

Commissioner Carmody  
Queensland Child Protection Commission of Inquiry  
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[www.childprotectioninquiry.qld.gov.au](http://www.childprotectioninquiry.qld.gov.au)

15 March 2013

Dear Commissioner,

The Commission of Inquiry provides a unique opportunity to influence the future of child protection in Queensland for the benefit of Queensland families and communities and we are pleased to take the opportunity to provide a submission to the Inquiry.

The authors of this submission, Zoe Rathus AM and Keryn Ruska, met with Counsel Assisting the Commission Kathryn McMillan SC and Commission staff Catherine Moynihan, Anne Edwards, Emma Ramatuela and Susan Johnson on 18 February 2013. This submission reflects some of the matters discussed at that meeting and also addresses some specific issues raised in the February 2013 Discussion Paper.

Both authors have been employed as academics at Griffith University for a number of years. Prior to that, we both worked with women and their families in the areas of family law, child protection and family violence. Our academic research has to date focussed on family law and family violence with some research in the area of child protection.

It is not our intention to address every issue or question raised in the Commission's February 2013 Discussion Paper, but to focus on those areas where we have experience and knowledge.

On a more general level, however, we agree with the Commission's proposal for a shift of focus to the provision of early intervention with the aim of reducing the number of families entering the tertiary level of the child protection system. We also support the proposal to transfer a range of child protection functions to the Aboriginal and Torres Strait Islander NGO sector.

The specific issues that we wish to address are set out below.

## 1. Representation of parent/s

It is the view of the authors that a representative or advocate for parents should be an integral part of the child protection system, not only at the tertiary level (Chapter 10 of the Discussion Paper) but also at the secondary level of the system (Chapter 4 and 5 of the Discussion Paper).

An advocate would assist to alleviate the power imbalance between parents and the Department of Child Safety and may also be a buffer between the parent/s and the Department, thus reducing the conflict that often occurs. An advocate would enhance communication between the parent/s and the Department and hopefully lead to parents feeling less isolated and alienated in the child protection system. Research conducted by Drs Heather Douglas and Tamara Walsh about the child protection system in Queensland suggests that mothers frequently did not understand what was happening in their proceedings, where their children were located or what their rights were as parents. Their research also noted that 'the approach of child protection officials changed perceptibly when the parent had a legal representative', with the Department seen to be less 'dominating'.<sup>1</sup> Douglas and Walsh note that 'the presence of advocates may shift some power back to the parent'<sup>2</sup>. While the inclusion of lawyers or advocates is sometimes viewed by departmental staff as overly adversarial, we submit that a representative or advocate for parent/s may lead to a more inclusive process which could reduce tensions and facilitate outcomes in the best interests of the children.

Ideally, a representative or advocate for parents should be available as early as possible, before matters have escalated and thereby save costs at the tertiary end of the system. We do not suggest that the representative or advocate should always be a lawyer. It is our view that in the secondary level of the system an advocate could be a suitable skilled community worker, although a lawyer is necessary for parties in the tertiary level of the system. It is essential that the representative or advocate is independent of the department so that parent/s will work with and trust that person.

## 2. Family Violence

Differential response pathways- chapter 4, question 9 of the Discussion Paper. We support the proposal for a specific response pathway for matters involving family violence. We endorse the submission of Women's House Shelta<sup>3</sup> that currently in child protection matters insufficient attention is paid to the power imbalance in family violence relationships and to providing support to women to enable them to keep their children safe.

Women experiencing family violence are often seen as 'not protective' and are given an ultimatum by the Department to leave the family home and the relationship or their children will be removed by the Department. The reality is that it can be extraordinarily difficult for women to leave the home and relationship without support. For many women to leave successfully they require support

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<sup>1</sup> H Douglas and T Walsh, 'Mothers and the Child Protection System' (2009) *International Journal of Law, Policy and the Family* (2009) 23(2): 211-229 at 222

<sup>2</sup> Ibid

<sup>3</sup> At page 85 of the Discussion Paper

in the period following the breakup of the relationship, when they are likely to be still traumatised and dealing with issues such as finding housing, changing schools and providing emotional support to the children. It is now understood that family violence can diminish the capacity of mothers to nurture and parent well but that this effect is likely to dissipate if the mother and her children are rendered safe.<sup>4</sup> Women need support to achieve this and it is important that departmental staff act cautiously in terms of assessing their parenting skill while they are still with their violent partner and shortly after their separation. A wrong appraisal of this could lead to an unnecessary removal of a child.

