

Mr James Wood AO QC
Commissioner
Special Commission of Inquiry into Child Protection Services in NSW
PO Box K1026
SYDNEY NSW 2001
Email: cps_inquiry@agd.nsw.gov.au
Fax: 9377 5411

CC: Carl Hook, The Secretary/Executive Officer

16 May 2008

Submission to the Special Inquiry into Child Protection Services in NSW

Thank you for the opportunity to make a submission to the Special Inquiry into Child Protection Services in NSW.

We have a long standing and close engagement with the communities affected by the 'redevelopment' of the Redfern/Waterloo area as well as extensive networks with other government and community service providers in the area, including NSW Police.

About Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent non-profit community-based organisation with a prominent profile in the Redfern area of over 30 years' standing. We have strong relationships with the Aboriginal and Torres Strait Islander community. We perform a role that is complementary to and not a duplication of the role played by the Aboriginal Legal Service. Redfern Legal Centre provides a Women's Domestic Violence Court Assistance Scheme, a credit and debt service and a tenants advice service all of which are well known and often used by Aboriginal families.

We also assist with civil liberties and discrimination matters, including complaints to the NSW Ombudsman about DoCS matters. In addition, RLC assists ATSI and other community groups as required.

Redfern Legal Centre has always provided legal assistance and referrals to families who are involved with DoCS.

After the "Redfern Riots" in January 2004 staff at Redfern Legal Centre noticed a significant increase in the number of families seeking assistance in relation to "DoCS matters". As a result, Redfern Legal Centre began to monitor DoCS related matters and selected a number of test cases to be run through the Centre. The Centre also monitored all child protection cases that came to the centre and became involved with the Combined Community Legal Centres Group (NSW) projects.

73 Pitt St	Phone (02) 9698 7277	General enquiries	Interviews by
Redfern	Fax (02) 9310 3586	Monday to Thursday	appointment
NSW	email info@rlc.org.au	9 am-9 pm	Monday to Thursday
2016	http://www.rlc.org.au	Friday 9 am-6 pm	6:30 pm-8:00 pm

Inquiry into Redfern and Waterloo in 2004

Redfern Legal Centre also made a submission to the Inquiry into Issues Relating to Redfern/Waterloo by the NSW Legislative Council Standing Committee on Social Issues¹ ('the 2004 Redfern Inquiry') and staff made oral submissions to the Inquiry. A copy of RLC's submission is attached. The comments made in our written and oral submissions remain current concerns of ours and other Redfern community workers.

The Standing Committee on Social Issues released its final report in December 2004. The report notes:

*A key concern among (inquiry) participants was the performance of the Department of Community Services (DoCS). Accordingly, the Committee recommends, as a priority, a number of actions on the part of DoCS' Eastern Sydney Community Service Centre to ensure much more effective action to protect children at risk, adequate training for caseworkers, and more effective relationships with other local agencies and with the Aboriginal community.*²

We note that the government's response issued by the Premier's Department of 22 February 2005 did not address or even acknowledge the Committee's concerns or recommendations in relation to the performance of DoCS.³

Background to this Submission

Redfern Legal Centre does not speak for the Aboriginal community in Redfern. However, RLC staff are aware of prevailing attitudes, frustrations and beliefs in relation to DoCS among RLC's Aboriginal clients. Often, these concerns are usually shared by community workers who work closely with and provide intensive support to these clients.

We have consulted with individuals and organisations that work with and provide services to Aboriginal families and families living in poverty in the Redfern area. Many of those individuals and community workers provided comments on the understanding that their identities would be kept confidential.

All of the individuals and agencies we consulted voiced similar views about the experience of families involved with DoCS in our area. Redfern Legal Centre is of the view that it is important that these views be made known to the Commission so that the community can have a sense that they have been heard on these issues. This submission includes quotes from our clients, community workers and individuals in the community to demonstrate the concerns and frustrations with DoCS.

