

13 May 2025

Independent Pricing and Regulatory Tribunal NSW
OOHC Care Costs and Pricing Review Team
By Email: ipart@ipart.nsw.gov.au

Dear Madam Chair,

ALS Submission in response to the IPART Out-of-home Care Costs and Pricing – Draft Report

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**) and thank you for the opportunity to provide a submission in response to the IPART *Out-of-home care costs and pricing – Draft Report (Draft Report)*.

The ALS is a proud Aboriginal Community-Controlled Organisation (**ACCO**) and the peak legal services provider for Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. Our vision is to achieve social justice and equity for Aboriginal and Torres Strait Islander people, families and communities. More than 350 ALS staff members based at offices in 21 communities support Aboriginal and Torres Strait Islander people through the provision of high quality and culturally safe legal assistance, including court representation in criminal law, children's care and protection law, and family law. We also deliver wrap-around programs including bail support, family violence prevention, and child and family advocacy and support.

The ALS is the Justice Peak on the NSW Coalition of Aboriginal Peak Organisations and a key partner in Closing the Gap in NSW and the ACT. As an ACCO, we represent community interests in our advocacy for the reform and transformation of systems which impact the lives of Aboriginal and Torres Strait Islander people.

We have had the opportunity to review the submission of AbSec – NSW Child, Family and Community Peak Aboriginal Corporation (**AbSec**). The ALS works both formally and informally in partnership with AbSec in the child protection sector, and in particular, is involved in advancing the interests of Aboriginal and Torres Strait Islander children in out-of-home care (**OOHC**) and elevating Aboriginal voices in decision-making for their children. AbSec's submission reflects feedback from their member organisations, and makes a number of recommendations relevant to the funding of ACCOs.

We support the recommendations of AbSec, particularly in regards to the operational and infrastructure needs of ACCOs.

We make the following observations and recommendations in addition.

Costs Associated with Court Proceedings

We note that the Draft Report does not include a recommendation about loading for court-related work undertaken by service providers and defers from analysing those costs on the basis of a lack of reliable data on the additional time required for court matters at a case level .

There is now an increasing body of case law from the NSW Children's Court which has made findings and commentary on Funded Service Providers (**FSPs**), which coincides with the growing practice of the Court seeking to hear directly from those providers. It is relevant for this Tribunal to consider the legal environment in which OOHC service providers are operating, and, in particular, the additional scrutiny and casework requirements that are involved in providing information to DCJ for use in the Department's own case preparation, as well as in the preparation of affidavits and supporting documents. This is in addition to responding to subpoena requests.

The ALS was involved in a published case where issues were reported about the state of case management and delays in the provision of information by the FSP, which had impacts on both the proceedings as well as the overall experience of the family and the care provided to the children.

In the decision of *Department of Communities and Justice (DCJ) and the Yarran Taylor Children* [2024] NSWChC 3, the Magistrate raised "real concerns about the conduct of both the FSP and the Secretary regarding the exercise of parental and care responsibility, case management and their conduct of these proceedings".¹

In the decision of *Finn, Lincoln, Marian and Blake Hughes* [2022] NSWChC 4 (**the Hughes case**), the Court found that the FSP had made further subcontracting arrangements to another provider for some of the care, but the Court did not have visibility of those arrangements.²

The *Hughes* case went further in scrutinising the provision of funds for the subject children, noting that the funded service provider was paid \$1,292.60 per day to look after Finn and Lincoln, but then allocated \$11.43 per day for each child to cover both food and activities: see [105], [107-108]. This case drew media attention to the "business" of out-of-home care.

