



**Submission to NSW Government:
Child Protection Legislative Reform**

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Acknowledgements

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- The 52 young people who shared their time, experiences and expertise for the purpose of informing this submission.

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Disclaimer

The views expressed in this report do not necessarily represent the views of CREATE Foundation; the project team or children and young people in care generally. The contents to this report have been developed in consultation with a non-representative group of young people in care and are not meant to represent the in care population in total.

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1. Introduction

CREATE is the national consumer body representing the views of children and young people in care. To be an effective advocate, CREATE balances the engagement and connection with children and young people with the independent role we play to gain their views about what is important to them, and change the system for the better. CREATE believes that all children and young people with a care experience should have the opportunity to reach their full potential.

CREATE Foundation's mission is to create a better life for children and young people in care.

CREATE does this through:

- **Connect** children and young people with each other, CREATE and their community;
- **Empower** children and young people to build self-confidence, self-esteem and skills that enable them to have a voice and be heard; and
- **Change** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness

CREATE Foundation Limited was established in 1999 with the belief that a truly effective child protection system is one that listens to the views of the children and young people it seeks to protect and support. The importance of encouraging and facilitating the participation of children and young people in key decisions that affect their lives is a core principle of the organisation.

2. Purpose

This submission will present information children and young people have provided to CREATE Foundation for the purpose of addressing some key issues in the Child Protection: Legislative Reform Legislative proposals: Discussion Paper (the Discussion Paper).

3. Voices of young people

CREATE asked 52 children and young people their opinions and to describe their experiences in relation to a number of key points identified in the Discussion Paper. The quotes in this document have been taken directly from the voices of young people with a care experience. Some young people attended a CREATE Foundation camp and responded to the key points identified in the Discussion Paper at that camp. Other voices were gathered from an online survey whilst others were gathered from face to face or telephone discussions, interviews and focus groups. Many of the quotes and case studies in this submission were gathered by semi-structured interviews and therefore the questions were not asked in exactly the same way with each and every young person. Due to the volume, not all of the voices consulted have been included in this submission. The voices we have included in this submission identify a diversity of the responses to the key themes.

In order to protect their identities, we have changed the names of the young people who have provided CREATE with quotes and case stories.

Whilst we consulted 52 young people with direct experience of the NSW care system for the purpose of this submission, CREATE recognises that this does not constitute a representative sample and therefore cannot be used to indicate a trend for all or most children and young people in care in NSW. Despite the non-representative nature of this submission, CREATE believes that each and every voice is an important voice and that in hearing the individual and diverse voices of young people with a care experience, we are in a better position to modify the care system to help children and young people live healthy and happy lives and to reach their potential.

4. Parenting capacity orders – access and use of relevant support services

It is well established that relevant support services can increase a family's capacity to deal with daily life.¹ However, as several young people have pointed out, support services need to be, among other things, relevant and accessible to each and every family.

Casey, 16 suggests that her family would have benefited from, among others things: food; counselling; and literacy services. What she says suggests that her family was living in poverty and had few resources to help them manage out of their situation. She says that her parents tried to budget and allocate financial resources appropriately but that a lack of macro planning hindered their progress. Casey also implies that her family did not receive any support services before she was taken into care.

Casey says:

Things like food services ... Crisco, meals on wheels, etc. Counselling groups ... AA, the quit line, reading and writing hotline...

Because [m]y birth parents would try and learn from their mistakes like money budgeting on things that were important, but then their previous priorities got in the way...I do believe some support would have helped them more.

Dana, 23 told CREATE that her mother did not have the support of a partner and that her mother was raising her by herself and had a fragile social network. She says that there were a number of support services that she believes would have helped her mother's ability to be a good parent and keep her from out-of-home care.

Like other young people, Dana raises counselling, respite, parenting classes and the need for a social network to reduce the impact of social isolation.

Dana says:

For my mum, she was a single mum, I think being made to go and see a psychologist would have really really helped her. And me. If it had been free that would have been good because she didn't have any money. Also some sort of respite – as she was a single mum and I think that was part of our problem. Also parenting classes, she didn't have many friends or anyone she was close to at all so she had no one to learn how to be a parent off. So if she had met other parents then she could have had some role models to learn off. ... mum was really isolated and didn't have any friends or talk to anyone and get any help. It would have been great if she had. Both for me and for her. I still worry about her now and I call her every week to see if she is still alive basically.

¹ Kathleen Wells & Maureen O. Marcenko. (2011). Introduction to the Special Issue: Mothers of children in foster care. *Children and Youth Services Review*, 33, 419-423; Hon. James Wood. (2008). Report of the Special Commission of Inquiry into Child Protection Services in NSW: Executive Summary and Recommendations. Government of NSW; Daryl Higgins & Ilan Katz. (2008). Enhancing service systems for protecting children: Promoting child wellbeing and child protection reform in Australia. *Family Matters*, 80, 43-50; Sally Palmer, Sarah Maiter, & Shehenaz Manji. (2006). Effective intervention in child protective services: Learning from parents. *Children and Youth Services Review*, 28, 812-824.

Social isolation impacts people in many ways and there are many ways that people might subjectively feel or objectively be socially isolated. The United Nations Development Program suggests that social isolation, unemployment and poverty are the three key elements contributing to social exclusion.² Linked to unemployment and poverty is education... education being the key to employment and manoeuvring out of poverty. Other elements of social exclusion include ethnicity, class, gender and age.³

Research suggests that social exclusion and a lack of belonging can negatively affect intellectual functioning, pro-social behaviour and self-regulatory conduct.⁴ The support services that Dana says may have helped her mother cope are also services that may have increased her mother's engagement in her community and increased her sense of inclusion and belonging. Therefore parenting classes may serve a dual purpose... the content of the classes may provide information to increase parenting capacity and they may facilitate a sense of belonging and increased social inclusion.

Andrew, 17 told CREATE that his family may have been helped by a parenting support group that would enable parents to learn parenting skills and to ensure they know that they are not alone in struggling to provide care and protection to their children.

Andrew also suggested a family facilitation model where the family dynamic is facilitated by a professional so that the entire family can work together to be better people:

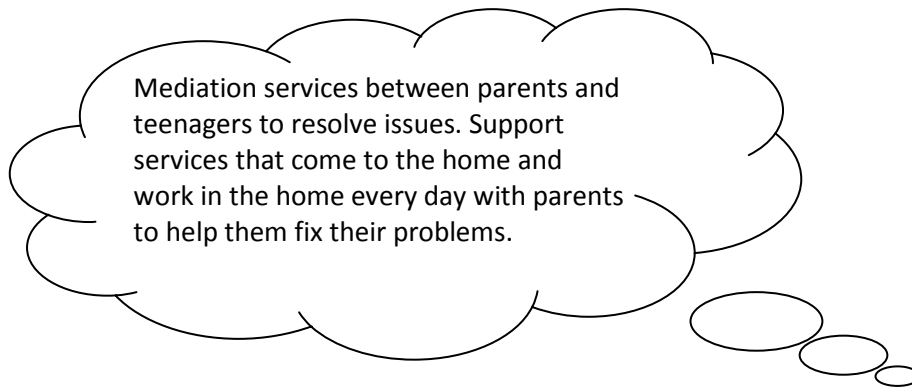
It would be good to have like an adult CREATE where the parents get together and actually support each other....a big peer support group
Like an adult CREATE or something where adults can have a weekend off and kids go into care or something. Where they can do stuff like this [a camp] and they can go, 'right we're not the only ones.' Cos my mother says 'I feel like I'm the only one who has to go through this shit.' And when I see that I think, well if the parents could get together they'd think, 'right, I'm not the only one dealing with this shit. Tommy over here and Larry over there is going through the same crap as well. So they'd be able to see they're not the only ones...
There's this place I know where the whole family can go and live at this place for a while and there are counsellors and stuff there and they can all be there together and try to help the situation. So if we had more of them, I can see that working.

² United Nations Development Program. (2006). *Poverty, employment and social exclusion*. Croatia, author, p 12.

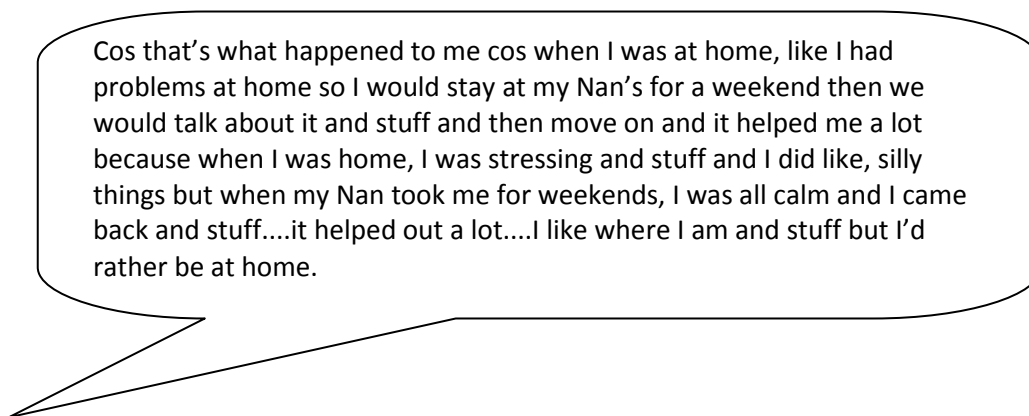
³ Ibid.

⁴ Jean M. Twenge, Natalie J. Ciarocco, Roy F. Baumeister, C. Nathan DeWall, & J. Michael Btrels. (2007). Social exclusion decreases prosocial behaviour. *Journal of Personality and Social Psychology*, 92:1, 56-66; Roy F. Baumeister, C. Nathan DeWall, Natalie J. Ciarocco, & Jean M. Twenge. (2005). Social exclusion impairs self-regulation. *Journal of Personality and Social Psychology*, 88:4, 589-604; Roy F. Baumeister, Jean M. Twenge, & Christopher K. Nuss. (2002). Effects of social exclusion on cognitive processes: Anticipated aloneness reduces intelligent thought. *Journal of Personality and Social Psychology*, 83:4, 817-827; Jean M. Twenge, Kathleen R. Catanese & Roy F. Baumeister. (2002). Social exclusion causes self-defeating behaviour. *Journal of Personality and Social Psychology*, 83:3, 606-615.

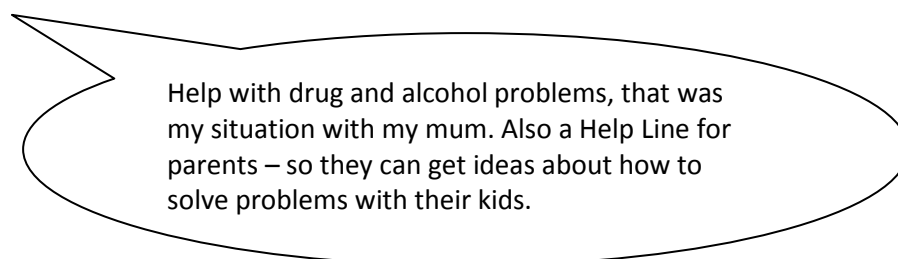
Georgie, 17 mentioned a mediation model similar to Andrew's. Georgie focused on the need to have mediated or facilitated communication between family members and suggests that outside assistance with daily life would have been helpful:



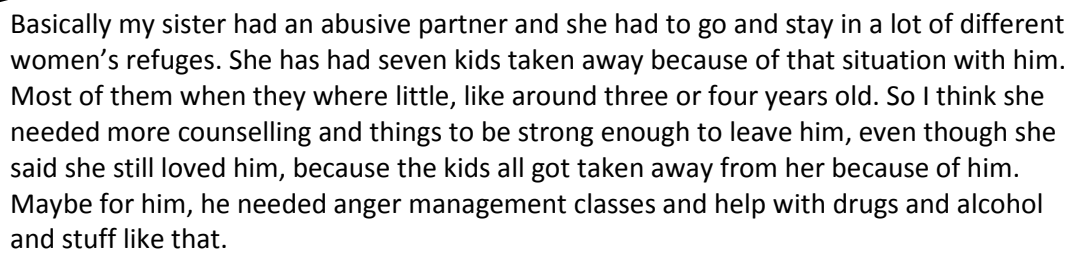
Tessa, 16 tells how respite with her grandmother helped her and her family. She says that her grandmother was her main support prior to entering care:



Lachlan, 18 told CREATE that his mother struggled with drug and alcohol problems. He did not mention his father. However, he also raised the issue of a lack of information for struggling parents and the need for a service that helps parents deal with parenting issues. He suggested a parents helpline:



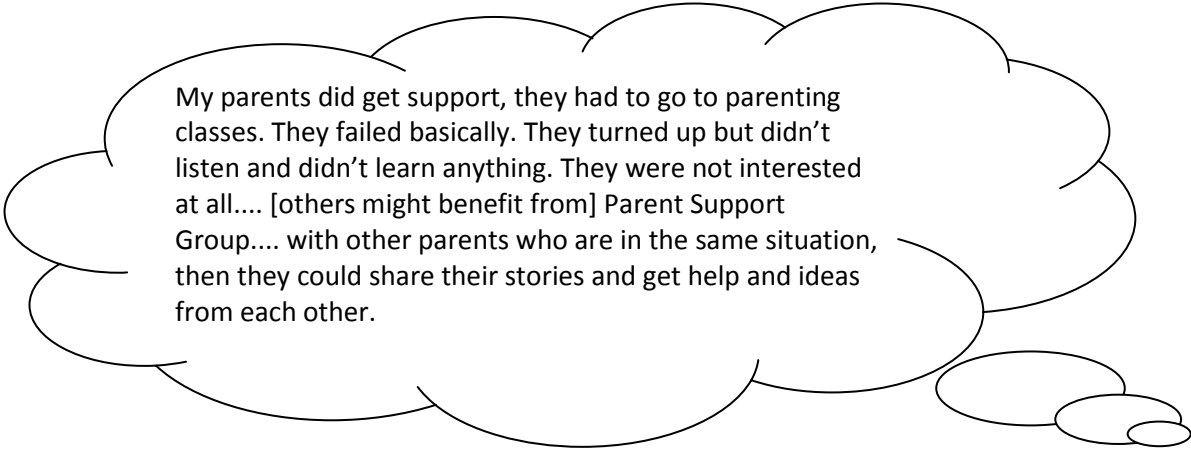
Julia, 21 also says that her parents did not receive support services and she decided to speak about her adult sister's situation that has its foundation in domestic violence. Her sister's situation took her from the family home into refuges whilst her abuser remained in the family home:



Basically my sister had an abusive partner and she had to go and stay in a lot of different women's refuges. She has had seven kids taken away because of that situation with him. Most of them when they were little, like around three or four years old. So I think she needed more counselling and things to be strong enough to leave him, even though she said she still loved him, because the kids all got taken away from her because of him. Maybe for him, he needed anger management classes and help with drugs and alcohol and stuff like that.

Julia's story suggests that there were two very different issues active in the family dynamic. The key issue appears to be the mother's inability to protect herself and her children from harm. According to Julia, her sister's learned helplessness was relevant to her sister's seven children being taken into care. The second issue relates to the victims having to leave the family home whilst the perpetrator remains...

Tracey, 18 says that her parents received parenting classes and group support but that they lacked motivation to change their behaviour:



My parents did get support, they had to go to parenting classes. They failed basically. They turned up but didn't listen and didn't learn anything. They were not interested at all.... [others might benefit from] Parent Support Group.... with other parents who are in the same situation, then they could share their stories and get help and ideas from each other.

From what young people have said it appears then that some parents may change their ways and start providing more appropriate care and protection to their children. It is also clear that parents do not exist in a vacuum and that social support may be a key element in increasing their capacity to respond. The 26 young people who responded to this question suggested one or more of the following:

1. Support services need to be individually tailored to the family circumstances;
2. It is important that children and parents do not feel alone in their situation and can access group supports that enable them to have a sense of belonging;
3. Focusing on the primary care giver may not improve a family dynamic and that there may be other members of the family or residence that prevent parenting capacity; and
4. Support services may not work for everyone but are well worth perusing and may prevent harm to a child or young person and may also keep a child or young person from entering care.

CREATE believes that timely, effective and appropriate support services are an essential factor to increase parents capacity to learn skills and to develop a sense of inclusion and combat feelings of social exclusion. Whilst support service may not be valued by every parent, they should be tailored to each family’s individual situation and families should be involved in determining the support services that are appropriate for them.

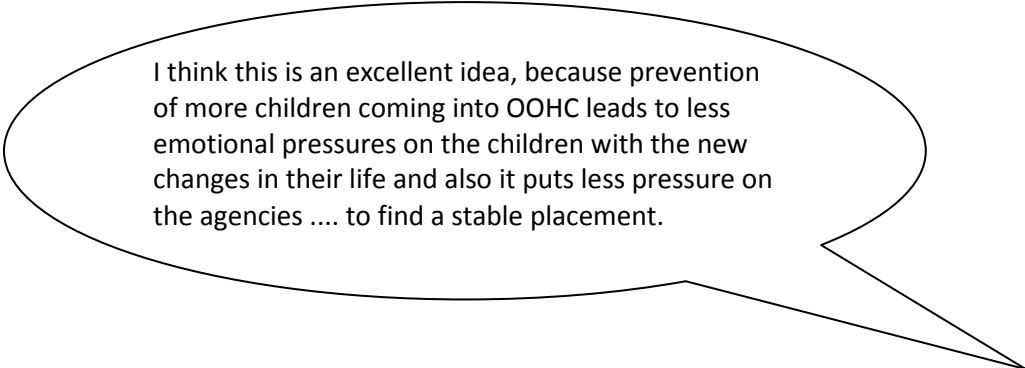
5. Parenting contracts

The Discussion Paper suggests that Parent Responsibility Contracts be increasingly used to encourage a parent or parents to engage in support services and parent capacity classes. Some issues are raised in relation to these types of contracts in the Discussion Paper. One issue is the legal nature of the contract and the legal ramifications of breaching a term of the contract and that lawyers tend to advise clients against entering such a contract.⁵

The reversal of the onus of proof from the complainant (the Department) to the defendant (parent) is also a heavy onus for a struggling family to bear particularly when the complainant is the State. If a parent or parents are struggling financially then it is unlikely they will be able to access quality legal representation and have to rely on a resource stretched Legal Aid. Establishing whether and to what degree a contract has been breached is the function of a court and not an administrative function and good legal representation should be accessible to all parents seeking to keep their children at home.

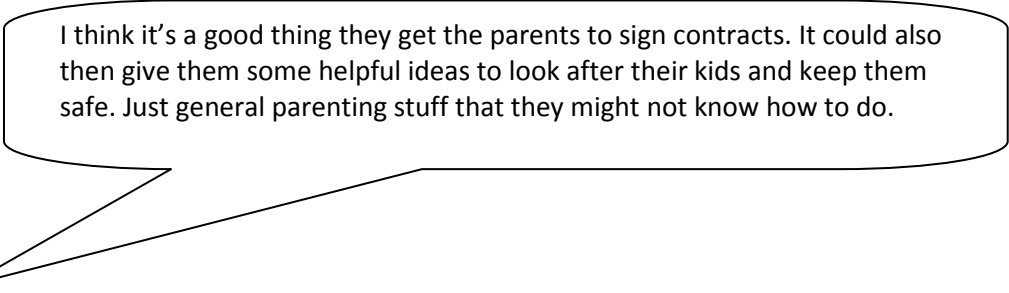
Having said that, 44 young people responded to the issue of holding their parents accountable under a contract.

