families need them. Are they being brought to bear? Are they in the right place at the right time? Some of the reforms with this legislation mean that we can be very assertive about making sure those resources are brought to bear for birth families. This is not about just removing children. We see this as an opportunity to talk about those families that may lose children or not be able to be reunified. So from our point of view, we see those two lines of effort.

**Ms PATTEN** — It is very interesting and I am learning a lot. The concerns that have been raised with me are still about the time frames. I appreciate the drift and the notion of five schools, five foster families. The concerns that have been raised with me are about the time limits put on the court's discretion for family reunification so that they are effectively prohibited from making family reunification orders after two years. Given some of the high needs of some of those very vulnerable families, particularly — as the VAGO report found — in rural areas and places like that, where those services just are not there, are you comfortable with that two-year restriction given to the courts in the 2014 bill?

**Ms TSORBARIS** — Let us just go back to the VAGO report. Are you talking about the Child FIRST and family services VAGO report; is that what you are referring to?

**Ms PATTEN** — Yes.

**Ms TSORBARIS** — We were very happy with those findings. They were followed up with resources beyond the demand quota of 10 per cent. So from our point of view we are celebrating a VAGO report that has responded with more resources than we were asking for as a sector, above 10 per cent, so we need to keep that in mind. We do not want to get into a situation where we are talking about not being able to respond to those things because I think we think we will be able to.

In terms of timeliness, I am not sure there is much else that we can say, because from our point of view we want to drive not only the practice of the court in child protection but our own practice. From where we sit, where we see what happens to birth families not getting decisions they need to have made, where carers cannot get decisions made and the child is sitting in this sort of no-man's-land, I am not sure how we can do anything unless we set ourselves some parameters. There have always been parameters in this legislation. There have always been periods within which we have had to work.

We would have a view that we actually do need to hold ourselves accountable. None of us are perfect in this space. We would all make different decisions sometimes about particular cases, given what we are then faced with. But I do not know that we can make much more comment about the timeliness.

**Ms KYRIOS** — I think we just need to take it from a child's perspective as well. If I was a five-year-old child and I began my care experience at five, how long do I need to wait before I am in a stable home, in a stable school, going to the same GP and the same dentist and having the same friends? How long do I have to wait before the adults around me make decisions? Is two years too short, or too long? I guess we will see that in the review and I think, like Deb said, we need to look at what other jurisdictions are doing, because they are having more stringent time lines than these ones. They are considered more moderate, in comparison.

I think for us in the centre we will be looking to see what is happening in other jurisdictions, what are the outcomes there, what is the research and evidence showing for children, and are we getting better outcomes. Also, for the review that will occur following the implementation, we will be keeping a close eye on it to see what are the unintended consequences, what are the themes that are coming out that maybe we did not anticipate or that we need to perhaps correct with a change in legislation or policy or practice.

**Ms TSORBARIS** — I suppose our job as a peak body is to have the community understand that there are 7500 of these children in care every night and they are not really a very visible group of people in our community. So our obligation is to make sure that the voices of those children come through. If they were sitting here, they would say, 'Why didn't they do something sooner?'. That would be their catchcry. So from our perspective we just all need to work harder and faster and make good and sound decisions based on all of the information we have in front of us.

**Ms SYMES** — Thanks for being here today. In relation to the bill that is before the Parliament at the moment, can you provide an example of how the courts can use section 276 — I do not know if 'common' is the right word, but a common or practical example that you see? Can you tell us why it is important to have this authority? In closing, are you worried about the current bill not passing the Parliament?

**Ms KYRIOS —** I am not sure I am going to answer your question exactly, because I do not exactly know how the courts will always apply it. They have so many other considerations that they need to weigh up and it is about where they put the most weight within the legislation. We talked about the best interests principles before and there are very many of those, so it is about what weighting you put on all of those. Depending on the weighting they might put on this particular section, it could have the effect where they might not put in a protection order. If you look at it from the child's perspective, that could mean another delay in making final decisions for children.

The other side of it means that maybe the Children's Court think there is a service that should be involved that has not been involved yet, or that the child or family are waiting for involvement with, so it might drive that a little bit harder if they do not make the protection order. The other side of it for members of the centre is that it might mean that some of their resources have their uses directed by the Children's Court and is that always the best thing for them? I do not know. I think either way you need to balance out what are the positives and the negatives and which outweighs which; what is the risk analysis there?

**Ms TSORBARIS** — In terms of the changes to the bill that have been negotiated with the current government, it is really for the Children's Court and the government to work that through. From our point of view, not unlike my colleague Andrew Jackomos, we have got to a position with this where we want to get to a point where we can look at what is working, so what reforms are working, is the legislation working, are the new dollars starting to work in the best interests of children? Once we start getting into that space, then we will be able to see what we were unable to know before these changes occurred.

We are presently in conversation with the department of human services around ensuring that everybody understands this legislation. From our perspective, and that is why I have Mary working for me, there has been quite a bit of misinformation about this legislation as well, because it is actually quite complex to get your head around what it really means. We have been working quite hard to make sure that the things that are true and factual are being talked about and the things that are not so are not, or that we are trying to rectify that, because it can become a very heated space.

What happens in that situation, and people forget, is that children and birth families and carers start to panic, and I think it is really important that we do not make it more difficult for them. So from our point of view we are spending a lot of time making sure that people understand the changes and that whatever happens beyond the work of this committee we will continue to take that responsibility really seriously, because the people in this space — the carers, and I know you meet with carers and you meet with birth families in your constituencies — are under a lot of pressure, so we need to make sure that in this environment, with this stuff, that we are all a bit clearer.

**Mrs PEULICH** — I have three questions, if I may. You mentioned that there was a tipping point for families which may precede the child being placed into care. What are the contributing factors in your experience and from the research that you have seen or the empirical evidence that is available that are existing at that point in time?

