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Results of consultation with carers undertaken by

The Foster Care Association of Victoria

for

Victorian Law Reform Commission

February – March 2010

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1 April 2010

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Executive Summary

Whilst it is generally believed that foster carers rarely have much direct contact with the Children's Court, this report establishes that carers do have experience of Children's Court. Accordingly carers have important feedback into the Victorian Law Reform Commissions review of Victorian Child Protection legislation and administration arrangements in relation to Children's Court process.

This report uses various forums to gather input from 32 carers. These forums include; focus groups, telephone or individual interviews and written submissions from carers. The findings are summarised into nine key areas. These areas are; experience of Children's Court, preparation of carers prior to court, predictability of outcomes through the court process, conduct of legal personnel, carers understanding of what is going on, court facilities, regional and rural Courts, carers views on where improvements could be made and any other relevant comments.

1. **Experience of Children's Court.** Victorian foster, permanent and kinship carers have had various experiences of court. These include; the transport of, supervision of and support of the children/ young people in their care during court matters, during finalisation of Permanent Care Orders (PCO's) and occasionally carers have given evidence or become party to proceedings. One permanent carer who was issued with (paperwork in relation to her permanent care son) advised the writer that she attended court on a number of occasions in relation to his safety and well-being. Kinship carers appear to attend most regularly and for more extended periods than foster or permanent carers. These carers appear to attend both when the child (a family member) is in their care and also when not in their care.
2. **Case preparation.** Carers reported various levels of preparedness for court. Those that reported feeling most prepared, were those with multiple previous court experiences, therapeutic foster carers, permanent carers. Those that reported feeling least prepared were foster & kinship carers and any first time users.
3. **Predictable outcomes.** Through the consultations there were numerous examples of issues that made Court outcomes different to what carers had expected. These variables can be grouped as; Court process, Department of Human Services (DHS) and Children's Court Magistrates. Court Process included issues such as; delays, adjournments and the unpredictable nature of the court day, as well as incomplete paperwork/ procedural compliance. DHS include; child protection varying their disposition or recommendations on the day of court, the need for highly experienced DHS workers, prepared and dedicated to the best interests of the child attending in a specific court matter. Magistrates contributions encompassed; Magistrates making a different decision to DHS's recommendation and in one instance a Magistrate making a different decision to a previous Magistrate in the same matter.
4. **Conduct of Legal personnel.** Most carers interviewed agreed that Children Court Lawyers appeared very busy and overloaded with cases. Carers reported feeling rushed by legal personnel during briefing and expressed difficulty in finding their assigned legal representative in Court. Expertise and communication of legal representatives in Children's Court/ Child Protection/ child welfare cases was questioned. Carers also raised issues of the conduct and expertise of magistrates both in Melbourne and Regional areas.
5. **Carer comprehension.** When asked about whether they understood all that was going on at Court most carers reported feeling very confused during their first few appearances. This included lack of understanding of what to do on arrival, no assistance via the signage or public announcement system and limited awareness of Court room protocol. Carer comprehension improved with further experience and exposure.
6. **Court facilities.** This report gained most information about the Melbourne Children's Court (MCC) with very limited information given about some rural and regional Courts. Carers

advised that they did not believe the layout of the MCC was adequate for its function as a Children's Court. Carers did not believe that the Court was child/young person friendly. Key to feedback regarding the facilities is that along with signage being inadequate, there is a lack of accessible, well informed professionals prepared to assist carers. Carers also raised the issue of seating as not feeling safe and limited interview rooms not meeting the needs of court users.

7. **Regional and Rural Courts.** Overall feedback regarding Rural and Regional Courts found carers more satisfied with the court facilities than Melbourne carers. While carers talked about a need for refurbishment and better access to refreshments in general carers accepted the extensive functions of Magistrates courts in rural areas. Carers were however concerned about delays in matters being finalised, circuit magistrates and inexperienced lawyers in relation to Child Protection matters.
8. **Suggestions for change.** When asked what could be done better in relation to Child Protection matters in the Children's Court carers made thirteen recommendations;
 - 8.1 That the process be inquisitorial rather than adversarial
 - 8.2 That children have skilled Child Advocates to be a voice for them
 - 8.3 That DHS appeal decisions if an appeal is in the best interests of the child
 - 8.4 That Trauma and Child Development training be available to Children's Court personnel
 - 8.5 That scheduling of court time allow for more organisation of matters
 - 8.6 That decisions be made in a timely manner
 - 8.7 That no fault outcomes be possible for Permanent Carers
 - 8.8 That Permanent Care Order have consistent conditions for siblings
 - 8.9 That carers be Party to proceedings for the children in their care
 - 8.10 That the inclusion of carers details in official reports and documents be disclosed to carers
 - 8.11 That Circuit Magistrates in Rural/Regional Courts be mentoring
 - 8.12 That printed Information Brochures be available to carers
 - 8.13 That there be a children's space
9. When asked **what else was important** to note when reviewing carers experience of Children's Court and Protective Services, carers identified nine other considerations.
 - 9.1 Carers becoming party to the proceedings
 - 9.2 Children's Court Clinic
 - 9.3 Permanent care Orders and sibling access
 - 9.4 Conditions
 - 9.5 Access
 - 9.6 Undisclosed placements
 - 9.7 Summons to appear
 - 9.8 Legal representation for 7 year olds
 - 9.9 Means testing of carer for legal aids eligibility

Background

In December 2009, The Attorney-General of Victoria the Hon Rob Hulls, wrote to Professor Neil Rees, Chairperson of the Victorian Law Reform Commission (VLRC) requesting :

- The VLRC review Victoria's child protection legislative and administrative arrangements in relation to the Children's Court processes
- Recommend any procedural, administrative and legislative changes that may minimise disruption and maintain the best interests of children and;
- Consider models that take a more administrative case management approach to child protection issues. (See Terms of Reference Appendix A)

VLRC Policy and Research team leader Myra White contacted Katie Hooper, Executive Officer of the Foster Care Association of Victoria (FCAV) in February 2010 and requested that the FCAV:

Facilitate consultations with foster, permanent and kinship carers who have had direct contact with the Children's Court, to seek their response to the following questions:

1. What have your experiences of the Children's Court been?
2. What did you know about the case before going to court?
3. Did the outcome reached differ from what you expected?
4. How did the lawyers conduct themselves?
5. Did you understand all that was going on?
6. How were the facilities at court?
7. Have you attended Children's Court in another location apart from Little Lonsdale Street (for example Moorabbin)? Did this experience differ?
8. What could be done better?
9. Anything else you would like to tell us about your experience with the Children's Court or Child Protection Services?

Provide the VLRC with a summary report of the consultations, organised by theme by Thursday 1st April 2010.

Consultations

Katie Hooper (FCAV Executive Officer) appointed FCAV's Vice President Tracey Cocks to co-ordinate and facilitate the focus groups and to complete the report. Tracey is a foster carer, permanent carer and respite kinship carer who has a working history spanning 15 years with both DHS and the non-Government sector in Youth and Family Services areas.

The FCAV provided the following opportunities for its members to be part of five scheduled consultative focus groups:

- Thursday 25 February 2010 from 10.30 to 12.00pm FCAV, Northcote
- Thursday 25 February 2010 from 5.30pm to 7.00pm FCAV, Northcote
- Wednesday 10 March 2010 from 2.00pm-4.00pm FCAV, Northcote
- Thursday 11 March 2010 from 1.00pm – 3.00pm, Shepparton
- Sat 27 Feb 2010 10-11.30 at CREATE

In addition the FCAV offered carers the opportunity to submit their views via email, letter or a scheduled telephone interview. Seven carers gave information to this report via email and another seven participated in telephone interviews. Both foster carers and kinship carers supplied information included in this report.

