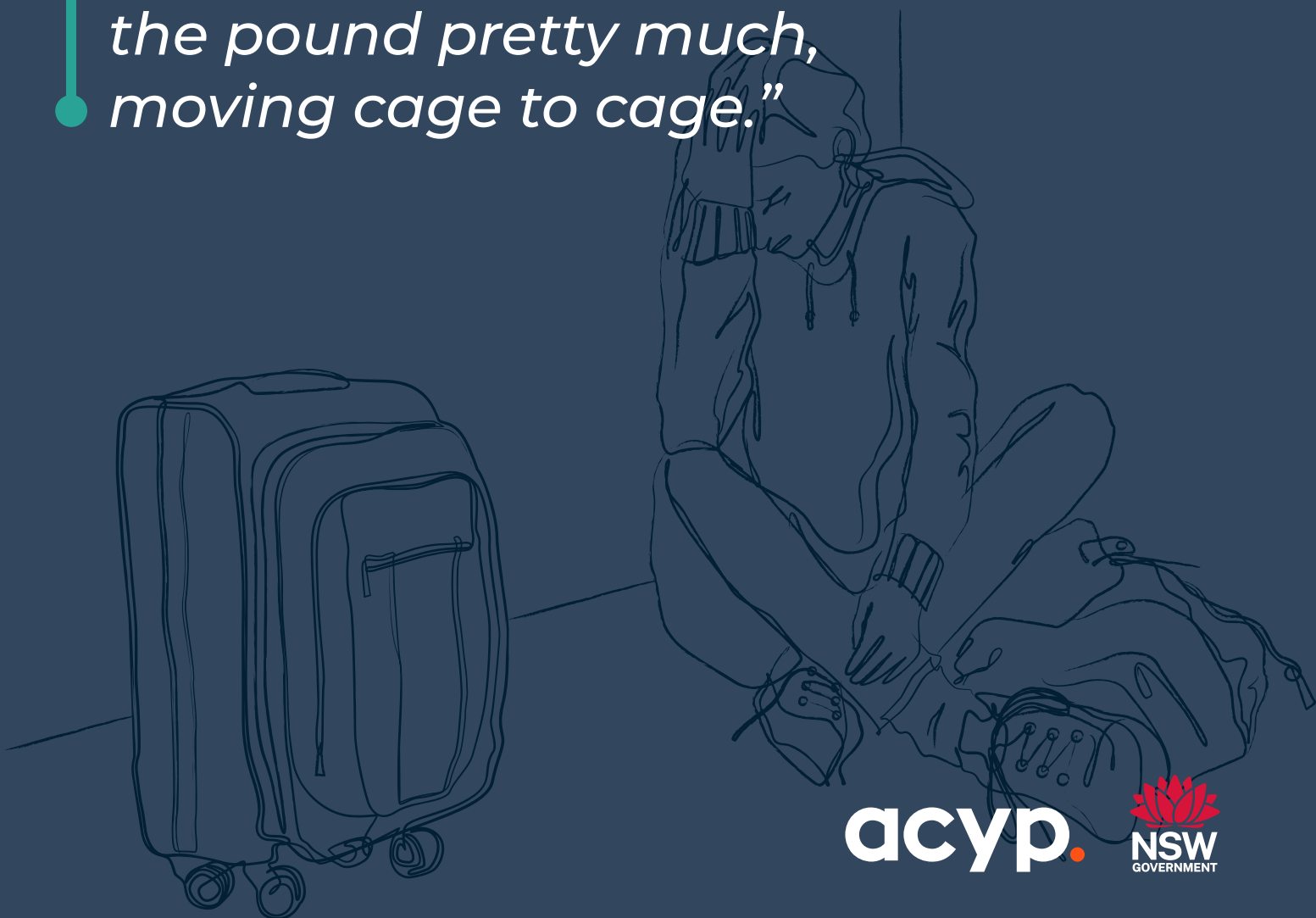


Moving cage to cage:

Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements

*“They just move me
around like a doggy in
the pound pretty much,
moving cage to cage.”*





We acknowledge the Traditional Owners of Country throughout Australia and recognise their continuing connection to lands, waters and cultures.

We pay our respects to their Elders past and present. We would also like to acknowledge the important role of Aboriginal and Torres Strait Islander people and culture within the NSW community.

We also acknowledge the children and young people who participated in private hearings as part of the Special Inquiry for bravely sharing their experiences. ACYP extends its gratitude and thanks to those young people.



Content Warning

This report contains information about the direct experiences of children and young people in alternative care arrangements in NSW. You may find that reading the report, or thinking about matters related to the work of the Special Inquiry, leads to the experience of distress.

If you or someone you know requires support, there is always hope and there is always help available.

For support, contact Lifeline on **13 11 14** (at any time, 24/7) or visit lifeline.org.au and Kids Helpline on **1800 55 1800** (at any time, 24/7).

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About the Advocate for Children and Young People (ACYP)

The Advocate for Children and Young People (ACYP) is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People.

The Office advocates for and promotes the safety, welfare, wellbeing and voice of all children and young people aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged.

Under the *Advocate for Children and Young People Act 2014* (NSW) (Act):

(1) The functions of the Advocate are as follows:

- | | |
|---|---|
| <p>a. To advocate for and promote the safety, welfare and wellbeing of children and young people aged 0-24 years.</p> | <p>e. To conduct, promote and monitor research into issues affecting children and young people.</p> |
| <p>b. To promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity.</p> | <p>f. To promote the provision of information and advice to assist children and young people.</p> |
| <p>c. To conduct special inquiries under Part 5 into issues affecting children and young people.</p> | <p>g. To prepare, in consultation with the Minister, a three-year strategic plan for children and young people in the State.</p> |
| <p>d. To make recommendations to government and non-government agencies on legislation, reports, policies, practices, procedures and services affecting children and young people.</p> | <p>h. Such other functions as are conferred or imposed on the Advocate by or under this or any other Act.</p> |

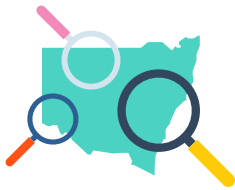
(2) In exercising functions under the Act, the Advocate must do the following:



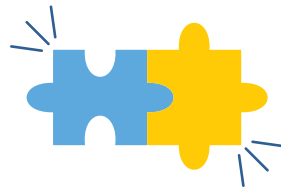
- a.** Focus on systemic issues affecting children and young people.



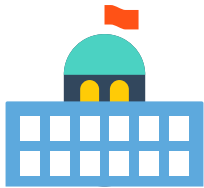
- b.** Give priority to the interests and needs of vulnerable and disadvantaged children and young people.



- c.** Consult with children and young people from a broad range of backgrounds and age groups throughout the State.



- d.** Work co-operatively with other organisations that provide services to or represent the interests of children and young people.



- e.** Work co-operatively with the Council.

Further information about ACYP's work can be found at: www.acyp.nsw.gov.au.

Special Inquiry Acknowledgements



I would like to thank and acknowledge a number of people who have made this work possible. Firstly, none of this would have been possible if the young people weren't willing to participate and share their experiences.

I want to thank the team at Deloitte Sydney led by Allan Mills. Thank you to Veronica Goudie, Olivia Clarke, Emma Berry and Yasmeen Chamraoui for all the work you did to make this Inquiry possible.

Thank you to the fearless advice from our lawyers from Johnson Winter & Slattery – Frances Dreyer, Katelyn Iacono and Emily Klotz. Together with our formidable Counsel Ross Glover and Jon Whealing.

To Deb Merhi and her team from Ability to Achieve, I am grateful for your support and how you cared for the young people during and after their hearings.

When we decided to do this work, it was important that we worked with a young person who had lived experience of care and who could ensure we did this work well. Tyrah Chan-Hampton has worked with our office before and provided empathy and guidance to this work. Tyrah assisted with a number of the hearings and I am forever grateful for her generosity of time and spirit.

I asked Tyrah to reflect on her experience, these are her words:



Firstly, I would like to acknowledge and thank all of the children and young people who bravely shared their lived experiences with us. As a young person and having lived experience in the OOHC sector, I understand the many emotions that come with sharing your life experiences to a group of strangers and just how confronting that can be. I commend your bravery and strength.

Undertaking and being part of this Special Inquiry has been such a privilege. I am honoured to have been a part of championing and uplifting the voices that matter the most – the voices of children and young people. Listening to children and young people in private hearings, I recognise the wisdom and resilience of young people. But most importantly, the answers they have for agitating the system. I am currently a social work student at the University of New South Wales (UNSW) and in my final year of study. I mention this because at UNSW, they emphasise the importance of critical reflective practice. As I reflect on the experiences that children and young people have bravely spoken to us about, I reflect on how we do not have the answers and how we never have. This is because those who currently live in, and those who have experienced an ACA placement, hold the answers on how it should be changed. Children and young people are our future advocates, leaders, and champions.

Regardless of what power and positionality we hold, we must listen and learn from children and young people who have experienced living in the systems that are built. They deserve to be heard.



The caseworkers and carers who provide support and care for children and young people – thank you for the positive impacts you have on the lives of children and young people.

I want to acknowledge the work currently being undertaken by the Department of Communities and Justice (DCJ) that is focused on finding placements that are not alternative care arrangements and the System Review into Out-of-Home Care (OOHC) as announced by The Hon. Kate Washington, Minister for Families and Communities, and Minister for Disability Inclusion on 2 May 2024 currently being undertaken.

The incredible team at ACYP, led by project lead Shannon Longhurst. Everyone in the office contributed to this work. It isn't possible without all people supporting and working alongside each other. To Rhys Morris, Lewis Lowcock and Jess Lee, who worked tirelessly to connect with caseworkers and young people – thank you. To our ACYP creative team, Caitlin Cooper, Tobias Fenn and Jennifer Chen, who have created visual masterpieces that represent the voices of vulnerable children and young people with respect and sensitivity, thank you. To the Director, Una O'Neill, who supported this from the beginning, thank you for always keeping us on track and focused and for taking the leap with me.

To the organisations and services that participated and encouraged children and young people to participate, thank you. Your continued support and investment in children and young people is valued and very important.

I know that it takes a collective of people to make positive changes that benefit these children and young people who are in alternative care arrangements. Together let's continue to serve these children and young people, and ensure they have the good, positive outcomes they deserve. I acknowledge all the positive work across government and the non-government sector. Thank you for lifting the voices of the children and young people in your care and I will continue to work with you to ensure all children and young people are safe and cared for.

Recommendations

There have been a number of reports that have been previously released that make a series of recommendations. For clarity and ease, my report recommends (as I previously have) adopting the recommendations contained in the *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care 2019*, by Megan Davis¹ and the recommendations contained in my previous report, *The Voices of Children and Young People in Out-of-Home Care 2021*².

In addition, I also endorse the recommendations in the Auditor-General's Reports released on 6 June 2024 entitled *Oversight of the child protection system (Oversight Report)*³ and *Safeguarding the rights of Aboriginal children in the child protection system*.⁴ The recommendations in those reports relate broadly to the out-of-home care system, and how we can care for our most vulnerable children and young people.

Further to those recommendations, and specifically in relation to alternative care arrangements (ACAs), I make the following recommendations:

Recommendation 1

Adopt and implement recommendation 4 of the Oversight Report. Without detracting in any way from that recommendation, I also recommend that any strategy to end the use of ACAs for children and young people in out-of-home care include the provision of appropriate support for children and young people who have been in ACAs, including health and wellbeing supports and immediate access to therapeutic support to assist their transition into a stable care placement.

Recommendation 2

Immediately invest in appropriate supports, and services, for the wellbeing of children and young people who are, or who have been in, alternative care arrangements.

This should include measures to:

- facilitate early access to therapeutic support for children who must be removed, even within “therapeutic placements”;
- prioritise therapeutic resources for children and young people with complex needs to prevent placement breakdowns;
- enhance remuneration, training, and support for volunteer foster carers to attract more individuals to the sector.
- supplement volunteer-based foster care with professional care models and therapeutic care models; and
- improve support and training for foster carers to enhance the quality of care provided, including every carer having mental health first aid training and trauma support training.

¹ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care*.

² Advocate for Children and Young People (ACYPP). (2021). *The Voices of Children and Young People in Out-of-Home Care*.

³ The Audit Office of New South Wales. (2024). *Oversight of the child protection system (2024)*.

⁴ The Audit Office of New South Wales. (2024). *Safeguarding the rights of Aboriginal children in the child protection system*.

Recommendation 3

Invest in an independent complaints and oversight mechanism to ensure children and young people in care arrangements can make complaints and be heard in relation to their care experience.

This should include measures to:

- create an independent complaint function focused on addressing the needs and concerns of children and young people in care with the ability and authority to access information, resolve complaints and require action to meet standards of care and statutory responsibilities in a timely manner;
- establish an Independent Oversight Mechanism which reports to Parliament and with the power to sit with and review the wellbeing of children and young people in out-of-home care; and
- ensure the complaints function is genuinely accessible to children and young people, including by investing in an independent socio-legal advocacy service to support and empower CYP with OOHC experience to advocate for their fundamental needs to be met and rights upheld while in and when leaving OOHC, and to make complaints to raise and address unmet needs where necessary.

Recommendation 4

Implement practices and procedures for record keeping and conduct regular reviews of data sharing practices.

This should include:

- long-term agreements and memoranda of understanding between government agencies to ensure the sharing of data across agencies (particularly health, education and DCJ) that relate to any child and young person in care;
- the independent review of case plans and case files (assurance and audit practices) to ensure that the information is accurate, updated regularly and is based on the best interests of the child or young person and their articulated outcomes.
- increasing transparency of data and placement information, including by regularly publishing data on the number of children and young people in care (including demographics) and the type of care placement; and
- enhancing support for children and young people transitioning between placements, including by ensuring comprehensive communication of relevant information to new service providers.

Executive Summary

In September 2023, in accordance with Part 5 of the Act, I established a Special Inquiry into children and young people in ACAs (which includes the use of hotels, motels and other settings for emergency out-of-home care (OOHC) placements) to understand the experiences of those children and young people in their own words. This is the first Special Inquiry undertaken under the Act.

In undertaking the Special Inquiry, it is appropriate that I recognise and acknowledge that the OOHC system has been the subject of several reviews and reports. This Special Inquiry was an opportunity to complement that work in circumstances where I had formed the view that it was vital to hear directly from children and young people who have been in ACAs. Having done so, it is clear to me that now is the time to enact positive, long-lasting change.

It is important at the outset to clearly set out what is not contained in this report. I have not endorsed any particular service or type of care. I have also not provided a detailed cost analysis of ACAs compared to any other type of care. There is existing data on this issue which well covers the field. Whilst there are elements of this report that touch on both those issues, that should not be read or understood as an endorsement of any particular service or support.

What is in the report is evidence that ACAs are not appropriate care placements or arrangements for children and young people. This evidence comes directly from children and young people who have been placed in these arrangements. The evidence in this report is also consistent with a number of the written submissions received.

Having regard to the evidence received during the conduct of this Special Inquiry, I have formed the view that the current system is not functioning appropriately for the children and young people who experience ACA placements. It is my view that the children and young people placed in ACAs are at significant risk of experiencing negative short and long-term impacts, which can lead to further complexities as they grow and develop. In my view, the use of ACA accommodation should not be continued, and there needs to be an immediate focus on transitioning away from these types of arrangements as a matter of priority.

In the words of a young person:

“ *The emergency placements would sort of turn into more long-term ideas of care...* ”

Another matter I want to call out early is language. I use strengths-based language when talking about children and young people. However, we have a system that has labelled children “complex” and “high needs”. Where language of that kind is used throughout this report, it reflects the language of the system, and the data and information that has been provided to me.

Throughout this report, I will regularly return to the concept of “care”. As you read this report, I want you to reflect on the true meaning of care, rather than how it has come to be defined in the care system.

I also want to acknowledge that care can be different in different cultures. As we look at any further reform or redesign of this system, my view is that we should first consider what care means to those who are receiving it and those who may be giving it.

The language of this sector talks about the welfare, wellbeing and safety of children and young people. This language does not necessarily reflect that used by children and young people. For example, in the private hearings I asked children and young people what “safety” meant to them. Some found that question difficult to answer, which was reflective of those young people’s experiences and situations.

However, the words of a young person – provided by a submission from CREATE, the peak body for children in out-of-home care – can help us understand safety and security:

“*Feeling secure felt like a ‘normal home’. I could feel the love from my carers and see and feel the care they had for me. Knowing that they were on my team, ready to advocate for me and would help me overcome obstacles that would come up on my life journey. Knowing that I was not going to be ‘shipped off’ to the next home because they were done or sick of me.*”⁵

That feeling of support and advocacy was common amongst several young people. When asked, some young people described an experience of not having people in their lives who were “in their corner” or “had their back”. No child or young person should ever feel like that.

A child or young person has come into care because a decision has been made for them. That decision says that they need to be somewhere safe, stable, and secure for their welfare and wellbeing. It also says that this somewhere is not with their biological family.

If that decision has been made by the courts and those agencies and departments that support these children, young people and their families, then the care they receive must meet the global and local standards. The care given to those children and young people must meet all applicable standards (both globally and locally) and must be like a ‘normal home’. Fundamentally – the context in which that care is delivered should be a place of care, love and safety.

The community that supports children and young people, and I include myself in that community, should constantly focus on the delivery of a high standard of care and nurture. In my view, we must always place the needs and outcomes of children and young people first. No child or young person should be unsafe or without care and compassion in their daily lives, and they should be included in decisions that impact them. They should have a connection to family and culture and community (however they define that) and they should have access to all basic human needs, including shelter, food and good health. They should be safe and have stability.

Start with them. Invest in them and fund the things that they need. Ensure they have access to family and, where possible, can remain with family. Meet their needs and promote their hopes. If we design a system that is focused on achieving outcomes that benefit the children and young people in care, it can only be better.

As announcements continue to be made about reviews into the care system, it already feels like the young people who participated in the private hearings of this Special Inquiry have been heard and there is now an appetite and impetus for lasting change. To effect that change, several systems will need to also change in order to deliver better outcomes for children and young people.

⁵ CREATE Foundation. (2023, November). Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.

I address some of those systems that will require change – including data and case management – in the body of this report. In doing so, however, it should be remembered that children and young people do not necessarily think in terms of government systems and agencies, so this section of the report is informed mostly by written submissions and the workshops we held.

It is uncontroversial that children and young people who have been placed in care deserve consistent, compassionate support, access to all services that will support their needs. That should not be a complex thing to deliver. In the words of a young person who gave evidence to this Special Inquiry, it involves a few fundamental concepts which all should be able to agree on:

“ *[being in] a home that is well looked after and a home where you can have enough sleep and where you can enjoy yourself and do activities, like play board games and stuff like that. A home that keeps you safe [is important for feeling healthy and well.]*⁶ ”

As you read this report you will realise that children and young people do not ask for much, in circumstances where they could legitimately ask much more of the system that is designed to care for them. But they do seek safety, stability, and love.