¹ RLC Submission to the Inquiry into Issues Relating to Redfern/Waterloo by the NSW Legislative Council Standing Committee on Social Issues dated 30 April 2004

² Inquiry into Issues Relating to Redfern/Waterloo by the NSW Legislative Council Standing Committee on Social Issues Final Report p xiii

³ NSW Government's response to the Interim and Final Reports, "Redfern-Waterloo A report on progress" dated 22 February 2005

Perceptions of DoCS

It is important to note that community perceptions of DoCS and how DoCS operates impact on the whole community's approach to dealing with DoCS, and supporting families with children who may be at risk. It is well understood that some Aboriginal families have a "fear of the past" and are reluctant to engage with DoCS or report other Aboriginal families who may be in need of early intervention by DoCS. However, perceptions of unfairness and gross injustice are prevalent in the whole Redfern Waterloo community. Stories of families that have been "through the DoCS system" and had a bad experience quickly become urban legend. It seems that everyone knows a story about children being removed from families due to domestic violence and then placed with the violent father. This issue is discussed further below. The failure of DoCS to respond to the recommendations of the 2004 Redfern Inquiry to engage with the Aboriginal and Redfern community is a tragically missed opportunity to change some of these perceptions.

DoCS in Redfern

Many Aboriginal people in Redfern still believe that DoCS was sent in to "clean up" Redfern after the Redfern riots. Community workers noticed a sudden increase in the number of Aboriginal children being removed in early 2004.⁴ Some activists say that "hundreds" of children were removed from Redfern during 2004. It is well known that many of our clients perceive themselves and their children to be another "Stolen Generation".

There is no dispute that some Aboriginal children that were removed from families in Redfern in 2004 were in need of care and protection. Subsequent Children's Court proceedings revealed that some children were well known to DoCS and Redfern Police to be in need of care and protection for many years prior to their removal. These families are well known in Redfern and it is a common perception that there were no specific incidents giving rise to the need for sudden removal apart from the riot.

Other Aboriginal families felt that they were "targeted" by DoCS after the riot. In many cases "fear of DoCS" was a significant factor in families inability to cope with interacting with DoCS and as a result, unable to have the benefit of programs that would have assisted the families to stay together.

The 2004 Redfern Inquiry failed to provide satisfactory answers to the community or community workers about how many Aboriginal children were "taken" during 2004 or whether there was a specific policy or strategy by DoCS or the government to remove more Aboriginal children in the immediate aftermath of the Redfern riot.

⁴ RLC Submission to the Inquiry into Issues Relating to Redfern/Waterloo by the NSW Legislative Council Standing Committee on Social Issues dated 30 April 2004 p5

After the 2004 Inquiry

The Final Report of the 2004 Redfern Inquiry acknowledged community worker's frustrations about working with DoCS including a "pattern of unwillingness to work with the members of the Aboriginal community and engender their trust".⁵

The overwhelming majority of comments made to Redfern Legal Centre in 2008 were a repeat of comments and submissions made to the 2004 Redfern Inquiry. They are all the types of comments that have been made by community members and workers during the course of the current enquiry.

Sadly, the 2004 Redfern Inquiry Final Report noted that:

*"Many of the matters raised in our consultations with people in Redfern and Waterloo echoed those expressed to the Committee when we undertook our Inquiry into Child Protection Services in 2002."*⁶

The Redfern community and community workers remain frustrated that the issues raised and commented on in the 2002 and 2004 inquiries were not acknowledged by DoCS or the government and never seriously addressed. After these experiences, many do not have confidence that another enquiry and more assurances from DoCS to address concerns that have been raised by the community will make any difference.

Interagency Communication

Dr Neil Shepherd, then Director General of DoCS, made extensive submissions to the 2004 Redfern Inquiry. He acknowledged that there were areas in need of improvement, especially in relation to interagency communication.

The Hon. Robyn Parker asked the following question of Dr Shepherd:

*We have had evidence from NGOs ad nauseam that said that in terms of early intervention, DOCS do not have liaison with NGOs, do not refer to a number of NGOs that are involved in early intervention and who are funded by DOCS and that DOCS, as opposed to other government departments, do not participate in the interagency meetings. I wonder if someone who is involved locally with the Redfern-Waterloo area could give us some information about that?*⁷

Dr Shepherd and Ms Anne-Maree Sabellico, then Regional Director Metro Central, made various submissions about attendance at interagency meetings. The issue of referral of early intervention matters to local NGO's was not directly addressed.

⁵ Inquiry into Issues Relating to Redfern/Waterloo by the NSW Legislative Council Standing Committee on Social Issues Final Report p 87

⁶ Inquiry into Issues Relating to Redfern/Waterloo by the NSW Legislative Council Standing Committee on Social Issues Final Report p 86

⁷ Report of Proceedings before the Standing Committee on Social Issues, Inquiry into Issues relating to Redfern and Waterloo (Uncorrected Proof) 3 November 2004 p23

The issue of participation in interagency meetings is still key issues for Redfern community workers in 2008. The community is disappointed to have seen very little change in attitude from DoCS despite the fact the DoCS had been put on notice that it was a key community concern in 2004.