**Ms TSORBARIS** — Mary is an ex-child protection worker, so I might get Mary to give a bit of an overview.

**Ms KYRIOS** — I think Andrew explained it really nicely before when he talked about some of it is about socio-economic status, some of it is about intergenerational abuse — going from family to family, not having the right resources — —

**Mrs PEULICH** — Are these underlying causes and drivers?

**Ms KYRIOS** — I guess from my experience there are families that have different characteristics that might make them more vulnerable, so that might be substance abuse issues, alcohol issues, drug issues, mental health issues, and if those are not being addressed and they are not accessing the right services, then they might impact on their parenting. You talked about family violence before. These are family characteristics that coexist in many families, so you will need to put in intensive services to try and address those so they do not perpetuate in future generations.

**Mrs PEULICH** — Is that information, is that understanding being captured by the current royal commission, do you think, so they can better inform the recommendations that they make about programs and services that are needed and when they are needed?

**Ms TSORABARIS** — In the family violence royal commission? Certainly in our submission to the royal commission we have presented all of that information, so the relationship between child protection issues or the need for the children and family violence and the service system, we have certainly captured that in our submission.

**Mrs PEULICH** — I guess my concern is that it is very hard to make recommendations about what is working well if we do not have an understanding as to the complexities and what sort of programs need to exist to make sure that children can continue to maximise their opportunities to be raised by their natural or biological family or families.

Secondly, you have spoken a lot about how we all need to be accountable, and I could not agree more. Coming from a communist regime, I have this inherent distrust of states and agencies. Whether or not this change proceeds, could you perhaps tease out what sort of indicators we should be looking at as evidence of improvement or success that in actual fact this change in machinery is working? What are the indicators that we should be looking for, we should actually be setting up apart from just attending court? Will it be fewer children? The number of kids who have orders extended? How long it takes for them to them to get a final decision? Are there other indicators that you would suggest we should be looking at.

**Ms KYRIOS** — I think there is a continuum of things that we need to be looking at from the beginning of children entering the child protection system right to the end, because these permanent care reforms are really looking at the pointier end where they are entrenched in the child protection system, so we would really like to see Child FIRST diverting families from the child protection system, that once they are entering the child protection system that we are targeting in a timely way services to address the issues that brought them to the attention of child protection. That the children who have experienced abuse and neglect are getting the right services to address their trauma so that they can reach their full potential. I think we will be looking at a lot of different things. The implementation group that the department is setting up will certainly be having some input, whether they will be KPIs they will be looking at — —

**Mrs PEULICH** — Indicators.

**Ms KYRIOS** — Or indicators that they will be looking at. We would be looking at what led to this review. So one was Cummins. He said children are taking five years to get to permanent care order and that is not good enough and things need to change, so we would be looking at that as one of those indicators. But I am sure there are going to be lots more indicators. So it might be looking at the continuum not just at the pointier end. I do not know whether you want to add anything, Deb?

**Ms TSORBARIS** — I think one of the issues that has come up during the course of all of these conversations last year and this year has been about separation of siblings. It is a good example of what Mary talks about. Often it is not really considered, even within the court context. Kids are separated quite a lot for all sorts of reasons, and I am sure my colleagues who are presenting next week will talk about it further, but we should not be waiting until a court order is issued to be talking about keeping siblings together. That seems to be what we do in this world. At the moment we are examining what do the policy guides say and what do the

practice guides say? What is the culture of our service delivery that is meaning that children are being separated? We have older siblings who would be very happy to care for their younger siblings. There is the moral and ethical side of this but also an economic side. We could argue forever about changing the legislation around siblings or we could get on with it and start to change the way we currently operate in a child protection and community services space.

We do not want to delay this. We want this to move forward, because we think there are some things we can all do outside of the legislative framework that would improve things for children, and the siblings one is just one example. We would love to have it in legislation, but from our point of view there are other things we should be doing much earlier.

I did not answer your question. I am really sorry.

**Mrs PEULICH** — Just on the last point, you mentioned looking at what other jurisdictions are doing. Are you looking at other international jurisdictions?

**Ms KYRIOS** — Yes, mainly the UK and USA, because they have quite well-documented policies and legislation.

**Mrs PEULICH** — The reason why I am throwing that in is that obviously we have a growing multicultural component, where the experiences and views of family are very different and the views about accessing services outside the family are very different. There may be a distrust of social workers, psychiatrists and the authorities, so it is not just the Anglo-speaking world but it is others, so we actually need to understand those nuances. For example, Islamic communities have a very strong sense of family. They are concerned about the potential radicalisation of their young people — obviously it is not children, it is young people, but nonetheless some of them are children. With those who are of adult age, their parents are excluded from the dialogue, when in actual fact their families are the ones who can actually impact the most on them. These are things that are embedded in their cultures, so we need to inform ourselves not only about the Anglo-speaking world.

**Ms KYRIOS** — Absolutely.

**Ms TSORBARIS** — It is important to acknowledge that the work that has happened in other jurisdictions informed this legislation, so we know that the previous government did look across the globe at the types of legislation that could be implemented when this was brought to the house last year. So we will be looking at whether there are any changes or any new things we want to bring to bear in that review period. But certainly, as has been said earlier, from our understanding this is quite moderate legislation, and again, the changes that Minister Mikakos wants to bring back into the act are moderate. From our observation, that is not a bad place to land.

On a final note, though, from our point of view all of this is going to require really good governance and an improved, cooperative planning process between the courts, the Department of Health and Human Services and ourselves to make sure that these children do get what they need. That is what we are looking for too.

**The CHAIR** — Ms Tsorbaris and Ms Kyrios, the committee thanks you both for your evidence today and for your preparedness to respond to the questions from the committee, and we thank you for appearing before us at relatively short notice.

**Committee adjourned.**

# C O R R E C T E D   V E R S I O N

# 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

Ms Nina Springle — Deputy Chair

Ms Margaret Fitzherbert

Mr Cesar Melhem

Mr Daniel Mulino

Ms Fiona Patten

Mrs Inga Peulich

Ms Jaclyn Symes

Participating Members

Mr Gordon Rich-Phillips

Staff

Secretary: Ms Lilian Topic

Research officer: Mr Anthony Walsh

Witnesses

Ms Fleur Ward, chair, children and youth issues committee, and

Mr Andrew McGregor, committee member,

Mr Joe Gorman, committee member, and

Ms Sarah Bright, policy lawyer, Law Institute of Victoria.

