

## Submission to the Royal Commission into Domestic Violence

### Court Standing of Foster and Kinship Carers

#### Personal details of the Submitter:

[REDACTED]

This Submission is on my behalf and that of Foster and Kinship Carers (Carers) more generally. The Carer Project Surveys, private Carer pages and direct communication with Carers has helped formulate the evidence I am submitting to the Commission.

Please note rural Carers, Carers with Aboriginal children in care, culturally diverse Carers and Specialist Carers have provided recent 2022 information and examples I refer to in this Submission

#### Contact details:

[REDACTED]

[REDACTED]

**Topic:** Foster and Kinship Carers' Standing in the Youth Court

#### Relevant Legislation, Codes or Statements:

- Terms of Reference of the Royal Commission
- Royal Commission Guidelines
- Nyland Royal Commission Reforms
- Children and Young People (Safety) Act 2017
- Youth Court Act 1993
- "South Australian **Statement of Commitment** with foster and kinship carers"
- Placement Principles
- Youth Court Practice Direction No. 2 of 2019

**Confidentiality / Privacy:** No

**Submission:**

The Nyland Royal Commission highlighted the important role Foster and Kinship Carers play in providing a safe and loving environment for some of society's most vulnerable children.

Much of this is a direct response by Foster and Kinship Carers to Domestic Violence surrounding these children in care.

The above **Legislation, Codes or Statements** contain many references to the need for Carers to be involved in the decision making relating to children in their care. For example: see the Placement Principles and Section 82 of Children and Young People (Safety) Act 2017

The need is also stated to be a Carer's entitlement.

The effect of these statutory reforms is to expand the range of persons who have standing in the Youth Court.

Regrettably, full force and effect has not been given to those reforms.

In particular, the Youth Court issued Practice Direction No. 2 of 2019 which constrains how "interested persons" interact with the Court. This practice direction has effectively disenfranchised carers.

I have attached a legal opinion outlining why despite this practice direction, carers do have a right of standing in the Youth Court. Obviously, the Youth Court applies its own views on the matter!

Until there is a change in the Youth Court's views, carers are faced with the following impossible situation.

Subject to my comments below relating to the representatives of a party, only "parties" to Youth Court proceedings have standing before the Court and are given copies of the actual legal documentation eg Originating Application, DCP reports, External Expert Reports (for example - Child Protection Services Reports), Court orders and so on.

Likewise, only those "parties" are allowed to be in Court to hear the legal and factual submissions from the bar table to the Judge.

"Parties" basically means the biological parents and DCP. However, their "representatives" (not limited to only their lawyers) seem to have unfettered access to the proceedings.

The child's Carer is not a "party" and so the Court loses the benefit of the input of someone who doubtless knows more facts about the child and their behaviour than any of the "parties" or their representatives.

Carers report that, if they apply via a court form, the Court allows them to make written or oral submissions. However Carer submissions are made in a vacuum because the DCP and Expert reports and submissions as well as those of the other "parties" are withheld from the Carer.

Carers are therefore ignorant of all the current issues and the written information that is being put to the Court.

Further, by being excluded from the courtroom, carers are precluded from making oral submissions to bring attention to incorrect or misleading oral submissions from the bar table.

**In other words, a complete lack of the respect and natural justice envisaged by the Nyland reforms.**

Carers have reported instances where it is subsequently clear that the Youth Court has been deliberately misled by one or more of the "parties". Worryingly, this has included DCP officers.

As a government Agency, DCP is required to act as a "Model Litigant", but rarely does in its dealings with Carers.

Misleading the Youth Court is a contempt of court and also a serious breach of the public service Code of Conduct. But of course, if the person likely to be aware of that wrongful behaviour has conveniently been excluded from the Court, the likelihood of being caught is seen as low. Recent instances of wrong doing by DCP officers typically come to light involving kinship carers where their kin is a "party" to the proceedings and has visibility to the offending submission, report or behaviour. Non kinship carers are kept completely in the dark.

Carers undertake an enforceable obligation of confidentiality when they become carers. The various reasons given for excluding a carer from their child's legal proceedings have (without exception) been shown to be specious and self serving by those seeking to exclude the involvement of the carer.

By successfully excluding the carer, there is no one who can stand up and call out the misleading and deceptive conduct. Not surprisingly, a Judge simply accepts at face value what they are told by DCP and others. There appears to be no rigor in interrogating the "facts" being presented to the Court.