The respondents are as follows:

	Number of Carers	METROPOLITAN	RURAL
Focus Group Thursday 25th February (am)	5	5	0
Focus Group Thursday 25th February (pm)	Cancelled no interest expressed		
Focus Group Wednesday 10th March (pm)	5	4	1
Thursday 11th March (pm) - Shepparton	8	0	8
Saturday 27th March (am) CREATE	Despite original interest CREATE were unable to provide anyone to contribute.	0	0
Individual telephone interviews	7	6	1
Email submissions	7	7	0
TOTALS	32	22	10

For the purposes of this report ;

Foster Carers is defined as an accredited and trained individual caring for a child or young person (not related to themselves) in their home and supported by a Community Service Organisation.

Therapeutic carer is defined as an accredited and therapeutically trained individual caring for a child or young person (not related to themselves) in their home and supported by a Community Service Organisation. These carers work as part of a care team to offer a therapeutic care opportunity to the children/young people in their care.

Permanent carer is defined as a carer who is post legal with a Permanent Care order. They are seen as the legal Guardian of the child/young person.

Kinship carers is defined as a carer who is caring for a family member. This can be a grandchild, nephew/niece, sibling and can be statutory through the Department of Human Services, Child Protection system or non statutory and a informal or Family Court arrangement.

Results of Data Collected

Section 1

Experience in the Children's Court

Almost all carers interviewed in the metropolitan regions have attended court with the children in their care. In some cases it was to assist with transport to and from court matters or supervision of the child/ren during the court process. One foster carer interviewed had the unusual experience of giving evidence and being cross examined on the stand for two consecutive days plus a fourth day later in proceedings. This carer and another carer responsible for caring for the child's siblings were subpoenaed to give evidence about physical threats made to carers and workers by the birth family. This trial lasted for 60 sitting days and some of the children were present in the court for many of these days.

One metropolitan carer of adolescents spoke of how the young people in his care are either required by their legal representative to attend court, or in several cases, the adolescents wish to attend court to ensure some understanding and involvement in the processes affecting their lives. This carer spoke of how even a non-contested scheduled extension of an order took a "marathon" of two sitting days. The reasons for this included a worker failing to file minutes and an adjournment, as one party had not been served.

In a rural region, carers advised us that they were subpoenaed by birth families to give evidence about the children in care. The carers stated that in this case they felt that the subpoena was made and they were asked to give evidence so that their care of the children (placed in their care) could be brought into question and the children removed from their care.

Many of the permanent carers who contributed to the focus groups had attended court with the children they had in their care on the day that their Permanent Care Orders (PCO) was granted or in one case where a PCO was revoked.

Five carers had attended for a Children's Court Clinic Assessment.

One foster carer from Shepparton recalled attending the Shepparton Magistrates Court on eight occasions in the past 18 months. Anecdotally, it appeared that in the Hume region it is not uncommon for carers to attend court with the children in their care for Interim Accommodation Order's (IAO's) and extensions to Custody or Guardianship orders. It is unclear why this practice of carers attending court with the children in their care is different to metropolitan situations, where workers transport children in they are required at court. It is also unknown if this practice is mirrored in other rural communities. One explanation might be that the distances and time travelled for children required to attend court in vast rural regions might prohibit child protection workers being able to facilitate transports to centralised courts. It is also possible that because rural child protection workers regularly represent themselves in court they may not have the capacity to support and supervise the children.

The stories of multiple and prolonged attendances in the Children's Court were most common from the kinship carers interviewed. These carers (most regularly grandparents) spoke of enduring weeks of court appearances over many years. One carer reported attending court on 34 occasions in the past 7 years; this included attending 5 Protection Applications (PA) for the one child. These

grandparents also attended court to acquire a PCO for their granddaughter however the birth parents contested this, resulting in Custody to Secretary Order (CSO) being granted.

One permanent carer attended court as a guardian parent of a child placed with her on a PCO. The child who had been severely traumatised prior to his placement with her, had posed a risk to himself and others and required a new PA in order to access Secure Welfare Services accommodation. This same carer has attended court for this child as a support to the birth mother on at least 7 occasions.

Five carers interviewed have at some point been employed by DHS Child Protection or a foster care agency in a professional capacity. These carers have attended court on more occasions as workers than as carers, however some of their general views as workers have been included in this report.

Five Carers interviewed had cause to apply to become party to the court proceedings. This issue is discussed in more detail in Section 8.1 of "Other Issues".

It is interesting to note that the rural carers interviewed had not attended a metropolitan court and the metropolitan carers had not attended a regional court.

Section 2

Case Preparation

Those interviewed were asked what they knew about the cases before they attended court. They were asked how well prepared for the experience they felt they had been. The answers varied considerably from carer to carer and the pattern of these responses appeared to be based on the level of experience with the court setting and number of attendances in court. Carers who had previous experience as workers in the field felt more prepared (through their training and attendance in court for other matters) than other carers. In general terms, foster and kinship carers were poorly informed before attending court. They are not given clear information regarding the court process generally, what is being sort specifically in the individual case, and are not given a copy of court reports or court papers in advance and often not after the matter has been finalised. They spoke of feeling overwhelmed by the process and court environment, and of not having clearly explained knowledge of the breadth of issues to be covered;

- "We knew nothing, we were naïve and in emotional shock, We were upset and the child was very troubled and still in turmoil and we didn't know what to expect or what to tell her" – kinship carer
- "I didn't have the court reports so I had no understanding of the history. I knew what the order they were seeking was but I didn't have a clue about the conditions they were seeking and those relating to school and access really affected my life. I had very little understanding of the process and how things would occur." foster and permanent carer
- "I knew the general direction only and I had to chase this information up over a few weeks – it changed so often, it was as if with each change they [DHS] tried to convince themselves and me that what they were seeking was the right thing" – foster carer
- "I didn't understand the [implications of the] orders and what they meant – it was my first placement" foster carer
- "I knew nothing and no one would tell me anything so I became party to proceedings and so I got the court report. It was very clear then" – kinship carer
- "We knew very little information and the agency didn't know much either. The agency was inconsistent in their briefing information and it felt like they didn't want to pass on

information to a carer. I get more information now because I get involved in meetings”. – foster carer

- “The court is naïve about family relationships and the impact of court on these in kinship care families. We need an explanation of what happens in court and we need clearer time frames, we don’t understand this area and we need help” – kinship carer
- “The first time I went to court I didn’t know anything or even what the conditions were until they read them out in court, Now I am known as a trouble maker so they give me a copy of the conditions in advance!”. – foster carer.
- “We never get to see the report until the day of court and some carers don’t even get that. The problem is that is it always full of inaccuracies and then there is no incentive to correct them because everyone wants the day over” – foster carer

Our interviews in Shepparton included carers who are providing “therapeutic foster care placements”. These placements require carers to be far more involved in planning and decision making and the understanding these carers have about the cases is evident in their response to this question.

