

# “PROMOTING INNOVATION IN CHILD PROTECTION”



FEDERAL SENATE SUBMISSION INTO CHILDREN IN OUT OF HOME  
CARE IN AUSTRALIA 2014

Alecomm is pleased to be in a position to provide this submission to the Senate Inquiry into Out of Home Care (OOHC). Our client base is predominantly parents and families of children in out of home care, and our submission aims to give these children and their families a voice that falls within the terms of reference so the Senate Inquiry has insight into the current impacts and outcomes for the vulnerable population the child protection system is supposed to protect and care for.



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## INTRODUCTION

The Australian Legislative Ethics Commission (Alecomm) is a registered charity that provides help and support to children and parents involved with the child protection industry. Our role is both unique and diverse.

For the past five years we have provided information about the complex child protection system, empathetic face to face and phone support 24/7, auditing of cases for legislative compliance, assistance with writing affidavits and court procedures, an independent support person for children and families in meetings with the departments and in court proceedings.

We are engaged in continuous research of all aspects of the child protection system and provide fearless advocacy for our clients. Every complaint we receive or request for assistance is unique and we endeavour to help and support each case in any way we can.

We are not currently funded so work on a voluntary basis using our own funds to try and achieve better outcomes for the vulnerable children and families that contact us in desperation for assistance.

## BACKGROUND

At the time the senate inquiry was announced, we developed a template of questions based on our years of experience of investigating the hundreds of complaints we have received and the cases we have audited, to provide a mechanism for the average child in care and parent of a removed child to be able to easily provide their case and victim impact statements by way of an online submission to the inquiry, so their voice could be heard.

While 1,730 participants commenced their contribution, only 151 Australian individuals actually submitted their case and victim impact statements to the inquiry. There were various reasons for the vast majority of attempts that did not result in a submission, including limited or no access to a computer, some were technology challenged and for others low levels of education and literacy was an obstacle.

Sadly the vast majority that could have made a valuable contribution were too afraid of the child protection departments power and the negative consequences their children could suffer including punishment by reduced contact with their families if they spoke out.

Trauma also prevented many from being able to complete their contributions, as they found the experience very confronting, painful and too traumatising to continue.

We received numerous messages from participants that felt too afraid or distraught to continue with their contributions and despite offers of support and reassurance,

most were unable to go through the daunting experience of thinking about and reliving the most traumatic events of their lives and very consumed with the realistic fear of damaging repercussions for their children in care.

Data from the 151 completed submissions and 653 written complaints leading to case audits by Alecomm over the past 5 years which evidenced poor levels of legislative compliance, combined with our ongoing research projects and significant lived experience will form the basis of our evidence in this submission and our recommendations for the significant changes required to ensure far better outcomes for vulnerable children and their families than the current systemic failures deliver in practice.

The 653 written complaints Alecomm has received from children in out of home care and their families cover a number of commonalities and report on the lack of ethics of the entire child protection industry from child protection agencies, to legal aid, non-government organisations, solicitors, and authorities that ignore their complaints as there is no accountability and the injustice of Secret Care Courts.

While every report to us has an individual unique basis, all cases follow a very similar pattern of identified breaches of law, misconduct, corruption, lying in reports and affidavits, perjury, failure to investigate, bullying, intimidation, falsification of reports, abuse and deaths of children in out of home care, despair, helplessness, hopelessness, worry for their children, lack of help and support for families and betrayal by their own legal representatives that failed to defend them and would not take their instruction and basically gifted their children to the respective government child protection departments, and magistrates that rubber stamp the wishes of caseworkers and do not even read the affidavits and evidence from families.

Attachment one: The full data report from the 151 participants that have been individually submitted to the Senate Inquiry.

The statistics collated and validated from the data provided by the 151 participants correlates with our data from the 653 written complaints and case audits undertaken by Alecomm over the past 5 years.

## ANALYSIS OF THE COLLATED DATA

The 151 participants were comprised of 109 parents of children in OoCH of which 79 (52%) were mothers. Only one child in care was able to complete their contribution and the remaining were extended family members of children in out of home care of which 20 were grandparents. These 151 cases account for 328 children in care from all over Australia.

## CASE DEMOGRAPHICS

State / Territory	Total cases	Percentage
New South Wales	71	(47.02%)
Victoria	24	(15.89%)
Queensland	24	(15.89%)
Northern Territory	1	(0.66%)
Western Australia	9	(5.96%)
Tasmania	7	(4.64%)
Australian Capital Territory	5	(3.31%)
South Australia	10	(6.62%)

As New South Wales removes more children than any other state and territory in Australia, case contributions appear to reflect this trend.

In seventeen cases the parents had been children in care themselves and of those 71% had suffered abuse as children in care. In 39 cases (26%) parents reported that they have a disability. 80% of the children are Australian, 13% are indigenous and the remaining 7% from other mixed nationalities.

48% requested their contribution be made in confidence to the Senate Inquiry and not for publication, for fear of threats and intimidation by caseworkers (44%), and fear of reduced contact with their children also 44%.

## STATEMENTS OF INJUSTICE RELATING TO DEALINGS WITH CHILD PROTECTION WORKERS

I have been separated from my children through the means of false claims by child protection workers. (1)	118	78.15%
I have been improperly treated and generally abused by child protection workers. (2)	109	72.19%
I am stating that my case is a matter of public interest. (3)	114	75.50%
I can prove child protection workers have acted negligently giving rise to civil claim. (4)	102	67.55%
I state that child protection workers have acted in a manner that poses a serious threat to public mental health. (5)	95	62.91%
I state there has been a serious miscarriage of justice. (6)	127	84.11%
I state child protection workers have continued in blatant dishonest reporting. (7)	126	83.44%
I state child protection workers have fabricated evidence. (8)	113	74.83%
I state that child protection workers have shown extreme bias. (9)	135	89.40%
I state there has been abuse of power by child protection workers. (10)	133	88.08%
I state there has been cover up of the department's approved placement. (11)	89	58.94%
I state child protection workers have perverted the course of justice. (12)	113	74.83%
I state child protection workers have covered abuse by a carer. (13)	81	53.64%
I state the department have failed in their duty of care to the children. (14)	130	86.09%
I state there has been alienation of child from the maternal / paternal family members. (15)	122	80.79%
I state there is a failure to notify parents of hospitalisation of child / children by child protection workers. (16)	82	54.30%
I state that I am requesting an independent and thorough audit of the case I am providing details about. (17)	121	80.13%

**87% of cases reported that there was no investigation of their case prior to the forced removal of the children.**

A further 86% of cases reported there was still no thorough investigation of their case after their children were forcibly removed.

In 68% of cases the children were forcibly removed without any warning.

Sadly, 85% of cases reported they were never given any opportunity to have their children returned to their care.

91% of cases reported that the child protection departments did not work with them for a better outcome for their children and family, and only 2 cases reported that the department did work with them for a better outcome. While 86% reported that the department worked against them.

88% of cases reported that they had not received any support services to prevent the forced removal of their children and only 7 cases reported they had received some support.

79% of cases were not kept informed about their children after the removal and 83% reported that the department would not listen to or respond to their concerns for their children.

**80% believe that caseworkers broke the law in their cases.**

73% reported false and misleading statements were used against them to pervert the course of justice. Both Care and Protection laws and Criminal code laws were breached by caseworkers in the forced removal of their children and throughout the legal process in Care Court.

## CASEWORKER ANALYSES:

### A BETTER WAY TO HAVE MANAGED THE CASE

The most common responses were that the family should have been offered support to remain together, the allegations should have been investigated for validity prior to removal, and the department should have communicated with the family first as there was no consultation and families felt they were never given a chance or opportunity to know what was required of them to get their children back or given enough time, support or opportunity to make the required changes.

Our case evidence clearly proves that despite the principles of practice for Child Protection agencies in Australia, that all state:

- they are to help and support families to remain safely together,
- that they only take children who are at significant risk of harm as a last resort and
- always place children where ever possible with extended family,



is in fact not the daily frontline lived experience of practice for the thousands of families that turn to Alecomm for help, support, advice and advocacy everyday Australia wide.

## **When there is a difference of opinion between parents and caseworkers**

81% reported they have had contact cut with their children in out of home care as punishment for holding a different opinion to the caseworker, 27% reported they had been threatened with jail and several have been jailed, 44% reported they were taken to court for a difference of opinion and 63% of cases had affidavits submitted against them for voicing their opinion.

Many parents are threatened constantly that they will never get their children back or even see them again unless they agree with the caseworker.

The tragic reality is that you can lose your children till they are 18 just because there is a difference of opinion or a personality conflict with a caseworker, such is their vast power because they are not held accountable by anyone.

63% of cases reported they were denied a change in caseworker when personalities clashed.

## **Treatment of parents by caseworkers**

75% reported caseworkers lied in their affidavits, 81% stated caseworkers lied in their reports, 77% stated that caseworkers only gave court reporters information that suited them, which in 87% of cases caused the court reports to be inaccurate.

61% stated their concerns about abuse of their children in care were ignored. 76% experienced vindictiveness from caseworkers, and 73% found them to be sarcastic - while 84% of parents were belittled by caseworkers.

In 89% of cases the department put their own best interests before the children and families, and 83% report they continue to be judged by caseworkers.

This is an ongoing problem because of the content of case notes where false allegations, inaccurate information and unsubstantiated false reports are recorded as fact, so every subsequent caseworker that reads the file falsely pre-judges the parents.

Even when issues or reports are found to be unsubstantiated, they are always filed in affidavits and re-written in the notes time and time again for, page after page, with the tiny one word of "unsubstantiated" almost hidden within the text.

Often that unsubstantiated word is never even recorded in the case notes when it has been evidenced in court to be false.

**There is no legal definition for the term “in the child’s best interest” in any of the state and territory care and protection legislation nationwide, so caseworkers can and do use that term to mean anything they want it to be.**

Cases are documented as substantiated not on evidence but on the opinion of a caseworker, meaning the data that refers to substantiated cases is extremely flawed, as no evidence is required in the secret care courts, and most judgments are made on an unsubstantiated caseworkers purported concerns, opinions and false anonymous allegations.

91% experienced caseworkers using and abusing the term “in the child’s best interest” to justify whatever they decided, even when it was clearly not in the child’s best interest.

**84% reported that caseworkers were unwilling to accept that parents had made positive changes.**

As caseworkers have little to no involvement with parents once they have forcibly removed their children it makes it very difficult for parents to prove themselves and to be able to put into practice what they have learned from parenting courses because they no longer have their children at home.

47% of cases reported that caseworkers discriminated against parents with mental illness.

51% of cases found that department office hours were too inflexible and interfered with their employment and education courses, with many parents losing their jobs and putting their education on hold to meet the weekday requirements of the department for supervised contact, meetings, court attendances and parenting courses.

85% reported they had been treated disrespectfully, assuming they had harmed their children when they had not, and 84% reported that the child protection workers assumed they are a bad parent when they had done nothing wrong.

80% stated that caseworkers chose not to accept positive statements from family members, while 67% found they accepted false statements from family members even when they were not true.

**61% of parents reported that caseworkers undermined them to their children.**

59% of cases reported that they do not understand the system that removed their children and placed them in OOHC.

## Caseworkers interviewing children

Only 24% reported their children were not alone when interviewed by caseworkers. 34% reported their children were alone when interviewed by 2 caseworkers, while 52% did not know the circumstances of how their children were interviewed.



Only 13% of parents received a copy of the children's interview by caseworkers, and 59% reported their children were not asked if they wanted a support person to be with them when they were interviewed.

This is a common complaint we receive at Alecomm. Children are routinely picked up and interviewed, particularly at schools, with no support person present and questioned by at least one but usually two child protection workers, and then the parents are confronted with allegations supposedly disclosed in that flawed interview process.

In many cases children have denied many of the false allegations of what they allegedly said in those interviews where they were unsupported, scared, nervous and being questioned by strangers.

With no recording of those interviews the care court always accepts the version given by the caseworker as evidence, even when children testify that the allegations were fabricated or questions were leading and confusing.



## Caseworker interviews with parents

73% of parents reported they were interviewed without a support person, 45% of parents had requested a support person be present and 31% reported they had been denied a support person. 64% reported there were two caseworkers present when they were interviewed alone.

38% reported that alleged disclosures supposedly made by their children when interviewed alone by two caseworkers were used and relied on in their interviews.

56% of cases wanted to record their interview with caseworkers, 34% asked to record but only 4% (six cases) were allowed to record their interview.

69% stated that had they been allowed to record the interview, it would have helped them to evidence the lies told or written by caseworkers in court.

81% believe that if all contact between the department and their children and families was recorded, that the system would be fairer and more honest.

87% believe caseworkers are getting away with misconduct and criminal behaviour as they have no way of proving what has been communicated to them by a caseworker.

## **Cases of alleged domestic violence 61% of cases were accused of domestic violence (DV), 40% claimed it was a false allegation.**

Of the 61% accused of DV, 46% were told by a caseworker to separate from their partner to have a better chance of getting their children back and 32% were told the same by their solicitor.

So 39% did separate, but 29% reported that the separation did not help their circumstances and only 2% who did separate or divorce actually got their children back.

24% of cases were told by caseworkers to take out a restraining order on their partner to improve their chances of getting their children back. 15% did take out a Domestic Violence Order (DVO) but only one case had their child returned.

**It is of great concern that 14% of cases report that the department returned the children to the perpetrator of domestic violence or abuser or known paedophile.**

## **Conduct of child protection workers in the care courts**

Only 25% of cases reported that caseworkers that were subpoenaed for cross-examination actually showed up to comply with the court order.

48% reported that caseworkers lied under oath committing perjury.

Only 2% of cases reported that the caseworkers evidence was based on fact, while 69% reported the caseworkers evidence was based on hearsay.

48% reported that caseworkers omitted relevant facts that would have portrayed parents in a more positive light.

62% stated the court material contained uncorroborated stories about them. Only 11% reported that the court material was objective, while 63% reported it was subjective in order to demean and belittle them as parents.

Only 5 cases reported that caseworkers told the truth and wrote truthful affidavits.

In 29% of cases the caseworker was not prepared to proceed in court on the day. 57% reported the caseworker or their legal representative requested adjournments.

Only 13% stated that court reports were received in the court ordered timeframes, and in only 2 cases were the children allowed by caseworkers to attend the court.

62% of cases reported that caseworkers were smug and pleased with themselves



when they won the case and got an order to keep their children. 22% reported that caseworkers hugged each other when they won, and 14% said they Hi-fived each other.



For a parent to lose the return of their child to their care in court in a system so unjust is a devastating experience, and for caseworkers to behave in such an insensitive manner exacerbates the pain, grief and loss suffered by children and their families.

## Removal of children and reason's for removal

78% of children were forcibly removed without consent. In two cases the children were forcibly adopted and another 35 cases confirmed that the department is talking about forced adoption for their children.