The subsequent *Independent Review of Two Children in OOHC* made key findings, including that:³

*there is limited line of sight to subcontracting arrangements entered into by permanency support program providers, and better mechanisms to assure the quality of these arrangements should be explored.*⁴

As the Children's Court increasingly looks to review and hear evidence from caseworkers and those making decisions where authority has been delegated, FSPs are now required to consider the allocation of human resources and expend time and funds on the preparation of affidavits and the consequent appearances before the Court for mentions and cross-examination where those matters include contested hearings. Magistrates across NSW often require the attendance of FSP caseworkers and managers at ongoing mentions, and it is common practice for them to attend court-ordered Alternative Dispute Resolution in matters where they hold case-management.

It is unacceptable for the funds provided for meeting a child or young person's needs to be expended on the provider's involvement in their Court proceedings. This is not a cost that should be borne by individuals who should be afforded "special protection" under the principles of the *Children and Young Persons (Care and Protection) Act 1998*.⁵

¹ *Department of Communities and Justice (DCJ) and the Yarran Taylor Children* [2024] NSWChC 3, at [16].

² *Finn, Lincoln, Marian and Blake Hughes* [2022] NSWChC 4, at [43].

³ NSW Department of Communities and Justice, *Summary report – Independent Review of two children in OOHC*, June 2023, 7, online: <https://dcj.nsw.gov.au/documents/service-providers/out-of-home-care-and-permanency-support-program/about-permanency-support-program-and-overview-childstory-and-oohc-resources/independent-review-of-two-children-in-oohc-summary-report.pdf>

⁴ *Ibid.*

⁵ See in particular s 9(2)(d).

Transparency and Accountability

The cost of the systemic failings of the OOHC system are predominantly borne by children – in particular, Aboriginal and Torres Strait Islander children, who are disproportionately represented in the OOHC system.


The above case examples illustrate a number of persistent issues, including lack of transparency and accountability in respect of how FSPs are commissioned and operate; uncertainty about the consequences for FSPs that fail to comply with legislation and, potentially, funding contracts; and the ways in which agencies and carers spend the funds provided by government to provide care and case management for a child or young person.

The true cost of care for a child or young person in OOHC is not publicly available information, despite the fact that the system is publicly funded. The IPART review goes some way to exposing those costs in recommending changes to the future pricing and costings for OOHC. The ALS would welcome the publication of the costs associated with keeping Aboriginal and Torres Strait Islander children and young people in the OOHC system. The ALS also recommends the publication of any review of the costs and pricing of OOHC in NSW within five years of the implementation of the decisions and recommendations from IPART's Final Report as a mechanism for measuring the impact of any reforms.⁶

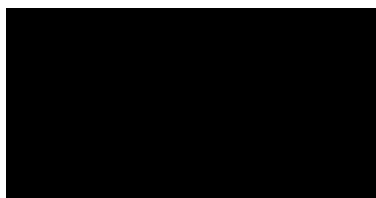
A "key finding" of the *Family is Culture Review Report* was that "the child protection system lacks adequate transparency and effective oversight. There is no effective regulator."⁷

This lack of transparency would be of less concern if child protection workers engaged in exemplary casework practice and if the child protection system was properly resourced. However, as discussed throughout the report, the case file review found widespread non-compliance with legislation and policy among FACS caseworkers and managers.⁸

We reiterate our call for the establishment of a NSW Commissioner for Aboriginal and Torres Strait Islander Children and Young People, whose functions would include having the ability to hear directly from Aboriginal and Torres Strait Islander children and young people experiencing the OOHC system, as well as the power to make recommendations to address systemic issues, including the ways in which public funds are spent on providing for the needs of Aboriginal and Torres Strait Islander children and young people in OOHC.

The ALS welcomes the opportunity to discuss this submission further. If you have any questions, please contact the ALS Policy team by emailing 

Sincerely,



Aboriginal Legal Service (NSW/ACT) Limited

⁶ IPART OOHC costs and pricing – Draft Report, Recommendation 18.

⁷ Davis, M, *Family is Culture Review Report: Independent Review Into Aboriginal Out-of-home care in NSW* (October 2019), p107. Found at: <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>

⁸ Ibid.