

**SUBMISSION BY  
YOUTH ADVOCACY CENTRE INC  
TO THE  
QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY**

**MARCH 2013**



## Introduction

The Commission's Discussion Paper is a very useful document in terms of pulling together all the information which has been provided to it over the last few months. There is a great deal of information in the 350 pages which takes time to read and review. For stakeholders whose main focus is service delivery, having the resources to digest and respond to the document in the time available has been challenging. YAC's response is therefore limited due to these limitations.

YAC also notes that, in light of the level of detail in the document provided, there is not a great deal which can be added at this point other than to reiterate some key concerns and to state our support for various positions which have been articulated. In general, it now has to be for the Commission to weigh up that evidence and make its recommendations accordingly. Therefore the first part of this submission aims to highlight what YAC considers to be key underpinnings for a best practice child protection system which must be kept in mind when developing the recommendations.

YAC has, however, been somewhat alarmed by media reports that "Carmody [sic] has admitted that he has no solutions to the rapidly rising number of kids in state care. All he can do is formulate makeshift policies to manage a problem which is set to explode into a financial and social nightmare".<sup>1</sup> No-one pretends that this is an easy area to manage, but this would be a disappointing outcome for the Commission.

PeakCare noted in its submission last year that *Previous Queensland inquiries, as well as similar inquiries elsewhere, have failed to conceptualise the child protection system in a different way and have therefore focused on doing the same things 'better' or doing 'more of the same', rather than advocating for different and new approaches.* YAC hopes that this will not be the outcome this time.

## General Observations

YAC is a member of PeakCare and one of its casework solicitors is a longstanding member of the Children's Law Committee of the Queensland Law Society and therefore YAC is generally supportive of the submissions and views submitted by those organisations last year.

The PeakCare submission is very valuable for the insights it provides in relation to the development of child protection conceptually. It made some very pertinent comments and recommendations which the Commission should not lose sight of, most importantly that children and families are at the heart of the system. YAC has also considered the United Kingdom's review of its child protection system undertaken by Professor Eileen Munro of the London School of Economics and Political Science (the Munro review) and, whilst the recommendations are often obviously UK-centric, there is some comment within the reports which resonate with issues the Queensland Commission has identified within the system here:

*Professor Munro's final report challenges us all to work towards a child protection system that is centred on the child or young person. The Government agrees with Professor Munro that the system has become too focused on compliance with rules and procedures and has lost its focus on the needs and experiences of children and young people. Frontline professionals tell us that this has skewed attention away from providing timely, high quality and effective help to children, young people and their families. Children and young people themselves tell us they find the system confusing, that too often their voices and/or experiences go unnoticed and that their relationships with professionals change too frequently.* Tim Loughton MP, Parliamentary Under Secretary of State for Children and Families, in the introduction to the UK Government's response to the Munro Review.

Mr Loughton also noted the comments in the review that, as a signatory to the United Nations Convention on the Rights of the Child (UNCROc) (as is Australia), the UK is bound to design a child protection system which "does not just react when things go wrong but also provides support to children and families to prevent maltreatment happening in the first place".

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<sup>1</sup> Courier Mail, Comments - Michael Maddigan 8 March 2013.

*Article 19: The right of the child to freedom from all forms of violence*

*1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

*'2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.'*

Combined with recognition that children and young people are individuals with rights, including their right to participate in major decisions about them in line with their age and maturity, it is argued that this provides the framework within which to build a child-centred system. "It means a system characterised by:

- *children and young people's wishes, feelings and experiences placed at the centre;*
- *a relentless focus on the timeliness, quality and effectiveness of help given to children, young people and their families;*
- *the availability of a range of help and services to match the variety of needs of children, young people and their families;*
- *recognising that risk and uncertainty are features of the system where risk can never be eliminated but it can be managed smarter;*
- *trusting professionals and giving them the scope to exercise their professional judgment in deciding how to help children, young people and their families;*
- *the development of professional expertise to work effectively with children, young people and their families;*
- *truly valuing and acting on feedback from children, young people and families; and*
- *continuous learning and improvement, by reflecting critically on practice to identify problems and opportunities for a more effective system."*

Professor Munro has stated the principles of a good child protection system as being:

- 1. The system should be child-centred: everyone involved in child protection should pursue child-centred working and recognise children and young people as individuals with rights, including their right to participation in decisions about them in line with their age and maturity.*
- 2. The family is usually the best place for bringing up children and young people, but difficult judgments are sometimes needed in balancing the right of a child to be with their birth family with their right to protection from abuse and neglect.*
- 3. Helping children and families involves working with them and therefore the quality of the relationship between the child and family and professionals directly impacts on the effectiveness of help given.*
- 4. Early help is better for children: it minimises the period of adverse experiences and improves outcomes for children.*
- 5. Children's needs and circumstances are varied so the system needs to offer equal variety in its response.*
- 6. Good professional practice is informed by knowledge of the latest theory and research.*
- 7. Uncertainty and risk are features of child protection work: risk management can only reduce risks, not eliminate them.*
- 8. The measure of the success of child protection systems..... is whether children are receiving effective help.*

Reports by the Queensland Commission for Children and Young People and Child Guardian and the CREATE Foundation indicate a lack of inclusion of, and participation by, children in care in Queensland in decision-making about their lives.