**Attachment A:**

**Legal opinion on the Standing of carers before the Youth Court.**

**Action by the Royal Commission:**

1. Acknowledge receipt of this Submission.
2. Recommend that Carers are entitled to Standing and may elect to become “parties” to the Youth Court proceedings relating to their child in care.
3. Recommend that through some other means, Carers are entitled to access the legal proceedings relating to their child in care including Originating Application, DCP reports, External Expert Reports (for example – Child Protection Services Reports), Court orders and so on.
4. Recommend that the Youth Court amend Practice Direction No. 2 of 2019 by acknowledging that Carers are entitled to Standing and have the same access to the legal proceedings relating to their child in care as the “parties”.

## Attachment A

### Purpose:

This memorandum seeks to answer the question: *what standing does a Carer have to appear before and be heard by the Youth Court in respect of a child in their care?*

### Relevant legislation and publications.

Youth Court Act 1993

Children and Young People (Safety) Act 2017 Section 66

Statement of Commitment

### Youth Court Act 1993

Section 24 of this Act sets out the persons who may appear before the Court. On the face of it, Carers are not included in that list.

- *officers of the Court;*
- *officers or employees of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the Youth Justice Administration Act 2016;*
- *officers or employees of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the Family and Community Services Act 1972;*
- *parties to the proceedings and their legal representatives;*

The historical references are now to be read as their modern counterparts.

Section 24 is no longer the only piece of legislation that defines the class of persons who may appear before the Court. The Children and Young People (Safety) Act 2017 enlarged the class of those persons who may appear by including Carers.

### Children and Young People (Safety) Act 2017.

Following the Nyland Royal Commission major reforms were implemented in the child protection sector. These reforms were intended to change the child protection landscape.

This Act contains many of those reforms.

For the first time, Carers were identified as having a significant role to play in the child protection sector. Their status was elevated in a number of important ways. In particular by Section 11 (the Placement Principles) and Section 82 of the Act.

**The Placement Principles provide:**

***11—Placement principles***

*(1) The placement principles are as follows:*

*(a) all children and young people who have been removed from the care of a person under this Act should be placed in a safe, nurturing, stable and secure environment;*

*(b) the preferred option in relation to such placement of a child or young person is to place the child or young person with a person with whom they have an existing relationship;*

*(c) approved carers are entitled to be, and should be, involved in decision-making relating to children and young people in their care.*

*(2) Each person or body engaged in the administration, operation or enforcement of this Act must exercise their powers and perform their functions so as to give effect to the placement principles.*

*(3) However, this section and the placement principles do not displace, and cannot be used to justify the displacement of, section 7.*

*(4) To avoid doubt, the requirement under this section applies to the Court.*

As stated above, Section 11(1) (C) provides:

*(c) approved carers are entitled to be, and should be, involved in decision-making relating to children and young people in their care.*

The purpose and intent of this Section is clear on its face.

Further, Section 11(4) provides:

*(4) To avoid doubt, the requirement under this section applies to the Court.*

Importantly, the Court is expressly included when considering the application and operation of the Placement Principles. In other words, the Court is obliged to recognize that *approved carers are entitled to be, and should be, involved in decision-making relating to children and young people in their care. Section 11(4)*. Emphasis added.

The effect of Sections 11(1) (C) and 11(4) is to expand the class of persons originally prescribed by Section 24 to now also include Carers.

To allow a Carer to be involved in decision making up to but not including the Court is non sensical and obviously inconsistent with the clear purpose and intent of Section 11. There is nothing in the Section or the Act that would support an argument for the exclusion of the Carer.

**Accordingly, Carers have standing before the Court.**

The next relevant empowering statutory provision is Section 82 of the Act.

Section 82 of the Act provides:

**82—Approved carers entitled to participate in decision-making process**

*(1) Without limiting Chapter 2, but despite any other provision of this Act or any other Act, an approved carer in whose care a child or young person is placed is entitled to participate in any decision-making process relating to the health, safety, welfare or wellbeing of the child or young person.*

*(2) Subsection (1) does not apply in relation to a particular decision if the decision-maker is satisfied that the participation of the approved carer would not be in the best interests of the child or young person.*

*(3) This section applies whether the decision is made under this or any other Act or law.*

Again, the purpose and intent of this Section is clear on its face. The clear purpose is to allow *an approved carer in whose care a child or young person is placed to participate in any decision-making process relating to the health, safety, welfare or wellbeing of the child or young person.* Emphasis added.