⁶ CREATE Foundation. (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs

Background Context

Background to OOHC and the use of ACAs in NSW

ACAs are one of a number of emergency care arrangements currently utilised in NSW, often referred to as high-cost emergency arrangements (HCEAs).⁷ ACAs involve arrangements where the child or young person is cared for in temporary accommodation, such as hotels, motels, caravan parks, serviced apartments or short-term rental accommodation. Whilst in ACAs children and young people are generally supervised by sub-contracted workers from non-accredited agencies or labour hire companies. They are fee-for-service arrangements and are ostensibly set up as “last resort” and “short-term” measures where no other appropriate placements with an authorised carer or intensive therapeutic support are available. Outside of ACAs, other HCEAs in NSW are provided by accredited care providers, in a mixture of both not-for-profit and for-profit arrangements. An outline of the different HCEA models, including ACA, IPA, ICM and STEP is set out in Appendix 2.⁸

As of 30 June 2023, there were approximately 500 children and young people in HCEAs across NSW.⁹ Of those, there were 118 children and young people in ACAs, including 26 children and young people in hotels and motels, 37 in serviced apartments and 55 in short-term rentals including caravan parks.¹⁰ Whilst there have consistently been over 100 children and young people in ACAs on an average day over the past five years, the number of unique children and young people who have spent any time in an ACA in the last 12 months is likely higher.¹¹ During the first six months of 2023, an average of 121 children and young people per month were in ACAs.¹²

Since the Special Inquiry commenced in September 2023 I am informed, by the Department of Communities and Justice, that there has been a reduction in children and young people in ACAs since June 2023. The data published as at 31 March 2024 shows there were 433 children and young people in HCEAs, of those there were 76 children and young people in ACAs.

It is reported that in the 2022-23 financial year, ACAs cost NSW taxpayers approximately \$100 million¹³, with DCJ data indicating that the average cost of an ACA is \$965,000 per annum.¹⁴

Whilst ACAs are intended to be utilised as a short-term emergency care placement for children and young people, recent data highlights that most are staying in ACAs for extended periods of time. For instance, over the course of the Special Inquiry, data provided by DCJ has indicated that the majority of children and young people placed in ACAs are there for more than three months and, in the most extreme cases, there have been instances where children and young people have been placed in ACAs for more than 600 days.¹⁵

7 NSW Department of Communities and Justice (DCJ). (2024, February). *Out of Home Care and Permanency Support Program: emergency and temporary care arrangements*. Summary table included at Appendix 2.

8 A definition of these different types of arrangements can be found at: *OOHC Terminology - Emergency and Temporary Arrangements*. (NSW Department of Communities and Justice DCJ) and summary table included at Appendix 2.

9 NSW Parliament. (2023, December). *Budget Estimates Answers to Question on Notice* Question 4 from The Hon. Natasha McLaren-Jones “471 children in the high-cost emergency arrangements as at 31 August.”

10 Data provided to ACYP by NSW Department of Communities and Justice (DCJ).

11 Data provided to ACYP by NSW Department of Communities and Justice (DCJ): 30 June 2019 – 160 CYP; 30 June 2020 – 106 CYP; 30 June 2021 – 101 CYP; 30 June 2022 – 119 CYP; 30 June 2023 – 118 CYP.

12 NSW Parliament. (2023, October). *Legislative Assembly: Question and Answer No.22. Question 1230 from Gareth Ward, “Between 1 January 2023 and 30 June 2023, 355 children and young people have been in Alternative Care Arrangements (ACA).”*

13 Coote, G & Shams, H. (2023, September 24). *NSW inquiry to hear from children forced into motels, hotels due to shortage of foster carers*. ABC News.

14 Data provided to ACYP by NSW Department of Communities and Justice (DCJ). Average cost per year per child in an ACA (based on January – June 2023 data).

15 Analysis of NSW Department of Communities and Justice (DCJ) data provided to ACYP.

Children and young people placed in ACAs range in ages from 1-18 years and have varying levels of needs, with children and young people with child assessment tool (CAT) scores of low, medium and high currently represented in the cohort.¹⁶ Of those children and young people in ACAs, Aboriginal and/or Torres Strait Islander children and young people are vastly over-represented, accounting for more than 50% of those currently in ACAs.¹⁷ In addition, close to 50% of children and young people in ACAs have a disability.¹⁸

According to DCJ, “a large proportion of children and young people in an ACA have a child assessment tool score of low or medium (61% of children and young people in ACAs as at 31 August 2023). A low or medium child assessment tool score suggest these children and young people are suitable for foster care and lack of suitable carers is likely the barrier to exiting high-cost emergency arrangements.”¹⁹

This information raises the question of how children and young people with low scores were placed in an ACA in the first place, and what placement breakdown (if any) occurred. If the assertion is that these children and young people could be placed in care if only there were carers, we need to understand the data around how they ended up in this placement in the first place (ie. on removal, due to a placement breakdown or for other reasons). Data in this instance includes their health and medical records, what supports are needed and required, if they have a NDIS plan and any other information that is useful to understand the best placement that child, or young person needs.

■ Rationale for Special Inquiry

Previous consultations with children and young people in OOHHC

Part of the impetus for the Special Inquiry was the consultations with children and young people that informed ACYP’s *Voices of Children and Young People in Out-of-Home Care report* (published in August 2022).²⁰ Throughout those consultations, several children and young people described their experiences of living in hotels for extended periods of time.

They recounted feeling unsafe as they had to move to many different hotels, keep packing and unpacking:

“ I was sent back to hotels until they could find me another placement. Hotels specifically are something I have a gripe with, with regards to safety, because you’re getting up and you’re moving every two weeks. You’re never in the same place, so it’s never stable... I was in hotels for six months. ”

Another young person who had lived in hotels for almost two years reported:

“ So we would pack and we would stay at one hotel and then we would have to pack up and then end up going to the exact same hotel and the exact same room. ”

Others said that some of the hotels were an hour’s drive away from their school. Feeling unsafe in placements was also frequently raised by children and young people, with several reporting to have been mistreated and abused in ACA placements:

“ I was sexually assaulted in a hotel that I was staying in, not by a worker but just by a person, another person. I was 12. ”

Centring and amplifying the voices of children and young people

As observed above, there have been numerous reviews of the OOHHC system in NSW.²¹ However, the direct voices of children and young people have often been absent. As Advocate, my role is to raise the voices of children and young people to government, business, and the community.

16 Analysis of NSW Department of Communities and Justice (DCJ) data provided to ACYP.

17 *Ibid.*

18 *Ibid.*

19 Department of Communities and Justice (DCJ). (2023, November). Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.

20 Advocate for Children and Young People (ACYP). (2021). *The Voices of Children and Young People in Out-of-Home Care*.

21 See for example: *The Wood Report 2008; The Tune Review 2016; General Purpose Standing Committee No. 2 Inquiry into the role of the Department of Family and Community Services in relation to child protection; Family Is Culture Report 2019; Committee on Children and Young People – Inquiry into the child protection and social services system 2020*.

As a result, a core focus of the Special Inquiry was to understand the lived experience of children and young people in their own words and to ensure that those voices are placed squarely at the centre of future work undertaken to reform the OOHC system in NSW.

Ongoing reports about systemic issues

Since ACYP's OOHC Report was published in 2022, there have been public reports, as well as judgments of courts, which have highlighted ongoing systemic issues in relation to these placements that warranted further investigation. This includes concerns related to the safety, welfare and wellbeing of children and young people in these ACA placements. For instance, there have been recurrent public media reports about authorities receiving multiple "risk of significant harm" reports about children and young people in ACAs, including suggestions that in one month alone there were 16 reports related to sexual abuse and 13 reports to physical abuse.²²

A submission by Southern Youth and Family Services highlighted deeper structural problems which led to these conditions:

*“The current commentary of ACAs is very limited, and it fails to recognise a significant set of other problems that have added to this problem. Instead, it chooses to blame agencies or overreact by suggesting OOHC all comes back to the Department to operate.”*²³

This, and other submissions, called on the Special Inquiry to consider the history of the OOHC space, as well as other factors influencing providers, such as insurance costs, the housing crisis and cost of living pressures.

In late 2022, an interim judgment in the NSW Children's Court concerning siblings in OOHC who had spent time in ACAs, raised concerns about NSW's OOHC systems, policy and procedures. Following this interim judgement, DCJ commissioned an independent review ("the Mitchell Review") of the care of those two children, undertaken by Megan Mitchell, former National Children's Commissioner and NSW Commissioner for Children and Young People.²⁴ The *Summary report – Independent Review of two children in OOHC* noted that:

*“While it is widely acknowledged that these care arrangements [ACAs] do not provide children and young people with the stability and permanency they require, placement of children in these arrangements has steadily risen over time.”*²⁵

There have also been more recent judgments published which have highlighted ongoing systemic issues in regard to the standard of care being provided to children and young people within NSW in ACA placements. This includes a judgment delivered in April 2024 by NSW Children's Court Magistrate Ford who found that a six-year-old child called Ray* had a "particularly distressing experience in care", including a period where he was placed with a third-party agency, which in turn placed him into emergency care arrangements – a serviced apartment where he lived for five months with a roster of rotating workers.²⁶ Magistrate Ford's judgment went on to note that the six-year-old "has had in excess of 100 adults acting as a caregiver to him".²⁷

22 Coote, G & Shams, H. (2023, September 24). *NSW inquiry to hear from children forced into motels, hotels due to shortage of foster carers*. ABC News. See also, Dole, N. (2024, May 2). *Report reveals 'harrowing' conditions facing vulnerable NSW children in emergency accommodation*. ABC News.

23 Southern Youth and Family Services. (2023, October). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

24 NSW Department of Communities and Justice (DCJ). (2023, June). *Summary report - Independent Review of two children in OOHC*.

25 *Ibid.*

26 NSW Department of Communities and Justice (DCJ) and the Yarran Taylor Children. (2024). *NSWChC 3, [19] – [21] and [28] [3]*.

27 Department of Communities and Justice (DCJ) and the Yarran Taylor Children. (2024). *NSWChC 3 at [20]*.

Sadly, this experience is all too similar to many others that I have heard throughout the process of conducting this Special Inquiry.

Similar issues in other jurisdictions

The use of hotels, motels and other similar settings as OOHC placements is not unique to New South Wales, with hotels being used as emergency placements across Australia and internationally. For instance, in 2019 the Commission for Children and Young People (CCYP) Victoria undertook a systemic inquiry into the lived experience of children and young people in the OOHC system.²⁸ As part of this investigation, the CCYP highlighted concerns about the use of hotels, motels, caravan parks, serviced apartments and other similar settings for care (which they term 'contingency arrangements'). The CCYP's final report found that the placement of children and young people in these settings was often the result of a lack of appropriate placement options and reactive decisions due to system pressures.²⁹ In addition, the CCYP highlighted the high cost of these placement types and that it would be more appropriate to direct these funds towards therapeutic models of care for children and young people.³⁰

In the United Kingdom, recent media reports have highlighted that young people aged 16 to 17 are entering OOHC in higher numbers, often with complex needs, and are increasingly being placed in hotels and motels.³¹

In the United States of America, the practice of 'hoteling' children in Oregon was the subject of a legal settlement in 2018, after an organisation representing young people brought a class-action lawsuit against the responsible government department.³² Whilst the department committed to curtail the practice, there have been reports of the ongoing 'hoteling' of children and young people at a high social and financial cost.³³

Similarly, in the Canadian province of Manitoba, foster children and young people have regularly been placed in hotel settings over the years, prompting Manitoba's children's advocate to release several reports raising significant concerns about the practice.³⁴

In New Zealand, there are also regular media reports about the placement of children and young people in hotels and motels.³⁵ Across all of these diverse jurisdictions there have been clear concerns raised about the impact of these types of placements on the safety, welfare and wellbeing of children and young people – and the low level and standard of care they provide. This further highlighted the need for an investigation of this issue in the context of NSW.

28 Commission for Children and Young People Victoria. (2019). [*In our own words – Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system.*](#)

29 Commission for Children and Young People, Victoria. (2019). CREATE Foundation – Submission to the systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care.

30 *Ibid.*

31 Fazackerley, A. (2024, April 28). [*Vulnerable teenagers 'dumped and abandoned' in hotels by councils in England.*](#) The Guardian.

32 Aboriginal Legal Service NSW/ACT (ALC NSW/ACT). (2023, December). Submission to the ACYP's Special Inquiry into Children and Young People in ACAs. [*More information on the background of the Oregon case and detail on the settlement.*](#)

33 *Ibid.*

34 CBC News. (2015, April 1). [*Children in care to be taken out of Winnipeg hotels after serious attack on girl.*](#)

35 Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December 12). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Methodology

Process of the Special Inquiry

In accordance with Part 5 of the Act, I, as the Advocate for Children and Young People (ACYP), made a request to establish a Special Inquiry on 19 September 2023. That request was approved by the NSW Minister for Youth, The Hon Rose Jackson, MLC.

The Terms of Reference³⁶ of the Special Inquiry were published on 12 October 2023. A public call for submissions to the Inquiry from all interested parties was made on that same day.

The full Terms of Reference can be found at *Appendix 1*. They cover a range of topics such as:

- the pathways, trajectories, factors and decision-making processes that lead children and young people to be placed in an ACA;
- the treatment of children and young people whilst in an ACA – including the suitability of the placement, the standard of care provided, access to services and supports, and appropriateness of the location;
- the short, medium and long-term impacts of ACAs on the safety, welfare and wellbeing of children and young people;
- the cost effectiveness of ACAs; and
- alternative approaches and solutions.

To guide the approach taken to the work of the Special Inquiry, practice guidelines were published on 28 November 2023. These guidelines included:

- **General Practice Guideline³⁷**: This guideline sets out general guidance about how the Special Inquiry works; and

- **Practice Guideline 2 - Conduct of private hearings with children and young people³⁸**: This guideline sets out general guidance for the conduct of private hearings with children and young people.

Consistent with the observations made above, a key focus of the Special Inquiry has been to speak directly with children and young people in ACAs to hear about their experiences and explore what changes can be made to better support them and others in the future. Over the course of the Special Inquiry, I conducted private hearings with 21 children and young people. The issues emerging from the private hearings held prior to 31 March 2024 were the focus of the interim report of the Special Inquiry, which was published on 2 May 2024.

Throughout the course of the Special Inquiry, I also received 21 submissions from interested parties, including submissions from DCJ, Non-government Organisations (NGOs), individuals and young people. In addition, the Special Inquiry team undertook desktop research and hosted two workshops: one with researchers and academic stakeholders on 26 February 2024, and another with caseworkers on 4 March 2024. The focus of these workshops was to gather views and insights on the issues raised by the Terms of Reference, and to explore the key issues emerging from the evidence and responses to them (including opportunities for reform).

On 8 March 2024, I held an online public hearing to provide an update on the progress of the Special Inquiry.

³⁶ Advocate for Children and Young People (ACYP). (2023). *Special Inquiry – Terms of Reference*. See *Appendix 1*.

³⁷ Advocate for Children and Young People (ACYP). (2023). *Special Inquiry – General Practice Guideline*. See *Appendix 3*.

³⁸ Advocate for Children and Young People (ACYP). (2023). *Special Inquiry – General Practice Guideline 2: Conduct of private hearings with children and young people*. See *Appendix 4*.

Private hearings with children and young people

The conduct of the Special Inquiry has been informed by a trauma-informed approach and an awareness of the sensitivity of the topics being explored. This approach included a particular focus on the wellbeing of children and young people who might choose to participate in private hearings.

Process for conducting private hearings with children and young people

The process for the Special Inquiry team to speak with children and young people about their experiences included:

- **Initial contact with providers and other stakeholders**

The ACYP Special Inquiry team reached out to DCJ, NGO and ACA providers and caseworkers to discuss arranging for children and young people to participate in private hearings. In addition, there was also extensive reach-out and communications to other stakeholders to promote the Special Inquiry to children and young people in their networks. The Special Inquiry team also sought to have discussions with caseworkers with a view to identifying children and young people who may wish to participate in an initial meeting to find out more about the purpose and process of the Special Inquiry.

- **Pre-hearing meeting between the child or young person and social worker**

Where the child or young person was aged under 18 years, a pre-hearing meeting was arranged between them and an independent social worker supporting the ACYP team. During that meeting, the social worker sought to:

- explain the purpose of the Special Inquiry and private hearings;
- assess the young person's willingness and ability to be involved;

- seek their informed consent; and
- discuss any special adjustments to ensure that children and young people are supported to share their experiences in a way that best suits them.

- **Private hearing conducted by ACYP Inquiry Team**

After the initial assessment had been conducted, and if informed consent from the young person had been obtained, the Special Inquiry team sought to arrange a private hearing with the child or young person of approximately one hour.

I presided over all private hearings, which also involved another member of the Special Inquiry Team. The private hearings were conducted in an informal manner and were held in a location that was suitable, having regard to the nature of the Special Inquiry's work. All children and young people who agreed to participate in a private hearing were able to choose to have a support person attend with them. An independent social worker was also available at each private hearing to provide support to the child or young person if needed.

- **Follow-up by social worker to check in on the child or young person post-hearing**

At the conclusion of each private hearing, the child or young person was provided with information about relevant supports available to them. A social worker also followed-up with the child or young person after the conclusion of the private hearing in order to provide them with a referral to appropriate support if needed.

The approach to questioning children and young people during private hearings

The Special Inquiry team took great care to ensure the raw perspective of the children and young people who gave evidence in private hearings was captured.

In particular, the evidence of children and young people was gathered by permitting them to relay their experiences in their own words. As part of that approach, open questions were used to the maximum extent possible.

The questions asked during private hearings focused on the issues raised by the Terms of Reference, in particular, the process that led the child or young person to enter an ACA, their treatment and experience whilst in an ACA placement, and any impact that their placement in an ACA had on their safety, welfare and wellbeing. Questions asked during the private hearings were formulated around the *NSW Child Safe Standards for Permanent Care*³⁹ and related to:

- Safety;
- Quality of care;
- Children and young people's involvement in decision-making;
- Health and wellbeing;
- Education;
- Identity, family and people who are important in their lives;
- Support from caseworkers, workers and other services; and
- Complaints processes.

Demographics

The demographics for the 21 children and young people that participated in private hearings as part of the Special Inquiry are as follows:



Aged 10 to 23 years.

11 females, 9 males,
1 young person who
identifies as gender-diverse.



15 live in regional NSW and
6 live in metropolitan Sydney.

12 identify as having a disability.



12 identify as Aboriginal or
Torres Strait Islander.

2 are a parent.



2 identify as LGBTQIA+.

3 have experienced
homelessness.



2 speak a language other
than English at home.

³⁹ Office of the Children's Guardian (OCG). (2015). *NSW Child Safe Standards for Permanent Care*.

Six children and young people who had indicated a willingness to participate in a private hearing, and who had met with the independent social worker supporting the Special Inquiry, did not ultimately participate in a private hearing due to a range of factors including:

- concerns about the mental health and wellbeing of the child or young person on the day;
- the child or young person not being present at ACA accommodation when the Special Inquiry team arrived; and
- one young person didn't want to participate in a private hearing unless it would lead to a change in her current placement arrangement/circumstances.