The focus of all child protection activity should be the safety and ongoing wellbeing of the child concerned and in the child's best interests. The views and wishes of the child are important in determining this. YAC makes this comment as an agency which works with children and young people 10 years and older within a Gillick-competency framework. So, for example, whether the child wishes to return to their family or not is a key consideration in any decision about their long term placement. This decision could change over time and there should be ability for the child to seek a review of the decision at any time.

As noted in the PeakCare submission there needs to be careful consideration of all the intended **and unintended** consequences which flow from decisions made in relation to children and their families to ensure that we do not create more damage than we are trying to remedy. It states that *"a well-functioning child protection system that has been comprehensively designed and developed therefore encompasses:*

- *public community education about child abuse, neglect, child sexual assault, and domestic and family violence so that children, parents, extended family and the general community understand the issues, are aware of acceptable standards of behaviour, know when and where to seek advice or assistance if needed, and recognise that protecting children is everyone's business*
- *widely accessible and non-stigmatising universal services such as schools, maternal and child health services, child care and community centres which:*
  - *promote social inclusion and community connectedness, and*
  - *are alert to identifying concerns about the well-being of a child and / or family and, if needed, can trigger referrals to other services or programs*
- *responses, services and programs aimed at assisting parents to care safely for their children by addressing or preventing the escalation of concerns through the provision of practical, financial, social, educational and therapeutic supports, that are designed for, and targeted to, particular:*
  - *populations (e.g. young children; parents with an intellectual disability; parents of children with disabilities; Aboriginal and Torres Strait Islander families; young parents; young people under both child protection and youth justice orders; gay, lesbian, bisexual, transgender or intersex young people), and / or*
  - *needs (e.g. mental health issues, substance use, domestic and family violence)*
- *tertiary services provided by the statutory agency, other government agencies and non-government organisations, that respond to the impacts of child abuse and neglect with specialised interventions, in-home support, outreach services and out-of-home care.*

The PeakCare submission described the need for interventions for children and families to be:

- *individualised and holistic [there is no "one size fits all"]*
- *child-centred, yet family-focused in the ways in which they are planned and delivered*
- *'needs' as opposed to 'service' driven (i.e. the services being provided should adapt to the needs of the child or family rather than the child or family being expected to adapt to the requirements of the service)*
- *timely in being able to deliver services as and when they are needed*
- *'multi-modal' in being able to offer access to an array of services that can flexibly respond to different strengths and needs*
- *culturally respectful, meaningful and consistent with the beliefs, values and cultural practices of children and families*
- *inclusive of children and families as integral members of the 'team' that design, deliver and 'own' their plans*

- *localised in a manner that enhances the connectedness of children and families with their home community and networks by making use of 'natural' supports in addition to professional services*
- *the least restrictive that still manage and minimise risks to the safety of children, and*
- *strengths-based with preference given to interventions that do not inappropriately 'pathologise' the experiences of children and their families.*

All aspects of the Commission therefore should take these themes into account and ensure that the system is working or will work in such a way as to incorporate them effectively.

## Specific issues

### Chapter 3: Reducing demand on the tertiary system

*Q. 4 What mechanisms or tools should be used to assist professionals in deciding when to report concerns about children? Should there be uniform criteria and key concepts?*

With respect to mandatory reporting, it would seem that this has had a significant net-widening effect which could well be harmful in itself. It has also placed additional stress on to the child protection system which may well lead to monies being diverted to managing this rather than useful service delivery. Some people will also report rather than not in order to "cover" themselves and avoid any risk of being blamed if something should happen to the child. A report may not result in any service at all because while a tertiary intervention is not required, a lower level issue remains unaddressed which may escalate as a result. Mandatory reporting can also prevent families from seeking help for fear that the person will report them.

YAC would argue that reporting should not be mandatory. The *Child Protection Guide* used by health and education staff seems to be of great assistance in making decisions as to whether reporting is required: the only action which should be mandated is that staff should actively consider the Guide and make a professional judgement as to whether reporting **or some other referral** is appropriate in the circumstances.

