NSW GOVERNMENT | Communities & Justice

Summary report - Independent Review of two children in OOHC

June 2023

Acknowledgement of Country

The NSW Department of Communities and Justice acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and future. We extend this acknowledgement to the Aboriginal and Torres Strait Islander people that contributed to the development of this report.

Table of contents

1 Secretary's message

As Secretary of the Department of Communities and Justice (DCJ) I am committed to ensuring the safety and wellbeing of children and young people in out of home care.

In late 2022, I became aware of an interim judgment in the Children's Court concerning siblings in out of home care which was published on the Children's Court website. The judgement raised concerns relating to out of home care systems, policies and procedures and the direct impact this had on children.

In response, I commissioned an independent review of service delivery, practices and oversight at defined stages of the sibling's case. The review identified key issues and provided a number of recommendations to improve out of home care service delivery.

I wish to thank Ms Megan Mitchell for undertaking the review and all who participated in the review. The report's findings demonstrate the experience of the siblings does not reflect the standard of care the community expects. We will use the findings from this review to learn and make the necessary changes to prevent this from happening again and to make the out of home care system in NSW stronger and better for the children, young people and families we serve.

This summary report has been developed to share the recommendations and important findings for out of home care system improvement, and to promote transparency and accountability. It will be used as a key tool informing improvements to the out of home care system as we move forward. In releasing a summary report rather than the review report itself, we deliver public accountability on statutory out of home care services while protecting the privacy and interests of the children and family involved. All findings and recommendations from the review report are included in this summary report. Identifying details of the children at the centre have been removed.

2 Introduction and Context

In December 2022, DCJ commissioned an independent review. The review considered service delivery, practices and oversight at defined stages of a case involving siblings in out of home care.

The Secretary of DCJ commissioned the review following an interim judgment in the Children's Court in October 2022, concerning siblings in out of home care which was published on the Children's Court website and raised concerns relating to out of home care systems, policies and procedures.

Ms. Megan Mitchell (Independent reviewer) was appointed to undertake the independent review. Ms. Mitchell has extensive experience in out of home care systems including appointments as Commissioner for Children and Young People NSW (2010-2013) and the National Children's Commissioner, Australian Human Rights Commission from 2013-2020.

The report outlined findings, issues and recommendations that provide DCJ and the out of home care sector with opportunities for improvement to out of home care systems, policies and procedures and will form the basis for further reform aimed at improving accountability, enhanced oversight and governance, training, development and information exchange.

3 The Review

3.1 Objectives and Scope

The need for the review arose, in part, as a result of the findings of a Children's Court Magistrate during hearings relating to siblings in out of home care.

This case pointed to the need to explore potential system improvements in commissioning, contracting, casework, oversight, and delivery of out-of-home care services, and in particular:

- the delivery of services;
- the extent to which the service provider met its contractual obligations during the period it held case management for the children; and
- the extent to which the Department met its case management and parental responsibility obligations throughout.

The review was to:

- consider and provide advice on any systemic issues impacting decisions made in the case;
- review DCJ contract management oversight and casework, decisions, and actions in relation to the focus children; and
- assess the use of a subcontracting arrangement and the oversight of that arrangement.

3.2 Methodology

The project method involved:

- desktop review of relevant legislation, standards, and compliance requirements
- review of policy and procedural documentation relating to contracting, commissioning, and case management;
- review of relevant contracts, agreements, case notes, care plans, correspondence, and court documents;
- review of relevant incident or concern reports;
- interviews with internal stakeholders; and
- interviews with external stakeholders.

4 Key Findings

The purpose of the review was to identify issues relevant to the actions, decisions and service delivery in relation to the siblings and to identify opportunities for improvements in systems, policies and processes.

The siblings were placed in two different types of emergency arrangements; an Interim Care Model (ICM) placement and an Alternative Care Arrangement (ACA). While waiting for a destination placement, each managed by a different non-government organisation (NGO) out of home care provider.

A summary of their placement history during the period reviewed includes:

Placement type	Agency providing day to day care	Agency with primary case responsibility
ICM	ICM provider	DCJ
Foster care	PSP (NGO) foster care provider	PSP (NGO) foster care provider
Short term care with relatives	PSP (NGO) foster care provider	PSP (NGO) foster care provider
ACA	Labour hire agency	PSP (NGO) foster care provider, then DCJ

Day-to-day care of the siblings was compromised in both emergency settings over the review period, primarily due to:

- the high number of rostered and changeable workers, many of whom were agency staff with basic qualifications only;
- the length of time the children were in these arrangements;
- multiple changes in schools and living arrangements; and
- limited access to meaningful activities and therapeutic support.

This significantly contributed to the decline in the children's behaviour and wellbeing over time.

In summary, the review found that while the children spent prolonged periods of care in less than ideal living arrangements, and that this contributed to the decline in their wellbeing, this was not due to failures of practice or process as such, but wider systemic issues associated with the out of home care system itself.

The report identified the following systemic issues:

- workforce skills shortages – the high number of rostered and changeable workers, many of whom were agency staff with basic qualifications only;
- dearth of available foster carers (and, in particular, those with the capacity to manage complex needs and sibling groups); and
- a lack of housing suitable to meet children's needs in communities they are familiar with.

In addition, the lack of continued constructive engagement with the children's mother to help her address her issues, and the failure to adequately support the foster care placement, presented missed opportunities.

It was noted that the series of events that took place for the siblings occurred at the height of COVID restrictions where generally there was limited opportunities for activities, education and family time, a significantly depleted workforce which had a negative impact on interagency relationships.

Departmental staff generally acted in accordance with policies and guidelines and there is no evidence that actions or decisions by staff impacted negatively on the safety and welfare of the children. There is, however, some evidence that contracted and fee for service agencies did not always meet expected standards of care or case management, and that earlier intervention by DCJ may have been warranted.

It appears that DCJ exercised an appropriate level of 'control' over its contracting, commissioning and fee for service partners in both the emergency arrangements; being an ICM and ACA.

DCJ has in place solid contract management policies, procedures, and documentation, scaffolded by regular contract management and placement panel meetings, and measures to correct underperformance (such as instituting service development plans). However, there is limited line of sight to subcontracting arrangements entered into by PSP providers, and better mechanisms to assure the quality of these arrangements should be explored.

Frontline workers interviewed for the purposes of this review demonstrated a mixed understanding of risk management and how contractual policies and procedures were implemented in practice at the operational level. Further, a lack of role clarity between agencies and among staff was apparent throughout the period covered by the review, in both the ICM and the ACA placement, including in relation to 'primary' and 'secondary' case management. This impeded the capacity to establish constructive channels of communication and timely information exchange between agencies.

A review of safety concerns that arose during the placements also indicates that, while operational staff were confident in reporting safety or risk concerns, they were not always clear about which channels were most appropriate to escalate agency performance related issues and were not always made aware of subsequent actions and decisions taken.

It would be prudent to test whether similar levels of risk management awareness are replicated across the agency.

The DCJ decision to resume case management, was taken only after a number of attempts to resolve concerns with the PSP (NGO) foster care provider's performance in relation to case management and supervision and support of agency care staff. Regular placement panel meetings were held between DCJ and the service providers to review and assess the children's progress and options for exiting the ACA. While this is broadly in line with policies that emphasise the importance of supporting the stability of case management activity and relationships with children, it could be argued that the deterioration in the children's wellbeing, the nature and level of concerns raised, and the lack of timely efforts to address these warranted earlier intervention.

While the models of care represented by ICMs and ACAs have a legitimate place in emergency situations, they should be underpinned by strong quality assurance measures and be closely monitored given the inherent risks involved. These types of placements should also include a significant therapeutic component and be strictly time limited. Where extensions are sought beyond 12 weeks, processes should be in place to require high level sign off of detailed plans to exit the placement, along with mandated monitoring and reporting requirements on progress.

The review found that there are opportunities to improve the guidance and training available to DCJ and non-governmental service provider staff in relation to: secondary and primary case management roles in emergency placements; contractual/ agreement terms, expectations and monitoring processes; and escalation processes where risks are present or concerns arise. Reforms in areas such as independent oversight, professional foster care and other innovative care models, access to appropriate housing, interagency relationships, and family engagement and restoration practice should also be prioritised to relieve system-wide pressures.

The review identified a number of opportunities for improvement to systems, policies and procedures and for enhanced oversight, training, development and information exchange that are outlined in Section 9.

5 Context: Out of Home Care in New South Wales

5.1 Roles and responsibilities

When child protective services within DCJ determine that a child is at unacceptable risk of abuse or neglect, following assessment and investigation, a child may be removed from their parents or other family members and placed into out of home care, temporarily or for a longer time. These provisions are set out under the Children and Young People's (*Care and Protection*) Act 1988 (the Act).

