

## Commissioner's Overview

This Inquiry was commissioned to review the overall performance of the state's current child protection system to ascertain whether it is protecting children and supporting families as intended and to report its findings and any proposals for change.

The Commission's final report will, no doubt, inform and hopefully help the government's search for the most effective, cost efficient and sustainable public child protection system and restore public confidence in the system's capacity to meet the protective needs of vulnerable children and families in Queensland.

This discussion paper is published for the purpose of creating a constructive debate around some of the more significant issues and reform options. The opportunity for anyone with a genuine interest in child protection to contribute positively to the exchange of ideas and views should not be missed.

The phrase 'current child protection system' as used in the terms of reference is taken by the Commission to refer to the intervention services that the Director-General of the Department of Communities, Child Safety and Disability Services (the department) funds, provides, coordinates or delivers as chief executive, as well as related court proceedings and oversight mechanisms. The details of the system are described throughout this paper.

### The challenges facing our system

Based on national studies, it could be estimated that 5 per cent to 10 per cent of Queensland's nearly 1.1 million children will be abused at some time during their childhood, and many of them will be left scarred for life by the experience. Many of these children will not enter the child protection system in Queensland. Of those who do, many will be screened out at an early stage, and only 20 per cent of reports will be classified as notifications warranting investigation and assessment.

Our Queensland intake (reports and notifications) system is clearly overloaded with intakes, tripling in the past decade (from 33,697 in 2001-02 to 114,503 in 2011-12). In 2011-12, 22,894 notifications (20 per cent of intakes) were investigated and assessed while the remaining 80 per cent were screened out, many without any further action or assistance.

Of the 22,894 notifications in 2011-12, around 34 per cent were substantiated after investigation and assessment. Most substantiated matters involved emotional harm (35.2 per cent) or neglect (42.4 per cent) with physical harm substantiated in 17.9 per cent of cases and sexual harm in 4.6 per cent of cases.

The high number of children and young people being harmed has significant costs for the children themselves and for the protective system designed to respond to their needs, as well as wider social impacts.

Research shows that young people harmed during childhood are between two and eight times more susceptible than the general population to attempt or commit suicide, and the life expectancy of those who have six or more abusive experiences is up to twenty years shorter than those having none. According to one overseas study, male teenagers in state care are 18 times more likely to die before the age of 25 than those raised by their parents at home (Segal & Dalziel 2011).

Family disintegration through community disengagement and isolation, joblessness, alcohol and drug addiction, substandard education outcomes and career prospects, poorer physical and mental health, chronic domestic conflict and violence, pervasive guilt and lifelong feelings of hopelessness, self-recrimination and despair are also identified as costs. In a wider social context, there is the cost of social deterioration due to crime, long term unemployment, higher hospital attendance rates, increased dependence, and intermittent contact with social welfare agencies including the child protection and juvenile justice systems. Other economic costs are due to falling production and increased public funding of social security programs and benefits, and growing demand for expensive human services.

Being harmed in childhood also reduces future adult functioning and parenting capacities, which ultimately leads to the transmission of intergenerational risks of harm.

The total cost of child abuse and neglect substantially outweighs the cost to government of countering it. In dollar terms the total cost of harm to children (including publicly provided protection services) in Australia was estimated to be about \$10.7 billion in 2007 (Segal & Dalziel 2011). It follows that preventing, responding effectively to and reducing the incidence and impact of child abuse and neglect is in everyone's interest.

While the overriding consideration is the welfare and best interests of children most in need, there remains a legitimate public interest in ensuring that the Department of Communities, Child Safety and Disability Services spends its total budget (\$2.564 billion in 2012-13) and uses other available resources as cost efficiently as possible in investing in a strategic blend of effective risk reduction and harm minimisation interventions.

Approximately \$735.5 million was expended in Queensland on direct child protection services in 2011-12 (an increase by 302 per cent from the \$182.3 million in 2003-04). Internal departmental budgets (mainly wages) have grown by in excess of \$200 million since 2003-04. One of the key challenges for the Commission is to identify whether this money could be used more cost-effectively and whether there is an appropriate balance between expenditure on responses involving coercive statutory interventions (see Chapter 4) and that on providing early intervention and prevention services for families (see Chapter 3). This challenge is explored in more depth throughout the paper.

Ultimately, however, the community expects the best interests of the child to be met, regardless of the expense, consistently with policy intents and statutory principles.

## The legal framework

Although the family has traditionally fulfilled the primary moral and legal responsibility for meeting children's overall wellbeing needs and safeguarding them from preventable harm, the government has played an important but strictly limited role since the late 19th century by providing a 'safety net' for a child who, for one reason or another, does not have a protective parent.