Does a *decision-making process relating to the health, safety, welfare or wellbeing of the child or young person* include processes of the Court? Emphasis added.

The answer to this must be yes. The Court has the ultimate responsibility in matters of *health, safety, welfare or wellbeing of the child or young person.* To allow a Carer to be involved in decision making up to but not including the Court is non sensical and obviously inconsistent with the clear purpose and intent of the Section. There is nothing in the Section or the Act that would support an argument for the exclusion of the Carer.

In further support of the Carer's right to standing before the Court, is Section 11 (4) more fully discussed above.

**Statement of Commitment 2020**

The Statement of Commitment is a major joint acknowledgement by the Minister for Child Protection and key partners in the child protection sector that highlights the vital role that Carers play.

The Statement of Commitment elevated the status of Carers in recognition of the enhanced legal rights of Carers following the Nyland Royal Commission reforms.



## **Submission to the Royal Commission into Domestic Violence**

### **Focus on Abuse of Power, Information Sharing and Care Concern complaints of Foster and Kinship Carers within existing Complaint Mechanisms**

#### **Personal details of the Submitter:**

[REDACTED]

This Submission deals with an Independent Complaint Mechanism and is on my behalf and that of Foster and Kinship Carers (Carers) more generally. The Carer Project Surveys, private Carer pages and direct communication with Carers has helped formulate the evidence I am submitting to the Inquiry.

Please note rural Carers, Carers with Aboriginal children in care, culturally diverse Carers and Specialist Carers have provided recent 2022 information and examples I refer to in this Submission.

#### **Contact details:**

[REDACTED]

#### **Topic:**

**Domestic Violence**

**Existing Complaint Mechanisms as they relate to Carers**

**Existing consultation process with Carers**

**Information Sharing and the sharing of documentation with Carers**

**Ensuring that there is a sound partnership with Carers and that the rights of children in foster and kinship care are respected, addressed and realized.**

**Recommendations to improve foster and kinship care in South Australia especially in the context of Domestic Violence.**

#### **Relevant other Legislation or Codes:**

- Terms of Reference of the Royal Commission
- Royal Commission Guidelines
- Children and Young People (Safety) Act (2017)
- Freedom of Information Act (FOI) (1991)
- South Australian **Statement of Commitment** with Foster and Kinship Carers
- Information Sharing Guidelines (ISG) for promoting safety and wellbeing (Government of South Australia, Department of Premier and Cabinet)
- Department for Child Protection (DCP) Service provider responsibilities in the management of care concerns
- Existing Complaint Mechanism (DCP website)
- DCP Care Concern Process Flowchart
- The Carer Project Abuse of Power Report 2021
- Supporting and collaborating with Carers Practice Paper
- Ombudsman Annual Report 2018-19 Audits- Information Sharing Guidelines & Complaints

**Confidentiality / Privacy: No**

**Submission:**

The Nyland Royal Commission highlighted the important role Foster and Kinship Carers play in providing a safe and loving environment for some of society's most vulnerable children.

Much of this is a direct response by Foster and Kinship Carers to Domestic Violence surrounding these children in care.

I will focus on Abuse of Power, Information Sharing and Care Concern complaints in this submission.

Carers have been advised to ask DCP and Non-Government Organisations (NGO) support workers to refer to The Statement of Commitment as a means of addressing an unsatisfactory circumstance in their roles as Carers, but the abuse of power by DCP and NGO workers has moved far beyond anything The Statement of Commitment could or can address.

Given the widespread abuse of power reported by Carers, an Independent Complaints Mechanism needs to be implemented in the Carer sector without delay.

Carers note that the Statement of Commitment has not been useful to assist Carers being: informed, supported, consulted, valued or respected by the Inquiry Team. Carer's communications have been disregarded and requests ignored-especially for oral presentations.

The Complaints processes within DCP and NGOs lack natural justice for Carers. Abuse of power is or should be an exception to the normal complaints handling processes and therefore requires its own Independent Complaints Mechanism.

One of the main causes complaints have risen to a fever pitch in the Carer community is the longstanding denial of access to DCP policies that Carers are entitled to by virtue of any number of mechanisms but especially Section 10 (1) of the FOI Act.

This denial of access makes it largely impossible for carers to ascertain what domestic violence their children have suffered or are likely to suffer when they are in the “care” of their biological parents or are being reunited with them.

For over three decades Carers have had DCP policies deliberately and improperly withheld from them by both DCP and NGO workers.

The purpose of FOI information is set out in the Objects of the FOI Act.

