Chapter 3
Drivers for out-of-home care trends

3.1   This chapter examines the drivers for the increase in the number of children placed in out of home care, types of care that are increasing and demographics of the children in care.[1]

3.2   The committee heard that there is no single reason children enter and remain in out-of-home care, but a 'myriad of complex structural constraints, system issues and social factors'.[2] Mr Andrew McCallum AM from the Association of Children's Welfare Agencies told the committee at its Sydney hearing:

> …out-of-home care is a symptom of a whole range of other things that happen…The notion of looking at the system in its totality and at the things that have gone wrong that have driven the out-of-home care system is, I think, where we need to focus our attention.[3]

3.3   Drivers identified by submitters and witnesses for the increased numbers of children in out-of-home care, particularly Aboriginal and Torres Strait Islander children, include:

- children remaining longer in care;

- social factors linked to disadvantage (including family violence, drug and alcohol misuse, poverty and homelessness); and

- systemic factors (including risk averse approaches to child removal and lack of family support services).

3.4   These drivers are examined in detail below.

Reasons children enter out-of-home care

3.5   The committee notes there are no national data available on the reasons children are placed in out-of-home care.[4] Representatives from the Australian Institute of Health and Welfare (AIHW) told the committee that data on the reasons children enter care are challenging to identify and measure due to their complex and inter-related nature:

> From our perspective…this type of national unit record collection…is not something we would generally be able to unravel. It is probably something you would do more on a case-by-case basis.[5]

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1   See: Terms of Reference, (a).

2   Salvation Army, *Submission 40*, p. 3.

3   Mr Andrew McCallum AM, CEO, Association of Children's Welfare Agencies, *Committee Hansard*, Sydney, 18 February 2015, p. 49.

4   Australian Institute of Health and Welfare (AIHW), *Submission 22*, p. 2.

5   Ms Justine Boland, Acting Group Head, Community Services and Communication Group, AIHW, *Committee Hansard*, Canberra, 16 April 2015, pp 42 – 43.

3.6   Concerns about the 'the absence of data documenting the criteria and decisions leading to placements' across Australia were raised by the United Nations Committee on the Rights of the Child (UN Committee) in its 2012 concluding observations.[6] The National Children's Commissioner, Ms Megan Mitchell, told the committee that the UN Committee recommended:

> Australia take all necessary efforts to examine the root causes of the extent of child abuse and neglect and provide general data on the reasons children are placed in care.[7]

3.7   AIHW suggested some reasons children may be placed in out-of-home care include: where children require a more protective environment as a result of a substantiated child protection notification; where parents are incapable of providing adequate care; or where alternative accommodation is needed during times of family conflict.[8]

3.8   While AIHW does not collect data on the reasons children enter out-of-home care, it does report on the reasons for substantiations of child protection notifications. As noted in Chapter 2, 91 per cent of children in out-of-home care are subject to substantiated child protection notifications. Substantiations refer to child protection notifications that are investigated and found to have reasonable cause to 'believe that the child had been, was being, or was likely to be, abused, neglected or otherwise harmed'.[9] AIHW's definitions of these reasons are outlined in Box 3.1.

Box 3.1 – Definitions of reasons for substantiations

AIHW reports on the following categories of reasons for child protection notification substantiations:

Neglect – Any serious acts or omissions by a person having the care of a child that, within the bounds of cultural tradition, constitute a failure to provide conditions that are essential for the healthy physical and emotional development of a child.

Emotional abuse – Any act by a person having the care of a child that results in the child suffering any kind of significant emotional deprivation or trauma. Children affected by exposure to family violence would also be included in this category.

Physical abuse – Any non-accidental physical act inflicted upon a child by a person having the care of a child.

Sexual abuse – Any act by a person, having the care of a child, that exposes the child to, or involves the child in, sexual processes beyond his or her understanding or contrary to accepted community standards.

Source: AIHW, Child Protection Australia 2013−14, pp 126–133.

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6   Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, p. 1.

7   Ms Megan Mitchell, *Committee Hansard*, Sydney, 18 February 2015, p. 1.

8   AIHW, *Child Protection Australia 2013–14*, Canberra, 2015, p. 4.

9   AIHW, *Child Protection Australia 2013–14*, p. 17.

3.9   In 2013–14, AIHW reported that emotional abuse (39.5 per cent) and neglect (27.5 per cent) were the two most significant reasons for substantiations across jurisdictions. A smaller proportion of substantiations were due to physical abuse (19.4 per cent) and sexual abuse (13.7 per cent).[10]

Aboriginal and Torres Strait Islander children

3.10   The committee heard in some jurisdictions, particularly the Northern Territory, Western Australia and Queensland, the overall increase in the numbers of children in out-of-home care is largely due to an increase in Aboriginal and Torres Strait Islander children and young people entering and remaining in care.

3.11   In Western Australia, for example, Ms Emma White, Director-General, Department for Child Protection and Family Support told the committee that:

> despite the total number of children in care in this state continuing to rise, the rate at which they have come into care has halved since 2006. In 2006, there was about 13 per cent growth each year. We are now around six per cent. The critical thing is that if you look at Aboriginal children versus non-Aboriginal children, non-Aboriginal children are really coming in at a rate around population growth, which is what you would probably expect. But, in fact, the exponential growth is with Aboriginal children and families.[11]

3.12   AIHW reports that neglect is the most common type of substantiated abuse for Aboriginal and Torres Strait Islander children. Nationally, neglect accounted for 41 per cent of child protection substantiations, compared with 22 per cent for non-Indigenous children.[12] The proportion of Aboriginal and Torres Strait Islander children subject to neglect substantiations differs across jurisdictions, and is as high as around 50 per cent in South Australia, Queensland and the Northern Territory. Figure 3.1 shows the proportion of children who were subject to a substantiation of neglect across jurisdictions. The reasons for the high proportion of neglect substantiations for Aboriginal and Torres Strait Islander children are examined in detail below.

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10   AIHW, *Child Protection Australia 2013–14*, Table A11.

11   Ms Emma White, Director-General, Department for Child Protection and Family Support, *Committee Hansard*, Perth, 16 February 2015, p. 62.