The Redfern Inquiry Final Report noted Dr Shepherd's undertakings that :

“The Department is seeking to reduce the proportion of children in out-of-home care (the rate is about 25% of all children at present), and its relationship with the Aboriginal community through a number of mechanisms including:

- genuine consultation with individual communities about the services required best way to deliver them*
- efforts to establish and effectively support services that are run by and for communities*
- recruitment and support for Aboriginal foster carers*
- recruitment and more effective support for Aboriginal staff in the Department and continued cultural awareness training for non-Aboriginal staff”⁸*

Community member and workers we have consulted are unsure whether “genuine” consultation by DoCS with the community took place following the 2004 Inquiry.

One group of community workers from an NGO that employs a number of experienced Aboriginal staff that provides services to Aboriginal and other families in Redfern and Waterloo commented that around 6 months ago a group of DoCS workers, some of whom were caseworkers, were taken on a “tour” of local agencies. The community workers were very surprised that they were asked to wear name badges as if it was “all new to them”. They were astonished that caseworkers were being told for the first time who they were and what services their NGO provided to families. They were left with the impression that some caseworkers were simply unaware of what services local NGO's provided. In the words of one community worker “they were surprised at how much we do”.

Ironically, some of the community workers had been trying to contact the particular caseworkers by telephone in relation to clients of the service but their phone calls had not been returned. Some of these calls were in relation (unsuccessful) attempts to refer particular families to DoCS for early intervention. On other occasions, the NGO received phone calls from DoCS asking them what they do and what programs they run.

⁸ Report of Proceedings before the Standing Committee on Social Issues, Inquiry into Issues relating to Redfern and Waterloo (Uncorrected Proof) Dr Shepherd, Evidence, 7 June 2004, p2 and 6

Victims of Domestic Violence

Redfern Legal Centre's Women's Domestic Violence Court Assistance Scheme (WDVCAS) works closely with local NGOs to provide support for women and children experiencing domestic violence.⁹ Women are often referred to the centre by Police having been told (or threatened) by DoCS that they need Apprehended Violence Orders ("an AVO"). Most women do not understand what an AVO is and have no idea what the consequence in terms of DoCS involvement with the family is of not obtaining the orders. In some circumstances, women have had little or no discussion with DoCS about whether there is family violence in the home.

Redfern Legal Centre have often been contacted by community workers who cannot understand why children end up living with violent fathers. One community worker commented:

"The kids were removed because she didn't do a AVO. DV was part of the reason. When I first met her she was a wreck. They just removed the children and the Dad was interstate. She did the DV group – she had come a long way – ticked all the boxes. Halfway through the boxes she realised why an AVO was needed. In the restoration, they gave the Dad the children. He had tried to drown her in the bath. DOCS knew that."

One recent case involved an Aboriginal mother with a mild learning disability. DoCS were aware that the father was violent and this had been thoroughly documented (by DoCS) for over 10 years. The children had been removed from the home due to his violence in the past. They were later restored to the mother when she obtained a 5 year AVO. Despite this, when the family recently came to the attention of DoCS, most of the children were placed with the father. Criminal charges were brought against the mother which may not have proceeded if DoCS had provided accurate information of DoCS involvement with the family to Police. The mother believed that the father was in close communication with DoCS at the time and felt that he was "using the system" against her.

In subsequent related criminal proceedings, the Magistrate found that DOCS had not provided a "balanced report" to Police or the Court. According the Magistrate, the DoCS statement:

"does appear to give a one sided account of key aspects concerning the DoCS file (concerning family violence by the father)".

In those proceedings the criminal prosecution against the mother was unsuccessful and costs orders were made against NSW Police. One child who had been in foster care was returned to the mother immediately. Other children remain with the father despite concerns for their welfare.