Notwithstanding their common aim, the child protection interests of the family and the government often compete and sometimes conflict with each other. These awkward relationship tensions are formally regulated by specialist laws reflecting contemporary social values and basic community standards in an attempt to strike the delicate balance between too much and not enough government intervention. However, exactly when, to what extent and for how long family privacy and parental autonomy can be displaced on welfare grounds remains a vexed socio-political question.

Modern child protection in Queensland relevantly began in 2000 when the current *Child Protection Act 1999* replaced the 35 year old *Children's Services Act 1965*. The parliamentary debates make it clear that the Act was intended to transform child protection in line with international practice and improved delivery methods.

The tenor of the Act is distinctly holistic, child centred and family oriented rather than the medico-forensic fault-based approach it replaced.

The main focus is on children's overall wellbeing needs and what if any protection (including care) order is required to meet them appropriately, rather than on blaming parents for their shortcomings.

The Act is based on the premise that the least intrusive viable intervention option should be adopted: preferably, supporting the child's family or assisting a parent to safely care for the child at home.

It is important to note that the Act introduced a range of new orders so that the least intrusive protection option (including prevention as well as ongoing care) could be used as appropriate in each case when intervening in family life and relationships, to ensure that the overall safety, wellbeing and best interests of children are met. This expressly includes taking action to give the help a child needs, including giving support services to the child and his or her family, and ensuring that preventative and other appropriate supports are given to a child at risk to decrease the likelihood of protection becoming the child's primary need (see Chapter 3).

The standard interventions under the Act rely on what are known as secondary and tertiary levels of preventative response. Secondary interventions include prevention and early intervention services based on risk. Coercive or tertiary intervention (or so-

called statutory protection) is based on past, likely future or ongoing harm into the foreseeable future and includes court-ordered long-term guardianship (see Chapter 2). Tertiary interventions can also be based on parental consent. Coercive intervention is only available to children reasonably suspected of being in 'in need of protection' and a precondition to coercive intervention by the department is the inadequacy of a voluntary or any less intrusive intervention option.

The Act plainly envisages that protective action should usually take place with the consent and cooperation of parents and that the chief executive, whenever possible, will work with the family to assist them to protect the child concerned.<sup>i</sup>

Forced removal and separation from the family was intended to be the step of last resort and restricted to 'a minority of cases' where the chief executive is required to assume custody of children, or take other protective action, without parental consent to ensure safety or meet assessed protection needs, because prevention and early intervention services were insufficient to adequately protect their wellbeing.<sup>ii</sup>

Even when removal is necessary as a safety measure, assistance is supposed to be given to both the child and family to facilitate the child's return if, as will usually be the case, that is in his or her best interests. In the meantime the chief executive has to consider, as a first option, placing the child in the care of relatives and, to the extent possible, with siblings in stable and secure living arrangements that can meet all developmental and wellbeing needs and maintain a connection with the family and community.

The Act also gives statutory force to the Aboriginal and Torres Strait Islander placement principle, which requires Indigenous children to be placed, preferably with family, in or close to their community to preserve cultural, social, traditional and familial links.

In addition to functions associated with statutory intervention, the chief executive has numerous other functions under the Act including to:

- provide or help provide preventative and support services to assist vulnerable families
- reduce the incidence of harm to children, including children in Aboriginal and Torres Strait Island communities
- educate the public about child abuse and neglect
- develop coordinated responses to child harm allegations and related risk factors such as domestic violence
- help young people (financially and otherwise) in the transition from being a child in care to planned independence and encourage their development into responsible adulthood (and potential parenthood)
- collect and publish information and research into (i) the causes and effects of harm to children, (ii) the life outcomes of children in care, and (iii) the relationship between the criminal justice and child protection systems.

One view would be that these statutory functions and responsibilities amount to duties<sup>iii</sup> rather than mere authorities, in which case refusing to duly fulfil them at all is not an option, although shortage of funds may justify some prioritisation and reasonable delay.<sup>iv</sup>

## The departmental service system

Child protection services are delivered across the state through 880 funded non-government organisations, and directly by the department through 55 service centres across 7 regions supported by a central corporate office.

The department's overall budget is \$2.564 billion in 2012-13, of which \$774.1 million is dedicated to the 'child safety' stream as distinct from 'social inclusion' and 'disability services'.<sup>v</sup>

In its annual report of 2011-12 the department claims to work closely with all levels of government and non-government bodies to 'deliver responsive and holistic services' to vulnerable clients.

Child Safety is described in the annual report 2011-12 as focusing on protecting children and young people via 'a range of statutory child protection services' and funding family support services where children are at risk.