**The CHAIR** — I 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. I welcome the Law Institute of Victoria, in particular Ms Sarah Bright, Ms Fleur Ward, Mr Joe Gorman and Mr Andrew McGregor. The committee thanks you very much for making yourselves available at this time of the day and at short notice.

I caution you that all evidence taken at this hearing 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 protected. All evidence is being recorded, and you will be provided with proof versions of the transcript in the next couple of days.

We have allowed half an hour for your session with us tonight. We thank you for your attendance this evening. I would ask you to make a brief presentation, and thereafter members of the committee will have questions for you.

**Ms WARD** — We thank you for the opportunity to present evidence to this committee, and we sit before you not only as representatives of the law institute but also as lawyers who are specialists in child welfare law. By way of introduction, Mr Joe Gorman is the longest practicing child welfare lawyer in Victoria, starting in 1975, and Mr Andrew McGregor has practiced almost as long as Joe — for some 28 years.

It is the job of the Children's Court and the lawyers before it to ensure that there is just, fair and proper treatment of vulnerable children and their families by the state, namely, the Department of Health and Human Services. We have spent our careers fighting to ensure that such treatment occurs. None of the 10 substantive public inquiries in the last 10 years, including most recently the Cummins inquiry of 2012, have ever endorsed fettering the Children's Court's discretion and reducing its powers in the way that we see in the 2014 legislative amendments.

We have represented thousands of children and families across our careers. We have witnessed the worst cases of abuse in care and the most appalling examples of mismanagement by the department. Unless you are part of the court process, it is difficult to appreciate just how much is at stake every day for these children and their families, just what has to be managed and how serious the impact of every single legislative provision is upon families and their children. We ask that you would consider yourselves how you would like to be treated if it was you and your child before the Children's Court.

It is undeniable that the 2014 reforms dramatically reduce the powers of the Children's Court, and we say that this is very dangerous when vulnerable children are involved. Any decision-maker in this area must be cognisant, as we are, of the pre-Carney era where children in state care were subject to wardship orders. Given the lack of judicial oversight of care arrangements, many of those wards of the state were abused, perversely mistreated, and often ended up homeless.

You will no doubt be aware that a lot of the evidence before the current royal commission into child sex abuse is being given by the wards of the state. With some of the provisions in the 2014 amendments we are resorting back to draconian wardship-type orders, namely, the new 'care by secretary' orders. Therefore we are imploring you to make a number of simple amendments to the 2014 legislative reforms to ensure there is a return of the essential powers of the court to protect children and ensure that the court remains the final arbiter of the best interests of children. It is not an exaggeration to say, in our opinion, that if you do not act and reinstate some of the court's powers, the outcomes for Victoria's children and their families will be catastrophic.

As to the lack of consultation, we say there was an abject lack of consultation. The law institute was invited to a single meeting with the department in June 2014. Joe and I attended personally. We were given a slide show presentation of what was coming and we were told to keep it in confidence. To say that that is consultation is certainly extending the definition.

We refer you to our submissions and our previous submissions to the last government as to the specific amendments we seek, but tonight we just want to talk about family reunification orders and care by secretary orders.

Amendments to those orders would ensure that the catastrophic consequences for children and families that we envisage could be avoided. The issue of the reinstatement of the court's ability to make conditions for contact on the care by secretary orders and the court's ability to determine the length of care by secretary orders is of profound importance to us as children's lawyers. Articles 8 and 9 of the United Nations Convention on the Rights of the Child demand that there is a preservation of the child's identity and regular contact for a child with their parents and siblings if they are removed from a parent's care.

Furthermore, I implore you to read chapters 9 and 15 of the Cummins inquiry. Cummins rejected outright the DHS request for DHS themselves to determine the frequency of contact. Cummins said, 'No. It is only for the court to determine that issue', but then we see this power removed in the 2014 legislative reforms.

Court-sanctioned contact — that is, contact that is protected by the court — is fundamentally important for these vulnerable children. It ensures the maintenance of their identity. The children before our court have difficult enough lives, but often the strength of their attachments and relationships is positive. And to ensure their sense of self we must allow the court to determine what frequency of contact there must be. It is also important for these children that they have contact with people they trust, people they really do feel safe with in disclosing and confiding if there is any maltreatment and abuse. This was part of the problem with the wardship orders.

As to the length of orders, making it a compulsory two-year period without our court's ability to determine the length of that order is akin to mandatory sentencing, and we say that is unacceptable. I had a matter recently with a child in DHS care who spent no more than two consecutive nights in one placement over a period of six weeks, and in that time the department was unable to comply with the access conditions with her parents and her siblings because the child was shipped around the state.

The system is in crisis. The 2014 legislative reforms only serve to create a mask over the problems that are existing in the system at the moment. We are thrilled that the 2015 bill reinstates section 276. We are thrilled about that, but we implore this committee to endorse the amendments that we seek, because there is much more of the court's powers that needs to be reinstated.

The issue of stability has been raised again and again, and the department has sold these reforms as creating stability. Unfortunately we say that is not what is going to be accomplished by this legislation. Cummins, if you read chapter 9, said that from the date of reunification to the date of making a permanent care order a five-year lag is too long. That is absolutely true, but Cummins did not then recommend this profound interference with the court's powers. Rather, Cummins said, 'Look at the barriers to permanent care' — whether there is support of permanent carers, whether the department reviews for children their stability time frames that are already in the legislation. At no time did Cummins say that there should be orders akin to family reunification orders.

We understand that, according to the department, the family reunification orders are based on this permanency and stability project of 2013. But we now know as a result of this inquiry that the project is not finalised. On this basis and on the basis of the grossly unjust outcomes we predict will occur, we seek that you amend the family reunification orders as follows: to remove — —

**The CHAIR** — If I could just interrupt for a second.

**Ms WARD** — Yes, of course.

**The CHAIR** — I just want to bring you back to our terms of reference. Whilst we have the ability to examine this bill that is before the house at the moment with regard to the legislation that sits behind us, we are examining the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill. That is the bill before this committee. That is the bill before this Parliament. I appreciate the LIV has a range of other issues they wish to prosecute. While they may be relevant to elements of the bill that are before us, I would ask you to address your comments to the bill that is before the Parliament and the committee.