12   AIHW, *Child Protection Australia 2013–14*, p. 26.

Figure 3.1 – Percentage of children who were subject to a substantiation of neglect by jurisdiction and Indigenous status
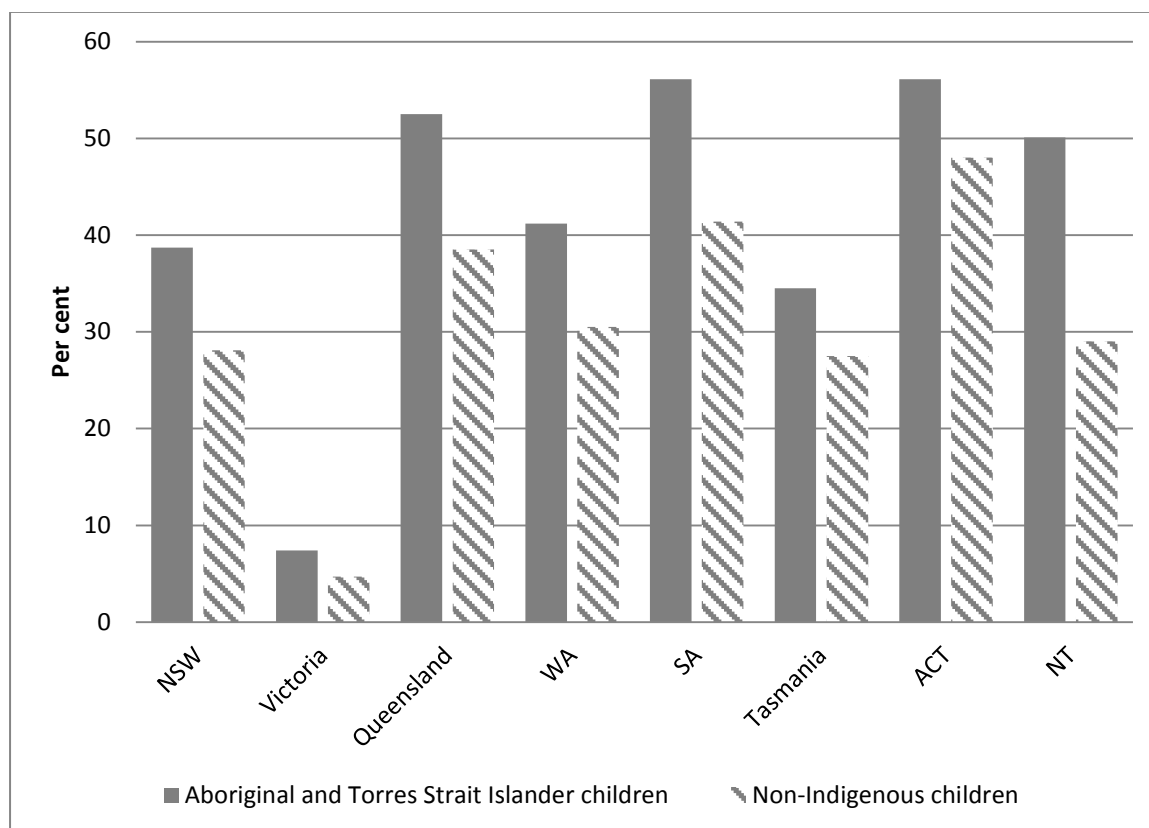
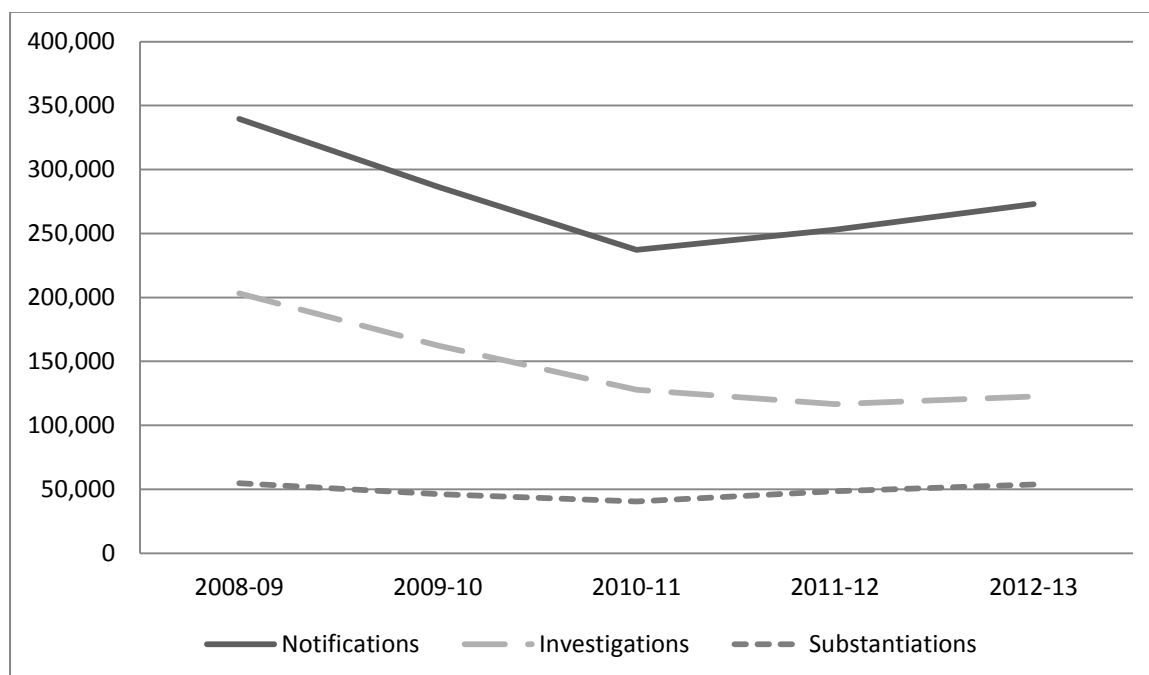*Source: AIHW, Child Protection Australia 2013–14, Table A11.*

Children remaining longer in care

3.13   A number of submitters and witnesses suggested that the number of children in out-of-home care is increasing due to increased reporting of child protection notifications and substantiations of claims.[13]

3.14   However, the available data shows the number of substantiated child protection concerns has remained steady over the past five years, with the number of children in substantiations continuing to increase. AIHW reports that the number of child protection notifications and investigations has been increasing since 2011-12, following a decline since 2008–09, whereas substantiations have remained relatively stable (54 621 for 32 641 children in 2008–09 compared with 53 666 for 40 571 children in 2013–14). Figure 3.2 shows the number of substantiations compared with the number of child protection notifications, investigations and substantiations between 2008–09 and 2012–13.

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13   See, for example: Australian Childhood Trauma Group, *Submission 9*, p. 4.

Figure 3.2 – Number of child protection notifications, investigations and substantiations, 2008-09 to 2012-13

Source: AIHW Child Protection Australia 2012–13, Table A36.

3.15   Rather than the number of substantiations increasing, AIHW suggested the key driver for the increased number of children in care may be due to the cumulative impact of children being admitted to, and remaining longer in, out-of-home care.[14]

3.16   While the overall number of children in care has continued to increase, AIHW submitted that the numbers of children admitted to out-of-home care has actually decreased between 2011–12 and 2012–13, with the number of admissions consistently outnumbering discharges (by almost 2 000 in 2012–13).[15]

3.17   AIHW further demonstrated that children are remaining longer in care. Figure 3.2 compares the length of time children spend in continuous placements, and shows since 2009 the percentage of children spending over five years in care has increased (from 32.5 per cent in 2009 to 39.1 per cent in 2013), while placements of less than five years have decreased.

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14   AIHW, *Submission 22*, p. 2.

