

NSW Department of Family and Community Services
Responses to Questions on Notice from Community Affairs References
Committee Inquiry into out of home care

p. 64 - Ms Walk: In our annual stats report, which we can make available for you—the 2013-14 report is not quite on the website yet, I think—we certainly break down the number of adoptions per annum that we do. Adoptions are hard to count because they take a long time. They might be in the process for two years because of the Supreme Court and all sorts of things, so we just count them the moment the order is done. We can certainly give you a breakdown per annum—I do not know that we ever pull out different orders per se, and we would not necessarily do so from the Children's Court, but we can give you a breakdown of what type of order it is.....

CHAIR: And also are you able to give us the age that they come into care, in relation to the permanency?

Ms Walk: We can give you the age of the child when they come into care and get a permanent order.

Senator SESELJA: As much breakdown as you could, as is reasonably available to you, would be certainly very helpful, I think, for the committee's work.

Ms Walk: In our annual stats report we have a chapter on out-of-home care, and it will have as much detail as we are able to gather. To be honest, that is on our website. We put our quarterly stats on our website as well, so our administrative data is relatively accessible.

Response:

The Department of Family and Community Services' Annual Statistical Reports are available on its website at:

http://www.community.nsw.gov.au/docs_menu/about_us/docs_data.html#annual

p.66 - Senator SESELJA: Ms Walk, you said there were time frames around that. What are those time frames?

Response:

Information about the *Permanent Placement Principles* is available on the Department of Family and Community Services' website at:

http://www.facs.nsw.gov.au/reforms/safe_home_for_life/providing_a_safe_and_stable_home_for_children_and_youth_people

p.67 - Ms Walk: They have raised a really good point. We have Aboriginal case workers. In Australia, New South Wales has the highest per cent of Aboriginal and child protection case work or out-of-home care. Ten per cent of our case workers are Aboriginal. I will check that number but it was around that....

Response:

Information about Aboriginal and Torres Strait Islander staff is available in the Department of Family and Community Services' Annual Report which is available on its website at: <http://www.facs.nsw.gov.au/publications>.

p.70 - Senator REYNOLDS: I think we would all agree with that, but presumably you have a budget for legal actions—for going to court, removals and the section 90 process. Can you talk us through your legal process, then. Do you have in-house counsel? Do you brief? How much do you spend every year on the legal process? I might just ask that last question to start with.

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Ms Walk: We have not brought that detail with us, but we can certainly take it on notice.

Senator REYNOLDS: Can you break it down as much as possible on how much is spent at each stage—what in-house counsel you have, how much gets briefed out and what matters they deal with. Maybe if you have the details of the number of cases that you take to court you could find out how many of those have had mediation or some attempt at discussion beforehand and not gone straight to removal.

Response:

Conduct of care proceedings

The majority of care proceedings are commenced after case work with the family. Emergency care and protection orders in response to the emergency removal of a child were only made in 36 of the care applications in 2013-14 as compared with 1382 care applications under section 61 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*.

The Practice First initiatives within the department are making significant changes to casework prior to the commencement of court proceedings. Tools that can be used at this stage include the development of care plans, parent responsibility contracts, parent capacity orders and the use of family group conferences. None of this work is undertaken as part of the court process although, if a court application does eventuate, it is reported to the court under section 63 of the Act as evidence of prior alternative action.

As the question is directed at legal involvement further detail of these processes is not included.

Legal representation

Legal representation of the Secretary in care matters is the responsibility of General Counsel within the department.

Child Protection matters which may result in the Minister being allocated parental responsibility can be taken in:

- Children's Court: which is the primary court for statutory child protection matters. In 2013-14, there were 2,890 initiating care applications currently before the court in its care jurisdiction in NSW.
- Family Court or Federal Circuit Court: the Secretary was involved in existing disputes commenced by family members in 2013-14 in 436 matters.
- Supreme Court: these are applications in the Supreme Court's 'direct' jurisdiction including orders for therapeutic secure care which incorporates restrictions on the movements of a child or young person. In 2013-14, there were 20 applications.

The carriage of this work is the responsibility of solicitors employed by the department and ultimately reporting to General Counsel. The legal work in the Children's Court is undertaken largely by solicitors who undertake all aspects of the advocacy. Where barristers are used they do not usually have an instructing lawyer present in the Court room. The allocation and management of the work is done by

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senior departmental lawyers. They have available to them 20 departmental lawyers and a panel of 63 lawyers in private practice. These lawyers are geographically located to provide full coverage for the entire State. While the proportion will vary depending on surge capacity, departmental lawyers undertake 40-60 per cent of all matters before the Children's Court.

Care decisions of the Children's Court can proceed on appeal to the District and Supreme Courts and in those applications, the Crown Solicitor and Counsel are instructed. In 2013-14, there were 68 care appeals currently in the District Court.

Alternative Dispute Resolution

The Family Group Conferencing pilot program for care proceedings prior to court proceedings being initiated was evaluated by the Australian Institute of Criminology and its report was published as AIC Reports: Research and Public Policy Series 121 in 2012.

The Children's Court Practice Note 5: Case Management in care proceedings requires in cl 16.3 that, in effect, no care matter is to be listed for hearing unless the Court is satisfied that alternative dispute resolution has taken place in the form of a dispute resolution conference facilitated by a Children's Registrar.

p.70 - Senator REYNOLDS: Can you describe your process of removal? When you physically take the children away, from hospitals or in any other circumstance, how does it happen?

Dr Heriot: Maybe we could provide you with information on that.

Response:

Chapter 4 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* outlines the department's responsibilities with regard to children and young people in need of care and protection.

The department's Casework Practice procedure: Statutory Support Arrangements and Court Orders states:

"Children and young people should receive care and protection that is necessary for their safety, welfare and well-being. In deciding what action is necessary to protect a child or young person from harm, (whether by legal or administrative process) the least intrusive intervention should be considered. The intervention considered should always be consistent with the paramount concern to protect the child or young person from harm and promote the child's or young person's development."