**Ms WARD** — The terms of reference, as I understand them, also include this bill along with the current legislation insofar as it goes to protect vulnerable children, and there is a symbiotic relationship with the effectiveness of 276 and the 2014 legislative reforms. So I cannot address you on the effectiveness in terms of protecting Victoria's vulnerable children with 276 being reinstated if I cannot make reference to the 2014 legislative reforms.

**The CHAIR** — I appreciate that, but I would ask you to make the primary part of your presentation relating to the legislation that is before the Parliament.

**Ms WARD** — Yes. Then in terms of the family reunification orders, we seek that there be amendment to those orders so that 276 can be effective. We say if you do not amend the family reunification orders in the manner that we seek, it will not permit any effective application of 276 by the court. Everybody in this room would be aware that the waiting lists for services are profound and horrific, particularly for clients, families, children in regional areas. We are of the view that with family reunification orders, unless the court can take into account the lack of provision of services by the department, which we often see, or the huge waiting lists, then the reinstatement of 276 is utterly ineffectual.

In our experience, waiting lists for services can vary from three weeks to six months, depending on the region. The Cummins inquiry looked at this in 2012 and made recommendations, but as recently as the May 2015 Victorian Auditor-General's report we see the department is found to be failing in the provision of their family-based services, which are Child FIRST and integrated family services. So there is much evidence in the community, apart from the experience that we have as practitioners every day, that there are not services that are readily available; and these new provisions — the family reunification orders — do not permit the court to take that into account. Therefore doors to reunification are being shut without the court being able to take that into account.

**The CHAIR** — Thank you for your presentation. Have you concluded?

**Ms WARD** — If I could say one more thing.

**The CHAIR** — If you could conclude quickly, that would be great.

**Ms WARD** — Family reunification will have a disproportionate impact on those who are the subject of family violence, those who are Indigenous, those who struggle with homelessness, those who have mental health issues.

**Ms SYMES** — You do not have to rush. It is okay.

**Ms WARD** — Thank you. I appreciate that. I am very cognisant of having only half an hour.

**Ms SYMES** — With respect, Chair, you did interrupt Ms Ward's flow. Take a breather and recompose.

**Ms WARD** — Thank you; I very much appreciate that.

**The CHAIR** — Ms Ward, I would ask that you conclude your remarks in the next minute or two.

**Ms WARD** — Yes, I will.

**The CHAIR** — We want sufficient time to ask questions.

**Ms WARD** — Thank you very much. The only thing we would say in finality is that the six-month review that is proposed is utterly inadequate in terms of the operation of the 2014 reforms but also how 276 will then be of benefit to the community. We say it is inadequate because we will not know how many children are being mistreated, how many children are not seeing their parents or siblings regularly, how many placements have changed and how many families are denied the opportunity to work on reunification. These legislative reforms serve to be nothing less than opaque glass.

**The CHAIR** — Thank you for your presentation. If I could just ask the first question. Going to your point about resourcing and waiting lists, your submission is that the current resourcing of the current waiting lists is unacceptable.

**Ms WARD** — Yes.

**The CHAIR** — Would you like to elaborate and provide further information?

**Ms WARD** — Yes, I can give a number of examples if that would be of assistance. It does depend on the area. We understand, for example, with the Queen Elizabeth Centre, which is the principal parenting analysis

residential stay tool used by the department regularly, for those in the metropolitan area it is one to two beds on a fortnightly rotating basis, whereas for regional areas it is four to eight beds a year.

**Mr MELHEM** — Can you slow down a bit? I am having a problem following you. Notwithstanding what the Chair said, I would rather you take your time and explain that. The Queen Elizabeth Centre was — —

**Ms WARD** — It is a residential house.

**Mr MELHEM** — It was the waiting tool.

**Ms WARD** — Yes, that is right. It is where the parents and their children will go and the quality of their parenting is under scrutiny and there is a report at the end. For those in the metropolitan region, there is one to two beds every fortnight on a rotating basis that the department can access. But for those in a rural area, there are four to eight beds a year. In terms of improving parenting for those who are struggling, and they are many of the people before our court — not bad parents, just those who are struggling; there are some who — —

Perhaps we do not need to go into that, but most of the people before our court are struggling. There is a lack of services in relation to parenting. I have already addressed you on the Victorian Auditor-General's report where they say it is failing. Child FIRST — one of the department's principal services for parenting support — and integrated family services, are failing. That is the conclusion of the report. Then I can give you anecdotal evidence about my clients who wait for significant periods in relation to drug and alcohol counselling, family violence counselling and for assessments in relation to their mental health. But certainly between three weeks and six months — it is that range.

**Ms SPRINGLE** — You have touched on the criticisms of the department by various quarters and in successive reports that have been publicly available. I am keen to unpack the ramifications of scaling back the Children's Court's jurisdiction over DHHS and what practically that will mean on the ground for families. Could you address that for me?

**Ms WARD** — Yes. If you have the power to remove children, there must be proper oversight. So if the court is not able to examine regularly what is happening in terms of care arrangements, because children on care by secretary orders are automatically in for two years and there is no review, certainly within the one-year period that we were used to seeing, or if you have children who were able to see their parents on a regular basis which now that decision will vest solely with the department, we will not know with what frequency of contact the department will then avail those children for contact. They are the sorts of matters we feel will be amounting to things which are not in those children's best interests. We have had this specialist court being able to determine these matters and suddenly all that decision-making power is relegated to an administrative body with a vested interest.

**Mr GORMAN** — We see on a daily basis disputes between what the department of human services proposes is an appropriate regime of contact for children with biological family. The court almost invariably in our experience considers that the department's constraints — budgetary are often cited — are not in the best interests of children and regularly orders that the children should have more contact with their biological family than the department of human services proposes. We anticipate with the care by secretary orders and no role for the court in determining that, that those vulnerable children will be deprived of an appropriate level of contact.