*Section 3 (2) The means by which it is intended to achieve the objects are as follows:*

*(a) Ensuring that information concerning the operations of government (including, in particular, information concerning the rules and practices followed by government in its dealings with members of the public) is readily available to members of the public and to Members of Parliament; and*

Carers have been denied DCP policies (i.e. the rule book) on how decisions are made and the vital information contained within DCP policies which could provide better outcomes for children in care. **The withholding of DCP policies has denied Carers natural justice (i.e. procedural fairness) and places children at risk of domestic violence due to the unnecessary living and placement disruption caused by Carers lack of vital information concerning their children in care.**

Carers should have access to all of the “Care Concern” policies. Yet these have not been made available and have been actively and intentionally denied to Carers. This intentional lack of information has caused terrible prejudice to the Carer community and children in care. The failure to share important and vital information with Carers denies Carers the opportunity to protect the children now in their care from domestic violence from their biological parents and to improve the chances of a better life for their children.

The following is the practical application of what occurs to a Carer when they wish to complain about the processes in a Care Concern made against them.

### Care Concern Complaints

Carers report that many “Care Concerns” are actually vexatious and contrived complaints from DCP support workers as retribution and attempts to “control” Carers.

Care Concerns must fit into one of the four categories of “physical, sexual, emotional abuse or neglect”. (See Service Provider responsibilities in the management of care concerns, The Carer Project Abuse of Power Report 2021 and the DCP Care Concern Process Flowchart).

The reality is that many contrived Care Concerns are administrative trifles and poor ad hoc judgements made by DCP staff.

1. Carers report that in most circumstances DCP do not inform the Carer in writing of the actual allegation that constitutes the Care Concern. An incident that could have your foster/kinship child removed begins with a phone call. Most Carers are told that “further information” will be provided at a subsequent meeting. Carers are then instructed when and where to front up for a meeting to hear the allegation for the first time.
2. The Carer is expected to attend an “allegation meeting” ignorant of the charge. The Carer is not provided with written notice of the legislation they have allegedly breached.
3. Many Carers are not provided support or information to prepare for a Care Concern meeting.
4. Many times, the Carer is blindsided at the meeting as they have no idea what the Care concern is about. (There is no natural justice in the process). In other words, a kangaroo court.
5. In this process Carers are disrespected, devalued and uninformed which is contradictory to the Statement of Commitment?
6. Carers are “guilty” until proven “innocent”. This is completely at odds with the concept of natural justice. Especially when the consequences can be so severe.
7. Without any preparation, Carers are told they must “agree an action plan” at the meeting. (See Flowchart). Again, procedural fairness is denied! Imagine how this process would play out at any other public institution, for example a university in South Australia! But for Carers, this power imbalance is part of the “normal” process DCP identify as acceptable.
8. As a result, Carers report being traumatized and fearful of speaking up for fear of retribution e.g. having a child removed. Many Carers report stories of children being removed because the relationship with the DCP support worker broke down; not because the child was unhappy or not thriving.
9. Many Care Concerns remain “open” for months, some for over a year. This indicates a further lack of natural justice. It would also indicate a lack of any merit behind the Care Concern.
10. There are additional concerns to be considered regarding Carer Assessment Review Unit (CARU).
  - CARU only accept and acknowledge information from 2 sources: DCP and NGOs. If the information provided is false, it seems to make no difference.
  - The number one problem for Carers is the recording of false information that is not amended in the Carer’s file. This false recording has a snowball effect and ruins placement opportunities. Children can be removed and reputations ruined due to false information on a file.
  - CARU can and have had Carers deregistered for false information.

- Carers report that CARU will not communicate with them. CARU appear to be in their own little bubble, unaffected and indifferent to their obligations to practice being model litigants.
11. CARU are not willing to receive information from Carers. Carers report that even DCP executives have found CARU to be an “island” that does not have to respond to anyone. This process of taking information from only DCP and NGOs (with little transparency) shows a bias against Carers and a repudiation of the Statement of Commitment values. CARU’s unfair processes and determinations are negatively affecting Carer retention.
  12. From feedback from Carers, the Abuse of Power Survey Report and other conversations with Carers, it appears that in a lot of instances, it should be the DCP support worker who should be reported for a “Care Concern” for putting a child at risk of emotional abuse for unnecessary removal that could impact the child’s attachment skills and further traumatize a child that is developing happily.

### Abuse of Power Complaint

Abuse of power means behaviours such as: being bullied, threatened, intimidated or retribution.

