Legal Aid Queensland's (LAQ) response to the Discussion Paper addresses only those questions that it is able to address on the basis of the professional knowledge and experience of it's child protection lawyers. Some issues raised in the Discussion Paper have already been considered in LAQ's initial submission to the Queensland Child Protection Commission of Inquiry (the LAQ Submission) and therefore reference will be made to the Submission throughout this response.

Chapter 5 – Working with children in care

- 13 – Should adoption, or some other more permanent placement option, be more readily available to enhance placement stability for children in long-term care?

It is noted that at page 110 of the Discussion Paper it is stated that past practices of forced adoption, particularly in the Aboriginal and Torres Strait Islander communities, but also in the wider population, have caused mistrust of adoptions generally, and at page 113 it is stated that use of adoption in the care system in its present form would be widely opposed.

It is also noted that in the *Adoption Act 2009* there are requirements for biological parents who are considering consenting to the adoption of their children to be provided with certain detailed information about the adoption process, pre-adoption counseling and informed of their right to, and the availability of, legal advice.

Given the above, and the legal implications of adoption, if adoption, including "open adoption", was to become one of the features of the child protection system, it would need to be the subject of further intensive investigation, including consultation. At a minimum, such a proposal would need to be complimented by a requirement for legal advice and representation for the biological parents, and, as the parents would generally be vulnerable and financially disadvantaged, funding for LAQ to provide that advice and representation.

- 15 – Would a separation of investigative teams from casework teams facilitate improvement in case work? If so, how can this separation be implemented in a cost effective way?

LAQ submits that separation of investigative teams from casework teams would facilitate the improvement in case work. In the LAQ Submission it was submitted that the multi-faceted role of investigator/assessor, prosecutor and therapeutic case worker is both difficult for the child safety officer to perform and counter-productive to achieving the best results for children and families. See page 25 of the LAQ Submission.

The most cost effective way of achieving separation of the investigative and casework roles will be a matter for the consideration of the Department of Communities, Disability and Child Safety Services. From the outside, given that individual child safety officers are currently carrying out both investigative work and case work, allocating to some child safety officers investigative work only, and other child safety officers case work only, would appear to be able to be achieved with minimal increases in the number of child safety officers. However, no doubt change of this type would attract a range of complexities that might complicate the implementation costs.

Chapter 10 – Courts and tribunals

- 37 – Should a judge-led case management process be established for child protection proceedings? If so, what should be the key features of such a regime?

In the LAQ Submission it was submitted that the most significant improvement to the child protection court process would be the establishment of a court case management system, supported by rules of court and practice directions. It was submitted that the key features of such a system would be:

- Early identification and location of parties and relevant non-parties and the joining of applications;
- Early consideration of the need for legal representation for parents;
- Early resolution of issues, including obtaining directions in relation to disclosure and the need for obtaining expert assessments and reports such as medical, psychiatric and social assessment reports;
- Guidance on the identification of non-parties who can make submissions under section 113 of the CPA.

See page 11 of the LAQ Submission.

- 39 – What sort of expert advice should the Childrens Court have access to, and in what kinds of decisions should the court be seeking advice?

LAQ supports the Childrens Court having access to expert advice from social scientists and/or psychologists specialising in working with children and their family, particularly when exercising jurisdiction to review decisions of the chief executive. In the LAQ submission it is submitted that the Childrens Court should be able to exercise this jurisdiction whenever the court is dealing with an application for a child protection order. See page 15 of the submission.

There may also be scope for greater expert input into the broader child protection jurisdiction of the Childrens Court. In this regard, consideration could be given to the establishment of a Clinic of consultants connected to the Childrens Court such as in Victoria and New South Wales, or similar to family consultants under Part III of the *Family Law Act 1975* (Cwth), to:

- Assist and advise people involved in proceedings;
- Assist and advise the court, and giving evidence, in relation to the proceedings;
- Help people involved in the proceedings resolve disputes that are the subject of the proceedings;
- Report to the court about the safety, wellbeing and development of a child the subject of the proceedings; and
- Advise the court about appropriate counselors, course, programs and services.

- 40 – Should certain applications for child protection orders (such as those seeking guardianship or, at the very least, long-term guardianship until a child is 18), be elevated for consideration by a Childrens Court Judge or a Justice of the Supreme Court of Queensland.

Given the gravity of the decision to remove a child from the care of the child's parents, consideration could be given to requiring such decisions to be dealt with by a Judge of the

Childrens Court of Queensland, at least when the order being applied for/contemplated is the most intrusive, that is, an order for long term guardianship.

One option for consideration is for the courts to continue to exercise concurrent jurisdiction at first instance, with the development of a protocol under which judges hear the most serious matters as defined in the protocol, with magistrates hearing the less serious matters. There should also be powers for matters to be transferred between the courts either on application of the parties or on the judge's or magistrate's own initiative. The protocol between the Family Court and the Federal Magistrates Court could provide a precedent for this.

- 41 – What, if any, changes should be made to the family group meeting process to ensure that it is an effective mechanism for encouraging children, young people and families to participate in decision making?