### **In an alarming 57% (85) cases children were removed because of a 'possible future risk of harm'.**

This is a very subjective term and is based merely on a caseworker's opinion.

There are often multiple allegations that develop and are added as the care court matter progresses and this was notable in the responses that indicated several cases had more than one allegation made against them.

In 76% of cases the parents stated the allegations made against them were false. In only 14 cases (9%) did parents state the allegations made against them were true.

In 75 cases the children were removed for being *at risk of emotional harm*, which correlated with 65 cases of domestic violence.

Instead of removing children from a victim of domestic violence because the children are at risk of emotional harm, we at Alecomm believe the perpetrator should be removed and the family protected and supported to remain together.

### **There is never any consideration given to the harm and risk of harm a child suffers from forced removal from their families and evidenced abuse children suffer in out of home care that result in poorer outcomes for children leaving OOHC.**

47 cases stated mental health issues. This is a common secondary allegation, and even if you had no mental health issues before your children were forcibly removed, you sure will have mental health issues afterwards.

Neglect in 44 cases is most commonly caused by poverty.

At Alecomm we believe it is better to help the family out of poverty as opposed to removing the children.

There was also: Non-Accidental Injury (13), Medical neglect (14), Medical abuse (4),

Physical health issues (7), Physical abuse (36), Sexual abuse (20), Criminal record of parent (18), Failure to thrive (25), Parents unable to care for child with disability (10), and one or both of the parents have a disability (15).

In 10 cases the fact that the parent was a former child in care themselves was used against them, No parenting skills (13), a medical condition of the parent was used against them in 22 cases and 44 marked other.

### **Some other reasons for removal were:**

A mother blamed because her daughter broke her arm at school, post natal depression, educational neglect (often home schooling is considered educational neglect), discrimination against a single father, malicious and vexatious reports in family break ups and disputes, substance abuse, unemployment, homelessness, racism in indigenous cases, untidy house, a teenager acting out.

And for some the removal was for no reason at all (in NSW in particular), because no reason is required if a prior child had been taken in the past - regardless of significant changes in circumstances since the previous child removal.

## **Charges and convictions relating to the removal of the child**

**Only 6 people were charged and convicted of abuse or neglect, or child abandonment for any matter related to the removal of their children.**

### **Use of support services**

43% of cases were given a list of what was required to get their children back, 45% reported the caseworkers kept adding to the list of requirements. 28% reported that they could not complete the list because the department kept adding to the list, and 56% of cases that did complete the list of requirements still did not get their children back.

52% of cases who were never told what was required of them to get their children back used their own initiative and did courses to improve themselves and their parenting skills.

56% of cases reported that the reason the caseworkers gave the Magistrate for not returning the children kept changing and 55% reported that it was difficult to address issues in court because the caseworkers kept changing them.

### **Care Plans**

Only 22% of cases were consulted about the care plan for their children.

Only 10% of cases received the care plans and affidavits in enough time to respond

to them in court. The common tactic seems to be they are provided the day before court or at the actual hearing giving parents no time to prepare an adequate defence or address the allegations.

The court magistrates rely heavily on the care plan filed by the caseworkers and in most cases make their decisions on the information in those care plans.

When parents are not allowed to either make a contribution or correct false information contained in the care plan or even respond to the content of the care plan so they have an opportunity to put their own contribution forward, the magistrate is left with a one way judgement as they have nothing before them from the parents, so accept whatever the caseworker has written.

This is another grave injustice to parents, as the vast majority of the hundreds of care plans that Alecomm has read in case audits mostly state:

***"There is no possibility of restoration of the children to the parents"***, and the department request an order till the child is 18 years old.

This powerful statement routinely written by caseworkers does not have to be backed up with any evidence, and is almost always granted by care court magistrates as no evidence is required.

## **Impacts on parents from their children being removed and placed in Out of Home Care**

The impacts can be viewed in full in both the 151 individual submissions and the full data report at attachment one. All impacts are severe and many will have lifelong implications.

82% reported they now lack trust in authorities and have issues with trust in general, 57% have experienced emotional abuse from the department, 64% suffer from excessive crying, 81% experience sadness.

64% are now withdrawn, 71% report depression, 58% now suffer low self-esteem, 71% have anxiety, 48% suffer panic attacks, 46% now suffer from Post Traumatic Stress Disorder, and 33% now have other mental health issues.



## Short and Long term emotional impacts caused by the care court proceedings and forced removal that parents are experiencing

Short and Long term emotional impacts caused by the care court proceedings and forced removal	No. of people	Percentage
Stress	123	(92.48%)
Grief	120	(90.23%)
Frustration	117	(87.97%)
Feelings of injustice	117	(87.97%)
Anger	116	(87.22%)
Loss	115	(86.47%)
Pain	114	(85.71%)
Difficulties sleeping	111	(83.46%)
Anxiety	107	(80.45%)
Fear	105	(78.95%)
Feelings of inadequacy for being unable to protection your children	103	(77.44%)
Depression	102	(76.69%)
General suffering	102	(76.69%)
Loss of enjoyment of life	101	(75.94%)
Feels like life revolves around courts and caseworkers	98	(73.68%)
Little interest in anything	91	(68.42%)
Feelings of mental and psychological torture by caseworkers	88	(66.17%)
Sometimes don't want to get out of bed	82	(61.65%)
Difficulties eating	81	(60.90%)
Post Traumatic Stress	73	(54.89%)
Difficulties working	71	(53.38%)

Other impacts included death caused by stress, suicide, loss of enjoyment in life, and some are unable to live life with any meaning as their life is empty now and they just exist from day to day because their children were their life.

Family separations and breakdowns in relationships with significant family members and friends were reported in 73% of cases, so support systems are destroyed leaving many parents alone and isolated. Many feel a sense of guilt from being unable to see their children and protect them from harm and get them back home and suffer feelings of hopelessness.

56% of cases reported negative physical effects on their health, 60% suffered negative financial impacts including loss of income caused by loss of employment, legal fees - some have spent up to and over \$100,000 fighting for the return of their children, transport costs to meetings, contact, courses, their solicitor, conferences and court, while some lost their home.



34% had to move house or town, and of those 53% were forced to move by caseworkers.



In only 3 cases were parents ever offered any kind of professional help such as grief counselling once their children were removed.

30% of cases were single parents. 81% of those who did have a partner at the time of removal reported that the loss of their children has had a negative impact on their relationship with their partners.

60% of extended family did not cope with their own loss caused by the removal of the children. And many extended family members are never allowed to see the removed children ever again as caseworkers refuse them contact, further isolating the children from their extended families.

The number of out of home care placements for the children ranged from 1 to 50, with 4 to 5 being the average.

In some cases parents did not know the number of placements because the department had not kept them informed.

The number of caseworkers ranged from 1 to 65, and most parents had lost count or were never informed of caseworker changes. The average appears to be about 10 different caseworkers.

Most parents did not know how often the caseworkers visited their children, as they were not kept informed, and only 30% of children knew who their caseworker was.



### Indigenous Cases

Only 4 of the 20 indigenous cases had been allocated an indigenous caseworker or support worker and none of the children had been placed in accordance with the Aboriginal placement principles.

### Better solutions that were put forward by the case contributors rather than forced removal of their children

Most cases reported that their children should never have been removed. Proposed solutions included:

- Allegations should have been investigated first before removal,
- help and support should have been provided,



- caseworkers should have just talked to the family first, caseworkers should have abided by the law and been truthful.
- Oversight authorities should do their job to make sure caseworkers are abiding by laws and polices.
- Factual and evidenced based documentation and honest communication would have assisted restoration.
- Assistance in remote areas where there are no or limited services would have prevented removal.
- The children should have been placed with their grandmothers or other suitable extended family members.
- The offender should have been removed in cases of domestic violence not the children.

## Children in Out of Home Care

Only one child in out of home care completed their contribution. They did not get regular contact with their parents after removal and only get 4 contact visits a year. The child was not provided with any grief counselling when removed or support of any kind to deal with the grief and loss of their parents and family.

They wanted and had requested more family contact but the caseworker denied them increased contact with their parents, siblings and extended family.

This child was not allowed by the caseworker to be present at meetings concerning their welfare. The caseworkers never acted on any of the concerns raised by the child.

This child wanted to go home to their parents and they asked caseworkers to help them return home but were never provided with any assistance for restoration. They also reported that they were not always treated with respect.

## Placement with extended family

15 cases applied for a kinship placement for their children. Only 8 were granted a formal assessment and 13 of the 15 were rejected as extended family placements.

Of the department controlled and decided kinship placements, 30% of cases had their children placed by the caseworkers with relatives they did not get along with.

This reduces the chances of restoration, creates further family division and we have seen in many cases where the very relative a parent does not want their child to be placed with is the very relative that the department choses for the children, to ensure

children and parents are kept separated, and so often the children are alienated by that kinship relative against their parents.

## Interstate cases

In 16 cases children were removed by child protection departments from another state that was not the state where the child and their family lived, and placed in out of home care in the state that removed them, and all these cases faced many insurmountable problems.

In 48 cases children ended up in out of home care in a different state to the one where the family resides, due to relocation of either parents or foster carers, or the department placing children interstate a long way away from their families, while still holding jurisdiction.

The individual state and territory care and protection laws do not apply and are not even recognised legally by each other.

In 45 cases the respective departments would not assist to have the children reside in the state where the parents were living especially when the department chose to support interstate moves by foster carers at the expense of ignoring the needs of the child and their families. Only 8 cases of interstate transfers have been allowed and the remaining 40 cases were denied.

There are different systems and laws in every state and territory in Australia, which are disadvantageous to children and families as there is no consistency in policy and procedures.

**Children and families are severely disadvantaged when their children are placed in care in a different state. The transport costs are expensive, the laws are different, getting legal representation is more difficult and much more expensive.**

Contact between children and their parents is limited or completely denied. Children are left completely isolated and alone with no family supports at all and placed in a completely strange area with a different education system.

If you reside in another state and your child is taken by FACS NSW, who is arguably the worst state of all, (as they steal more children by far than any other and now have made forced adoptions legal and a priority for children in care), you are severely disadvantaged.

No one in your home state has any power to help parents whose children are in out of home care interstate. It is difficult to have your child transferred, and as the statistics show most are denied a transfer.

Of the cases that were allowed a transfer by the courts the departments can take up to 2 years to effect the court ordered transfer of restoring children back to their home

state.

This is a very important reason why there needs to be one federal jurisdiction where one rule applies to every Australian child and their families and states jurisdictions and their power needs to be abolished.

## CASE REVIEWS, APPEALS, APPLICATIONS FOR RESTORATION

64% of cases have not been granted a case review by even a Regional Office Director. Most children are taken until they are 18 years old with no review of the case. Even prisoners get a review of their cases - but not children in care and their families who have never even committed a crime.

In 55% of cases the department applied for an 18 year order from the time of removal of the children. In 59% of cases parents made an application for restoration of their children to their care.

The laws are different in every state and territory for restoration applications, and New South Wales has the harshest process of all after the 2010 case in the matter of "Troy", where a Judgment made by the President of the Children's Court has made it virtually impossible in NSW to get leave to proceed to a Section 90 Application for Restoration.<sup>1</sup>

### The case of "Troy" in the NSW Care and Protection Court

The case of "Troy" is arguably an illegal judgement that needs to be tested in a higher court on appeal, as no case law was relied on. It was a judgment created on the concerning collaboration between the government and the President of the Children's Court. The Government directed and instructed the Care Court to reduce the high number of parents applying for restoration of their children to reduce court costs.

In essence, the judgement in the Case of Troy lifted the bar unacceptably high by requiring the court to consider all aspects of an entire restoration hearing at the leave hearing (instead of just those elements of law that required consideration to get leave to proceed), that it is nearly impossible now to get leave to proceed to a restoration hearing in NSW since that judgment in 2010.

In addition, a hearing for 'leave of the court' to proceed to a 'restoration hearing' is now routinely only allocated two hours of care court time, and are 'hearings by submission', so no cross-examination is allowed.

This leaves parents only half an hour to make their case, and in New South Wales you get half an hour to submit all that is required for an entire restoration hearing. This has been done purely for economic reasons, and is not in the best interest of any child or their family.



**As solicitors are not under oath when they speak from the bar table in a submission hearing, they can and do say whatever they like to the magistrate and from our experience they lie to win for their clients (the child protection department).**

When complaints have been made about this to the Bar and the Judicial Commission, the solicitors excuse their lies by saying they were just acting on the instructions of their client and they did not know they were telling lies.

**Only 22 cases were given permission by the court to proceed to a Hearing for Restoration.**

The department opposed restoration in 80 cases and there were only 9 cases where the department did not oppose restoration. In only those 9 cases where the department did not oppose restoration did the parents win and the children were returned home.

**It is Alecomm's experience that an application for restoration will only succeed if it is brought by the department or not opposed by them.**

That is why it is vitally important that every case is independently audited for restoration and the restoration applications are made by the department, then if all parties agree the application will automatically be approved by the magistrate with minimal costs.

46 cases appealed the final orders but only 7 were successful, and in 41 of the 46 cases the parents had to pay their own expensive legal costs for the appeal.

## CONCERNS FOR CHILDREN IN OUT OF HOME CARE

40% of cases reported that their children have not received appropriate medical care in out of home care. 43% reported that their children had to change schools.

**Responses to the Question: Do the children ever ask to come home?**

Yes the child does ask to come home	92	(61.33%)
The child asks why they cannot come home	86	(57.33%)
The child asks to come home all the time	80	(53.33%)
Cries to come home at contact regularly	71	(47.33%)
Begs to come home	65	(43.33%)
Practically kicks and screams at end of contact	49	(32.67%)
Does not ask to come home	3	(2.00%)
The child never asks to come home	1	(0.67%)

Other responses included: Children run away constantly from school and their placements because they want to go home, that the children become violent such as kick, bite and throw objects at caseworkers, contact supervisors and drivers. Some children have hidden so they would not be taken back to their out of home care placement.

When any of these previously noted behaviours occurred, in 47% of cases they were documented and used against the parent, in 27% of cases the caseworker threatened to cut contact, in 21% of cases contact was cut because the children wanted to come home. In 37% of cases the child's wishes to come home have been used against them.