There are several types of out of home care in NSW, including foster care (where the child is placed with an unrelated foster parent), residential care (usually used for older children with high needs), and kinship care (where the child is placed with a relative or community member).

Foster Care is statutory care provided by prospective guardians, prospective adoptive parents and authorised foster carers in the carers' own home or, sometimes in a home/house owned or rented by a service provider. This includes relative and kinship care provided by an extended family member or persons of significance to the child or young person. In NSW, both government and non-government agencies provide or auspice out of home care services to children.

Key actors in the out of home care system in NSW

Actor	Role
DCJ	DCJ is a major provider of out of home care services in New South Wales. It also funds (contracts and commissions) NGOs to deliver out of home care services.
The Minister	A court can order the Minister for Family and Community Services to assume parental responsibility for a child (statutory care).
Children in statutory out of home care	As of June 2022, there were 15,223 children in statutory out of home care.[1]
Carers	Children in statutory care live with authorised foster, relative or kinship carers. They can also be supported by carers in residential and therapeutic care arrangements.
Non-government organisations	Agencies funded by government to provide or support out of home care services (such as foster care) to children.
The Office of the Children's Guardian	The Children's Guardian accredits and monitors statutory out of home care providers in New South Wales. It sets minimum standards for providers of out of home services, manages reportable conduct allegations, and administers the carers and residential workers register.

The NSW Children's Court	The Children's Court can order the Minister for Family and Community Services to assume parental responsibility for a child, to restore a child to the care of their parents/family and set conditions for contact etc.
The Supreme Court of NSW	The Supreme Court assesses and grants orders for adoption.
NSW Ombudsman	The Ombudsman receives and investigates complaints, including in relation to out of home care.
NSW Ageing and Disability Commission	The Official Community Visitor (OCV) scheme is part of the NSW Ageing and Disability Commission.

5.1.1 The Department of Communities and Justice

In New South Wales, the Department has a range of roles in relation to child protection and out of home care, which are specified under the Act, including, in broad terms:

- The assessment and investigation of risk of harm reports relating to children
- Case work actions, decisions, and court work to assume a child into care (either temporarily or for the longer term) and to support preservation, restoration to family, guardianship, foster care, adoption, or third-party orders
- Placement, care planning and case management of children in out of home care
- Contracting and commissioning non-government providers to deliver out of home care services.

Out of home care considered to be a pathway to a permanent home for a child or young person rather than a long-term form of support. This policy is supported by the Permanency Support Program (PSP).

5.1.2 A mixed model of service delivery

Since 2012 the Department has sought to transfer more and more out of home care provision to NGOs. The transition recognises NGOs have capacity to provide the support services children, young people and carers need, with a view to allowing DCJ caseworkers more time to help the most vulnerable families and prevent their children coming into care. Despite this, the Department remains a significant provider of out of home care services (and as such is subject to Office of the Children's Guardian [OCG] accreditation). In broad terms, DCJ provides out of home care services to relative and kin placements with foster care provision provided by NGOs.

This mixed model of service provision is a feature of a number of other Australian jurisdictions, and holds considerable challenges in practice, especially in terms of role clarity. For example: an NGO may support day-to-day care of children, in a residence or care placement, and hold case management responsibility; they may only hold case management, with another agency supporting day-to-day care of children in a residence; or they may be the provider of day-to-day care for the child, with another agency or the Department holding case management responsibility.

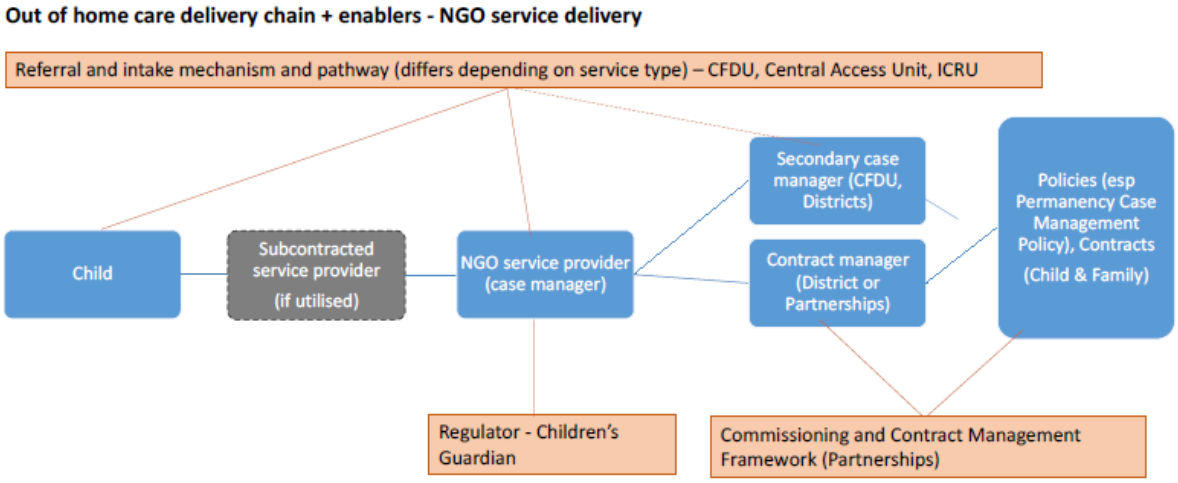
In general, whatever the arrangement, the Department holds what is known as secondary case management which includes decisions relating to Parental Responsibility (decisions that need to be made when parental responsibility (PR) has been assigned to the Minister, such as medical interventions and school enrolment).

The exception to this is where PR has been delegated under the Act to another organisation. It is the reviewer's understanding that this only applies to a particular cohort of children in the care of Barnardos.

A high-level organisational chart for DCJ is below. The two key streams of the organisation that administer, fund and monitor out of home care are: Child Protection and Permanency, District and Youth Justice services (the operational arm) and Strategy, Policy and Commissioning.

The following figure shows the basic out of home care delivery chain involving non-government providers

NGO OOHC delivery chain



Child & Family District Units (CFDUs) comprise casework practitioners who exercise secondary case responsibility for most children in the case responsibility of PSP providers (contracted NGO service providers). This means they have the powers and functions of delegated PR. These are located in the Operational arm of the organisation.

CFDUs are the key notification point for many individual child-related events and provide or arrange approvals for some funding packages, including under the PSP.

The Central Access Unit (CAU) in DCJ is responsible for determining the suitability for entry of a child to therapeutic care related services, and are responsible for case coordination, monitoring and exit pathways, outcome reporting, and service capacity development. These are generally targeted at older children with higher needs.

Interim Care Referral Unit (ICRU) acts as a centralised referral pathway for children entering Interim Care Model placements or other specialised placements arranged by ICRU.

Commissioning and Planning (C&P) teams and State-wide Contracts oversee the PSP Program Level Agreement (PLA) including reporting related to contractual obligations and monitor performance. State-wide Contracts also reconcile funding. In making referrals, CAU and ICRU work through the various contract managers in Commissioning and Planning Teams.

C&P teams play a role in supporting an integrated local service system beyond PSP service provision to support holistic service delivery and client outcomes. PSP providers that operate across multiple districts will have a lead contract manager. The

lead contract manager may be located in State-wide Contracts in central office under the Strategy, Policy and Commissioning arm or a C&P team in a local district through the operational arm. C&P contract managers support the work of the lead contract manager.

5.1.2.1 The Permanency Support Program

PSP is based on evidence that demonstrates that a permanent, safe, and loving home gives a child or young person a better chance at leading an independent, successful life as an adult. The program aims to achieve: fewer entries into care by keeping families together; shorter time in care by returning children home or finding other permanent homes for children; and a better care experience by supporting children's individual needs and their recovery from trauma.

Under the Program, caseworkers (government or non-government) work with a child and the people who care about that child, to identify the best permanency goal and to attain that goal within two years.

The principle of placing a child or young person as close as possible to their family and community connections is built into NSW child protection laws, the NSW Practice Framework and the Permanency Case Management Policy. The NSW Practice Framework (introduced in 2017) outlines how DCJ seeks to work with children and families in NSW, incorporating an interrelated set of principles, values, mandates, standards, approaches, and systems. The framework includes 11 Practice Standards for child protection and out of home care establishing expectations about how practice is to be carried out. These standards reference requirements relating to legislation, policies, mandates and the OCG's Child Safe Standards for Permanent Care, and promote practical and analytical skills, thinking, behaviours and interactions that DCJ practitioners are expected to use in daily practice.

