

# **Queensland Child Protection Commission of Inquiry: options for reform**

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Queensland Child Protection Commission of Inquiry  
GPO Box 2360  
Brisbane Qld 4001  
Tel: 1300 505 903  
Fax: 07 3405 9780  
Email: [info@childprotectioninquiry.qld.gov.au](mailto:info@childprotectioninquiry.qld.gov.au)  
[www.childprotectioninquiry.qld.gov.au](http://www.childprotectioninquiry.qld.gov.au)

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# Abbreviations

ADR	Alternative Dispute Resolution
AFDM	Aboriginal Family Decision Making
ALRC	Australian Law Reform Commission
CCQ	Childrens Court of Queensland
CMC	Crime and Misconduct Commission
COC	Court ordered conference
CYWR	Cape York Welfare Reform Trial
DCCSDS	Department of Communities, Child Safety and Disability Services
DCP	Department of Child Protection
ESP	Education Support Plan
EVOLVE	Evolve Interagency Services
FRC	Family Responsibilities Commission
HCNU	High and Complex Needs Unit
HoF	Helping out Families
IMG	Interagency Management Group
LAC	Looked After Children
LAWA	Legal Aid Western Australia
NAPLAN	National Assessment Program – Literacy and Numeracy
NGO	Non-government organisation
PICC	Palm Island Community Company
PLO	Public Law Outline
QATSICPP	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
QCAT	Queensland Civil and Administrative Tribunal
RAI	Referral for Active Intervention
SCAN	Suspected Child
SDM	Structured Decision Making
UK	United Kingdom
US	United States
VACCA	Victorian Aboriginal Child Care Agency

## Glossary

Aboriginal and Torres Strait Islander child placement principle	Requires that an Aboriginal and Torres Strait Islander child who is to be placed in out-of-home care be placed – in order of preference – with a: (a) member of his or her family; (b) member of his or her community who has a relationship of responsibility for the child; (c) member of the child’s community; (d) person with the same Aboriginal and Torres Strait Islander cultural background as the child; or (e) non-Aboriginal or Torres Strait Islander person who is able to ensure that the child maintains significant contact with his or her family, community, or communities.
Case planning	A participative process of planning strategies to address a child's protection and care needs and promote a child's well-being. It is made up of a cycle of assessment, planning, implementation and review.
Disclosure regime	A process that ensures full and frank disclosure of all relevant material relied on by the department in making its decision to the other parties in court proceedings. This can include original case file documents, risk assessments, statements and expert reports.
Intake	Child protection concern reports are received, most commonly by telephone, and intake workers determine whether the reported concern falls within the mandated area of the statutory child protection service. The notification details are recorded, the client’s prior history with child protection is checked, and follow-up phone calls may be conducted (for example, to the school). Following the preliminary investigation, the intake worker conducts an initial risk assessment based on the information available to them. On the basis of this assessment, the intake worker determines whether the report warrants further investigation to establish whether the child has been harmed or is at risk of being harmed. Those cases requiring further investigation are referred to the second phase of statutory child protection (investigation).
Non-government organisation	A recognised organisation or organised body with an active operation in the child and family welfare sector. Non-government organisations may be funded solely or in part by government (Australian and/or state/territory). Generally families are voluntarily involved with non-government services rather than mandated to attend such services. Non-government organisations are also referred to as NGOs, non-government agencies or voluntary services.
Out-of-home care	The term out-of-home care refers to the placement of children in alternative care in circumstances where they are unable to live with their parent(s) or primary carer(s). An out-of-home care placement can encompass a placement with kin (i.e., kinship care), or in other home-based care settings (e.g., foster care), as well as residential-based care arrangements. Although there are provisions for children to be placed in out-of-home care voluntarily with the consent of parents (e.g., for respite), most children in out-of-home care are placed according to an Order made by the relevant court.
Secondary services	Secondary interventions target families who are ‘at risk’ for child maltreatment. Where families are at risk for child maltreatment (due to the presence of one or more risk factors for child maltreatment), secondary approaches prioritise early intervention. Secondary interventions generally involve early screening to detect children who are most at risk, followed by a combination of interventions (for example, home visiting, parent education, and skills training) to address the risk factors for child maltreatment.

Statutory child protection services	The phrase ‘statutory child protection services’ refers to statutory agencies/departments (i.e., departments established by parliament) charged with the responsibility of securing the safety and welfare of children. Such services/departments are designed to intervene to protect children where children have been harmed or are at risk of harm. Statutory agencies possess a legal mandate for such intervention, which is prescribed in relevant legislation.
Tertiary services	Tertiary interventions target families in which child maltreatment has already occurred (e.g., statutory child protection services). Tertiary interventions seek to reduce the long-term implications of maltreatment and to prevent maltreatment recurring. Given that tertiary interventions operate once child maltreatment has occurred or is believed to have occurred, they have been assessed as reactive and ‘after-the-fact’ approaches.
Universal (or primary) services	Universal (or primary) interventions are strategies that target whole communities in order to build public resources and attend to the factors that contribute to the occurrence of child maltreatment.

# Introduction

This paper follows the online publication by the Queensland Child Protection Commission of Inquiry of an issues paper in September 2012 and discusses some alternative approaches to a series of specific child protection topics dealt with in that paper. The intention behind this paper is to describe the current Queensland approach to various child protection practices and to look at how they have been addressed in other jurisdictions in Australia and overseas.

The Child Protection Commission of Inquiry was established to review the effectiveness of the current child protection system in Queensland (the terms of reference for the Commission are outlined in Appendix 1).

The work of the Commission has been informed by:

- submissions received to date from individuals and organisations about their experiences with the child protection system
- public hearings convened throughout Queensland to seek information from individuals and organisations who have knowledge about the child protection system
- information and documentation requested from key government agencies
- the academic literature on child protection.

The six focal issues selected for consideration below are:

- investment in intake and secondary intervention services
- increasing Aboriginal and Torres Strait Islander self-determination
- decision-making models
- effective coordination of services
- court models
- adoption as one response to permanency planning.

The questions posed in this paper have been developed to assist individuals and organisations who wish to make a submission to the Commission. Information about how to lodge an online submission can be found on the Commission's website, [www.childprotectioninquiry.qld.gov.au](http://www.childprotectioninquiry.qld.gov.au).

A discussion paper, scheduled for release in December 2012, will provide more detail about reform options for Queensland. There will be an opportunity to provide comment on the Commission's vision for child protection in Queensland following the release of the discussion paper.

## 1 Investment in intake and secondary intervention services

One of the issues identified in the Commission's *Emerging issues* paper (Queensland Commission of Inquiry into the Child Protection System 2012), and a consistent theme arising in hearings and submissions made to the Commission, is the need for increased investment in services that target vulnerable families to prevent the abuse and neglect of children. While there has been no suggestion during the course of the Commission's work that tertiary responses should not be provided by the state to protect children, it has been claimed that Queensland does not fund or utilise secondary services adequately.

The extent to which the state invests in secondary services can be seen as a reflection of a number of elements, including the socio-political orientation of the state, the relationship it has with its citizens, and the position it takes in relation to the rights and responsibilities of individuals within the state (Gilbert et al 2011). Australia's states and territories historically operate within a 'child safety' orientation towards child maltreatment, where the state takes a forensic, investigative and legal approach to child protection. This has led to a possible over-reliance on removing children where harm has occurred, or where children are at risk of harm, and responding to parents using a legal and adversarial approach. An alternative approach, most evident in the Scandinavian

countries (Finland, Denmark and Sweden), is the 'family service' focus on the issue of child maltreatment, where the state seeks to strengthen families and takes a more therapeutic approach to ensuring children are safe within families. This orientation has led to an emphasis on assessment of family circumstances and providing services to parents and families to respond to identified needs rather than assessed risks or harms.

The Commission has heard there is a need in Queensland to strike a balance between these rival perspectives to ensure children and families have access to early help when needed most, to prevent their avoidable entry into the statutory child protection arena and to reduce the growing number of notifications to a tertiary system under increasing pressure of demand for services.

### **Secondary investment in Sweden**

Sweden, which is a high-taxing nation, has in place a generous tax-funded social welfare framework. Welfare services begin before a child is born, with prenatal health checks, parental education and access to pregnancy termination (Cocoza & Hort 2011). Once a child has been born 80 per cent of a person's salary is delivered to the primary parent (usually the mother) generally over the first 12 months of life, with a further three months maternity payment available to parents at a lower rate as the Swedish parents' allowance. Children aged 15 months to six years are entitled to guaranteed childcare, provided by local municipalities under law (Andersson 2006).

Support for children and families in Sweden is localised, with each municipality responsible for providing activities and programs to support children and families. The types of local programs offered include groups for young parents or single mothers, group activities for children who have parents misusing drugs or alcohol, programs for young people to prevent their involvement in drugs, alcohol or criminal activity, social workers who might be responsible for contact with particular families, and psychiatric treatment for children or families (Andersson 2006).

An example of the organisation of social welfare in one particular district – the district of Rosengård, which services a population of 21,000 people – is provided by Gunvor Andersson (2006). The social services office in Rosengård, staffed by administrative social workers, comprises a central point of initial contact for any person seeking social assistance, reporting suspected child abuse or neglect, or seeking financial support. The social workers staffing this central office are responsible for undertaking preliminary professional assessment of the presenting issues, including an evaluation of home conditions. They can implement care orders, which are determined by the regional court, and refer children and families requiring additional support to the child and family centre. The child and family centre is staffed by a team of 18 social workers divided into three teams:

- the community work team - this team works at a broader community level, for example, with local schools to deliver programs in classrooms targeted at particular children, or with the local police to investigate and respond to juvenile offending
- the recruitment of carers team - this team is responsible for identifying foster carers and contact persons/families (described below in more detail), assessing them for suitability and administering the contract and associated remuneration
- the guidance and support team - this team provides therapeutic services to individual children and young people and their families in a variety of ways, including home visits, intervening in conflicts between parents and foster families and supporting young people living independently.

One statutory program provided in Sweden that is worth particular attention is the contact person/family service for children and families (Andersson 2006). This program is open to any child or family on a voluntary, self-referred basis, but also takes referrals from social services. It operates essentially to provide respite to parents and a form of mentorship for young people. A contact family can have a visiting child stay with them regularly overnight, over weekends, when there are problems at home, or when there is a need for temporary accommodation. The host family involves the child in family life for those periods when they are visiting, and this flexible and



temporary arrangement can be in place for several years or more. The contact person program is intended for older children and young people and involves the adult volunteer working collaboratively with parents. Contact people typically have daily contact with the young person to assist with homework, discuss problems, provide assistance with independent living, or simply to provide companionship.

Contact families and people are generally volunteers who have no special training, but who have the time, resources and personal civic interest in providing assistance to families and children in need. State social services oversee the program, approve individuals and families who participate in the program, pay and supervise volunteers and review each contact person/family every six months. A court may also appoint a contact person from social services to provide this program where it is determined there is a need for an individual or family to have access to it. While there is legislation in place to require a young person to submit to the contact person program, this is rarely used. The contact person/family program is used very flexibly and with few administrative constraints (Andersson 2006).

While there are reportedly quite high levels of satisfaction by those participating in the program, there has unfortunately been little research or evaluation undertaken to determine whether there are therapeutic benefits and overall cost savings arising from the service (Andersson 2006) as compared with longer-term child protection order alternatives. The need for research and evaluation in this area is a common theme.

### **Child FIRST and Integrated Family Services – Victoria**

The Child FIRST and Integrated Family Services initiatives, established in Victoria in July 2006, were created to deliver a number of outcomes, including to:

- enable a single point of intake for the reporting of concerns about children at risk of harm
- link vulnerable families into services at an earlier point, to avoid statutory intervention as the only pathway to help
- undertake assessment of the needs and risks (including, but not limited to protection) of families referred to the service and link them into services as required
- assist with the targeting and prioritisation of services to families.

Child FIRST is an integrated community-based intake point located in each sub-region of Victoria; there are 24 Child FIRST sites throughout the state (Department of Human Services 2008). Anyone wishing to raise a child care or protection concern can call Child FIRST, which is staffed by Family Service practitioners who make an initial assessment of the primary or immediate needs of the child or young person. Child FIRST may simply provide information and advice to a family as a result of the assessment, or may establish a plan for the best way of assisting the child and his or her family. Child FIRST will make any arrangements for a family services agency to provide relevant programs (e.g. family violence, mental health, or a universal service).