**Mr McGREGOR** — We are being told that the six-month review has no allocation of any particular budgetary amounts to tell us of what level of detail it will entail. We are also being told that the purpose of these reforms is to achieve stability promptly. But who knows when we will be assured about the accuracy of those predictions? Our concern is that where the department currently argues that it does not have resources to facilitate a level of contact, this is simply going to deprive an outside decision-maker of a mechanism for ensuring that that connection between biological parent and child will at some level be maintained.

In the court the description is often given, 'Is it identity contact or is it reunification contact?'. Whichever way it is, the court is in a position to make determinations. If you take that away from external scrutiny, we have a joint opinion that there is a likelihood that that level of contact will reduce markedly. I think we all would have read recently in the newspaper the importance of sibling contact — a third of children in care having no contact with siblings. These are resourcing issues, and there is no reassurance that if you take from the court you will give to

the sector. We are here to argue for a client group. They do not have the capacity to coordinate and come here and argue on their own behalf.

**Ms WARD** — Just in terms of a very important example if I can give it in terms of, say, a woman with domestic violence and homelessness and the issue of ice. Our court sees the intersection of all of the most significant social matters currently alive. If I have a client who is the victim of domestic violence because her partner went berserk on ice, and ultimately those children are removed from her because they do not think that she can protect them— the house is in his name, she becomes homeless. The waiting list for public housing is over 10 years, and many of our clients cannot get their children back if they do not have housing and they cannot get housing if they do not have children. With these new family reunification orders, if the period is 12 months and my client has the child out of her care for that time given the ice and the family violence and the homelessness, the court can only extend that period if there is compelling evidence that she would resume care. But if she is still on the waiting list for housing, then that door to reunification for that child and their parent is shut and that is it. Then the court can make a care by secretary order for two years, which is basically a guardianship order. It is inappropriate that the legislation will be structured in that way.

**Ms SYMES** — I concur. Thank you so much for your presentation. We had some hearings last week, but I am very glad that you guys have come along today because I wanted to ask about a situation that is much more easy for lawyers to answer I think. Noting your support of the bill that is currently before the house — the 2015 bill — we are all aware of the highly publicised case last year in the Children's Court of the two siblings who were tragically sexually abused whilst in care. My understanding is that that court's decision rested on section 276. If the 2014 amendments to section 276 remain unchanged — that is, the current bill before the house does not get through the Parliament — would the court have been able to make the order that it did?

**Ms WARD** — The answer is categorically no. I felt that I wanted to address you on other things, because obviously that was in our submissions. It was very much in the shadow minister's mind last year when she was debating against the 2014 reforms. Our point is this, there is a reinstatement of 276, but the court's ability to make an IAO — an interim order — on an unfettered basis is not being restored. I say one feeds into the other.

Why any Parliament would want to interfere with a court's ability to make a temporary order to manage its proceedings to conduct them in the best interests of children, particularly when you have other orders which are then limiting time frames, is just, we say, an unnecessary and unjustifiable interference in judicial power.

**Mr McGREGOR** — Could I just add to that issue that highlighting the significance of that case, the publicity for it and the fact that the now minister is remedying that issue, which we all applaud — highlighting that case was demonstrating that when we were presented with the draft documents telling us about the reform of this jurisdiction, there was no inclusion of that particular problem because the draft had been prepared before that case emerged. The department identified it as a problem, we surmise, in terms of being castigated by the magistrate, and added it to the wish list. So we come to you saying that over a period of years there have been many reform attempts, and the drumbeat throughout them has been an outcome by which the department would be free of the scrutiny that the court currently provides.

**Ms PATTEN** — I am not sure that I have much to offer, but I appreciate that you are saying that the reinstatement of section 276, while it is applaudable — am I right that you are saying that it will have absolutely no benefit without further repeals on family reunification orders?

**Mr McGREGOR** — It might be that that is a strong expression to say that. We applaud this amendment, but in terms of the totality of the jurisdiction, it represents a fraction of the changes that are crashing over the court like a tsunami.

**Ms WARD** — And you only have to look at the way in which the family reunification orders are drafted this is, to say the court must not make the order if it has the effect of removing the child. You only have to look at the expression, the language and the prohibitions and the fettering of the court's discretion and then really contrast with what 276 could do. If you compare and contrast and start to unpack how they will actually work in reality, there will be no benefit from the reinstatement of 276 unless there is a concomitant rectification, if you like, or amendment to family reunification orders.

**Mr MELHEM** — Just a quick question. This is my first go at this; I missed the last meeting. In my understanding the reason in 2014 the secretary made the decision — the department, you know, driven by

efficiency and trying to make decisions reasonably quickly and so forth, where you are coming from, which I agree with — it is the side effect is removing the court oversight. That is now going to be reinstated. Talking about resources, what do you think the court resources will be like and how quickly the court will be able to deal with these cases? Will that kind of slow down the process, or are we talking about a bit of both — the department does what it does but the court now reinstates its powers to oversee the process? I just want to understand it in my mind. I do not want to end up with the department resources and now they are doing a quick decision that might not be in the interests of the child but then ending up fully with the court and then the case is delayed. What is your comment on that?

**Ms WARD** — It is certainly true that there are waiting periods to get before a magistrate for a final determination. It is problematic with the family reunification orders that even that is not being able to be taken into account. Up in the regional areas I understand there is a six-month wait for a final contest, a final determination of whether the department have made out their case against that parent and the family. So, yes, that in and of itself, if I have understood your question correctly, is a very serious issue, but the bigger problem is the department. Regularly there is not an allocation of a worker. For some families the cases are unallocated for months at a time. Then there is the issue that the department is not making the referrals quickly. And then there is the waiting lists themselves.

**Mrs PEULICH** — Thank you. It is a strong presentation. A quick question. So you are anticipating that under the current legislation — or the 2014 legislation — that there are fewer contacts between children and parents. You are obviously suggesting that this is motivated by lack of resourcing of the department. Are there instances where the department is making those decisions because it is actually in the best interests of children? What proportion of parents would be such bad parents that perhaps it would be in the best interests of the child to make that permanent order more quickly?