The following is the practical application of what occurs to a Carer when they raise an Abuse of Power complaint.

1. The Carer is instructed to confront their abuser (support worker) to see if they can achieve a different behaviour. (This is unacceptable in any circumstance, but in a first world country like Australia, it is an unbelievable expectation of DCP processes given the notable power imbalance. Carers should never be forced to confront their abuser.)
2. The Carer must next confront their abuser’s supervisor and attempt a second time to achieve a different behaviour result. (Abuse of power is a cultural problem and Carers report that they have not achieved satisfaction from attempting to resolve abuse of power problems with a support worker or supervisor).
3. Under the current complaints regime, “abuse of power” complaints are not regarded as a “Reviewable Decision” and therefore the complaint terminates within DCP and the abuse continues unresolved. Of course, DCP workers know this.
4. The Carer needs to then complain to the Ombudsman. This next step can be quite overwhelming to Carers. This is a ridiculous waste of taxpayer money and the resources of the Ombudsman. The Ombudsman’s standard for investigating a complaint is extremely high and at the “public interest” standard. Carers have been set up to fail in submitting information to the Ombudsman about abuse of power complaints as the “public interest” standard appears unlikely to be reached. It appears to be a contrived loop of wasting time and resources for a zero outcome.

However, this does not mean Carers should not have the right to be free from abuse of power. This is a strong indication that utilizing the Ombudsman for abuse of power complaints is not working.

5. The process of sending Carers to confront their abuser then submit a written complaint to the Ombudsman is a process of further abuse to Carers, a waste of the Ombudsman's time and no resolution for the Carer.
6. It does not appear that DCP acknowledge there is a significant problem with their culture including abuse of power toward Carers, even though abuses toward Carers have been reported and recorded in numerous Royal Commissions.

### **Examples of Prejudice Due to Carers Being Denied an Independent Complaint Mechanism**

1. DCP staff behaves as if they are unaware of the Statement of Commitment and their requirement to make this a "living document".  
DCP has not implemented with its staff the obligations under the Statement of Commitment "to work in partnership with Carers" by keeping Carers "Informed, Supported, Consulted, Valued and Respected." Failure to implement the Statement of Commitment values has caused a steady and persistent loss of Carers. **There appears to be no recognition by DCP they are the root cause of poor retention of Carers.**
2. Almost 50% of Carers report having experienced Abuse of Power by DCP staff. (See Abuse of Power Report 2021).
3. More than 23% of Carers report feeling intimidated or threatened into signing documents by an NGO support worker. (See Abuse of Power Report).
4. More than 66% of Carers report fears of repercussions prevented them from escalating issues through DCP offices. (See Abuse of Power Report)
5. Denying Carer's DCP policies has exacerbated the power imbalance. Carers are entitled to ALL DCP policies without redactions. (See FOI Act Section 10 (1)).
6. Carers are not provided natural justice in complaint handling. (See DCP webpage).
7. Carers are sent on a circuitous route of complaining to the Ombudsman when DCP must be fully aware that the standard of "public interest" would rarely be achieved. Thus, perpetuating continued abuse of power. There is no accountability for the abuses Carers have suffered in the current model. Accountability comes with consequences and there never appear to be consequences for DCP wrong-doing.
8. Carers regularly say that DCP staff purports to know all about the Court system and procedures, legal rights etc but demonstrate little regard for the rule of law and natural justice when it doesn't suit them.
9. Carers report they have tried to utilize the Child Abuse Report Line (CARL), when the DCP support worker has withheld assistance. Carers report there has been no change in circumstances using CARL. (See Abuse of Power Report).
10. Vexatious and false reports to CARL that are inappropriately recorded as a "Care Concern" (that permanently stays on a Carer's file) damages the Carer's reputation, unnecessarily complicates and can even block a Carer's application for Long Term Care.

11. CARU have damaged Carer's reputations and broken-down placements unnecessarily. The lack of accountability within CARU highlights the need for transparency in policies and procedures to rapidly provide Carer's with natural justice they are entitled to.
12. The impact of an inadequate complaints mechanism has been to exacerbate the challenges a Carer is required to manage-many times adding stress and trauma to their caring experience. (See Abuse of Power Report).
13. Carers report:
  - delays in medical treatment that will have lifelong impacts on children.
  - being out of pocket thousands of dollars to get diagnosis for children in care.
  - DCP do not reimburse the Carers for these significant expenses-even if the Carers have attempted to get the diagnosis for years.
  - advocacy for financial support leads to retribution and threats.
14. **The lack of an Independent Complaints Mechanism has been unfair to Carers and demonstrates not only an imbalance of power, but an abuse of power.**
15. DCP appear to have a culture of demanding control over Carers. Control of the most powerless people they work with "the volunteer" Carers who are not even paid adequate reimbursements needed to cover all of the expenses for their child in care.
16. Without an Independent Complaints Mechanism, Carers will continue to leave their Caring role in increasing numbers. DCP is the root cause for the lack of Carer retention.