### Impacts on the children since they were placed in out of home care for the 328 children in the 151 cases submitted to the Senate Inquiry:

Sadness	107	(71.33%)
Lack of Trust	89	(59.33%)
Emotional abuse	89	(59.33%)
Withdrawal	84	(56.00%)
Low self-esteem	71	(47.33%)
Anxiety	71	(47.33%)
Excessive crying	67	(44.67%)
Depression	66	(44.00%)
Failure to attach	61	(40.67%)
Physical abuse	57	(38.00%)
Medical abuse	44	(29.33%)
Attachment disorder	43	(28.67%)
Post Traumatic Stress Disorder	42	(28.00%)
Violent behaviour	38	(25.33%)
Complex trauma	35	(23.33%)
Panic attacks	33	(22.00%)
Mental health issues	32	(21.33%)
Physical health problems	31	(20.67%)
Antisocial traits	28	(18.67%)
Sexual abuse	27	(18.00%)
Overeating	20	(13.33%)
Eating disorders	17	(11.33%)
Self harm	14	(9.33%)
Suicidal tendencies	12	(8.00%)
Borderline personality disorders	11	(7.33%)
Sexual promiscuity	8	(5.33%)
Smoking	7	(4.67%)
Drug use	7	(4.67%)
Drinking	6	(4.00%)
Teenage pregnancy	2	(1.33%)

### Other short and long term emotional impacts from experiencing life in OOHC:

Loss	106	(86.18%)
Frustration	103	(83.74%)
Anger	102	(82.93%)
Grief	99	(80.49%)
Pain	94	(76.42%)
Fear	92	(74.80%)
Anxiety	84	(68.29%)
Stress	84	(68.29%)
General suffering	73	(59.35%)
Depression	71	(57.72%)
Nightmares and bad dreams	71	(57.72%)
Feelings of injustice	59	(47.97%)
Difficulties sleeping	56	(45.53%)
Loss of enjoyment of life	54	(43.90%)
Lower school grades	44	(35.77%)
Post Traumatic Stress	43	(34.96%)
Wetting the bed	40	(32.52%)
Feelings of inadequacy	40	(32.52%)
Little interest in anything	35	(28.46%)
Feelings of mental and psychological torture by caseworkers	34	(27.64%)
Difficulties eating	33	(26.83%)
Feels like life revolves around courts and caseworkers	33	(26.83%)
Sometimes don't want to get out of bed	18	(14.63%)
Difficulties working	9	(7.32%)

Others emotional impacts included: death of a child in care, sexualised behaviours, nightmares, confusion, fear of speaking out, fear of all forms of abuse in out of home care.

Now, if you return to the original allegations for the children being forcibly removed from their parents and placed in out of home care, the end result so far for these children is far worse than the allegations made against the parents that resulted in the forced removal of these 328 children in every comparable area.

## CONTACT WITH CHILDREN IN OOHC

**37 cases reported that they now have no contact at all with the children in out of home care.**

For the rest, contact varied between daily in 8 cases, up to once every second year. Average contact time was from one to two hours.

Time of contact is often determined by how late the child arrives for contact and the mood of the caseworker. It was clear that more contact is both wanted and needed but the department controls all contact and rapidly reduces contact once they decide on an 18 year order, even despite court ordered contact orders that they often ignore.

In NSW now under the new legislation (enacted March this year), the care and protection courts no longer have a say in contact anymore.

**It is all decided by the caseworker. This is very unfair for children and parents at the mercy of the caseworker, and their unlimited power over their lives.**

### Siblings & Contact

85 cases reported sibling groups. In 38 cases the siblings were placed together and in the other 37 cases the siblings were separated. Contact for siblings that are in separate placements varied from contact twice a week in four cases, fortnightly for seven cases, and monthly for thirteen cases, to once every two years, and in eight cases no contact at all.

**In 65 cases it was reported that all extended family have been denied contact with the children in out of home care altogether.**

### Contact via technology



Only twenty-five percent of cases were allowed phone contact with their children, while only four percent have been allowed Skype contact calls.

## RULES OF CONTACT BY DEPARTMENT CASEWORKERS

58% of cases (87) are told they cannot talk about the past, when for most the past is all they have.

66% (99) are told they cannot talk about the case, 40% (60) are told they cannot change their child without supervision, 29% (44) cases have been told they must



leave the toilet door open, 29% (44) cases have been told they are not allowed to take photo's of the contact.

**36% (54) cases have not been allowed to take a photo of an injury a child has acquired in out of home care.**

**This rule can only be interpreted as preventing parents from being able to evidence the abuse of their children in OOHC.**

47% (70) have not been allowed to record the contact visit, which includes no video recording of time spent together as a family. 56% (84) have been told they are not allowed to whisper and 22% (33) cases have been told they are not allowed to cuddle their children or not too many cuddles.

**43% (65) were not allowed to talk to each other outside of the contact room.**

55% (82) have been told they must talk loud enough for the contact supervisor to hear, and 64% (96) have been told they are not allowed to tell their children the truth about questions they ask; and sadly this order destroys trust between children and their parents.

51% (76) cases have been told they are not allowed to bring any other children or relatives to contact visits. 65% (97) cases have been told they must get other children or relatives approved by the caseworker before they will consider any contact.

41% (62) cases have been told they are not allowed to have a birthday party for their children as their friends and extended family can't attend. 28% (42) have been told they are not allowed to ask their children how they are going at school and 54% (81) have been ordered that they cannot ask a child about their placement or how they're going in the placement.

Further, parents find that more and more rules are made up all the time such as they are not allowed to cry or show any emotion at contact, they are not allowed to ask any questions of their children and they are not allowed to give the children any family photos.



**In 49 cases contact was cancelled because a parent broke one of the numerous rules.**

**Other reasons that contact was cancelled included:**

A parent sticking up for their child, punishment of a child when they ran away, the allocated time was not suitable for carers as they were busy or away or could not be contacted, caseworkers were busy and children were getting too emotional at contact.

59% of cases (88) were denied any contact on special days such as the child's birthday, Christmas, Mothers Day, Fathers Day or a parent's birthday.

In 42% (63) cases the children were not allowed to attend a family members funeral, and in only 10 cases were children allowed to attend a family funeral. In 53% of cases children were not allowed to visit a sick or hospitalised family member, and only the same 10 cases were granted permission.



In only 4 cases have immediate or extended family members been allowed to visit a child in out of home care that has been hospitalised.

**Most reported that contact after forced removal and the care court proceedings has been very difficult and traumatic, and that prisoners have more visiting rights and less contact rules than children in out of home care and their parents.**

## The giving of gifts, letters, cards and money to children in OOHC

Of the 78 cases that have sent letters, gifts, cards or money to their children in out of home care, 62 cases experienced problems.

- In 44% of cases the child protection workers refused to pass these letters, cards and gifts onto their children - often stating they would leave them in the file until the child turned 18 and if the child asked for it when they were 18 then they could receive it.
- 31% of cases reported that the letters, cards and gifts were all opened and things went missing.
- In 17% of cases the money went missing and never made it to the child.
- No one was ever given a receipt - even when 13 cases asked for a receipt.



Only 35 cases reported that their children actually received the letters, cards, gifts and money they sent for their child, 15 cases knew the child never received what they sent and the remaining 36 cases still do not know.

In 6 cases parents have been informed that the money they have sent for their children has been placed in a trust fund until the child is 18 years old.

No one has ever been provided any evidence of such a "trust fund" despite requests for receipts, deposit slips, and bank statements, or answers as to who holds the trust over their child's money, and all requests for evidence and information have been ignored right up to the level of the Minister.

**24 cases believe the money has been stolen. This is straight up theft.**

These gifts and money are sent for the children to enjoy immediately in their lives, not to be stock piled, lost or stolen by caseworkers so children never even know what their families have tried to do for them and that they are thinking of them especially on significant days such as Birthdays and Christmas.

**There is no policy for giving gifts for children in out of home care. There is no accountability for misconduct of caseworkers when these gifts go missing. Children in care have had their gifts stolen and letters and cards withheld causing extreme pain for over a century and still no departments even have a policy in place to protect children from misappropriation of their gifts, letters, cards and money. It is a criminal disgrace.**

We have been bringing this matter to the attention of ministers of departments, other politicians, director-general's, police and ombudsman's without any progress.

While it is confirmed that no gifts and letter polices exist, no one has bothered to develop a policy to protect the children in out of home care from theft and emotional abuse and deprivation.

## CONCERNS WITH FOSTER CARERS

Only 17 cases report being treated respectfully by foster carers. Only 16 cases report that foster carers put the needs of their children first. Only 9 cases reported that foster carers supported restoration of the children, and in 81 cases foster carers had not supported restoration.

In 47 cases the foster carers had made the children call them Mum and Dad, and in 29 cases the caseworkers had forced the children to call the foster carers Mum and Dad.

Only 16 cases reported that the foster carers had helped to preserve the relationship between the parents and the children, while 76 cases reported that foster carers had not helped to preserve their relationship with their children.

**64 cases reported that the foster carers opposed restoration because they wanted to keep the children. In 64 cases foster carers opposed restoration because they had formed a bond with the children.**

71 cases reported that foster carers had undermined them to their children and only five cases reported they had not been undermined to their children by foster carers.

20 cases reported that the foster carers had criminal records - but only 6 cases reported that the foster carers criminal records were known to the caseworkers.



## Criminal records of foster carers

Criminal histories of foster carers included:

- A convicted paedophile
- Manslaughter
- Break and enter
- Sexual assault
- Armed robbery
- Assault of a minor
- Assault police
- General assault
- Assault police when scheduled to a mental health facility, post suicide attempt with a firearm
- Driving through red lights with children in the car
- Drug charges including drug dealing
- Drink driving resulting in loss of license
- Affray and violence towards a neighbour
- Possession of illegal weapons
- Multiple alcohol related offences
- Multiple drink driving offences
- Fraud
- Stalk and intimidate

**In only 2 cases was the criminal history of the foster carers given to the magistrate, and in 5 cases it was reported that caseworkers deliberately concealed the criminal history of the foster carers from the magistrate because they were the chosen foster carers.**

While foster carers have no legal rights and are supposed to care for children only until they are able to return to their families, in reality they hold far too much power and control over the children in their care and obstruct restoration of the children to

their families to meet their own selfish needs to have someone else’s child or for financial incentives, and the department not only allows the wishes of foster carer’s to form the basis of their decisions but often support the foster carer’s to get what they want at the expense of children and their families.

**In 34 cases the paid foster carers were allowed to become a party to the court proceedings, and 14 of them were given free legal aid.**

When auditing cases Alecomm has witnessed that child protection workers commonly defame parents to the foster carers and provide them with the list of false allegations made against the parents as if they are fact.

This can serve two purposes, firstly to create an adversarial environment between foster carers and parents, and secondly to ingratiate foster carers into believing the children placed in their care have come from extremely abusive homes.

Many foster carers are provided with supports over and above their carer payments including but not limited to: large cars, home extensions, cleaners, holidays, respite both in home and external, tutors to assist children with their homework and home furnishings including white goods.

If parents were provided with the income and additional support carers are given, many more children could have remained at home with their families.

## NON-GOVERNMENT ORGANISATIONS (NGO’S)

44 cases had their children case managed by NGO’s and only 8 of those cases reported that the NGO’s were helpful. A further 20 cases had their contact visits managed by NGO’s.

Only 17 cases found the NGO to be helpful when arranging contact visits, whilst 46 cases reported they were **not helpful with contact visits**.

**In only 25 cases did the NGO comply with the full amount of court ordered contact.**

**In 36 cases the NGO breached the court orders and reduced the contact time.**

**In 27 cases the NGO began reducing contact prior to a new court order.**

In 28 cases the **NGO cancelled contact** because the foster carer refused to bring the children to contact. In 31 cases contact was cancelled because the NGO did not notify both parties of the scheduled contact time.

30 cases reported that they missed contact with their children because the NGO did not notify them about the contact the NGO arranged, and in 29 of those cases it was reported that the children were very upset when their parents did not show up for contact.



In 33 cases the NGO would not make up the contact time when it was their fault that contact had been cancelled.

35 cases reported that the NGO would not change contact times to accommodate their employment or education commitments. Only 12 cases reported the NGO was flexible in facilitating contact in general, while 34 cases reported they were not flexible at all. In only 14 cases did NGO's allow weekend contact, while 40 cases were denied any weekend contact visits.

9 cases reported that as soon as the NGO took over management of their children's cases - they began focusing on adoption, and 18 cases have their children managed by different NGO's, instead of all their children in out of home care being managed by the same NGO.

Children in out of home care and their photo's are being advertised everywhere by NGO's on the internet and sales sites such as "Gumtree", in print media, TV, radio and even on the back of buses.



**It is a national disgrace and nothing short of child trafficking and exploitation by profiteering stakeholders.**

A typical Barnardo's advertisement: *"We urgently need people who will open their home to care for a child aged 5 years and older for anywhere between 6 months and 2 years. We pay a generous tax free allowance of up to \$1291.00 a fortnight."*

**If the same proportion of money was invested in keeping families together then the real need for out of home care would be minimal.**

With auditing case file notes and subpoena's and attending meetings, conferences and care court for support with families, we at Alecomm see and experience the corruption between the departments and NGO's going on everyday, and are helpless to stop it in most cases because of lack of accountability in the current failed systems.

The departments are outsourcing services and the care of children to NGO's at alarming levels. As the department still funds the NGO's, they are dependent on their jobs and funding from the departments of child protection.

What we experience is that if the department does not get the report or outcome it requires or wants, they then request an NGO worker be removed from a case or that a report be re-written or "proof-read" before release, or they threaten to withdraw funding.

NGO's are complying with the demands of the caseworkers to pervert the course of justice because they do not want to loose their funding. We see this is all areas including intensive family support services, so called "expert witness court reports", placement assessments, contact supervision, forced adoptions and all aspects of case management for children in out of home care.

**So basically what the department wants it pays for, thereby ensuring they get whatever outcome they want.**

The majority of the NGO's and other stakeholders involved with children in out of home care and their families all profit from children being removed, so nobody is there to truly do what is right both legally and morally for the children, and we at Alecomm are witnessing this constantly.

The only people benefiting in this multi-billion-dollar child protection industry are the profiteering stakeholders, especially the NGO's currently before the Royal Commission for their past and ongoing abuse of vulnerable children.



Another common problem we encounter in advocacy for children and families, is that the NGO is not held accountable when complaints are made about them, especially when concerns are raised of abuse of children under their management, which they deny and just cover up.

The department whilst still holding legal parental responsibility, will not take complaints about NGO's or children under NGO care now, particularly in NSW because they claim that “it is not their responsibility anymore” as case management is now with the NGO.

So parents whose children have now been sold off to NGO's, have nowhere to turn when the care of their children is compromised.

Basically, Australia has learned nothing from the “Forgotten Australian's” report,<sup>2</sup> nor the evidence being exposed daily in the current Royal Commission into the Sexual Abuse of Children under the care and control of NGO's that cover up abuse to protect their funding and public reputation.

They have now also specialised in residential care (that yields between \$176,000 and \$288,000 per annum per Unit (child)),<sup>3</sup> with numerous dubious staff on rotating rosters, which is in reality just institutional care on a smaller more expensive scale with a more modern name.

From our experience NGO's view their carers as their priority, as they are a means to their funding, with children just a commodity, and their families an irrelevant nuisance.

This is illustrated very well in residential facilities where unqualified cheap staff, who are often young inexperienced workers less qualified than the parents from whom the children have been removed, are placed at the coal face doing the 24/7 care of traumatised children.

So the least amount of funds are actually being spent on the care of children, to their

detriment.