The strategic policy intent is said to be to improve support services to vulnerable individuals and families and developing opportunities for children in care. Included in the 'range of prevention and early intervention services' mentioned by the department are a number aimed at reducing entry into the tertiary protection system, including:

- continued support for young people with complex and multiple needs that addresses risk factors
- establishment of the Evolve behaviour support service – early intervention which provides support services to children with a disability who have complex behaviours and support needs and who are at risk of being relinquished to the child protection system
- continuation of the Helping Out Families pilot with early indications suggesting that the initiative contributes to improved outcomes for families by connecting them with the right services at the right time, thus reducing demand on the tertiary child protection system
- successful implementation of regional homelessness community action plans in 7 regions.

The department also works with other allied agencies having a child protection function (such as health, education, disabilities, and police) within a broader social welfare sector to ensure the overall safety, wellbeing and best interests of children and young people are met.

## Policy intents and expectations

There is no suggestion that the Act is unclear about the outcomes it intends the system to deliver. Nor is there any uncertainty about the statutory functions and responsibilities of the chief executive and, to my knowledge, it has not been contended by any interested party that the policy and priority settings of the Act are misguided or unrealistic. Indeed, the department's annual report 2011-12 suggests they are being implemented and given full practical expression.

However, the reality as described throughout this paper is that many of the expected outcomes are routinely not achieved and a yawning gap appears to have opened up in the years since 2000 between what the system should be doing and what it actually does.

For example, if the Act was working as intended, some of the many effects one would expect to see in Queensland are:

- preference given to early intervention and support rather than coercive tertiary intervention
- notifications decreasing yearly because of the cumulative success of preventative and early interventions in previous years
- children at risk of emotional harm or neglect having their safety and wellbeing ensured by the department supporting and assisting the child's family rather than by removal and retention
- having children in care stably placed, preferably with kin and siblings, and preferably near their parents and community
- the chief executive encouraging their development to responsible adulthood and adequately preparing them for transition to independence on reaching 18. This is critically important to breaking the intergenerational cycle of child protection risk factors
- providing preventative and support services to strengthen and support families and reduce the incidence of harm and to protect children if a risk of harm has been identified
- a coordinated preventative and early intervention service framework to respond to allegations of harm to children and domestic violence being developed and strengthened by the department yearly since 2001
- state, federal and local government entities with child protection related functions cooperating to provide statutory protection services
- protecting all children in need of protection and ensuring that no child is mistakenly identified as needing protection.

The information available to the Commission to date suggests that Queensland is falling short in achieving all of these aims. The published data gives the clear

impression of a system under stress struggling to meet ever increasing demand for tertiary level intervention in a market of rapidly reducing supply and scarce resources. This is indicative of failures in the system which could be the result of either design failures or failures in implementation.

Of particular concern to the Commission is the increasing number of children in out-of-home care, and the overrepresentation of Aboriginal and Torres Strait Islander children in the system.

As Chapter 2 shows, the number of children in out of home care in Queensland has more than doubled from 3,257 in 2002 to 7,999 in 2012. Nearly a fifth of these children have needs that are classified as 'high support needs' or 'extreme support needs'. There is evidence that children are staying in out-of-home care for longer periods and that the stability of their placements is declining. At present there are 600 high needs young people in care pending transition to independence. The cost of providing out-of-home care continues to increase, especially for those children and young people with high needs, as does the cost of supporting them in transition to independence. The Commission is looking at ways to reduce this cost, while at the same time recognising the need to provide appropriate care which will enhance the opportunities for these children and young people, especially in the transition from care.

Indigenous children and young people are overrepresented in the child protection system at an increasing rate. As Chapter 7 shows, they are now five times more likely than their non-Indigenous counterparts to be notified, six times more likely to have harm substantiated and nine times more likely to be living in out-of-home care. More than 50 per cent of the Aboriginal and Torres Strait Islander children in the state are expected to have contact with the child protection system in 2012-13.

The reasons for such a high level of overrepresentation are multiple and complex, including systemic and chronic disadvantage stemming from historical factors and social factors such as alcohol and drug abuse as well as domestic and community violence. These broader issues have challenged all levels of government for decades and there is no simple solution to such complex problems. It is clear that any solution will require the Aboriginal and Torres Strait Island communities and organisations to work together with all levels of government to develop solutions to address the issue at a local level. It is important therefore that the Commission continue to encourage input from those stakeholders.

