LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES

(Reference: Inquiry into Child and Youth Protection Services (Part 2))

Members:

MS B CODY (Chair)
MRS V DUNNE (Deputy Chair)
MS C LE COUTEUR

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 29 JANUARY 2020

Secretary to the committee:
Dr A Cullen (Ph: 620 50136)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Privilege statement

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

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“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 20 May 2013

The committee met at 9.30 am.

BLEASDALE, MR MICHAEL, Chief Executive Officer, ACT Disability, Aged and Carer Advocacy Service (ADACAS
BULENDA, MS KATIE, Team Leader/Disability Advocate, ACT Disability, Aged and Carer Advocacy Service (ADACAS

THE CHAIR: I declare open the second public hearing of the Standing Committee on Health, Ageing and Community Services inquiry into part 2 of a reference from the ACT Legislative Assembly. As it concerns part 2 of this inquiry, the Assembly has asked the committee to inquire into the ability to share information in the care and protection system, in accordance with the Children and Young People Act 2008, with a view to providing maximum transparency and accountability so as to maintain community confidence in the ACT's care and protection system.

Before we proceed, I would like to take a moment to acknowledge that we meet on the lands of the Ngunnawal people, the traditional custodians. I pay my respects to their elders, past, present and emerging, and acknowledge the continuing contribution of their culture to this city and this region.

Today the committee will be hearing from representatives from the ACT Disability, Aged and Carer Advocacy Services, ADACAS; Legal Aid ACT; the Women's Legal Centre ACT and Region; and the Canberra Restorative Community network.

I move to our first witnesses appearing today, Mr Michael Bleasdale and Ms Katie Bulenda, from the ACT Disability, Aged and Carer Advocacy Service. On behalf of the committee, thank you for appearing today.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink privilege statement. Could you confirm, for the record, that you have read and understand the privilege implications of the statement?

Ms Bulenda: I have.

Mr Bleasdale: Yes, I have.

THE CHAIR: Thank you. For the purposes of this inquiry and public hearing, I remind witnesses to refrain from referring to information that may identify a child or young person who has been or is the subject of a Childrens Court proceeding. As witnesses will be aware, any information that is disclosed to or obtained by a person under the Children and Young People Act 2008 is subject to a strict set of secrecy provisions. The Assembly reference to the committee also specifically requires that the committee take evidence and hold documents in ways that will not allow for individual people to be identified without their express consent.

These proceedings are being recorded by Hansard, for transcription purposes, and being webstreamed and broadcast live.

Before we proceed to questions from the committee, Mr Bleasdale, would you like to make an opening statement?

Mr Bleasdale: Thank you, yes. I have a brief opening statement.

ADACAS has provided advocacy support to people with disability, people with mental ill health and older people, as well as carers, for almost 30 years, operating principally in the ACT but also now on the south coast of New South Wales.

Our systemic advocacy on a wide range of issues which impact on our client groups is informed by the individual advocacy we carry out daily. Our submission to this inquiry commences with a statement that "CYPS involvement should never be assumed in circumstances where a parent has disability or mental health issues". This statement speaks to the experience of our advocates, who too often have to strongly defend the rights of parents with disability to be given the opportunity to raise their children without the assumption of incompetence.

The position of ADACAS is driven by our commitment to human rights and directly informed by those rights enshrined within the United Nations Convention on the Rights of Persons with Disabilities, the CRPD, as well as the framework provided under the ACT Human Rights Act 2004.

In our previous submission, our response to the review of child protection decisions in the ACT, made in June 2019, we placed human rights at the centre of the principles which need to underpin any future decision process in the CYPS. We believe these rights-based principles should inform practice when considering the current and potential parents who may have disability or have experienced mental ill health.

In addition to previous points we may have made in our submission, we believe that the negative experience of people with disability within CYPS is an instance of a denial of justice, and will be addressed, we believe, in the disability justice strategy.

Article 12 of the CRPD clearly underpins this, and other disability justice efforts, where it requires that our machines of government recognise people with disability as equal under the law.

ADACAS's submission highlights a number of areas where we believe improvement is needed. There are six dot points. They are: the need for quality training and ongoing mentoring of CYPS workers on disability, human rights and the principles of making reasonable adjustments to procedure and infrastructure to ensure that people with disability are accommodated when dealing with the CYPS system; an increase in the support available to parents with disability or mental ill health during assessment and legal processes related to child protection matters, in particular advocacy support; a guarantee of continued legal support for parents with disability or mental ill health attending court in relation to child protection matters; the introduction of new models of contact for parents who have not abused or neglected their child or children but, due to their disability, and possibly the child's, do not have the ability to undertake their parenting duties full time; and improvement in the exchange of information to facilitate support to parents with a disability or mental ill health but—the final point—greater safeguards in the oversight of and accountability for the sharing and use of personal information.

We are very happy to spend time today talking further about all of the above and answering questions about our submissions. Our systemic advocacy team leader, Ms Lauren O'Brien, who drafted our submission, is not available today, but I am accompanied by the advocacy team leader/disability, Ms Katie Bulenda, who works on most, if not all, of the family and children matters at ADACAS, who will be able to talk to the detail of CYPS practice and how it impacts on parents with a disability or mental ill health.

THE CHAIR: Thank you. I am going to start with a question about your submission, but you did raise some interesting points in your opening statement, so we will probably move to that as well.

You mention, both in your opening statement and in your submission, that people with a disability do not always have someone to advocate for them. How does that impact the sharing of information? In cases where you do get to advocate for people with a disability or mental illness, do you receive the information you need to advocate strongly for them, to advocate fairly for them?

Mr Bleasdale: My understanding is that where we are approached by a client and we are able to take on that client—over the past year we have taken on every referral that has been related to CYPS matters and parents with disability—there is too much difficulty in the sharing of information between agencies. I might refer to Katie to talk about that detail.

Ms Bulenda: Most of the time it is fine. We get the client to sign an authority to exchange information and we find that CYPS are forthcoming with information about their concerns for the client. Occasionally we will get a bit of pushback, where they will say, "No, we are not going to share this with you." But, usually, if we escalate it a bit, we get the information we need.

THE CHAIR: That must assist in advocating for people from your end.

Ms Bulenda: It does.

Mr Bleasdale: It does. Our point about the exchange of information is mainly around the exchange of information with external agencies, in particular where there is a requirement for the parent to have assistance through the NDIS. That is a particular difficulty. There is an incompatibility within those systems which we have been identifying for a considerable amount of time. It is going to be difficult to address, and it has not been addressed. The time frames are very different for both. The focus of one is upon the best interests of the child and the other is upon gaining as much information and evidence as possible to be eligible for acceptance into the scheme. Those things do not work very well.

MS LE COUTEUR: Would not in general the parent, if they were going to be NDIS eligible, already be in the scheme before the child came, because the child would not be the reason they are in the scheme?

Ms Bulenda: Often they are not. Often they do not have support out in the community. You have to get a lot of reports in order to become eligible to do that. So you need the finances. You need to know how. NDIS is not a simple system.

MS LE COUTEUR: I know it is not. We did another enquiry into NDIS; I appreciate that it is not a simple system. The thing that is surprising to me is that you are saying that people were not involved in NDIS at all. They then had a child and then things were bad enough that it was worth while getting involved with NDIS. That is the bit that I would like to know more about.

Mr Bleasdale: Katie might have some absolute detail on this. My take on this is that things have not changed very much in the past 20 to 30 years, in that often a person with disability or mental health who is becoming a parent does not necessarily need those specialist supports. It is only when they are challenged in that that they are required then to apply for NDIS. That was the case when I was a practitioner 30 years ago and it seems to be the case nowadays. We have not really moved on very far in terms of the assumption that a person with disability needs that specialist support in order to be able to parent.

Ms Bulenda: Yes, absolutely. The NDIS has provisions there for parenting support. So often that is a focus of CYPS when they become involved.

MS LE COUTEUR: But what you are saying basically, is that their time frames and CYPS's and the child's time frames are not the same.

Ms Bulenda: Exactly.

MRS DUNNE: But would that not create a situation where it would be in the CYPS's interests to also be advocating on behalf of a parent with a disability to get the NDIS support they need rather than alternatively breaking up the family?

Mr Bleasdale: The answer to that is yes. And let us be honest about this: we have a complex relationship with CYPS. On the one hand we work very constructively, I do believe, with that agency, and they have come to us in good faith also with that very idea: How do we do this better? The answer is that there is no easy way to get access to the NDIS. It is on an individual basis and I do not think that CYPS is in any better position than we are to assist a person to get access.

Ms Bulenda: I think they actually have a lot less knowledge. That is why they come to us when NDIS is needed: because we do have that experience.

Mr Bleasdale: And, unfortunately, the way things are—and I do not think I am speaking out of turn here, because I think the Tune review and the federal Senate committee reports have identified that, unfortunately—currently getting into the NDIS is a matter of a specialised knowledge of how to fill in the form and the application correctly. So that is really why we have more knowledge than CYPS: because we do it on a more regular basis. I do not think that they are advantaged, necessarily.

MS LE COUTEUR: That makes sense. One of the things where you also have more knowledge than CYPS is that you probably have a reasonable chance of looking at a client and saying, “It will take six months but you’re going to be successful”—or are you not that likely? Are you in a position to say to CYPS, “It will take a while but probably it is going to get sorted,” and ensure that there is nothing done in the CYPS system which produces permanent separation between the parent and the child when you can be fairly confident that eventually NDIS will provide the support needed?

Ms Bulenda: I would like to be able to say that that is the case. But unfortunately we have had plenty of people who have come to us seeking access to the NDIS that we think absolutely should get in and they do not. So we never promise anything to anyone. We never say, “It’s going to take us six months and you’ll be in.” We just cannot promise that. And if somebody does not get in, often then it is a huge long battle and it is really draining on everyone, let alone the family.

THE CHAIR: Going back to something that you raised in the initial question, which was around information sharing with the other agencies, can you clarify that part for me? You were saying information sharing between CYPS and you as an advocate is quite good but that the information sharing between the other agencies—can you just clarify that bit for me?

Ms Bulenda: Once CYPS is involved, usually a case conference occurs. That can be after emergency action or if there are concerns and they do a family assessment. They have a case conference where all parties meet, so you can have 13 to 15 people sitting around a table: the client; if they have an advocate, the advocate; and then everybody else. We have got two to four members from—

MRS DUNNE: That is entirely intimidating.

Ms Bulenda: Yes. You have got CYPS, you have got your 19—you have got a whole lot of providers. You might have perinatal mental health. You have just got a whole lot of potential providers that might become involved. So you can see the power imbalance is massive. Once you have that first meeting, they declare a care team. We all sign off saying that we are part of this care team and we can exchange information. Generally what I find is that we will get the minutes of those meetings, but my assumption is that there is a lot of information exchanging between the other parties and there is very little our way. We can ask, but the assumption is that they can all share information as required about that case.

THE CHAIR: Because you are part of the care team?

Ms Bulenda: Yes.

MS LE COUTEUR: And you are also part of that care team?

Ms Bulenda: Yes.

MS LE COUTEUR: So theoretically they could share it with you; just practically they do not?

Ms Bulenda: Absolutely. That is correct.

MRS DUNNE: But you did say that if you put pressure you get information.

Ms Bulenda: Sometimes. I had a case recently where CYPS deemed that the mother of the child was not able to parent her child, and I could not get a good reason for that. We had seen plenty of evidence of good parenting; it had been documented. When I asked for reasons, I could not get them. One of the reasons they put up was, "The last MACH nurse raised some concerns." I asked what those concerns were and if I could have a copy of that. It was not forthcoming. She got to keep her child, but we have gone down the road of "Can we have a copy of her medical records?" "No, you can't. You have to go to freedom of information." She does not have the money to afford to get that.

MRS DUNNE: But you are not making those requests on your own behalf; you are making those requests as an agent.

Ms Bulenda: Yes, that is right. Because—

THE CHAIR: And as an advocate for the—

Ms Bulenda: Yes.

MS LE COUTEUR: But you had to go to freedom of information to get her medical records, despite her being the person who actually wanted them?

Ms Bulenda: Absolutely, yes.

MS LE COUTEUR: I thought we were meant to have access to our medical records.

MRS DUNNE: It is a little irregular.

MS LE COUTEUR: That is slightly outside this, I suppose.

Ms Bulenda: I am just giving you an example.

MRS DUNNE: Yes but it does actually—

MS LE COUTEUR: But in this instance, if a MACH nurse was the informant, I guess it is not.

MRS DUNNE: What you have described is a very opaque system. You have got the care and protection system and the NDIS coming together like two great icebergs. And you have got an individual client in the middle of this who has a disability or may have a mental disability. What you are describing is something which is extraordinarily difficult to navigate. With the NDIS there are appeal mechanisms and stuff like that. But with the care and protection system, as you and other people have said, there is no transparency about decision-making.

You referred to making decisions about someone being suitable or unsuitable to parent and not being able to get an answer. If you ruled the world how would you make that navigation simpler for people who are—and it is hard for able-bodied people who have got their wits about them and who are not distracted by a sick child or a newborn or whatever to navigate bureaucracy—essentially vulnerable? As Ms Bulenda said, the power imbalance is quite skewed.

Mr Bleasdale: I think that is a complex answer. But thank you for giving us the opportunity to rule the world briefly. I will go back to something Ms Le Couteur said earlier. In the question she asked, "Why do people not think of applying for the NDIS ahead of time?" I repeat the answer I gave then. It is because it has not occurred to them that they need that kind of specialist assistance. The request comes from the assumption within CYPS that a person who has a diagnosis of some kind of mental ill health, or an intellectual disability primarily, is someone who is going to have problems parenting. There is an additional pressure placed upon those parents in the community which is not placed upon other members of the community, and it forces them down that track.

