

# **Evidence-based law and practice with disadvantaged populations: Perspectives of parents involved in child protection proceedings<sup>+</sup>**

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**Abstract:** Lawyers and other professionals who work with disadvantaged populations often have limited research evidence about the impact of laws on their clients. People who experience socio-economic disadvantage can find it very difficult to access legal systems and processes. Locating and engaging them in research about their experiences is also challenging. One such group is parents who have children removed from their care due to child protection concerns. This article examines some of the prior research carried out with this group and then describes a qualitative study conducted with 18 parents in the Hunter Valley, New South Wales. This research explored their perspectives on the Children's Court, child protection, and out-of-home care proceedings and processes. The findings suggest that parents whose children are removed are systematically disempowered. This raises major social justice and economic questions for government, policy-makers, practitioners, and researchers. The research demonstrates one approach to research with disadvantaged groups, which includes a multidisciplinary research team and assistance from parent consultants.

**Key Words:** evidence-based law, disadvantaged populations, child protection

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## Introduction

Parents who have their children removed experience numerous personal and social disadvantages. They are stigmatised in a similar way to those accused of criminal offences but have considerably less procedural protections against the actions of the state. To improve legal and professional practice with this disadvantaged group, it is important to understand how they experience legal proceedings and processes, and how their participation can be better supported. Lawyers and other professionals can find it challenging to acknowledge the vulnerabilities of parents who have abused or neglected their children, because of a perception that parents' needs are in competition with children's needs. While children's safety and wellbeing should remain the paramount focus of proceedings, parents' experiences and support needs are of research interest because parents and families are key to optimal outcomes for children.

This article first delineates why these parents are considered to be a disadvantaged group, then outlines prior research carried out with them. The methods that previous studies used and the available evidence about parents' experiences of child protection systems and proceedings are examined. Secondly, the design and context of the research with parents in the Hunter Valley is described, and the primary themes and findings that relate to legal practice are presented. These are illustrated by examples of parents' narratives taken from interviews and focus groups. The article concludes with suggestions on how this research might influence law, policy and practice.

## Parent disadvantages in child protection proceedings

Most parents of children who are removed experience poverty and intergenerational disadvantage,<sup>1</sup> often compounded by substance use,<sup>2</sup> violence, disability, mental illness and social instability. Those factors affect a broad spectrum of their parenting experiences, including parenting capacity and child maltreatment,<sup>3</sup> their children's removal, participation in

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<sup>1</sup> Kelley Fong, 'Child Welfare Involvement and Contexts of Poverty: The Role of Parental Adversities, Social Networks, and Social Services' (2017) 72 *Children and Youth Services Review* 5, 6; Paul Bywaters et al, 'Inequalities in Child Welfare Intervention Rates: The Intersection of Deprivation and Identity' (2016) 21(4) *Child and Family Social Work* 452.

<sup>2</sup> The statutory child protection agency in NSW, Family and Community Services (FACS), estimates that 80 per cent of all child abuse reports to Community Services involve parents experiencing substance use issues. See Department of Family and Community Services, Government of New South Wales, *Our Services*, Community services, <<http://www.community.nsw.gov.au/about-us/our-services>>.

<sup>3</sup> James Doidge et al, 'Economic Predictors of Child Maltreatment in an Australian Population-Based Birth Cohort' (2017) 72 *Children and Youth Services Review* 14, 58.

court, child protection and out-of-home care processes, inclusion in their children's lives while in care, and the likelihood of children being restored to their care. As such, disadvantages already exist prior to involvement in child protection proceedings and interventions. Subsequently, those disadvantages can be exacerbated, becoming more complicated, compounded, and cyclical during and after processes and interactions with different systems.

Poverty can increase other adversities, such as,

increased conflict and stress, family instability, and neighborhood disorder... [which] may in turn inhibit parenting capacity or negatively affect parenting practices through increased stress or decreased support... [that] frequently co-occur with child welfare involvement.<sup>4</sup>

Parents experience child removal and placement as stigmatising, isolating, disrespectful and unhelpful,<sup>5</sup> and as involving processes which force them to comply with unrealistic targets,<sup>6</sup> where they are locked out of participation in their children's lives,<sup>7</sup> and attacked and belittled.<sup>8</sup> Participants in the Harries study talked about the increased isolation and disruptive and corrosive impact of statutory intervention in their lives and relationships — with each other, within and between families, within the community, and with helping services.<sup>9</sup> This was echoed in Hinton's study, where parents received little information from authorities about child protection processes, the progress of their matter, or what was happening to their children in out-of-home care. Those first contacts with child protection processes led parents to feel worthless, disrespected and powerless.<sup>10</sup> Studies with Aboriginal parents revealed they did not feel respected by child protection authorities, who talked down to them rather than listening to them. A perceived lack of respect was in many instances based on the perception that workers

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<sup>4</sup> Fong, above n 1, 6.

<sup>5</sup> Maria Harries, *The Experiences of Parents and Families of Children and Young People in Care* (Anglicare, 2008) <[http://finwa.org.au/wp-content/uploads/2011/06/Report\\_on\\_the\\_Exp\\_of\\_Parents\\_v2.pdf](http://finwa.org.au/wp-content/uploads/2011/06/Report_on_the_Exp_of_Parents_v2.pdf)> ch 4; Teresa Hinton, *Parents in the Child Protection System* (Social Action and Research Centre, Tasmania, 2013) 52; Chris Klease, 'Silenced Stakeholders: Responding to Mothers' Experiences of the Child Protection System' (2008) 33(3) *Children Australia* 21, 26.