### Chapter 4: Investigating and assessing child protection reports

*Q.7 Is there any scope for uncooperative or repeat users of tertiary services to be compelled to attend a support program as a precondition to keeping their child at home?*

Parents will generally be advised that if they are to avoid intervention from Child Safety Services then certain issues may need to be addressed and if that does not happen, then there is a greater risk that their child may not be able to stay at home or go home. This needs to be a proper conversation laying out the choices and consequences of those choices for the parents.

Question 7 is framed in such a way as to make it seem that keeping the child could be used more by way of a threat or incentive. That is not an appropriate way in which to try and engage with the family and achieve results. It may also be problematic for their ongoing relationship with their child.

The decision with respect to the child must only be about what is in the best interests of the child bearing in mind their safety, wellbeing and life opportunities.

A number of submissions and comments in the Discussion Paper make reference to the adversarial nature of child protection and that this needs to change. A functioning child protection system should seek to engage with the child and the family and listen to their views and concerns with a view to everyone "being on board" as being the most effective way to address issues. Sometimes there may be very good reasons or concerns as to why parents are apparently "uncooperative" and it is important that workers take the time to talk to the family to ascertain this and either change what is being requested to something which can be done or ensure the concerns are addressed, wherever this is possible.

*Q. 8 What changes, if any, should be made to the Structured Decision Making tools to ensure they work effectively?*

YAC notes that the PeakCare submission and the Munro review emphasise that tools are useful but they should be used **to assist** professional staff with their work with children and young people and should not replace professional judgement in the particular circumstances of a case. The reality is that every child, their family and situation is different and it has yet to be proved that every variable can be accommodated in a tool. Years of study and experience should not be ignored.

*Q.9 Should the department have access to an alternative response to notifications other than an investigation and assessment? If so, what should the alternatives be?*

The department should have access to a range of responses so that it is able to respond in a manner which is likely to be the most beneficial and least intrusive (and therefore the most cost efficient) for the child and their family. There can be no “one size fits all” response because every child, family and situation will be different.

## **Chapter 5: Working with children in care**

*Q.11 Should the Child Protection Act be amended to include new provisions prescribing the services to be provided to a family by the chief executive before moving to longer term placement alternatives?*

Prescribing such things in legislation is always highly undesirable due to the inflexibility which is then created. Since the services to be provided would depend on the particular needs of the child and their family, it would be difficult to do so in a way which would work for each situation. The only appropriate way is for the chief executive to have a general duty to ensure that all possible avenues have been attempted with the family, including the provision of relevant services and supports, and there is no viable alternative but to move to a longer term placement.

*Q.13 Should adoption or some more permanent placement option be more readily available to enhance placement stability for children in long term care?*

The use of adoption should be carefully considered due to the legal consequences on the child’s relationships. It is unclear how open adoption can work well in this situation. YAC recommends that further work should be undertaken to gain greater insights into the impact of adoption in such situations.

*Q.15. Would a separation of investigative teams from casework teams facilitate improvement in casework? If so, how can this separation be implemented in a cost effective way?*

It must be preferable to separate the two areas of work as it is difficult to see how an improvement in engagement with the family can be achieved if the family is unable to talk openly and honestly about its issues for fear this will then be used against them. It seems likely that better results could be achieved in working with the parents if the casework team was not directly associated with the investigation team which has the potential to reduce costs in the longer term – thus making it cost-effective.

*Q. 17 What alternative out-of-home care models could be considered for older children with complex and high needs?*

Young people in out-of-home care are among the most vulnerable people in our society. As such, this question requires a broader discussion in relation to out-of-home care.

The PeakCare submission noted *that an integrated range and mix of ‘care settings’ is required, with access to a particular setting determined on the basis of each child’s individual needs – recognising also that these needs may change over time and so the care setting will also need to adapt. The placement needs to be judged on the extent to which it can:*

- *accommodate the child within an environment where the living conditions and the persons responsible for their care have a demonstrated capacity to provide for their immediate and ongoing safety from harm*
- *meet the child's daily care requirements including the nurture, support and stimulation needed to enable their physical, intellectual, emotional, pro-social, cultural and spiritual growth*
- *provide the appropriate setting for the child's access to individualised needs-based services (such as medical, cultural, educational/ vocational, recreational, counselling and therapeutic services) coordinated through complementary and integral partnerships with other service providers.*

The type of out-of-home care placements and the number of placements available for children in Queensland are limited. This means that children are often simply put where there is an available place and not in line with their individual needs. Good pre-placement planning is essential if the child is to make the transition successfully and children need to be given comprehensive information about their placement. YAC recently represented a young woman who was removed from the placement she wanted to stay in with only an hour's notice. While it might not have been unreasonable that her placement be changed, the total lack of preparation for the move and discussion with the young woman made this move extremely stressful for her.