A range of other challenges were also experienced in the private hearings, such as:

- one young person wanted to participate but on the day of the hearing was not able to do so due to personal matters; and
- one young person did not get the opportunity to select the support person in the room and they did not have the chance to speak freely.

The Special Inquiry team attempted to make contact with 65 children and young people. In accordance with the process set out above, all initial contact was made through a caseworker and an organisation, with the ultimate decision as to whether to voluntarily participate in a private hearing left to the child or young person. Whilst I hoped to hear from more children and young people about their experiences in ACAs, the 21 individuals who participated in the private hearings gave largely consistent evidence. Further, the issues that were identified from that evidence were common to most of the individuals who participated in the private hearings, and were not isolated to one or two.

Challenges in engaging children and young people to participate

DCJ provided the Special Inquiry with information and data in relation to children and young people who were currently in ACAs. However, that data was not available for every placement, and in some cases, it was not accurate or current. For example, some of the data received included incorrect information concerning where the relevant child or young person was living and other inaccuracies.

The experience of the Special Inquiry team in obtaining accurate and up-to-date information about the children and young people in ACAs demonstrates that there is a clear opportunity to improve data collection and information-sharing between DCJ, NGOs and ACA providers. I recommend that this becomes an urgent priority for DCJ.

Despite those difficulties, I engaged in extensive stakeholder communication with DCJ, Permanency Support Program (PSP) providers and ACA providers/agencies, including meeting with Directors and Executives from across these agencies, and undertaking outreach to key NGO and sector organisations in conducting this Special Inquiry.

Analysis

All private hearings conducted with children and young people were recorded and transcribed, and analysed thematically for the purpose of this report.

All of the transcripts were reviewed by independent advisors to the Special Inquiry, to ensure that the hearings proceeded in an appropriate manner, and according to the methodology and Special Inquiry process.

Obligations and responsibilities to children and young people in OOHC

Various legal frameworks and instruments at the international, Commonwealth and state levels have been developed that outline the rights of children and young people, and the ethical and legal obligations and responsibilities governments hold, to provide a high standard of care to all children and young people in the OOHC system.

It is critically important that the work of the Special Inquiry and any ongoing work in this space is centred around these collective obligations and responsibilities, to provide an appropriate high standard of care for children and young people in OOHC. It is through the relevant legal frameworks and standards that the evidence I have received through the Special Inquiry has been assessed.

United Nations Convention on the Rights of the Child

Four of the key principles that encompass the *United Nations Convention on the Rights of the Child (UNCRC)*⁴⁰, that Australia has a duty to uphold for all children and young people in Australia, are:

- every decision or policy that affects children or young people must prioritise their best interests, always (Article 3);
- all children and young people are to be treated equally (Article 2);
- all children and young people have the right to life, survival and to reach their fullest potential (Article 6); and
- all children and young people have the right to be heard and participate in decisions that affect them (Article 12).

Article 9

Children should not be separated from their parents unless it is for their own good. For example, if a parent is mistreating or neglecting their child. Children whose parents have separated have the right to stay in contact with both parents, unless this might harm the child.

Article 13

Children have the right to get and to share information, as long as the information is not damaging to them or to others.

Article 19

Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents or anyone else who looks after them.

Article 20

Children who cannot be looked after by their own family must be looked after properly by people who respect their religion, culture and language.

Given the over-representation of Aboriginal children and young people in ACAs, as well as children and young people with a disability, other international conventions such as the *United Nations Rights of Persons with Disabilities (UNCRPD)*⁴¹ and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* are also of relevance.⁴²

40 United Nations General Assembly. (1989, November 20).

Convention on the Rights of the Child.

41 United Nations General Assembly. (2006, December 12).

United Nations Convention on the Rights of Persons with Disabilities.

42 United Nations General Assembly. (2007, September 13).

United Nations Declaration on the Rights of Indigenous Peoples.

Of note in the UNDRIP are the following articles:

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Global standards for care arrangements

The global standards for OOHC are set out in the *United Nations Guidelines for the Alternative Care of Children*⁴³, a seminal paper on which most universal OOHC practices are developed. The guidelines emphasise a comprehensive approach to providing suitable forms of OOHC for children, with a primary focus on promoting the child's full and harmonious development.

The guidelines suggest decisions should be made on a case-by-case basis, prioritising the child's safety, security, and best interests, while respecting the child's right to be consulted.

The guidelines stress the importance of maintaining geographical proximity to family, ensuring a safe and stable environment, and protecting children from abuse. Removal is seen as a last resort, subject to constant review. Rights and responsibilities, including education, health, and identity, must be maintained, and siblings should only be separated in cases of clear risk or conflict. There is also a strong emphasis on the importance of a culturally sensitive approach, which takes into account structural discrimination.

Countries and states are also urged to develop and measure quality standards and address the root causes of child separation. The importance of adopting prevention policies, such as social support before administrative care, is highlighted. The guidelines emphasise that decision-making processes should adhere to legal safeguards, with sustainable, long-term care prioritised over temporary solutions.

Overall, the guidelines underscore a child-centric, culturally sensitive, and rights-based approach to OOHC, emphasising the importance of family preservation and well-defined standards.

Australian Guidelines

The Australian National Standards for OOHC were established as part of the former Council of Australian Governments (COAG) *National Framework for Protecting Australia's Children 2009-2020*.⁴⁴

They aim to ensure a consistent and high-quality care framework for children and young people in OOHC across the country.

⁴³ United Nations General Assembly. (2009, December 18). [United Nations Guidelines for the Alternative Care of Children](#).

⁴⁴ [An outline of National Standards for out-of-home care \(2011\)](#) | Department of Social Services, Australian Government (dss.gov.au); [National framework for protecting Australia's children indicators, National Standards indicators](#) | Australian Institute of Health and Welfare (aihw.gov.au); [National Standards for Out-of-Home Care \(2022\)](#) (aihw.gov.au).

The standards cover key areas, including (in summary terms):

- need for stability;
- parental and child participation in decisions;
- specific Aboriginal and Torres Strait Islander community involvement and approaches;
- need for individualised care plans;
- ability to effectively meet health needs;
- access to equal education, recreational activities access and support for employment;
- maintenance and fostering of family connections;
- access to fulfilling identity development;
- access to supportive relationships, stringent carer training and standards; and
- a clear process for the long-term transition from out of home care, with a process around development of a transition from care plan commencing at 15 years old.

In more recent years, the new *Safe and Supported: The National Framework for Protecting Australia's Children 2021-2023* has emphasised that the protection of children is not simply a matter for the statutory child protection systems. I agree with the sentiment that “*Protecting children is everyone's business*”.

In addition to the National Framework, the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) recognises the importance of connections to family, community, culture and Country in child and family welfare legislation, policy and practice. It asserts that Aboriginal and Torres Strait Islander communities are central to supporting and maintaining those connections.⁴⁵

■ NSW Standards and Legislation

Children and Young Persons (Care and Protection) Act 1998

In NSW, the legislation that outlines the operation of the OOHC system is the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*⁴⁶ (*Care and Protection Act*).

Within the *Care and Protection Act*, the following objectives and core principles are outlined:

- That children and young persons receive such care and protection as is necessary for their safety, welfare and wellbeing, having regard to the capacity of their parents or other persons responsible for them;
- Recognition that the primary means of providing for the safety, welfare and wellbeing of children and young persons is by providing them with long-term, safe, nurturing, stable and secure environments through permanent placement in accordance with the permanent placement principles;
- That all institutions, services and facilities responsible for the care and protection of children and young persons provide an environment for them that is free of violence and exploitation and provide services that foster their health, developmental needs, spirituality, self-respect and dignity; and
- That appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment.

NSW Child Safe Standards for Permanent Care

The *NSW Child Safe Standards for Permanent Care* establish the minimum requirements for the accreditation of OOHC service providers in NSW and are based on the statutory responsibilities of OOHC service providers.⁴⁷

45 SNAICC. (2019). *The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation*. See also: ____.

46 NSW Government. (Updated 2024). *Children and Young Persons (Care and Protection) Act 1998 No 157* | NSW Legislation.

47 Office of the Children's Guardian (OCG) | [Home page](#).

48 Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December 12).

The standards outline 12 principles fundamental to children and young people's care and wellbeing:

1. The rights of children and young people are the primary focus of their care;
2. Children and young people receive appropriate care relevant to their circumstances, in a safe environment;
3. Children and young people are safe and protected from harm;
4. Children and young people have a positive sense of identity;
5. Children and young people remain connected to significant people and places in their lives;
6. Children and young people contribute to decisions relating to their lives;
7. The organisation's practices are underpinned by rights to privacy and confidentiality;
8. Children and young people are emotionally healthy and are supported to achieve their developmental potential;
9. Children and young people are healthy and have access to appropriate health and support services;
10. Children and young people's educational outcomes match those of their peers in the general population;
11. Children and young people are supported to manage their own behaviour; and
12. Young people successfully transition to independent living.

There are also 11 further standards that cover casework practice to support care, people who work in care and child-safe organisations.

I note that recent amendments to the *Children's Guardian Act 2019 (NSW)* clarify that the Child Safe Standards apply to residential carers engaged through designated agencies, including through labour hire models.⁴⁸

I understand that these amendments mean that since July 2022, residential care workers have been required to be recorded on the Residential Care Worker Register prior to being engaged to work with children in residential care. Only designated agencies have access to the register, as they are the agency responsible for determining the suitability of all residential care workers.

At the same time, amendments were introduced to the *Children and Young Person's (Care and Protection) Regulation 2022 (NSW)*, to introduce a category of authorisation for residential care workers. A designated agency must authorise a worker prior to them providing care to a child in residential care, and this includes those workers who are sourced from an external labour hire agency.

Designated agencies must undertake the same safety and suitability checks on labour hire workers, as they would any other worker recruited internally by the agency. Designated agencies must comply with the requirements of the Residential Care Worker Register in order to comply with the Child Safe Standards.

Submission to ACYP's Special Inquiry into Children and Young People in ACAs. 49 NSW Department of Communities and Justice (DCJ) data provided to ACYP.

Factors leading to children and young people entering ACAs

The use of ACAs and other forms of HCEAs for children and young people in NSW is not a new issue. However, as has been highlighted in submissions and other evidence provided to the Special Inquiry, the issues that have led to the ongoing use and reliance on ACAs have not been adequately addressed in recent years.

Witnesses providing evidence to the Special Inquiry highlighted that children and young people are entering ACAs in NSW due to a variety of reasons including:

- lack of appropriate placement options;
- placement breakdown;
- pressures on the housing system;
- issues with existing assessment tools; and
- out-sourcing of services to private providers.

This section will provide a brief overview of these key issues. Many of these matters were raised in written submissions received by the Special Inquiry.

Lack of appropriate placement options

Although ACAs are meant to be utilised as a short-term temporary option whilst trying to find a suitable placement for the child or young person, ACAs are commonly being utilised for months at a time, with the average stay, as of 30 June 2023, being 120 days.⁴⁹ Evidence provided to the Special Inquiry, through both submissions and the workshops, have highlighted that one of the driving factors for the use of ACAs is a lack of available and appropriate placement options - such as foster care placements, family and kin placements or holistic wraparound support programs. This includes a lack of suitable placements being available at the first point of entry to OOHC, and not only in instances where an existing placement has broken down.

A core issue raised was the current critical shortage of foster carers, with a nation-wide trend of foster carers resigning and exiting the system. In Adopt Change's submission to the Special Inquiry, they noted that data from the NSW Office of the Children's Guardian (OCG) highlights that there were 2,684 Carer Household exits in the year prior to 30 June 2023, compared to only 1,581 Carer Household authorisations in the four quarters reported from 31 December 2022 to 30 September 2023.⁵⁰ This data, when compared with the number of carer households that DCJ reports they need, also highlights a significant shortfall within the system.⁵¹

The Special Inquiry heard that there are numerous factors for this, including a lack of focus on retention and support for foster carers, exacerbated by the increasing cost of living and low carer payments.⁵² Information provided through submissions and workshops has suggested that there is a need for foster carers to be provided with ongoing support and training around how to support children and young people with trauma, complex needs and behaviours, as well as more consideration around a role for professional carers in the system or a higher allowance payment for carers.

⁵⁰ OCG Data cited by Adopt Change. (2023, December 8). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

⁵¹ Adopt Change. (2023, December 8). Submission to the ACYP's Special Inquiry into Children and Young People in ACAs.

⁵² ACYP's Special Inquiry into ACAs Caseworker Workshop, 4 March 2024; Adopt Change. (2023, December 8).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.
⁵³ Adopt Change. (2023, December 8).

An additional constraint raised in the NSW context is that a carer's authorisation is currently tied to the particular agency that they are authorised with.⁵³ This means there may be times when there are authorised carers who have the capacity to provide children and young people with care, however in NSW there is no centralised database which captures this information. As a result, it is common that these carers either will not be located by DCJ in time for a placement to occur or the agency may choose to not make them available.⁵⁴

Feedback provided through submissions and workshops also highlighted that there is currently a lack of suitable family or kinship placements being identified by DCJ and NGO providers. Both Aboriginal communities and certain culturally and linguistically diverse communities are currently under-represented among foster carers, and it was noted that there is a need for more time to be devoted to both recruiting foster carers in these demographics and undertaking family-finding work.⁵⁵ The Aboriginal Legal Service (NSW/ACT) noted in their submission that addressing the current shortage of foster carers and kinship carers will also “necessarily require a complete overhaul of the way that Aboriginal and Torres Strait Islander families are assessed to be kinship carers, including the impacts that Working with Children Check (WWCC) requirements have on Aboriginal households seeking authorisation”.⁵⁶

It was also noted that placement options can also be particularly challenging in regional areas, as well as in instances where children enter OOHC in sibling groups or are older young people who are close to aging out of the system (for example, those aged 14 years and above).⁵⁷

Placement breakdown

Another core reason identified for why children and young people enter an ACA is ‘placement breakdown’, including foster carers feeling ill-prepared to respond to ‘challenging behaviours’. This aligns with data from the Office of the Children’s Guardian Annual Report 2020-21, which noted that of the 530 children and young people in HCEAs, 32% were placed in emergency care as a result of high-needs behaviours, 28% were the result of a placement breakdown and 14% were because there were no available carers.⁵⁸

It is well understood that children and young people in OOHC often have a range of complex and co-existing needs and challenges, regularly relating to experiences of trauma and distress. This can include adverse childhood experiences including exposure to domestic and family violence, parental incarceration, homelessness, cultural dispossession, exposure to alcohol and drug abuse or experience of child sexual abuse. This can result in increased physical, mental and social health needs, which are unfortunately often coupled with limited access to resources.

It was noted in the evidence provided to the Special Inquiry that many of the challenges relating to responding to children and young people with complex needs in OOHC are being exacerbated and compounded by a current lack of therapeutic service provision options for children and young people.

Throughout private hearings, many young people spoke about wanting to be provided with a greater explanation of why they needed to move and why a placement may have broken down.

Submission to ACYP’s Special Inquiry into Children and Young People in ACAs. 54 *Ibid.*

55 Law Society of NSW. (2023, November 30).

Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.

56 Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December).

Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.

57 Law Society of NSW. (2023, November).

Submission to ACYP’s Special Inquiry into Children and Young People in ACAs; ACYPs Special Inquiry into ACAs Caseworker Workshop, 4 March 2024.

58 Office of the Children’s Guardian (OCG). (2022). *Annual Report 2021-22*.

59 Confidential submissions to ACYP’s

“ I didn't really know what was going on at first. All I knew was that I got moved away from my parents, I was self-placed there. Then I got taken away, like two weeks later and then I didn't know what was gone [sic] on, after that.

Not really, no. They just say... um, when I had to come to New South Wales, they just came up to my school and said they're going to pack up everything and I'm going. They didn't really give me an explanation why.

”

Children and young people also spoke about the importance of there being more support provided for carers and foster parents at an early point, to prevent placement breakdowns from occurring in the first place.

“ ...foster parents shouldn't be able just to give up their kid over one little argument or disagreement. There should be a thing in place that something majorly has to happen. You can't just go give up your kid, like your own daughter and say, 'I don't want you'. They shouldn't be able to do it to foster kids either.

More caseworker involvement coming around to the house is more regular – even just taking the kids out to do something with them, giving the foster parents a break.

Funding after school care so the foster parents, you know, have a bit more of a break. Just stuff like that.

The training of not just caseworkers, but the actual carers, because the young people and the kids have to live there so they're not living with their caseworker, you know. Like the caseworkers and people that work in the office, they have all the training in the world. They have to do that training to get that job.

(cont.) But the carers... like obviously they do background checks and some base, you know, of studies, but they're not educated to a trauma child... like that's probably the biggest thing, they need a better understanding of the backgrounds of traumas and just how to relate with the child that has trauma backgrounds and trauma responses and block things out because of trauma or has behavioural issues because of trauma.

”

Other evidence provided to the Special Inquiry also highlighted the need for greater supports for carers, as well as the children and young people in their care. It was common to hear of experiences of carers seeking to get additional support for children and young people – such as disability and mental health support – but facing multiple challenges in accessing this, resulting in crisis and placement breakdowns.⁵⁹ There was also a strong theme across the evidence received that there needs to be a greater focus on prioritisation of therapeutic supports for children and young people at an early point, to prevent placement breakdowns from occurring.⁶⁰ For Aboriginal and culturally diverse children and young people, this should include consideration of access to healing programs and culturally safe mental health supports.⁶¹

■ Pressures on housing system

Another theme highlighted in evidence provided to the Special Inquiry was that broad pressures on the housing system are further restricting options for placements, particularly in instances of crisis. It was noted that there is a particular challenge around finding suitable accommodation in regional areas, as facilities are more limited, and it can be challenging to find accommodation for indefinite periods of time – leading to an ongoing reliance on the use of hotels/motels.

Special Inquiry into Children and Young People in ACAs.

60 Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December 12). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.
61 *Ibid.*

One provider said that they currently:

“ Have a property it could use to increase the number of placements we offer but we cannot do it with the current restrictions on funding and the pressures of the staff requirements in the current labour market.”⁶²

Concerningly, when asked if there was anything that was ‘working well’ with ACAs, a common theme highlighted by participants in the caseworker workshop was that ACAs play a role in providing crisis and emergency accommodation in instances where it has not been possible to find any other adequate or appropriate care for children or young people. As a result, it was noted that ACAs play a role in providing children and young people with basic essentials that they did not have before. For instance, participants noted that ACAs, at times prevent children and young people in OOHC from ending up homeless by providing somewhere to sleep and have their basic needs met. In one submission, it was suggested that an ACA:

“ Can be an opportunity for the most damaged and disengaged young people to experience success and develop reparative relationships with safe and nurturing adults...”