Casey, 16 said that such a contract would be excellent and suggested that it would prevent more children entering care:



I think this is an excellent idea, because prevention of more children coming into OOHHC leads to less emotional pressures on the children with the new changes in their life and also it puts less pressure on the agencies to find a stable placement.

Lachlan, 18 also thinks it is a good idea to introduce parenting contracts because it may help with parenting capacity:



I think it’s a good thing they get the parents to sign contracts. It could also then give them some helpful ideas to look after their kids and keep them safe. Just general parenting stuff that they might not know how to do.

⁵ Government of New South Wales, (2012). *Child Protection: Legislative Reform, Legislative Proposals – Strengthening parental capacity, accountability and outcomes for children and young people in State care – Discussion Paper*. Sydney: Department of Family and Community services, p 13.

Lachlan suggests that a contractual obligation to obtain support services to increase parenting capacity and ability might help keep children and young people safe. However, other young people are not so sure.

Sara, 17 suggests that her mother was dependent on drugs and her father was violent. She suggests that they did not want to change despite four of their children being taken into care. Sara said:

Some parents just don't learn. Because my parents....I would have thought that she would have been smarter and not had more kids. Because she's like in her 30's or something. She had four kids and they all got taken off her and now she has 10 kids in total....and the thing is, after she got me and my three other brother taken off her I thought that she would have known by then but she didn't, she's still going.

Q: Do you think that there could have been something back then that would have helped that and prevented the kids from being removed?

She forced everyone away from her.... because she was on the drugs and everything and she was like, really really really badly messed up and so was my dad. He was like, mental. Like, badly violently mental. He took his anger out on my brother's caseworker one time....They didn't want to change. They liked the way they were. They still do it now.

Leah, 23 also suggests that entering a contract would be a waste of time for some people:

Some parents are just too far gone. They wouldn't turn up to their appointments anyway; they'd just make some crappy excuse as they do.

Jared, 18 told CREATE that entering contractual obligations may or may not work for some families. He suggests that with parents who struggle with drug addiction and drug dependency, the issue of that addiction needs to be tackled first:

No I don't think so – in my mum's situation it took her quite a few years to get into the right state of mind. It depends on the situation – on what the parent's problems are. Like with the example of drug problems it takes a while to get off them and to deal with that and then learn how to look after your kids and do a good job and keep them safe.

The experiences of the 44 young people suggest that parenting contracts may or may not work. Some of the issues the young people voices were:

- Parents need to received appropriate support services;
- Parents may learn new skills if they are legally obligated to; and
- Parents may not fulfil their obligations.

Jared, Leah and Sara were just some of the young people who suggested entering a contract would have been fruitless in their situation. This follows what Tracy and some other young people said about their parents choosing to not utilise support services. This tends to follow the common law notions that parties need to enter contracts voluntarily and with a meeting of the minds sufficient to show an intention to perform the terms of contract. Anything less renders a contract void meaning a contract was never formed.

CREATE is concerned that the threat of losing a child to out-of-home care if they do not enter a contract would be akin to coercion. **CREATE believes** that some parents may use the entering of a contract as a delay tactic and others may enter a contract because they do not know what else to do. **CREATE also questions** whether and to what degree parents will have a remedy if the Department fails to perform their part of the contract and provide families with timely, appropriate and effective support services.

CREATE believes that if families in crisis are to be led to believe they are entering a legally binding contract, despite legal principles enabling a government to essentially frustrate the contract,⁶ that consistent with the principles of contract law, all parties should have remedies for a breach.

5.1 Consequences for breaching a Parental Responsibility Contract

In Australia, the consequences for breaching a contract are compensatory which means any remedy should place the parties in the position they were in prior to entering the contract.⁷ Usual remedies include rectification (undoing the actual damage and doing it properly), pecuniary damages (profits lost or costs wasted), specific performance (having to fulfil the terms of the contract) etc.⁸

According to the Discussion Paper, when used in a child protection context (as opposed to an early intervention context) the consequence for a breach is to have the children removed and taken into care.⁹ Certainly, this is prefaced with the notion that the situation is such that the child or young person is on the brink of entering care anyway. None-the-less, it appears that the consequence for breaching a Parental Responsibility Contract would not place the parties in the same position they were in prior to the contract. The place that the parents are in prior to entering the contract is that they are on the brink of having their child taken into care.

The consequence of children being taken from their homes can have far reaching effects. It appears manifestly unjust that a consequence for failing a contractual obligation includes losing a child. There are certainly cases where sentient creatures have been the subject of a contract, however those tend to apply to animals that are characterised as property under the law.¹⁰ Making children the subject of

⁶ *Australian Woollen Mills Pty Ltd v Commonwealth* (1954) 92 CLR 424; Privy Council [1956] 1 WLR 11; See also Jeannie Paterson, Andrew Robertson, & Peter Heffey. (2005). *Contract: Cases and Materials* (10th edn). Sydney: Lawbook Co., pp 141, 159.

⁷ *Robinson v Harman* (1848) 1 Ex 850; 154 ER 363.

⁸ See Jeannie Paterson, Andrew Robertson & Peter Heffey. (2005). *Principles of Contract Law* (2nd edn.). NSW: Lawbook Co. Part IX.

⁹ Discussion Paper, above n 5, p 12.

¹⁰ Blackstone, *Commentaries on the Laws of England* (1765-1769) Book II, 3, cited in Peter Sankoff, 'The Welfare Paradigm: Making the world a better place for animals?' in Peter Sankoff & Steven White. (2009, eds), *Animal*

a contract rather than a party appears to treat them as property and not as persons. CREATE questions how this is in the best interests of any child.

Andrew, 17 voices his concern about being used in a system more powerful than he. He implies that that notion of being the subject of a Parent Responsibility Contract is exploitation and unacceptable:

It sounds like the government is gonna use children as pawn pieces and they're gonna say:

'Here ya go. We've got this pawn piece here and if you don't do what we say, we're not gonna give you the pawn piece back'...

In my experience, and I'm only young, people use people as pawn pieces, they don't get along well.... In my opinion, don't take the kids away, give them a fair warning and if they still don't persist, give them a bit of respite, take a step back and then let them back in and let them have a go again. And if they don't want to change, well then I guess that's it...

Andrew suggests that as the subject of the contract he is a pawn piece. It may be that if he was a party to the contract or at least informed of the contractual obligations then his feelings of being exploited would be reduced. **CREATE is concerned** that young people like Andrew feel like they are powerless in a process that purports to care and protect them. **CREATE believes** that if a child or young person has the capacity to understand then they should be involved in decisions that affect them. For young people like Andrew, this would include contractual arrangements that could detriment them.

Jay, 14 also expressed concern that the consequence for a breach of contract would be the child or young person is taken into care. Jay said expressed himself quite clearly when he said:



Historically, being taken into care is an option of last resort. Being in care can help some young people to flourish, particularly when compared to the maltreatment of their parents. **CREATE is also very concerned** that contracts might be standardised and inflexible. A standardised contract is a contract

Law in Australasia, Sydney: Federation Press; Steven White, 'Exploring Different Philosophical Approaches to Animal Protection in Law', in Peter Sankoff & Steven White. (2009, eds), *Animal Law in Australasia*, Sydney: Federation Press; Deborah Cao. (2010). *Animal Law in Australia and New Zealand*. Sydney: Lawbook Co, Chapter 3.

that is no specifically tailored to individual circumstances and negotiated agreements.¹¹ They are inherently inflexible.

Leah, 23 suggests that the consequences for a breach of contract should be individualised to meet the particular challenges the family is facing. She states that some breaches might have a good reason, something may happen to prevent a parent from getting to their appointment. She says:

I don't think that there's one answer for all of them. I think that it should be an individual thing ... It should be unique to your personal circumstance. It shouldn't be one punishment for everyone. I think there are different circumstances for everyone and it wouldn't be fair if some people were really trying and trying and they had an appointment and couldn't go because they were really sick, or someone in their family died. Kind of like with Centrelink. If you don't come to your appointment, your payment gets cut off like that and they don't care about the circumstances. If you don't go, you don't get paid. I don't like that.

Harriet, 17 says that a warning system should apply before children are taken into care:

They should probably have like a month or three months. Like if they don't do the things, they get a warning. So like, first warning and the parents might be like 'oh crap. We better get our act together.' Then they get a second warning and then on the third warning, the kids get taken away. So it does give them a chance to sort of get their act together but also scare them into doing it. You sort of need to be scared into doing it. Having a contract there that says 'if you muck up one more time, your children are gone' still gives them the chance to get their act together.

Harry, 21 also states that parents should be given warnings before children and young people are taken into care. However, Harry focuses on the need to increase parenting capacity and that at every breach a parent must go and engage in the support services designed to help them be better parents:

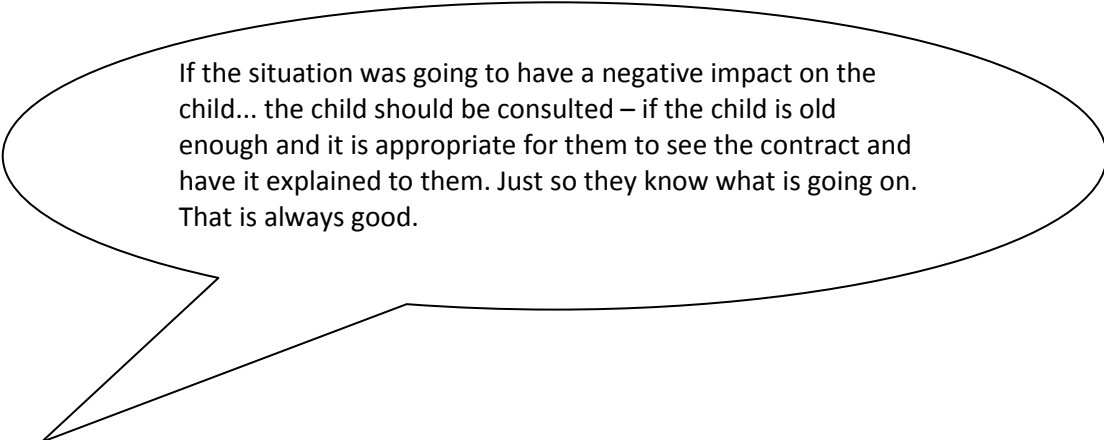
Well I think there should at least be a warning system, like a 1, 2, 3 strike and you're out system. Like for a first warning you may have to do a small amount of community service, or join a group session with other mothers have also done a first strike. And be instructed about where they are going wrong and where they can pick up.

The second one would be like: ok you're pushing it now this is what you need to do, you have one more chance and then your child may possibly be taken...

A build up, you gotta at least give em those chances. You know because, we're human, every human makes mistakes, you cannot expect a human to be perfect 100% of the time....

¹¹ Paterson, above n 8, pp 248-249.

Dana, 23 suggests that the child or young person should be a part of the contract. She suggests that the consequences of a breach materially affect the child and where possible the child should be consulted when contractual obligations include them:



If the situation was going to have a negative impact on the child... the child should be consulted – if the child is old enough and it is appropriate for them to see the contract and have it explained to them. Just so they know what is going on. That is always good.

The feedback that numerous young people have given CREATE ranges from:

1. The need to ensure parents have access to and can utilise support services when a breach of contract occurs to better equip parents with the skills for better parenting, this suggests that a breach may occur because of a lack of skills or resources;
2. The inherent unjustness of children entering care because parents have breached an agreement;
3. The need to implement a warning system so that parents understand the gravity of the situation; and
4. The need to have the child or young person the subject of the contract involved in the contract.

CREATE believes that most children and young people are better off in the care of their parent(s).

CREATE believes that parents who have come to the attention of child protection authorities may be in dire need of timely, effective and appropriate support services to increase parenting capacity.

CREATE also believes that many parents may enter a contract under a state of duress or coercion and that unless there is a true meeting of the minds is evidenced, parenting capacity may not change.

CREATE does not believe that a child or young person should be taken into care in the event of a mere breach of a Parental Responsibility Contract. Therefore **CREATE does not believe** that a mere breach of a contract should be characterised as the parent(s) being unfit to care and protect for their child.

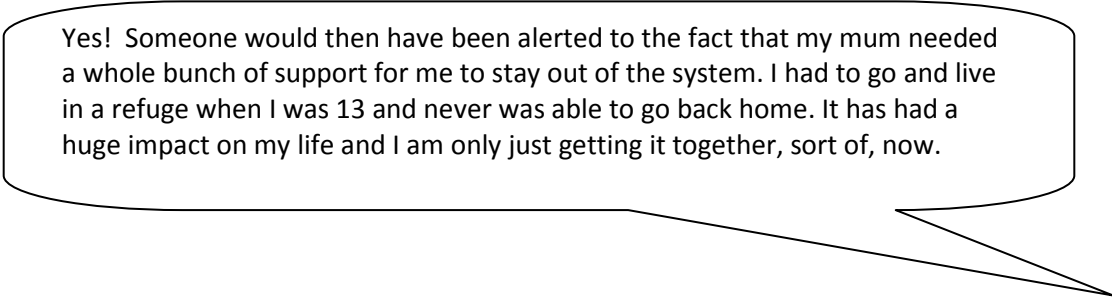
6. Participative decision making in Family Group Conferences

Family Group Conferences (FGC) have often been held out to be a great way to involve key people in the child or young person's life and the child or young person themselves in a way that enables communication, partnerships and collaboration to better care and protect the child or young person.¹²

¹² Susan M. Chandler & Marilou Giovannucci. (2004). Family Group Conferences: Transforming Traditional Child Welfare Policy and Practice. *Family Court Review*, 42:2, 216-231; Margaret Bell & Kate Wilson. (2006). Children's Views of Family Group Conferences. *British Journal of Social Work*, 36:4, 671-681.

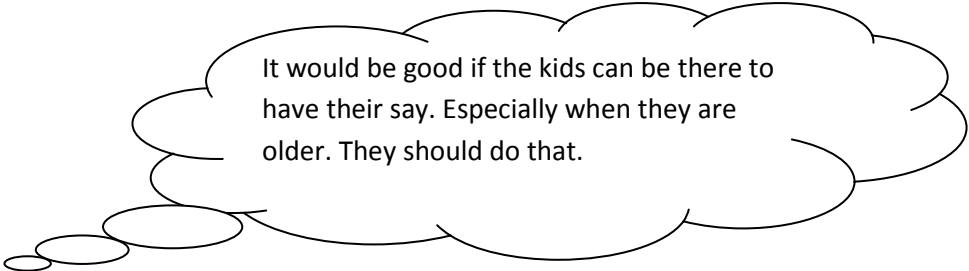
Chandler and Giovannucci state that a “conference, by definition, is a collaboration among family members, agencies, providers, and the state. Without these partners fully participating, it does not meet the minimal requirements of an FGC.”¹³ FGC’s should be, among other things: solution focused rather than blaming the parents; should empower the family to take a leadership role; and be culturally appropriate for the family.¹⁴

Dana, 23 says that a FGC could have altered kept her from entering care. When asked if she thought a FGC would have helped her family, she said “Yes!”



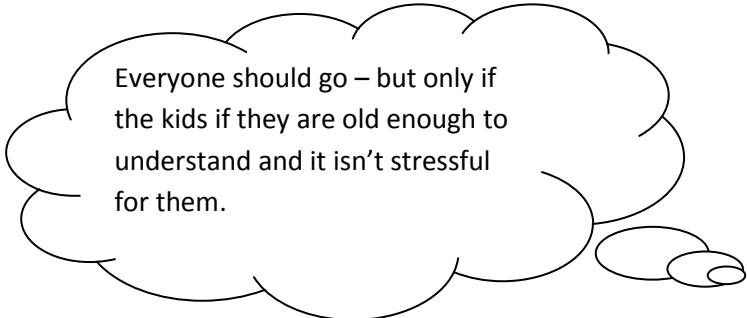
Yes! Someone would then have been alerted to the fact that my mum needed a whole bunch of support for me to stay out of the system. I had to go and live in a refuge when I was 13 and never was able to go back home. It has had a huge impact on my life and I am only just getting it together, sort of, now.

Kyle, 12 says that FGC’s would be good for young people having their say:



It would be good if the kids can be there to have their say. Especially when they are older. They should do that.

Nika, 13 also told CREATE that young people should be able to participate in group conferences:



Everyone should go – but only if the kids if they are old enough to understand and it isn’t stressful for them.

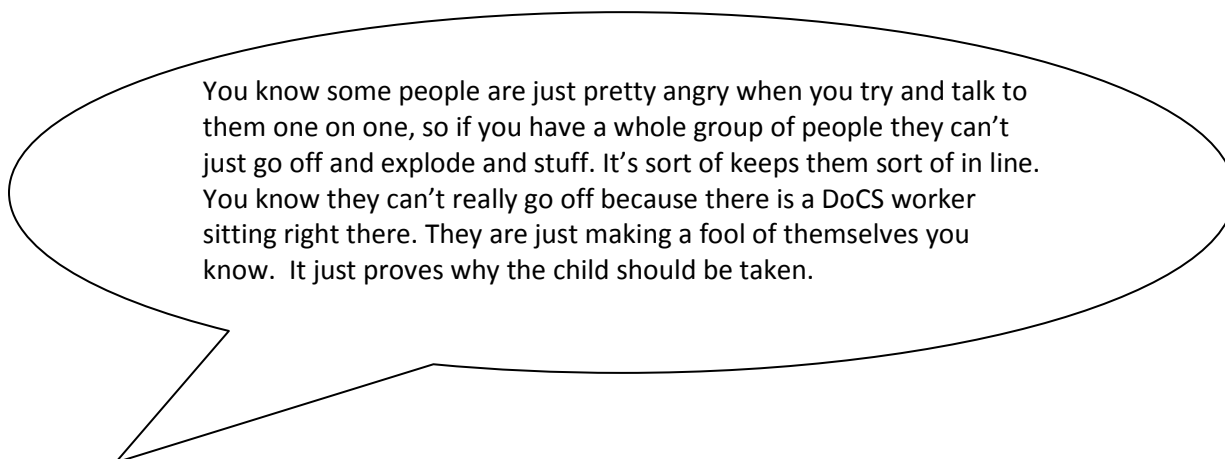
Kyle and Nika’s suggestions are consistent with research that suggests children and young people generally value FGC’s because they can feel empowered by being listened to. As Bell and Wilson report, the children and young people participating in properly facilitated FGC’s can help children feel valued and “empowered by being consulted, but [the children] are also able to understand

¹³ Ibid, p 220.

¹⁴ Chandler, above n 12.