Child FIRST is teamed with the Child and Family Services Alliance. Together, these are an integrated way of delivering programs and services to children and their families in each location. Since its establishment in the 2006–07 financial year, state government investment in introducing this model of service delivery has totalled just over \$50 million (see table 1 below).

**Table 1: Funding for the establishment of Child FIRST and Integrated Family Services**

	2006–07	2007–08	2008–09	2009–10	TOTAL
<b>Integrated Family Services</b>					
Base total	5,225,000	7,493,000	10,530,000	10,530,000	33,778,000
Indexation total	0	187,575	533,014	809,891	1,530,480
Escalated total	5,225,000	7,680,575	11,063,014	11,339,891	35,308,480
<b>Community-based intake</b>					
Base total	1,607,000	3,120,000	4,836,000	4,836,000	14,399,000
Indexation total	0	78,000	244,466	371,809	694,275
Escalated total	1,607,000	3,198,000	5,080,466	5,207,809	15,093,275

Source: KPMG 2011

A 2011 evaluation of the service model (KPMG 2011) has shown a number of benefits, including:

- coordinated delivery of family services, including a much stronger alliance between mainstream services and the Aboriginal Community Controlled Organisations, which provide services specifically to Aboriginal and Torres Strait Islander families
- better interface between the community-based intake and Child Protection (the state-based tertiary response agency in Victoria)
- much stronger relationships between universal and secondary services for families
- increasing numbers of referrals from professionals – an indication that the visibility of services has improved as a result of the new model, and significantly more families are receiving services
- services provided to families earlier. The KPMG report comments that numbers of reports, investigations, interventions and orders has increased at a much slower rate in Victoria than they have in other jurisdictions over the same period.

### Proposed New Zealand reforms

The White Paper for Vulnerable Children, published in October 2012, outlines a range of child protection reforms the New Zealand Government intends to implement (New Zealand Government 2012). These reforms include:

- a central intake line called ‘Child Protect’ which will be staffed by professionals who will refer calls to the appropriate place for a response, including to appropriate universal and secondary services. The express intention behind this is to reduce the need for contact with the tertiary system and improve the access of children and their families to secondary services
- better information sharing between government and non-government agencies, in the form of a Vulnerable Kids Information System, so that all relevant information about a child and their family is known to any government or non-government allied service provider
- a public awareness campaign to improve knowledge among members of the public about child protection and how to report concerns about the safety of children and young people
- the development of a ‘risk predictor’ tool to assist professionals to identify children at risk
- the creation of a single multi-agency plan for every vulnerable child, which will be led and overseen by a supervising professional
- integrated services to children and their families via the new Children’s Team which will require professionals from across the health, education, justice and welfare sectors to work together to respond to the child.

### Questions for consideration

Clearly, increased emphasis on investment in secondary services has been a key recent theme in several jurisdictions across Australia and overseas, as a means of putting downward pressure on demand for tertiary responses while at the same time meeting the relevant support needs of vulnerable children and families. The Commission has heard a lot of concurrent evidence on this

issue and many submissions to the Inquiry have called for greater investment in earlier and less intrusive and coercive secondary intervention services. The Commission is exploring questions about how a stronger primary and secondary support system for children in families could be positioned within the state child welfare framework without withdrawing tertiary services, or at too great a cost. In particular:

- How do we best transition our current investment in tertiary interventions towards increased investment in secondary services, without putting the safety of children in jeopardy?
- Is there currently a broad enough range of services in Queensland to provide for an increase in referrals to the secondary service system?
- How do we facilitate the collaboration of government and non-government services at a local level to ensure a coordinated approach to helping families?
- How do we build the capacity of non-government organisations (NGOs) to enable them to play a more significant role in the process of intake, assessment and referral to appropriate services?

## 2 Increasing Aboriginal and Torres Strait Islander self-determination

The over-representation of Aboriginal and Torres Strait Islander children continues to be among the most pressing and demanding concerns facing Queensland's child protection system. Eight years after the Crime and Misconduct Commission highlighted a 'gross over-representation' of Aboriginal and Torres Strait Islander children in the child protection system, the rate of Aboriginal and Torres Strait Islander children entering out-of-home care has almost tripled (Crime and Misconduct Commission 2004, Australian Institute of Health and Welfare 2004, 2012).

Queensland's Aboriginal and Torres Strait Islander children are approximately six times more likely than other children to be subject to a child protection substantiation (Australian Institute of Health and Welfare 2012). They are also nine times more likely to be placed in out-of-home care. It has been estimated by the Department of Communities, Child Safety and Disability Services that more than one in every two Aboriginal and Torres Strait Islander children in Queensland will have been reported to Child Safety Services by 2012–13.<sup>1</sup>

Significant issues have also been raised about the services and care provided to Aboriginal and Torres Strait Islander children and families in the system. For example, almost half of the Aboriginal and Torres Strait Islander children in out-of-home care in Queensland are cared for by non-Aboriginal and Torres Strait Islander carers (Australian Institute of Health and Welfare 2012). This is contrary to the intentions of the Aboriginal and Torres Strait Islander Child Placement Principal established under the *Child Protection Act 1999*. It also risks disconnecting children from their culture and identity, to the detriment of their long-term wellbeing (Secretariat of National Aboriginal and Islander Child Care 2008).

It has been put to the Commission that Aboriginal and Torres Strait Islander communities and Aboriginal and Torres Strait Islander-controlled agencies be given greater responsibility to deliver child protection services for Aboriginal and Torres Strait Islander children.<sup>2</sup> This includes the delivery of early intervention services and the performance of some statutory functions. It is argued that doing so may help to both reduce the over-representation of Aboriginal and Torres Strait Islander children and improve the quality of the services provided to them and their families. In his statement to the Commission, William Hayward from the Aboriginal and Torres Strait Islander Legal Service states:

The statutory child protection system has systematically failed to consistently adhere to the unique cultural and legal rights of Aboriginal and Torres Strait Islander children and young people... I would argue that the legislated cultural and legal rights of Aboriginal and Torres Strait Islander children may be more appropriately delivered by the Aboriginal and Torres Strait Islander community and its agencies.<sup>2</sup>

While it has become commonplace for Australian states and territories to fund Aboriginal and Torres Strait Islander-controlled agencies to provide some child protection functions, the capacity of these agencies to have a meaningful influence on child protection policy or practice has been questioned (Tilbury 2009, Libesman 2008). Tilbury points out that for the most part these agencies represent a relatively minor part of the child protection system. They typically receive low level funding, they are small in number and in practice they have only limited decision-making powers. Libesman (2008) goes on to suggest that current arrangements tend to limit agencies to participating in established mainstream child protection processes. Aboriginal and Torres Strait Islander-controlled agencies are often given little scope to develop responses specifically designed to meet the cultural and other needs of Aboriginal and Torres Strait Islander people.

In 2011-12, the Department of Communities, Child Safety and Disability Services allocated a total of \$49 million in grants for the provision of Aboriginal and Torres Strait Islander-specific child protection services by NGOs. The department has advised that \$32.7 million of these funds were allocated to Aboriginal and Torres Strait Islander-controlled agencies (see table 2). These services comprised:<sup>3</sup>

- Family Support Services to deliver a range of intensive and practical in-home supports primarily to families at risk of entering the statutory system
- Family Intervention Services to work with families where ongoing intervention is required, to prevent children entering care or promote reunification where children have entered care
- Safe Houses to supply short and medium term supervised residential care for children at risk of harm in discrete Aboriginal and Torres Strait Islander communities
- Safe Havens to provide culturally appropriate, integrated services to respond to the safety needs of children and families affected by family violence
- Recognised Entities to participate in significant decisions made by the department about Aboriginal and Torres Strait Islander children including intake, investigation and assessment case planning and placement decisions
- foster and kinship care services to deliver carer recruitment, training, assessment and support functions
- residential care services that provide care specifically for Aboriginal and Torres Strait Islander children
- the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) as a peak body for Aboriginal and Torres Strait Islander child protection services.

**Table 2: Aboriginal and Torres Strait Islander-specific grant funding, Queensland, 2011-12**

	Total		Aboriginal and Torres Strait Islander-managed		Mainstream-managed	
	Services	Funding	Services	Funding	Services	Funding
Family Support Services	11	9,434,020	11	9,434,020	0	0
Family Intervention Services	7	2,089,360	6	1,897,161	1	192,199
Safe Houses	9	8,457,070	3	2180525	6	6276545
Safe Havens	3	2,097,585	1	747,381	2	1,350,204
Recognised Entities	11	9,619,219	11	9,619,219	0	0
Foster/ Kinship Care	11	4,856,960	11	4,856,960	0	0
QATSICPP	1	635,673	1	635,673	0	0
Residential care	8	6,600,448	0	0	8	6,600,448
Other services	18	5,205,121	12	3,348,754	6	1,856,367

Source: Statement of Bradley Swan, 31 August 2012 [Attachment 3] (Revised 12 September 2012)

Note: The department has provided revised figures showing that as at 31 July 2012, there were 10 Recognised Entities allocated funding of \$9,079,219 in the 2011-12 budget.

A variety of local, interstate and international initiatives could be considered as potential models for giving Aboriginal and Torres Strait Islander communities and agencies greater responsibility in child protection. Some of these initiatives are examined below. They include options for building the capacity and increasing the autonomy of Aboriginal and Torres Strait Islander agencies in policy setting, decision making and direct service delivery. They range from those that transfer full responsibility for child protection to local Aboriginal and Torres Strait Islander communities to those that retain all or most functions within the mainstream system.

### **Lakidjeka, the Victorian Aboriginal Child Care Agency (Victoria) and Protecting Aboriginal Children Together (NSW)**

The Victorian Aboriginal Child Care Agency (VACCA) is an Aboriginal, community-controlled organisation first established in 1977 to provide statewide, culturally sensitive child protection and family support services to Aboriginal communities (Higgins & Butler 2007). VACCA currently provides a range of early intervention services and statutory child protection functions. These include home visiting, family counselling, placement support, residential care and leaving care services (Victorian Aboriginal Child Care Agency 2007, 2010).

VACCA's Lakidjeka Aboriginal Child Specialist Advice Support Service provides specialist consultation and advice for Aboriginal and Torres Strait Islander children in the statutory system, from the point of notification to case closure. Child protection services are required to notify Lakidjeka of all notifications concerning Aboriginal and Torres Strait Islander children. The service must then be consulted before making any key decisions. Lakidjeka plays a key role in deciding whether significant risk is present and child protection involvement is required.

Lakidjeka case workers operate alongside mainstream child protection workers (Higgins & Butler 2007). Formal protocols and service agreements between Lakidjeka and the Victorian Department of Human Services authorise Lakidjeka workers to be consulted and involved in:

- determining whether investigations and protective orders are required
- joint home visits, case planning meetings and family group meetings
- locating appropriate placements for children within the Aboriginal community
- determining outcomes for children where there are allegations of abuse in care
- providing advocacy and support to families and facilitating families' involvement in decision-making processes
- providing advice to courts during court proceedings
- ongoing case planning, including the development of cultural plans
- making case closure decisions.

VACCA is governed by a board of seven directors elected by its membership. Only Aboriginal and Torres Strait Islander people are eligible to apply for membership to the agency and to apply to stand as directors. VACCA's services are funded under agreements with the Commonwealth Department of Families, Housing, Community Services and Aboriginal and Torres Strait Islander Affairs and the Victorian Department of Human Services (Victorian Aboriginal Child Care Agency 2010). In 2010-11, VACCA had a total income of \$14 million.

In 2008, the Wood Inquiry (Protecting Victoria's Vulnerable Children Inquiry 2012) recommended that the NSW Government develop a strategy to enable one or more Aboriginal and Torres Strait Islander agencies to take a role similar to the Lakidjeka service (Special Commission of Inquiry into the Child Protection System in NSW, 2008). In response, the NSW Government announced that it would partner with the Aboriginal Child, Family and Community Care State Secretariat to jointly plan and test two Protecting Aboriginal Children Together advisory services (Department of Premier and Cabinet 2011).