This submission went on to suggest that the following elements are, however, needed:

“ A consistent care team who are committed and heavily supported to meet challenging needs, a focus on giving the young person a sense of control over the things that they can control, and provide predictability and stability in their daily life...”⁶³

Another submission stated that:

“ We accept that there may be a need in an emergency to access some accommodation in an ACA quickly, but these should be for the most extreme cases and very short-term.”⁶⁴

Another provider submitted that:

“ ACAs do not always have a negative impact on children and young people – and that, if the model were changed, it could operate in a way that benefitted both children/young people and their carers.”⁶⁵

The provider also submitted that ACAs can be used:

“ As a circuit breaker in situations where placements are at risk of breaking down.”

The theme of ACAs being a step before homelessness was also something that was raised in evidence from children and young people in private hearings. For instance, when asked what are the ‘good things’ about being in an ACA, a number of young people spoke about having a place to sleep and a roof over their heads.

“ Probably the fact that I’ve actually got somewhere to live.

I slept in a car park at 14 in the middle of winter, so I guess like having the option there as well like is good as well.

Um, just having a place to stay and not living out on the streets.”

⁶² Legal Aid NSW (LANSW). (2023, November). Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Legal Aid NSW (LANSW). (2023, November).

Across submissions and in feedback provided during workshops, there was a strong call for greater investment in alternative housing options – to prevent ACAs from being seen as a ‘good’ or preferable option. This included a focus on reviewing the availability of home-based emergency accommodation and carers, as well as investment in specialised responses and crisis accommodation for children and young people who may require emergency accommodation.

In the process of conducting the Special Inquiry, I encountered instances where ACAs were also being used as a placement for children and young people upon exiting youth justice. In these instances, ACAs were being utilised as an emergency accommodation option and as a preferable alternative to avoid a child or young person unnecessarily spending time in custody on remand. However, as Legal Aid NSW noted in their submission to the Special Inquiry (referring to children and young people as “CYP”):

“ In our experience bail is also much more complex for CYP placed in ACAs compared to other placements. CYP in ACAs can be more likely to abscond and if residing at the ACA is a condition of the CYP bail, this will often lead to the CYP breaching their bail, being placed in custody and charged with further offences. As CYP living in ACAs are frequently relocated to different ACA addresses until more stable accommodation is available, their bail is also often subject to multiple variations, which can make it more difficult for the CYP to comply with.⁶⁶ ”

One young person who participated in a private hearing exited a custodial setting into a hotel. They had been in custody for a number of months (and in and out since they were 12 years old) and when asked about how it felt moving into a hotel they said:

“ I didn't really want to. I wanted to go to a house. ”

This young person had been in care, and prior to entering custody, was in a refuge and a care placement. They are exiting custody in August 2024 and are hoping they will have a permanent place to go to. When asked about their hopes for their future they said:

“ I hope that I'm back with my family. ”

It is critical that there is investment in alternative options, including supported bail accommodation, to ensure all children and young people can access safe and stable accommodation in a caring environment.

■ Issues with existing assessment tools

Another issue reported as contributing to the increased use of ACAs is the difficulty in placing young people based on determinations made using the Child Assessment Tool (CAT). The CAT is used to determine the level of care a child or young person in OOHC requires and was considered by many to be inadequate and not accurately reflecting the needs of many children and young people.⁶⁷

In evidence given to the Special Inquiry, it was reported that issues can arise if a child is assessed for a level of care lower than a residential setting, but then cannot be successfully placed in a foster care setting, resulting in them ending up in limbo. What this often leads to, however, is that children and young people with a wide variety of needs (low, medium and high) are being placed in ACAs. For instance, DCJ's submission to the Special Inquiry reported that 61% of children and young people in ACAs score low or medium on the CAT, suggesting that they are suitable for a foster care placement but there is a lack of availability.⁶⁸

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

67 Uniting NSW/ACT. (2023, November).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

68 NSW Department of Communities and Justice (DCJ). (2023, November).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

69 Legal Aid NSW (LANSW). (2023, November)

Other submissions to the Special Inquiry also highlighted that the recent independent Permanency Support Program evaluation came to a similar conclusion – noting that the CAT score assigned does not consistently reflect the amount of effort required by PSP providers to deliver services, especially when children first enter OOHC. I am also informed by DCJ that providers have access to additional funding packages to support placements, that are not dependent on the CAT level.

Much of the evidence provided to the Special Inquiry suggested that the CAT, and other assessment tools, are inappropriate for children and young people and need to have additional factors included and be updated as circumstances change. For instance, throughout the academic workshop, participants raised a number of key concerns with existing assessment tools, including that they only measure a snapshot in time, as opposed to a holistic and ongoing assessment of the child which is updated to reflect changes. Any tools utilised should reflect the development stages of children and young people and should adapt as they grow and develop. It was also noted that there is a need to consider how assessment tools are being applied, particularly for those children and young people who are deemed to be high needs and are placed in inappropriate emergency settings as a result, rather than the stable environments required to respond to those needs.

■ **Out-sourcing of services to private, unaccredited providers**

Another issue highlighted in evidence provided to the Special Inquiry was the gradual transition of OOHC services to non-government organisations, post the 2008 Wood Special Commission of Inquiry into Child Protection Services, as well as the accompanying growth in for-profit, private and unaccredited OOHC providers. It was noted in submissions that this has resulted in an increasingly complex system with varying contracts and arrangements, as well as complexities around oversight and governance.⁶⁹

This has, in turn, created obstacles to accessing home-based respite carers at short notice, resulting in children and young people increasingly being placed in ACAs.⁷⁰

I note that further issues related to the ACA workforce and the use of unaccredited providers will be further touched on in the next two sections of this report.

One submission suggested that ACAs:

“ Are problematic because they offer an inconsistent level of care and support to children and young people. This is because the agencies that provide staff for ACAs are not required to be accredited.⁷¹ ”

Another submission points to the impact that this can have on the children and young people given:

“ The reliance on casualised, poorly trained staff, inconsistent staffing and living environments that are not fit for purpose all contribute to ongoing risk to the health, wellbeing and safety of vulnerable children and young people.⁷² ”

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.
⁷⁰ *Ibid.*

⁷¹ Uniting NSW/ACT. (2023, November).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

⁷² Centre for Excellent in Therapeutic Care. (2023, November).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Legal Aid suggested that:

“ At a minimum, staff who supervise CYP in ACAs should be expected to engage positively with CYP, including being trained to support CYP to develop independent living skills such as personal hygiene, making a bed, keeping a house clean, cooking and washing.⁷³ ”

Furthermore, Adopt Change simply stated:

“ They are in a form of costly and unsuitable accommodation with no consistent care arrangement.⁷⁴ ”

Outsourcing the supervision of children and young people in ACAs is something felt and spoken about by children and young people. In a number of private hearings children and young people would talk about “carers”, “workers” and “case workers”. When describing a good worker, one young person said:

“ They talk to you when you’re feeling down and they’re not being a smart ass and that they’re there for you and you can count on them. ”

One young person, who was aged 10 at the time, called their support person “mum” and when asked how that makes them feel, they said that they felt:

“ Happy. Because I have someone that supports me. ”

That person had been with that young person over a two-year period in four different hotels.

Children and young people gave great suggestions about what a good support person can be and suggested appropriate training for carers and workers, including trauma-informed training. It is clear from the private hearings that even in temporary arrangements children and young people want to feel safe and supported. Sub-contracting arrangements, and labour hire companies that are not accredited or operate without proper oversight, put children and young people at risk. If we accept that a number of the children and young people in ACAs are our most vulnerable, then the standard of care needs to be high to ensure the safety, welfare and wellbeing of the child or young person.

⁷³ Legal Aid NSW. (2023, November). Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.
⁷⁴ Adopt Change. (2023, December 8). Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.

Experiences of children and young people in ACAs

The overwhelming weight of the evidence given to the Special Inquiry supports the conclusion that ACAs are neither a stable nor appropriate environment for children and young people.

This chapter seeks to outline the treatment and experiences of children and young people in ACAs throughout NSW, as raised through private hearings, workshops, submissions and other evidence provided to the Special Inquiry. This includes common themes of:

- Instability;
- Lack of continuity, supervision and poor standard of care;
- Inappropriate accommodation and living environments;
- Disruption to education;
- Lack of access to therapeutic supports; and
- Isolation and disconnection from friends, family, community and culture.

It will also highlight some of the short, medium and long-term impacts that placement in an ACA can have on children and young people's safety, welfare and wellbeing.

■ Treatment and experiences of young people in ACAs

Instability

Children and young people enter OOHC for a variety of reasons, and often have a range of complex and co-existing needs and challenges related to experiences of trauma and distress. As a result, it is critically important that they are provided with a high standard of stability, care and support.

Despite this, evidence given to the Special Inquiry has consistently highlighted the instability of ACA placements as being a key challenge, with DCJ acknowledging that ACAs are considered to be the least preferred placement option, due to their:

“ *Inability to provide a child or young person with a sense of stability, belonging or permanency.*⁷⁵ ”

Children and young people in ACAs often have no idea how long they will stay for or where they will go next. During the private hearings, children and young people regularly spoke about the stress that comes from the instability of ACA placements – reporting that they had been told to take it ‘day-by-day’ and keep their bags packed so that they could move at short notice:

“ *Uhm, it's pretty s*** when you can only get a motel for a week and then have to move to another motel, and it's just the same cycle. Just keeps happening.* ”

I hate living out of a suitcase.

Moving constantly.

It feels frustrating, angry and it just upsets me.

[It was] kind of stressful because we had to move a lot.

[T]hey just move me around like a doggy in the pound pretty much, moving cage to cage. ”

⁷⁵ Adopt Change. (2023, December 8). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

When asked if there was anything that would make being in an ACA a better experience, a young person said:

“ Just to go back home. ”

Another young person said that they would feel more settled and secure:

“ If this was a permanent place. And I know I wasn't going to move again. ”

When asked about what they would change about their experience, a 10-year-old who participated in a private hearing said:

Q. “ What other things would you like to have changed? ”

A. How many things can I choose?

Q. You can choose. Tell me all of them, please.

A. Definitely the first place. I never would have been removed from my mother. ”

Such evidence reinforced that the instability of ACAs is a key issue for the children and young people in care, and highlighted they want stability and predictability in their lives, as it provides a sense of safety and security. Conversely, instability can often result in a child or young person who is already experiencing a higher-than-normal level of emotional distress being further destabilised, often resulting in an escalation of existing challenging behaviours.

The evidence given to the Special Inquiry also supports the conclusion that the instability of ACAs is a cause of the delay or suspension of therapeutic arrangements, which in turn can result in further disruption and negative impacts on children and young people.

In addition, the constant cycle of moving makes case management planning challenging and can also lead to disconnection and disengagement from other existing supports.

Further, the evidence given to the Special Inquiry, and the submissions received, also highlighted that children and young people placed in ACAs have little opportunity to meaningfully participate in decisions regarding their placement. In this respect, it was reported by many that the process is poorly coordinated and generally excludes children and young people, resulting in placements that are not in their best interests.

Aboriginal Legal Service Case Study

An ALS solicitor provided the example of a 15-year-old girl who was removed from kinship care and placed in two ACAs, both over 4 hours' drive away from her home, school and friends.

The placement with the ACA provider resulted in an immediate transfer of case management, and her requests to discuss the proposed move with DCJ met with the response that the decision was 'out of their hands now'.

Neither the decision to place her in the ACA or the decision to change location and transfer case management were discussed with the young person.

Lack of continuity, supervision and poor standard of care

Another strong theme that emerged from the evidence given to the Special Inquiry is that there are significant issues relating to the quality, continuity and standard of care being provided to children and young people in ACA placements.

Children and young people who are placed in ACAs have often experienced high levels of trauma, however, the workers who are employed to provide care in these settings on a 24/7 shift work basis come from unaccredited third-party agencies. Consequently, these workers often lack experience and there are substantial variations and inconsistencies in their levels of training and professional qualifications – all contributing to an absence of quality care.

Workers in ACAs are currently required to hold a NSW Working with Children's Check (WWCC) and a Nationwide Criminal Record Check, but are not required to hold any other formal qualifications.⁷⁶ Whilst additional training may be offered in some instances, there are no mandatory training requirements for this workforce.

I am informed by DCJ, that Community Services Checks will be phased in at a future date.

The evidence given to the Special Inquiry supports a conclusion that many workers in ACAs do not have experience in therapeutic trauma-informed approaches or skills in managing challenging behaviours, as well as often having a lack of knowledge of what their role entails. For instance, in a workshop with caseworkers one participant noted that there is a perception that ACA staff are glorified babysitters who contact case managers and seek assistance for every decision.⁷⁷ Similarly, a submission provided to the Special Inquiry stated that a staff member had referred to the quality of care in an ACA as being akin to:

“Babysitting troubled children, putting out fires as they popped up.”⁷⁸

The rotational nature of ACA care teams also makes it difficult to maintain a consistent standard of care, with children and young people often having multiple different shift workers coming in and out of their placement environments every day.

This continuous cycle of workers in ACA placements was highlighted in evidence given by children and young people in private hearings.

“ [I lived] like with all these different types of people and they would come and then we would stay in like an apartment or hotel.

It was different every day. I never had the same one until the last four months of me being in there. So, it was just random people every day. Different people. Rarely ever got to see the same person twice.

They generally keep regular workers going but if not, then they just try to chuck on a worker that I have worked with. [In] the worst-case scenario, they just chuck on a new worker.

Similarly, a submission to the Special Inquiry noted that children and young people:

“ Often have three different workers coming in and out of their placement every day. This can result in as many as 21 different unfamiliar adults spending time in the CYP's 'safe place' over the course of a week.”⁷⁹

⁷⁶ NSW Department of Communities and Justice (DCJ). (2023, December). Submission to ACYP's Special Inquiry into Children and Young People in ACAs notes:

“To ensure children and young people in ACA are cared for safely, DCJ has introduced enhanced authorisation requirements for all Residential Care Workers supporting children and young people in ACA. These requirements exceed the minimum authorisation conditions outlined in the legislation and Office of the Children's Guardian (OCG) guidance materials and enable a comprehensive assessment of the Residential Care Worker and their suitability to support children in ACA.”

“DCJ is also in the process of updating the ACA casework practice mandate and implementing a new ACA Service Agreement and operational guidelines to ensure consistency of care and service delivery in ACA. The forthcoming ACA Service Agreement and guidelines provide clear guidance to both ACA Service Providers and their Residential Care Workers by outlining roles and responsibilities, minimum service expectations, and essential information necessary for the delivery of high-quality care. The objective is to enhance overall service quality and ensure a unified understanding of expectations within the caregiving framework.”

⁷⁷ ACYP's Special Inquiry into ACAs Caseworker Workshop, 4 March 2024.

⁷⁸ Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December 12). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

⁷⁹ Legal Aid NSW (LANSW). (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Other submissions highlighted that staff rosters can often change at the last minute as they are reliant on pools of staff – resulting in young people never being certain of who will be looking after them each day.⁸⁰ For instance, a submission by Legal Aid NSW noted that some children and young people had told their lawyers of their distress about being dropped off at school in the morning not knowing who will pick them up that afternoon. They had also expressed anxiety that a staff member coming on for the next shift would know to pick them up from school and that they would be left waiting alone outside school.⁸¹

It was regularly observed in evidence to the Special Inquiry that the unpredictability and lack of continuity around workers can lead children and young people in ACAs to feel anxious, unsupported, unsafe and not cared for.

The Special Inquiry did receive some evidence to the effect that there are a few instances where ACAs are staffed by a child or young person's existing caseworkers, such as NDIS-funded support workers.⁸² In those instances, the evidence was that children and young people have a more positive experience due to there being a more experienced and consistent team of workers.⁸³ However, this experience was rare, and not reflective of the care being provided to most children and young people in ACAs.

As noted above, throughout private hearings, children and young people spoke about both "workers", "carers" and "case workers". In their own language, ACA workers were not seen to be the same as carers. When asked about what the workers in ACA placements were like and how they supported young people in ACAs, views from children and young people were mixed. One young person who was aged 12 years and had been living in hotels for two years referred to the person living with them as "mum".

However, they also noted that they had around 17 different workers and only two or three they would regard as "good". When asked what was not great about hotels this young person said, "the staff sometimes." When asked what it means for someone to be good, they said:

“ *When I saw her, she looked nice and then we became friends.* ”

Throughout private hearings, it was apparent that children and young people often had very low expectations about the type of care and support they would receive whilst in an ACA. For instance, some young people spoke about viewing the relationship that they had with workers in ACAs as an exchange only focused on gaining access to basic necessities, such as purchasing food, phone credit or transport, rather than a kind, caring and supportive relationship.

When asked what good support looks like, one young person said:

“ *I don't really need much, just food and phone credit.* ”

Similarly, a 10-year-old said that ACA workers showed that they were kind and caring if:

“ *They like, say good night and they would like, make me breakfast and stuff.* ”

Several young people said that whilst there were workers present 24/7, they often did not feel like they knew the workers very well as they changed so often. For example, one young person said:

“ *Most of them were very distant. I'd get very little interaction by them. Most interaction I got was them taking me to places so I that could do something...* ”

⁸⁰ The Benevolent Society. (2024, February 15). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

⁸¹ Legal Aid NSW (LANSW). (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

⁸² *Ibid.*

⁸³ *Ibid.*

Others highlighted significant gaps in the quality of care that they were receiving from workers whilst in an ACA. For instance, one young person reported that:

“ They wouldn't really [look after me]. They'd just be doing their own thing. They'd let me just roam off. They wouldn't care. I'd go missing, they wouldn't report me missing for sometimes two weeks, three weeks. ”

The same young person went on to state that there were occasions when their workers were not present on-site at their ACA accommodation overnight.

The following case study from Legal Aid NSW's submission to the Special Inquiry highlights the potential significant adverse consequences of a low standard of care and supervision being provided to young people in ACAs.

Legal Aid NSW Case Study

Legal Aid NSW acted for Kylie, a 17-year-old Aboriginal woman.

Kylie was placed in an ACA in a motel in Sydney, supervised by an inexperienced young carer. Kylie expressed that she was bored and thinking of leaving the motel to meet up with a man she had met that day on Snapchat. The carer looked up from her own mobile phone to encourage Kylie to leave the placement and meet the man.

Kylie did so and was sexually assaulted by him later that evening.

Having regard to the evidence given during the private hearings, it is apparent that there is a significant lack of consistency in the nature of supervision of and care given to children and young people in ACAs.

For example, in some instances, the evidence given by young people suggested that workers were absent or staying in hotel rooms or caravans on the opposite side of properties from where the child or young person was located. On other occasions, workers were located closer by – such as in a hotel room next door to the child or young person or in another room in the same rental property.

There were also examples where young people spoke about not feeling as though their privacy was being respected. For instance, one young person highlighted an incident where they felt as though a worker was violating their privacy by looking through their bedroom window. The young person later made a complaint about the worker.

Another young person highlighted the importance of supervision and having someone present whilst also providing respect for privacy.

“ Having someone there frequently... not staying in the same room as you because I understand like privacy depending on an age, you know what I mean. Obviously, if they are like under 12, you know. If they're over 12, give them privacy, especially girls like girls, you know, they want, they want to be left alone, especially when they're going through that hormonal change and stuff like that. But like get a room at the same place, you know? So there is support there or they're not alone, you know what I mean. ”

This inconsistency in the type and standard of care was reflected in other evidence given to the Special Inquiry, with significant concerns being raised about the safety and wellbeing of children and young people in these placements.