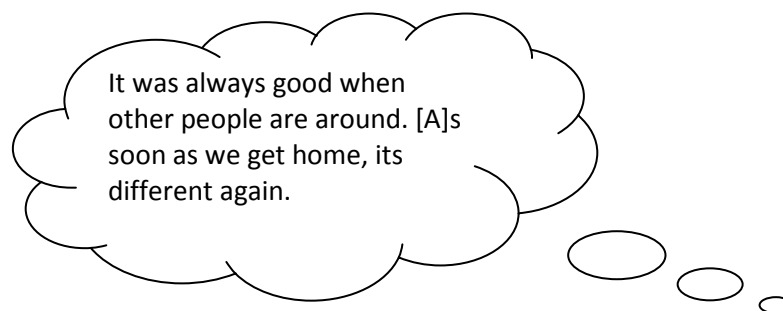
information given to them about issues which affect them.”¹⁵ They also point out that it is important that children’s views are taken seriously.

Ted, 18 states the group conference can keep otherwise belligerent people from acting up. His comment implies that family conduct is altered because of the presence of the caseworker:



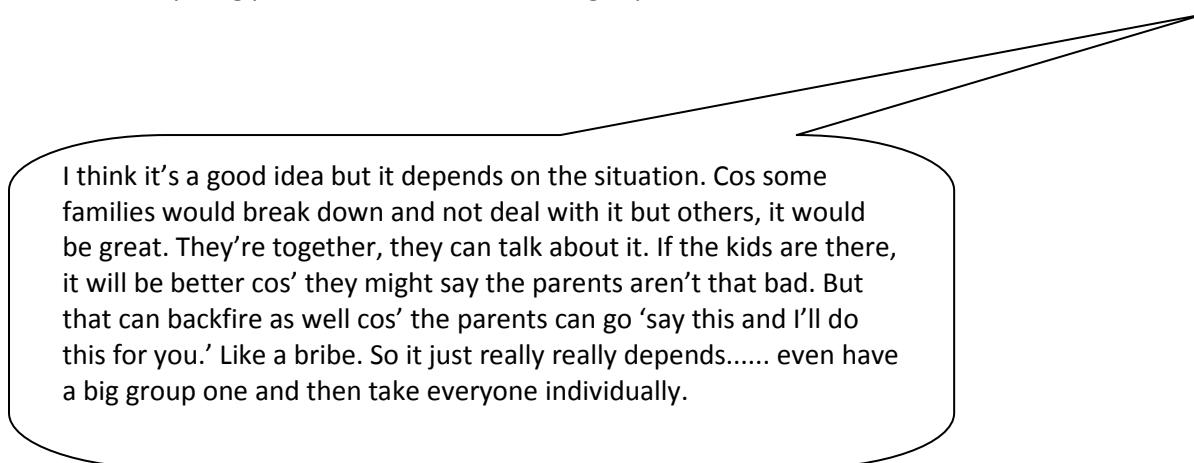
You know some people are just pretty angry when you try and talk to them one on one, so if you have a whole group of people they can’t just go off and explode and stuff. It’s sort of keeps them sort of in line. You know they can’t really go off because there is a DoCS worker sitting right there. They are just making a fool of themselves you know. It just proves why the child should be taken.

Julia, 18 holds a similar view to Ted and suggests that the family dynamic changes when people are around:



It was always good when other people are around. [A]s soon as we get home, its different again.

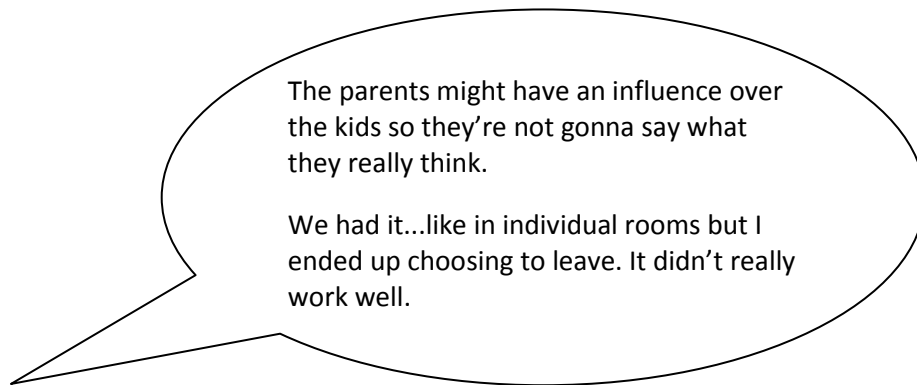
Tara, 18 speaks of the family politics that can occur in family group conferences and identifies how group conferencing should be held in conjunction with closed door one-to-one conferencing to ensure it is the child or young person’s views that are being expressed:



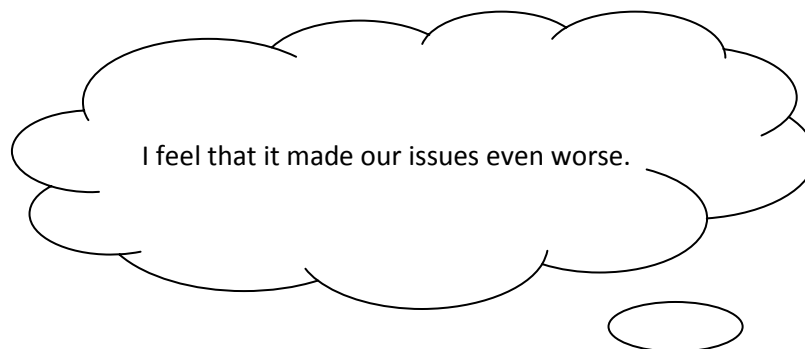
I think it’s a good idea but it depends on the situation. Cos some families would break down and not deal with it but others, it would be great. They’re together, they can talk about it. If the kids are there, it will be better cos’ they might say the parents aren’t that bad. But that can backfire as well cos’ the parents can go ‘say this and I’ll do this for you.’ Like a bribe. So it just really really depends..... even have a big group one and then take everyone individually.

¹⁵ Bell, above n 12, p 679.

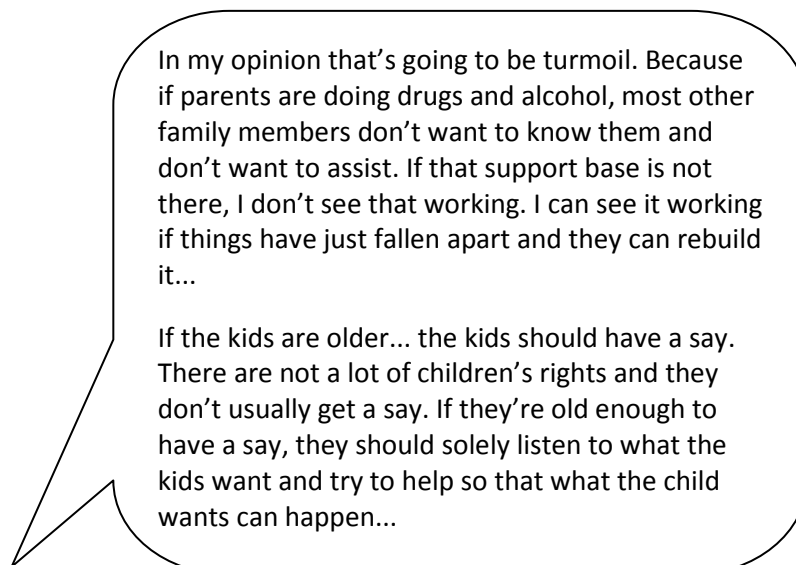
Jenny, 21 also speaks of family politics influencing what is said in the group conference situation:



Jodi, 17 also experienced FGC's and suggests it did not work for her. This is consistent with Bell and Wilson's research which suggests FGC's is not appropriate for all families.¹⁶ Jodi says:



Andrew, 17 suggests that where drugs are involved the family dynamic tends to be in crisis and that older children should have a very strong say in what happens to them:



¹⁶ Bell, above n 12.

On the whole FGC's may be a good way to facilitate communication between key people in the child or young person's life and a mechanism for a child or young person to be involved in the decision making process. FGC best practice suggests, among other things, that the facilitator is an independent, neutral party and that it is solution focused and empowering to all parties.¹⁷ However FGC's are unlikely to work in all cases.

The feedback that 37 young people gave CREATE in relation to this issue ranges from:

- FGC's might be a good way for all family members to come together to discuss the issues and find workable solutions;
- A group setting might help some people to be able to talk about difficult issues;
- A group setting might make it hard for some people to talk about difficult issues;
- What is said in the group situation may not be the same as what is said in other settings;
- Children and young people could feel pressured to say things that they may not otherwise say in an individual one to one interview;
- Children and young people should be involved in these if they want to and if they have the capacity to understand what is going on; and
- Some extended family members won't want to engage in a FGC because of intrafamilial conflict.

CREATE believes that FGS's may be appropriate for many families. Facilitated by an independent, neutral party, FGC's can empower the family to understand the gravity of their situation and help them to determine their way forward.

Increasingly, children and young people in care often have high and complex need and/or come from families with high and complex needs. For this reason, families should be offered a diverse range of free or affordable support services that will better equip them with moving toward a more harmonious and caring family milieu.

CREATE is however concerned that some young people may feel pressured or coerced to say or agree to things in a FGC that may not be their truth. For this reason **CREATE believes** that children and young people who choose to be a part of a FGC, that their opinions are also canvassed outside the group context by the independent, neutral facilitator.

7. Family contact whilst in care

The family is 'the fundamental group unit of society'.¹⁸ It is a principle of international and domestic law that family based care offers the best opportunities for children to grow and develop to reach their potential.¹⁹ Government intervention to remove a child from their family should be a response of last resort where there is no less restrictive way through which a child's care or protection needs could be met.

Every jurisdiction in Australia, including New South Wales, aims to restore a child or young person in out-of-home care with their biological, or pre-care family unit.²⁰ CREATE's recent Report Card found

¹⁷ See Chandler, above n 12; Bell above n 12.

¹⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 16(3).

¹⁹ Child Rights Convention, above n 3, Preamble; The Act, above n 2, ss 5B 5C.

²⁰ *Children and Young Persons (Care and Protection) Act 1998* (NSW), ss 9(2)(c), 83; Government of NSW. (2007). *Out-of-Home Care (OOHC) Program Guidelines*, Sydney: NSW Department of Community Services; Discussion Paper, above n 5, p 13.

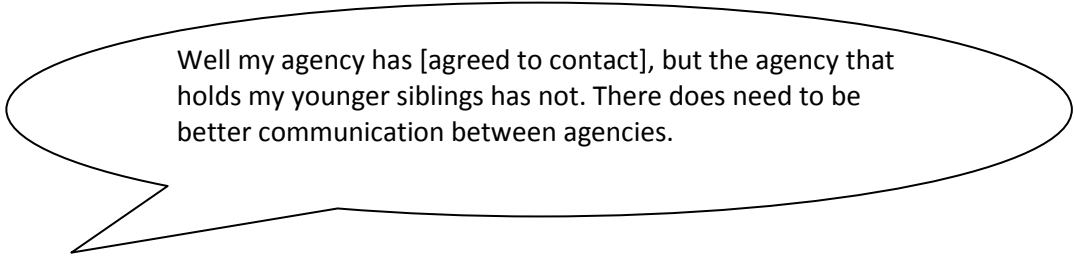
that contact with certain family members altered depending upon the type of care they are in and that respondents in NSW would like 'a little more contact with all family members'.²¹ Consistent with some earlier research,²² the Report Card found that siblings are the family members that children and young people in care contact the most.²³

It is important that children and young people are given a choice as to whether and to what degree they will maintain relationships with their biological, or pre-care, family unless such contact would pose significant risk to the child that could not be minimised by the department. It is also important that all children and young people in care have a choice as to whether and to what degree they retain relationships with extended family members and other people important to them.

Generally, a child or young person who maintains a connection with family, particular family members or community is likely to experience a greater sense of security and stability and to return home to their pre-care family.²⁴ However, some children and young people choose not to maintain familial relationships or relationships with particular family members and may attempt to avoid them. Forcing a child or young person to maintain a relationship with a person who abused and/or neglected them might expose them to further trauma.²⁵

A child or young person may feel less isolated and alone if they have contact with those they are familiar with. Social exclusion includes those situations where children and young people are or feel unable to connect with key people in their lives. This includes the child or young person's wider community such as particular neighbours, their school (teachers and friends and friends parents), extended family, their church, synagogue or mosque or other connections a child or young person has formed prior to entering out-of-home care.

Casey, 16 reveals how interagency communication is holding her back from seeing her brothers and sisters:



Well my agency has [agreed to contact], but the agency that holds my younger siblings has not. There does need to be better communication between agencies.

²¹ McDowall, J. J. (2013). Experiencing out-of-home care in Australia: The views of children and young people (CREATE Report Card 2013). Sydney: CREATE Foundation. p 53.

²² Macaskil (2002) cited in Government of NSW. (2005). *Research Report: Contact between children in out-of-home care and their birth families: Literature Review*. Sydney: Department of Community Services, p 16.

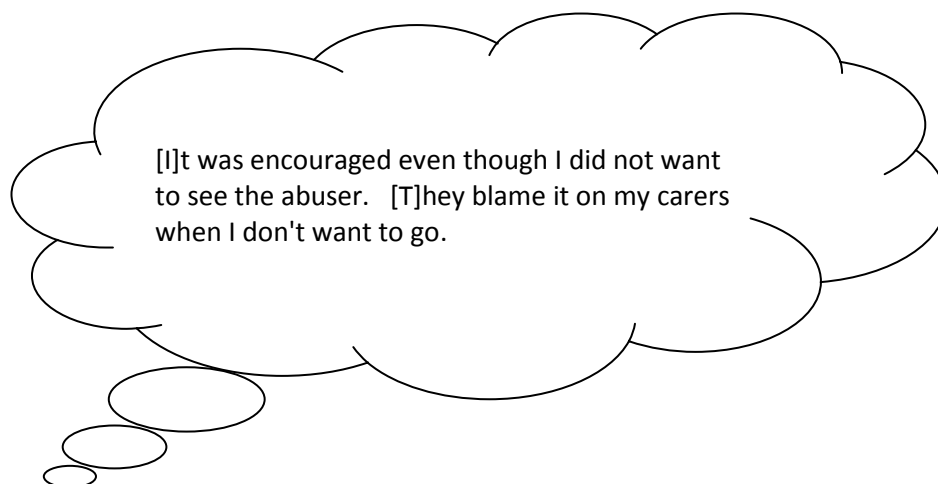
²³ McDowall, above n 21, pp XX, 52.

²⁴ Elizabeth Fernandez & Jung-Sook Lee. (2011). Returning children in care to their families: Factors associated with the speed of reunification. *Child Indicators Research*, 4:4, pp 749-765; Queensland Department of Communities, Child Safety and Disability Services website: <<http://www.communities.qld.gov.au/childsafety/foster-care/case-planning-for-a-child-in-care/family-contact-and-reunification>> Retrieved 26 September 2012; Government of NSW, above n 23.

²⁵ Tufnell, G., & DeJong, M. (2008). Stress and post-traumatic stress disorder. *Paediatrics and Child Health*, 19:2, 79-83. Kilpatrick, K.L., & Williams, L.M. (1998). Potential mediators of post traumatic stress disorder in child witnesses to domestic violence. *Child Abuse & Neglect*, 22(4), 319-330; Wilson, K.R., Hansen, D.J., & Li, M. (2011). The traumatic stress response in child maltreatment and resultant neuropsychological effects. *Aggression and Violent Behaviour*, 16, 87-97.

Her comment suggests that one agency has agreed to contact but the other agency, responsible for the care and protection of her siblings has not agreed. This suggests that an agency is already responsible for contact decisions and that the wishes of the older sister (Casey) and possibly the younger siblings are not being acted upon. **CREATE believes** that every child and young person has a qualified right (based on harm) to have contact with their family and this includes their brothers and sisters.

Laurie, 15 states that he was not heard when he said he did not want to see his parent:



Children and young people in care are, like everyone else, active participants in their own lives. These children have thoughts, dreams, desires, goals, abilities and capacities that, as they grow and mature, become more refined and increasingly define who they are as individuals. There is no doubt that actively engaging in the opportunities our environment presents us produces rewards such as language acquisition, sporting prowess, artistic skill, musical ability, high academic achievement and leadership skills – all of which are refined by practice.²⁶

Active participation, or actively participating in decisions that affect one's life is not a privilege; it is a developmental process, just like learning to walk.²⁷ The more a child engages in a behaviour the better they become at it and the more confident they are. Rather than feeling like powerless victims, unable to express an opinion or have their opinion considered, their active participation in decisions that affect them gives children and young people a sense of being active agents in relation to their own care.²⁸ For some decision makers in positions of power, enabling a child or young person to actively engage in decisions affecting them may take a paradigm shift... from viewing children as the objects of concern to viewing them as the subjects with concerns.²⁹ It appears that Casey and Laurie are not having her voice heard in relation to family contact.

A decision to have contact with a child's family, particularly when one family member abused a child in care, is a decision that is likely to have a significant impact on the life of that child.³⁰ A child or young

²⁶ Davies, D. (2011). *Child Development: A Practitioner's Guide*, (3rd edn.). New York: The Guilford Press.

²⁷ Ibid.

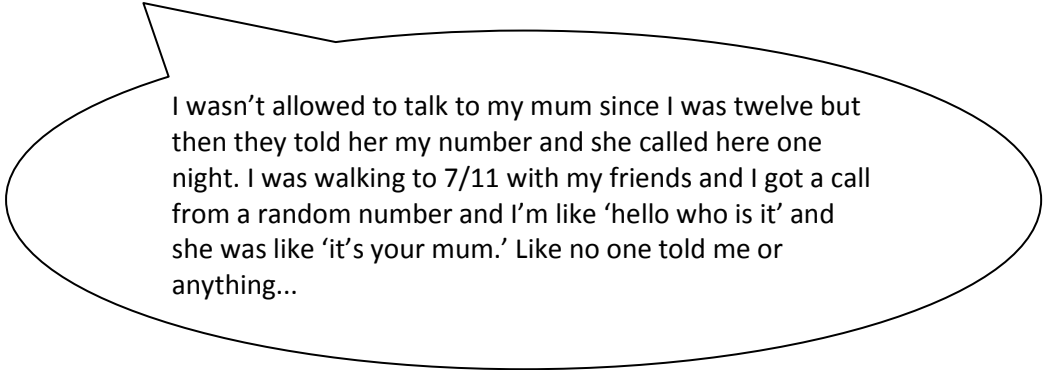
²⁸ Landsdown, G. 'The realisation of children's participation rights: critical reflections'. In Percy-Smith, B. & Thomas, N. (2010, eds). *A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice*. New York: Routledge; Cashmore, J. (2002). Promoting the participation of children and young people in care. *Child Abuse & Neglect*, 26, 837-847; Roche, J. (1999). Children: Rights, Participation and Citizenship. *Childhood*, 6, 475-493.

²⁹ Woodhead, M. (2005). Early childhood development: A question of rights. *International Journal of Early Childhood*.

³⁰ See *Children and Young Person (care and Protection) Act 1998*, s 10(3)(f).