The Permanency Case Management Policy describes the minimum expectations of DCJ and service providers, in working collaboratively to deliver the PSP. This is a comprehensive document articulating: roles and responsibilities; assessment processes; placement types and processes; case planning for permanency; approaches to partnership (including commissioning); and requirements in relation to legal matters.

DCJ has established specialist positions to support permanency work called Permanency Coordinators. Permanency Coordinators work with non-government agencies and DCJ caseworkers to support the identification of permanent care options for children.

Permanency Coordinators:

- Support and encourage good practice
- Help drive cultural change
- Provide advice and answer questions about permanency options
- Monitor the achievement of case plan goals and conduct case plan goal reviews
- Help with referrals to other support services
- Provide advice about legal processes
- Provide information on PSP packages.

Permanency Coordinators also facilitate consultations prior to setting up or changing the case plan goal of a child and help to identify what work is needed to make placement decisions (e.g., family finding) and the types of information or evidence that should be collected by caseworkers.

5.1.3 Non-government agencies contracted under the PSP

Under the PSP, contracts are only entered into with agencies accredited to provide out of home care service by the Office of the Children's Guardian. Ostensibly, this provides assurance that the agency has all relevant policies and systems in place to care and protect children in line with certain standards. These cover all aspects of the agency's operations from staff skills and qualifications to governance and financial viability. Contracting is for a 5-year term, under a Program Level Agreement, and paid quarterly in advance based on DCJ's estimate of the contract value for that quarter (adjusted later if there is an over/under payment). NGOs are not required to issue invoices, but rather DCJ issues a Recipient Created Tax Invoice for GST purposes.

The PSP packaged care service model comprises a case plan goal package, baseline package and child needs package. Specialist packages are available depending on the child's circumstances and eligibility.

The packages are provided to cover the cost of case management, services, and supports required to address the individual child's needs across the continuum of care. For most children, the PSP provider will receive one case plan goal package, one baseline package and one child needs package but can receive multiple specialist packages, depending on the child's circumstances and needs.

The Child Assessment Tool (CAT) is applied to identify the most appropriate level of care for a specific child or young person, based on an assessment of their behaviour and health and development. CFDUs apply the tool at various points in a child's care journey. The tool was first developed in the United States by a consortium of not-for-profit public policy organisations, including the Annie E Casey Foundation. CAT data are monitored on a quarterly basis and each district has a CAT administrator.

The CAT recommends one of six levels of care for a child or young person in OOHC, based on the combination of behavioural issues and health and development issues. These levels match Community Services placement types and service models.

In general, the *Recommended Level of Care* represents a combination of:

- The level of supervision to be provided to the child or young person.
- The level of support to be provided or available.
- The level of staff training required.
- The level of restrictiveness for the placement of the child or young person.

The tool focuses on the safety and wellbeing of the child, including developmental milestones, health, behavioural needs and social skill attainment:

- High needs children are those with CAT scores of five and six.
- Medium needs children are those children with CAT scores of three and four.
- Low needs children are those with CAT scores of one and two.

Policies and guidance note that the CAT is not a diagnostic tool and workers are encouraged not to regard the CAT as replacing a full assessment of a child's strengths and needs. A Discretionary Override applies if the CFDU caseworker feels

that, based on their professional judgement and experience, the *Recommended Level of Care* does not accurately reflect the actual needs of the child or young person.

Cases where a child or young person has basic behavioural needs but has a combination of complex health needs that require a more intensive level of care will be the most common reason for using a discretionary override.

Overrides are approved by the Manager Client Services, CFDU.

5.2 Models of emergency out of home care relevant to this case

Under the PSP, a range of models exist to respond to emergency circumstances when a permanent option is not immediately available and other temporary family or foster placements cannot be found. These include the ICM and the ACA which, along with foster care, were the care types accessed for the siblings over the Review period. The Department enters into contracts or agreements with non-government agencies to provide such care. Both can be described as residential-like models of care and may be delivered in a variety of dwelling types.

5.2.1 Interim Care Models (ICM)

The ICM is a short-term placement (ideally up to three months, but with provisions for extensions) for children in out of home care with low and medium needs currently placed in an ACA or at risk of imminent entry into an ACA because a suitable kinship or relative, foster care placement or other permanency option is not available. In part this model has been developed to reduce the reliance and use of ACAs. ICM contracts can only be entered into with accredited PSP providers. The model aims to provide children and young people with as close to a 'home-like' environment as possible. It is complemented by continued intensive casework activities delivered by the agency with case responsibility to support transition to kinship or relative care, foster care placement and/or work towards other permanency goals.

The client group is children in the PSP who have been assessed as suitable by DCJ, have low or medium needs, are aged between nine and 14 years, and are in or would otherwise be at imminent risk of entering an ACA.

The ICM is considered to be a standalone baseline package under the PSP described in the Table below:

ICM PSP package

Description	Funds the Interim Care provider (agency with **Supervisory Responsibility**) to support children (9-14 years) in statutory OOHC that have low or medium needs. Funding is time-limited (up to 3 months) for this short-term temporary placement. Eligible cohort for entry into ICM are children currently placed in Alternative Care Arrangement's (ACA), Individualised Placement Arrangement (IPA) or are at risk of entering into an ACA or IPA. Paid at daily rate per child. Interim Care providers may also receive: • vacancy payment per vacancy to meet the fixed costs of running the home • a one-off Placement Establishment Payment to assist with costs of establishing a new house • Complex Needs payment, in extraordinary circumstances.
Eligibility	Children and young people who: • are in statutory OOHC or temporary care of the Secretary • have low or medium needs • are aged between 9 to 14 years • are in or would otherwise be at imminent risk of entering an Alternative Care Arrangement or Individualised placement • have been assessed as suitable by DCJ. There is a maximum of up to four children and young people in an Interim Care home.
Inclusions	• Supervisory Responsibility • Direct care and support in a home-like environment • Staffing as described in the service requirements including two direct care staff during the day when the child is home and one overnight staff • House Parent • Other staff commitments (including overheads) • Household expenses and child related costs (such as housing, utilities, food, transport, recreation, medical, dental, clothing, education, personal care, copies of birth certificates) • Management/administration overheads.

Supervisory responsibility *has a note attached that specifies: Primary Case Responsibility does not transfer to the Interim Care service provider (with supervisory responsibility). Primary Case Responsibility is maintained by the referring agency. If this is a PSP provider, they are eligible to receive Case Plan Goal Packages, Baseline – Case Coordination (Not in Placement), Child's Need Packages and Other Specialist Packages as applicable.*

Several non-government agencies are contracted by DCJ to deliver ICM placements, including the two non-government agencies featured in the siblings case.

Staff interviewed consistently referred to this model of care as the second least preferred placement type. In general, the ICM was acknowledged as filling a current service gap, especially given the lack of available home-based carers, with the potential to provide an opportunity for children to settle, while intensive casework can focus on child well-being, connecting children with services and supports, and finding a suitable permanent home. Another benefit of the model identified was that it can be specifically tailored to a sibling group.

The key documents accessed by the reviewer describing the ICM model were: the Interim Care Model Service Overview (November 2020); the Interim Care Model Facts Sheet (November 2020) and the ICM Operations Guide (April 2021). This latter document sets out fairly detailed guidance and processes for providers and case managers of ICMs. ICM providers are expected to provide day-to-day care of children through delivery of consistent and appropriately trained staff, a safe, child friendly and home like environment, and through every day routines and links to community, cultural and social activities. Agencies with primary case management (including DCJ) exercise the primary casework relationship between the child, carers, parents, family, and kin. This includes case planning, placement, and permanency activities (including family finding and foster care recruitment), and referral to additional supports. Weekly interagency discussion on children's progress and welfare is specified as a requirement, chaired by the ICM provider. Minutes from these meetings are to be shared with ICRU and the local DCJ office. No minimum child visitation requirements are specified in relation to case management, however, there was general agreement from review participants that once per week was the minimum expectation for agencies with a case management role.

5.2.2 Alternative Care Arrangements (ACAs)

ACAs (for example, care delivered by unaccredited agency staff in serviced apartments, hotels and motel accommodation) are used as a last resort option, in emergency situations. While it is widely acknowledged that these care arrangements 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.

Several labour hire agencies and other entities (not accredited by the OCG) have arrangements with DCJ to establish ACAs. Non-government PSP providers also have these relationships and enter into subcontracting agreements with these labour hire agencies to establish ACAs (as a last resort). This includes the two non-government PSP agencies featured in this case.

An ACA is a fee-for-service arrangement delivered by a non-government agency, rather than a contractual arrangement, and are only entered into when a contracted placement cannot be identified. It is established under a Standing Offer Agreement. Another example in this space is the Caseworker Support Scheme. ACA arrangements are established and monitored by a case managing agency (DCJ or a designated non-government agency).

