

Training for Child Safety Officers

Child Safety Officer Entry Level Training Program

Financial Year	Programs	Participants
2009 - 2010	20	212
2010 - 2011	18	243
2011 - 2012	18	216
2012 – 2013 (as at 23/10/12)	4	24

Interviewing Children and Recording Evidence Training Program

Financial Year	Programs	Participants
2009 - 2010	12	76
2010 - 2011	5	56
2011 - 2012	3	20
2012 – 2013 (as at 23/10/12)	1	10

Step Up To Leadership Training Program

Financial Year	Programs	Participants
2009 - 2010	7	84
2010 - 2011	4	37
2011 - 2012	0	0
2012 – 2013 (as at 23/10/12)	0	0

Training for Team Leaders/Senior Practitioners

Leadership Capabilities Training Program

Financial Year	Programs	Participants
2009 - 2010	13	130
2010 - 2011	5	44
2011 - 2012	0	0
2012 – 2013 (to 23/10/12)	0	0

- The last program run by Training & Specialist Support Branch was in October 2010

Leadership Training – Corporate Programs

Financial Year	Programs	Participants
2009 - 2010	4	43
2010 - 2011	6	37
2011 - 2012	6	56
2012 – 2013 (to 23/10/12)	0	0

This includes the following courses:

Capability and Leadership Framework Workshop - L&OD

Ethical Decision Making 2012 [Online] - L&OD

Leadership Links - Achievement and Capability Planning - L&OD

Leadership Links - Change - L&OD

Leadership Links - Managing Difficult Conversations - L&OD

Leadership Links - Team Management - L&OD

Leading Change (2 hours) - L&OD

Managing with Confidence - L&OD

Practical People Management - 2009 - L&OD

Practical People Management - 2010 - L&OD

Senior Officer Masterclass: Session 3 - L&OD

Supervision Essentials 2009 - L&OD

Supervision Essentials 2010 - L&OD

Supervision Essentials 2011 - L&OD

Webinar: Leading Change - L&OD

Training for Managers

Manager Training

Financial Year	Programs	Participants
2009 - 2010	2	8
2010 - 2011	5	20
2011 - 2012	6	15
2012 – 2013 (to 23/10/12)	0	0

This includes the following courses:

Building Integrity Project - L&OD

Capability and Leadership Framework Workshop - L&OD

Ethical Decision Making 2012 [Online] - L&OD

Leadership Links - Achievement and Capability Planning - L&OD

Leadership Links - Managing Difficult Conversations - L&OD

Leadership Links - Team Management - L&OD

Leading Change (2 hours) - L&OD

Managing with Confidence - L&OD

Queensland Public Sector Young Leaders Conference - L&OD

Senior Officer Masterclass: Session 2 - L&OD

Senior Officer Masterclass: Session 5 - L&OD

Other Training Programs

Foundation Studies in Culture

Financial Year	Programs	Participants
2009 - 2010	40	361
2010 - 2011	34	357
2011 - 2012	18	244
2012 – 2013 (to 23/10/12)	3	26

Aboriginal and Torres Strait Islander Cultural Capabilities

Financial Year	Programs	Participants
2009 – 2010	16	245
2010 – 2011	15	192
2011 – 2012	34	457
2012 – 2013 (to 23/10/12)	2	16

Multicultural Capability

Financial Year	Programs	Participants
2009 - 2010	n/a	n/a
2010 - 2011	2	23
2011 - 2012	15	201
2012 – 2013 (to 23/10/12)	0	0

Child Safety Support Officer - Cert IV, Diploma (2009 – 2011)

Total No of Child Support Officers Enrolments	Total No. of Child Safety Support Officer Completions	Total No. of Child Safety Support Officer Withdrawals
81	55	26

NB: As the delivery and assessment of the qualification was the responsibility of Department of Education and Training, through the four TAFE institutes:

- Metropolitan South Institute of TAFE,
- Sunshine Coast Institute of TAFE,
- Bremmer Institute of TAFE; and
- Tropical North Queensland Institute of TAFE.

Statistical breakdown per financial period were not kept.

NB: Of the 26 CSSOs, who withdrew from the program, 12 resigned from their positions whilst enrolled.

The CSSOs, who completed the Certificate IV in Child, Youth and Family Intervention, were offered the opportunity to undertake the Diploma in Child Youth and Family Intervention.

Attachment Marking

The preceding 3 pages is the annexure mentioned and referred to as ATTACHMENT 1a
in the statement of Kenneth Dagley taken on 25/10/2012

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a series of loops and a horizontal stroke.

Signature of witness to Inquiry

A handwritten signature in blue ink, appearing to read 'M. Momar' with a stylized 'M' and a horizontal stroke.

Signature of person witnessing statement

List of Training programs provided to frontline child safety staff between the period 2009 to 2013

NB: Some programs listed below ceased at various financial years during the above noted period. Statistical breakdown of programs has also been provided as attachment to this document.

POSITION	AVAILABLE TRAINING	DESCRIPTION
All staff	Practice Skills Development Workshops	<p>The practice skill development workshops were a joint initiative between the Child Safety Practice Improvement Unit, Child Protection Development Unit and Training and Specialist Support Unit. The workshops were implemented state-wide to promote and support quality practice skill development for frontline staff.</p> <p>The initiative aligns with the strategic directions of the department as outlined in the Department of Communities 2011-2015 Strategic Plan to focus on supporting and developing quality staff, quality systems and quality practice.</p> <p>The workshops also build on the learning opportunities provided through Child Safety and Community Training, in particular the Specialist Skills Training.</p>
	Aboriginal and Torres Strait Islander Cultural Capability	Aboriginal and Torres Strait Islander Cultural Capability is a 2 day program which is available to all departmental staff which equips them with skills and behaviours that align with the department's Aboriginal and Torres Strait Islander Cultural Capability Framework. The aims of the framework are to acknowledge value and respect Aboriginal and Torres Strait Islander peoples and cultures and to improve on the way staff develop and maintain working relationships with Aboriginal and Torres Strait peoples and communities.
	Multicultural Capability in Service Delivery training	Multicultural Capability in Service Delivery training is a 1 day program which is available to all departmental staff which develops their capability to initiate and maintain working relationships with culturally and linguistically diverse (CALD) clients and their communities. These capabilities align with both the Department of Communities Strategic Plan 2011-15 and the Queensland Multicultural Action Plan 2011-14.

	Specialist Skills Training	<p>The Specialist Skills modules have been developed in accordance with CMC recommendations relating to the need for ongoing professional development opportunities for all staff.</p> <p>The specialist skills modules assist in building effective specialist support training and development and capability within regions.</p> <p>The specialist skills modules are designed to:</p> <ul style="list-style-type: none"> • Cater for a large and dispersed workforce (i.e. be readily accessible across the State). • Cater for various modes of learning (i.e. individuals, small groups and facilitated training sessions). • Compliment the learning as identified in Achievement Capability Plans, verification of competency and personal and professional development. <p>The specialist skills modules are designed to compliment existing departmental resources and enhance staff's professional development and practice.</p> <p>There are approximately 90 specialist skills modules available for staff.</p>
	Regional Workshops	<p>Regional workshops as part of the Blueprint for Implementation Strategy to address the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the child protection system. These workshops were developed to enhance the understanding of staffs roles and responsibilities, explore barriers to best practice and develop shared solutions to improve local culturally sensitive practice. These workshops were facilitated for the staff of:</p> <ul style="list-style-type: none"> • Child Safety Services • Recognised Entities • Indigenous Family Support Services • Indigenous Foster; and • Kinship Services <p>At a regional level, training is also developed and delivered in response to locally identified training needs as</p>

		required.
Child Safety Officers	Child Safety Officer entry level training	<p>The Child Safety Officer Entry Level Training Program is mandatory for all new CSOs. There have been several iterations of this program since 2004. The instructional design model and curriculum were developed by the former Department of Communities, Training and Specialist Support Unit The current version of 72 weeks and 5 phases which are as follows:</p> <ul style="list-style-type: none"> • Phase 1: Orientation (1 – 4 weeks) • Phase 2: Face-to-face training phase (three weeks) • Phase 3: Flexible workplace assessment phase (five months) • Phase 4: Consolidation face-to-face phase (one week) • Phase 5: Flexible workplace assessment phase (five months) <p>The CSO ELTP was mapped against the Vocational Graduate Certificates to identify evidence that CSOs are required to complete and provide in order to RPL the qualifications. CSO ELTP workplace learning documents and activities are completed and the evidence of completion is validated is via a competency conversation between a Workforce Capability Learning Facilitator, the CSO and the CSOs Team Leader.</p>
	Indigenous Engagement – Foundation Studies in Culture	<p>The Foundation Studies in Culture 'Indigenous engagement' training is a two-day competency based program. It covers knowledge and skills that build and strengthen child protection services for Aboriginal and Torres Strait Islander children and young people.</p>
	Interviewing Children and Recording Evidence (ICARE)	<p>ICARE (Interviewing Children and Recording Evidence) is nationally accredited training course run jointly between the Queensland Police Service and Child Safety Services. The five-day course is primarily based at the Queensland Police Academy, Oxley, Brisbane.</p> <p>The aims of the ICARE program are to minimise trauma for children during interviews whilst ensuring that evidence obtained meets legislative and judicial requirements.</p>

		On successful completion participants are deemed competent in the ICARE model and provided with accreditation issued through the Registered Training Organisation (RTO), Queensland Police Service.
Child Safety Support Officers	Certificate IV in Child Youth and Family Intervention (Residential out of home care/Child protection, Family support) and the Certificate IV in Community Services Advocacy and the Diploma of Child, Youth and Family Intervention.	<p>As part of the Child Protection Skills Strategy (2009-2011) the program was offered via a Memorandum of Understanding (MOU) developed between the then Department of Communities and Department of Education and Training. This arrangement was included in schedule 1b of the Community Services Skilling Strategy. The program provided the opportunity for Child Safety Support Officers and workers from the funded child protection non government sector to undertake the Certificate IV in Child Youth and Family Intervention.</p> <p>The instructional design model and curriculum were developed by the former Department of Communities, Training and Specialist Support Unit and comprised of 4 blocks of learning over 12 months. The program was rolled out across the state in urban or regional locations and a blended training model was developed that utilised web based learning materials, attendance at face to face delivery sessions and workplace learning guided by workbooks. A variety of funding pathways maximised the number of participants – there were 574 total enrolments. This was made up of 81 Child Safety Support Officers (CSSOs) and 493 non government child protection workers. Participants who completed the Certificate IV in Child Youth and Family Intervention were offered the opportunity to undertake the Diploma in Child Youth and Family Intervention.</p> <p>Providing CSSOs with the opportunity to complete the Diploma of Child Youth and Family Intervention was essential given that the Diploma level qualification was used as an eligibility criterion for the CSSO – CSO Pilot program, which developed a career pathway for CSSOs to become professional officers.</p> <p>The program focused on:</p> <ul style="list-style-type: none"> • <i>Working in the child protection sector</i> • <i>Communication in the child protection sector</i> • <i>Knowing about clients with complex/unique needs</i> • <i>Case planning and case management for clients</i> <p>Training was provided by five TAFE Queensland Institutes:</p>

		<ul style="list-style-type: none"> • Sunshine Coast • The Bremer • Tropical North Queensland • Metropolitan South <p>To ensure the greatest accessibility to the training the TAFE institutes delivered the training in multiple locations across the state:</p> <ul style="list-style-type: none"> ○ Brisbane ○ Gold Coast ○ Ipswich ○ Toowoomba ○ Gladstone ○ Rockhampton ○ Townville ○ Cairns
Team Leaders	Child Safety Team Leader training (2005-2010)	<p>There were several iterations of Team Leader/Senior Practitioner and CSSC Manager training offered commencing in 2005 through until 2010. The instructional design model and curriculum were developed by the former Department of Communities, Training and Specialist Support Unit. Training included multiple face-to-face workshops and a workplace learning component. Programs were delivered in five modules, each of three (3) days - total face-to-face training was 15 days over the eighteen month period. Each module was offered eight (8) times over a two month period. The training was compulsory for all Team Leaders and was linked to the Team Leader competency profile. The modules were:</p> <ul style="list-style-type: none"> • <u>Unit 1</u> Induction: Unit 1 will be a combined program for Team Leaders/Senior Practitioners and Managers • <u>Unit 2</u> Supervision, Leadership, Management and Team Building: Unit 2 will be a combined program for Team

		<p>Leaders/Senior Practitioners</p> <ul style="list-style-type: none"> • <u>Unit 3</u> Legislative Reform, Implementing Practice Change: Unit 3 will be a combined program for Team Leaders/Senior Practitioners • <u>Unit 4</u> Applied Leadership and Coaching: Unit 4 will be a combined program for Team Leaders/Senior Practitioners • <u>Unit 5</u> Quality Practice: Unit 4 will be a combined program for Team Leaders/Senior Practitioners <p>On-the-job workplace learning focused on workplace learning activities developed around daily work tasks relevant to the Team Leader role: These activities focused of three broad areas:</p> <ul style="list-style-type: none"> • Service strategy • People development • Systems development <table> <tr> <th>SERVICE STRATEGY</th><th>PEOPLE DEVELOPMENT</th><th>SYSTEMS DEVELOPMENT</th></tr> <tr> <td> <p><i>Ensure service delivery requirements</i></p> <p><i>Collaborate and form partnerships with key stakeholders</i></p> <p>Partnership with Indigenous communities</p> </td><td> <p><i>Lead and develop the team</i></p> <p><i>Learning and development</i></p> <p><i>Support and supervision</i></p> </td><td> <p><i>Undertake administrative responsibilities</i></p> <p>Case management</p> <p><i>Workload management</i></p> </td></tr> </table>	SERVICE STRATEGY	PEOPLE DEVELOPMENT	SYSTEMS DEVELOPMENT	<p><i>Ensure service delivery requirements</i></p> <p><i>Collaborate and form partnerships with key stakeholders</i></p> <p>Partnership with Indigenous communities</p>	<p><i>Lead and develop the team</i></p> <p><i>Learning and development</i></p> <p><i>Support and supervision</i></p>	<p><i>Undertake administrative responsibilities</i></p> <p>Case management</p> <p><i>Workload management</i></p>
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		<div> <div></div> <div>Address workplace risk</div> <div></div> </div> <p>During the on-the-job workplace learning component Team Leaders were observed and assessed by managers through formal supervision against the workplace activities. Verification of competence was assessed and evidence was gathered through direct observation, collection of work samples, third party observation reports and direct questioning.</p> <p>Service Stream specific Team Leader training ceased in 2010/2011 in accordance with the newly instated Learning and Organisational Development Strategy 2010-2015. Subsequently Team Leaders were able to access generic leadership and management training offered by the Strategic Learning and Organisational Development team.</p>
Senior Practitioner	Child Safety Team Leader training (2005-2010)	As indicated in the cell above.
Court Co-ordinators		This training was not delivered by Workforce Capability, please refer to Court Services.
Family Group Meeting Convenors		This training was not delivered by Workforce Capability, please refer to Court Services.

Managers

The CSSC Manager development program was delivered through several iterations commencing in 2005 through until 2008. The instructional design model and curriculum were developed by the former Department of Communities, Training and Specialist Support Unit. Training comprised multiple face-to-face workshops and a workplace learning component.

Regional Directors or other nominated people work with managers to develop knowledge and skills in a range of pertinent areas. On-the-job workplace learning focused on workplace learning activities relevant to the CSSC Manager role.

These activities focused of three broad areas:

- Service strategy
- People development
- Systems development

SERVICE STRATEGY	PEOPLE DEVELOPMENT	SYSTEMS DEVELOPMENT
Planning	Leadership and change management	General systems development
Program development	Workforce planning and recruitment	Resource management
Collaborate and form partnerships with key stakeholders	Learning and development	Case management
		Workload management

		<table><tr><td>Performance measurement and continuous improvement</td><td>Support and supervision Manage workplace risk</td><td></td></tr></table>	Performance measurement and continuous improvement	Support and supervision Manage workplace risk					
Performance measurement and continuous improvement	Support and supervision Manage workplace risk								
		<p>The planning and monitoring of learning occurred on a regular basis through supervision and performance and learning plans. During on-the-job workplace learning, managers were observed and assessed by Regional Director against the workplace activities. Evidence was gathered through direct observation, collection of work samples, third party observation reports and direct questioning.</p> <p>Managers continue to access a range of corporately delivered programs including:</p> <table><tr><th>Program</th><th>Content area</th></tr><tr><td>Managing with Confidence</td><td>Two and a half day experiential management development program specifically designed to build confidence in communication, set performance expectations and performance management from a manager's perspective. The aim of the program is about practical skills and about ensuring that you are aware of your role as a leader and of the support networks available to you.</td></tr><tr><td>Leading Change</td><td>Leading Change – a 2 hour workshop that overviews the actions to be undertaken when leading teams effectively through change.</td></tr></table>		Program	Content area	Managing with Confidence	Two and a half day experiential management development program specifically designed to build confidence in communication, set performance expectations and performance management from a manager's perspective. The aim of the program is about practical skills and about ensuring that you are aware of your role as a leader and of the support networks available to you.	Leading Change	Leading Change – a 2 hour workshop that overviews the actions to be undertaken when leading teams effectively through change.
Program	Content area								
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Leading Change	Leading Change – a 2 hour workshop that overviews the actions to be undertaken when leading teams effectively through change.								

		Harvard Management Series	This is a practical online resource with 44 subject areas. It addresses a full spectrum of challenges faced by managers and aims to empower you to excel with performance support on-demand from the world's pre-eminent business thought leaders.
		Public Sector Management Program	<p>The Public Sector Management Program (PSM Program) is a unique national management and leadership training program for the public sector.</p> <p>A joint venture between federal, state and territory governments, the program combines tertiary study with experiential learning and focuses on the strategic direction of the contemporary public sector. The program is conducted over 18 months.</p>
		Project Management Fundamentals	3 day workshop to support the practice of project management in the Department of Communities, the Portfolio & Program Office offers Project Management Fundamentals as a comprehensive introduction to project management
		Financial Compliance for Managers	The aim is to provide managers with the required knowledge to enable them to perform their financial management role.
		Leadership Links: Achievement and Capability Planning	<p>In this workshop we will explore providing performance feedback. The program is led with open discussion, shared ideas and extracts from key thinkers in this area.</p> <p>Further exploration will be available online after the session.</p>

Child Safety Officer Entry Level Training Program

Background summary

Child Safety Officer Entry Level Training Program (CSO ELTP) has evolved over time in response to various departmental and external reports, initiatives, working groups and recommendations including:

- Crime and Misconduct Report (CMC), Protecting Children: An Inquiry into Abuse in Foster Care
- Foster Care Audit (Murray Report)
- External evaluation of CSO ELTP (Dr Trish Fox)
- Frontline Work Analysis and Job Design Project (FWAJDP)
- Skills Formation Strategy
- Department of Education and Training, Queensland Skills Plan 2008
- Expansion of the qualification profile
- National Framework for Protection Australian's Children (2009–2020) – National Priority Project Plan No. 6
- Review of Australian Higher Education – Final Report – December 2008 (referred to as the 'Bradley Report')
- Toward Q2 – Tomorrow's Queensland
- System Practice Review Committees
- Executive Management Committees
- Key stakeholder consultations

In February 2004, the former Department of Child Safety instituted an 8 week Entry Level Training program for new Child Safety Officers (CSOs). In January 2005, this program was increased to 10 weeks in duration after the former Minister for Child Safety; Mr Mike Reynolds announced the addition of a mandatory two weeks field placement with a community agency for new CSOs in his Budget Portfolio Statement. By mid-2005, the mandatory two-week field placement was reduced from 2 weeks to 1 week, thus reducing the duration of the CSO ELTP from 10 weeks to 9 weeks.

In September 2005, the Executive Management Committee (EMT) requested that the Training unit (formerly known as the Training and Specialist Support Branch) explore other models for entry level training for CSOs. As a result of this request a 'new 6 month model' was developed in consultation with the Zonal Director and Managers in Central Queensland and trialled on the 20 March 2005 in that zone. The success of this trial, lead to the 'new 6 month model' being implemented State-wide in November 2006.

In August 2008 approval was gained for the expansion of the entry qualifications into the former Department of Communities (Child Safety Services). To support this change consideration was made to provide a process where new CSOs regardless of what qualification they held, would exit CSO ELTP with a nationally recognised qualification specifically designed for the child protection sector.

In June 2009, a decision was made that all CSOs, who entered employment with the Department of Communities (Child Safety Services) from that date, would exit the Child Safety Officer Entry Level Training Program with the Vocational Graduate Certificate in Community Services Practice (Statutory Child Protection) and Vocational Graduate Certificate in Community Services Practice (Client assessment and case management). This was to ensure child safety officers held a nationally accredited high level qualification (Level VIII) that was specific to Queensland's child protection work. This decision continues currently.

Timeline of CSO Entry Level Training 2004 - Current

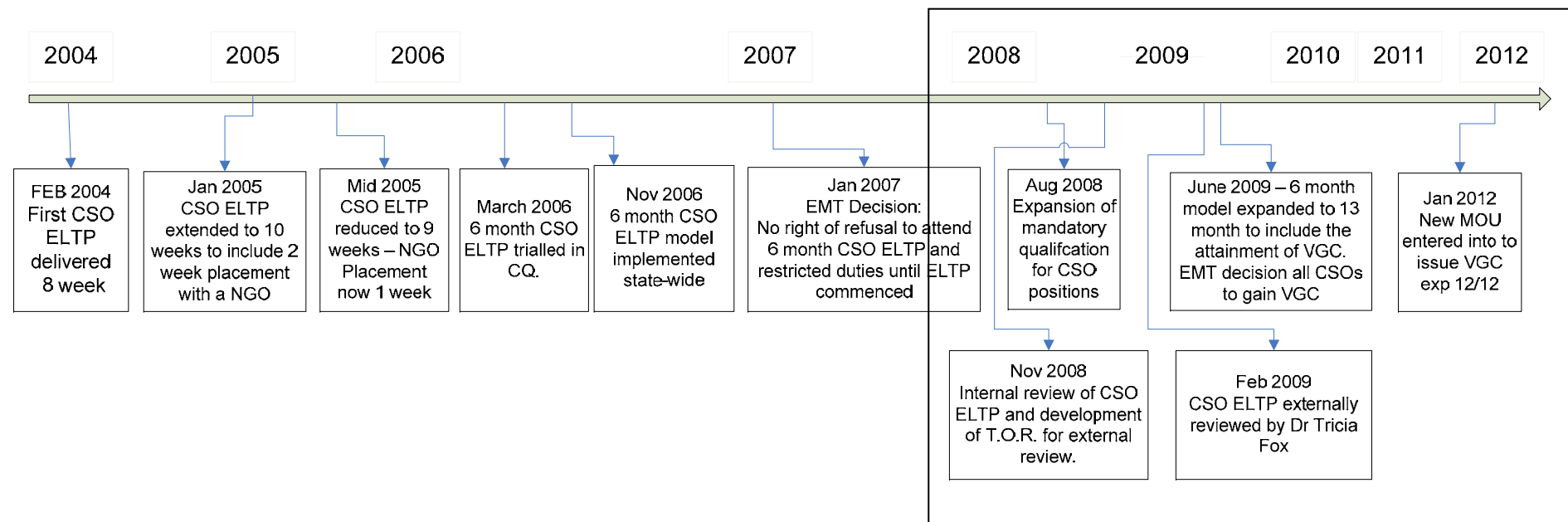


Table of the Child Safety Officer Entry Level Training program

The core components for the CSO ELT program for the period 2009 to current is provided in the table below. Please note that the program remained the same for each of the financial year periods – 2009/2010, 2010/2011 and 2011/2012.

	June 2009 - Current
Time	72 weeks
Bulk of training occurs	Child Safety Service Centre (CSSC) workplace
Responsibility for training	Training unit /CSSC
Structure	<ul style="list-style-type: none"> • 3 weeks face-to-face problem solving (Brisbane and provincial cities) • 5 months structured and monitored workplace learning – this includes a four day non-government organisation (NGO) placement, and a day and a half NGO and Recognised Entity (RE) visits. • 1 week face-to-face workshops on specialist areas (Brisbane and provincial cities). <p>PLUS</p> <ul style="list-style-type: none"> • 6 months structured and monitored workplace learning.
Purpose	<ul style="list-style-type: none"> • To produce a Child Safety Officer (CSO) who is knowledgeable and skilled in the roles and responsibilities of a CSO. • The program focuses on providing the skills to problem-solve; access information and apply it in the workplace.
Learning outcomes	<p>Participants can assist in:</p> <ul style="list-style-type: none"> • conducting an intake • conducting an investigation and assessment • conducting support cases • managing intervention with parental agreement process managing a child protection case
Methodology	Problem solving – process focussed curriculum
Access and release	<ul style="list-style-type: none"> • Programs can be run more frequently. • Small groups can be accommodated. • More CSOs can be trained as a result of increased access. • Shorter period out of the workplace, disruption to office minimised. • Local delivery is possible so increasing access. <p>PLUS</p> <ul style="list-style-type: none"> • CSOs exit the Entry Level Training program with a consistent nationally recognised qualification specific to their role as Child Safety Officers.

Overview, structure and training materials: 2009 - current

Overview

With the expansion of the accepted entry qualifications into the Department of Communities (Child Safety Services) and an undertaking to upskill the workforce by developing a career pathway from para-professional to professional stream, consideration was given to a process where new CSOs regardless of what qualification they held would exit CSO ELT program with a nationally recognised qualification specifically designed for the child protection sector.

A specific child protection qualification was important to ensure that all new staff, who entered the department, received the same foundation level of child protection knowledge. For the CSO ELT program caters to the diverse practice disciplines of new staff additional content was added. The provision of a qualification of a sufficient level was necessary for the CSSOs undertaking the Pilot to be eligible to cross over to the professional officer stream.

In 2008, the Training and Specialist Support Branch's, curriculum team began working on establishing a specific child protection qualification. This process involved mapping the then 6 month model of Child Safety Officer Entry Level Training (CSO ELT) program to a new Vocational Graduate Certificate to identify the gaps.

The Vocational Graduate Certificate was deemed an equivalent qualification to the Post Graduate Studies in Child Protection offered by the University of Queensland (U.Q). The qualification offered by U.Q. (2003 – 2009) had previously been used as a 'bridging' qualification to enable departmental and community sector staff the opportunity to obtain a high enough qualification to allow entry into professional officer roles.

As a result of the mapping exercise, additional activities were included in the CSO ELTP and the program was extended from 6 months which consisted of 4 phases to its current version of 72 weeks and 5 phases which are as follows:

- Phase 1: Orientation (1 – 4 weeks)
- Phase 2: Face-to-face training phase (three weeks)
- Phase 3: Flexible workplace assessment phase (five months)
- Phase 4: Consolidation face-to-face phase (one week)
- Phase 5: Flexible workplace assessment phase (five months)

In February 2009, another review of the CSO ELTP (72 weeks – 5 Phases) was undertaken this time by an external consultant, Dr. Tricia Fox. At the time of the external review, Dr Fox held the position of the Doctor of Adult and Community Learning, School of Learning and Professional Studies, Queensland University of Technology. Dr. Fox also had substantial experience in the area of child safety and was the external representative on the selection panels for Child Safety Managers across the State post CMC recommendations.

The outcomes of Dr Fox's review included the following:

- The CMLS had demonstrated that the workplace learning element of the CSO ELTP is an effective learning and development strategy for new Child Safety Officers (CSO). The workplace learning element advanced by the CMLS is receiving national recognition as leading the way forward in the professional development and practice skills of all CSO personnel.

- The curriculum content and phases of learning in the CSO ELTP is an effective way for advancing knowledge and practice skills of CSO personnel.
- In June 2009 a decision was made that all CSOs who entered employment with Child Safety Services from that date would exit Child Safety Officer Entry Level Training with the Vocational Graduate Certificate in Community Services Practice (Statutory Child Protection) and Vocational Graduate Certificate in Community Services Practice (Client assessment and case management). This was to ensure child safety officers held a nationally accredited high level qualification (Level VIII) that was specific to Queensland's child protection work.

It was further recognised that CSOs who had completed their CSO training in the period 2005 to Pre-June 2009 would be able to be issued with the two Vocational Graduate Certificates retrospectively, via a Recognition of Prior Learning (RPL) process.

The current CSO ELT program has led to linkages to other staff attraction and retention initiatives, such as P02 to P03 Progression for current professional staff and the Child Safety Support Officer to Child Safety Officer Pilot (CSSO to CSO Pilot) for para-professional staff.

Structure

CSO Entry Level Training Program (ELTP) is a **12-13 MONTH** program which is presented as 5 distinct phases:

Phase 1	Phase 2	Phase 3	Phase 4	Phase 5
Orientation	Problem solving	Workplace learning	Consolidation	Workplace learning
(1-4 weeks)	(3 weeks)	(20 weeks)	(1 weeks)	(24 weeks)

A CSO must complete all of the above phases in order to graduate from CSO ELTP.

For detailed information on the structure, purpose, requirements and learning resources for the CSO ELTP please refer to the [Overview of CSO ELTP](#) document.

Child Safety Officers (CSOs) are provided induction training within a framework of Orientation to child protection practice. Orientation to child protection practice takes place in the workplace where CSOs must complete a variety of tasks outlined in an Orientation guide – Activities include compulsory online training modules such as Record keeping and Information security as well as research and shadowing activities relating to other child protection roles in the child protection continuum. At the end of the orientation to child protection practice phase CSOs are familiar with office personnel, departmental structure, supervision processes, office computer systems, information accountability requirements and some of the duties of an authorised officer.

The orientation phase is the first phase of a five phase entry level training program which runs over a 12 month period. The entry level training is delivered in a mixed mode of workplace learning and face to face training.

CSO ELTP and the Vocational Graduate Certificate

The CSO ELTP has been carefully mapped against the Vocational Graduate Certificates to identify pieces of evidence that CSOs are required to complete and provide in order to meet the evidence requirements for RPL towards each unit of competence within the qualifications. Therefore, it is important that all CSO ELTP documents and activities are completed and the validity and authenticity of the evidence is checked via a competency conversation between a CMLS facilitator, the CSO and the CSOs Team Leader.

Training resources

Resources previously provided in response to summons reference number:
3885920.

Specialist skills training

The Specialist Skills modules have been developed in accordance with CMC recommendations relating to the need for ongoing professional development opportunities for all staff. The specialist skills modules will assist to build effective training and development and specialist support capability within zones.

The specialist skills modules are designed to:

- Cater for a large and dispersed workforce (i.e. be readily accessible across the State).
- Cater for various modes of learning (i.e. individuals, small groups and facilitated training sessions).
- Complement the learning as identified in ACP's, VC and personal and professional development.

The modules are learning about, so; deepening and enriching knowledge and skill NOT learning how to (this is covered in policies and procedures/legislation).

The specialist skills modules are designed to compliment existing departmental resources and enhance DChS staff's professional development and practice.

The Child Protection Act 1999 provides staff with their statutory requirements and the Child Safety Practice Manual and associated Practice Papers provide staff with the step by step requirements of their role (what to, when and how).

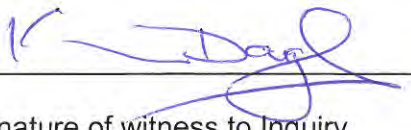
The specialist skills modules are designed to focus on the individual professional development of staff and to enhance and develop their professional framework for practice. They do not address the "how to" of a certain task but provide reflection and development opportunities on the various social and family factors that can impact on how well they complete their statutory obligations.

An example of how the specialist skills modules are constructed is given here: DChS provides legislation, policy and practice guidelines and a practice paper on the what, when, how of working with a family experiencing domestic and family violence. The specialist skills modules through a learning guide and a resource are designed to enhance an officer's knowledge and skills in identifying that family and domestic violence exists, as well as learnings on identifying why DFV occurs in individual and family systems, and effective approaches to addressing and interacting with families of DFV.

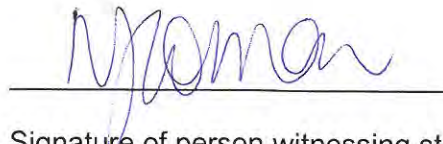
NOTE: Further information about Specialist skills modules can be obtained on request.

Attachment Marking

The preceding 19 pages is the annexure mentioned and referred to as ATTACHMENT 1b
in the statement of Kenneth Dagley taken on 25/10/2012

A handwritten signature in blue ink, appearing to be 'K. Dagley', written over a horizontal line.

Signature of witness to Inquiry

A handwritten signature in blue ink, appearing to be 'M. Maman', written over a horizontal line.

Signature of person witnessing statement

Court Coordinator - Induction

Financial Year	Date	Attendance Numbers	Resources
2009-2010 Financial Year	29 – 31 July 2009	13 Frontline Staff / 2 Other	1 x Induction Manual 2009 updated February 2009 Marked as attachment 2a
	30 Sept – 2 Oct 2009	11 Frontline Staff	
	29 – 31 Mar 2010	11 Frontline Staff	

Court Coordinator - Conference

Financial Year	Date	Attendance Numbers	Resources
2009-2010 Financial Year	19 – 21 Oct 2009	51 Frontline Staff	1 x Conference Folder 2009 marked as attachment 2b

Court Coordinator Induction Training Program

**This resource package is to provide
information and learning material to support
the Court Coordinator role within Child Safety
Service Centres**

**Prepared by:
Court Services Unit
February 2009**



Queensland Government
Department of Communities

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BACKGROUND

In January 2004 the Crime and Misconduct Commission (CMC) delivered a report "*Protecting Children: An Inquiry into Abuse of Children in Foster Care*" which contained a number of recommendations specially aimed at improving the lives of children and young people at risk in Queensland.

The CMC recommended that the Department of Child Safety consider the advantages of specialist Court Workers.

The "*Blueprint*" identified the strategies, plans and processes from implementing the CMC recommendations in order to improve the child protection system in Queensland. It proposed that dedicated Court Coordinator positions be part of the staff establishment of each Child Safety Service Centre, reporting directly to the manager and identified the duties of a Court Coordinator as including:

- representing the Chief Executive Officer (CE) in local non-contested child protection proceedings;
- resourcing and supporting staff and departmental witnesses to prepare court and Tribunal material;
- quality assuring affidavits, statements and other evidence;
- establishment and maintenance of systems to ensure the efficient management of upcoming court and Tribunal proceedings (eg Court Diary, bring-up systems re filing dates, order expiry dates etc);
- training local staff in court related matters; and
- liaising and networking with key local service providers (eg attending Court Management meetings; liaising with Legal Aid).

It was also noted in the *Blueprint* that most of these functions were not then undertaken by Service Centre staff and therefore the introduction of Court Coordinators would:

- represent and enhancement to the quality of service delivery;
- free-up team leaders and enable them to be dedicated to the core functions of case work and case work supervision.

The *Blueprint* further proposed that Court Coordinators be line managed locally, however, be resourced and supported by the Court Services Unit (CSU) to ensure a skilled specialist workforce and consistency of practice statewide.

Court Coordinators are now key positions within the organisation and are heavily relied upon by Child Safety Service Centre Staff AND specialist Courts and Tribunals.

ROLE OF THE COURT CO-ORDINATOR

The role of the Court Coordinator is to assist Child Safety Service Centre staff and the Director General to meet their legal obligations in courts, tribunals and to adhere to various protocols and conventions and promote quality practice that protects children.

Court Coordinators do this by being involved in the following:

1. Actively participate and assist with:

- Childrens Court mentions
- Coordination and preparation of contested child protection matters
- Coordination and preparation of Children Services Tribunal matters
- Family Law matters
- Appeals
- Warrants
- Interstate matters
- Judicial transfers of orders interstate
- Interstate transfer of proceedings

2. Undertake and assist others to undertake the necessary interviews, assessments and written material to formulate court submissions and provide post court advice which is consistent with departmental policies and practice standards by actively assisting with and participating in:

- Case discussions with internal and external stakeholders
- Considering the evidence
- Providing a quality assurance role – checking and proofing all material prior to lodgement at court
- "Advice in Conferences"
- Liaising with Separate Representatives
- Working with external witnesses
- Participating in discussions with Recognised Entities as required
- Ensuring departmental staff are aware of the requirements of any interim court orders which need to be followed up eg social assessments, medical examinations
- Completing court outcomes in the Integrated Client Management System (ICMS)

3. Provide information and advice on court and Tribunal related matters, including resourcing and supporting staff and departmental witnesses in the preparation of evidence and quality assuring material for court and the Children's Services Tribunal by providing:

- Information and advice on Court and Tribunal matters, including resourcing and supporting staff and departmental witnesses in the preparation of evidence
- Providing quality assurance in relation to TAO, CAO and CPO applications

4. Liaise with a range of internal and external stakeholders including Magistrates, Judges, legal representatives and community organisations to ensure the provision of quality court services at the local level by:

- Being proactive in developing and participating in local court management meetings with key stakeholders involved in the court process
- Actively attempting to resolve local issues at the local level through relationship building with other key stakeholders
- Attending meetings with Legal Aid and other legal representatives as required
- Liaising with CSU in relation to difficult or specific court issues
- Liaising with Separate Representatives
- Providing information and training sessions for key stakeholders
- Attending other forums eg SCAN as required

5. Develop, implement, monitor and maintain office systems in relation to court and Children's Services Tribunal matters to ensure the efficient management of court and Tribunal appearances, timely recording of outcomes and monitoring of relevant trends and issues by:

- Effective use of court diary for matters before the children's court
- Completion of all Client Information / Client Outcome forms
- Developing and coordinating systems to ensure that orders don't lapse without being brought back before the court
- Developing and coordinating systems to ensure timely responses to Children's Services Tribunal matters
- Recording relevant statistics
- Preparing monthly / quarterly reports as required
- Developing systems within the office to record significant decisions

6. Providing a consultancy resource service to department staff and other key local stakeholders in relation to court and Tribunal related matters including the development and delivery of local training initiatives by:

- Mentoring new staff in relation to court processes
- Developing resources
- Identifying local training needs
- Developing and delivering training in relevant areas
- Participating in Management Team Meetings
- Consultation with colleagues throughout the state

7. Monitor and contribute to the development of practice standards, operational guidelines, and review mechanisms to promote effective and efficient departmental services to courts and the Children's Services Tribunal, and actively participate in the Statewide Court Coordinator Network by:

- Actively participating in Zonal meetings

- Being proactive in establishing regional Court Coordinator forums
 - Developing and implementing statistical recording mechanisms
 - Actively participating in forums to contribute to practice development
 - Reporting significant court outcomes to Court Services, particularly where the matter may result in setting precedents which impact upon practice
 - Reporting and recording practice trends to the CSU
 - Sharing resources and tools that enhance best practice via forums such as the Zonal meetings or the Court Coordinator Conference.
8. Foster a culture and philosophy of frontline service delivery, cooperation, commitment to excellence and a professional ethic which ensures the CSSC continues to meet the Departments priorities by:
- Promoting best practice – child focused
 - Presenting a professional manner
 - Being accountable
 - Being supportive of other staff
 - Promoting effective working relationships
 - Striving for effective working relationships with external agencies
 - Drawing attention to practice inefficiencies
 - Embracing an open and supportive culture
 - Documenting all decision making processes
 - Having a commitment to ongoing learning
 - Adhere to the principles of being a model litigant

INSTRUMENT OF DELEGATION, AUTHORISATION AND APPOINTMENT

Delegations:

Four groups of Statutes (Acts of Parliament), and delegated powers under those Acts, legally regulate the work of the Department. The group of Acts are those relating to: child protection, adoptions, the public sector/human resources and financial administration.

For the purposes of this resource it is sufficient to refer to the Acts relating to child protection and adoptions, in particular the:

- *Child Protection Act 1999*
- *Family Services Act 1987*
- *Childrens Court Act 1992; and*
- *Adoption of Children Act 1964.*

To authorise actions to give effect to the purposes of these Acts, they each confer powers on the chief executive (CE). As it is not practical to expect that the CE would always exercise those powers (ie perform or authorise particular actions on a day-to-day basis) the Acts also give the CE power to delegate their statutory powers to officers or categories of officers.

The formal legal instruments for this delegation of authority are written as 'instruments of delegation' signed by the CE which delegate specified powers to particular categories of officer.

What is an Instrument of Delegation?:

The Department of Child Safety CE implements this policy to ensure staff have the appropriate legal authority to exercise powers and carry out certain actions for which they are personally accountable.

Staff with delegations then have a responsibility when using a delegation to ensure:

- the action is within the **power and limitation** of their delegation; and
- they have followed all relevant departmental procedures.

Under Section 149 of the *Child Protection Act 1999* the Chief Executive may appoint an officer or employee of the Department to be an authorised officer.

Authorisation for Court Coordinators:

The powers of a Court Coordinator are **limited to Section 108A** of the *Child Protection Act 1999*.

Child Protection Act 1999 Section 108A

108A Right of appearance of departmental coordinators

- (1) A coordinator may appear in a proceeding.
- (2) In this section –

Coordinator means an officer or employee of the department who is authorised in writing by the chief executive to appear in proceedings under this Act



Child Protection Act 1999

INSTRUMENT OF DELEGATION AND AUTHORISATION

I, NORELLE DEETH, Director-General, Department of Child Safety, do now, under the provisions of Sections 149 and 155 of the *Child Protection Act 1999*.

- 1) authorise the person who is from time to time the holder of the office set out in Schedule A below to exercise and perform the powers, authorities, functions and duties conferred, or imposed on me by, or under the provisions specified in Schedule C below;
- 2) delegate to the person who is from time to time the holder of the office set out in Schedule A below, the powers, authorities, functions and duties arising out of me being made a respondent or party to proceedings under the *Child Protection Act 1999*.

SCHEDULE A

Court Coordinator, Child Safety Service Centre

SCHEDULE B

Nil

SCHEDULE C

Child Protection Act 1999, Section 102A.

- I. This Instrument of Delegation and Authorisation revokes any other Instrument of Delegation and Authorisation issued pursuant to the aforementioned Acts and Regulations, held by you.
- II. This Delegation and Authorisation shall be effective from the date of execution of this instrument until revoked.
- III. The exercise of powers, authorities, functions and duties delegated under this instrument are subject to directions issued under my hand from time to time.

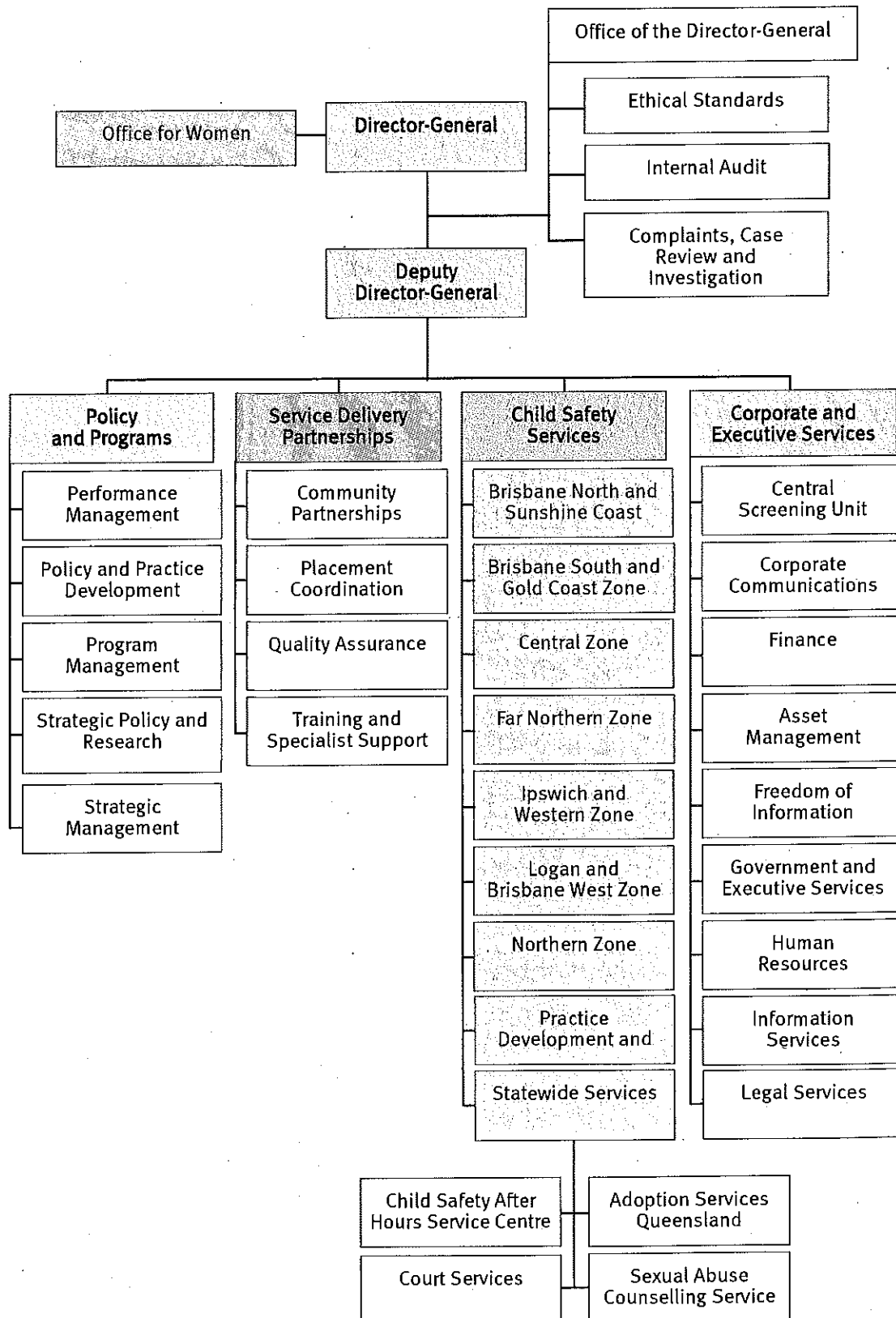
Executed at BRISBANE this thirty-first day of January 2008.