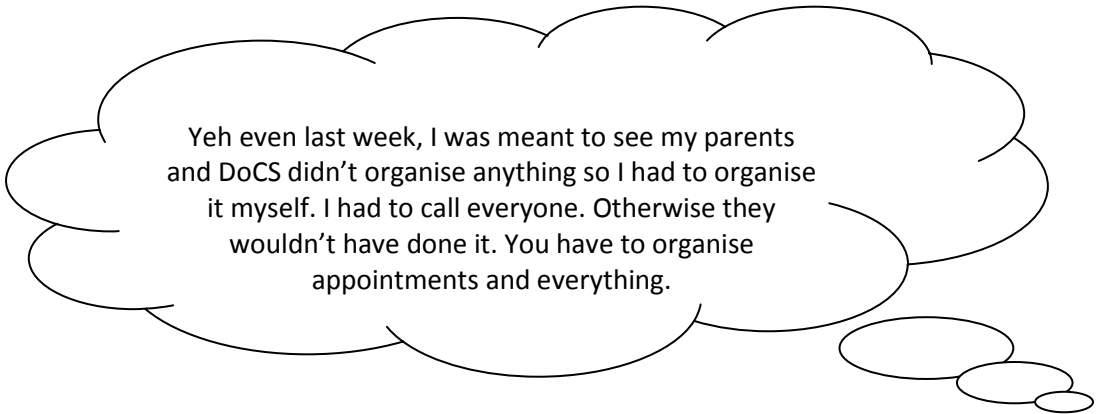
person in care should never be forced or be made to feel guilt or self doubt about deciding not to have contact with their family or any member of that family in particular. Likewise a child who wants contact and has that contact denied is unacceptable.

Kris, 15 says she was not allowed to talk or have contact with her mother from the age of 12 but then one night she received an unexpected phone call from her mother:



I wasn't allowed to talk to my mum since I was twelve but then they told her my number and she called here one night. I was walking to 7/11 with my friends and I got a call from a random number and I'm like 'hello who is it' and she was like 'it's your mum.' Like no one told me or anything...

Michael, 16 told CREATE how he has had to organise family contact days:



Yeh even last week, I was meant to see my parents and DoCS didn't organise anything so I had to organise it myself. I had to call everyone. Otherwise they wouldn't have done it. You have to organise appointments and everything.

The feedback from young people we consulted suggests:

- Family contact is not appropriate or desired by some young people and they should not feel pressured to change their minds;
- Where a young person desires family contact, that contact should be encouraged and facilitated;
- Family contact can mean contact with particular family members and not others; and
- Family contact can sometimes be blocked or discouraged by people who are supposed to be acting in the child's best interests.

CREATE acknowledges that family contact may not be in every child or young person's best interests. However, **CREATE believes** that where children and young people desire contact with their family, with particular family members or specific people in the child's life, that contact should be encouraged and facilitated.

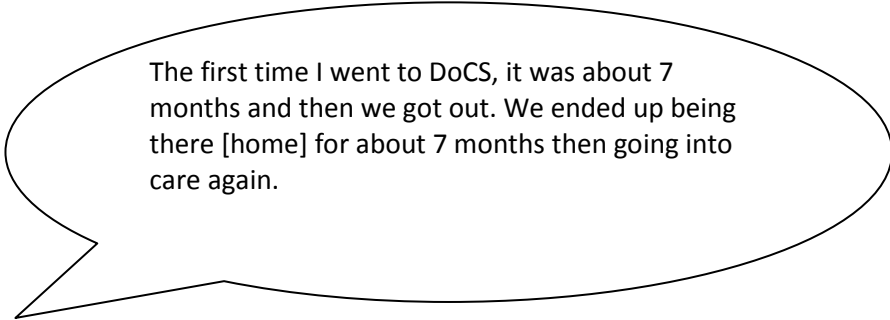
CREATE also believes that where family contact is frequent, and where support services are timely, appropriate and effective, there is an increased likelihood of permanent family restoration.³¹

³¹ See Government of NSW, above n 23, pp 18-20.

8. Family restoration – experiences and reflections

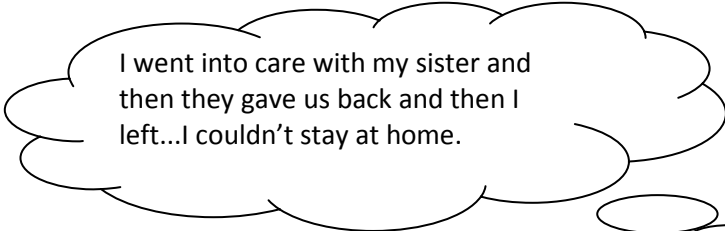
CREATE's Report Card found that a total of 835 young people across Australia (78% of the survey population) had never returned to their pre-care family homes. McDowall suggests that children and young people in foster care are reunited with their pre-care families at a rate less than those in residential care.³² CREATE received 37 responses from young people about their experiences of family restoration and reunification.

Matthew, 16 told CREATE that he entered care for a short time and then went back home to his family but soon after that re-entered care:



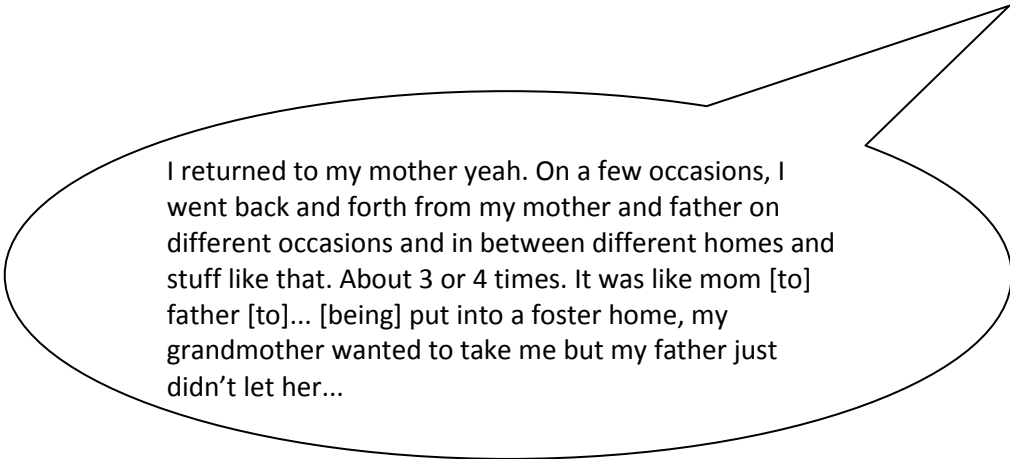
The first time I went to DoCS, it was about 7 months and then we got out. We ended up being there [home] for about 7 months then going into care again.

Jenny, 21 reflected on her experience of entering care and returning home and the language she uses suggests how she felt about the process of 'being given back':



I went into care with my sister and then they gave us back and then I left...I couldn't stay at home.

Ted, 18 said that he moved from his mother's home then to his father's home and then to foster care. He said his grandmother was prepared to take him but that his father objected. So Ted remained in care...



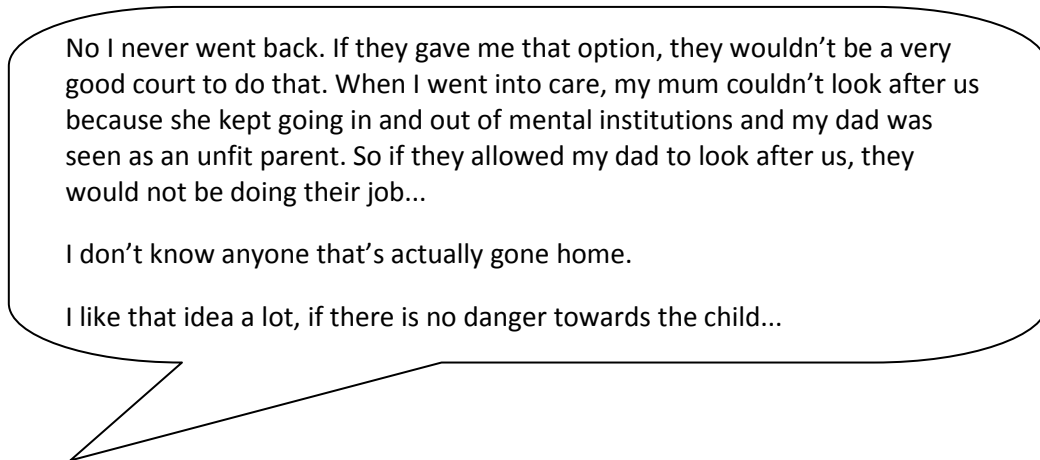
I returned to my mother yeah. On a few occasions, I went back and forth from my mother and father on different occasions and in between different homes and stuff like that. About 3 or 4 times. It was like mom [to] father [to]... [being] put into a foster home, my grandmother wanted to take me but my father just didn't let her...

Ted suggests that he had an opportunity to be cared for by his grandmother but that objections by one of his parents prevented this. In all jurisdictions in Australia, including New South Wales, kinship care

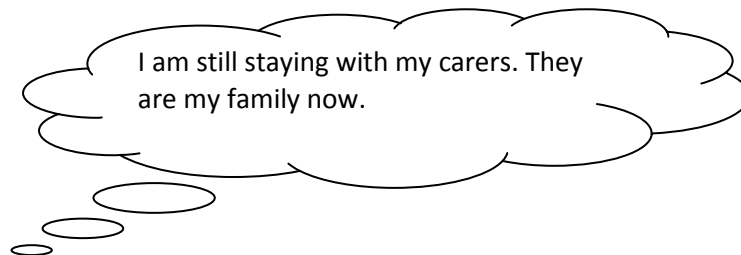
³² McDowall, above n 21, p 51.

is preferred over foster and residential care. Indeed, if family restoration is not possible, then appropriate kinship care should be sought.³³

Leah, 23 told CREATE that she never returned to her pre-care family and that family restoration did not work for her:



Jesse, 18 says that she never returned home and doesn't consider her pre-care family her family:



The young people we consulted had various experiences of family restoration including:

- Returning to the pre-care family home does not necessarily mean they will stay there as some young people re-enter care or run away; and
- Some young people never return to their pre-care family home.

CREATE believes that where family contact is frequent, and where support services are timely, appropriate and effective, there is an increased likelihood of permanent family restoration.³⁴

8.1 Pre-care family restoration and increasing parenting capacity to the required threshold within 12 months

In section 4 above we showcase a diversity of voices from young people about the types of services that may have helped their parents' capacity to care for them. Responses ranged from stating that, to their knowledge, their parents did not receive any support services; to their parents received support but that it did not help them and they entered the care system.

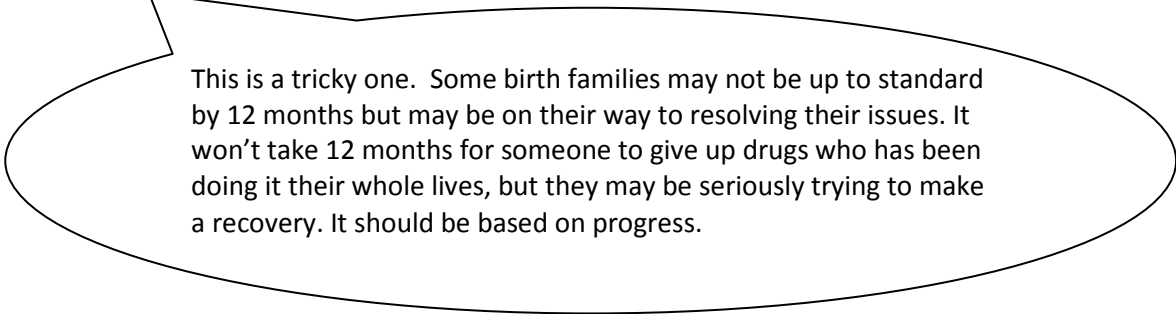
A key theme that emerged from the discussion in section 4 above was the need to individually tailor support services to the needs and complexities of individual families and to ensure services are relevant and accessible. Whilst that discussion was relevant to pre-care services to increase parenting

³³ See definition of "permanent placement", the Act, above n 18, s 18; Discussion Paper, above n 5, p 26.

³⁴ See Government of NSW, above n 23, pp 18-20.

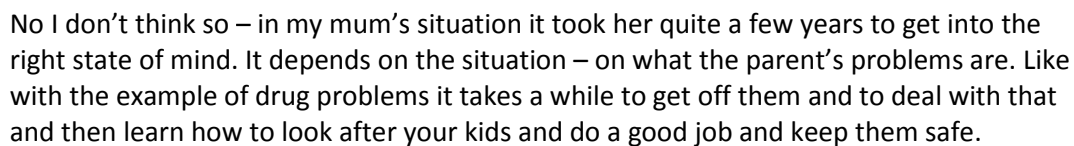
capacity, this section is relevant to increasing parenting capacity once in care for the purpose of the child or young person returning to their pre-care families. Similar themes are found in both sections.

Casey, 16 suggests a flexible approach based on individual cases is required. Casey suggests that in some cases 12 months might be appropriate but to have a time cut off when a family is making progress could be detrimental:



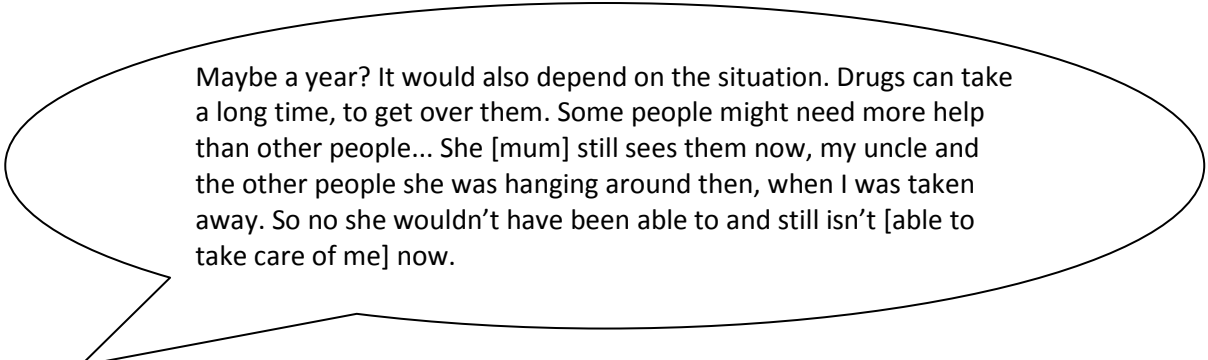
This is a tricky one. Some birth families may not be up to standard by 12 months but may be on their way to resolving their issues. It won't take 12 months for someone to give up drugs who has been doing it their whole lives, but they may be seriously trying to make a recovery. It should be based on progress.

Lachlan, 18 makes similar observations as Casey when he says that a hard and fast rule with the clock ticking would not be appropriate for some families with complex problems:



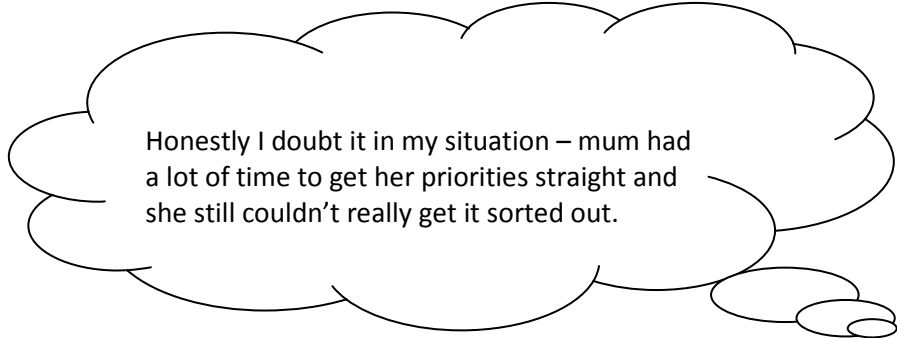
No I don't think so – in my mum's situation it took her quite a few years to get into the right state of mind. It depends on the situation – on what the parent's problems are. Like with the example of drug problems it takes a while to get off them and to deal with that and then learn how to look after your kids and do a good job and keep them safe.

Julia, 21 also suggests that where there are drug problems that 12 months might not be appropriate. However, Julia says that after many years her mother is still not capable of looking after her:



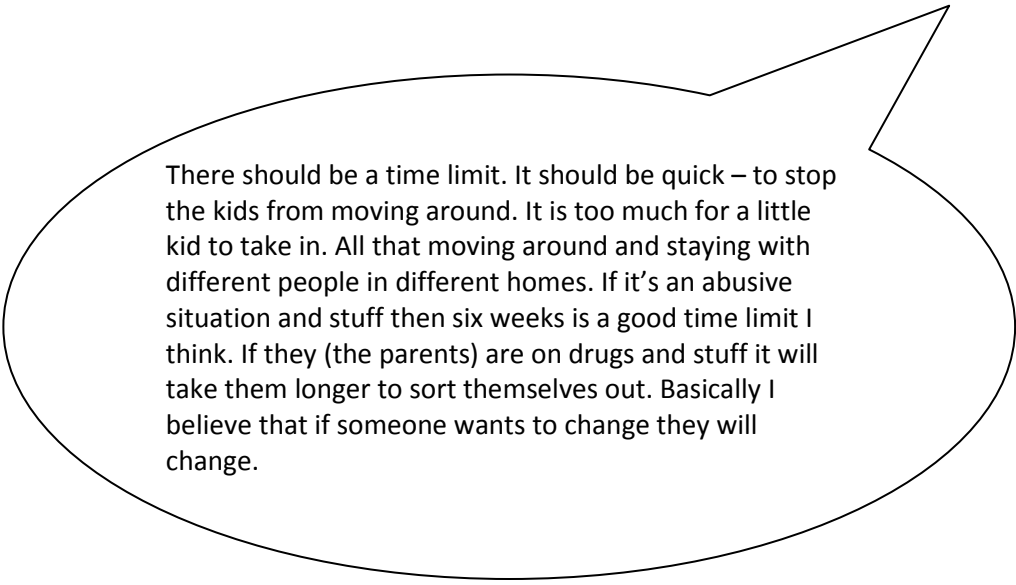
Maybe a year? It would also depend on the situation. Drugs can take a long time, to get over them. Some people might need more help than other people... She [mum] still sees them now, my uncle and the other people she was hanging around then, when I was taken away. So no she wouldn't have been able to and still isn't [able to take care of me] now.