A fee-for-service arrangement requires the service provider to invoice the Department. Often this is after the service is delivered, or for a period of service (for example, at the end of a month). The invoice cannot be issued until a price is agreed. If case management sits with a PSP provider, the invoice arrangement is with the

Department and the PSP provider, who in turn pays the subcontracted entity used as labour hire for the ACA.

Labour hire agencies (such as the one used in the ACA in this case) are subject to service agreements that specify a range of conditions that need to be met in providing the day-to-day support for children in an ACA. These include minimum staff qualifications, skills and training requirements. These agencies do not provide case management for children in the placements, this is undertaken by the Department or an accredited (designated) non-government agency.

Staff interviewed consistently referred to this model of care as the least preferred placement type, because they do not provide a sense of stability, belonging or permanency for the child. However, some workers considered this to be a better than, or at least equivalent to, the ICM in some circumstances, particularly where the Department held case management and greater control over arrangements.

DCJ has internal documents which set out the processes DCJ workers are to follow in setting up an ACA, in securing funds to support it and in reporting responsibilities. This includes that DCJ must verify an agency's staff probity checks and recommending weekly home visits.

There appears to be limited documented resources available to non-government service providers in relation to ACAs and the processes and requirements that underpin them

5.2.3 Oversight and delivery of emergency care models

To provide statutory out of home care or adoption services in NSW, agencies must first be accredited by the Children's Guardian. Agencies that are accredited to provide statutory out of home care are known as designated agencies. The OCG generally conduct audits and monitoring visits to confirm an agency is continuing to comply with its accreditation requirements. However, in some cases, monitoring assessments will occur in response to issues or concerns brought to their attention, including by DCJ.

ICM arrangements are governed by the same oversight arrangements as other PSP arrangements, and as providers accredited by the Children's Guardian, they are subject to monitoring and auditing by the Guardian. Because the agencies staffing ACAs are not necessarily accredited, these agencies are not subject to monitoring by the Guardian. However, heightened oversight arrangements are in place for ACAs, including, and importantly, weekly, fortnightly, or monthly placement panel reviews – involving both DCJ and/or PSP/agency staff (depending on where case management sits) – and regular reporting to the Deputy Secretary and the Minister. Commissioning and Planning officers attend all panels for ACAs and ICMs in Districts.

There are also notification procedures to the Office of the Children's Guardian to be followed by out of home care providers when a child or young person is placed in a non-home based emergency arrangement, including on entry and exit.

6 Analysis

6.1 Commissioning and contracting arrangements within the Department of Communities and Justice through the lens of this case

6.1.1 The Permanency Case Management Policy

The Permanency Case Management Policy (PCMP) is designed to:

- explain how safety, permanency and wellbeing for vulnerable children and young people is achieved for children by keeping them with or returning them to family, arranging a permanent legal guardian, supporting open adoption, or providing long term care;
- clarify the different roles and responsibilities of DCJ and funded service providers in responding to child protection reports, assessing safety, and case planning for permanency and wellbeing;
- embed in practice a culture a focussing on safety, permanency, and wellbeing by responding to the impact of trauma early on, collaborative and evidence-based approaches to casework practice, partnering with children, their families/kin, carers, and people significant to them, to achieve meaningful change, and engaging family strengths, nurturing resilience and giving dignity.

The Policy is supported by the NSW Practice Framework. The Framework shapes the programs DCJ develops and its practice with families and sets out mandates for roles at all levels of the system for DCJ case work staff.

6.1.2 Commissioning Contract Management Framework

DCJ's Commissioning Contract Management Framework articulates a set of systems and processes that underpin the management of contracts with service providers and their relationships with the Department. The framework's objective is to enable parties to work together to deliver agreed outcomes specified in contractual agreements. Based on the Harvard Kennedy School model of data driven performance management and active contract management, the framework is strength based and seeks to ensure:

- contracts achieve better outcomes for clients
- service providers have ongoing capacity and capability to deliver outcomes agreed in contracts
- issues and risks are managed so that service delivery is stable and uninterrupted
- clarity and accountability for parties in how funds are being used to meet client needs.

The framework is supported by a Charter for Working with Contracted Service providers which sets out the expectations of the Department and service providers in relation to contract management, based on principles of:

- a strong relationship
- mutual understanding of obligations
- a client centred focus

- shared responsibility for quality and outcomes.

6.1.3 Contractual arrangements and documentation

External service providers commissioned to deliver PSP services must adhere to requirements outlined in PSP contracts that include a Funding Deed, a Program Level Agreement (PLA) and associated Schedules. In general (with the ICM being the exception), under these contractual arrangements, service providers that have been commissioned to provide PSP residential care are expected to provide or support both residential day-to-day care of children and to exercise case management responsibility. Contracts can only be entered into with agencies accredited by the OCG to provide out of home care (designated agencies).

The contract sets out, inter alia: terms (including commencement and termination); the services to be delivered (e.g., foster care); transition and implementation plans; payment provisions; and notification and performance information requirements. Monthly performance meetings between the service provider and the department are required at a minimum. The contract includes a number of schedules that provide additional detailed specifications in relation to service provision, reporting obligations and the like. The contract also includes provision for providers to disclose subcontracting arrangements.

An ACA Agreement is intended to respond to emergency placement needs and can be entered into with a non-designated agency (that is, they are not subject to the OCG's accreditation standards). The Alternative Care Arrangements – Standing Offer Agreement sets out: the general terms under which the offer is made; the standing offer agreement details (commercial parameters); schedules, including services to be delivered; fees applying; probity, qualifications, and training expectations; and a request for service. In the case review in question, there were Standing Offer Agreements in place. In this context, the agency with case management had responsibility for working to exit the children from the ACA and back to a contracted placement arrangement.

6.1.4 Subcontracting arrangements and documentation

Outsourcing and subcontracting is allowable in certain circumstances, regardless of the service model, to enable flexible arrangements, respond to staff shortages and support access to timely emergency accommodation and support for children. Importantly, these arrangements may be made with non-designated, non-accredited agencies such as labour hire firms who are able to stand up a care and house arrangement at short notice. In such arrangements, the lead contractor is responsible for all risks associated with the subcontracted entity.

6.1.5 Use of labour hire firms

The key relevant document that applies for non-government agencies to subcontract to labour hire agencies/people is the Application for Consent to Subcontract to Individuals. This form is used by service providers contracted by the Department to apply for consent to subcontract individuals (labour hire), either directly or through another organisation. It is not related to specific children but a standing arrangement for a period of time. The form is in several parts, including: application details (that is, the service provider applying, contract start and end date, rationale, arrangements for monitoring subcontractor); and a declaration in relation to staff skills, qualifications, training and bone fides, standards of supervision, and quality of services. This latter part specifically references that DCJ has no relationship with subcontractors, that the service provider is ultimately responsible for delivery of services and actions of

subcontractors, and that the subcontract does not compromise the header contract with the department.

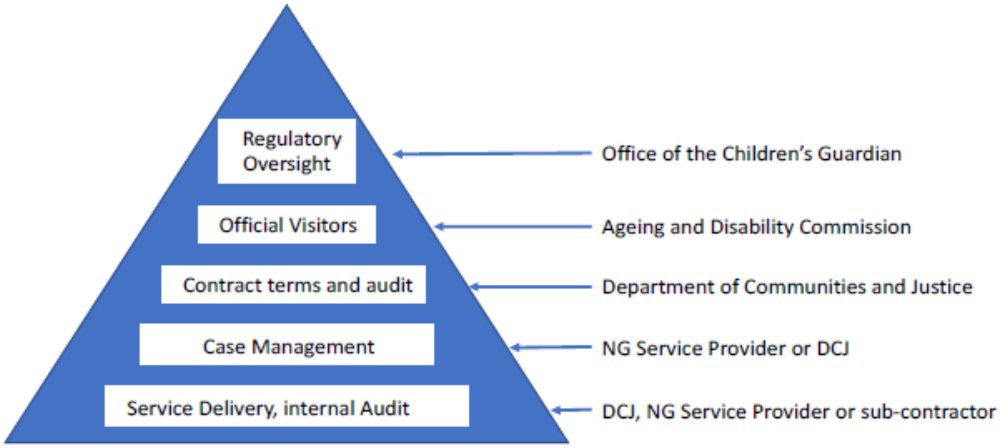
In the case that is the subject of this review, both NGO service providers had such an agreement in place with the Department. In the ICM, services were subcontracted out to some labour hire firm personnel to complement the provider's staff in the house to provide the day-to-day care of the children, while in the ACA, the PSP service provider subcontracted out all day-to-day care to another agency who deployed labour hire personnel to the residence where the siblings were living.