- “Since being a therapeutic carer I have known much more than before. I am part of care team meetings and the DHS worker always phones from court to discuss the proposed conditions with me before settling anything”.
- “The DHS workers know us and involve us on a daily basis, court is just an extension of the care team meeting so we know what to expect”.
- “Because the DHS workers know us they understand the dynamics of our carer family and so they consider this when making decisions which influence us”.
- “We have very little to do with DHS in our regular placements compared to our therapeutic placements. Generally we just know the direction but don’t have any details. If we actually have to attend court we are generally well informed and supported by our foster care agency worker”. – foster carer
- “Everyone forgets that we don’t understand this environment, there was no explanation of even the fundamentals like, what do we call the Magistrate?” – foster carer

Permanent carers seemed to be better informed about individual cases of the children they had in foster care. This could be due to the fact that the children had been in their care for extended periods and the plan was for ongoing/ permanent care. Interviews with this group of carer still identified some cases where surprises occurred in the court process.

- “I feel like I knew a lot about the DHS position, the family, the order, but just didn’t know the placement outcome. I didn’t know about the legal representation or the process or how they thought the access needed to be supervised by me” – permanent carer
- “We felt very well prepared when it was time for the PCO but the conditions relating to sibling access still had to be worked out. We worked this out in the open hallway with the other carer for our child’s sibling and a DHS lawyer. Although we got what we wanted, I think the other carer was a bit railroaded by the process”. – permanent carer

The Court Network Service was raised in couple of the forums and it generated robust discussions. It appears that when filling the role of providing general court orientation information and listening to distressed families, that they are a great value. Several people spoke about variable experience of their Court Network Service volunteer and raised the issues of volunteers getting too involved in giving ‘legal advice’.

- “We wouldn’t have survived without the great woman who was an independent court worker from the court network. She talked to us about what to expect and what might happen. She really listened to us when no one else seemed to have time” – kinship carer
- “Our first court network person was great but the staff are variable and we had a useless one last time, don’t think I’d use them again” – kinship carer
- “The Court Network is very dangerous because they get too involved in your business and don’t know what they are talking about. They give families incorrect advice and this slows everything down. They are middle class do gooders, like a church cult!” -foster & permanent carer and past DHS worker
- “It was great to have a place to go to be private, it was a place where our granddaughter could wait and not have to face her parents. I feel very grateful to them for that” – kinship carer

In contrast, those carers who were currently workers in the field or had been in the past, felt far better prepared for court. They speak of having been either offered or seeking communications from DHS about what the case complexities were likely to be.

- “I always knew what the case direction was when I was a worker so I knew that the information existed. As a carer I just asked for what I needed to know. I always felt confident asking”
- “I used to work in the Children’s Court so I knew the procedures very well. I was always surprised how uncomfortable the foster carer agencies were in this environment and they didn’t always have the level of experience or knowledge that their carers required. When we had inexperienced DHS workers they didn’t seem to know much either, I always had to ask them to ask their team leader for answers to questions they didn’t understand. They were particularly unclear about legal process.” – foster carer and past DHS worker
- “I am an ex- DHS worker too and it is surprising how many new workers can’t answer my questions about case direction and conditions in particular – it seems that the team leaders make the decisions and regularly attend court in place of the case worker”

Section 3

Predictable Outcomes

Many foster and kinship carers interviewed believed that the outcomes of the court hearings were not predictable and did not result in the outcomes as expected going into the matter. They cited many variables which tended to change the direction of a case on the day or over time. For example:

Unexpected adjournments or waiting to be called to a contested matter.

- “It’s taken us 3 years to get a PCO when it appeared to be a straight forward case. I could never have predicted all those adjournments but I did get the order we wanted in the end” – permanent carer
- “Nothing is predictable, last week I lost a full week of work [and wages] waiting to hear each day if I was required in court and I’m the only one who pays for that” – foster carer

Incomplete court process. More assessments being requested or paperwork being processed on the day of court.

- “You go to court thinking that you are prepared and you know what will happen, but it’s hard to predict because birth families turn up after being gone for months and then the

court wants more paperwork and assessments. Parents contest when you think they won't because lawyers encourage them to do it" – support worker kinship care agency and past DHS worker.

- "You can't predict anything because left of field issues always appear" – kinship carer.

Child protection changing their disposition and recommendation to the court. Carers are advised of what Child Protection are seeking in Court only for this to change through the court process of negotiations on the day of court.

- "My foster child was planned for a PCO for nearly two years but DHS changed their minds about the PCO the night before court. They told the kids on the phone and it was very distressing for all of us. I got a lawyer that night and with the support of the children and the birth mother, we eventually got the PCO we were promised" – foster and permanent carer.

When speaking to foster and permanent carers who were, or were currently DHS or agency workers, we received some different views about predictability of outcomes. Primarily these carers with experience in the field raised concern regarding Child Protection's lack of willingness to back their assessment, case direction and court recommendation through the court process.

- "Negotiations for court move very fast and everyone runs around brokering deals in the pre hearing phase. Usually, the legal reps start out being very hard line, but their real position is often much lighter. It seems everyone wants to avoid a contest so they agree to things that aren't always in the best interests of the child just to avoid a contest. There are too many variables to make predictions, particularly if parents get a fabulous lawyer".
- "I found it appalling when DHS were prepared to settle on once per month supervised access in one breath, and then later considered a mother baby unit placement".
- "Our child's case went in with a recommendation of once per month supervised access, and returned with twice per week. They (DHS) had agreed to it because they wanted to avoid a contest. The worker actually said "we had to go for what we thought we could get, rather than what we really think is best for the child and consistent with the case plan – I couldn't believe she was so open about it" – foster carer

Also raised was the issue of complex cases at the court stage needing dedicated time from the child protection worker to ensure a positive outcome for the child/young person related to the matter.

- "The practice of sending team leaders in to negotiate for several cases in a day, is appalling. They rarely know the case well and they seem to miss the complexities. They say it saves resources, but I can only see outcomes which don't fit the case that was heard"
- "You can't predict outcomes when parents may or may not show up. They (the parents) may or may not get a brilliant legal aid rep and your child's DHS worker may or may not appear, instead, sending someone who doesn't know the case. You can't predict when people are balancing many cases in a day, and there are winners and losers and no one wants to lose too many times in the same day!"

Differences between DHS recommendations and Court outcome

- "Magistrates at Shepparton regularly make decisions contrary to DHS recommendations. This is usually because the parents get a good solicitor and the DHS worker representing themselves is under prepared, or just not good at giving evidence or being cross examined" – therapeutic foster carer.
- "Why it is that no one really values Guardianship anymore? DHS always settle for Custody Orders where the parents are incapable, or unwilling, to provide Guardianship

determinations. Known drug addicts, mentally ill parents, those with extreme intellectual disability, those transient in boarding houses with no mobile phones, and those who are just unprepared and agree with anything DHS ask, still retain guardianship. DHS and agencies just say to carers “don’t worry we can give medical consents anyway”, but it’s far more complex than that” – foster carer.

- “Why do workers going to court just settle on what they can get, rather than what they think is the best thing for the child?” – foster carer.
- “Twice we were asked to send our kids to court with their clothes packed for a return home to parents, and twice they returned to us” – rural foster carer.
- “DHS have said that they just present the case and then accept what the court decides, surely this is not ensuring the best interests of the child” - kinship carers
- The idea that the midpoint between two arguments is a fair or desirable outcome is absolutely ludicrous. It seems that lawyers like to each have some win or feel they must concede some loss to avoid a case going to contest”
- “The fact that DHS has a team of lawyers who are paid to primarily settle cases to avoid lengthy expensive contests, shows us that best interests are lost in a system which has financial KPI’s for staff” – permanent carer and past DHS worker
- “Why don’t DHS appeal more outcomes? If they felt that their case protected a child, why do they back down from it so easily? We all know that many kids have been further abused, or at worst died, after being sent home from Children’s Court when DHS wanted them in out of home care. Surely they should fight for these kids” – foster carer and ex DHS worker

Variations in magistrates ruling and decision making.