Signed

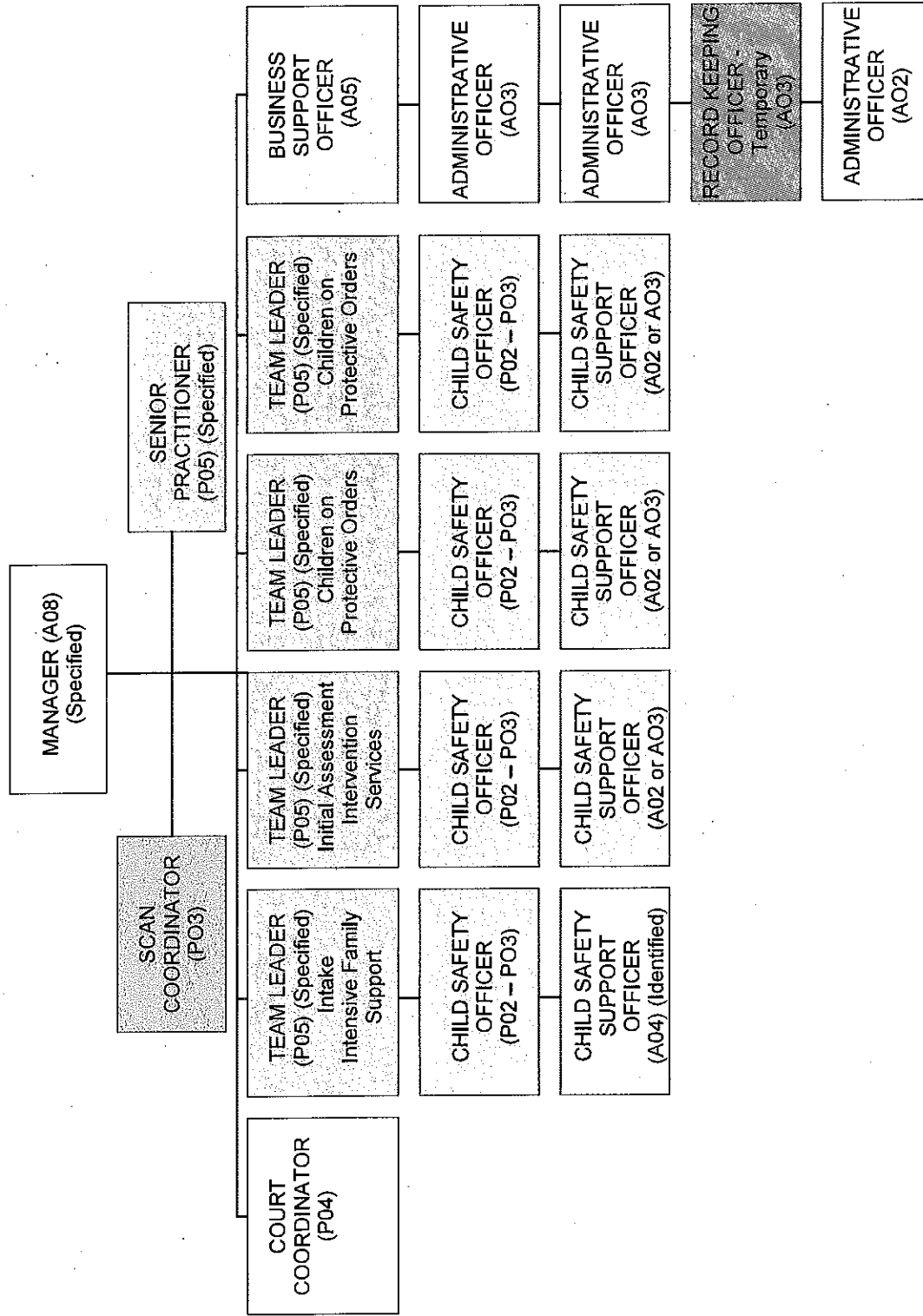
Norelle Deeth
Director-General

Department of Child Safety

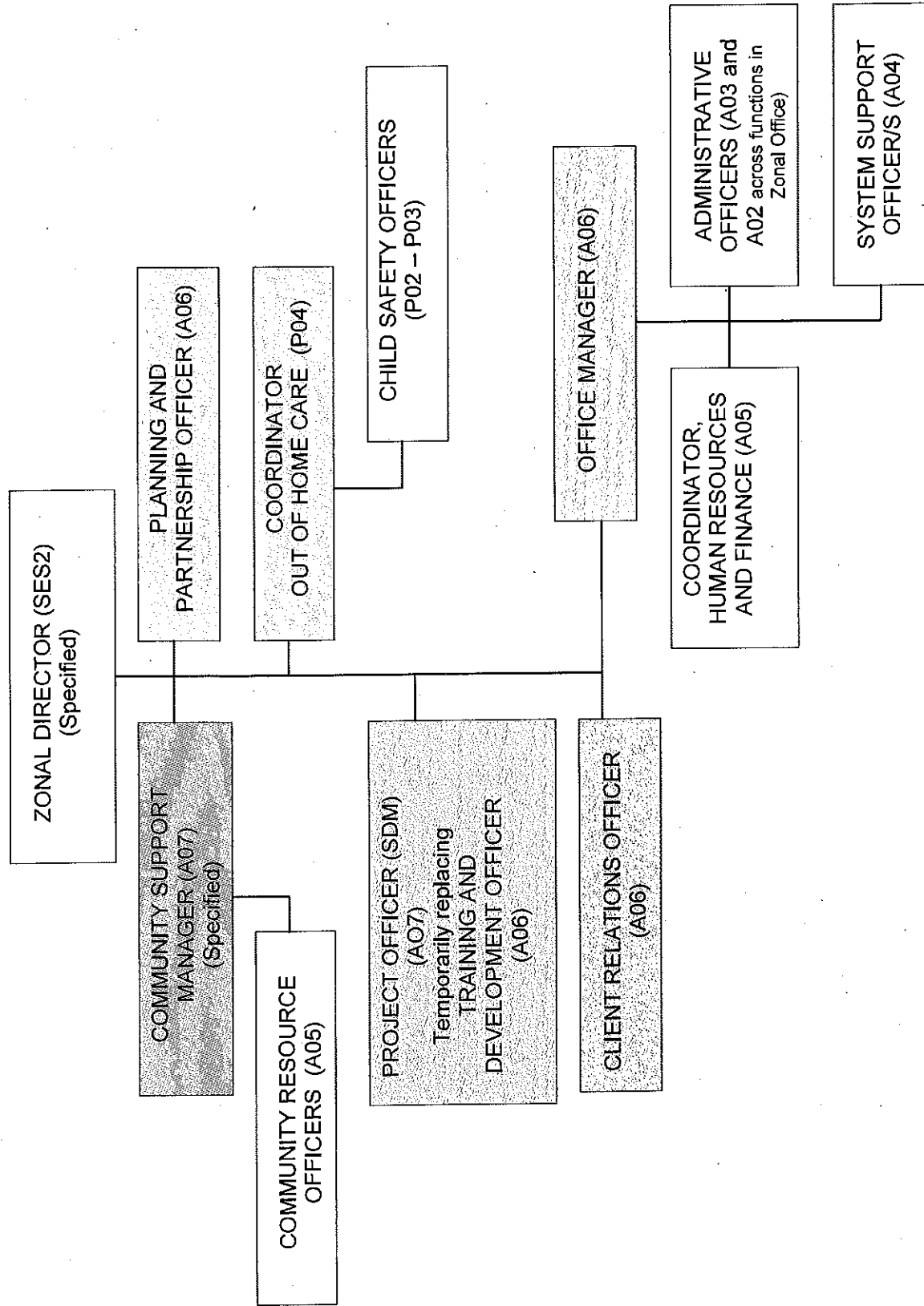
Organisational structure



Child safety service centre (CSCC) - example organisational structure



Zonal office - organisational structure





Queensland Government
Department of **Child Safety**

Court Coordinator

Workplace Assessment

NAME	POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment

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Queensland
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Court Coordinator Workplace Competency Assessment

How to Use this Document

This document contains 4 sections:

- Guidelines
- Summary of ongoing competency assessment
- Workplace activities
- Completion certificate.

SECTION 1 – GUIDELINES

These guidelines contain information for Court Coordinators and Service Centre Managers on how to complete the competency assessment document. This includes ways in which evidence can be collected for workplace assessment.

SECTION 2 – WORKPLACE ACTIVITIES

Each workplace activity contains four parts:

- competency development
- assessment guide
- evidence guide
- competency assessment.

PART 1 – COMPETENCY DEVELOPMENT

You are required to document tasks you have completed for each workplace activity by providing examples from current experience and/or relevant training. There should be at least four examples from your work that are different in some way and show a range of experiences.

For example: Disseminate Material and Monitor Outcomes - Task 3 (Practice trends are identified)

- Attended Statewide Court Coordinator Training re: practice trends
- Provide Training relating to practice trends to CSSC staff
- Copies of practice trend reports provided to Management Team Meetings
- Feedback from key stakeholders

PART 2 – ASSESSMENT GUIDE

These pages detail the elements of each workplace activity that must be performed to the standard as outlined in the Department's Practice Guidelines and Policy and Procedures. You must be able to show evidence to the person assessing your performance that you have completed all tasks. Evidence can be provided by the person watching you do the task, by providing examples from case notes, forms, another person verifying that they have seen you perform the elements of the task or by asking you questions.

PART 3 – EVIDENCE GUIDE

Types of evidence that might be collected and the knowledge and skills required are included at the end of each task.

PART 4 – COMPETENCY ASSESSMENT

This section must be signed off by you and your Service Centre Manager or nominated officer.

SECTION 3– COMPLETION CERTIFICATE

Once the Court Coordinator has achieved competence in all workplace activities and these have been signed off by the Service Centre Manager, the back page of this document (completion certificate) is to be returned to the Court Services Unit. The results will be recorded on the Human Resource Management System. A copy of the completion certificate is to be held on the officer's personnel file at the Service Centre. The workplace assessment must be completed within the 12 month period of the completion of the Court Coordinator Induction Training.

If you have any questions about the completion of the Workplace Competency Assessment contact the Court Services Unit in Brisbane on (07) 3235 9859.

Court Coordinator Workplace Competency Assessment

Section 1 - Guidelines



Queensland
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INFORMATION FOR COURT CO-ORDINATOR AND SERVICE CENTRE MANAGER

COURT CO-ORDINATOR

Congratulations on your appointment to the Court Coordinator role. Over the next 12 month period you will be required to gather evidence to confirm your competence in each of the Workplace Activities within this booklet. Your Service Centre Manager or other nominated staff within your zone will work with you to further develop your knowledge and skills in a range of situations to consolidate what you have learnt in the Court Coordinator Training Program.

Your on-the-job assessment will focus on the following Workplace Activities of the Court Coordinator role:

SERVICE STRATEGY	PEOPLE DEVELOPMENT	SYSTEMS DEVELOPMENT
<ul style="list-style-type: none">▪ Appear in Court▪ Provide a quality assurance mechanism / Monitor Practice Standards▪ Manage evidence collection and preparation for courts	<ul style="list-style-type: none">▪ Delivery of training▪ Liaise with key stakeholders / Provide a consultancy service / Networking	<ul style="list-style-type: none">▪ Disseminate material and monitor outcomes▪ Develop, implement, monitor and maintain office systems

The planning and monitoring of your learning and development needs should take place on a regular basis through supervision and Performance Planning and Review.

During your on-the-job assessment period, you will be observed and assessed against the Workplace Activities, by your Service Centre Manager and the Zonal Court Services Advisor may assist in this process.

At a minimum you will participate in formal workplace assessment meetings with your Service Centre Managers at three monthly intervals. Your Service Centre Manager will outline the preparation that you should undertake prior to the formal assessment meeting. At each meeting, your Service Centre Manager will explain the assessment process, context and purpose of the assessment, the competency tasks to be assessed and the evidence that will be relied upon. After each meeting the outcomes relating to areas of competence to be

achieved and strategies to meet these should be recorded in your Performance and Learning Plan, as well as the negotiated time for the assessment process.

In those instances where you are unable to have your competence confirmed, your Service Centre Manager, in consultation with the Manager Court Services Unit, will develop a program to enable you to gain the necessary competencies.

TIPS FOR COURT CO-ORDINATOR

- Make a time to discuss your Performance and Learning plan with your Service Centre Manager.
- Plan out your 12 months in terms of how you will meet each Workplace Activity and use that as a basis for discussions with your Service Centre Manager.
- Don't let the time slip by, work at this at a steady pace over the 12 months.

SERVICE CENTRE MANAGERS

It is suggested that you meet with each Court Coordinator to map out a plan for the 12 month period. The plan should enable the Court Coordinator to effectively complete the tasks and meet the assessment requirements within the timeframes. You are required to develop and review the Performance and Learning Plan at three monthly intervals based on the Workplace Competency Assessment and Behavioural tools.

You must provide feedback and direction to the Court Coordinator, as required, regarding the assessment outcome or process including guidance on further options. This feedback also needs to include information on the reassessment and review process.

Failure to meet the competencies after opportunities for development and improvement should be appropriately addressed through the performance improvement framework.

The process of workplace assessment needs to take into account any special needs relevant to people from non-English speaking backgrounds, Aboriginal and Torres Strait Islander people, and people with disabilities. Assessment procedures need to be culturally appropriate for the individual and the situation. Reasonable adjustments need to be made to assessment procedures for people with special needs such as people with disabilities.

TIPS FOR SERVICE CENTRE MANAGERS

- Plan your supervision and book times with Court Coordinators in your diary.
- Take a longer-term view about how the Court Coordinator will be able to complete all the Work Activities in the 12 month period.

ASSESSMENT EVIDENCE

Your Service Centre Manager will draw on a number of different strategies in order to assess your competency. These may include:

DIRECT OBSERVATION

The assessor watches or has watched the Court Coordinator do a particular task or procedure, complete a form etc. as part of the Court Coordinator normal day-to-day duties.

WORK SAMPLE

These are products that the Court Coordinator has completed or developed. They may be memoranda, case notes or workplace forms that have been completed by the Court Coordinator.

3RD PARTY OBSERVATION

Your Service Centre Manager may ask your colleagues to verify that you have performed a task or components of a task to the standard required. This should be in writing, or have notes taken by the manager during the conversation.

QUESTIONING

Whilst using any of the above-mentioned strategies, the assessor may ask you questions about the activity or item to determine your underpinning knowledge and understanding. These questions need to be noted, as do the answers given.

GATHERING EVIDENCE

Your Service Centre Manager will establish a plan for gathering sufficient quality evidence about your performance in order to make and substantiate the assessment outcomes. He/she may need to coordinate and brief other personnel involved in this evidence gathering process to ensure that the evidence is valid, reliable and fair. Final judgments about your competence will be based on the evidence and the relevant unit of competency.

You will receive clear and constructive feedback on the assessment decision, including information on ways of overcoming any identified gaps in competency revealed by the assessment. During the feedback session you will have an opportunity to discuss the assessment process and outcome. If reassessment is required you will be given information about this as well as the process to have the assessment decision reviewed.

The outcome of the workplace assessment process will be formally recorded and all records relating to the workplace assessment process will be maintained according to departmental policy and procedures, including confidentiality requirements.

DRAFT VERSION

Court Coordinator Workplace Competency Assessment

Section 2 – Summary of Competency Assessment



Queensland
Government
Department of
Child Safety

SERVICE STRATEGY

WORKPLACE ACTIVITIES

Workplace Activity	Competent	Not Yet Competent
Appear in Court		
Provide a quality mechanism / Monitor practice standards		
Manage Evidence collection and preparation for courts/tribunal		

PEOPLE DEVELOPMENT

Workplace Activity	Competent	Not Yet Competent
Delivery of Training		
Liaise with key stakeholders / Provide a consultancy service		

SYSTEMS DEVELOPMENT

Workplace Activity	Competent	Not Yet Competent
Disseminate material and monitor outcomes		
Develop, Implement, Monitor and Maintain Office Systems		

Court Coordinator Workplace Competency Assessment

APPEAR IN COURT



Queensland
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PART 1 – COMPETENCY DEVELOPMENT

APPEAR IN COURT

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – 'APPEAR IN COURT' (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

PART 2 – ASSESSMENT GUIDE**APPEAR IN COURT**

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Attend and represent the Department in court for all matters requiring interface with the Court <i>Comments:</i> _____
[]	Negotiate with the Court as to suitable times to have matters listed for mention <i>Comments:</i> _____
[]	Prepare submissions in consultation with Team Leaders and CSO's <i>Comments:</i> _____
[]	Review material filed <i>Comments:</i> _____
[]	Liaise and consult with Departmental officers <i>Comments:</i> _____
[]	Attend and organise pre-court and post court interviews with parents and/or legal representatives <i>Comments:</i> _____

Method	Tasks
[]	Co-ordinate pre and post court preparation with Departmental staff Comments: _____
[]	Disseminate information to all staff re: court outcomes Comments: _____
[]	Ensure Court documents meet legislative requirements Comments: _____
[]	Participate in case discussions with Child Safety Officers, Team Leaders, Senior Practitioners in relation to any matter requiring intervention in the legal system Comments: _____
[]	Ensure that all relevant court material is lodged within appropriate timeframes Comments: _____
[]	Advise court services in situations where there may be issues and which may have the potential to require the involvement of Crown Law Comments: _____
[]	Participate in forums scheduled to discuss the progress and management of the matter Comments: _____
[]	Liaise with all key stakeholders in relation to court matters when necessary Comments: _____
[]	Make arrangements with Court Services for representation by Crown Law as required Comments: _____
[]	Ensure that departmental staff are aware of the requirements of any interim court orders which need to be followed up during the adjournment Comments: _____

Method	Tasks	
[]	Operate within a statutory framework Comments: _____	
[]	Prepare legal documents to meet departmental administrative and legal requirements Comments: _____	
[]	Communicate legal issues and the technical language it is expressed in to Departmental staff and key stakeholders in appropriate ways Comments: _____	

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Court documentation
- ☐ Participation and attendance at court
- ☐ Case discussion minutes
- ☐ Feedback from Team Members, Peers, and Supervisor
- ☐ Appearance in Court has resulted in appropriate child protection orders granted
- ☐ Feedback from Team Members, Peers and Supervisor
- ☐ Feedback from stakeholders and community partners
- ☐ Other
specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Admissible Evidence
- ☐ Burden of Proof
- ☐ Rules of evidence
- ☐ Workings of courts and legal process
- ☐ Understanding of different court jurisdictions and how they interface
- ☐ Detailed understanding of different legislation impacting on statutory work
- ☐ Court hearing procedures
- ☐ Providing constructive feedback to TL's, CSO's and Managers
- ☐ Collation and compilation of court documentation
- ☐ Ability to articulate rationale for decision making
- ☐ Report and Submission Preparation
- ☐ Negotiation
- ☐ Techniques to seek agreement between parties
- ☐ Report Writing
- ☐ Detailed understanding of different legislation impacting on statutory work
- ☐ Legal implications and responsibilities of statutory work
- ☐ Ability to manage crisis, competing demands, priorities and agendas

PART 4 – COMPETENCY ASSESSMENT**APPEAR IN COURT**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity – “APPEAR IN COURT”	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – “APPEAR IN COURT”	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment



PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS

PART 1 – COMPETENCY DEVELOPMENT

PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – ‘**PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS**’ (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

PART 2 – ASSESSMENT GUIDE**PROVIDE A QUALITY ASSURANCE
MECHANISM / MONITOR PRACTICE
STANDARDS**

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Ensure court material filed meets legislative requirements ie S59, S6 Comments: _____
[]	Collation of evidence is co-ordinated with departmental staff Comments: _____
[]	Provide information and advice in relation to what issues/areas need to be canvassed within court material Comments: _____
[]	Ensure that all material is referred to Court Services as soon as a Court Ordered Conference is scheduled Comments: _____
[]	Participate in case discussions regarding Departmental intervention within the court system Comments: _____
[]	Consider evidence that the Department currently has to present before the court and provide feedback Comments: _____

Method	Tasks
[]	<p>Check and proof all material prior to lodging with the court and/or Tribunal</p> <p>Comments: _____</p>
[]	<p>Provide feedback on areas that may require further development or may need to be reworked to both Team Leader and Child Safety Officers</p> <p>Comments: _____</p>
[]	<p>Ensure the court paperwork has been served on all parties prior to court and the appropriate documents in relation to service of this material have been completed</p> <p>Comments: _____</p>
[]	<p>Check interim and final orders that are received from the court to ensure that they are correct and match with the record of the court outcome held by the Department</p> <p>Comments: _____</p>
[]	<p>Liaise with court services regarding the quality of the material</p> <p>Comments: _____</p>
[]	<p>Receive feedback from key stakeholders regarding quality of material ie magistrates, court services, crown law, tribunal</p> <p>Comments: _____</p>
[]	<p>Ensure that regional Court coordinator forums are established</p> <p>Comments: _____</p>
[]	<p>Participate in forums to contribute to practice developments</p> <p>Comments: _____</p>
[]	<p>Share resources and tools that enhance best practice</p> <p>Comments: _____</p>
[]	<p>Ensure court orders and other legal interventions are reflective of the best interests of the child</p> <p>Comments: _____</p>

Method	Tasks	
[]	Document all decision making processes	
	Comments: _____	
[]	Report on significant court outcomes to Court Services	
	Comments: _____	
[]	Prepare court material to meet the standards of Departmental policy and procedures	
	Comments: _____	

PART 3 – EVIDENCE GUIDE

PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Quality assurance of court documentation
- ☐ Participation and attendance at court
- ☐ Case Discussion Minutes
- ☐ Feedback from TL's, CSO's, Managers
- ☐ Appearance in Court has resulted in appropriate child protection orders granted
- ☐ Benchmark documents are created for quality assurance purposes
- ☐ Role modelling of positive/negative feedback to improve service delivery
- ☐ Developed system to identify practice trends, gaps in service delivery
- ☐ Inclusion of all relevant stakeholders in decision making forums
- ☐ Case plans are child focussed and reflect best practice
- ☐ Other

specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Admissible evidence, Rules of Evidence, Burden of Proof
- ☐ Workings of court and legal processes
- ☐ Organisational policy and procedures
- ☐ Detailed understanding of different legislation impacting upon statutory work
- ☐ Superior written and interpersonal communication skills
- ☐ Understanding of different court jurisdictions and how they interface
- ☐ Report Writing
- ☐ Techniques to seek agreement between parties
- ☐ Analytical and strategic thinking/planning
- ☐ Providing constructive feedback
- ☐ Report and Submission preparation
- ☐ Understanding of indicators of harm, definitions and dynamics of harm
- ☐ Questioning and clarifying techniques
- ☐ Case management framework, practice standards

PART 4 – COMPETENCY ASSESSMENT**PROVIDE A QUALITY ASSURANCE
MECHANISM / MONITOR PRACTICE
STANDARDS**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity – "PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS"	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – "PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS"	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment



DISSEMINATE MATERIAL AND MONITOR OUTCOMES

PART 1 – COMPETENCY DEVELOPMENT

DISSEMINATE MATERIAL AND MONITOR OUTCOMES

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – 'DISSEMINATE MATERIAL AND MONITOR OUTCOMES' (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Strategies are identified and employed Comments: _____
[]	Data analysis occurs Comments: _____
[]	Practice trends are identified Comments: _____
[]	Management team meetings are attended Comments: _____
[]	Key stakeholder meetings are attended Comments: _____
[]	Constructive feedback is provided to all departmental staff Comments: _____
[]	Court Outcome Forms are completed Comments: _____

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Reports on practice trends are generated
- ☐ Management Team Meetings Minutes
- ☐ Feedback from CSO's, TL's, Managers and key stakeholders
- ☐ Completion of Court documentation
- ☐ Training schedule is organised
- ☐ Court diary
- ☐ Court Outcomes Forms
- ☐ Team and Staff Meeting Minutes
- ☐ Case Discussion Minutes
- ☐ Appearance in Court has resulted in appropriate child protection orders granted
- ☐ Other
specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Adult Learning Principles
- ☐ Understanding of recording and reporting strategies
- ☐ Networking, Liaison, Consultation
- ☐ Record Keeping Policy
- ☐ Organisational policy and procedures
- ☐ Ability to use a range of communication strategies (BE SPECIFIC)
- ☐ Providing constructive feedback
- ☐ Collation and compilation
- ☐ Report Writing
- ☐ Analytical and strategic thinking/planning
- ☐ Report and submission preparation
- ☐ Other
specify _____

PART 4 – COMPETENCY ASSESSMENT**DISSEMINATE MATERIAL AND MONITOR OUTCOMES**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity – “DISSEMINATE MATERIAL AND MONITOR OUTCOMES”	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – “DISSEMINATE MATERIAL AND MONITOR OUTCOMES”	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment



MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL

PART 1 – COMPETENCY DEVELOPMENT

MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – '**MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL**' (tick each box that is relevant)

<input type="checkbox"/> Reading/Self Assessment	<input type="checkbox"/> Training/Formal study
<input type="checkbox"/> Practical Experience in the Workplace	<input type="checkbox"/> Verified by Others
<input type="checkbox"/> Practical Experience	<input type="checkbox"/> Work Samples
<input type="checkbox"/> Other, specify	

PART 2 – ASSESSMENT GUIDE**MANAGE EVIDENCE COLLECTION AND
PREPARATION FOR COURTS/TRIBUNAL**

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Ensure court material is filed to meet departmental and legislative standards <i>Comments:</i> _____
[]	Provide support to departmental staff to complete court documentation <i>Comments:</i> _____
[]	Review of material is conducted <i>Comments:</i> _____
[]	Guide and direct departmental staff about rules of evidence <i>Comments:</i> _____
[]	Prepare and co-ordinate witnesses and their court material <i>Comments:</i> _____
[]	Ensure referral to court services is completed and co-ordinate management of any appeals filed by parents or the Department <i>Comments:</i> _____
[]	Provide information and advice on Court and Children Services Tribunal <i>Comments:</i> _____

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Feedback from CSO's, TL's, Managers and key stakeholders
- ☐ Completion of court documentation
- ☐ Appropriate Child Protection Orders are being made
- ☐ Training sessions are provided to improve practice
- ☐ Staff and Team Meeting Minutes
- ☐ Advice in Conference Meeting Minutes
- ☐ Case discussion Minutes
- ☐ Other

specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Superior written and interpersonal skills
- ☐ Providing constructive feedback
- ☐ Admissible evidence, rules of evidence, burden of proof
- ☐ Workings of court and legal processes
- ☐ Understanding of different court jurisdictions and how they interface
- ☐ Organisational policies and procedures
- ☐ Detailed understanding of different legislation impacting upon statutory work
- ☐ Analytical and strategic thinking
- ☐ Questioning and clarifying techniques
- ☐ Consultation and Liaising
- ☐ Other

specify _____

PART 4 – COMPETENCY ASSESSMENT**MANAGE EVIDENCE COLLECTION AND
PREPARATION FOR COURTS/TRIBUNAL**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity – "MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL"	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – "MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL"	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment



DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE

PART 1 – COMPETENCY DEVELOPMENT

DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – **‘DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE**
(tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal Study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

PART 2 – ASSESSMENT GUIDE**DEVELOP, IMPLEMENT, MONITOR AND
MAINTAIN COURT SYSTEMS WITHIN THE
CHILD SAFETY SERVICE CENTRE**

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Review and/or establish court systems within the Child Safety Service Centre <i>Comments:</i> _____
[]	Record and report court systems data to the Child Safety Service Centre Manager <i>Comments:</i> _____
[]	Ensure use of court diary for efficient documentation of court matters <i>Comments:</i> _____
[]	Review, co-ordinate and/or develop a bring-up system to monitor all court orders and expiry dates including Children Services Tribunal matters <i>Comments:</i> _____
[]	Prepare a monthly and/or quarterly reports on workflow <i>Comments:</i> _____
[]	Use trends analysed from data to improve your own and Child Safety Officer practice <i>Comments:</i> _____

PART 4 – COMPETENCY ASSESSMENT**DEVELOP, IMPLEMENT, MONITOR AND
MAINTAIN COURT SYSTEMS WITHIN THE
CHILD SAFETY SERVICE CENTRE**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity – “DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE”	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – “DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE”	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment



**Queensland
Government**
Department of
Child Safety

LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE/ NETWORKING

PART 1 – COMPETENCY DEVELOPMENT

LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE/ NETWORKING

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – **'LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE / NETWORKING'** (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal Study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

?PART 2 – ASSESSMENT GUIDE**LIAISE WITH KEY STAKEHOLDERS /
PROVIDE A CONSULTANCY SERVICE/
NETWORKING**

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks	
[]	Identify key stakeholders in child protection <i>Comments:</i> _____	
[]	Assist Separate Representatives and report writers commissioned by Sep Rep's to access departmental information as required for court submissions/reports <i>Comments:</i> _____	
[]	Participate, establish and/or co-ordinate a local court management meeting <i>Comments:</i> _____	
[]	Resolve local issues at the local level <i>Comments:</i> _____	
[]	Attend meetings with Legal Aid and other legal representatives as required <i>Comments:</i> _____	
[]	Liaise with Court Services in relation to difficult or specific court issues <i>Comments:</i> _____	
[]	Attend and participate in SCON meetings <i>Comments:</i> _____	

Method	Tasks
[]	Provide information and/or training sessions for key stakeholders <i>Comments:</i> _____
[]	Mentor new Child Safety Officers in relation to court processes, preparation of material <i>Comments:</i> _____
[]	Assist staff to complete the "workplace based competency assessment" in relation to the court components for Child Safety Officers <i>Comments:</i> _____
[]	Develop a resource package for staff to access re: good examples, templates <i>Comments:</i> _____
[]	Liaise and consult with staff members within the Child Safety Service Centre <i>Comments:</i> _____
[]	Support all staff within the Child Safety Service Centre regarding court and legal issues <i>Comments:</i> _____
[]	Attend, participate and/or co-ordinate key stakeholder meetings and/or other forums as required <i>Comments:</i> _____
[]	Build and maintain relationships with key stakeholders <i>Comments:</i> _____
[]	Represent the organisation in a professional manner in external forums <i>Comments:</i> _____

PART 3 – EVIDENCE GUIDE

LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE/ NETWORKING

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Schedule of training programs
- ☐ Feedback from Departmental staff and key stakeholders
- ☐ Resource package for new staff
- ☐ Workplace Base Assessment Document for CSO's re: court work is completed
- ☐ Court Management Meeting Minutes
- ☐ Team Meeting Minutes
- ☐ Case Discussion Meeting Minutes
- ☐ Other
specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Knowledge of key stakeholders
- ☐ Organisational policy and procedures
- ☐ Court hearing procedures
- ☐ Detail understanding of child protection policy and procedures including interagency protocols
- ☐ Consultation skills to maintain effective relationships/networking
- ☐ Understanding and appreciation of the role of other party's legal representatives and separate representatives
- ☐ Ability to articulate the rationale for decision making
- ☐ Knowledge of existing networks
- ☐ The values and limitations of networks
- ☐ Negotiation and consultation
- ☐ Analytical and strategic thinking/planning
- ☐ Questioning and clarifying techniques
- ☐ Engagement of staff across diverse backgrounds
- ☐ Interpreting legalese into language understood by a range of people

PART 4 – COMPETENCY ASSESSMENT**LIAISE WITH KEY STAKEHOLDERS /
PROVIDE A CONSULTANCY SERVICE/
NETWORKING**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity – “LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE / NETWORKING”	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – “LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE / NETWORKING”	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment



DELIVERY OF TRAINING

PART 1 – COMPETENCY DEVELOPMENT

DELIVERY OF TRAINING

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – 'DELIVERY OF TRAINING' (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience in Training (role play)	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

- | | |
|--|---------------------------|
| 1. Direct observation in the workplace | 2. Recent samples of work |
| 3. Third Party Verification | 4. Oral questioning |

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Identify learning and training needs of both Departmental staff and key stakeholders <i>Comments:</i> _____
[]	Develop and deliver local training initiatives with both children's court and tribunal <i>Comments:</i> _____
[]	Participate in Management Team meetings to discuss training needs in relation to court process <i>Comments:</i> _____
[]	Build capacity within the local CSSC for other departmental staff to undertake the role of Court Coordinator as required. <i>Comments:</i> _____
[]	Develop and act on outcomes in your Performance and Learning Plan <i>Comments:</i> _____
[]	Review delivery of training session <i>Comments:</i> _____

Method	Tasks	
[]	Facilitate group and individual learning	
	Comments: _____	
[]	Promote training opportunities ie internal or external	
	Comments: _____	
[]	Develop and gather training resources/materials	
	Comments: _____	
[]	Provide opportunities for practice and feedback	
	Comments: _____	
[]	Evaluate and report on training and it's impacts on practice	
	Comments: _____	

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Calendar of training programs both
- ☐ Evaluations of training completed
- ☐ Feedback from CSO's, TL's and Managers
- ☐ Feedback from key stakeholders
- ☐ A range of CSSC staff are attending Children's Court
- ☐ Performance and Learning Plans
- ☐ Management Team Meeting Minutes
- ☐ Training Material and Resources
- ☐ Other

specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Understanding of the Adult Learning Principles
- ☐ Organisational policies and procedures
- ☐ Knowledge of training delivery and methods
- ☐ Ability to manage crisis, competing demands, priorities and agendas
- ☐ Provide constructive feedback
- ☐ Designing tasks and activities to facilitate learning
- ☐ Facilitate individual and group learning
- ☐ Active listening
- ☐ Ability to identify learning needs
- ☐ Engagement of staff from diverse backgrounds
- ☐ Knowledge of different learning styles

PART 4 – COMPETENCY ASSESSMENT**DELIVERY OF TRAINING**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity - 'DELIVERY OF TRAINING'	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – 'DELIVERY OF TRAINING'	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Co-Ordinator Workplace Competency Assessment

Section 4 - Completion Certification



COMPETENCY ASSESSMENT - COMPLETION CERTIFICATE

(For all workplace activities)

TO BE COMPLETED BY THE COURT CO-ORDINATOR

SIGNATURE

NAME/POSITION

WORKPLACE

DATE

TO BE COMPLETED BY THE CHILD SAFETY SERVICE CENTRE MANAGER

I certify that I have conducted the assessment of the Team Leader named above to the standards specified in this assessment document.

☐ Competent ☐ Not yet competent (in all workplace activities)

Reason: (if not yet competent)

SIGNATURE

NAME/POSITION

WORKPLACE

DATE

Original of this certificate to be retained by the Assessee

Forward a copy of this certificate by fax or mail to:

Ms Bernadette Smith
Manager
Court Services Unit
Department of Communities (Child Safety)
PO Box 806
BRISBANE QLD 4001
Fax: (07) 3235 9851

Session Plan – Interstate Liaison Officers Role and Interstate Warrants

To be presented in conjunction with the power point presentation: N/A

Outcomes:

- To develop an understanding of the Interstate Liaison role and responsibilities
- To develop an understanding of the interface between the Court Co-Coordinator role and the Interstate Liaison Officer role

Time	Content	Resources / Comments
	<p><u>Introduction</u></p> <ul style="list-style-type: none"> • Linkage <p>This is a continuation of providing an overview of the organisational structure of the Court Services Unit. It provides participants with the opportunity to develop a clearer understanding of the differing areas of child protection work that are managed within the Court Services Unit specifically.</p> <ul style="list-style-type: none"> • Outcomes <ul style="list-style-type: none"> ➤ To develop an understanding of the Interstate Liaison role and responsibilities ➤ To develop an understanding of the interface between the Court Co-Ordinator role and the Interstate Liaison Officer role <ul style="list-style-type: none"> • Strategy <ul style="list-style-type: none"> ➤ The Interstate Liaison Officers, will present an overview of the Interstate Liaison Role and an overview of the range of enquiries and tasks that they manage. <ul style="list-style-type: none"> • Stimulus <ul style="list-style-type: none"> ➤ It is important for Court Co-Ordinators to have an understanding of the Interstate Liaison Officer role and their responsibility to ensure that if a court matter has an interstate or New Zealand interface then the Interstate Liaison Officer needs to be involved. This will be even more prudent if decisions are being made to have a child protection order transferred interstate or to New Zealand. 	

Time	Content	Resources / Comments
	<p><u>The Interstate Liaison Role</u></p> <p>Introduce Kerry Daly and Holly Whiteman the Interstate Liaison Officers.</p> <p>Session to cover:</p> <ul style="list-style-type: none"> ➤ Overview of the Interstate Liaison Officer Role. ➤ The functions of the Interstate Liaison Officer ➤ Interstate Warrants ➤ Child Protection Orders and proceedings ➤ What they can and can't do ➤ Tips for practice regarding matters that have an interstate or New Zealand interface <p><u>Overview of the Interstate Liaison Officer Role</u></p> <ul style="list-style-type: none"> ➤ Explanation of the role, where it is located within the Department, who we liaise with, when interstate assistance is required. ➤ Discuss the Interstate Protocol, Chapter 7 of the <i>Child Protection Act 1999</i>, and Chapter 17 of the Child Safety Manual- how they inform and outline the procedures in relation to Interstate Liaison Work. ➤ Review of the Protocol ➤ Guidelines to support the Protocol ➤ Interstate Alerts Protocol <p><u>Functions of the Interstate Liaison Officer Role</u></p> <ul style="list-style-type: none"> ➤ What are the different tasks that we can request Interstate and New Zealand Department's to assist us with: <ul style="list-style-type: none"> - alerts - notifications - assessments - kinship, carer, reunification, holiday. (8 weeks vs priv prac) - casework tasks (to QLD - no FGM, case plan or decision making etc) - locating a placement - transfer of orders/proceedings - warrants ➤ Role of the CSSC's in relation to interstate matters- what will be required of them if they need interstate assistance- in and out. <p><u>EG:</u> obtain appropriate request from ILO – ILO will guide process.</p> <p><u>Child Protection Orders and Proceedings</u></p> <ul style="list-style-type: none"> ➤ When an order can be transferred - NSW now a participating state ➤ When a proceeding can be transferred – (<i>CPA 1999</i> Sect 225 & 229). ➤ Compatible orders for transfer (see table handout) (NB: 3rd party orders) ➤ Order to be as close to maximum length as possible (6 months remaining) ➤ Role of the ILO in relation to transfers ➤ Role of the CSSC in relation to transfers <p><u>Relevant sections of Legislation:</u></p> <p>206 – Orders that can be transferred</p> <p>209 - Consent required for transfer</p> <p>214 – Judicial transfer, court may transfer order</p> <p>218 – order ceases to have effect</p> <p>222 – effect of registration (order transfer to QLD)</p>	<ul style="list-style-type: none"> • Interstate Protocol • Warrants Protocol • Table: transferrable orders. • Table: "What they can & can't do". • Interstate Protocol

Interstate Warrants

- Information about the warrants protocol- when it was developed, its function and when it is used
- Role of the ILO in relation to Warrants- to recover a child from another jurisdiction and to assist another jurisdiction to recover a child from Queensland
- Role of the CSSC in relation to Warrants- to recover a child from another jurisdiction and assist another jurisdiction to recover a child from Queensland.
- Relevant section of the Legislation/role of Department in relation to the Court

• Warrants protocol

What ILO can and can't do!

Can't do:

- CP checks (except for NZ) – NB: VIC only check via child's name
- Police checks – QPS does Australia wide
- Carer checks
- Accessing departmental databases – exchange of information
- Obtaining medical, educational histories – need to go directly to the organization/SCAN/subpoena files

Can do:

- Notice of holiday placement and interstate travel
- Locating parents interstate/NZ
- Serving papers interstate
- Majority of cases with an interstate aspect

- NB: Interstate outcomes don't happen quickly!!!

Practice issues regarding matters that have an interstate or New Zealand interface

There have been some practice issues identified in relation to the transfer of matters interstate and the responsibility of the Department's involved. This is an opportunity to highlight some of these to improve practice and understanding within the CSSC and in regard to the interface with the court system.

- Make a child protection order that meets the child's best interests and matches the case plan to ensure the safety needs of the child are met appropriately

EG: short term order and reunification if child placed interstate and parents reside in QLD.

- Consider how realistic it is to secure a custody order if the child is remaining in Queensland but parents are in NZ, for example
- Don't make a child protection order that is based on a promise to parents that the child/ren will be placed in a particular placement either interstate or in New Zealand – incl. locate a placement
- Do not place child interstate if subject to Care Agreement – not enforceable
- Cannot ask for assistance if child not subject to an order i.e. not IPA; Care agreement etc
- Cannot transfer IPA/ CAO or care agreement

- Have a clear understanding about what you are requesting an Interstate or the New Zealand Department to do by liaising with the ILO and thoroughly completing the appropriate request forms – give eg
- If you think the case has an interstate component, contact the ILO to ensure that the appropriate interstate assistance is provided.
- Before registering an order from interstate, ensure that the carers have been approved as Qld carers – CSU/Blue card/assessment etc
- Bear in mind that obtaining an assessment interstate might take many weeks, and this could have a bearing on the outcome of the CAO or finalising the CPO
- Can't expect an interstate office to offer the same level of service as you would offer here – this might determine the nature of the order sought
- FAQs
- Don't accept direct approach from an interstate office
- Crown Law advice re Custody/guardianship decisions and interstate placements
- ILOs can use their contacts to get interstate information, but cannot work miracles – eg can use internet, but so can you eg NZ phone number; Immigration information
- CONTACT ILO AT ANY TIME

Question and Answer time provided for participants.

Handouts:

- Interstate Protocol
- Warrants Protocol
- Table of transferrable orders
- Subpoena table
- Request for transfer of order (NSW)

OVERVIEW OF THE COURT SERVICES UNIT (CSU)

The Court Services Unit sits under the Statewide Services Branch and has responsible for the following program areas:

Child Protection:

- Represents the Director-General in all child protection matters in the Brisbane Children's Court, the Children's Court of Queensland, District Court and the Supreme Court;
- Trains, consults and advises on matters concerning the management of child protection cases before the courts;
- Coordinates all contested child protection matters across the state;
- Coordinates all appeals across the state;
- Coordinates Crown Law representation and advice in case related matters; and
- Provides quality consultation on child protection legal system interface.

Adoptions:

- Manage the dispensation of Adoption consents.

Queensland Civil and Administrative Tribunal matters (Children Services Tribunal):

- Promotes accountable and transparent decision making through the coordination of reviews to the Queensland Civil and Administrative Tribunal (Children Services Tribunal).

Interstate Liaison:

Court Coordinators or Child Safety Officers may require the services of an Interstate Liaison Officer (ILO) to:

- request an interstate jurisdiction to complete an initial assessment
- notify an interstate jurisdiction about child protection concerns in relation to a child/family living interstate
- assess a prospective carer who resides interstate
- assess a parent who resides interstate, for the purposes of contact visits or to consider reunification

- request an interstate jurisdiction to undertake casework with a child/young person and their carer, if the child/young person is under a QLD CPO and is residing interstate
- transfer an Order to an interstate jurisdiction, where a child/young person is under a QLD CPO and residing interstate
- locate an interstate placement for a child/young person under a QLD CPO
- obtain a warrant for the return of a child/young person under a QLD CPO from interstate
- obtain a child protection history or criminal history check for a family being assessed or a carer applicant who has resided in NZ.