In these residential facilities, single men are still being employed to stay overnight by themselves with groups of children unsupervised. The risks to children in out of home care are great, because oversight is minimal and accountability non-existent.

## Contact rules with NGO's



60% of cases are told they cannot talk about the past. 64% are told they cannot talk about the case, 67% have been told they are not allowed to answer their children's questions about the court proceedings, 50% are told they cannot change their child without supervision, 50% of cases have been told they must leave the toilet door open, 33% cases have been told they are not allowed to take photo's of the contact while 38% of cases have not been allowed to take a *photo of an injury* a child has acquired in out of home care. 43% have not been allowed to record the contact visit.

60% have been told they are not allowed to whisper and 45% were (again) not allowed to talk outside of the contact room. 21% of cases have been told they are not allowed to cuddle their children or not too many cuddles.

64% have been told they must talk loud enough for the contact supervisor to hear. 67% have been told they are not allowed to tell their children the truth about questions they ask; and sadly this "rule" destroys trust between children and their parents.

69% of cases have been told they are not allowed to bring any other children or relatives to contact visits. 69% of cases have been told they must get other children or relatives approved by the caseworker before they will consider any contact. 45% of cases have been told they are not allowed to have a birthday party for their children, as their friends and extended family cannot attend.

29% have been told they are not allowed to ask their children how they are going at school and 57% have been ordered that they cannot ask a child about their placement or how they going in the placement.

In comparison to the department caseworkers and supervised contact, there was little difference except parents reported that most NGO's were much clearer with their rules and a couple were "a bit kinder" and did not accuse them constantly of false allegations, as the caseworkers did.



## ABUSE, INJURIES AND NEGLECT OF CHILDREN IN OUT OF HOME CARE

24 cases reported that their children have been placed on psychotropic medications since being removed and placed in out of home care to chemically restrain them.

94 cases reported injuries, abuse and/or neglect of their children in out of home care. These included:

- Death.
- Placed with a paedophile and enslaved by him.
- Sexual abuse and sexual assault.
- Physical abuse, black eyes, broken bones, constant bruises, cuts, scratches, lacerations, head injuries, fat and split lips, teeth knocked out, burns, facial injuries from assault by carers, assaults by other children at the placements, bites, hit in the face and dragged by carers, herpes, children having their head held and forced to eat.
- Slapped for not calling foster carers “mum and dad”.
- Lack of warm clothing, holes in shoes.
- Medical neglect of infections.
- Screamed at constantly by foster carers and called degrading names.
- Medical conditions ignored and treatments including paediatric prescribed medications withheld, skin conditions, constant colds and illness, foot and mouth disease.
- Psychological abuse.
- Forced contraception implants.
- Self harm.
- Poor diets, forced to eat diets against religious and lifestyle beliefs.
- Children that have run away and are missing and it has not been reported to the police.
- Parental alienation.
- Dental neglect.



- Forced to have invasive medical procedures and surgery.
- Newborn babies being denied colostrum and breast milk.
- Body lice.

27 cases reported that their children had been hospitalised for injuries and illness, but only 4 cases had been notified as soon as possible.

**Some were never told at all by the department and found out months afterwards in court documents (including five sexual assaults)<sup>4</sup>.**

## Reports of injuries, abuse and / or neglect of children on out of home care and outcomes

Reported to:

Caseworkers	59	(98.33%)
Child Protection Complaints Units	38	(63.33%)
State Minister for Child Protection	30	(50.00%)
State Police	28	(46.67%)
Local MP	25	(41.67%)
State ombudsman	21	(35.00%)
Members of Parliament	17	(28.33%)
Contact Centre workers	14	(23.33%)
Commissioner for Children	14	(23.33%)
Child guardian	6	(10.00%)
Federal Police	3	(5.00%)

Others reports were made to solicitors, family doctors and child clinic nurse.

### **Results of reports to caseworkers:**

21 received a short letter that ignored the injury, abuse and neglect, 28 never received a response, and 41 state it was covered up and ignored.

### **Result of reports to contact centre workers:**

4 received a short letter that ignored the injury, abuse and neglect, 6 never received a response, and 7 state it was covered up and ignored.

### **Result of reports to state child protection complaints units:**

10 received a short letter that ignored the injury, abuse and neglect, 17 never received a response, and 19 state it was covered up and ignored.

**Result of reports to state Minister for Child Protection:**

9 received a short letter that ignored the injury, abuse and neglect, 9 never received a response, and 19 state it was covered up and ignored.

**Result of reports to Child Guardian:**

2 cases never received a response, and 3 state it was covered up and ignored.

**Result of reports to Commissioner for children:**

2 cases received a short letter that ignored the injury, abuse and neglect, 4 never received a response, and 6 cases state it was covered up and ignored.

**Result of reports to State Ombudsman:**

There were 7 refusals to investigate as the matter was before the court, 5 refusals to investigate as the matter was 12 months old after the court case was over, 3 refusals to investigate because policies and laws had changed, 2 cases where the report was referred and properly investigated, 1 case where the report was referred to the state police, 11 received a short letter that ignored the injury, abuse and neglect, 7 never received a response, and 7 state it was covered up and ignored.

**Result of reports to Local MP:**

In 1 case the report was referred to the state police/ state prosecution service or ombudsman for further investigation, 5 received a short letter that ignored the injury, abuse and neglect, 11 never received a response, whilst 6 state the matter was covered up and ignored.

**Result of reports to other Members of Parliament:**

2 cases state the report was referred to the state police/ state prosecution service or ombudsman for further investigation, 4 received a short letter that ignored the injury, abuse and neglect, 11 never received a response, whilst 8 state it was covered up and ignored.

**Result of reports to State Police:**

4 received a short letter that ignored the injury, abuse and neglect, 12 never received a response, and 13 state it was covered up and ignored. State police referred 9 cases back to the child protection department and refused to get involved.

**Result of reports to the Federal Police:**

1 case were the report was referred to the state police/ state prosecution service or Ombudsman for further investigation, 2 received a short letter that ignored the injury, abuse and neglect, 7 never received a response 2 state it was covered up and ignored.



## CASEWORKER COMPLAINTS

105 cases (70%) reported caseworkers acting incorrectly or corruptly, or bias and did not follow guidelines, policy or procedure. In only 7 cases 6.73% were the caseworkers held accountable for the other 95 cases the caseworker was NOT held accountable for their misconduct, corruption, maladministration or bias.

Reports were made to:

Child Protection Complaints line in your state	67	(65.05%)
Minister for Child Protection in your state	56	(54.37%)
State Ombudsman	42	(40.78%)
Local MP	42	(40.78%)
Members of Parliament	39	(37.86%)
Commissioner for Children	18	(17.48%)
State Police	17	(16.50%)
State Attorney General	13	(12.62%)
Crime and Misconduct Commission or ICAC	11	(10.68%)
Child Guardian	9	(8.74%)
Federal Police	7	(6.80%)

Others reported the matter to their solicitor.

### ***Result of reports to the State Minister for Child Protection:***

There was only one case where the misconduct / breaking of laws was properly investigated and rectified, in only 1 case the matter was referred to the state police or ombudsman for further investigation (as required by law), 23 received a short letter stating there was no misconduct, 22 never received a response and 28 state it was covered up and ignored.

### ***Result of reports to State Child Protection complaints unit:***

2 cases stated the misconduct/breaking of laws was properly investigated and rectified, 20 received a short letter stating there was no misconduct, 30 never received a response and 31 state it was covered up and ignored.

### ***Result of reports to State Ombudsman:***

There were 13 refusals to investigate as the matter was before the court, 9 refusals to investigate as the matter was 12 months old after the court case was over, 6 refusals to investigate because policies and laws had changed, 2 cases were referred to the state police prosecution service or state crime commission for further investigation as required by law, 18 received a short letter that ignored the

misconduct or crime, 13 never received a response and 16 state it was covered up and ignored.

***Result of reports to the State Police:***

3 received a short letter stating there was no misconduct, 10 never received a response, and 8 state it was covered up and ignored.

***Result of reports to the Federal Police:***

2 received a short letter stating there was no misconduct, 5 were informed they refused to get involved, 3 never received a response and 3 state it was covered up and ignored.

***Result of reports to ICAC (or other state Crime and Misconduct Commission):***

7 received a short letter stating there was no misconduct, 4 never received a response, and 6 state it was covered up and ignored.

***Result of reports to State Attorney General:***

6 received a short letter stating there was no misconduct and it did not fall within their guidelines when in fact it did, 6 never received a response and 5 state it was covered up and ignored.

***Result of reports to a Commissioner for Children:***

4 received a short letter stating there was no misconduct, in 3 cases the Commissioner refused to intervene, 5 never received a response and 3 state it was covered up and ignored.

***Result of reports to the Children's Guardian:***

2 received a short letter stating there was no misconduct, in 3 cases the Child Guardian was not interested in getting involved, 1 never received a response 1 states it was covered up and ignored.

***Result of reports to Local MP:***

In 10 cases the matter was forwarded to the state Minister for Child Protection and a standard letter was sent back saying there was nothing they could do, 9 received a short letter stating there was no misconduct, 13 never received a response and 11 state it was covered up and ignored.

***Result of reports to Members of Parliament:***

In 1 case the matter was referred to the state police or ombudsman for further investigation as required by law. In 7 cases the matter was forwarded to the state Minister for Child Protection and they sent back a



common letter saying there was nothing they could do, 8 received a short letter stating there was no misconduct, 16 never received a response and 15 state it was covered up and ignored.

## LACK OF RESPONSE AND LACK OF ACCOUNTABILITY

These results for **lack of response** and **lack of accountability** from those in authority to act, or those who have an oversight capacity, are typical of what Alecomm has experienced over the years of making formal complaints on behalf of victims.

**Without accountability children and families will continue to be abused, and the system will always fail them.**

**ICAC and state crime authorities do not recognise continual breaches of legislation and policy as corruption, and therefore refuse to investigate cases adequately.**

Internal authorities such as the Privacy Manager for privacy violations routinely cover for the department instead of ensuring compliance with law. They do not allow auditing of child protection cases for compliance.

No oversight authority is willing or interested in ensuring transparency and legislative compliance.

The state ombudsman who is supposed to investigate misconduct of public servants use their own legislation which absolves them from investigating the misconduct of any parties if a matter is before a court.

Every case where a child is taken **is** before the court, and many care and protection matters can be before the court for many years.

When a court case is over the ombudsman uses the excuse that they will still not investigate a matter because it is has by that time been twelve months since the complaint arose.

State police outright refuse to investigate evidenced perjury by caseworkers, and in most cases just refer the matter back to the child protection department.

**Perjury in cases has the potential to change the appropriate and just outcome for parents and children.**

The internal department complaint's units are nothing more than an early warning system to alter or destroy any incriminating evidence, as has been proven time and time again by subpoenas.

And if they (or a department manager) on behalf of the Minister or the Director-General do bother to respond to an evidenced complaint, the letter makes no admissions, ignores the concerns and always advise a parent to work with the very

caseworkers the person is complaining about "in the best interest of the child", so are not worth the paper they are written on and usually lead to punishment of your child or reduced contact for making the complaint.

## FORCED ADOPTIONS

There were only two cases of forced adoptions in the 151 case contributions.

Both were prevented from having a support person with them at meetings, conferences and court proceedings.

One case was denied legal aid, and neither of the forced adoptions allowed for post adoption contact.

Sir James Munby, President of the UK Children's Court, has made several significant rulings in the past year in care court matters that have begun to improve justice in the UK for parents fighting for their children.



Painting by Albina Kumirova <sup>1</sup>

A directions ruling he made in September 2013 has resulted in a dramatic slump in forced adoptions in the UK. <sup>5</sup>

Sir James Munby expressed his concerns, (that we at Alecomm share here in Australia), that recurrent "inadequacy of reasoning" and analysis put forward in support of forced adoptions by social services and family court judges has to be halted.

**Further he stated that there must be proper evidence from social services addressing all the options "realistically possible", pointing out the arguments for and against each, and providing a fully reasoned recommendation.**

**Too often there was "sloppy practice", with little or no evidence given about the merits or otherwise of an adoptive placement, and this was "simply unacceptable".**

*"Where the proposal before the court is for non-consensual adoption, the issues are too grave, the stakes for all are too high, for the outcome to be determined by rigorous adherence to an inflexible timetable and justice thereby potentially denied"* he said.

With the new forced adoption legislation in New South Wales now a priority for children in out of home care, we are extremely concerned.

Forced adoption of children in out of home care in NSW can now take place without a parents' knowledge - let alone their consent - and for children under 2 within 6 months, which is a grossly inadequate and unjust timeframe for their families.

We implore all Senators to watch the Meet The Press panel discussion on Adoption.<sup>6</sup>

**When you realise that James Packer is funding Deborra Lee Furness in her campaign to market all children in care in NSW for forced adoptions and their relationship to Pru Goward, as friend and former de-facto mother-in-law, the power of the rich and famous is overwhelming.**

Add to that the concerning situation of Louise Voigt who has been the CEO of Barnardo’s Australia for over 30 years and who prioritised recruiting of the lucrative gay and lesbian prospective adoptive parents market, only after her own daughter identified as lesbian, indicating exploitation of our children for personal agenda and profit.

Pru Goward in an interview last year with her friends at 2GB, including Alan Jones, admitted that her forced adoption legislation came about when her friend Deborra Lee Furness came to visit her about wanting more babies for adoption and for economic reasons Pru Goward decided to formulate laws to forcibly adopt all children in care at the very same time she gave a tearful apology in state parliament for the past policies of forced adoptions that destroyed so many lives.

**Deborra Lee Furness is a good example of how “Open Adoption” is abused.**

She bought her oldest adopted son from the child protection system in the USA on an “Open Adoption” contract, and broke all the rules by her own admission in an interview with Andrew Denton.<sup>7</sup>

Just one year after the adoption of her son, Furness violated the “Open Adoption” contract and cut her son’s mother off completely.

His mother committed suicide due to the pain, grief and loss of her son, arguably caused by the selfishness of the adopting parent.

Yet fame, fortune, money and power has seen Deborra Lee Furness made Australian of the Year in NSW, when she does not even live in Australia, and allowed her to run a campaign to market all children in out of home care in NSW for forced adoption when arguable many of those children have been stolen from their families.

**Most of these children have families that love them, and adoption should be for orphans not children who have families that love them.**<sup>8</sup>



When this poorly researched and biased article was published, declaring all children in out of home care in NSW as adoptees, Alecomm had to console and support parents distraught that their stolen children were now classified as “adoptees”, when so many are fighting for restoration.



While we can't even achieve a response from Pru Goward or the Prime Minister Tony Abbott, Deborra Lee Furness has open access to them and was wined and dined by the PM who is now supporting her adoption agenda, because of his own personal involvements with adoption as stated to the media at his reception party for Furness, to fast track overseas and domestic adoptions.