From 18 July 2022, all designated agencies are responsible for ensuring that any subcontracted agency staff they use are listed on the residential care workers register and meet Working With Children Check and other OCG requirements.

According to the OCG's website, as of 18 July 2022, 23% of current engagements on the residential care workers register were sourced from labour hire agencies.

6.1.6 The regulatory environment and the role of the Office of the Children's Guardian

Regulatory environment and quality controls for out of home care in New South Wales



6.1.6.1 The Office of the Children's Guardian (OCG)

The OCG accredits agencies so they can provide statutory out-of-home care and adoption services in NSW. The Guardian's powers are set out under the Children's Guardian Act 2019 and the Children and Young people (care and Protection) Act 1998. A key role of the Guardian is to set standards and accredit and monitor agencies against these standards.

The NSW Standards for Permanent Care articulate the expected standards for children receiving out of home care.

The accreditation process requires agencies to focus their work on meeting the needs of children and young people in out of home care, so they experience similar levels of service. It helps them identify areas where they meet current standards of good practice, as well as areas where they need to change or improve.

The accreditation process also allows agencies to:

- share a common understanding of good practice;

- work towards continuous quality improvement;
- systematically review their performance against standards; and
- encourage greater scrutiny of outcomes and quality.

Agencies that are accredited by the Children's Guardian to provide statutory out-of-home care services are known as designated agencies. Only designated agencies accredited by the Children's Guardian can provide out of home care in NSW.

The Office of the Children's Guardian oversees the accreditation process. In doing so, they assess the quality and effectiveness of an agency's services based on acceptable standards.

The *NSW Child Safe Standards for Permanent Care* have been in place since 2015 and were developed in collaboration with the out-of-home care sector and key peak organisations to:

- establish a clear benchmark of care where every organisation that provides out-of-home care is expected to meet a quality of care that is nurturing, safe and secure
- help agencies to reflect on and improve their own practices.

There are 23 standards, currently grouped into the categories of: children and young people-care and well-being; casework practice to support care; people who work with and care for children and young people; and child safe organisations. These standards are currently under review.

Standard 2 relates to providing a positive care environment, where the objective is that children and young people receive appropriate care relevant to their circumstances, in a safe environment.

Key requirements in the legislation are that:

- all children and young people must be provided with comfortable and safe care environments.
- agencies that work with children and young people have an obligation to keep them safe from harm.
- the permanent placement principles must guide placement decisions for all children and young people.
- the Aboriginal and Torres Strait Islander placement principles must guide placement
  decisions for all Aboriginal and Torres Strait Islander children and young people.
- children and young people have the right to privacy within the care environment and to maintain their personal belongings.
- children and young people must be provided with a range of social and recreational activities.

Indicators of compliance with the standard are that:

- the agency cooperates with other agencies to provide an integrated service for each child or young person and their family.

- children and young people are placed in care environments that support their need for permanency and stability.
- the care environment is assessed for safety and suitability prior to a placement commencing, including the safety of swimming pools and outdoor areas.
- there is ongoing monitoring of the safety and suitability of the care environment.
- the care environment is altered when the specific needs of a child or young person require it.
- staff allocation in the care environment supports continuity of care and relationships.
- children and young people have privacy in their personal space and their belongings are safe and respected.
- there is a range of age-appropriate activities and experiences in the care environment.
- critical incidents occurring within the care environment are reported, recorded and managed within the agency's required timeframes and in accordance with mandated responsibilities.

6.1.6.2 Official community visitors (OCVs)

Official Community Visitors visit accommodation services for children and young people (including residential out of home care arrangements supported by DCJ or designated agencies), people with disability and people living in assisted boarding houses, throughout NSW.

Official Community Visitors are appointed by the Minister for Families Communities and Disability Services under the Ageing and Disability Commissioner Act 2019, and the Children's Guardian Act 2019.

The Scheme is currently administered by the NSW Ageing and Disability Commission.

The work of the Official Community Visitors is integrated into the Government's broader regulation of agencies providing out-of-home care. Under the Children Guardian's Act, OCVs can provide the Minister and Children's Guardian with advice or reports on any matters relating to the conduct of a visitable service, and to inform them on matters affecting the welfare, interests and conditions of children using visitable services. There are no provisions for proactively sharing with DCJ.

According to the 2021/22 OCV Annual Report, OCVs made 522 visits to residential OOHC services, and worked on 1,007 issues of concern. There is information about the OCV scheme's work in relation to OOHC throughout the report, including outcomes from referrals to the OCG. Participants in this review did not recall any official visitors to placements where the siblings were living under the ICM model.

6.1.7 Overlap with other oversight mechanisms

In NSW, a range of agencies and mechanisms play a role in regulation, quality assurance and oversight of out-of-home care services. These include:

- The OCG (through standard setting, accreditation, audits, and maintenance of carer and residential care registers)
- The NSW Ombudsman (through complaints handling and investigations)

- The Official Community Visitors (through monitoring visits to services)
- DCJ (through policies, procedures, internal standards, and performance reviews)
- Contractual terms and conditions associated with commissioning and fee for service arrangements (through specifying reporting and other obligations, and audit activities).

In this context, it is imperative that these agencies are cognisant of their distinct but interrelated and sometimes overlapping roles and that effective protocols and systems are in place to foster cooperative working relationships, in ways that maximise and focus resources in areas and situations where they can add most value and have the greatest impact on service quality.

Other actors of influence in this space include the Children's Court, peak bodies such as ACWA and ABSec, relevant NSW Parliamentary Committees, professional bodies, and unions. Regular dialogue with these and other actors is therefore also critical.

6.2 Agency performance in relation to the siblings, in accordance with relevant policies, commissioning and contractual terms, and the regulatory environment

6.2.1 Department of Communities and Justice

6.2.1.1 Contract and commissioning oversight

Arrangements for the ICM, the foster care placement, and the ACA were subject to the following contractual and commissioning arrangements:

- A Funding Deed outlining service provider obligations in relation to performance of services, personnel, performance audits and reviews, expenditure and management of funds, financial reporting, records management, confidentiality, privacy and information security, insurance and indemnity.
- A PLA with a contract term of five years from 1 October 2017 to 30 September 2022, outlining further service provider obligations including in relation to sub-contracting, accreditation, reporting and notification requirements.
- A series of detailed schedules were attached to these PLAs as follows:
    - Schedule 1 – PSP Service Requirements
    - Schedule 2 – Performance and Outcomes Data Reporting
    - Schedule 3 – Payment Provisions
    - Schedule 4 – Legislation and Policies
    - Schedule 5 – Implementation Plan (if applicable)

The PSP PLA provides for monthly contract meetings to review Service Provider's performance and to review any contentious issues with children in placements. However, the frequency of these meetings can depend on the complexity of issues at hand.

Arrangements when the siblings were in the ACAs were subject to:

- Agreement between the Department and PSP (NGO) foster care provider to

subcontract to labour hire firms.

- A Standing Offer Agreement between the Department and the labour hire agency after the Department resumed case management.
- The deed of agreement consists of the following parts:

  (a) The General Terms – the clauses of the general terms set out the contractual framework under which the Service Provider will supply Services and include obligations in relation to service provider's personnel such as probity checks and qualifications; complaints and reportable conduct; information sharing; invoicing; confidentiality, privacy and information security; records management; reporting and audits; indemnity and insurance; work health and safety.

  (b) The Standing Offer Agreement Details – the details set out the key commercial variables applicable to the deed

  (c) Schedule 1 – the Dictionary

  (d) Schedule 2 – Services to be provided and corresponding services fees, a€(e) Schedule 3 – the form of Request for Service

As can be seen, a series of detailed schedules are attached to these agreements, including in relation to meeting OCG and Departmental standards, audit, and performance reporting requirements.

The reviewer found no evidence that there were significant issues in terms of contractual and commissioning oversight in this case. Reports received from providers were generally considered to be compliant with Agreement schedules and regular interagency contract management meetings occurred. Where performance concerns arose in relation to the ICM, the assistance of Commissioning and Planning was enlisted, interagency meetings and discussions ensued, and a service development plan instituted. Similarly, in relation to the ACA established by the PSP (NGO) foster care provider, monthly panel meetings included representatives from Commissioning and Planning. It could be argued, however, that service improvement interventions and case management transfer back to DCJ (or another party) might have occurred earlier, especially given the number, level and nature of concerns raised about the quality of care in the placements.