Each state and territory has an ILO with protocols in place around requests for assessments, transfers etc.

Any requests from interstate jurisdictions should come to CSSC's **via the Queensland ILO**. If you receive any requests directly from interstate, you should check whether they have been in contact with their state ILO, and also advise the QLD ILO of the request.

Any requests for **interstate child protection histories** should be directed to **Data Management Services**.

Checks of criminal histories, including interstate, should be done using the Request for criminal history form.

Please refer to:

- **The Transfer of Orders table**
- **The Request for Interstate Transfer document and**
- **The Protocol of Transfers document**

Subpoena Team

- Process subpoenas for all departmental documents;
- Carry responsibility for ensuring that an appropriate response is arranged in order for the material to be produced on time to the court or for the subpoena to be contested.

Family Law:

- Coordinate departmental interface with the Family Court of Australia and the Federal Magistrates Court.
- Trains, consults and advises on matters concerning the management of child protection cases before the Family Court of Australia and Federal magistrates Court;
- Coordinates Crown Law representation and advice in case related matters; and
- Provides quality consultation in relation to child protection matters within the Family Court of Australia and Federal magistrates Court.

International Child Abduction:

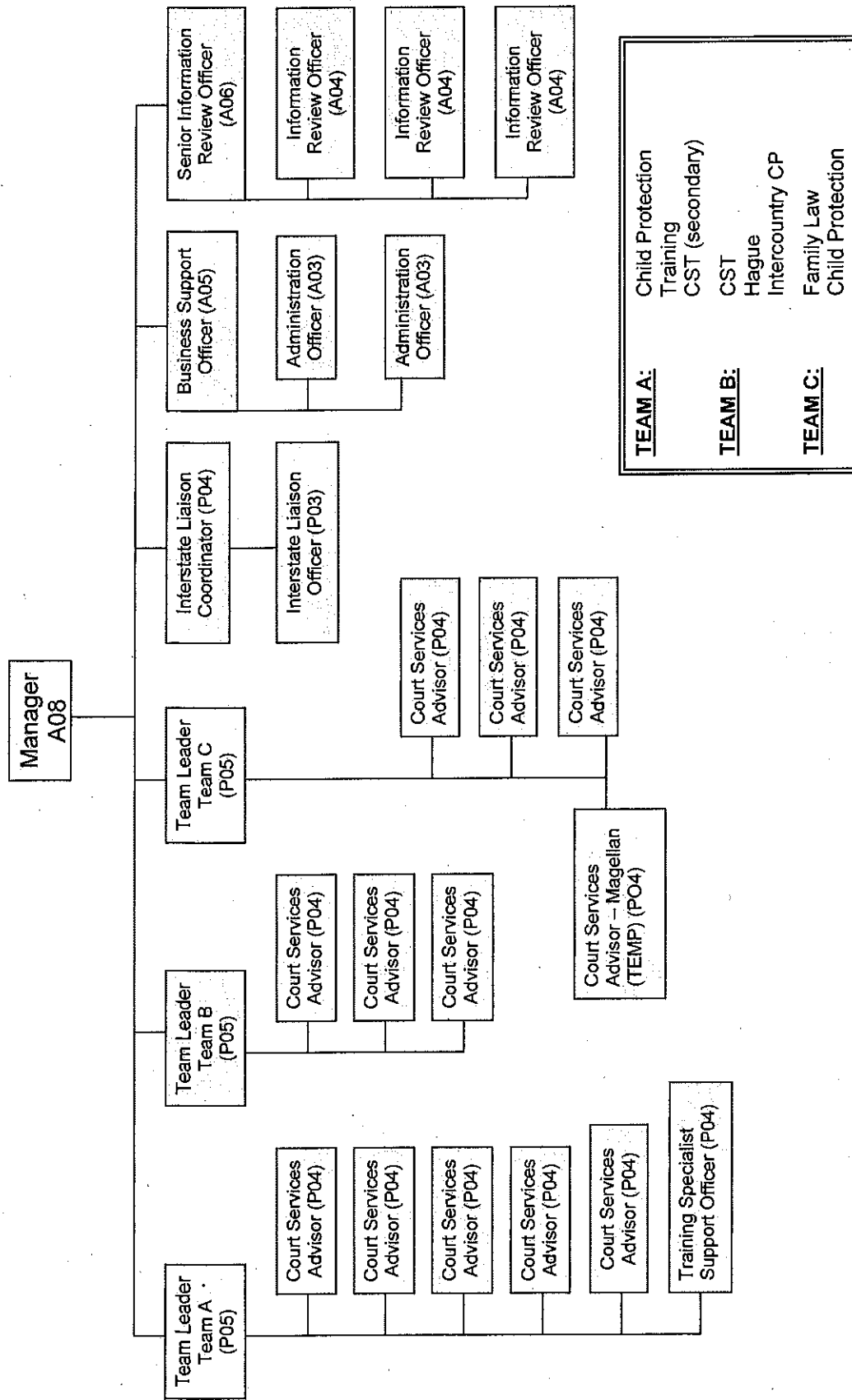
- Act as the State Central Authority in the Hague Convention of the Civil Aspects of International Child Abduction.

International Child Protection Matters:

- Coordinate requests in relation to international child protection matters.

The Court Services Unit also provides quality consultation to Child Safety Service Centre's on any legal aspects in relation to the above jurisdictions.

COURT SERVICES (CHILD SAFETY) UNIT



ROLE AND RESPONSIBILITIES OF THE COURT SERVICES UNIT

The Court Services Unit (CSU) coordinates the provision of the legal services of Crown Law who are engaged to advise and represent the Child Safety Service Centres in connection with contested matters before the Courts.

Therefore it is important that CSU obtains AS SOON AS POSSIBLE from the Child Safety Service Centres the dates for mentions, Court Ordered Conferences and Hearings at which Crown Law will be required.

The CSU provide instructions at the earliest possible date for Advice in Conferences, Court Ordered Conferences and Hearings.

The purpose of the Advice in Conference is to record and clarify, where necessary, the use of various evidence; time-frames for the preparation of evidence; and raise any other difficulties that may be noteworthy either in obtaining the evidence or in the conduct of the Hearing.

After the Advice in Conference, the CSU confirms with the Court Coordinator, Applicant and Team Leader the material sought and the timeframes for the supply of the material in email or letter and further liaises with the office to ensure that the material is prepared on time.

If material is filed late, the CSU liaise with the Child Safety Service Centre and Crown Law to negotiate an appropriate filing strategy to ensure that relevant material is before the court.

The CSU also liaise with the Child Safety Service Centre for the purposes of settling any affidavit material and where necessary seeking Crown Law assistance in the same; assisting the Court Coordinator in making arrangements for witnesses for Hearings together with dates and times for specific witnesses; to liaise with witnesses in relation to their entitlements AND to advise Crown Law of any changes in hearing dates.

The Child Safety Service Centre is responsible for providing all relevant information to Court Services and Crown Law for the purposes of the conduct of contested hearings.

Relevant staff MUST attend any Advice in Conference, providing the information referred to above together with alternative sources of information including expert information where required.

The Court Coordinator and the applicant are to assist to coordinate witnesses in conjunction with Court Services, in respect of preparation and filing of affidavits along with the preparation and service of subpoenas on witnesses to be had for the Hearing.

INTERFACE BETWEEN COURT SERVICES AND COURT COORDINATORS:

Once the Child Safety Service Centre has informed Court Services of a hearing date, the matter is then allocated to a Court Services Adviser. The Court Services Adviser then contacts the Court Coordinator and commences the consultation and coordination between the Child Safety Services Centre and Crown Law in relation to that specific case.

Furthermore, two Court Services Advisers are allocated to an Intake Roster to respond to any general enquiries, however Court Coordinators are encouraged to contact their Zonal Court Services Advisor at the first instance in relation to obtaining advice.

COURT COORDINATOR ZONAL LINKS

Each Court Services Adviser is allocated to particular Zonal areas including:

Logan and Brisbane West
Ipswich and Western Area
Brisbane South and Gold Coast
Brisbane North and Sunshine Coast
Central
Northern and;
Far Northern

Each Court Services Adviser is responsible for arranging a meeting with all the Court Coordinators that sit in positions in the Child Safety Services Centre in each Zone. These meetings are generally held every 6-8 weeks.

The purpose of these meetings is to have a forum where Court Coordinators can discuss practice issues, receive assistance and support from CSU and their colleagues on a regular basis, discuss complex cases as a professional development strategy and to give and receive any updates on legislation, appeal decisions, policy and practice.

TRAINING AND CONFERENCES

The Court Services Unit delivers Court Coordinator Induction Programs four times a year.

It also organises the annual Court Coordinator Conference.

INTERSTATE TRANSFER INFORMATION

Transfer of Orders Table

Request for Interstate Transfers Document

Protocol for the Transfer of Care and Protection Orders
and Proceedings and Interstate Assistance August 2007

Transfer of Orders

Transfer of Orders from QLD to another State:

QLD	Acceptance						
	NSW	VIC	NT	WA	ACT	TAS	NZ
Short term Custody To CE	No	Yes	No	No	Yes	Yes	Yes
Short Term Guardianship to CE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Long term Guardianship to CE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Long Term Guardianship to 3 rd Party – see CPA 1999 Section 206b	No	No	No	No	No	No	No
Protective Supervision Order (directives)	Yes	Yes	No	No	Yes	Yes	Yes
TAO Proceedings	No	No	No	No	No	No	No
CAO Proceedings	No	No	No	No	No	No	No
CPO Proceedings	Yes	Yes	Yes	Yes	Yes	Yes	Yes



Queensland
Government

Department of Child Safety

REQUEST FOR INTERSTATE TRANSFER

TRANSFER OF GUARDIANSHIP FROM QUEENSLAND TO NEW SOUTH WALES

Section 207 and 208 *Child Protection Act 1999*

• **Child/Young Person Details:**

Family Name	
Given Names	
Date of Birth	
Place of Birth	
Type of Child Protection Order (do not use acronyms eg STGCE)	
Date of Child Protection Order	
Date of Expiry of Order	

The abovenamed child is currently under an order placing him/her in the Guardianship of the Chief Executive, pursuant to Section 59 of the ***Child Protection Act 1999***

I,, Manager of the Child Safety Service Centre, Department of Child Safety, request the transfer of Guardianship administratively to the Department of Community Services, NSW, pursuant to the relevant section of the Queensland Child Protection legislation and under s 231W(1) of the ***Children and Young Persons (Care and Protection) Act 1998 (New South Wales)***

Signed at this day of200

Manager,CSSC

REQUEST FOR INTERSTATE TRANSFER OF CHILD PROTECTION ORDER

(To be used for: Administrative transfers of child protection orders under sections 207 & 245
Judicial transfers of child protection orders under section 214
Judicial transfers of child protection proceedings under section 228)

Originating State

Receiving State

1. Interstate Details:

Name of Carer:.....

Relationship to child:.....

Address:.....

.....

Phone:.....

Date child moved to placement with this carer

2. If you are seeking to transfer Current Proceedings, (Child Protection Act 1999 s 228), please give details

.....

.....

.....

3. Network of family members/other significant people

Name	Age/dob	Address	R'Ship	Contact Arrangements
			mother	
			father	

4. If transfer is between Australia and New Zealand:

- ☐ **Nationality:**.....
- ☐ **Residency:**.....
- ☐ **Citizenship:**.....

- 5. Is the child indigenous?** **No** ☐ **Yes** ☐
- Aboriginal** ☐
- Torres Strait Islander** ☐
- Maori** ☐
- Other eg Vietnamese, Samoan** ☐
-

- ☐ **Has any organisation with expertise in the child welfare matters of the relevant indigenous community been involved with the child?**

Yes ☐ **No** ☐

If yes, name of organisation and phone contact

.....

(Please attach relevant reports)

- ☐ **Has the organisation expressed any views about the placement/proposed transfer of the order? (Please provide relevant reports)**

.....

.....

.....

6. Have all relevant appeal or review periods expired eg Children Services Tribunal?

Yes ☐

No ☐

If no, give details:

.....
.....

7. Please provide the following information as an attachment—

- ☐ A - Genogram of the child's family, including significant people in the child's life.
- ☐ B - A signed, stamped copy of the child protection order – please ensure the order shows its expiry date.
- ☐ C - Originals of consents, countersigned by the Manager: parents, child over 12 years, carers if child has moved from Queensland with the carer. If a parent cannot be located, please indicate on the consent form the attempts made to locate the parent/s or obtain the consent
- ☐ D - Copy of current case plan including maintaining of cultural links (see Q 6) and an assessment of the child's protective needs. Please note: If the goal of the case plan is reunification and the parent does not live in NSW, you will need to provide details of how reunification will be achieved.
- ☐ E - Copy of the carer assessment report to facilitate payment of the carer by the interstate office once the order has been transferred.

8. Please provide the following information by typing directly onto this document

- ☐ A - Summary of child protection history and Departmental involvement
- ☐ B - Indications that child's interstate placement is stable – please provide details as appropriate:
 - ☐ Regular contact by caseworker with carers/child
 - ☐ Carer meets child's emotional/physical/psychological needs

1. **Medical/Health:**
2. **Physical Development:**
3. **Education:**
4. **Social/Emotional Development:**
5. **Behaviour:**
6. **Other:**

Please list here all reports that are included with this request.

.....

.....

.....

- | | |
|--|---|
| Fortnightly fostering payments | \$ |
| Other regular fortnightly payments | \$ |
| Is child in receipt of High Support Needs Allowance or other additional payments given child's individual needs. If yes, please give details of amount paid and enclose a copy of the latest application for allowance funding, outlining child's requirements | Yes No |
| Any other child related costs met | |

by the Department

☐ H – Details of the proceedings at the time the current order was granted:

Party to the proceedings	Name & Address	Legal Rep Yes/No	Contact Details for Legal Representation (name/address/phone/fax/email)
Mother	As above		
Father	As above		
Child	As above		
Applicant (e.g. CSO)			
Other (R'ship to child)			

Signature of Manager:
(Delegated Officer)

Date:

Signature of Interstate Liaison Officer:

Date:

**Protocol for the Transfer of
Care and Protection Orders
and Proceedings
and Interstate Assistance**

13 August 2007

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Preamble

The Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance (the Protocol), provides the framework for parties to work together in order to promote the interests and well-being of children. Parties recognise the desirability of working collaboratively as fundamental to achieving this goal. The Protocol is therefore based on the principle that all parties to it operate on a basis of mutual respect and co-operation for the benefit of the children to whom it applies.

Introduction

1. Purpose of Protocol

The purpose of this Protocol is to:

- a) Improve the provision of care and protection services to children and young people who
 - i. are the subject of a child protection order or proceeding which is proposed to be transferred interstate; or
 - ii. are the subject of a child protection intervention where there is a proposal for the child to move interstate, without involving the transfer of an order.
- b) Provide guidance for Departmental workers and improve the co-ordination of the operations of the relevant Department to facilitate:
 - i. the protection of children in need of care; and
 - ii. the promotion of the best interests of such children.
- c) Provide for cooperation between jurisdictions to facilitate the care and protection of children and young people.

2. Legislative Basis

In each participating State the basis for transfer of Orders and Proceedings are contained in the relevant child protection legislation of that State. This Protocol should be read in conjunction with provisions contained within each State's respective legislation and the processes contained therein be adhered to.

3. Definitions

For the purposes of this Protocol:

"Child" means children and young people under the age of 18;

"Child Welfare Law" means State child protection legislation;

"Co-ordinating Interstate Liaison Officer" has the meaning given to it in paragraph 5 below;

"Department" means a State Department, Ministry or agency however described which has responsibility for administering the child protection legislation of the State or has officers with such responsibility;

"Indigenous child" means a child identified as being of Aboriginal or Torres Strait Islander ancestry in Australia, and Māori ancestry in New Zealand

"Interstate Liaison Officer" has the meaning given to it in paragraph 5 below;

"National Co-ordinating Interstate Liaison Officer" has the meaning given to it in Paragraph 6 below;

"receiving State" means the State which receives a request for:

- a) transfer of child protection order;
- b) transfer of child protection proceeding;
- c) transfer of child without transferring orders (casework transfer);
- d) assessment
- e) assistance in locating a placement

from the sending State;

"sending State" means the State which sends a request for:

- a) transfer of child protection order;
- b) transfer of child protection proceeding;
- c) transfer of child without transferring orders (casework transfer);
- d) assessment;
- e) assistance in locating a placement

to the receiving State;

"Senior Officer" means a very senior officer nominated by the Chief Executive Officer or equivalent of a Department as the Senior Officer for the purpose of this Protocol;

"State" means New Zealand or any State or Territory of Australia and "interstate" has the corresponding meaning.

"Welfare benefits" includes Australian Commonwealth and New Zealand government supports, payments, entitlements and other benefits.

"Whānau, hapū, iwi" are New Zealand Māori words to describe family groups:

- Whānau is a wider concept than just immediate family made up of parents and siblings. Whānau links families to a common ancestor/tīpuna.
- Hapū is a sub-tribe or cluster of family/whānau groups that have a common ancestor.
- Iwi is a tribal group composed of many hapū led by an Ariki or paramount chief.

4. Operating Procedures

The Operating Procedures exist as a separate document to provide support and guidance for implementation of this protocol. They are guidelines for practice and are not enforceable provisions.

The operating procedures may be varied from time to time as necessary.

Interstate Liaison Structure

5. Interstate Liaison Officers

Each State shall appoint one or more officers who are referred to as "**Interstate Liaison Officers**". If there are a number of Interstate Liaison Officers in a State, there must be an officer who has the role of **Co-ordinating Interstate Liaison Officer**.

Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance

If Interstate Liaison Officers are appointed for distinct regions, a reference to the Interstate Liaison Officer of a State shall be read as the Interstate Liaison Officer of the relevant region.

The Interstate Liaison Officer, or if there is more than one Interstate Liaison Officer, the Co-ordinating Interstate Liaison Officer, is responsible for:

- a) ensuring that paragraph 7 is complied with in relation to his or her State; and
- b) promoting knowledge of, and compliance with, this Protocol.

6. *National Coordinating Interstate Liaison Officer*

The National Coordinating Interstate Liaison Officer has the role of compiling, maintaining and distributing on a regular basis:

- a) The Interstate Liaison Officer contact register
- b) The register of Senior Officers
- c) Any other information which may be of assistance to the other Interstate Liaison officers

The National Coordinating Interstate Liaison Officer will be appointed annually from the membership of the respective state Interstate Liaison Officers.

7. *Providing Information Regarding Officers*

Each State must provide the following information to the National Coordinating Interstate Liaison Officer:

- a) the contact details of the Interstate Liaison Officer(s), and, if applicable, the National Co-ordinating Interstate Liaison Officer;
- b) details of the Senior Officer or officers of each respective state; and
- c) if any of the above details change, the new details within 10 working days of the change.

General Provisions for the Interstate Transfer of Child Protection Orders and Proceedings

8. *General Principles*

Decisions regarding the interstate transfer of child protection orders and proceedings and the interstate placement of children will be made in accordance with each State's interstate transfer legislative provisions and case planning principles and include the following principles:

- a) The best interests of the child are paramount.
- b) It is the responsibility of the sending State to ensure that all legislative requirements necessary for the transfer of child protection orders or proceedings from that state are complied with for the purpose of the transfer, including required consents.
- c) Delay is contrary to the interests of a child and should, where possible, be minimised. Accordingly, all requests and responses must be made promptly. As a general observation, a transfer of an order and all associated tasks would occur within 6 months of a child being placed interstate and would often be done more quickly.

- d) Settled care and protection arrangements are considered to be in the best interests of a child and to this end the orders to be transferred should, dependent on the specific needs of the child, have not less than 6 months remaining before expiry of such order.
- e) Planning an interstate placement, where the child is subject to a child protection order, should include the involvement of the receiving State prior to the interstate placement.
- f) A child protection order should be enforceable and effective pursuant to the child protection legislation of the State where the child resides.

9. Relocating Children Between New Zealand and Australia: Immigration Officials

Where a State is considering relocating a child between New Zealand and Australia, the sending State must contact the Immigration Officials of the receiving State and seek information regarding any immigration issues/ entitlement to welfare benefits that relate to the child prior to:

- a) relocating a child between New Zealand and Australia; or
- b) seeking a judicial or administrative transfer of a child protection order or proceeding between Australia and New Zealand.

10. Interstate Placement of Indigenous Children

- a) Subject to paragraph 11 below, where the transfer of a child protection order or proceeding occurs or is proposed, a State should comply with the Indigenous Child Placement Principle in its own jurisdiction.
- b) The planning of an interstate placement of an Indigenous child, whether the child is subject to a child protection order or not, should involve one or more relevant Indigenous organisations.
- c) If there is no organisation with the appropriate knowledge or expertise, consultation should occur with an appropriate Indigenous Departmental/Ministry officer or employee and/or an appropriate representative of the Indigenous community to which the child belongs.

11. Interstate Placement of Indigenous Children Between New Zealand and Australia

- a) Where a transfer of a child protection order or proceeding between New Zealand and an Australian State occurs or is proposed, this paragraph applies to the following States:
 - i. New Zealand, if the child is an Aboriginal or Torres Strait Islander child; and
 - ii. an Australian State, if the child is a Māori child.
- b) Subject to sub-paragraph (c) below, a State to which this paragraph applies must:
 - i. apply the Indigenous Child Placement Principle, either as carried out within that State's jurisdiction, or, if there is no Indigenous Child Placement Principle for the Indigenous child, in accordance with Schedule A to this Protocol
 - ii. where practicable, maintain and strengthen the relationship between the child and his or her family, whānau, hapū, iwi, family groups and/or community group.

- c) If a State to which this paragraph applies is a Sending State, the State may:
 - i. contact the receiving State; and
 - ii. subject to the paramount interests of the child and any provisions in the law of the sending State, comply with the Indigenous Child Placement Principle in the receiving State in relation to the placement of the child.

12. Information Provided When Requesting a Transfer

Prior to the transfer of a child protection order or proceeding or interstate placement of a child, the Interstate Liaison Officer of the sending State must provide to the Interstate Liaison Officer of the receiving State all information necessary for the request to be considered. The Interstate Liaison Officer of the sending state should ensure that the request contains information that is comprehensive, accurate and up to date.

13. Exchange of Information & Obtaining Consent to a Transfer from a Receiving State

- a) When considering an interstate transfer of a child protection order or proceeding, the Interstate Liaison Officers will communicate as required, including:
 - i. discussing what further information (if any) is required;
 - ii. the Interstate Liaison Officer in the receiving State informing the sending State that it intends to accept the proposed transfer of the child protection order or proceeding, as soon as practicable after forming that intention; and
 - iii. the Interstate Liaison Officer in the receiving State notifying the sending State as soon as practicable after the court in the receiving State:
 - 1. registers or files a transferred child protection order or proceeding;
 - 2. revokes the registration of a registered child protection order; or
 - 3. orders that a child protection proceeding should be returned to the sending State.
- b) Unless there are exceptional circumstances, a decision by the receiving State whether to accept or decline a transfer of a child protection order or proceeding will be made within 3 months of the receipt of the request for transfer provided all required documentation has been provided by the sending State.
- c) If a decision to accept or decline a transfer of a child protection order or proceeding is not made within 3 months of the receipt of the request for transfer, the sending State may request the decision proceed to the dispute resolution process.
- d) Where, because of exceptional circumstances, there is a delay in acceptance of the transfer of a child protection order, the receiving state should, wherever possible, offer to provide casework assistance until such time as formal transfer occurs.
- e) If a child protection order or proceeding is transferred the sending State must provide a copy of the Departmental file, including a hard copy of any electronic files, to the Department in the receiving State within 28

days of receipt of advice of finalisation of the transfer. In many cases the Departmental file could be forwarded to the receiving State upon the receiving State advising that they consent to the transfer of the child protection order or proceedings.

- f) Until such time as the a child protection order or proceeding transfers to a receiving State the sending State is responsible for all case management decisions.

14. Declining to Accept Transfer

- a) The receiving State must agree to the transfer of the child protection order or proceeding unless it:
 - i. would be contrary to the interests of the child; or
 - ii. is an exceptional case where it is clearly impracticable to accept the transfer; or
 - iii. is not legally possible.
- b) Where the receiving State declines to accept transfer of a child protection order or proceeding, the receiving State will provide a written statement outlining the reasons why the transfer cannot be accepted.
- c) If the receiving State declines a proposed transfer, the sending State may subsequently request the Senior Officer to review that decision.

15. Costs

- a) If a child protection order or proceeding is transferred to a receiving State, the receiving State must generally bear all costs associated with the administration of the matter after the transfer of the child protection order or proceeding has occurred.
- b) In special cases, the receiving and sending States may agree that the sending State makes some payments during a specified transition period. The specified transition period should be agreed prior to acceptance of the transfer.
- c) If a sending State requests a transfer of orders for a child where the costs required to be met by the receiving State will be highly in excess of the norm, the receiving State Interstate Liaison Officer will refer the issue of costs directly to the Senior Officer of that State to negotiate an agreement with the Senior Officer of the sending State prior to acceptance of the transfer.
- d) Until such time as the a child protection order or proceeding transfers to a receiving State, the sending State is responsible for all costs associated with that child.
- e) Unless otherwise agreed, where a Department provides assistance to the State that retains case management responsibility, any costs external to the Department are borne by the State with the case management responsibility.

Where Child is Placed Interstate, but the Child Protection Order is not Transferred

16. Transferring Child Without Transferring the Order

- a) If a child subject to a child protection order is placed interstate, the receiving and sending States would generally negotiate the transfer of the child protection order in accordance with paragraphs 8 - 15 above.

However, if a sending State is unable to transfer a child protection order or the transfer of the order (at that time) is contrary to the interests of the child, the sending State may place the child interstate without transferring the order.

- b) If a child on a child protection order is placed, or proposed to be placed, interstate without transferring the child protection order:
 - i. the receiving State, to the best of their ability, shall co-operate with the sending State and provide all services reasonably requested by the sending State. Such services would include support and supervision/monitoring of a placement; and
 - ii. the sending State must provide the receiving State with all information that is required by the receiving State.
- c) Where the receiving State has agreed to provide services for a child without transfer of the order, the sending State will request transfer of order to the receiving State within 12 months of the original request except in exceptional circumstances.
- d) Where guardianship/parental responsibility has been conferred solely upon a carer and the carer is located in the receiving State, the sending State may as necessary request specific time limited casework tasks of the receiving State subject to discussion with and agreement by the receiving State Interstate Liaison Officer.

17. Interstate Placement or Movement of a Child Who is Not on a Child Protection Order

- a) ***Within or from Australia:*** If a State is involved in a child being placed interstate due to protective concerns, where there is not a child protection order or proceeding, the sending State must, prior to the placement being made, inform the receiving State of the placement. The sending State must provide sufficient information, including the child protection concerns, so that the receiving State can determine whether to take any action, under relevant child protection legislation, in relation to the welfare of the child. If the child is an Indigenous child, the information provided must include an outline of any prior involvement of any organisation with expertise in the child welfare matters of the relevant Indigenous community.
- b) ***From New Zealand:*** If a child is not the subject of a child protection order, but:
 - i) a Family Group Conference (FGC) has made decisions or recommendations and plans in relation to a child; and
 - ii) a recommendation of the FGC is that the child is placed with caregivers in another state; and
 - iii) where the necessary agreements to the FGC decisions or recommendations or plans have been obtained,

then, if the child is or will be placed interstate, the receiving State shall where possible provide an assessment of the proposed caregivers and the provision of a report on the placement if it is reasonably requested by New Zealand. If the child is Māori, the receiving State shall where possible include with the assessment, an outline of the proposed

involvement of any organisation with relevant cultural and social work expertise. The provision of other support and services would be provided by negotiation being mindful of the principles noted in paragraph 8 above and the obligations that are placed on New Zealand.

Assessments

18. Placement Assessments

- a) A sending State may request a receiving State to undertake an assessment of a proposed caregiver located in the receiving State.
- b) The sending and receiving states are each individually responsible for such checks as they require as part of the assessment, unless otherwise negotiated.
- c) Provided the receiving state is satisfied that the information provided by the sending State is sufficient to undertake the assessment, the receiving State should complete the assessment within 8 weeks of receipt of the request unless other wise agreed between the relevant states.
- d) If the receiving State is unable to complete the requested assessment internally within the above timeframe it will meet the costs of contracting a private practitioner/agency to undertake the assessment.
- e) The assessment writer must make a recommendation as to the suitability of the proposed placement but any decision whether to proceed with the placement rests solely with sending State.

19. Requests for urgent assessments

- a) Should the sending State require an urgent assessment to be completed in less than 4 weeks, the receiving state may elect to have the assessment competed by a private practitioner and the sending State will bear any cost involved in completing the assessment.

20. Holiday/Contact Assessments

- a) A sending State may request a receiving State to undertake an assessment of a proposed caregiver located in the receiving State (for the purpose of a holiday/contact visit).
- b) The sending and receiving states are each individually responsible for such checks as they require as part of the assessment, unless otherwise negotiated.
- c) For requests for a holiday/placement over the Christmas/ summer school holiday period, the request should be forwarded to the receiving State's Interstate Liaison Officer by the end of September. For holidays at other times of the year, the request should be with the receiving State's Interstate Liaison Officer two months before the proposed holiday/contact visit.
- d) Provided the receiving state is satisfied that the information provided by the sending State is sufficient to undertake the assessment, the receiving State should complete the assessment within 4 weeks of receipt of the request unless other wise agreed between the relevant states at the time of the request.

Other Interstate Assistance

21. Assistance with Locating Interstate Placement

- a) A sending State may request a receiving State to assist in locating a suitable long term non-relative placement when the sending State considers that locating the child in the receiving State is in the best long term interests of the child. Particulars of the request will be subject to negotiation and agreement between the Interstate Liaison Officers of the respective States.
- b) A request for locating a suitable long term placement should be treated by the receiving State as though it were a request for placement made within the receiving State and reasonable and active efforts should be made to locate a placement.
- c) If, after 6 months of receipt of the request, a placement is not located, the Interstate Liaison Officer of the receiving State will advise the sending State in writing that no placement has been located and advise of the attempts that have been made to locate a suitable placement. Should the sending State still desire a suitable placement to be sought, it will renew the request providing reasons why it remains in the best interests of the child for the placement to be sought.

22. Interstate Notification of a Child in Need of Protection

A Department ("**Notifying Department**") may believe that a child known to them has gone interstate, and that it would be appropriate for the Department in the State where the child is believed to be located to be aware of child protection concerns relating to that child. The Notifying Department should provide an outline of these concerns and any other information to the state where the child is now located for the Department of that state to take such action as it considers appropriate.

23. Child Temporarily in Non Resident State

This provision applies where a child who:

- i. is normally resident in one state, (the resident State) or, in the case of a newborn child, where the parents normally reside in the resident State; and
- ii. is temporarily present in another state (the non resident State), eg. for reason of medical attention in a regional hospital; and
- iii. is subject to statutory child protection intervention by the non resident State.

If the family indicate they wish to immediately return to the resident State, the non resident State may request the resident State to assume responsibility for the care and protection of the child. Where the resident State receives such a request the resident State will do whatever is necessary to assume responsibility, unless it is not in the interests of the child to do so or there are statutory limitations preventing the requested assistance. It is noted however that it is always the responsibility of the state where the child is located to take action to secure the immediate care and protection of the child if necessary.

24. General Assistance

In the spirit of co-operation agreed to under this Protocol, a State may at any time request another State to provide specific assistance in regard to a child protection

matter and, where required, the other State should provide such assistance as is practicable.

Information Sharing

25. Interstate Provision of Information

Subject to confidentiality/privacy provisions in a State's legislation:

- a) A Department will provide information it holds relevant to a particular child if requested to do so by another interstate Department for the purpose of enabling the interstate Department to undertake its responsibilities under that State's child protection legislation.
- b) A Department will provide information it holds relevant to the safety, welfare and wellbeing of a child or children to any or all States party to this protocol as agreed between the Departments of the respective States.

26. Confidentiality of Information Received by an Interstate Officer

Subject to contrary provisions in a State's legislation, if a Departmental officer in a State receives information from an interstate Department pursuant to paragraph 25 above, the received information should be dealt with as if it was directly obtained by the Departmental officer in that State.

A State Amending its Child Protection Legislation

- 27. If a State amends provisions relating to child protection orders and interstate matters, the Interstate Liaison Officer from that State must, as soon as possible, inform the National Co-ordinating Interstate Liaison Officer when the legislation comes into force. The National Co-ordinating Interstate Liaison Officer will subsequently advise the Interstate Liaison Officer/Co-ordinating Interstate Liaison Officer of each State.

Dispute Resolution

28. Dispute Resolution Process

- a) Any dispute or complaint should be dealt with, in the first instance, between the respective Interstate Liaison Officers/Co-ordinating Interstate Liaison Officers from the States which have the dispute.
- b) If the dispute is still unresolved the following process should be adopted:
 - i. The Interstate Liaison Officers involved will refer the matter to their respective line managers for resolution.
 - ii. If resolution of the problem is not achieved at this level, the matter will be dealt with by the Senior Officers from the respective Departments.

Review & Withdrawal

29. Review of the Protocol

The respective state Interstate Liaison Officers as a group will be responsible for review of the Protocol within each three-year period of the date of the last review.

Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance

30. Withdrawal

A party to this Protocol may withdraw from the Protocol with 12 months notice in writing. If a party withdraws from the Protocol, the Protocol continues to apply to all other parties.

Official Endorsement Process

The Department Heads listed below in the table individually signed and endorsed the Protocol.

Jurisdiction	Sign Off and Endorsed by:	Date
NSW	Neil Shepherd, Director General, NSW Department of Community Services	07/06/2007
ACT	Sandra Lambert, Chief Executive, Department of Disability, Housing and Community Services	29/06/2007
TAS	Simon John Barnsley, Secretary, Department of Health and Human Services	13/06/2007
VIC	Gill Callister, Executive Director, Department of Human Services	26/06/2007
SA	Sue Vardon, Chief Executive, Department of Families and Communities	07/06/2007
WA	Judith Anne Hogben, A/Director General, Department for Child Protection	13/06/2007
NT	David Ashbridge, Chief Executive Officer, Department of Health and Community Services	15/06/2007
QLD	Robin Sullivan, Director General, Department of Child Safety	13/06/2007
NZ	Peter Stanley Hughes, Chief Executive, Ministry of Social Development. Child, Youth and Family	16/07/2007

SCHEDULE A

INDIGENOUS CHILD PLACEMENT PRINCIPLE

Placement is to be made in accordance with the paramount interests of the child. Subject to the paramount interests of the child, placement is to be made according to the following order of preference:

1. Placement with a member of the child's family (as defined by local custom and practice) in the correct relationship to the child in accordance with Aboriginal, Torres Strait Islander or Maori custom.
2. Placement with a member of the child's community, whanau, hapu or iwi in a relationship of responsibility for the child according to local custom and practice.
3. Placement with another member of the child's community, whanau, hapu or iwi.
4. Placement with another Indigenous carer.

The preferred placement may be displaced where:

- a. subject to an assessment of a child's best interests, and having regard to the maturity of the child, the child objects to that placement; or
- b. no carer in the preferred category is appropriate or currently available.

Where placement is with a non-Indigenous carer, the following principles must guide the choice of carer:

- i. continuing contact with the child's Indigenous family, community, whanau, hapu or iwi and the child's culture should be ensured;
- ii. proximity to the child's Indigenous family, community, whanau, hapu or iwi is desirable; and
- iii. there is regular review of the appropriateness of the placement.

Any placement should be made in consultation with an Indigenous organisation with expertise in the child welfare matters of the relevant Indigenous community. If there is no organisation with the appropriate knowledge or expertise, it may be appropriate to consult with an Indigenous Departmental officer or employee from any State who has such knowledge and expertise.

THE LEGAL SERVICES BRANCH (LSB)

Overview of the Role, Function and Interface of the Legal Services Branch:

The Legal Services Branch is part of Corporate and Executive Services Division. As the name of the Division suggests, the Legal Services Branch serves as a primary role the Executive of the department.

The branch will take care, for the executive, of all of its legal requirements

One of the major matters that the branch administers is the litigation that exists, essentially with the department being nominated as defendant. In fact it is the State of Queensland that is actually named as defendant in any such proceedings.

What litigation do we do?

Currently there are a number of legal claims against the department. The majority of these are "abuse" claims. Of these, some legal claims have been progressed by the claimants in the past year. The other matters remain current as they have not been removed from the legal process by the claimants.

The majority of the claims are personal injuries claims brought by former residents of Queensland institutions as well as former children in foster care.

Overall there are four main types of claims:

1. **First**, and in the **majority**, are **"abuse" claims** where the **statute of limitations does apply**. Claims have been brought by former residents of Queensland institutions as well as former children in foster care. The claimants will have to demonstrate to a court why they should not be barred from bringing their claims because the claims have been commenced "out of time". The claimants allege that they were abused whilst in care of the State and that the State failed in its duty of care to them. Most of the claims have been made in the last four years

There is a new scheme that will become operational soon whereby an administrative process can be followed by previous foster children that have been in an orphanage. If an application is lodged and some money is received there is the possibility to claim an extra amount, however once the process is finalised the person cannot go to sue the State of Queensland separately.

2. **Second**, there are **abuse claims** where the **statute of limitations does not apply** - that is, the claims have been commenced within the time limits provided for by the *Limitation of Actions Act 1974*. Where the alleged abuse is said to have occurred within the limitation period and the Director-General is still the guardian of the child then the State will refer the matter to the Public Trustee to act in the child's interests.

The Public Trustee would normally brief the matter to a private firm of solicitors to act for the child. This is appropriate as the State would have a conflict of interest and could not provide instructions on behalf of the child.

3. There are claims by foster carers who have been injured by children in our care. This commonly occurs where we have placed a difficult or violent child with the carer. In the current financial year no such matters were finalised.
4. There are claims where the claimants allege that they have suffered as a result of the adoption process. Most of the claims have been made in the last four years.
5. There are some claims where a person alleges that the State of Queensland failed to remove them from their parents and or care situation in breach of the duty of care owed by the Department to all children in Queensland.
6. Last, there are a small number of miscellaneous claims, such as work related stress injuries etc.

Who represents the Department in these matters?

In relation to these matters Crown Law acts on behalf of the department, and performs a significant amount of the legal work. However, the Legal Services Branch locates relevant evidence, considers advice provided, interprets the advice for relevant persons such as the Director General and Minister and will provide opinions on the advice given by Crown Law, suggest the most appropriate course to adopt so that the executive can provide proper instructions back to Crown Law .

Quite separately there are cases where the chief executive of the department acts as litigation guardian for children. In these cases, the department is not being sued. The child is suing someone else for a wrong that it is alleged that other person has committed against the child.

What else does Legal Services Do?

The branch also carries out the following function:

- Legal advice - provide legal advice to the Minister, Minister's Office, Director-General and senior executive in relation to the department's statutory responsibilities.

- Casework - manage and participate in ongoing legal casework as required.
- Policy and strategic legal compliance - contribute to the development of departmental policy and other strategic initiatives that involve a significant level of legal content, hence ensuring consistency in legal compliance.
- Instruction on legislation to Parliamentary Counsel - provide instruction to Parliamentary Counsel in respect of new or amending departmental legislation for which the branch has been allocated responsibility.
- Cabinet submissions - draft submissions on behalf of the Director-General for consideration by Cabinet.

The branch provides services including:

- in-house legal advice in relation to corporate, case related and policy development issues.
- Management of department's instruction of Crown Law in relation to legal representation and advice.
- case related and policy development issues
- advice on legislative development

Interface:

In the first instance Court Coordinators should consult with the Court Services Unit prior to contacting the Legal Services Branch. **NO Child Safety Officer should contact the Branch directly.**

Any contact with the LSB should be instigated by CSU who will advise when contact is appropriate.

CROWN LAW

The purpose of Crown Law is to provide competent, high quality, efficient, cost-effective advice and/or representation by experienced legal officers at Court Ordered Conferences and before the Courts and Tribunals of Queensland.

Overview of the Role, Function and Interface of Crown Law:

Upon receipt of instructions from the Court Services Unit, Crown Law will allocate an officer who will have carriage of that particular file. This officer will liaise with the Court Services Adviser who has also been allocated this file, on all matters concerning the hearing.

The officer with carriage of the matter will review the instructions and provide a brief initial response (wish list, issues, problems, evidence to be adduced, and strategy for case management) within 7 days and in any event prior to the Advice in Conference.

The officer will participate in all 'Advice in Conferences' and provide advice in detail in relation to:

- relevant legal issues
- evidentiary issues
- strategies for the conduct of the case
- prospects of success
- timetable for various witnesses
- set a timetable for completion of tasks discussed such as preparation of evidence.

After the Advice in Conference the officer will confirm, in writing, the evidentiary material to be obtained by the CSSC.

The officer will attend a Court Ordered Conferences ONLY where instructed by Court Services.

Crown Law undertakes to provide an efficient and cost effective legal service in that they:

- will only seek the evidence necessary to establish a case (eg. they will not seek to have 3 or more witnesses establish the same factual point, unless the circumstances of the case require it).
- will only seek to issue subpoenas for the purposes of having specified documents available to be tendered before the Court (ie they will not seek to use subpoenas as a method of establishing or creating a case to be made before the Court, or seeking to search for information to be used before the Court.

LEGAL AID QUEENSLAND

What does the Child Protection Unit (CPU) do?

The CPU is set up to do separate representation and direct representation of children and young people (not parents) incorporating:

- Separate representation for children in the Children's Court and Children Services Tribunal;
- Consulting on Family Law, child protection and social work issues relating to all sectors of LAQ, external providers and the community sector;
- Training and information dissemination (internal and external) in relation to the above fields;
- Maintenance of internal and external networks with providers or stakeholders;
- Responding to policy development and law reform.

What is a Separate Representative?

A separate representative is a solicitor appointed to represent the child's best interests before the Children's Court or Children's Services Tribunal. They are party to the proceedings. When the order is made their role is finalised.

How does a Separate Representative get involved?

The court/tribunal decided whether there should be a Separate Representative appointed and makes the order – it is not the decision of the Department or the parents.

Court Coordinators may need to consult with the CSO about whether you should make a recommendation for an order to be made. Section 110 in the *Child Protection Act 1999* gives the Magistrate the power in the Children's Court. Section 68 in the *Children Services Tribunal Act 2000* gives the Tribunal power in the Children Services Tribunal.

When does a Separate Representative get involved?

Children's Court

The Court must consider appointing a Separate Representative where the matter is contested or where the child opposes and it must be in the child's best interests to appoint one. The types of matters where the court may consider appointing a Separate Representative vary but include:

- where there are complex issues like mental illness;
- where the child is particularly vulnerable;
- where the child is of an age where they are expressing clear views about what they want to happen; and

- matters involving a number of siblings where orders are sought for some and not others.

Children Services Tribunal

The Tribunal must consider whether it would be in the child's best interests to appoint one. The types of matters where the Tribunal may consider appointing are similar to where the Children's Court orders the appointment of a Separate Representative.

What is the process once a Separate Representative is ordered?

The Children's Court/CST sends a copy of the order and all the material filed to date to the GRANTS DIVISION of LAQ. In most cases the appointment will be made but it is a grants decision about funding.

The grants officer must allocate the file to someone in-house or on a preferred supplier list of private solicitors. There is a limited pool of solicitors in Queensland who do this sort of work so sometimes it is a struggle to find someone who is willing and available.

What does a Separate Representative actually do?

- They are independent with no vested interest in the proceedings and the outcome;
- They are like a 'devil's advocate' checking the Department's position and the parent's position on matters along the way;
- How they perform their role is a matter for each Separate Representative to work out for themselves depending on their professional style and the circumstances of the case;
- They act in the child's best interests and make their recommendations based on all the evidence which is why it is important to keep them in the loop by providing information along the way (eg family meeting invitations and minutes) and timely provision of affidavit material;
- Sometimes in a matter the Court, the Department and the Separate Representative may all have different views about what is in the child's best interests – and that's ok;
- Sometimes what is in the child's best interests changes over the course of a matter – and that's also ok.

What do the cases say?