- “We arrived expecting a PCO for our granddaughter to stay with us. The magistrate advised us not to accept a PCO, but rather apply for a long-term Guardianship order. When we returned to court seeking a long term Guardianship Order, a different magistrate said this was an entirely inappropriate order and he granted a 12 month Custody Order, instead so that our 13 year old could make up her own mind if she wished to return home to her drug addicted father and his physically abusive wife next year” – kinship carer

Also raised was the perceived variation in outcome depending on which magistrate heard the case.

- “Magistrates have different styles and expectations, some really favour birth families and some seem to hate DHS. Sometimes one magistrate will send a birth parent two registrars’ letters to remind them about the court hearing, whilst another will dispense with their consent and make decisions in their absence. There seems no rhyme or reason”.

Section 4

Conduct of legal personnel

It was agreed by most carers who had visited the Melbourne Children’s Court that the lawyers are extremely busy and are required to manage multiple cases at any one time. Those carers with working knowledge of the area seemed very empathetic toward the lawyers’ case load and the demands placed on them. A carer who was called by DHS to give evidence in a contested matter felt very supported and prepared by the legal representative.

Most carers report feeling very rushed by legal personnel.

- “Our lawyer said we had better decide on it now or we would lose the opportunity” – kinship carer

Carers also spoke about not knowing how to actually find their assigned legal representatives once in court.

- “I was looking for my DHS worker and accidentally found the DHS solicitor who immediately engaged me in conversation about the case. After 10 minutes she realised that I was a grandparent who was party to proceedings and she said “Oh my gosh, I can’t talk to you”, but the damage was done – kinship carer.

Some general comments were made about confusion lawyers cause foster carers during the court process

- “The DHS solicitor told me I couldn’t talk to the DHS social worker on the day of the hearing because we were on opposite sides (we were party to proceedings). I thought we were part of the same care team who were there to support and seek the best outcomes for our granddaughter” – kinship carer.
- “In my children’s case there were 7 lawyers briefed. One for each parent, two for DHS, one for each child and one for us. It was ridiculous and a huge expense someone had to pay” – kinship carer

There was a mixture of responses as to whether the lawyers had been good at giving legal advice and updating carers as the matter progressed through the day, or whether the assigned legal representative had left them without explanations or updates. It appears this depended on the individual lawyer and the number of cases they were managing on the day.

- “The lawyers are too busy and overworked. They are often not well informed, and focus on just one or two aspects” – foster carer
- “There are quite a few solicitors and magistrates who primarily work in the Family Court and they are not necessarily well prepared for Children’s Court proceedings and circumstances of [Child Protection] cases” – foster carer
- “The birth family’s lawyer was a real cowboy; he kept fighting for family reunification when the mother repeatedly said she didn’t want the child home. This same lawyer kept telling the intellectually disabled mum that she could walk the child to school when she turned 9, even though she would be on a PCO ” – permanent carer
- “[The child’s] Mum’s lawyer was so out of touch. He tried to argue for unsupervised fortnightly access for an intellectually disabled mum whose baby was going to be on a PCO. It eventually ended up in VCAT and this held the whole thing up for another year – then the lawyer who set this all up didn’t show “ - permanent carer
- “I really didn’t understand and the lawyer didn’t assist me to as they knew what I wanted and got me that outcome, but I still really don’t understand what happened” – foster & permanent carer.

Comment was made about the expertise of the lawyers (especially in complex child welfare matters)

- “The mother’s solicitor didn’t know about rostered residential care so he asked the DHS worker (who was recommending it) about it. Of course she said it was fabulous so he didn’t question it further. I was furious because it definitely was not going to be appropriate for my 8 year old “ - foster and permanent carer.

One carer commented on an individual solicitor’s ethics.

- “We have been noticing a pattern in the cases up here, and it appears that the cases which have the largest numbers of unwarranted adjournments and hold ups, all come from one private solicitor’s firm who get paid via legal aid. We are beginning to feel that perhaps they see birth families as an opportunity to make extra money via legal aid payments” – rural non govt agency worker and kinship carer
- “Carers in the country don’t generally expect an outcome, we expect a few adjournments, a contest and then a long order” – foster carer

Interviews with rural carers highlighted some different issues in the country from Melbourne experiences. They indicated that the court is less hectic and that workers often represented themselves. Carers indicated that children rarely attended court hearing. Instead due to distances, children’s legal representatives would take instruction over the phone. Through the rural consultation, all carers commented on the fact that they now expect adjournments. It was not clear if this is a comment on process or personnel.

Comment was made by carers regarding the difficulties that arise from the circuit magistrate system and a perception that this causes inconsistency in outcome for children.

- “In the country we get circuit magistrates who don’t always want to be here. You end up with a different magistrate each time, and this can be very inconsistent”. – rural foster carer
- “The circuit magistrates are by their own admission not very familiar with the new Act, so decisions are often made on misinterpretations, or led by solicitors and mistakes are regularly made” – rural foster carer

Several carers interviewed including rural and Melbourne Children’s Court, were very keen to have their experiences with magistrates documented:

- “Our magistrate was rude and condescending toward us. He had the opposite view of the previous magistrate and he ridiculed us. The rotation of magistrates resulted in a worse outcome than the first magistrate promised” – grandparent kinship carers
- “The lawyers for the parents were very harsh but the magistrate looked after us” – foster carer
- “Trauma and attachment are not well understood by all magistrates. They should be trained in the same way as social work professionals are, so that everyone is making decisions and judgements based on the latest learning’s’. They (magistrates) don’t seem to make decisions understanding that trauma is often experienced as a result of disrupted attachment” – foster and permanent carer and ex agency worker
- “The magistrate verbally slapped DHS in open court for the poor standard of the report and for running a poorly prepared case. Magistrates should ask more questions in these cases so that they can make informed decisions in the best interests of the child, not just make decisions with inadequate information.
- “We were so unhappy with one new magistrate who disagreed with a previous magistrate’s decision. He recommended very different things and set a brand new case planning direction which was different to what we, and DHS, felt was required. He then very clearly told us not to bother contesting the decision as he assured us we would have to pay all legal costs if we did. We don’t have the money to ensure our granddaughters best interests are served, and we feel awful about it” – grandparent kinship carers
- “Druggies don’t change a 15 year heroin habit in 3 months. Magistrates rely on this information too and return kids to unstable families” – social worker who has supported kinship carers in many court cases.

- “My kids, and our family, loved the warmth and sincere gratitude the magistrate showed us when we gained the Permanent Care Order. He spoke to each of our children in turn using their names and told them something wonderful he had read about each of them. He then sent his clerk off to find matching teddy bears for the kids as a commemorative token. These personal touches almost made the horrible time waiting to go in worth it” - permanent carer
- “The female magistrate saw us together and said that she wanted no restriction on my contact with my permanent care child who was temporarily in residential care. She seemed so happy to have a conversation with me in court, outside the formal protocol, – this really helped me” – permanent carer

Section 5

Carer Comprehension.