6.2.1.2 Primary and secondary case management, including exercise of Parental Responsibility by DCJ staff

Similarly, there is no evidence that DCJ staff did not perform according to policies and procedures during the ICM, when the Department held case management responsibility for the siblings. This translated to weekly visits to the house, regular meetings with the ICM provider, care planning and the coordination, procurement and provision of various services and supports. This included grief counselling and therapeutic support organised by the DCJ psychologist.

In parallel, extensive efforts were being made to find a permanent arrangement for the siblings, with relatives, family friends and foster carers. At the time, both DCJ caseworkers and the Court Clinician had formed a view that restoration to the mother was not a safe option, so this was not actively explored. In hindsight, this permanency option should have been kept on the table and additional efforts made to engage and continue to assist the mother address her own issues and parenting capabilities.

Once case management transferred to another NGO service provider, it appears that DCJ staff continued to exercise secondary case management (including Parental Responsivity decisions) in line with policies and procedures.

6.2.1.3 ICM provider

As the ICM model was quite new at the time, was set up quickly in response to an urgent need for a placement for the siblings, and that there was some confusion as to which agency should do what, it is difficult to determine whether there were significant performance issues in relation to the ICM provider. Clearly the use of rostered staff, including some from labour hire firms, reduced the intended experience of a 'home like' environment. In this context, the children were exposed to too many workers who they did not know, did not feel safe with or have a positive relationship with. Concerns about the number and quality of rostered staff deployed ultimately led to a decision to require regular access to care staff rosters by DCJ.

DCJ workers reported that they had significant difficulties engaging the ICM staff (the care team) in activities such as group supervision and training (related to the siblings therapeutic and behavioural support needs, in particular), and that they felt the ICM service provider's workers were, on the whole, inexperienced and ill-informed about out-of-home care policies, standards, and practices.

DCJ workers also reported problems accessing regular information about the siblings needs and progress in the placement. This came to a head when a risk of harm report was received about aggressive discipline by a worker in relation to one of the siblings. There were concerns from DCJ staff at the time, the ICM provider failed to undertake a timely investigation, and were resistant to share information about what had happened to support the Department undertake the required Alternative Assessment.

6.2.1.4 NGO (PSP) foster care provider who managed the foster care placement and ACA

DCJ workers also reported problems accessing regular information about the children's needs and progress in both the foster care and ACA placement. It was only when a DCJ caseworker visited the foster care placement by chance that she found the carers in significant distress and considering relinquishing care for the boys due, in part, to lack of support from the agency.

Several reports of concern were received in relation to the ACA which, it was reported, were not dealt with in a timely or adequate way. Care staff in the ACA also indicated to DCJ staff that they had limited training, information, and guidance from the agency, and that this contributed to issues around availability of adequate food, school attendance, lack of access to appropriate winter school clothing, and limited opportunities to pursue activities or interests. There is also evidence, especially early on, of irregular case management visits and supervision, and no substantive provision of therapeutic supports to the siblings.

6.2.1.5 Labour hire agency

The reviewer was not able to interview workers involved with the labour hire agency at the time, as there has been significant internal staff and structural changes within the agency.

On the whole, it appears that the ACA workers performed to a suitable standard despite reports that they received minimal training, support, guidance from the

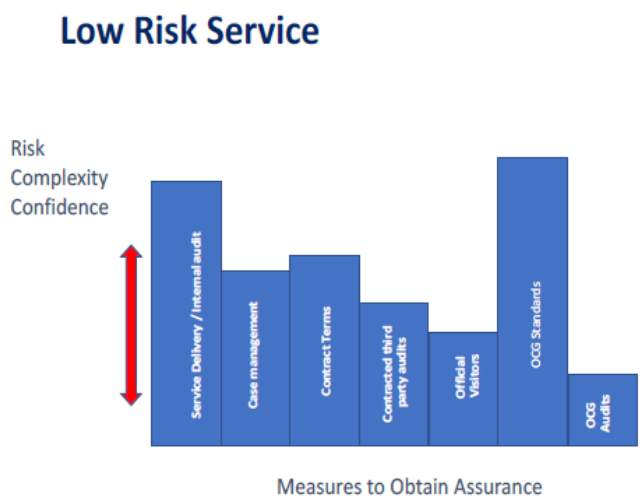
auspicing agency. Early on in the placement, workers had a great deal of difficulty managing the siblings' behaviour, understanding policies and priorities, and exercising discretion. However, this greatly improved once DCJ engaged with the workers (ultimately assuming case management) and the staff profile was reduced so that the siblings could form relationships with a fewer number of more consistent and trusted workers.

7 Reflections

7.1 Oversight of emergency care models

Models to support emergency care such as ACAs and ICMs for younger children are inherently risky. In this context, additional measures need to be put in place to ensure the best quality care and case management is directed at children in such placements. This means, despite the need for flexibility in providing a safe environment at short notice, every effort needs to be made to ensure that: the highest quality of suitable care staff are available; the environment is as home like and stable as possible; there are strict monitoring and oversight arrangements in place; that children are safe, informed, and heard; and, that the placement is supported by experienced and skilled case managers dedicated to keeping children connected to family and securing an early permanent placement. Drift in these arrangements should be avoided at all costs. There is a question of whether it is appropriate to allow a designated agency auspicing a subcontracted labour hire arrangement to also hold case management. The following figure represents the main quality controls that require dialling up of down in low versus high-risk service environments.

Strengths of quality controls based on service risk profile



ICMs and ACAs represent high-risk service models that require the dialling up of non-static controls such as case management, contractual oversight, independent audits and visits.

Section 150 (6) of The Children and Young Persons (Care and Protection) Act 1998 remains an uncommenced provision. Section 150 (1-4) provides that the designated agency with responsibility for the placement of the child or young person is to conduct a review of an out of home placement effected by order of the Children's Court, in specified circumstances and in accordance with guidelines prepared by the Children's Guardian, for the purpose of determining whether the safety, welfare and well-being of a child or young person is being promoted by the placement.

If proclaimed, Section 150 (6) would provide the Children's Guardian the capacity to review such placements at any time for the purpose of determining whether the safety, welfare and well-being of a child or young person who has been placed in out-of-home care by an order of the Children's Court is being promoted by the placement.

150 Review of placements effected by order of Children's Court

(1) For the purpose of determining whether the safety, welfare and well-being of a child or young person who has been placed in out-of-home care by an order of the Children's Court is being promoted by the placement,

(2) A review is to be conducted--

(a) in the case of a child or young person who is in out-of-home care pursuant to an interim order of the Children's Court--within 4 months after the interim order is made, and

(b) in the case of a child or young person who is in out-of-home care pursuant to a final order of the Children's Court--

(i) in the case of a child of less than 2 years of age--within 2 months after the final order is made and thereafter within every period of 12 months after the final order is made, or

(ii) in the case of a child of not less than 2 years of age--within 4 months after the final order is made and thereafter within every period of 12 months after the final order is made, and

(c) after the death of a parent or the authorised carer, and

(d) after an unplanned change of placement.

(3) Subsection (2) does not prevent the conduct of more frequent reviews.

(4) A review is to be conducted in accordance with guidelines prepared by the Children's Guardian.

(6) Despite subsection (1), a review may be conducted at any time by the Children's Guardian.

Importantly, this would allow the Guardian to review individual placements, rather than general agency capability and performance against standards. It could be argued that that their capacity to conduct spot audits and other oversight mechanisms, such as the Ombudsman and the Official Community Visitors, are sufficient to fulfil this role but from the reviewer's standpoint, this is a missing part of the regulatory system that could be revisited, in particular in relation to placements in more high-risk arrangements such as residential and residential -like placements with rostered staff. The Guardian's accreditation role would have particular teeth in this space.

7.2 Carer Availability

For many years commentators have warned about the declining availably of people willing to come forward as foster carers. This has occurred at the same time as family and children's needs have grown in complexity. Despite new forms of outreach such as through social media broadcasts, it is likely that these call outs are largely targeting the same traditional cohorts, already embedded in or familiar with the system, already providing care to children, or who have left the system for various reasons. For more children to experience home-like environments and avoid undesirable residential arrangements it is imperative that greater system wide effort is made to recruit carers from diverse backgrounds who have the motivation and skills to provide temporary or long-term care for children, along with the capacity to constructively engage with children's extended families and communities. This should occur alongside exploration and scaling up of innovative professional and therapeutic care models.

7.3 The impact of COVID

The ICM and ACA placements were operating in the acute periods of COVID infections and lockdowns, the legacy of which lingers to this day.

The consequences for the siblings were undesirable but understandable in the particular context characterised by COVID infections, restrictions and lockdowns, school closures, vaccination requirements and a consequent lack of skilled and available staff. In addition, COVID lockdowns and restrictions had a direct impact on: interagency relationships (with most meetings taking place by video link); the capacity to visit the children in the house and for the children to take part in activities outside the house, including with family members.