**Mr McGREGOR** — It is a terrific question. In my practice I have recently had a matter in which there was a judicial determination that there would be no further contact with the father — in very extreme circumstances. That is the only instance I have had. As I mentioned, in terms of the aims of contact, whether it is to work to reunification or whether it is to maintain an identity, I think it is the centre for excellence that cited the figure that we will make orders that keep children away from parents where we consider them to be harmful but we find that at the time at which they are old enough to vote with their feet 20 per cent of them gravitate back to the parent. We sometimes have the idea, based on the advice of the social sciences, that unless they have a level of contact with the parent, they will fantasise about that idealised parent and seek them out to their detriment. But in terms of how you calibrate those processes, the reason we have the misgiving about the idea that decisions will be made on the basis of resourcing — how do you have a contact centre funded? How do you have someone to do the transporting? — is because we encounter those arguments when we have a newborn child temporarily away from a parent awaiting a placement in Queen Elizabeth and the department says, ‘We do not have workers on a weekend. Is there a family member who can help out?’.

**Ms WARD** — Even if the child is breastfeeding.

**Mr McGREGOR** — So this is why we say it is not that we are cynical or that we treat the department as some organisation that we have a paranoid view about. It is on the basis of experience and practice and argument in court where magistrates say, ‘I will not tolerate an outcome where there is not daily contact with this newborn child’.

**Mr GORMAN** — There is potentially a more concerning reason why in certain circumstances contact might not be allowed, and that is if children are being treated inappropriately — abused — in care. Obviously there will be a huge temptation for whichever is the care organisation charged with the responsibility of looking after the children and arranging the contact to make sure that the child does not have contact with the family so that they can report their abuse. That is a great concern to us.

**Ms WARD** — The court itself, when it determines the frequency of contact — I mean, they are often hotly contested matters. The court is very cautious, and it considers matters. The magistrates are trained experts in child welfare law, social sciences, and often we use the Children’s Court clinic — psychologists and psychiatrists who are specialists in their field, peri-natal specialists — to give that evidence. So the court takes all of that into account when determining frequency. It is a very significant matter for a child, and many of the contested hearings before our court are about that. It is not done capriciously. It is just that often the department

is seeking far less for whatever reason, but the court decides — sometimes it decides with them but often it decides that it is more in that child's best interests.

**Mrs PEULICH** — Thank you for the answer, but just the question: what proportion of parents would be such bad parents that contact is curtailed?

**Mr McGREGOR** — O. J. Simpson had visits in prison. It is a rarity for a court to make a decision that there will be a prohibition on contact, and it is for the reasons that I say. But it may be that it is rationed for appropriate reasons.

**Ms WARD** — And supervised so that it is safe for the child.

**Mr McGREGOR** — Yes. But I am sorry, I do not have an actual figure I could offer you.

**Mr MULINO** — A brief two-part question. Firstly, given that the focus of this inquiry is the 2015 bill, thank you for clarifying that you support that particular amendment. Having said that, you also acknowledge that there are some interdependencies in the act. Given that you have raised concerns about the consultation process that was undertaken last year and the complicated nature of the provisions, would it not be appropriate for the government to take some time to consult with stakeholders such as yourself, the community sector and the court in determining whether the totality of the previous bill was reaching the right balance but that we pass this strengthening provision in the meantime, notwithstanding that there is a set of issues to resolve?

**Mr GORMAN** — That would certainly be an excellent outcome if it is at all possible.

**Mr MULINO** — The second question is: a number of people have raised resourcing issues, which no doubt is an issue in this sector. Would you say that the increase of funding of around 17 per cent in this year's budget would assist in that, even though it is undoubtedly not a panacea?

**Ms WARD** — It will assist, and it is fantastic news. Our clients need a huge injection of those funds, they absolutely do. But it still does not mean that the court should not be able to properly determine the best interests of the child, and being hamstrung in those matters is just inappropriate for kids.

**Mr McGREGOR** — I think so, to cut across. Our other concern is that we are swimming in opposite directions at the same time, whether it is to do with federal funding or the community sector and its resourcing. If we say to parents, 'Once you've had the domestic violence counselling, you can reunite. You're on a waiting list. It will take you six months for a referral to be accepted', the clock is ticking. It has been ticking under the present legislation, but it achieves a very different urgency under these reforms.

**Mr GORMAN** — Could I just make one last comment. For Beth Allen to have described the departures between the 2014 legislation and the Cummins recommendations as slight variations was just breathtaking. It is extraordinary. In a number of respects the 2014 legislation goes quite directly against very specific recommendations in Cummins. To say that is a slight variation is just astonishing.

**The CHAIR** — Our purpose is to elicit the different views on this issue, and I think we are achieving that. With that, I would like to thank the Law Institute of Victoria for your presentation and again for your preparedness to appear before us at short notice at this time of the evening. Thank you very much.

**Mr GORMAN** — Thank you for the opportunity.

**Witnesses withdrew.**

C O R R E C T E D   V E R S I O N

# 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

| | |
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| 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

Staff

Secretary: Ms Lilian Topic

Research officer: Mr Anthony Walsh

Witnesses

Mr Llewellyn Reynders, policy and public affairs manager, and

Ms Carly Nowell, policy advisor, Victorian Council of Social Service.

**The CHAIR** — Our next witness this evening is the Victorian Council of Social Service. I welcome Mr Llewellyn Reynders and Ms Carly Nowell. Thank you both very much for being before us this evening, and again, as I said to the previous witnesses, for making yourselves available at short notice at this time of the evening.

I caution you that all evidence taken at this hearing 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 protected. All evidence is being recorded. You will be provided with proof versions of the transcript in the next couple of days.

We have allowed half an hour for this session, and I would ask you to make an introductory statement of 5 to 10 minutes. Thereafter we will have questions. Thank you again for being before us tonight, and we look forward to your presentation.

**Mr REYNDERS** — Thank you for inviting the Victorian Council of Social Service to give evidence for this inquiry, and we welcome the opportunity to discuss this bill and the issues surrounding the protection of vulnerable children in Victoria. I would firstly like to give the apologies of our CEO, Emma King, who is unable to appear before the committee today as she is attending the ACOSS conference in Sydney.