Jared, 18 told CREATE that his mother had a lot of time to increase her capacity but that she didn't manage to meet the required threshold:



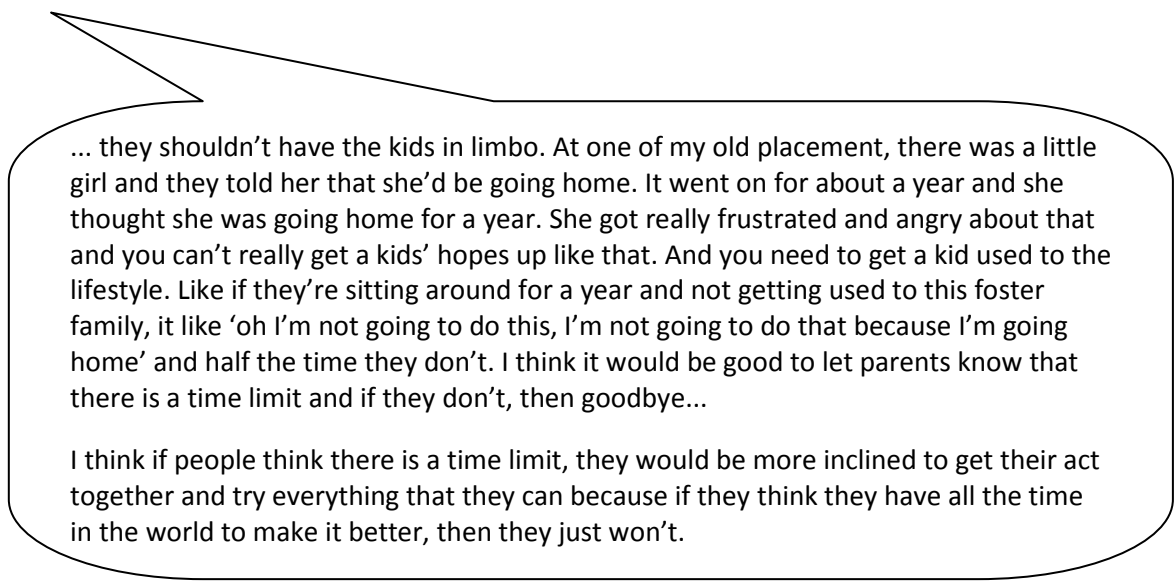
Honestly I doubt it in my situation – mum had a lot of time to get her priorities straight and she still couldn't really get it sorted out.

Tracey, 18 focuses on the needs of the child or young person when she says that the time frame should be short to stop the placement instability:



There should be a time limit. It should be quick – to stop the kids from moving around. It is too much for a little kid to take in. All that moving around and staying with different people in different homes. If it's an abusive situation and stuff then six weeks is a good time limit I think. If they (the parents) are on drugs and stuff it will take them longer to sort themselves out. Basically I believe that if someone wants to change they will change.

Harriet, 17 told CREATE about another foster child who believed she was going home for a year and grew angry and frustrated whilst she waited:



... they shouldn't have the kids in limbo. At one of my old placement, there was a little girl and they told her that she'd be going home. It went on for about a year and she thought she was going home for a year. She got really frustrated and angry about that and you can't really get a kids' hopes up like that. And you need to get a kid used to the lifestyle. Like if they're sitting around for a year and not getting used to this foster family, it like 'oh I'm not going to do this, I'm not going to do that because I'm going home' and half the time they don't. I think it would be good to let parents know that there is a time limit and if they don't, then goodbye...

I think if people think there is a time limit, they would be more inclined to get their act together and try everything that they can because if they think they have all the time in the world to make it better, then they just won't.

Tara, 18 suggests that 12 months is appropriate if the parent really wants their child back however she also says that parents should be given another chance:

If they really want their kids that much, it's enough time. Especially babies. I know some people can't deal with babies but if they really want their child, they would make the change in the amount of time...

Our friends foster and they have two little girls. One's 9 and one's 2. They had them for 9 months and like, at the start, [the foster mum] would do everything for [the 2 year old]. By the end when they found out they were going back to their Mum, [the 9 year old] would do everything for the little one, like she wouldn't let the foster carers do anything for her cos she had it in her head that as soon as she went home, she'd have to do everything. Like cook, clean, taking the kids to pre-school. Like, she's 9. And they were back at their house for 2 weeks then they were taken again. It's just so sad...

I think 12 months is a good timeframe. If they haven't changed, they've lost their chance. Or even until they're a bit older and then they want to have another try at it, not every year and not 'I'm going to have a try at it and then give up.' Once they've proven themselves that they can change, then give them another chance.

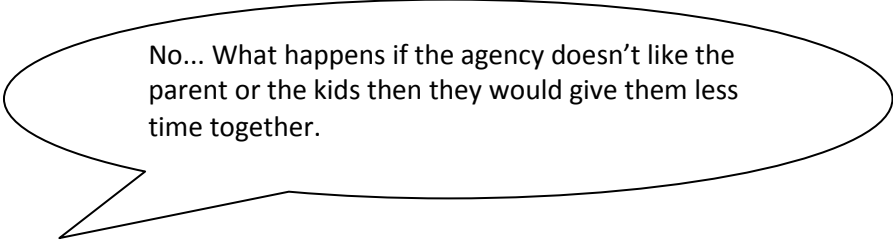
Twenty four young people responded to this question and responses varied along a number of themes including:

1. People with high and complex needs may not be able to improve their capacities within 12 months;
2. Some parents would not be able to increase their parenting capacity even if a long time frame were given; and
3. The time limit should be based on the needs of the child or young person and that a stable home life is the most important consideration.

9. Department making family contact decisions where there is no hope of restoration

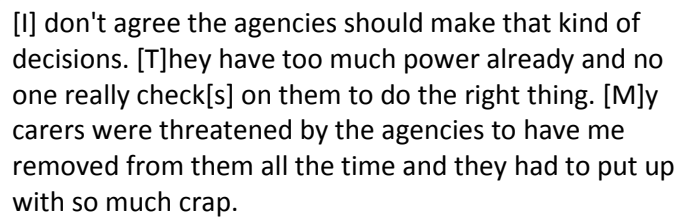
CREATE received 20 responses from young people regarding the issue: once restoration with their family had been ruled out, whether they thought caseworkers and/or out-of-home care agencies could make decisions about the contact they would have with their families or whether this decision should stay with the court. It should be kept in mind that a number of young people in section 7 above stated that some agencies and carers thwarted their attempts at family contact even when restoration was not in issue. The key is that family contact should be encouraged and facilitated where the child or young person desires it, unless significant harm is a likely consequence.

Georgie, 17 suggests that decisions regarding contact can be political and not made in the child's best interests:



No... What happens if the agency doesn't like the parent or the kids then they would give them less time together.

Laurie, 15 expressed a similar opinion and suggests that agencies decision making processes are not transparent enough for them to wield that kind of power:



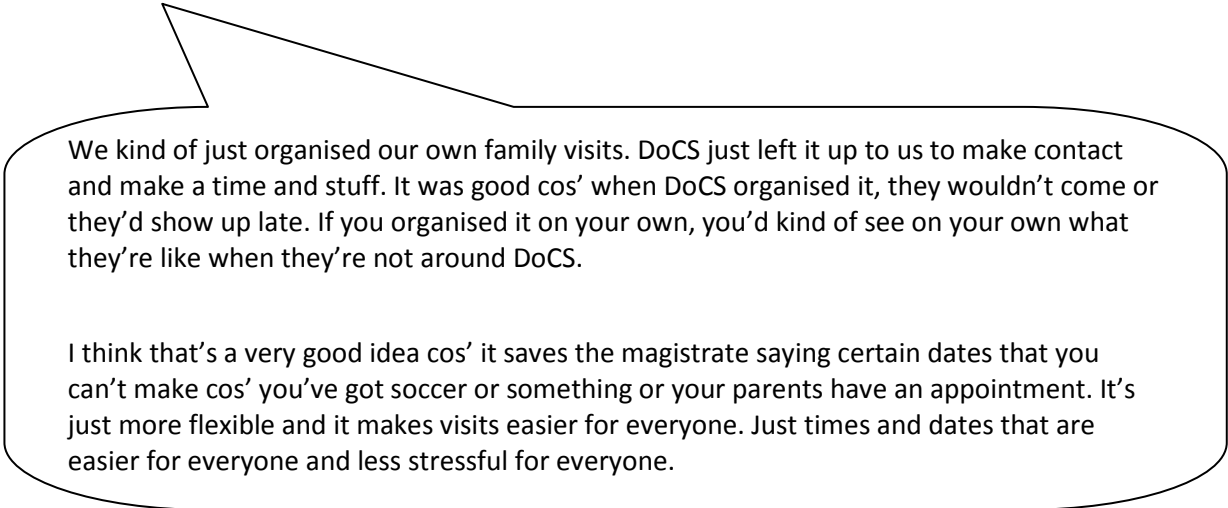
[I] don't agree the agencies should make that kind of decisions. [T]hey have too much power already and no one really check[s] on them to do the right thing. [M]y carers were threatened by the agencies to have me removed from them all the time and they had to put up with so much crap.

Nina, 17 also says that the power to make the decision about contact should stay with the court:



It should stay with the court.

Harriet, 17 told CREATE that contact decisions were made by her, her biological family and her foster family and they simply organised to see each other. She also suggests that delegating the decision from the court to the agencies or case workers is a good idea because if something comes up on a date decided up by a court, then you would have to go back to court to remedy it:



We kind of just organised our own family visits. DoCS just left it up to us to make contact and make a time and stuff. It was good cos' when DoCS organised it, they wouldn't come or they'd show up late. If you organised it on your own, you'd kind of see on your own what they're like when they're not around DoCS.

I think that's a very good idea cos' it saves the magistrate saying certain dates that you can't make cos' you've got soccer or something or your parents have an appointment. It's just more flexible and it makes visits easier for everyone. Just times and dates that are easier for everyone and less stressful for everyone.

Harry, 21 recognises that he gets negatively affected from contact visits and that his caseworker knows how difficult he can find it. This is not to suggest he is harmed by the contact, simply that he wishes to go back home. He suggests that he needs support services available for him to help him cope with the feelings that arise as a result of the visit with his family and that therefore his caseworker should be the one that decides his visiting schedule:

I actually kinda agree that it should be down to the caseworker to decide how much contact there is. I know from my own past that my behaviour was always up and down after a contact visit, id be bouncing around thinking: I don't want to be here, I want to go back with mom I had a great day out with mom, I want to be with mom. So I would go ballistic and go absolutely off the wall after contact because I would want to go back to mom and that's how it is with a lot of kids and contact visits. They feel like: where I'm going is shit and they want to go home with their mother.

The CW would have been in contact with the carer and behaviour and mental health around coming back from an access visit.

A couple of times my placements broke down because of my behaviour after the contact visits...

The agencies are the ones that are actually hands deep with the child, they are the ones that know the child and know what exactly is going on , with the courts, they are just going on small bits of information that is passed to them.

They make decisions without knowing the child and the day to day impact those decisions are having on the child. They know what makes the child tick, what upsets them, what makes them happy the things that have to be taken into account. That is what's fair on the child as well. The child should be involved in those decisions along with the agency.

It should be flexible and take into account the child's mental health.

Michael, 16 says that his foster carer should decide his contact arrangements:

I think the foster carers should decide.

Barry, 15 also states that the foster carers or caseworkers should decide contact arrangements:

It should be the foster carers or the workers.

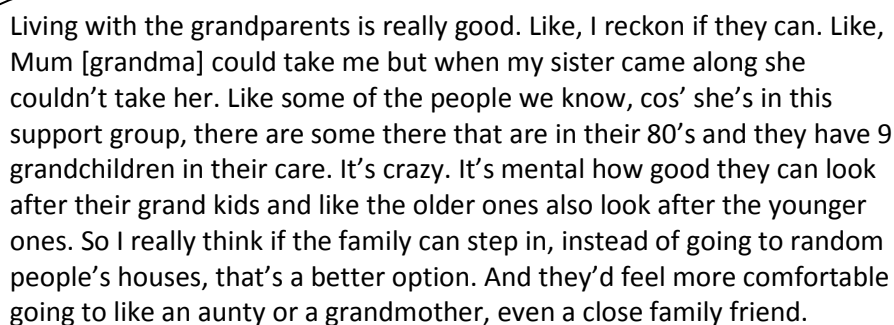
There were mixed responses to the question regarding family contact arrangements where the possibility of restoration had been extinguished. The responses from young people ranged from:

- Agencies have too much power and may use it to the detriment of the young person or their biological family if they had the power to decide contact arrangements;
- The power to decide family contact should stay with the court;
- Contact should be determined by the young person and their biological family; and
- Contact should be a decision for an informed caseworker and/or also be made in conjunction with foster carers.

10. Kinship care – a sense of belonging to extended family

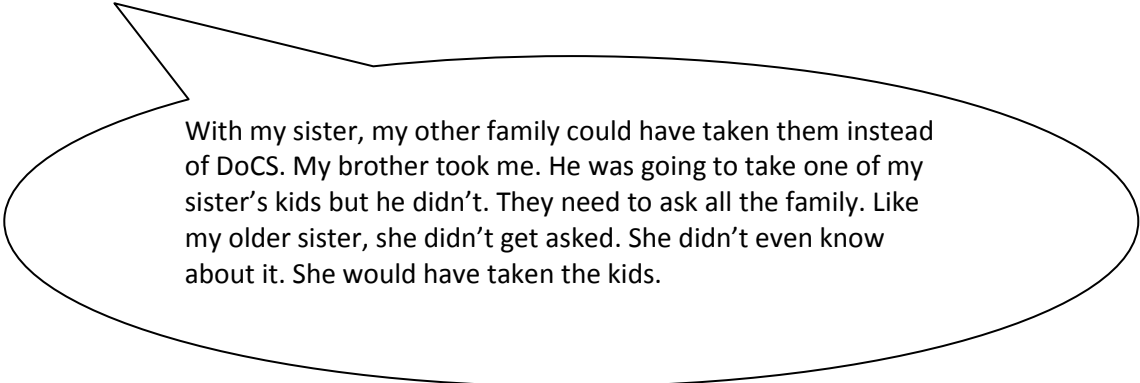
Many of the young people CREATE consulted spoke fondly about living with extended family members. McDowall suggests that even where a child or young person is under a care and protection order, because they are living with family, they do not consider themselves to be 'in care'.³⁵

Tara, 18 has lived with her grandmother and says that her grandmother utilises a support group. Unfortunately her grandmother could not also take care of Tara's sister:



Living with the grandparents is really good. Like, I reckon if they can. Like, Mum [grandma] could take me but when my sister came along she couldn't take her. Like some of the people we know, cos' she's in this support group, there are some there that are in their 80's and they have 9 grandchildren in their care. It's crazy. It's mental how good they can look after their grand kids and like the older ones also look after the younger ones. So I really think if the family can step in, instead of going to random people's houses, that's a better option. And they'd feel more comfortable going to like an aunty or a grandmother, even a close family friend.

Jenny, 21 was cared for by her older brother but also stated that he couldn't take one of her sisters as well as her. She says that her older sister would have taken her younger siblings but that she did not know about the issue and was not approached:



With my sister, my other family could have taken them instead of DoCS. My brother took me. He was going to take one of my sister's kids but he didn't. They need to ask all the family. Like my older sister, she didn't get asked. She didn't even know about it. She would have taken the kids.

³⁵ McDowall, above n 21, p 14.

Jodi, 17 says that she went to foster care first and then to her grandparents with the intention of staying for one night:

After 2.5 years in foster care my placement broke down. I couldn't find anyone to take me so my grandparents agreed to take me for 1 night - I'm here 1.5 years later. My experience has been really good - way better than foster care.

Ted, 18 has been living with his grandmother for 11 years and says it was a lot better than foster care. He says that whilst in foster care the contact with his biological family was severely restricted but that now he sees his family often. He says that having contact with his family 'cancels out' the bad things that have happened in his life:

Just my grandmother. 11 years now... Well it was a lot better than at a foster home or something, I didn't get to speak to any of my family or anything when I was in a foster home, no phone calls and letters or anything like that. But at least now I can see you know my aunties and uncles and things like that. And be you know involved in the family... My sister and stuff like that [I] still see her. My cousins and all that you know, you're not completely cut off from what you used to know.

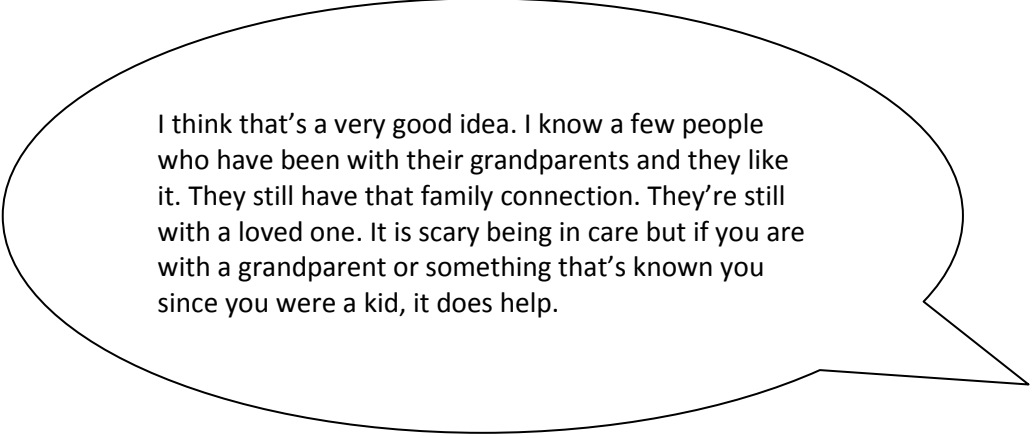
It sort of helps with whatever has happened in the past, it sort of cancels that out. You get to talk about what happens you know. When you get put into a foster home who are you going to talk to about that? Foster parents are not really going to know what happened you know they just know that you are in their care now. That's about it...

I was actually going to school and stuff like that. When I was with my parents I wouldn't go to school and when I was with my foster family I would be fighting and stuff like that I was just really angry and all that stuff. And like when I went into primary with my grandma I made friends and stuff, before that I never had any friends and stuff and that...it was pretty good. I just got on and coped a lot better. I was still depressed and all that but a lot better.

Question: did you feel safer?

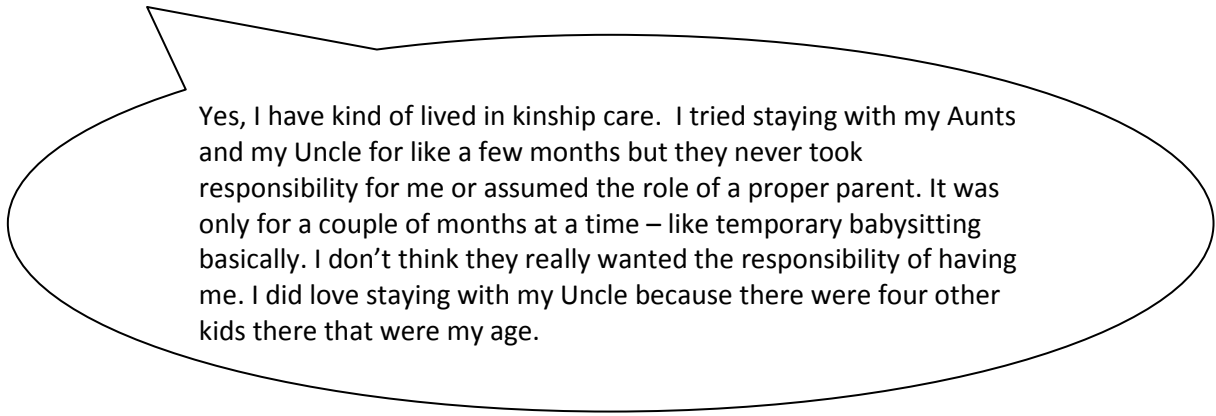
yeah. Just comfortable you know. Wake up in the morning and you're not going what do these people think about me and stuff. It's like she's gotta love me..she's my family.

Harriet, 17 says that living with extended family has been great for some of her friends:



I think that's a very good idea. I know a few people who have been with their grandparents and they like it. They still have that family connection. They're still with a loved one. It is scary being in care but if you are with a grandparent or something that's known you since you were a kid, it does help.