Unemployment is near record lows across many industries, and people previously working in or may have been considering a career in child protection and out-of-home care, are likely to opt to pursue less stressful work and/or better pay and conditions. This continues to place considerable strain on the sector

7.4 Lack of housing stock

A lack of accommodation options in areas familiar to the siblings, and the number of different homes and locations they resided in, also contributed to their poor outcomes. This reflects a general housing undersupply across the state. In addition, specific barriers are in play limiting options to purchase or rent properties to accommodate children in out of home care, with out of home care providers finding themselves in competition with both the general rental market and community/social housing and disability providers. Further, even if properties can be secured, they are not necessarily fit for purpose and may require modification - for example, to accommodate rostered staff, sibling groups, disability access or on-site therapeutic care. Expanding the breadth of care accommodation options is therefore critical to both supporting the system more generally, and to assuring a better locational fit and a level of stability in emergency placements such as ICMs and ACAs.

8 Recommendations

8.1 DCJ contract management oversight and casework, decisions, and actions in relation to the focus children.

The models of care represented by ICMs and ACAs appear to have a legitimate place in emergency situations in the current environment. However, they must be underpinned by strong quality assurance measures and be closely monitored given the inherent risks involved. These types of placements should also include a significant therapeutic component and be strictly time limited. Where extensions are sought beyond 12 weeks, processes should be in place to require high level sign off of detailed plans to exit the placement, along with mandated monitoring and reporting requirements on progress. It would be prudent to review how often both ICM and ACA placements operate beyond 3 months.

While there is no evidence that DCJ staff failed to perform to an adequate standard, nor that they did not follow policies and procedures, the fact that the ICM placement was subject to numerous extensions such that it blew out to 14 months, and that the ACA was still in place for one child 13 months later, is of serious concern.

Lack of role clarity and not knowing what was happening for the children in placements were sources of significant frustration for DCJ staff. Caseworkers generally reported that they would like to understand more about what is specified in contractual and commissioning arrangements, and the outcomes of contract management meetings, so that they are in a better position to negotiate in relation to case management, casework and care concerns involving children.

Recommendations

1. Commissioning and planning teams should hold regular sessions with DCJ staff about contracting and commissioning arrangements in place with local providers in relation to ICMs and ACAs.
2. Mandatory group supervision or reviews should occur at initial implementation of ICM/ACAs and at points which exceed 12 weeks, and any extensions thereafter. This should be written into contracts and fee for service agreements.

8.2 Delivery of ICM services preceding the transfer of the children to foster care

As a new model, there were a range of teething problems associated with the ICM model service established for the siblings. This was associated with both role confusion about who was responsible for what, and the need to deploy several rostered and agency staff. In addition, there were safety and welfare concerns associated with the children's care that were not adequately addressed at the time.

Recommendations

3. Simplify and provide role clarity guidance around case management/secondary case management for ICMs. This should include specific examples in currently contentious areas, for example, implementation of behaviour support plans, arranging and transport to activities, therapeutic support, contact visits, and reporting requirements (and regularity).
4. ICM providers should provide evidence of casework team meetings and coordination of supports and activities at regular points (at least fortnightly) to the Department and this should be specified in contracts and/or agreements.
5. Conduct joint information sessions with the OCG to re-enforce risk of harm and reportable conduct obligations with designated agencies, along with information about the Safety in Care Mandate.

8.3 Delivery of services by the PSP (NGO) foster care provider and the extent to which it met its contract obligations during the period it held case management for the siblings

The provider's under-performance in supporting the foster carers for the older siblings is likely to have contributed to the breakdown of that placement and should have rung alarm bells. In addition, it is understood that DCJ had intelligence about other issues with the agency around that time. Continuing an arrangement with the provider under an ACA therefore appears to have been a risky strategy. Further, it was reported that the provider was slow to attend to and report back on basic case management tasks, did not proactively follow permanency leads, and did not adequately respond to reports of harm or concern.

8.4 The PSP (NGO) foster care provider's use of a subcontract arrangement in an ACA and the oversight of that arrangement by both the provider and DCJ

As far as the reviewer understands there is no requirement for designated providers to furnish a copy of the agreement with the subcontracting agency to the Department as a matter of course. This makes it difficult to understand what the designated agency has actually agreed to, for example, in terms of training, support, and supervision of

agency staff. Nevertheless, the provider would have held records of team meetings, reflective practice sessions and other instructions provided to staff in relation to day-to-day care and support of the children in the placement.

The general expectations articulated by DCJ staff is that when DCJ or an accredited PSP provider enters into an Agreement with an ACA agency this should include:

- care service parameters and expectations
- staff qualifications and probity requirements
- essential training required
- other probity needs, such as conflict of interest declarations
- rosters and delegations in relation to children's health and welfare needs
- management of client routines and implementation of behavioural supports.

According to a number of participants, it is not clear whether some or all of these requirements are effectively articulated in agreements made between DCJ/PSP accredited providers and ACA providers. In this context, there may be opportunities to obtain a better line of sight to these arrangements and deliver greater assurance that key elements to ensure the quality of care expected for children are addressed.

Some participants in the review have argued that the provider (or any other provider) should not have continued to have case management responsibility in the ACA arrangement, as given this is an uncapped time arrangement, there may be reduced incentives to find a permanent alternative situation for the children.

Recommendations

6. Case managing agencies for ACAs should provide evidence of meetings, visits to children, and coordination of supports and activities at regular points (at least fortnightly) to the Department and this should be specified in contracts and/or agreements.
7. DCJ should develop a template and fact sheet for subcontractor agreements entered into by the Department and designated providers.
8. DCJ to explore establishing a mechanism to quality assure subcontracting arrangements between PSP providers and labour hire firms delivering day-to-day care in emergency placements.

8.5 Systemic issues impacting decisions, in particular case management

DCJ staff interviewed were very cognisant that, in line with policy, it was undesirable to disrupt the case management arrangement for the siblings while in the ACA. This is because it would represent additional relationship and service disconnections for the children. While concerns about the placement and the quality of case management and care provided were present from the outset, DCJ staff sought to attempt to manage the relationship through placement panel meetings and other levers (for example, additional

meetings, visiting the children, liaising with the children's schools, and talking to care staff). In general, DCJ front line workers expressed confusion about escalation procedures relating to agency performance, and when they had significant concerns for the children in both the ICM and the ACA took to "emailing everyone they could". In this context, they felt somewhat powerless and unheard.

Despite regular panel meetings occurring and minuted every month (attended by DCJ and the provider with primary case responsibility) over the period of the ACA, the children's situation continued to deteriorate, and it became clearer and clearer that essential casework was not being completed (e.g., boys not picked up from school, lack of food, lack of access to meaningful activities, winter uniforms not purchased), or not to an acceptable standard. This was exacerbated by changes in key leadership and case management positions within the provider over the period (from late April to early August 2022), and a lack of training, support, and guidance for the care workers in the house. Throughout the period, DCJ and the PSP (NGO) foster care provider continued to issue broadcasts for potential foster carers and re-prosecute kinship options. By July, discussions about DCJ taking on case management, and/or looking for an alternate placement (for example, to an ICM or Professional Individualised Care placement) had entered conversations. In parallel, DCJ Legal Officers were aware of the increasing frustration of the Court as to the children's situation but had little line of sight as to what was happening on the ground, and perhaps might have been able to support an earlier decision to resume case management. Some interviewees considered that weekly or fortnightly panel meetings would be more effective in managing and keeping on top of emergency placements such as ACAs (underscored by a close collaborative relationship between agencies and a good early understanding of mutual expectations). The monitoring and accountability arrangements in place in the Hunter and Central Coast District was cited as an effective model worthy of consideration in this regard. Others felt that the panel meetings did little to advance the situation of children and were 'service' and blame focused rather than child centred.

As it was, case management was assumed by DCJ just over three months in the ACA placement.

Recommendations

9. DCJ should develop clear internal guidance on processes for timely escalation of serious concerns in emergency placements such as ICMs and ACAs, including nominating particular receiving positions or personnel, information about how concerns will be handled, and feedback mechanisms with timelines.
10. Ensure that the DCJ legal team receives copies of ACA and ICM placement panel reports as a matter of course.
11. Review the cooperative accountability arrangements in place in the Hunter and Central Coast District governing ICMs and ACAs with a view to applying in all such arrangements.
12. Consider a policy change that does not allow for concurrent case management and supervising subcontracted day-to-day care in an ACA by the same designated agency.