These services are currently being piloted in the Moree and Shellharbour regions and aim to:

- develop locally driven service models which empower and actively engage with the unique needs of Aboriginal and Torres Strait Islander families and their communities
- actively encourage consultation between relevant non-Indigenous and Aboriginal and Torres Strait Islander NGOs to form meaningful partnerships and enhance service capacity.

### **Family Group Conferences (New Zealand), Care Circles (NSW) and Aboriginal Family Decision Making (Victoria)**

Family Group Conferences were first legislated in New Zealand in 1989 with the aim of empowering families to take a significant role in resolving child protection concerns (Connolly 2006, Harris 2008).<sup>4</sup> Based partly on Maori and Pacific Islander family practices, conferences bring together immediate and extended family, children and professionals in a family-led decision-making process. The Family Group Conference is a three-stage process. The child protection concerns are first discussed, followed by private family time to consider the concerns. Finally, an agreement is sought about whether the child is in need of protection and a plan is developed to keep the child safe. The Family Group Conference is a central decision making process in the New Zealand child protection system, with decisions having the same status as those made by courts.

Most child protection systems in Australia have now adopted some form of family group conferencing – known in Queensland as the Family Group Meeting. However, the role played by conferences in Australian jurisdictions is substantively different to their role in New Zealand (Harris 2008). In particular, Australian models have generally not afforded conferencing the same level of decision-making power. In most jurisdictions, to be enforceable, decisions made during conferencing must be later endorsed by the child protection department or courts. Advocates of family group conferencing have recommended wider use of the New Zealand model of conferencing, with its enhanced decision making and enforcement powers, as a way of increasing the autonomy of Aboriginal and Torres Strait Islander communities in child protection decisions (Ban 2005).

Both NSW and Victoria have recently sought to increase the role of family conferencing in child protection decisions for Aboriginal and Torres Strait Islander children. In 2008, the NSW Attorney General's Department began piloting the use of Care Circles in the Nowra region (Best 2011). Care Circles aim to increase the participation of Aboriginal and Torres Strait Islander families and communities in child protection proceedings before the Children's Court. Care Circles may be convened at the discretion of a Magistrate once a decision has been made that a child is in need of protection (Department of Attorney-General and Justice 2011). The matters that may be considered by Care Circles include:

- what interim arrangement there should be for the care of the child
- what services and support can be made available to the family
- where the child should live
- what contact arrangements should be in place
- alternative family placements
- any other matters considered relevant to the child's care.

The membership of Circle includes a Magistrate, the Care Circle project officer, the child protection case worker and manager, the child's family and their legal representatives, and the child's legal representatives. Each Circle is also attended by three trained Aboriginal and Torres Strait Islander community representatives. Membership may also include extended family and professionals working with the family. Any of these parties can request the establishment of a Care Circle but Circles will only be convened where all parties agree to participate. Care Circles may provide input on a range of matters before the court but act in an advisory role only. Care Circles have no formal decision-making or enforcement powers. Any orders proposed by the Circles must be made by a different Magistrate to the one participating in the Circle.

Cultural and Aboriginal and Torres Strait Islander Research Centre Australia (2010) has prepared an evaluation report on the NSW program based on nine Care Circles conducted in the Nowra pilot. In their report, they conclude that the families involved in Care Circles felt the program provided opportunities for input that were not available in traditional court processes. It was also concluded that the Circles resulted in a greater level of satisfaction and acceptance of decisions made by the court. In response to the report's favourable conclusions, the NSW government expanded Care Circles to the Lismore region (Smith 2011).

In Victoria, Aboriginal Family Decision Making (AFDM) meetings, modelled partly on the New Zealand approach to family conferencing, have been a feature of the child protection system since 2002. AFDM was initially introduced under an agreement made between the Department of Human Services and the Rumbalara Aboriginal Co-operative (Harris 2008). This agreement allowed Aboriginal workers to play the primary role in coordinating family group conferencing for Aboriginal and Torres Strait Islander children and families. Following a positive review of the program in 2003, the role of AFDM was formalised in Victoria's *Children, Youth and Families Act 2005* (Vic). This small-scale review, involving 12 families, found a high level of acceptance of AFDM among meeting participants and suggested a reduced rate of re-notification to child protection services (Linqage International 2003).

AFDM is used where child safety concerns have been substantiated for an Aboriginal and Torres Strait Islander child subject to an ongoing child protection intervention (Department of Human Services 2012a). The aim is to strengthen the family's ability to address the issues that have led the child to be in need of protection and allow the child to be cared for safely in the future. AFDM meetings are organised and facilitated through a co-convenor model. This model involves a departmental convenor working with an independent Aboriginal and Torres Strait Islander convenor from a recognised Aboriginal and Torres Strait Islander-controlled agency. In addition to the two convenors, AFDM meetings may involve the child, the child's parents and extended family, and Elders or other community representatives or professionals agreed to by the child's family. In keeping with the original New Zealand model, AFDM uses a three-stage process that includes private family time. It also authorises the departmental convenor to endorse the plans made during AFDM meetings. However, the plans are not enforceable.

Although the role of AFDM has been formalised in Victoria's child protection legislation,<sup>5</sup> in practice the use and level of support for AFDM has been found to vary widely across the state (Harris 2008). In 2012, the Protecting Victoria's Vulnerable Children Inquiry report recommended that AFDM be adopted as the preferred decision making process for Aboriginal and Torres Strait Islander children subject to a substantiated child protection notification (Cummins 2012). In response, the Victorian Government has agreed to increase funding for AFDM to become a regular part of practice in statutory child protection (Victorian Government 2012).

### **Remote Area Aboriginal and Torres Strait Islander Child Care (Queensland)**

The Remote Area Aboriginal and Torres Strait Islander Child Care service (RAATSICC) is a network of Aboriginal and Torres Strait Islander child and family services operating throughout far north Queensland (RAATSICC 2012, Black Wattle Consulting 2012). RAATSICC covers the centres of Cairns and Mt Isa. It also takes in 15 of Queensland's discrete Aboriginal and Torres Strait Islander communities. RAATSICC had its origins in the early 1990s when a group of Aboriginal and Torres Strait Islander women met to discuss concerns about child care and domestic violence in the far north (Higgins 2007). In 1991, the Queensland Government funded the then Northern Peninsula Area service. It was renamed RAATSICC in 1997 to reflect its growing geographical coverage. The service initially focused on early childhood support and community development but has since evolved to include child protection functions.

Since 2010, RAATSICC has been funded in partnership with the Wuchopperen Health Service to provide a combination of family support and Recognised Entity functions for the far north (Black Wattle Consulting 2012). This partnership uses a 'hub and spoke' model. In this model, RAATSICC

provides services to the Cape and Gulf regions and Wuchopperen Health provides services to Cairns. Each agency takes the lead for a different aspect of the partnership's combined activities. RAATSICC acts as the lead, or hub, for family support work while Wuchopperen Health acts as the hub for Recognised Entity functions. The partnership does not currently provide foster, kinship, or residential care services. RAATSICC's current services comprise (RAATSICC 2012):

- the Cape York and Cairns Regional Family Support Service providing practical support to help prevent children entering the statutory system
- the Remote Area Child Placement and Family Support Service providing support, assistance and networking opportunities to child and family support workers
- the Remote Aboriginal and Torres Strait Islander Child Witness of Domestic Violence counselling service for children exposed to family violence
- a resource unit providing a library of materials to support human services workers
- crisis accommodation for women and children escaping domestic violence
- emergency funding to support children temporarily removed from home
- an advisory network to promote links and collaboration between network members.

RAATSICC is governed by a nine member board representing the 23 communities within its service region (Black Wattle Consulting 2012). RAATSICC services are principally funded by the Department of Communities, Child Safety and Disability Services. In 2011–12, the department allocated \$2.2 million to fund RAATSICC's child placement and family support services.<sup>6</sup>

### **Family Responsibilities Commission and the Cape York Welfare Reforms (Queensland)**

The Cape York Welfare Reform (CYWR) trial is a joint initiative of the Australian and Queensland governments and the Cape York Institute for Policy and Leadership. In response to chronic levels of welfare dependency, social dysfunction and economic exclusion, the CYWR aims to restore social norms and local authority in four remote Queensland communities – Aurukun, Coen, Hope Vale and Mossman Gorge (Family Responsibilities Commission 2011a; Department of Families, Housing, Community Services and Aboriginal and Torres Strait Islander Affairs 2012).

The Family Responsibilities Commission (FRC) commenced operation in July 2008 as a key component of the CYWR trial (Family Responsibilities Commission 2012, 2011a).<sup>7</sup> Under the *Family Responsibilities Commission Act 2008* (Qld) a resident's receipt of government benefits can be linked to making and maintaining improvements in the care of their children, particularly in relation to child safety issues and school attendance. They may also be linked to improvements in lawful behaviour and responsible tenancy. Residents who do not comply with directions from the FRC can be subject to mandatory income management.

Conferencing is central to the FRC model, with local people involved in the conferencing and decision making process (Family Responsibilities Commission 2011b). Residents may be referred by local agencies to the FRC for conferencing for any of the following infractions:

- having a child absent from school three times in a school term without reasonable excuse
- having a child of school age who is not enrolled in school without lawful excuse
- being the subject of a child safety report
- being convicted of an offence in the Magistrates Court
- breaching the terms of their tenancy agreement.

Where the referral is considered to be within the FRC's jurisdiction, a conference may be convened (Family Responsibilities Commission 2011b). The standard process is for a conference to be convened by the FRC Commissioner and two local Commissioners who have been appointed as respected community Elders.<sup>8</sup> During the conference, the three Commissioners, the resident and the local FRC coordinator discuss the referral and determine what actions should be taken by the resident to correct the problem. At the conclusion of the conference the Commission may:

- decide that no further action be taken



- issue a warning
- recommend or direct the person to attend a community support service
- order the person to undergo conditional income management, or
- require the person to undergo conditional income management imposed by Centrelink for a period of between three and 12 months.

A 2010 review of the FRC implementation concluded that while the FRC was positively contributing to the restoration of local authority, there was a need for greater engagement with the community about its program (Department of Families, Housing, Community Services and Aboriginal and Torres Strait Islander Affairs 2010). The review found that conference attendance rates were approximately 60 to 70 per cent, with most attendees reaching agreement about actions to be taken to address the cause of their referral. Although evidence was found that FRC attendees had experienced improvements in their lives following conferencing, these improvements were often fragile and short-lived. Many attendees went on to breach further obligations following conferencing.

In September 2012, the Queensland Government announced it would extend funding for the CYWR trial and the FRC to the end of 2013 (Nichols & Elmes 2012). A total of \$5.7 million has been allocated for the 12-month extension, including \$1.8 million to continue the FRC.

### **The Palm Island Community Company (Queensland)**

The Palm Island Community Company (PICC) is a not-for-profit agency established in 2007 to provide human and social services, capacity building and economic development in the Palm Island community which is predominantly Aboriginal and Torres Strait Islander (Palm Island Community Company 2010, 2012). While the company was not specifically developed as a child protection response, it does provide a range of child protection services. These include the management of the island's Family Support Hub and the Creating Safe Communities program. These programs provide a range of human services for children and families including:

- family support
- night and youth patrols
- diversion and disability services and supports
- targeted counselling services for women, men, young people and families
- sporting activities for young people
- a women's crisis centre (a Safe Haven), and
- supports for school attendance and alcohol reforms.

PICC works as a partnership rather than being based on a fully Aboriginal and Torres Strait Islander-controlled model. The company is governed by an Independent Chair and Board of Directors with equal representation from the Palm Island community, the Palm Island Shire Council and the Queensland Government (Palm Island Community Company 2012). PICC is seen as an alternative to existing models of service delivery in discrete Aboriginal and Torres Strait Islander communities. The existing models have seen human services typically delivered either by community agencies that are struggling with governance and financial problems or by large external agencies that have no long term stake in the communities (Limerick 2011). The company is intended to provide a 'third way'. The goal is to bring together external and local expertise in a way that will eventually mean services are delivered by capable Aboriginal and Torres Strait Islander-controlled organisations with a genuine interest in the future of the community.