## CARE AND PROTECTION COURT ISSUES

48% of cases reported that adjournments were granted because the caseworkers were not ready to proceed, and only 19% of Independent Child Lawyers (ICL's) and parent solicitors objected to these adjournments.

In 40% of cases the magistrates granted adjournments because the department was too busy, and only three parents reported the adjournment was in their child's best interest.

70 cases reported that they were not given enough time to prepare for court because of last minute service of affidavits, care plans and court reports by the department.

**A very tragic statistic that is indicative of high numbers of stolen children is that 52% of cases reported that their children were not returned because they had been in care for a year or more and it was not in the child's best interest to unsettle them in their out of home care placements.**

At Alecomm we see this occur constantly when the caseworker has no reasons left to prevent a child being returned to their loving family, especially when parents have evidenced their innocence of the false allegations made against them, or completed all requirements needed to get their children back, which usually takes a year to get to a Hearing so they can finally be heard in court.

**No consideration is ever given to the trauma of forced removal of children and the years they have spent in the loving care of their families as opposed to just one year in out of home care, and the Magistrates rule time and time again in favour of the caseworkers and grant 18 year orders.**

**It is a travesty of injustice that is occurring in the secret care courts daily around the nation and must be stopped.**

Only 38% of cases were required to complete courses and all cases reported that the courses improved their parenting skills, but only 8% were given the opportunity to put their new skills into practice with their children at home.

Tragically only 7 cases (4.7%) got their children back after completing all that the department asked them to do.

- ♣ Only 3 cases reported that the department assisted them to do what was required to get their children back, and only 2 of those cases reported that they were encouraged and supported to do what was required.



- ♣ Only 6 cases reported that completing the requirements made a difference in getting their children returned.
- ♣ 48% of cases were prevented from having a support person with them during meetings, conferences and court proceedings.
- ♣ 99 cases reported that the courts "hindered" their case, and only 12 reported that the court process helped them.
- ♣ 90 cases believe that the magistrate did not read their affidavits or listen to them, while only 18 cases believe that the magistrate did read their affidavits and listen to them.

We find it of interest that children's court magistrates often state that it is not their job to read the case file and that "they only read what the department gives them".

An article by a NSW solicitor trying to defend parents is still very relevant today because nothing has changed and the response from the department is always the same, as they defer responsibility to the care court when we can demonstrate that care court is bias and in many cases nothing more than a rubber stamp legalising the corruption we continually witness from child protection departments.<sup>9</sup>

**It is very difficult to defend a parent against false anonymous verbal hearsay. So while ever the secret care court jurisdiction laws are so poorly constructed to allow this there will never be any justice for innocent parents and children will continue to be needlessly stolen destroying lives forever.**

## LEGAL REPRESENTATION FOR PARENTS

57 cases were denied legal aid, 26 cases paid for private legal representation, 11 cases self represented, 18 cases part self represented and had part legal aid, and 62 cases had difficulty finding solicitors that had not previously worked for the department. 48 cases reported that they had to choose a legal aid representative from a limited list.

73 cases reported that their solicitor did not clearly explain the legal situation to them. Only 36 cases reported their solicitor was clear in their explanation of the legal situation. 71 cases report that their solicitor did not provide the correct legal advice, and only 25 cases reported they did get the correct legal advice.

Only 28 cases reported that their solicitors followed their instructions, while 74 cases reported their solicitors did not follow their instructions. Only 22 cases felt their solicitors spent sufficient time on their case, and 89 cases reported that their solicitors did not spend enough time on their case.

87 cases reported that their solicitors did not try hard to defend them and win their cases with only 20 cases reported that their solicitors did try hard to win.

Of the 83 cases that have concluded only 10 cases won their children back, and 73 lost their cases and their children. The remaining cases are still before the Care Court.

65% reported they had trouble finding a solicitor prepared to fight for them in Care Court. 49% of cases had their Legal Aid Grants cut off during the court process. In 65 cases (43%) the solicitors advised the parents to agree with establishment and in 84 cases (56%) solicitors advised parents to agree with what the child protection department wanted.

A standard initial grant of Legal Aid to defend a parent in care court for the initial application is only around \$400.

For most solicitors that is not enough money for them to even read the application and affidavit of the caseworker. Routinely legal aid solicitors do not even write an affidavit of response from parents, or spend any money on subpoena's or other forms of investigation to defend the parents.

Most complaints we have received confirm that Legal Aid solicitors usually pressure parents to agree with the department and accept establishment without admissions, and then to accept final orders and come back and see them 6 months later to apply for a Restoration order, which never eventuates.

In the majority of cases that contact Alecomm, poor legal representation has resulted in their children being taken into care until the children are 18 years of age.

A recent trend is emerging where parents qualify for Legal Aid but then have their grant refused on the grounds that the case has "No Merit". We have witnessed cases where this is the result of collaboration between child protection and legal aid.

We recently won a case and had four children returned to their family in just this situation. So the case did have merit, but like so many is being pre-judged by Legal Aid and refused funding for the parents to defend themselves. Without the support of Alecomm we have no doubt that these children would have ended up remaining in out of home care.

Without good solicitors properly funded to defend parents it is not possible for parents to have any chance of getting their children back in the current unjust care and protection court system.

## Care Court Conferences and Dispute Resolution Conferences

Care Court and dispute resolution Conferences are also a waste of time and money.

In every conference where Alecomm has provided an independent support person for the families, we found the conferences to be nothing more than a means of pressuring parents to consent to what the department wanted.

In just about every case the department produced pre-prepared contracts that were produced towards the end of the conference and requested the parents to sign away their children, proving that they never approach the conferences with an open mind, only their own determination to enforce their views and decisions on parents without compromise.

## INDEPENDENT COURT REPORTS:

In most cases, our investigation of these so called independent expert court reporters (or witnesses) during case audits have evidenced that they are not independent at all, and they are given too much weight in court by the magistrates.

They are usually chosen by the department, are paid for by the department, in fact overpaid in most cases, and many are former child protection workers.

They have no true experience of the person whom they give their "expert opinion" about and in some cases they never even meet the person who they are reporting on.

They court reporters often change their report to suit the departments desired outcome, and the department provide them with only the information they want known, including the caseworkers report of the outcome the department seeks in the case.

At Alecomm we view these reports with the scepticism they deserve, and as another expensive waste of taxpayers money that would be better spent on supporting families to remain together.

## COURT TRANSCRIPTS

Only two cases reported that their transcript was accurate and reflected the court proceedings. 15 cases reported that parts of their transcript were missing, and 9 cases reported their transcripts were completely altered.

Transcripts are very expensive and take considerable time to obtain. Even when inaccuracies, omissions and alterations are detected there is no way for parents to be able to get them corrected.

## OUTCOMES FOR CASEWORKER PERJURY

The magistrate did nothing.	72	(65.45%)
The magistrate refused to act upon the caseworker's unlawful acts.	23	(20.91%)
The magistrate defended the caseworkers actions.	22	(20.00%)
The magistrate acknowledged the lies and perjury but did nothing else.	17	(15.45%)
The magistrate reprimanded the caseworker for lying in	9	(8.18%)

affidavits.		
The magistrate reprimanded the caseworker for committing perjury.	4	(3.64%)
The magistrate imposed penalties upon the caseworker.	2	(1.82%)

The crime of "perjury" in care courts committed by caseworkers is very common. Even when a parent is clearly able to evidence that they have committed perjury to pervert the course of justice they are not charged, and only two cases report that a penalty was imposed.

Children are being taken into care every day based on lies by caseworkers destroying lives forever, and they are not held to account for their crimes, which is why they continue to behave so dishonestly.

## COURT AUDIO EQUIPMENT

50 cases reported that that they could not hear what was being said in the courtroom at times.

Only 14 cases reported that they were able to hear what was being discussed between the parties' solicitors, while most cases (92) could not hear these discussions. 39 cases reported they could not hear clearly what the Magistrate was saying at times.

## INDEPENDENT CHILD LAWYERS (ICL)

In May 2012 research on "Independent Child Lawyers" was commissioned by the Attorney General's Department,<sup>10</sup> and conducted by the Australian Institute of Family Studies (AIFS).

Alecomm contacted the researchers, as they had widely publicised<sup>11</sup> that they wanted to hear from children and parents who had an ICL appointed in their family separations and court matters, and child protection workers were participating in their research<sup>12</sup>.

At Alecomm we have ready access to children and parents who are experiencing very poor quality in the ICL's involved in care court matters, and we wanted to make a contribution to the research to give children and parents a voice.

However our offer to participate in the ICL research was rejected, so we devised our own ICL survey to conduct our own research, which is still underway, and so far has been completed by 64 participants - and our findings so far are in stark contrast to the commissioned research undertaken by AIFS - because it is the viewpoint of the lived experiences of children and parents in their dealings with ICL's - rather than the vast legal opinion that reflects heavily in the AIFS Research report. The final AIFS report second edition on their research into ICL's was published in June 2014<sup>13</sup>



Attachment 3 of this submission contains the ICL surveys completed so far in our Alecomm ICL research project.

The project was designed to have In-depth interviews with parents and children who have been involved in a court matter where an Independent Children's Lawyer was involved.<sup>14</sup>

Unfortunately the AIFS research involved 562 participants, of which 528 participants were professionals working within Australia's family law system, a notable 169 participants being ICL's themselves, and another 192 participants being non-ICL lawyers - so the study was flawed because it was overrun by self-serving legal opinions.

**Only 24 parents and 10 children participated in the independent children's lawyer survey conducted by the Australian Institute of Family Studies (out of 562 participants).<sup>15</sup>**

There is one area that Alecomm does agree with the AIFS research, and that is the significant reliance magistrates place on the ICL when making their decisions on the outcome for a family. So the quality of a magistrate's decision rests heavily on the quality and performance of the court appointed ICL.

The Attorney General's department defines the role and function of an ICL to be:

- facilitating the participation of the child/young person in the proceedings;
- evidence gathering;
- litigation management—playing an “honest broker” role in case management and settlement negotiation.

In the 151 participants whose submissions are before the Senate Inquiry via Alecomm, only 7 cases reported that the ICL healthily promoted the United Nations convention on the rights of the child.

In only 4 cases was the child provided with the age appropriate Children's Charter of Rights.

Only 5 cases reported that the ICL was available at times to discuss matters with the child.

In 7 cases the child tried to dismiss the ICL due to their lack of willingness to abide by the representation principles for a children's lawyer, and in 4 cases the child tried multiple times to have their ICL removed - but only 1 child was successful in dismissing their ICL.

**In only 5 cases did the ICL receive and act on the instruction of the child.**

In only 16 cases did the ICL attempt to reduce court delays in the child's best

interest.

In 21 cases there was a change in the ICL part way through the case. In only 22 cases was the child able to convey their wishes to their ICL. In only 5 cases did the ICL represent the child client with loyalty, confidentiality and competently. In only 4 cases did the ICL identify appropriate family and professional resources for the child. In only 2 cases did the ICL discuss the possibility and desirability of an appeal application with the child client.

In only 11 cases did the ICL represent the child in a competent and professional manner. In only 17 cases did the ICL even participate in all telephone and other conferences and court Hearings.

In only 4 cases did the ICL advocate in accordance with the child's instructions and preferences. In only 5 cases did the ICL consult with the child before closing submissions to ensure all aspects of the child's instructions were before the court.

In only 5 cases did the ICL ensure that all relevant evidence was before the court. In only 6 cases did the ICL question the accuracy of evidence given by other parties and cross-examine them where it was relevant to the child's welfare.

No child was advised that they could have a support person with them.

#### **No child had a trusted adult with them when interviewed.**

In only 18 cases did the ICL even see the child, and in only 10 of those cases did the ICL see the child well before the first hearing.

Only 4 cases found the ICL independent. Only 1 ICL made sure that issues were argued on evidence rather than personal opinions. No ICL ensured there was a support and monitoring mechanism established to assist the child. No ICL arranged follow up meetings with the children throughout the legal process and after judgment.

#### **No ICL sought to enhance a child's capacity to provide instruction.**

In only 5 cases did the ICL seek assistance from an appropriate behavioural scientist to assist them to ascertain the wishes and instructions of younger children, and in only 1 case did the ICL use this information to assist the child. Only 1 ICL informed the child that they were entitled to access documents held by the ICL. In 2 cases the child did request access to documents held by the ICL but only one child was allowed access.

**In 20 cases the child requested to give evidence but in only 1 case did the ICL assist the child to give their evidence. These are also human rights violations under the Convention of the Rights of the Child.**<sup>16</sup>

- ♣ In 10 cases children had written evidence that they wanted the ICL to provide to the court, and in only 3 cases did the ICL provide that written evidence to

the court.

- ♣ In 5 cases children had audio evidence that they requested the ICL provide to the court, but none of that evidence was provided to the court.
- ♣ No ICL requested the magistrate speak with the child if they were not allowed to speak in court. In only 19 cases did the ICL obtain copies of all court documents and evidence relevant to the case.

31 cases reported that other parties tried to provide the ICL with evidence, but only 11 had their evidence accepted by the ICL on behalf of the child. Only 6 cases believe that the ICL actually read all the subpoenaed notes and affidavits in the case.

In only 4 cases did the ICL act in an independent, unfettered way in the **best interest of the child**. In only 6 cases did the ICL make a submission to the court suggesting a particular course of action in the best interests of the child.

In only 3 cases did the ICL inform the court of the child’s wishes. In only 3 cases did the ICL arrange for the collation of expert evidence to ensure that all evidence relevant to the child’s welfare was before the court.

**In only 4 cases did the ICL test by cross-examination where appropriate the evidence of other parties and their witnesses.**

In only 1 case did the ICL ensure that the views and attitudes brought to bear on the issues before the court were drawn from evidence and not drawn from a personal view or opinion of the case.

In only 7 cases did the ICL minimize the trauma to the child associated with the court proceedings. In only 6 cases did the ICL facilitate an agreed resolution in the proceedings

## ICL REPRESENTATION OF REMOVED NEWBORN BABIES

In the 151 cases submitted there were 23 newborn babies removed at birth.

In only one case did the ICL object to the removal of a newborn baby, when there had been no supportive intervention provided first.

No ICL objected to the baby being denied colostrum from the mother, which is vital to a baby’s immune system. No ICL’s objected to the baby being denied its mothers breast milk, and only one ICL objected to the mother and baby not being allowed to bond.

**Of the thousands of complaints we receive at Alecomm from children in care and their families, and the case audits we perform for legislative compliance, a very common concern is that independent children’s lawyers are not doing their job in accordance with their legislated responsibilities in care and**



**protection matters.**

This is reflected in our own ICL survey with 64 participants so far, and the 151 cases submitted via Alecomm to the Senate Inquiry, which clearly evidence that ICL's are not doing the job they are generously paid to do.

The most common concern is that the ICL is not doing their own discovery of the evidence, that they do not even read the evidence, rarely do they actively participate in the case and mostly just support the position of the legal representative for the child protection worker, and children and families are then up against two legal parties.