The Full Court of Family Court in *P&P* (1995) FLC 92-615 commented on the role of the Separate Representative, as it was then known in the family law jurisdiction, saying:

The Separate Representative ought to:

- Act in an independent and unfettered way in the best interests of the child.
- Act impartially, but if thought appropriate, make submissions suggesting the adoption by the Court of a particular course of action if s/he considers that the adoption of such course is in the best interests of the child.
- Inform the Court by proper means of the child's wishes in relation to any matter in the proceedings. In this regard the Separate Representative is not bound to make submissions on the instructions of the child or otherwise but is bound to bring the child's expressed wishes to the attention of the Court.
- Arrange for the collation of expert evidence and otherwise ensure that all evidence relevant to the welfare of the child is before the Court.
- Test by cross examination where appropriate the evidence of the parties and their witnesses.
- Ensure that the views and attitudes brought to bear on the issues before the Court are drawn from the evidence and not from a personal view or opinion of the case.
- Minimise the trauma to the child associated with the proceedings.
- Facilitate an agreed resolution to the proceedings.

How do they represent the child's best interests?

Direct Representative – doing what the child wants:

When acting as a direct representative the child gives you instructions, you really test them, give them advice about their options but you are required to act on their instructions. Solicitor / client relationship is privileged.

Separate Representative - doing what you think is in the child's best interests:

The Separate Representative should find out what the child's wishes are (usually through a report writer) and consider them in the context of all the other evidence from the Department and the parents.

The Separate Representative may organise their own evidence, test the other parties' evidence (eg cross examination) and make a recommendation to assist the court or tribunal in making the final decision.

Do they meet with the child?

There is a decision made depending on the child and the nature of the matter about whether there is a benefit to the child in meeting with them. When the decision is made the Separate Representative will meet the child with the report writer or sometimes (rarely) with the caseworker.

The reason that the Separate Representative will not meet with a child on their own is to ensure independence and reliance on evidence not on personal opinion. Separate Representatives are lawyers not social scientists.

What does the Sep Rep do along the way?

- Inspects the files
- Has dealings with the Department and parents
- May attend SCAN meetings and Family Meetings
- Attends Court events (mentions, conferences and hearings, appeals)

Inspecting the files

Why?

- To find out how we got to this point
- The only information given to the Sep Rep in the beginning is what has been filed in the Court / Tribunal
- To see the original source material

What do they want to look at?

- Initial Assessments
- Assessment of Protective Needs
- SCAN team minutes
- Record of Family Meetings minutes
- External reports / assessments (eg medical, school)
- Information about suicide risk
- Case notes (eg observation of contact)
- Correspondence – this includes phone messages and emails (eg suspension of contact)
- Birth certificates
- Relevant police checks
- Carer assessments
- Placement meetings
- Any previous Court proceedings

How?

- Looking through computer and paper files
- Requesting notes and copies of what is needed to take away
- There is an inter-agency protocol that support the exchange of information

Dealing with the Parties

The Sep Rep will talk to both separately and together; they will write to both parties. They may deal with the parents through their lawyers if they have them. They may ask parents to complete questionnaire and authorities.

The Sep Rep needs all the material that develops along the way and in a timely manner. The Sep Rep will be interested in the details of case planning for the child.

SCAN team and Family Meetings

The Sep Rep may ask to be invited to SCAN team meetings.

The Sep Rep would like to be given the opportunity to attend family meetings and at the very least the timely provision of minutes.

Court Events

The Sep Rep attends mentions; conferences (court ordered and preliminary – may just listen and observe, may reality test what the parties are saying, may not be prepared to state their position at that stage).

The Sep Rep also attends the hearings – may call expert evidence, may cross examine witnesses, may make submissions making recommendations.

Report Writers

A report writer is a professional person (usually an accredited social worker or psychologist) who has been asked by a Sep Rep to prepare a report for the Children's Court / CST. This person is considered by the Court / Tribunal to be an independent expert in child protection matters. This is no confidentiality in communications with the report writer.

In order to assess the child's best interests the report writer will need to collect information about:

- The child or young person's relationship with significant people (eg parents, siblings, extended family and friends)
- The child or young person's views and wishes, if they want to share this with the report writer.
- The child or young person's personal history and emotional attachments
- The child or young person's family history, including any significant issues which have impacted on the child.
- The child or young person's needs.
- What is currently happening in the child or young person's life.
- If the report is required for the CST, what matters were taken into consideration when the Department made the decision about the child or young person?

- The report writer has a limited amount of time to collect this information and prepare the report. They will decide what is the most information to be included.

The report writer will conduct a series of interviews which may include interviewing the following people:

- the child or young person alone;
- the child or young person with a parent, CSO, foster carer or other significant person;
- the child or young person's parent, and their current partners, separately or together;
- the CSO for the child; and
- other relevant professionals such as teachers, counsellors or doctors.

The interviews may occur at a LAQ office or at the offices of other professional people involved. Some interviews may occur over the telephone. A home visit may be necessary and they will contact those involved to arrange a suitable date and time for the interview. Sometimes the report writer may also want to observe the child or young person on contact visits.

Legal Advice / Legal Representation

All parents should be referred to legal advice to get some assistance in understanding the legal process. Not all parents will get legal aid for legal representation for the whole proceedings. How a parent's legal representative advocates is a matter of personal style – some are negotiators, some are more adversarial - Don't take it personally!

Lawyers for the parents will want to know why and how the Department have come to decisions and they are entitled to ask. The timely disclosure and service of your material makes everyone's job easier – trial by ambush is not in the child's best interests.

See also LAQ factsheets 7 & 19

SEPARATE REPRESENTATIVE

This factsheet provides information for parents about the role of the Separate Representative in Child Protection cases.

What is a Separate Representative?

A Separate Representative is a solicitor appointed to represent your child's best interests before the Children's Court when the Court is asked to decide whether a child protection order should be made. The Separate Representative's role is to act in your child's best interests and as far as possible place their views and wishes before the court during the proceedings.

How is a Separate Representative appointed?

Separate Representatives can be appointed by the court during child protection order proceedings if the court considers it necessary to protect the best interests of the child.

If this is the case, the Children's Court will request Legal Aid Queensland to appoint a lawyer to be the Separate Representative.

How will the Separate Representative recognise my child's best interests?

The Separate Representative is responsible for representing your child's best interests. They may gather information about the case by:

- reading the material that has been given to the court by you and by the Department of Families;
- meeting your child personally;
- requesting a Social Assessment Report. A Social Assessment Report is prepared by a social worker or other professional to help the court understand your family situation and the child's wishes and emotional attachments;
- seeking information from teachers, guidance officers or other people who have had a significant amount of contact with your child;
- requesting reports from other professionals.

If your child has already been required to talk to lots of different people, the Separate Representative may not talk to them again or request new reports. Sometimes it can be quite harmful for children to have to talk to lots of different people.

How will I be involved with the Separate Representative?

It is important that the Separate representative remains independent from the parties involved in the case.

If you have your own solicitor, the Separate Representative will communicate with you through your solicitor. Do not contact the Separate Representative yourself. If you do not have a lawyer, the Separate Representative will contact you either in person, by phone or in writing.

The Separate Representative may request you to take part in the preparation of a social assessment report.

The Children's Court may also order that a conference be held between you and the Department of Families. There is a chairperson at the conference and the Separate Representative will also attend. Conferences are held before a hearing to try to decide what issues are in dispute and to try to resolve them.

What happens in court?

The Separate Representative presents evidence to the court about the wishes of your child. They must also "test" the evidence before the court about what appears to be in the best interests of the child. This means that sometimes the child's wishes are not always followed.

It is important that you avoid questioning your child about what they say to their Representative. The child's discussions with their Representative are confidential.

If the matter does proceed to court, your child does not have to appear because a Separate Representative has been appointed. Any information required for the court will be contained in reports and affidavits before the hearing.

CHILD PROTECTION AND CHILDREN'S SERVICES TRIBUNAL

This factsheet will answer your questions about the Social Assessment Report.

What is a report writer?

A report writer is a professional person (usually an accredited social worker or psychologist) who has been asked by a separate representative for a child or young person to prepare a report for the Children's Court or the Children's Services Tribunal. This person is considered by the Court or Tribunal to be an independent expert in child protection matters.

What does the report writer do?

The report writer is asked by the separate representative to help them represent the child or young person's best interests. In order to assess the child's best interests the report writer will need to collect information about:

- the child or young person's relationship with significant people (eg, parents, brothers and sisters, extended family and friends);
- the child or young person's views and wishes, if they want to tell the report writer this;
- the child or young person's personal history and emotional attachments;
- the child or young person's family history, including any significant issues which have impacted on the child;
- the child or young person's needs;
- what is currently happening in the child or young person's life; and
- if the report is required for the Children's Services Tribunal, what matters were taken into consideration when the Department of Families made the decision about the child or young person.

The report writer has a limited amount of time to collect this information and prepare the report. The report writer will not include all of the information they collect in the report. They will decide what is the most important information to be included in it.

Interviews - who, where, when and how?

The report writer will conduct a series of interviews. This may include the report writer interviewing the following people:

- the child or young person alone;
- the child or young person with a parent, Department of Families officer, foster carer or another significant person;
- the child or young person's parents, and their current partners, separately and together;
- the Department of Families officer for the child; and
- other relevant professionals such as teachers, counsellors or doctors.

The interviews may occur at a Legal Aid Queensland office or at the offices of other professional people involved. Some interviews may occur over the telephone. A home visit may be necessary. You will be contacted to arrange suitable dates and times for interviews. Sometimes the report writer may also want to observe you and the child or young person on your usual contact together.

How will they write the report?

The report writer will take notes and may tape interviews. This information is then used as a record for the report writer and may be used in a hearing. All information obtained by the report writer is reportable to the Court or Tribunal. The report writer may be required to give evidence in the Court or Tribunal at a hearing.

In assessing the best interests of the child or young person, a detailed report will be prepared which may contain recommendations to the Court about whether or not a child protection order should be made and other matters.

Once the report is completed the writer will give a copy to the child or young person's separate representative who will file it in the Court or Tribunal. If you are a party to the proceedings, you or the solicitor acting for you if you are legally represented, will also be given a copy of the report. A copy will also be given to the Department of Families and other parties to the proceedings. If you are not a party to the proceedings you will not be given a copy because of the confidentiality provisions of the legislation.

Child Protection & the Children Services Tribunal

Are you under 18? Have the Department of Child Safety become involved in your problems at home? Are they making decisions about you? Has there been a child protection order made for you? You have rights, too!

WHY IS THE DEPARTMENT OF CHILD SAFETY INVOLVED WITH ME?

The Department of Child Safety becomes involved if they are concerned about your safety and whether there is anyone who can look after you.

WHAT HAPPENS WHEN THE DEPARTMENT BECOMES INVOLVED?

The Department of Child Safety may want to talk to you at home or at school. They may want to talk to you without your parents being there. If your parents won't allow this, the department may apply to the Children's Court for an order allowing them to talk to you or to take you to see a doctor if they think you've been harmed, or for you to stay somewhere else while they check things out.

If the department thinks you need protection and they think it is in your best interests for you to live with someone else for a while, they may also apply to the Children's Court for a child protection order.

If a child protection order has been made for you the department may be able to make some decisions about you. For example, they may be able to decide who you live with and how often you see your family.

WHAT HAPPENS WHEN THE DEPARTMENT MAKES A DECISION ABOUT ME?

When the Department of Child Safety makes a decision about you, they need to take into consideration what you say you want to happen. Sometimes this is not the same as what is best for you and the decision made may not be what you wanted.

When a decision is made about you (like where you should live or who you can have contact with) the department should tell you about the decision and may give you a letter explaining it to you.

If you are not happy about the decision that has been made, in some decisions, you can ask the Children Services Tribunal to think about things and make the decision again. This is called an "application for review". Your foster carer, parents or other people affected by the decision may also be able to do this.

WHAT ARE MY RIGHTS?

If this sounds like what is happening to you, you have rights, too!

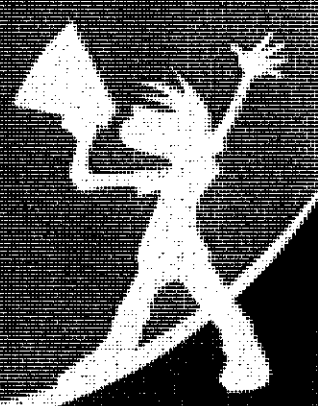
The Department of Child Safety, the Children's Court and the Children Services Tribunal must all act in your best interests.

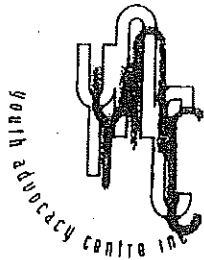
You have the right to:

- be protected from harm;
- have your views and wishes heard;
- have your religious beliefs and cultural values taken into account;
- take part in the making of decisions that affect your life;
- maintain contact with your family;
- appear and be legally represented in court; and
- apply to court or the Children Services Tribunal to have certain decisions reviewed.

If you are in the care of the department ask your Child Safety Officer to give you information about the *Charter of Rights for Children in Care*.

"The department, the court and the tribunal must all act in your best interests!"





CAN YOUNG PEOPLE UNDER 18 MAKE THEIR OWN DECISIONS?

This sheet is intended to provide general information only, not advice. If you have a particular legal problem you should contact a solicitor. Each section ends with a list of agencies who might be able to assist you, including legal agencies. The Youth Advocacy Centre does not accept responsibility for any action arising out of reliance on this information. This section was last updated on 1 January 2004. This legal information is relevant to Queensland, Australia.

The answer to this question can be found in the *Gillick* Case, an English House of Lords decision which has been approved by the High Court of Australia. Sometimes legal advocates refer to young people as *Gillick competent*, which means that they have met the test as to whether they are able to make their own decisions.

The *Gillick* Case

The *Gillick* Case¹ centred on the issues of contraception and abortion. Mrs Victoria *Gillick*, the mother of ten children including five girls, lived in the area of the West Norfolk and Wisbech Area Health Authority. She wrote to the Health Authority requesting that no daughter of hers under 16 years be provided with contraception or an abortion, and that if any of her children did contact the authority that she automatically be informed. The Health Authority, acting on a Department of Health and Social Security directive, informed Mrs *Gillick* that, whilst they would encourage her children to discuss the matter with her, they could not give a categorical assurance to her, because consultations were confidential and therefore the final decision must rest on the doctor's judgment. Mrs *Gillick* sought a declaration in the court that the Department's directive was unlawful. Justice Kirby (1984)² has summarised the arguments thus:

Mrs Gillick's Queen's counsel told the court that she found the circular 'quite intolerable'. According to her it encouraged the secret provision of the Pill or other contraceptives to under-aged girls. She wanted to retain her right and duty as a mother, to the exclusion of any other person, to advise her children on sexual matters. Specifically, she wanted to retain her right to prevent other persons doing things that would encourage her children to have a sexual relationship 'which the law forbids'.

Mrs Gillick asserted her 'fundamental right' to concern herself with the moral upbringing of her children and a 'fundamental right' to rebuke, and even prevent, interference. Though professional secrecy between the doctor and his patient was important, confidentiality should not be permitted to 'cloak illegalities'. To do so would be to abandon completely the protection of the law against under age sexual relationships.

Mr Simon Brown, Counsel for the Department, rejected Mrs Gillick's argument. He drew upon a competing area of the law. He said that, as long as young people knew the consequences of their decision, they could give valid consent for medical treatment. An under-aged girl who had sexual intercourse was not herself guilty of a criminal offence though the man might be guilty. Therefore, in giving the girl advice and medical treatment, the doctor could not be said to be encouraging or procuring a criminal offence.

¹ *Gillick v. West Norfolk & Wisbech Area Health Authority* (1985) 3AU ER 402

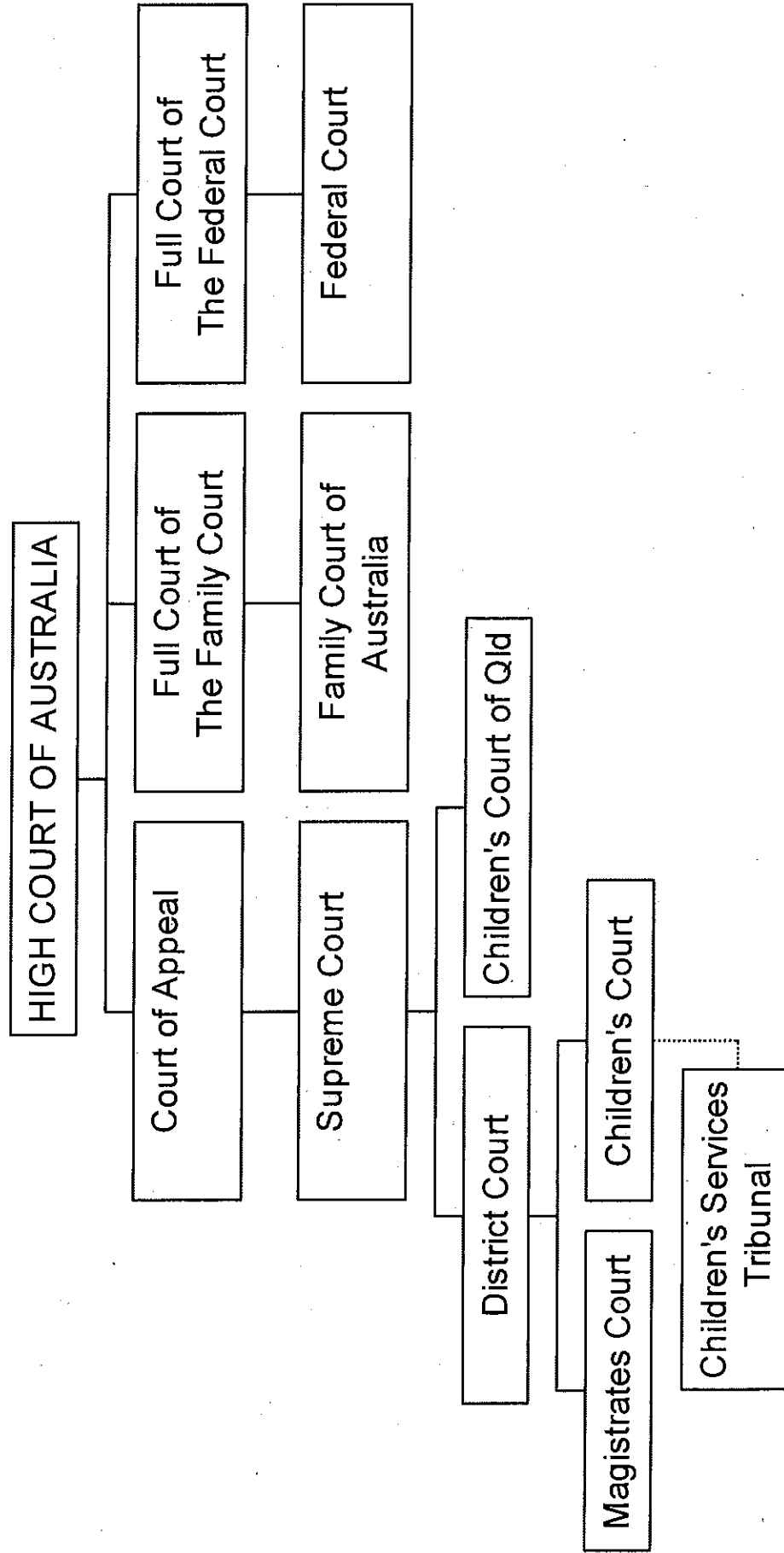
² Kirby, M. (1984) 'Law and Family Planning' *Medical Journal of Australia* March 17, p.358

benefits and risks, the doctor can make a Judgement as to the child's competence (Wilson et al, NC & YLC, 1995).

In addition, if the doctor is satisfied as to the child's ability to make choices and decisions and agrees to provide medical assistance, the doctor is then bound by confidentiality in the same way as she would if treating an adult.

Youth workers should be aware that the *Gillick* Case is not limited to the work of doctors giving people under 18 contraceptive advice. The reasoning behind the decision was drawn from a recognition by the Court of children's increasing ability, as they gain in maturity, to make their own decisions about their lives in general.

COURT HIERARCHY



OVERVIEW OF COURT SYSTEMS

Although Parliament decides what the laws will be, it is the courts' role to decide how these laws will be applied to particular cases.

Some courts, such as the Family Court and the High Court, are a federal court, which means they have been established by the Federal Government.

However, most cases in Queensland are decided in the State courts: the Supreme Court, the District Courts or the Magistrates Courts.

Cases are described as being either criminal or civil. A civil case is one in which a person, a company or the Government claims that another party has acted contrary to the law.

A criminal case is one in which the police or the Government says that a person has broken the criminal law, for example by killing someone or stealing property.

STATE COURT SYSTEMS

1. Children's Court

A Childrens Court is presided over by a magistrate or two Justices of the Peace (Qualified). The Children's Court has separate jurisdiction from the adult jurisdiction of the Magistrates, District and Supreme Courts. The Childrens Court has the jurisdiction to:

- determine certain offences against young people under 17 years who have offended
- determine child protection matters in accordance with the Child Protection Act 1999.

Childrens Courts are convened in the same locations as Magistrates Courts throughout Queensland - except in central Brisbane where there is a separate Childrens Court building.

The Childrens Court is a closed court and therefore only certain persons are allowed to be present. Those who are allowed to attend court include:

- the magistrate (or judge in the Childrens Court of Queensland)
- court clerk
- representatives from the Department of Child Safety - applicant and court officer/legal representative
- parents and their legal representative
- the child (if old enough) and their legal representative
- the Separate Representative (lawyer) appointed by the court to represent the child's interests

- a representative of a Recognised Entity if the child is an Aboriginal or Torres Strait Islander child or young person
- non-parties who the magistrate would like to hear from.

The child safety officer of the Department of Child Safety is known as the 'Applicant' in court.

Parents are referred to as the 'Respondents'.

Magistrates in the Childrens Court must be addressed as 'Your Honour'.

In Summary:

- presided over by a Magistrate (address as "Your Honour")
- child protection matters
- dispensation of consent to adopt
- children's criminal matters (10-16 years) where it has jurisdiction

2. Childrens Court of Queensland

The Childrens Court of Queensland (CCQ) deals with all juveniles who commit criminal offences while under the age of 17 years, unless the court orders that the matter be dealt with in an adult court.

Matters involving children can be heard in the adult District Court of Queensland if:

- the child is charged as an adult
- the proceedings have been committed up to the District Court following an application under the Juvenile Justice Act 1992, for example, if a child is co-accused with an adult.

CCQ matters are usually heard in a closed court. This means that only people who are directly involved in the case can be present. Members of the public are not usually allowed to be in court and no one is permitted to publish identifying information about the accused.

The CCQ is presided over by judges who have been appointed from the District Court. Matters are heard in accordance with the guidelines set down in the Childrens Court Act 1992 and the Juvenile Justice Act 1992.

Matters involving children can also be heard in the Magistrates or Supreme Court. These cases are also heard in accordance with the guidelines set out in both of these acts.

Child protection matters

The CCQ also deals with appeals against child protection orders made by a magistrate. In these cases, the court will make a directive to protect a child from harm.

In Summary:

- appeals from Children's Court (child protection / youth justice)
- summary of trials / sentences
- appeals on matters of law from CST

3. Magistrates Court

A magistrate presides over a Magistrates Court. There is no jury. These courts deal with less serious offences. More serious criminal matters are decided in the higher courts, that is, the District or Supreme Courts.

In less serious criminal cases, the magistrate must decide whether the accused person is guilty or not. If he or she is guilty, the magistrate also fixes the penalty.

If a criminal case is too serious to be dealt with in a Magistrates Court, it must be decided in the District or Supreme Court. However, the accused is first charged in a Magistrates Court and the magistrate must then decide whether there is enough evidence to justify sending the matter for trial in one of the higher courts. This is called a committal for trial.

Magistrates Courts deal with civil matters if the amount in dispute is \$50,000 or less.

In Summary:

- presided over by a Magistrate
- adult criminal matters
- family court matters (uncontested)
- orders (exercising federal jurisdiction)
- civil matters up to \$40,000

4. District Court

Serious criminal cases, such as rape and armed robbery, are decided in a District Court. A District Court also handles civil disputes where the amount in dispute is between \$50,000 and \$250,000.

Appeals against some decisions of a Magistrates Court may also be dealt with by a District Court.

A District Court judge presides over a District Court. In criminal trials, a jury decides whether the person charged is guilty or not. If the person is found guilty, the judge then decides on the penalty. Most civil cases

are decided by a judge sitting without a jury. Some Judges of the District Court also sit in the Planning and Environment Court and in the Childrens Court.

In Summary:

- presided over by a Judge (addressed as "Your Honour")
- civil and criminal (middle range offences)

5. Supreme Court

The Supreme Court is the highest court in the Queensland court system. It consists of the Chief Justice and two divisions, the Trial Division and the Court of Appeal.

Presiding over the court is a justice (judge) of the Supreme Court. The Supreme Court hears serious criminal offences, such as murder and certain serious drug offences. The Supreme Court hears civil disputes where the amount in dispute is more than \$250,000.

Like the District Courts, the Trial Division of the Supreme Court must use a jury to determine guilt or innocence in criminal cases. Civil cases are usually decided by a judge without a jury.

In certain circumstances, parties may dispute the decision of a court or the sentence imposed through a process called an appeal. Most appeals are heard in the Court of Appeal. It is part of the Supreme Court and handles only appeals; it does not decide cases initially. The Court of Appeal does not have a jury. Three justices of the Supreme Court make the decisions.

In Summary:

- presided over by a Judge
- serious criminal matters (adults and children)
- civil matters (eg custody / guardianship issues)
- appeals are dealt with by 3 x Supreme Court Judges
- sits in Brisbane, Townsville, Rockhampton. The Judge also travels on circuit to other major cities.

FEDERAL COURT SYSTEMS

1. Family Court

The Family Court of Australia was created by the Family Law Act 1975 (Cth) to interpret and apply that law to individual cases. The Family Court has registries in Brisbane and Townsville and sub-registries in Rockhampton and Cairns. This initiative was aimed not only at improving the manner in which separation and marriage dissolution were managed but also aimed at providing specialised facilities and services concerned with the welfare of children of the separating couples.

The Court also has jurisdiction in some matters under other legislation such as the *Marriage Act 1961* (Cth) and the Child Support legislation. The jurisdiction and the administration of the Court has changed over time as a result of changes to the Family Law Act, in response to recommendations of reviews both internal and external, and the creation of the Federal Magistrates Court.

The Family Law Act defines the jurisdiction of the Family Court and of the State Courts which may also exercise some jurisdiction under it. For example, the Family Court has jurisdiction to hear matters related to divorce whereas the Federal Court does not have this power because these matters are not within its jurisdiction.

The Family Court's jurisdiction in relation to children includes the power to make parenting orders, which may include one or more of the following:

the person or persons with whom a child is to live (*Family Law Act 1975*, section 64B(2)(a));

the time the child is to spend with another person or other persons (*Family Law Act 1975*, section 64B(2)(b));

- the allocation of parental responsibility for a child for making daily and long-term decisions about a child's care, welfare and development (*Family Law Act 1975*, section 64B(2)(c));
- if two or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility (*Family Law Act 1975*, section 64B(2)(d));
- the communication a child is to have with another person or other persons (*Family Law Act 1975*, section 64B(2)(e)); and
- maintenance of a child (*Family Law Act 1975*, section 64B(2)(f)).

The Family Court also has a broad welfare jurisdiction to deal with special matters such as consent to medical treatment and certain powers under international conventions.

The roles of the Family Court and the Department of Child Safety:

The role of the Family Court is to determine disputes between separated parents and other persons concerned with the child's welfare or about the care of the child. In deciding whether to make a particular parenting order, the Family Court must regard the best interests of the child as the paramount consideration.

If there is suspected harm or risk of harm to a child, the department is the mandated authority to investigate the allegations. The Family Court

does not have the expertise, role or resources to perform this function. Whether or not there are proceedings in the Family Court, the department has the lead responsibility to ensure the child's safety and need for protection. A child of separated parents has the same right to protection and to receive departmental services, as do other children.

The *Family Law Act 1975* recognises the child protection role of the state in the following ways:

- Family Court personnel are mandated to report cases of suspected harm and risk of harm, and family violence, to the state welfare authority (*Family Law Act 1975*, section 67Z, 67ZA);
- the Family Court cannot make a parenting order in relation to a child in the care of a person under the *Child Protection Act 1999*, unless the order is to come into effect when the child ceases to be in that care or the chief executive consents to the application proceeding in the Family Court (*Family Law Act 1975*, section 69ZK(1));

Nothing in the *Family Law Act 1975* or any order under that Act affects:

- the jurisdiction of the Childrens Court to make an order by which a child is placed in the care of a person under the *Child Protection Act 1999*; or
- the power of the department under the *Child Protection Act 1999* to take any action by which a child is placed in the care of a person under the Act; or
- the operation of the *Child Protection Act 1999* in relation to a child (section 69ZK(2));

The department has the right to intervene in Family Court proceedings and deal with child protection issues in the Family Court if it chooses (*Family Law Act 1975*, section 92A);

The Family Court may request the department to intervene in the proceedings (*Family Law Act 1975*, section 91B); and under the *Family Law Rules 2004*, rule 6.02(2), the chief executive of the department must be served as a respondent to any application relating to a child for whom a care agreement, assessment order or child protection order under the *Child Protection Act 1999* is in place.

In Summary:

- presided over by a Judge, Judicial Registrar, Registrar; 3 Judges for an Appeal (Full Court)
- deals with child and family matters
- international child abduction matters (Hague matters)

2. Federal Magistrate Court

The Federal Magistrates Service and state Magistrates Courts also have jurisdiction under the *Family Law Act 1975* to deal with children's matters. The Federal Magistrates Court, which shares registries with the Family Court in Brisbane and Townsville, can deal with contested children's matters provided the consent of all parties has been provided. For the purpose of this procedure, the Family Court also refers to the Federal Magistrates Service. The State Magistrates Court has jurisdiction to make consent orders only.

In Summary:

- specialised court which deals with Family Court matters (eg international child abduction matters, dissolution or annulment of marriages)
- appeals heard by the Family Court (Full Court)

3. High Court of Australia

The High Court is the highest court in the Australian judicial system. It was established in 1901 by Section 71 of the Constitution. The functions of the High Court are to interpret and apply the law of Australia; to decide cases of special federal significance including challenges to the constitutional validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts.

The seat of the High Court is in Canberra, where it is located in its own building within the Parliamentary Triangle. In addition, there are offices of the High Court Registry in Sydney and Melbourne, staffed by officers of the High Court. In Brisbane and Perth registry functions are performed on behalf of the High Court by officers of the Federal Court of Australia, and in Adelaide, Hobart and Darwin they are performed by officers of the Supreme Court of the respective State or Territory.

In Summary:

- presided over by 5 x Judges who hear appeal matter
- sits once a year in Brisbane
- oversees the State and Federal Court Systems

Judicial Review v Administrative Review

Judicial Review looks at whether the decision was made contrary to legislation, rules of natural justice, made on no evidence or otherwise made outside of power. See section 20(2) of the *Judicial Review Act 1991*. It basically looks at whether a decision was made contrary to law.

Administrative review is a merits review process which looks at all the information afresh and any new information to determine if the decision made was the correct one.

In Queensland judicial review is undertaken by the Supreme Court pursuant to the *Judicial Review Act 1991* and other Tribunals in relation to specific legislation (for example CST deals with Child Safety (Schedule 2) and Childrens Commission (blue card refusals etc).

The Queensland *Judicial Review Act 1991* (JR Act) gives the public the right to:

'request the reasons for the decisions which adversely affect them; or seek a review of a decision in the Supreme Court'.

As well as administrative decisions of Government departments and local authorities, the JR Act also applies to administrative decisions of semi-government agencies and statutory authorities.

'Administrative decisions' which are made under an enactment are reviewable. An enactment includes part of an Act or a statutory instrument such as regulations, rules, by-laws, ordinances, guidelines or standards.

'Decisions' include a failure to make a decision and actions and conduct leading up to the making of the decision. A decision can be an order, award or determination, certificate, direction, approval, consent or permission, licence, condition or restriction, declaration, requirement, demand or a refusal to hand over an article.

Some of the grounds for review are that:

- The decision-maker breached the rules of natural justice;
- The decision-maker did not observe the correct legal procedures;
- The decision-maker did not have the authority to make the decision;
- The decision was not authorised by the legislation it was purported to be made under;
- The decision involved an improper use of power;
- The decision involved an error of law;
- The decision is or may be tainted by fraud;
- There was no evidence or other material supporting the decision; or
- The decision was in some other way unlawful

Children Services Tribunal

The Tribunal was specifically established to look into some government decisions about the services to children and young people in the care of the Department of Child Safety. It protects and promotes the rights, interests and welfare of children and young people by making sure their views and wishes are considered and by involving them in making decisions. The Tribunal's decisions are focussed on getting the best outcome for children and young people.

One of the Tribunal's main jobs is to look at decisions made by the Department of Child Safety about children and young people who have been taken into care under the *Child Protection Act 1999*. These decisions are about:

- who they should live with;
- not telling their parents where they are living; or
- the amount and type of contact between them and their parents.

The Tribunal also looks at decisions made about:

- people who want to adopt a child;
- licensing a child care centre;
- people who are not allowed to work with children because of their history.

If a child or a young person has been taken into care and they or their family feel the decision made by the Department of Child Safety was wrong or unfair, the family can ask the Children Services Tribunal to look at the decision. The types of decisions that can be reviewed are listed above.

The Tribunal is usually made up of three people who have experience in many areas such as children's issues, law and medicine. The Tribunal is not like a court. People do not have to have a lawyer to go to the Tribunal. Hearings at the Tribunal are closed. That means that only people involved in the case and Tribunal staff are allowed to be at the hearing. Everyone usually sits at a big table to discuss the problem.

The Tribunal can:

- say YES to a decision (the decision stays the same);
- say NO to a decision (as if the decision had never been made);
- CHANGE some things about a decision; or
- make a NEW decision.

Glossary of court terms

The following table provides definitions of child protection court terminology as they relate to the Child Protection Act 1999 (Note: Provided as a guide only).

Term	Details
Adjournment	A court order by which proceedings are postponed, interrupted, or continued at a different time or place before the same court.
Affidavit	A written statement made by a person who has sworn or affirmed before a person authorised to administer the oath that the contents of the statement are true. This may be then used to support a position in a court proceedings. The person who signs the affidavit is called the deponent. Under the Act this is to be in Form 25 format.
Affirmation	A solemn declaration that the evidence given is truthful. A person can make an affirmation instead of taking an oath where the person has no religious belief or where it is not reasonably practical to administer an appropriate oath as required by the person's particular faith.
Aggrieved person	For a reviewable decision under the Act, this means a person stated in Schedule 2 who is affected by the decision. It is a person who has the avenue to have the decision reviewed by the Children Services Tribunal.
Appeal	An application to a higher court to reconsider or rehear the decision of the lower court on the ground that there has been an error in the decision of the lower court. Available on a question of law only or for mistakes of facts of law
Appellate court	<p>Under the Act:</p> <p>For a decision on an application for a Court Assessment Order or Child Protection Order, or for an order transferring a Child Protection Order or child protection proceeding to a participating state:</p> <ol style="list-style-type: none"> 1. if the decision was made by the Childrens Court constituted by a judge - the Court of Appeal 2. if the decision was made by the Childrens Court

Term	Details
	<p>constituted in another way - the Childrens Court constituted by a judge.</p> <p>For a decision on an application for a Temporary Assessment Order - the Childrens Court constituted by a judge.</p>
Assessment Order	Involves either a Temporary Assessment Order or Court Assessment Order
Authorised officer	Means a person holding office as an authorised officer under an appointment under the Child Protection Act.
Balance of probabilities	The standard of proof in a civil matter, including child protection matters. This is the degree to which the court must be satisfied that the applicant has made out his/her case. A fact is proved to be true on the balance of probabilities if its existence is more probable than not.
Burden of proof	The duty of one party to make out the case against the other party and to prove to the court that the case has been established. It is for the applicant to prove the facts, which are in dispute. These are often called facts in issue. In child protection matters, the burden of proving a child is in need of a child protection order falls upon the applicant.
Child Protection Order	<p>a. Means a Child Protection Order under chapter 2, part 4 of the Child Protection Act, including:</p> <ul style="list-style-type: none"> • an order extending, varying or revoking a child protection order • an interim order under section 67 in relation to a proceeding for a child protection order. <p>b. For chapter 7, includes an order mentioned in section 201.</p>
Child	An individual under 18 years (as defined in section 8 of the Act).
Child in need of protection	<p>A child who (as defined in Section 10 of the Act):</p> <p>a. has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm</p> <p>b. does not have a parent able and willing to protect the child from the harm.</p>
Child protection proceeding	<p>a. A proceeding under the Child Protection Act for the making, extension, amendment or revocation of a child protection order, or</p>

Term	Details
	<p>b. A proceeding under a child welfare law of a participating state for:</p> <ul style="list-style-type: none"> the making, extension, amendment or revocation of a child protection order or interim order if, under that law, the making of a particular finding is a prerequisite to the making of a child protection order - the making of that finding.
Childrens Court	The court that may hear and decide a child protection proceeding at first instance.
Court ordered conference	This is ordered by the court on adjournment of proceedings under section 68 (1)(e) and is a meeting held between the parties that is convened by a chairperson (refer to sections 69-72 of the Act). It is an attempt to decide the matters in dispute or to try to resolve the matters.
Court Assessment Order	<p>An order under chapter 2, part 3 of the Act, and includes:</p> <ul style="list-style-type: none"> a. an order extending, varying or revoking a court assessment order b. an interim order under section 67 in relation to a proceeding for a court assessment order.
Criminal history	The person's criminal history within the meaning of the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> and includes a conviction of the person and a charge made against the person for an offence.
Cross examination	<p>Questions addressed to a witness by a party other than the party who called the witness to give evidence. Cross examination takes place after the witness has given his or her evidence in chief. Leading questions are permitted during cross examination.</p>
Custody	As defined in Section 12 of the Act, custody means the right to have the child's daily care and the responsibility to make decisions about the child's daily care.
Custody order	Of a child under a child protection order, means custody of the child for not more than two years.

Term	Details
Deponent	The person who gives sworn evidence in an affidavit.
Directions hearing	Held with respect to Section 8 of the <i>Childrens Court Act 1992</i> . This is a hearing or mention conducted prior to the substantive hearing to determine procedural matters or interlocutory (interim) issues. This could also be known as a 'directions mention'.
Directive Order	A Child Protection Order directing a parent to do or refrain from doing something directly related to the child's protection, or an order directing the parents not to have contact with the child or to have contact only when a stated person or category of person is present.
Domestic violence history	The history of domestic violence orders made against the person under the <i>Domestic Violence (Family Protection) Act 1989</i> .
Evidence in Chief	The questioning of a witness by the counsel of the party who called that witness. Evidence in chief is given orally. Leading questions on a relevant matter should not be put to a witness being examined in chief without the court's leave.
Ex parte	An application by one side when the other is not, or does not need to be present.
Expert witness	A witness who is an expert in a particular field. This person has skills or qualifications, which allow them to express an opinion in court. The opinions of ordinary witness's are deemed irrelevant. The court decides whether or not a person is an expert.
Family meeting	A meeting held under section 96 of the Act, or a meeting with the family as defined within the department's case management framework.
Guardianship	Legal responsibility for all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children. This includes responsibility for decisions about the child's long-term care. This is defined in Section 13 of the Act.

Term	Details
Hearing	A proceeding conducted by a court or tribunal with a view to resolving the issues of fact or law, in which oral evidence may be taken and documentary evidence tendered. A hearing may be by way of oral or written submission.
Hearsay	Evidence of fact not actually perceived by a witness with one of their own senses, but stated by another person not called as a witness, with the object of asserting the truth of the contents of the statement.
Interim Order	An order made under section 67 of the Act, on an adjournment of a proceedings for a court assessment order or child protection order. These orders identify the status of the child or make a direction to the parent about contact with the child during the period of the adjournment.
Jurat	A short statement at the conclusion of an affidavit, setting out the name of the deponent, the signature of the deponent, where and when the affidavit was sworn, the name of the person before whom it was sworn, and the signature and title or description of the person before whom it was sworn.
Justice of the Peace	Appointed in an honorary capacity with authority to issue warrants for search and arrest, admit prisoners to bail and witness certain documents. In limited situations, they may sit in a court depending on the level at which they are appointed.
Leave of the court	Authority obtained from a court to take particular action which would not be permissible otherwise.
Litigation	The conduct of legal proceedings by parties before a court.
Long-term guardianship	Under a Child Protection Order, means guardianship until the child turns 18 years.
Magistrate	A judicial officer with summary jurisdiction (power to hear and determine a case alone, without a jury) in minor criminal and civil matters.

Term	Details
Medical examination	A physical, psychiatric, psychological or dental examination, assessment or procedure, and includes forensic examination and an examination or assessment carried out by a nursing or other health professional.
Mention	A preliminary procedure before a court where the matter is 'mentioned' before the judge or magistrate to determine pre-hearing issues. If a matter in court is set for mention, the case will not usually be heard that day.
Non-participating state	A state other than a participating state (as it relates to interstate provisions).
Oath	A solemn promise to tell the truth calling upon God as one's witness.
Parent	This is defined differently in different parts of the Child Protection Act. See sections 11, 23, 37, 52, 205, 242.
Participating state	A state declared to be a participating state under section 204 of the Act (as it relates to interstate provisions).
Party	To a proceeding on an application for an order for a child, means the child the applicant or a respondent to the application, and includes the chief executive if the application is for a court assessment order made by a police officer.
Recognised Entity	For an Aboriginal or Torres Strait Islander child, means an entity that, under an agreement between the state and the entity, is the appropriate entity to be consulted about the child's protection.
Remand	This relates to the status of the person who is the subject of the application. Between court appearances, the person is remanded by the court to appear at a future court date. A person who is remanded may be released on bail, held in custody, or for a child protection proceedings, an interim order may be made.
Respondent	A party called upon to answer an application, a petition or an

Term	Details
	appeal.
Reviewable decision	Is a decision stated under Schedule 2 of the Act. This is heard by the Children Services Tribunal.
Separate legal representative	A legal representative appointed by the court on adjournment of a child protection proceedings who acts in the child's best interests and presents the child's views and wishes to the court.
Short-term guardianship	Of a child under a Child Protection Order, means guardianship of the child for not more than two years.
Standing down a matter	Seeking the leave of the court to have the matter placed 'on hold' for a short period of time (definitely not overnight) with a view to obtaining further information to provide to the court.
Stay of proceedings	An order made by a court preventing an action proceeding further either before or after a determination by a court in respect of that action. The suspension of the proceedings may be temporary or permanent.
Subpoena	This is a document issued by a court ordering a person to attend court and produce information or testify in a case.
Supervision Order (also known as Protective Supervision Order)	A Child Protection Order requiring the chief executive to supervise the child's protection in relation to the stated matters. To give effect to this order, the chief executive can issue administrative directives to the parents directing them to do or refrain from doing something specifically related to the supervision matters stated on the order (refer to Section 78 of the Act).
Temporary Assessment Order	Means an order under chapter 2, part 2 of the Act, and includes an order extending a Temporary Assessment Order.
Tribunal	The Children Services Tribunal established under the <i>Children Services Tribunal Act 2000</i> .

Last updated 3 August 2007

COURT ETIQUETTE

The Department has a role in court to provide information which will assist a court in the decision making process in dealing with departmental clients.

In child protection matters a departmental officer duly authorised may apply to a Children's Court for an assessment order and/or a child protection order pursuant to the *Child Protection Act 1999*.

In court, correct dress, behaviour and language protocol are important in establishing and maintaining credibility with the presiding magistrate or judge and other parties.

Correct Dress

A conservative approach should be adopted in the choice of dress. This will require a reasonably formal standard of dress. Casual dressing is not acceptable. For example, both men and women may wear trousers or pants, however jeans are not permissible.

Correct Behaviour

Stand when the magistrate or judge enters the court.

Stand when addressing the bench unless the presiding judge or magistrate invites you to remain seated. Bow to the bench when entering and leaving the court. If you need to leave the court during the proceedings, stand and bow to the bench. Leave the courtroom without turning your back on the court.

If you need to communicate with the parents, solicitors or the departmental officer with case responsibility, during the proceedings, do so discreetly.

Stand when the court is closed.

Correct Language and Protocol

A magistrate (Children's Court/ Magistrate Court) should be addressed as "**Your Honour**".

A judge (Children's Court of Queensland) should be addressed as "**Your Honour**".

If in doubt "**Sir**" and "**Ma'am**" may also be acceptable.

OVERVIEW OF THE CHILD PROTECTION ACT 1999

The legislation which underpins the Department of Child Safety's daily work is the *Child Protection Act 1999* (hereinafter referred to as 'the Act').