<sup>6</sup> Ros Thorpe, 'Family Inclusion in Child Protection Practice: Building Bridges in Working with (Not against) Families' (2008) 3(1) *Communities, Children and Families Australia* 4, 11.

<sup>7</sup> Meredith Kiraly and Cathy Humphreys, 'A Tangled Web: Parental Contact with Children in Kinship Care' (2015) 20(1) *Child & Family Social Work* 106, 110–111.

<sup>8</sup> Rosie Smithson and Matthew Gibson, 'Less Than Human: A Qualitative Study into the Experience of Parents Involved in the Child Protection System' (2017) 22(2) *Child & Family Social Work* 565, 5.

<sup>9</sup> Harries, above n 5, 25.

<sup>10</sup> Hinton, above n 5, 43.

had treated parents or carers as if they were untrustworthy.<sup>11</sup> Parents' requests for help were rarely heeded: instead they led to the removal of their children. Stories of betrayal, broken promises, blame and shame, loss and grief, together with a lack of common courtesy and respect for others resonate through these studies.<sup>12</sup>

Parents' relationships with other people, including lawyers, workers, and carers, are key to their participation in proceedings and processes. The processes through which child protection authorities investigate and bring proceedings to court are complex. The stigma, fear and grief parents experience along with their lack of knowledge and social disadvantage mean they cannot engage with child protection processes effectively in the absence of trusting relationships. Research indicates that parents are less likely to engage actively and positively with these people if they feel judged, not listened to, or their parental role is undermined.<sup>13</sup> Relationships with child protection professionals are often beset by poor communication, including a failure to listen, consult and to provide clarity,<sup>14</sup> and a lack of sensitivity, understanding and empathy, which some parents experience as harassment.<sup>15</sup>

### **Prior research: methodologies**

Prior Australian studies which have investigated parents' perspectives of the child protection system and out-of-home care have used primarily qualitative research methodologies. Common forms of qualitative research include interviews, focus groups, and ethnographic studies such as participant observation and life history interviewing. These methods are well-suited for research with disadvantaged groups, as they can provide an in-depth and detailed

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<sup>11</sup> Mary Ivec, Valerie Braithwaite and Nathan Harris, "Resetting the Relationship" in *Indigenous Child Protection – Public Hope and Private Reality* (2012) 34(1) *Law and Policy* 80-103, 89-90.

<sup>12</sup> Klease, above n 5, 26.

<sup>13</sup> Tyrone C Cheng, 'Factors Associated with Reunification: A Longitudinal Analysis of Long-Term Foster Care' (2010) 32(10) *Children and Youth Services Review* 1311, 1315; Fotina Hardy and Yvonne Darlington, 'What Parents Value from Formal Support Services in the Context of Identified Child Abuse' (2008) 13(3) *Child & Family Social Work* 252, 256.

<sup>14</sup> See Karen Healy, Yvonne Darlington and Judith Feeney, 'Parents' Participation in Child Protection Practice: Toward Respect and Inclusion' (2011) 92(3) *Families in Society: The Journal of Contemporary Social Services* 282; Hinton, above n 5, 12.

<sup>15</sup> Donald Forrester et al, 'How Do Child and Family Social Workers Talk to Parents About Child Welfare Concerns?' (2008) 17(1) *Child Abuse Review* 23, 33; Sharynne Hamilton and Valerie Braithwaite, 'Complex Lives, Complex Needs, Complex Service Systems: Community Worker Perspectives on the Needs of Families Involved with Act Care and Protection Services' (Occasional Paper No 21, RegNet, The Australian National University, 2014) 38; Sarah Maiter, Sally Palmer and Shehenaz Manji, 'Strengthening Social Worker-Client Relationships in Child Protective Services: Addressing Power Imbalances and 'Ruptured' Relationships' (2006) 5(2) *Qualitative Social Work* 167, 179–181; Gillian Schofield et al, 'Managing Loss and a Threatened Identity: Experiences of Parents of Children Growing up in Foster Care, the Perspectives of Their Social Workers and Implications for Practice' (2011) 41(1) *British Journal of Social Work* 74, 85.

understanding of the experiences of people in their everyday life. Qualitative studies allow researchers to gain insights into the lives and perspectives of these parents, by engaging them in conversational interviews and other qualitative techniques. The development of reciprocal relationships between researchers and participants who are members of disadvantaged groups can also lead to a better exploration of perspectives and experiences.<sup>16</sup> These methodologies generally involve conducting research *with* participants, rather than *on* participants.

The Family Inclusion Network's 2005 study involved focus groups with parents to explore their experiences and perspectives. The focus groups were held across Queensland and involved 67 parents and their partners.<sup>17</sup> Harries utilised both individual interviews and focus groups to explore the views and perspectives of parents who had their children removed into out-of-home care. The interviews were designed to be flexible. Interviews began as unstructured, oral story interviews and were then assessed based on the ease of conversation flow.<sup>18</sup> If this interview technique was unsuitable for a particular interviewee, the interview would take on a semi-structured form, where the interviewer would prompt the interviewee to talk about specific aspects of their experiences and perspectives.<sup>19</sup> Participants were also able to bring a support person to their interview.<sup>20</sup> Three focus groups were also conducted, and included parents who had previously been interviewed separately, as well as new participants who had not previously featured in the research.<sup>21</sup>

Hinton used face-to-face interviews with 20 families about their experiences of the child protection system.<sup>22</sup> The interviews were generally conducted in the homes of the families, or another comfortable location, and the participants were allowed to bring a support person.<sup>23</sup> A further six focus groups were conducted with a total of 27 parents.<sup>24</sup> Following the research, support services were offered to the participants if required.<sup>25</sup>

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<sup>16</sup> Jo Aldridge, 'Working with Vulnerable Groups in Social Research: Dilemmas by Default and Design' (2014) 14(1) *Qualitative Research* 112, 117.