LAQ submits that changes to the family group meeting process should ensure that the process results in a plan that is:

- Meaningful and effective for the child and their family;
- Makes use of the framework relied upon in the 'Signs of Safety' Child Protection Practice;
- Sets out a clear method to evaluate the success of the plan, including what would indicate progress had been made.

See page 15 of the LAQ Submission.

- 42 – What, if any, changes should be made to court-ordered conferences to ensure that this is an effective mechanism for discussing possible settlement in child protection litigation?

LAQ submits that there should be clear guidance in the CPA as to the purposes of court ordered conferences. There would be benefit in having two conferences: one at the beginning of a proceeding for a child protection order for the purpose of attempting to resolve the threshold issue of whether the child is in need of protection and if so, what type of intervention is needed, and if not, what interim orders and issues can be agreed. The second conference, if required, could occur prior to a final hearing to try and settle the matter or crystallise the issues for hearing. At both stages, there needs to be full disclosure by the Department prior to the conference.

There is also a need for the qualifications of the conference chairperson to be more clearly defined in the CPA.

See page 16 of the LAQ Submission.

- 43 – What, if any, changes should be made to the compulsory conference process to ensure that it is an effective dispute resolution process in the Queensland Civil and Administrative Tribunal.

In the LAQ Submission it is submitted that the need for a court case management system, and its features, applies to child protection matters in both the Childrens Court and the Queensland Civil and Administrative Tribunal (QCAT). See page 13 of the LAQ Submission.

- 44 - Should the Childrens Court be empowered to deal with review applications about placement and contact instead of the Queensland Civil and Administrative Tribunal, and without reference to the tribunal, where there are ongoing proceedings in the Childrens Court to which the review decision relates?

LAQ supports the Childrens Court having jurisdiction to deal with review applications about placement and contact instead of QCAT when a matter is before the court. See the answer to question 39 and page 15 of the LAQ Submission.

- What other changes do you think are needed to improve the effectiveness of the court and tribunal processes in child protection matters?

The changes that LAQ is of the view that are necessary to improve child protection court and tribunal processes, are:

  - Better and earlier legal support for staff of the Department of Communities Child Safety and Disability Services (the Department) involved in child protection litigation (see page 26 of the submission);
  - Additional rights for parents and children to apply to QCAT for review of administrative decisions about children, following the making of a reviewable decision (see page 15 of the submission);
  - A consistent definition of "parent" throughout the CPA (see page 13 of the submission);
  - Adoption of a less adversarial trial model (see page 14 of the submission);
  - Compliance by the Department of Communities, Disability and Child Safety Services with the model litigant principles (see page 15 of the submission).

See the LAQ Submission for further details.

This response will address only those issues or proposals of the Department of Communities, Child Safety and Disability Services (the department) where we consider that the professional knowledge and experience of our staff will assist the Commission of Inquiry to reach an informed view or make an appropriate recommendation for reform.

Department proposal 1.2

The proposal is:

> The development of a whole-of-government strategy requiring all agencies that provide services to children, young people and their families to prioritise improving wellbeing outcomes for children and reducing the incidence and impact of child abuse and neglect in the development and implementation of individual agency and whole-of-government reforms and service delivery.

We generally support this proposal, however, when we are providing legal services, our lawyers must act in accordance with their duties to the Court and the administration of justice and their fundamental ethical duties to their client.

Department proposal 2.1 and 2.3

Proposal 2.1 is:

> Amending the *Child Protection Act 1999* to include a new provision that makes it clear that a report to Child Safety Services can be made when a person has reasonable grounds to suspect that a child may have suffered significant harm, be suffering significant harm or be at an unacceptable risk of suffering significant harm.

Proposal 2.3 is:

> Amending the *Child Protection Act 1999* to change the current term 'harm to a child' to 'significant harm to a child' to more accurately align with the role of Child Safety Services in the statutory child protection system and include in the current definition clarification that whether or not a detrimental effect is of a significant nature to a particular child will depend upon the particular characteristics of the child and the individual circumstances of the case.

Adoption of a new definition of "significant harm" to a child should be developed in a way that incorporates the concept of cumulative harm.

Department proposal 2.4

The proposal is:

> Amending the *Child Protection Act 1999* to include in the current definition of 'child in need of protection' the matters that may be taken into consideration when determining whether a child has a parent who is able and willing to protect a child from the harm.

This proposal has the potential to have a significant impact on the decisions of the department whether to intervene and remove children from their parents, and any resulting proceedings. However, we are unable to express a view on the proposal until the

department provides some detail about the matters that might be taken into consideration when determining whether a parent is able and willing to protect a child from harm.

Department proposal 11.2

The proposal is:

> Amending section 59(1)(b) of the *Child Protection Act 1999* to limit this provision to a requirement that the Court be satisfied that there is a case plan for the child that has been developed or revised under Part 3A and removing the requirement for the Court to be satisfied that the case plan is appropriate for meeting the child's protection and care needs. This would maintain the requirement for an up to date case plan to be provided to the Court and the parties before the making of an order, but limits the Court's role to determining the substantive matters rather than reviewing the case plan that has been developed appropriate (sic) in accordance with the Act.