A 2011 review of PICC found that the company had made mixed progress in its first three years of operation (Limerick 2011). It found that PICC had established a well functioning structure for oversight, had been able to expand the range of services on the island and had increased the capacity of its staff. However, it also found that the company needed to do more to increase community participation. In particular there was a need to engage locals more fully in service delivery. There was also a need to provide more training and development opportunities to meet

the company's core objective to build the capacity of local NGOs. The review concluded that the company's foundations should allow it to meet this objective in the future. It was also concluded that the core features of PICC could be adopted in other communities if adapted to local circumstances.

PICC had an income of \$1.6 million in 2009-10, with 85 per cent of this provided by the Department of Communities, Child Safety and Disability Services (Palm Island Community Company 2012).

### **First Nations and Métis Child and Family Services (Canada)**

A wide array of administrative instruments and service models govern the delivery of child protection services to Aboriginal (First Nations, Inuit and Métis) children and families across Canada (Blackstock 2003, Libesman 2004). The most common service models are wholly mainstream, partially or fully delegated. Partially delegated services are those in which Aboriginal-controlled agencies are responsible for some but not all child protection functions. Fully delegated services are those in which Aboriginal-controlled agencies provide a full suite of early intervention and statutory child protection services (National Collaborating Centre for Aboriginal Health 2009).

Since the early 1990s, the Canadian province of Manitoba has been engaged in a significant reform process to fully delegate child protection services for Aboriginal children to its First Nations and Métis communities (Libesman 2008). As part of these reforms, four separate child protection authorities have been established – two First Nations authorities, a Métis authority and a mainstream or general authority.<sup>9</sup> Under this arrangement, First Nations and Métis authorities have been granted the right to establish child protection services to meet the needs of their respective communities. While each authority is required to deliver services in accordance with the same governing child protection legislation,<sup>10</sup> they are free to develop their own local policies and to fund and manage their own local agencies. Each First Nations or Métis authority is governed by a Board of Directors appointed solely by their respective leadership bodies. The general authority Board is appointed by the relevant provincial Minister.

As of October 2012, there were 18 mandated First Nations and Métis Child and Family Services operating throughout Manitoba (First Nations Child and Family Caring Society of Canada 2012). As new First Nations and Métis Child and Family Services have become active, caseloads, resources and assets have been progressively transferred from mainstream services (Libesman 2008). A central intake service receives all referrals. These referrals are then streamed to a service appropriate to the cultural background and particular service needs, and preferences of the family involved.

In 2007, an evaluation of on-reserve First Nations Child and Family Services<sup>11</sup> found that demand for these services had been growing over the preceding decade (Indian and Northern Affairs Canada 2007). The number of on-reserve children being placed in out-of-home care was also found to be growing more rapidly than in other parts of the country. It was concluded that the funding formula for on-reserve First Nations Child and Family Services was encouraging the use of out-of-home care and discouraging investment in early intervention. The evaluation report recommended changes in funding models, pointing to early evidence that the demand for statutory interventions with on-reserve children had been reduced in the province of Alberta following an increased investment in community-based early intervention services.

### **Questions for consideration**

Over the coming months, the Commission will be considering whether there is scope for Aboriginal and Torres Strait Islander communities and agencies to play a greater or different, more active, role in Queensland's child protection system. The options discussed in this paper will help shape this thinking. Some of the questions the Commission will be asking before formulating its recommendations are:

- In what areas of the child protection system, if any, should the role of Aboriginal and Torres Strait Islander-controlled agencies be expanded or changed?
- Do the state's Aboriginal and Torres Strait Islander-controlled agencies currently have the capacity to take on these roles? If not, how should this capacity be developed for the future?
- Would Queensland benefit from a statewide advisory service similar to Lakidjeka and, if so, what would its structure and functions look like?
- Would the interests of Aboriginal and Torres Strait Islander children be better served by a fully delegated Aboriginal and Torres Strait Islander child protection service?

### 3 Decision-making models

In 2004, the CMC (2004) recommended that:

...there be thorough, standardised, evidence-based case planning that is consistently applied and focuses on the best interests of the child.<sup>12</sup>

**Reason:** The evidence indicates that the current standard of case planning is inadequate and lacks a coherent evidence base, which leads to poor outcomes for children.

In response, the then Department of Communities commissioned Dr Anna Stewart and Ms Carleen Thompson to review the available risk assessment tools, who recommended the department adopt the Structured Decision Making<sup>®</sup> (SDM) system developed by the Wisconsin Children's Research Center (Stewart & Thompson 2004). Eight of 10 SDM tools which comprise the system were rolled out across the department in 2006.

#### Structured risk assessment

There are two broad types of risk assessment decision-making instruments – actuarial models and consensus-based models. D'Andrade, Austin and Benton (2010) describe consensus-based models as emphasising:

...a comprehensive assessment of risk based upon various theories of child maltreatment, the research literature on maltreatment, and/or the opinions of expert practitioners. Items on one instrument are often combined with items from another instrument, creating hybrid instruments that vary according to the needs or beliefs of the user (D'Andrade, Austin & Benton 2010, references omitted).

The Victorian Risk Framework (VRF) is a form of comprehensive consensus-based assessment tool which:

allows for a large degree of professional discretion and, rather than solely identifying risk factors, also includes assessment of the strengths, needs and goals of children and families. (Lamont, Price-Robertson & Bromfield 2010)

In contrast, the SDM tools adopted in Queensland are based on an actuarial model. Hughes and Rycus (2007) describe actuarial risk assessment as:

...incorporat[ing] measures that are demonstrated through prior statistical assessment to have high levels of association with recurrences of maltreatment. These criteria are included in a standardised risk assessment protocol only *after* the relationships among the variables have been quantified and thoroughly tested. The scoring for each measure in the instrument, and overall risk level for a family, are dictated by the previously determined statistical weighting of the variables included in the model (Hughes & Rycus 2007, p.101).

The Department of Communities (2011a) states that the principles underlying its SDM policy statement are that:

- the safety, wellbeing and best interests of the child are paramount

- every child has a right to protection from harm
- consistent assessment and case planning enhance quality outcomes for children
- increased accuracy of critical decisions contributes to the safety of children
- resources are targeted to families at highest risk
- the length of time taken to achieve permanency for children in out-of-home care is reduced.

Strengths of the SDM tools include that:

- they have a level of predictive validity that enables a distinction to be made between low, medium and high levels of risk of subsequent maltreatment. Proponents assert that the SDM actuarial tools 'have stronger predictive validity than the available consensus-based instruments'<sup>13</sup>
- in terms of the SDM's ability to produce consistent outcomes between different workers, the tools perform reasonably well because they utilise more objective measures,<sup>14</sup> and
- capacity for clinical judgement has not entirely been circumvented, as the tools enable workers to override risk classifications or upgrade a risk category to a higher level.<sup>15</sup>

The SDM tools have been criticised on the basis that they:

- produce overly risk averse decision-making and have therefore contributed to an increase in the numbers of children in care<sup>16</sup>
- have been adapted into the Queensland context 'holus bolus'<sup>17</sup> which may be inappropriate because the 'evidence base is entirely from the United States'<sup>18</sup>
- do not adequately assess Aboriginal and Torres Strait Islander children's 'spiritual, emotional, mental, physical and cultural holistic needs'<sup>19</sup>
- can oversimplify situations and cannot deal with complexity (Gillingham & Humphreys 2010)
- undermine the 'development of skills and knowledge required in child protection' (Gillingham & Humphreys 2010)
- have added to the administrative burden placed on child protection workers (Gillingham & Humphreys 2010) and can devalue the human service orientation of workers' roles (Healy & Oltedal 2010)
- are frequently used as accountability tools, rather than as tools used to assist in decision-making (Gillingham & Humphreys 2010), and
- are based on:
  - statistical generalisations believed to be predictive of the behaviour of groups of like individuals. However, child protections services are not concerned with groups of individuals; they are expected to make predictions about individual children in families. (Gillingham 2006)

### **Clinical risk / professional assessment**

Structured risk assessment tools were designed to overcome the significant limitations perceived to be inherent in human reasoning. Professor Eileen Munro has observed that people can be:

- reluctant to make decisions because they can be intellectually and emotionally challenging (Munro 2008)
- narrow-minded in the types of options they consider, i.e. they adopt 'tunnel vision' (Munro 2008)
- short-sighted in their decision-making (Munro 2008), and
- selective in applying information, e.g. child safety workers tend to be swayed by the more vivid and emotive sources of information, in preference to the 'dull, abstract, statistical and old' (Munro 1999, p.756).

However, claims have been made that structured risk assessment tools, such as the SDM tools, have been adopted at the expense of nurturing workers' professional or clinical decision-making skills:<sup>20</sup>

[i]n the clinical method, information is combined or processed in the decision-maker's head. In the actuarial or statistic method, the human judge is eliminated and information is combined or processed

using empirically established relations between data and the condition. (Stewart & Thompson 2004, reference omitted).

The clinical method is fundamentally characterised by workers making decisions based on previous experience in the field. As has been noted, even when workers rely on formal theory, 'it is used intuitively at this stage...to check and perhaps modify' (Gillingham 2009, p.13) an original assessment and decision.

Advantages of the practice of clinical risk assessments include that they:

- may be more accurate at 'identifying dynamic or situational factors that are more useful for predicting what will happen in relation to specific individuals' (O'Sullivan 2011, p.136)
- are less procedural and therefore enable workers to exercise their professional discretion when making decisions (Goddard et al 1999).

### **Alternative models**

Structured Clinical Judgment has been promoted as a compromise approach to sound decision-making. This approach relies on actuarial data but seeks to apply it in a more tailored way to particular cases (White & Walsh 2006). Instead of solely identifying the risks facing a child, efforts can simultaneously be directed to recognising strengths in the child's family unit in an attempt to promote ways forward. The 'Signs of Safety' framework devised by Turnell and Edwards is one such approach and has received some positive reviews from staff involved in practising this model (Wheeler & Hogg 2012).

Generally speaking, jurisdictions which rely less on structured risk assessment instruments are those described by commentators as having predominantly a child and family welfare orientation, such as New Zealand and most western European countries. These countries favour the use of multidisciplinary child protection conferences over the employment of structured risk assessment tools (Gilbert et al 2009). These jurisdictions are also characterised by employing a needs-based approach to service delivery (Gilbert et al 2009) and a greater willingness to intervene in matters at an early stage (Khoo 2004).

In contrast, locations which are described by commentators as subscribing to the child safety model, such as Queensland, Canada and the United States, are focused on forensic investigations, determining a child's future risk of abuse (Gilbert et al 2009) and being selective about which matters require state intervention (Khoo 2004). Consequently, should the reliance on SDM tools be reduced then consideration should be given to adopting other aspects of the child and family welfare model.

There are potentially some logistic and cost implications of changing from the current SDM model, as these tools are currently embedded into the Integrated Client Management System, the child safety electronic database which is used by staff on a daily basis.

### **Questions for consideration**

The Commission will be considering the decision-making frameworks used by Queensland's Child Safety Officers. Some of the questions the Commission will be asking to help make its recommendations are:

- What type of decision-making model would aid the search for the best interest solution and assist Queensland's Child Safety Officers in their daily work?
  - structured risk assessment tools
  - clinical risk assessment
  - a combined use of structured risk assessment tools and clinical risk assessment
  - an alternative model which is less centred on assessing the risks facing a child, and more centred on the child's needs

- Of the above decision-making models, which model is more likely to:
  - satisfy the long-term needs of children and their families
  - build a workforce characterised by expertise, consistent decision-making and job satisfaction
  - create cost efficiencies in the system while improving outcomes?

## 4 Effective coordination of services

Recent reviews of child protection services in Australia have identified a lack of coordination of services as being a substantial impediment to children and their families addressing identified risks and concerns.<sup>21</sup> Moves towards more coordinated and collaborative service delivery in some jurisdictions is an acknowledgement that a service system in which agencies work in isolation is limited, and that agencies working alone may not be as effective when responding to the difficult and multiple problems associated with child abuse (McDonald & Rosier 2011a).

McDonald and Rosier (2011b) identify that research undertaken to assess the effectiveness of collaboration suggests it does benefit children and families, although there are some caveats relating to this claim. Collaboration is most effective for children with high and complex needs, although the success of the collaboration is highly dependent on the context.