<sup>17</sup> Family Inclusion Network, 'Family Inclusion in Child Protection Practice, Creating Hope, Re-Creating Families' (Family Inclusion Network, Queensland, 2007) 3.

<sup>18</sup> Harries, above n 5, 6, 9.

<sup>19</sup> *Ibid* 5.

<sup>20</sup> *Ibid* 4.

<sup>21</sup> *Ibid* 9.

<sup>22</sup> Hinton, above n 5, 141.

<sup>23</sup> *Ibid* 142.

<sup>24</sup> *Ibid* 141.

<sup>25</sup> *Ibid* 142.

Taplin and Mattick's study into the experience of mothers who had children in care while undergoing drug rehabilitation used structured interviews to explore their experiences of the child protection system, as well as demographic, social, mental health, and drug use information.<sup>26</sup> The researchers also accessed the child protection records of the mothers.<sup>27</sup>

Kiraly and Humphries explored the experiences of 20 mothers with children in kinship care through the use of semi-structured interviews.<sup>28</sup> The researchers were aware of the power imbalance between the participants and the interviewer, and so took measures to reduce the effects of this imbalance. The interviews took place in comfortable environments, such as the participants' homes, the participants were rewarded for their participation, and they received a copy of a progress report and the final report.<sup>29</sup>

Other studies have investigated the perspectives of people with children in care with particular disadvantages. McConnell and colleagues implemented mixed methods to investigate the experiences of parents with mental health issues in the child protection system.<sup>30</sup> The researchers reviewed court files and observed parents in court, although parents were not directly included in the study. Focus groups and interviews were also conducted with magistrates, legal representatives and child protection workers.

Qualitative unstructured and semi-structured interviews allow rich, detailed perspectives to be documented, and allow the interviewee to discuss the matters they feel are most important to their experiences.<sup>31</sup> This contrasts with quantitative methods which investigate issues predetermined by the researcher to be important. Such research is typically more generalisable than qualitative methods but misses opportunities to understand important factors related to people's unique experiences and circumstances.

Quantitative child protection data can give some picture of families' and children's circumstances but should be considered in unison with other qualitative evidence because of

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<sup>26</sup> Stephanie Taplin and Richard P Mattick, 'Supervised Contact Visits: Results from a Study of Women in Drug Treatment with Children in Care' (2014) 39 *Children and Youth Services Review* 65-72, 67.

<sup>27</sup> *Ibid.*

<sup>28</sup> Kiraly and Humphreys, above n 7, 108.

<sup>29</sup> Kiraly and Humphreys, above n 7, 108.

<sup>30</sup> David McConnell, Gwynnyth Llewellyn and Luisa Ferronato, 'Parents with a Disability and the NSW Children's Court' (Report, The Family Support and Services Project, August 2000).

<sup>31</sup> Alan Bryman, *Social Research Methods* (Oxford University Press, 4<sup>th</sup> ed, 2012) 470.

particular methodological limitations. For example, certain families such as single parent families come to the attention of child protection authorities more than others. Policy and social factors influence data, for instance where there are different reporting and definitions across jurisdictions, cultural values and differing norms about child abuse. There may also be inconsistencies in how data is collected, for instance, in relation to methods and purposes of data collection and prospective versus retrospective collection.<sup>32</sup>

### **Evidence from previous studies**

The handful of Australian and international studies of parents' experiences have common findings: parents find court proceedings traumatic and alienating and feel unable to participate in these processes.<sup>33</sup> Parents who have contact with child protection proceedings and processes experience guilt, fear, shame and a sense of powerlessness. They are unable to access adequate support and information during child protection proceedings and experience grief and trauma following children's removal.

Australian research shows that parents' lawyers are aware of their role in countering significant power imbalances between parents and the state in child protection proceedings.<sup>34</sup> It is difficult to ensure procedural fairness in an adversarial system that has a high level of informality, such as no rules of evidence. Research has shown collaborative approaches between professionals and children's parents ensure the best outcomes for children and families.<sup>35</sup> In NSW, McConnell et al have researched the power imbalances for people with intellectual disability,<sup>36</sup> and Ainsworth and Hansen have explored the difficulties parents have in managing the

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<sup>32</sup> Cathryn Hunter and Rhys Price-Robertson, 'Family Structure and Child Maltreatment: Do Some Family Types Place Children at Greater Risk?' (Paper No. 10, Child Family Community Australia Information Exchange (CFCA), 2012) <<https://aifs.gov.au/cfca/publications/family-structure-and-child-maltreatment-do-some-family-types-place-children>> 4.

<sup>33</sup> Family Inclusion Network, above n 17; Harries, above n 5; Hinton, above n 5; Klease, above n 5; Nathan Harris and Linda Gosnell, 'From the Perspective of Parents: Interviews Following a Child Protection Investigation' (Occasional Paper 18, RegNet, The Australian National University, March 2012); Taplin and Mattick, above n26; Helen Buckley, Nicola Carr and Sadhbh Whelan, 'Like Walking on Eggshells': Service User Views and Expectations of the Child Protection System' (2011) 16(1) *Child & Family Social Work* 101; Gary C Dumbrell, 'Parental Experience of Child Protection Intervention: A Qualitative Study' (2006) 30(1) *Child Abuse & Neglect* 27.