VCOSS is the peak body for the social and community sector, and pursues just and fair social outcomes through policy development and public advocacy. VCOSS advocates for the elimination of poverty and disadvantage and the protection of vulnerable members of society, including children and families. The wellbeing of children and families is one of the most important responsibilities of governments and the wider community. Children and young people who enter our child protection system are among our most vulnerable people, and despite some progress in reforming the system, these people remain at risk of falling behind their peers across virtually every aspect of life, including their health and wellbeing, housing, educational achievement, contact with the justice system and their future employment prospects.

VCOSS is supportive of the current bill before Parliament. Our first principle in assessing laws about the wellbeing of children is that the best interests of the child are kept paramount. While this bill addresses one small aspect of the legislative framework, we believe that it is a useful amendment. By maintaining the Children's Court's ability to be satisfied that all reasonable steps have been taken by DHHS to reunite the child with their parents, the court retains some oversight of the quality and timeliness of the services provided by DHHS to support the child's family to develop the capacity to care for and keep children safe.

More generally, we are deeply aware that the operation of the child protection system is being affected by the dramatic increase in reports and cases being brought to the attention of governments over the last decade. Community awareness of child abuse and neglect has grown significantly, alongside stronger legislative requirements to report concerns. This is good news and shows that the wellbeing and protection of children have become a much stronger part of our culture and society. But the consequence of the rapid expansion in demand on the system is that it struggles to allocate the required services and make decisions in a timely manner.

We acknowledge that successive governments have increased resources and acted to reform the system to achieve better outcomes, and the latest state budget provided a welcome addition to the resources available. But it remains the case that all parts of the child protection system have struggled with this demand, from prevention and early intervention right through to the provision of out-of-home care. I would make particularly mention the rapid rise in Aboriginal children entering the statutory system, with the number of Aboriginal children being removed from their families in Victoria now at the highest level since white settlement.

In our view this state of affairs has often meant that the resources and attention have been focused on the most immediate needs and pressing situations in the statutory system without sufficient attention and resources directed to the prevention and early intervention end of the spectrum, which has the potential to reduce numbers flowing into the statutory system.

VCOSS has repeatedly raised a number of changes to Victoria's approach to improving the safety and wellbeing of our children, which my colleague Carly will briefly outline, and we do so in understanding the

scope of services and the changes required to them, which the bill mentions in terms of the application of section 276.

**Ms NOWELL** — Thanks, Llewellyn. As highlighted earlier, investing in prevention and early intervention support services for children, young people and families is crucial in preventing or reducing the conditions that may lead to abuse and neglect. Currently many families only receive vital supports once they reach crisis, with many falling through the cracks because services are overstretched and under-resourced. Providing greater access to early intervention support services, such as family support, parenting programs, drug and alcohol services, housing and homelessness services, and mental health services, will help families to access the supports they need when they need them before problems escalate and require the involvement of child protection services.

This could be supported by facilitating greater integration of universal services with specialist health and community services and child protection services. Universal services such as maternal and child health services and schools are uniquely placed to support the wellbeing of children and families and to link these vulnerable families into additional targeted supports and the broader support system as required. Further work could also be done to improve how schools meet the learning and development needs of children in out-of-home care, including developing more flexible learning environments and more consistent use of individual education plans. Given the increasing demand for services, there is also a need for enhanced funding for services that support the wellbeing of vulnerable children, young people and families, such as Child FIRST.

As you would know, Child FIRST provides community-based referral points to connect vulnerable children, young people and their families to the community services they need to protect and promote their development. The foster care system is struggling to recruit and attract enough carers, with more foster carers exiting the system than entering it. The lack of financial support is a major contributor to this. Similarly, more than half of Victoria's kinship carers report financial stress. The state government's review of care allowances is warmly welcomed, and it is hoped this will result in higher reimbursements of foster carers and kinship carers and will help to reduce the number of children in residential care.

Given the concerning rates of Aboriginal children and young people entering the child protection system, it is important that efforts are made to improve outcomes for Aboriginal children, young people and families. For example, increasing the number of Aboriginal children placed with Aboriginal members or kin, in accordance with the Aboriginal child placement principle; supporting Aboriginal community-controlled organisations to provide more early intervention and intensive family support and to participate in decision-making; convening Aboriginal family-led decision-making meetings for all cases involving Aboriginal children; and developing meaningful cultural support plans for all children who are placed with non-Aboriginal carers. The findings of Taskforce 1000 should also be used to inform practice and future reform.

Finally, for those children who do enter the out-of-home care system, it is important that every effort is made to improve their health and wellbeing. VCOSS recommended that therapeutic care is expanded to all children and young people in out-of-home care to help them to recover from any trauma associated with abuse and neglect. It is also recommended that greater support is provided to young people to help them successfully transition out of care. Young people transitioning from out-of-home care to independent living continue to experience poorer outcomes than their peers, with over-representation in the youth justice system, poorer mental and physical health, and lower education and employment participation rates.

**The CHAIR** — Thank you both for your presentation. I note your comments that there has been an increase in resources provided by successive governments but there has also been a significant increase in demand in recent times. We heard last week from the Centre for Excellence in Child and Family Welfare, and they talked about the concept of drift — of children being in the system for five years, as Cummins found, or for long periods of time. Do you want to make a comment, given your expertise, on what impact that can have on children?

**Mr REYNDERS** — Certainly. We responded quite comprehensively to the Cummins inquiry. Indeed the idea of drift or children particularly being in the out-of-home care system, in temporary arrangements — moving from perhaps one placement to another — there is certainly a great deal of evidence that this has a detrimental impact on children. I think from all players in the system there is a general consensus that minimising the time that children are not in stable families and not in stable care arrangements is best for everyone in the system. Carly, did you have anything to add?

**Ms NOWELL** — Yes. There are a number of impacts, but one of the key ones that a lot of reports have pointed to is the educational outcome. Obviously with drift and instability it can result in a lot of changes in schools, which means new teachers, new peers, and often students end up missing certain parts of the curriculum or repeating others and there are a lot of issues there, so I think while addressing that issue there are other broader issues as well to be considered, but certainly lower educational outcomes is a big issue.