McDonald and Rosier also identify a need to develop methodologically rigorous evaluations that can measure process and outcome indicators to further develop the evidence base about collaboration. Atkinson (2007) asserts that recent research appears to be positive as researchers develop more sophisticated and appropriate approaches to evaluation. Additionally, the literature assumes there is merit in the process of partnering, and that outcomes from the collaboration process are significant.

In Queensland a range of initiatives, some of which are local and others statewide, are used across government and/or with NGOs and other stakeholders to coordinate services for clients. For example:

- the Helping out Families (HoF) initiative in Logan, Beenleigh and the Gold Coast provides services for families with complex needs, where children are at risk of entering the statutory child protection system. This initiative represents a recent attempt to build a formal arrangement of services across the government and non-government sectors to coordinate responses to families
- Evolve Interagency Services (EVOLVE) deliver a coordinated range of intensive mental health and disability behaviour support services for children and young people in out-of-home care with severe emotional and behavioural problems. EVOLVE is a partnership between Department of Communities, Child Safety and Disability Services (DCCSDS), Queensland Health and the Department of Education, Employment and Training
- the Suspected Child Abuse and Neglect (SCAN) teams coordinate services from participating agencies for those families with children who have been reported to Child Safety, but who may not yet require further intervention. SCAN provides a method for sharing information and coordinating a multidisciplinary response to cases of child abuse and neglect referred for assessment. However, SCAN teams are not obliged to provide services to support a family on an ongoing basis past the assessment phase.

The question of who is best placed to coordinate services, government or non-government agencies, is also a matter for consideration. Different arrangements exist in each region of the state as to how services are coordinated for families with children at risk of entering the system.

While there are some discrete examples of efforts to improve service coordination, across Queensland there do not appear to be clear mechanisms to successfully coordinate the range of government and non-government services either for children in out-of-home care or for families

requiring support for children to remain at home. Whether there should be standardised processes is also an issue to be explored, given the unique context of local areas and the services available.

Other jurisdictions nationally and internationally have adopted various models and processes, as outlined below, to improve coordination of services within the statutory system and outside of it.

### **A Single Government Case Plan (Victoria)**

In response to the *Report of the Protecting Victoria's Vulnerable Children Inquiry*, the Victorian Government has committed to trialling working with vulnerable children and their families through a single, coordinated case plan and a single key worker (Victorian Government 2012). The single case plan will require individual departments to work in partnership with their community-based partners and with other levels of government in the human service system. It is the first step in the government's commitment to reform case management in two lead sites.

The process in these sites will be examined as they are developed and rolled out, including consideration of the merits of a single case plan model for statutory child protection clients. In the 2012–13 budget, Victoria committed to expanding the single case plan and single case manager approach to statutory child protection clients (Baillieu 2012). The single case plan will connect government agencies to develop a shared understanding of an individual child's needs and common goals.

While the single case plan model is still being designed, the Minister for Community Services (Victoria), The Honourable Mary Woodridge (MP), has indicated they are designing a model with three levels of support:

- Level 1 - Managed Support, for people with high level need
- Level 2 - Guided Support for people who have moderate levels of need which require some coordination of services and occasional assistance
- Level 3 - Self Support, where people need less assistance (Department of Human Services 2012b).

Early indications from the trial show improved results for individuals and families and a more effective model for community service organisations to work with the department (Department of Human Services 2012b).

### **Strengthening Families (New Zealand) and Strong Families (Western Australia)**

The Strengthening Families model was developed in New Zealand and adapted and implemented as the Strong Families approach in Western Australia as a recommendation of the 2002 Gordon Inquiry Report, *Putting the picture together*.

The model is based on gaining consent from families to collaborate, share information, and create a process that draws agencies and families together to address issues of mutual concern.<sup>22</sup>

This model offers a structured way for services supporting a family to work together to achieve particular goals. The process involves any professional working with a family or the family themselves contacting the NGO delivering the model. An independent coordinator is then allocated to oversee the course of action.

The coordinator will meet with the family to gain their consent to the process, plan the meeting, discuss who should be involved, and sign a form indicating they commit to the program. If an agency made the referral, they will also be asked who should be involved.

At the first meeting of all participants everyone discusses what the concerns are, what needs to be achieved, and what supports will be provided to help the family reach the identified targets. A key contact person is identified and tasked with keeping track of the plan. All the actions and

timeframes that agencies and the family agree to are documented and sent to all participants. Depending on the nature of the plan, subsequent meetings may be held to discuss progress and agree on ways to tackle any problems that arise.

While it is difficult to conclusively measure the success of the New Zealand Strengthening Families process in improving outcomes (Family and Community Services, no date), available research into the case management process demonstrates that:

- it improves collaboration, which in turn, helps to better clarify roles and strategies, design and manage ways of working together, build consensus over basic goals and solve problems in a pragmatic way (Majumdar 2006).
- in relation to outcomes, the Strengthening Families process provides greater support to families, improves the behaviour of the child/young person, improves the well-being/safety of the child/young person, improves a family's situation and provides access to a greater range of supports (Ministry of Social Policy 2001)
- the Strong Families program was found to contribute to enhancing and strengthening the capacity of families, increasing their engagement with services, providing short-term improvement, encouraging acceptance/recognition by the family of the need for longer term change in underlying contributing factors, and providing long-term improvement in parents' and/or the child's wellbeing (Cant & Henry 2007))
- Strong Families was an important vehicle for interagency collaboration and was achieving a high level of interagency cooperation, particularly among workers on the ground. The program was also found to work equally well with Aboriginal and Torres Strait Islander families. There was no family for whom Strong Families was identified as prima facie unsuitable (Cant & Henry 2007)

### **Looked After Children (UK and Victoria)**

Looked After Children (LAC) is a best practice framework for supporting outcomes focused collaborative care for children and young people who are placed away from their families as a result of a child protection intervention. LAC was originally developed in the UK and has subsequently been implemented in many other jurisdictions including Victoria.

The LAC framework and tools are designed to help professionals working with a child and their family in out-of-home care to effectively respond to the child's needs. The LAC framework considers the child's needs and outcomes in seven life areas:

- health
- emotional and behavioural development
- education
- family and social development
- identity
- social presentation, and
- self-care skills.

To ensure each of these seven areas is considered, a range of records is kept. These records ensure a child will always have access to information relating to decisions about their own care and assessment. The records are reviewed every six months for a child aged up to five years or aged 15 years and over, and reviewed annually for a child aged between five and 15 years. The records include:

- an essential information record – holds important information that will always be kept updated
- a Care and Placement Plan – describes how the child's needs will be met while they are in care and for what each member of the child's care team is responsible
- assessment and progress/action record – six age-related assessment records that comprehensively assess a young person's development and identify any follow-up action needed



- review of the Care and Placement Plan – looks at changes since the previous Care and Placement Plan (Department of Human Service, no date).

In reviewing the Victorian pilot of the LAC framework in Australia, Wise (1999) found that:

- implementation of LAC can help establish a service system that will contribute to children maintaining or achieving specific goals that will enable them to lead happy and healthy lives into adulthood
- national implementation of LAC would help rationalise documentation and create consistency between social service agencies and states and territories
- implementing LAC is a positive step toward ensuring that whenever out-of-home care is utilised it is maximally therapeutic and minimally harmful, with the Victorian pilot also possibly leading to improvements in the physical and psychosocial health and wellbeing of children
- the implementation of LAC needs to be appropriately resourced and it needs to be introduced as a cornerstone of services to children in out-of-home care, and
- in addition to its practice function, LAC has also been designed as a tool for gathering information about the outcomes of children in out-of-home care.

The LAC framework has also been found to have the potential to promote resilience in children and young people and that completion of the Assessment and Action Record within the LAC records is central to its success. However, information collected for these records was found to lack analysis and the plans developed were often over-optimistic (Ward, no date).

### **High and Complex Needs Unit (New Zealand)**

The High and Complex Needs Unit (HCNU) is an interagency unit that supports staff and managers across health, disability, education and statutory child protection services to identify, plan and better meet children's needs when they are high and complex. The unit provides tools, resources and information to support interagency work and, where necessary, funding for the purchase of additional services. Families must have at least two agencies involved to be eligible for support from the HCNU and any interventions directly funded by the HCNU are in addition to what is provided by families, communities and local agencies. The HCNU is not a replacement for existing services.

The unit is focused on managing the needs of the most challenging group of young people. Young people who receive HCNU funding have on average six adverse life experiences (e.g. abuse/neglect), six problem behaviours (e.g. violent/aggressive behaviour) and three diagnoses (e.g. attachment disorder).

The process for accessing support from the unit involves a worker from any agency who is involved with a child, making an application to their Regional Interagency Management Group (IMG). The IMG comprises local managers of government or government funded agencies who are responsible for working together to ensure effective interagency collaboration where there is, or needs to be, multi-agency involvement with clients. Each IMG is responsible for providing leadership to:

- build effective working relationships between agencies
- facilitate access to existing services and provide a problem-solving forum for practitioners to seek assistance for individuals with complex needs
- identify and monitor the progress of children and young people with high and complex needs
- provide opportunities for interagency liaison between practitioners, and
- identify service shortfalls and support applications for HCN funding.

Support provided by the HCNU may include (but is not limited to):

- access to an HCNU advisor who can provide advice and support on developing interagency plans, and

- funding intensive interventions over and above what government agencies can normally provide. This includes funding interventions for a longer period than is normally available, funding services unavailable locally or nationally under normal government service provision and/or funding access to services whose criteria would otherwise restrict access.

### Questions for consideration

In preparation for its discussion paper and final report, the Commission will be looking to find ways to ensure the effective and cost efficient delivery of coordinated services in Queensland, both at a secondary and tertiary level. In addition, the Commission will consider how primary services, such as child health programs, link families with secondary services. The examples provided in this paper will help develop recommendations about how services and providers can work together to improve the lives of children, young people and their families. Some of the key questions the Commission will be exploring are:

- Should government agencies involved in ensuring the protection, welfare and wellbeing of Queensland's children and young people be co-located?
- How do you ensure services are working together to meet best interest requirements while also helping the family to feel empowered and be responsible?
- Should models to improve coordination of services be delivered through government or non-government agencies?
- How do we ensure that all parties participate in any planned collaboration and how do we measure the effectiveness of improved coordination and accessibility of available services?
- How can services be more effectively coordinated to ensure cost efficiencies for government without compromising outcomes?

## 5 Court models

The Commission has been asked to consider the effectiveness of child protection court and tribunal processes as part of its terms of reference. Currently in Queensland the Childrens Court of Queensland (CCQ), operating under the *Childrens Court Act 1992* (Qld) and the Childrens Court Rules 1997, determines applications for assessment and child protection orders. There is only one specialist Childrens Court located in Brisbane with one specialist Magistrate, although the Childrens Court Act allows any state Magistrate to constitute a Childrens Court when required.<sup>23</sup>

The Queensland Civil and Administrative Tribunal (QCAT) hears a range of applications for review of administrative decisions made under legislation concerning children, but most relevant for present purposes are decisions made under the *Child Protection Act 1999* (Qld) in relation to placement and contact.

The existence of the CCQ and QCAT means there is the potential for children, young people and their families to be affected by decisions being made in two separate jurisdictions at the same or different times. In 2010-2011, approximately 3,959<sup>24</sup> child protection applications were lodged in the CCQ. In 2011-12 about 188<sup>25</sup> review applications were filed in QCAT under the Child Protection Act.

Section 5 of the Child Protection Act establishes that the overarching principle for the administration of the Act is that 'the safety, wellbeing and best interests of a child are paramount.' The CCQ and QCAT are bound to apply the 'paramourcy principle' by virtue of s 105 and s 99D of the Child Protection Act respectively. However, it is clear there is also an inherent power balance that exists in child protection proceedings in both the CCQ and QCAT where the state is making decisions that can fundamentally override the wishes of the child or young person and their family. Child protection matters in both the CCQ and QCAT involve making decisions that have profound consequences for the children and young people concerned, including whether they will return to

their family, be permanently placed in care and where they will be placed and/or whether they can have contact with their family members.

Section 107 of the Child Protection Act provides that the CCQ may appoint a person having special knowledge or skill to help the court. However, such an ability must be supported by an appropriate budget allocation. The QCAT model provides the potential for a multidisciplinary team from a range of professional disciplines to constitute the decision-making panel. The decisions made in child protection law by both the CCQ and QCAT intersect with a wide range of social science considerations including attachment theory, child development, risk assessments and psychiatric assessments.