⁹ RLC Submission to the Inquiry into Issues Relating to Redfern/Waterloo by the NSW Legislative Council Standing Committee on Social Issues dated 30 April 2004 p5

Compliance with Court Orders

One new issue that has been routinely reported to Redfern Legal Centre since the 2002 and 2004 inquiries is DoCS treatment of parents of children who have been removed subsequent to final orders being made. In many cases, the Children's Court acknowledges that, despite the fact that the child is to be in the care of the Minister, it is in the best interest of the child to maintain a relationship with their natural parent. Orders are made accordingly for the child to have regular contact visits with the parents. In many cases, however, despite the existence of the orders, DoCS informs the parents that they will be granted the minimum 4 visits per year. Clients and community workers remain perplexed at how and why DoCS is able to act contrary to Children's Court orders. Sadly, parents are often not in a situation to seek leave to have those orders reviewed by the Court.

Conduct of Children's Court matters

Community workers and lawyers assisting parents with DoCS matters are also concerned about the unnecessarily adversarial attitude of DoCS case workers in the lead up to and conduct of Children's Court matters. Community workers often report that an unnecessarily punitive and belittling attitude is displayed, particularly against women who are victims of domestic violence, and that threats and demeaning language are often used in care plan and other meetings. Community workers who are providing intensive support to families can be left feeling sidelined or as humiliated as the parents. In some cases community workers are left questioning whether DoCS staff have had the benefit of cultural awareness training in relation to Aboriginal clients.

Community workers who support parents in Children's Court proceedings are often surprised to hear exaggerated and inaccurate claims being made to the Court about family circumstances. According to one community worker: "DOCS are totally over the top in their affidavits". The conduct of some proceedings leave community workers concerned that DoCS workers sometimes do not make their best efforts to fully inform the Court of all the relevant circumstances of matters at the earliest opportunity. Redfern Legal Centre is aware of some matters where cost orders have been made against DoCS as a result of this type of conduct.

It is often noted that case workers and their legal representatives are overworked and have little time to prepare cases. It is unfortunate and unnecessary that DoCS workers are often known in the community and amongst community workers as "unfair", "sneaky" and "nasty". Over time this type of behaviour makes it less likely that families will be willing to engage with DoCS at an early intervention stage. This is particularly concerning in matters involving Aboriginal families where early intervention may have been effective.

Ongoing concerns

Our clients and fellow community workers continue to express their frustrations in the following ways:

- "The DoCS Helpline is a black hole"
- "DoCS doesn't support families"
- "People go in to ask for help and they end up having their kids removed"

- “With DoCS it’s all about threats but they don’t offer any support”
- “People still have the “fear of the past”
- “(Aboriginal) People don’t understand why their children are being removed”
- “Parents get told to get legal advice but the children get removed before they can get advice”
- “Parents (especially Aboriginal parents) feel threatened and confused in care plan “meetings”
- “The minutes of the care plan meetings are never correct. They change them to “suit themselves”

The following case study illustrates many of the issues raised above.

Case Study

Betty perceives herself to be “Fourth Generation - Stolen Generation”. Her grandmother and mother were “taken” and she herself grew up in a home. Betty has a history of drug and alcohol abuse. Her 2 older children were removed by DoCS and placed with their father despite him being known as a drug user and being the subject of an incomplete police investigation in relation to domestic violence against her sexual assaults against one of the children. She never saw the children again. Despite court orders that DoCS monitor the children’s placement until they were 18, DoCS was unable to find a file on the children and was unwilling to investigate their whereabouts.

When Betty had her third child she “hid” from DoCS. She was terrified of DoCS taking her child. So great was her fear that it became all-consuming. She turned to Redfern Legal Centre for support. RLC staff tried to link up Betty with appropriate community workers who could provide her with intensive support. Betty feared that the community workers would “dob her into DoCS”. We also referred her to medical experts to help her deal with her overwhelming and disabling fear.

Betty could have taken advantage of a number of programs to support her and help her child stay with her if not for her fear of DoCS. RLC staff notified DoCS that Betty’s fear of DoCS was preventing her from being able to engage with case workers and community workers. There were no Aboriginal case workers available to work with Betty.

DoCS workers were critical of Betty’s apparent “failure to co-operate” with their proposed case plan. On the day prior to the removal Betty’s lawyer was surprised when the senior case manager commented: “I’m just sick of this woman – we’re taking the child”.

The child was placed with a non-Aboriginal family and sees his mother 4 times per year. He has not met his Aboriginal siblings.

We do not anticipate it would necessary to provide oral submissions to this inquiry and refer you to submissions made to the 2004 Redfern Inquiry for more information.

Yours sincerely

REDFERN LEGAL CENTRE
Helen Campbell
Executive Officer