The following are critical to a successful care experience:

- the continuity and stability of care
- ongoing contact with parents, siblings and extended family and the quality of this contact
- having a choice about seeing family
- knowing why they are in care
- having the opportunity to maintain cultural connections
- consistent and continuing engagement in schools and friendships
- consistent and continuing engagement with known and trusted workers
- feeling safe, respected, listened to and believed, and
- being involved in decision-making about their care.<sup>2</sup>

In its previous submission, YAC drew attention to the criminalisation of young people in care, particularly residential care settings, where police are called to address behavioural issues which would usually be dealt with by families if the child was at home, irrespective of whether the child had technically broken the criminal law. YAC is concerned that workers in residential settings appear to have a limited understanding of the legal consequences of involving young people in the criminal justice system: some even seem to view the system simply as another behaviour modification tool in the same way as sending the young person to their room for time out.

The Discussion Paper does not address this practice. For those young people whose behaviour may be of concern, this clearly needs to be addressed through the appropriate professionals engaging and working with them within a well-developed case management plan. The list of behaviours on page 133 includes:

- self-injury or attempting suicide
- running away with prolonged absences
- having developmental delay or a disability that impacts on daily living and self-care
- needing medical or physical care.

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<sup>2</sup> PeakCare: Refer to Hannon, C, Wood, C. & Bazalgette, L. (2010) In Loc Parentis. Demos. U.K. Downloaded from UK.  
[http://www.demos.co.uk/file/In Loco Parentis - web.pdf?1277484312](http://www.demos.co.uk/file/In%20Loco%20Parentis%20-%20web.pdf?1277484312)

It is unclear how the “outcomes of these behaviours” could potentially place members of the public at risk” and why these behaviours would require the police to be called (except to advise a young person as a missing person at an appropriate time for the second dot point).

For those young people who are alleged to have assaulted staff or damaged property, YAC has not represented clients where this involved any danger to members of the public or neighbours.

*Residential support staff*

The role of a residential support worker can be extremely challenging and places workers in legal circumstances where they need to be fully aware of their own and their client’s legal rights and responsibilities regarding: confidentiality; negligence; police powers; criminal law; family law and the child protection system. It has been YAC’s experience in providing training to these workers over the past 20 years that many experienced workers in this field lack an adequate understanding of these issues.

One of the crucial factors determining a young person in care’s trajectory is the quality of support that they receive by their residential care workers and this in turn must be affected by the quality of education and training that is provided to these residential care workers. A recent online check of job advertisements on the qualifications required to gain a position as a residential care worker by registered care providers is shown in the table below. Whilst not making any comment on the quality of the care provided by these services, it is clear that it is possible to have as little as **an interest in** gaining qualifications or experience in the child protection/human services sector to be in the position of responsibility to provide care for young people in care with highly complex needs. More commonly a Certificate IV in youth work/social work appears to be a standard minimum requirement.

Qualifications required to gain residential care worker role
<ul style="list-style-type: none"> <li>• Cert IV qualifications or higher in Community Services or equivalent</li> <li>• a current Queensland open driver’s license and have a reliable vehicle</li> </ul>
<ul style="list-style-type: none"> <li>• Qualifications within the youth work, social work, psychology or behavioural sciences areas are required (minimum Certificate IV qualification); <b>and / or</b></li> <li>• Relevant prior experience within the field.<sup>3</sup></li> </ul>
<ul style="list-style-type: none"> <li>• Relevant qualifications within the youth work, specifically working with young children including, social work, psychology or behavioural sciences qualifications (minimum Certificate III in Youth Work or similar required) <b>and or;</b></li> <li>• Relevant experience and skills in working with young people with complex needs, and / or experience working in the welfare/community service sector.</li> <li>• A strong understanding of child protection and out-of-home care.</li> <li>• A commitment to therapeutic engagement and practice.</li> </ul>
<ul style="list-style-type: none"> <li>• qualifications in the Behavioural or Social Sciences <b>or be studying towards these qualifications</b></li> <li>• have an understanding of the needs of children in care,</li> <li>• the ability to create an environment which nurtures, stimulates and encourages the development of young people.</li> <li>• excellent verbal and written communication skills,</li> </ul>
<ul style="list-style-type: none"> <li>• qualifications and/or experience, <b>or interest in obtaining such,</b> in the child protection/human services sector would be beneficial</li> </ul>
<ul style="list-style-type: none"> <li>• Have previous experience managing complex and challenging behaviours</li> <li>• Be able to work autonomously</li> <li>• Display strong professional boundaries</li> <li>• Organise, facilitate and participate in recreational activities</li> <li>• Qualifications in <b>youth work, community services or similar (desirable)</b></li> </ul>

<sup>3</sup> <http://www.seek.com.au/Job/residential-care-worker/in/brisbane-brisbane/23913802> Accessed 01/03/13.