The problem of increasing demand on the system is not unique to Queensland – the Protecting Children: Evolving Systems Report 2011 states that the workload of all child protection authorities has increased since 1989 due to factors such as:

- the expectation and responsibility for supporting vulnerable families and keeping children safe shifting from communities to governments
- progressive introduction of mandatory reporting in all states and territories from the 1980s onwards
- development of risk-averse cultures

- expansion of the types of harm and severity of harm or risk of harm to which child protection systems are expected to respond, particularly in relation to emotional abuse, neglect and exposure to domestic violence.

The relevance of these factors in the Queensland context is explored throughout this paper.

## Enhancing performance

A key challenge we face in this state is to strengthen universal and secondary services to families and communities to prevent and reduce the incidence of abuse and neglect, while at the same time having the capacity to provide statutory intervention when required and the therapeutic services to ameliorate the impact of harm on children and young people.

Shifting the focus of the system from a forensic investigative risk averse culture (where demand is pushed along the prevention-protection continuum as a mechanism across government to manage risk) to one focusing on supporting families is likely to be a more sustainable approach in the long term.

Clearly, even if future funding needs could be met from revenue and it was possible for services to expand enough to meet demand, it is clear that the problem cannot be solved by funding alone.

The key question is not how much tertiary intervention costs but whether the return on the investment in public child protection is a net welfare gain for Queensland children, their families and society in general.

Among the many impediments to answering this question is the lack of research and evaluation in Queensland to assist in measuring costs and benefits of various interventions. The economic evaluation of the best value, highest yield services and their delivery is lacking. In 2006 a recent Australia-wide audit (Cashmore et al. 2006) of child protection research found significant gaps in existing research, a shortage of research funding and an inadequate evidence base for sound policy and practice decisions. It identified seven crucial areas for development to build research capacity and promote a research culture in child protection agencies, including a 'roadmap' to identify priorities and provide some direction in a systemic framework. It also identified the need to situate this area of research within a broader context. The ultimate conclusion was that neither the evidence to inform child protection decisions and policies nor the use of the existing knowledge base is adequate.

Unsurprisingly, given this paucity of research, there is no clear consensus within the professional child protection community about which interventions consistently outperform rival options and represent the 'best buy' or 'highest yield' on investment. It is clear, however, that traditional analytical approaches do not work (Australian Public Service Commission 2007, p1).

Understanding what ‘works, and what doesn’t, and what represents good value is challenging. Furthermore, as successful implementation will require cross-portfolio – budget negotiations and the involvement of central agencies, the optimal mix of services will be difficult to realise’ (Segal & Dalziel 2011, p276).

During the past months, the Commission has met with people who have experience in all aspects of the protection system, from academics and senior public servants to front-line workers and families who have been directly affected by the system. In addition, the Commission has received a number of submissions which have offered information and insight into the challenges faced by those negotiating the child protection system. Those who have taken the time to provide information to the Commission have made an important and valued contribution to the Commission’s work.

In making its findings and recommendations, the Commission will endeavour to strike a balance between the competing demands of the community’s expectations that the government will protect children from harm, and the damage that may be caused by acting in a risk-averse manner and intervening when it is not necessary to do so. The Commission is mindful that any recommendations must be realistic and cost-effective, and will continue to work to provide Queensland with a much-needed ‘road map’ for the next ten years.

**Tim Carmody SC**  
Commissioner

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<sup>i</sup> Explanatory Memorandum, Child Protection Bill 1998 (Qld), p16.

<sup>ii</sup> Explanatory Memorandum, Child Protection Bill 1998 (Qld).

<sup>iii</sup> See Padfield (1968) AC at 1010.

<sup>iv</sup> *Boe v Criminal Justice Commission* BC930403 (unreported, 10 June 1993) per de Jersey J, pp2-3.

<sup>v</sup> Department of Communities, Child Safety and Disability Services, *2012-13 Service Delivery Statement (Budget Paper 5)*, p6.



# Chapter 1

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## Introduction

The Queensland Child Protection Commission of Inquiry (the Commission) was established on 1 July 2012 to review the effectiveness and efficiency of the child protection system in Queensland and is headed by the Hon Tim Carmody SC (the Commissioner). The terms of reference require the Commission to:

- a. Review the progress of implementation of the recommendations of the *Commission of inquiry into abuse of children in Queensland institutions* (the Forde Inquiry), apart from recommendation 39 of that Inquiry, and *Protecting children: An inquiry into abuse of children in foster care* (Crime and Misconduct Commission Inquiry).
- b. Review the 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. Review the effectiveness of the child protection system in relation to a number of specific areas, including whether resources are adequate and whether they could be used more efficiently, the current response to children and families, the appropriateness and level of support for frontline child protection staff, tertiary child protection interventions (including case management, service standards, decision making frameworks and child protection court and tribunal processes) and the transition of children through, and exiting the child protection system.
- d. Review the effectiveness of the monitoring, investigation, oversight and complaint mechanisms for the child protection system and identify ways of increasing public confidence in the child protection system.
- e. Review the adequacy and appropriateness of any government response to allegations of criminal conduct associated with historic child sexual abuse in youth detention centres.