The linkage between those two systems is one avenue where people actively need that support or where it has been identified through the CYPS system that additional parenting supports are required. That is fine. But the problem emerges unfortunately because of that assumption in the first place and that was what I was pointing to earlier, that this has been an assumption within care and protection for decades. I think we need to attack it at that level as well as the systemic level.

In terms of how we deal with the assumption, there needs to be a lot more awareness of disability, the capabilities of people with disability to live in the community and the ability for the community and families to provide parenting and other kinds of support that might be available and not to necessarily leap to the assumption that people who are so categorised are incapable of doing it.

MS LE COUTEUR: Is one of the issues the type of support that CYPS is prepared to offer? Are they going to out of home care in a situation where actually a small amount of more practical support in the home would actually solve whatever problems there may be?

Ms Bulenda: I think that is correct. I think when advocates get involved it is far less likely to happen. If we look at our stats we have had fabulous outcomes in most of our cases. We have even had one case where a mother had five previous children taken as soon as she gave birth and it was not until the sixth that we got involved. I raised the fact that she actually has far more capacity than people are giving her credit for. Absolutely, if the right supports are put in place, which is what we ensured happened, she kept her child.

Mr Bleasdale: To continue the answer as well, I think there is this continued assumption. It is obviously quite entrenched because it has been around for a long time. It is going to take a while to overturn that. In the interim, and as we put in the submission, we see there a role for a more specialised advocacy service to be available to people.

We have been fortunate in that we do not maintain waiting lists and we have been able to take on everyone who has come through with a request for CYPS, because it does trigger a priority of access for our service. But we are not certain that everyone gets access to that. For us, it is a different type of advocacy that we do on a day-to-day basis because often advocacy is just issues based, single issue based. We are in, solve the issue, we are out again.

With this type of advocacy, it is a range of different challenges within the single issue that can go on for a significant level of time. It challenges us resource wise to be able to allocate that. It is quite challenging also for the advocates who do it because it can be very stressful. It also involves, unfortunately, too often at the end, us going to court supporting somebody through that rather traumatic process as well, which requires a certain level of skill. We had made this representation, even prior to the submission, directly to a minister around the need for this kind of specialised, dedicated support to individuals with disability and mental ill health who might come to the attention of CYPS. It might be possible to nip some of this in the bud early. When we are involved early we have had significant amounts of success.

MRS DUNNE: You speak in your submissions about the Red Cross program for early parenting and you talk about the waiting list. Can you quantify what you understand the waiting list to be?

Mr Bleasdale: I cannot. I cannot honestly give you a figure on that. I believe that we consulted Red Cross when we were writing the submission. They are aware of our position on this. I think our advocacy is slightly different. I think it is much more intensive. It is much more for the whole course of the person's journey through that session. But I think the main issue that you are pointing to is the waiting list and I do not actually have figures on that.

MRS DUNNE: Getting back to your point about advocacy, are you saying that ADACAS is not the best organisation to do this, that you are the people who are occupying the space at the moment, or are you looking for additional funding to allow you to do this job better?

Mr Bleasdale: I am definitely not saying the former because I think we do it very well. I think the results speak for themselves. It is becoming more the case that different streams of funding are being made available for specific purposes and certainly within ADACAS we have a different stream of funding to assist us to support people through the disability royal commission. That is a very different type of advocacy. We have a different stream of funding to enable us to support people through AAT appeals, through NDIS and, again, that is a long-term relationship through very challenging circumstances.

I am identifying, I suppose, a new stream of funding, a special program if you like, that really targets this because this is an entrenched and systemic issue and we are able to deal with it through our generic advocacy at the moment. But unless we actually see wholesale change then that is going to persist and I think it would benefit from a targeted advocacy which is then able to be monitored and impact and outcomes also assessed.

THE CHAIR: What is your caseload on an annual basis? How many clients would you see in this space?

Mr Bleasdale: In this particular space, last year we looked at the stats and there were 19 clients that we supported through the CYPS system last year.

Ms Bulenda: But it is a very heavy workload, very heavy.

THE CHAIR: How does the workload in the ACT compare to—I note you do a lot of the South Coast—the Eurobodalla area?

Mr Bleasdale: We are fairly new in that area. I am not aware—

Ms Bulenda: We might have one.

Mr Bleasdale: One? Because we are new we have not really engaged at that level and—

THE CHAIR: How long have you been advocating in that area?

Mr Bleasdale: Since the end of 2018. It is one full year we have been there and it has been an exercise in making people aware that we are there to do advocacy.

MRS DUNNE: You made some strong points about the essential need for information and the information not being forthcoming and you have spoken a little about increasing the understanding of disability by people in the CYPS system. In a sense, are you seeing that CYPS has a slightly old-fashioned, perhaps mid-20th century, view about the capacity of people with disabilities?

Ms Bulenda: Yes. I think CYPS staff have varying levels of knowledge and experience but there is definitely a general assumption that there is less capacity if a person has especially an intellectual disability and if you add psychosocial on top of that there is just this underlying presumption that they cannot parent.

THE CHAIR: We heard evidence yesterday that it can also depend on what caseworker you might get; some caseworkers are great. Would you agree?

Ms Bulenda: Yes, I agree. I really believe that CYPS workers should be doing compulsory training in disability and NDIS as part of their induction and perhaps regular updates to keep them up to date because the NDIS changes so frequently and they would have a greater knowledge, greater understanding. They would be able to adjust how they engage with clients who have a disability or mental health issue; those regular adjustments and what these people need to understand. So many times when I interact with these people they are just not being clear. The client does not understand what they are doing wrong.

MS LE COUTEUR: Was the situation any better before the NDIS when the ACT government effectively ran the ACT disability services?

Ms Bulenda: I cannot answer that because I have only been here three years.

Mr Bleasdale: I cannot answer that because I have not been here, I am afraid. I do not know. The NDIS often comes up as a bit of a white elephant in the room. It is seen as the panacea to everything and as I said—

MRS DUNNE: But it is also blamed for a whole range of things.

Mr Bleasdale: It is.

MS LE COUTEUR: I am just wondering whether, when the ACT government controlled both sides, it worked better because they would be able to say, "We know that that side will do whatever that side needs to do." They cannot with the NDIS system.

Mr Bleasdale: I cannot comment. I was drawing on my experience in New South Wales many years ago and I suspect the root of the problem lies with the focus of child protection, as it should be, on looking after the best interests of the child and looking for characteristics within parents that they deem to be problematic and we are stuck with that rubric: that disability and mental health issues are deemed problematic. That is what I think the training and the information exchange need to get to.

For the record, we are currently engaged with our colleagues at AFI in developing some training on behalf of the Office for Disability. I just wanted to state that the importance of that is not to do it one off. Disability awareness-type training is sometimes done one off and then the next generation of workers comes through. I think, with that kind of training, we are very aware of the problem of the situation. We would be very hopeful that that training could actually assist those good caseworkers. It will empower them to be more effective in the workplace and effect some kind of culture change from within the workforce.

But that will take some time to embed and it needs to be continued. It needs to be rolled out as soon as workers come through. Part of their induction really needs to be part of it.

MRS DUNNE: In your last comments you touched a little on definition of best interests of the child and sometimes you get the feeling that that is a very narrow definition and is defined in very bureaucratic terms. From your experience, how do you soften that up? That does not necessarily mean being lax but blurring the edges a little so that there are not hard and fast rules that prompt someone to say, "This person has a disability, ipso facto they have to prove to us that they have capacity," rather than us looking and seeing where their difficulties are.

Mr Bleasdale: I am going to let Katie speak to that a bit more than I but I am going to start off by saying that, in my limited experience of this, I have found that parents with disability are every bit as good, if not better than. It is trying to get across that the best interests of the child are served by being with their family. That would be the primary point that we would come in on. It is necessary to actually demonstrate that the parent is not capable of parenting well before any action should be taken or they should come under scrutiny.

I genuinely attest to the fact that people are incredibly mindful, thoughtful and capable parents if they have a disability. And it astonishes me, because I have come from that part of the community sector that when I am confronted with the opposite the assumption is that they will not be. But you might be able to speak in better detail to that.

Ms Bulenda: Generally it is exactly as you say. The onus is on the parent to prove that they can parent. Generally I will find that the client has difficulty in communicating that. They can demonstrate it if they get access to the child. And this is the thing: of course when they have access to the child they know that they are being watched by people every second of the day and you can see clients physically just tense up because they know, "If I do anything wrong they are going to take my baby away."

MRS DUNNE: Whereas the rest of us can make mistakes all the time?

Ms Bulenda: Exactly. From our end, it is a lot of pushing back. It is a lot of talking about and pointing out strengths. It is about helping that person to identify their strengths and to hopefully self-advocate. If they cannot, we step in and do that as well.

MRS DUNNE: Another quite unrelated question is the one about the point you made that it is very hard or just about impossible to access pro bono legal services. Do you have an explanation for that? Is it because care and protection cases do not award costs, or generally do not award costs, or is there some other reason? It is too complex?

Mr Bleasdale: I do not know. I am not very up to speed on that, other than I just thought there was so much demand for pro bono legal services that it was a bit of a lottery. In fact, we are going to be making direct representation to legal firms to see if there is a possibility of some pro bono if and when Legal Aid is unable to assist or comes to the conclusion that they are no longer going to continue with the case. But I am not really aware of the reasons why. Are you?

Ms Bulenda: No. The only thing I can think of is that often it can be quite a long process and quite intensive work for them. But I am guessing there.

MRS DUNNE: It is a large, open-ended commitment?

Mr Bleasdale: Yes.

MS LE COUTEUR: Also lawyers may have the views that you were talking about—from the last century—if they think it is going to be an unsuccessful case. I imagine that if you are deciding to put in a lot of your time pro bono you are going to do some evaluation for yourself as to whether or not you think it is going to be successful. I would imagine you would go for the ones you think you will be successful in.

Mr Bleasdale: We will only be approaching those legal firms who have already expressed support for these sorts of causes. I am not even sure how the pro bono system works, to be honest, whether or not they are able to make that commitment. Only time will tell when we actually have the discussions with them.

THE CHAIR: I thank you both for your time today. It was a very interesting discussion. When available, a proof transcript will be forwarded to you both to provide an opportunity to check the transcript and provide corrections if required. On behalf of the committee I thank you both for appearing today and for your submission to this inquiry.

Hearing suspended from 10.07 to 10.28 am.

CAMPBELL, MS JANE, Deputy CEO, Legal Aid ACT
HILES, MS SALLY, Solicitor, Family Practice, Legal Aid ACT

THE CHAIR: Welcome back to the Standing Committee on Health, Ageing and Community Services public hearing into part 2 of the reference from the ACT Legislative Assembly. As it concerns part 2 of this inquiry, the Assembly has asked the committee to inquire into the ability to share information in the care and protection system, in accordance with the current Children and Young People Act 2008, with a view to providing maximum transparency and accountability so as to maintain community confidence in the ACT's care and protection system.

We will now move to our next witnesses, Ms Jane Campbell, Deputy CEO, and Ms Sally Hiles, Solicitor, Family Practice, from Legal Aid ACT. On behalf of the committee, thank you both for appearing today.

I remind witnesses of the protections and obligations afforded to them by parliamentary privilege and draw your attention to the pink privilege statement on the table. Could you confirm for the record that you have read and understand the implications of the statement, please?

Ms Campbell: Yes, I have read that and understand that.

Ms Hiles: Yes, me too.

THE CHAIR: I remind witnesses to refrain from referring to information that may identify a child, or a young person, who is or has been the subject of a Childrens Court proceeding. As witnesses will be aware, any information that is disclosed to or obtained by a person under the Children and Young People Act 2008 is subject to a strict set of secrecy provisions. The Assembly reference to the committee also specifically requires that the committee take evidence and hold documents in ways that will not allow for individual people to be identified without their express consent.

The hearings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live.

Before we proceed to questions from the committee, Ms Campbell, would you like to make an opening statement?

Ms Campbell: I thank the committee for inviting us to appear today. Legal Aid has provided written submissions in regard to part 2 of this inquiry, however, Ms Hiles will be able to speak more directly about that matter as she is the person who has more experience in that field. I would ask Ms Hiles to address the committee.

Ms Hiles: In the family practice, we work both in the family law and care and protection fields. We are, I guess you could say, the front line in terms of the solicitors who appear regularly in the Childrens Court, acting both for parents and, probably more often, as children's legal representatives. We are there on any given day of the week—at least one of us; usually multiple. Legal Aid ACT also has a duty solicitor who is available—I think it is every day of the week at the moment—Mr Hugh

Jorgensen. His job is to give more ad hoc advice and be there, on call almost, to help out, usually parents, but the court if necessary.

THE CHAIR: Thank you. I want to raise a couple of questions in relation to your submission. I also have a question that does not necessarily relate to your submission, but I hope you will get the gist of it.

Ms Hiles: Sure.

THE CHAIR: You have talked about disclosure during care proceedings and how, sometimes, when you act for parents, the information that the child has been moved out of a placement to a different placement is not forthcoming and it makes your job more difficult. Can you expand on that, please?

Ms Hiles: Sure. Over the years I have seen this happen many times. I have worked in the field for about 10 years. Generally when children are taken into out of home care placements, that decision is made solely by the director-general or what we call CPS, care and protection services, staff caseworkers. They are obliged to first look at kinship carers, family members who put their hand up. That is an obligation they have under the legislation. Assuming someone suitable is found, they need to be declared as a suitable entity. Once that happens, that does not mean that that particular person is automatically the carer; there may be multiple people who are considered suitable entities.