The Act was introduced in 1999 and has subsequently undergone a number of amendments. The current version of the Act is 'reprint 4D' which came into force on 11 June 2008. There are currently proposed amendments which are due for inclusion early 2009 (see summary document).

The Purpose of the Act

The purpose of the Act is set out at s4 which states:

- *the purpose of this Act is to provide for the protection of children.*

The Principles of the Act

The principles of the Act are outlined at s5 which states:

- *this Act is to be administered under the principle that the welfare and best interests of a child are paramount;*
- *every child has a right to protection from harm;*
- *families have the primary responsibility for the upbringing, protection and development of their children;*
- *the preferred way of ensuring a child's wellbeing is through the support of the child's family;*
- *powers conferred under this Act should be exercised in a way that is open, fair and respects the rights of people affected by their exercise, and, in particular, in a way that ensures—*
 - *(i) actions taken, while in the best interests of the child, maintain family relationships and are supportive of individual rights and ethnic, religious and cultural identity or values; and*
 - *(ii) the views of the child and the child's family are considered; and*
 - *(iii) the child and the child's parents have the opportunity to take part in making decisions affecting their lives;*
- *if a child does not have a parent able and willing to protect the child, the State has a responsibility to protect the child, but in protecting the child the State must not take action that is unwarranted in the circumstances;*
- *if a child is removed from the child's family—*
 - *(i) the aim of authorised officers' working with the child and the child's family is to safely return the child to the family if possible; and*
 - *(ii) the child's need to maintain family and social contacts, and ethnic and cultural identity, must be taken into account; and*

- (iii) *in deciding in whose care the child should be placed, the chief executive must give proper consideration to placing the child, as a first option, with kin;*
- *a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;*
- *if a child is able to form and express views about his or her care, the views must be given consideration, taking into account the child's age or ability to understand; and*
- *if a child does not have a parent able and willing to give the child ongoing protection, the child has a right to long-term alternative care.*

Some basic concepts of the Act:-

Section 8 Who is a *child*

- A ***child*** is an individual under 18 years.

Section 9 What is *harm*

- (1) ***Harm***, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.
- (2) It is immaterial how the harm is caused.
- (3) Harm can be caused by—
 - (a) physical, psychological or emotional abuse or neglect; or
 - (b) sexual abuse or exploitation.

Section 10 Who is a *child in need of protection*

- A ***child in need of protection*** is a child who -
 - (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
 - (b) does not have a parent able and willing to protect the child from the harm.

What is Natural Justice and/or Procedural Fairness?

The rules or principles of natural justice, also known as procedural fairness, have been developed to ensure that decision-making is fair and reasonable.

Natural justice is a legal requirement that applies to government decision-making. Put simply, natural justice involves decision-makers informing people of the case against them or their interests, giving them a right to be heard (the 'hearing' rule), not having a personal interest in the outcome (the rule against 'bias'), and acting only on the basis of logically probative evidence (the 'no evidence' rule). A denial of natural justice is a ground of review. An example of a denial of natural justice is late service of Court material.

Due Process of Law

Due process is the principle that the government must respect all of a person's legal rights, instead of just some or most of those legal rights, when the government deprives a person of life, liberty, or property.

Due process is the idea that laws and legal proceedings must be fair.

Rights of Parents:

Parents are afforded numerous rights under the Act.

Sections 11, 23, 37, 51F, 52, 67(3) outline the definition of a parent which relates to specific divisions of the Act.

The following sections of the Act place obligations on the CE that must be complied with in relation to parents and their rights:-

Section 15 - Child's parents to be told about allegation of harm and outcome of investigation

- (1) An authorised officer or police officer who is investigating an allegation of harm, or risk of harm, to a child, or assessing the child's need of protection because of the allegation must give details of the alleged harm or risk of harm to at least 1 of the child's parents.
- (2) Also, as soon as practicable after completing the investigation, the officer must—
 - (a) tell at least 1 of the child's parents about the outcome of the investigation; and
 - (b) if asked by the parent—give the information in writing to the parent.
- (3) However, if the officer reasonably believes—
 - (a) someone may be charged with a criminal offence for the harm to the child and the officer's compliance with subsection (1) or (2) may jeopardise an investigation into the offence; or
 - (b) compliance with the subsection may expose the child to harm;

the officer need only comply with the subsection to the extent the officer considers is reasonable and appropriate in the particular circumstances.

Section 20 - Officer's obligations on taking child into custody

- (1) If an authorised officer or police officer takes a child into the chief executive's custody, the officer must, as soon as practicable—
 - (a) take reasonable steps to tell at least 1 of the child's parents—
 - (i) that the child has been taken into custody and the reasons for the action; and

- (ii) when the chief executive's custody ends under section 18(7); and
 - (b) tell the child about his or her being taken into the chief executive's custody;⁷ and
 - (c) tell the chief executive the child has been taken into the chief executive's custody and where the child has been taken.
- (2) Subsection (1) does not require the officer to tell the child's parents in whose care the child has been placed.
 - (3) The officer's obligation under subsection (1)(a)(i) to give reasons for taking the child into custody is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes—
 - (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the subparagraph may jeopardise an investigation into the offence; or
 - (b) compliance with the subparagraph may expose the child to harm.

Section 32 - Explanation of temporary assessment orders

- Immediately after a temporary assessment order is made for a child, the applicant for the order must—
 - (a) give a copy of the order, or facsimile order or order form under section 30(6), to at least 1 of the child's parents; and
 - (b) explain the terms and effect of the order; and
 - (c) inform the parent—
 - (i) about the right of appeal; and
 - (ii) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately;¹⁰ and
 - (iii) how to appeal; and
 - (d) tell the child about the order

Section 41 - Notice of application (CAO's)

- (1) As soon as practicable after the application is filed, the applicant must—
 - (a) personally serve a copy of it on each of the child's parents; and
 - (b) tell the child about the application.¹³
- (2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.
- (3) Also, if the applicant is a police officer, the applicant must immediately give a copy of the application to the chief executive.
- (4) A copy of the application served under this section must state—
 - (a) when and where the application is to be heard; and

- (b) for a copy served on a parent—that the application may be heard and decided even though the parent does not appear in court.

Section 48 - Chief executive's obligations after making of court assessment order

- As soon as practicable after a court assessment order for a child is made, the chief executive must give to the parties to the application for the order—
 - (a) a copy of the order; and
 - (b) a written notice—
 - (i) explaining the terms and effect of the order; and
 - (ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
 - (iii) stating how to appeal.

Section 51L - Who should be involved (in case planning)

- (1) The convenor must give the following persons a reasonable opportunity to attend and participate in the meeting—
 - (a) the child, unless it would be inappropriate because of the child's age or ability to understand;
 - (b) the child's parents;

Section 51T/Y - Distributing and implementing the case plan

- After a case plan has been recorded in the approved form and endorsed, the chief executive must—
 - (a) give a copy of the plan to the child, unless that would be inappropriate having regard to the child's age and ability to understand; and
 - (b) explain the plan to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand; and
 - (c) give a copy of the plan to—
 - (i) the child's parents; and
 - (ii) anyone else affected by the plan or who the chief executive considers should receive a copy; and
 - (d) support the implementation of the plan.

Section 51T/Y - Distributing and implementing the revised case plan

- (1) This section applies after the chief executive has prepared the revised case plan.
- (2) The chief executive must—
 - (a) give a copy of the plan to the child, unless that would be inappropriate having regard to the child's age and ability to understand; and
 - (b) explain any changes in the plan to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand; and

- (c) give a copy to the child's parents and anyone else affected by the plan or who the chief executive considers should receive a copy; and
- (d) support the implementation of the plan.

Section 56 - Notice of application

- (1) As soon as practicable after the application is filed, the applicant must—
 - personally serve a copy of it on each of the child's parents; and
 - (b) tell the child about the application.
- (2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.
- (3) The copy of the application served under this section must state—
 - when and where the application is to be heard; and
 - (b) the application may be heard and decided even though the parent does not appear in court.

Section 63 - Chief executive's obligations after making of child protection order

- As soon as practicable after a child protection order for a child is made, the chief executive must give to the parties to the application for the order—
 - (a) a copy of the order; and
 - (b) a written notice—
 - explaining the terms and effect of the order; and
 - (ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
 - (iii) stating how to appeal.

Section 78 - Chief executive's powers

- (1) For giving effect to the child protection order, the chief executive may, by written notice given to a parent of the child, direct the parent to do or refrain from doing something specifically relating to the supervision matters stated in the order.
- (2) The notice must state the following—
 - (a) the reasons for the decision;
 - (b) that the parent may apply to the tribunal to have the decision reviewed only on the ground mentioned in subsection (3);
 - (c) the application must be made within 28 days after the person receives the notice;
 - (d) how to apply to have the decision reviewed.
- (3) The parent may apply to have the decision to give the direction reviewed only on the ground that the direction does not specifically relate to the supervision matters.

- (4) Despite the *Children Services Tribunal Act 2000*, section 70 the tribunal can not grant a stay of the decision.

Section 86 - Chief executive to notify parents of placing child in care—child protection order

- (1) This section applies if the child is in the chief executive's custody or guardianship under a child protection order.
- (2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the child, give written notice of the decision to the child and the child's parents stating the following—
 - the person in whose care the child is placed and where the child is living;
 - the reasons for the decision;
 - that the child and the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;
 - how to apply to have the decision reviewed.
- (3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.
- (4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive may decide not to comply with the subsection.
- (5) If the chief executive makes a decision under subsection (4), the chief executive must give written notice of the decision to the child and the child's parents stating the following—
 - (a) that the chief executive has decided not to tell the child's parents the person in whose care the child is placed and where the child is living;
 - (b) the reasons for the decision;
 - (c) that the child and the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;
 - (d) how to apply to have the decision reviewed.
- (6) Subsection (2) does not apply if the chief executive is satisfied it is not reasonably practicable for the chief executive to give the notice because the child is placed in the person's care for less than 7 days.

Section 87 - Chief executive to provide contact between child and child's parents

- (1) The chief executive must provide opportunity for contact between the child and the child's parents and appropriate members of the child's family as often as is appropriate in the circumstances.
- (2) However, the chief executive may refuse to allow, or restrict or impose conditions on, contact between the child and the child's parents or members of the child's family, if the chief

executive is satisfied it is in the child's best interests to do so or it is not reasonably practicable in the circumstances for the parents or family member to have the contact.

- (3) If the chief executive refuses to allow, or restricts or imposes conditions on contact between the child and a person, the chief executive must give written notice of the decision to each person affected by the decision.
- (4) The notice must—
 - be given as soon as practicable after the decision is made; and
 - (b) state the reasons for the decision; and
 - (c) state that the person may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
 - (d) state how to apply to have the decision reviewed.

Model Litigant Principles:

Refer to the Model Litigant Principles article by Conrad Lohe (dated 28 June 2007).

Principles apply to the Department of Child Safety as a state body.

Principles are broken down into two main headings:

Fairness:-

Acting consistently;
Dealing promptly;
Endeavouring to avoid litigation;
Keeping litigation costs to a minimum where it cannot be avoided;
Paying legitimate claims without litigation;
Not seeking to take advantage of an impecunious opponent;
Not contesting matters which it accepts is correct; and
Not instituting and perusing appeals unless there is a belief for reasonable prospects of success.

Firmness:-

Appropriately testing claims;
Contesting all spurious or vexatious claims;
Claiming legal professional privilege where appropriate;
Claiming public interest immunity to protect confidential information;
Seeking security for costs;
Relying on available statutes of limitation; and
Acting properly to protect state's interest.

Model litigant principles

Although the State has traditionally acknowledged that it should act as a model litigant, there has been no formal statement of those principles in Queensland. The Queensland Government has now formalised the principles.

The model litigant principles reflect the community's and the courts' expectation that the State conduct in a manner that exemplifies the principles of justice. In other words, the power of the State is to be used for the public good and in the public interest, even in litigation.

Model litigant principles to be adopted in the conduct of litigation, including significant litigation

These principles have been issued at the direction of Cabinet. The power of the State is to be used for the public good and in the public interest, and not as a means of oppression, even in litigation. However, the community also expects the State to properly use taxpayers' money, and in particular, not to spend it without due cause and due process. This means that demands on the State for compensation for injury or damages should be carefully scrutinised to ensure that they are justified.

The principles will be kept under review and amended from time to time with the approval of the Premier and the Attorney-General, or, if significant amendments to the principles are proposed, with the approval of Cabinet.

It should also be noted that the principles are not intended to be applied rigidly and do not override any legislative requirement or authority concerning an agency's functions.

1. The State and all agencies must conduct themselves as model litigants in the conduct of all litigation by adhering to the following principles of fairness:

- acting consistently in the handling of claims and litigation
- dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
- endeavouring to avoid litigation, until other means of resolving a dispute are exhausted or impractical
- where it is not possible to avoid litigation, keeping the costs of litigation to a minimum
- paying legitimate claims without litigation, including making partial settlements of claims, or interim payments, where liability has been established and it is clear that the State's liability is at least as much as the amount to be paid
- not seeking to take advantage of an impecunious opponent
- not contesting matters which it accepts as correct, in particular by:
 - not requiring a party to prove a matter which the State knows to be true
 - not relying on purely technical defences where the State will suffer no prejudice by not doing so
 - not contesting liability if the State knows that the dispute is really about quantum
- not instituting and pursuing appeals unless the State believes that it has reasonable prospects for success, or the appeal is otherwise justified in the public interest.

2. The State must behave as a model litigant in the conduct of all litigation, including significant litigation, by adhering to the following principles of firmness:

- appropriately testing all claims
- contesting all spurious or vexatious claims

- claiming legal professional privilege where appropriate
- claiming public interest immunity to protect confidential information such as Cabinet papers appropriate cases
- seeking security for costs where appropriate and pursuing costs when it is successful in litigation which will assist in deterring vexatious proceedings from being instituted against it
- relying on available statutes of limitation, which have been enacted to protect a defendant from unfair prejudice
- acting properly to protect the State's interests.



Conrad Lohe
Crown Solicitor

Presentation Paper
Legal Managers'
Breakfast Briefing
June 2007

The Model Litigant Principles

Prepared by Crown Solicitor, Conrad Lohe
for presentation on 28 June 2007.

My topic today concerns what are called the Model Litigant Principles, and I am going to talk about a number of aspects:

- the role of the State as a litigant;
- the background to the development of the principles;
- the content of the principles;
- what they mean in practice; and
- how they can help you.

I should start by saying that the Model Litigant Principles do not mean that you must roll over and pay up when someone sues your Department or agency. On the contrary, you are entitled to defend yourself by all legitimate means, and to do so vigorously if that is justified.

What is the position of the State of Queensland as litigant?

The *Crown Proceedings Act 1980 (Qld)* and the Commonwealth's *Judiciary Act 1903* place the Crown in essentially the same position as a private litigant in litigation for or against the State. This poses the question, that if the rights of the Crown are equated with those of a private litigant, why then is the Crown commonly urged to behave in a different fashion from private litigants, for example, by waiving defences that may be available to it?

The answer is that the community, and the courts, expect the Crown to meet higher standards of conduct than they might expect of a private litigant. Merely complying with court rules and solicitors and barristers professional rules, although important in itself, is not necessarily accepted as sufficient. The courts expect the highest standards of probity and fairness from the State in its handling of litigation.

On the other hand, the community also expects the State to deal properly with taxpayers' money and, in particular, not to spend it without due cause and due process. The State is sometimes seen as having very deep pockets, and virtually unlimited funds. We all know that is certainly not the case in these days of budgetary constraints. That means that demands on the State for compensation for injury or damages should be scrutinised carefully to ensure that they are justified.

The balancing of these community and court expectations of fairness and firmness forms the basis of the model litigant principles.

Where do the special obligations on the Crown come from?

Although the development of a set of specific principles to guide Governments and their lawyers in the conduct of civil litigation is relatively new, the idea that the State or the Crown must behave as a model litigant in court proceedings is not at all new.

It may be, as was suggested in an English case, that the underlying concept originates in the constitutional theory that the Crown is the fount of justice, and from the fact that the courts were the royal courts of justice and that the judges were His or Her Majesty's judges. We still see a remnant of that history in the Royal Coat of Arms which in Queensland can be seen on the wall of the court above the judge.

It follows, I think, that if the Crown, or in more modern terms, the State, is the fountain and origin of justice, the Crown must conduct itself in its courts to exemplify the principles of that justice. The power of the State is to be used for the public good and in the public interest, and not as a means of oppression, even in litigation.

These principles have for many years been recognised in the criminal courts, where those representing the Crown as prosecutors have very clearly defined duties of fairness and propriety which they are obliged to obey in the conduct of prosecutions.

They have also been recognised in the civil courts, although until fairly recently perhaps not with the same precision as in the criminal courts.



Crown Law
Queensland Government

In 1912, Sir Samuel Griffith, the Chief Justice of the High Court, who had in his long career been Attorney-General of Queensland, Premier of Queensland and Chief Justice of the Supreme Court of Queensland, observed in the course of his judgment in *Melbourne Steamship Co Ltd v Moorehead*¹ in relation to a technical response pleaded by the Attorney-General of the Commonwealth in the action before the Court:

The point is a purely technical point of pleading and I cannot refrain from expressing my surprise that it should be taken on behalf of the Crown. It used to be regarded as axiomatic that the Crown never takes technical points, even in civil proceedings, and a fortiori not in criminal proceedings.

I am sometimes inclined to think that in some parts – not all – of the Commonwealth, the old fashioned, traditional and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects, which I learned a very long time ago to regard as elementary, is either not known or thought out of date. I should be glad to think that I am mistaken.

Australia has not been alone in the acceptance of the concepts of fairness on the part of the Crown or the state in litigation.

In an English case in 1949, *Sebel Products Limited v Commissioners of Customs and Excise*², the court was concerned with an action relating to the plaintiff's liability to pay purchase tax which had set down for trial. Several days before the trial, the plaintiff Sebel paid the Commissioners of Customs and Excise the amount of tax which would have been due if their claim had failed. Sebel succeeded in their action, and were found not liable to pay the tax. However, the Commissioners refused to return the tax paid before the trial because it had been paid under a mistake of law.

Sebel, not surprisingly, claimed that the payment was under an agreement with Customs and Excise that, if their claim was successful, the amount of tax paid would be refunded. The court found in Sebel's favour that there had been such an agreement, but the Judge, in commenting on the mistake of law defence said:

By the *Crown Proceedings Act, 1947*, the defendants are placed in the same position as the ordinary subjects of the Crown and I see no reason why they should not in appropriate cases refuse to refund money paid to them voluntarily under a mistake of law . . . At the same time I cannot help feeling that the defence is one which ought to be used with great discretion, and that for two reasons. First, because the defendants being an emanation of the Crown, which is the source and fountain of justice, are in my opinion bound to maintain the highest standards of probity and fair dealing, comparable to those which the Courts, which derive their authority from the same source and fountain, impose on the officers under their control. Secondly, because the taxpayer, who is too often tempted to evade his liability and to keep in his pocket money which he ought to have paid to the Revenue will find too ready an excuse in the plea that the Revenue Authorities will, if they can, keep in their coffers, if they can get it there, money which the taxpayer was under no obligation to pay them, and they had no right to demand.

Although such an excuse would have no validity in either a court of law or in the forum of the taxpayer's own conscience, I think that, in the public interest, grounds for proffering it should, so far as possible, be avoided.

In another case, *Kenny v South Australia*³, the State of South Australia was represented by the Crown Solicitor's Office. The defence was not filed or delivered within the time prescribed by the rules of court.

Apparently, there had been a pattern on the part of the State of South Australia and the Crown Solicitor's Office in other actions of non-compliance with the rules and the Master had given previous warnings to them about the persistent failure to comply with the time limits under the rules and that he was no longer prepared to extend leniency. The Master's patience ran out, and he made an order against the State. When the matter came before the Supreme Court, the Chief Justice said:

The Court and the Attorney-General, to whom the Crown Solicitor is responsible, have a joint responsibility for fostering the expeditious conduct and disposal of litigation. It is extremely important that the Crown Solicitor's Office set an example to the private legal profession as to conscientious compliance with the procedures designed to minimise cost and delay and to make the maximum use of the resources committed to the Court . . .

I must point out that pressure of work and lack of staff is not accepted from the private profession as an excuse for non-compliance with the Rules and it cannot be accepted from the Crown Solicitor's Office. The Court could not 2

tolerate a situation in which litigants were delayed because the opposite party was the State in a way which would not be tolerated if the opposite party were a private litigant.

These various comments by the courts, and no doubt many other similar ones, acknowledge that the courts have for many years recognised that the Crown, or the State, has a special responsibility to the court and the community where litigation is concerned.

Where do we find these principles?

The earliest formulation of the principles was apparently developed by the Commonwealth, where the current statement of the model litigant principles is to be found as part of the Attorney-General's Legal Service Directions. I have attached a copy of the principles to this paper.

I am aware of one other recent formulation of the model litigant principles which appeared in the recent request for tender for the provision of legal services to the Victorian Government. Although that formulation was not identical to the Commonwealth's principles, it was based on them.

In Queensland, before 2006, there was no comprehensive formulation of the general principles about how the State should conduct itself in civil litigation, although the courts in this State have on a number of occasions made criticisms and given guidance about how the Crown should behave in criminal prosecutions.

In 2006, when Cabinet issued directions about the conduct of significant litigation, it also adopted a statement of the model litigant principles to govern the conduct of all litigation in which the State and its agencies is involved, not just significant litigation.

The introductory paragraphs of the principles adopted by Cabinet make it clear that there is a balance to be struck:

The power of the State is to be used for the public good and in the public interest, and not as a means of oppression, even in litigation. However, the community also expects the State to properly use taxpayers' money, and in particular, not to spend it without due cause and due process. This means that demands on the State for compensation for injury or damages should be carefully scrutinized to ensure that they are justified.

These two basic concepts are expanded under the headings 'fairness' and 'firmness'.

What are the principles?

As to fairness, the Cabinet Directive says:

The State and all agencies of the State must conduct themselves as model litigants in the conduct of all litigation, including significant litigation, by adhering to the following principles of fairness:

- acting consistently in the handling of claims and litigation;
- dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
- endeavouring to avoid litigation, wherever possible;
- where it is not possible to avoid litigation, keeping the costs of litigation to a minimum;
- paying legitimate claims without litigation, including making partial settlements of claims, or interim payments, where liability has been established and it is clear that the State's liability is at least as much as the amount to be paid;
- not seeking to take advantage of an impecunious opponent;
- not contesting matters which it accepts as correct, in particular by:
 - not requiring a party to prove a matter which the state knows to be true;
 - not relying on purely technical defences where the State will suffer no prejudice by not doing so; and
 - not contesting liability if the State knows that the dispute is really about quantum; and
- not instituting and pursuing appeals unless the State believes that it has reasonable prospects for success, or the appeal is otherwise justified in the public interest.

The State must behave as a model litigant in the conduct of all litigation, including significant litigation, by adhering to the following principles of firmness:

- appropriately testing all claims;
- contesting all spurious or vexatious claims;
- claiming legal professional privilege where appropriate;
- claiming public interest immunity to protect confidential information such as Cabinet papers in appropriate cases;
- seeking security for costs where appropriate and pursuing costs when it is successful in litigation, which will assist in reducing the potential for vexatious proceedings to be instituted against it;
- relying on available statutes of limitation, which have been enacted to protect a defendant from unfair prejudice; and
- acting properly to protect the state's interests.



What does this mean in practice?

One can identify a number of practical effects of these principles.

- We do not play favourites: we deal even-handedly with all litigants.
- We do not use delaying tactics, for example to force a plaintiff to run up unnecessary costs, or to try to force a plaintiff to abandon his or her action because they have run out of money.
- We do not commence legal proceedings, including prosecutions, for ulterior or improper motives.
- We do not defend indefensible claims, or try to avoid legitimate liabilities, and do not attempt to avoid disclosure of unfavourable or inconvenient information when it should be disclosed.
- We do not take technical points merely for the sake of taking those points where they do not affect the merits of the case, particularly for the purpose of 'stringing out' the litigation.
- We do not seek to delay implementing the result of litigation by instituting appeals which have little or no merit. However, the State may be justified in seeking to have the law clarified, if necessary by an appeal, but in such a case may have to be prepared to carry the burden of the costs of the appeal even if it is successful in some respects.
- We do not avoid our obligations to obey court-imposed time limitations and deadlines, and ensure that disclosure of documents is thorough and prompt.

On the other hand,

- We are entitled to examine any claim against the State thoroughly, and we do not back down if we believe a claim to be spurious or vexatious. We will seek security for costs where appropriate.
- We will act fairly but firmly in the defence of actions against the State, and will require a plaintiff to prove his or her case by proper evidence.
- We are entitled to defend a case even if there is no absolute certainty of winning, provided that there are reasonable prospects of a successful defence. In doing so, we recognise that litigation is not an exact science, and the result of a case can often not be predicted with certainty.
- We will defend the State's legal professional privilege, and will raise a claim of public interest immunity whenever a legitimate claim can be made.
- The State is entitled to rely on the *Limitation of Actions Act* where the time limitation for actions has passed, although it has the right to waive compliance in a particular case if that is thought appropriate.
- We will seek to prevent the courts from being used for improper claims, including claims which are vexatious, for example if they are commenced for some improper and ulterior motive, and will seek to have vexatious litigants declared vexatious in appropriate cases.
- We will generally seek to recover the legitimate legal costs incurred by the State if it is successful in an action, although there is a discretion in the chief executive to waive the recovery of costs if a particular case warrants such a waiver.

To whom do the principles apply?

The general statements by the courts about how the Crown should behave in litigation apply to the State in all its manifestations, and to agencies and employees of the State. Because they apply to the State, they must necessarily apply to anyone who represents the State before the courts, whether that be the Crown Solicitor or other legal representatives.

What are the consequences of failure to follow these principles?

In a particular case, a court will often be willing to penalise the State if the court perceives that the State has acted other than with complete propriety. It can do that by ordering costs against it, even to the extent of ordering costs on what is now called an indemnity basis.

However, even apart from these specific penalties, behaviour of a lesser standard than that expected of the State will have longer-lasting and more insidious effects. It has certainly been my experience that judges rely upon the integrity and fairness of the lawyers who represent the State, and often look to them for assistance and guidance. That does not mean of course, that the State is any more likely to get a favourable decision from a judge.

It would be of great concern to me, and I am sure to all of us, if the courts came to distrust the State and its lawyers, and I have no doubt that it would be of great concern to the judges themselves. The guidance of the model litigant principles will help to ensure that that confidence is maintained.

How should you apply these principles?

I expect that it will rarely be necessary for any of you to have to consider the application of these principles. They are consistent with the way in which litigation for the State has always been conducted. However, there may be occasions when your department will be asked to refrain from taking a particular course in litigation involving your department, for example, by not relying on the statute of limitations, and the formulation of the general principles will assist you in deciding how to proceed.

In cases of doubt you are of course entitled to seek advice from me or my office, and from the Solicitor-General. If I or my staff have an issue about the conduct of a particular action, we will discuss the issue with you or your officers.

Conclusion

I have tried to show that the Model Litigant Principles are not chains which restrict your ability to act in the best interests of the State or your agency.

Rather, they give guidance which allows you to be confident that the litigation within the area of your responsibility will be conducted fairly but with due regard for the interests of the State.



Attachment

The Commonwealth's obligation to act as a model litigant

The obligation

- 1 Consistently with the Attorney General's responsibility for the maintenance of proper standards in litigation, the Commonwealth and its agencies are to behave as model litigants in the conduct of litigation.

Nature of the obligation

- 2 The obligation to act as a model litigant requires that the Commonwealth and its agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or an agency by:
 - (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
 - (b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid
 - (c) acting consistently in the handling of claims and litigation
 - (d) endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate
 - (e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
 - (i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true, and
 - (ii) not contesting liability if the Commonwealth or the agency knows that the dispute is really about quantum
 - (f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
 - (g) not relying on technical defences unless the Commonwealth's or the agency's interests would be prejudiced by the failure to comply with a particular requirement
 - (h) not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, and
 - (i) apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.

Note 1 – The obligation applies to litigation (including before courts, tribunals, inquiries, and in arbitration and other alternative dispute resolution processes) involving Commonwealth Departments and agencies, as well as Ministers and officers where the Commonwealth provides a full indemnity in respect of an action for damages brought against them personally. Ensuring compliance with the obligation is primarily the responsibility of the agency which has responsibility for the litigation. In addition, lawyers engaged in such litigation, whether Australian Government Solicitor, in-house or private, will need to act in accordance with the obligation and to assist their client agency to do so.

Note 2 – In essence, being a model litigant requires that the Commonwealth and its agencies, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the Commonwealth and its agencies will act as a model litigant has been recognised by the Courts. See, for example, *Melbourne Steamship Limited v Moorhead* (1912) 15 CLR 133 at 342; *Kenny v State of South Australia* (1987) 46 SASR 268 at 273; *Yong Jun Qin v The Minister for Immigration and Ethnic Affairs* (1997) 75 FCR 155.

Note 3 – The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.

Note 4 – The obligation does not prevent the Commonwealth and its agencies from acting firmly and properly to protect their interests. It does not therefore preclude all legitimate steps being taken to pursue claims by the Commonwealth and its agencies and testing or defending claims against them. It does not preclude pursuing litigation in order to clarify a significant point of law even if the other party wishes to settle the dispute. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interests of the Commonwealth or an agency pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable. In certain circumstances, it will be appropriate for the Commonwealth to pay

costs (for example, for a test case in the public interest.)

Note 5 – The obligation does not prevent the Commonwealth from enforcing costs orders or seeking to recover its costs.

Merits review proceedings

- 3 The obligation to act as a model litigant extends to agencies involved in merits review proceedings.
- 4 An agency should use its best endeavours to assist the tribunal to make its decision.

Note – The term ‘litigation’ is defined in paragraph 15 of these Directions in terms that encompass merits review before tribunals. There are particular obligations in relation to assisting a tribunal engaged in merits review to arrive at a decision. Agencies should pay close attention to the legislation under which a tribunal is established, and any practice directions issued by the tribunal. In the case of the Administrative Appeals Tribunal see in particular subsection 33(1AA) of the *Administrative Appeals Tribunal Act 1975* and the explanatory memorandum to the *Administrative Appeals Tribunal Amendment Bill 2005*.

Alternative dispute resolution

- 5 When participating in alternative dispute resolution, the Commonwealth and its agencies are to:
 - (a) participate fully and effectively, and
 - (b) wherever practicable, ensure that their representatives have authority to settle the matter, or at least clear instructions on the possible terms of settlement that would be acceptable to the Commonwealth, so as to facilitate appropriate and timely resolution of a dispute.

Note – Agencies are encouraged to develop dispute management plans addressing the place of litigation and alternative strategies in addressing disputes.

- 6 An agency which agrees to participate in an alternative dispute resolution process is to tell the other party to the process whether or not a representative attending the process will have the authority to settle the matter to finality.

Note – When participating in alternative dispute resolution processes, regard is still to be had to the requirements for settling major claims under paragraph 4.4 and Appendix C. In practical terms, this may mean that a representative attending an alternative dispute resolution process may not be given authority to settle a matter to finality.

Notes

¹ (1912) 15 CLR 333, at 342

² (1949) 1 Ch 409 at 413

³ (1987) 46 SASR 268 at 273



They are playing a game. They are playing at not playing a game. If I show them I see they are, I shall break the rules and they will punish me. I must play their game, of not seeing I see the game.

R D Laing, *Knots*

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an introduction to Australia's legal system

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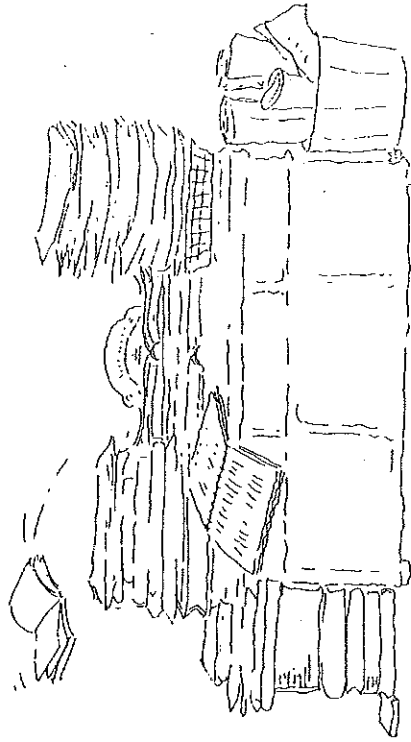
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Due process of law



The Fifth Amendment to the Constitution of the United States of America provides that 'no person shall be ... deprived of life, liberty or property without due process of law'.

Article 10 of the Universal Declaration of Human Rights provides that 'everyone is entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'.

The requirement of fair trial is one of the basic elements in 'the rule of law'. In the United States the requirement has superior status under the Constitution, so that any statute which allows for a person's rights to be affected other than by due process of law will be invalid.

In Australia, however, as in Britain, due process of law is not guaranteed by the Constitution. For the most part, parliaments may, if they choose, make laws providing for people to be thrown into dungeons without due process. The only limiting factor in Australia is s 71 of the Commonwealth Constitution, which provides that if any such power to affect people under Commonwealth law can be classified as judicial, it may be vested only in the High Court or other federal court constituted in accordance with s 72, or in State courts. If the

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power can be classified in some other way, for example, as administrative, then it may validly be given to some other tribunal or a minister or public servant. (There is quite a lot of technical law on the question whether a power is to be classified as judicial.) Under State law, there is no limitation of this sort, even for judicial powers. However, the High Court held in *Kable v DPP (NSW)* (1996) that, because a State Supreme Court may exercise judicial powers of the Commonwealth, it is in breach of the Commonwealth Constitution for the State Parliament to vest in the court powers which are incompatible with the exercise of judicial power.

The legal notion of due process of law takes the procedures of the courts as a model. These procedures, developed over the centuries, are the main subject of this chapter.

When legislation gives powers to a public official or body other than a court, it often requires that person or body to follow procedures similar to those of the courts. Even if it does not, the courts can themselves sometimes review the decisions and proceedings on the basis of some element of procedural unfairness, as mentioned in chapter 12.

The principle of due process of law, therefore, is part of our legal system in that it governs courts; it is (sometimes) embodied in legislation; and it is (sometimes) accepted by courts in reviewing the proceedings of lower courts, tribunals and officials, even where parliament has not expressly required a fair hearing.

The requirements of due process are most fully developed in the procedures of the courts, and although the law often requires other bodies (for example, trade unions or local government) to conduct fair hearings into certain matters, the procedures are much less elaborate and formal than those of the courts. The notion of due process and a fair trial in the Australian legal system is, therefore, best understood through an examination of the procedures of the courts.

We do not propose to analyse court procedures in detail. They are complex, and vary from one type of court, or one jurisdiction, to another. Instead we will discuss the basic principles which underlie court procedures in our system. It is worth noting that procedures are strictest in criminal proceedings, when the liberty of the accused may be at stake.

The fundamental rule of 'due process' and 'natural justice' is that no person shall be judged unheard. There must be a hearing, and the hearing must be fair. How do Australian courts achieve these objectives?

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Notice

If there is to be a hearing, the person who may be affected must, obviously, have sufficient notice of the fact. If it is to be a fair hearing, he or she must also know in advance the case to be answered.

In *civil* proceedings at common law this is achieved by an exchange of documents between the parties.

Suppose you are punched by your neighbour, Fred. You prepare a document setting out your side of the story: how it happened, the injuries you suffered, and the amount of damages you claim. You have this document 'issued' by a court officer (who stamps it) and then 'served' on the defendant (it is given to Fred). Fred then prepares a document setting out his side of the story, and goes through the same process of issuing and serving it on you. He may, perhaps, deny that he punched you; or he may admit the punch but say it was in self-defence. You can then respond to that by denying that you had attacked him. So it goes, until the documents make it clear what is really in dispute: it may be whether Fred punched you at all, or it may be whether you had attacked him first. When this stage arrives, it is said that 'issue is joined', and the case can then be put on the list for hearing. The point of the whole exercise — a kind of paper war — is to avoid misunderstanding and waste of time, as well as to help each side prepare for the trial. For example, if Fred admits punching you, there is no need to bother calling evidence to prove it: the only evidence necessary is that relating to the question of self-defence. In most cases, the documents are drafted by lawyers. They can be very long and complicated, for example, in complex commercial cases in the higher courts, but in the lower courts they are usually less elaborate. In many civil jurisdictions, too, the evidence is in the form of affidavits (sworn written statements filed in court and served on the other party).

In *criminal* proceedings the procedures are different. Fred may be arrested by police and charged with the alleged offence. For less serious offences, he may be summonsed instead. He is entitled to full particulars of the charge against him, and the court may order that he be given such particulars.

If Fred is charged with an indictable offence (that is, one of the more serious offences that needs to be tried by judge and jury) then a preliminary hearing (or 'committal proceeding') must be held before a magistrate as soon as possible. In the meantime, he may be released on bail, unless the court feels that he may abscond, commit another offence, or try to get at witnesses, or unless the offence is particularly serious, for example, murder.

At the preliminary hearing the Crown produces its evidence in order to establish that it has a plausible (*prima facie*) case against Fred. If the evidence seems insufficient to warrant putting him to trial, the magistrate may discharge him; otherwise he will be committed for

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trial. Fred may himself give evidence and call witnesses at the preliminary hearing, but in most cases he will not do so. As a result of the preliminary hearing, Fred has learnt not only the charge he has to answer but also the evidence the Crown will be relying on. The Crown, on the other hand, usually has little knowledge of what defence the accused will raise, or what sort of evidence he will be calling. This is why Fred chose not to give evidence at this stage.

So, in civil cases each side is entitled to full notice of the opponent's case and, where affidavits are filed, much of the evidence to be used. In criminal cases, however, while the accused is entitled to prior notice of the prosecution's case (and, where there is a committal proceeding, also its evidence) the prosecution has no similar right to notice of the accused's defence. (There is an exception where the accused proposes to rely on an 'alibi', that is, where he claims to have been somewhere else when the offence occurred.) This apparent bias is partly because the prosecution has many advantages, and partly because of the traditional view that it is essential to prevent innocent people being convicted, even at the expense of some guilty people going free.

Publicity

It is an important principle that judicial proceedings should normally be conducted in open court, so that members of the public, including press representatives, may attend if they wish to do so. As mentioned earlier, the Universal Declaration of Human Rights requires 'a fair and public hearing'. It is felt that because there is a vital public interest in the administration of justice, it should be treated as a public matter, even though a particular case involves only the affairs of private individuals.

There are exceptions. Minor aspects of cases may be settled in private chambers or closed court. A judge may close a court to the public if they are disrupting the proceedings, or if a witness is unable to give evidence in open court, or if evidence to be given is of a secret nature, for example, where it relates to security matters or secret industrial processes. Children's Courts are closed to the public.

In some cases, although the public's access to the courts is not affected, restrictions are imposed on what may be published in the press or elsewhere. Thus evidence in family law cases may not be published.

Apart from these exceptional cases, if court proceedings are not conducted openly they may be held to be invalid.

Standards of proof

As a general rule, any person seeking some kind of court order must provide the court with a good reason for making the order. This obvious principle is reflected in the law. The plaintiff in civil proceedings and

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the prosecution in criminal proceedings must succeed in proving their case to the court, showing either that they are entitled to some remedy or that the defendant has committed some offence. In legal terms, the plaintiff and the prosecution bear the 'onus of proof'. But another question is: how strongly must the case be proved? How sure does the court have to be before it makes an order? The answer to this question is different in civil and criminal cases.

In *civil* cases, a plaintiff simply has to persuade the court — judge or jury — that the facts he or she alleges are true on a *balance of probabilities*. If after hearing both sides, the judge or jury feels that the plaintiff's story is more likely than not to be true, then the plaintiff will be entitled to a verdict.

In *criminal* cases, the standard of proof is much stricter. It is a fundamental principle of the common law system, expressed also in Article 11 of the Universal Declaration of Human Rights, that a person is presumed to be innocent until proved guilty. The prosecution has to do much more than to tip the 'scales of justice' its way; it must prove the accused's guilt *beyond reasonable doubt*. No matter how strong the prosecution's evidence may be, if the magistrate or the jury has any reasonable doubt that he or she is guilty, the accused is entitled to be acquitted.

Evidence

The decision of a case where facts are in dispute can only be based on evidence as to those facts. No evidence is admissible in court proceedings unless it is *relevant* to the issue in question. If you were being tried on a charge of offensive behaviour arising out of a street demonstration, it would be irrelevant for the prosecution to produce evidence that you had been charged with evading bus fares three years earlier. That evidence would be 'inadmissible': the court would not normally allow it to be given.

The rules of evidence are complex. They are designed to keep out evidence which is irrelevant, and evidence which might be relevant but would unfairly prejudice a party. The rules are particularly strict in criminal cases, although they apply to civil cases as well. We will not go into details, but simply give a few examples:

(a) Frieda is on trial for fraud. She made a full confession at the police station, but pleads not guilty and says she only made the confession because she was frightened of being assaulted by the police. The courts will only admit her confession as evidence if it was made voluntarily, and not if any threat or promise had been made to get it. Furthermore, the judges may not admit such a statement as evidence if Frieda had not first been warned by the police that she was under no obligation to say anything, and that anything she did say might be used as evidence.

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The police sometimes complain that these strict requirements hamstring investigation of crime, that innocent persons have nothing to fear in speaking up, and that the rules protect only the guilty by warning them to say nothing. They would like to see the rules modified in some way, without jeopardising the rights of the innocent, but others see them as essential in the interests of civil liberty.

(b) Evidence is usually not admissible in criminal proceedings to show that the accused has had previous convictions or is of bad character. The sole issue is whether he or she is guilty of the specific offence. (There are some exceptions, for example, if a defendant claims to be of good character.)

However, evidence of character and previous convictions is admissible after a person has been found guilty, in order to assist the magistrate or judge to impose the appropriate sentence.

(c) Hearsay evidence is usually inadmissible. Janet is on trial for murder. An issue is whether a blood-stained knife was in Janet's hand. Andrew, an eye-witness, can say: 'I saw the blood-stained knife in Janet's hand.' However, Martin cannot say: 'Andrew told me he saw the blood-stained knife in Janet's hand.' Martin's statement is inadmissible because it is considered less reliable than first-hand evidence, and because Janet (the accused) should have the opportunity to cross-examine Andrew in court. (Once again, there are important exceptions to the rule.)

These and other rules of evidence are an important safeguard for fair trial.

Each party has a right to give evidence, usually in the form of oral evidence by witnesses in court. The other party also has a right to cross-examine those witnesses, by asking questions in order to discover other facts, or in order to diminish the weight of the evidence already given. If anything new comes out of cross-examination, the first party may re-examine.

Generally, no evidence or information may be presented to the court in the absence or 'behind the back' of the other side. The common law technique of examining witnesses by question and answer is designed to give the other side time to object in order to keep out inadmissible evidence.

Impartiality

So far we have seen that our court procedures aim to ensure that both parties can present their cases to the court as fully and as fairly as possible. This, however, will not ensure a fair trial if the court itself is biased.

We have already considered, in chapter 8, the means by which the general independence of judges is achieved. They have independence and security of tenure, immunity from legal liability for things said or done in judicial proceedings, and so should fear no pressures from government or anyone else.

A problem of impartiality may arise, though, in a particular case. For example, you may be suing a company and the judge may be a shareholder in that company. You may be suing your next door neighbour for allowing his incinerator to get out of control so that it burnt down your garage, and the judge may turn out to be the neighbour's cousin. You may be a Ruritanian migrant, and the judge may have said, in an earlier case, that he had always found Ruritanian migrants to be untruthful.

In each of these and similar cases, if the judge did not stand down willingly, you could object to that judge hearing the case. It is a fundamental principle that 'people may not be judges in their own cause', and this will disqualify a judge from hearing a case in which he or she has some financial or personal interest, or in which other circumstances exist so as to raise a reasonable suspicion of bias. It is not necessary to show that the judge is in fact biased — a reasonable suspicion is enough. To quote the famous words of a former English Lord Chief Justice: 'Justice should not only be done but should manifestly and undoubtedly be seen to be done.'

Indictable criminal cases, and some civil cases too, are tried not by a judge alone but by a judge and jury. The jury in such a case decides the facts. The possibility of bias among the jurors is sought to be met by provisions for 'challenge'. Both parties have a right to challenge members of the jury panel, if they think that they are biased against them for one reason or another. They may dismiss a certain number of jurors without giving a reason; beyond that point they must give a reason for challenge. The details vary from one type of case to another, and from one State or Territory to another. Generally, the opportunity to challenge jurors is greater in criminal than in civil cases.