15   AIHW, *Submission 22*, Table 2.

Figure 3.3 – Percentage of children by length of time in continuous placement, 2009–2013.
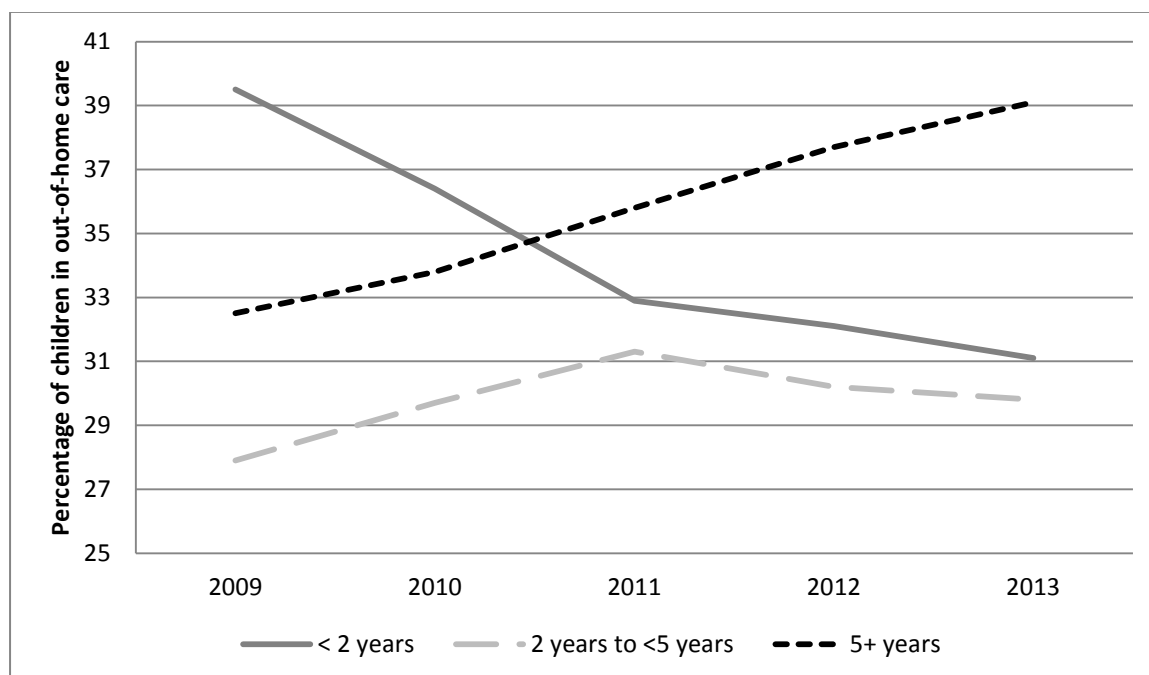
Source: AIHW, Submission 22, Table 3.

3.18   AIHW also noted that an increasing proportion of children are entering care at a younger age and being discharged at an older age. Between 2008–09 and 2012–13, the proportion of children aged less than one year entering care increased (from 16.1 per cent to 17.4 per cent) and the proportion of children aged 15-17 years discharged from out-of-home care also increased (from 27.8 per to 33.8 per cent).[16]

3.19   Dr Daryl Higgins from the Australian Institute of Family Studies (AIFS) told the committee that the while the number of child protection notifications was beginning to plateau, this was not reflected in the numbers of children remaining in out-of-home care:

> What we know is that one of the biggest drivers of the number of children in out-of-home care is, broadly, the number of children coming to the concern of statutory child protection authorities. Obviously, one of the most important issues in addressing any concerns about the out-of-home care system, the quality of care, the wellbeing for young people in care and whether or not different forms of care are good has to be premised on whether we can reduce the number who are coming into care in the first place. The problem is that while we might have had some turnaround in terms of slowing the rise of notifications, that is not yet translating into a slowdown of children entering into or, more importantly, staying in the out-of-home care system.[17]

16   AIHW, *Submission 22*, p. 5.

17   Dr Daryl Higgins, Deputy Director, Research, AIFS, *Committee Hansard*, Melbourne, 20 March 2015, p. 1.

3.20   The committee notes Professor Clare Tilbury's evidence to the Queensland Child Protection Commission of Inquiry in 2013:

> [I]t's not that the entry rate to care is increasing, it's that the length of time children spend in care is increasing. So in other words, children are going in and then there's a big ballooning effect going on because children are exiting at this lower rate and staying longer.[18]

3.21   Families Australia, citing a Victorian government report, noted that the proportion of children remaining in non-permanent out-of-home for over five years has doubled in the past decade.[19] Similarly, PeakCare Queensland argued that the issue is not the increasing numbers of children entering care:

> [T]he 'problem' is that once in the system, children predominantly age out of care having not been reunified with the family from whose care they were removed.[20]

Social disadvantage

3.22   The committee heard the most significant drivers for children and young people entering and remaining longer in out-of-home care are socio-economic factors linked to disadvantage, particularly family violence, drug and alcohol abuse and mental health issues. These issues are compounded by the increasing complexity of intergenerational disadvantage.[21]

3.23   The committee heard families involved with child protection authorities are among the most disadvantaged and vulnerable. Dr Patricia Hansen and Dr Frank Ainsworth provided the committee with their 2013 study, which found that families involved with the child protection system commonly share the following characteristics:

> …they live on welfare benefits, often in stressed public housing environments, and are socially isolated. In addition, many have poor education achievements, are frequently unemployed and have low job skills. They themselves are often the product of poor parenting and may be in less than ideal personal relationships. For some, there is the added issue of a low-level criminal record, poor mental health (including drug and alcohol usage) and/or intellectual disability factors. In other words, these parents represent the most vulnerable and most needy section of Australian society.[22]

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18   Child and Family Welfare Association of Australia (CFWAA), *Submission 65*, p. 2.

19   Families Australia, *Submission 77*, p. 13

20   PeakCare Queensland, *Submission 84*, p. 13.

21   See, for example: ALSWA, *Submission 25*, pp 7–9, Child Wise, *Submission 31*, p. 6; Wanslea Family Services, *Submission 60*, p. 3; Berry Street, *Submission 92*, p. 8; AASW, *Submission 18*, p. 3.

22   Patricia Hansen & Frank Ainsworth, *Submission 89, Attachment 2*, 'Viewpoints: Australian child protection services: a game without end,' *International Journal of Social Welfare*, vol. 22, 2013, p. 108.