A number of issues have been raised with the Commission about the current court and tribunal structures and processes. These include:

- who is the appropriate decision-maker to determine applications for child protection orders?
- should there be a specialist childrens court?
- is there effective case management in child protection litigation?
- how should alternative dispute resolution be used in child protection matters?

### **The appropriate decision maker to determine applications for child protection orders**

In Queensland (and other Australian jurisdictions) applications for child protection orders are determined by judicial officers. In other models, decisions are made at the lower level by an administrative tribunal or an expert panel. Critics of judicial decision-making argue that courts are too adversarial and that judicial officers do not have the requisite understanding of the applicable social science issues. Proponents argue that such a fundamental interference with individual rights must have judicial oversight as envisaged by the Westminster model of democracy to ensure that administrative decision-making is evidence based and is procedurally fair to all those affected.

#### **Children's Hearing Model – Scotland**

In Scotland, the Children's Hearing Model deals with child protection and juvenile justice matters. A specialist volunteer panel, comprising three local community panel members who are specially trained, is convened on a case-by-case basis to decide child protection and juvenile justice applications. The multidisciplinary panel is designed to promote a non-legalistic and child welfare solutions-focused hearing system. In essence, this model allocates responsibility for determining the facts to a court and leaves the majority of welfare decisions to the panel. The views of the child are actively sought during this process.

In 2011, the Family Justice Review Interim Report considered the potential expansion of the model to other UK jurisdictions (Ministry of Justice 2011). The report rejected such a model, noting concerns with the consistency of decision-making and the lack of permanency for the children involved. The Interim Report concluded that 'to introduce a panel system in England and Wales would be disruptive and would not offer sufficient advantage over a court-led process. We reject suggestions for a tribunal system on similar grounds' (Ministry of Justice 2011, p.117).

Earlier this year, the Cummins Inquiry also considered the applicability of the model to the Victorian jurisdiction. It ultimately considered that such a tribunal model was not appropriate to determine whether the state should intervene in a family's life and make determinations on the fundamental rights of individuals such as a child's relationship with his/her parent.

The Inquiry noted that:

...child protection matters are not simple disputes between private parties. They involve a fundamental state intervention in family relationships. In Australia, the role of the courts is to provide independent oversight of administrative or executive decision making. This is known as the

'separation of powers' between the executive and the judiciary. It is pertinent to observe that currently in all Australian jurisdictions policy makers have determined through legislation that a specialist court should determine protection applications in the statutory child protection framework. (Protecting Victoria's Vulnerable Children Inquiry 2012, p.382)

The Inquiry found that:

...a specialist Children's Court should continue to have the primary role in determining the lawfulness of a proposed intervention by the state in a child's life. This requires a careful weighing of the rights and interests of the children, as viewed by the state, against the rights and interests of their parents or caregivers. The Inquiry considers that a judicial officer is best qualified to make this determination. However, this does not mean the court should be involved in administering orders or case managing care plans. (Ibid.)

### Children's Court Clinic Victoria

The Children's Court of Victoria has access to the Children's Court Clinic, 'an independent body which conducts assessments and provides reports on children and their families at the request of the Children's Court magistrates throughout Victoria' (Children's Court of Victoria 2011a, p.31). During 2010–11, the clinic received 613 child protection referrals. In that same year approximately 3,317 child protection applications were initiated in the Family Division. The clinic is funded by the Children's Court (Children's Court of Victoria 2011b).

The Australian Law Reform Commission (ALRC) noted the clinic was generally well regarded and functioned efficiently (Australian Law Reform Commission 1997). The ALRC recommended that similar clinics be incorporated into children's courts nationwide. The report noted that the clinics would need to be adequately resourced to provide the court and legal representatives with expert advice on the best interests of the child.

### A specialist child protection jurisdiction

There is current discussion that suggests Queensland does not have a well developed specialist child protection jurisdiction.<sup>26</sup> While the Commission appreciates that other courts deal with child protection where it intersects with that court's jurisdiction, and that the CCQ deals with youth justice matters, this paper is focussed solely on a specialist child protection jurisdiction.

Professor Clare Tilbury has identified that the CCQ operates as a two-tiered court system with the first tier constituted by Children's Court Magistrates and the second tier constituted by Children's Court Judges (at a District Court level).<sup>27</sup> Section 105 of the Children's Court Act provides that a judge or magistrate may determine applications for assessment or child protection orders. However, in practice the vast majority of applications for assessment or child protection orders are heard and determined in the CCQ by a Magistrate. This includes applications for long-term guardianship, which places a child in the care of the department or another person until they are 18 years. The Queensland Law Society has submitted that 'given the seriousness and significance of these orders for children and their families' these should be determined by a judge.<sup>28</sup>

There is only one specialist Children's Court Magistrate appointed on a permanent full time basis. The Queensland Law Society highlights this point and states:

In other states the magistracy contains several specialised Children's Court magistrates. For example:

- In NSW, there are 13 specialist children's magistrates and 5 children's registrars to assist in administrative matters in the Children's Court;
- in Victoria, there are 12 full-time Children's Court magistrates;
- In Western Australia, there are 4 full-time Children's Court magistrates and 1 casual magistrate;
- In South Australia, there are 2 District Court judges and 2 specialist magistrates; and
- In Tasmania, there is 1 specialist magistrate. (Submission of the Queensland Law Society, p.40)

In the UK, child protection matters can be heard at two levels:

- Simple cases can be heard at a Magistrate Court level in the family proceedings court. The matter will be heard by a District Court Judge and potentially two magistrates (non legally qualified individuals who have been specifically trained to hear cases about children and families).
- Complex matters are heard in the family division of the High Court, which has jurisdiction to hear all matrimonial matters, the *Children Act 1989* (UK) and the *Child Abduction and Custody Act 1985* (UK). It also deals with matters relating to Part IV (Family Homes and Domestic Violence) of the *Family Law Act 1996* (UK), wardship and adoption applications, declarations in medical treatment cases, and final dissolution matters (civil partnerships). The family division is headed by the President.

### Case management in child protection matters

Social science experts express concern about the need for timely decision-making in child protection matters. Timeliness in decision-making is enshrined in the Child Protection Act, for instance:

- s 5B(n) states that a delay in making a decision in relation to a child should be avoided, unless appropriate for the child
- s 66(3) provides that when a court is considering the period of an adjournment it must take into account the principle that it is in the child's best interests for an application to be decided as soon as possible.

While there is capacity for judges and magistrates to case manage proceedings before them on an individual basis, there is no comprehensive case management system (including appropriate rules and practice directions) for the child protection jurisdiction. A further complication is the lack of a clear disclosure regime to give full and frank disclosure of all relevant material relied on by the department in making its decision to the other parties in the proceedings. This can include original case file documents, risk assessments, statements and expert reports.

### Public Law Outline – United Kingdom

In April 2008 the UK reformed its child protection proceedings following a 2006 review. Reforms were implemented through the introduction of:

- Practice Direction: Guide to Case Management in Public Law Outline (PLO), initially a 41 page document produced by the Ministry of Justice, and
- Children Act 1989 Guidance and Regulations, Volume 1: Court Orders in England, and The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders (Wales) in Wales.

The overall aims of these reforms were to ensure the efficiency of child protection proceedings by reducing delay and improving outcomes for families with children in care. The reforms focused on the department's UK equivalent undertaking a number of pre-proceedings processes to provide an opportunity for the social worker to work with the family (with the intention of avoiding a contested court proceeding) and to ensure that all necessary information is put before the court if and once proceedings are initiated.

In 2009, the PLO was reviewed by the Ministry of Justice (Jessiman et al 2009). The review found that overall the PLO provided clear structure for child protection proceedings, however it did note there were inconsistencies in compliance with the requirements and that the paperwork required was overly burdensome for local authorities. As a result of this finding, the PLO was revised to a 31

page practice direction. The revised PLO sought to reduce the number of documents required at the time of issue of the application, and to further clarify the 'timetable for the child principle'.

The main principles of the PLO were to ensure continuity and consistency for the progress and determination of child protection matters. This involved allocating no more than two case management judges for each case, who are responsible for every case management stage in the proceedings through to final hearing, and that each case is managed in a consistent way, utilising standard steps detailed in the PLO.

There are four stages prescribed by the PLO:

1. Issue and first appointment. The local authority files the C110 application form<sup>29</sup> and annexes documents where available (in compliance with the pre-proceedings checklist).<sup>30</sup> At the point of filing the Court gives standard directions.<sup>31</sup> By day three the relevant children's guardian should be allocated and the local authority serves all the documents on the parties. By day six, the first appointment is to occur, in which the court will confirm initial case management directions to progress the matter through stages 2-3.
2. Case Management Conference (CMC) (to occur no later than day 45). The conference should identify the issues that need to be resolved, confirm the timetable for the child and provide case management directions. An Advocates Meeting occurs no later than two days before the CMC. This meeting allows legal representatives to draft a case management order for the upcoming CMC (to be filed prior to the CMC), identify experts and draft questions for them. In this meeting, legal representatives should consider information on the application form, case summaries from all other parties, case analysis and recommendations.<sup>32</sup>
3. Issues Resolution Hearing which is to occur between weeks 16 and 25. The hearing is used to resolve and narrow issues in dispute. An Advocates meeting is to occur between days 2 and 7 before this Hearing in which parties are to consider each other's case summaries, case analysis and recommendations, and to draft a case management order (which is to be filed prior to the Issues Resolution Hearing).
4. Final Hearing.

### **Alternative dispute resolution**

Section 59 of the Child Protection Act provides that a court ordered conference (COC) must be held if the matter is contested. However, there is limited guidance provided in the Act about the purpose of the COC, and at what point in the proceedings it should be held. In other Australian states there have been a range of reform processes undertaken in relation to alternative dispute resolution (or mediation) in the child protection jurisdiction, which include setting clear expectations about when this process is to occur, its purpose and how it is to be conducted. This includes requirements for relevant material to be filed ahead of time and forms to be filed and served on all parties prior to the mediation occurring.

A further complication is the role of the family group meeting in relation to alternative dispute resolution in child protection. A submission to the Inquiry from the Australian Association of Social Workers has identified a range of concerns in relation to the family group meeting process being co-opted into court proceedings.<sup>33</sup> Section 59 of the Child Protection Act provides that a final child protection order cannot be made without an appropriate case plan which is usually developed in a family group meeting process. Ultimately any changes to the alternative dispute resolution processes in child protection must properly consider how the inherent power imbalance in these proceedings can be addressed.

## Victoria

The Final Report of the Protecting Victoria's Vulnerable Children Inquiry proposed multiple alternative dispute resolution opportunities at critical points in child protection proceedings. The Inquiry recommended:

- an initial family group meeting run by the department to determine child protection concerns
- a Child Safety Conference once an application for a child protection order is commenced to appropriately divert matters away from the court where possible, and
- a New Model Conference prior to trial to determine whether there is any possibility of settlement or, if not, narrow the issues for trial. (Protecting Victoria's Vulnerable Children 2012, p.391-392)

## Western Australia

In WA, the *Children and Community Services Act 2004 (WA)*<sup>34</sup> details the use of pre-hearing conferences. It states that all parties must complete a Signs of Safety Pre-Hearing Conference outline document which provides a summary of disputed facts and other relevant information from each party. The conference is to occur as early in the proceedings as possible. The Signs of Safety Pre-Hearing Conference is aimed at resolving protection applications early, in a less adversarial way and by involving family members informally.<sup>35</sup> The aim of the conference is to be collaborative and to focus on the future protection of the child. Everything discussed in the conference is confidential. The conference is presided over by a Convenor appointed by the President of the Court.<sup>36</sup> A pilot of the conference model commenced in November 2009 following collaboration between Legal Aid WA (LAWA), the Department of Child Protection (DCP), King Edward Memorial Hospital for Women and the Perth Children's Court:

As part of the implementation of the pilot, Legal Aid and DCP developed a training program for a combined pool of facilitators, who facilitate the Meetings, and Convenors, who convene the Conferences, to prepare them for their roles in the Pilot. They also provided a separate training program to lawyers representing DCP, parents and children. Modelling the collaborative approach required in the process, each training group included legal practitioners from DCP, LAWA, Aboriginal Legal Services, Community Legal Centres, private firms and support agencies. A team from Legal Aid, DCP Legal Services and Best Practice Unit also provided seminars to staff at DCP District Offices involved in the Pilot (including Peel and Wheatbelt-Northam), the President and Magistrates of the Children's Court and to social work staff at King Edward. (Howieson & Coburn 2011, pp.18-19)

## New South Wales

In NSW section 65 of the *Children and Young Person (Care and Protection) Act 1998 (NSW)* and Practice Note 3<sup>37</sup> detail the ADR process to be followed. A matter cannot proceed to a final hearing until such a process has been undertaken, unless a Children's Court Registrar has dispensed with such requirement.<sup>38</sup> The conference is held before a Children's Court Registrar and should be held as early as possible in the proceedings to facilitate early resolution. The conference may be held at different stages in the proceedings if deemed appropriate to do so.<sup>39</sup>

Care Circles, described earlier in Section 2 of this paper, are also currently used in NSW as an alternative avenue for care matters (once it has been established a child is at risk) involving Aboriginal or Torres Strait Islander children.