This information of the "prejudices" to Carers is further evidence of a troubling culture at DCP.

#### **Recommendations:**

- An Independent Complaints Mechanism must be implemented immediately for Carers. (The Internal review system is unjust and unacceptable to Carers. They should not be obligated to deal with DCP personnel in addressing their complaints when they fear this action may lead to retribution and removal of children in their care.)
- That the essential partnership between DCP and Carers be mandated in legislation to underpin and regulate DCP practices and policies.
- That DCP Support Workers (and NGO workers) receive comprehensive, documented, ongoing and updated in-service training (including DCP trainers with experience as Carers) in order to meet the requirements of the mandated essential partnership with Carers of value and respect. (The essential role Carers perform in the child protection system and the value they deliver to taxpayers savings hundreds of millions of dollars annually, demands a shift in culture that places Carers and the children under their care, at the centre of DCP practices and not in a subsidiary role).
- That all DCP Policies be freely available to the members of the public (as required by law) via DCP website hyperlinks. (This is a very simple process to express partnership, "bring the Statement of Commitment to life" and begin some transparency in DCP processes).

- That DCP Support Workers (and NGO workers) receive extensive training to understand their legal obligations to act as “model litigants” in all of their interactions with Carers.
- That DCP staff receive extensive customer service training to appreciate Foster and Kinship Carers.
- The Children and Young People (Safety) Act must include in the Act and Regulations “model litigant” responsibilities of the DCP support workers.
- The Information Sharing Guidelines must be correctly implemented as envisaged by the Ombudsman (June 2019 Directive) and the undertaking of the DCP CE from June 2019 which has not been implemented by front line DCP workers.
- That DCP must accept full responsibility that they are the root cause for the poor Carer attraction and retention to Foster and Kinship Care roles.
- CARU must be required to accept information from Carers and respond to Carers. CARU need to operate without the bias toward DCP and Agencies that Carers experience now. CARU must be accountable for their actions of recording false information and taking part in retribution toward Carers.

**Action by the commission:**

1. Acknowledgement of receipt of this Submission.
2. Findings of the Inquiry specifying the need for the establishment of an Independent Complaints Mechanism and the mandating of the essential partnership with Foster and Kinship Carers to accord with understood universal principles of fair practice, natural justice to replace the present system.
3. Findings that the DCP Support Workers (and NGO workers) receive comprehensive, documented, ongoing and updated in-service training (including DCP trainers with experience as Carers) in order to meet the requirements of the mandated essential partnership with Carers of value and respect. (The essential role Carers perform in the child protection system and the value they deliver to taxpayers saving hundreds of millions of dollars annually, demands a shift in culture that place Carers and the children under their care at the centre of DCP practices and not in a subsidiary role).
4. That the Inquiry find the essential partnership between DCP and Carers be mandated in legislation to underpin and regulate DCP practices and policies.
5. That the Inquiry report to the proper authorities breaches of legislation and directives that the Inquiry has been made aware of.



# Submission to the Royal Commission into Domestic Violence

## Existing Complaint Mechanisms – Domestic Violence

### Personal details of the Submitter:

[REDACTED]

This Submission is on my behalf. The Carer Project Surveys, private Carer pages and direct communication with Carers has helped formulate the evidence I am submitting to the Inquiry.

Please note rural Carers, Carers with Aboriginal children in care, culturally diverse Carers and Specialist Carers have provided recent 2022 information and examples I refer to in this Submission.