The magistrates do rely heavily on the position of the ICL as evidenced in the AIFS ICL report, followed closely by what the caseworker has written in the care plan.



Painting by Albina Kumirova 2

This illustrates the power imbalance in care court and explains why so many children are stolen from innocent parents or families that needed support rather than having their children forcibly removed, tearing their family apart.

This is a very unjust situation for children and families that are poorly represented in care court and often have no legal representation at all.

Given that \$65 million dollars was identified in the AIFS report on the cost of ICL's for a 3 year period, we contend that the amount of money wasted on ICL's could have been better spent supporting families to stay together.

## AUSTRALIA'S OBLIGATORY HUMAN RIGHTS

Australia promoted its humanity to the rest of the world as one of eight nations involved in drafting Universal Human Rights and overseeing the global adoption of Universal Human Rights in 1948. Yet in practice our governments have continued to ignore and breach the human rights of children in out of home care and their families in the 66 years since the UN declaration was made.

**If a country is judged on how it treats its children in their care - Australia has well and truly failed as a nation.**

All accounts of the violations of Australia's obligatory human rights <sup>17</sup> can be read in full, in either our Data report at Attachment 1 or in the individual submissions.

### ***Article 7 of the International Covenant on Civil and Political Rights***

70 cases reported they had been subject to torture or cruel inhumane and degrading treatment or punishment.

**Article 8.1 of the International Covenant on Civil and Political Rights**

24 cases reported they had been held in slavery and or the slave trade in its many forms.

**Article 14 of the International Covenant on Civil and Political Rights**

65 cases reported that they had not been treated as equal before the courts and tribunals, and only 15 cases reported they had been treated equally.

**Article 17 of the International Covenant on Civil and Political Rights**

68 cases reported that they had been subject to unlawful interference with respect to their privacy, family, home or correspondence or subject to unlawful attacks on their honour and reputation.

**Article 23 of the International Covenant on Civil and Political Rights**

44 cases reported their family had been denied protection by society and the state.

**Article 26 of the International Covenant on Civil and Political Rights**

78 cases reported their right to all persons to be equal before the law and entitled to equal protection of the law without discrimination was violated.

**THE INTERNATIONAL COVENANT OF CHILDREN’S RIGHTS****Article 7.1 of the International Covenant of the Rights of the Child**

99 cases reported that their children had been denied the right to be registered at birth and to know and be cared for by their parents.

**Article 8.1 of the International Covenant of the Rights of the Child**

68 cases reported their child’s right to have state parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference has been violated.

**Article 8.2 of the International Covenant of the Rights of the Child**

49 cases reported their children are illegally deprived of some or all of the elements of his or her identity, and state parties are not providing appropriate assistance and protection, with a view to re-establishing their children’s identities, also violating the universal human rights of the children.

**Article 9.1 of the International Covenant of the Rights of the Child**

101 cases reported that State parties have violated their children rights, as state parties have forcibly separated their children from their parents against the child's will.

**Article 9.3 of the International Covenant of the Rights of the Child**

In 73 cases state parties have violated and disrespected the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis.

**Article 19 of the International Covenant of the Rights of the Child**

Only 4 cases reported that the states have taken appropriate measures to protect their children from all forms of abuse, violence, negligence, maltreatment or exploitation, including sexual abuse.

In 6 cases the children were removed because the family became homeless or were at risk of homelessness..

**Article 29 of the International Covenant of the Rights of the Child**

60 cases do not believe that “the state has educated their children in the development of the child's personality, talents and mental and physical abilities to their fullest potential”, as they are obliged to do.

61 cases do not believe that “the state has educated their children in the development of respect for human rights and fundamental freedoms”, as they are obliged to do.

Only 16 cases believe that the state has educated their children on the Principles enshrined in the Charter of the United Nations, as they are obliged to do.

72 cases report that the children have not been educated by the state to develop respect for the child's parents, as they are obliged to do.

58 cases report that the state has not educated their children in their own cultural identity, and 50 cases report they have failed to educate their children in their own language and values.

Only 22 cases report that their children have been educated in the national values of their country, and in only 23 cases have they received education on their country of origin.



## Participants thoughts and beliefs about Child Protection services prior to involvement with them.

- ♣ 42 cases (before any personal contact with child protection) “thought they did a good job”.
- ♣ 70 cases thought “that if child protection got involved that parents must have done something wrong”.
- ♣ 83 cases thought “they would never remove a child without investigating the family properly first”.
- ♣ 34 cases thought caseworkers were “overworked and underpaid”.
- ♣ 56 cases thought the department “needed more funding” so they could help more families.
- ♣ 29 cases thought “caseworkers did not get enough gratitude for the job they do”.

## After personal exposure to Australian child protection agencies there were stark changes.

- ♣ 39 cases had sought help from the department - but now only 1 case would “ever contact them for assistance again”, while 121 cases will “never contact child protection agencies for assistance”.
- ♣ 116 cases do NOT “tell domestic violence victims to seek assistance from child protection”, and only 8 would.
- ♣ 64 cases “now tell domestic violence victims **not to ask for help because of mandatory reporting laws**”. While 36 cases would still call the police for assistance in a domestic violence situation, 73 cases would not.
- ♣ Only 11 cases would still “trust health care professionals with information that may be used against them by child protection agencies”, and 105 would not.
- ♣ 111 cases would “never seek help from any government authority again after having the child protection department involved in their life”, and only 8 would.

When asked what the best thing about the child protection system was, the most common response was “NOTHING”, and no one made a positive response.

124 cases would like to have their case reviewed - however 47 of those do not see any point in having their case reviewed by another **government department**.

117 cases would like to have their file audited for compliance with state Care and

Protection laws, policies and procedures by a professional organisation this is experienced with current child protection issues that is independent of child protection.

## IN THE BEST INTEREST OF CHILDREN

Many social researchers along with the evidence contained in the “Bringing Them Home Report” tabled in Parliament in 1997<sup>18</sup> acknowledged the harm that was done to several generations of the indigenous population due to blanket social policies of child removal in past generations.

At the time these blanket social policies claimed to be “in the best interests of the children forcibly removed from their families”. The National Apology to the Stolen Generations in 2007 acknowledged the policy was clearly not in the best interest of the stolen children or their families. While some children may have benefitted, on the whole, it was bad social policy and damaged far more lives than it helped.

Despite the mistakes of the past, blanket social policies are being advocated today by researchers in Child Protection. It has been widely reported that children from foster care have poor outcomes<sup>19</sup> with the description of “the lost generation” being used to describe the increasing number of children that go through the foster care system that are ending up in the juvenile justice system. Yet researchers like Jeremy Sammut at the Centre for Independent Studies uses exactly the same terminology – “a lost generation” –to advocate for a blanket policy of child removal.<sup>20</sup>

**Dr Sammut claims, “they are being lost due to the favoured family-preservation approach to child protection in Australia.” He makes the claim that family support is the favoured approach to child protection, despite the fact that, on average nationwide only around 10% of total Child Protection funds go to family support and preservation, with the remaining 90% of funds going to lawyers and out of home care costs.**

At Alecomm we believe the expenditure figures clearly demonstrate that foster care is the “favoured approach” to child protection, and in contrast to Dr Sammut’s claims, family support and preservation is the very “least favoured approach” in current child protection practice.

However, we do recognise there may be a very small number of cases where children need to be removed, so we do not advocate a “blanket policy” approach to child protection.

To consider what it would be like if hospitals took a “blanket policy” approach to the medical intervention they delivered, we will use a fictional example of a hospital that has a policy of amputating a patient’s right leg for every person that presents to the emergency department.

This would be a great policy for doctors, as it would diminish the need for critical

thinking. And they would not be responsible for the medical decision they made to amputate every patient’s right leg because it was hospital policy regardless of the actual problem a patient had.

While the hospital activity measures would make it appear okay to do this, because they could claim that a successful operation was performed according to policy, it would not be helpful to the patient or solve their actual health problem.

In hospitals, any emphasis on a one-policy fits all approach to intervention, is clearly a disadvantage to the patient. All cases must be diagnosed by someone both competent enough to make the diagnosis and accountable to the patient for that diagnosis. Any medical intervention that followed must be based on evidenced best practice for the diagnosis. The collated studies of the type of cases and their treatments in the health system is referred to as “case mix analysis” and a great deal of effort goes into this analysis in the health system.<sup>21</sup>

Dr Sammut claims to have enough knowledge of “case mix analysis” and hospital policy to determine that money is “wasted” on administration rather than patient care.<sup>22</sup>

Yet he claims the opposite in the child protection system, and suggests that when 30% of funding is spent on lawyers and 60% on foster care - that the remaining 10% spent on family support is too much.

Alecomm disagrees with Dr Sammut. We are glad that hospitals do not run as child protection agencies do, and consider the 10% of funding currently spent on family support is grossly inadequate.

We would like to see a shift in the child protection system, to ensure that intervention is only performed after a competent analysis of the holistic situation has taken place, and an accurate evidenced diagnosis of the problems has been determined by appropriately qualified specialists who can be held accountable to the children and families for the decisions made about their lives.

Further we would advocate that any intervention must be based on that analysis, must be evidenced best practice and must be made in the “best interests of the child” rather than the current departmental Key Performance Indicators.

## **TWO MAJOR ISSUES IN THE FAILED AUSTRALIAN CHILD PROTECTION INDUSTRY**

### **The increasing rate of forced removals**

Forced removals are heavy handed with police involvement that traumatises children. Parents are being arrested for resisting police just because they refuse to hand over their frightened children.

**Our extensive case experience indicates that forced removals are still happening as a first resort - with no investigation taking place before removal, no warnings to parents, and often they are not even allowed to say goodbye to their children.**

Significantly increased numbers of children are removed on Friday nights and in the lead up to holiday periods such as Easter and Christmas to deliberately disadvantage parents when trying to seek legal representation and support.



Painting by Albina Kumirova 3

Families are routinely not being provided with any help and support to remain safely together in their best interest.

**FORCIBLY REMOVING CHILDREN IS THE MOST DRASTIC, COSTLY AND INTRUSIVE ACT A GOVERNMENT CAN CARRY OUT.**

Australia is currently removing more children per head of population than any other western nation:

Country	Population	Number of children in OOHC	Rate per million
Australia	22 million	50,000	2,272
Finland	5.4 million	10,675	1,851
UK	64 million	92,000	1,439
Canada	34 million	47,000	1,382
USA	319 million	400,000	1,255
New Zealand	4.5 million	3,783	840
Spain	46.8 million	35,000	747
Norway	5 million	3,300	660
Sweden	9.5 million	5,000	526
Italy	59.4 million	29,000	488

The world trend of reducing numbers of children in care in Europe is because they have embraced a **whole of childhood family preservation model**, while Australia only talks about family preservation but in practice continues on with the entrenched UK and USA systems combined with the destructive risk adverse culture that has emerged in the past decade.

Emeritus Professor Dorothy Scott urged Australia to follow the European Care System that focuses on preserving families, rather than the failed US and UK “**grab the child and run**” model because the **evidence for best practice proves** that forced removal of children and forced adoptions do not ensure a safe, stable and

loving homes for vulnerable children - and the outcomes are far better for children, families and society when they are supported to remain at home.

## CHILDREN ARE SAFER WHEN LEFT WITH FAMILIES. <sup>23</sup>

Commissioner Carmody, in the most recent inquiry into the failed child protection system in Queensland, identified three main causes for the systemic failure in child protection: <sup>24</sup>

1. Too little money is spent on early intervention to support vulnerable families.

No more money is required - just a reversal of current spending - with a focus on restoration of all children whom were removed without all guidelines, policy, procedure and legislation completely abided by are restored to their families regardless of how long they have been in out of home care, freeing up funding to invest in prevention of child abuse and family preservation.

Far too much money is tied up and wasted on forced removal of children, with 30% of funding spent on solicitors and litigation and then the highly profitable out of home care industry costing 60% of funding - leaving only 10% of funding nationally to spend on family support and preservation.

2. The widespread risk–adverse culture within child protection focusing on coercive instead of supportive strategies

66% of the 50,000 children currently in care nationwide were forcibly removed for "possible future risk of emotional harm and neglect".

The high numbers of "emotional harm" are mostly from children exposed to domestic violence of adult family members - so start protecting the victims of domestic violence, and remove the violent perpetrators instead of the children.

The high numbers of neglect cases are due mainly to poverty - so help the family out of poverty. Don't forcibly remove their children.

These figures illustrate that there are approximately 33,000 stolen children, currently in out of home care, that should have received help and support to remain safely with their families.

### **Restoration of the stolen children must be a priority of government.**

Mandatory reporting laws are actually killing children, because it is like trying to find a needle in a hay stack when there are over 100,000 reports of children at risk and less than 30% of cases are ever sighted - let alone assessed by a child protection worker.

Queensland has recently introduced a milder form of mandatory reporting whereby a family at risk can be referred to a "family support agency" rather than the child protection department, if the risk of harm is not significant. Unfortunately there is no



legal definition of what “significant risk of harm” actually means.

3. An overreaction to hostile media and community scrutiny

### **Four out of five reports across Australia are not substantiated.**

Of those cases that have been labelled as substantiated – less than 5% have sufficient evidence for a criminal conviction of abuse or neglect – and it is those few cases the media focus on - and **it is** necessary to remove children in that situation, but the reaction to these media stories from the department is they remove more children “just in case”, resulting in ongoing stolen generations. Whilst at the same time deaths and abuse of children in care are covered up, and we have experienced media refusing to get involved because of threats by the department.

## **LACK OF ACCOUNTABILITY**

Total lack of accountability in the Australian child protection industry is arguably the main cause of systemic failures, and is responsible for such high rates of removal of children, combined with no legislation that forces child protection departments to help and support families before forcibly removing children.

Child safety caseworkers are not a registered profession in Australia. Unlike other professions, they have no governing body to establish and mandate codes of practice, conduct or even base levels of education and training.

**No external board is monitoring their performance to protect the public from the harm their opinions and misconduct are doing to children and families everyday.**

**No one is holding these unregistered caseworkers accountable in an environment of secrecy, yet they have more power than any other professional in Australia.**

We need mandatory national registration for all child protection workers - similar to the Australian Health Practitioner Regulation Agency (AHPRA) for health practitioners, as the lives of vulnerable children and families are in the hands of these child protection workers, and deaths and lifelong damage from abuse are occurring on a regular basis.

**The entire child protection industry has too much power with no accountability, and this breeds an environment of incompetence, misconduct and corruption.**

The system relies not on evidence but on an unregistered caseworkers opinion to forcibly remove and forcibly adopt children, thus destroying families for life. That is why so many children are stolen, and the system is and always has been a total failure.

We need a panel of independent professionals and to assess every case, that are **mandated** to liaise with the family and their appointed cultural representatives **before** any child is forcibly removed.

A “family preservation unit” and a “restoration unit” are urgently needed in every department across Australia. All they currently have is an Intake Team that forcibly removes children, and an Out of Home Care Team that manages the stolen children.