Family violence, drug and alcohol abuse, mental health

3.24   The National Children's Commissioner, Ms Mitchell, told the committee that:

> …the three main drivers for kids coming into care—and often they appear together—are: domestic violence, substance abuse and mental health issues. What causes what is debatable, but they are the three main ones. That is the troika. Those factors account for 80 to 90 per cent of all cases.[23]

3.25   These three factors were also identified as the key drivers by child protection authorities across jurisdictions. In Queensland, Mr Matthew Lupi, Executive Director from the Queensland Department of Communities, Child Safety and Disability Services told the committee:

> …our evidence and our analysis of parental risk factors and presenting factors of families coming to child protection, domestic and family violence, drug and alcohol use and misuse and mental health issues are certainly very high in the constellation of families. That is not to say they are the only causal factors in parental abuse and neglect, but they are certainly present in many cases.[24]

3.26   In Western Australia, Ms Emma White told the committee:

> [T]he biggest drivers for children coming into care in this state are family and domestic violence, drug and alcohol misuse, and mental health. Family and domestic violence features in 80 per cent of all our open cases in this state. We often talk about neglect as a separate identity and, in some instances, it is long-term absence of medical care, nutrition, educational opportunities et cetera. In fact, neglect is often a feature in families where there is critical family domestic violence or other structural issues of caring.[25]

3.27   A number of non-government service providers also noted the prevalence of family violence, drug and alcohol abuse and mental health issues in out-of-home care cases.[26] Wanslea Family Services, which provides a grandparent support scheme for 1 000 'grandcarers' in Western Australia noted the most common factors grandparents cited for children being placed in care were:

> …substance abuse, mental health issues, imprisonment, domestic violence, unstable accommodation or homelessness and family breakdown…it appears that not only are illicit drugs becoming more prevalent in a number

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23   Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, p. 5.

24   Mr Matthew Lupi, Executive Director, Department of Communities, Child Safety and Disability Services, *Committee Hansard*, Brisbane, 17 April 2015, p. 62.

25   Ms Emma White, Director-General, Department for Child Protection and Family Support, *Committee Hansard*, Perth, 16 February 2015, p. 62.

26   See, for example: Melbourne City Mission, *Submission 76*, p. 7; Salvation Army, *Submission 40*, p. 3; Western Australia Council of Social Service (WACOSS), *Submission 51*, p. 2; Northern Territory Council of Social Service (NTCOSS), *Submission 72*, p. 30.

of regional towns but the types of drugs used tend to be 'harder', for example methamphetamines.[27]

3.28   In particular, a number of submissions noted the causal effect of family violence on homelessness and other issues that contribute to the removal of children and placement in out-of-home care.[28] Ms Susan Heylar from the ACT Council of Social Service told the committee that there are few housing options available for women fleeing family violence:

> [W]omen leaving violence having nowhere to go, living in their car with their children, and Care and Protection Services then taking their children into care because it is not a suitable environment for their children—but not offering them a place to live![29]

3.29   Submitters also identified the 'increased prevalence of parental drug and alcohol abuse and exposure to accepted drug culture'.[30] The Mirabel Foundation, an organisation that supports children and kinship carers affected by parental drug use in Victoria, told the committee that the number of children referred to its programs has grown by at least 20 per cent each year over the past five years.[31] In its submission, the Mirabel Foundation noted that drug use affects families from all socio-economic and cultural backgrounds:

> It does not discriminate. When drug use is present, there is commonly the coexistence of mental health issues that further complicate the situation and the parent's ability to parent their children.[32]

3.30   A 2013 study by researchers from Monash University found parental substance misuse was present in 51 per cent of Victorian child protection cases sampled and concluded children living with parents using illicit drugs are at greater risk of removal compared with drug-free households.[33] The study recommended prompt recognition of substance misuse and associated compliance/engagement issues in order to refer appropriate cases for further assessment and treatment in specialist drug treatment services.[34]

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27   Wanslea Family Services, *Submission 60*, p. 4.

28   See, for example: National Family Violence Prevention Legal Service (NFVPLS), *Submission 29*, p. 7. The impact of family violence on Aboriginal and Torres Strait Islander communities is discussed in detail below.

29   Ms Susan Heylar, Director, ACTCOSS, *Committee Hansard*, Canberra, 16 April 2015, p. 15.

30   Salvation Army, *Submission 40*, p. 3.

31   Mirabel Foundation, *Submission 36*, p. 1.

32   Mirabel Foundation, *Submission 36*, p. 2.

33   Lillian de Bortoli, Jan Coles and Mairead Dolan, 'Parental substance misuse and compliance as factors determining child removal: A sample from the Victorian Children's Court in Australia', *Children and Youth Services Review*, no. 35, 2013, p. 1323.

34   De Bortoli et al, 'Parental substance misuse', p. 1319.

Intergenerational disadvantage

3.31   Evidence to the committee highlighted that these social factors were compounded by the increasing complexity of the needs of both children and families as a result of intergenerational disadvantage, particularly for kinship carers.[35] This supports one finding from the committee's previous inquiry into grandparent carers, which was that the lack of support for increasingly complex families contributes to the number of children entering care.[36]

3.32   The committee heard that intergenerational disadvantage is not adequately addressed in current models of care. Mr Tony Kemp, Deputy Secretary of the Department of Health and Human Services in Tasmania told the committee:

> I think one of the things that has changed is the complexity and the enduring nature of the types of needs these families have, and the types of support that they now need, I think, are simply not there.[37]

3.33   Witnesses suggested the experience of care itself was a significant factor in perpetuating the cycle of social disadvantage. A number of parents with children in care noted they, and sometimes even their parents, had experienced out-of-home care. Ms Teegan Bain, whose child was the third generation of children placed in care, told the committee of the cyclical impact the experience of care:

> I have been in foster care myself, and I had a mother who was a drug addict as well. I guess there is also that generational history repeating itself: people who do not know another way will not go another way.[38]

3.34   The committee notes there is no data currently collected on the intergenerational impact of care, including whether the parents of children in care had experienced out-of-home care.[39]

Aboriginal and Torres Strait Islander children

3.35   It was put to the committee that the reasons for the disproportionate number of Aboriginal and Torres Strait Islander children in care are complex and interrelated. The National Children's Commissioner, Ms Mitchell, told the committee that:

> The issue for Indigenous communities and families is a very complex one…it includes the combination of factors, such as: socioeconomic disadvantage; experiences of substance abuse and domestic violence; and a

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35   See: Australian Association of Social Workers, *Submission 18*, p. 3; Baptcare, *Submission 50*, p. 2.

36   See: Senate Community Affairs References Committee, *Grandparents who take primary responsibility for raising their grandchildren*, October 2014, pp 8–11.

37   Mr Tony Kemp, Deputy Secretary, Department of Health and Human Services, *Committee Hansard*, Brisbane, 17 April 2015, p. 69.

38   Ms Teegan Bain, Committee Member, Family Inclusion Strategies Hunter, *Committee Hansard*, Sydney, 18 February 2015, p. 14.

