



OmbudsmanSA

STATEMENT ON INVESTIGATIONS

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Investigations of three complaints about the informal removal of children by the Department for Child Protection



Essential Insights

When the Department for Child Protection identifies that a child or young person is at risk of harm, effective outcomes may be achieved through genuine collaboration with the family and agreement on a 'safety plan'. Where agreement cannot be reached about the steps to achieve safety and the child remains at risk of serious harm, the department must exercise formal statutory powers to remove a child from their parent's care. If the department wishes to retain guardianship of the child, the matter is then brought before the Youth Court.

If the department seeks to alter the care and custody of a child without using statutory powers, and without genuine and documented agreement from parents or caregivers, the department acts in error. It is therefore essential that the department engage openly and genuinely with families and recognise where agreement has not been or cannot be given.

INVESTIGATIONS OF THREE COMPLAINTS ABOUT INFORMAL REMOVAL

The Ombudsman received and investigated three separate complaints about children being informally removed and withheld from their respective mothers' care. In each matter, the department was responding to serious concerns for the children's safety and wellbeing.

In two complaints, the department had proposed and adopted safety plans for the children to stay with another parent or a close family member.

Ordinarily, a safety plan is a collaborative agreement between parents, guardians, or caregivers or a child or young person; the department; and support systems surrounding the family. Meaningful engagement and genuine agreement by the parents, guardians or

caregivers are required to implement a safety plan. Each plan identifies actions or interventions aimed at addressing specific safety concerns. These can include short-term informal care arrangements (including the child or young person residing out of the home with a safe caregiver identified by the family) while safety concerns are addressed. Such arrangements do not establish legal guardianship over a child or young person.

Where agreement cannot be reached, the department must consider alternative approaches to addressing safety concerns, including formal removal under the *Children and Young People (Safety) Act 2017*. The Act imposes a high threshold for the exercise of that power, and, if the child or young person is not returned to a parent or guardian, the department must apply to the Youth Court for an order for the child or young person's care and custody.

In the two cases involving safety plans, the mothers clearly and consistently disagreed to the proposed plans. Despite this disagreement, the department did not exercise formal powers of removal and instead adopted the safety plans either with the child's other parent or with other family members.

In the third complaint, the department had removed an infant from their mother and placed them in the care of their father without the use of a safety plan or statutory powers of removal. At the time, the department held serious concerns for the mother's mental health. The mother also clearly disagreed with the proposal that her child be placed in their father's care. Although she eventually reluctantly agreed, the Ombudsman did not consider it open for the department to have sought that agreement to effect a removal without the use of its formal powers.

KEY OUTCOMES

The Ombudsman concluded that the department's approach to removing each child involved administrative error. Across the investigations, the Ombudsman identified four themes of concern that contributed to that error.

Disregarding disagreement

In each matter, the department appeared to have disregarded the clear and persistent disagreement of one of the parents. This was inconsistent with clear internal policy that required genuine collaboration and agreement with parents, guardians, and caregivers.

Inconsistent and contradictory understanding by department officers of the actions available to address safety concerns

In two of the matters, contradictory and occasionally incorrect interpretations of the department's statutory powers and its internal policies influenced its approach to removing the children. Correct and consistent understanding of the steps available to address safety concerns ensures that the department's actions are lawful and fair.

Failing to provide support and engage meaningfully

In each matter, there were explicit expectations in the department's policies for how the department ought to have engaged with each parent. This expectation arose either

because of a parent's vulnerability, or because the parent and their child are Aboriginal. The expectations for genuine engagement and independent support were not met.

Altering the care and custody of a child without agreement

Where a safety plan is used to alter the care arrangements for a child on a short-term basis, agreement must be reached with the party who will no longer care for the child, as well as the party who will provide short term care. If agreement cannot be reached with the parent, guardian or caregiver in whose care the child is unsafe, the department must then consider whether the circumstances of a matter meet the high threshold for removal under section 41 of the CYP(S) Act.

Each matter under investigation culminated in the department informally altering the care arrangements of a child without agreement from the parent from whose care the child was removed.

The department's response

The department accepted the themes of concern identified by the Ombudsman and outlined the steps it was taking to strengthen its practices and prevent recurrence. This includes targeted reminders and training on the appropriate use of safety plans, and the review and amendment of guidance in the Manual of Practice. The Ombudsman will monitor the implementation of these improvements.