<sup>34</sup> Tamara Walsh and Heather Douglas, 'Lawyers, Advocacy and Child Protection' (2011) 35 *Melbourne University Law Review* 621, 629.

<sup>35</sup> Jemma Venables, Karen Healy and Gai Harrison, 'From Investigation to Collaboration: Practitioner Perspectives on the Transition Phase of Parental Agreements' (2015) 52 *Children and Youth Services Review* 9.

<sup>36</sup> David McConnell, Gwynnyth Llewellyn and Luisa Ferronato, 'Disability and Decision-Making in Australian Care Proceedings' (2002) 16 *International Journal of Law, Policy and the Family* 270, 271.

complexities of child protection proceedings.<sup>37</sup> These difficulties include finding and consulting with a solicitor, often a Legal Aid lawyer; assembling supporting documents in short time frames; problems associated with no application of the rules of evidence; challenges for parents complying with aspects of the adversarial system; parents' lack of understanding or knowledge of any rules about what can and cannot be said during contact with children; and a lack of support services. In New South Wales, under section 93(3) of the *Children and Young Persons (Care and Protection) Act 1998*:

The Children's Court is not bound by the rules of evidence unless, in relation to particular proceedings or particular parts of proceedings before it, the Children's Court determines that the rules of evidence, or such of those rules as are specified by the Children's Court, are to apply to those proceedings or parts.

Studies in other states support how difficult it is for parents when child protection departments provide incriminating evidence about parents that is not in accordance with the rules of evidence. In a study undertaken in Tasmania, lawyers and advocates commented on significant use of hearsay evidence by child protection services and the low level of proof required for something as fundamental as parents keeping their children.<sup>38</sup> There are a few international studies of parents' legal representation that demonstrate the complex requirements for the effective representation of parents.<sup>39</sup> Guggenheim in the USA believes specialised training is necessary for lawyers who represent parents.<sup>40</sup> In England and Wales, Shaw and colleagues

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<sup>37</sup> Frank Ainsworth and Patricia Hansen, 'The Experience of Parents of Children in Care: The Human Rights Issue' (2011) 32(1) *Child & Youth Services* 9; Frank Ainsworth and Patricia Hansen, 'Behind the Closed Door: A Guide and Parents' Comments on the Workings of the New South Wales Children's Court' (2013) 38(2) *Children Australia* 47; Frank Ainsworth and Patricia Hansen, 'Family Foster Care: Can It Survive the Evidence?' (2014) 39(2) *Children Australia* 87; Frank Ainsworth and Patricia Hansen, 'Understanding Difficult Parental Behaviours During a Child Protection Investigation' (2015) 40(1) *Children Australia* 20.

<sup>38</sup> Hinton, above n 5, 82.

<sup>39</sup> Studies in England and Wales: Julia Pearce, Judith Masson and Kay Bader, 'Just Following Instructions? The Representation of Parents in Care Proceedings' (Research Report, Economic and Social Research Council, University of Bristol, 2011) 87–89; Judith Masson, 'I Think I Do Have Strategies': Lawyers' Approaches to Parent Engagement in Care Proceedings' (2012) 17(2) *Child & Family Social Work* 202. Study in Ireland: Conor O'Mahony et al, 'Representation and Participation in Child Care Proceedings: What About the Voice of the Parents?' (2016) 38(3) *Journal of Social Welfare and Family Law* 302. Studies in the United States: Bruce A Boyer, 'Ethical Issues in the Representation of Parents in Child Welfare Cases' (1996) 64(4) *Fordham Law Review* 1621; Martin Guggenheim, 'Parental Rights in Child Welfare Cases in New York City Family Courts' (2007) 40(4) *Columbia Journal of Law and Social Problems* 507; Martin Guggenheim, 'The Role of Counsel in Representing Parents' (2016) 35(2) *Child Law Practice* 1; Steve M Wood and Jesse R Russell, 'Effects of Parental and Attorney Involvement on Reunification in Juvenile Dependency Cases' (2011) 33(9) *Children and Youth Services Review* 1730; Martin Guggenheim and Susan Jacobs, 'A New National Movement in Parent Representation' (2013) 47(1-2) *Clearinghouse Review Journal of Poverty Law and Policy* 44; Kathleen A Bailie, 'The Other Neglected Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them' (1998) 66(6) *Fordham Law Review*, 2285; Jillian Cohen and Michele Cortese, 'Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families' (2009) 28(3) *Child Law Practice* 33.

<sup>40</sup> *Ibid.*



have raised the complex issue presented by recurrent removals of children from the same parents: this clearly demonstrate the need to understand how parents experience and respond to processes and proceedings.<sup>41</sup>

In summary, there is limited research into parents' perspectives on legal processes or into how legal and administrative processes impact their lives and relationships with their children. Although both Australian and international studies have identified common parental responses to investigation, such as, feelings of powerlessness, fear and stigma,<sup>42</sup> parents voices about the impact of these systems are rarely heard by those in positions of power, and parents make only a marginal contribution to reforms to these systems. Previous research has recognised the lack of parents' involvement in research, policy and practice and law reform in Australia.<sup>43</sup> In prior studies, similar groups of parents have expressed appreciation of the rare opportunity to have their say in an area of deep personal interest to them.<sup>44</sup> Research carried out with parents that asks them about their experiences, perspectives and ideas meets their needs to be involved, allows for public recognition of their collective loss, and can improve outcomes for children.