39   Ms Kirsty Raithel, Acting Unit Head, Child Welfare and Prisoner Health Unit, AIHW, *Committee Hansard*, Canberra, 16 April 2015, p. 46.

history of removal and the trauma that has come with that, impacting generations of people and their capacity to parent safely.[40]

3.36   As discussed above, a large proportion of Aboriginal and Torres Strait Islander children are placed into out-of-home care due to substantiations of neglect. However, the committee heard the definition of 'neglect' can be highly subjective and linked closely the prevalence of social disadvantage in Aboriginal and Torres Strait Islander communities. Ms Natalie Lewis, CEO of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) told the committee that parental 'neglect' in Aboriginal and Torres Strait Islander communities may be due to broader social factors:

> [W]hen unpacking the concept of neglect in Aboriginal families, it is apparent that the key drivers include poverty, poor housing and lack of equitable access to appropriate services. Both poverty and poor housing are arguably outside of the domain of parental influence, so it is unlikely that a family, while being in the child protection system, could effectively redress these risks in the absence of other social investments and strategies to alleviate poverty and improve access to appropriate housing.[41]

3.37   In particular, neglect may result from complex social factors such as family violence. Ms Mary Cowley, CEO of Aboriginal Family Law Services in Western Australia explained:

> Sometimes it is hard to actually say what 'neglect' means, because it is so broad … we would anticipate that there is a large percentage of children in out-of-home care who come out of a family violence situation. And out of the family violence situation arises a whole raft of different things—and neglect is one of them. There are other things that occur with neglect. It could be physical and emotional abuse. That is all part of neglect. When we start to break it down, it can be broken down into a whole raft of different things that we are talking about.[42]

3.38   Witnesses also suggested that the definition of 'neglect' by child protection authorities may not recognise issues affecting Aboriginal and Torres Strait Islander communities, such as crowding of large family groups into limited housing options. Mr Neil Anderson from the Aboriginal Legal Service of Western Australia (ALSWA) told the committee:

> I think what some people might see as harm or neglect others might not necessarily see as neglect. Overcrowding might be a good example of that. The question of harm to the child becomes quite complex. Is there an ongoing issue of harm if the child remains in the home environment? But what is the extent of harm that is being done if we take that child away from

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40   Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, pp 5–6.

41   Ms Natalie Lewis, CEO, QATSICPP, *Committee Hansard*, Brisbane, 17 April 2015, p. 48.

42   Ms Mary Cowley, CEO, Aboriginal Family Law Services, *Committee Hansard*, Perth, 16 February 2015, p. 39.

family of origin? They are getting very limited contact with parents, siblings and extended family and they start to experience that loss of identity crisis. There is question as to what sort of harm is being done over the next 10 or 20 years to that person that results in a lifelong disturbance. You may have the situation where, okay, it is not great at home but, if the child remains at home with their family and there is some added support—more room, more stuff for school and that sort of thing—you might be avoiding a huge amount of harm in the future. So it becomes quite complicated.[43]

3.39   These issues are particularly acute for families in remote communities. Ms Melissa Kean from the NPY Women's Council in central Australia told the committee that people in remote communities:

> …are dealing with systemic issues such as overcrowding, poverty, lack of employment options, low educational attainment, poor health. All of those things are precursors for issues such as domestic violence, neglect and child protection issues. It is very hard to overcome cases of child protection concern without addressing those bigger systemic factors.[44]

3.40   Addressing neglect therefore means addressing a broad range of complex social factors such as poverty and housing that are beyond child protection services alone. Ms Andrea Smith from the Aboriginal Family Law Services WA (AFLSWA) highlighted:

> …if we are talking about poverty as a factor in relation to Aboriginal communities, we are talking about a structural issue that is bigger than a family. It is also bigger than the community services sector. That is an issue that goes back to whole of government. So we have some issues here that need to be addressed not just by, for example, the Department for Child Protection or by services that are funded to provide early intervention—that goes back to the Commonwealth government or the state government—but also through other ways to make sure that people have enough money to support their families. Here we are talking about housing and the quality of that housing, their ability to pay rent, their ability to buy enough food for their families and their ability to maintain employment. Those things are attached to poverty and the link then to their physical conditions. Attached then to the poverty are all those other things—for example, education and health. It is not easy. It is clearly very complex when you are talking about neglect. I guess that is the nature of the definition and the broadness of the definition. That is why it is difficult to pin down and difficult to address.[45]

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43   Mr Neil Anderson, Managing Solicitor, Aboriginal Legal Service of Western Australia, *Committee Hansard*, Perth, 16 February 2015, p. 39.

44   Ms Melissa Kean, Child and Family Wellbeing Service Manager, Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council, *Committee Hansard*, Darwin, 1 April 2015, p. 15.

45   Ms Andrea Smith, Policy and Compliance Coordinator, AFLSWA, *Committee Hansard*, Perth, 16 February 2015, p. 39.

3.41   Witnesses highlighted that addressing these social determinants is beyond the capacity of child protection authorities alone. In Queensland, Mr Matthew Lupi noted that:

> …the tertiary child protection system should not have and cannot have a different threshold of what is safe and appropriate care, regardless of your culture or your gender. So it is a difficult thing for us alone, outside of all of the other levers of human services, housing, poverty and the complex factors that affect Indigenous families, over decades and generations, to address over-representation alone from the tertiary child protection system.[46]

Impact of trauma

3.42   The committee heard the intergenerational trauma linked to past practices of child removal and entrenched social disadvantage significantly affects the numbers of children placed in out-of-home care.[47] The National Family Violence Prevention Legal Service noted that:

> [T]he over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care cannot be separated from past policies of forced removals and intergenerational trauma. This history is not in the past. As removals continue, albeit under contemporary laws, so too does trauma continue, and so too does Aboriginal and Torres Strait Islander children's dislocation from family, community and culture continue.[48]

3.43   The ongoing impact of this trauma was highlighted by Mr Frank Hytten, CEO of the Secretariat of National Aboriginal and Islander Child Care (SNAICC):

> The impact on those communities—not just for the kids moving now, but for the kids that have been removed over the last 100 years—has a compounding effect that continues to have fairly grave consequences for communities as well as for individuals.[49]

3.44   Witnesses suggested 'what child protection systems call risk factors', such as family violence, mental health issues, substance misuse and intergenerational child protection issues are products of trauma caused by the past practices of forced child removal of the Stolen Generations. Mr Frank Spry, CEO of the Northern Territory Stolen Generation Aboriginal Corporation told the committee:

> There is evidence around now that is pointing to trauma as underlying this whole business of what is happening in our communities. Yes, people drink. Is that a symptom of something deeper underneath? People gamble

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46   Mr Matthew Lupi, Executive Director, Child and Family Services, Department of Communities, Child Safety and Disability Services *Committee Hansard*, Brisbane, 17 April 2015, p. 62.