There is NO external complaints mechanism in the Australian child protection industry, so evidenced complaints are NOT being investigated by anyone but themselves, and the Department is NOT being held to account for their criminal misconduct when dealing with vulnerable families and abuse of children in their care by anyone.

### **Failures are being ignored and covered up.**

We need an independent commission that families can approach with their evidenced complaints of misconduct and abuse of their children in care, that has full investigative and prosecutorial powers.

During his inquiry in Queensland, Commissioner Carmody recommended that every case should be examined to determine if children could be returned home to their families – this has not occurred, and restoration should be the priority of government, and it **MUST** be conducted by independent auditors in consultation with families.

The most common reason children enter care is an unregistered caseworkers opinion of their perception of neglect or emotional harm, only one third enter care as a result of (alleged) abuse.

### **Statistics evidence that most child abuse occurs at the hands of non-biological carers.**

Domestic violence, substance abuse, mental health issues, disability, emotional, physical and sexual abuse and even neglect span **all** classes of Australian society, but only the marginalised, disadvantaged and poorer class (including the homeless) have their children forcibly removed - because the “well off” can afford to pay for justice - and so unregistered caseworkers seem to overlook their children at risk.

- ♣ Legal Aid is under funded for families in care and protection matters, resulting in inadequate or at times no legal defence for parents at all.
- ♣ There is an abusive imbalance of power denying justice to innocent and vulnerable families, ensuring the government with their unlimited resources and crown lawyers win at all cost.
- ♣ Unregistered caseworker opinions are made without adequate investigation,

as evidence is not required in the secretive care courts.<sup>25</sup> So parents are denied justice because a caseworker has failed to adequately investigate the truth of allegations or lied in their affidavits.



With the cases Alecomm has audited, we have yet to read an unregistered caseworker's affidavit that does not contain defamation of parents, false allegations and outright lies.

**Our case audits overall have identified that the majority of organisations and agencies dealing with child protection matters completely fail to abide by policy, procedure and legislation.**

State ombudsman's shirk their responsibility of oversight, transparency and accountability by stating "they will not get involved whilst court cases are in progress", then later by stating "it's been too long (over twelve months) since the issue arose".

**MANY CASES WOULD NOT EVEN BE IN COURT IF CASEWORKERS HAD ABIDED BY THE LAW IN THE FIRST PLACE AND PROVIDED SUPPORT SERVICES AND INTERVENTION AND STOPPED LITIGATING BEFORE INVESTIGATING.**

In cases such as this every authority should be involved in the investigation due to the massive waste of government funds that should have been available as support services for parents to prevent removal.<sup>26</sup>

State Attorney-Generals, the highest legal authority in each state, continue to respond that issues of corruption by caseworkers breaking the law "do not fall within their guidelines", when clearly they do, just as the Human Rights Commissioner also ignores human rights violations of children in out of home care and their families.



"Persecution Strategies" are the "means and methods" used by child protection caseworkers in reports and affidavits in court proceedings.

**Child protection workers focus on any and all negative aspects or weaknesses of a parent they can find or imagine to be concerned about, rather than looking at the strength of parents and families who have survived quite well and stood the test of time long before modern child protection agencies became over judgemental and too risk adverse.**

In all the cases Alecomm audits, the most obvious areas lacking in all documentation are the strengths of parents and families, because they are never assessed or identified and secondly what opportunities and/or support services were provided to the parents to prevent removal in the first place.

In areas of research, the child protection department accepts and utilises research

and submissions from organisations that benefit from family destruction, while refusing to accept suggestions, changes and research from end-users.

There is no transparency or accountability within state child protection departments that refuse to publish the data for children who die and are abused in their care, what the causes were and who the perpetrators are - so that sets the example for NGO's in continuing the cover-ups that have always been a part of the secret child protection industry.

The basic right to information (RTI) is denied in child protection matters, with the standard response to an application being a fraction of the case file and most of the pages released are blank, and the reason given is that it is not in the best interests of the public to know.

We believe it is in the best interest of the public to know about the corruption in the Australian child protection industry.

## CONCLUSION

Given that Australia has ratified and signed the International Covenant On Civil and Political Rights; and that Article 3 states: "The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant"<sup>27</sup>, Alecomm would like to see significant changes to the way our children, the nations most valuable assets, are protected.

We call upon the federal government to evidence that the vulnerable children of Australia are important to them, and that accountability in child protection is at the forefront of all their decisions for reform.

We believe the only real remedy for the failed child protection system is its abolition. There are so many failures that the system is broken beyond repair.

No one should have the power to take children from their parents by force of arms, when they have not committed any crime and without evidence.

**THE FAILED POLICY OF CHILD STEALING CREATED BY GOVERNMENT HAS TO STOP.**

**THE LESSONS OF HISTORY MUST BE HEADED.**

**NO LONGER CAN GOVERNMENT'S PLEAD IGNORANT.**

The damage to individuals taken from their families and placed with strangers, either fostered or adopted, is horrendous and lifelong. The damage to their parents has proven irreparable and is passed down to subsequent generations.

The federal government said "SORRY" to the "Stolen Generation", to the "Forgotten Australians", and for past forced adoptions - yet NOTHING has changed at the state level, and the past atrocities and human rights abuses continue today.

Saying "Sorry" for past government abuse of vulnerable children and their families is meaningless while ever the abuse of the past is continued by current state and territory governments.



Since the political will to eliminate the child protection system is nowhere near realisation, we have created two alternative lists of recommendation of lesser reforms.

One is for federal jurisdiction and the other is vital state reforms if federal jurisdiction is denied, that may alleviate the hardships in the current failed system to ensure better outcomes for vulnerable children and their families, and at the very least reduce the current levels of abuse suffered by vulnerable children and their families at the mercy of current state and territory child protection agencies that have no accountability.

The Australian federal government has a responsibility to all children to ensure they are not disadvantaged because of the state or territory were they are born. This is a national issue and needs to be a National Agenda to uphold the human rights of all Australian children nation wide.

## RECOMMENDATIONS FOR A FEDERAL JURISDICTION

1. Abolish all state and territory jurisdictions for care and protection of vulnerable children, as they have failed since they were established and are not fixable. Make care and protection of Australia's children a federal jurisdiction.
2. Draft new national legislation that is fair and just, that is focussed on mandated family preservation, and ensures accountability where rules of evidence apply and the terms "in the best interest of the child", "harm", "risk of harm", and "significant risk of harm" are defined in law.
3. Abolish the state and territory secret care courts - as they are not needed, and are a destructive waste of taxpayer money.

**LESS THEN 5% OF PARENTS WHO HAVE CHILDREN IN OUT OF HOME CARE HAVE BEEN CONVICTED OF CRIMINAL ABUSE OR NEGLECT OF THEIR CHILDREN - AND THEY ARE DEALT WITH THROUGH THE CRIMINAL JURISDICTIONS.**

4. Do not forcibly remove any children unless there is evidence sufficient to

- warrant a charge of criminal abuse or neglect.
5. In all other cases make it law to help and support the family to remain safely together as no crimes have been committed.
  6. In the relatively few cases where children do need to be removed, then placement with extended family or significant others must be mandated by law.
  7. Create a federal department of families that works collaboratively with state departments of education and health to focus on providing a lifetime of help, support, care, education and encouragement to ensure family preservation and prevention of child abuse.
  8. Staff this department of families with government employees that have relevant professional qualifications such as nurses, teachers, child and family psychologists, accountants that specialise in family budgeting and intensive family support workers, specialists in substance abuse, domestic violence, mental health, life skills and employment guides. Utilise existing services in Health and Education for implementation of prevention strategies and rehabilitation for substance abuse and mental health issues with a need to establish facilities that are family centred and encourage and support family admission.
  9. If the fear factor of forced child removal of children is no longer relevant, then families will engage better in both seeking assistance and participation for improved family outcomes - just as they currently do with hospitals for health problems and schools for education.
  10. Countries like Germany have a parent counsellor appointed for all parents from the time they conceive, who monitors families and guides them towards any service or education course they may require until their children turns eighteen, so a similar system could be implemented for parents here in Australia. That one primary overseer of a family would get to know them and be in a better position to assess families strengths, weaknesses any interventions they may need for improved outcomes.
  11. Establish as a matter of urgency restoration units in every department across Australia. All they currently have is an intake Team that forcibly removed children, and an Out of Home Care Team that manages the stolen children.
  12. Establish laws that mandate the process of restoration, based on evidenced best practice, that sets a maximum timeframe of 3 months for restoration to be achieved.
  13. Have every child currently in OOHC independently assessed and their case audited for legislative compliance, and for restoration in consultation with their families where the child should not have been removed at all.

14. Children whom were removed without all guidelines, policy, procedure and legislation completely abided by must be restored to their families regardless of how long they have been in out of home care.
15. Then effect restoration immediately with mandated support for the family, given the extensive trauma children and families have suffered by forced removal and out of home care placements, to assist in their rehabilitation so healing can begin.

## RECOMMENDATIONS IF JURISDICTION REMAINS WITH THE STATES AND TERRITORIES

1. Do not forcibly remove any children unless there is evidence sufficient to warrant a charge of criminal abuse or neglect. In the relatively few cases where children do need to be removed, then placement with extended family or significant others must be mandated by law when possible.
2. In cases where there is insufficient evidence for a charge of criminal abuse or neglect then it must be made law that help and support is provided in **all** cases where no crime has been committed for family preservation.
3. Have every child currently in OOHC independently assessed and their case audited for legislative compliance, and for restoration in consultation with their families where the child should not have been removed at all.
4. Mandatory national registration for all child protection workers.
5. Establish an independent commission that children and families can approach with their evidenced complaints of misconduct, corruption, crimes and abuse of children in care that has full investigative and prosecutorial powers and is mandated to investigate and prosecute offenders.

Commission members must include a position for a former child in care and a representative of a family of a former child in care, as the lived experience is essential in thorough oversight.

6. Mandatory CCTV footage for every contact child protection workers have with children and families, just as the police force does. As most offices already have CCTV for security the cost would be minimal but the impact on accountability and transparency would create massive savings with reduced numbers of children wrongfully removed and placed in out of home care till they are eighteen - due to the current lack of honesty, integrity and accountability of child protection workers.
7. Abolish the state and territory secret care court jurisdiction - as it is not needed and is a destructive waste of taxpayer money. Less than 5% of parents who have children in care have been convicted of criminal abuse and neglect of their children and they are dealt with through the criminal

jurisdictions.

8. If abolition of the care court jurisdiction is denied, then the court must be opened up to public scrutiny including the option of Trial by Jury, and the rules of evidence must apply with parents given the presumption of innocence until proven guilty beyond reasonable doubt like every other jurisdiction in Australia.
9. Abolish gag orders and suppression on publications orders so parents are free to talk publically about their case ensuring greater transparency and accountability. Some magistrates have told mothers that they are not allowed to talk about their matter to family members.
10. The decision to forcibly remove a child must by law be made only when it has been evidenced to a Magistrate by all parties, that removal is an absolute last resort.
11. Make it law that a child may only be removed after help and support has been provided for at least a year, and all extended family have been independently assessed and determined on evidence to be unsuitable to care for and protect the child - unless there is evidence sufficient for a criminal charge of abuse and neglect.
12. The establishment of a panel of independent professionals and community members to assess and oversee every case, that must by law liaise with the family and their appointed cultural representatives before an application can be made for an order to forcibly remove a child from their families. This ensures there is an independent buffer between the department and families to ensure accountability and transparency.
13. Establish as a matter of urgency a “Family Preservation Unit” and a “Restoration Unit” in every department across Australia. All they currently have is an “Intake Team” that forcibly removes children and an Out of Home Care Team that manages the stolen children.
14. Have every child currently in out of home care independently assessed and case audited for legislative compliance and restoration in consultation with their families. Then effect restoration immediately with mandated support provided for the family given the extensive trauma children and families have suffered by forced removal and out of home care placements to assist in their rehabilitation so healing can begin.
15. Make forced adoptions illegal. Unless both parents voluntarily consent without any duress to the adoption of a child it must be deemed illegal. Adoption is for orphans - not children that have families who love them.
16. There must be mandated legislative and policy compliance with independent auditing of case files. The government is obligated to ensure that any case not following legislation and or policy should be treated as unlawful and



persons involved should be charged and penalised.

17. The state ombudsman must be mandated to investigate every case of misconduct of child protection workers and their agencies - and refer the matters for public prosecution as they are public servants, and the ombudsman's legislation must be amended to preclude care and protection courts from their legislation that currently allows them not to investigate a child protection employees misconduct when a matter is before the court.
18. Every Commissioner for Children and Child Guardian position throughout Australia must have the power to investigate all matters pertaining to out of home care, and must be mandated to refer misconduct for prosecution. Currently all they have is powerless oversight and advocacy.
19. Mandatory prosecution for any person knowingly making a false or misleading risk of harm report to child protection authorities.

Currently anyone making a report is protected from both civil and criminal prosecution, and mandatory prosecution would not only give families some protection against false allegations but also reduce the amount of notifications by deterring false, malicious and vexatious reports.

20. In every case where a child is unlawfully removed from their family, the perpetrators of that unlawful forced removal must be prosecuted for child kidnapping under the respective criminal codes. This will quickly reduce the significant amount of unlawful forced removals and protect families from abuse of power by child protection workers.
21. All care and protection legislation must be audited for breaches of the human rights of children and families, and urgently amended to uphold their human rights.
22. Statutes of Limitation must be abolished for all children placed in out of home care and their parents, so they can seek redress for the abuse and crimes committed against them.
23. Abolish the power of caseworkers and NGO's to determine contact between children and their families. Return that jurisdiction to the courts provided contact submissions by children and parents are given due consideration by magistrates as caseworkers and NGO's routinely abuse their power and punish children and families by denying or reducing contact.
24. If court ordered contact between a child and their family is breached then the perpetrators must be prosecuted.
25. Make it law that a lay adviser is able to assist unrepresented parents and advocate for them in care court. Many parents are denied or can't afford legal representation and if they are unable to speak for themselves they should be afforded the opportunity to have a layperson of their choosing

speak for them in court.