### **Evidence gap that prompted the research**

Research into parents' experiences can inform legal and professional practice with parents and help to generate a focus on outcomes for children who are the subject of legal proceedings and/or in care. It was particularly important to research experiences of parents in the Hunter region, which has one of the highest rates of children in out-of-home care in NSW, particularly when NSW has a higher rate than the national average. High rates, and variations across jurisdictions, are not well understood, but likely reflect the social and structural disadvantages described in this article. Reforms to the child protection system in NSW in 2014 increased the need for research into parents' experiences as they participated to a limited extent in consultations about these changes.

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Guggenheim, (2007, 2016)

<sup>41</sup> Mike Shaw et al, 'Recurrent Care Proceedings: Part 1: Progress in Research and Practice since the Family Justice Council 6th Annual Debate' (2014) 44(9) *Family Law* 1284

<sup>42</sup> See above n 5, n 6 and n 7.

<sup>43</sup> See Family Inclusion Network, *Family Inclusion in Child Protection Practice, Creating Hope, Re-Creating Families* (Family Inclusion Network, Queensland, 2007); Harries, above n 9; Cas O'Neill, 'Christmas Without the Kids: Losing Children Through the Child Protection System' (2005) 30 *Children Australia*, 11; Meredith Kiraly and Cathy Humphreys, 'Family Contact for Children in Kinship Care: A Literature Review' (2013) 66(3) *Australian Social Work* 358; Hinton, above n 4; Taplin and Mattick, above n 30; Meredith Kiraly and Cathy Humphreys, 'A Tangled Web: Parental Contact with Children in Kinship Care' (2015) 20(1) *Child and Family Social Work* 106.

<sup>44</sup> Kiraly and Humphreys, 'A Tangled Web: Parental Contact with Children in Kinship Care' above n 43, 108.

## **Research with parents in the Hunter Valley in 2016**

Parents' experiences of participation in child protection proceedings and processes has not been the subject of research in the past in the Hunter region. The Hunter region in NSW has one of the highest rates of children in out-of-home care in Australia, at a rate of about 1.8%, compared to a state-wide rate of approximately 1% and a national rate of 0.8%.<sup>45</sup> Rates of children in out-of-home care are generally much higher in rural and remote regions.<sup>46</sup>

### **The Context for the research: child protection reforms in New South Wales**

NSW and other Australian child protection systems have traditionally been risk focused, with less emphasis on prevention, early intervention and support.<sup>47</sup> In 2008 the Wood Special Inquiry into Child Protection Services in NSW instigated major changes to the system, recommending a move to a public health model and a staged transition of out-of-home care services to the non-government sector.<sup>48</sup> This led to large numbers of non-government organisations providing casework services and out-of-home care, with increased funding for government child protection services and secondary services. Expenditure on out-of-home care services remained high due to higher numbers of children and young people remaining in in out-of-home care for longer. The spending on secondary services failed to impact these growing numbers and, in fact, may have contributed to the increases.

Major legal reforms commenced in NSW in October 2014, with permanency of care the key focus: although a consultation was undertaken prior to the changes, there was minimal input by parents. These reforms prioritised guardianship and adoption over long term care of children in out-of-home care. Both these options have consequences for parents' ongoing relationships with children. These reforms were coupled with reforms intended to enhance caseworkers' focus on parents, for instance, through the introduction of parent capacity contracts.

As discussed above, previous research in Australia and other countries has found that parents are systematically disadvantaged by processes in these systems, with very poor outcomes for parents and their ongoing relationships with children. There have been no similar studies in

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<sup>45</sup> Department of Family and Community Services, Government of New South Wales, above n 2.

<sup>46</sup> Department of Family and Community Services, Government of New South Wales, 'FACS Statistics, Hunter-New England 2015-16' (2016) <<http://www.facs.nsw.gov.au/facs-statistics/facs-districts/hunter-new-england>>. This provides detailed statistics on rates of children in care including those in rural and regional areas, and differences between metro Sydney rates and regional rates can be seen in data from the individual districts.

<sup>47</sup> Bente Heggem Kojan and Bob Lonne, 'A Comparison of Systems and Outcomes for Safeguarding Children in Australia and Norway' (2012) 17(1) *Child & Family Social Work* 96.

<sup>48</sup> New South Wales, Special Commission of Inquiry into Child Protections Services in NSW *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (2008) vi, vii-viii.

NSW since the inception of the reforms. The research in the Hunter region was undertaken with a small group of parents in response to this gap, to better understand their experiences and concerns. The research was qualitative and adopted a family inclusion and children's rights perspective in its design.<sup>49</sup>

### **Family inclusion and a children's rights perspective**

'Family inclusion' and 'family inclusive practice' – sometimes called 'family engagement' in the literature – are developing terms and were a key focus in this research. The practice involves a collaborative process for the meaningful inclusion of parents in their children's lives, in ways that extend beyond the usual, often limited, contact visits. It is fundamental to maintaining important family and social connections for children in out-of-home care, and to supporting parents to be better parents, regardless of whether children remain in care permanently. The concept of family inclusion is important as parents have tended to be largely invisible as subjects of concern in practice and in the literature, once their children have entered care.