- Relevant Human Services qualifications **and/or proven experience in a similar role working with children and young people**
- Demonstrated working knowledge of the Disability Service and Child Protection Acts
- Knowledge and ability to engage and effectively support children and young people with a disability
- Experience working within a Trauma Informed framework (Therapeutic Crisis Intervention training highly regarded)
- Knowledge of issues faced by young people living in Out-of-home Care
- Demonstrated understanding of the nature of Out-of-home Care and the requirement to provide intensive support for young people

YAC would consider that *experience* is not sufficient if it has not been recognised through some form of Recognised Prior Learning process and that *being in the process of studying* is also not sufficient. It should also be highly desirable that people have experience of working with young people **as well as** an appropriate level of qualification so that people have both the theoretical underpinnings and a reasonable amount of practical experience. In the absence of the latter, supervision both in terms of experienced line managers as well as external supervision with a mentor, would be critical.

### **Secure Care or containment**

YAC is concerned about the notion of secure care once again being raised following the experience with Care and Control Orders (CCO) which were available under the *Children's Services Act 1965* (the CS Act), the predecessor to the *Youth Justice Act 1992* and *Child Protection Act 1999*. When seeking to detain a young person with or without out the prerequisite of a criminal charge or conviction, Australia's international commitments must be taken into account which clearly discourage the use of detention.

### United Nations Conventions on the Rights of a Child (UNCROc)

**Article 3(1)** requires that the **best interests of the child are the primary consideration** in all actions concerning children.

**Articles 37** states that:

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

### The Rules for the Protection of Juveniles Deprived of their Liberty

#### **Rule 2**

Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules). **Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases.**

#### **Rule 3**

The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, **with a view to counteracting the detrimental effects of all types of detention** and to fostering integration in society.

The Standard Minimum Rules for the Administration of Juvenile Justice

**Rule 17.1**

- (c) restrictions on the personal liberty of a child shall be imposed **only after careful consideration** and shall be **limited to the possible minimum**, and
- (d) the deprivation of a child's liberty **shall not be imposed unless the child is adjudicated of a serious act involving violence against another person or due to their persistence in committing other serious offences and there is no other appropriate response.**

**Rule 19.1**

The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Care and Control Orders were directed to the behaviour of the individual child. Section 60 of the CS Act stated that a child could be placed under the care and control of the Director of the Children's Services Department if:

- the child is falling or is likely to fall into a life of vice or crime or addiction to drugs;
- the child is exposed to moral danger;
- the child is or appears to be uncontrollable.

A child could be committed to this order through a court application by: an officer of the department authorised by the director; a police officer; or a parent or guardian. The child could also be held in custody pending the hearing of the application. These children were generally referred to as "status offenders".

YAC staff provided a duty lawyer service to the then Sir Leslie Wilson Detention Centre at Windsor on a weekly basis. It was usual to see at least one or two young people being held on applications for CCO, in particular, young women for being "uncontrollable" by running away from home or their placement. No-one ever seemed to ask "why" they were running away before making the application. It was usually related to some form of sexual abuse or violence or inability to live with the new partner of a parent. Care and control orders in this regard lasted until the child was 18 – although an application could not be brought in relation to a 17 year.

In relation to criminal matters, care and control orders were used as a sentencing option. Children could be sentenced to care and control for up to two years with a recommendation that they be placed in detention for a certain period. This was a recommendation only and it was at the discretion of the Department to implement – which it generally did – and could be for the recommended period or otherwise.

In either case, the young person could be returned to the detention centre at the whim of a departmental officer with no judicial oversight.

YAC would agree with the Director-General of the Department, Ms Allison, who has expressed strong reservations about returning to practices where there is a "blurring between what we now call youth detention centres and secure care facilities".

If a young person is exhibiting behaviours which put them immediately at risk of serious self-harm, then they should meet the criteria under the Mental Health Act. If they are acting in a way which puts others at imminent and serious risk of injury, then, in this case, there may be no alternative but to call the police. In both scenarios there are established mechanisms which enable a review in relation to being detained. It is not clear what other situations would justify a young person being

detained. Some young people in care are already inappropriately detained by being remanded in custody for lengthy periods because of out-of-home care placements not being available to them.

Ms Allison also made reference to the “paucity of mental health services for young adolescents ..... great deal of difficulty of getting access to mental health services for adolescents manifesting extreme behaviours”. Rather than create new secure care centres, the focus should be on providing youth appropriate mental health resources which are woefully inadequate.

It is unclear how effective **therapeutic** work to address “trauma and associated self-destructive behaviours” can be when a person is locked up and effectively forced to participate, for the same reasons that compulsory counselling is generally considered self-defeating. The Commission should seek data on the short and longer term outcomes for young people detained in secure care in other jurisdictions before any further consideration of this very intrusive proposal.