26. Make it law that families can have up to six support people with them in care court, as often parents are alone, unsupported and extremely out numbered causing intimidation and denial of justice.
27. Make it law that parents can have support people with them at every meeting and conference with child protection workers, to reduce intimidation, bullying and misconduct - and provide parents with witnesses to caseworker conduct and all conversations.
28. Make it law that all children and parents must be provided with a list of their rights and the opportunity to have them explained by an independent person from the time of first contact with child protection authorities.
29. Make it mandatory that children in out of home care are placed as close to their home as possible, and that any case where a child is removed interstate then that child must be immediately returned to their home state, and the case transferred immediately to the child's home state jurisdiction. Make it law that no child in out of home care can be moved interstate without the consent of the parent.
30. Make it law that a parent must approve of the kinship placement for their child to ensure the child is not placed in an adversarial situation that will sever the bond between the child and parent as is commonly occurring now.
31. Repeal all laws in care and protection legislation that allow a child protection worker to forcibly remove a new born baby, or any child without a court order that the parent has had the opportunity to defend.
32. Make it law that newborn babies and young children cannot be forcibly removed until an establishment hearing has taken place - where evidence of both parties is considered by a magistrate who is the only person that can make a removal order. Make it law that no newborn baby is deprived of colostrum to boost their immune system and their mother's breast milk.
33. Repeal all care and protection laws that automatically allow a new born baby or child to be removed just because a prior child has been removed. Every child's case must be treated on its own merit and assessment.
34. Make it illegal to force medicate children in out of home care for restraining purposes with psychotropic drugs.<sup>28</sup> Also make it law that a parent that refuses to medicate their child with psychotropic drugs prescribed by medical professionals does not constitute medical neglect.
35. Make it law that all parents must be notified when their children are sick and injured in out of home care as soon as possible and allow families to be able to visit their hospitalised child.

36. Make it law that child protection workers *must* keep parents informed about all aspects of their child’s care and life, including provision of photos, school reports and other significant events in their lives.
37. Make it law that every child removed and their families are given immediate professional psychological support to help them to deal with the trauma, pain, grief and loss.
38. Make it law that all parents receive all documentation including court reports as soon as they are available and in sufficient time to be able to respond to the court.
39. Make it law that all parents receive copies of any mandatory notifications, or any information added to their file immediately, so they can respond to allegations earlier to prevent misunderstandings and detect vexatious reporting that could possibly lead to removal of a child.
40. Make it law that children and parents are freely able to access and read their child protection case files, just as hospital patients are entitled to read their medical notes.  
Currently case notes are not even fully provided under a court ordered subpoena.
41. Make it law that all requested case notes are made available when a Right to Information application is made. The child protection system must by law become open and transparent to reduce corruption.
42. Until compulsory CCTV recording of all contact child protection workers have with children and families is in place parents *must* be allowed to record the contact themselves, so they can be used in evidence to protect families from dishonest caseworkers.
43. Minutes of every meeting are to be read and amended until agreed upon and signed by all parties so they can be used in evidence to protect families from dishonest caseworkers.
44. Make it law that parents are able to film, photograph and record their contact time with their children, not just to ensure honesty but also to preserve family memories.
45. Parents and children must be given equal access to legal representation as afforded to child protection departments.
46. Specialist care court defence solicitors, independent of the department, must be made available in all areas especially rural towns to defend families.
47. All families must receive the same amount of funding for legal representation as child protection authorities do, for the families to have an equal chance to defend themselves and fight for the return of their children against the

department, in accordance with their human rights to be equal before the courts.

48. Child protection departments must not fund NGO's. They need to be separately funded so they are not controlled by child protection workers to reduce corruption.
49. Children and families must be protected from financial exploitation by NGO's, especially as many currently operate under conflicts of interest, making profits from involvement in all aspects of out of home care.
50. More governance of NGO's is urgently needed, and an independent Commission must be established with both investigative and prosecutorial powers to protect vulnerable children and families from the exploitation by NGO's for profit.
51. No NGO should be allowed to be involved in more than one aspect of out of home care. For example, providing intensive support for family preservation, but at the same time case managing children in out of home care, or being involved in restoration, while case managing out of home care placements - these are conflicts of interest that can adversely affect children and families.
52. Each NGO should only be allowed to have a specific focus - and they should be financially rewarded for successful family preservation or successful family restoration.
53. No NGO that is managing and making profits from children in OOHC should be involved in family preservation or restoration work - because it is a conflict of interest and a disincentive for them to preserve or restore families.
54. Eliminate Risk Assessments. Caseworkers now use risk assessment tools to estimate the risk of "future abuse or neglect". A high score can justify child removal, even when no abuse or neglect has actually occurred.
55. Scientific analysis and reports from caseworkers confirm that these are subjective tools that reflect only the will of the caseworker. And since we do not jail people because they may have the capacity or be at risk of committing a crime, we should afford the same respect to families and not remove their children for the term of their childhood based on a subjective risk assessment tool controlled by the input of information by a caseworker.
56. All children on long-term orders until they are 18 must have mandatory case reviews by an independent auditor for any change in circumstances that could make restoration possible on an annual basis.

**PRISONERS GET REVIEWS OF THEIR SENTENCES, BUT CHILDREN PLACED IN OUT OF HOME CARE DO NOT.**

57. Make it mandatory that all extended family and significant others are

- independently assessed for placement of a child if they must be removed from their parents. This independent assessment cannot be undertaken by any assessment service funded by child protection. The parent must also consent to the placement. It must be mandatory and made law that children are placed with suitable extended family where possible first, before any other out of home care placement is considered.
58. Children in out of home care must be allowed to have regular contact with their extended family and significant others instead of being denied contact with all of them as currently occurs now in most cases.
  59. All laws protecting child protection workers by immunity from prosecution must be repealed.
  60. All religious organisations and NGO’s with histories of abuse of children in care must be disqualified from any involvement with current children in out of home care.
  61. When current abuse of children in care is identified under the case management of an NGO, they must immediately be disqualified from further involvement in children in out of home care. This will ensure greater vigilance and accountability to protect vulnerable children from abuse in care.
  62. Any NGO that does not abide by court orders especially for contact with children in out of home care, must be prosecuted and disqualified from any further involvement with children in OOHC.
  63. Outlaw the current practice of forcing children in out of home care to call foster carers and strangers “Mum” and “Dad”. The long-term consequences of a child not knowing their true identity can negatively shape their future, and this can get extremely confusing for a young child who has six to eight “mum’s” over the period of a year as they are moved through multiple placements in OOHC.
  64. Eliminate mandatory reporting to child protection authorities as it creates more problems than it solves, and children actually in need of protection are not being seen as Commissioner Carmody recommended.
  65. Allow mandatory reporters to refer families in need of help and support to appropriate services instead of making risk of harm reports to child protection authorities.
  66. Only escalate a mandatory report when the threshold for significant serious risk of harm is identified, but that definition firstly needs to be legally and clearly defined and then all mandatory reporters must be educated on how to fulfil their new reporting requirements. This will help to ensure that those children really in need of protection are assessed instead of being overlooked as is happening now.

67. Make it law that child protection workers must provide a written legally binding contract of what is required of parents to have their children returned that can be used in court to have their children returned once they have completed all the requirement.
68. All child abuse must be investigated by the police not child protection workers, so evidence can be collected and preserved.
69. Child protection workers must be banned from interviewing children and all child interviews must be conducted by specialist child protection units within the police force - who are trained in and specialise in this area and all interviews must be recorded on CCTV.
70. Make it law in domestic violence cases that the perpetrator must be removed - not the children.
71. In cases of neglect caused by poverty make it law that the family must be supported out of poverty instead of removing the children and tearing the family apart.
72. Independent child lawyers must be forced to do the job they are mandated to do, or be removed from care court cases saving millions of dollars.
73. Caseworkers must be mandated to focus on the strengths of families not just their weaknesses when doing family assessments, reports and writing their affidavits.
74. The term “secretary” must immediately be removed from all care court orders.

The latest trend in care court orders is to place children into the care of the “secretary” for the term of the order. However there is no such position as “secretary” in most states and territories, and this has created a concerning legal predicament for both children taken under such orders and their parents.

75. Caseworkers must stop allowing foster carers to have too much power and influence over the lives of children in out of home care. As they have no legal rights they must be reminded that their role is to care for children until they can return to their families, and that they must promote restoration of children to their families not impede it by opposing restoration. If foster carers want to have other peoples children permanently at the expense of the children and their families then they are not suitable as foster carers.
76. Foster carers must not be allowed to be joined into care and protection matters.
77. There must be national registration and regulation of all foster carers to improve the safety and care of children in out of home care. With NGO’s desperate for foster carers, many are having children placed in their care

without being properly screened.<sup>29</sup>

78. A legally binding policy for giving letter, cards, gifts and money must be created for all children in out of home care. It must be made law that children receive all the mail and gifts without interference and misappropriation by caseworkers and foster carers, and that any breaches of the policy must be prosecuted.

79. It must be law that children whom were removed without all guidelines, policy, procedure and legislation completely abided by are restored to their families regardless of how long they have been in out of home care.

80. The current decisions of refusing to restore children just because they have been in out of home care for a year or more because it is not in their best interest to unsettle them from their placement has to stop immediately to reduce the numbers of stolen children in OOHC.

## SUMMARY

The solution to the current failures in child protection and the rapidly increasing rate of children in out of home care is quite simple, and no extra money is required - just the will to achieve better outcomes for vulnerable children and their families.

Start with independent audits of cases for legal compliance and restoration, then prioritise restoration. As each child is restored funds are available to help and support families to remain safely together instead of removing their children.

As restoration and family preservation will rapidly reduce the numbers of children in out of home care, more funds will be available to implement prevention of child abuse and neglect programs nationwide.

Within a decade massive savings would be achieved, we will have stronger families and better protection of children that will continue into future generations and be in the best interest of children, their families and all of Australia.

Australia has had more than 80 Inquiries into children in state and territory care in the last 160 years, and all have evidenced the system is a failure.

Governments have been more concerned with costs than the care of vulnerable children, making past inquiries more about "damage control" than reform.

**Children have been left exposed to a system more interested in economics than their best interests.**

Recommendations from these inquiries have not been implemented and no one is held accountable for the lives destroyed.

That is why we are now facing a system in total failure and shamefully have the highest rate per head of population of children in out of home care in the western

world.

The current Senate Inquiry into out of home care must result in recommendations that will place Australia at the forefront of evidenced best practice. The recommendations must be implemented as a priority of government.

Saying “sorry” for past abuse and failures in out of home care is meaningless while children are still being needlessly stolen, deaths and abuse of children in care is still happening and still being covered up in Australia’s multi-billion-dollar child protection industry that caters to the whims of the profiteering stake holders, not the best interests of our children and certainly not their families.

Australia currently has the chance to set new world class standards in child protection that will benefit children and families for the next, that the rest of the world would follow. No more apologies for stealing children, the time to act is now.

Attachments :

1. Submission data for public display
2. Submission data for senate committee only
3. ICL data for public display



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[http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.childrenscourt.justice.nsw.gov.au%2Fagdbasev7wr%2F\\_assets%2Fchildrenscourt%2Fm4100511422001%2F2010%2520cInv%2520inthematterofTroy.doc&ei=7YBpVK2KKYWOuAT7soCACg&usg=AFQjCNFhsbE2kuTsWNzoF-fRC142BYeB0w&sig2=2gcKMyNIAfwkevOVBC9SbQ&bvm=bv.79908130,bs.1,d.cGU](http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.childrenscourt.justice.nsw.gov.au%2Fagdbasev7wr%2F_assets%2Fchildrenscourt%2Fm4100511422001%2F2010%2520cInv%2520inthematterofTroy.doc&ei=7YBpVK2KKYWOuAT7soCACg&usg=AFQjCNFhsbE2kuTsWNzoF-fRC142BYeB0w&sig2=2gcKMyNIAfwkevOVBC9SbQ&bvm=bv.79908130,bs.1,d.cGU)

2

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Completed\\_inquiries/2004-07/inst\\_care/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/report/index)

3

[http://www.community.nsw.gov.au/DOCSWR/\\_assets/main/documents/OOHC\\_SERVICE\\_SPEC.PDF](http://www.community.nsw.gov.au/DOCSWR/_assets/main/documents/OOHC_SERVICE_SPEC.PDF)

<sup>4</sup> Due to illegal gag orders placed upon parents, evidence of these cases are available *only* to the senate committee upon request.

<sup>5</sup> [http://www.newLawjournal.co.uk/nlj/content/munby-slates-sloppy-practice-adoption](http://www.newlawjournal.co.uk/nlj/content/munby-slates-sloppy-practice-adoption)

<sup>6</sup> <https://www.youtube.com/watch?v=kl8dTAArWy8>

<sup>7</sup> <http://www.originsnsw.com/awareness.html>

<sup>8</sup> <http://www.dailytelegraph.com.au/news/nsw/only-1-of-adoptees-have-found-a-home/story-fni0cx12-1227122672365>

<sup>9</sup> <http://www.theaustralian.com.au/archive/news/lawyer-lashes-docs-workers/story-e6frg6no-1225766190589?sv=25b88d0b77440ec646b5e174b3b95bbc#.VDnwBJZV0Ys.facebook>

<sup>10</sup> <http://www.aifs.gov.au/icl/index.html#participants>

<sup>11</sup> <http://pandora.nla.gov.au/pan/132822/20130204-0704/www.attorneygeneral.gov.au/Media-releases/Pages/2012/Second%20Quarter/25-May-2012---Research-to-ask-families-and-children-about-Independent-Childrens-Lawyers.html>

<sup>12</sup> <http://www.aifs.gov.au/icl/pubs/icl-fs2013.html>

13

<http://www.ag.gov.au/Publications/Documents/IndependentChildrensLawyersS>

tudy/IndependentChildrensLawyerStudyFinalReport.pdf.

<sup>14</sup> <http://www.aifs.gov.au/icl/index.html#participants>

<sup>15</sup> <http://www.familylawexpress.com.au/family-law-brief/freelegalsupport/legalaid/overview-of-the-aifs-independent-childrens-lawyer-study/3000/>

<sup>16</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> Article 12

<sup>17</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

<sup>18</sup> National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing Them Home: the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Human Rights and Equal Opportunity Commission (HREOC), Sydney, 1997.

<sup>19</sup> <http://www.abc.net.au/lateline/content/2012/s3514803.htm>

<sup>20</sup> <http://www.cis.org.au/media-information/opinion-pieces/article/4109-child-protection-generation-lost-by-not-being-stolen>

<sup>21</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/Casemix-1>

<sup>22</sup> <http://www.cis.org.au/images/stories/policy-monographs/pm-99.pdf>

<sup>23</sup> <http://www.alecomm.com/index.php/component/content/article/46-child-death-articles/408-australian-government-statistics-prove-children-are-far-safer-at-home-than-with-parental-responsibility-allocated-to-the-minister-for-community-services-gee-what-a-surprise#addcomment>

<sup>24</sup> <http://www.childprotectioninquiry.qld.gov.au/>

<sup>25</sup> [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/caypapa1998442/s93.html](http://www.austlii.edu.au/au/legis/nsw/consol_act/caypapa1998442/s93.html)

<sup>26</sup> <https://www.alecomm.com/index.php/child-protection-articles/corruption-coverups-nsw-child->

<sup>27</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>28</sup> <http://www.abc.net.au/news/2014-11-16/anti-psychotics-over-prescribed-australian-children-experts-say/5892822>

<sup>29</sup> <http://www.abc.net.au/news/2014-11-13/childcare-advocates-are-worried-about-the-safety/5889882/?site=brisbane>