The responses to this question are easy to categorise. Almost all respondents reported feeling very confused attending their first couple of appearances at the Melbourne Children’s Court.

Carers complained of not knowing where to go or what to do on arrival. Carers didn’t know the layout of the Melbourne Children’s Court and one carer actually sat in the Criminal Division for half a day waiting for his family case to be called. Some carers reported that they didn’t know where to go or who to ask and were overwhelmed by the activity in the space.

Carers reported having difficulties finding seating and then many reported that they were too scared to leave their seat to go to the toilets for fear of the seat being taken.

Signage was poor, the electronic ‘in session’ indicator was unfamiliar, as was the public address (PA) system. Many spoke of not hearing the PA over the noise and chaos, and another carer who thought to look for the daily court list could not find their child’s name on it, even though it was listed for hearing on the day. One carer even missed the hearing because he didn’t know it was occurring so he wasted an entire day.

Some carers said they felt embarrassed about not understanding respectful protocols in court.

A couple of carers spoke about not understanding the orders after leaving court and having no one around to explain it to them.

All carers agreed that these things were far less of a mystery after they had attended a few times. Some carers spoke of helpful lawyers or DHS workers who took time to explain things to them. Several carers also learnt about the court processes from the birth families who had previously attended. Carers who were currently employed in a related field or who had been DHS or agency workers in the past, reported a higher level of understanding of all aspects of the process and environment. These carers also reported feeling far more confident to ask questions of court personnel if they required information or direction than carers who had not worked in related fields.

Section 6

Court Facilities

6.1. Melbourne Children's Court

Feedback about the Melbourne Children's Court was consistent amongst the respondents. Carers said that the layout was inadequate for its function. All spoke of inadequate signage and a lack of accessible, well informed professionals, prepared or able to assist them.

Signage – is not clear or adequate to assist a carer navigate the court experience

- “ The signage directs you to people who won't speak to you” (Appendix C)

Public Announcement (PA) system and intercom – not a friendly, useful or successful communication tool for carers. Carers indicated they are intimidated by using such a form of communication to find appropriate people at court. With so much “noise” and regular use, carers indicated that it was difficult to identify what was relevant to them.

- “You can't hear the intercom in the toilet so I try to hang on as long as I can so I don't miss the case being called”

Security/Safety – carers talked about the environment not be conducive with negotiating serious matters regarding children's wellbeing, children's presence or carers safety. Carers talked about the seat configuration not allowing them to feel comfortable and it not being an environment that is child/young person friendly.

- “There was at least one client a week found ‘shooting up’ in the toilets – we were often calling the ambulance”-past DHS court worker
- The chair configuration in 6 to an area is very unsafe, particularly if you are sitting with intimidating people”
- “The kids and I were effectively locked into a bank of chairs by two smelly, and drug affected clients. Our only option was to move and then stand against a wall”
- Having security with guns is very frightening for the kids as they enter or walk around”
- Carers sometimes require security and it seems you can only get attention after something has gone wrong”
- “My son (PCO) was in the secure room as he had been at secure welfare. He has a play station, chips and a couch, and I could visit him whenever I liked which was great, in theory, but in fact I couldn't stay because the PA couldn't be heard there and I didn't know what was happening in court. I guess though in many ways his facilities were better than mine in the main court waiting area” – PC carer

Layout / Floor plan – Carers commented that there were not enough interview rooms for meetings with their (or childrens) legal reps.

- “People linger near the stairs to consult or talk and you can't get in or out”

Child Focussed Issues – Carers talked about the fact that Melbourne Children Court is not a space you would want a child/ young person to spend time. They identified the physical environment (including graffiti and swearing), the often protracted hours (including boredom and exposure to potentially unsafe/ unfriendly people) and the exposure to inappropriate conversations/ stresses as major issues for children/ young people.

- “The graffiti in the toilet is so extremely foul and it seems it keeps getting added to, rather than removed. I don’t like taking the kids in there, but there is no alternative”
- “It was such a long day in those hard chairs til 6pm. I heard so much swearing, smelt so much poor hygiene, and watched wild kids let run from one end to the other. There was nothing for them to do” – foster carer
- “My kids said it was boring waiting in court, but I could see that it was actually very frightening for them. My kids are very vulnerable emotionally, and they became quite anxious. There was no privacy, and seeing their mother was particularly difficult for them” – foster and permanent carer
- “Court is too foreign and formal for children to attend. Their life is on show and it is embarrassing for them” – foster and permanent carer”
- “So many times I have seen a child sitting in on their DHS workers discussions with the DHS legal rep in the Court Advocacy Unit room. The kids hear their lives spoken about without emotion or empathy, like they are not there. They also hear confidential stories about other children from other professionals in the small room. If carers were encouraged to attend, the kids could be protected from this” - foster carer and ex DHS worker

Housekeeping – Carers talked of the fact that court rooms themselves at Melbourne Children’s Court were well kept. They advised that accessibility by transport was good, while parking is expensive and access to café’s was easy.

- “The court rooms themselves are very clean”
- “The vending machine is always well stocked, but there is nothing healthy in there”
- “The plain chips and the Diet Coke always run out”
- “Lots of good local cafes for lunch”
- “Public transport access is great, but parking is extremely expensive as court starts after early bird rates stop”.

Other issues raised were how expensive the experience of court is for a carer and how time consuming it seems

- “It was such an expensive day with the parking, the lunch, the vending machine and the coffees. As well as that, I lost a day of wages” - foster and permanent carer
- “You are never the first case heard – perhaps there is no first case!” – foster carer.

6.2 Geelong Magistrates Court – brief comment was made about these facilities

- “It’s a regular Magistrates court and they announce a Children’s Court session when required. The layout is not good for kids because they could always see their parents if they attended court. There is no privacy unless you take up an interview room, but they don’t like you to do that for long. Security seems inadequate, but I’ve been protected by my agency staff. I’ve never actually seen children there, and I’ve been there a lot” – foster and permanent carer.

6.3 Shepparton Magistrates Court - brief comment was made about these facilities

- “Shepparton court really needs refurbishment and you can never get an interview room, so all the confidential conversations/negotiations happen outside, or inside, with others listening in”
- “There is no coffee or food and you can’t leave, or you will miss your case”
- The Salvation Army workers attempt to be supportive, but we need legal advice “

- “Kids don’t attend court here”.

6.4 Benalla Magistrates Court – very brief comment was made about these facilities

- Benalla Magistrates Court is great because they always hear kids cases first and kids don’t attend court”.

6.5 Bendigo Magistrates Court - brief comment was made about these facilities

- “Bendigo Court is part of The Shire Offices, so there is a lot of through traffic. Everyone in town paying a bill knows you are there”
- “The interview rooms are OK, but there is nowhere to get a cup of tea or coffee”
- “They will hear kids cases first and kids generally don’t attend”.

6.6 Echuca Magistrates Court - very brief comment was made about these facilities

- “There is only one court room at the Magistrates Court, but they will hear the children’s cases first”

Section 7

Regional and Rural Courts

The feedback we received from carers about rural/regional court facilities was in many ways quite positive compared to the responses received about Melbourne Children’s Court. It appears that carers do not feel overwhelmed and rushed by lawyers, in contrast to the experiences reported from carers experience of Melbourne Children’s Court. The facilities, although in some case in need of refurbishment, do not seem to distress the rural carers in the way the metropolitan carers report.