### Contact details:

[REDACTED]

**Topic: Domestic Violence**

**Existing Complaint Mechanisms as they relate to Carers**

**Existing consultation process with Carers**

**Information Sharing and the sharing of documentation with Carers**

**Ensuring that there is a sound partnership with Carers and that the rights of children in foster and kinship care are respected, addressed and realized.**

**Recommendations to improve foster and kinship care in South Australia.**

### Relevant other Legislation or Codes:

- Terms of Reference of the Royal Commission
- Royal Commission Guidelines
- Children and Young People (Safety) Act (2017)
- Freedom of Information Act (FOI) (1991)
- South Australian **Statement of Commitment** with Foster and Kinship Carers
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- Department for Child Protection (DCP) Service provider responsibilities in the management of care concerns
- Existing Complaint Mechanism (DCP website)
- DCP Care Concern Process Flowchart
- The Carer Project Abuse of Power Report 2021
- Supporting and collaborating with Carers Practice Paper
- Ombudsman Annual Report 2018-19 Audits- Information Sharing Guidelines & Complaints

**Confidentiality / Privacy: No**

**Submission:**

The Nyland Royal Commission highlighted the important role Foster and Kinship Carers play in providing a safe and loving environment for some of society's most vulnerable children.

This submission is relevant to the Commission because the issues raised here impact on Carers ability to care for their children plus DCPs ability to support carers.

Much of this is a direct response by Foster and Kinship Carers to Domestic Violence surrounding these children.

DCP has many good workers who are dedicated to supporting vulnerable children in care in SA. We are keen to note that the many excellent workers at DCP need to be promoted into Training Roles to begin a much-needed change in DCP culture.

Regrettably there are far too many DCP workers who are incompetent and/or routinely engage in serious misconduct towards Carers. The Carer Project's Abuse of Power April 2021 Report provides alarming examples of this serious misconduct. This Report is included alongside other Carer Project Submissions.

Ample evidence exists to show that senior management at DCP are not only aware of this serious misconduct but are complicit in it.

The Carer Project is aware of a recent and alarming trend where very good DCP workers have had enough of the toxic environment of wrongdoing in DCP and are electing to resign and pursue their careers elsewhere. Very good people are being lost to the public child protection sector. In these circumstances, common sense indicates those workers are unlikely to move to NGOs where they would still be exposed to dealing with DCP and in all likelihood, be on the other end of bullying and retribution themselves.

Not only DCP support workers engage in serious misconduct toward Carers, but Carers report the satellite Division of DCP such as Carer Assessment Review Unit (CARU) and most recently Adoption Services have staff leaving in numbers.

The consequences of the loss of genuine sector expertise for Carers and their children in care are obvious. Optimal care for these children will become ever more impossible to deliver.

Further, Carers report that a common reason for them ceasing to be carers is the misconduct (typically bullying, intimidation and retribution) directed towards them by DCP personnel.

If real improvement is to be made in the Child Protection sector in South Australia, then this toxic environment must be changed so that DCP can attract and retain the best talent available.

### **Examples of Prejudice and Harm Due to Experienced Child Protection Workers Leaving DCP**

1. DCP staff behave as if they are unaware of the Statement of Commitment and their requirement to make this a “living document”.  
DCP has not implemented with its staff the obligations under the Statement of Commitment “to work in partnership with Carers” by keeping Carers “Informed, Supported, Consulted, Valued and Respected.” Failure to implement the Statement of Commitment values has caused a steady and persistent loss of Carers.  
**There appears to be no recognition by DCP they are the root cause of poor retention of Carers.**
2. DCP have a harmful toxic culture that is causing abusive practices toward Carers.
3. Almost 50% of Carers report having experienced Abuse of Power by DCP staff. (See Abuse of Power Report 2021).
4. More than 23% of Carers report feeling intimidated or threatened into signing documents by an NGO support worker. (See Abuse of Power Report). This is unaddressed by DCP.
5. More than 66% of Carers report fears of repercussions prevented them from escalating issues through DCP offices. (See Abuse of Power Report)
6. Denying Carer’s DCP policies has exacerbated the power imbalance. Carers are entitled to ALL DCP policies without redactions. (See FOI Act Section 10 (1)).
7. Carers are not provided natural justice in complaint handling. (See DCP webpage).
8. Carers are sent on a circuitous route of complaining to the Ombudsman when DCP must be fully aware that the standard of “public interest” would rarely be achieved. Thus, perpetuating continued abuse of power. There is no accountability for the abuses Carers have suffered in the current model. Accountability comes with consequences and there never appear to be consequences for DCP wrong-doing.
9. Carers regularly say that DCP staff purport to know all about the Court system and procedures, legal rights etc but demonstrate little regard for the rule of law and natural justice when it doesn’t suit them.