What happens then? There may only be one person. If so, usually that person ends up having the child, or children, placed with them. In the event that there are multiple suitable entities, the department makes a decision. One of our issues is that we are not really sure how that decision is made as to who would be the best placement. That is under the guise of the best interests of the child principle.

In the event that no suitable entity is found within kin, within family, the next step is for the department to look at suitable foster care placements or other out of home things, particularly for older children. For example, with teenagers, sometimes, unfortunately, there is no placement suitable for them in a family situation, so they may be put into what colloquially would be called a group home or another situation where other teenagers reside.

That is the first step when emergency action is taken. What happens then, from time to time, is that placements break down. When that happens, that placement changes somehow. One of the things we spoke to in our written submissions that is a frustration is information then as to how the next placement is sorted out.

Placement decisions are all then made internally, as far as we are aware. There is usually no consultation with us, particularly as the child's representative, as to the fact that child X has been removed from this placement because of X, Y or Z reasons and the child has been placed with whoever the next person may be. That information is usually not forthcoming in an immediate sense. Sometimes—I would say usually—we do not find out about that until the next lot of court documents is filed. We go, "Okay, we did not know that. What happened?"

MRS DUNNE: That would happen even if Legal Aid was acting as the child's advocate?

Ms Hiles: Yes.

MRS DUNNE: How can you advocate?

Ms Hiles: You cannot.

MRS DUNNE: Then how can the child be involved in the decision about their placement?

Ms Hiles: As far as we are aware—I will try my hardest to be careful about what I say—ultimately that decision all happens behind closed doors. We do not usually know how the decision is made. We do not know what opportunities the child is afforded to have a say in what placement they may have.

MRS DUNNE: You would not even know the circumstances of how the placement broke down?

Ms Hiles: Not always, no. We may only find out with the next lot of court documents, which may be months down the track. "Hang on a second; we did not know about this. Why is this child placed here?" Or we may find out at the next court event; if we just speak informally to the lawyers for care and protection outside the court, we are told then.

Obviously, that makes our job very difficult in terms of advocating for the child's best interests. We do not know anything about why the placement broke down or what supports could have been put in place for the child to stay in that original placement. Obviously, we take the view that moving a child around too much is not ideal. Simply, we do not know. We are not provided reasons for that, usually. If so, it is an informal email or something from the solicitor from care and protection saying, "Just letting you know that so and so has been moved to a separate placement." We might not even know what the placement is; we might not be afforded details of the placement.

MRS DUNNE: As a child advocate, how does Legal Aid keep contact with that child? It is a different set of circumstances if you are representing the parents, but if Legal Aid is placed as the child's advocate, is there an expectation that you would be in regular contact with that child?

Ms Hiles: That is a good question; that is actually something that has happened. I can speak to this; it has happened recently. It usually depends on the age of the child. If it is an older child, usually they have their own mobile phone and I am very comfortable with just speaking to the child directly if I need to or just calling them up and saying, "Hi, just letting you know …" We usually have an initial meeting with that child, regardless of age, unless they are babies.

If they are old enough, I will speak directly to them. Otherwise, there is an expectation—and I believe an obligation upon the department, because the department usually have parental responsibility for that child—to make that child available to come in to see us at our offices or somewhere that is convenient. Unfortunately, sometimes that is difficult as well, because that usually involves about five people trying to organise for that child to come in.

For example, I then would be required, as the child's advocate, to write directly to the department solicitor, because I am not able to speak directly to the caseworker. I write to the solicitor for the department and say, "I confirm that I have been appointed as the child advocate for X child. I would like to meet with that child. Can you please make arrangements to have that child brought to me." They usually then convey that message—I assume; this is all a bit of a mystery—to the team leader of care and protection, who then speaks to the direct caseworker, who then speaks to the child's placement. Then that comes back the other way. So it can be a difficult process.

MS LE COUTEUR: Time consuming at the least.

Ms Hiles: And time consuming. I am very lucky: I have an excellent paralegal who does a lot of that stuff for me, thank goodness. But it is really tough sometimes to even have the child made available.

I can speak to a recent example that I have had of that, just before the Christmas break: a young woman—she is 12, a young lady; I think she is classed as a young person under the act. Being able to actually see her, for me to chat to her about my role and what I could do to help her—I think we went through three court adjournments, just because I kept on saying, "I can't help the court, because I still can't meet with this young person. She has a right to her legal representation being able to advocate properly for her, and I have not been able to do that, because the child would not be brought in."

That child was still living at home with her mother. There were obviously some problems there, which is why care and protection were involved. They took the view that it needed to be arranged directly with the mother, who was not forthcoming about participating in the process. So I did not end up getting to see that child until finally, on the last day of school, we made the decision for one of us just to go out to the school and see her there. I usually take the approach not to do that, because I consider that school is a safe space for a lot of these kids, and sometimes their only safe space. So we like to do it in a more neutral environment. But it can be very difficult—

THE CHAIR: You were running out of options.

Ms Hiles: Sometimes we have no other options, and that was the case.

MRS DUNNE: What that describes is a situation which reinforces what I see as the overall point of your submission. You touched on it. As an officer of the court you are supposed to be assisting the court in its deliberations. And that goes for the parent's solicitor, the CYPS solicitor, et cetera. But being deprived of access to information—which is privileged, and you are bound by a whole range of conventions about how you handle that information—inhibits everybody's capacity to assist the court, it seems to me.

Ms Hiles: Yes, I completely agree with that. And what, in my submission, it also does is elongate the court process. I know that this is probably a far-reaching outcome, but if we are not able to access the information that we need in order to give proper and effective legal advice to parent clients and to advocate properly for the children and young people that we act for, we are then in a position where the process is frustrated so that really no one can effectively do their job, which then leads to more and more adjournments. It takes a lot longer for the process to be finalised. Often we are given the court documents on the day. We arrive for a 10.15 listing at a quarter to 10 or something, and we are handed a bundle of documents when we get there. I can read fast but not that fast. Often what will come out of the material then leads to further questions. Particularly because the sharing provisions are so strict, it leads me to then need to ask further questions, which often are not answered because the fallback position is, "We can't release that information," which then may lead to—it is in our submissions—me having to issue a subpoena to get particular documents. So we are then looking at another six weeks down the track for those documents. For example, with Queensland police documents or something like that, if the family have been involved with that particular organisation, we need to have those documents produced. Everyone needs to have a chance to look at them, decipher, figure out what is in them—

MRS DUNNE: So what you are describing is an encumbrance on the court.

Ms Hiles: Yes.

MRS DUNNE: But also, because you have a delayed outcome, that cannot necessarily be in the best interests of the child. Everyone says, "We can't do this; it's not in the best interests of the child." But what you are actually doing is delaying a decision-making process, which is not in the best interests of the child.

Ms Hiles: Absolutely not. A lot of the children that we deal with, as I am sure is obvious, are very anxious children. They have obviously had a very difficult history. To hear that they are involved in a court process is very upsetting to some children, and parents of course as well. They would like it over and done with as soon as possible. And when that leads to multiple delays, adjournments and effectively the court not being able to make a final determination, or even for a consent process, for example. If parents end up consenting to the arrangement, they cannot do so without actually knowing what they are consenting to. So matters that could have been resolved by consent earlier are simply not able to happen, because of the information production.

MRS DUNNE: Do Childrens Court magistrates comment adversely on these events?

Ms Hiles: Yes, they do, and particularly more recently, I would say. Like I said, I have done this for quite a long time. Earlier, not so much, but nowadays I think yes, particularly in the past, I would say, three years, I have noticed quite a change.

MRS DUNNE: Is that a change in personnel involved in this, or has it got worse?

Ms Hiles: No, I think the judicial comments have been actually very helpful to us. I can say that there probably was an approach back when I started this job of, "There's no point in taking that up, because the director-general will win." There was probably a general flavour of that, not just in our organisation; obviously I have a lot of colleagues who do this kind of work as well. I think that is very gradually changing. I think being able to challenge decisions has been more welcomed by judiciary, a lot of the magistrates of the Childrens Court. To be fair to the magistrates, they probably are not aware of how difficult some of this stuff is. When it is brought to their attention, in the appropriate environment, they are often quite horrified. We need to remember that the department are a model litigant. They are meant to be—

MRS DUNNE: They are meant to be.

Ms Hiles: They are meant to be, and with these kinds of things there can be quite scathing comments directed at them. When it is brought to their attention, yes, of course there are comments made. I cannot say that I have ever seen, for example, a cost penalty or anything—not that I can think of, but obviously I do not appear in every matter.

The other problem, I would say, for example, just tying some of these things together, would be placement decisions—one of the biggest things that we come across. Placement decisions are not reviewable decisions. I must—

THE CHAIR: That is one of the points I wanted to ask about from the submission.

Ms Hiles: I can speak further to that. Sorry if I am speaking inappropriately or if this is something you already know. There is a table in the legislation as to what is and is not a reviewable decision. It is section 839. It is a very small table of decisions that are externally reviewable. Those types of decisions are things like whether someone is a suitable entity. There are not very many. One of those that, in my submission, is one of the biggest problems is the lack of reviewability when it comes to placement decisions.

For example, when I was going through this and speaking to Ms Campbell yesterday, it was jogging my memory of a case that I ran, trying to overturn something whereby, even if family members are considered suitable entities, there is no obligation upon the department to place the child with any of those suitable entities, whether the suitable entities are family or not. As far as I can see, based on my research, there has only been one published decision from ACAT with regard to this particular issue, which is called W v Director-General 2015. That was a case where this particular provision was challenged, from what I can see, the only published decision, probably incorrect in law, in that placement decision is not reviewable. While ACAT was sympathetic to this particular woman's plight, they said, "We are bound. We have no jurisdiction to make any decisions about this."

After doing some research into what happens if a placement decision is made—I will do this hypothetically. Even if a child has been placed with—in this case of W v Director General*,* which I was not involved in, this woman was caring for her three nieces and nephews. She already had her own family and those children had been placed with her for what I think they called a short to medium-length placement. Then after that medium length, which it does not specify but seems to be quite a long process, they decided, "Actually, we don't think that you are a suitable long-term carer until the children are 18 years." Then those children were removed from that placement and their cousins. The aunt made an application to ACAT, which would be the only avenue available to her in the administrative law review decision and said, "I want to challenge this. This is not right," basically. That was about the thrust of it, because ACAT said, "Whether or not it was the right decision or an appropriate decision, we have no ability to review that decision, because it is not—

MRS DUNNE: Not even under ADJR?

Ms Hiles: Yes. And that decision was made and it cannot be challenged.

MRS DUNNE: What you are saying is that the provisions in section 839 effectively override AD(JR)?

Ms Hiles: In effect, practical effect, yes. I did find something when I was looking again last night, trying to find anything. There is a section in the director-general's website on the working together for kids document, guide 4, which seems to suggest that a placement decision would be able to be internally reviewed. There is no detail on how that would occur, who would do that review. In any event, that would all fall under the auspices of sensitive information that would not be released to anyone anyway and would not be externally reviewable by anyone. I am not really sure how that works.

MRS DUNNE: Does Legal Aid have experience or knowledge of how this operates in other jurisdictions, what are reviewable decisions in other jurisdictions and—

Ms Hiles: I cannot speak specifically to other jurisdictions' placement decisions. Their sharing information provisions in my view are much the same, I think, in every state that I have looked at. I rely on a document provided by the Human Rights Commission. There is a good summary there of the other jurisdictions. In my submission, they are much more liberal in terms of their information sharing. I cannot speak specifically to their replacement decision reviewability. However, my understanding of other jurisdictions is that they have greater external review mechanisms and internal review mechanisms than we do here.

In my submission, if there is anything that could come out of this inquiry, any further review, particularly of placement decisions—that is obviously something that I feel very strongly about—it would be welcome, any external scrutiny. I understand that technically the Public Advocate may be able to be apprised of placement decisions but how much practically they could do about it, given the lack of review mechanism, would be very limited.

MRS DUNNE: What you have described is that the current children and young people legislation in the ACT was not reviewed by this committee's predecessor before it came into operation. I specifically moved for that to happen and it did not happen. This was never brought up in any way. What you are actually saying is that there is no effective internal or external review of decision-making provisions in the act?

Ms Hiles: Particularly when it comes to placement decisions. And, to be fair, I cannot comment too much on the internal process because I could not find any information on it and—

MRS DUNNE: And you cannot see what is happening?

Ms Hiles: I cannot see behind what is going on and I do not know.

MRS DUNNE: For certain decisions, including placement decisions, we have specifically disallowed AD(JR)?

Ms Hiles: I would say the practical effect is that it is not reviewable.

MS LE COUTEUR: In your submission, in point 5, the fifth paragraph—and I must say it is a very useful submission, it is very succinct and to the point; thank you very much to whoever was the author of this—you are saying that the issues with obtaining this information stem in part from the fact the director-general's power to disclose safety and wellbeing information is discretionary. Do you think that this requires a legislative change or could it be done by a policy change? It is not clear here.

Ms Hiles: That is a good question. I did not draft the document but, just thinking about it, in my view, given the scope of inquiries also directed to community competence, I would be concerned if it was just a policy change. I would be concerned that, given all the other issues I touched upon, apart from lack of external scrutiny and whatnot, it would be difficult for it just to be a policy change. We could not really tell whether or not it would be adhered to. But it would depend on how strictly the policy was adhered to, I would say. I would suggest that a legislative change would be very helpful.

We have spoken to the discretion and that is based on the word the minister or director-general "may" give on information sharing. Obviously there is a statutory interpretation issue on the word "may". However, in the practical effects that I am aware of, may means—

MRS DUNNE: Wait.