**Ms SPRINGLE** — Last week we heard from DHHS that there was an extensive consultation that was staged before the 2014 amendments, and they talked about a broad range of stakeholders that were consulted, including permanent carers, foster carers, academics, community service organisations and legal stakeholders. My question is: was VCOSS consulted regarding the amendments in 2014, and if so, what did the consultation look like? And were any of your concerns, if you had any, about those amendments taken into account when they drafted the legislation?

**Mr REYNDERS** — VCOSS was not consulted.

**Ms SPRINGLE** — Thank you.

**Ms PATTEN** — Thank you for your presentation. One of the issues that the department raised with us — and a number of people have raised this — is the timeliness of children being put into care. But I am concerned with the numbers you are talking about with Aboriginal children being put into care. In your opinion, do these amendments help with the timeliness and possibly prevent more and more Aboriginal children going into care, or is it quite the opposite?

**Mr REYNDERS** — To give you a little bit of background, VCOSS has a very diverse membership base, and partially because we were not engaged in the consultation process around the 2014 amendments we have not gone through the process with membership to work out in fact where the consensus lies and be able to dig into some of the deeper issues like you mentioned. But what I will say in terms of the timeliness issue is that certainly one of the objectives of the 2014 legislation was to try and I guess force the courts to make more timely decisions.

I guess we would add to that that the resourcing component and where resources are placed in the system has a very large effect on the timeliness of DHHS to be able to respond to the needs of parents and children, on the availability of supports, particularly as those supports are often not provided by child protection services. They are provided across the public and community services systems, often which have their own barriers to access as well. Finally, I would make the point again that investing in reaching people before they enter the statutory system is going to be, in our view, the best bang for your buck in terms of trying to remove the incredible demand on that system and not having to put everyone through the trauma of the child protection system. Once children have entered that system, none of the options for them are particularly fantastic.

**Ms NOWELL** — The only thing I would add to that is that not only are the rates high but some of the practices that should be followed for the best interest of Aboriginal children are not being followed too. For example, we know that only 8 per cent of Aboriginal children required by law to have a cultural plan have one, and as well 70 per cent of Aboriginal children and young people are placed with non-Aboriginal carers. There are other things outside the legislation that should be done to follow best practice and better support outcomes for Aboriginal children and young people.

**Ms SYMES** — Thanks for your presentation; it was really good. As I am sure you are aware, the government's recent budget provided an additional 17 per cent on the previous year for the child protection budget specifically and the biggest budget boost in almost a decade. I am sure we can all acknowledge that it is an area that you can always put more money into, but I am just wondering about your view of the impact that the increased funds will have, particularly on your stakeholders.

**Mr REYNDERS** — In terms of the use of some of those funds, firstly, there was a significant investment in Child FIRST, which we are very pleased to see. We are very aware that from its inception in fact as an early intervention service there has often been increased pressure on Child FIRST to deal with more and more complex cases that have moved deeper into the child protection system. Its role and its capacity, because of the amount of demand that is placed upon it to actually do the early intervention work before children are potentially entering the child protection system, has been limited. We hope that certainly the greater capacity in

that system allows it to be reaching people before they are entering the statutory system rather than trying to assist families after they enter that system.

**Ms SYMES** — For the benefit of the committee, could you just explain a little bit more about Child FIRST?

**Mr REYNDERS** — Child FIRST, I guess, is a — —

**Ms NOWELL** — It is a referral and intake service.

**Mr REYNDERS** — Cases are referred by the department to Child FIRST, and then Child FIRST works with those clients, be they families at risk of entering the statutory system or indeed families whose children have already entered the statutory system, to provide them with a range of supports. But often those supports are not provided directly; in fact many of them are a referral service, so it is about linking families and children to the various places where those supports can be gained, although those avenues may already be at capacity and there may be significant waits beyond Child FIRST for families to access them.

**Ms NOWELL** — And certainly the recent VAGO report found that there was a more complex and overwhelming demand and that the needs were more complex, and they were being forced to focus on the high-risk young people in the family stream and those at the more low to medium risk were missing out, and the whole point of the service is to help support them before problems escalate.

**Ms FITZHERBERT** — Thank you for your time tonight and for your presentation. I am just curious to know, and this figure may have come up earlier when I was not present, so I apologise if it has, but how many Victorian children are subject to protection orders, roughly?

**Mr REYNDERS** — We do not have those figures to hand.

**Mr MULINO** — Thank you for your presentation and your time tonight. I am wondering, do you think that it is worthwhile to have a requirement in the legislation that places an onus on the department to provide the services necessary in the best interests of the child?

**Mr REYNDERS** — We do.

**Ms PATTEN** — I appreciate that obviously prevention is where we should be, and I have no doubt your members would be advocating for that. Looking at the bill before us now, which is reinstating section 276, in your opinion does that go far enough, or should we be moving to reinstate other areas that help with family reunification orders?

**Mr REYNDERS** — As I have mentioned, I think to a previous question, we have quite a diverse membership with a diverse set of views on some of these issues. I certainly could not say that there is a consensus position across the sector. The challenge that the court faces, and one of the things I would mention, is that these are incredibly difficult decisions for anyone to make, regardless of where they are in the system. What the court is being asked to do under the 2014 amendments is make a decision whether to permanently prevent a child reunifying with their parents versus continuing them left in limbo in the out-of-home care system. Neither of those options are great options, but certainly having a mechanism to get more timely decisions made is broadly supported by VCOSS. Whether this is the best mechanism to do so is a question on which our members do not have a consensus position.

**The CHAIR** — Thank you both for your preparedness to be before us tonight and for your evidence. As I said earlier, a Hansard transcript will be sent to you in the next couple of days. Thank you again.

**Witnesses withdrew.**

C O R R E C T E D   V E R S I O N

# 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
Ms Nina Springle — Deputy Chair
Ms Margaret Fitzherbert
Mr Cesar Melhem
Mr Daniel Mulino
Ms Fiona Patten
Mrs Inga Peulich
Ms Jaclyn Symes

Participating Members

Mr Gordon Rich-Phillips

Staff

Secretary: Ms Lilian Topic
Research officer: Mr Anthony Walsh

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 Krysia’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.**