47   See: Healing Foundation, *Submission 7*; SNAICC, *Submission 93*; Grandmothers Against Removal, *Submission 64*.

48   NFVPLS, *Submission 29*, p. 6.

49   Mr Frank Hytten, CEO, Secretariat of National Aboriginal and Islander Child Care, *Committee Hansard*, Melbourne, 20 March 2015, p. 43.

and there is violence. What is it that is driving all of that? People are suiciding. What is driving that? It really is the trauma that people have faced. We know from evidence that, whether it is colonisation, whether it is people having been removed—whatever it is—it is driving people's symptoms, which are destructive to the community and to themselves.[50]

3.45   These witnesses suggested that existing child protection frameworks do not address this underlying trauma for Aboriginal and Torres Strait Islander communities. Ms Lisa Hillan from the Healing Foundation told the committee:

Few child protection systems across this country have a focus on trauma, let alone the level of trauma faced by Aboriginal and Torres Strait Islander communities. As a result, the systems that are utilised to respond are experienced by Aboriginal people as punishing, not supportive.[51]

Family violence

3.46   A number of submissions and witnesses noted family violence was the key driver for the increase in the numbers of Aboriginal and Torres Strait Islander children entering out-of-home care.[52] AFLSWA highlighted that Aboriginal women are 45 times more likely to experience family violence than non-Aboriginal women.[53] In its submission, the Family Violence Prevention Legal Service (FVPLS) Victoria noted in 2013–14 it experienced a 66 per cent increase in its child protection casework for survivors of family violence compared to the previous year.[54] Ms Antoinette Braybrook, CEO of the FVPLS Victoria told the committee:

The causes of Aboriginal and Torres Strait Islander children's overrepresentation in out-of-home care are undoubtedly complex. However, it must be recognised that family violence is one of the biggest drivers. We simply cannot produce out-of-home care rates for Aboriginal and Torres Strait Islander children without addressing family violence.[55]

3.47   As discussed above, the experience of family violence contributes significantly to other problems such as drug and alcohol abuse. FVPLS Victoria highlighted in its submission the strong link between family violence and drug, particularly methamphetamine, abuse:

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50   Mr Frank Spry, CEO, Northern Territory Stolen Generation Aboriginal Corporation, *Committee Hansard*, Darwin, 2 April 2015, p. 27.

51   Ms Lisa Hillan, Programs Director, Healing Foundation, *Committee Hansard*, Canberra, 16 April 2015, p. 34.

52   See: Aboriginal Family Law Services, *Submission 46*, p; NFVPLS, *Submission 29*, p. 7; Ms Musk, North Australia Aboriginal Justice Agency (NAAJA), *Committee Hansard*, Darwin, 2 April 2015, p. 16.

53   AFLSWA, *Submission 46*, p. 4.

54   FVPLS, *Submission 24*, p. 5.

55   Ms Antoinette Braybrook, CEO, Aboriginal Family Violence Prevention and Legal Service Victoria, *Committee Hansard*, Brisbane, 17 April 2015, p. 42.

> …our clients' experiences indicate that family violence is often an underlying factor for ICE use … many women use drugs and alcohol as a way to cope with their experience of family violence. Anecdotal reports also suggest that ICE or other drugs may increase the regularity and severity of family violence. Our lawyers see and hear daily of existing family violence being exacerbated by alcohol and/or drug abuse and of clients self-medicating with alcohol and drugs in an attempt to cope with family violence-related trauma.[56]

3.48   A recent review of 222 Aboriginal and Torres Strait Islander out-of-home care cases by the Victorian Commissioner for Aboriginal Children and Young People (Commission), Mr Andrew Jackomos, found that male perpetrated family violence is the 'primary driver' of about 95 per cent of cases and 'is often coupled by alcohol and other drug misuse by parents'.[57] Ms Janette Kennedy from the Commission told the committee that the Commissioner is currently reviewing each child in out-of-home care in Victoria as part of the Taskforce 1000 project, taking its name from figure of approximately 1 000 Aboriginal children in out-of-home care in Victoria in 2014.[58] Ms Kennedy highlighted the prevalence of family violence in Aboriginal and Torres Strait Islander communities had a significant impact on the attempts to return children to their families.[59]

3.49   Based on the Victorian data, Ms Smith from AFLSWA estimated similar outcomes for Western Australia:

> I guess that for WA we can perhaps surmise something similar—that up to 90 per cent of our kids are in care because of family violence, which is an alarming statistic.[60]

3.50   The committee notes its significant concern that Aboriginal women are viewed by some child protection authorities as 'enablers' of family violence, contributing to decisions to remove children and place in out-of-home care. Ms Sandra Nelson, Executive Officer at the Katherine Women's Information and Legal Service (KWILS) told the committee:

> [I]n a case where the Department of Children and Families is considering the removal of children from a parent or parents, the history of domestic violence is a deciding factor, and that is as it should be. But more often we

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56   FVPLS, *Submission 24*, p. 6.

57   Ms Janette Kennedy, Manager Aboriginal Strategy and Policy, Commission for Children and Young People Victoria, *Committee Hansard*, Melbourne, 20 March 2015, p. 34.

58   Ms Janette Kennedy, *Committee Hansard*, Melbourne, 20 March 2015, p. 34; FVPLS, *Submission 24*, p. 5. Since the commencement of the Taskforce 1000 project, the number of Aboriginal and Torres Strait Islander children in Victoria has risen to 1 308 (as at 30 June 2014 – see Productivity Commission, *Report on Government Services 2015*, Table 15A.18).

59   Ms Janette Kennedy, Aboriginal Strategy and Policy, Commission for Children and Young People Victoria, *Committee Hansard*, Melbourne, 20 March 2015, p. 35.

60   Ms Andrea Smith, Policy and Compliance Coordinator, AFLSWA, *Committee Hansard*, Perth, 16 February 2015, p. 37.

are seeing children being removed from the home of a single parent who has been a victim of domestic violence and more often we are hearing that these victims of domestic violence are considered as enablers of domestic violence because they failed to protect their children from being exposed to acts of domestic violence.[61]

3.51   Ms Kate Lightfoot, a solicitor at KWILS, told the committee of an extreme example where a client was accused of 'enabling' family violence and the subsequent neglect of her child:

> I remember sitting in the courtroom watching her in the witness box, and she was absolutely pummelled. Not only was she pummelled in the information provided, in affidavits provided by the department in the decisions of neglect, that she was enabling a violent household. She was pummelled in the courtroom, and the perpetrator was sitting in the courtroom probably even closer than you are sitting to where I am now. It is a situation where she is victimised for her position. In this case I think it was accepted by all parties that there was an ongoing environment that was not healthy for the children, but it was not healthy for her either. So for the department to have been so intense in their victimisation of her as an enabler was quite shocking.[62]

3.52   Ms Lightfoot emphasised that being labelled an enabler re-traumatises victims of family violence and affects family relationships:

> …when the woman is then further victimised and told that she is doing something wrong, it only creates negatives within the family and for the children…it should not be that a woman is a victim in one courtroom and then an enabler in the next…[63]

Homelessness and housing

3.53   The committee heard that the prevalence of family violence in some Aboriginal and Torres Strait Islander communities contributes to a number of other social factors, particularly homelessness. According to the National Family Violence Prevention Legal Service, Aboriginal and Torres Strait Islander women are 15 times more likely to seek assistance from crisis homelessness services. In 2012-13, one in ten Aboriginal and Torres Strait Islander women used a specialist homelessness service.[64]

3.54   Evidence to the committee suggested that the lack of housing options for Aboriginal and Torres Strait Islander women escaping family violence contributes

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61   Ms Sandra Nelson, Executive Officer, KWILS, *Committee Hansard*, Darwin, 2 April 2015, p. 12.