A children's rights perspective emphasises the importance of collaborative and meaningful practice with parents and families of children who are the subject of legal proceedings and where children are placed in out-of-home care. Children have a right not only to be protected from harm, but to be supported and cared for by their parents, and parents have responsibilities to uphold those rights.<sup>50</sup> Children and young people in care have expressed their need to have a sense of belonging and relationships with their family of origin and others.<sup>51</sup> Research shows that maintaining stronger relationships between parents and children leads to better permanency and stability during care,<sup>52</sup> better outcomes leaving care, including less loneliness

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<sup>49</sup> For a full report on this research, see Nicola Ross et al, 'No voice, no opinion, nothing': Parent Experiences when Children are Removed and Placed in Care' (Research Report, The University of Newcastle, 2017).

<sup>50</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, (entered into force 2 September 1990).

<sup>51</sup> Nina Biehal, 'A Sense of Belonging: Meanings of Family and Home in Long-Term Foster Care' (2014) 44(4) *British Journal of Social Work* 955; Janet Boddy, 'Understanding Permanence for Looked after Children: A Review of Research for the Care Inquiry' (School of Education and Social Work, University of Sussex, 2013); CREATE, WA, 'Hearing from Children and Young People in Care: Experiences of Family Contact' (Report, 2014).

<sup>52</sup> Gretta Cushing, Gina M Samuels and Ben Kerman, 'Profiles of Relational Permanence at 22: Variability in Parental Supports and Outcomes among Young Adults with Foster Care Histories' (2014) 39 *Children and Youth Services Review* 73, 80; Robin Sen and Karen Broadhurst, 'Contact between Children in out-of-Home Placements and Their Family and Friends Networks: A Research Review' (2011) 16(3) *Child & Family Social Work* 298, 301.

and more practical support,<sup>53</sup> improved outcomes in adulthood,<sup>54</sup> higher rates of restoration<sup>55</sup> and stronger relational permanency, contrasting with a narrow measure of legal permanency.<sup>56</sup>

### Research Design

The research aim was to explore parents' experiences and perspectives of child protection proceedings and processes, including processes associated with children's removal, contact and support service for parents. A further aim was to examine if a policy of family inclusion was reflected in parents' accounts of their experiences.

To provide insights into parents' lives and perspectives a qualitative study was adopted, using conversational methods of interviews and focus groups. Lived experience research can raise key people's awareness of others' experiences. Otherwise, they may never hear those stories, or may hear them in pressurised work situations such as court proceedings, assessment, and children's removal.

Recruitment can be a very significant challenge in studies with this parent group due to stigma associated with their disadvantage. Most parents for this study were recruited via social media and parent-peers, and some responded to emails and flyers sent via non-government out-of-home care services and parenting programs. The difficulty of accessing this parent group can be minimised by working with organisations that are set up to support this group of parents.

The most successful avenue of recruitment via services was through family support services, particularly where parenting programs targeted this particular group of parents. This research required a balancing act between protecting participants from further trauma and harm during the research and acknowledging their right to be heard and consulted about matters affecting them. It was also necessary to alleviate parents' concerns about the potential repercussions of talking about systems they found disempowering. An important innovative approach was the inclusion of two parent consultants – with personal experience of child removal and out-of-

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<sup>53</sup> Philip Mendes, Guy Johnson and Badal Moslehuddin, 'Young People Transitioning from out-of-Home Care and Relationships with Family of Origin: An Examination of Three Recent Australian Studies' (2012) 18(4) *Child Care in Practice* 357, 368; Nina Biehal et al, 'Moving On: Young People and Leaving Care Schemes', (HMSO, 1995).

<sup>54</sup> Mendes et al, above n 53, 368; Judy Cashmore, Marina Paxman and Michelle Townsend, 'The Educational Outcomes of Young People 4–5 Years After Leaving Care: An Australian Perspective' (2007) 31(1) *Adoption and Fostering* 50, 56.

<sup>55</sup> Elizabeth Fernandez and Jung-Sook Lee, 'Accomplishing Family Reunification for Children in Care: An Australian Study' (2013) 35(9) *Children and Youth Services Review* 1374. This article discusses some findings from a four-year prospective longitudinal study of reunification process and outcomes.

<sup>56</sup> Gina M Samuels, 'A Reason, a Season, or a Lifetime: Relational Permanence among Young Adults with Foster Care Backgrounds' (University of Chicago, 2008), 14.

home care placement – who assisted the researchers with framing questions for participants, analysing de-identified data, and co-facilitated one to two focus groups each with a researcher. Focus groups are commonly used in research involving disadvantaged groups. Participants may feel empowered and supported while participating in focus groups, and the relaxed structure may enable participants to control the discussion and incorporate into the discussion topics that they feel are the most important.<sup>57</sup> However, focus groups may not always be appropriate. Some participants may not feel comfortable engaging in public speaking in front of an audience of other participants and researchers; and may feel the need to censor their language and opinions, especially in focus groups where many strangers are present.<sup>58</sup> This can potentially be avoided by composing focus groups of participants who have existing social relationships. The research team included parent consultants as co-facilitators of focus groups to help overcome some of the discomfort that parents might experience when discussing their lives with researchers who may have different life experiences.

Most of the interviews with parents were carried out in their homes, with some taking place by phone due to logistics or child care needs. An early attempt to put aside a day on a weekend to interview parents, with lunch and refreshments provided, was not successful. As in other studies of this kind, parents appear to be more comfortable talking about their experiences in their own homes. The first part of the interview was taken up with the collection of some basic demographic information, which helped researchers to understand the structure of participants' families and their narratives. It also allowed basic information about the participant group to be collated for the purposes of the research.