Trial by jury

The use of jury trial is itself a special and characteristic feature of the common law system. It is used for all indictable criminal offences, except where there is an option to have the offence tried without a jury, and the option is taken. It is also used for the trial of some civil actions at common law.

When jury trial is available, the effect is that the determination of facts and the weighing up of evidence is entrusted to a group of one's fellow citizens rather than to a judge. The system has a long history and has considerable emotional overtones in our society, at least in criminal cases.

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No special qualifications are needed for jury service. Usually, entry on the electoral roll is sufficient. Different classes of persons may be exempt from service, for example, doctors, teachers, members of parliament, lawyers, and others. Individuals may apply for exemption for personal reasons, for example, illness, or insufficient command of the English language. The actual jury for a case is selected, by ballot and after challenges, from a larger number summoned to the court.

In criminal cases a jury of 12 is used. It hears the evidence, listens to addresses of counsel for both sides, and to the judge's summing up. The judge directs them, in accordance with the law, as to what verdict they should return on various possible conclusions they may reach about the facts. For example, in a murder case the judge might tell them that if they find that A did kill B and did so with deliberate intent, then they will return a verdict of guilty; if they find that A killed B but did so in self-defence or under provocation, they shall return a verdict of not guilty of murder but guilty of manslaughter; if they have any reasonable doubt whether A killed B at all, they should return a verdict of not guilty.

The jury then retires and, when it reaches a decision, delivers its verdict to the court. Traditionally criminal verdicts have to be unanimous and, if the jury fails to agree on a verdict, they are discharged and a new trial must be held. But in England and some Australian States provision has now been made to receive verdicts of a large majority of the jurors in some circumstances after a specified time.

If the jury finds the accused not guilty, he or she is acquitted, and can never again be tried for the same offence. If the jury returns a verdict of guilty, the judge then imposes sentence.

The task of the criminal jury, then, is to decide facts in the light of the law as put to them by the judge.

The size of civil juries varies from one State to another, and there are possible variations within States. Civil jury verdicts do not have to be unanimous, and the decision of a specified majority may be accepted after a certain time. Jury trial is not available in all civil cases, even in common law matters. In recent years, both in Australia and elsewhere, jury trials in civil cases have been giving way to trial by judges sitting alone. Juries make for longer and slower trials, and their use in civil cases does not have quite the same degree of community support as their use in criminal cases.

Most civil cases tried by jury are actions for damages, whether the cause of action is negligence or defamation or something else. As in criminal cases, the civil jury listens to the evidence and returns a verdict in the light of the law as put to them by the judge, but normally they must then go on to assess the amount of damages (if any) which

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the defendant should pay. In criminal cases, the judge decides on sentence; in civil cases, the jury decides on damages.

Appeal

The procedures mentioned do not, of course, guarantee that the decision of a court will be correct, on the facts or on the law. In particular, the law itself may not be clear. A further safeguard is to make provision whereby decisions may be reviewed by a higher court on several possible grounds, and by various procedures. The Australian legal system does, in fact, provide fairly amply for appeal to a higher court and ultimately to the High Court of Australia, if it grants special leave, although these cases are rare.

Legal representation and the adversary procedure

The courtroom procedure sketched above is often referred to as the 'adversary system'. This is a fair description. The law courts are places where the parties fight out their cases according to the rules of the game — the rules of evidence and procedure — and they fight for a favourable judgment. The court adopts a basically passive role, reaching a decision on the evidence and arguments which the parties put before it. (There are, however, other possible procedures for resolving disputes and reviewing problems. A royal commission, for example, may call its own witnesses and make its own investigations: its procedure is quite different from that of a court and could be described as 'inquisitorial'.)

In the adversary procedure of the courts, much turns on how the parties present their cases. The law provides that any party to court proceedings is not only entitled to be heard, but also to be represented by a lawyer (if he or she can afford one). In *Dietrich v The Queen* (1992) the High Court held that a criminal trial for a serious offence may be unfair if the defendant cannot afford legal representation and is unable to get legal aid for the purpose; in that event, the courts have power to adjourn proceedings, or, if the defendant has already been convicted, an appeal court may quash the conviction.

Parties themselves can, of course, argue their own case, even in the highest courts, but lawyers regard this as very unwise, shake their heads, and invariably make the stock witticism that 'anyone who acts as his own lawyer has a fool for a client'. This professional attitude is very good for business, of course, but it is probably unfair to write it off as self-serving. Legal proceedings are usually very technical, and there would be few cases which lay persons could successfully argue on their own. On the other hand, the moves towards 'do it yourself kits for undefended divorces and land transfers may indicate a growing scepticism of the lawyers' claims, and a questioning of the need for their services in some areas. Criticism along these lines goes hand in hand with calls for simplification of procedures to make the business

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more intelligible to non-lawyers, and lawyers' assurances that this cannot be done are not likely to continue to go unchallenged.

For all this, it remains true that legal proceedings in courts — and many legal matters outside courts, for example, drafting wills — do usually require lawyers, and laypeople would be likely to get into serious trouble on their own. Any significant court hearing, whether civil or criminal, will involve rules of procedure and evidence which a lay person will not usually understand, and unrepresented persons in criminal or civil cases run a real risk of being prejudiced by their lack of knowledge about how the system works. (The problem presented by the inability of many people to pay for legal services is considered in the following chapter.)

The adversary procedure not only means that lawyers are usually necessary, but also places them in a position of some responsibility. The court inevitably relies on the lawyers to put their arguments fairly, and the law places certain restraints on lawyers in their efforts to advance their clients' interests. For example, lawyers must not knowingly mislead the court by making allegations which they know are false, or by deliberately failing to tell the court about a relevant precedent, even if it is unfavourable to their case. Courts place quite a deal of trust in lawyers: in an emergency, a court might make an order on the basis of allegations made by a barrister even without evidence, then adjourn the case while the evidence is collected. The working out of lawyers' responsibilities to their clients and to the courts is not simple.

The rules of procedure and evidence which make up our 'due process of law' are among the most difficult and complex parts of the law. While they represent a very notable effort to minimise human error and ensure just trials, they do so at the price of substantial legal costs and delay. They also tend to make the courts mysterious and intimidating for many people. In some areas, it seems, the price is too high. For example, many commercial people try to resolve their disputes out of court if possible, often through arbitration, where lawyers need not be involved at all. In some places community justice centres may be available to resolve disputes between neighbours (for example) by mediation. There have been moves to set up special courts and tribunals where small claims can be resolved quickly and sensibly without the complexities and expense which seem inevitably to accompany lawyers and courts. Some of these are discussed in chapter 11.

CHILD PROTECTION ACT 1999

The *Child Protection Act 1999* is the primary legislation providing for the protection of children in Queensland. This act is available for download.

The following outline indicates the key parts of the legislation:

Chapter 1 explains:

- the purpose of the legislation
- the key principles under which the Act is administered
- provisions about Indigenous children
- relationship to the *Child Protection (International Measures) Act 2003* and
- functions of the chief executive (Director-General)
- key terms used in the legislation
- the effect of custody and guardianship

Chapter 2 covers the protection of children, including:

- responding to allegations of children at risk of harm
- temporary assessment orders (TAOs)
- court assessment orders (CAOs)
- case planning
- Intervention with the agreement of parents
- child protection orders
- adjournments of proceedings and court ordered conferences
- obligations and rights under orders and care agreements
- general matters including reports about criminal history, medical examinations or treatment, social assessments and custody or guardianship of a child pending a decision or application for an order.

Chapter 3 covers court proceedings, including:

- jurisdiction of the Childrens Court
- Childrens Court procedures
- appeals regarding Childrens Court decisions

Chapter 4 covers the regulation of care, including:

- standards of care
- licensing of care services and approval of carers
- application of the *Commission for Children and Young People and Child Guardian Act 2000*

Chapter 5 covers administration matters including:

- authorised officers under the Act
- general matters including delegation of powers under the Act, approved forms and payment of carers.

Chapter 5A covers service delivery coordination and information exchange, including:

- coordination of service delivery
- the Suspected Child Abuse and Neglect (SCAN) system
- information exchange
- release of health and other relevant information to a coroner
- protection from liability and interaction with other laws

Chapter 6 covers enforcement and legal proceedings including:

- establishment of offences under the Act
- prosecution of certain interstate offences
- warrant for apprehension of a child
- general powers of authorised officers and police officers
- evidence and legal proceedings
- obligations of confidentiality
- general provisions including compliance with provisions about providing explanations and documents, exercise of power by other officers and protection from civil liability.

Chapter 7 covers interstate transfers of child protection orders and proceedings including:

- transfer of orders or proceedings from Queensland to another state
- transfer of orders or proceedings from another state to Queensland

Chapter 7A covers child deaths, including the requirement for a review.

Chapter 8 covers miscellaneous provisions including:

- recognised entities
- reviewable decisions
- annual reporting about child protection matters
- acting in support of the Commissioner for Children and Young People
- consultation about investigations and prosecutions
- power to make regulations

Chapter 9 covers the impact of this Act on other legislation and existing orders at the time the legislation was enacted.

There are three schedules to the Act:

- charter of rights for a child in care
- reviewable decisions and aggrieved persons
- a dictionary that sets out the meaning of terms used in the Act.

**CONFIDENTIALITY PROVISIONS IN THE
CHILD PROTECTION ACT 1999**

Section	Section title	Summary
186	Confidentiality of notifiers of harm	Notifier information is strictly confidential. Disclosure can only occur: <ul style="list-style-type: none"> - in the course of performing functions under this Act to someone else performing functions under this Act eg to a police officer involved in a joint investigation. - to the Ombudsman when an investigation is being conducted. - when giving evidence in legal proceedings – only with the leave of the court.
187	Confidentiality of information obtained by persons involved in the administration of Act	This is the main confidentiality provision. It prohibits departmental staff, police officers and others performing duties under the Act from disclosing personal information about children and families. This provision also applies to foster carers and Recognised Entity staff. Disclosure of this information can only occur for purposes related to carrying out duties under the Act and for purposes directly related to the welfare of any child.
188	Confidentiality of information given by persons involved in administration of Act to other persons	If information is disclosed under s187, this provision requires that the person who receives the information must not disclose it to anyone else. Disclosure can only occur for purposes directly related to a child's welfare or as otherwise required by law.
189	Prohibition of publication of information leading to identity of children	This section prohibits the media or anyone else from publishing information which identifies a child as a child subject to an investigation, a child under an order, or a child who has allegedly been or is at risk of being harmed by a family member.
190-193	Confidentiality in relation to proceedings	These provisions cover confidentiality in relation to subpoena of departmental records, disclosure of information to courts or tribunals and reporting of court proceedings.
194	Release of information by health service employees	This provision clarifies that health employees can disclose information relevant to the protection or welfare of a child to departmental and police officers, even though it is subject to confidentiality under the <i>Health Services Act</i> .

Childrens Court Forms

Form 1	Application for a temporary assessment order
Form 2	Application to extend/vary a temporary assessment order
Form 3	Temporary assessment order
Form 4	Temporary assessment order – extension/variation
Form 5	Application for a court assessment order
Form 6	Application to extend / vary / revoke a court assessment order
Form 7	Court assessment order
Form 8	Court assessment order – extension / variation / revocation
Form 9	Adjournment of proceeding for a court assessment order
Form 10	Application for a child protection order
Form 11	Application to extend and/ vary /revoke a child protection order
Form 12	Application to revoke a child protection order and make another child protection order
Form 13	Child protection order
Form 14	Child protection order – extension / variation / revocation
Form 15	Child protection order made in place of revoked order
Form 16	Adjournment of proceeding for a child protection order
Form 17	Recognised Aboriginal or Torres Strait Islander agency
Form 18	Report of a family meeting
Form 19	Notice of court ordered conference
Form 20	Report of court ordered conference
Form 21	Notice to parties (following court ordered conference)

Form 22	Affidavit of service
Form 23	Request for subpoena
Form 24	Subpoena
Form 25	Affidavit
Form 26	Certificate of exhibit
Form 27	Application for warrant for apprehension of a child
Form 28	Warrant for apprehension of a child

Session Plan – Temporary Assessment Orders

To be presented in conjunction with the power point presentation: Nil

Outcomes:

- Identify the key elements of temporary assessment orders
- To provide an overview of the process involved in obtaining a temporary assessment order
- Develop an understanding of some of the issues and complexities that may arise when dealing with applications for temporary assessment orders.

Time	Content	Resources / Comments
	<p><u>Introduction</u></p> <ul style="list-style-type: none"> • Greetings • Linkage <p>Court Co-ordinator's will be required to have detailed knowledge of assessment and child protection orders. This knowledge will relate to the elements of the orders and the associated processes involved in applying for these orders. This session will focus on temporary assessment orders will are the less intrusive type of assessment order, given there length.</p> <ul style="list-style-type: none"> • Outcomes <ul style="list-style-type: none"> ➤ Identify the key elements of temporary assessment orders ➤ To provide an overview of the process involved in obtaining a temporary assessment order ➤ Develop an understanding of some of the issues and complexities that may arise when dealing with applications for temporary assessment orders. • Strategy <ul style="list-style-type: none"> ➤ General information in relation to TAO's and the process that is undertaken to obtain a TAO will be provided ➤ Participants will be required to complete a Form One: Application for a TAO based on the information provided in the scenarios ➤ Small group exercise: working through the a number of complex scenarios associated with TAO's • Stimulus <p>Whilst an application for a TAO does not require a departmental officer to appear in court in relation to the application, the orders are made by a Magistrate and it is anticipated that the Court Co-ordinator will be involved in these applications in a quality assurance capacity. For example, checking applications for TAO's prior to them being provided to a Magistrate, to ensure that they meet the legislative requirements.</p>	

Time	Content	Resources / Comments
	<p><u>Temporary Assessment Order's</u></p> <p>As it states a "TAO" is an assessment order. The purpose of an assessment order is to facilitate assessment of a child's possible need for protection. Assessment orders are used using the phase of the departmental intervention when we are seeking to answer the question "is this child in need of protection?"</p> <p>Assessment orders authorise initial assessment actions when consent has not been obtained because:</p> <ul style="list-style-type: none"> ➤ Parents have refused to consent ➤ Parents are not able to consent. <p>They also authorise the safe placement of a child during the assessment if interim protection is required.</p> <p>Sections of the <i>Child Protection Act, 1999</i> that relate to TAO's are Sections 23 – 36.</p> <p>For the purposes of assessments the definition of "parent" includes only to parents or others who by law have parental responsibility for the child. See Section 23 of the CPA, 1999.</p> <p><u>Features of TAO's</u></p> <ul style="list-style-type: none"> • Duration <p>Maximum of 3 days initially.</p> <ul style="list-style-type: none"> • Provisions of a TAO <p>Provisions that can be sought under TAO's are contained in Section 28 of CPA, 1999. They allow for the following to occur:</p> <ul style="list-style-type: none"> ➤ Authorised officer or Police Officer to have contact with the child ➤ Take the child into custody and keep the child in the chief executive's custody while the investigation is carried out. ➤ Authorising medical examination or treatment. ➤ Parents not to have contact or only supervised contact. ➤ Authorised officer or Police to enter and search a place where a child is reasonably believed to be. ➤ Authorised officer or Police may remain in this place for as long as the officer reasonably considers necessary. <ul style="list-style-type: none"> • Application Process <p>Section 25 of CPA, 1999 sets out the requirements for making an application for a TAO</p> <ul style="list-style-type: none"> ➤ The application must be sworn and state the following: <ul style="list-style-type: none"> ➤ Grounds on which the application is sought. ➤ The nature of the order sought. ➤ If chief executive request custody, the proposed arrangements for the child's care. 	<p>Included in the manual</p> <p>Refer to Section 23 of CPA, 1999.</p>

Time	Content	Resources / Comments
	<ul style="list-style-type: none"> • Making of a TAO <p>Section 27 of the <i>CPA, 1999</i> sets out what the Magistrate must be satisfied of to make a TAO. These include:</p> <ul style="list-style-type: none"> ➤ An investigation is necessary to assess whether the child is in need of protection. ➤ The investigation can not be properly carried out unless the order is made. ➤ Reasonable steps must have been taken to obtain the consent of at least one of the child's parents, to take the action requested in the order. <ul style="list-style-type: none"> • Extension or Variation <p>Section 34 of the <i>CPA, 1999</i> sets out the provisions for TAO to be extended.</p> <p>Conditions include:</p> <ul style="list-style-type: none"> ➤ Order must not have expired ➤ Order can only be extended once ➤ Order can only be extended until the end of the next business day after it would have otherwise ended if the Magistrate is satisfied that the officer intends to apply for a court assessment order or child protection order for the child within the extended term. <p>TAO's can be varied – this is outlined in Section 33 of the <i>CPA, 1999</i>.</p> <ul style="list-style-type: none"> • Provisions for indigenous children <p>Consultation should occur with the recognised agency prior to the application being made. If this is not possible then consultation should be made as soon as possible after the order is made.</p> <ul style="list-style-type: none"> • Other Provisions <p>Section 18</p> <p>TAO's are used in all cases when a child is taken into custody under <i>Section 18 – Child at immediate risk may be taken into custody</i>. This is even if it is immediately decided that :</p> <ul style="list-style-type: none"> ➤ A longer period of assessment is required and therefore a Court Assessment Order will be needed. ➤ A child protection order will be required. <p>This is to ensure immediate judicial oversight of the continued custody of the child after action is taken under Section 18.</p> <p>Effect of temporary assessment order on existing child protection orders</p> <p>If a temporary assessment order is made for a child for whom a child protection order is already in force, the temporary assessment order prevails to the extent of any inconsistency between the orders. This is outlined in Section 36 of the <i>CPA, 1999</i> – Effect of temporary assessment order on existing child protection orders</p>	

Time	Content	Resources / Comments
	<p><u>Grounds for Applications for TAO's</u></p> <p>Applications TAO's (and for extensions and variations etc of these orders) must include the grounds of the application.</p> <p>The ground should include a summary of the main reasons for the order. These reasons should be supported by key facts.</p> <p>The grounds should address the key issues that the magistrate needs to be satisfied of to make the order.</p> <p>The following questions provide prompts to guide the type of information which should be provided in the grounds of each application.</p> <p>Application for TAO</p> <ul style="list-style-type: none"> ➤ Why is the Initial Assessment necessary in relation to this child now? ➤ Why is a TAO needed to carry out the Initial Assessment? ➤ Why are each of the particular authorities/directives that you are seeking needed? ➤ Why is a TAO of a shorter duration not appropriate? ➤ What steps have been taken to obtain the consent of the parents for the actions which you are seeking the order to authorise, or why is it not practicable (or appropriate) to obtain consent? ➤ If applicable, indicate that the child was taken into protective custody under Section 18. <p>Application to extend a TAO</p> <ul style="list-style-type: none"> ➤ Why is an extension of the order necessary? ➤ If applying for extension beyond the maximum duration of 3 days – do you intend to apply for a CAO or CPO? <p>Application to vary TAO</p> <ul style="list-style-type: none"> ➤ Why does the existing order need to be varied? <p>Application to extend and vary the TAO</p> <ul style="list-style-type: none"> ➤ Why is an extension of the order necessary? ➤ If applying for extension beyond the maximum duration of 3 days – do you intend to apply for a CAO or a CPO? ➤ Why does the existing order need to be varied? <p>• How to apply for a Temporary Assessment Order</p> <p>Take the participants through the process of applying for a TAO – as per the Handout "How to apply for a Temporary Assessment Order"</p>	<p>Included in the manual</p>

Time	Content	Resources / Comments
	<p><u>ACTIVITY</u></p> <p>❖ TAO QUIZ – based on information above</p> <p>Can be completed either in tables or as more of a Sale of the Century type of activity.</p> <p><u>Exercise: Completing an Application for a Temporary Assessment Order</u></p> <p>Advise the participants that the following exercise involves the drafting of a Form 1 – Application for a Temporary Assessment Order.</p> <p>Based on the information that has been provided to date in relation to:</p> <ul style="list-style-type: none"> ➤ The Smith Family <p>Get the participants in their groups to consider the following question -</p> <p>Would you apply for a Temporary Assessment Order in this situation? If so – on what basis?</p> <p>Allow several minutes for the participants to discuss and then seek feedback from the large group.</p> <p><i>The Smith Family:</i></p> <p><i>A TAO would be required on the following basis:</i></p> <ul style="list-style-type: none"> ➤ <i>The mother has withdrawn her consent for the child to be in voluntary care</i> ➤ <i>The mother is subject to an Involuntary Mental Health Order and does not appear to have the capacity to care for or make decisions in the best interest of her children.</i> <p>Using the information that has been provided to date get the participants to draft an "Application for a TAO" (Form 1) for one of the "Smith" children.</p> <p>Allow the participants 15 minutes to undertake this task.</p>	<p>The worksheet for this activity is already included in the manuals</p>

Time	Content	Resources / Comments
	<p>Direct the participants to the examples of both of the following:</p> <ul style="list-style-type: none"> ➤ Form 1 – Application for a Temporary Assessment Order that has been developed for the Smith family as a “good” example. ➤ Form 3 – Temporary Assessment Order that has been developed for the Smith family as a “good” example. <p>Provide the participants with an opportunity to discuss the examples provided – do the participants agree with the information that is contained in the examples?</p> <p><u>INFORMATION THAT MUST BE HIGHLIGHTED DURING THIS SESSION:</u></p> <ul style="list-style-type: none"> ○ Applicant must serve the TAO ○ Attempts must have been made and referred to in the application regarding consent of one parent to the assessment ○ TAO applications written succinctly ○ When does the TAO expire? You don't count the day it was made. ○ Not advising parents or their solicitors that we're applying for a TAO ○ The overuse of S30 – special orders ○ Recognised Entity - consultation/participation ○ Provisions regarding contact 	<p>Good examples are included in the manuals already</p>

TAO'S QUIZ and ANSWERS

1. What section of CP Act relates to the definition of "harm"? **S9**
2. What section of the CP Act relates to the definition of "a child in need of protection"? **S10**
3. Name two sections of the CP Act that relates to TAO's? **S23 - 36**
4. Name two provisions you can ask for when applying for a TAO?
 - **Authorised officer or Police Officer to have contact with the child**
 - **Take the child into custody and keep the child in the chief executive's custody while the investigation is carried out.**
 - **Authorising medical examination or treatment.**
 - **Parents not to have contact or only supervised contact.**
 - **Authorised officer or Police to enter and search a place where a child is reasonably believed to be.**
 - **Authorised officer or Police may remain in this place for as long as the officer reasonably considers necessary.**
5. Section 27 of the CP Act sets out 3 things that the Magistrate must be satisfied of to make a TAO. Name them.
 - **An investigation is necessary to access whether the child is in need of protection.**
 - **The investigation can not be properly carried out unless the order is made.**
 - **Reasonable steps must have been taken to obtain the consent of at least one of the child's parents, to take the action requested in the order.**
6. If S18 is used to take a child into immediate custody, does a TAO need to be immediately applied for even if we don't need it? (secondary question could be why to explore knowledge) **Absolutely – to ensure accountability for actions used in legislation**

7. The applicant must serve the TAO on the respondents. **True** or **False**
(refer to section of the Act)
8. What is the maximum time for a TAO? **4 days**
9. When considering a TAO for an Aboriginal and Torres Strait Islander child, the Department must consult with the Recognised Entity? **True** or **False**
10. If you apply for a TAO on Tuesday, when does it expire? **Friday**
11. The only way to apply for a TAO is through Section 30? **True** or **False**
12. In what circumstances should a TAO through Section 30 be sought?
When it is urgent or other special circumstances ie remote location.
It isn't to be used a matter of general practice.
13. Can an assessment order direct a defacto or step-parent not to have contact with a child? **No. Assessment orders can only direct parents who fit the definition of a parent outlined in sections 23 and 37 of the Child Protection Act, 1999. This definition restricts the category of people who are potentially affected by the orders and who are respondents to applications for these orders to people who are the legally recognised parents for the child. Other options available within the orders would need to be considered to address risk of harm from contact with a defacto or step-parent.**

Temporary Assessment Orders

Part 2 Sections 23 – 36 of the *Child Protection Act 1999*

Purpose:

The purpose of a temporary assessment order is to facilitate assessment of a child's possible need for protection if the child is regarded at immediate risk of harm.

Assessment orders are used during the phase of departmental intervention when we are seeking to answer the question "is this child a child in need of protection?"

Assessment orders authorise initial assessment actions when consent has not been obtained because:

- Parents have refused to consent
- Parents are not able to consent

They also authorise the safe placement of a child during the assessment if interim protection is required.

For the purposes of assessments the definition of "parent" includes only to parents or others who, by law, have parental responsibility for the child (Section 23 of the *CPA, 1999*).

Features of Temporary Assessment Orders (TAO's)

Duration

- Maximum of 3 days initially.

Provisions of a Temporary Assessment Order

Provisions that can be sought under TAO's are contained in Section 28 of *CPA, 1999*. They allow for the following to occur:

- Authorised officer or Police Officer to have contact with the child
- Take the child into custody and keep the child in the chief executive's custody while the investigation is carried out;
- Authorising medical examination or treatment;
- Parents not to have contact or only supervised contact;
- Authorised officer or Police to enter and search a place where a child is reasonably believed to be;
- Authorised officer or Police may remain in this place for as long as the officer reasonably considers necessary;

Application Process

Section 25 of *CPA, 1999* sets out the requirements for making an application for a TAO:

- The application must be sworn and state the following:
- Grounds on which the application is sought (why are we seeking an order – see 'Grounds for Applications for Temporary Assessment Orders');
- The nature of the order sought (what provisions are we seeking and why. For example, if we are seeking temporary custody to the chief executive WHY we think this is necessary);
- If the chief executive requests custody, the proposed arrangements for the child's care.

Making of a TAO

Section 27 of the *CPA, 1999* sets out what the Magistrate must be satisfied of to make a TAO. These include:

- An investigation is necessary to assess whether the child is in need of protection;
- The investigation can not be properly carried out unless the order is made;
- Reasonable steps must have been taken to obtain the consent of at least one of the child's parents, to take the action requested in the order.

Extension or Variation

Section 34 of the *CPA, 1999* sets out the provisions for a TAO to be extended.

Conditions include:

- Order must not have expired;
- Order can only be extended once;
- Order can only be extended until the end of the next business day after it would have otherwise ended if the Magistrate is satisfied that the officer intends to apply for a court assessment order or child protection order for the child within the extended term.

NB: If an application to extend a TAO occurs on a Friday then it is extended until the next business day meaning it will finish on the Monday at 5pm.

TAO's can be varied – this is outlined in Section 33 of the *CPA, 1999*.

Provisions for indigenous children

Consultation should occur with the recognised agency prior to the application being made. If this is not possible then consultation should be made as soon as possible after the order is made.

Other Provisions

Section 18

TAO's are used in all cases when a child is taken into custody under *Section 18 – Child at immediate risk may be taken into custody.*

This is even if it is immediately decided that:

- A longer period of assessment is required and therefore a Court Assessment Order will be needed;
- A child protection order will be required.

This is to ensure immediate judicial oversight of the continued custody of the child after action is taken under Section 18.

Effect of temporary assessment order on existing child protection orders

If a temporary assessment order is made for a child for whom a child protection order is already in force, the temporary assessment order prevails to the extent of any inconsistency between the orders.

This is outlined in Section 36 of the *CPA, 1999* – Effect of temporary assessment order on existing child protection orders.

Grounds for Applications for Temporary Assessment Orders:

Applications for TAO's (and for extensions and variations etc of these orders) must include the grounds of the application.

'Grounds' mean a summary of the main reasons for why we think an order is necessary. These reasons should be supported by key facts NOT assumptions or opinion.

Remember that a Magistrate is only able to make an order if they are satisfied that an investigation is necessary AND it can not be done unless an order is made. Therefore the grounds of the application should address key issues that would convince a magistrate that court intervention is necessary.

The following questions provide prompts to guide the type of information which should be provided in the grounds of each application. These questions may be useful when assisting Child Safety Officers in writing their applications.

Questions to assist in the Application for TAO:

- Why is the initial assessment necessary in relation to this child now?
- Why is a TAO needed to carry out the Initial Assessment?
- Why is each of the particular authorities/directives that you are seeking needed? For example, if we are seeking temporary custody, explain why this is necessary.

- What steps have been taken to obtain the consent of the parents for the actions which you are seeking the order to authorise, or why is it not practicable (or appropriate) to obtain consent?
- If applicable, indicate that the child was taken into protective custody under Section 18.

Application to extend a TAO

- Why is an extension of the order necessary (remember this is only for one more business day)?
- What assessments have already been completed?
- If applying for an extension beyond the maximum duration of 3 days – do you intend to apply for a Court Assessment Order or a Child Protection Order?

Application to vary TAO

- Why does the existing order need to be varied?

Application to extend and vary the TAO

- Why is an extension of the order necessary?
- What assessments have already been completed?
- If applying for extension beyond the maximum duration of 3 days – do you intend to apply for a CAO or a CPO?
- Why does the existing order need to be varied?

How Child Safety Officers apply for a Temporary Assessment Order

1. Complete Form 1 "Application for TAO" which is located on ICMS

- If an application relates to an indigenous child – consult with the recognised Aboriginal or Torres Strait Islander agency.

2. Application must be sworn before a JP or Commissioner of Declarations

- If this is not possible prior to contacting the magistrate, application must be sworn ASAP afterwards.
- 2 copies of the application form are needed – magistrate's copy & file copy. Copying does not however need to occur immediately if applying via phone/fax.

3. Arrange to meet/speak to magistrate

Business hours –
Contact local court.

OR

After hours (outside Brisbane metro area) –
1. Contact a/hrs number for local magistrate.

2. If local magistrate unavailable, contact Brisbane on-call magistrate.

OR

After hours (Brisbane metro area) –
1. Contact on-call magistrate on
3247 5089.

4. Make application to magistrate by -

Meeting in person – hand application form to magistrate

OR

Combination of fax and phone – fax application form to magistrate and discuss via phone

OR

Phone – advise the magistrate of the details on the application form

5. Obtain copy of order by –

Magistrate handing copy to applicant

OR

Magistrate faxing copy to applicant

OR

Magistrate providing order details to applicant over phone and applicant recording on TAO form on ICMS or hard copy. Order form must be signed by applicant.

At least 2 copies of the order are needed – parents' copy & file copy.

6. Provide copy of order to parents -

- Provide a copy of the order and explain the order and appeal rights to the parents.
- Tell the child/young person about the order if it is considered appropriate in the circumstances having regard to the child's age or ability to understand the matter (S32 & S195).

7. If application and order were made over fax/phone, send sworn application form, and TAO form if used, to the court the magistrate is attached to. Send to Brisbane Children's Court for applications made to Brisbane a/hrs magistrates.

- Retain copies of these forms for the file.
- Court will forward copy of the order to Department if order was made over fax/phone.

8. Record order details on ICMS

Case Scenario One: The Smith Family

Current Information:

On the 12th January, 2009 at approximately 10am, the "Intake Officer" based at the Stones Corner Child Safety Service Centre received a call in relation to two children.

The notifier advised that Ms Karen Smith (the mother) has been admitted to the mental health unit at the Princess Alexander Hospital due to:

- A belief that she and the children are being followed by the devil;
- Clawing and scratching of the skin on her face, forearms and thighs resulting in bruising and bleeding;
- Cutting her upper thighs and lower arms with a sharp object;

The mother has requested a voluntary placement for her two children to enable her to remain in hospital for treatment, as she has no family, or supports in Queensland that could care for her children, as she had only recently arrived in Queensland, having previously lived in South Australia and New South Wales.

The details of the family are as follows:

Mother: Karen Smith
Date of Birth - 13th June 1970
Address: no fixed place of abode.

Father: details unknown

Children: John Smith
Date of Birth – 25th September, 2000
Address: No fixed place of abode

Wendy Smith
Date of Birth – 9th November, 2003
Address: No fixed place of abode

Departmental staff attends the hospital and the mother signs a consent form agreeing to the children being placed in the voluntary care of the Department. A temporary placement is located and the children are placed with a foster carer.

At approximately 3pm, of the same day, notifier two (2) contacts the Department and advises that the mother's mental state has deteriorated since her admission to hospital.

The mother has indicated to notifier two that she is no longer consenting to her children being in the care of the department as she believes that the foster carers are "possessed by the devil and are extremely dangerous". She is reported to be presenting in an extremely anxious state and is very concerned about the safety of her children.

Notifier two advises that an Involuntary Mental Health Order has been invoked. The notifier is of the opinion that the mother does not currently have the capacity to care for or make decisions in the best interest of her children, at this time. The notifier also advised that at this stage, the mother is likely to be hospitalised for a minimum of three days.

Form 1

Children's Court Act 1992
Child Protection Act 1999
(Section 25)

APPLICATION FOR A TEMPORARY ASSESSMENT ORDER

CHILD: JOHN SMITH

Date of Birth: 25th September, 2000
Sex: Male

Aboriginal: unknown
Torres Strait Islander: unknown

APPLICANT DETAILS:

Name: Amanda Hall

an authorised officer under the *Child Protection Act 1999*.

Address: 30-40 Quay Street, Brisbane.

APPLICATION DETAILS:

This is an application for a temporary assessment order.

The grounds on which this application is made are:

At approximately 10am on the 12th January, 2009 the Intake Officer at the Stones Corner Child Safety Service Centre received a notification in relation to two children, John and Wendy Smith. The notifier advised that the children's mother had been admitted to the Mental Health Unit of the Princess Alexander Hospital due to:

- A belief that she and the children are being followed by the devil;
- Clawing and scratching of the skin on her face, forearms and thighs resulting in bruising and bleeding;
- Cutting her upper thighs and upper arms with a sharp object;

I attended the hospital where the mother initially requested a voluntary placement for her two children to enable her to remain in hospital for treatment. She advised that she had recently arrived in Queensland and had no family or supports that could care for her children. Arrangements were made for the children to be placed in voluntary care with a foster carer.

At approximately 3pm on the 12th January, 2009 notifier two (2) contacted the department and spoke with myself. They advised that the mother's condition had deteriorated since her admission to hospital. The mother had withdrawn her consent for the children to be in the Department's care on the basis that she believes that the foster carers are "possessed by the devil and are extremely dangerous".

Signature of Applicant

Justice of the Peace/
Commissioner for Declarations

Notifier two advised me that due to the mother's current condition an Involuntary Mental Health Order has been invoked. The notifier is of the opinion that, at this time, the mother does not have the capacity to care for or make decisions in the best interest of her children. The notifier advised that the mother is likely to be hospitalised for at least three days.

The purpose of this order is to assess the following:

- The mother's capacity to care for her two children, given the current concerns regarding her mental health;
- Alternative placement options if the children are unable to be cared for by their mother.

Custody is considered necessary to secure the child's protection during the duration of the order given the mother's current mental health state.

This application seeks an order –

- Authorising an authorised officer or police officer to take the child, John Smith and keep the child in the chief executive's custody while the order is in force.
- Directing Karen Smith not to have contact, direct or indirect, with the child other than when a departmental officer is present.

Proposed arrangements for the child's care are as follows:

- The child is currently placed with a foster carer and will remain in this placement. Contact between the child and the mother will be facilitated by the department.

The order is sought for a period of 3 days.

This application is made by means of fax, pursuant to section 30 of the *Child Protection Act 1999*.

PARENTS NAMES:

Mother's name: Karen Smith
Address: Unknown

Father's name: Unknown
Address: Unknown

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner for Declarations
Place: Brisbane
Date: 12th January, 2009

Form 3
Childrens Court Act 1992
Child Protection Act 1999
(Sections 27, 28, 29)

TEMPORARY ASSESSMENT ORDER

CHILD: JOHN SMITH
Date of Birth: 25th September 2000
Sex: Male

An application for a temporary assessment order was made by Amanda Hall an authorised officer, to me, Mr Bruce Wayne Magistrate, on 12 January 2009 in relation to the above-named child.

Having considered the grounds of the application, I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation can not be properly carried out unless the order is made.

I MAKE a temporary assessment order in relation to the child –

- authorising an authorised officer or police officer to have contact with the child;
- to take and keep the child in the chief executive's custody while the order is in force;
- authorising a medical examination or treatment of the child;
- directing Karen Smith not to have contact, direct or indirect, with the child other than when an authorised officer is present.

This temporary assessment order will continue in force until Thursday, 15th January 2009, Midnight.

Magistrate

Place: Brisbane
Date order made: 12 January 2009
Time order made: 5.45pm

This order was made by means of telephone pursuant to section 30 of the *Child Protection Act 1999*.

I hereby certify that this document is a true representation of the order made by the above-named Magistrate.

Signed:

Name: Amanda Hall
Authorised officer

Form 1
Childrens Court Act 1992
Child Protection Act 1999
(Section 25)

APPLICATION FOR A TEMPORARY ASSESSMENT ORDER

CHILD: (name)

Date of Birth:

- ☐ Aboriginal but not Torres Strait
Islander origin
- ☐ Both Aboriginal and Torres Strait
Islander origin
- ☐ Not stated/inadequately described

Sex: *Female/Male

- ☐ Torres Strait Islander but not
Aboriginal origin
- ☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

Name:

- *an authorised officer under the *Child Protection Act 1999*.
- * a police officer.

Address:

APPLICATION DETAILS:

This is an application for a temporary assessment order.

The grounds on which this application is made are:

This application seeks an order –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

- * authorising an authorised officer or police officer to take the child into and / keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact, direct or indirect, with the child.
- * directing (name of parent) not to have contact, direct or indirect, with the child other than when #(person's details) is present.

* Proposed arrangements for the child's care are as follows:

The order is sought for a period of (specify time):

* This application is made by means of *fax/telephone/radio/other, pursuant to section 30 of the *Child Protection Act 1999*

PARENT(S) / GUARDIAN(S) NAME(S):

Mother's name:

Address:

Father's name:

Address:

Other Name : (please specify relationship)

Address:

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place:

Date:

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 2
Childrens Court Act 1992
Child Protection Act 1999
(Sections 34 and 34A)

APPLICATION TO EXTEND AND/OR VARY A TEMPORARY ASSESSMENT ORDER

CHILD: (name)

Date of Birth:

- ☐ Aboriginal but not Torres Strait
Islander origin
- ☐ Both Aboriginal and Torres Strait
Islander origin
- ☐ Not stated/inadequately described

Sex: *Female/Male

- ☐ Torres Strait Islander but not
Aboriginal origin
- ☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

Name:

- *an authorised officer under the *Child Protection Act 1999*.
* a police officer.

Address:

APPLICATION DETAILS:

This is an application for an order to *extend and/or vary the temporary assessment order made by (magistrate's name), Magistrate on (date) in relation to the above-named child.

The grounds on which this application is made are:

* I intend to apply for a court assessment order for the purpose of further assessing whether the child is a child in need of protection.

* I intend to apply for a child protection order in relation to the child.

*Proposed arrangements for the child's care are as follows:

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

FILE NO.: «Merge Record #»

Form 3

Childrens Court Act 1992

Child Protection Act 1999

(Sections 27, 28, 29)

TEMPORARY ASSESSMENT ORDER

CHILD: «Merge Record #»(name)

Date of Birth: «Merge Record #»

Sex: Female/Male

An application for a temporary assessment order was made by «Merge Record #»(applicant's name) *an authorised officer / a police officer, to me, «Merge Record #»(name of Magistrate) Magistrate, on «Merge Record #»(date) in relation to the above-named child.

Having considered the grounds of the application, I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation can not be properly carried out unless the order is made.

I MAKE a temporary assessment order in relation to the child –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * authorising an authorised officer or police officer to *take the child into and / * keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact, direct or indirect, with the child.
- * directing (name of parent) not to have contact, direct or indirect, with the child other than when #(person's details) is present.

This temporary assessment order will continue in force until «Merge Record #»*the end of (specify day and date) / (time, day, date).

(name of magistrate)

Magistrate

Place: «Merge Record #»

Date order made:

Time order made:

This order was made by means of *telephone/ radio/(other) pursuant to section 30 of the *Child Protection Act 1999*.

Form 4

Childrens Court Act 1992

Child Protection Act 1999

(Sections 34, 35)

**TEMPORARY ASSESSMENT ORDER
EXTENSION AND/OR VARIATION OF ORDER**

CHILD: «Next Record»(name)
Date of Birth: «Next Record»
Sex: «Next Record»*Female/Male

An application to *extend and/or vary the temporary assessment order in relation to the above-named child made by «Next Record»(name of Magistrate) Magistrate at «Next Record»(place) on «Next Record»(date) was made by «Next Record»(applicant's name) *an authorised officer / a police officer, to me, «Next Record»(name of Magistrate) Magistrate, on «Next Record»(date).

Having considered the grounds of the application I am satisfied that the temporary assessment order made on «Next Record»(date) has not ended and that

- * the *extension and/or variation of the order is necessary to assess whether the child is a child in need of protection and the assessment can not be properly carried out unless the order is made.
- * the applicant intends to apply for a *court assessment order / child protection order in relation to the above-named child.

*I ORDER that the temporary assessment order in relation to the child be extended until «Next Record»*the end of (specify day and date) / (time, day, date).

*I ORDER a variation of the temporary assessment order in relation to the child –

- * authorising an authorised person or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * authorising an authorised officer or police officer to *take the child into and / keep the child in the chief executive's custody while the order is in force.
- * granting temporary custody of the child to the chief executive.
- * directing (name of parent) not to have contact, direct or indirect with the child.
- * directing (name of parent) not to have contact, direct or indirect with the child other than when #(person's details) is present.

«Next Record»(name of magistrate)

Magistrate

Place: «Next Record»

Date order made:

Time order made:

This order was made by means of *telephone/ /radio/(other) pursuant to section 30 of the *Child Protection Act 1999*.
I hereby certify that this document is a true representation of the order made by the above-named Magistrate.

Signed:

Name:

*Authorised officer/Police officer

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 4 – version 2, November 2003

Session Plan – Court assessment orders

To be presented in conjunction with the power point presentation: N/A

Outcomes:

- Identify the key elements of court assessment orders
- To provide an overview of the process involved in obtaining a court assessment order
- Develop an understanding of some of the issues and complexities that may arise when dealing with applications for court assessment orders.