The concerns about rural and regional courts are more focused on magistrate and lawyer issues. It is more likely that a case will have several magistrates hearing it if it occurs in a rural court, as many of these magistrates are on circuit. These circuit magistrates also are reported to not be as familiar with the complexities of the legislation as they must utilise many different Acts in their daily jobs. The carers also judge many of the solicitors as lacking expertise in the legislation and child protection and child welfare practice.

Allocating time for contested matters is a huge issue in some rural areas. One carer family said that their child had to endure a 6 moth adjournment in order for the Shepparton Magistrates Court to allocate enough hearing days to hear a contested matter. Several others Shepparton families said that 12 month Interim Accommodation Orders were common place.

As mentioned earlier (section 5 pg 12) in one region, it is also alleged that a popular legal firm might be facilitating excessive adjournments by utilising a number of strategies, including regularly failing to seek client instruction or attending court unprepared. Whilst it is reported that both DHS and a non Government agency hold this concern, it is not known if this has formally been addressed.

The carers in these focus groups consistently identified that it was not common practice for children in care to attend court, unless there were specific reasons requiring attendance. This is in stark contrast with the Melbourne Children’s Court, where children over 7 years are encouraged to attend

in order to give legal instruction. In the rural areas, seeking instructions from a child this age appears to occur by telephone in most instances.

Section 8

Carer Suggestions for Change

It is with great respect and acknowledgment of the complexities of the system that these carers ask for change. Whilst carers understand that they might not always know how best an outcome can be achieved, they deserve respect for wanting better outcomes for the children in their care. It is also possible that some of the simplest suggestions, unencumbered by culture, are in fact worthy of consideration.

8.1 That the process be inquisitorial rather than adversarial

Carers are concerned that by focussing unduly on legal processes, many children and families are receiving the wrong outcomes. Carers believe there needs to be more opportunities for asking questions and investigating best interests, rather than permitting extended timing and “red herring” searches amounting to nothing. Negotiations are too often seeking compromise, rather than an outcome which best meets the needs of the child. The focus needs to stay on the child.

8.2 That children have skilled Child Advocates to be a voice for them

Children cannot be assisted unless they have skilled advocates that lawyers can seek instruction from. These advocates would understand child development and the impact of traumatic events and child abuse. They would know not only what to ask the children, but also how to best act upon what they have heard.

8.3 That DHS appeal decisions if an appeal is in the best interests of the child.

Carers report feeling frustrated by the DHS apparent unpreparedness to stand by their risk assessments. Carers report that DHS often “back down” after losing a contest and rarely follow on with a Supreme Court appeal. Carers feel that DHS see these as too costly to warrant advocacy for an individual child’s best interests, and that individual children can be further abused and traumatised as a result. It is believed that the only cases appealed are those which are seen as “test cases”, and likely to have an effect on the way the Children’s Court might respond to similar cases in a broader way.

8.4 That Trauma and Child Development training be available to Children’s Court personnel

Carers feel that further training in the areas of child development and the effects of abuse and trauma on children would assist with better outcomes for children and young people.

8.5 That scheduling of court time allow for more organisation of matters

Carers think that it would be better for families if the court sitting day was in two parts. Cases would be called for either a morning or afternoon session in an attempt to avoid large numbers of people sitting in the waiting area all day, when it is clear from the outset, that the case will not be heard until after lunch.

Some carers think that mentions and uncontested extensions should be agreed to prior to the commencement of Court and be heard first. Carers believe that if parents do not attend the court building by a scheduled time that the case could be heard and adjourned only once, and then if this occurs a second time, decisions should be made in their absence.

Some Carers suggested that decisions and negotiations, including specifying conditions, could be better managed in a best interest planning meeting or similar forum. If all parties agreed to a particular order, or the conditions, or the extension, then it should be possible for this to be in a signed Statutory Declaration which is accepted by the court as consent to the matter. In this way, papers could be filed with the court as an administrative measure only, freeing up valuable court time for contests.

8.6 That decisions be made in a timely manner

Carers commented on the importance of decisions being made with full information in a timely manner. Situations warranting adjournments are to meet very clear and rigid guidelines, thus avoiding unnecessary delays. Carers would, for example, like parents failing to attend on the first occasion to be required to submit a reasonable excuse (for example, produce a medical certificate), otherwise to have decisions made in their absence. There should be a consistency applied to all adjournments and parties should be made aware of this in the information they receive in their summons. Professionals and lawyers being unprepared on the hearing day should not be a valid reason for an adjournment.

8.7 That no fault outcomes be possible for Permanent Carers

In recognition of the fact that children who have experienced extreme trauma may well become mentally ill adolescents, 'no fault' outcomes of Protection Applications should be possible. This would protect the integrity and reputation of carers who have taken on long term guardianship of very complex and difficult children who later require child protection intervention in order to access services. Alternatively, services should be funded to respond to these children (often on permanent care orders) without the requirement of child protection investigations and resources. Trying to make these circumstances fit a fault finding model is inadequate in its support of both children and their carers. Those who take on responsibility of traumatised children on permanent care orders or in long term guardianship situations should be thanked, not punished.

8.8 That Permanent Care Order have consistent conditions for siblings (see 9.3)

To ensure greater consistency in conditions, where possible, Courts should only process sibling permanent care orders in one sitting. If it is known that a child being placed on a permanent care order has a sibling, it should be mandatory that copies of the siblings orders are produced and that subsequent access conditions are consistent and not contradictory amongst siblings.

8.9 That carers be Party to proceedings for the children in their care (see 9.1)

As detailed earlier in this report, carers of all types feel discouraged by applying to become party to proceedings. Carers stated that they should be party to all matters which they can add, otherwise unheard, relevant information, or information that impacts on a child's life (for example, in all permanent care matters). Carers require either an insurance scheme or a service which provides funding for legal costs associated with being joined as a party to proceedings where it is seen that

this is appropriate. It is not appropriate to expect carers to fund their legal representation, or to be means tested by Legal Aid, to determine who pays for them to assist other people's children who are in State care

8.10 That the inclusion of carers details in official reports and documents be disclosed to carers

Carers are concerned about not being informed when their names and assessments of them are being made in court reports or other tendered documents. DHS and the court should ensure that copies of all documents planned to be submitted to court which contain information about or judgement of carers, be provided to carers where possible, at least 48hrs prior to the court date. This enables carers to ensure accuracy of information disclosed about them and also allows them an opportunity to challenge contained views if necessary.

8.11 That Circuit Magistrates in Rural/Regional Courts be mentoring

Carers recommend that magistrates on circuit are to be mentored by more experienced magistrates when hearing Children's Court matters. This could be in the form of a telephone secondary consultation with an experienced regional or Melbourne Children's Court magistrate.

8.12 Printed Information Brochures

Carers have expressed in great detail how difficult and emotional their first experiences at court have been. It seems to carers that much of this has been due to the fact they feel very unfamiliar with the court environment and are often unaware of what to do, where to find things or how to behave. This unfamiliarity could be reduced significantly with a simple "Information for Carers" brochure. This brochure would have a simple floor plan showing families where to find things and answer issues in simple question/answer format.

Suggested questions would be:

What do I do first?

How can I find people and how can people find me?

Roles and responsibilities of

- DHS worker in court
- DHS court advocacy Unit
- Salvation Army/Court network
- Legal aid Lawyers
- The magistrate

What are the facilities for children?