62   Ms Kate Lightfoot, Outreach Services Solicitor, KWILS, *Committee Hansard*, Darwin, 2 April 2015, p. 14.

63   Ms Kate Lightfoot, Outreach Services Solicitor KWILS, *Committee Hansard*, Darwin, 2 April 2015, p. 14.

64   NFVPLS, *Submission 29*, p. 12.

significantly to homelessness and subsequently the removal of children. The National Family Violence Prevention Legal Service submitted that the:

> [L]ack of safe and adequate housing is a significant barrier for Aboriginal and Torres Strait Islander parents, particularly mothers fleeing family violence, to continue or resume caring for their children after child protection involvement.[65]

3.55   The lack of housing support for Aboriginal and Torres Strait Islander is particularly acute for those women in regional and remote communities. Ms Melissa Kean from the NPY Women's Council, which provides services for remote communities in central Australia, told the committee:

> …a lot of families who when they come to town are homeless or they move between town camps, hostels, visitors' parks, various family members or nowhere, as in parks or sleeping in the back of their car or out the front of NPY Women's Council.[66]

3.56   The issue of homelessness is particularly significant in Western Australia where, due to current housing policy, 'people are being evicted because of domestic violence situations'.[67] The Aboriginal Legal Service (WA) submitted that the Department of Housing's 'three strikes policy' for disruptive behaviour in public tenancies means that women may be evicted due to domestic violence. The committee heard this, coupled with the waiting times for public housing (almost 21 per cent of people wait over five years for placement), results in 'homelessness and/or overcrowding for many Aboriginal families. This, in turn, may become the basis for determining that parents are unable to properly care for their children'.[68]

3.57   Mr Anderson from Aboriginal Legal Service (WA) told the committee, evictions due to domestic violence or other reasons lead to overcrowding and possible intervention by child protection authorities:

> …families start to congregate in properties that are average to small size, so you end up with maybe 10 or 12 children and a number of adults living in a home that is really designed for a family of five or maybe six people. This becomes a problem from the child protection perspective because the department will start to investigate usually in our experience and will say overcrowding is an example of neglect. There are basically not enough places for people to sleep. There might be a perception of unruliness and people coming and going because you have a household full of up to maybe 20-odd people all doing different things and having different needs. There is a general impression of chaos, I suppose, and that is really good at being picked up under the relevant legislation as a form of neglect and therefore a

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65   NFVPLS, *Submission 29*, p. 12.

66   Ms Melissa Kean, Child and Family Wellbeing Service Manager, NPY Women's Council, *Committee Hansard*, Darwin, 16 April 2015, p. 16.

67   Ms Mary Cowley, CEO, AFLSWA, *Committee Hansard*, Perth, 16 February 2015, p. 40.

68   ALSWA, *Submission 25*, p. 7.

child protection concern leading to possible apprehension of children. It is something we see quite often.[69]

Systemic factors

3.58   Evidence suggested there are also a number of systemic factors contributing to the increased number of children in out-of-home care.

Mandatory reporting and awareness of abuse

3.59   As discussed in Chapter 2, all jurisdictions have legislative requirements for mandatory reporting of suspected cases of child abuse and neglect. As Figure 3.2 shows, the number of child protection notifications received by state and territory authorities has been increasing since 2010-11.

3.60   Submitters suggested the increased level of identification and reporting of child abuse and neglect may contribute to the increasing number of children entering care. The Australian Childhood Trauma Group submitted that:

> …the increase [of children in out-of-home care] is due to greater pressures on families and a heightened awareness of abuse. In essence, the community is more alert to vulnerable children and there is a growing acceptance that it is better to report and discuss such things.[70]

Narrow approach and aversion to risk

3.61   A number of submitters and witnesses expressed concern that Australia's child protection systems are too narrowly focussed on legislative requirements to stop child abuse rather than the overall outcomes for children and young people. The National Children's Commissioner, Ms Mitchell, explained that:

> The issue for the child protection system is that we have a piece of legislation that we have to abide by. That means removing children from unsafe situations. But that is not all about a child's wellbeing. In fact that act in itself can cause trauma and distress, depending on the child's circumstances and age. So there is a larger piece of work here to think about: what is the best long-term outcome from this for this child. We should be thinking about that right from the beginning, not delay and delay and delay that holistic thinking about a child's needs.[71]

3.62   Research by Dr Patricia Hansen and Dr Frank Ainsworth suggests Australia's current child protection framework is characterised by a narrow focus on stopping child abuse, including:

> …an over-reliance on mandatory reporting legislation, a forensic investigative prosecutorial model of practice, a risk-averse organisational

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69   Mr Neil Anderson, Managing Solicitor, ALSWA *Committee Hansard*, Perth, 16 February 2015, p. 41.

70   Australian Childhood Trauma Group, *Submission 9*, p. [4].

71   Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, pp 4–5.

culture and zero-tolerance of any imperfections in parenting practices which are defined as child abuse and neglect regardless of their severity.[72]

3.63   Dr Hansen and Dr Ainsworth submitted that these factors are compounded by political imperatives to respond to high-profile cases of abuse, where 'the imperative becomes stopping child abuse and neglect and a zero tolerance approach prevails'.[73]

3.64   Evidence suggests the impact of this 'zero tolerance' approach is an increasingly risk averse approach to child protection decisions that favour removal from potentially unsafe situations. The committee notes similar conclusions have been drawn by recent state based inquiries into child protection. In Queensland, the 2013 Child Protection Commission of Inquiry found evidence of:

> …a widespread risk-averse culture that focuses too heavily on coercive instead of supportive strategies and overreacts to (or overcompensates for) hostile media and community scrutiny.[74]

3.65   A 2008 study by AIFS indicated the prevalence of risk management in child protection systems across Australia and internationally:

> [A]s a consequence of intense scrutiny and the fear of the public fall-out if a 'wrong' decision is made, risk management has become a core component of child protection practice in nations that possess a child protection orientation.[75]

3.66   The Queensland Child Protection Commission of Inquiry concluded the risk averse 'better safe than sorry' culture was the 'root cause' of

> …an overcrowded out-of-home care system struggling to provide safe and stable placements for children with multiple and complex needs who could, with proper support, be cared for safely at home by a still-loved parent.[76]

3.67   Witnesses suggested complete risk aversion was not possible and child protection authorities and service providers need to 'learn to manage risk more sophisticatedly'.[77] Anglicare suggested that in out-of-home care, 'people are working with relativities':

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72   Patricia Hansen & Frank Ainsworth, *Submission 89, Attachment 2*, 'Viewpoints: Australian child protection services: a game without end,' *International Journal of Social Welfare*, vol. 22, 2013, p. 104.

73   Patricia Hansen & Frank Ainsworth, *Submission 89, Attachment 1*, 'Children in out-of-home care: what drives the increase in admissions and how to make a change,' *Children Australia*, vol. 33, no. 4, 2008, pp 15–17.