### ***Participants***

A total of 18 parents participated in interviews, 13 women and five men. Eight of those parents also participated in focus groups. The group included three couples, which meant participants represented 15 families. Their average age was 35 years, and eight of the parents were caring for children at home, either on their own or with their own parent. The three couples did not have children living at home. The participant families had a total of 50 children, 34 of whom

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<sup>57</sup> Karen Block et al, 'Addressing Ethical and Methodological Challenges in Research with Refugee-Background Young People: Reflections from the Field' (2012) 26(1) *Journal of Refugee Studies* 69, 81.

<sup>58</sup> Deborah J Warr, "'It Was Fun ... But We Don't Usually Talk About These Things": Analyzing Sociable Interaction in Focus Groups' (2005) 11(2) *Qualitative Inquiry* 200, 202.

had been removed. Of those children, 27 were still in care (all kinship or foster care), six had been restored (four to the same family), and one had left care once over 18 years.

## **Findings**

The study provided rich data on the experiences and perspectives of parents. Five primary themes emerged related to power and inclusion, professional relationships and relating, parent-child relationships and attachment, grief and loss, and identity. Legal experiences appeared across all of the themes, although predominantly in ‘power and inclusion’ and ‘professional relationships and relating’. Although identified separately, power and inclusion ran through all themes as a major feature or explanation of most parents’ personal and system experiences. The following describes key findings related to legal proceedings, processes and practice.

### ***Not a level playing field, even with a lawyer***

Most (but not all) parents in the study commented positively about the assistance they received from their lawyer. The lawyer’s ability to communicate respectfully with them and put them at their ease was very important. Honest and clear feedback was appreciated, so that parents knew where they stood.

My lawyer was brilliant, she was brilliant. She was one of those ones that was quite honest with me about what was going to happen and how it was going to go.

Where parents expressed dissatisfaction, this was where they felt judged or neglected by their lawyer, or felt the lawyer lacked the necessary expertise in this specialised area.

...the first one didn't listen, wouldn't get affidavits in on time, wouldn't meet with me to discuss court. (My new solicitor) just listens. I think that's the biggest part in solicitor-client representation. If the solicitor doesn't listen to you then they don't know what you really want. They're going off their own back, agreeing to almost everything and that's not what I want.

One young parent had a very poor experience with her lawyer. He was judgmental and she struggled to understand him; he did not present her case well. This had serious consequences – her baby was removed. Although she tried to access resources she needed, to facilitate the care of her child, she was unable to do so when her the child was removed and was unable to understand why this occurred.

[It] confused me because I did the best I could and it still wasn't enough for them...I had a house, was waiting for the psychologist. I engaged with the young parent social worker.

Later, when she was provided with the services she had asked for (primarily, counselling from a psychologist), she was able to successfully parent the next child she gave birth to.

Parents said that legal representation by itself did not ensure that there was a level playing field. They felt the legal processes worked against them, for instance by allowing the lawyers for Family and Community Services to tell lies or partial lies about them, without an opportunity to question these lies. Parents' lawyers also had to comply with the legal processes: according to some of the lawyers, these worked against parents who "didn't have a lot of rights".

Even the lawyer said you don't have a lot of rights when you're a parent and your child's been removed.

Some of the reasons for this relate to court processes, such as the non-application of the rules of evidence, discussed above.

### *Negative characterisation of parents; isolation in the court process*

Parents found court to be an intimidating, frightening and humiliating experience. They felt the process was not only impersonal, it was dehumanising. The judge didn't look at them, but only dealt with the lawyers.

...they don't even really acknowledge that you're in the room. They'll ask and the judge will say is the mother present but she doesn't look at you...

The process left out vital parts of their experience – for instance where domestic violence issues were not properly acknowledged.

Court was awful. It was belittling, worst feeling ever. The judge, looking at you like you're the biggest loser, let your children down...I had nowhere else to go. My ex, we had a domestic violence relationship, so it made me feel scared as well when I was in the courthouse with them all and them all lying. It was horrible...the anxiety and everything you get before you walk into that court house is horrible.

One parent discussed having to breastfeed a newborn in court; no allowance was made for her to do so and she found the experience of the judge "seeing her boobs" humiliating.

Parents were not allowed to engage in an active way with proceedings and often felt marginal and irrelevant, even though the outcomes were vitally important to them. Many expressed the concerns they felt when negative characterisations were made about them in court.

I didn't feel really part of the process. I was being talked about but I wasn't being spoken directly to. It was a judge talking to DOCS and the lawyers... Some evidence from community services wasn't true or not completely true. It was hard to not stand up and say, that's not fair, that's not true.

Despite their lawyer's presence, parents did not feel powerful enough to question what they saw as false evidence or lies, as no rules of evidence applied. They perceived that the more powerful position of FACS was used to dominate court processes and eventually to determine outcomes, without proper time and space to address issues such as what they had achieved in working towards providing adequate support for their children.

### ***Removal began a process that distanced parents from children***

Parents found removal of their children extremely traumatic. They expressed how difficult it was without support or information about the process, such as when they could see their children next, or what they had to do in order to have their children restored. They often had to attend court soon after removal and this meant they needed to find a good lawyer quickly – they often didn't know where to start. With limited information and resources, they struggled to find ways to do what was necessary to have their children returned. Programs they were told they needed were often not available or had rules that excluded parents whose children were not living with them, so there was a sense of catch 22.