There would be additional concerns where the young person was of Aboriginal or Torres Strait Islander or of a culturally and linguistically diverse background.

It seems unlikely that young people will view being detained in secure care as anything other than youth detention. Research tells us that detention increases the risk of offending behaviour and further detention as a young person and as an adult. Secure care may contribute to this and therefore will undermine rather than support addressing the behaviour.

It would be important to understand what the consequences would be if a young person did not participate in any therapeutic intervention. Would this mean that they would be held in secure care until they did so?

It would also be important to know what the consequences for a young person would be if they absconded from secure care. It is to be hoped that it would not be an offence. However, if police then have the ability to pick them up, this places the young person at risk of a negative interaction with the police which would likely lead to being charged with the all too common obstruct police and public nuisance offences.

It is noted that other Australian jurisdictions have introduced some form of secure care but this does not of itself imply that it is appropriate or desirable. However, South Australia has rejected taking this course on the advice of its Guardian for Children and Young People. Interestingly, PeakCare advises that an analysis of Victorian data has found that female children are more likely to be both admitted and re-admitted to secure care than males – which mirrors Queensland’s experience under CCO.

Of equal concern is the suggestion of re-introducing “cost effective” “large scale campus based residential care facilities”. It might be cheaper to provide the services in this way in the short term, but the potential for greater costs in the longer term is something which must be investigated. These types of institutions were dismantled in Australia and New Zealand for good reason.

## **Chapter 6: Young people leaving care**

*Q. 18 To what extent should young people continue to be provided with support on leaving the care system?*

YAC would support CREATE’s submissions to the Commission in relation to young people leaving care. For them to have the best in terms of wellbeing and life opportunities then they need the same support as any other young person transitioning to adulthood.

YAC made the following recommendations in its previous submission:

- Transition to Independence should commence at 15 and be ongoing until the young person reaches 21 (unless the young person does not require it for that length of time) and incorporate preparation, transition and after care stages that ensure young people actively participate and make decisions in their transition to independence process.

- The transition plan should be an ongoing process that is integrated into every young person's individualised case plan.
- The transition plan must be flexible as it needs to adapt and change to meet the young person's needs and interests as they develop and mature.
- Linkages with support/community agencies must be incorporated in all stages of the planning and transition process to ensure a young person establishes and maintains community connections/connectedness
- The young person must be given a copy of their transition plan when it commences and further copies of it as it develops over time.
- Young people should be able to access an advocate to assist their effective participation in the transition planning and process where they want it.
- A mentoring system for people and families to be available to advise and support young people, to commence once they turn 17, to further assist their integration into the broader community.
- The state must give priority to young people who are leaving care for public and social housing.
- Safe and appropriate accommodation must be a key component of transition to independence planning.

#### **Chapter 8: Workforce development**

*Q. 26 Should child safety officers be required to hold tertiary qualifications in social work, psychology or human services?*

Child Safety Officers should be required to hold social work qualifications. Where staff have limited post qualification experience, again supervision both in terms of experienced line managers as well as external supervision with a mentor, would be critical. It is not fair on either the young people and their families or the workers themselves to put them into challenging and complex situations to which they cannot respond adequately. Contrary to the way the system works, the best qualified people are needed out in the community, not the least experienced.

The success of a child protection system in meeting its aims is highly dependent upon the quality of its workforce with a mix of qualifications, personal attributes, training, skills and experience matched to the demands and responsibilities of the various roles that are to be performed.

#### **Chapter 9: Oversight and complaints mechanisms**

*Q. 34 Are the external oversight mechanisms – community visitors, the Commission for Children and Young People and Child Guardian, the child death review process and the Ombudsman – operating effectively? If not, what changes would be appropriate?*

Oversight of the child protection system is important because of the risks to children and young people which can occur – as history has shown. Putting a best practice child protection system in place, including preventing people coming into the system through early intervention and prevention (primary and secondary services), would reduce the risks and potential for complaint – and be the more cost effective than having to deal with matters when they have gone wrong.

##### *Effectiveness of Oversight Mechanisms*

YAC acknowledges the key role that the Commission for Children, Young People and the Child Guardian plays currently in the oversight process and protection of children in care. The Community Visitors program, in requiring all children in care to be visited on a regular basis, and the use of unannounced visits, is a significant mechanism, particularly if the Visitor is able to establish a relationship with each young person, providing the young person with someone outside of the care system to turn to if they need to register a complaint and to be their advocate.

YAC notes that concern has been expressed, such as in the USA and UK, about the long term effectiveness of the home visit approach and it would be important to monitor for this in Queensland.