During private hearings, I asked participants what “safety” meant to them. The following answers are reflective of the responses given to that question:

“ [When] I've got people who look after me, that I know they will protect me.

Safety means when you can have someone open up to you, someone you're comfortable with, someone that... has your back and that protects you from anything.

All the staff is always here for you if you need them. ”

A 10-year-old who spent approximately nine months in and out of hotels said the following about safety:

“ To have a home and someone that cares for me. ”

During private hearings, children and young people were also asked if they had ever made a complaint about the care provided to them whilst in an ACA. Most had little awareness about the complaints processes and mechanisms available to them. However, when asked what they would have complained about if they knew that they were able to make a complaint, one young person said:

“ Everything, every bit of it. ”

Of those young people who had made a complaint or had an awareness of their rights whilst in care, one said their ACA worker had been removed after they made a complaint, but they did not know what further steps had been taken. Another young person said:

“ I had one carer who handed me a laminate sheet of children's rights and I went through, and I read all of them and I noted down on a piece of paper every single right that I had broken. ”

The evidence given to the Special Inquiry has highlighted significant areas of concern and inconsistencies in the quality and standard of care being provided to children and young people in ACAs. There is clearly an urgent need for this to be addressed, and for minimum standards, training and mandatory requirements for anyone charged with the responsibility of caring for vulnerable children and young people to be introduced.

Accommodation and living environments

The overwhelming weight of the evidence given to the Special Inquiry has noted that ACAs, particularly placements in hotels and motels, are inappropriate living environments for children and young people.

As one young person stated in a private hearing:

“ I don't think anyone should live in a motel. Especially a kid. Especially the little 9-year-olds that you see... I was 10, but I've heard of like younger kids than 10 going into them and like, I just wouldn't be able to see it. ”

Another young person noted:

“ It's better to stay in a family home environment, not in motels. Motels are supposed to be for a holiday. ”

The Special Inquiry heard from many children and young people in private hearings who highlighted concern at the standard and location of the accommodation that they were being placed in and said that they did not always feel that it was a safe place to be. As observed above, ACA accommodation settings vary considerably which impacts the nature of the care being provided to children and young people, including the ability to meet OOH legislative and regulatory requirements.⁸⁴

⁸⁴ Barnardos. (2023, December 14). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

“ I was in ACA from 10 to 12, just in motels, caravan parks, whatever they can find... it's pretty bad. I was put in like \$99 night rooms, and I'd be like in one room and then the workers would be like 10 rooms down.

...look into where you're putting them in a safe environment, for instance. Like, don't just be putting them in the cheapest place you can get because it's cheap and it's easy.

”

The Special Inquiry has also heard evidence that children and young people felt worried about the presence of other people, who they viewed as being unsafe, near their ACA accommodation. For instance, one young person said:

“ It was just me on my own around like full grown adults on drugs, homeless people, people with mental illnesses, like it was disgusting. ”

A young female who participated in a private hearing said:

“ The first one, like, I got along with the worker. Well, the second one, I didn't like it because there were too many male staff. ”

Another young person described how they felt unsafe because the caravan park that they lived in whilst in an ACA was located right next door to a youth justice centre.

In addition, there were also young people who raised concerns about hygiene in ACAs, including pest issues and basic bathroom facilities not working. For instance, in a written submission provided to the Special Inquiry, a young person said:

“ In some experiences I had cockroaches, but I had friends in ACA and all had really dodgy experiences. Hotel utilities such as showers didn't work so they had to go somewhere and find random places to shower. ”

These reflections are consistent with other evidence that has been provided to the Special Inquiry – including numerous reports of substandard ACA accommodation featuring poor and dirty facilities, such as “rusted kitchens, mouldy showers, dirty toilets, pest infestations.”⁸⁵ It was also reported that these settings often lack basic amenities – such as a backyard or television – and can be located in unsafe physical settings. The latter was reported as being due to factors such as the geographical location of hotels and motels, the presence of other people in these places, as well as loud and noisy environments. In hotel and motel environments without cooking facilities, it was also common for young people to heavily rely on takeaway foods and snacks for meals which indicates they are likely to experience poor diets with very little access to healthy food.

I note that these environments and conditions are inadequate and unacceptable locations and environments for any child or young person to be placed in. There are also particular additional challenges for young people with disability or other complex needs. For instance, in a submission to the Special Inquiry, YFoundations highlighted the story of a young person who was placed in a hotel on a loud, main road.⁸⁶ The young person had autism and as a result, this location was inappropriate for them as they found the noise and environment to be overwhelming.⁸⁷

“ The one thing I remember consistently stating was I felt unstable and uncomfortable. And I felt like I was going crazy. [As] someone who lives with autism, my environment is everything to me. If I'm not in a stable environment, no matter how hard I try, I can't be stable.⁸⁸ ”

85 YFoundations. (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

86 *Ibid.*

87 *Ibid.*

88 *Ibid.*

Evidence provided to the Special Inquiry also highlighted that, most often, ACA placements are not located near where the child or young person was residing prior to entering the ACA, often resulting in isolation and disconnection from existing routines and supports. ACAs are also regularly located far from public transport and areas that young people know well. Collectively this can exacerbate existing mental health challenges or result in young people absconding from placements in order to seek out more familiar places.⁸⁹

As set out above, there is evidence that ACAs, at times, provide a preferable option of last resort to a child or young person who would otherwise have been faced with homelessness or unnecessarily spending time in custody on remand. However, it is imperative that we work collectively to lift the standards and options available to ensure all children and young people can access safe and stable accommodation.

In this respect, one young person who gave evidence during a private hearing had exited custody into a hotel, despite previously being in a care placement. When talking about their time in that hotel they said:

“...I just go muck up. Like, I get bored because I don't have, like I am not occupied with things. So I just go muck up.”

Disruption to education and other supports

It was a common feature of the evidence given to the Special Inquiry that placement of children and young people in ACAs causes disruption to their attendance at school. This was due to a range of reasons including young people disengaging due to instability and disconnection from existing supports, or ACA accommodation being located a long distance from a child or young person's school.

For instance, the ALS' submission to the Special Inquiry observed that one young person in an ACA advised their solicitor that:

“ I was not even asked if I wanted to keep going to school – I was just moved – and because it was five hours away, I couldn't keep going, even if I wanted to.⁹⁰ ”

Children and young people who participated in private hearings had mixed experiences in relation to access to education whilst in an ACA.

Whilst some were still engaged in education, the Special Inquiry was provided with answers, on more than one occasion, that indicated children and young people had not attended school for a significant period of time or that being in an ACA had caused a substantial disturbance to their education and schooling.

“ I was out of school for about a year...

Barely [went to school], because I had to keep changing schools because I was moving.

My school pretty much dropped off the face of the earth after that. Um, I was pretty far away from where I was going to school. ”

A common cause of disruption from school was the instability of being in an ACA, including regularly having to move or being placed in ACA accommodation that was located far away from the child or young person's school. This often resulted in children and young people having to change schools multiple times or travel unsustainable distances to stay engaged in education.

⁸⁹ Legal Aid NSW (LANSW). (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.
⁹⁰ Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December 12). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

A significant number of the children and young people who I spoke with throughout the private hearings should have been engaged in school but were not. For instance, one young person, who was 14 years of age, spoke about not having attended school for one to two years. They spoke about wanting to re-engage with school and that the reason that they liked school was because:

“ ...I can make friends my age and ... learning and education. ”

Many children and young people said that the disruption and disconnection from education due to being in an ACA meant that they were often behind in their schoolwork and that catching up and re-engagement was difficult.

“ I moved a lot of primary schools. And so basically high school is really hard because I've moved to a lot of homes, so I had to keep on moving primary schools. So like, high school work is so hard for me.

It was just like all my hard work that I had put in for when I was in primary school like from like year 3, no, yeah, like year 4 to year 5. I had to gain all that stuff back, all my knowledge and that was like really hard ... I could hardly learn to spell, read.

I do have the choice to go, I just don't. I just haven't been in so long, I just can't bring myself to go ”

Q. “ You've been to three schools this year, okay. And did you change because you wanted to change or?

A. | No. I got moved over and over. ”

In addition, children and young people also spoke about placement in an ACA being a factor in suspensions and their subsequent disengagement from school.

For instance, during a private hearing, one young person said they had never been suspended before they went into ACA placements in hotels, however in the seven months they have been moving between hotels:

“ I've been suspended quite a lot. ”

That evidence aligned with other submissions provided to the Special Inquiry, which have highlighted examples of significant declines in school attendance by children and young people during their time in ACAs. In its submission, the Benevolent Society noted:

“ Although we aim to support ongoing education attendance, if this was an issue before the young person is placed in an ACA, we know this gets worse when they are there. Given the rotation of staff, setting boundaries and keeping these boundaries is difficult in these settings. We have seen an increase in school refusal with a lot of our young people in ACA's.⁹¹ ”

It was also highlighted in evidence provided to the Special Inquiry that this disruption to education can have long-term consequences for children and young people, leading to academic setbacks and hindering future long-term educational attainment.

⁹¹ The Benevolent Society. (2024, February 15). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Lack of access to therapeutic supports

Another common theme in evidence provided to the Special Inquiry was a significant lack of therapeutic supports for children and young people in ACAs. It was reported that moving to an ACA placement could cause a child or young person to become disconnected from previous supports, including access to physical and mental health supports, and that ACA providers can be inconsistent in their delivery of trauma-informed care.

During private hearings, children and young people were asked about access to support for health and wellbeing whilst in an ACA. Some young people gave evidence that they were able to see a GP or a psychologist if they wanted to and had regular health appointments, which they found helpful. However, others indicated their ACA workers did not take them to medical appointments, or that these appointments were very infrequent.

Q. *“When you were in the alternative care arrangements or temporary accommodations, do you feel like your health and wellbeing was being cared for when you were there?”*

A. *“Definitely don’t.”*

A common theme that emerged throughout private hearings, was the feeling of isolation, boredom and disconnection experienced by children and young people in ACAs. When asked what they did not like about staying in hotels, one young person said:

“Because you don’t get to see your friends or you don’t get to do stuff. I just sit in my room being antisocial all the time on my phone. Just depressed and in my room.”

Similarly, when asked what a typical day looks like in an ACA placement in a hotel, another young person said:

“... I’d wake up, go downstairs, eat some cereal um and then kind of just go back and sit on a bed. And I sat there for most of the day. After a little while I started to play with my Lego again but that took about maybe a month and a half before I started to do anything other than just sit there and cry...”

Another common issue that emerged in the evidence was that many children and young people who experienced isolation and boredom in ACAs often also felt that existing issues were exacerbated and that their mental health had significantly deteriorated.

“Since I’ve been in care, I’d notice my mental health gotten a lot worse...”

*...it just messes up your mental health sometimes. If you’re not used to living by yourself then your mental health just goes to s***.*

*It’s good just to get time to yourself, you know, just. But you know there’s always that downside like I was saying, it just, some kids aren’t built for places like this. And it just messes them up in the head. Everything goes to s***.*

Because it was very sudden that I was taken away we didn’t have much time before we were told and being taken. So, um it was a fair bit of a shock. And I didn’t have time to adjust. And my behaviour started to slope, my mental health got worse and before I left that care I was suffering from extreme depression and suicidal dependencies.”

Case studies provided in submissions to the Special Inquiry also highlighted the significant decline of children and young people’s mental health whilst in ACA placements and the lack of appropriate therapeutic supports and interventions.

Aboriginal Legal Service Case Study

An ALS Solicitor gave the example of a young person, aged 16, with no contact with his family or attendance at school, who was confined 24 hours a day to a hotel room as a result of his circumstances affronting other guests. He was threatening self-harm on a daily basis and had the first opportunity for contact when his solicitor was able to access the placement to obtain his instructions for his court matter.

Experiences of that kind indicate there is a critical need for an increased focus on providing wrap-around therapeutic support to children and young people, as well as highlighting the inappropriate nature of unstable and isolating ACA environments for children and young people experiencing such levels of distress.

Other evidence provided to the Special Inquiry highlighted that ACAs can be very impersonal, stark and isolating environments for children and young people, where young people are detached from making connections, and this can have significant impacts on mental health.⁹² Being placed in an ACA can lead to a feeling of rejection or a feeling of being unwanted, impacting the self-worth of the child or young person.⁹³

When asked during private hearings, “*And when you were in the hotels, did you feel safe?*”, one young person said:

“*To be honest, I am not really sure. After what I had been through emotions kind of just faded. I still struggled to feel a lot of things. So, I am not 100% sure what I felt. All I know is that I didn't want to be there.*”

In giving evidence, children and young people often raised the role of animals and pets as a means by which to reduce feelings of isolation and increase connection.

For instance, one young person who had been given an opportunity to train a dog, spoke about how important that was to them:

“*It's just that I wanted that bond with an animal... because it's like having a best friend that won't turn their back on you.*”

Another young person spoke about wanting to have a pet to help give them a sense of stability and routine but not being allowed to have one whilst in an ACA.

“*I want to live in the city, but live with a pet ... because I can rely on a pet, so I can stay home and look after it and take it for a walk.*”

Being in an ACA can further impact or cause poor mental health in children and young people – causing increased anxiety, uncertainty of the future, no sense of belonging and retraumatization.⁹⁴ It is critical that there is a prioritisation of therapeutic supports and resources for children and young people at the earliest point possible, including through professional psychological and emotional support.

Isolation and disconnection from friends, family, community and culture

A significant theme that emerged in evidence was that placement in an ACA causes children and young people significant isolation, including disconnection from family, friends, community and culture. This in turn can cause children and young people to experience further traumatising and a feeling of abandonment and loss of sense of belonging.

92 ACYP's Special Inquiry into ACAs Caseworker Workshop, 4 March 2024.

93 *Ibid.*

94 Centre for Excellence in Therapeutic Care. (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Friends

It was common for the Special Inquiry to be told that children and young people in ACAs feel isolated and disconnected from their peers, with children and young people losing touch with friends due to instability and having to move all the time. The evidence indicates this was compounded by not regularly being in spaces and places, such as school, where they could easily interact with people their own age.

“ You need to be very resilient because you're not always going to get what you want. And you know, you don't. There are certain days that you know, if for example I go to the park, I am not always going to see my mates there. So, I need to find some other way to either contact them, or even if I was to give them the address so they could pop around and see how I was. When you're doing that if you were to move out you wouldn't be able to contact them. So, there's that downside of losing those friends that you make.

Because kids in care don't have phones until a certain age. Like I lost probably at least 35, 40 friends.

...I do have freedom, unlike a lot of other kids. A lot of other kids are stuck in the house. Hard if they are trying to make new friends. Once those kids find out they are in care they get picked on.”

Some children and young people also spoke about their frustration of not being able to hang out and visit friends outside of school and engage in other social activities and opportunities that other children and young people have.

Q. “ Can you have friends over here?

A. No, sadly. That's what I hate about this place. ”

When asked what they would like to change about where they lived, children and young people referenced wanting to be able to have friends come around and have sleepovers like other children and young people and the barriers that they experienced around this.

“ Being able to sleepover with friends more.

Approval, like approval you need from your caseworker to go to this place and this place.

...other kids out of foster care don't need approval for stuff. So why can't foster care be the same as a normal house? That's just like the same thing. Every human being should be treated the same instead of giving different curfews like foster care.”

Experiences of loneliness and a lack of home-based activities in ACAs to connect with peers was also raised as an area of concern in workshops with caseworkers and academics. Participants at these forums noted that these are critical prosocial activities and moments in a child or young person's development.⁹⁵

Family

Evidence given to the Special Inquiry through submissions and workshops highlighted that placement in an ACA often caused disruption to children and young people's relationships with their families and communities. At times, this is due to lack of physical proximity, with ACAs often being located a significant distance away from family making contact difficult or impossible. There were also reports of instances where escalating behaviours resulted in children and young people having family or sibling contact limited or ceased entirely.

⁹⁵ ACYP's Special Inquiry into ACAs Academic Workshop, 28 February 2024; ACYP's Special Inquiry into ACAs Caseworker Workshop, 4 March 2024.

However, evidence provided to the Special Inquiry suggested that a more thorough needs-based assessment and understanding of the impact this would have on the young person might have resulted in different decisions being made, or more support being offered to help maintain a relationship.

Throughout private hearings, children and young people's contact with their birth family whilst in ACAs was recorded as mixed. Some children and young people reported having good contact experiences with family members and being supported to have this contact.

Others recounted having only limited or irregular contact. For many children and young people, speaking about connection and contact with their birth family was a particularly sensitive topic. Accordingly, if the children or young people did not want to speak about those issues, I did not press them to do so.

Q. “ Okay, and could you see your family when you were in the second place?

A. Yeah, but not as much. Like, they didn't take me as much. ”

This young person was also placed in a hotel that was not close to where their family lived, making it difficult for them to get there independently.

Community and culture

Ongoing connection to community, culture and country are key principles outlined under NSW care legislation and other relevant legislative frameworks and standards. A number of children and young people who participated in private hearings did not feel they had a strong connection to their culture or community.

For many Aboriginal children and young people, and those from culturally and linguistically diverse backgrounds, the instability, location and disruption caused by ACA placements can cause a loss of connection to community, elders, values, and traditions that they are unable to practice.

When asked during private hearings about whether they were provided support in accessing information and learning about their culture whilst in an ACA, many young people said this was an area where they wanted more support.

“ I'm Aboriginal. I had no assistance in finding my mob – still don't know it.

I would deeply like to [know more about my culture].

Oh, I don't know anything about it

Not really, because my dad doesn't really talk about it, but all I know is that I am Aboriginal.

I don't feel like I get to express it [culture or language] that much. ”

In addition, evidence given to the Special Inquiry highlighted that this disconnection from community and culture can have both short and long-term impacts on children and young people, eroding their sense of identity and belonging and leading to feelings of cultural alienation and loss.⁹⁶

A submission to the Special Inquiry also noted that whilst questions around specific cultural considerations for Aboriginal children and young people are included in the forms and documentation related to ACAs (Permanency Support Form A), there is no mandatory requirement to adhere to s13 of the Aboriginal and Torres Strait Islander Placement Principles nor the preparation of a Cultural Support Plan for children in ACAs.⁹⁷

I am informed by DCJ that the Permanency Support Form A is no longer in use. It stopped being used on 21 December 2023.