Where can I get a drink and food?

Who sits where in the court room and what is court Etiquette?

What is "Party to Proceedings" and when might it be appropriate for me?

8.13 Children's Space

Carers are in agreement that the current situation experiences at MCC are unsuitable for attending children. The FCAV suggests that the court or DHS lease an empty office space in an adjoining building and set this up as a safe space for children. The room would be staffed by a childcare qualified person who would ensure that the activities provided for the children were age appropriate and that equipment was used safely. Children would be booked into the room by their

DHS worker and must have their own adult with them. Foster and kinship carers would be encouraged to attend with their children and the child care worker would be available to care for the children in only specified circumstances i.e. – if their carer was in a court session or if their carer required a toilet break for example. The space would have several interview rooms where legal and other professionals could seek instruction from children. Video linkage would also be possible from this space if required. Birth families would only be allowed to attend the room in special circumstances where DHS could ensure that there were no possibilities of threat to any of the children, staff or carers in the space. Violence, drug abuse, bad language, threatening and bullying behaviours would not be permitted to occur in this space. The space would also not be able to be utilised for supervised accesses with birth families. The sole purpose of this space would be for children and their carers to have a safe, comfortable and stimulating play space for them to wait. Communicating regarding relevant court room activity would be available in this space so that carers and children were always well informed of progress and requirements for them to attend.

Section 9

Other Issues

9.1 Carers becoming party to proceedings

Carers are increasingly requesting to be made ‘party to proceedings’ where they have children in their care, whether they are foster or kinship carers. The reasons for this are varied, but usually are triggered by carers feeling that they have not been involved in decision making, or have not had their views considered when case direction, orders, or conditions are determined. In some cases, carers seek to be joined as a party to the proceedings because they would like to receive a copy of the court report, either for the child, or because they believe there are inaccuracies in it which portray them negatively. Carers, whether they be foster or kinship, report being strongly discouraged by DHS in seeking to be joined as a party and then having to pay for ongoing legal representation, or representing themselves. This was identified as further discouragement for many carers.

- “I know quite a few families in our region who have been made party to proceedings because DHS won’t agree to consider the child, who had spent several years in their care, be placed on a PCO with them”
- “You can only apply to become party to proceedings on the day of court, and this holds things up. It’s not nice to feel like you are responsible for slowing down the process, but sometimes it’s the only way” – foster carer
- “Carers can have accusations made about them in writing by parents and tabled in court. Even though they aren’t proven, you have no opportunity to answer to it or defend your reputation, unless you become party to proceedings. Carers can feel so disrespected by professionals who disregard their non- legal opinions” – foster carer

9.2 Children’s Court Clinic – carers commented that the Children’s Court Clinic process was not respectful of their role within children in cares lives and questioned how assessments can be made via limited interviews in office settings.

- “I have had 3 Children’s Court Clinic Assessments. I know it sounds rude, but the first psychologist was an evil manipulative woman. She had it set in her mind before she started that I wanted to keep my foster children. She actually said, “come on, admit it, she’s cute and you want to keep her”. I was so upset. She was angry because she had

been discredited in court as the child was previously returned home on her advice and it broke down. Now, she was trying to imply that I sabotaged the reunification.” – foster and permanent carer

9.3 Permanent Care Orders (PCO’s) and sibling access – a carer commented on how sibling access is important, especially in permanent care matters and magistrate training/ information should be given to ensure it is considered as part of a permanent order.

- “I am a permanent carer of the eldest child in a sibling group, and recently took on a foster care placement of two of his younger siblings when their permanent care placement broke down. Their youngest sibling is in permanent care with a different carer. When her court order went through, there was a new magistrate sitting who put the permanent care order through with conditions regarding access for birth mother (four times per year), but totally neglected to include any condition, as recommended in court report, for the siblings (10 times per year), with no rationale as to why sibling access wasn’t included – it was just forgotten!

When the two, now in my foster care, received their PCO’s with their previous carer they got sibling access as a condition 10 times per year, along with birth mother having access 4 times per year (the same as for their eldest brother). However, now the permanent carers of the youngest child won’t allow any sibling access outside of birth mother’s access, and say that as it is not a condition on the youngest child’s order, they do not have to accommodate this, despite all four children seeing each other once a month for several years at their grandparents house for respite from foster care.

If I were to appeal this, I would have to do so in one of the children’s names as the cost would be prohibitively expensive for me as a carer without legal aid, and apparently whoever appealed this, the court would now take into account the likely stress on the youngest child’s placement of any court action/increased access. This leaves these children without a sibling relationship with their youngest sister”.

9.4 Conditions – foster carers questioned the way conditions on a Court Report and then on a Protective Order were being developed and then enforced by the Child Protection system. Foster carers commented that recommendations regarding conditions on a Court Order were sometimes not clearly communicated to them because negotiation was occurring at Court not in case plan meetings or prior to the Court Hearing. Carers also highlighted the need for Child Protection to use the court processes such as breaching an Order as a way of keeping parents accountable for their actions regarding their children.

- “Where is the accountability for the parents to actually meet any of the conditions on the orders. Why bother having conditions which require parents to abstain from illicit drug use, accept psychiatric treatment, find suitable accommodation etc if the parents have poor ability or interest in doing these things. If they are truly conditions, then why don’t they breach them?” – foster and permanent carer.
- “Conditions should be agreed to in case planning or best interest planning meetings before court – not on the day of court when everyone is frantic and emotional” - foster carer

9.5 Access – All carers interviewed raised the issue of access as a serious concern. Carers talked about the frequency of access and time of day access is scheduled for as concerns. Some carers raised concern regarding the impact of lengthy access visits on the wellbeing of the child they care

for. The disruption a weekend access causes the carers family and the child in care was also raised as unsettling for everyone. Carers also raised the level of stress the anticipation of access visits and the effort required to settle children and young people after the visit as unsettling for the child/ young person.

- “Access is really stressful for my kids. It’s rarely the same worker who transports them (often with the wrong car seats) and almost never the same person who supervises the access. The access reports are too brief and rarely shed much light on anything as DHS and agencies get students on placement to supervise them. The students are often poorly briefed and too scared to stand up to the parents, many of them don’t even know what to look for or what is concerning – access like this is damaging to children and families” foster carer
- “Frequency of access is still an issue for us, despite the “Baby on Board” research. The access awarded to the parents of our 5 year old required him to miss three days of school each week when you factor in the travel time”- foster carer
- “The court agreed to weekend access, but didn’t consider who would provide transport when professionals don’t work or how this might affect a foster family who have other children to care for and commitments to fulfil”- foster carer
- “Our 2 year old foster child was required to attend 4 days per week of access from 10am until 4.30pm, supervised by the grandmother. You would think that this was a reunification plan but it was not, and ended up in permanent care!” – foster and permanent carer
- “My foster child was required to attend 3 access visits per week with 3 different people. This was a result of a grandparent becoming party to proceedings. The child was absolutely confused about where he was, or where he was going – very disruptive” foster carer
- “Unreasonable or excessive access arrangements impact on the child, the foster carer and the other children in the carers household. You can’t go on holidays and sometimes I feel like I’m just driving all day. I don’t know why anyone would want to become a foster carer under these circumstances” -foster carer
- “Our foster son had access three times weekly for three years from birth whilst the severely drug addicted parents contested and appealed everything, and DHS wasted time by not ensuring timely planning. After 3 years DHS finally recommended a Permanent Care Order, but the Permanent Care team said that access three times per week was inappropriate for a permanent care placement so DHS child protection were forced to take it back to court to try to have the access reduced” - foster carer
- “Our foster son is planned for a PCO with us next month. DHS are insisting that in order to get the Permanent Care Order we must agree to supervise the birth family access. Both parents are heroin addicts and the father has been extremely violent toward DHS and agency workers over time. Infact, on several occasions individual workers have refused to supervise his access as they are fearful of his threats and violence. We asked if we could, at a minimum, be allowed to utilise an access centre at the expense of DHS. They said they had no funding for any ongoing support of children in permanent care. Do they honestly think it would be more expensive than continuing the child on a Guardianship Order, and besides, who cares about the child’s long term security?” – foster carer
- “We don’t feel that DHS understand the complexities of supervising access between your grandchild and your drug addicted son. We have asked if we can utilise an access centre so that we get some security if we need it, but they seem to frown upon this”. – kinship carer