If a woman takes protective action and leaves the violent relationship she can also be placed in a complex position if the children have already been removed or are placed in care shortly after her separation. A situation can arise where the Department expects her to behave as a mother but the reality is that she is living as a childless single woman. She is ineligible for many financial and social services benefits available to parents but decisions about returning the children to the mother's care depend on the mother living her life as she would if the children were living with her. This is an unrealistic standard. In the meantime, the requirements of the Department in terms of attending meetings and parenting courses etc can often limit such a mother's capacity to move forward, restricting her opportunities for employment or study.

It is in the area of family violence that women most dramatically experience the policy and philosophical differences in the underpinnings of the family law system and the child protection system. While the child protection system scrutinises the mother to ensure that she manifests the characteristics of an overtly protective parent, such a stance can create adverse outcomes for her within the family law system where the focus will be on her level of cooperation with the father and her facilitation of contact between the father and the children unless there has been absolute proof of the violence and harm.<sup>5</sup>

It is hoped that a specific response pathway for matters involving family violence would allow meaningful support and assistance to be provided to women experiencing family violence, so that they can keep their children safe and in their care wherever possible.

### 3. Multi-disciplinary teams

We support the proposal in Chapter 4 for multi-disciplinary teams to work with families in the Child Protection system. We propose that it is important to include lawyers in the multi-disciplinary team, to allow legal issues to be addressed as early as possible rather than on the eve of a court date. The involvement of lawyers at the earliest stages of departmental intervention would allow for lawyer-to-lawyer negotiation (assuming the parents are also represented) and assist to resolve issues quickly. The involvement of lawyers may be viewed by some as adversarial but it reflects the reality of the system being a statutory system, and would serve as a safeguard to ensure compliance with legislation.

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<sup>4</sup> P Jaffe, J Johnston, C Crooks and N Bala, 'Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans', (2008) 46(3) *Family Court Review* 500 at 503 – 504.

<sup>5</sup> See s60B and s60CC(2) *Family Law Act 1975* (C'th). While the amendments introduced by the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* mean that greater weight will now be given to 'protection' than to a 'meaningful relationship', (see, for example, new sub-section s60CC(2A)) the impact of the amendments remains to be seen.

The model in the UK child protection system is an example of a multidisciplinary team that includes lawyers both for the Local Authority (the statutory body responsible for child protection) and the parents. The UK Ministry of Justice Best Practice Guide<sup>6</sup> stresses the importance of collaboration between the various professionals working with at-risk families and sets out the roles of the different members of the multi-disciplinary team. This includes setting out the role of the lawyer for the parent.

The Best Practice Guide states that parents should be actively encouraged to seek legal advice and notes that “If the [Pre-Proceedings Meeting] is to have the best possible chance of resolving issues or identifying an alternative care solution it is vital that both the [Local Authority] and the parent have appropriate advice from their qualified legal advisors.” At a local level in the UK, various County Councils have developed protocols that set out the roles of professionals in the child protection system.<sup>7</sup>

The inclusion of lawyers in the multi-disciplinary team in child protection and the encouragement of meaningful collaboration between professionals, including recognition of the role of the advocate/lawyer for the parents, is something that would be beneficial in the Queensland child protection system and in our view would lead to better information sharing, earlier resolution of matters and better outcomes for children and families.

#### 4. Permanent placement options and adoption

This issue is raised in Chapter 5 of the Discussion Paper and as noted in the Discussion Paper, it is a complex issue. The desire for permanency is understandable, particularly from long-term foster carers and some children in long-term placements. However we are of the view that adoption (either open or closed), or the proposed permanent placement option that is somewhere between long-term guardianship and adoption, should be an option of absolute last resort.

The reality is that, as supported by the evidence of Karen Healy of the AASW<sup>8</sup>, young people will often seek to return to their biological family when they reach their teenage years or when they exit the care system. It is doubtful that adoption or some other permanent placement arrangement would change this reality for the majority of young people in the care system.

Of particular concern is that the availability of the option could lead to its overuse, particularly in a system that is under stress as is the case at present. We note that the Discussion Paper makes specific mention of the forced removal of children including the Stolen Generation and the need to guard against such events occurring again. However given the increasing overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system, it is likely that any overuse of adoption as an option would directly affect the Aboriginal and Torres Strait Islander

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<sup>6</sup> Care Proceedings Programme, Ministry of Justice *Preparing for Care and Supervision Proceedings: A Best Practice Guide for use by all professionals involved with children and families pre-proceedings and in preparation for applications made under section 31 of the Children Act 1989*, 2009

<sup>7</sup> For example see the Bedfordshire County Council, “Protocols for attendance of lawyers at child protection conferences” 2005

<sup>8</sup> Referred to at page 111 of the Discussion Paper.

community by the unnecessary permanent removal of Aboriginal and Torres Strait Islander children from their families and communities.

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