⁹⁶ The Benevolent Society. (2024, February 15).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

⁹⁷ Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December 12).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Given that in June 2023, Aboriginal children represented 67% of children and young people in ACAs, and over the course of the Special Inquiry they have consistently accounted for more than 50% of those in ACAs, the lack of focus and enforcement around maintaining cultural connection is a significant concern.⁹⁸

Aboriginal Legal Service Case Study

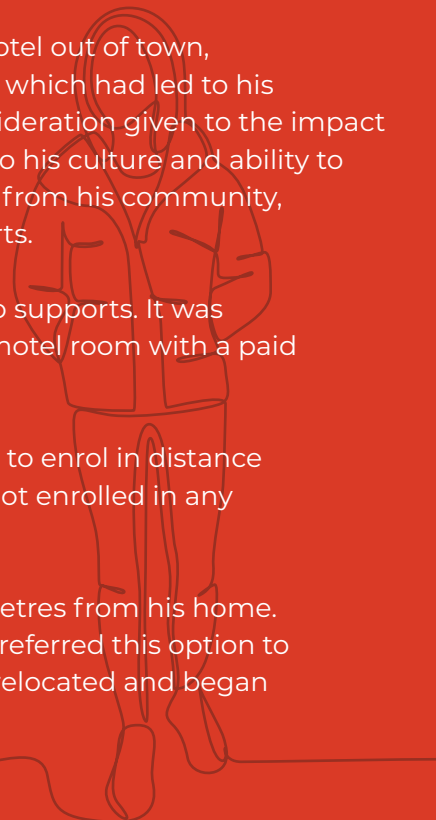
Legal Aid NSW assisted Joe, an Aboriginal young person living with mental health challenges and intellectual disability. Joe had connections to a major regional town, including being case managed by a service based there. Joe was on strict bail conditions which made it extremely difficult for him to be placed with other children and young people.

Joe's case manager arranged for Joe to reside in an ACA at a motel out of town, believing this would distance him from the negative influences which had led to his offending behaviours. There was little to no negotiation or consideration given to the impact that this would have on Joe's overall health, loss of connection to his culture and ability to maintain connections. Being placed out of town dislocated Joe from his community, schooling, friends, relatives, mental health and disability supports.

The small regional town where he was placed offered little to no supports. It was detrimental to Joe's health and wellbeing to reside in a studio motel room with a paid worker 24/7 out of his home area.

Joe was unable to attend school in his new area and was forced to enrol in distance education. There was no gym available for Joe to join. Joe was not enrolled in any extracurricular activities in his new town.

Eventually, a full-time placement was located almost 600 kilometres from his home. While Joe was initially upset by being so far from his roots, he preferred this option to remaining in a motel for the foreseeable future. Joe eventually relocated and began to establish a home for himself with a new agency.



Impacts of ACAs on the safety, welfare and wellbeing of children and young people

The evidence given to the Special Inquiry highlighted that placement of children and young people in ACAs has clear adverse impacts on their safety, welfare and wellbeing – with ACAs failing to offer the basic requirements and conditions to meet children and young people's emotional, social, physical and psychological development needs.

At the caseworker workshop it was noted that children and young people have few personal belongings, clothes, and hobbies. It was observed that their school attendance often becomes problematic and with a lack of support, their connections suffer. It was also noted that screen time on phones and other technologies are used to manage behaviour.

⁹⁸ NSW Department of Communities and Justice (DCJ) data provided to ACYP.

Similarly, an NGO submission to the Special Inquiry noted the following observation from one of their staff members about the impact of ACAs on children and young people:

“Adolescence is a time when children should be consolidating the skills they're going to be using later in life. And instead of being in a stable, secure environment where they're feeling that they're loved and connected, these kids are sitting in a motel room where they're consolidating the idea that they are unloved. That they don't belong. That there is no place for them. That they need to fend for themselves because they don't trust others. They don't trust society.”⁹⁹

As has been highlighted by the evidence summarised and referred to earlier in this section, some of the reported immediate short and medium-term impacts of ACAs include:

- deterioration of physical health – including a lack of regular health checks, lack of engagement in physical activities and exercise, missed or refused medications and inconsistency around medical appointments;
- decline in mental health – including increased anxiety, self-harm and other behaviours, as well as impacts on psycho-social and emotional development;
- disruption to social support networks;
- school disengagement;
- further traumatisation and feelings of abandonment, disconnection and loss of any sense of belonging;
- a risk of sexual or physical abuse;

- escalation of challenging or risk-taking behaviour – including unsafe social media usage, property damage and absconding whilst in an ACA, and increased likelihood of contact with police and the criminal justice system;
- lack of access to basic essentials – such as healthy food, clothing and routine; and lack of opportunity to develop life skills.

Many of these impacts are even greater for children and young people who experience multiple placements, a common experience for children and young people in ACAs.¹⁰⁰ In addition, after exiting from an ACA, many children and young people continue to experience significant ongoing negative impacts from the lack of routine, lack of consistency and instability of being placed in an ACA, including long-term impacts on a child's development.

It is also well-evidenced that children and young people who experience this level of impermanency are more likely to be impacted by adverse long-term outcomes in the future – including experiences of homelessness, contact with the criminal justice system, poor future health outcomes and low levels of educational attainment.¹⁰¹

99 Uniting NSW/ACT. (2023, November 17).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

100 Gilbert C. (2023, November 23). *What Is the Impact of Out-of-Home Placements for Children?* Psychology Today.

101 Walsh P, McHugh M, Blunden H and Katz I. (2018). *Literature Review: Factors Influencing the Outcomes of Children and Young People in Out-of-Home Care, Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care, Research Report Number 6*. Department of Family and Community Services, NSW Government.

Broader system challenges

In addition to the key impacts of ACAs on children and young people, evidence provided to the Special Inquiry, by organisations, academics and caseworkers, has highlighted a number of other key issues and challenges relating to the use of ACAs and other HCEAs in NSW. These include:



Data and information sharing



Contractual arrangements and ACA workforce



Oversight governance



Cost

It is worth noting that these are not the core issues or the framing that is forefront in the minds of the children and young people whose voices and experiences are paramount to any reform of the system. However, this section of the Report seeks to outline some of the core system challenges that have been raised throughout the course of the Special Inquiry through submissions, workshops, desktop research and other evidence.

I note that in response to the Special Inquiry's Interim Report, the NSW Government has announced a broader review of the current over-reliance of high-cost emergency placements (including ACAs), which will provide the opportunity to further explore some of the issues highlighted in this section of the report in more detail.

Data and information sharing

Evidence given to the Special Inquiry highlighted that there is currently a lack of strong, comprehensive and publicly available data related to children and young people in OOHC, with the data relating to the use of ACAs and other HCEAs in NSW being particularly lacking.

However, I am informed that since the Special Inquiry commenced a breakdown of High-Cost Emergency Arrangement data is, as at March 2024, being published on the DCJ website on a quarterly basis. This includes Aboriginality and alternative care arrangements.

For instance, Barnardos' submission highlighted a concern about "the current lack of transparency and shared commitment to a collaborative 'whole of OOHC sector' approach across both government and non-government services in meeting the needs of 'hard to place' children and young people including [those in] ACAs".¹⁰² Similarly, ALS' submission notes that OCG's 2022-23 Annual Report does not provide statistics in relation to ACAs or emergency care, nor the total number by placement type, instead reporting on the number of notifications of children under the age of 12 whose placements commenced in residential care.¹⁰³ They also highlighted that OCG's data does not include public reporting of the number of Aboriginal children in ACAs in its reports, despite the staggering over-representation of Aboriginal children in ACAs.¹⁰⁴

¹⁰² Barnardos Australia. (2023, December 14). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

¹⁰³ Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December 12). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

¹⁰⁴ *Ibid.*

There was a strong desire from across the sector for further data about ACAs and other HCEAs to be made publicly available – to support with planning as well as increasing accountability and oversight.

As noted above, DCJ now publishes this data on the DCJ website. It is updated quarterly.

Submissions made to the Special Inquiry also highlighted the need for data to be made available that describes age, gender, Aboriginality, sibling status, OOH placement agency, child legal status, health records, placement history and case plan goal.

It also became apparent in discussion with caseworkers that there are significant issues around data and information-sharing which impacts the continuity of care of children and young people. For instance, issues were raised in relation to information flow between DCJ, PSP providers and ACA providers. There were also concerns raised about issues relating to data sharing across jurisdictions, such as in a case where a child or young person was in the care of another jurisdiction but had been placed interstate at an ACA in NSW. These issues warrant further exploration by the upcoming NSW Review.

In discussions about children and young people in care in other jurisdictions (South Australia, Victoria and Queensland), I am supportive of:

- a proactive obligation to ‘information exchange’ that applies to parental responsibility when a child moves over state borders that overrides privacy and other legal barriers;
- seeking compatibility in ‘Information and Communications Technology’ across state borders; and
- an obligation on workers involved with the child or young person on both sides of the border to remain involved in case management for a long period of time in the best interests of the child.

Contractual arrangements and ACA workforce

As outlined in the previous section of this report, the evidence given to the Special Inquiry highlighted that the current sub-contracting model is perceived as having resulted in inconsistent care levels and support for children and young people.

As outlined in the previous section of this report, the evidence given to the Special Inquiry highlighted that the current sub-contracting model is perceived as having resulted in inconsistent care levels and support for children and young people.

As observed above, the evidence supports a conclusion that current sub-contracting of ACAs to private providers is resulting in ACAs most often being staffed with ill-experienced and unaccredited workers who largely play a supervisory role, as opposed to providing appropriate therapeutic support and helping them develop independent living skills.

Several submissions expressed the view that regardless of the type of placement a child or young person is in, care should only be able to be provided by not-for-profit accredited providers. These submissions suggested that the growth of for-profit organisations in the children’s OOH space challenges the premise that the care of vulnerable children and young people who are unable to be cared for by their families is the responsibility of government and should not be a profit-focused activity.

Some submissions also highlighted how the current subcontracting arrangements create significant challenges in oversight and monitoring of the care being provided to children and young people. For instance, a submission to the Special Inquiry by Barnardos noted that all aspects of day-to-day decision-making for children and young people in ACAs, is the responsibility of employed rostered shift workers who are providing direct care.

“ Because ACA residential care workers are the employees of organisations under sub-contract to the OOHC agency holding case management (DCJ or NGO), there is no effective exercisable control by the agency holding case management, of the daily direct care being provided to the child. ”

■ Oversight and governance

In the evidence given to the Special Inquiry, it was observed by some that the ACA model is inconsistent with government's obligations and responsibilities to children and young people in OOHC, including being counter to principles in the UNCRC. As a result, another core issue raised, was the need for greater oversight and accountability of HCEAs and the OOHC system more broadly. This was particularly evident in submissions to the Special Inquiry by Aboriginal Community-Controlled Organisations (ACCOs) and the views expressed during the academic workshop, which called for increased accountability of the sector around the standard of care that is being provided to children and young people.¹⁰⁵

Some of this feedback was focused on highlighting the need for greater standards to be put in place in relation to principles of the types of care that we provide to children and young people, including minimum requirements around therapeutic assessments and follow-ups. There was also a focus on the need for enhanced authorisation requirements for any workers engaged in the care of vulnerable children and young people in OOHC, regardless of the placement type.

Feedback from peak Aboriginal organisations indicated strong support for the establishment of an Independent Child Protection Commission and the appointment of an independent Aboriginal and Torres Strait Islander Child and Family Commissioner to take on an oversight role.

I note this aligns with recommendation nine of the *Family Is Culture* Final Report.

■ Cost

The evidence given to the Special Inquiry highlighted the detrimental high social and emotional costs to children and young people placed in these arrangements, as well as the high economic cost to the taxpayers. In the 2022-2023 financial year, the total costs of placing children and young people in ACAs in NSW was almost \$100 million, with the average cost of an ACA being a staggering \$965,000 per year per child in an ACA.¹⁰⁶

It is also important to note that there are likely additional costs related to ACA placements. For instance, ACYP also requested information and data from DCJ in regard to any other costs related to the placement of children and young people in ACAs, such as NDIS funding. However, this information could not be provided prior to the finalisation of this report.

There was evidence in submissions that the significant funds that have been spent on ACAs could be better invested in providing alternative models and placement options for children and young people which have a stronger focus on therapeutic support.

For instance, YFoundations noted in their submission that:

“ Government is spending a staggering amount of money on an option which seems to do more harm than good.¹⁰⁷ ”

¹⁰⁵ Aboriginal Legal Service NSW/ACT (ALS NSW/ACT). (2023, December 12). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

¹⁰⁶ NSW Department of Communities and Justice (DCJ) data provided to ACYP.

¹⁰⁷ YFoundations. (2023, November).

Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Whilst DCJ themselves noted in their submission that:

“ACAs are a significant driver of OOHC budget pressure. These arrangements are usually very costly and due to the nature of these arrangements their value for money is considered low. Until recently there has not been a consistent price point, there are variations in price and service delivery, as pricing is negotiated on a case-by-case basis.”¹⁰⁸

Numerous other submissions to the Special Inquiry have highlighted how alternative models that provide more therapeutic focused responses for children and young people not only come at a lower cost but are also much more likely to have a positive impact on outcomes for children and young people. As highlighted in the executive summary, it is not my intention to suggest one model over another. It is, however, important that the available funding is deployed for the benefit of the child or young person in care, including to ensure they have access to all the things they need, such as health, education and housing. Since commencing this Special Inquiry, and while drafting this report, the Independent Pricing and Review Tribunal NSW (IPART), has commenced a review of out-of-home care costs and pricing. This essential review will bring clarity to current expenditure in relation to all out-of-home care categories. Investment and funding decisions must focus on the needs and wellbeing supports of the child, young person and their family, appropriate support for caseworkers and carers and housing needs. It also needs to look at systems reform that will better support the children and young people.

The Auditor-General also published two reports on 6 June 2024, prior to the finalisation of this report. Those reports deal with (1) the oversight of the child protection system¹⁰⁹, and (2) safeguarding the rights of Aboriginal children in the child protection system.¹¹⁰

I note the recent System Review into Out-of-Home Care (OOHC)¹¹¹ announced into the over-reliance on high-cost emergency arrangements by the NSW Government will include a focus on exploring in further detail how these funds are being spent, and I look forward to seeing the results of that work along with that of the IPART review.

Ongoing reliance on harmful ACA settings and other HCEAs, will not result in improved outcomes for children and young people. Instead, continuing to place children and young people in these settings is likely to result in poor future outcomes and ongoing reliance on government service systems into the future.

¹⁰⁸ NSW Department of Communities and Justice (DCJ). (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

¹⁰⁹ The Audit Office of NSW. (2024). *Oversight of the child protection system*.

¹¹⁰ The Audit Office of NSW. (2024). *Safeguarding the rights of Aboriginal children in the child protection system*.

¹¹¹ NSW Department of Communities and Justice (DCJ). (2024, May). *System review into out-of-home care (OOHC)*.

Alternative approaches to the use of ACAs

This section does not intend to critically assess the alternative approaches that have been identified in written submissions and through the workshops. However, while children and young people were not asked what alternatives would be better, we did get some insights around things that young people thought would be useful. For example, one young person, when asked about what makes a good team, said:

“*They're more of a family than just like workers. They wouldn't treat me any differently than they would treat their own daughter.*”

As set out above, some young people talked about wanting to have pets in the accommodation, and others about having the ability to see their friends and not having to move so frequently.

There are local and global examples of models of care that were provided to the Special Inquiry. Any investment or model of care needs to ensure that the safety, welfare and wellbeing of the child or young person is central. They need to have access to the therapeutic supports required to enable them to thrive, and those that care for them should have appropriate support and training as well.

As identified above, children and young people frequently expressed a desire to stay with family where they can. Accordingly, greater investment needs to be made in prevention and supporting their families to care for them. We need to work with the community and family that supports, and can support, the child or young person.

It is my view, based on the evidence given to the Special Inquiry, a consistent, prioritised focus on investment in early intervention and prevention is important.

Prioritise investment in early intervention and prevention

The evidence given to the Special Inquiry supports the conclusion that there is a need for greater investment in the early intervention and prevention space. That evidence also included references to specialised investment into domestic and family violence, which we know is a contributing factor to family placement breakdowns, mediation, reunification, and family supports. Submissions also suggested that work needs to be done to invest in the Community of Schools of Service (COSS) Model (also known as the Geelong Project or the Albury Project).

The elements of these proposed solutions are community responses, investment in family supports and time. For positive change to occur, families and communities will need to be given time to implement that positive change, and a commitment needs to be made to work with families, services, and the community for sustained and consistent periods of time.

During the academic workshop, there was a suggestion that a 'whole of family' response model like the 'shared family care' model that currently operates in Canada should be considered. Without seeing the model in practice, or hearing directly from the children, young people and their families it is hard to recommend a particular model. However, there appears some merit in keeping a family together but wrapping around the necessary supports for families, children and young people.

The Canada Live-In Family Enhancement (LIFE) emerged in Manitoba, Canada, to promote family enhancement in every phase of child welfare cases¹¹² for families seeking to re-unify. Metis Child, Family, and Community Services, an Indigenous agency, developed a shared family foster care model approach in which parents were fostered along with their children. The LIFE model had parents and children move in full-time to a foster home together with a family mentor for 8–12 months.¹¹³

This model sees families moved, as one entity, into a place where supports can be provided including coaching and support in parenting on a moment-to-moment basis, seven days per week. Families can also access attachment-based parenting training, anger management training, substance abuse relapse prevention, employment assistance, help with nutrition and budgeting, support with issues at school or daycare, and a range of other resources needed to become competent and nurturing families.¹¹⁴

The ALS in their submission referred to the work being done in New Zealand to address children and young people being placed in motels as part of a broader reform that focuses on:

“ Better addressing the needs of young people who are leaving care, including addressing systemic issues like poverty and homelessness.¹¹⁵ ”

While this Special Inquiry sat with children and young people who had experienced time in ACAs, it is important to address the issues associated with leaving care when looking at any systemic review.

112 Deane, L., Glass, J., Vystrcil-Spence, I., & Mignone, J. (2018). *Live-In Family Enhancement (LIFE): A comprehensive program for healing and family reunification*. First Peoples Child and Family Review.

113 Metis Child, Family, and Community Services. (2014). *Annual Report 2013-2014*.

114 *Ibid.*

115 Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT). (2023, December 12). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Below is a summary table of alternatives that were identified during the Special Inquiry. In considering the range of alternatives to ACAs available, it is my firm belief that the type of care should be built around the needs of the child and young person, and their family.

Alternative care models provided to the Special Inquiry	Definition
<i>Community of Schools and Services (COSS)</i>	The 'Community of Schools and Services' (COSS) Model is an innovative early intervention service-delivery and reform-orientated model for addressing and supporting vulnerable young people and their families to reduce disengagement from education and early school leaving and to help where family issues are heading towards a crisis and possible homelessness as well as other adverse outcomes. ¹¹⁶
<i>Family Finding</i> ¹¹⁷	Continue to invest in and support family finding for children and young people, ensuring that the placement meets the appropriate needs and standard of care. Provide access to training and supports for any placement.
<i>Home-based respite carers</i> ¹¹⁸	When a carer attends the home to provide temporary relief for the benefit of the carer, but the young person remains in the home.
<i>Volunteer foster care</i> ¹¹⁹	<p>The dominant foster care model in NSW relies on volunteerism, providing a modest allowance to cover expenses, while assuming that carers are not in full-time paid employment and available to devote significant time to caring.</p> <p>Requires improving carer allowances and improved training and access to supports.</p>
<i>Strengthen current residential care system</i>	Including reviewing PSP, providing more funding, recruit more carers and provide wrap around supports for placements.