Ms Hiles: I will not go there. I will not touch that with a 10-foot pole. But it means may or may not. From my understanding of their processes—and I had another look at all the publicly available information—there are no guides or policies when they may or may not provide that information. It may be that if there was a guide I would be able to say, "Sure, a policy would be helpful." I think that is obviously one step forward to where we are now. A legislative change would be helpful.

I would suggest that if there is a legislative change that would enhance community competence and also would assist, speaking personally, on the front line in terms of us being able to say, "Why didn't you provide that information? The legislation says you must," or in these particular circumstances compels them to provide that information. It would just help us, again, to be able to be more effective advocates and assist the court because all the information would be there.

Of course we understand privacy issues and that this is all very sensitive information and I am not trying—

MRS DUNNE: But you are officers of the court and you are bound by all sorts of rules, which are clear?

Ms Hiles: Of course, very strict rules, yes. As part of our job, not just as officers of the court but after being admitted to practice, we are bound by certain things. For example, in the Federal Circuit Court or Family Court, in addition to our general rules about confidentiality and privilege, orders are very often made about the way that documents can be handled or dealt with. For example, access restricted to legal representatives only means that we may only view certain documents at the court in a particular space and that that document is not allowed to be removed from the court precinct. There are more simple things like no photocopy access; restraints on whom you can and cannot speak to about whatever you glean from that information. There are lots of ways that we can still, in my view, ensure privacy and confidentiality while still being able to do our jobs more effectively.

MRS DUNNE: There are precedents for that?

Ms Hiles: Yes.

MRS DUNNE: Could I touch on the issue that was touched on by previous witnesses and I think when we dealt with part one of this inquiry about pro bono work and how difficult it is to obtain pro bono assistance, presumably on the basis that the likelihood of being awarded costs is very rare. Does Legal Aid have a view about the need for pro bono work in this space and what the impediments might be?

Ms Hiles: Did you want to speak to that?

Ms Campbell: Yes. I think that was an issue that was raised in part 1. But Legal Aid now have received funding for a duty officer, Mr Jorgensen, who appears every day in the care and protection field at the Children's Court. In the very short time that he has been involved in that—and there is a large amount of work that he is doing and of course it is promoting that early assistance that is necessary in those matters—he is there on that very first occasion when an emergency action has come and it is listed in court the following week. He is there to provide information and assistance and then sometimes a representation of parents who are going through the process.

That, in some way, has filled a bit of a gap because there was that lack of pro bono work. And I think it was a recognition that there is a need for legal assistance for parents and people involved in the process because of the difficulties with that process. It is very hard to navigate. As you can see, it is difficult because of the lack of information that people see. It is difficult even for solicitors to navigate.

MRS DUNNE: And it is complex, and people are stressed?

Ms Campbell: And it is extremely complex.

MRS DUNNE: And there is a power imbalance?

Ms Campbell: That is right. And the emotions are so raw as well. In terms of pro bono work, again I am not sure how much is available in terms of pro bono work. In terms of providing legal aid, the matters will go through the usual guidelines for seeing whether a person is eligible for legal aid and then also the discretion of the chief executive officer can be used in certain circumstances as well. There is definitely a need for more legal assistance in this field.

Ms Hiles: I want to speak a bit further in terms of practical effects of that. Earlier in my career it would be almost understood, or a given, that once emergency action was taken the department are required to bring that to the court within 48 hours. Of course this is all happening very quickly, and I am not trying to minimise what a difficult job that would be trying to put together court documents and find placements and all those things in that very short time frame. But it would then be expected you get there, if you are acting for the child, and there would be an automatic adjournment for a period of two to three weeks to allow the parents to obtain legal representation.

I will say, now that Mr Jorgensen is on board, I think that that is happening a lot less because the parents are able to see someone then and there at the court. The court is happy to stand it down for a short period so that they can talk to somebody. I think that that is helping not to, I guess, waste that court appearance. Obviously this parent is in a terrible state. Their children, usually, have just been removed from them. It is a very heightened court event. I think that that is helpful.

I will say, though, that when it comes to more ongoing pro bono work it is difficult—I would say again, this is quite informally—to attract many people to this type of work. I would say that there are not very many people who do it. Even in the family law space, most of the people I see in the family law courts, I very rarely see in the care and protection courts. Obviously the subject nature is very difficult, and I think that people find it very personally confronting. I find it still personally confronting after doing it for such a long time.

But also there is not a lot of money in this particular work; it is not particularly attractive in that you are not going to get a published judgement out of it either, for the most part. Something that could attract people to do more of the work would be something like published decisions. That is why obviously some people take on pro bono work, to get their name out there. That does not happen in this particular jurisdiction. Even when I am looking to refer someone who does not fall within the means test of legal aid and I am thinking, "Which of my colleagues, externally, can I refer them on to?", there is such a small pool of people who do it.

MS LE COUTEUR: Can you tell me a bit more about published judgements?

Ms Hiles: Sure.

MS LE COUTEUR: I never heard of it before as something that lawyers wanted.

Ms Hiles: Yes, they do.

MS LE COUTEUR: I have known about it in different contexts.

Ms Hiles: Particularly if they win, they want it published. Generally, not just in care and protection law but in trials, if we go to trial and it runs the whole way through, we have all our days of hearing and at the end the judge makes the decision. I think it is up to the judge's discretion, as far as I am aware, whether or not that decision is published.

Some judges, in family law, publish everything. Every single one of them they send off to get published. That then makes publicly available the reasons for the decision. On those published decisions, it will have your name. "The applicant was represented by Sally Hiles; the respondent was represented by Jane Campbell"—I would not want to go up against her—and those types of things. It has the barrister's name as well.

Barristers are looking for business. Their job is to get their name out there as a very good advocate so that people want to send them work. If you can then say, "I have won this judgement, I have won this, and have a look at my work," published judgements are one way to do that.

In care and protection, I can say, for the first huge chunk of my career, there were no published judgements from the ACT Children's Court, which then obviously makes it difficult for lawyers, particularly up and coming lawyers. When you are first starting out, you rely very heavily on reading judgement, after judgement, after judgement so that you get what is going to happen. You understand, "In this particular set of circumstances it is likely that this particular judge will order X. In this particular circumstance a different judge might order something different." And you just get that by reading judgement, after judgement, after judgement, after judgement.

MRS DUNNE: Why are they not published?

Ms Hiles: That is a good question.

MS LE COUTEUR: This is surprising because of the case that started this inquiry, the CP case. Clearly it eventually was published in huge amounts of detail.

Ms Hiles: Yes, it was.

MS LE COUTEUR: It did not occur to me that this was something unusual.

Ms Hiles: Again, this is informal; I do not have anything to back myself on this. But I can say that the CP case was the rarest case I have seen in my career. I was involved in the very early stages of that case, to the point that I could not tell you, before CP, for there ever to be a judgement or a case published or details provided in that way, ever. That is in my personal experience, but quite literally never.

MRS DUNNE: Is it something in the court practice or is it a convention or is it—

THE CHAIR: Is it part of the Children and Young People Act?

Ms Campbell: That is what I am thinking. That is where there is that sharing information.

Ms Hiles: Not to my knowledge.

Ms Campbell: The sensitive information provisions may, in fact, impact on what the court could actually publicly reveal.

MRS DUNNE: But that again is another issue of transparency?

Ms Hiles: Yes, it is. Sorry, I am not trying to debate your point but obviously the sharing information-sensitive aspects of the case would be difficult. But definitely there are provisions that allow these judgements to be published and, in my view, should be able to be published—also for public accountability. For example, until CP I had never heard of a care case, as we call them, being published, talked about in the media.

Ms Campbell: And there is also the jurisprudence of the care and protection field of work which is therefore missing because we do not have it and we cannot really access it.

Ms Hiles: Of course. And we just do not know, which then makes it difficult for you to give—sorry, I am trying not to go off on a tangent here but—

MRS DUNNE: It makes it difficult to make decisions based on precedent when there is no precedent published?

Ms Hiles: Correct, there is no precedent. There is only the act to fall back on, no common law. Yes.

THE CHAIR: In your submission at point 9 you talk about disclosure when emergency action is taken and the fact that you are not often told whether the parents or the child are from an Aboriginal or Torres Strait Islander background. Would that also be true from a disability background, from a—

MS LE COUTEUR: A multicultural background?

THE CHAIR: Yes, a multicultural background?

Ms Hiles: I will speak to that in terms of how we get notified about the case. It is an imperative that a child representative be appointed in all care and protection cases. That is the first step. What happens when a child is taken into care is that an emergency action is taken and the director-general is obliged to let Legal Aid client services, who are our funding body, know that basically we need a child representative in this new matter. That is just, simply, a form. It is a piece of paper that has certain boxes that can be ticked or usually it is one or two sentences as to what happened, why emergency action was taken.

It probably depends on who the caseworker is or who the lawyer is who has actually drafted this piece of paper. This piece of paper, this document, has no box for disability, for example. But sometimes, with the one or two sentences at the bottom where it talks about what the case is, they may mention that this child has complex medical needs or something—

THE CHAIR: But what about the parent, for example?

Ms Hiles: Or the parents, no. And one thing I will have a gripe about, a personal gripe—and I have been asking for this since day dot—is having the parents' date of birth provided. You would think that is a very basic requirement. But what that does is help me shape the way that I am going to approach the case. For example, if it has got the child's date of birth, which is good, that is something. But it does not have the parents' date of birth.

It is perhaps a nuanced thing but it may be why that we approach it differently. For example, if we are talking about very young parents, or teenage parents, it probably would be different than the way we would look at a parent aged 40 with five other children. Other information could be whether or not this child is the first child of these parents; if it is very young parents, what supports could be put in place for those people. Often I do not even know these things.

I get to court—and I must say, I am not a very good judge of guessing how old people are—and I see them and I sometimes even in that court event will say, "I am sorry, can you please give me your date of birth?" And I write it down so that I can probably have a think about what would be appropriate next.

Sorry, that is not particularly on point. We need that basic information provision from the first point of contact. If this is a multicultural family we have a great—what are they called, Jane, the liaison team?

Ms Campbell: The community liaison team.

Ms Hiles: Community liaison unit, yes. We have varying cultural backgrounds but also support services available in house. For example, if I know this person is of a particular background, we may actually have someone of that background on staff whom I can ask, "Would you mind coming with me?" Often, particularly, parent clients are much happier speaking to someone in their own language or someone that they know and feel more comfortable with than me. That is very helpful for me to be able to do my job and for the client to feel supported.

MRS DUNNE: Going back to the role of child legal advocate, if that is the expression—

Ms Hiles: Children's legal representative, yes. We call them child reps.

THE CHAIR: We have been calling them all sorts of things.

MRS DUNNE: Is it the case that each individual child would have a legal representative or, if there was a group of siblings, would they have one—

Ms Hiles: A sibling group would have one lawyer.

MRS DUNNE: On behalf of all of them?

Ms Hiles: Yes.

MRS DUNNE: Would it be possible that as things developed—there might be an age range—one of the older kids said, "I want to be represented by myself"? Does that happen or no-one is that bolshie?

Ms Hiles: Sometimes they are bolshie enough to tell you they do not want to talk to you, in no uncertain terms. I would not say that I have ever had that experience.

MRS DUNNE: The normal practice would be that siblings are represented by one person?

Ms Hiles: Yes. Having said that, though, if there is a big age range: sometimes children have very different interests, legal interests, as well as personal interests and I will not see them as a sibling group, I will see them individually; sometimes we see, sadly, that there are problems within the sibling group itself in terms of violence or other things. Obviously their interests are completely divergent and there may need to be particular care taken to address their individual needs, rather than just say, for example, the Smith children or the Jones children. Sometimes we do that, particularly if they all very young and their interests are aligned.

But often, particularly when we have young people, teenagers will make their own decisions about what they want to do and will not listen to whatever we try to do. And they make what we call self-place. Whether that be an appropriate place or not is another story. But then their interests would be different from the younger children's.

Sometimes we do not even have the opportunity. If they are very young I will not see them. If they are babies, obviously there is no point. Sometimes people get a bit uncomfortable with that, I think. I think it is very important to treat children as individuals, not just as a sibling group.

MRS DUNNE: I suppose this is an individual thing but where would you start—

Ms Hiles: Age-wise?

MRS DUNNE: age-wise—to have that conversation with the children?

Ms Hiles: If it is a single child, no siblings, I usually say around school age, kindergarten age, five and above. That is my general rule. Obviously it depends on the nature of the child and also their maturity level. Some of the children we see obviously have very complex medical needs or delays and things. It might not be appropriate.

If they are a little bit younger, for example if I have got a four-year-old within a sibling group that are, say, 10, eight and four, I will see them. But there is no rule or guideline necessarily. But that works with family law as well. It is down to individual practice.

But what I tend to find is that I actually get more out of the young ones than I do out of the older kids, because they do not have filters. Often they do not know what they are supposed to be telling me and they open up and I get some amazing information. It is great fun, I must say, with the five or six-year-olds who come in and say, “My daddy told me I have to tell you this.” Automatically that gives me a bit of information right there. I am not going to see a non-verbal child or something.

THE CHAIR: What age range do you represent up to?

Ms Hiles: Technically, the jurisdiction is anyone under the age of 18. But I will say we generally do not tend to see any action being taken for children—

Ms Campbell: Sixteen?

Ms Hiles: Probably a bit lower, probably 15. It depends on the nature of the case. If there are 16-year-olds we generally do not see care and protection doing anything about those children, which is actually, in my view, very sad and very concerning. I feel as though—and not just to hammer anything home—those kids are usually in the too-hard basket, which is very sad. They are young people who are often very sad. My former boss used to refer to the generations that will come through, which is really sad. I agree that it is very difficult to try to place older children, for myriad reasons. But, technically, the answer is up to 18.