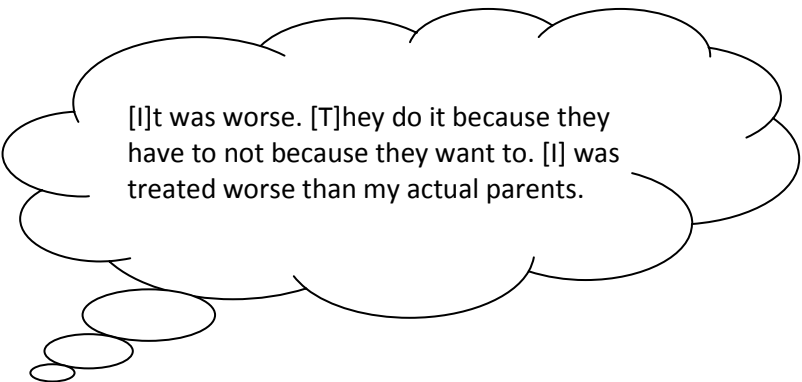
Dana, 23 says that she has stayed with extended family but that they never assumed responsibility for her:



Yes, I have kind of lived in kinship care. I tried staying with my Aunts and my Uncle for like a few months but they never took responsibility for me or assumed the role of a proper parent. It was only for a couple of months at a time – like temporary babysitting basically. I don't think they really wanted the responsibility of having me. I did love staying with my Uncle because there were four other kids there that were my age.

However not all young people spoke fondly about their experiences living with extended family.

Laurie, 15 was never reunified with his biological parents. He does not believe any support services would have assisted his parents capacity to care for him and states here that his experience with extended family was worse than with his biological parents:



[I]t was worse. [T]hey do it because they have to not because they want to. [I] was treated worse than my actual parents.

Melissa, 15 says that she asked to stay with numerous members of her extended family but that she was told those people did not want her:

This last time I went into foster care in 2008, they asked me who I wanted to live with.
I said 'my mum'.
They said 'no'.
I said 'my aunty'.
They said 'no'.
I said 'my uncle'.
They said 'no'. I was 9 years old.
I was like 'why not?'
They said, 'cos they don't want you.'
I was like, 'well ok, thanks.'

Barry, 15 challenges the assumption that being cared for by extended family is better just because it is family. He also highlights an issue regarding migration and that staying with family is difficult if the extended family isn't living in the country:

Well if they just assume that's the best option, that's idiotic. I've got mates that are in it and have it worse than at their parents... it depends on the situation. I was lucky to have one family member who actually gave two shits about me. The rest didn't give a crap where I went. It's stupid to assume that anyone related to you by blood is better. I mean, if you're in DoCS cos' of your family....it's idiotic to assume that anyone else in your family is going to be better. They could be the same.

My mum had schizophrenia and ADHD and dementia and all that crap. She died of a heart attack while I was in care. My dad also just had a heart attack and he's in hospital. All the rest of my family are overseas. It's hard when you are not from this country. All these people you could be living with are overseas and DoCS aren't keen on sending kids overseas. I've got a lot of family- I'm Irish so there's lots of family. Out of all of them, you'd think at least one would be decent. But at the same time, there's a lot of controversy with sending kids overseas. There's no DoCS in Ireland so if you send a kid there, you're sending them in blind.

Vicky, 17 told CREATE how she moved from a loving foster care home to residential care and unbeknown to her she had an aunty who would have cared for her. Vicky is Samoan and feels she would have gained culturally if she had been cared for by her aunty:

I was in foster care for three years with a carer ... and it was a really off and on relationship. She was a good carer. She was a beautiful carer- she had an open heart and a lot of money. But because I'd always been thrown around as a little girl, I didn't have much trust. So over the years, we just got more distant. After 8 years, we had a massive fight. She was fighting diabetes, she was on dialysis. She was really, really unhealthy. We had a really big fight and I went into resi care. I was in resi care for about two years and I decided that things had ended really badly. So I tried to get back into contact with her and I had a case meeting. At my case meeting, they sat me down and they slid over a newspaper and highlighted was her death notice. They didn't tell me; ask me if I wanted to go to the funeral ... four years later, I found out that I had family. DoCS knew that I had family but my aunty has eight kids. It's a beautiful family, it's a safe family and DoCS knew about them the whole time- while [my foster carer] was sick, I could have been in their care....I look back at it now and I don't see any legit reasons for me not to be with my aunt. She was... the cultural [Samoan] bond as well. That's something I share now that I've build a relationship with her. But if I had that at a younger age- that discipline, the cultural bond, I would have been a lot different.

The young people CREATE spoke with had a diverse range of experiences, some of them had experienced kinship care. Their experiences included:

- Living with family in kinship care is better than foster care however this is not always the case;
- Kinship carers may have access to peer support groups;
- Kinship care can mean living with older siblings;
- Kinship care can mean siblings are not living together;
- Some young people are unaware of the existence of extended family;
- Some extended family are unaware that a child or young person is in care and requires their help; and
- First generation migrants and ethnic minorities may experience difficulties with identifying family in this country.

CREATE believes that extended family can offer a child or young person in care a sense of belonging, cultural identity and a loving home environment. Indeed, kinship care can enable a child or young person such a sense of security that they no longer consider themselves in care.

CREATE is concerned that children and young people continue to be placed in foster or residential care when there may be a viable family member willing and able to care for them. **CREATE suggests** that an independent agency who specialise in ancestry may be able to assist the Department in identifying family members where these members are unknown to the child, the parents and other significant people.

11. The need for safe and stable homes – permanent placements

Being raised in a safe and stable living environment maximises opportunities for a child or young person to grow and develop to meet their potential.³⁶ In Queensland safe and stable living environments include a stable connection with family and community (where appropriate), providing for the child or young person's developmental, educational, emotional, health, intellectual and physical needs.³⁷ In NSW a safe and stable living environment is not defined however the definition of 'permanent placement' includes one which "provides a safe, nurturing and secure environment for the child or young person and which may be achieved by" among other things, family restoration or placement in kinship care.³⁸ In other words, generally speaking a safe and stable living environment is a durable placement that enables a child to flourish.

Children require a stable environment in order to form positive attachments and trusting relationships with the significant people in their lives.³⁹ This includes developing a sense of belonging within the family environment and the school environment. It is the development of this secure base that enables the child to develop cognitively and emotionally.⁴⁰

Schofield says that in childhood, protective factors include:

... placements that built internal resources of resilience through offering a secure base and promoting self-esteem and self-efficacy, not only within the family relationships but also in the range of other relationships/activities where children need to feel confident and effective. These internal resources included the young adult's capacity to achieve comfortable intimacy, to think and reflect on situations, to make choices and to seek out/use support. [In adulthood, protective factors include] the continuing availability of significant adults, former caregivers in particular but also other networks, who offered love and support to young people who remain vulnerable and continue to need family.⁴¹

Australian research has suggested that stability in care is a key factor in developing a sense of security, belonging and a network of social support.⁴² These three elements have been found to be vital for children and young people who will one day, transition from care and enter adulthood where all of the skills they have learnt are tested. However, research suggests that '[p]lacement instability, in part, is a result of poor administrative processes, lack of agency support of foster parents and behavioural problems of youth.'⁴³

³⁶ Cashmore, J., & Paxman, M. (2006). Predicting after-care outcomes: the importance of 'felt' security. *Child and Family Social Work*, 11, 232-241; Schofield, G. (2002). The significance of a secure base: A psychosocial model of long-term care. *Child and Family Social Work*, 7(4), 259 – 272; Schofield, G., (2001). Resilience and family placement: A lifespan perspective. *Adoption & Fostering*, 25(3), 6-19.

³⁷ *Child Protection Act 1999* (Qld), s 5B(k).

³⁸ The Act, above n 18, s 3.

³⁹ Cashmore, J., & Paxman, M. (2006). Predicting after-care outcomes: the importance of 'felt' security. *Child and Family Social Work*, 11, 232-241; Schofield, G. (2002). The significance of a secure base: A psychosocial model of long-term care. *Child and Family Social Work*, 7(4), 259 – 272; Schofield, G., (2001). Resilience and family placement: A lifespan perspective. *Adoption & Fostering*, 25(3), 6-19.

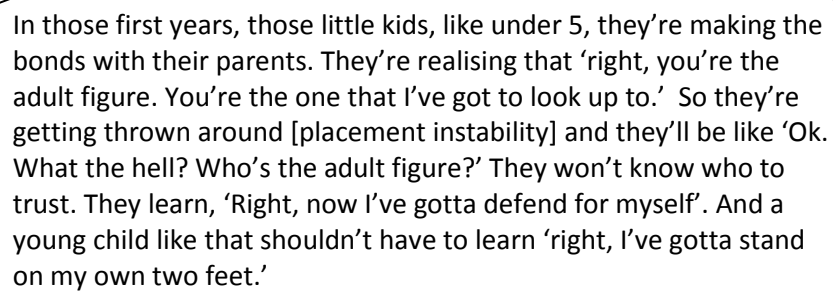
⁴⁰ Ibid.

⁴¹ Schofield, above n 25, 2001, p 17.

⁴² Cashmore, above n 25; Cashmore, J. & Paxman, M. (2006). Wards leaving care: Follow up five years on. *Children Australia*, 31:3, 18-25.

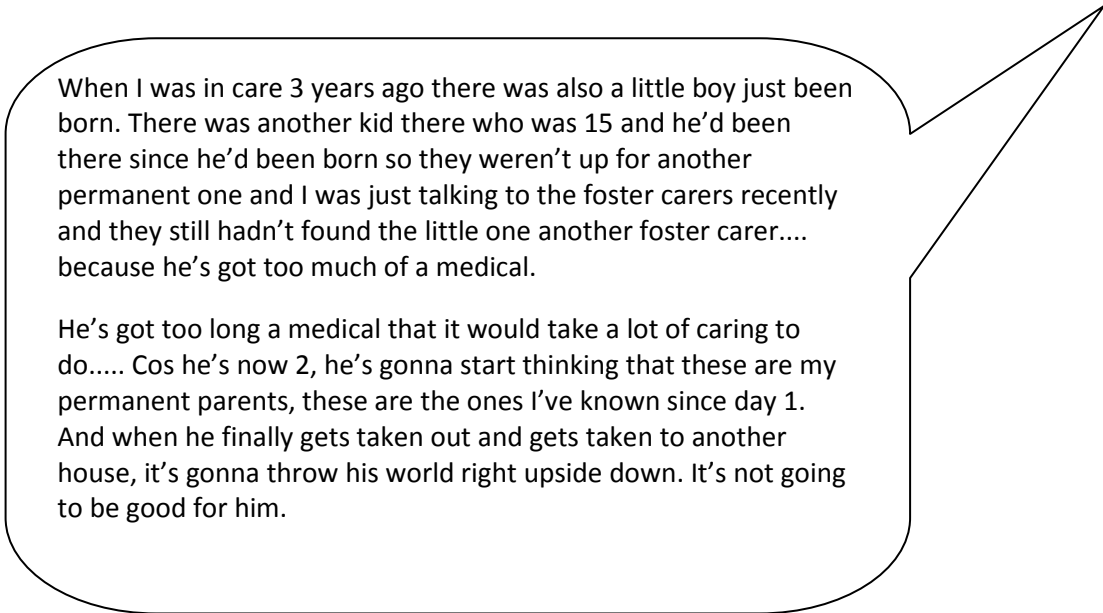
⁴³ Pecora, P.J. (2012). Maximising educational achievement of youth in foster care and alumni: factors associated with success. *Children and Youth Services Review*, 34, 1121-1129.

Andrew, 17 discusses a key issue of trust and attachment faced by many children and young people in care who experience placement instability:



In those first years, those little kids, like under 5, they're making the bonds with their parents. They're realising that 'right, you're the adult figure. You're the one that I've got to look up to.' So they're getting thrown around [placement instability] and they'll be like 'Ok. What the hell? Who's the adult figure?' They won't know who to trust. They learn, 'Right, now I've gotta defend for myself'. And a young child like that shouldn't have to learn 'right, I've gotta stand on my own two feet.'

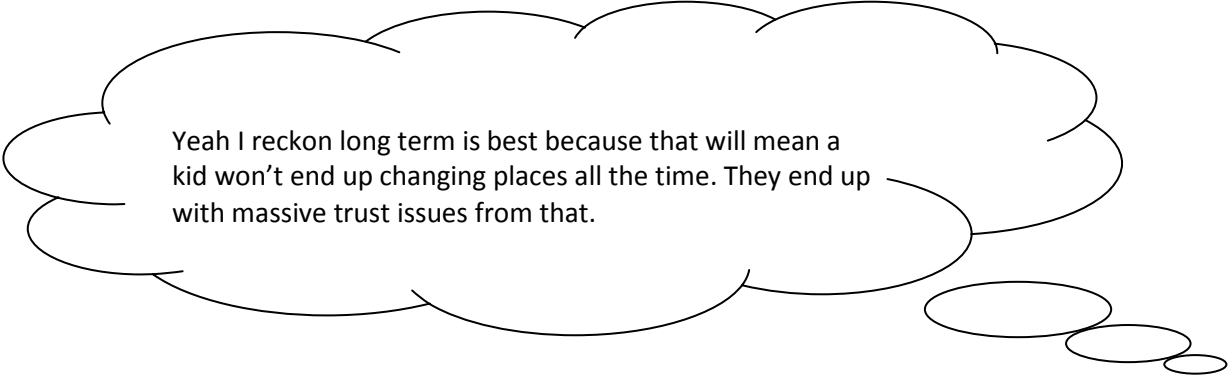
Andrew also talks about the difficulties faced by some foster families who take in a child with high and complex needs and raises the issue of a lack of appropriately resourced foster placements affecting placement stability:



When I was in care 3 years ago there was also a little boy just been born. There was another kid there who was 15 and he'd been there since he'd been born so they weren't up for another permanent one and I was just talking to the foster carers recently and they still hadn't found the little one another foster carer.... because he's got too much of a medical.

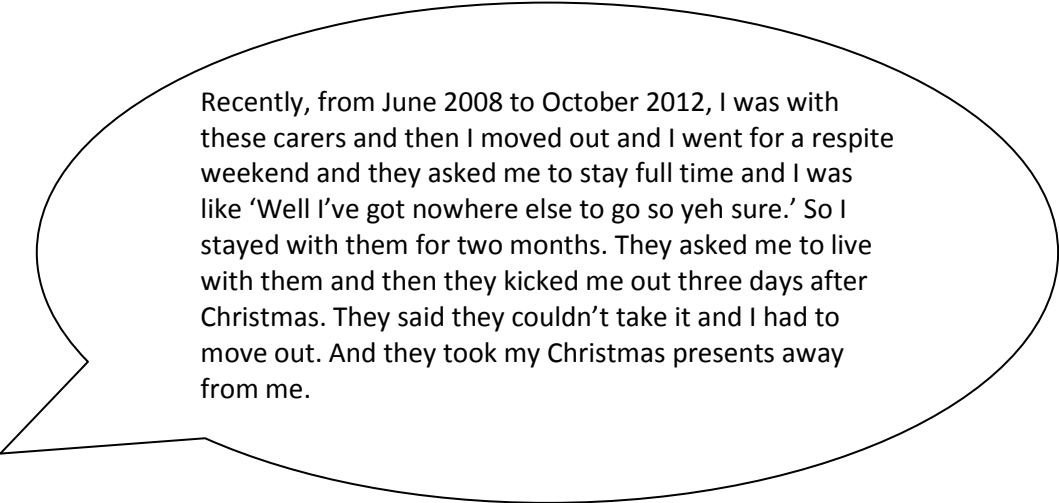
He's got too long a medical that it would take a lot of caring to do..... Cos he's now 2, he's gonna start thinking that these are my permanent parents, these are the ones I've known since day 1. And when he finally gets taken out and gets taken to another house, it's gonna throw his world right upside down. It's not going to be good for him.

Tracey, 18 also recommends long term or permanent placements because of the propensity for children and young people to develop trust issues if their living situations are unstable:



Yeah I reckon long term is best because that will mean a kid won't end up changing places all the time. They end up with massive trust issues from that.

Melissa, 15 told CREATE about a situation where she was taken into care by her respite carers who then decided she could not stay:



Recently, from June 2008 to October 2012, I was with these carers and then I moved out and I went for a respite weekend and they asked me to stay full time and I was like 'Well I've got nowhere else to go so yeh sure.' So I stayed with them for two months. They asked me to live with them and then they kicked me out three days after Christmas. They said they couldn't take it and I had to move out. And they took my Christmas presents away from me.

All of the 23 young people who responded to questions about placement stability and permanency strongly favour safety, stability and permanency and many of them have experienced the detrimental effects of instability.

There are many issues associated with a lack of permanency including:

- Reduced ability for children and young people to develop attachments to significant carers and this reduces their ability to trust people; and
- Trust issues may be exacerbated by cruel treatment such as Christmas presents being taken off the child or young person when the placement breaks down.

There are additional issues associated with a lack of permanency including an increased change in schools.⁴⁴ Changing schools can detriment social networks, feelings of belonging, a sense of community and educational outcomes.⁴⁵ The CREATE Report Card 2013 found that children and young people in kinship care or permanent had less school changes than any other placement type.⁴⁶

CREATE believes that safety and stability is a key element in helping children and young people to live happy lives and that stability can help them reach their potential. **CREATE believes** that the concept of permanency should include housing/familial and educational stability because they are intimately linked and without both, a child or young person may continue to struggle with social exclusion.

12. Transforming foster carers into adopted parents

Adoption is a very contentious issue as it takes parental rights from one family and places it with another. There are contemporary issues regarding historical forced adoptions where the rights of children and parents were negated under a government policy. CREATE acknowledges that adoption without consent of the biological parent(s) and/or the child has been and continues to be a traumatic

⁴⁴ McDowall, above n 21, p Elizabeth Fernandez. (2013). 'Support for the voices of children and young people in care'. In McDowall, above n 21, p XV; McDowall, above n 22, pp XXI, 61.

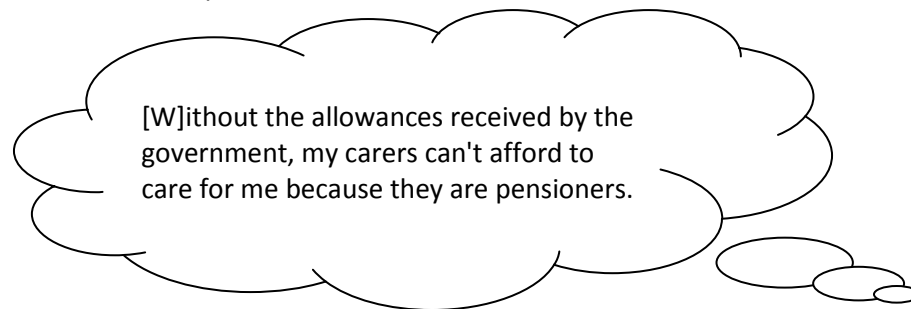
⁴⁵ CREATE Foundation. (2013). *Educational engagement in out-of-home care in Australia*. Brisbane, author, in press.

⁴⁶ McDowall, above n 21, p 61.