¹¹⁶ Retrieved from Upstream Australia. *The Coss Model*.

¹¹⁷ Uniting NSW/ACT. (2023, November 17). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

¹¹⁸ Legal Aid NSW (LANSW). (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

¹¹⁹ Law Society NSW. (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

Alternative care models provided to the Special Inquiry

Definition

<p><i>OurSPACE and OurSPACE+</i>¹²⁰</p>	<p>OurSPACE was founded in 2018 from the Their Futures Matter reform. It was established to address the needs of <i>“some 3500 children and young people under the age of 12 in out of home care across NSW identified as having experienced placement breakdowns in the previous 6 months.”</i></p> <p>It builds a network of adults around the child or young person to help understand unmet trauma needs. It is a trauma-based response.</p> <p>OurSPACE+ builds on the original model to deliver a more intensive, tailored response.</p>
<p><i>STEP</i>¹²¹</p>	<p>1:1 emergency accommodation and support model for children and young people with high and complex needs that are in, or at risk of, imminent entry into an ACA or IPA.</p> <p>STEP should be explored as an option after every effort has been made to place the child or young person with relatives/kin, a foster carer, or contracted OOH placement (e.g. accredited PSP provider).</p> <p>Eligibility:</p> <ul style="list-style-type: none"> • High or complex needs • Aged 12-17 years <p>Referral to occur when less intensive placement options have been exhausted.¹²²</p>
<p><i>Professional Care mode</i>¹²³</p>	<p>This model emphasises the need for specialised, trained foster carers who can provide trauma informed care to children and young people.</p>
<p><i>Therapeutic foster care</i></p>	<p>Treatment Foster Care Oregon (TFCO)¹²⁴</p> <p><i>“It is a short-term placement of around six to 12 months in the specialised foster carer’s family home. TFCO carers provide close supervision and implement a structured, individualised program for each child or young person.”</i></p>

120 Centre for Excellence in Therapeutic Care. Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.
 121 Southern Youth and Family Services. (2023, November). Submission to ACYP’s Special Inquiry into Children and Young People in ACAs.
 122 *OOHC Terminology – Emergency and Temporary Arrangements*. Provided by NSW Department of Communities and Justice (DCJ).
 123 The Law Society of NSW; The Benevolent Society. Submissions to ACYP’s Special Inquiry into Children and Young People in ACAs.
 124 The Benevolent Society; Barnardos Australia. Submissions to ACYP’s Special Inquiry into Children and Young People in ACAs.

Alternative care models provided to the Special Inquiry

Definition

<p><i>Intensive Therapeutic Care Homes (ITCH)</i>¹²⁵</p>	<p>Provide 24-hour professional support for complex needs.</p>
<p><i>Intensive therapeutic transitional care</i>¹²⁶</p>	<p>ITTC¹²⁷ Outreach has the primary goal of promoting the safety, welfare and wellbeing of children and young people in PSP with the main objectives to:</p> <ul style="list-style-type: none"> • prevent placement breakdown; • prevent entry into ITC; • assist transition where children and young people require a placement change; or • assist transition where children and young people require support to move to step down models of care.
<p><i>Integrated housing models: Youth Foyers</i></p>	<p>Foyers provide a point in time service that enable young people in transition to develop and achieve educational and employment pathways, exiting in a sustainable way from welfare and service dependence. While there are programs in both the education and homelessness sectors that seek to support young people experiencing disadvantage with their education or accommodation across Australia, there are almost no fully integrated service models focused on education and employment outcomes.</p> <p>The key to the model lies in the provision of stable accommodation for up to two years in a supported, congregate living environment. For young people who are unable to rely on family support in this critical developmental stage, Foyers provide the time, personalised attention, mentoring, coaching and access to opportunities needed to lead fulfilling, independent and productive lives.¹²⁸</p>

¹²⁵ Uniting NSW/ACT. (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

¹²⁶ Southern Youth and Family Services. (2023, November). Submission to ACYP's Special Inquiry into Children and Young People in ACAs.

¹²⁷ NSW Department of Communities and Justice (DCJ). (2020, May). *ITTC Outreach Factsheet*. See Appendix 5.

¹²⁸ See [Foyer Foundation website](#).

Conclusion

This Special Inquiry has brought to light some specific issues faced by children and young people who are in the care system. This was an opportunity for their voices to be heard and for us, now as a community, to consider how we want to care for some of our most vulnerable.

The process of the Special Inquiry highlighted some initial matters that need to be addressed and improved, including the collection of data and information relating to the children and young people, and further oversight in relation to ACAs and HCEA.

The evidence that was given by children and young people who participated in hearings was powerful. That evidence led me to the conclusion that a system that includes ACAs cannot be accepted, and we need to transition away from their use as a matter of priority. Further, in making that transition, appropriate supports need to be provided for children and young people.

Let me end, where we started – with the voice of children and young people in ACAs:



It's better to stay in a family home environment, not in motels. Motels are supposed to be for a holiday.



Children and young people who gave evidence in this Special Inquiry shared their experiences openly. Their evidence was powerful, and supports a conclusion that ACAs:

1. Do not provide stable housing for children and young people;
2. Children and young people in these arrangements do not have access to the supports that they need, including education, health and other necessary supports;
3. Children and young people do not feel safe in alternative care arrangements;
4. There is inconsistency in the standard of care received by children and young people in these arrangements; and
5. Children and young people in these arrangements are not always aware of their rights and where they can raise issues.

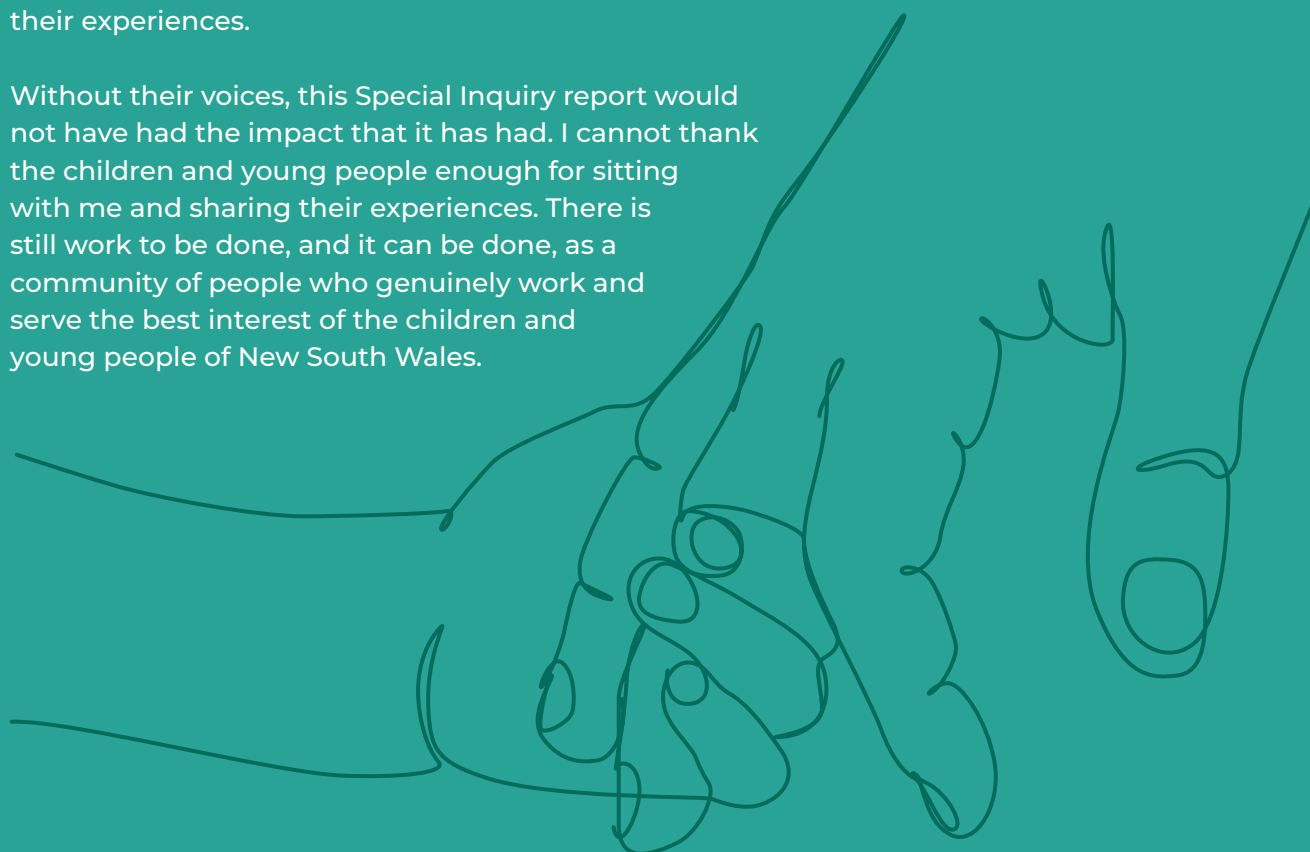
Any redesign of the system is likely to need an assessment of prevention methods to ensure ACAs are not required, particularly in complex situations that can further traumatise a young person (such as a placement breakdown). This means alternatives must be found.

The evidence given to the Special Inquiry, and the issues and themes that emerge from it, also support a conclusion that there is a need for greater training and support for carers to ensure that issues that arise can be managed in the placement, without a child or young person fearing being removed (again).

Evidence given to the Special Inquiry also suggests that it is not an 'either-or' approach between carers and children and young people in care. Collectively, we can invest in positive outcomes for children and young people, and support carers who provide positive support and stability to children and young people in care. Children and young people suggested that themselves – advocating for carers to get appropriate training and receive appropriate support. Accordingly, alternatives explored should consider specifically ceasing the use of ACAs and other harmful high-cost emergency arrangements and instead develop systems that support complex situations through trained carers, who are well supported and resourced, and ensure that we meet our duty of care to all involved. We must grow the workforce, provide necessary support to those caseworkers and ensure children and young people have access to all the supports they need.

There is an opportunity to reimagine how we support children, young people and their families to thrive – jointly with government, non-government and services that support children and young people. This process should be done with the outcomes of children and young people as the focus, and in a manner which takes account of their experiences.

Without their voices, this Special Inquiry report would not have had the impact that it has had. I cannot thank the children and young people enough for sitting with me and sharing their experiences. There is still work to be done, and it can be done, as a community of people who genuinely work and serve the best interest of the children and young people of New South Wales.



Appendix 1: Terms of Reference

Special Inquiry into the experiences of children and young people in alternative care arrangements (ACAs) in New South Wales.

Terms of Reference

In accordance with Part 5 of the *Advocate for Children and Young People Act 2014 (NSW)* the Advocate for Children and Young People (ACYP) made a request to establish a Special Inquiry (Inquiry) on 19 September 2023, which was approved by the NSW Minister for Youth, the Hon Rose Jackson MLC.

ACYP is conducting an Inquiry into the experiences of children and young people in NSW in alternative care arrangements (often referred to as ACAs or “high-cost emergency placements”), which includes the use of hotels, motels, caravan parks, serviced apartments and other similar settings as emergency accommodation.

The Inquiry will have a particular focus on hearing from children and young people about their experiences.

The Inquiry will be examining and seeking views from interested parties on the issues and areas of focus set out below:

- a) The pathways, trajectory and factors relating to:
 - children or young people being placed in an ACA, including factors such as complex needs, disability, neurodivergence, psycho-social behaviour and experiences of trauma; and
 - transitions between placements, including different types of emergency care arrangements.
- b) The decision-making process through which a child or young person is placed in an ACA, including:
 - the participation of the child or young person in the placement process and their ongoing case and placement plan;
 - the information given to the child or young person;
 - measures to ensure that the safety, welfare and wellbeing of the child or young person is maintained through the transfer of responsibility; and
 - the decision-making process under which a child or young person is removed from an ACA.
- c) The treatment of children and young people whilst in an ACA, including:
 - the suitability of the placement, including its facilities and condition, and the standard of care provided;
 - the availability, access to and adequacy of provision of education, recreation, health, psychological supports, and other services;
 - the appropriateness of the location for the child or young person; and
 - follow-up support and care after being placed in an ACA.

d) The short, medium and long-term impacts of ACAs on the safety, welfare and wellbeing of children and young people, including:

- the social, emotional, psycho-social and physical health impacts;
- connection to family, friends, community, culture and supports; and
- other impacts experienced by children and young people.

e) The cost effectiveness of ACAs.

f) Alternative approaches to the use of ACAs, including any local or global examples, and the social or economic benefits of such alternatives.

g) Any other related matter.

The Advocate intends to deliver the report from the Inquiry to the Minister in early 2024.

Submissions

ACYP will be calling for submissions to the Inquiry from interested parties. ACYP will particularly seek to hear the views and experiences of children and young people who are currently in an ACA in NSW, and anyone who has been in an ACA in NSW in the last 10 years.

For more information see: <https://www.acyp.nsw.gov.au/special-inquiry>.

Ms Zoë Robinson



Advocate for Children and Young People

Published on 12 October 2023

Appendix 2: Emergency and Temporary OOHC Arrangements in NSW¹

	Short-term Emergency Placement (STEP)	Interim Care Model (ICM)	Alternative Care Arrangements (ACAs)	Individual Placement Arrangements (IPA)
Accommodation style	Home-like accommodation (e.g. house, unit, serviced apartment)	Group, 4 bed model shared with other children in home-like accommodation (e.g. house, unit, serviced apartment)	Temporary accommodation (e.g. hotel, motel)	Home-like accommodation (e.g. house, unit, serviced apartment)
Child/young person age and need requirement	Support model for children (aged 12-17) with high and complex needs	Support model for children (aged 9-14) with low-medium needs	Interim fee-for-service aiding children in or entering, statutory or supported OOHC	A temporary fee-for-service emergency accommodation arrangement based on the individual needs of the child
Steps taken prior to this placement	For children that at imminent risk of entry into ACA or IPA, and every effort has been made to place them with relatives/kin, a foster carer, or contracted OOHC	For children that at imminent risk of entry into ACA or IPA, and every effort has been made to place them with relatives/kin, a foster carer, or contracted OOHC	For when every effort has been made to place them with relatives/kin, a foster carer, or contracted OOHC	For when every effort has been made to place the in a contracted OOHC placement
Carer type	1:1 (child to care worker) placement, predominately provided by staff from a residential care accredited agency	House manager and direct care staff provided by staff from a residential care accredited agency	Direct care provided by staff from a non-designated agency (not accredited for residential care by the Office of the Children's Guardian)	Direct care is predominately provided by staff from a residential care accredited agency
Timeframe of support	Up to 12 weeks duration (extension possible in exceptional circumstances)	Up to 3 months duration (extension possible if required)	Very short-term	Very short-term

• Focus of the Special Inquiry

¹ Summary table drawn from: NSW Department of Communities and Justice (DCJ). [OOHC Terminology – Permanency Support Program: Emergency and Temporary Arrangements](#).

Appendix 3: General Practice Guideline

Special Inquiry into the experiences of children and young people in alternative care arrangements (ACAs) in New South Wales.

General Practice Guideline

Published 28 November 2023

Part A – Introductory matters

1. This Practice Guideline relates to the conduct of the Advocate for Children and Young People (**the Advocate**) in relation to the Special Inquiry (the **Inquiry**) into the experiences of children living in alternative care arrangements (**ACAs**).
2. This Practice Guideline should be read in conjunction with the *Advocate for Children and Young People Act 2014* (NSW) (the Act), the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the CYP Act) and the Terms of Reference.
3. This Practice Guideline sets out general guidance about the procedures the Advocate will follow relating to the conduct of the Inquiry.
4. Where the Advocate thinks it appropriate, this Practice Guideline may be varied, changed or replaced at any time.
5. Unless otherwise specified, contact with the Inquiry should be made by email to specialinquiry@acyp.nsw.gov.au. If you do not have access to email, please call 0461 252 921 for assistance.

Part B – Providing information to the Inquiry

6. The Advocate invites submissions from any persons with information or documents relevant to the matters contained in the Terms of Reference.
7. Any person who wishes to provide the Inquiry with information relevant to the Inquiry's Terms of Reference should contact the Advocate through the online submission page, which can be accessed on the Advocate's website.
8. If you would like to speak to a member of staff at the office of the Advocate regarding the information you wish to provide to the Inquiry or if you require assistance to provide information to the Inquiry, please email specialinquiry@acyp.nsw.gov.au or call 0461 252 921.
9. You should tell us if you are assisting someone who has information or documents to provide to the Inquiry and you are of the opinion that the person you are assisting is disadvantaged or hampered from providing the information or documents in any way.

Part C – Confidentiality

10. The Inquiry is sensitive to the need to keep certain information provided to it confidential, particularly information which may identify or adversely reveal confidential information about children or young people who are or have been in ACAs or OOHC.
11. The Inquiry will not publish or otherwise disclose Confidential Information except in accordance with this Practice Guidance and any other practice guidelines published by the Inquiry.
12. The Inquiry may disclose or publish copies of de-identified or redacted documents or information where it is satisfied that the Confidential Information has been removed.
13. Any person providing information to the Inquiry may request that such information be determined by the Inquiry to be Confidential Information.
14. A person or their legal representative may request that information, including a whole document or part thereof, be determined to be Confidential Information by written application given at the time of submitting the information setting out:
 - a. part of the information in respect of which confidentiality is sought;
 - b. whether complete confidentiality is sought or whether publication was acceptable to some person or categories of persons; and
 - c. the basis for the claim of confidentiality.
15. The Inquiry will:
 - d. maintain confidentiality over the subject matter of the application pending consideration of the request for confidentiality;
 - e. decide the application on the papers and notify the person or the person's nominated representative accordingly; and
 - f. where confidentiality is granted, decide the terms of the confidentiality.
16. The Inquiry may determine that a whole document or part thereof is Confidential Information.
17. The terms upon which information is determined to be Confidential Information may include directions relating to the preparation and production of de-identified or redacted documents suitable for use during the Inquiry or publication.
18. The Inquiry may of its own volition determine that any information received is Confidential Information, and take appropriate steps to maintain this confidentiality, including limiting or preventing publication of such information.
19. The Inquiry may disclose Confidential Information where the mandatory reporting obligations in the CYP Act or any other relevant legislation apply.

Confidentiality – children and young people

20. Any child or young person giving evidence to the Inquiry will be assisted by a person from the Inquiry witness support team and given information about the Inquiry and their appearance prior to giving evidence.

21. Evidence from, and information about, a witness regarding their experience in an ACA or OOHC will be treated by the Inquiry as Confidential Information with respect to:
- the name of the witness;
 - any information identifying the witness;
 - any information identifying any other child or young person;
 - any other information determined to be Confidential Information by the Inquiry:
- and the witness, and any other child or young person referred to in the witness' evidence, will be referred to by a pseudonym, unless the witness or that person is over 25 years of age and can and does consent freely and knowingly to their name and identifying information being published by the Inquiry.