74   Queensland Government, *Taking Responsibility: A roadmap for Queensland Child Protection*, June 2013, p. xi.

75   Leah Bromfield & Prue Holzer, *A National Approach for Child Protection: Project report*, Australian Institute of Family Studies, National Child Protection Clearinghouse, 2008, p. 14.

76   Queensland Government, *Taking Responsibility*, xiii.

77   Ms Michelle Waterford, Director, Research and Policy, Anglicare Australia, *Committee Hansard*, Canberra, 16 April 2015, p. 14.

[T]here are no absolutes in the out of home care system and as such the absolute avoidance of risk is counter-intuitive to good practice.[78]

3.68   These witnesses further suggested that, as part of this new approach to risk, child protection authorities need to consider a broader range of alternative care options focused on the needs of children and young people. The National Children's Commissioner, Ms Mitchell, told the committee that, in her view:

> …the headlines will happen regardless of what you do ... Yes, you have to take immediate measures to keep a child safe. That does not mean that that has to be a permanent removal. That is about working with the families and saying: 'What is the best option here? What is the possibility for you if you get support and help? We will keep this child safe over here for a while, while we see what you can manage and what supports you might need to get your act. But let us put you on notice: if you cannot after a period of time, it is going to be in this child's interests to be in another arrangement.' I do not see that the two are incompatible, but we know that harm happens to children inside the system as well as outside the system.[79]

Lack of family support programs

3.69   Many submissions noted that the increase in children in out-of-home care was due to a lack of support services for vulnerable families.[80] Ms Glenys Wilkinson, CEO of the Australian Association of Social Workers told the committee:

> …we need to be able to prevent children from coming into care, we need to maintain children within their families and we need to have family support type arrangements to allow the family to do their work, which is to care for children. We need to get family support services and then some more targeted services such as drug and alcohol or family violence services to intervene and prevent. That way, if we are keeping the child safe within their family then it is an economic factor as well. The family can do what they are there to do, which is raise their children, but we can also try and break that generational cycle of children and families struggling.[81]

3.70   The need for increased early intervention programs across jurisdictions is examined in Chapter 5.

Families and children with disability

3.71   As noted in Chapter 2, there are limited national data on the number of children with disability placed in out-of-home care. However, evidence to the

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78   Anglicare, *Submission 87*, p. 4.

79   Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, pp 3–4.

80   See: Alliance for Forgotten Australians, *Submission 34*, p. 3; Women's Legal Service NSW, *Submission 86*, p. 8; Centre for Excellence in Child and Family Welfare, Submission 99, p. 10; Jan Barham MLC, *Submission 98*, pp 2 – 3; Anglicare, Submission 87, p. 11; Berry Street, Submission 92, p. 9; Wesley Mission, *Submission 104*, p. 3.

81   Ms Glenys Wilkinson, CEO, Australian Association of Social Workers, *Committee Hansard*, Canberra, 16 April 2015, p. 51.

committee suggested that children with disability are over-represented in the out-of-home care system, particularly those children of parents with intellectual disability.[82]

3.72   Witnesses and submitters noted that families and children with disability enter the out-of-home care system either through relinquishment or removal by child protection authorities due to the incidence or risk of neglect or abuse. Families with intellectual disability are particularly susceptible to having their children removed and placed into out-of-home care. In NSW, Ms Marissa Sandler from the Intellectual Disability Rights Service (IDRS) told the committee that families with an intellectual disability make up just one to two per cent of all families with children aged 0–17, but account for around nine per cent of child protection cases before the NSW Family Court.[83]

3.73   In both cases, the committee heard existing child protection systems do not provide adequate support for families with disability or families of children with disability to keep their children.[84] These supports are examined in detail in Chapter 9.

Aboriginal and Torres Strait Islander children

3.74   Evidence to the committee suggested that the over-representation of Aboriginal and Torres Strait Islander children in care is due in part to the lack of support services tailored to the specific needs of Aboriginal and Torres Strait Islander communities.[85] In Queensland, Mr Lupi suggested there was no significant policy change that had contributed to the increase in numbers of Aboriginal and Torres Strait Islander children in care, rather a failure of early intervention services to assist families:

> …the attempts to address the over-representation have possibly in the past not been effective because of the inability to address that wide, complex range of issues such as housing, employment, standards of education. So I do not believe there has been a policy shift. I think it is just a fact that our commission found that the early intervention services, the strategies to try to address those issues, had been ineffective and more ineffective because they did not recognise the massive complexity of the issues.[86]

3.75   The available models and supports for Aboriginal and Torres Strait Islander communities, including family support programs, are explored in detail in Chapter 8.

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82   See: National Disability Services, *Submission 54*.

83   Ms Marissa Sandler, Intellectual Disability Rights Service, *Committee Hansard*, Sydney, 18 February 2015, p. 37.

84   See: Intellectual Disability Rights Service, *Submission 21*; Endeavour Foundation, *Submission 43*; National Disability Services, *Submission 54*; ACT Disability, Aged and Carer Advocacy Service (ADACAS), *Submission 71*; People with Disability Australia (PWDA), *Submission 74*; Children with Disability Australia (CDA), *Submission 80*.

85   Mr Neil Anderson, Managing Solicitor, ALSWA, *Committee Hansard*, Perth, 16 February 2015, p. 36.

86   Mr Matthew Lupi, Executive Director, Department of Communities, Child Safety and Disability Services, *Committee Hansard*, Brisbane, 17 April 2015, pp 61–62.

Committee view

3.76   The committee notes the reasons why children enter and remain in care are complex and closely linked to social disadvantage, particularly for Aboriginal and Torres Strait Islander children. The committee acknowledges that Aboriginal and Torres Strait Islander communities face significantly higher levels of social disadvantage than non-Indigenous communities, contributing to the over-representation of Aboriginal and Torres Strait Islander children and young people in out-of-home care. The committee acknowledges that to properly address the increasing numbers of children entering care means addressing a broad range of social issues, particularly family violence, alcohol and drug abuse and mental health.

3.77   The committee notes there are also certain systemic factors that may contribute to children entering and remaining in out-of-home care. In particular, the risk averse approach by child protection authorities and the lack of early intervention and prevention supports mean there are limited options for families at risk of having their children placed into care. The lack of available supports and understanding of the specific needs of Aboriginal and Torres Strait Islander families, and families with disability also contribute to an overrepresentation of these groups in out-of-home care.

3.78   The committee also recognises the role of mandatory reporting of child abuse concerns and heightened community awareness of abuse in contributing to the number of children entering care. The committee recognises that placement in out-of-home may be the best option for many children to protect their safety and wellbeing. The committee therefore acknowledges that reducing the number of children in out-of-home care is not an end in itself, and that it is vitally important to ensure existing systems provide the highest standard of care possible.

3.79   The committee shares the concerns expressed by the United Nations Committee on the Rights of the Child about the lack of data on the reasons children are placed in out-of-home care. While acknowledging the difficulty in collecting this data on a national scale, the committee notes such data is vitally important to identifying and addressing the key reasons children are placed in care. The committee supports the recommendation of the UN Committee to improve the collection of data about the reasons why children are placed in care.