## United Kingdom

In the UK, the PLO<sup>40</sup> details the requirement for a number of conferences to occur throughout the care proceedings, to ensure all parties and the Court are in agreement as to the issues in dispute and facts that relate to each issue. The outline details processes to occur pre-proceedings and includes a detailed pre-proceedings checklist of documents to be annexed to the application form once proceedings are filed.

Once the Local Authority concerns are to a point where the threshold appears to be met,<sup>41</sup> a meeting is held with the social workers and legal advisers (legal planning meeting/legal gateway meeting), a decision is made as to whether the threshold has actually been met and whether the concerns require immediate legal action to ensure the child's safety. If a decision is made to apply for a protection order, but the concerns do not require immediate action, the social work team manager will issue a 'letter before proceedings'. This letter details that the Local Authority (social worker, manager) would like to meet with the parents and their legal representative to discuss the concerns with a view to reaching agreement on what should occur to safeguard the child. If no agreement is reached at such meeting, the Local Authority will commence legal proceedings.

Once proceedings are commenced, regular advocacy meetings are to occur before each stage of the PLO to discuss and narrow issues in dispute in preparation for the case management conference and interim resolution hearing.

### **Questions for consideration**

As part of the terms of reference the Commission has been asked to consider the effectiveness of the Queensland Child Protection Court and Tribunal process. Alternative court models in other jurisdictions outlined in this paper have been considered in an effort to inform the Commission more fully. In reviewing the current court and tribunal processes the Commission will be required to consider a range of questions including (but not limited to):

- Who is the appropriate decision maker in relation to applications for assessment and child protection orders? Should this responsibility sit with a court or tribunal? Should there be specialist training and expertise required to make these decisions, and what are the implications of this in such a decentralised state as Queensland?
- How should child protection proceedings be realigned to meet the needs of children and young people?
- How should alternative dispute resolution processes fit in the context of child protection proceedings to provide the most meaningful opportunity for the parties to consider whether the matter can be settled?
- What participants should be included in any alternative dispute resolution process, e.g. parents, foster carers?
- Should the court have an active case management role?

## **6 Adoption as one response to permanency planning**

### **Permanency planning**

Permanency planning is described as:

...a case planning process aimed at securing stability and continuity for children in out-of-home care. Permanent options cover the spectrum of placement prevention, reunification, supporting children and carers in kin, foster or residential placements and adoption. (Osmond & Tilbury 2012, references omitted)

In Queensland, permanency planning involves pursuing long-term out-of-home care placements for children who have reached particular timeframes fixed according to the risk level, quality/frequency of the child's contact with their family and various risk factors within the household (Department of Communities, Child Safety and Disability Services 2012).<sup>42</sup> Under Queensland's *Child Safety Practice Manual*, plans for long-term out-of-home care may involve:

- arranging for the child to live with a member of the child's family, or another suitable person, under a child protection order granting long-term guardianship of the child
- arrangements for the child's adoption under the *Adoption Act 2009* (Qld), or
- arrangements for the child's transition to independent living, for a child 15 years and over.



One of the options to achieve permanency for children, if they are unable to return to live with their family, is adoption. Queensland's Adoption Act provides that a child's biological parents must consent to the child's adoption. Under this legislation, a court may dispense with this requirement in a limited number of circumstances — for example, when:

- the relevant parent cannot be identified or located
- the child was conceived as a result of an offence committed by the relevant parent
- the relevant parent does not have the capacity to consent, or
- the relevant parent is not able or willing to protect the child from harm and meet the child's need for long-term stable care, or is unreasonably withholding his or her consent to the adoption.

Unlike its predecessor statute, the Adoption Act provides for the possibility of 'open adoptions'. 'Open adoptions' allow for the child's birth and adoptive parents and families to continue to know each other after the finalisation of the adoption. Under the legislation, arrangements concerning how and when contact will be made between the parties may be set out in an adoption plan, but this plan is not enforceable.

### Adoption and out-of-home care statistics

As discussed in the *Emerging issues* paper, demand for out-of-home care has increased substantially over the last 10 years (Queensland Child Protection Commission of Inquiry 2012). As at 30 June 2011, there were 7,602 children in Queensland in out-of-home care<sup>43</sup> (Steering Committee for the Review of Government Service Provision 2012). Table 3 shows that the majority of these children (64.5%) had been in care for more than two years:<sup>44</sup>

**Table 3: Children in out-of-home care, Queensland, 30 June 2011**

Length of time in out-of-home-care	Number	Per cent
Less than 1 year	1,560	20.5
1 to less than 2 years	1,139	15.0
2 to less than 5 years	2,319	30.5
5 years or more	2,584	34.0
<b>TOTAL</b>	<b>7,602</b>	<b>100.0</b>

Source: Steering Committee for the Review of Government Service Provision 2012

Approximately 60 per cent of children in Queensland in out-of-home care were living with an unrelated foster carer (4,528 children),<sup>45</sup> as opposed to living with a relative under a kinship care arrangement.

In the 2010–11 financial year, a total of 384 adoptions were finalised in Australia. Of the 384 adoptions in Australia, 169 of those children already resided in Australia prior to being adopted<sup>46</sup> (the remaining children were inter-country adoptions). Of those 169 children, only five of them were adopted in Queensland<sup>47</sup> (Australian Health Institute of Health and Welfare 2011).

### United States (US) adoption policy

Adoption policy in the US is outlined in the *Adoption and Safe Families Act 1997* (US) which makes clear 'that adoption is the second best option if reunification with biological parents is not possible.' (Gilbert, Parton and Skivenes 2011). The Adoption and Safe Families Act provides that if a child has been in care for 15 out of the past 22 months (or if a parent has committed a serious offence against the child or another one of their children), steps must be initiated to terminate parental rights and seek an appropriate person to adopt the child, unless the child can be returned home, can live with an appropriate relative, or it would otherwise not be in the best interests of the child.<sup>48</sup>

As at 30 September 2011, there were 400,540 children in foster care in the US, and 104,236 of those children were waiting for adoption (for 60,631 of those children, their parents' parental rights had already been terminated). In the 2011 financial year, 50,516 children were adopted with government child welfare agency involvement and 54 per cent of those children were adopted by their foster parents (Children's Bureau 2012).

## UK adoption policy

Numbers of adoptions have steadily declined in the UK following a peak in 1968 of 24,831 children, although the number of children being adopted from the care system has remained stable (O'Halloran 2006). In 2011, the UK media heavily focused on statistics which demonstrated that there were 65,520 children in care in England and only 3,050 adoptions.<sup>1</sup> Of the 3,050 children adopted in the previous year, only 60 of those were babies. In July 2012, the Cameron Government responded by announcing the *Fostering for Adoption* scheme. *The Guardian* explained the initiative in the following terms:<sup>2</sup>

Under the plans, men and women who have been cleared as adopters can become a child's foster parent until they are legally allowed to adopt them. Local authorities at present generally wait until court orders are made before beginning their search for a permanent home.

The move will not pre-empt any legal ruling, meaning the youngsters could be returned to their birth parents or other carers. But the government hopes it will mean the interests of the children are put first.

In June 2012, the House of Lords established the Select Committee on Adoption Legislation. Thus far, the Select Committee has conducted five hearings. From the evidence given to date, it would seem there is a general consensus that adoption should be promoted but that it will only be suitable for a minority of children. However, there have been witnesses who have been more categorical in their support for adoption. For example, Martin Narey, Ministerial Adviser on Adoption, pointed out that adoption provides a child with lifelong support:

I think adoption offers something unique in terms of outcomes. It is more successful than the others. It is the only thing that lasts forever. Fostering finishes at 16 or 18, special guardianship finishes at 16, and a residence order at 16. My guess is that many Members of the Committee are like me and have children that are much older than that. I have children in their late 20s, and they are still my kids... [I am] still supporting them emotionally and financially. Adoption does that. It is unique. (Adoption Legislation – Uncorrected evidence, 24 July 2012, p.3)

## Should Queensland refocus its efforts on adoption as a means of reducing the number of children in out-of-home care?

Arguments in favour of elevating the use of adoption in Queensland include that:

- countries such as the US and the UK have achieved higher adoption rates for children in care
- empirical evidence suggests that, compared with long-term fostering, adoption is favourable because it generates higher levels of emotional security, a greater sense of belonging and a 'more enduring psychosocial base in life for those [children] who cannot live with their birth families' (Triseliotis 2002)<sup>49</sup>
- it may reduce overall government costs,<sup>50</sup> especially given that 'efforts to keep the biological family intact are expensive and resource-intensive' (CMC 2004)

<sup>1</sup> David Batty, 'Just 60 babies adopted last year in England', 29 September 2011, available at <http://www.guardian.co.uk/uk/2011/sep/29/60-babies-adopted-england-last-year>

<sup>2</sup> *The Guardian* (2012), 'Adoption process to be speeded up', 6 July 2012, available at <http://www.guardian.co.uk/society/2012/jul/06/adoption-process-speeded-up>

- too much emphasis is placed on the rights of biological parents, instead of focusing on whether the termination of parental rights would serve the child's best interests (Dwyer 2006)
- while:
  - dysfunctional parents should have an opportunity to access support services to address their problems when they first come under child protection scrutiny [...] in the best interests of children, the first chance ought be the last chance to get their acts together in full knowledge of the looming consequences of non-compliance — the permanent removal of children and severance of parental rights. (Sammut 2011)
- adoption may be 'a desirable way of providing a stable life for a significant proportion of children with drug-addicted parents' (Standing Committee on Family and Human Services 2007).

Arguments against increasing the use of adoption in Queensland include that:

- a system focused on adoption could have negative effects on the Aboriginal and Torres Strait Islander population (CMC 2004), particularly given that the Human Rights and Equal Opportunity Commission (1997) recommended that
  - national standards legislation provide that an order for adoption of an Aboriginal and Torres Strait Islander child is not to be made unless adoption is in the best interests of the child and that adoption of an Aboriginal and Torres Strait Islander child be an open adoption unless [...] it would not be in the best interests of the child.
- in many respects, there are no discernable differences in Queensland between long-term guardianship orders under the Child Protection Act and open adoptions as both arrangements allow for contact to be maintained between the child and the biological parents
- from a financial perspective, it may be disadvantageous for a foster parent to adopt the child he or she is caring for because foster parents are entitled to tax-free fortnightly carer payments from the Queensland Government, whereas adoptive parents are not entitled to any Queensland Government payments
- in the US, some children are left in a situation where they have been 'freed for adoption but not chosen' (Cashmore 2001)<sup>51</sup> and this is especially true for male, black and older children (Cashmore 2001)
- in the US, parents appearing before parental termination hearings have no constitutional right to counsel representation and only some states in the US provide counsel to indigent parents facing termination hearings (Parkinson 2003)
- the case made that adoption is the best way in which children's needs for permanency can be met may be overstated (Testa 2005, p. 533; Cashmore 2001, p. 7)
- any proposal which views adoption as the primary means of helping children in need may discourage parents from seeking help because they may fear losing their child (Standing Committee on Family and Human Services),<sup>52</sup>
- historical practices of forced adoptions in Australia for both Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander Australians have had devastating long-term impacts on both adoptive children and their biological parents.