Time	Content	Resources / Comments
	<p><u>Introduction</u></p> <ul style="list-style-type: none"> • Greetings <p>Welcome the participants to the next session in relation to Court Assessment Orders.</p> <ul style="list-style-type: none"> • Linkage <p>Court Co-ordinator's will be required to have detailed knowledge of assessment and child protection orders. This knowledge will relate to the elements of the orders and the associated processes involved in applying for these orders. This session will focus on court assessment orders.</p> <ul style="list-style-type: none"> • Outcomes <ul style="list-style-type: none"> ➤ Identify the key elements of court assessment orders ➤ To provide an overview of the process involved in obtaining a court assessment order ➤ Develop an understanding of some of the issues and complexities that may arise when dealing with applications for court assessment orders. <ul style="list-style-type: none"> • Strategy <ul style="list-style-type: none"> ➤ General information in relation to CAO's and the process that is undertaken to obtain a CAO -will be provided ➤ Participants will be required to complete a Form 5: Application for a CAO based on the information provided in the scenarios <ul style="list-style-type: none"> • Stimulus <p>Court Co-ordinators will be involved in taking court assessment orders through Court. They will also be involved in terms of a quality assurance role, involving the proofing of these documents prior to being lodged in court.</p>	

Time	Content	Resources / Comments
	<p><u>Court assessment orders</u></p> <p>Again, as the order states a CAO is an assessment order. The purpose of the order is to facilitate the assessment of a child's possible need for protection. Assessment orders are used using the phase of the departmental intervention when we are seeking to answer the question "is this child in need of protection?"</p> <p>The main difference between TAO's and CAO's is the length. Because a CAO is for a longer period the process of the application is different to allow parents, and young people, where applicable, to have their say about the making of the order.</p> <p>Use of court assessment orders</p> <p>CAO's should be applied for when</p> <ul style="list-style-type: none"> ➤ The assessment action required is likely to take more than a few days to complete, and ➤ The child/young person is not at immediate risk of significant harm at home or elsewhere (ie – it is possible to withdraw from the premises to make arrangements and consult with others). <p>CAO's should also be applied for</p> <ul style="list-style-type: none"> ➤ Before a TAO has finished if further assessment action is required. ➤ After taking a child into custody using Section 18 if a time frame of longer than 3 days is likely to be necessary to undertake the assessment -(a TAO must also be applied for, due to the use of Section 18. It is also likely that custody would otherwise expire before the CAO is heard). <p>CAO's can also be considered where a young person of 12 years or over refuses to agree to initial assessment action.</p> <p>It is important not to confuse the purpose of a court assessment order with the purpose of a child protection order. The assessment that is to be completed is the only the initial assessment – that which allows a decision about whether a child is in need of protection. This is the same decision for all initial assessments. For example: whether the concerns are substantiated and if so whether ongoing intervention is required and at what level.</p> <p>The decision about:</p> <ul style="list-style-type: none"> ➤ Whether a child is in need of protection and if so ➤ Whether the protection of an order is needed at this time <p>can normally be made within 4 weeks, so extensions of CAO's should rarely be necessary for assessment purposes.</p> <p>Decisions about:</p> <ul style="list-style-type: none"> ➤ the type of intervention (ie what type of order) and ➤ the length of intervention needed <p>can if necessary be made after the application for a CPO. It is not appropriate to make a court assessment order for this purpose, or extend the order unless it can be argued to be in the child's best interest.</p>	<p>All resources are included in the manual.</p> <p>Refer to Section 23 of CPA, 1999.</p>

Time	Content	Resources / Comments
	<p>Do not apply for the court to make or extend a CAO for the purpose of gathering evidence to support an application for a CPO, where the decision to apply for a CPO has already been made. Instead, apply for the CPO and seek an adjournment of the proceedings to assemble the evidence.</p> <p>Sections of the <i>Child Protection Act, 1999</i> that relate to CAO's are Sections 37 – 51.</p> <p>For the purposes of assessments the definition of "parent" includes only parents or others who by law have parental responsibility for the child. In relation to CAO's this is Section 37 of the <i>CPA, 1999</i>.</p> <p><u>Features of court assessment orders</u></p> <ul style="list-style-type: none"> • Duration <p>Maximum of 4 weeks initially.</p> <p>(28 days – If order is made on a Monday it expires on 4 weeks later on the Monday night at midnight).</p> <ul style="list-style-type: none"> • Provisions of a CAO <p>Provisions that can be sought under CAO's are contained in Section 45 of <i>CPA, 1999</i>. The provisions for CAO's are the same as for TAO's. They allow for the following to occur:</p> <ul style="list-style-type: none"> ➤ Authorised officer or Police Officer to have contact with the child ➤ Take the child into custody and keep the child in the chief executive's custody while the investigation is carried out. ➤ Authorising medical examination or treatment. ➤ Parents not to have contact or only supervised contact. ➤ Authorised officer or Police to enter and search a place where a child is reasonably believed to be. ➤ Authorised officer or Police may remain in this place for as long as the officer reasonably considers necessary. <ul style="list-style-type: none"> • Application Process <p>Section 39 of <i>CPA, 1999</i> sets out the requirements for making an application for a CAO.</p> <ul style="list-style-type: none"> ➤ The application must: <ul style="list-style-type: none"> ➤ be sworn ➤ state the grounds on which the application is made ➤ The nature of the order sought ➤ Comply with applicable rules of the court and ➤ Be filed in the court. <p>Note: an affidavit is not necessary as the application is sworn and contains full details of why the order is required. However, in some situations affidavits are prepared to support a CAO. These affidavits may come from persons' other than the applicant. For example: a doctor.</p>	

Time	Content	Resources / Comments
	<ul style="list-style-type: none"> Making of a CAO <p>In order to make a CAO the Magistrate must be satisfied as per Section 38, CPA, 1999, that the:</p> <ul style="list-style-type: none"> ➤ Consent of the parent is not able to be gained. ➤ More than 3 days is needed <p>Section 44 of the CPA, 1999 sets out what the Magistrate must be satisfied of to make a CAO. These include:</p> <ul style="list-style-type: none"> ➤ An investigation is necessary to access whether the child is in need of protection. ➤ The investigation can not be properly carried out unless the order is made. Extension or Variation <p>Section 49 of the CPA, 1999 sets out the provisions for a CAO to be extended.</p> <p>Conditions include:</p> <ul style="list-style-type: none"> ➤ An authorised officer may apply to the Children's Court for an order to extend the term of a CAO. ➤ Order must not have expired ➤ Extension must be considered to be in the child's best interests. <p>Note: a CAO can only be extended once. CAO's can be varied or revoked – this is outlined in Section 50 of the CPA, 1999.</p> Provisions for indigenous children <p>If the child is indigenous the Form 17 – Aboriginal or Torres Strait Islander Recognised Agency should be filed with the application for a CAO. This has the dual purpose of :</p> <ul style="list-style-type: none"> ➤ Advising the parents of an indigenous child/young person that a representative of a recognised agency is involved and may be present in court. ➤ Advising the court which recognised agency will provide to the court the advice required under section 6(3) of the CPA, 1999. <p>Consultation should occur with the recognised agency prior to the application being made. If this is not possible then consultation should be made as soon as possible after the order is made.</p> Other Provisions <ul style="list-style-type: none"> ➤ The application for a CAO must be "personally" served on the parents. If it is not practical to serve a copy on the parents personally, a copy of the application may be served on the parent by leaving it at or sending it by post to the parents last known residential address. This is outlined in Section 41 of the CPA, 1999. <p>Once a CAO has been served on the parents a Form 22 – Affidavit of Service must be completed and lodged with the relevant court.</p> <p>The Chief Executive's obligations after making the CAO are as follows:</p> <ul style="list-style-type: none"> ➤ Providing a copy of the order to the parents / parties. ➤ Providing the parents/parties with a written notice explaining the terms and effect of the order. <p>Providing the parents/parties with written notice stating that a party may appeal against the decision with 28 days and how the appeal is made.</p> 	

Time	Content	Resources / Comments
1.35	<p><u>ACTIVITY</u></p> <p>❖ CAO QUIZ – based on information above</p> <p>Can be completed either in tables or as more of a Sale of the Century type of activity.</p> <p><u>Exercise: Completing an Application for a court assessment order</u></p> <p>Advise the participants that the following exercise involves the drafting of a Form 5 – Application for a court assessment order.</p> <p>Using the information that has been provided to date get the participants to draft an application form for a CAO for the "Jones" children.</p> <p>All participants will be working on the Jones family.</p> <p>Advise the participants that they only need to complete an application for one of the children.</p> <p>Also get the participants to complete a Form 22 – Affidavit of Service for the court assessment order – working on the assumption that the Form 5 has been served on the parent.</p> <p>Allow the participants 15 minutes to undertake this task.</p> <p>Provide the participants with copies of the Form 5 – Application for a Court assessment order that have been developed for the Jones family as "good" examples.</p> <p>Provide the participants with an opportunity to discuss the examples provided – do the participants agree with the information that is contained in the examples?</p> <p><u>INFORMATION THAT MUST BE HIGHLIGHTED DURING THIS SESSION:</u></p> <ul style="list-style-type: none"> ○ Shouldn't be seeking for 4 weeks if it's not required ○ Applications need to be clearer regarding exactly what the Department will be assessing during the period of the order ○ Reiterate the use of a CAO – it's an assessment order ○ Reiterate the process for extending a CAO – the application for an extension must be filed and heard before the expiration of the original CAO ○ Attempts must have been made and referred to in the application regarding consent of one parent to the assessment ○ CAO applications written succinctly ○ Affidavits from external stakeholders ie doctor's included in CAO application process to provide critical information to court ○ Meaning of a parent ie respondents ○ Focus on both parents in application – it's not just about one parents who the allegations may pertain too <p>❖ <u>Practice Issues Discussion – as required by participants</u></p>	<p>Assessment to date about the Jones Family. Already included in manuals</p> <p>Form 5 Worksheet – is already in the manuals</p> <p>Handout Form 22 Worksheet. Already in the Manuals.</p> <p>Form 5 Notes. Already in the Manuals.</p> <p>Handout: Form 5 - Application for the Smith Children. Form 22</p> <p>Handout: Form 5 - Application for the Jones Children. Form 22</p>

CAO QUIZ and ANSWERS

1. Is a CAO used to decide whether a child is need of protection? **YES**
2. Can you apply for a CAO extension for the purpose of gathering evidence to support an application for a CPO? **NO (SECONDARY QUESTION – WHY?)**
3. The provisions for a CAO are exactly the same as a TAO? **YES**
4. A CAO can be extended for 2 weeks? **TRUE or FALSE (SECONDARY QUESTION – WHAT IS THE MAXIMUM TIMEFRAME FOR A CAO TO BE EXTENDED?)**
5. Name two sections of the CP Act 99 that relate to CAO's?
Sections of the *Child Protection Act, 1999* that relate to CAO's are Sections 37 – 51.
6. When applying for a CAO you must apply for 4 weeks? **TRUE or FALSE**
7. Before applying for a CAO, some attempts must be made to gain consent from one parent to the assessment of the child protection concerns? **TRUE or FALSE**
8. When applying for a CAO the respondents section refers to the parent and/or other adult household member that the allegations are made against? **TRUE or FALSE** (secondary question could be - define respondent)
9. If applying for a CAO extension, the application needs to be filed and heard with a determination made before the expiration of the original CAO? **TRUE or FALSE**
10. The application for a CAO must be served on the respondents and an affidavit of service sworn and filed? **TRUE or FALSE**
11. When writing the application for a CAO, it should include clear information about what further assessments the Department will be conducting? **TRUE or FALSE**
12. Can a CAO be revoked? **YES or NO**
13. Under what circumstances would you revoke a CAO? **Assessment is completed within the 4 week timeframe and it is deemed intrusive**

and unnecessary for the order to continue and the provisions to remain in place. Child is not in need of protection.

14. If a CAO is made for a child who is subject to a CPO, which order prevails? CAO or CPO. **S49 outlines this situation – CAO prevails to the extent of any inconsistency between the orders.**

Court Assessment Orders

Part 3 Sections 37 – 51 of the *Child Protection Act 1999*

Purpose:

The purpose of a Court Assessment Order (CAO) is to facilitate the assessment of a child's possible need for protection.

Assessment orders are used during the phase of the departmental intervention when we are seeking to answer the question "is this child a child in need of protection?"

The main difference between TAO's and CAO's is the length of the order.

Because a CAO is for a longer period of time, the process of the application is different to allow parents, and young people, where applicable, to have their say about the making of the order.

Use of Court Assessment Orders:

CAO's should be applied for when –

- The assessment action required is likely to take more than a few days to complete, and
- The child/young person is not at immediate risk of significant harm at home or elsewhere (ie – it is possible to withdraw from the premises to make arrangements and consult with others).

CAO's should also be applied for –

- Before a TAO has finished if further assessment action is required;
- After taking a child into custody using Section 18 if a time frame of longer than 3 days is likely to be necessary to undertake the assessment.

NB: A Temporary Assessment Order *MUST* also be applied for, due to the use of Section 18. It is also likely that custody would otherwise expire before the CAO is heard.

CAO's can also be considered where a young person of 12 years or over refuses to agree to initial assessment action.

It is important not to confuse the purpose of a court assessment order with the purpose of a child protection order. The assessment that is to be completed is only the initial assessment which allows a decision about whether a child is in need of protection. If you have already made an assessment that the child needs protection then you should make an application for a child protection order rather than a court assessment order.

The decision about whether a child is in need of protection; and if so whether the protection of an order is needed can normally be made within 4 weeks, so extensions of CAO's should rarely be necessary for assessment purposes.

Decisions about the type of intervention (ie what type of child protection order) and the length of intervention needed can, if necessary, can be made after the application for a child protection order.

Do not apply for the court to make or extend a CAO for the purpose of gathering evidence to support an application for a CPO, where the decision to apply for a CPO has already been made. Instead, apply for the CPO and seek an adjournment of the proceedings to assemble the evidence.

Features of a Court Assessment Order:

Duration

Maximum of 4 weeks initially.

(28 days – If order is made on a Monday it expires on 4 weeks later on the Monday night at midnight).

Provisions of a Court Assessment Order

Provisions that can be sought under CAO's are contained in Section 45 of *CPA, 1999*. The provisions for CAO's are the same as for TAO's. They allow for the following to occur:

- Authorised officer or Police Officer to have contact with the child;
- Take the child into custody and keep the child in the chief executive's custody while the investigation is carried out;
- Authorising medical examination or treatment;
- Parents not to have contact or only supervised contact;
- Authorised officer or Police to enter and search a place where a child is reasonably believed to be;
- Authorised officer or Police may remain in this place for as long as the officer reasonably considers necessary;

Application Process

Section 39 of *CPA, 1999* sets out the requirements for making an application for a CAO.

The application must:

- be sworn;
- state the grounds on which the application is made;
- The nature of the order sought;
- Comply with applicable rules of the court and
- Be filed in the court.

NB: An affidavit is not necessary as the application is sworn and contains full details of why the order is required. However, in some situations affidavits are prepared to support a CAO. These affidavits may be from persons' other than the applicant. For example: a doctor; a police officer; a teacher.

Making of a CAO

In order to make a CAO the Magistrate must be satisfied as per Section 38, CPA, 1999, that the:

- Consent of the parent is not able to be gained;
- More than 3 days is needed.

Section 44 of the CPA, 1999 sets out what the Magistrate must be satisfied of to make a CAO. These include:

- An investigation is necessary to assess whether the child is in need of protection;
- The investigation can not be properly carried out unless the order is made.

Extension or Variation

Section 49 of the CPA, 1999 sets out the provisions for a CAO to be extended.

Conditions include:

- An authorised officer may apply to the Children's Court for an order to extend the term of a CAO;
- Order must not have expired;
- Extension must be considered to be in the child's best interests.

NB: A Court Assessment Order can only be extended once. The application for an extension MUST be heard prior to the initial Court Assessment Order expiring.

CAO's can be varied or revoked – this is outlined in Section 50 of the CPA, 1999.

Provisions for indigenous children

If the child is indigenous the Form 17 – Aboriginal or Torres Strait Islander Recognised Agency should be filed with the application for a CAO.

This has the dual purpose of:

- Advising the parents of an indigenous child/young person that a representative of a recognised agency is involved and may be present in court;
- Advising the court which recognised agency will provide to the court the advice required under section 6(3) of the CPA, 1999.

Consultation should occur with the recognised agency prior to the application being made. If this is not possible then consultation should be made as soon as possible after the order is made.

Other Provisions

The application for a CAO must be "personally" served on the parents. If it is not practical to serve a copy on the parents personally, a copy of the application may be served on the parent by leaving it at or sending it by post to the parents last known residential address. This is outlined in Section 41 of the CPA, 1999.

Once a CAO has been served on the parents a Form 22 – Affidavit of Service must be completed and lodged with the relevant court.

The Chief Executive's obligations after making the CAO are as follows:

- Providing a copy of the order to the parents / parties;
- Providing the parents/parties with a written notice explaining the terms and effect of the order.
- Providing the parents/parties with written notice stating that a party may appeal against the decision with 28 days and how the appeal is made.

Effect of CAO on existing child protection orders

If a CAO is made for a child for whom a child protection order is already in force, the CAO prevails to the extent of any inconsistency between the orders. This is outlined in Section – 49 of the CPA, 1999.

Grounds for Applications for CAO's

Applications for CAO's (and for extensions and variations etc of these orders) must include the grounds of the application.

The grounds should include a summary of the main reasons for the order. These reasons should be supported by key facts.

The grounds should address the key issues that the magistrate needs to be satisfied of to make the order.

Specify why an assessment is required and include the reasons why the specific provisions sought are needed. Most assessment occurs without orders so you will need to explain why, in this case, an order is required and why the provisions you are seeking are required (eg: shy the child needs to be in safe custody while the assessment is carried out).

The following questions provide promotes to guide the type of information which Child Safety Officers should include in the grounds of each application.

Questions to assist in the Application for CAO:

- Why is the Initial Assessment necessary in relation to this child now?

- Why is a CAO needed to carry out the Initial Assessment?
- Why is each of the particular authorities/directives that you are seeking needed?
- Why is a CAO of a shorter duration not appropriate?
- What steps have been taken to obtain the consent of the parents for the actions which you are seeking the order to authorise, or why is it not practicable (or appropriate) to obtain consent?

Application to extend a CAO

- Why is an extension of the order necessary?
- What assessments have already been completed?
- How is the extension in the child's best interest?

Application to vary CAO

- Why does the existing order need to be varied?

Application to extend and vary the CAO

- Why is an extension of the order necessary?
- How is the extension in the child's best interest?
- Why does the existing order need to be varied?

Application to revoke an CAO

- Why the order is no longer needed?

How to apply for a Court Assessment Order

1.	Complete Form 5 "Application for CAO" on ICMS.
2.	If the application relates to an indigenous child – complete Form 17 "Aboriginal and Torres Strait Islander Recognised Agency".
3.	Contact court to arrange filing of the application and to establish a court date for the application. Record court date and time on "Notice to Parents" section of Form 5. Advise parents of court details and confirm a time to serve copy of application.
4.	Arrange for application to be sworn before a JP or Commissioner of Declarations. At least 3 copies of the application are needed – court's copy, parents' copy and file copy.
5.	File the application in the court by taking copies of Form 5 (and Form 17 if relevant) to court registrar to be stamped and signed. File at least 1 full business day before the proposed court date.
6.	Personally serve each of the parents with a copy of Form 5 (and Form 17 if relevant). Explain the application and provide brochure on CAOs. Tell the child/young person about the application and if appropriate provide a copy. If unable to personally serve the application, a copy may be posted by certified mail or left at the last known residential address. If the parents are represented by a solicitor, the application may be served upon the solicitor.
7.	Complete the Form 22 "Affidavit of Service" and file in the court. This can be done just prior to the court date. 2 copies are needed – court's copy and file copy.
8.	Attend court to apply for order. The applicant MUST be in court whilst the Court Coordinator is making submissions in relation to the CAO application.
9.	Obtain the order from the court as soon as practicable. Provide a copy to the parents with a letter explaining the order and the appeal rights. An automated letter is available on ICMS for this purpose. Tell the child/young person about the order and, if appropriate, provide a copy of the order and written information explaining the order.
10.	Record details of the court matter on ICMS.

Case Scenario: The Jones Family

Initial Information:

On the 9th January, 2009 a notification was recorded at the Caboolture Child Safety Service Centre. A child, Peter Jones (Date of Birth – 16/12/06) presented at the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of such a nature that the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father and partner reported to hospital staff that they were in the living room watching the television when they heard a crash from the kitchen. When they went to investigate what the noise was they found the child lying on the ground amongst a number of cereal boxes and other food items. The child appeared to be having a seizure. The father and his partner stated that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food from the pantry. The father advised that he called an ambulance immediately given that the child was "fitting".

The father and his partner are being cooperative and have indicated that they are willing to work with the Department. They appear to be generally concerned for the child's welfare and have given consent for the child to undergo all relevant medical assessments and receive all necessary treatment.

Initial medical observations by Doctors at the Mater Hospital suggest that the injuries may be non-accidental and appear to have been consistent with the child receiving a severe blow to the head.

The details of the family are as follows:

Father:	Barry Jones Date of Birth: 26/12/71 Address: 24 Lynfield Drive, Caboolture
Mother:	Mary Bell Date of Birth: 14/03/71 Address: unknown
Father's Current Partner:	Denise Sutton Date of Birth: 18/04/1970 Address: 24 Lynfield Drive, Caboolture
Subject child:	Peter Jones Date of Birth: 16/12/2006 Address: 24 Lynfield Drive, Caboolture
Denise Sutton's child:	Gary Sutton Date of Birth: 23/11/2000 Address: 24 Lynfield Drive, Caboolture

Initial Assessment:

In the week following the admission of Peter Jones to hospital the following assessments were undertaken:

- Checks of the departmental Child Protection System were undertaken and revealed that the Department had previously received two notifications in relation to the child, Gary Sutton. For one of the notifications the child's mother, Denise Sutton, was the alleged perpetrator whilst for the other, the mother's partner, Barry Jones was the alleged perpetrator. There was also one previous intake in relation to the child, Peter Jones. A summary of the details of the child protection history for the Jones/ Sutton family is attached.
- On the 11th January, 2009 medical staff from the Mater Hospital advised the Department that the child's injuries on admission included:
 - A subdural haemorrhage (bleeding between the skull and the brain).
 - Retinal haemorrhaging in both eyes
 - Bruising to the left side of the face, this was estimated to be approximately two days old.
 - Bruising to the left knee, this was also estimated to be approximately two days old.

Medical staff advised that on the basis of the CT scan and professional opinion it was likely that the child had suffered a severe blow to the head approximately 24 to 48 hours prior to his presentation to the Redcliffe Hospital. The retinal haemorrhaging was thought to be consistent with the child being severely shaken. The injuries are considered by the medical profession to be non-accidental.

Medical staff was unable to indicate what the long-term implications may be for the child but were suggesting that it was likely that the child may suffer some motor dysfunction and long term learning difficulties. They also indicated that if medical assistance had not been sought it is likely that the child would have died.

- Separate interviews were conducted with Barry Jones and Denise Sutton on the 11th and 12th of January, 2009, respectively. These interviews were conducted in conjunction with the police. The father and his partner maintained that the child appeared to have fallen whilst attempting to climb up on his high chair. The explanation offered by the father and his partner are not considered to be consistent with the presenting injuries.

When questioned in relation to the timing of the injuries Barry Jones and Denise Sutton maintained that an ambulance was called immediately following the incident. This also appears to be inconsistent with medical staff advising that the injuries appears to have occurred approximately 24 to 48 hours prior to the child's admission to the Redcliffe Hospital.

During the interview on the 11th January, 2009 Barry Jones became verbally abusive to departmental staff and the police. Given his behaviour the interview was terminated. Prior to leaving the interview Barry Jones indicated that he was not willing to participate in any further interviews regarding the matter with either the Department or the police.

- On the 12th January, 2009 staff from the Caboolture Child Safety Centre participated in Mater SCAN. Based on the inconsistencies between the

presenting injuries and the explanations offered by Barry Jones and Denise Sutton the SCAN team were of the opinion that the child was "at risk". Given that the father was no longer willing to cooperate with the Department's inquiries SCAN recommended that the Department apply for a court assessment order to gain custody of the child, whilst further assessments were undertaken. The SCAN team also recommended that further investigations be undertaken to ensure the safety of the child, Gary Sutton. During the SCAN discussions medical staff indicated that Peter would be likely to remain in intensive care unit for another 3-4 days before being moved to a general ward for further follow-up treatment.

- In relation to the child's mother, Mary Bell, the father advised that she had experienced difficulties when giving birth to Peter. These complications resulted in the mother being left intellectually impaired and requiring 24-hour care. Barry Jones advised that he had not had contact with Mary Bell since the birth of their son. He advised that Mary Bell's parents, Gordon and Sandra Bell, had come to Brisbane and assumed responsibility for their daughter after she became disabled.

Barry Jones stated that he had never had a good relationship with Mary's parents and this deteriorated further following Peter's birth. He indicated that he believed that they blamed him for Mary's condition. Barry informed the Department that at the time of Peter's birth, Gordon and Sandra Bell were residing in New South Wales, but he was not able to provide a current address for them given that he had not had contact with them for the past two years.

- Barry Jones further advised that Mary was of Aboriginal decent.

Child Protection History for the Jones/Sutton Family obtained from Departmental Records

Date	Child	Type of Harm	Child Protection Concerns Recorded	Action Taken	Outcome
15/03/04	Gary Sutton (4yrs)	Neglect	<ul style="list-style-type: none"> • Notifier reported observing the child crossing the road and playing in the street for 'hours' unsupervised. • Child seen wandering the streets in his underwear on one occasion and in his pajamas on a second occasion. • Notifier stated that they believed the mother was home during these reported occasions due to the family car being in the drive way and the front door being open. 	Information recorded as a notification – investigation undertaken.	<p>Outcome recorded as "Substantiated at Risk"</p> <ul style="list-style-type: none"> • Mother appeared to minimise child protection concerns. • Mother confirmed at times child plays in the front yard but denied that he had been wandering on the street and would not participate in further discussions in relation to the alleged incidents. • No further action recorded.
11/11/07	Peter Jones (1 year)	Neglect	<ul style="list-style-type: none"> • Notifier expressed concerns about the father's ability to care for his son. However, was not able to provide information in relation to any specific concerns. 	Due to limited information provided recorded as an "intake".	No further action taken
03/03/08	Gary Sutton (8 years)	Physical	<ul style="list-style-type: none"> • Mother's partner, Barry Jones, is alleged to have physically assaulted the child, Gary Sutton, with a leather strap. • Child is alleged to have been hit on the leg and hands. 	Information recorded as a notification.	No assessment possible due to client reasons – clients moved prior to the initial assessment being undertaken.

Form 5
Children's Court Act 1992
Child Protection Act 1999
(Section 38)

APPLICATION FOR A COURT ASSESSMENT ORDER

CHILD: PETER JONES

Date of Birth 16th December, 2006
Sex: Male

Aboriginal: Yes
Torres Strait Islander: No

APPLICANT DETAILS:

Name: Amanda Hall, an authorised officer under the *Child Protection Act, 1999*
Address: 30-40 Quay Street, Brisbane

APPLICATION DETAILS:

This is an application for a court assessment order.

The grounds on which this application is made are:

- **Current Child Protection Concerns:**

The Caboolture Child Safety Service Centre received a notification on the 9th January, 2009 in relation to Peter Jones. The child was presented to the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of a serious nature and the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father, Barry Jones and his partner, Denise Sutton advised me that at the time the injuries occurred they were in the living room of their home. They heard a crash from the kitchen and when they went to investigate the noise they found the child lying on the ground amongst a number of grocery items. The child appeared to be having a seizure. The father and his partner explained that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food. The father advised that he called an ambulance immediately given that the child was "fitting".

On the 11th January, 2009 Dr. Lewis from the Mater Children's Hospital advised me that the child's injuries on admission included:

- A subdural haemorrhage (bleeding between the skull and brain).
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, this was estimated to be approximately two days old.

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

- Bruising to left side of the body, this was estimated to be approximately two days old.

He also informed me that the injuries to the child are considered to be non-accidental. This preliminary finding is based on a CT scan and professional opinion that the child suffered a severe blow to the head, 24 to 48 hours prior to his presentation at the Redcliffe Hospital. Dr. Lewis also indicated to me that the retinal haemorrhaging is consistent with the child being severely shaken.

At this time, Dr. Lewis is unable to clarify what the long-term implications for the child will be but have suggested that it is likely that he may suffer some motor dysfunction and long term learning difficulties. He also indicated that if medical assistance had not been sought for the child it is likely that he would have died.

- Interviews undertaken with the Father, Barry Jones and his partner, Denise Sutton:

I conducted Interviews, separately, with Barry Jones and Denise Sutton on the 11th January, 2009 and the 12th January, 2009. These interviews were conducted in conjunction with the police. During these interviews Barry Jones and Denise Sutton maintained that the child appears to have fallen whilst attempting to climb up on his high chair. The explanation offered by Barry Jones and Denise Sutton is not considered to be consistent with the medical facts.

When questioned in relation to the timing of the injuries Barry Jones and Denise Sutton maintained that an ambulance was called immediately following the incident. Dr. Lewis however has indicated that it is likely that the injuries occurred 24 to 48 hours prior to the child's admission to the Redcliffe Hospital.

During the interview on the 12th January, 2009, Barry Jones became increasingly agitated and indicated that he was no longer willing to participate in any further interviews regarding the matter with either the Department or the Police.

- Suspected Child Abuse and Neglect Team Recommendations:

On the 12th January, 2009 I participated in discussions with the Mater Children's Hospital Suspected Child Abuse and Neglect Team. Based on the inconsistencies between the presenting injuries and the explanations offered by Barry Jones and Denise Sutton the Mater Children's Hospital Suspected Child Abuse and Neglect Team were of the opinion that the child is at risk of further harm. Given that Barry Jones is no longer willing to cooperate with the Department's inquiries it was recommended that an application for a court assessment order be made, whilst further assessments are undertaken.

- Details of the mother, Mary Bell:

Barry Jones advised me that Peter's mother is Mary Bell and she is of Aboriginal decent. He further advised that Mary Bell experienced difficulties when giving birth to Peter and these complications left her intellectually impaired and requiring 24-hour care. He further

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stated that at the time of Peter's birth, Mary's parents, Gordon and Sandra Bell, came to Brisbane from New South Wales and assumed responsibility for their daughter. Barry Jones advised that he has not had any contact with Mary Bell or her parents over the past two years. Ms Bells current whereabouts is unknown.

- Previous Departmental Child Protection History:

Checks of the Department's Child Protection System have revealed two previous notifications in relation to Denise Sutton's son, Gary Sutton and one previous intake in relation to the child, Peter Jones. Details of these are as follows:

- On the 15th March, 2004 a notification was received in relation to Gary Sutton (D.O.B – 22/11/2000). The allegations related to neglect and involved the child crossing roads and playing in the street for hours without supervision. Denise Sutton was interviewed in relation to these allegations and the outcome of the assessment was recorded as "substantiated at risk".
- On the 11th November, 2007 information was received by the Department regarding Barry Jones' ability to care for his son. The information was of a general nature and on the basis that the notifier was unable to provide any information relating to specific child protection concerns the matter was recorded as an intake.
- On the 3rd March, 2008 a further notification was received in relation to Gary Sutton. Barry Jones was alleged to have physically assaulted Gary with a leather strap. This notification was unable to be assessed as the family moved prior to the initial assessment being completed.

The purpose of this order is to undertake the following:

- Obtain further medical information in relation to the possible cause of the injuries and future care needs.
- Attempt to locate the children's mother, Mary Bell.
- Continue to assess the father's capacity to care and protect the child given the nature of the injuries sustained by the child whilst in the care of the father.
- Continue to explore further the father's explanation for the child's injuries given the inconsistencies between the father's version of events and medical facts.
- Consult further with the Mater Children's Hospital Suspected Child Abuse and Neglect Team.
- Obtain the parents criminal history
- Consult further with the recognised entity in relation to the current child protection concerns and possible placements options for the child.

Custody is considered necessary to secure the child's protection during the duration of the order given the serious nature of the injuries to the child and the father's reluctance to continue working with the Department. It is requested that the order be for a period of four weeks to allow the Department to conduct further assessments in relation to the child's protective needs.

This application seeks an order –

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

- * authorising a medical examination or treatment of the child, Peter Jones.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to keep the child in the chief executive's custody while the order is in force.
- * Directing Barry Jones not to have contact (direct or indirect) with the child other than when an departmentally approved person is present.

Proposed arrangements for the child's care are as follows:

The child is currently in intensive care unit of the Mater Children's Hospital. Dr. Lewis has advised that the child is likely to remain in this unit for the next three to four days. If appropriate the child will then be moved to a general ward for further follow-up.

Contact between the child and the father will be facilitated by the Department.

The order is sought for a period of 4 weeks.

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place: Brisbane
Date: 15th January, 2009

RESPONDENT(S) NAME(S)

Mother's name: Mary Bell
Address: Unknown

Father's name: Barry Jones
Address: 24 Lynfield Drive, Caboolture

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the
Childrens Court at
Place: Brisbane
Date: 16th January, 2009
Time: 2.00pm

**NOTE: IF YOU DO NOT ATTEND, THE COURT MAY PROCEED TO MAKE AN
ORDER IN YOUR ABSENCE.**

Registrar:
Date:

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

Form 17
Childrens Court Act 1992
Child Protection Act 1999
(Section 6)

ABORIGINAL AND TORRES STRAIT ISLANDER RECOGNISED AGENCY

CHILD: PETER JONES

Date of Birth: 16 December 2006

Sex: Male

X Aboriginal but not Torres Strait
Islander origin

☐ Torres Strait Islander but not
Aboriginal origin

☐ Both Aboriginal and Torres Strait
Islander origin

☐ Neither Aboriginal nor Torres Strait
Islander origin

☐ Not stated/inadequately described

APPLICANT DETAILS:

Name: Amanda Hall

an authorised officer under the *Child Protection Act 1999*.

Address: 30-40 Quay Street

APPLICATION DETAILS:

This information relates to an application for a court assessment order made in the Childrens Court at Brisbane on 15th January, 2009 in relation to the above-named child.

RECOGNISED AGENCY:

The recognised Aboriginal or Torres Strait Islander agency for the child under section 6(3) of the *Child Protection Act 1999* is:

Karbul Indigenous Placement Agency

The representative of the recognised Aboriginal or Torres Strait Islander agency for the child is: to be advised.

Form 22
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT OF SERVICE

CHILD: PETER JONES

Date of Birth: 16/12/06

Sex: Male

In the matter of application for a court assessment order made by Amanda Hall, an authorised officer, in the Childrens Court at Brisbane on the 16th January, 2009 in relation to the above-named child –

I: Amanda Hall
of: 30-40 Quay Street, Brisbane
occupation: Social Worker
do swear that:

1. On 15th January, 2009 I served Barry Jones with a sealed copy of the following document in the above-mentioned proceedings:

Form 5 – Application for a Court Assessment Order, sworn by Amanda Hall, on the 15th January, 2009.

Form 17 – Aboriginal and Torres Strait Islander Recognised Agency.

2. The document was served by -
giving it to Barry Jones personally
3. I established as follows that the person to whom the document was delivered was the person on whom service of the document/s was to be effected as Barry Jones identified himself as the father of the above mentioned child. I have met Barry Jones on a number of occasions previously and known him as the father of Peter Jones.

Deponent:

SWORN before:

Justice of the Peace / Commissioner
for Declarations / Lawyer

Place: Brisbane
Date: 15th January, 2009

Form 7
Childrens Court Act 1992
Child Protection Act 1999
(Sections 44, 45, 47)

COURT ASSESSMENT ORDER

CHILD: PETER JONES
Date of Birth: 16 December 2006
Sex: Male

An application for a Court Assessment Order was made by Amanda Hall, an authorised officer, in the Childrens Court at Brisbane on 15 January 2009 in relation to the above-named child.

Having considered the grounds of the application I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation cannot be properly carried out unless the order is made.

I MAKE a court assessment order in relation to the child –

- * authorising a medical examination or treatment of the child, Peter Jones.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to keep the child in the chief executive's custody while the order is in force.
- * directing Barry Jones not to have contact Peter Jones with the child other than when a departmental officer is present.

This court assessment order will continue in force until 15th February 2009.

Magistrate
Place: Brisbane
Date: 15th January 2009

Form 5
Childrens Court Act 1992
Child Protection Act 1999
(Section 38)

APPLICATION FOR A COURT ASSESSMENT ORDER

CHILD:

Date of Birth

Aboriginal *yes / no/unknown

Sex

Torres Strait Islander *yes/no/unknown

APPLICANT DETAILS:

Name:

Address:

APPLICATION DETAILS:

This is an application for a court assessment order.

The grounds on which this application is made are:

This application seeks an order –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to *keep/take and keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact (direct or indirect) with the child.
- * directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- * making the following provisions as to the child contact with his/her family during the period of time he/she is in the chief executive's custody: (specify details)

The order is sought for a period of (specify time).

Signature of Applicant:

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place:

Date:

RESPONDENT(S) NAME(S)

Mother's name:

Address:

Father's name:

Address:

Other Name (specify relationship)

Address:

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the
Childrens Court at

Place:

Date:

Time:

**NOTE: IF YOU DO NOT ATTEND , THE COURT MAY PROCEED TO MAKE
AN ORDER IN YOUR ABSENCE.**

Registrar:

Date:

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 22
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT OF SERVICE

CHILD: (name)
Date of Birth:
Sex *Female/Male

In the matter of application/s *for / in relation to a *court assessment order / child protection order made by (name of applicant), an *authorised officer / police officer, in the Childrens Court at (place) on (date) in relation to the above-named child –

I:
of:
occupation:
do *swear/affirm that:

1. On (date), I served (name) with a sealed copy of *the following documents / *each of the following documents in the above-mentioned proceedings:
2. The document/*s *was/were served by -
 *giving *it / them to (name) personally
 *posting/leaving the document/*s in one envelope addressed to (name) at (address)
3. I established as follows that the person to whom the document/*s *was/were delivered was the person on whom service of the document/s was to be effected
 (state means by which the deponent identified the person served):

Deponent:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations / Lawyer

Place:
Date:

*delete whichever is not applicable
Form 22 – Version 1, March 2000

FILE NO:

Childrens Court Act 1992
Child Protection Act 1999
(Sections 44, 45, 47)

COURT ASSESSMENT ORDER

CHILD:

Date of Birth:

Sex:

An application for a court assessment order was made by _____, an authorised officer, in the Childrens Court at _____ on DATE in relation to the above-named child.

Having considered the grounds of the application I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation cannot be properly carried out unless the order is made.

I MAKE a court assessment order in relation to the child –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him / her.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to *keep / take and keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact (direct or indirect) with the child.
- * directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- * making the following provisions as to the child's contact with his/her family during the period of time he/she is in the chief executive's custody.

This court assessment order will continue in force until _____.

Magistrate

Place:

Date:

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 7 – Version 2, November 2003

Form 6
Childrens Court Act 1992
Child Protection Act 1999
(Sections 49, 50)

**APPLICATION TO EXTEND / VARY / REVOKE
A COURT ASSESSMENT ORDER**

CHILD: (name)

Date of Birth:

Sex: *Female/Male

☐ Aboriginal but not Torres Strait
Islander origin

☐ Torres Strait Islander but not
Aboriginal origin

☐ Both Aboriginal and Torres Strait
Islander origin

☐ Neither Aboriginal nor Torres Strait
Islander origin

☐ Not stated/inadequately described

APPLICANT DETAILS:

Name:

an authorised officer under the *Child Protection Act 1999*.

Address:

APPLICATION DETAILS:

This is an application for an order to *extend *and/ vary / revoke the court assessment order made in the Childrens Court at (place) on (date) in relation to the above-named child.

The grounds on which this application is made are:

*In seeking to vary the order, this application seeks an order –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to *keep/take and keep the child in the chief executive's custody while the order is in force.

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

- * directing (name of parent) not to have contact (direct or indirect) with the child.
- * directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- * making the following provisions as to the child contact with his/her family during the period of time he/she is in the chief executive's custody (specify details)

*An extension of the order is sought for a period of (specify time).

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place:

Date:

RESPONDENTS' NAME/S

Mother's name:

Address:

Father's name:

Address:

Other name (specify relationship):

Address:

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the Childrens Court at

Place:

Date:

Time:

NOTE: IF YOU DO NOT ATTEND, THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.

Registrar:

Date:

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 9
Childrens Court Act 1992
Child Protection Act 1999
(Sections 66, 67)

ADJOURNMENT OF PROCEEDING FOR A COURT ASSESSMENT ORDER

CHILD:

Date of Birth:

Sex:

Male:

An application for a court assessment order was made by NAME, an authorised officer, in the Childrens Court at PLACE on DATE in relation to the above-named child.

I ORDER that the proceeding is adjourned to DATE and TIME for further mention of the application.

I ALSO ORDER an interim order in relation to the child –

- * granting temporary custody of the child to the chief executive.
- * directing NAME and NAME not to have contact, direct or indirect, with the child other than when a departmentally approved person is present.

The interim order has effect for the period of the adjournment.

Magistrate

Place:

Date:

Form 8
Childrens Court Act 1992
Child Protection Act 1999
(Sections 49, 50)

COURT ASSESSMENT ORDER
EXTENSION / VARIATION / REVOCATION OF ORDER

CHILD:

Date of Birth:

Sex

An application to *extend *and/ vary / revoke the court assessment order made in the Childrens Court at (place) on (date) in relation to the above-named child was made by (name), an authorised officer, on (date).

*Having considered the grounds of the application I am satisfied it is in the child's best interests to *extend *and vary the court assessment order.

*I ORDER that the court assessment order in relation to the child be extended until (date).

*I ORDER a variation of the court assessment order in relation to the child –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to *take/take and keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact (direct or indirect) with the child.
- * directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- * making the following provisions as to the child's contact with his/her family during the period of time he/she is in the chief executive's custody.

*Having considered the grounds of the application I am satisfied it is in the child's best interests to revoke the court assessment order.

*I ORDER that the court assessment order be revoked.

Magistrate

Place:

Date:

Form 17
Childrens Court Act 1992
Child Protection Act 1999
(Section 6)

ABORIGINAL AND TORRES STRAIT ISLANDER RECOGNISED AGENCY

CHILD: (name)

Date of Birth:

Sex *Female/Male

Aboriginal *yes / no

Torres Strait Islander *yes / no

APPLICANT DETAILS:

Name:

an authorised officer under the *Child Protection Act 1999*.

Address:

APPLICATION DETAILS:

This information relates to an application for a *court assessment order / child protection order made in the Childrens Court at (place) on (date) in relation to the above-named child.

RECOGNISED AGENCY:

The recognised Aboriginal or Torres Strait Islander agency for the child under section 6(3) of the *Child Protection Act 1999* is: (agency name)

The representative of the recognised Aboriginal or Torres Strait Islander agency for the child is: * to be advised / (name)

*delete whichever is not applicable
Form 17 – Version 1, March 2000

Session Plan – Child protection orders

To be presented in conjunction with the power point presentation:

Outcomes:

- Identify the key elements of child protection orders.
- To provide an overview of the process involved in applying for, extending, varying and revoking a child protection order.
- Develop an understanding of some of the issues and complexities that may arise when making application for child protection orders.

Time	Content	Resources / Comments
	<p><u>Introduction</u></p> <ul style="list-style-type: none"> • Greetings <p>Welcome the participants to the next session focussed on the application process for Child Protection Orders.</p> <ul style="list-style-type: none"> • Linkage <p>The focus of this session is on child protection orders. It continues on from yesterday's session. Court Co-ordinator's will be required to have detailed knowledge of child protection orders. This knowledge will relate to the elements of the orders and the processes associated with applying for, extending, varying and revoking child protection orders.</p> <ul style="list-style-type: none"> • Outcomes <ul style="list-style-type: none"> ➤ Identify the key elements of child protection orders. ➤ To provide an overview of the process involved in applying for, extending varying and revoking a child protection order. ➤ Develop an understanding of some of the issues and complexities that may arise when making application for child protection orders. <ul style="list-style-type: none"> • Strategy <ul style="list-style-type: none"> ➤ General information in relation to CPO's and the process that is undertaken to make application for a CPO will be presented. ➤ Participants will be required to complete a Form 10: Application for a child protection order based on the information provided in the scenarios <ul style="list-style-type: none"> • Stimulus <p>Court Co-ordinators will be involved in taking applications for child protection orders through Court. They will also be involved in terms of a quality assurance role, providing advice and proofing applications and affidavits prior to these documents being lodged in court.</p>	<p>PP Slide 9/ Handout: Session Outcomes.</p>

Time	Content	Resources / Comments
	<p><u>ACTIVITY</u></p> <p>❖ CPO QUIZ – based on information included in the Session Plans named “Overview of CPO’s, and Part 2 Applying Process”</p> <p>Can be completed either in tables or as more of a Sale of the Century type of activity.</p> <p><u>***At the end of the Quiz – participants will complete a Form 10 in relation to the Jones Family*****</u></p> <p><u>Making Application for a Child protection order</u></p> <ul style="list-style-type: none"> • Jurisdiction <p>To make a child protection order the Children’s Court may be constituted by a Magistrate or Judge.</p> <p>In the Magistrates Court two Justices of the Peace can constitute a Children’s Court to adjourn proceedings and make interim orders. (Possibly more common in regional areas and does occur during the annual Magistrate Conference).</p> <p>Note: Magistrates Court Practice Direction No 9 or 2004. As from the 17th November, 2004 Magistrates are to be addressed as “Your Honour” and not as “Your Worship”.</p> <ul style="list-style-type: none"> • Who can apply? <p>Only an authorised officer of the DChS can make application for a child protection order.</p> <p>Note: As previously, advised Court Co-ordinators are not authorised officers and cannot make application for child protection orders.</p> <p>Under Section 54 of the CPA, 1999 all authorised officers have authority in their own right to apply for a child protection order. However, it is departmental policy that the decision to file an application for a child protection order must be approved by a Team Leader or Manager.</p> <p><u>Pre Court Processes</u></p> <p><i>The following information should be canvassed whilst working through the PP Slide “Application for CPO’s – Precourt processes”</i></p> <ul style="list-style-type: none"> • Material to be prepared and filed <p>Application for a child protection order is made by filing the following documentation with the court:</p> <ul style="list-style-type: none"> ➤ Form 10: Application for a child protection order ➤ Form 25: Affidavit by the applicant supporting the application. ➤ Form 17 – Recognised Aboriginal and Torres Strait Islander Agency - if the child/young person is an indigenous child. 	<p>Magistrates Court Practice Direction 9 of 2004. Included in manuals</p> <p>Guide for application for a CPO.</p> <p>Application for CPO – Precourt Processes. Included in manuals</p>

Form 10: Application for a child protection order

The completed Form 10 includes:

- The details of the applicant
- Grounds on which the application is made – this should outline in summary form, the key reasons why the child/young person is in need of protection and why this order is needed to secure that protection.
- Nature of the order sought – this is the type of child protection order sought and the duration sought.