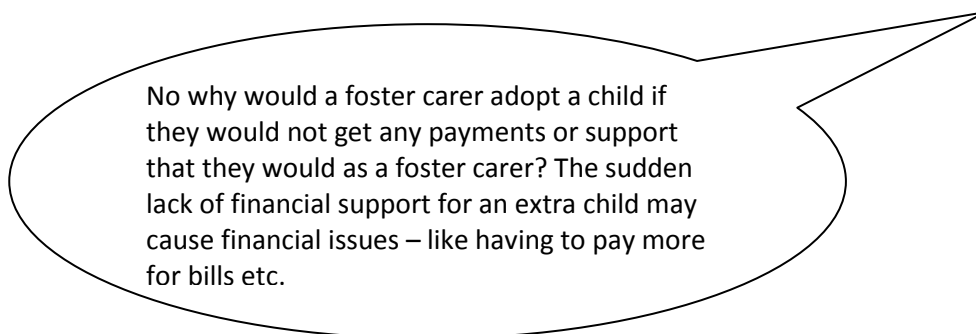
experience in the Australian community and Australia's stolen generations continue to suffer trauma due to forced family separation.

Eighteen young people responded to CREATE's question regarding foster carers becoming adopted parents. However it must be stressed that the young people CREATE spoke to were not informed of the legal, cultural and political issues associated with adoption. Likewise, none of the young people CREATE spoke with had direct experience with being adopted. However, a number of the young people CREATE spoke with had direct experience with attempting to be adopted.

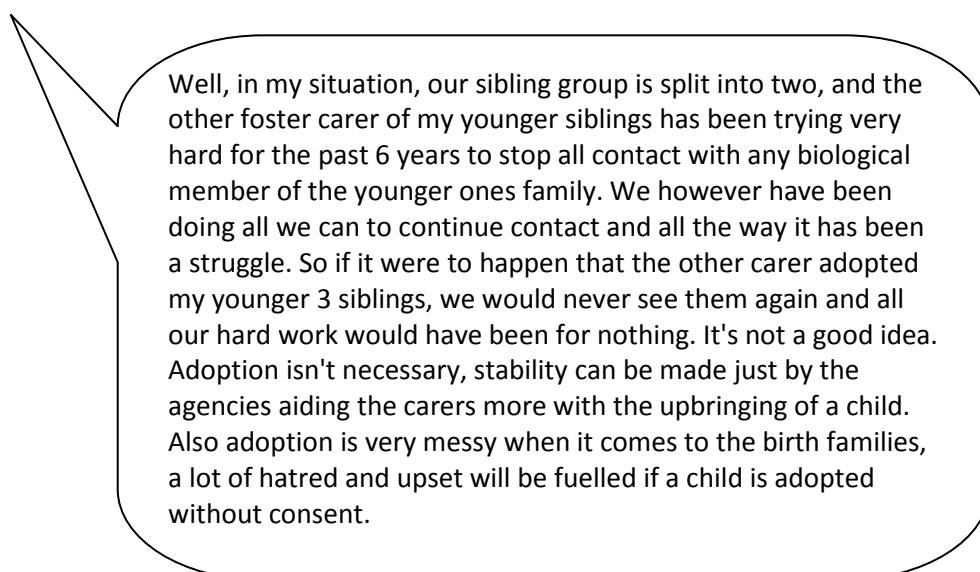
Laurie, 15 suggests that without financial compensation his foster parents would not be able to keep him and this would rule out adoption for him:



Dana, 23 also questions why foster parents would elect to adopt and receive no compensation:



Casey, 16 told CREATE how her siblings were split between two foster families and how the other foster family stopped her siblings from contacting any of their family. She hypothesises that if her siblings foster family were to adopt her siblings then she would not have seen them until they were adults:



Nina, 17 says she has been cared for by her foster family for 16 years and that for 12 of those years she has wanted to be adopted by them. She suggested she has experienced significant trauma because of this and that she is about to turn 18:

I have been with my foster family for 16 and a half years and have wanted to be adopted for 12 years. Adoption has also been in the case plan for the last 3 years but there has been no action by docs or my foster agency. Still to this day I am not adopted, and I am faced with further complications as I turn 18 and try to fight to be adopted by my loving [foster] parents. No child should have to wait 12 years and suffer the emotional trauma that my family and I have faced in adopting a foster child.

Melissa, 15 suggests that if adoption is being considered as an option then there should be a period of time where the foster carers have care of the young person but they are unable to rely on the Department:

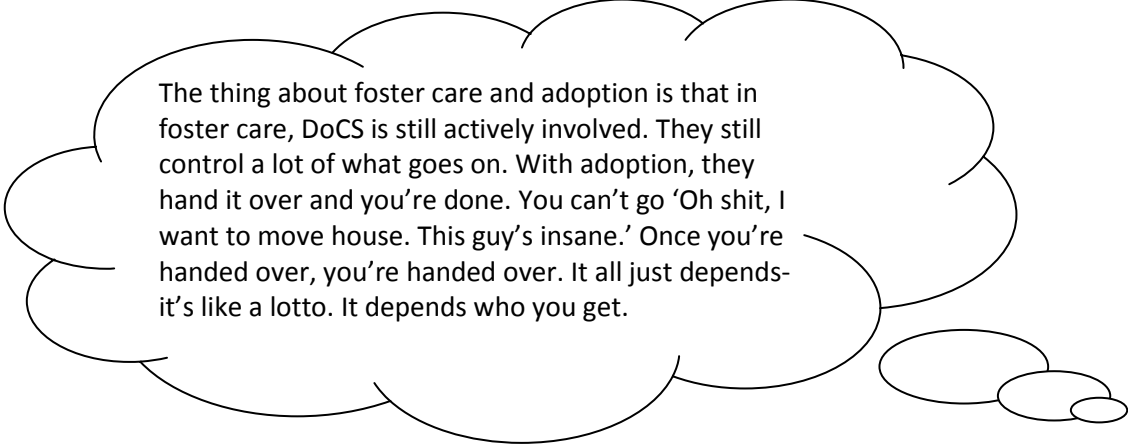
Well with my carers- I've been with them since 2008, we looked at adoption; we even talked to DoCS about it and everything. But my Mum refused....

Question: What issues can you see arising with kids being adopted by foster families?

I reckon that there should be a time....like 6 months or so where DoCS doesn't interfere at all. Then you could see, like the carers make all the decisions, they don't ask DoCS anything. Like, when I wanted to stay at a friend's house in year 5, they had to get a police checks. Like, they could have just got the foster carers to meet them and make sure they're ok. So yeh, then see how the foster carers go. Like a trial period....

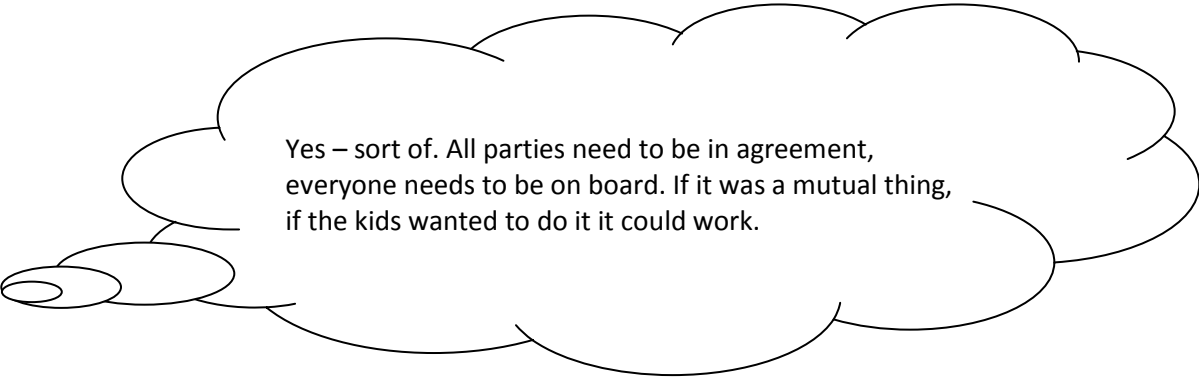
I think that with the adoption process, that they should live with the carers for a minimum of two years before they are able to adopt and then try that cooling off period where DoCS doesn't interfere. Use it as a trial. I know a girl who did get adopted by her carers and they adopted her straight away cos' she didn't have parents. And she ended up running away. She's pregnant with twins and she's 14.

Barry, 15 seems to carry similar concerns to Melissa because he suggests that with foster care the Department still has involvement but that with adoption, well, he says it's like the lotto you have to live with:



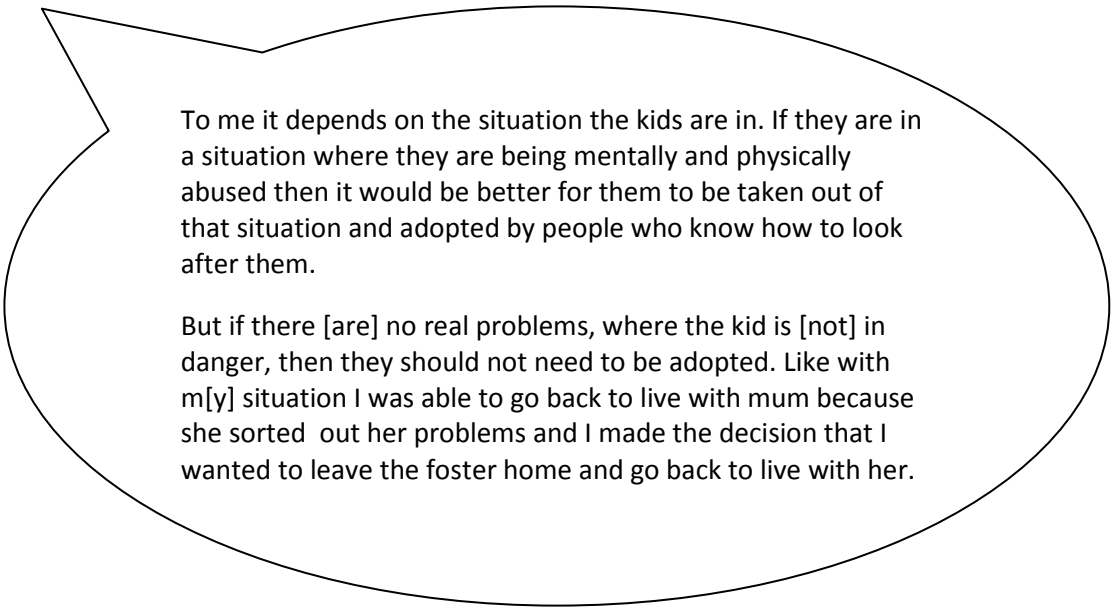
The thing about foster care and adoption is that in foster care, DoCS is still actively involved. They still control a lot of what goes on. With adoption, they hand it over and you're done. You can't go 'Oh shit, I want to move house. This guy's insane.' Once you're handed over, you're handed over. It all just depends- it's like a lotto. It depends who you get.

Jared, 18 seems unconvinced on the merits or demerits of adoption from foster care. He told CREATE that any adoption would need to be mutually agreed to by all parties... he said the child or young person would also need to agree. This suggests he is against adoption without the consent of all parties affected:



Yes – sort of. All parties need to be in agreement, everyone needs to be on board. If it was a mutual thing, if the kids wanted to do it it could work.

Lachlan, 18 says that adoption by foster parents depends on the family situation:



To me it depends on the situation the kids are in. If they are in a situation where they are being mentally and physically abused then it would be better for them to be taken out of that situation and adopted by people who know how to look after them.

But if there [are] no real problems, where the kid is [not] in danger, then they should not need to be adopted. Like with m[y] situation I was able to go back to live with mum because she sorted out her problems and I made the decision that I wanted to leave the foster home and go back to live with her.

Leah, 23 says she wishes she had been adopted by a number of her foster families. She suggests that adoption may foster a sense of belonging for a child or young person in care but that it should not be forced upon a child. Like Jared, Leah states that the child or young person should be fully informed and consent to the proposed adoption:

I like that a lot. There were a few foster families that I wish adopted me but I never got that option. I'm actually still in contact with the very first foster home I was in and they're a good family and I would have felt like I belonged...

But if a family says to a 7 or 8 year old, 'your parents can't look after you but I'd love you to be my child', that would make you feel like you belonged somewhere. Especially having the same last name...

The only problems I can think of is that the foster family has to be thoroughly checked out because I know of some foster families that didn't even get police checks...

Some foster families are more abusive than the actual parents themselves... I don't think that adoption should be forced. It shouldn't be like 'ok, you've lived here for two years, you're adopted now.' It should be a choice. Kind of like becoming an Australian citizen or something... Will they still get access to their birth parents?

Harriet, 17 recalls her foster mother trying to adopt one of the other children her foster family and recalls the process being very difficult:

Being with an adoptive carer, someone that wants to adopt you, it's a better sort of family feel. You know that they care about you and you know that you have a family. It's not the end of the world- there are people there that love you and stuff.

DoCs make it very hard. My carer who had me for 14 years, she tried adopting one of her other foster children and they just made it hard. I remember the struggles they went through. This is back 10 years now. It was the dark ages back then. I think they are now more open to it because there really are no homes.

This raises the question of how other children in a foster placement may feel if they themselves are not the subject of a proposed adoption when other children are. Many children and young people may already harbour feelings of rejection, invalidation and betrayal simply because of maltreatment by their pre-care families. If family restoration is not possible, and/or if extended family do not take

responsibility for the child, then it is likely that these negative feelings about their self worth will be exacerbated. It is foreseeable that cumulative harm would result where a child or young person is in placement with other children or young people, and not all of those children are being considered for adoption.

Harry, 21 told CREATE that a parent should lose the right to refuse an adoptive situation once their child enters care. He says that three of his younger siblings were adopted by their foster carer and they are very much a part of that family. Like Jared and Leah, Harry says that when a child is old enough they need to be a part of the decision making process and they need to be fully informed and consent to the adoption before it proceeds. This reiterates the importance of children and young people having an inherent right to have their opinions heard and considered:

I believe if the child has had to enter the care sector due to the parents actions or umm misparenting [sic]. I believe that they should not have a say about adoption because they have not fulfilled their role as a parent and if someone else is willing to take role they should be.

I approve of being adopted. For example, my 3 youngest siblings have been adopted by their foster carer, now they have been there since birth so they are a part of that family. Changing diapers, first day of school. The foster mom has been the 'mother' not our birth mother. Adopting those 3 girls has completely been justified because she has been the mother, not our birth mother.

Question: What issues can you see arising with kids being adopted by foster families?

If the child has no say in it they will run away and feel trapped. Mental health is another thing that will have to be addressed. Depression because they do not have a choice in the matter.

In the case that the child gives approval and consent: the child has to feel loved and cared for they would say yes, a child will have to feel love and feel completely comfortable and actually feel like a family member. If a child is saying no to the adoption it is because they do not feel welcome in the house. They are not saying no for the sake of it, they feel uncomfortable in that home.

Depending on age, a child should always be asked, say..10 and over once a child can make judgments on some of those issues, like being comfortable feeling safe, wants and needs are more thought out. Say when you are 13 because that is when a child can make those calls.

CREATE received 18 relatively varied responses to the question of whether a child or young person in care should be adopted by their foster parents. However because the 18 young people we consulted did not have direct experience with adoption outcomes, their responses are considered hypothetical.

CREATE believes that permanency and living in a family environment is conducive to helping a child or young person being happy and maximising their potentials. However, **CREATE is concerned** that adoption scenarios, without the consent of the parent(s) would be akin to stolen generations.

CREATE believes that where a child or young person has been cared for by the same foster parents for many years (such as in Nina's case) and where the foster family and the child or young person consents, adoption without the consent of the parent(s) may be appropriate.

13. Medicated behavioural control of children and young people in care

Sixteen young people spoke to CREATE about their exposure to medication whilst in care. Fifteen young people stated that either they or someone they know (in care) had been medicated for the purpose of controlling or modifying behaviour. Of the young people who gave CREATE detailed accounts of their experiences via one to one interviews (as opposed to focus groups) one young person mentioned being medicated by a doctor, one said she saw a psychiatrist and the other mentioned his friend was prescribed medication and did not receive counselling.

Leah, 23 shared her story with CREATE and suggests that kids in care don't need medication, they need proper parenting.

I was on ADHD medication. They thought I was a bit of a hypo child I guess. I mean, it didn't bother me but when I lived with my Nan, she got me checked out and I would go to the Paediatrician every six months and I got weighed and measured and we'd talk to the doctor and he'd look at my medication and if I needed to up the dose or down the dose or whatever. But as soon as I changed foster homes, they were like 'Oh, well I'm not going to Sydney and I'm not paying for your medication.' But also with the medication, I was also not allowed certain foods, like things with additives. I was very good with keeping to that and checking the box. I never did anything behind my Nan's back. But as soon as I changed foster homes, they were like 'Oh, we think you can have orange juice now.'

I did experience some side effects on one medication when I was 17, like an antidepressant. They took me to a Psychiatrist actually. But DoCS would only pay for two visits with the Psychiatrist. I thought that was ridiculous because he put me on medication and then I never saw him again. I never got monitored on it and that's really bad. Because I already knew about being monitored on it because when I was a kid, I had been on Ritalin and stuff.

My caseworker was like, 'we've got funding for two visits.' And then it never got fixed and then I turned 18. It was so stupid. And especially because my Mum was in and out of mental facilities, I knew that you had to get monitored on it.

That happened to me again when I was homeless when I left care. I ended up in a psych ward for two weeks. I had just moved to a refuge ... and the hospital closest to [the refuge] was full so they took me to another hospital. And once I left there and went back to my refuge, they were like 'well now you're classified as out of area.' They wouldn't let me come back on a daily thing or a weekly thing to evaluate me because I was out of area. So the medication they gave me in the hospital, I would just keep going round to doctors filling my script thinking I was doing a good thing. When you go into hospital, they drug you up with so much stuff to make you so sedated so you can't cause problems to anybody. I took myself off that medication eventually. I put on weight, it makes you incredibly hungry. And I didn't know if I needed it or not.

I don't think you should take kids to a GP once and say 'they're depressed, they need medication'. When I was a kid, I got taken to a Paediatrician and had a whole two day assessment, where they put a cap with wires and everything on my brain to really check me out. Sometimes they just give kids medications for the sake of it. Like they may be hypo but it's the home life as well. Like if you don't have a good home life, of course you're going to be one of those violent bullies at school. Cos that's what's happening at home and they don't have boundaries. They don't need medication, they just need to be parented properly.

Harry, 21 told CREATE that he refuses to take medication but that he has many friends who are prescribed with anti-depressants and suggests that medication is not what kids in care need. Harry says that kids in care need support from caring people:

I know a lot of friends who have [been] medicated for depression. I have always been quite headstrong when it comes to medication. Even when I'm sick I don't like taking pills. Whenever I have mental health issues I try and combat it the best I can, really trying to sit there and think it through.

I have had a best friend who is now off it. He lost his job, his girlfriend, living out of his grandmother's spare room you know they were things that were rather depressing for him and it got to the stage where he didn't want to be on this earth anymore.

He was just given medication, there was no counselling, no help, 'here have this medication, and sort yourself out, your own your way'.

Question: How was his behaviour affected by this?