THE CHAIR: Unfortunately we have reached the end of our time today. Thank you very much for coming in and having a chat with us.

Ms Campbell: Thank you.

Ms Hiles: Thank you for the opportunity.

Hearing suspended from 11.17 to 11.34 am.

MACLEAN, MS CLAUDIA, Principal Solicitor, Women's Legal Centre (ACT and Region

THE CHAIR: Good morning. Before we proceed, I remind witnesses of the protections and obligations afforded to them by parliamentary privilege and draw your attention to the privilege statement. Could you confirm for the record that you have read and understand the implications of the statement?

Ms Maclean: Yes, I have.

THE CHAIR: Thank you for appearing today. For this inquiry, I am mindful of telling witnesses what you already know. However, for the purposes of this inquiry and public hearing, I remind witnesses to refrain from referring to information that may identify a child or a young person who is or who has been the subject of a Childrens Court proceeding. As witnesses will be aware, any information that is disclosed to or obtained by a person under the Children and Young People Act 2008 is subject to a strict set of secrecy provisions. The Assembly reference to the committee also specifically requires that the committee take evidence and hold documents in ways that will not allow for individual people to be identified without their express consent.

Ms Maclean, do you have an opening statement you would like to make?

Ms Maclean: Yes, I do. Firstly, I would like to thank you for the opportunity to appear before this committee.

The Women's Legal Centre ACT, as you are probably aware, is a community legal centre helping Canberra's most vulnerable women. We have a team of lawyers, an Aboriginal caseworker and a social worker dedicated to a trauma informed and culturally safe approach to helping clients with their legal problems and ideally the source of those problems. We fill the gaps in the legal assistance sector, providing legal representation and other supports to women who would otherwise go without.

Much of our work involves helping women engage with their legal issues. Specifically in the care and protection space we provide early intervention assistance, including liaising with care and protection about child concern reports, representing women at case conferences, linking women with other supports such as housing, counselling and DV support, and ensuring that women understand the process and are heard in this process.

Much of this work involves being a conduit between care and protection and the client to ensure that they remain engaged. We also work with women in the maternity unit at Calvary Hospital as part of the health justice partnership and helping women who are facing newborn removals. This is an initiative of the family safety hub. We also provide support for kinship carer applications that prioritise the Aboriginal placement principle and advocate for children to remain with Aboriginal families where possible. In limited circumstances, we support and represent women seeking restoration of care.

We also coordinate and manage the ACT Legal Assistance Forum care and protection working group, known as the ACTLAF working group, which includes members of care and protection, the ACT Human Rights Commission, private lawyers, carers, and Aboriginal elders, to share information and find opportunities for collaboration. So we are very much focused in that early intervention space.

Ultimately, the Women's Legal Centre works with Canberra's most vulnerable women. I do not think that there is any greater vulnerability than facing the prospect of losing your kids. There are many complex reasons why women face this prospect. Often for the women we support there are safety concerns about an ex-partner or current partner, and concerns about the women's capacity to protect their children. Often there are drug and alcohol dependency issues. Sometimes there are mental health concerns. Usually there is a combination of all of these. However, what they all have in common is trauma. This trauma is layered, cumulative and, for many of our clients, particularly Aboriginal clients, intergenerational.

A care and protection system that is impenetrable, confusing and opaque compounds this trauma. It reinforces the inherent power imbalance between a government system and a highly vulnerable individual. Many women come to our service distressed and confused. They do not know the care and protection system and they are unable to get information from care and protection to clarify the situation. Very rarely are women given anything in writing, which makes our job very difficult. When you cannot articulate what is going on and you are in the middle of a process that puts up significant roadblocks, it is very difficult to seek help.

As noted in our submission, it is very difficult to obtain information and much of the centre's time is spent chasing the client's caseworker for it. Sometimes we have been told that caseworker do not speak to lawyers. Whilst this may be the case if you are in the middle of Childrens Court proceedings, it is not the case for a matter that is not in court. However, the provision relating to when information can be shared is discretionary, limited and not subject to external review unless in court. Indeed, the information may become available only once there are proceedings in the Childrens Court on foot.

When it is in court, emergency action has already been taken and the woman has to go through the process to address the assumptions which care and protection have relied upon to commence emergency action. That is, there is a flow-on affect from care and protection acting upon substantiating information that the client does not have the opportunity to address in a formal way at the earliest opportunity. When the matter proceeds to court, care and protection have a caseworker, a lawyer from the department, a lawyer from ACTGS, and a barrister on the other side of the table. It is costly, traumatic and labour intensive.

We do not deny that these matters are complex. Care and protection have a difficult mandate. The Women's Legal Centre is encouraged by this inquiry and our recent collaborations with care and protection to improve outcomes for families. The centre has been working with care and protection, CYPS, to improve this process and is currently formalising a policy with CYPS to confirm that the centre can attend conferences as a legal support to the client, as this was often an obstacle that we faced in the first instance. We have also met with the CYPS complaints team so that both organisations can understand the other's function and limitations. Increased transparency is one of the innumerable measures needed to address this power imbalance. However, it is the tip of the iceberg if we are to build a true culture of transparency and fairness which is more congruent with a progressive jurisdiction like this ACT.

THE CHAIR: You talked, both then and in your submission, about the flow-on affect and a lack of information sharing about child protection concerns. How do women—I am using ‘women’ because you primarily support women—find your services? We have heard from other witnesses that people are finding it difficult to understand that they can have legal representation and how to get legal representation. How do women find your services?

Ms Maclean: Yes. It depends upon, I think, which cohort of women, particularly Aboriginal clients. Very rarely do those clients approach the service directly. It is often through our amazing Aboriginal caseworker, Leah House, who is out in the community helping these women. She knows these women; she lives with these women. So word of mouth is a big one for us. We also have very strong referral relationships with key organisations in the ACT: Legal Aid, which is probably one of our big refers, and likewise we refer to and rely upon Legal Aid greatly; DVCS; some judges in the Family/Federal Circuit Court, as we actually have a very good relationship with the local judiciary; private practitioners; and other support services. Women’s refuges are a big referral source for us as well. But I also think working in the ACT—we are a big country town most of the time—people tend to find us and are linked in with other services already.

THE CHAIR: We heard yesterday from Beryl Women Inc basically similar things to what you raised: that is, the re-traumatisation of women when their children are removed from them. You were talking about the word of mouth stuff with the Aboriginal community. How do you link in and provide services around that sort of thing as well? Obviously women are traumatised when their children are being removed. Do you link in with other services to help provide that? And how does the information sharing work? We have heard that that can also be a bit difficult.

Ms Maclean: Particularly for us. We have the added layer of being lawyers. We have the duty of confidentiality and legal client privilege. We would say we are women led. If a woman has given consent for us to share information with a service that she is working with and trusts, we make sure that that is informed consent but, essentially, if the woman consents to that information, that is enough for us to be able to create those working relationships. And we have a very good relationship with Beryl on that basis as well.

To answer your question about how we operate, I would not say it has been a shift but a lot of resources and emphasis and training have gone into being a trauma-informed service. But what that actually means—because it is a bit of a buzzword—and what that means day to day for us and if I am a private practitioner coming into doing it is that you do shift the way you practise. You are always balancing ensuring that the client feels heard and that you are giving them appropriate time but also noting that you have got many clients and there are efficiencies and limited resources. So it is about how you elicit information without retraumatising. For example, we will often try to get a statement of facts or look at a previous case file or, if they have worked with other services, get those notes beforehand so we are not coming in completely green.

In terms of a culturally appropriate way, it is making sure that they are linked up with and provided support by our caseworker. That can be really practical things like us going out to them rather than expecting clients to come in, particularly if they have got seven children in their care and it is really quite a logistical feat to make an appointment in Civic. Essentially, it is really understanding how trauma impacts upon people's decisions, because there is great frustration when you are dealing with a traumatised person.

Sometimes you think, "Yes, there's a very clear legal pathway here if only you do X, Y and Z and you attend all your urinalysis and so forth." But if you do not have money to attend to food, let alone a bus or a taxi, particularly when the urinalysis is offered in only very limited places, that is a huge barrier. We do have brokerage, we do have a legal disbursement fund, but that is from our core funding. So for us it is a constant analysis of where to put our resources, and it is tight. We are very mindful of not duplicating services as well. Again, we are a small jurisdiction; we should be able to coordinate quite well with other services, and I think we do.

THE CHAIR: Do you also represent children? Are you a child legal representative?

Ms Maclean: No. We are not independent children's lawyers at the centre. We do have people who are trained in it and have come from that type of work in a past life but no, we represent the women.

MRS DUNNE: I suppose the thrust of your submission is that there is a distinction between privacy and secrecy. I think that what we are starting to see is some slightly Kafkaesque sort of performance of using privacy as an excuse for not providing any information. I am wondering whether the Women's Legal Centre over time has seen a change, a tightening up of the secrecy and privacy provisions. Are officials in CYPS less forthcoming than they once were?

Ms Maclean: That may be the case, but also the ACTLAF working group which I mentioned, where we are meeting with people from care and protection, has been an incredible source of information sharing in terms of their policies and also their knowing what we are doing in the space, because it is quite new. It is a bit of a novelty having a lawyer in a case conference. Before, lawyers were only involved once the matter went to court.

To answer your question about the tightening, just anecdotally from what we find, is that in that ACTLAF working group we have had some great traction with the heads of CYPS. They have verbalised a commitment to changing the culture. They do now acknowledge that there is a cultural shift that needs to happen, particularly with women who have experienced violence and not putting the onus on women to act protectively all the time. For us it is the trickle-down. The issue we have got, and even in the CYPS's own submission, is that this is a really complex web of information sharing—what is protected, what is sensitive et cetera—and you have people who possibly are not that experienced, particularly in this jurisdiction, because it is not a national jurisdiction; it is quite particular. So if you do not know, you err on the side of caution to minimise risk. I think it is that intense risk-averse culture which we are finding at the bottom end.

There is commitment, in my view, at the top. It is about that being able to trickle down. Anecdotally, we find on the ground that there are different caseworkers all the time. There is such a churn through those caseworkers that there is no traction. It is hard to create culture if you do not have people who are sticking around for that to happen and championing that change as well.

MRS DUNNE: I asked this question of some of the previous witnesses from the Law Society and I will ask it of you as well. As an officer of the court, are you impeded in providing assistance to the court through the privacy and secrecy provisions in the act?

Ms Maclean: No. Once we are in court, as a solicitor our duty is first and foremost to the court, and that trumps certain things. But also affidavits and so forth have been filed, so it is at that stage that the information is on the table. But, as outlined in my submission, it is too late if it is in court. That is the problem.

MRS DUNNE: But that means that you might end up with things being laid over because you are getting those affidavits often from evidence within an hour of the court proceeding—

Ms Maclean: Five minutes, sometimes, before going in.

MRS DUNNE: So that does not give you, acting on behalf of your client, the opportunity to digest that material—

Ms Maclean: And to respond to it.

MRS DUNNE: If you were acting in a criminal matter, for instance, you would have much more access to discovery earlier. So in a sense what you are finding is that your client is accused of something which has ended up in the Childrens Court but they do not necessarily know what that is until quite close to the time they turn up in court. So they cannot prepare; you cannot prepare.

Ms Maclean: That is right. So one of the big frustrations for us is right there. Emergency action is swift, and I understand that sometimes there are protective reasons for that and not to give too much warning of that. However, even if emergency action is taken on the Friday and the matter is in court first thing on the Monday, that is all right; we are a nine to five service, as is Legal Aid. There is a duty lawyer now, thank goodness, at the Childrens Court as part of Legal Aid. But, again, they face that same issue of trying to digest all this information; and to respond appropriately you need to issue subpoenas. You need to get access to medical records. You need access to criminal records. You are not going to get that in a week, let alone a day.

Emergency action is such a drastic action. Sometimes, yes, it is necessary. We do not deny that. But particularly with young children, as soon as you are interrupting that primary attachment—and we talk about the flow-on effect—it is this compounding thing; it is like a runaway train. Sometimes when the court has said, “Yes, there’s risk. It’s mitigated and yes, we should be keeping this child with the family,” at that point, even if that is, best-case scenario, within a six-month window, there is so much damage done. There are so many more complicating factors.

We had one—I am trying not to identify; I will keep it very high level—where the father was not even on the scene when emergency action was taken. He had not spent any time with this child for two years, and care and protection got involved and started a supervised time regime. This was a very violent perpetrator. The mind boggles sometimes.

We do a lot of work in the family law jurisdiction. They are applying similar legal tests, i.e. best interests tests. However, the consistency of how that is interpreted and applied: you would think they were two completely different practice areas, and they become completely different practice areas, when ultimately they have the same legal test at the core.

For example, with care arrangements, even if there are issues of risk, in family law jurisdictions there will be much more time with the at-risk parent, so at least that child still has the benefit of a relationship and that of course is done in a safe way. In Childrens Court matters, even while they are figuring out whether there is a risk, time is very limited. If 18-year orders are made, the standard we see is four times a year you see that child, and that is supervised. If that same fact scenario were in the Family Court, that would be an every second weekend case. So the difference in the quality of maintaining a relationship, I think that is the second part of it. Even if a parent cannot look after their child and that is the right decision to make, okay: can they still have a meaningful relationship and is it safe for that to occur? And sometimes that is the case. So there is just this huge discrepancy between jurisdictions. Sorry, that was a little off topic. But it is a different world—that is what I am trying to communicate—when it should not have to be.