#### *Transparency*

YAC agrees that there has been some increase in transparency in terms of how complaints can be made by young people in out-of-home care, as well as the processes that the complaints will follow. However, we agree with the submissions by the Queensland Law Society that many of the departmental processes and procedures remain inaccessible outside of the department. It recommended that for greater transparency and public confidence, the policies and procedures of the Department that relate to children in care should be readily available.

#### *Role of the Ombudsman*

The Discussion Paper indicates that the Department had the following process for dealing with complaints regarding child safety:

1. The complainant makes initial contact with the complainants officer at the local child safety services centre and where possible the complainant is managed locally,
2. If the complaint is not resolved, or it is not possible for the complaint to be managed locally, it is escalated to the Child Safety Central Complaints Unit;
3. If the complainant is not satisfied with the way that their concerns have been managed, the complainant may seek internal or external review by the Queensland Ombudsman.

It is probably correct that, due to the implementation of the Community Visitors program, and also the Views survey, any issues that young people have will be brought to the attention of the local Child Safety Services Centre or the Child Safety Central Complaints Unit. However, YAC is unaware of any mechanism whereby young people in care are made aware of their rights to seek internal or external review from the Ombudsman regarding their complaint and or a mechanism to assist them to do this. The Commission and Community Visitors may be able to assist in this regard.

### **Chapter 10: Courts and tribunals**

*Q.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?*

YAC would support a judicially-led case management process for reasons of consistency and so that people do not have to constantly be involved in a re-telling of their issues every time they go to court. The parties may be more confident in the process and the outcome if they can see one person has heard and understood all of the issues.

*Q 38. Should the number of dedicated specialist Childrens Court magistrates be increased? If so, where should they be located?*

YAC supports the views expressed by the Queensland Law Society (QLS) that specialist knowledge is required when making decisions in relation to young people, in relation to both child protection and youth justice. It notes that a specialist magistracy was recommended some 15 years ago by the Australian Law Reform Commission, noting that "all major population centres should have their own specialist ...children's magistrates, while in more remote areas specialist magistrates should operate on circuit."<sup>4</sup>

If it is not possible in the short term to do this, at the very least magistrates should be required to undertake specifically tailored training which will ensure a minimum level of competency across the profession. In larger centres, one magistrate could be given responsibility for the children's court list.

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<sup>4</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (ALRC Report 84)

*Q. 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?*

The Magistrate is able to appoint a person with “special knowledge or skill” to assist the court under s 107 of the Child Protection Act. The resources should be available to a Magistrate to do this when she thinks this would be appropriate. The type of expert will depend on the particular circumstances and issues involved in a matter, but is likely to be someone with knowledge of child development, , particular disorders such as Autism Spectrum, a psychologist or psychiatrist, etc. There should be no prescriptive list, bearing in mind that the Act also provides that the court is not bound by the rules of evidence and can inform itself in any way it sees as appropriate (s 105).

*Q. 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?*

YAC agrees that there should be a provision similar to that in the Youth Justice Act s186 which would allow a magistrate on their own volition, or on the motion of a party, to refer to a Children’s Court Judge a matter of particular complexity or where there are any concerns about a long term guardianship order.

*Q. 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?*

Family Group Meetings need to be more child and family friendly with the emphasis on cooperation wherever possible and eliminating an “adversarial” approach. There should be a full and frank exchange of information and views, with the Department being required to bring all relevant material to the discussion. The Department is in a position of power and the power imbalance needs to be ameliorated by ensuring that the meeting is not dominated either by numbers or by process by departmental staff. Information provided should be in plain English and jargon free – as should the resulting case plan so that everyone can understand, participate and be clear about decisions made. Critically, where the child is able to participate and wishes to, the meeting must provide appropriate time and support to allow the child to do so.

*Q. 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?*

Both QLS and LAQ have commented on the lack of clarity and detail around conferences in terms of purpose and conduct and this should be addressed.

Conferences must be facilitated by people with expertise and specialist training in relation to child protection matters. QLS and LAQ have identified that the qualifications for the chair of a conference is somewhat less than required in alternative dispute resolution processes and in light of the complexity and sensitivity of the issues under discussion, this should also be addressed.

The question refers to “settlement”. The Act currently does not allow for resolution of matters by consent as such as the court can only make a child protection order once it is satisfied in relation to a number of criteria in accordance with s 59 Child Protection Act, including the threshold issue that *the child is a child in need of protection and the order is appropriate and desirable for the child’s protection*. If the chairperson was sufficiently qualified, the Act could provide for a consent order, helping to minimise the adversarial environment, the chair could sign off that all the criteria are met and the court could then simply confirm the order unless the judicial officer has concerns and requires the matter to come back to the court.

As also noted by LAQ and QLS, a proper and timely process for disclosure of documents in a case management system could support the effectiveness of the conference.