Disclosure of Confidential Information for the purpose of the Inquiry

22. The Advocate may seek access to documents held by relevant Government agencies or service providers with respect to children and young people who give information or evidence to the Inquiry about their experiences in ACAs or OOHC. Such documents will be treated as Confidential Information by the Inquiry.
23. The Inquiry may provide Confidential Information to an interested party or a person to whom a notice requiring the production of a statement or documents in relation to a particular child or young person or service provider has been issued, for the purpose of the Inquiry.
24. Where the Advocate determines it necessary to disclose any Confidential Information for the purposes of the Inquiry, the disclosure will be limited to information sufficient to meet the circumstance and the disclosure will be on a confidential basis.

Part D – Other methods of Inquiry

25. The Advocate may consult with any person, and hold public seminars or workshops, in the course of the Inquiry, to obtain information and views in relation to the subject matter of the Inquiry.
26. The Advocate may establish working groups and task forces during the course of the Inquiry, to carry out such work as is requested of them by the Advocate, and report to the Advocate, in relation to the subject matter of the Inquiry.
27. The Advocate will publish on the Inquiry web page information as to any seminar or workshop it holds, or any working group or task force it establishes.

Part E – Hearings

28. The Advocate may hold public and/or private hearings during the course of the Inquiry. The Advocate may, by written notice, require a person to attend a hearing before the Advocate to give evidence.
29. The Advocate may make any special arrangements it considers appropriate regarding the conduct of public and private hearings. Such arrangements include, but are not limited to requiring that:
- evidence of witnesses be given at a place other than the hearing room and transmitted to the hearing room by video or audio transmission;
 - a witness be accompanied or supported by a relative, friend or other person as approved by the Advocate; and
 - a witness give evidence with the assistance of an interpreter.

30. The Advocate intends to communicate with ACA service providers to ensure that children and young people in ACAs are able to participate in the Inquiry.

Public hearings

31. The Advocate will give reasonable notice prior to holding any public hearings by way of advertisement published in a newspaper circulating throughout the State and in such other manner as the Advocate considers appropriate as required by the Act.

32. Any such notice will include detail as to the subject-matter of the hearings.

33. A person or entity who considers they have an interest in a hearing may make an application to the Inquiry to be approved as an interested party to appear and be heard at all or part of the hearing. The Advocate has the discretion to approve such an application where the person is substantially and directly interested in the subject-matter of the Inquiry.

Private hearings

34. The Advocate will hold a hearing in private if: (a) the Advocate is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason; or

35. the hearing concerns the evidence of a child or young person.

36. The Advocate may issue a Direction that information given at, or in relation to, a private hearing not be published. The Advocate may direct that:

- a. any evidence given at a private hearing of a special inquiry;
 - b. the contents of any document, or a description of any thing, produced to the Advocate at a private hearing;
 - c. any information that might enable a person who has given or may be about to give evidence at a private hearing to be identified or located; or
- the fact that any person has given or may be about to give evidence at a private hearing must not be published except in such manner, and to such persons, as the Advocate specifies.

37. In accordance with the Act, a person must not make a publication in contravention of such a direction.

38. The Advocate may publish transcripts of a private hearing in a form redacted to preserve Confidential Information.

Proposed Team for Special Inquiry

39. The Advocate, for the purpose of this Inquiry, has created a dedicated team to work on the Inquiry. The team will consist of the following (and may be subject to change):

- | | |
|---|--|
| <ul style="list-style-type: none">a. Advocate as Chair of the Inquiry;b. Deputy Chair – Senior Policy Advisor;c. Lived Experience Chair – person with lived experience of OOHHC and ACAs;d. Social worker to provide support to witnesses at Inquiry hearings; | <ul style="list-style-type: none">e. Taskforce that will review submissions, and transcripts and other material that is relevant to the Inquiry;f. Legal support team; andg. Any other person that the Advocate deems appropriate. |
|---|--|

Part F – Telephone or Video Proceedings

40. At the discretion of the Advocate, part of any hearing may be conducted either by telephone, video link or other mechanism as approved by the Advocate. Any person appearing before the Inquiry may apply to participate by telephone, video link or other mechanism.
41. Where information or evidence is to be given either by telephone, video link or other approved mechanism, the Office of the Advocate will make the necessary arrangements and provide the details of the proceedings, the witness or witnesses, location, telephone numbers and the date, time and estimated duration to the parties.

Part G – Legal representation at hearings

42. The Advocate may authorise a person appearing at a hearing of the Inquiry to be represented by an Australian legal practitioner if the Advocate is satisfied that the authorisation is necessary or desirable in the public interest or for the safety, welfare or wellbeing of a child or young person.
43. A person seeking authorisation for legal representation at a hearing must make an application to the Advocate at least four days before the hearing in writing via specialinquiry@acyp.nsw.gov.au. An application should include submissions of no more than two pages as to why it is necessary or desirable in the public interest or for the safety, welfare or wellbeing of a child or young person for legal representation to be allowed.
44. Any decision to allow legal representation may be varied, withdrawn, or subject to additional conditions by the Advocate at any time.

Part H – Cross-examination of witnesses

45. The cross-examination of witnesses will not be permitted other than with the approval of the Advocate or person presiding.

Appendix 4: General Practice

Guideline 2 – Conduct of Private Hearings with Children and Young People

Special Inquiry into the experiences of children and young people in alternative care arrangements (ACAs) in New South Wales.

General Practice Guideline 2: Conduct of Private Hearings with Children and Young People

Published 28 November 2023

Part A – Introductory matters 1

1. This Practice Guideline relates to the process through which the Advocate for Children and Young People (the **Advocate**) will conduct private hearings with children and young people, as part of the Special Inquiry (the Inquiry) into the experiences of children and young people living in alternative care arrangements (**ACAs**).
2. This Practice Guideline should be read in conjunction with the *Advocate for Children and Young People Act 2014* (NSW) (**the Act**), the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the CYP Act), the *Terms of Reference and General Practice Guideline 1*.
3. Where the Advocate thinks it appropriate, this Practice Guideline may be varied, changed or replaced at any time.
4. Unless otherwise specified, contact with the Inquiry should be made by email to specialinquiry@acyp.nsw.gov.au. If you do not have access to email, please call 0461 252 921 for assistance.

Part B – Conduct of private hearings

5. Any child or young person giving evidence to the Inquiry will be assisted by a person from the Inquiry witness support team and given information about the Inquiry and their appearance prior to giving evidence.
6. The Inquiry will only receive evidence from children or young people who have given informed consent to participate in a private hearing.
7. The Inquiry will not compel a child or young person to participate in a private hearing.
8. Usually, a private hearing will involve two members of the Inquiry team (including the Advocate or their delegate) meeting with a child or young person. However, on occasion, it might involve additional members of the Inquiry team. Children and young people can choose to have a support person attend the private hearing with them.
9. Prior to commencing the private hearing, the Inquiry team will seek children and young people's consent to audio record session and will also prepare a transcript to help the Inquiry in its work.

10. Any Confidential Information will be redacted or anonymised prior to publication to the extent necessary to maintain confidentiality.
11. A child or young person giving evidence before a private hearing may request the Inquiry to treat any part of their evidence (in addition to identifying information) as Confidential Information.
12. A social worker will be available to provide support to children and young people prior, during and after the private hearing.

Part C – Adjustments and supports

13. The Advocate will, as far as practicable, support children and young people to share their experiences in private hearings in the way that best suits them.
14. Prior to a child or young people appearing at a private hearing the Inquiry witness support team will discuss any relevant adjustments and supports that might be needed. For example:
 - a. if the child or young person will need longer than one hour to tell the Inquiry about their experience, how long they think you might need and if they think they will need to take breaks;
 - b. if there is a particular time of day that suits them best;
 - c. if the child or young person would like the private hearing to be in person or via telephone or video link;
 - d. if the child or young people needs us to travel to them because they cannot travel to attend a private session;
 - e. if the child is part of a family group, they can elect to attend a private hearing with their family group, or as an individual;
 - f. if the child or young person would like to have a relative, friend or other support person attend the private hearing with them;
 - g. if the child or young person would like to share their experience with the help of an interpreter or someone else who may communicate on their behalf or help with communication;
 - h. if the child or young person needs any aids or equipment to help them share their experience; or
 - i. if the child or young person has any other requests for adjustments to enable them to participate in a private hearing.

Part D – Scheduling or requesting a private hearing

15. The Advocate intends to communicate with ACA service providers, to ensure that children and young people in ACAs are able to participate in the Inquiry.
16. The Advocate will also communicate with broader stakeholders to ensure that children and young people who have experience of being in an ACA in the past 10 years are able to participate in the Inquiry.
17. Please tell us if you are a child or young person, or know a child or young person, that would like to share information with the Special Inquiry in a private hearing that is relevant to any of the matters contained in the terms of reference.
18. You can contact us to request a private hearing by emailing specialinquiry@acyp.nsw.gov.au or calling 0461 252 921.

Definitions

19. **ACA** means alternative care arrangements or “high-cost emergency placements”, which includes the use of hotels, motels, caravan parks, serviced apartments and other similar settings as emergency accommodation.
20. **Child** means a person under the age of 12 years.
21. **Confidential Information** means any information provided to the Inquiry that the Inquiry has determined is confidential, including but not limited to any information which discloses the identity of or is likely to lead to the identification of a child or young person who is in, or who has been in, an ACA or OOHC who is under the age of 25 years.
22. **Out-of-home care (OOHC)** means:
- a. residential care and control of a child or young person that is provided under the CYP Act:
 - i. by a person other than a parent of the child or young person, and
 - ii. at a place other than the usual home of the child or young person, whether or not for fee, gain or reward.
 - b. There are two types of OOHC:
 - i. statutory OOHC:
 - A. OOHC that is provided in respect of a child or young person for a period of more than 14 days, or
 - B. pursuant to a care order of the Children’s Court, or
 - C. by virtue of the child or young person being a protected person.
 - ii. supported OOHC:
 - A. OOHC in respect of a child or young person that is, as a result of the Secretary forming the opinion that the child or young person is in need of care and protection, arranged, provided or otherwise supported by the Secretary.
23. **Young person** means a person who is 12 years of age or above but under 25 years of age.

Appendix 5: IITC Outreach Factsheet

From the NSW Department of Communities and Justice website

Intensive Therapeutic Transitional Care (ITTC) Outreach – Factsheet

Published May 2020

This factsheet has been developed for use by Department of Communities and Justice (DCJ) staff as part of the referral process for outreach services from Intensive Therapeutic Transitional Care (ITTC) units. It is intended as a guide only to assist staff understand the different levels of service provision when making referrals to ITTC units.

The factsheet should be read in conjunction with the following documents:

- [ITTC Outreach Practice Guide](#)
- [Business Rules: Eligibility Criteria for PSP Service Packages](#)
- [Permanency Case Management Policy - Policy Statement](#)
- [Permanency Support Program Appendix 5: Service Overview - Intensive Therapeutic Care \(ITC\)](#)
- [PSP Program Level Agreement](#)
- [NSW Therapeutic Care Framework](#)

ITTC Outreach is a service provided by a DCJ funded Intensive Therapeutic Care (ITC) Service Provider through an Intensive Therapeutic Transitional Care Unit (ITTC) unit.

ITTC Outreach is not prescriptive so it does not limit its capacity for innovation and creative service provision, however has the intention of providing short term support based on specific, measurable, achievable, realistic and time-limited (SMART) goals. These will be included in the ITTC Outreach Plan.

Areas where support may be provided will depend on the availability of specialists by the provider in that location. This could extend to providers undertaking brokerage to deliver services.

Services could include behavioural assessment and support (but not drafting BSPs), developmental assessments including but not limited to occupational and speech therapy, mental health, alcohol and/or drugs, education, independent living skills, carer / parent support, placement support, and risk management.

This will be achieved through providing the necessary assessments and interventions identified on a case by case basis for each child, young person and/or their carer, family or direct care staff referred to ITTC outreach.

Primary goals:

ITTC Outreach has the primary goal of promoting the safety, welfare and wellbeing of children and young people in PSP with the main objectives to:

- prevent placement breakdown;
- prevent entry into ITC;
- assist transition where children and young people require a placement change, or
- assist transition where children and young people require support to move to step down models of care.

Key outcomes:

The key outcomes of ITTC Outreach are that:

- children and young people remain in their current placement, if appropriate;
- children and young people receive the support they need to preserve their placements;
- children and young people do not enter ITC, unless in their best interests;
- children and young people who need to transition to new placements receive the assessments and intervention they need to ensure its success; and
- foster carers, family or direct carers receive the support they need to maintain placements.

Services provided:

The Intensive Therapeutic Transitional Care (ITTC) Unit has been established as part of the ITC service system and facilitates the delivery of a suite of evidence informed, tailored assessments and interventions.

The ITTC Unit performs two distinct functions, to:

1. provide time limited (up to 13 weeks) direct care supported by a highly skilled multidisciplinary team in home-like and child-centred environment (for children and young people aged 12 years and over with a CAT score of high); and to
2. provide outreach support to children and young people that require increased support and assistance.

The focus of this factsheet will however be **ITTC Outreach only**.

As each ITTC unit is operated by different SP and the Multi-disciplinary Specialist Team (MDST) services may be either provided in-house, purchased from other agencies or individuals, or a combination of both depending on the individual needs of the children and young people, service provision will vary by unit and location.

Services not provided:

The following services are not provided by an ITTC outreach model:

- early intervention services; and
- placement in an ITTC unit.

Minimum requirements:

The ITTC unit as part of outreach must provide services:

- for up to 24 children and young people per quarter;
- for a period of up to 13 weeks in duration;
- that develop and monitor outreach plans;
- conduct monthly care team meetings; and
- complete an exit summary on services provided and outcomes achieved.

After consultation with service providers the following forms have been agreed for use:

- ITTC Outreach Referral Form;
- ITTC Outreach Plan; and
- ITTC Outreach Exit Summary.

It is an expectation that referrals and ITTC service provision comply with these forms and processes.

Service delivery:

ITTC Outreach will be expected to meet the requirements outlined in the Permanency Support Program and the Ten Essential Elements as part of the Intensive Therapeutic Care Framework.

ITTC Outreach will provide support to children and young people by a highly skilled and multi-disciplinary specialist team (MDST), qualified staff with experience in (but not limited to) behavioural assessment, therapy, psychology or allied health services led by a Therapeutic Specialist.

Service provision will be for a period of up to 13 weeks, with an option to extend for a further 13 weeks in circumstances where the intended outcomes cannot be achieved in a shorter time frame.

These services will vary on a case by case basis and are expected to focus on review, referral and recommendations to guide case plan goals, rather than the delivery of full assessments and associated wraparound services. Referrals will be determined by the local Child and Family District Unit (CFDU) and will be dependent on the capacity of the ITTC Unit at that time.

ITTC Outreach will provide support to the PSP service system in the following ITTC geographically based locations:

- Blacktown;
 - Gosford;
 - Lismore;
 - Liverpool (yet to be established);
 - Newcastle;
- Orange;
 - Queanbeyan;
 - Tamworth (yet to be established); and
 - Wollongong (yet to be established).

NB: Service provision will only be provided within a 2-hour radius of the ITTC unit

Client group:

The target group for ITTC Outreach is children and young people with high and/or complex needs placed in:

- foster care that require increased support and assistance to prevent entry into ITC;
- ITC and need further assessment and assistance to transition to, or settle in to a new placement;
- alternate care arrangements (ACAs) and require support to transition to an ITC placement or more appropriate placement; and
- the interim care model who require support to transition to a more permanent care arrangement.

Referral process:

Referrals can be made by PSP or ITC service provider (SP), or Department of Communities and Justice (DCJ) caseworker as per eligibility criteria.

Pre-screening (Suitability Consult)

In some districts, prior to a referral being made the referring agency (DCJ or a service provider), may contact their permanency support coordinator (PC) to determine whether ITTC outreach would be beneficial for a child, young person, or their carer, or whether another service would be more appropriate based on their needs.

Referral pathway

Referrals for ITTC Outreach can be made by completing the ITTC Outreach Referral Form and emailing it to the local agreed mailbox in the district.

If the referral meets the eligibility criteria the District sends it to the Therapeutic Specialist and Multidisciplinary Team at the ITTC unit.

The Therapeutic Specialist assesses the referral based on capacity (taking in to consideration current ITTC placements and outreach support) and completes the 'Referral Outcome' section of the referral form (including reasons for non-acceptance).

¹ This includes children and young people placed with PSP funded SP.

If the referral is accepted the Therapeutic Specialist immediately contacts the allocated caseworker and commences development of an ITTC Outreach Plan. This could include bringing together all the relevant stakeholders in the child or young person's life through a care team meeting.

If the ITTC Unit declines the referral CFDU will pass on the outcome to the caseworker, who could consult with the Permanency Support Coordinator for support.

Referrals when an ITTC unit covers more than one CFDU

In some ITTC locations the unit may cover more than one CFDU. To ensure a consistent process there should be a lead CFDU identified for the location. The following steps should be followed by the local CFDU once a referral is received.

The local CFDU assesses the referral against the eligibility criteria and sends it to the lead CFDU. The CFDU in the lead district assesses the referral based on the capacity of the unit and forwards the referral to the ITTC unit.

The ITTC unit (as per referral process) assess their capacity to provide outreach and advise the CFDU in the lead district of the outcome.

The CFDU in the lead district informs the local CFDU of the outcome. The local CFDU contact the referring agency to inform them of the referral outcome.

Care Team Meetings:

Care Team Meetings can be arranged and facilitated by the ITTC service provider to develop an outreach plan through the course of the engagement of services.

A review of the plan, its implementation and progress should be conducted at each care team meeting, which could include the caseworker with primary case responsibility.

Monitoring:

Whilst further work is being progressed on monitoring mechanisms, Districts may wish to consider monitoring referrals in consultation with contract managers.

Care responsibility during ITTC outreach:

Under PSP, children and young people are placed with a non-government service provider who has primary case responsibility. The service provider receives funding via PSP packages to cover the cost of providing case management as well as services and supports to address the needs of children and young people in their care.

When a referral is accepted for ITTC outreach primary case responsibility remains with the referring agency whether that is DCJ or a SP. Case co-ordination of outreach services will however be provided by the ITTC Unit.

Whilst the ITTC multi-disciplinary team will assist in making referrals, and reviewing and making recommendations to guide case plan goals, their role does not include tasks associated with primary case responsibility.

Exiting process:

During the course of outreach ITTC service providers should provide District staff with copies of Outreach Plans and advise when support is close to completion.

At cessation of service provision the Therapeutic Specialist (ITTC) should complete the ITTC Outreach Exit Summary, including any recommendations for future supports or intervention. The report should be discussed with the caseworker with primary case responsibility, with a copy sent to the district mailbox.

Support and advice:

For more information contact OOHCRecontracting@facs.nsw.gov.au.



acyp.



**Office of the Advocate for
Children and Young People**

Report:
“Moving cage to cage” –
Final Report of the Special Inquiry
into Children and Young People in
Alternative Care Arrangements

Date:
August 2024

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