10. Carers report they have tried to utilize the Child Abuse Report Line (CARL), when the DCP support worker has withheld assistance. Carers report there have been no change in circumstances using CARL. (See Abuse of Power Report).
11. Vexatious and false reports to CARL that are inappropriately recorded as a “Care Concern” (that permanently stays on a Carer’s file) damages the Carer’s reputation, unnecessarily complicates and can even block a Carer’s application for Long Term Care.
12. CARU have damaged Carer’s reputations and broken-down placements unnecessarily. The lack of accountability within CARU highlights the need for transparency in policies and procedures to rapidly provide Carer’s with natural justice they are entitled to.
13. The impact of an inadequate complaints mechanism has been to exacerbate the challenges a Carer is required to manage-many times adding stress and trauma to their caring experience. (See Abuse of Power Report).
14. Carers report DCP support workers have caused:
  - delays in medical treatment that will have lifelong impacts on children.
  - being out of pocket thousands of dollars to get diagnosis for children in care.
  - DCP do not reimburse the Carers for these significant expenses-even if the Carers have attempted to get the diagnosis for years.
  - retribution for advocacy for financial support.
15. The lack of an Independent Complaints Mechanism has been unfair to Carers and demonstrates not only an imbalance of power, but an abuse of power.
16. DCP appear to have a culture of demanding control over Carers. Control of the most powerless people they work with “the volunteer” Carers who are not even paid adequate reimbursements needed to cover all of the expenses for their child in care.
17. Without an Independent Complaints Mechanism, Carers will continue to leave their Caring role in increasing numbers. DCP is the root cause for the lack of Carer retention.

This information of the “prejudices” to Carers is further evidence of a troubling culture at DCP.

#### **Recommendations:**

- An Independent Complaints Mechanism must be implemented immediately for Carers. (The Internal review system is unjust and unacceptable to Carers. They should not be obligated to deal with DCP personnel in addressing their complaints when they fear this action may lead to retribution and removal of children in their care.)
- Under performing staff (in particular those with a proven track record of misconduct and/or incompetence) must be removed from the sector. The safety of children in care demands as much.
- Senior management has been complicit in DCP ending up where it is. They cannot be relied upon to fix the problems they themselves helped to create.
- That the essential partnership between DCP and Carers be mandated in legislation to underpin and regulate DCP practices and policies.

- That DCP Support Workers (and NGO workers) receive comprehensive, documented, ongoing and updated in-service training (including DCP trainers with experience as Carers) in order to meet the requirements of the mandated essential partnership with Carers of value and respect. (The essential role Carers perform in the child protection system and the value they deliver to taxpayers savings hundreds of millions of dollars annually, demands a shift in culture that places Carers and the children under their care, at the centre of DCP practices and not in a subsidiary role).
- That all DCP Policies be freely available to the members of the public (as required by law) via DCP website hyperlinks. (This is a very simple process to express partnership, “bring the Statement of Commitment to life” and begin some transparency in DCP processes).
- That DCP Support Workers (and NGO workers) receive extensive training to understand their legal obligations to act as “model litigants” in all of their interactions with Carers.
- That DCP staff receive extensive customer service training to appreciate Foster and Kinship Carers.
- The Children and Young People (Safety) Act must include in the Act and Regulations “model litigant” responsibilities of the DCP support workers.
- The Information Sharing Guidelines must be correctly implemented as envisaged by the Ombudsman (June 2019 Directive) and the undertaking of the DCP CE from June 2019 which has not been implemented by front line DCP workers.
- That DCP must accept full responsibility that they are the root cause for the poor Carer attraction and retention to Foster and Kinship Care roles.

**Action by the Commission:**

1. Acknowledgement of receipt of this Submission.
2. Findings of the Commission specifying the need for the establishment of an Independent Complaints Mechanism and the mandating of the essential partnership with Foster and Kinship Carers to accord with understood universal principles of fair practice, natural justice to replace the present system.
3. Findings that the DCP Support Workers (and NGO workers) receive comprehensive, documented, ongoing and updated in-service training (including DCP trainers with experience as Carers) in order to meet the requirements of the mandated essential partnership with Carers of value and respect. (The essential role Carers perform in the child protection system and the value they deliver to taxpayers saving hundreds of millions of dollars annually, demands a shift in culture that place Carers and the children under their care at the centre of DCP practices and not in a subsidiary role).
4. That the Commission find the essential partnership between DCP and Carers be mandated in legislation to underpin and regulate DCP practices and policies.
5. That the Commission report to the proper authorities breaches of legislation and directives that the Commission has been made aware of.