*Q. 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 proceedings?*

QCAT is not a particularly child or family friendly jurisdiction. The Child Protection Act provides that the panel members must have a demonstrated knowledge of and experience in one or more of the fields of administrative review, child care, child protection, child welfare, community services, education, health, indigenous affairs, law, psychology or social work. Since one of the members must be legally qualified, YAC submits that the other member, if only two are sitting, should have child protection, child welfare or social work experience. If there are three, then one of the other two should have this background.

YAC noted its concerns in its previous submission that young people are not receiving appropriate information about their right of review and/or that they find the QCAT process too daunting – hence the very few review applications being brought by young people. We recommended:

- Child Safety Services ensure that young people are advised about decisions and review rights and that these actions are properly recorded;
- When Child Safety Services staff provide this advice, they also provide information to young people about who they can talk to about, and/or get help with an application to review, decisions they are unhappy with.

*Q. 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?*

YAC agrees with the QLS and LAQ submissions that where there are proceedings already on foot in the Childrens Court that it should deal with review applications in relation to placement and contact rather than QCAT.

*Q. 45 What other changes do you think are needed to improve the effectiveness of the court and tribunal processes in child protection matters?*

- As noted above, the roles of caseworker and investigator/applicant should be split to provide the therapeutic aspect the best chance of success.
- Child safety officers are not lawyers yet they are operating within a legal system and process. It would be preferable for the Child Safety agency to have a legal unit which manages the applications and legal documentation and processes. This would align with the point above, be a more appropriate use of staff skills and ensure that the department complies with Model Litigant principles.
- The Commission should give consideration to the Less Adversarial Trial Model, noting that it would require some adaptation to the child protection jurisdiction but that the concept is sound.
- The Commission should consider the ability of children and young people themselves to seek a review of a decision under s. 14 (1) Child Protection Act: investigation and assessment or any other action taken by the Department regarding investigation of alleged harm.

## **Chapter 11: Funding for the child protection system**

*Q. 46 Where in the child protection system can savings or efficiencies be identified?*

In designing the “road map” for the next 10 years for child protection it must be understood that, despite the fiscal constraints being imposed by government, this is not an area where savings will necessarily be found. Where inefficiencies may be identified which may “free up” some monies, this will need to be re-invested back into the system – for example, investing more heavily in the early intervention and prevention space, both at the primary and secondary level. This could include

investing in other portfolios such as Health and Education in the early years in particular. Only in this way will real savings be made in due course to the benefit of all concerned.

A review should be undertaken into the cost-efficiency and effectiveness of suitability / personal history checks and 'Working with Children' checks in preventing harm to children. This mechanism takes significant time and resources and it may be that some savings could be made.

The current system has many anomalies. On the one hand, if a person under 18 is taken on as an apprentice, the adults with whom they are working are not required to have a "blue card". On the other hand, a young person who turns 18 years has to obtain a 'blue card' if they stay on with their foster or kinship carer and that carer has children placed in their care.

### **Matters not dealt with in the Discussion Paper**

#### **Other matters**

YAC submits that the following matters raised in its first submission remain to be addressed by the Commission:

#### *Charter of Rights*

The Charter of Rights is not actively promoted to children and young people.

- Section 74 of the CP Act should be strengthened to require that young people are regularly reminded about the Charter of Rights and that workers must ensure that the young person understands what it means and they record when they have done this;
- Child Safety Services must produce copies of the Charter in a suite of formats which address differing levels of maturity, understanding and disability: for example, in similar ways to those which other agencies produce in relation to the Convention on the Rights of the Child.

#### *Child Protection and Youth Justice interface*

Mr Steven Armitage in his statement to this Commission of Commission noted that 69% of young people in the youth justice system as at June 2011 were known to child protection system.

- Queensland Police Service and Child Safety Services must ensure that the legislative requirement for "prompt" notification in relation to commencement of criminal proceedings for a young person is adhered to;
- Child Safety Services staff must have sufficient and appropriate knowledge and training about how they can and should properly support young people who come into conflict with the youth justice system, including how to assist them to obtain legal advice;
- Youth Detention Centres must have a Child Safety Officer on staff who can liaise as required with young people's Child Safety workers;
- For those young people in care and in prison (those aged 17), Child Safety Services must ensure that there is an officer with responsibility to see these young people on a regular basis and liaise as required with their Child Safety workers.
- Child Safety Services must take action in relation to those young people who are unnecessarily remanded in custody for lengthy periods because of out-of-home care placements not being available to them.

#### *Child Protection and Education interface*

Children in care tend to have lower educational achievement than children not in care and this impacts on their employment prospects and work outcomes. They also tend to be overrepresented in exclusion and suspension processes. It is critical that Child Safety Services ensure young people are provided with advice and support in relation to these processes and assisted to re-engage with education.