

# CORRECTED VERSION

## STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

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

Melbourne — 19 June 2015

#### Members

Mr Edward O’Donohue — Chair

Ms Nina Springle — Deputy Chair

Ms Margaret Fitzherbert

Mr Cesar Melhem

Mr Daniel Mulino

Ms Fiona Patten

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#### Witnesses

Mr Bernie Geary, principal commissioner, and

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

**The CHAIR** — I welcome Mr Bernie Geary, OAM, principal commissioner of the Commission for Children and Young People, and Mr Andrew Jackomos, the commissioner for Aboriginal children and young people. I caution that all evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore the information you give today is protected by law. However, any comment repeated outside this hearing may not be protected. All evidence is being recorded. You will be provided with proof versions of the transcript in the next couple of days. We have allowed 45 minutes for this session. To ensure that there is sufficient time for questions, the committee asks that any opening comments be kept to between 5 and 10 minutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr JACKOMOS** — And good practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr GEARY** — Sure.

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

**Mr JACKOMOS** — Yes.

**Mrs PEULICH** — Why is that?

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

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

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

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

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

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

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

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

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

**Mr GEARY** — Yes.

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

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

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

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

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

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

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

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

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

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

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

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

**Mr GEARY** — Yes.

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

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

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

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

**Mr GEARY** — Thanks a lot.

**Witnesses withdrew.**