MRS DUNNE: What do you think leads to such restricted access in the Childrens Court?

Ms Maclean: I think that there are many variables, as with most organisations. They are doing what we called in the office the *Canberra Times* test: “If this all goes belly up, is it going to end up in the *Canberra Times*?” That is a very valid test which you might empathise with. You are in high-risk situations.

Resources: if you look at supervised-time services in Canberra, you have got Marymead, one service in Narrabundah. That is not the most accessible place for a lot of people. There are no major public transport systems out there. As a policy, they can offer a two-hour supervised time a week, just because there is such a huge demand for their service, and they do an incredible service. That is not just in care and protection. If you go down the road to the Family Court and Federal Circuit Court, they are on the waiting list too for the supervised time services. So I think resourcing is a huge issue.

And I think it is risk aversion, this idea that we do not have the evidence to test what the impact is of more frequent and ongoing time on this child. But ultimately, in our view and in our experience, it is more the risk of damaging that relationship, and then once that is damaged it is very hard to repair.

MS LE COUTEUR: Earlier you talked about a change at the top, where you were suggesting that the top was more in favour of information sharing but lower down was more risk averse. How do you think that can be changed? Do you think that this requires legislative change so that the act is clearer about areas and times when information should be shared?

Ms Maclean: Yes, absolutely. Any greater clarity is always useful, and particularly simplifying the current system. For example, we spend a lot of time and energy trying to get traction about, as I mentioned, lawyers being involved at the case conference. If you look at the provisions which relate to information entities, you have a parent, you have a person with parental responsibility. But it does not expressly state "and/or their legal representative". Essentially, in our view, they are outsourcing that particular part of it. So expressly mentioning lawyers, not just community services, because there are a lot of private practitioners doing this work as well, albeit on legal aid rates most of the time.

For us, even just to get in the room was a great battle. To the credit of CYPS, they realised, "No, there is benefit in you being in the room," and we were able to get some traction there. But, even so, it was hit and miss. We would rock up to these case conferences and be denied entry into the room, and then you have got a woman who has no idea what is going on. I think part of that was the fear that anything said—you are a lawyer—is going to end up in court or as a very adversarial process. So it is this disconnect. But then if you are not giving someone anything in writing or anything concrete, you can only go off what you are told. So you are just creating this circle of mistrust.

To answer your question about legislative change, yes, there definitely needs to be some clean up and so forth. But I think that the bigger issue is that cultural shift that needs to happen, and that was referenced in the terms of reference. A culture of transparency is one piece of a much bigger puzzle. The current talks about Canberra being a restorative city and that translating into the care and protection jurisdiction is really interesting. But also, in my view, it would be more cost effective. I mentioned in my submission that when you rock up you have at least four representatives on the other side—for an adjournment. It is a crazy waste of resources. Yes, some matters need to go to court, no question, and they are really complex matters. But so much can be tidied up in those earlier stages. I think there is real growth and opportunity there.

MRS DUNNE: Going back to the issue about the culture of transparency, if there are a whole swag of decisions which are not reviewable either internally or externally, that militates against cultural transparency: "I don't have to be transparent, because no one is ever going to look at my decision." So I presume that that part of that legislative change would have to be more reviewable decisions.

Ms Maclean: Absolutely. Complementing part 1 of this inquiry about a system of reviewable, and external review of, decisions—it definitely goes hand in hand. And it is consistent, in my view, with the basic administrative law principles of access to justice and natural justice. Every other major government decision that affects your life—I am thinking in terms of migration, child support, all these things—has quite a clear system. You have 28 days to respond, blah, blah, blah. Why doesn't care and protection? This goes back to what I was talking about: that it is its own world unto itself. I do not quite understand how it got this way, why it is so inconsistent with other government systems or, in legal terms, jurisdictions.

It is not only decisions being not reviewable and so forth but also the access to legal services. If you have someone who is incriminated, if they are facing imprisonment, they are entitled to a lawyer. If you have someone facing losing their kids, they are not entitled to a lawyer. In my view, losing your kids is much more of a sentence than imprisonment. So it just goes back to that cultural shift that needs to happen.

MRS DUNNE: We are supposed to be a human rights compliant jurisdiction but there is not access to reasonable legal representation. You make the point in your submission that the accusations become a body of evidence that often goes unchallenged because the parent does not know what that body of evidence is and it builds up and builds up. We saw in the original case that we looked at in the other part of this inquiry that that was the case, that there was a body of evidence which went unchallenged.

If you ruled the world, how would you make the care and protection information sharing and review system different to make it more compliant with our human rights obligations?

Ms Maclean: I definitely think that the earliest intervention possible, the better the outcome. Even if you do not get an outcome, at least it defines the scope of the issues. I would say a system of review, a system of decisions and definitely a focus on decisions being in writing, that they are actually based upon certain things. A lot of the time, even if you do receive something in writing, it is pretty scarce and it is completely based upon discretionary principles.

I would say more articulate guidelines around decision-making—publicly available guidelines, more detailed guidelines—and that also being paired with easy English and accessible information services.

I would say greater legal assistance funding at both ends, in the Childrens Court and the early intervention end. As I said, for us it is quite a new space, the early intervention space. We have been doing a lot more of it, I would say, in the past two years. But that is not a specific program that is being funded. We are using our core funding to do that, but that is where we see the need.

Definitely decisions that are in writing and reviewable early on would be the most logical step.

MRS DUNNE: Legal Aid made the point that decisions in relation to care and protection are not published. They therefore made the point that there is no ACT jurisprudence in this space. Do you have a view on that?

Ms Maclean: Absolutely. I keep harping on about the family law jurisdiction, but there is a clear body of case law which guides not only the decision-makers but also the people giving the advice. In the care and protection space, there are just so many unknowns. I think having published decisions would aid in addressing that confusion—possibly adding to confusion in some instances.

MRS DUNNE: Why do you think there is not a practice of publishing decisions in care and protection?

Ms Maclean: I do not know. I have thought about that, because they have the same privacy concerns that you have in the family law space. You use anonymous names; that is how they fix that. Whether because we are such a small jurisdiction you are able to figure out possibly identifying information but, again, that is the same problem you have in the family law space, so I do not think that that is the reason. Whether it is a resourcing issue, I am not sure.

I know that case. The Women's Legal Centre were part of the initial Childrens Court case and part of bringing the appeal as well for the decision that is at the centre of this inquiry. Part of that, particularly amongst legal practitioners, is that finally we got a Supreme Court decision which lays out what you can and cannot rely upon in Childrens Court proceedings. Part of that, and relating to this particular inquiry about information sharing, was that you cannot rely upon child concern reports if you do nothing to follow up on those. There is this idea that "We're going to take emergency action because there are 12 reports." But if they did nothing to investigate those reports or they investigated and nothing came of it, that cannot be used as evidence of you being an unfit parent. That was really useful, because that gets taken back to all legal practitioners, both those for the department and those assisting clients within the system. So I 100 per cent support decisions being published.

THE CHAIR: Thank you very much for your time today, Ms Maclean. When available a proof transcript will be forwarded to you for an opportunity to check the transcript and suggest any corrections should they be required. Thank you for appearing today and for your submission.

Short suspension.

IVEC, MS MARY, Convenor, Canberra Restorative Community Network
NORTHAM, DR HOLLY, Member, Canberra Restorative Community Network
TITO WHEATLAND, **MS FIONA**, Co-Convenor, Canberra Restorative Community Network

THE CHAIR: We now move on to our next witnesses, from the Canberra Restorative Community Network. On behalf of the committee, thank you for joining us today. I remind witnesses of the protections and obligations afforded by parliamentary privilege. Can you look at the pink privilege statement and confirm that you have read and understood the privilege implications of the statement?

Ms Ivec: Yes.

THE CHAIR: For this inquiry, I am mindful of not telling witnesses appearing today what you already know. However, for the purposes of this inquiry and public hearing, can I also remind witnesses to refrain from referring to information that may identify a child or young person who is, or has been, the subject of a Childrens Court proceeding. As witnesses will be aware, any information that is disclosed to or obtained by a person under the Children and Young People Act 2008 is subject to a strict set of secrecy provisions.

The Assembly reference to the committee also specifically requires that the committee take evidence and hold documents in ways that will not allow for individual people to be identified without their express consent. I also remind witnesses that the proceedings are being transcribed for Hansard and are being webstreamed and broadcast live.

Before we proceed to questions from the committee, do you have a very brief opening statement, Ms Ivec?

Ms Ivec: Yes, I do. I convene the Canberra Restorative Community Network. I am here with my co-convener, Fiona Tito Wheatland. Dr Holly Northam, who is also part of the restorative network, is running a bit late; she may join us.

I would like to acknowledge and celebrate the Ngunnawal traditional owners on whose land we meet, and pay our respects to their elders past, present and emerging.

Firstly, thank you for your work. Thank you to the standing committee for this invitation to expand on our submission of September last year. Restriction on the sharing of information in child protection adversely affects children who are at risk, their families, and those non-government organisations—midwives, health professionals, teachers and many others—who are providing services to keep children safe. Restriction on the sharing of information also adversely affects those very child protection workers who are prevented from developing trusting relationships and who are prevented from fully participating in a trustworthy way in restorative activities that can ensure safety to the child.

Restorative practices embrace dialogue, active responsibility, healing, building relationships, building human capabilities and prevention of future injustice. In a child protection context, restorative approaches acknowledge the harm that has been done, restore safety to the child through harnessing resources beyond government, restore confidence to the parent, heal damaged relationships and offer hope for the future.

Our recommendation is for family-led decision-making in all cases where child concerns exist. In cases where child removal is being considered as a likely outcome, restorative justice conferences must accompany every case. These conferences are to be open to family, friends, any supporter or person identified as meaningful in the life of that child, the young person, their family, and the trusted professionals and child protection workers involved. We would also promote independent facilitators at all times to promote transparency and fair process.

The premise that community confidence exists in the ACT care and protection system is flawed. Family bonds and connections to, and love for, these children outlast the legalistic and formalistic regulation which has lost its purpose. Regulation must be responsive to the relationships that matter in our lives. How does regulation support the relationships that matter to our children, to our young people, to their parents, families and communities? Restorative approaches in child protection provide relationship-responsive regulation.

The general matters of principle, policy and public administration that the standing committee needs to address must begin with seeing children as embedded in the reality of their complex web of relationships. Children's best interests can only be served by strengthening the relationships of love and protection in their family, their extended family, supporters, friends and community, that enable them to flourish.

The New Zealand Oranga Tamariki Act 1989, the Children's and Young People's Well-being Act, strongly embeds constructs of the child's best interests in their nest of relationships. The act applies Maori relational concepts to all New Zealand children. All children are embedded in a web of relationships, and these need to be recognised and reflected in our local legislation.

The committee notes that it has a broad public interest mandate and it is not in a position to determine the rights and wrongs of individual cases. I understand that. The committee process is not a forum to resolve issues pertaining solely to individual cases or grievances. However, these children and young people are not cases. They have names, they have a family, they have a history, hopes and dreams for the future. They are of us.

In her latest international publication, in January 2020, Ngunnawal PhD scholar Sharynne Hamilton highlights a first of its kind Australian study undertaken to establish the prevalence of foetal alcohol syndrome disorder amongst youths sentenced to detention in Banksia Hill, WA. That study said there was little evidence of key professional relationships as sources of hope and inspiration. Sharynne's work focuses on specific facets of young people's recovery capital, happiness and hopes for the future, family relationships, and networks and connections. Her work breaks new ground.

Other studies and evidence shared with us in December 2019 by Paul Nixon, former chief social worker of New Zealand's Ministry for Children, quoted that children could identify 17 significant relationships in their lives, while their social workers could identify only three.

In January 2020 we understand better than ever before what a state of alert and a state of emergency look like and feel like. We have become all too familiar with extreme and catastrophic fire danger ratings. Just as fire leaves people deeply scarred, so too does child protection intervention. We have given social licence for that to continue for too long.

We have been listening to emergency warnings in our child protection system for many decades, from the *Bringing them home* report to the recent Royal Commission into Institutional Responses to Child Sexual Abuse and the 40-plus inquiries in between. We are now also witnessing how the ACT Emergency Services Agency is implementing their motto "Working together to care and protect".

We have learnt, from the 2003 fires and the McLeod report that followed, "the need for mutually supportive relationships" between agencies, media and the community. That same McLeod report advocated for other forms of direct community support to be introduced to encourage self-help arrangements in the community. A much stronger emphasis on working with the community in building together a much more robust set of prevention and mitigation strategies and practices was called for.

The public can also help by supporting greater levels of community protection as a result of government initiatives or community-based self-help schemes. The states that have more experience in dealing with serious bushfires have strong mutual support programs involving government and community working closely together in bushfire prevention.

We seem to have learnt a lot in relation to fire management since the 2003 Canberra fires and the 2009 Victorian fires. I do not think we can say the same thing when it comes to child protection. We are at emergency levels with child protection removals, especially for Aboriginal and Torres Strait Islander families. What can we learn from disaster management and public messaging from the recent fires in terms of helping rather than ruining very complex families with multiple needs? How can we think about the recent series of events to inform both child protection practice in its interactions with families and the public messaging which surround child protection issues in this country?

It is time to rebuild, together, families, community and government, for each to be asked, "What do you need?" and for that support to be provided. Look at the responses to the fires: donations of money, people opening their homes, giving generously in so many ways, and building relationships.