### Questions for consideration

The Commission has heard evidence about the issue of adoption and has received submissions from individuals and organisations who are both supportive of a greater role for adoption as an option for permanency planning, as well as those who are opposed to adoption as a long-term child protection strategy. As part of its work to review the effectiveness of out-of-home care placements, the Commission will consider adoption, and in particular such questions as:

- Given the past history of forced removal of children in Australia, is adoption a socially acceptable and appropriate 21st century option for children who are unable to remain with their family?
- Is the adoption of children from out-of-home care under-used in Queensland?
- Should Queensland refocus its efforts on adoption as a means of reducing the number of children in out-of-home care? If so, how could this be satisfactorily achieved?
- Does the US approach to adoption have any place in the Queensland context?

## Conclusion

This paper provides an outline of some alternative approaches in place in child protection systems elsewhere in Australia and overseas. It is clear, when reading commentators about the structures and processes in place to respond to children and young people at risk of harm, that there is no panacea in the business of child protection. Child protection systems have often been influenced by the socio-political landscape of a country, its history and the relationship of the state with its citizens. Child protection systems also often evolve in direct response to the death of a particular child or young person. The very nature of child protection is that policy and practice are often driven by these flashpoint incidents, making it an area of public policy that is volatile and vulnerable to reactive change and kneejerk responses.

While we must accept that there is no 'silver bullet' that will solve the problems of child protection in Queensland, the ideas behind some aspects of child protection systems that have been trialled or which are in place in countries like Sweden, the UK and the US, can provide useful commentary on what might be wrong with our system, or what might potentially be worth considering for implementation in Queensland.

# Appendix 1

## Order in Council containing terms of reference

### Commissions of Inquiry Order (No. 1) 2012

#### Short title

1. This Order in Council may be cited as the *Commissions of Inquiry Order (No. 1) 2012*.

#### Commencement

2. This Order in Council commences on 1 July 2012.

#### Appointment of Commission

3. UNDER the provisions of the *Commissions of Inquiry Act 1950* the Governor in Council hereby appoints the Honourable Timothy Francis Carmody SC, from 1 July 2012, to make full and careful inquiry in an open and independent manner of Queensland's child protection system, with respect to:

a) reviewing the progress of implementation of the recommendations of the [Commission of Inquiry into Abuse of Children in Queensland Institutions](#) (the Forde Inquiry) and [Protecting Children: An Inquiry into the Abuse of Children in Foster Care](#) (Crime and Misconduct Commission Inquiry);

b) reviewing Queensland legislation about the protection of children, including the [Child Protection Act 1999](#) and relevant parts of the [Commission for Children and Young People and Child Guardian Act 2000](#)

c) reviewing the effectiveness of Queensland's current child protection system in the following areas:

- i whether the current use of available resources across the child protection system is adequate and whether resources could be used more efficiently;
- ii the current Queensland government response to children and families in the child protection system including the appropriateness of the level of, and support for, front line staffing;
- iii tertiary child protection interventions, case management, service standards, decision making frameworks and child protection court and tribunal processes; and
- iv the transition of children through, and exiting the child protection system;

d) reviewing the effectiveness of the monitoring, investigation, oversight and complaint mechanisms for the child protection system and identification of ways to improve oversight of and public confidence in the child protection system; and

e) reviewing the adequacy and appropriateness of any response of, and action taken by, government to allegations, including any allegations of criminal conduct associated with government responses, into historic child sexual abuse in youth detention centres.

4. EXCEPT that the inquiry is not to have regard to the following matters:

a) Recommendation 39 of the Forde Inquiry;

b) any matter that is currently the subject of a judicial proceeding, or a proceeding before an administrative tribunal or commission (including, but not limited to, a tribunal or commission established under Commonwealth law), or is, as of the date of these terms of reference, the subject of police, coronial, misconduct or disciplinary investigation or disciplinary action;

c) the appropriateness or adequacy of:

- i any settlement to a claim arising from any event or omission; or
- ii the rights to damages or compensation by any individual or group arising from any event or omission, or any decision made by any court, tribunal or commission in relation to a matter that was previously the subject of a judicial proceeding, or a proceeding before a tribunal or commission; or
- iii any Queensland Government redress scheme including its scope, eligibility criteria, claims and/or payments of any kind made to any individual or group arising from any event or omission;

for any past event that, as of the date of these terms of reference, is settled, compromised or resolved by the State of Queensland or any of its agencies or instrumentalities; and

d) the operation generally of youth detention centres (other than those matters relating to historic child sexual abuse in youth detention centres identified at paragraph 3(e) of these terms of reference), including but not limited to the progress of implementation of Recommendations 5 to 15 (inclusive) of the Forde Inquiry relating to the operation of youth detention centres.

### **Commission to report**

5. AND directs that the Commissioner make full and faithful report and recommendations on the aforesaid subject matter of inquiry, and transmit the same to the Honourable the Premier by 30 April 2013.

### **Commission to make recommendations**

6. IN making recommendations the Commissioner will chart a new road map for Queensland's child protection system over the next decade. The recommendations should take into consideration the Interim Report of the Queensland Commission of Audit and the fiscal position of the State, and should be affordable, deliverable and provide effective and efficient outcomes. The recommendations should include:

- a) any reforms to ensure that Queensland's child protection system achieves the best possible outcomes to protect children and support families;
- b) strategies to reduce the over-representation of Aboriginal and Torres Strait Islander children at all stages of the child protection system, particularly out-of-home care;
- c) any legislative reforms required; and
- d) any reforms to improve the current oversight, monitoring and complaints mechanisms of the child protection system.

### **Application of Act**

7. THE provisions of the *Commissions of Inquiry Act 1950* shall be applicable for the purposes of this inquiry except for section 19C – Authority to use listening devices.

### **Conduct of Inquiry**

8. THE Commissioner may hold public and private hearings in such a manner and in such locations as may be necessary and convenient.

#### **Endnotes**

1. Made by the Governor in Council on 28 June 2012.
2. Notified in the Gazette on 29 June 2012.
3. Not required to be laid before the Legislative Assembly.
4. The administering agency is the Department of Justice and Attorney-General.

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# Endnotes

- <sup>1</sup> Statement of Bradley Swan, 10 August 2012 [p45: para 179]; The department has estimated that 1 in every 1.6 Aboriginal and Torres Strait Islander children will be reported to the department in 2012-2013 compared to 1 in every 4.2 non-Aboriginal and Torres Strait Islander children.
- <sup>2</sup> Statement of William Hayward, 24 August 2012 [p15: para 55]; Submission, Queensland Public Interest Law Clearing House Incorporated, September 2012 [p5: para 1]; Transcript, Clare Tilbury, 28 August 2012 [p40: line 30]; Statement of Bob Lonne, 16 August 2012 [p15: para 77].
- <sup>3</sup> Statement of Brad Swan, 10 August 2012 [Attachment 7].
- <sup>4</sup> The Family Group Conference was established under the *Children, Young Persons and Their Families Act 1989*.
- <sup>5</sup> *Children, Youth and Families Act 2005* (Vic).
- <sup>6</sup> Statement of Bradley Swan, 31 August 2012 [p4: para 18; Attachment 3].
- <sup>7</sup> The Family Responsibilities Commission is established as a statutory authority under the *Family Responsibilities Commission Act 2008* (Qld).
- <sup>8</sup> Under amendments to the process in October 2010, three local Commissioners can hold a conference in certain circumstances. There are 18 local Commissioners across the four CYWR communities (Family Responsibilities Commission 2011a).
- <sup>9</sup> Authorities have been established under the *Child and Family Services Authorities Act 2002* (Manitoba).
- <sup>10</sup> *Child and Family Services Act 1984* (Manitoba).
- <sup>11</sup> This evaluation was concerned with federally-funded on-reserve First Nations Child and Family Services, not provincially-funded off-reserve services.
- <sup>12</sup> Recommendation 7.35, p214.
- <sup>13</sup> D'Andrade, Austin & Benton 2010.
- <sup>14</sup> Ibid.
- <sup>15</sup> Lamont, Price-Robertson & Bromfield 2010.
- <sup>16</sup> Transcript, Professor Karen Healy, 5 September 2012, Brisbane [p35: lines 32-40].
- <sup>17</sup> Transcript, Professor Karen Healy, 5 September 2012, Brisbane [p16: line 28].
- <sup>18</sup> Transcript, Professor Bob Lonne, 28 August 2012, Brisbane [p137: line 15].
- <sup>19</sup> Exhibit 21, Submission of the Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, 16 August 2012 [p12].
- <sup>20</sup> Submission of Dr Phillip Gillingham, 31 August 2012 [p2].
- <sup>21</sup> Protecting Victoria's Vulnerable Children Report 2012, Volume 1, xxxiv; Wood Inquiry into Child Protection Services in NSW 2008, Executive Summary, IV; Growing Them Strong Together (NT) (2010), Volume 1, xxxviii and p18.
- <sup>22</sup> Strengthening Families (no date), Strong families (no date).
- <sup>23</sup> Section 5, *Childrens Court Act 1992*.
- <sup>24</sup> Magistrates Court of Queensland Annual Report 2010-2011, p26.
- <sup>25</sup> QCAT response to information request from QCPCI dated 22.08.12.
- <sup>26</sup> Statement of Clare Tilbury, 20 August 2012, Attachment 5 'Tilbury, C & Mazerolle, P. (forthcoming)'The Children's Court in Queensland where to from here?' in R Sheehan and A Borowski (Eds) in *Australia's Children's Courts Today and Tomorrow*, Springer Publishing Company, New York, [p.13-22].
- <sup>27</sup> Statement of Clare Tilbury, 20 August 2012, Attachment 5 [p. 4].
- <sup>28</sup> Submission of Queensland Law Society [p.9].
- <sup>29</sup> <http://webarchive.nationalarchives.gov.uk/20110218200720/http://www.hmcourts-service.gov.uk/cms/479.htm>, viewed 12 October 2012.
- <sup>30</sup> This includes filing 'annex documents' – social work chronology, initial social work statement, initial and core assessments; letters before proceedings; schedule of proposed findings and care plan.
- <sup>31</sup> Including pre-proceedings checklist compliance; allocate or transfer file; appoint children's guardian; appoint solicitor for child; case analysis for first appointment; appoint guardian ad litem or litigation friend for protected party or any non subject child who is a party, including the official solicitor (i.e.: akin to adult guardian) where appropriate and list the matter for first appointment.
- <sup>32</sup> Ordered as part of case management direction - Standard document which summarises each party's case.
- <sup>33</sup> Submission from the Australian Association of Social Workers, p. 6-7.
- <sup>34</sup> Section 136-137 Children and Community Services Act.
- <sup>35</sup> Children's Court of Western Australia Practice Direction No 1 of 2012.
- <sup>36</sup> Section 136 (4) Children and Community Services Act.
- <sup>37</sup> Alternative Dispute Resolution Procedures in Children's Court.
- <sup>38</sup> Section 65 (1A) Children and Young Persons (Care and Protection) Act.

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- <sup>39</sup> Practice Note 3: Alternative Dispute Resolution procedures in Childrens Court.
- <sup>40</sup> Practice Direction – Public Law Proceedings guide to case management: April 2010.
- <sup>41</sup> Section 31 Childrens Act.
- <sup>42</sup> See Chapter 5.4.
- <sup>43</sup> Steering Committee for the Review of Government Service Provision 2012, Table 15A.16.
- <sup>44</sup> Steering Committee for the Review of Government Service Provision 2012, Table 15A.77.
- <sup>45</sup> Steering Committee for the Review of Government Service Provision 2012, Table 15A.75.
- <sup>46</sup> The 169 children adopted comprises of 45 'local' adoptions and 124 'known' adoptions.
- <sup>47</sup> The five Queensland children adopted comprises of one 'local' adoption and four 'known' adoptions.
- <sup>48</sup> 42 U.S.C. § 675(5).
- <sup>49</sup> See also submission of Barnados Australia, 6 September 2012 [p4].
- <sup>50</sup> Submission of Barnados Australia, 6 September 2012 [p5].
- <sup>51</sup> See also Transcript, Professor Clare Tilbury, 28 August 2012, Brisbane [p31: lines 14-20].
- <sup>52</sup> (Dissenting Report), pp316-317.