The terms of reference also require the Commission to make recommendations in the following way:

- chart a new road map for Queensland's child protection system over the next decade, taking into account the Interim Report of the Queensland Commission of

Audit and the fiscal position of the state and ensuring affordable, deliverable, effective and efficient outcomes

- include any reforms to ensure that Queensland's child protection system achieves the best possible outcomes to protect children and support families
- include strategies to reduce the over-representation of Aboriginal and Torres Strait Islander children at all stages of the child protection system, particularly in out-of-home care
- include any legislative reform required
- include any reforms to improve the current oversight, monitoring and complaints mechanisms of the child protection system.<sup>1</sup>

The Commission is required to report back to the Premier in the first half of 2013.

This Discussion Paper relates only to the work the Commission has been asked to do in relation to items (a) to (d) listed above, and not to item (e), which will be the subject of a separate report.

## The Commission's approach

To date, the Commission has sought to inform itself in a number of ways:

- through the public hearing process conducted pursuant to the *Commission of Inquiry Act 1950* (Qld). In relation to items (a) to (d) listed above, the Commission has sat for 42 days and heard from 83 witnesses
- through written submissions made to the Commission by individuals and organisations. As at 11 February 2013, the Commission has received 244 submissions which it considers to be within the terms of reference
- through the statements of individuals who may or may not have appeared in a public hearing
- by reading the academic literature on child protection
- by convening meetings with a number of key individuals and stakeholders who have knowledge and expertise in the child protection system
- by engaging individuals with specialist skills or knowledge to provide intellectual input into discrete topics of interest to the Commission.
- by holding five focus group meetings with frontline child protection workers (held in Mount Isa, Ipswich, Mt Gravatt, Caboolture and Labrador) and by sending an online survey to approximately 1,700 frontline child protection workers in the Department of Communities, Child Safety and Disability Services
- by attending three focus group meetings with children in the care system organised and run by CREATE Foundation

- by convening a meeting of an advisory group – a group of professionals with specialist expertise – who provided feedback on early reform ideas being considered by the Commission, and who will meet again prior to the Commission developing its final report (a list of the members of the advisory group is included in Appendix 1).

This Discussion Paper follows two earlier papers published to the Commission’s website in September (*Emerging issues*) and October (*Options for reform*). These earlier papers presented information about issues of relevance to the Queensland child protection system and were intended to provide information about the progress being made by the Commission

The Discussion Paper aims to provide a more comprehensive exploration of the key issues facing Queensland’s child protection system and some preliminary ideas that aim to address or solve the problems identified. The intention is to provide insight into the Commission’s early thinking and to seek feedback on potential ideas for reform of the system. It should be noted that these are early ideas and the Commission may alter, discard or adopt these or other reforms for its final report.

The paper is structured to cover the central areas that have to date presented themselves as requiring the Commission’s attention. These are:

- investing in secondary services for children and families who are at risk of entering the statutory child protection system
- decision-making processes involved in investigating and assessing child protection reports
- working with children and families who have entered the statutory child protection system, to either re-unify them with their families or to provide long-term stable care
- assisting and supporting young people when they exit the care system and transition to independence
- increasing self-determination for Aboriginal and Torres Strait Islander communities in the child protection system to reduce over-representation
- ensuring the system has a stable workforce that is fully supported to perform its role within the child protection system
- strengthening courts and tribunals processes, to ensure fairness and accessibility
- ensuring that the public has confidence in the system because it is fully accountable, without being constrained by a culture of compliance
- ensuring the child protection system is efficient and cost effective.

A number of questions have been posed throughout the Discussion Paper. These questions seek the opinions and views of respondents about the issues and proposals for reform outlined. The Commission anticipates a range of views to be submitted, and encourages and welcomes input.

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<sup>1</sup> The terms of reference specifically exclude:

- 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 was, as at 1 July 2012, the subject of police, coronial, misconduct or disciplinary investigation or disciplinary action.
- The appropriateness or adequacy of:
  - any settlement to a claim arising from any event or omission
  - 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
  - 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 1 July 2012, is settled, compromised or resolved by the State of Queensland or any of its agencies or instrumentalities; and

- The operation generally of youth detention centres, including but not limited to the progress of implementation of recommendations 5 to 15 of the Forde Inquiry relating to the operation of youth detention centres.