Let us consider for a moment some of the key messages about what our state of emergency is with our fires. They say, "Turn to a source of trust. Turn to a source you can trust." In child protection we have to identify where those sources of trust are and we need to build on them. We see amazing leadership in the teams that are fighting our fires, and those leaders exist in our community to help reset the relationship with child protection services here in Canberra: our Indigenous elders, Our Booris, Our Way committee members, families affected by child protection interventions, former foster carers, workers in child protection, and the wider community. There is the research community of Val and John Braithwaite, Holly Northam and Nathan Harris; the list goes on. There are our international relationships that have supported us: Jennifer Llewellyn and Paul Nixon.

In December 2019, at the invitation of Ngunnawal elders and with financial support from the philanthropic NED Foundation, Paul Nixon spent three full days with us in Canberra. Led by Ngunnawal elders and supported by the University of Canberra and Dr Holly Northam and the Canberra Restorative Community Network, Paul facilitated a number of workshops with over 100 participants across government, community, non-government organisations and affected community members, foster carers and grandparents. This work continues as we source further funding.

It is time that we learnt that we must look after each other's children as if they are our own. We have a cultural and human obligation to care: to care for our children and for our land. We see what happens when we do not.

THE CHAIR: Before I ask my first question, Dr Northam, I note that you have just walked in. There is a pink privilege statement on the table in front of you. Could you read it and confirm that you understand the implications of the statement?

Dr Northam: Thank you very much.

THE CHAIR: I want to ask about the part of your submission where you talk about restorative care. You referred to the New Zealand model of restorative family group conferences. Let us call them that, for want of better terminology. Some of the evidence we have been hearing is that information sharing becomes difficult. How would you see a restorative family group conference working? We are already hearing evidence that information sharing maybe is not as good as it could be.

Ms Tito Wheatland: The information sharing regulations have two parts. One is to close off access to information in relation to a lot of aspects of decisions that are made by care and protection. The other part is about trying to share information that is in the best interests of children. That has been tightened up, so it is even harder now than it used to be.

I used to be a foster carer, and one of the things that was always difficult was when you went to talk to schools about what information you were able to share. Our little bloke did not understand that there was anything wrong with having come from foster care, so he used to talk about mummy 1, mummy 2 and mummy 3. He had three mums that he recognised, so it was already out there, anyway. I think there is a false construct that sometimes goes around that. He is older now and he would not like that. He would not be happy about sharing some of that information.

The problem with the law, as it is at the moment, is that it seems to preclude even beneficial sharing of information. It seems to me that there is a tightening up from what it used to be, when you were allowed to share information where it was in the best interests of the child. I think that should still remain. With this notion of secrecy, there was a fashion with adoption where you did not talk about adoption; you did not tell the child anything about that. Kids pick up on the shame. You might say, "We can't talk about it; we don't want anyone to know." It is okay if they say, "I don't want this lot of people to know about it," and you do not share it. But when you have behavioural issues at school that are sometimes related to their trauma background, it is very complicated if you are not talking about some of that stuff. I do not think it serves the children well.

MRS DUNNE: It is counterproductive.

Ms Tito Wheatland: Yes, it is absolutely counterproductive. With respect to the other side of it, every time that a child protection matter is put in, the directorate opts for the appraisal process. That appraisal process cuts off almost any other way of looking at that information because it all becomes particularly secret under the provisions of that bit of the legislation. The consequence is that you cannot even find out what you are supposed to have done wrong, if you are a parent, a foster carer or whoever.

There is often secrecy at multiple levels, which I think is against the public interest and against the interests of the people who are involved. It only serves to protect child protection workers from being accountable for decisions. I call them "hill of beans" decisions, where you basically have a little bit of information here and a little bit of information there, instead of talking to the parents about that, which is what happens under the New Zealand system. They are given a notice of concerns and they say, "This is what our safety concern is in relation to the child. We want to work out how we can address those with you." We need to have a degree of openness about some of those things; otherwise you have an unaccountable system that is very powerful.

I do not think there is a greater thing that you could do to a parent than take their children away from them; yet there are none of the protections that are there in criminal matters or even in civil matters. A degree of secrecy has been put in there with the notion that it somehow protects people. I do not know that people who are subject to it see that protection as a protection.

Ms Ivec: From the nursing and midwives point of view, Holly has some things to say, around information sharing.

Dr Northam: I am the discipline lead for nursing at the University of Canberra. I am a midwife as well. My work around restorative justice, restorative practice and health care for the last number of years has linked to the idea of how we frame hope in our society. The thing that really hit me hard, in my previous experience as a midwife and a nurse where child removals have taken place, is the fact that we are suddenly taking a child from the opportunity to breastfeed, to connect, to bond and to attach to a person, all really basic stuff. It is about going through that lens of being accountable to protect and to keep the child safe—absolutely.

Also, we need to think about the family. With the work that we have been doing, particularly in the Indigenous health space, around the gap, it has become abundantly clear that intergenerational trauma, the birth of the baby, the removal of the child, the child's future and what they can look forward to are totally interlinked. In the ACT at the moment we have very high levels of children in detention, and we have very high levels of child removal. You wonder whether there is a link.

If you look at the evidence that we use in nursing and midwifery about what is required for a good child development process, we are taking away those opportunities. That is great if there is an absolute, confirmed need, and we need to do it that way. Clearly, what we have been doing until now is not necessarily meeting the needs of the child or the community.

MRS DUNNE: There are a couple of issues in relation to taking children away from the maternity hospital that I would like to come back to. Could I go back to the point that Ms Tito Wheatland made about the decision-making process? I go to a point that you make in your submission. Is it fair to say that what we are seeing is bad decision-making being compounded because there is secrecy about how those decisions are made and there is no peer or external review of those decisions? Without that, you cannot improve your decision-making.

Ms Tito Wheatland: Absolutely. It is known through research where you have decisions which do not have transparency, where decisions are required to be made. When we first had freedom of information, that was one of the things that started to improve. We have a system that has become more and more closed off. That actually has reinforced the poor decision-making. Getting a statement of reasons is very difficult, even for very serious decisions that they make. When you get the decision, sometimes it has errors of fact in it. You can go to the complaints unit, but the complaints unit is an internal complaints unit; nearly always, they find that the complaint is not justified.

MRS DUNNE: There is no mechanism for—

Ms Tito Wheatland: External scrutiny.

MRS DUNNE: addressing errors of fact?

Ms Tito Wheatland: No.

MRS DUNNE: What sort of things would you come across that would be errors of fact?

Ms Tito Wheatland: All sorts of different things: the fact that there is an assumption that someone is a drug addict when they are not a drug addict, because of their appearance. They might be poor and skinny, so there is an assumption that they are a drug addict. They then have to disprove that, which requires them to keep having drug testing done over an extended period of time. Meanwhile the child has been removed because of an assumption that that person looks like they are a drug addict.

Ms Ivec: There are so many. The problem fundamentally is that it is about who makes the decisions and how they are made. With complex cases, and with more people being involved in looking at the problem, I have sat in rooms with judiciary in New Zealand where they have said, “We make poor decisions as judicial officers. We know that we make poor decisions for children, and we need the support of families and communities to help us make those decisions.” That is our main point, really, and the point that Paul has driven home to us. If you want to change the outcomes for children, you must change the decision-making practices. We need to see every family being legally entitled to family-led decision-making, and harnessing the supports that they have. Fundamentally, that is the issue that we are facing.

MRS DUNNE: Successive governments have talked about family-led decision-making, family conferencing et cetera. Why do you think that that is not happening? You are saying it is not happening.

Ms Ivec: It is a legal entitlement in New Zealand. We do not have it here as a legal entitlement for our families.

Ms Tito Wheatland: It is a compulsory thing before you remove a child. You have to have a family group conference. You cannot remove the child without that.

THE CHAIR: This is in New Zealand?

Ms Ivec: Yes.

Ms Tito Wheatland: Whereas here it is much more optional. Where it was introduced, it was introduced in the Aboriginal space. There was no provision for allowing expenditure in relation to the solution to the problems. It was like saying, "You can give the child to us and we will actually make sure money is available to meet those needs, or you can work out how you're going to fund it." The Human Rights Commission, in their submission, complained to the Law Reform Commission about exactly that fact.

In New Zealand they go into a room and say, "You can tell us what you think you need to do, and these are some of the service providers; let's see if we can come up with a package of help to assist this family to stay together with the child." In fact, it is about keeping the child safe; it is not necessarily about keeping the family together. It is much more collaborative. Child protection in the ACT at the moment is very much like saying, "We're in charge; you do what we need you to do."

MRS DUNNE: It is adversarial.

Ms Tito Wheatland: It is very adversarial.

MRS DUNNE: Would you say it is adversarial rather than collaborative?

Ms Tito Wheatland: Yes, it is adversarial. That partly arises out of the rumours and that sort of thing. I can think of someone that I know. There was a complaint made. The complaint was made by the child protection worker, and they would not allow the person to know what the child protection worker's report had said because it was under an appraisal process. The person could say whatever they wanted to. You were just told that the bottom line was that there had been a complaint: "We decided it was upheld." "What was it about?" "We're not going to be able to tell you because it's a secret provision."

There are other things that happen. They say, "This is against a policy." You say, "Okay, can I have a look at the policy?" There is no access to the policy. In fact sometimes there is no policy. But you cannot actually appeal against those sorts of things. You can say, "There's no policy about that, so why am I in strife?" For parents who are often poor and not very well educated, and maybe not very literate, the only things that you can get are quite often quite complicated, and it is like butting heads. You often have no legal representation until a very late period of time. It is starting to happen now where you are getting early intervention.

Ms Ivec: It is complex enough; I have been working with families for 30 years—

MRS DUNNE: It is complex enough for people who are literate in the law and—

Ms Tito Wheatland: That is right; absolutely.

Ms Ivec: Yes. We heard from the previous witness about the difficulties. There is a widespread community conviction that things have to change. There are examples of how we can do it.

MRS DUNNE: Just across the ditch.

Ms Ivec: It is not impossible.

MRS DUNNE: Are there other examples closer to home? From your experience, do other Australian jurisdictions do this better?

Ms Ivec: Certainly there are pockets.

Dr Northam: Pockets of good practice.

Ms Ivec: John and Val Braithwaite are doing some work in Victoria with the environmental protection agency. I know they have connected with some of the Indigenous elders down there and they are talking about some of the programs around family-led decision-making. I think it was in Bendigo.

Dr Northam: Janine Mohamed and her husband are busily working on a project in Victoria at the moment. We have pockets of excellence, absolutely. It is about how we bring that into it. Obviously, a lot of these things have not been evaluated over time. It is hard to have the evidence there to be able to present it and say, "This really works."

MRS DUNNE: Presumably, because New Zealand has been doing this since the late 90s—

Ms Ivec: 1989.

MRS DUNNE: The late 80s; there must be some evaluation of that?

Ms Tito Wheatland: There is, yes. They have shown a decline. Wellington is about the same size as the ACT. There are elements of greater poverty in that area, and poverty is quite often associated with child protection stuff, particularly in relation to neglect. But the data there is showing that there are only about 600 kids in care for that whole—

Ms Ivec: With strangers.

Ms Tito Wheatland: Yes, with strangers.

Dr Northam: I think that includes the kinship—

Ms Ivec: It is on page 2 of our submission. They halved the number of kids in institutional care once families were legally entitled to that family group conference and that family-led decision-making. The courts were happy with the plans that families were presenting, as were the workers. It is about creating that space where you can have collaborative decision-making so that families can have explained to them what the issues are and looking at how we provide supports.

I think we are really lucky in Canberra that we have a community now that is much more engaged with this conversation. If there is fear, whether it is from the minister's office or child protection workers, that is where we need to sit down as a community and say, "Let's talk." We can actually solve this. We need to put aside the blame and the hysteria, and approach this, as we have the emergency situation with our fires, calmly and with clarity. We need to look at what people need. What do families need? How can we support them with trained volunteers? It is trained volunteers that are doing a lot of the firefighting.

In the UK there was a program that won the national social care award in about 2013. It involved volunteers in child protection. They trained volunteers to work to support families, and that was an award-winning program. There are many options that we have. We do have, I think, an appetite where we have really strong engagement with our Aboriginal communities and with our elders. We could take a step forward and look at making a difference.

Ms Tito Wheatland: In relation to your question earlier about the adversarial nature of the thing and the secrecy impact of that, I was thinking about what happens for a lot of people. When I was representing carers and when I talked to birth families, one of the things that happens is that people are told not to cause trouble for the system, because if you cause trouble, the system will make sure that your kids either are not returned or are taken away. That would be my experience. Some of the senior clinicians who worked with us in these matters said that the most likely person to have a child removed is a really good advocate for that child.

Quite often, if you buck the system, if you like, because there is no requirement for accountability in the system for their reasons for decision-making, the decision can get made quite easily on pretty tenuous grounds, and it is almost not appealable. Particularly with emotional abuse and neglect, those things are so amorphous. I think that only 17 per cent of kids are taken because of sexual or physical abuse. Even for the ones with physical abuse, the number is quite small. The rest are children who are removed for emotional abuse, which is quite often because there has been some violence in the home. Instead of working on the violence, the child is removed.

MRS DUNNE: So you victimise the child?

Ms Tito Wheatland: Absolutely, and you victimise—

MS LE COUTEUR: You victimise the victim in the family violence.

Ms Tito Wheatland: Yes, that is right. The other one is neglect, which is nearly always associated with poverty. It does not get fixed by moving the child from one place to another.

Ms Ivec: The rate of removals per family where there is a disability, either with the child or with the parent, is huge. Fiona May, who was ADACAS CEO for many years, would have many stories of grandparents basically being told by child protection, "No, you actually can't look after your grandson or granddaughter who has just been born because we have to do an assessment of you as a grandparent beforehand." Babies have been removed from mothers with a disability and put into foster care when there have been willing grandparents, and those grandparents have been locked out. There are some horrendous stories of families with disability that, as advocates, we can only touch on.