I hear it from a lot of parents that when their kids are taken into care, they don't know what to do, who to see, or parenting programs they can do...in the court process they say, you need to do X, Y, Z parenting courses...you've got to wait for them to come up. I think it would be good if when a child's taken into care...at least putting an information pack in their hands...going, this is what's next, this is the procedure.

Parents became aware of the importance of bonds between parents and children to the ultimate decision about whether children would be returned to their care. They were often advised by their lawyers not to challenge FACS early decisions to remove the children – and for many parents, this began a process of them being distanced from their children. Their relationships were severely impacted by limited contact of an hour once or twice a week, often in a foreign setting, with unfamiliar supervisors.



...they really try and break that bond between you and the kids. Then that's one of their reasons for not letting you have the kids back because they're settled where they are and you've only been seeing them once every fortnight.

In relation to one child who was reunified with his parent, contact was ordered by the court prior to final orders being made to return him to the parent's care, and this included telephone calls. However, the carer failed to follow these orders and there was nothing the parent could do to enforce the orders – or as can be seen here, to keep up to date with their child's medical situations.

The carer forgot some weeks totally. I would sit next to the phone and wait and wait; the phone call just never came. I wasn't involved in any medical care until he was restored.

These situations caused children and parents further harm, which had to be sorted out following restoration.

## **Discussion – Law, policy and practice**

This research adds to existing sources of child protection knowledge and, importantly, provides rich and powerful examples of the lived experience of parents who had children removed and placed in out-of-home care. The findings clearly echo what other researchers have found about the powerlessness and angst of parents in child protection processes and legal proceedings. As in similar studies, parents in our study overwhelmingly said they did not receive help when they sought it, did not understand how to participate in child protection processes and proceedings, and did not believe they were on a level playing field when the court was deciding their children's future. They found it difficult to maintain suitable contact with their children while they were in out-of-home care, pending a final order being made about whether children were to return home permanently, which significantly affected their relationships with their children.

The research team published a report and followed up the report launch with publicity and involvement in academic and policy forums to promote the findings and to change how these parents are viewed.<sup>59</sup> The team is also communicating with key stakeholders about how parents

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<sup>59</sup> The research team have submitted articles to a number of journals and clearinghouses and have made submissions in relation to proposed legislative reforms in 2017. Presentations were made in 2016 to the Australian Institute of Family Studies Bi-annual Conference and to the Association of Children's Welfare Agencies Annual Conference, and in 2017 to the Second International Conference on Non-Adversarial Justice, Sydney and at Oxford University (UK).

experience legal and other processes, highlighting how critical parents are in their children's lives, no matter where children reside. The research team are particularly interested in how practitioners will apply the findings, and have used practice forums, conferences, surveys and workshops to communicate with practitioners about how they see the findings and what they might do with them.<sup>60</sup>

This group of parents have key insights which need to be listened to if reunification of children with their families is to be accorded the priority it is given in the legislation. Evidence from this research can help change negative community attitudes and stereotypes about these parents. It can raise awareness of the significance of social and economic disadvantage to children's safety and wellbeing, as well as parents' capacity to care for their children and to engage in legal proceedings. It can inform the introduction or expansion of alternative pathways and more collaborative approaches to work with parents that focus on both heightening parents' participation and strengthening children's identity through minimising disruption to their connections with families of origin.

The findings of this research can also inform related legislative and procedural changes. It raises important questions about the level of support for parents once children are removed from families. These questions include; should children be removed if relevant services have not been provided? What role does and could the court play in ensuring that children are not removed before support services have been offered? What is needed to support more collaborative processes between parents, child protection workers, staff from out-of-home care agencies and carers? Asking these questions can help lead organisations to develop processes that acknowledge the contexts of children's and families' lives across the spectrum of child protection interventions, from prevention or early intervention to legal proceedings and participation in court. This can ensure better-informed and evidence-based decision making about whether or not parents and their children can remain together.

Research such as this increases the visibility of parents and their lived experiences and can recalibrate how legal systems and professionals think about parents. This can humanise parents and normalise their responses to intervention, legal practitioners, and helping professionals. By extension, this allows parents and their perspectives to be included in practice and policy

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<sup>60</sup> To date, the research team have presented findings at a Hunter-based out-of-home care forum in March 2017, to a Family and Community Services caseworker conference in Sydney in September 2017, an Association of Children's Welfare Agencies restoration forum in Sydney in July 2017, and as part of an Australian Institute of Family Studies webinar in August 2017.

development, to support more effective consideration of questions about the law-in-action and forming and sustaining quality parent-practitioner relationships.

## **Conclusion**

Due to the stigma parents experience, and because the need for research must be balanced with respect for parents' disadvantages, this group of parents is not easily accessed for research purposes. The use of a multidisciplinary team made up of academic and practising lawyers and social workers and parent consultants was an important feature of the qualitative research design and helped us to reach out to parents in a way that appeared to meet their need to talk about their experiences. It also modelled what collaborative practice between mixed disciplines, and parents and professionals, could look like in practice.

This research is one example of qualitative research which investigates the impact of the law on a disadvantaged population. We examined how those disadvantages impact on parents' ability to interact with and participate in child protection processes and proceedings. Social justice for children and their parents requires that policy makers and practitioners respond to the needs of this group by better supporting their participation in processes and court proceedings. They can do so only if better research evidence is available to them about how this group of parents experience their interactions with processes and proceedings, to provide a basis for further reform and improvement. Finally, and most importantly, this research can enhance opportunities for restoring children to parents where appropriate, which is the first goal in all child care proceedings, including those in New South Wales.