9 Potential improvements in oversight and delivery of care models through the lens of the case

9.1 Potential system wide improvements

There are several system wide issues that have impacted on this case where reform and development could significantly improve both government and non-government capacity to respond in a timely way to meet the needs of children who come into contact with the child protection system.

9.2 System oversight

A key system risk relates to the limitations of independent oversight of individual children in care. There is an opportunity to revisit and strengthen this aspect of the system.

Recommendation

13. Consider options for strengthening independent oversight of individual out-of-home care placements such as through the OCG or Official Community Visitors.

9.3 Supporting restoration as a critical permanency outcome

The continued emphasis on restoration or preservation as the first permanency priority is a critical component in stemming the flow of children into the care system. This, however, requires sound skills and capabilities in engaging with parents and families, willingness to invest in and availability of needed interventions (such as drug and alcohol and mental health services) and potentially more flexibility in permanency timeframes to allow parents time to address any personal, safety or parenting issues they have. The reality is that for many children, despite difficult and sometimes unsafe relationships with their parents, strong bonds often exist that are intimately tied to their sense of identity and belonging, and they will ultimately be very likely to return to this and other family relationships throughout their lives.

Recommendation

14. Invest in joint non-government/DCJ caseworker training in family engagement to support restoration.

9.4 Professional Foster Care

Where restoration is not possible in the short or medium term, the paucity of available carers who are able to care for children with more complex needs remains a significant gap. The need for 'professional' foster carers has been identified as a way of bolstering system capacity for many years. For example, a key action under the National Framework for Protecting Australia's Children – Second Action Plan 2012-15, was to support the establishment of a professional foster care workforce.

Despite this, there are limited examples of this being taken up in any meaningful way, mainly due to concerns about tax and industrial issues. However, unlike 'voluntary' foster carers who are provided a stipend to contribute to the costs of caring for a child, the reviewer would argue that there are opportunities to seriously explore the employment of 'professional' carers either by the Department or by the non-government sector, as a more cost effective and quality solution than extended ICM or ACA arrangements. The PIC model (Professional Individualised Care), delivered by one NSW service agency, is an example of an innovative relationship-based care model with elements of professional care contained within it. This is described as a model where a skilled professional carer such as a psychologist or social worker, lives in the home with the young person. The carer has the skill set to respond to the child or young person and their trauma and attachment needs. Importantly it means the young person has access to real relationships and not rotating shift workers. Another model being applied in the Victorian context, is the Teaching Family Model (TFM), which is a trauma-informed model of care where children and young people learn new behaviours by observing and imitating others. The model is based on social learning theory and focuses on building children's strengths, problem-solving, interpersonal and leadership skills. TFM practitioners live with a small group of children and young people (up to 4 per house), providing support 24-hours a day in a family-style setting. TFM was developed in the United States and has more than 40 years of research evidence. Other options include employing people with professional backgrounds such as education, psychology and social work to be full or part time carers for children in a home (their own or leased or owned by an agency) with 24-hour wraparound support, ongoing training, and accreditation.

A PSP provider forum on *Recruiting carers for children and young people with high needs*, hosted by DCJ, ACWA and AbSec (in December 2022) acknowledged the current challenges in carer recruitment, issues related to emergency placements and ACAs in particular, and provided an opportunity to explore innovative care models. It is understood that further forums are planned.

Recommendation

15. Explore with the nongovernment sector, opportunities to expand and grow innovative care models, including a Professional Foster Care workforce.

9.5 Accommodation options to support emergency placements

The lack of housing available to NGOs and the Department is a particular concern and frequently dictates the living circumstances of children, as it did in the case of the siblings, rather than arrangements that would suit their needs and support their physical and emotional stability. It is understood that other jurisdictions offer different approaches to making property available for children in care, and these are worthy of greater exploration.

Recommendation

16. Explore strategies for supporting NGOs and/or the Department to acquire or rent additional housing suitable for use in emergency situations for children in out-of-home care.

9.6 Accreditation of ACA carers/agencies

A key risk in relation to the ACA model in particular is that because it is on an invoice-to-invoice basis and not time-limited, there is limited incentive for external agencies to embrace and support permanency planning, thus contributing to placement drift. In this context, it could be argued that a model where the same agency has case management as has day-to-day care responsibility is not appropriate, similar to an ICM. If this distinction was adopted, ACAs could feasibly be brought under the PSP banner and contractual arrangements.

It is clear that the use of ACAs is restricting the staff available to accredited providers who are unable to compete with the wages and conditions being offered by non-designated providers. Further, current policy settings prevent children receiving 1:1 care in an ICM, while this is entirely possible in an ACA (at higher cost). In this context, and to address current workforce availability issues, it is reasonable to consider bringing ACAs under the PSP, with delivery supervised by designated providers. Further, as some non-designated agencies appear to be performing to a reasonable standard, it may be beneficial to consider incentives for them to become accredited agencies.

The other key risk relates to the unaccredited nature of providers, and low skills and experience of rostered agency staff. One suggestion made in this regard was to explore establishing a pool of ACA providers and carers accredited by the Children's Guardian. Another participant suggested that a group of agencies could be encouraged to come together to establish an emergency carer pool (similar to the childcare sector), and where greater flexibility in terms of pay and conditions could be explored (e.g., offering 12-hour shifts).

Recommendation

17. Explore, with the non-government sector and the Guardian, the potential for establishing an accredited ACA carer and or carer provider pool.

9.7 Therapeutic support

Children whose needs and circumstances are such that they require a residential-like emergency placement, will necessarily have therapeutic needs. These will only intensify the longer such placements go on. It is clear that in this case the children had experienced significant trauma, grief, and loss, were disconnected from friends and family, had limited voice and control over their frequently changed and prolonged residential arrangements, and that their primary relationships at 'home' were with rostered staff. Given this, most participants considered that the Child Assessment Tool (CAT tool) was not a useful mechanism for assessing the needs of the siblings. One participant also observed that if there was capacity for greater flexibility in responding to the presenting needs of children, one option might have been to craft a bespoke 'out of guidelines' therapeutic placement for a limited period of time early on, while permanency options were intensively explored.

Therapeutic support should be considered a component of any residential or residential-like arrangement. Some participants thought this should ideally be arranged by the agency with case management of the children, while others thought the ICM provider (as a designated agency) could be funded to coordinate or provide this support. Regardless, the case managing agency and the care agency should jointly ensure behaviour management plans are regularly reviewed and updated and that all staff with day-to-day care responsibilities are aware of duties and responsibilities.

Recommendation

18. Review the efficacy of the Child Assessment Tool, as a means of determining a child's level of need, and/or develop add-on tools to support more comprehensive assessments

9.8 Relationship Management

Communication issues between non-government agencies and the Department were evident throughout the period covered by this review. In part, this related to a lack of role clarity, partly, mismatched expectations, and partly, workforce and skills shortages. Some of this tension is inevitable and can be managed by joint reviews and group supervision, good communication processes and a common focus on children and their needs. However, these kinds of tensions are of substantive concern when it results in a lack of timely information exchange and action critical to placement stability and quality of care. This not only occurred throughout to placement but in relation to the gathering of evidence from the service provider with case responsibility for the Court, despite clear references to requirements relating to cooperation on legal matters in the Permanency Case Management Policy. It is understood that the absence of a Legal team within the service provider with case responsibility may have contributed to this. A recent practice note (No.17) issued by the Court has sought to address this issue, by requiring DCJ to obtain agency sign off in relation to evidence in affidavits from agencies involved in casework with children.

In this case, it was also clear that quite early on the Court had significant concerns about the welfare of the children involved, but had limited means to escalate these, save for making proceedings public, at which time it was much later in the process.

Permanency Coordinators (PCs) have a particularly important role to play in relationship management, but some caseworkers reported that they were unclear about the role and the extent to which they could involve them. Others felt PCs were an incredibly helpful resource. One participant noted that reports from Child Wellbeing Units are not routinely or automatically received by the Department, and that this would provide an additional early warning system for concerns about children.

Recommendations

19. Agencies be required as part of contractual or agreement terms to cooperate and furnish information where court proceedings are in play and where they have played a part in the care of children.

20. The Permanency Coordinator role be reviewed and promoted, such that

Coordinators play a more consistent and proactive role in supporting caseworkers navigate relationships with service providers.

21. A protocol should be developed where the Court is able to raise concerns directly with the Department in a way that does not comprise the integrity of either the Court or the Department.
22. Explore options to engage Court Officials in dialogue around policy, program, practice and developments.
23. Establish a protocol and systems for referral of concerns from Wellbeing units.
24. Conduct joint (regular) training with Departmental staff and Non-Government agencies who have contracts to deliver ACAs and ICMs on relevant policies and procedures.