As a community, this is us. Our bonds are still with the children who, over the decades, have been in child protection and have come out. We are still connected, but it has been a bloody hard fight. The reality now is that it is actually time for a different conversation, for a different sort of approach and for really deep engagement and deep listening. I think that in this jurisdiction we could actually do this.

Dr Northam: The other thing that is really important is that often we silo these situations. We look at child protection and think, "Okay, we're removing that child for the safety of the child and we're putting them there," and we forget about the impact that that has on the rest of the life of that person. We now know that the stats are overwhelming—the mental health problems, the chronic disease issues, the drug and alcohol problems that are often within these communities.

If you look at the journey of the child and what they have to look forward to, with every best intention at heart, when we remove a child we have to look at the fact that we are giving them a shortened life sentence. Their opportunity to have the same length of life as another person will be shortened. The evidence from Marmot and all the rest of it, on the determinants of health, shows that early childhood is the most predictive stage of a person's life as to how the rest of their life will be.

Ms Ivec: We know that that time around a woman's pregnancy and early afterwards is a great motivator for change as well.

Dr Northam: And the connection into community. We need to wrap support around them. There are so many stories that I have heard, seen and am aware of. Multiple inquiries have all of the data. If it was me and it was my child, would I have raged against the removal of a child? Was I a perfect mother to my three daughters? No. Were there times when I did things whereby, if I had had a child protection worker looking over my shoulder, they would have been horrified? I am normal. We know that none of us is perfect. It is about how we support those who are particularly disadvantaged generally, and are labelled.

MRS DUNNE: Can I ask a threshold question? Can you speak a little bit more about the Canberra Restorative Community Network? It probably needs a little bit of context.

Ms Ivec: It builds on the work of John Braithwaite, who was very instrumental in the early work on restorative justice in Canberra. We have had a very strong support base in our attorneys-general, from Terry Connolly's days right through to Simon Corbell, and now Gordon Ramsay. Basically, the idea that John had was that the restorative approach as a restorative philosophy is not just one to apply in a justice context; we can look at restorative approaches in health, in education, in how we do land management—across every dimension of our life, wherever we work, play or pray, and wherever we live.

We have always tried to work closely with our Indigenous colleagues, whether it is in health or education, and whether it is with the United Ngunnawal Elders Council or the elected body. This is a conversation that we have been having for many decades. The Restorative Community Network was supported through the reference that Simon Corbell gave to the Law Reform Advisory Council to look at what a restorative approach would mean in child protection and in public housing.

We have probably over 600 people that are involved. It ranges from people who are working to those who are not working, across government and non-government. There are people who are volunteering. There are restorative programs that have been running. There were two pilots that were run in the prison. It is very broad, but it is trying to shift people's thinking to what a restorative approach would be. What would that look like? Why do we even want to be looking at restorative Canberra? Is it just another tagline, or is it something more fundamental about how we live in community?

Dr Northam: To build on that, it is actually not only Canberra; it is a connected international learning community. The connections are with academics and communities in New Zealand, the US, Canada and in the UK. Recently, we have had a little visit to Taiwan, and I think there is a really good chance of connecting with first nations people there as well. Professor Jennifer Llewellyn, who is the Yogi and Keddy Chair in Human Rights Law at Dalhousie University, has done a lot of theory in this space. It is about just relationships. It is about our relationships; it is about how we live in a just relationship with the others around us.

Ms Ivec: Halifax in Nova Scotia have run restorative inquiries into deaths in prison.

Dr Northam: The Colored Children's Home.

Ms Ivec: The Colored Children's Home, which was the equivalent of our Royal Commission into Institutional Responses to Child Sexual Abuse. They have some very strong case studies, which Fiona has written up in her evidence report that provided background for the Law Reform Advisory Council.

Ms Tito Wheatland: The actual network sprang out of the series of talks that were sponsored by the Attorney-General and the restorative justice unit. We did about five or six different things. Jennifer Llewellyn and John Braithwaite held, on behalf of the attorney, a forum in the reception room here. About 150 people turned up to it from all sorts of places—footballers, that sort of stuff.

Ms Ivec: That was in July 2015.

Ms Tito Wheatland: Yes. That was really the kick-off for what became the network. Basically, with the people who were interested there, we then had a series of talks. More people became interested and we decided that it was important to continue it. The series of talks finished but people were still enthusiastic. We meet twice a month—once on a Tuesday evening, once on a Friday lunchtime—and whoever wants to come along can do so. We keep providing information about what is happening to people. It is a loose coalition of individuals. We are not an association or anything like that.

Ms Ivec: We draw on our international connections, whether it is through the universities or people's civil society action. The thing is that success actually exists. We actually have a choice about how we do this. I think that is the really positive thing.

Dr Northam: The work with our community was part of a research project we have been involved with, the collaborative Indigenous research initiative at the University of Canberra. We went to Whanganui to look at a restorative hospital and how that was done. We came back and looked at how that could be applied in the University of Canberra hospital, looking at how we make places safe so that people who are in need of care can approach it without feeling threatened. It comes back to this work. If we have a pregnant Indigenous woman, the chances of her seeking antenatal care compared to a non-Indigenous woman are greatly reduced because of fear of child removal. Those issues are everything.

Ms Ivec: It is all interconnected.

THE ACTING CHAIR (Mrs Dunne): Could I go to the point of child removal? Dr Northam, you spoke about the taking of children from hospitals. In your experience, how often does that happen in the ACT?

Dr Northam: In fact Fiona has done the data.

Ms Tito Wheatland: I have not done the data on that because I could not get it. I spoke to the social workers at the hospital. The week that I went there, it had been very unfortunate; there were four babies removed that week. They said that was really unusual. I said, "How many are we talking about?" They were not actually sure of how many, but they said there would be a couple each month, at least, and maybe one a week. As I said I thought that data would be really easy to get hold of, so I did an analysis of the data under—

THE ACTING CHAIR: You would have thought it would be, yes. What sort of circumstances would cause a child to be removed?

Ms Tito Wheatland: ADACAS talked to us about that. Quite often it is a mother who has an intellectual disability or some other physical disability or mental illness. Often as well—

THE ACTING CHAIR: Those people would have come to the attention of medical authorities before they gave birth. Is there ever intervention—

Ms Tito Wheatland: A positive intervention? At the moment, no.

THE ACTING CHAIR: It is a matter of saying, "We'll let nature take its course and then we'll take the baby," rather than making a decision about how to assess whether this person who is going to give birth is able to manage after the birth.

Ms Tito Wheatland: There can be a number of different ways of being notified. You can have what is called a pregnancy at risk, which is actually provided for under the legislation. That can happen from a number of places. It can be from a doctor, from a neighbour or from wherever. Once that occurs, there is another thing, which is a birth alert. They are both unconnected in the sense that a birth alert can be put on, for example, if you have ever had a child removed beforehand and it comes to care and protection's notice that you are pregnant.

I was recently involved with a woman where those were the exact circumstances. To try to stop that happening I went to them and said, "What do we need to do to demonstrate that in fact this mother is a safe option for this child?" I did that, we presented it and they said, "Okay, we won't put a birth alert on if she complies with all of those sorts of things." I worked with her and walked with her on that journey and made sure that that actually happened. But a lot of parents do not have someone who can do that, because there is no program to do that at the moment. There used to be a program so that, if a mum was identified, you had a whole lot of help. But the people in the hospital said that had stopped and there is really nothing there now that happens.

Some of it is quite malicious. There have been a number of court cases that we are aware of where they would tell a family that mum needed to rest, and waited until the advocate or the person who was there with the mother went away. They then called in the security guards and took the child away. Some of it is quite brutal, in my view, particularly in a human rights compliant jurisdiction.

Dr Northam: Very brutal. There are a number of stories. Julie Tongs has provided me with a number of examples. What is happening is that that onus of responsibility for that decision-making goes back to care and protection having all of the power.

THE ACTING CHAIR: Those decisions are not reviewable?

Dr Northam: As a midwife and a nurse, part of the work that I am currently being asked to help with in the ACT is around doing an education program for our midwives so that they will be able to do mandatory reporting on infants in this situation. In consultation with my colleagues, you would ask the question, "Why do we have to do this program, because we all know what the law says?" Why on earth would there be a barrier? We are all very protective of children. We are very protective of infants. Why would there be a barrier to this reporting, which is a mandatory report? If we do not report, it is our registration that is potentially at risk. It is because many of them do not believe that the right thing has been done by the child or the mother. You have a ridiculous situation where removals are happening that do not seem to be fair to the people who are actually involved at the time the removals are done. They witness them; they cannot see why and they cannot understand what is going to happen to that child. They do not see that it is in the best interests of the child.

MS LE COUTEUR: You said that it used to be different. Do you have any idea why it changed? It was not a legislative change?

Ms Tito Wheatland: No, I think it was a cutback. They decided to put more resources at the post end rather than at the front end. You asked how can this be, which is what my first question was. You are often talking, as I said, about very disadvantaged mums.

MS LE COUTEUR: Yes. I am sure they would be 100 per cent disadvantaged mums.

Ms Tito Wheatland: Yes. They have their child removed just after having given birth, when they are completely off their tree with worry and distress. The court hears the matter as an emergency order, three days afterwards. Often there is inadequate information provided back to the mum. The mum is still recovering from the birth. I asked social workers at the hospital what things were in place to support a mum in that circumstance. They looked at me completely blankly and said, "What do you mean?" I said, "Well, she's got milk. Her milk's coming in. She's got no baby." The story I heard from one of the Aboriginal mums was that she went home and told her family that the baby had died, because she could not face the shame of having had the child removed. I said to them, "What happens in terms of the health of a woman in this situation?" and they said—

THE ACTING CHAIR: They just go off.

Ms Tito Wheatland: Yes, they do. She said, "They probably go to their GP." I said, "Why would they go to their GP?" She has just been screwed over, basically, by the other health care providers, so she would not go near anybody.

THE ACTING CHAIR: Also, the thing that you were speaking about before was that you walked with someone who had previously had children taken away. The propensity for women in that circumstance to not seek medical assistance would be huge, because there is no trust in the system.

Ms Tito Wheatland: The other bizarre thing is that I said to her, "You're in trouble at the moment, sweetie, because you have missed medical appointments. When is your next one?" She said, "Let me think." I said, "Where's your diary?" She just looked at me. She had never had a diary. No-one had asked, "Why were you not meeting your commitments?" They just assumed she was bad. In fact she has this chaotic life. She did not have a diary, so she bought herself a diary. She had a pink diary which she carried through the rest of the pregnancy and we knew when the appointments were. I look at that and thought, "I missed it." But the system does not even look.

THE ACTING CHAIR: We assume that, because of our background, everyone has a diary.

Ms Tito Wheatland: Everybody has one; that is right.

Dr Northam: Some of the subjective decision-making is what really horrifies me. An example that Julie Tongs gave me was of one of the mothers that her midwives were involved in caring for. Two child protection workers came to visit the family home. There were some children sitting on the couch; they had some sandwiches on the couch and one of the sandwiches had gone down the crack or something like that. One of the care and protection workers said, “This is neglect. They’ve got this messy couch.” The other one assessed it as, “It’s great, they’re getting good food.” That is how subjective it is.

Ms Tito Wheatland: We have so many of those stories documented in research that we have done at RegNet since 2007. With some of the services that have been working really closely with women, be they women’s services or the refuges, even where there has been preparation, as you say, we know that women are pregnant and that they are going to give birth. It does not just happen. Child protection have said to the support workers, “No, we won’t remove the child; it’s all right,” and they have done so. They have left workers absolutely dumbfounded. Workers have said to us, “If we knew that was going to happen, we would have hidden the woman ourselves.”

Dr Northam: That goes back to why they are not reporting, and doing the mandatory reports.

THE ACTING CHAIR: This has come up before; it is about trust. Care and protection workers say, “If you do X, we won’t take the children,” and you do X, and they take the children. You think, “How can professional people work in an environment where they are inculcating such a lack of trust?”

Ms Ivec: This is what we are seeing with the royal commissions that we are having at the moment, the fact that they are going around holding community forums and having roundtables. That is where we need to start. There is no trust. Again we have plenty of data for all of this. There is no trust. The workers do not trust parents; parents do not trust workers. Agencies do not trust child protection; child protection does not trust the agencies. Across the board the trust levels are absolutely depleted. The first thing we need to do is to sit down and have conversations about how we are going to build trust.

Dr Northam: I think that also goes to questions of engagement. It is really difficult to keep staff who are doing things that they do not feel comfortable with and are feeling the moral dissonance that comes about. Whether it is in nursing/midwifery, whether it is in child protection or whether it is in social work, if you feel as though you are doing something that is morally inconsistent with your values, it makes it very hard. You get a lot of burnout; you get a lot of churn. We know that there is dissatisfaction in all of those spaces. We are looking at it as a community: how can we break down our silos and work together so that we are all flourishing? We have lots of skills, lots of knowledge and lots of intent to do good.

Ms Ivec: And we have really strong barriers.

Dr Northam: We are working really closely with the elders and the university in the discipline—

Ms Tito Wheatland: You would be aware of the data in relation to Aboriginal families: one in 10 Aboriginal children in the ACT area is in care at the moment.

MS LE COUTEUR: It is just appalling; unbelievable.

THE ACTING CHAIR: We have overrun. I call this hearing to a conclusion. I apologise for the absence of our chair, who had another appointment. When available, a proof transcript will be forwarded to witnesses to provide an opportunity to check the transcript and suggest any corrections. On behalf of the committee, I would like to thank you all for appearing today.

The committee adjourned at 1.02 pm.