- “The parents hardly turned up to access, but they always turned up to court and they asked for more access, which they got, and then they only attended about 30% of it. It was so hard on the child” -foster carer

9.6 Undisclosed Placements – privacy and safety of carers was raised as an issue. This was identified as an issue specifically when carers were sworn in to court matters and their home address/ details are undisclosed to the child in placements family.

- “I had been caring for a sibling group of young children and the father was known to be very violent and had fire arms charges pending. He had threatened me and several DHS workers on a few occasions, and I was very frightened of him. I was subpoenaed to give evidence about his violent threats and I reminded all parties that this was an undisclosed placement. As soon as I was put on the stand they read out my full name and my street address – so much for an undisclosed placement” – foster carer

9.7 Summons to appear – a carer raised the issue of very late notice regards being summons to appear in court

- “I was served with a summons to appear in the Melbourne Children’s Court at 2am on the day of the hearing. I needed to be in the court by 9.30am and I had to telephone friends at 2.30am to ask them to babysit. I had no time to organise a lawyer and I felt very unprepared and traumatised” - foster and permanent carer

9.8 Legal Representation for 7 year olds - Carers expressed mixed views about legal representation for children over 7 years. Some carers felt that children deserved a greater say in what is happening in their lives, whilst others felt that merely asking children what they want and then acting on it, is very short sighted. Many carers spoke of the children in their care expressing a view to them and then later reversing it in the company of their parents, or when in the court situation. It was reported that some children feel very guilty about feeling like they are contributing to decisions which may negatively affect their parents, whilst others express a strong desire to be present for all discussions and decision making concerning their lives. Carers were in agreement that the current situation at the Melbourne Children’s Court is not a positive experience for children, but many of these felt that the children need to be in attendance as they are poorly consulted and excluded from decision making forums prior to court. The rural carers interviewed said that the practice of lawyers contacting the child in person or by telephone ensured their views were heard and avoided them attending court. Although a carer of adolescents said that when the lawyers contact the children by telephone the carer doesn’t know what is asked, said, or suggested, thus is unable to respond to the needs of the child adequately. Several carers said that older children should attend court as it is too easy to forget the children when they are not there.

9.9 Means testing of carers for legal aid eligibility – This was an issue for kinship carers primarily but also for some foster carers. Kinship carers were becoming part of a process to protect their families (grandchildren) however due to means testing were not eligible for legal aid and were incurring large costs.

- “I retired several years ago with my superannuation, hoping that his would see us through our twilight years. Then we took on the care of our granddaughter and have been excluded from so much available support because we are means tested on the small amount we have in investments. It is not reasonable that we should spend this money before we are eligible for legal aid, or family tax benefit, or child care rebates etc. If we do that, we will have nothing left to support us in our old age and keep us and our granddaughter in our home”. – grandparent kinship carer

Appendix A

REVIEW OF VICTORIA'S CHILD PROTECTION LEGISLATIVE ARRANGEMENTS

TERMS OF REFERENCE

To review Victoria's child protection legislative and administrative arrangements in relation to Children's Court processes, and to recommend options for procedural, administrative and legislative changes that may minimise disputation and maintain a focus on the best interests of children.

In reviewing the current Victorian arrangements, the Victorian Law Reform Commission should consider models that take a more administrative case management approach to child protection issues. In particular, the Commission should include consideration of the arrangements currently in place in other relevant Australian jurisdictions (including the Family Court) and overseas, including England and Scotland.

In addition to consulting with Victoria's Children's Court and the Victorian Departments of Human Services and Justice, the Victorian Law Reform Commission should consult with Victoria Legal Aid and other relevant stakeholders.

This reference is designed to provide the government with recommended options for Victoria's child protection legislative and administrative arrangements.

In conducting the review, the Victorian Law Reform Commission should have regard to:

- the underlying aim of the child protection system to protect children in Victoria from abuse and neglect, and the objectives of the best interests principles set out in the *Children, Youth and Families Act 2005*
- the processes associated with the application for an order and the review of interim and ongoing disposition orders before the Family Division of the Children's Court
- the previous reviews of Victoria's child protection system, particularly in relation to the models for the Children's Court, and the report of the Government's Taskforce that will look at measures to immediately reduce court time and bring in less adversarial processes
- the themes and principles of the Attorney-General's Justice Statement (2004) and Justice Statement 2 (2008), particularly the focus on Appropriate Dispute Resolution and measures to reduce the adversarial nature of the justice system
- the rights enshrined in Victoria's *Charter of Human Rights and Responsibilities Act 2006*.

The Commission is to report by 30 June 2010.

Appendix B

Focus Group Information to FCAV constituents

Foster Care Association Vic (FCAV) is assisting the Victorian Law Reform Commission with **Children's Court consultation groups**

There are no simple solutions to the complex problems arising out of proceedings in the Children's Court. The Vic Law Reform Commission (VLRC) has been asked to come up with recommendations for procedural, administrative and legislative changes that might minimise disputes and maintain a focus on the best interests of children.

The commission with the assistance of FCAV is now seeking the views of people who have had direct contact with the Children's Court. This might be as a foster carer of a young person who has been at Court or as a kinship carer looking after a grandchild, brother, sister or niece/nephew. This may be from a young person themselves. How did the experience of going to court make you feel? What were the outcomes for you and your family? What could be done better?

These discussions will feed into the VLRC's work to develop detailed recommendations for inclusion in The Law Reforms final report to the Attorney General.

FCAV are holding Carer consultations as follows:

Metro – FCAV office Thursday 25th February, 2010 from 10.30 to 12.00pm
Metro – FCAV office Thursday 25th February, 2010 from 5.30pm to 7.00pm
Metro – FCAV office Wednesday 10th March, 2010 from 2.00pm -4.00pm
Shepparton – Berry Street office Thursday 11th March 2010

The consultations will elicit the following information:

- What have your experiences of the Children's Court been?
- What did you know about the case before going to court?
- Did the outcome reached differ from what you expected?
- How did the lawyers conduct themselves?
- Did you understand all that was going on?
- How were the facilities at court?
- Have you attended Children's Court in another location apart from Little Lonsdale Street (for example Moorabbin)? Did this experience differ?
- What could be done better?
- Anything else you would like to tell us about your experience with the Children's Court or Child Protection services?

FCAV office is at 48 High St Northcote. Parking available around the office

Please RSVP to Gabbi on 94899770 or admin@fcav.org.au

Appendix C

Example of Melbourne Children's Court signage 2009