LAQ does not support this proposal. The removal a child from their family is a serious encroachment on the rights of the members of that family. It is appropriate that when the department is seeking the endorsement of a court for its intervention, that it should be required to satisfy the court that the case plan for the child is suitable for meeting the child's protection and care needs.

The case plan is integral to the Court's consideration of whether the order that is sought, is appropriate and desirable for the child's protection, and the level of protection sought is unlikely to be achieved by an order of less intrusive terms.

It is important to understand the requirement of section 59(4), that if the child has a revised case plan (indicating they have been or are the subject of a child protection order or the proceedings have been before the Court for over 6 months awaiting determination) then a copy of the report about the last revision of their plan under section 51X must be filed. The Court in this instance, is able to consider the child's revised case plan with the knowledge of what has been achieved or is yet to be achieved under their previous plan, when determining what if any type of child protection order should be made.

Removing the obligation of the Court to consider the substance of case plans, will work against a court case management system. Currently, the Court can seek to manage matters relating to the child's wellbeing and protection and care needs on an adjournment of proceedings by ordering the chief executive to convene a family group meeting pursuant to section 68(1)(d).

The proposal also seems contrary to the department's suggestion at 11.3, that the court needs to be satisfied about steps taken to provide services to a child and their family. Without the necessity for the court to be satisfied by the chief executive that there is an appropriate plan to underpin the order that is being sought, the Court is at risk of losing its judicial oversight and the judicial determination of applications to the Court.

Department proposal 11.3

The proposal is:

> Amending the *Child Protection Act 1999* to insert a new requirement in section 59 that before a child protection order can be made for a child, the court must be satisfied that all reasonable steps have been taken to provide services to the child and their family in the best interests of the child.

LAQ supports this proposal. It has long been a matter of concern to our lawyers that families involved in the child protection system have not been offered the services and support the child and their family need to address matters of concern identified by the department. There are parents who need to be given support and encouragement to bring up their children. We support the department shifting its focus from a rescue approach to a supporting families approach.

Department proposal 11.4

The proposal is:

> The department work with the Department of Justice and Attorney-General to review the current legislative, policy and practice approach to support Court Ordered Conferences to ensure they align with best practice to enable proceedings to be settled as early as possible.

LAQ strongly supports this proposal. We raised a number of issues about the operation of Court Ordered Conferences in our submission to the Inquiry (see pp. 16 – 18). In particular, we made the point that there is no published policy, standard process or key principles for the conduct of Court Ordered Conferences and to be most effective they need to fit within a broader court case management process supported by appropriate processes for discovery and disclosure.

We also suggested:

> that an initial COC may be required early in proceedings to deal with the threshold issue of whether the child is in need of protection, or disputes in relation to the interim placement and contact arrangements. A second COC should occur prior to final hearings to provide a final opportunity to settle the matter, and if that cannot be achieved, to narrow the issues in dispute to reduce the time of any hearing. In complex matters, there may be benefit in COCs occurring at appropriate times in the course of the matter prior to interim hearings. The timing of COCs would be determined by the court as part of the overall case management of the proceedings by the court using a fully developed case management process established under the Childrens Court Rules. (p. 16 Legal Aid Queensland submission to the Child Protection Commission of Inquiry)

Department proposal 12.1

Proposal 12.1 is:

> The department working with the Department of Justice and Attorney-General, Legal Aid Queensland and the Queensland Law Society to explore options for the establishment of a child protection practitioner accreditation process.

LAQ supports this proposal. LAQ offers a separate representative training course for lawyers., Completion of this course is a prerequisite for LAQ when assessing the application of a lawyer to be on our panel of preferred suppliers who undertake separate representative work in child protection matters. We would be pleased to work with the department and those other agencies listed to develop a comprehensive accreditation process for lawyers that would like to have a specialisation in the area of child protection.

Department proposal 14.2

Proposal 14.2 is:

> Increasing the use of intervention with parental agreement and care agreements as a mechanism to support families to keep their children safely at home in appropriate cases.

Intervention with parental agreements and care agreements are currently commonly used by the department as the basis for intervention. This can include children being placed in the care of someone other than their parents. These agreements operate outside of any judicial oversight.

Parents appear to be encouraged by departmental officers to consent to these agreements, without there being any requirement or acknowledgement that the parents, and in some cases the child, could and should seek legal advice. We have encountered instances of women consenting, via these types of agreements, to the removal of their newborn babies while they are still in hospital after giving birth. These practices run contrary to all of the research literature about the importance of women bonding with their babies in the first days following the birth. They also give rise to concerns that women in these situations are consenting to the agreements at a time when they are experiencing great physical and emotional stress.

If the department is proposing to use these agreements more frequently, as the basis for intervening in families, provision will need to be made for parents, and the child where appropriate, to obtain legal advice before entering into these agreements. The department should be required to recommend that they should seek legal advice and funding be made available to LAQ for the cost of providing advice in these cases.