Anger, angry because he had no help. He had me, and that's what always cheered him up whenever he was feeling down he could come over and play video games with me. That was his only support network. He didn't feel like he could speak to anyone else. He didn't have someone there to help - not even within his family. He was just given pills and told to work [it out] from there...

You can't just give someone a pill and expect that it will have some magical effect ... it all comes down to support networks not pills.

No quick fix.

Dana, 23 told CREATE how easy it is for children and young people in residential care to have medications prescribed for them and that to her knowledge the children are not informed of their right not to take the medication. She says that she has seen children and young people swapping medications to obtain a high. This suggests that drug abuse occurs prior to leaving care.

Yes almost everyone I have met who has been in care has been put on some type of medication. Mostly anti-depressants. Because when you go to live in resi they take you to see a psychiatrist and it's free.

The psychiatrists just put everyone who acts up at all on meds. It's just like that in refuges and residential units. I have seen quite a few psychiatrists and they all just put me on meds after like the first visit.

I would say about 2/3 of YP in residential units are on meds from my experience. I lived in a bunch of different places like that from when I was 13 till when I was 18 years old....

Well the psychiatrists just see you alone, the caseworker just takes you there and waits outside the room, and they don't brief the staff at the refuge about it. So yeah it needs to be monitored better I think. Instead of just handing it out like candy...

I remember kids swapping and trading their meds with each other, because they thought you could get high off them... So the kids need to be educated on what the meds are and what they do.

They also need to make it really clear that you are not obliged to take the medication. Because no one ever explained that to me. The young people need to be told that it is not obligatory to take the medication.

Of the three young people who gave detailed accounts of their experiences with medication, all three suggested that the use of medications by children and young people in care is high.

There is no doubt that many, if not all children and young people in care have experienced significant trauma, including being taken from the family home. **CREATE believes** that children and young people should have all reasonable opportunities to voice their concerns, their doubts and their feelings about their life and that psychological counselling may give them an avenue to express themselves in a safe environment. Indeed, psychological counselling may assist them to develop increased understanding of their childhood experiences and help them develop healthy coping mechanisms.

CREATE is concerned that the use of medication for behavioural control may be high in the care community. **CREATE is also concerned** that children and young people may not have frequent access to professional psychological rehabilitation.

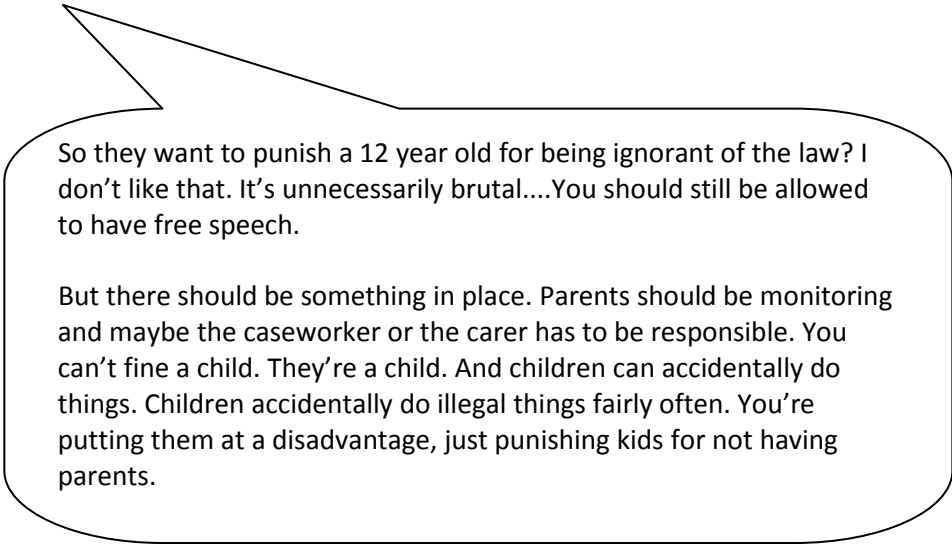
CREATE believes that it is in the best interests of children and young people in care to receive regular psychological counselling and rehabilitation rather than medication. Medication of children should be a short term option only. **CREATE acknowledges** that there may be an increased short term cost implication but that the long term costs may be recovered.

14. Imposing fines for publishing identifying information of a child or young person in care

Section 105 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) purports to prohibit the publication or broadcasting of the name or other identifying information of, among others, children or young people the subject of a notification, mandatory report or care proceedings in the Children's Court. This is a continuing obligation until the child or young person is 25 years of age.

A number of exemptions apply including where a young person (aged 16-18) consents. Generally publication is different from posting – publication can include the owner of a website. Therefore, it could include any person's social media site. If this is an accurate interpretation, this is a very heavy burden for people engaging in social media communications. Indeed, it is unclear whether or not this section refers to self publication on a social media site that the child or young person chooses to express themselves on.

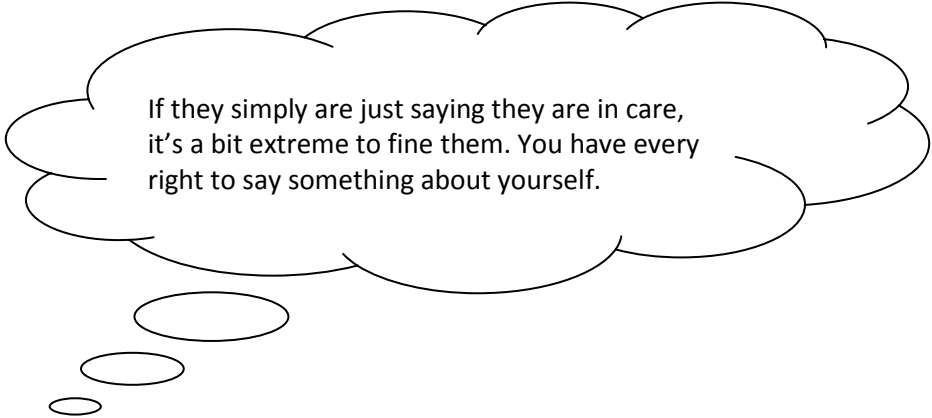
Not surprisingly, Dana, 23 voiced her concern about children publishing information about themselves and being fined:



So they want to punish a 12 year old for being ignorant of the law? I don't like that. It's unnecessarily brutal....You should still be allowed to have free speech.

But there should be something in place. Parents should be monitoring and maybe the caseworker or the carer has to be responsible. You can't fine a child. They're a child. And children can accidentally do things. Children accidentally do illegal things fairly often. You're putting them at a disadvantage, just punishing kids for not having parents.

Jared, 18 also expressed concern that children and young people in care could get fined for identifying that they are in care:



If they simply are just saying they are in care, it's a bit extreme to fine them. You have every right to say something about yourself.

Rose, suggests that children and young people should be able to identify themselves and express themselves as they see fit but they need to make their profiles inaccessible to people they don't know:

I don't think you should be fined for identifying yourself online or expressing your feelings about being in care. But you should only make your profile accessible to the people you know.

It really comes down to parents or foster parents monitoring kids. It should be the adult's responsibility.

CREATE is concerned that children and young people may be negatively discriminated against by not being able to express themselves and identify that they are in care. **CREATE is also concerned** that self expression may be met with criminal or civil penalties.

CREATE suggests that the legislation clarify the difference between posting and publication and consider the degree to which it would impinge on a child or young person's freedom of expression to post information about themselves or others in their care community. Likewise, if children and young people in care choose to belong to an online out-of-home care community, thereby identifying themselves as a part of that community, then to restrict their ability to do so would be detrimental to their sense of belonging and their freedom of association.

15. Imposing fines for publishing material with the intent to harass

There may be some ambiguity about this proposal and whether it aims to target people who post material with the intent to harass a case worker or whether a person who does not post but who has it published on their social media site by other people is liable for content. This is a similar ambiguity as identified in section 13 above.

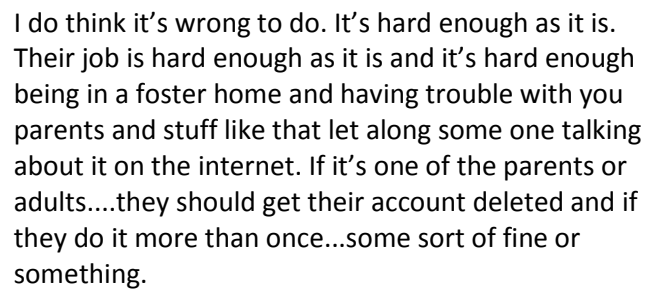
Twenty six young people were asked whether and to what degree posting offensive material about Departmental case workers on social media sites should be unlawful.

Jared, 18 said that it should be an offence but the penalty should be a fine and not jail:

Yes it's a good idea. Make it illegal. Not jail time but maybe a fine.

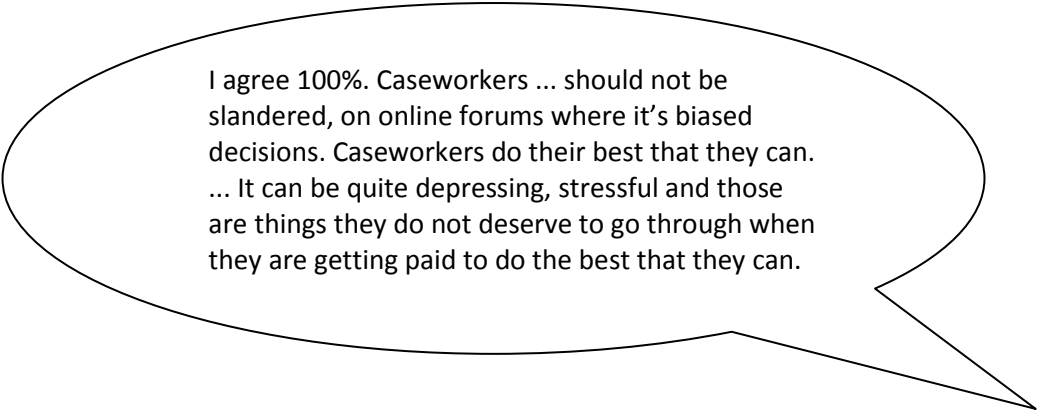
Posting information about caseworkers is an offence already I think. It should be OK if you just say 'my caseworker, etc..' But if you are using a surname, that's overstepping boundaries. If it's anonymous, you shouldn't be fined.

Mark, said that if they are adults then their accounts should be deleted or a fine imposed:



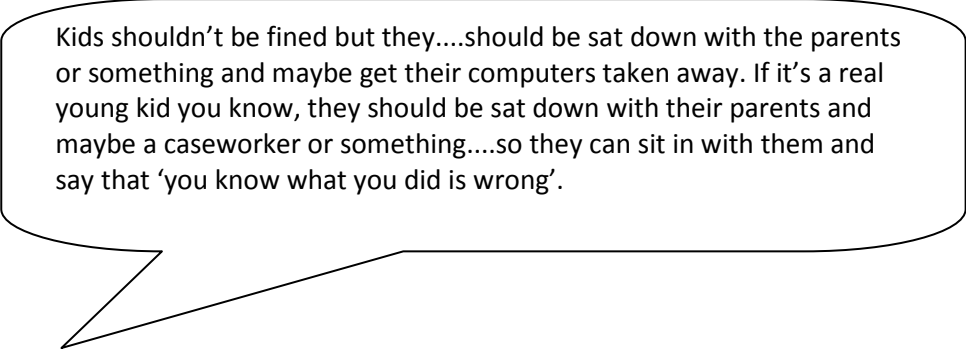
I do think it's wrong to do. It's hard enough as it is. Their job is hard enough as it is and it's hard enough being in a foster home and having trouble with you parents and stuff like that let along some one talking about it on the internet. If it's one of the parents or adults....they should get their account deleted and if they do it more than once...some sort of fine or something.

Peter, told CREATE that he agrees that case workers should not be the subjects of defamation and that case workers do the best they can with limited resources.



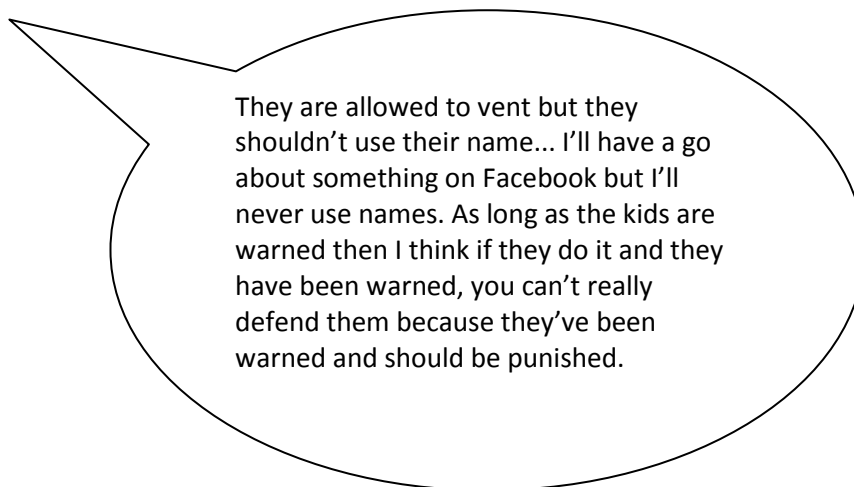
I agree 100%. Caseworkers ... should not be slandered, on online forums where it's biased decisions. Caseworkers do their best that they can. ... It can be quite depressing, stressful and those are things they do not deserve to go through when they are getting paid to do the best that they can.

Andrew, suggested the children and young people should not be fined. He suggests that children and young people should be educated and this suggests it should not be an offence for a person under the age of 18:



Kids shouldn't be fined but they....should be sat down with the parents or something and maybe get their computers taken away. If it's a real young kid you know, they should be sat down with their parents and maybe a caseworker or something....so they can sit in with them and say that 'you know what you did is wrong'.

Tara, 17 agrees that children and young people in care should not be restricted by venting their frustrations:



CREATE acknowledges the harm that may occur where a caseworker is identified and harassed on an online social media site. **CREATE also acknowledges** that this proposal is not confined to instances of defamation (where what is said is untrue) but that it also includes the element of intent to harass.

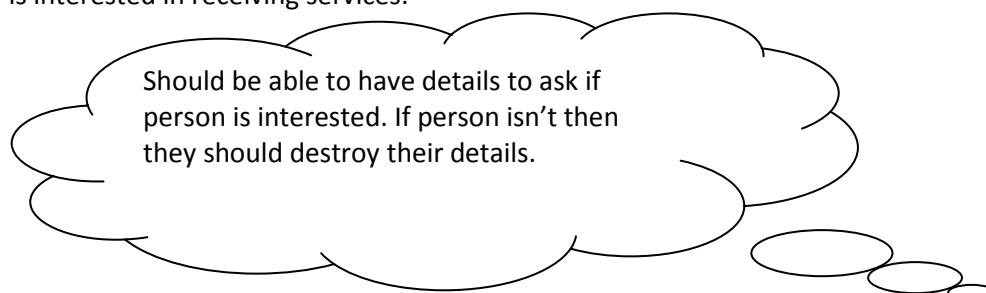
CREATE wonders whether the standard of proof on the element of intent would be on the civil standard (balance of probabilities) or the criminal standard (beyond reasonable doubt). **CREATE suggests** that if an offence is to be created then the relevant standard is the criminal standard.

However, **CREATE is concerned** that this proposal singles out children and young people in care. Indeed, it is only children and young people in care that have child protection caseworkers. To CREATE's knowledge that is not a similar offence relevant to people posting information about school teachers, child care workers, and other professionals. Therefore, it would appear that children and young people could be discriminated against.

16. Contact details to CREATE

CREATE is a systems advocate informed by the diversity of voices of children and young people who have a care experience. CREATE conducts consultations to inform submissions such as these and those to inform Commissions of Inquiry and also consultations to inform government departments and the wider community. CREATE believes that all children and young people have a right to voice their opinions about a system that is responsible for their care and protection. CREATE prides itself with sharing the voices of children and young people even where those voices express opinions that are not held by the organisation.

Georgie, 17 told CREATE that contact details should be made available to CREATE to see if a child or young person is interested in receiving services:



Leah, 23 tells how she became involved with CREATE at the age of 13 and for the first time in her life realised that she was not alone in her care experience. She says that the children and young people connected with CREATE became like a family to her:

I think that getting kids in touch with CREATE is great. I got involved when I was 13 and I went on Mission B and I absolutely loved it and it was like, the first time in my life when I knew that there were other kids out there that were like me, they were in care. And you felt like you had this family. You got how each other felt and what each other were experiencing.

Also, I used to love getting mail from CREATE. Even being 13. I know that's a bit odd being a teenager but I loved getting mail from CREATE. They'd always put like a lollypop or a balloon in there and they'd put a little newsletter or something and I thought that was so exciting. You go to the letterbox and there's something with your name on it and it's so exciting. I like CREATE a lot...

Jodi, 17 agrees that children and young people should be able to make up their own minds but suggests that receiving the entering care pack was a good thing for her:

I love you guys & all but I think young people should make up their own mind if they want your help & should get in contact with you. Although I have to admit the entering care pack was pretty cool & would brighten the spirits of a lot of kids in a difficult time.

Nat, 12 suggests that the Department could inform children and young people of CREATE services:

I don't think that it would be wise to do that. I think that community services could recommend joining organisations such as create.

Michael, 16 agrees and suggests that a case worker needs to ask the child or young person first:

You should ask for permission first before sending anything- like the caseworker has to ask you.

Ten young people responded to the question about whether or not CREATE should be given their contact details for the purposes of supplying or informing them of CREATE services and involving them in advocacy campaigns, were affiliated with CREATE. Despite this, their opinions varied along the following themes:

- Contact details could be given to CREATE and that if the child or young person does not want to engage with the organisation then their contact details should not be used;
- Receiving CREATE services upon entry to care was excellent but that they would also like to have a say on whether or not they receive any other services; and
- Permission should be obtained before their contact details are given out.

CREATE believes that its services and advocacy function is in the best interests of children and young people in care. CREATE acknowledges that some young people may not value or choose to be a part of the CREATE community however with 7,000 clubCREATE members and very low attrition rates, CREATE believes that children and young people should receive CREATE communications upon entry to care and then have the choice as to whether and to what degree they will engage.

Conclusion

CREATE Foundation advocates for the rights and welfare of children and young people with a care experience. We consult with children and young people with a care experience across Australia in every jurisdiction. We recognise that good law is essential to protecting children and young people from harm and that effective systems are required to help children and young people reach their maximum potential.

CREATE also recognises that departments are often overwhelmed by notifications, substantiations and the number of children and young people in and entering care. This is a national phenomenon and has been experienced in other countries. CREATE believes that where possible children and young people should remain with their families if it is safe to do so and recognises that entering and remaining in care can detriment their futures.

It is well recognised that the pool of foster carers is reducing and the complexity of cases is increasing. CREATE believes that quality child care and protection requires resources, training and most of all participation by each child and young person where participation is possible.

CREATE supports the New South Wales government's willingness to reform the child protection legislative framework in a way that reduces the risk of harm and increases the happiness and welfare of all children and young people.

Contact

CREATE Foundation thanks the New South Wales Government for the opportunity to participate in the legislative reform project and amendments to the Children and Young Persons (Care and Protection) Act 1998 (NSW).

For more information about this submission please contact:

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