Notice to the respondent parents and others with legal parenting rights. For example: information in relation to where and when the matter is to be mentioned in court.

Note: As opposed to applications for TAO and CAO, applications for child protection orders are not sworn documents.

If making application for more than one type of order for the same child, complete an application form for each of the orders.

Form 17: Recognised Aboriginal and Torres Strait Islander Entity

If the child/young person is an indigenous child, attach a Form 17: Recognised Aboriginal and Torres Strait Islander Entity to the application. This has the dual purpose of :

- Advising the parents of an indigenous child/young person that a representative of a recognised agency is involved and may be present in court.
- Advising the court which recognised agency will provide advice to the courts as required under section 6(3) of the *CPA, 1999*.

Time	Content	Resources / Comments
	<p>Form 25: Affidavit</p> <p>Affidavit of the applicant supporting the application</p> <p>Time restraints may mean the initial affidavit of the applicant is brief. However the affidavit should contain sufficient evidence to:</p> <ul style="list-style-type: none"> ➤ secure any interim child protection orders sought under Section 67 of the CPA, 1999 – <i>Courts powers to make interim orders on adjournment</i> ➤ enable the court to properly consider other orders on adjournment under Section 68 of the CPA, 1999 – <i>Courts other powers on adjournment of proceeding for child protection orders.</i> <p>The applicant may be required to provide further affidavit material at subsequent mention dates. It is best practice to provide an updated affidavit at each court mention.</p> <p>The applicants affidavit should contain:</p> <ul style="list-style-type: none"> ➤ details of allegations, concerns or circumstances giving rise to the application. ➤ Names and titles of those who investigated and assessed the allegations or who are working with the family/child/young person. ➤ Details of interview with the child/young person and parents, eg the parents explanation of harm to the child and the child disclosures ➤ An assessment of the harm and protective needs of the child/young person ➤ Details of departmental intervention or intervention by other agencies. This includes interventions that were assessed as necessary to ensure the child's/young person's protection but were refused by the parents or young person ➤ Details of other person's who will provide affidavit material relevant to the grounds of the application ➤ Where appropriate, indicate that the child/young person has been given information about the application (having regard to the child's/ young person's age and ability to understand). <p>Explain to the participants that on Day Five (Friday) a session will be conducted in relation to "Advanced Affidavit Writing". During this session affidavit writing will be looked at in detail.</p>	

Time	Content	Resources / Comments
	<p>Certificate of Exhibit</p> <p>A document mentioned in an affidavit must be attached and identified as an exhibit to the affidavit. For convenience, each separate exhibit is given a letter. Eg Exhibit "A", Exhibit "B" and so on.</p> <p>Form 26 – Certificate of exhibit – must be completed on the back of each exhibit.</p> <p>The Section 12 of the <i>Children's Court Rules, 1997</i> outlines the rules in relation to the use of exhibits.</p> <p>Filing the application</p> <p>Applications should be filed at least one business day before the proposed date for the appearance of the parties in court.</p> <p>Filing involves taking the documents to the court to be sealed (stamped with the Court's seal) by the Court Registrar or other officer authorised by the Registrar. Contact the court personnel first to negotiate the best time to do this. Note: different Courts will have different processes – you will need to establish the processes undertaken at your local court.</p> <p>At the time the application is filed the Registrar of the Children's Court will fix a time and place for the initial mention. This will be as soon as possible after the filing of the application.</p> <p>Information to Parents</p> <p>After the application is filed in court:</p> <ul style="list-style-type: none"> ➤ Personally serve a copy of each of the child's parents (as defined in Section 52 of the CPA, 1999). This should be done as soon as possible after the application is filed. Note: the application can be served by an officer other than the applicant if necessary ➤ Explain the nature of the application to the parents ➤ Complete the Form 22 – Affidavit of Service. <p>If the identity or whereabouts of a parent is unknown, make reasonable attempts to ascertain this information. You must inform the court what has been done to locate the parent. It may be necessary to seek direction from the court regarding what further attempts may be required if any.</p> <p>Attempts to locate a parent may include:</p> <ul style="list-style-type: none"> ➤ An Electoral Roll Check ➤ Transport Department Check ➤ Centrelink Checks 	

Time	Content	Resources / Comments
	<p>Be aware of issues which entitle a parent named on the application to confidentiality about their address. For example, if there are domestic violence issues or other reasons what a parent does not want the other parent to know their address, leave this information off the form served on the other parent.</p> <p>It is not acceptable practice for a parent not to be served with the application where it is possible to do so. If it is assessed that a child and/or parent will be endangered by another parent becoming aware of the application, leave of the court must be sought to not serve the dangerous parent.</p> <p>Method of Service</p> <p>The CPA, 1999 – Section 56 and the Children's Court Rules, 1997, rule 15 provide for the provisions in relation to service.</p> <p>Best practice is to serve the parents in person but if this is not possible the application can be served on the parents by leaving it or by sending it by post to the parent's residential address that is last known to the applicant.</p> <p>If a parent or child is represented by a solicitor, the documents may be served upon the solicitor (instead of personally serving them upon the party).</p> <p>Note: if the person to be served resides in another part of the state make arrangements for with the appropriate Child Safety Service Centre or Police in that area to serve the material.</p> <p>If the parents reside interstate our interstate counterparts maybe able to assist. The Interstate Liaison Officer may be able to assist with the contact details for the most appropriate interstate office.</p> <p>Affidavit of Service</p> <p>Form 22 – Affidavit of Service</p> <p>This verifies that:</p> <ul style="list-style-type: none"> ➤ Both parents were actually served with the child protection applications and ➤ The service was at least one full business day prior to the hearing of the application. <p>It may be necessary to prove to the court that attempts were made to serve the material. This can be done by swearing an affidavit outlining:</p> <ul style="list-style-type: none"> ➤ Date and times at which the residence was visited ➤ Other attempts made ➤ Any witnesses to these visit/attempts. <p>Information to the Child</p> <p>If the child is of an appropriate age, details of the application should be explained to the child.</p> <p>If considered appropriate a copy of the application can be provided to the child.</p>	

Time	Content	Resources / Comments
	<p><u>Application for CPO's – Possible court outcomes on adjournment</u></p> <p>Section 66, 67 and 68 of the <i>CPA, 1999</i>, outlines information in relation to the adjournment of proceedings.</p> <p>The Children's Court may adjourn the proceedings for a child protection application for a period of time, as decided by the court. The court must take into account the principle this it is in the child's best interests for the application to be decided as soon as possible (Section 66(3) of <i>CPA, 1999</i>).</p> <p>If you seek an adjournment:</p> <ul style="list-style-type: none"> ➤ Be clear as to why the adjournment is required ➤ Consider whether the length is consistent with the case plan ➤ Ensure that it is possible to complete the tasks that are intended within the adjournment period. <p>Use adjournment periods to</p> <ul style="list-style-type: none"> ➤ Obtain statements and assessment information to support the application. ➤ Complete assessments about the level of order which is appropriate at this stage of intervention. ➤ Complete assessments about options relevant to the application. For example: assessment of relatives as potential custodians. <p>Interim orders on adjournment</p> <p>When adjourning proceedings the court may make an interim child protection order under Section 67 of the <i>CPA, 1999</i>. These include the following:</p> <ul style="list-style-type: none"> ➤ Granting temporary custody of the child to Chief Executive. ➤ Granting temporary custody of the child to a suitable member of the child's family. ➤ Directing a parent not to have contact with a child. ➤ Directing a parent to have only supervised contact with a child. <p>Note: can have one or more of the following options. Duration is for the period of the adjournment.</p> <p>Other orders on adjournment</p> <p>When adjourning proceedings the court may make other orders of a procedural nature under Section 68 of the <i>CPA, 1999</i>. These include orders for:</p> <ul style="list-style-type: none"> ➤ A written social assessment report ➤ A medical examination and report ➤ Contact between the child and family ➤ Convening a Family Group Meeting firstly or review a caseplan ➤ A Court Ordered Conference ➤ Separate legal representation 	<p>Possible court outcomes on adjournment.</p> <p>Included in manuals</p>

Time	Content	Resources / Comments
	<p>Note: you can have more than one of these options.</p> <p><u>Social Assessments:</u></p> <p>If the court orders the applicant to provide a social assessment report to the court:</p> <ul style="list-style-type: none"> ➤ Arrangements must be made for the report to be completed. ➤ Ascertain the time required to complete the report. ➤ Whilst social assessments can be completed by departmental staff arrangements are normally made to have these report completed by practitioners outside the Department. This allows for the reports to be considered independent. <p>Note: If a Separate Representative is appointed they will normally make arrangements for the social assessment to be completed. In these situations the Separate Representative pays for the report to be prepared.</p> <p>If the Department makes arrangements for the report to be prepared then it is the Department responsibility to pay for the report.</p> <p>When the order for the assessment is made, ask the court if a copy of the completed report can be given to parents or their legal representative – this can only be done with the court's permission.</p> <p><u>Orders in relation to Contact</u></p> <p>Whilst the court can make an order about the child's contact with their family – the court must not make an order requiring the chief executive to supervise family contact with the child unless the chief executive agrees to supervise the contact.</p> <p><u>Court Ordered Family Group Meeting</u></p> <p>If the court orders a Family Group Meeting, the meeting should be attended by all relevant persons, family members and key stakeholders that might be engaged with the family. A record of this meeting will be attached in the form of a Caseplan and is an exhibit to an affidavit.</p>	

Time	Content	Resources / Comments
	<p><u>Application for CPO's – Post-court Process – adjournment of application</u></p> <p>Discuss with the participants the PP Slide: Post Court Processes – adjournment of application.</p> <p>Possible Outcomes:</p> <ol style="list-style-type: none"> 1. Adjournment with no order. 2. Procedural order only. 3. Interim child protection order only. 4. Interim child protection orders and procedural orders <p>Provide the participants with a copy of the letter that should be provided to parents once an interim child protection order has been made. <i>Advise the participants that this form is located in the share directory.</i></p> <p><u>Application for CPO's – Possible court outcomes on finalisation of application</u></p> <ul style="list-style-type: none"> • Making of a child protection order <p>Section 59 of CPA, 1999, outlines what the Magistrate needs to be satisfied of in order to make a child protection order. These include:</p> <ul style="list-style-type: none"> ➤ The child is a child in need of protection and the order is appropriate and desirable for the child's protection ➤ A family group meeting has been held or attempts to hold a family group meeting have been made. ➤ If the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made. ➤ The child's wishes or views, if able to be ascertained, have been made known to the court and ➤ The protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms. <p>Briefly canvas with the participants the PP Slide: Possible court outcomes on finalisation of application</p> <p><i>Note: information was canvassed in the previous session.</i></p>	<p>Post-court processes – adjournment of application. Included in manuals</p> <p>Letter for parents Re: interim CPO Included in manuals</p> <p>Possible court outcomes on finalisation of application. Included in manuals</p>

Time	Content	Resources / Comments
	<p><u>Application for CPO's – Post Court Processes – finalisation of application</u></p> <p>Discuss with the participants the PP Slide: Post-court processes – finalisation of application.</p> <p><i>Advise the participants that the letters to parents in relation to CPO's are generated by the system.</i></p> <p>Provide the participants with a copy of the brochure child protection orders – Information for parents</p> <p><u>Extension Variation and Revocation</u></p> <p>Child protection orders can:</p> <ul style="list-style-type: none"> ➤ Be extended ➤ Be varied ➤ Be revoked ➤ Be revoked and another order made in it's place. <p>Provide the participants with a copy of the "Child Protection Orders – Summary".</p> <p><u>Exercise: Completing an Application for a Child protection order</u></p> <p>Advise the participants that the following exercise involves the drafting of a Form 10 - Application for a child protection order.</p> <p>Using the information that has been provided get the participants to draft an application for a CPO for Jones family.</p> <p>Advise the participants that they only need to complete an application for one of the children.</p> <p>Allow the participants 15minutes to undertake this task</p> <p>Direct the participants to the good example of a Form 10 for Peter Jones that is provided in the manuals.</p> <p>Provide the participants with an opportunity to discuss the examples provided – do the participants agree with the information that is contained in the examples</p>	<p>Post Court process – finalisation of application. Included in manuals</p> <p>Child protection orders – Summary. Included in Manuals</p>

INFORMATION THAT MUST BE HIGHLIGHTED DURING THIS SESSION:

- Meaning of a parent and respondents
- Section 113 – involvement of non parties to proceedings
- Linking directly to child protection concerns – assessments/conclusions drawn linking to issues that are raised as causing harm or risk of harm to the child
- Long-term guardianship memo – include Statement of Standards
- Directive orders being time limited when a Family Court order may be more appropriate to meet the safety needs of the child
- S59 being fulfilled – clarity re: demonstrating the most appropriate child protection order to seek, length – does it match the caseplan regarding the outline for intervention
- Must serve material there is “no dispensation of service”
- Form 10 – tips to complete ie do the current child protection concerns and assessment section of affidavit first and transpose into the Form 10!
- Shouldn't be asking for final orders to be made if parents are contesting, don't turn up for one court ordered conference, mentally challenged, or solicitor doesn't show – not appropriate re: natural justice processes
- Must be affidavit lodged with application at first mention of matter – this is best practice.
- Refer to Practice Manual regarding “how to locate a parent”
- Correct completion of Affidavits of Service re: time, exactly what material has been served, and being clear about how you know the person on whom you served the material
- **Medical examination ????? (was to be discussed in Team Mtg)**
- Consent letter template – make them accurate and reflect what is being sought, length of order and what is to occur during the intervention re: CPO

❖ **Practice Issues Discussion – as required by participants**

CPO QUIZ and ANSWERS

1. Name the section of the Act that outlines the meaning of a parent for a CPO application? **S52**
2. Name the section of the Act that outlines the types of child protection orders that can be applied for? **S61**
3. Name the three non-custodial child protection orders?
 - **Directive Orders Re: actions by the parents**
 - **Directive Orders Re: contact by the parents**
 - **Supervision Orders**
4. Name the two custodial child protection orders?
 - **Custody to the chief executive**
 - **Custody to a relative**
5. Name the four guardianship child protection orders?
 - **Short term guardianship to the Chief Executive**
 - **Long term guardianship to the Chief Executive**
 - **Long term guardianship to a relative**
 - **Long term guardianship to another suitable person**
6. Only an authorised officer of the Department of Child Safety can make application for a child protection order? **TRUE** or **FALSE**
7. Form 10 - Child protection applications are sworn documents? **TRUE** or **FALSE**
8. There is no ability to dispense with service for court material on a parent? **TRUE** or **FALSE**
9. An affidavit of service needs to include the time in which court material was served on the respondent? **TRUE** or **FALSE**
10. Are the Statement of Standards applicable to a child who is subject to a Long-term guardianship order to another suitable person? **YES** or **NO**
11. Can the Department apply for a Child Protection Order granting custody to the Chief Executive for a period of 13 months? **YES** or **NO**
12. Section 59 asks the Department to identify the most appropriate child protection when a child is deemed "in need of protection"? **TRUE** or **FALSE**

13. Which section of the CPA 99 can an order be sought for a court ordered conference to occur between the parties? **S68 (e)**
14. What title do you use to address a Magistrate in Children's Court?

Your Honour

15. Which section of the Act stipulates that the caseplan developed for a child needs to be endorsed within 7 days? **S51Q**
16. Name two interim child protection orders that can be made on adjournment of proceedings under S67 of the CPA 99?
- **Granting temporary custody of the child to the CE**
 - **Granting temporary custody of the child to a suitable member of the child's family**
 - **Directing a parent not to have contact with a child**
 - **Directing a parent to have only supervised contact with a child**
17. Under which section of the CPA 99, does the Department need to provide the court with the child's views and wishes, if able to be ascertained, before a child protection order can be made? **S59 (1) (d)**

CHILD PROTECTION ORDERS

Part 4 Sections 52-65 of the *Child Protection Act 1999*

When to apply for a child protection order

An application for a child protection order can only be made when the protection and care needs of the child are unlikely to be met by a less intrusive intervention, such as, intervention with parental agreement.

If the question of whether an order is necessary is still to be determined, then an application for a child protection order is premature, and either an assessment order should be sought, or the assessment is to proceed with parental agreement.

Whilst the decision is being made about the type of ongoing intervention or the type of order required, the child's safety needs must be met, and a placement with the parent/s agreement (under a care agreement), an assessment order or an interim child protection order may be required.

Deciding which child protection order is appropriate

When deciding which is the most appropriate child protection order for a child, the CSO is to:

- ensure that, having regard to the principals of the *Child Protection Act 1999*:
 - the child and the child's family have an opportunity to participate in the decision; and
 - the proposed order to be sought does not exceed the level of intervention needed to secure the child's safety;
- ensure the recognised entity is given the opportunity to participate in the decision-making about the most appropriate order for an Aboriginal or Torres Strait Islander child;
- determine the most appropriate order based on an assessment of the individual circumstances relating to each case, including:
 - what the child needs to be safe (where applicable, this consideration will be informed by the most recent safety assessment);
 - the strengths and needs of the child and family (this decision will be informed by the most recent child and parental strengths and needs assessments); and

- what level of intervention is needed to meet the child's protection and care needs (consider the child's need for stability and long-term care arrangements, as appropriate).

Deciding which order is appropriate to recommend

The types of child protection orders reflect the needs of children and their families and the case plan goal, either reunification or out-of-home long-term stable living arrangements. Short-term orders are appropriate while efforts are being made to reunify a child and their family. Long-term orders are appropriate when it has been determined that a child's protection and care needs are to be met through long-term out-of-home care.

In deciding which order is appropriate to recommend, the following broad issues will be considered:

- whether the child needs to be removed from home under an order;
- whether ongoing intervention can occur (or is occurring) with the child residing at home;
- the length of time needed to work towards meeting the child's case plan goal; and
- the purpose of the order, that is, whether efforts are being made to reunify the child and family, or a long-term out-of-home care placement is considered necessary.

More specifically, the CSO will consider the following issues related to the child's family circumstances:

- Does the child need protection from, or need to be removed from the care of, both parents (where applicable, this consideration will be informed by the most recent safety assessment)?
- If the risk of harm relates to one parent only, is the other parent, with support, able to protect the child?
- Are there relatives who have been assessed as able to assume a protective role?
- Is contact with one or both parents to be restricted for safety reasons?
- Is there conflict or harmony between the prospective kinship carers and the parents?
- Are both parents involved and contactable?
- Are the parents able and willing to be involved in case planning?
- If one parent is not contactable or involved, is that parent likely to oppose case planning decisions?

These general considerations should be taken into account alongside the specific information outlined in the Child Safety Practice Manual.

Court Coordinator role

Court Coordinators (CC) will be involved in taking applications for child protection orders through Court. The role of the CC will be to:

- provide quality assurance
- provide advice
- proofing applications and affidavits
- have a role in co-ordinating the referral of contested applications to the CSU
- have a role in conjunction with CSU and Crown Law in overseeing the preparation of material for a hearing.

Hearsay and the evidence of children

In practice children are not called to give evidence in child protection proceedings. The evidence of a child who is subject to a proceeding will be hearsay. A child's evidence should be put to the court, without embellishment, using the words which in making the disclosure, the child used itself. It should be reported to the court in an affidavit what the child said, using the child's own words and give details of the circumstances under which the disclosure was made, ie when and where and significantly, what if anything, prompted the child to make the disclosure (for example whether the disclosure was spontaneous).

- You should try not to rely on hearsay evidence if you can avoid it and only use it as a last resort.
- Use the personal pronoun – I did this or I contacted the Police and they told me (as opposed to the Police were contacted and it was reported..)
- Ensure to identify the source of the hearsay – I spoke with Mr Smith from...and he gave me the following information...



Witnesses

The applicant relies upon material (usually affidavits) filed in the court and served upon the respondent. Generally speaking the applicant will not call people to give oral evidence. However the respondent may nominate any person named in the applicants material and that person may be cross-examined by the respondent, as to the evidence which he/she has given.



Points to remember

- ☐ Be accurate and factual
- ☐ Use plain English
- ☐ Be clear in expressing your case
- ☐ Consider headings, where relevant to separate issues and events
- ☐ Avoid lengthy sentences or making the document too wordy
- ☐ The material should be relevant to the issues
- ☐ Try to avoid the use of hearsay
- ☐ Avoid the use of jargon unless it is necessary to express the point. Where jargon is used an attempt should be made to explain its meaning in clear terms.

Remember, the more familiar you are with the requirements of the court, the better guided you are in completing your affidavits.

**Guidelines for
Decision-making
Regarding types of
Child Protection Orders**

Child Protection Orders – Summary

Child Protection Orders (CPO)	
Purpose	<p>CPOs are used during the ongoing intervention phase of child protection.</p> <ul style="list-style-type: none"> ▪ CPOs are therefore made to authorise ongoing intervention to achieve the child's protection, when parental consent for the intervention cannot be obtained and ▪ To secure ongoing custody or guardianship where this is required to achieve the child's protection.
Duration	<p>Non-custodial short term orders – Any duration to a maximum of one (1) year</p> <p>Short term custody or guardianship orders – Any duration to a maximum of two (2) years</p> <p>Long term guardianship orders – To eighteen (18) years of age</p>
Types of CPO's	<p>Non-custodial short term orders</p> <ul style="list-style-type: none"> ▪ Directive orders re contact by parents ▪ Directive orders re actions by parents ▪ Supervision orders <p>Custody or guardianship orders</p> <ul style="list-style-type: none"> ▪ custody orders – to CE ▪ custody orders – to relative ▪ Short term guardianship orders – to CE <p>Long term guardianship orders</p> <ul style="list-style-type: none"> ▪ Long term guardianship orders – to CE ▪ Long term guardianship orders – to relative ▪ Long term guardianship orders – to other suitable person
Application process	<p>Application can only be made by authorised officers of the Department of Child Safety.</p> <p>Application is made to a Court.</p>
Obtaining an order	<p>To make a CPO, the magistrate needs to be satisfied that:</p> <ul style="list-style-type: none"> ▪ The child is a child in need of protection and the order is appropriate and desirable for the child's protection. ▪ A family group meeting has been held or attempts to hold a family meeting have been made. ▪ If the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made ▪ The child's wishes or views, if able to be ascertained, have been made known to the court and ▪ The protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms. <p>Also before making a CPO regarding custody/guardianship of a child to a person other than the CE, the Court must have regard to any report given, or recommendation made, to the court by the CE about the person, including a report about the person's criminal history, domestic violence history and traffic history.</p>
Extension, variation & revocation	<ul style="list-style-type: none"> ▪ A CPO can be extended. ▪ A CPO can be varied. ▪ A CPO can be revoked. ▪ A CPO can be revoked and a new order made in its place

Directive order - S61 (a)

Directing a parent to do or refrain from doing something related to the child's protection

This order is appropriate when ...

- The child can remain at home, so long as the parents take certain action (or cease certain activity)
- The parents will not take the action (or cease) on a voluntary basis
- The action is able to be clearly defined and what is required of them is easily understood by the parents
- A specific order is able to be made by the court and no court-ordered supervision of the directive is required
- Failure on the parents' part to keep to the order will not have immediate safety consequences for the child
- The parents are likely to adhere to the recommended order.

Guidelines for use:

- The order must be specific, not general (eg "take the child to the hospital clinic for treatment every Thursday", rather than "provide adequate medical care"). If the order needs to be general, a protective supervision order would be more appropriate.

Sections of the Act which outline obligations and rights in relation to this order:

Section 73

Directive order – S61 (b) (i) and (ii)

Directing a parent not to have contact with a child or to have only supervised contact

This order is appropriate when ...

- The child could remain at home with a protective parent if the offending parent was prevented, or restricted, from contact
- The child could be placed in a voluntary placement, eg with relatives, if the offending parent was prevented, or restricted, from contact (if there is a protective parent to consent to the placement)
- There is a Family Court contact order which needs to be overridden for child protection reasons (allowing the protective parent to apply for variation of the Family Court order)
- There is a need to prevent a parent from harassing the child in a significantly harmful way (eg telephone threats). In this case, the order may be made in conjunction with any other child protection order
- The child could be safe if the contact with the offending parent was supervised, and there is a person willing to provide the supervision

Guidelines for use:

- Directive orders can not be used to effectively deny *both* parents contact – when that is required, a custody order is more appropriate, as someone still has to exercise custody/guardianship over the child
- Similarly, directive orders about contact are not appropriate when the child is living with their only parent – the order should not be used in a way which would leave the child “at home alone”
- Supervision by someone could range from contact visits to someone moving into the home temporarily to ensure the child was not left alone with the offending parent. The supervising person must be aware of the proposed order and voluntarily agree to their role – they are not ordered
- It is not appropriate to use the order in a way which would effectively deny someone entry to their own home, except on a very temporary basis
- A directive order concerning contact may be made conjointly with another type of child protection order, eg a directive order relating to contact and a protective supervision order

Directive order – S61 (b) (i) and (ii)

Directing a parent not to have contact with a child or to have only supervised contact

Sections of the Act which outline obligations and rights in relation to this order:

Section 73

Protective supervision order – S61 (c)

Requiring the chief executive to supervise the child's protection in relation to particular matters

This order is appropriate when ...

- The child could remain safely at home with supervision and direction by the DChS being enough to prevent harm to the child
- It is possible to specify the areas relating to the child's care which are to be supervised by the DChS
- Failure on the parents' part to keep to any directives by the DChS will not have immediate safety consequences for the child
- The intervention needed (with the child at home) will not be accepted by the parents on a voluntary basis

Guidelines for use:

- This order can be used when general conditions in relation to the care and welfare of the child need to be supervised.

Sections of the Act which outline obligations and rights in relation to this order:

Sections 73, 77 and 78

Custody order – S61 (d) (ii)

Granting custody of the child to the chief executive

This order is appropriate when ...

- The child cannot be safely left at home using a lesser order
- It is appropriate for the parents to retain guardianship, ie at least one parent is available and involved in planning
- It is not necessary to impose a 'no contact' condition on a parent
- It is not possible or appropriate to make the short-term custody order in favour of a relative

Guidelines for use:

- If it is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, then a guardianship to the chief executive order should be sought (if the order is short-term). Guardianship cannot be removed from just one parent and not the other.
- If it is necessary to restrict a parent from all contact with the child, then a guardianship order should be sought. It is not appropriate for a parent retaining guardianship to be prevented from all contact with the child

Sections of the Act which outline obligations and rights in relation to this order:

Sections 73, 74 and 75

Custody order- S61 (d) (i)

Granting short term custody of the child to a family member

This order is appropriate when ...

- The child cannot be safely left at home using a lesser order
- There is an appropriate relative able and willing to assume short-term custody for the purpose of protecting the child
- It is not necessary to impose a 'no contact' condition on a parent
- There is no significant conflict between the parents and the relatives
- The relatives will facilitate appropriate contact between the child and parents
- The relatives are able and willing to work with the DChS in planning for the child
- It is appropriate for the parents to retain guardianship, ie at least one parent is available and involved in planning
- The relatives understand and are willing/able to meet their obligations under the Act
- The relatives are assessed as suitable

Guidelines for use:

- If it is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, then a guardianship to the chief executive order should be sought (if the order is short-term). Guardianship cannot be removed from just one parent and not the other.
- If there is uncertainty about one of the above factors (eg the relatives ability to ensure positive contact between the child and parents), it may be appropriate to seek a custody to the chief executive order, but still place the child with the relatives
- If it is necessary to restrict a parent from all contact with the child, then a guardianship order should be sought. It is not appropriate for a parent retaining guardianship to be prevented from all contact with the child

Sections of the Act which outline obligations and rights in relation to this order:

Sections 73, 79 and 80

Short term guardianship order –S61 (e)

Granting short term guardianship of the child to the chief executive

This order is appropriate when ...

- The child cannot be safely left at home using a lesser order
- There is no available parent to exercise guardianship and be involved in planning; or the parents' availability is erratic
- It is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, or because of the parent's current incapacity to exercise guardianship
- It is assessed that the parent will fail to exercise appropriate guardianship on a significant issue (eg a needed medical procedure) and therefore it is in the child's interests for guardianship to be vested in the chief executive
- Planning/work with the family to resolve the child's protective needs is still occurring/has not been completed.

Guidelines for use:

- Given the principle that the order used should not exceed the level of intervention needed, this order may not be used frequently. It will be preferable for parents to retain guardianship where possible

Sections of the Act which outline obligations and rights in relation to this order:

Sections 73, 74 and 75

Long term guardianship – S61 (f) (iii)

Granting long term guardianship of the child to the chief executive

This order is appropriate when ...

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of a relative
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of another person (eg a foster carer)
- There are significant ongoing safety concerns which are best managed with the child in the chief executive's guardianship
- It has not yet been possible to establish a suitable long-term placement for the child
- There is significant conflict between the parents and any relative who could otherwise assume guardianship
- The child is in the care of a carer from whom it is not appropriate to move the child, but the carer is unable to meet the criteria for assuming long-term guardianship

Guidelines for use:

- This order can only be made if the other long-term guardianship options have been considered and there are reasons why they are not appropriate in the particular case
- If, with ongoing assessment, it becomes apparent that circumstances have changed and a long-term guardianship order could now be made in favour of a relative or other person, a new order should be obtained to achieve that
- When a child is to 'grow up in care' and does not yet have a stable placement, this order may be made pending the location of a suitable person to assume long-term guardianship of the child after an appropriate settling period

Sections of the Act which outline obligations and rights in relation to this order:

Sections 74 and 75

Long term guardianship order – S61 (f) (i)

Granting long term guardianship of the child to a family member

This order is appropriate when ...

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term
- There is an appropriate relative able and willing to assume long-term guardianship of the child
- It is not appropriate for a Family Court order to be sought because there are ongoing protection concerns (eg the risk of the parent seeking return of the child)
- There is no significant conflict between the parents and the relatives such that this would make the order insecure
- The relatives will facilitate appropriate contact between the child and parents
- The relatives will deal appropriately with identity issues for the child and meet the child's cultural needs
- The relatives are assessed as suitable and likely to remain so in the long-term
- The relatives understand and are willing/able to meet their obligations the Act
- If the child is old enough to decide – the child agrees with the relatives assuming guardianship

Guidelines for use:

- Long-term orders (to 18 years) can only be made as guardianship orders. The rationale for this is that the person with whom the child is living permanently needs to be able to exercise guardianship if the child is to grow up in their care.
- It may be not so much inappropriate as not *possible* for a Family Court order to be sought (for financial reasons). While strictly speaking this is not a reason to seek/retain a long-term child protection order, it will sometimes be unavoidable
- If it is appropriate to limit the child's contact with a parent or significant family member, this must be a condition of the order – the relatives with guardianship can not impose such a restriction themselves
- If family contact is likely to be the subject of ongoing dispute, it will be more appropriate to make a long-term guardianship order to the chief executive.

Sections of the Act which outline obligations and rights in relation to this order:

Long term guardianship order – S61 (f) (ii)

Granting long term guardianship of the child to another suitable person

This order is appropriate when ...

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term
- The child is already living in the care of an appropriate person (eg foster carer) who is willing to assume long-term guardianship of the child
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of a relative
- There is no significant conflict between the parents and the child's carer such that this would make the order insecure
- The child's carer has an accepting and relaxed attitude towards the child's parents and will facilitate appropriate contact between the child and parents and between the child and other members of the child's family
- The child's carer will deal in a positive way with helping the child understand their identity and is able and willing to meet the child's cultural needs
- The carer is assessed as suitable and likely to remain so in the long-term
- If the child is old enough to decide – the child agrees with the carer assuming guardianship

Guidelines for use:

- If it is appropriate to limit the child's contact with a parent or significant family member, this must be a condition of the order – the carer with guardianship can not impose such a restriction themselves
- If family contact is likely to be the subject of ongoing dispute, it will be more appropriate to make a long-term guardianship order to the chief executive
- If the carer does not have an accepting and positive attitude towards the child's natural family (even where contact is restricted for safety reasons) it will be more appropriate to make a long-term guardianship order to the chief executive.

Sections of the Act which outline obligations and rights in relation to this order:

Section 80

The Jones Family: Assessments and case developments whilst subject to the Court Assessment Order.

On the 16th January, 2009 a court assessment order was made in relation to the child, Peter Jones. This order was for a period of four weeks.

On the 17th January, 2009 a family meeting was held with Barry Jones and Denise Sutton. During this meeting the details of the court assessment order were explained and arrangements were made for Mr Jones and Ms Sutton to have supervised visits with Peter, twice per week, for the duration of the court assessment order. Amanda Hall sought permission from Denise Sutton to interview Gary Sutton. She refused stating that it would be too upsetting and confusing for Gary to be interviewed by departmental staff.

On the 17th January, 2009 the recognised entity, the Karbul Indigenous Placement Agency, was advised that Peter was subject to a court assessment order granting custody to the Chief Executive for a period of four weeks.

In an attempt to locate Peter's mother contact was made, on the 18th January, 2009, with the Royal Brisbane Hospital, which was where Peter was born. The Department was provided with an address in New South Wales. A letter was sent to this address by registered mail but this was returned by Australia Post. The explanation provided by Australia Post as to why the letter could not be delivered was that Mary Bell was no longer residing at this address.

Attempts to locate Mary Bell through Centrelink were commenced. To date there has been no response.

On the 19th January, 2009 further attempts were made by police officers Jack Campbell, Susan Wall and CSO, Amanda Hall to interview both Barry Jones and Denise Sutton. Both refused to be interviewed.

On the 2nd February, 2009 the Queensland Police Service advised that neither Barry Jones nor Denise Sutton have any previous criminal history.

On the 6th February, 2009 staff from the Karbul Indigenous Placement Agency were invited to attend a Family Group Meeting (FGM) in relation to Peter to be held on the 10th February, 2009. A representative from the Karbul Indigenous Placement Agency stated that they would attend the Family Group Meeting and requested that a copy of the CAO application, the CAO and an agenda for the meeting being forwarded to them prior to the FGM.

On 7th February, 2009 Dr Anthony Lewis advised the Department of Peter's current situation and possible rehabilitation requirements. The following information was provided:

- It is difficult to say with any certainty the long-term prognosis for Peter.
- It is highly likely that Peter will have some motor dysfunction on the left side of his body.
- Peter may have difficulty walking.
- Peter may have some long term learning problems.
- Whilst Peter's rehabilitation needs are likely to be on-going throughout his childhood, they will be intensive over the next twelve to twenty-four months.
- A more definitive prognosis could be given after one to two months of rehabilitation.
- Peter will require a high level of support from his caregivers in order to assist him

Form 10

Childrens Court Act 1992
Child Protection Act 1999
(Section 52)

APPLICATION FOR A CHILD PROTECTION ORDER

CHILD: PETER JONES

Date of Birth: 16th December 2006
Sex: Male

Aboriginal: Yes
Torres Strait Islander: No

APPLICANT DETAILS:

Name: Amanda Hall, an authorised officer under the *Child Protection Act 1999*
Address: 30 - 40 Quay Street, Brisbane

APPLICATION DETAILS:

This is an application for a child protection order.

The grounds on which this application is made are:

Peter Jones is currently subject to a court assessment order. This order will expire on the 15th February, 2009. The child came to the attention of the Department on the 9th January, 2009 when the child was presented to the Emergency Department of Redcliffe Hospital with head injuries and significant bruising to his body. Given the serious nature of the injuries the child was transferred to the Mater Children's Hospital.

The child's injuries on admission included:

- A subdural haemorrhage (bleeding between the skull and brain).
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, which was estimated to be approximately two days old.
- Bruising to left side of the body, which was estimated to be approximately two days old.

These injuries are considered to be non-accidental by medical professionals. The child's father, Barry Jones, has been charged with Grievous Bodily Harm in relation to the child's injuries.

The child is considered to be at risk if returned to his father's care due to the following:

- The child has suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
- Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Barry Jones and his partner remain unresolved.
- Inconsistencies exist between the timing of the child's injuries with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented to the Redcliffe Hospital. Barry Jones and his partner maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital.

- The child is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers over the next twelve to twenty-four months. The Department has concerns regarding Barry Jones' ability to provide this level of care.

Mr Jones has reported that the child's mother, Ms Mary Bell, suffered complications whilst giving birth to Peter and as a result she was left with an intellectual disability and requires twenty-four hour care. The mother's current whereabouts are unknown. Attempts have been made to locate the child's mother but to date these have been unsuccessful.

This application seeks an order:

Granting custody of Peter Jones to the Chief Executive.

The order is sought for a period of two years

Signature of Applicant:

Date: 19th January, 2009

RESPONDENTS' NAME/S

Mother's name: Mary Bell
Address: Unknown

Father's Name: Barry Jones
Address: 24 Lynfield Drive, Caboolture

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the Childrens Court at

Place: Brisbane Children's Court at 30-40 Quay Street, Brisbane
Date: 22/01/09
Time: 2pm

NOTE: IF YOU DO NOT ATTEND THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.

Registrar:
Date:

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child: Peter Jones – (DOB: 16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Amanda Hall, Child Safety Officer of 30-40 Quay Street in the State of Queensland, make oath and say as follows:-

1. I am an officer of the Department of Communities (Child Safety) (hereinafter referred to as "the Department"). I am appointed as an authorised officer under the *Child Protection Act 1999*. I hold a Bachelor of Social Work Degree from the University of Queensland, which was conferred in 1997.

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

2. I am the applicant seeking a child protection order granting custody of the subject child, Peter Jones, to the Chief Executive for a period of two years. This affidavit is sworn in support of my application.

Family Details

3. Barry Jones (hereinafter referred to as "Mr Jones") is the father of the subject child.

I first met Mr Jones on the 11th January, 2009 at the Mater Children's Hospital whilst undertaking an initial assessment in relation to his son, Peter Jones. Since this time I have met with Mr Jones on a number of occasions.

4. During my discussions with Mr Jones on the 11th January, 2009 he identified the mother of Peter to be Ms Mary Bell (hereinafter referred to as "Ms Bell"). In relation to Ms Bell, Mr Jones advised of the following:

- a) Ms Bell suffered medical complications whilst giving birth to Peter. This left Ms Bell intellectually impaired and requiring twenty-four hour care.
- b) Ms Bell's mother and father, Sandra and Gordon Bell, travelled to Brisbane and assumed responsibility for their daughter after she became disabled.
- c) Mr Jones had not had contact with Ms Bell since the birth of their son.
- d) Mr Jones is not presently aware of Ms Bell's address.
- e) Ms Bell is of Aboriginal descent.

5. I have attempted to locate Ms Bell. On the 18th January, 2009 I contacted the Royal Brisbane Hospital, which was the hospital where Peter was born. They provided me with an address in New South Wales. I attempted to contact Ms Bell,

by posting a letter to this address by registered mail. This letter was returned to me by Australia Post. The explanation provided as to why the letter could not be delivered was that Ms Bell was no longer residing at the address provided. I am currently attempting to locate Ms Bell through Centrelink.

6. Denise Sutton (hereinafter referred to as "Ms Sutton") is Barry Jones' current partner. She is presently residing at the same address as Mr Jones. I first met Ms Sutton at the Mater Children's Hospital on the 11th January, 2009, whilst undertaking an initial assessment in relation to Mr Jones' son, Peter Jones. I have met with Ms Sutton on numerous occasions since this time.
7. Ms Sutton has one son, Gary Sutton (hereinafter referred to as "Gary") (DOB: 23/11/2000) from a previous relationship. Gary resides with Ms Sutton and Mr Jones.
8. I have met Gary Sutton on the 11th January, 2009 whilst undertaking the initial assessment with Ms Sutton. I have subsequently asked Ms Sutton if I could interview Gary at his school in relation to the incident involving Peter. Ms Sutton refused this request stating that it would be too upsetting and confusing for Gary to be interviewed by departmental staff. Therefore I have not been able to have further contact with Gary Sutton at this time.
9. Peter Jones (hereinafter referred to as "Peter") is the subject child.

Current Departmental Involvement

10. Peter is currently the subject of a court assessment order, granting custody to the Chief Executive for a period of four weeks. This court assessment order was made

in Brisbane Children's Court on 15th January, 2009. This order is due to expire on the 15th February, 2009. Exhibit "A" to this application is a true copy of the Form 7 – court assessment order.

History of Departmental Contact

11. I have prepared a report outlining previous child protection history in relation to Mr Jones and Ms Sutton. This report was prepared from departmental files and records. Exhibit "B" to this affidavit is a true copy of this report.
12. As outlined in Exhibit "B", departmental files indicate that a notification was received on the 3rd March, 2008 by the Logan Child Safety Service Centre in relation to the child, Gary Sutton. The notifier alleged that the child had been physically assaulted by Mr Jones, with a leather strap. It was alleged that the child was hit on his legs and hands. The outcome of the initial assessment was "no assessment was possible due to client reasons – the clients had moved prior to the initial assessment being undertaken".
13. On the 11th January, 2009 I spoke with Mr Jones and Ms Sutton regarding the above concerns. Ms Sutton stated that she could not remember the alleged assault on Gary as it was so long ago; however she stated that "both of them tell me when something happens like that. There are no secrets between us. I have never seen any marks or bruising on Gary. I have never had any concerns about how Barry disciplines Gary. Sometimes he needs a firm hand."
14. Mr Jones admitted that he has smacked Gary with a leather strap once. He indicated that he did not hit him with "any real force" and that he had taken this

action as Gary was "playing up" and not following his instructions.

15. Mr Jones stated that on this occasion, Gary had locked himself in the family car and was playing with matches. He refused to open the car despite numerous requests by him so he ended up calling the RACQ to unlock the car. Once the car was unlocked he removed the matches from Gary and smacked him with the belt he was wearing for being so disobedient and putting himself at risk and damaging the car. Gary had burnt holes in the car seats. He said that at the time Denise was at work.

Current Child Protection Concerns

16. On the 9th January, 2009 a child protection notification was recorded at the Caboolture Child Safety Service Centre. Peter was presented at the Redcliffe Hospital Emergency Department, by ambulance, with head injuries and significant bruising to his body. The injuries were of a serious nature, resulting in Peter being immediately transferred to the intensive care unit of the Mater Children's Hospital.
17. The notifier advised the Department of the following:
 - a) Mr Jones advised that he and Ms Sutton were in the living room when they heard a crash from the kitchen. Mr Jones went to the kitchen and found Peter lying on the ground amongst some cereal boxes and other food items. He appeared to be "fitting". Mr Jones presumed that Peter had fallen while trying to climb up on his high chair to get some food.
 - b) Mr Jones advised that given Peter appeared to be "fitting" he had immediately called an ambulance.

- c) When Peter was presented at the Redcliffe Hospital, Mr Jones and Ms Sutton appeared to be very distressed. They also appeared to be generally concerned for Peter's welfare.
18. On the 11th January, 2009 I spoke with Doctor Anthony Lewis, a consulting paediatrician, from the Mater Children's Hospital. He advised that Peter's injuries on admission included:
- a) A subdural haemorrhage (bleeding between the skull and the brain);
 - b) Retinal haemorrhaging in both eyes;
 - c) Bruising to left side of the face, which was estimated to be approximately two days old;
 - d) Bruising to the left side of the body, which was estimated to be approximately two days old.
19. Dr Lewis described Peter's injuries as being non-accidental. This was on the basis that the explanations offered by Mr Jones as to how the injuries occurred were not consistent with his assessment of the presenting injuries, which were of a serious nature. Dr Lewis stated that the retinal haemorrhaging in both eyes was consistent with a child who has been shaken. Dr Lewis further indicated that it was likely that Peter had suffered a severe blow to the head. Dr Lewis also stated that the timing of the injuries offered by Mr Jones varies from his professional opinion, which suggests that the injuries occurred approximately twenty-four to forty-eight hours prior to child's admission to the Redcliffe Hospital.
20. Mr Jones was interviewed on the 11th and 12th of January, 2009. Jack Campbell
-

and Susan Wall, Police Officers attached to the Brisbane Child Abuse Unit, conducted these interviews. I was also present when these interviews were conducted. Mr Jones maintained that he and Ms Sutton were in the living room when the child was injured. He stated that he did not actually see how the injuries were caused but the only possible explanation is that the child fell whilst climbing up his on his high chair. Mr Jones further stated that he "called an ambulance, immediately, once he saw Peter lying on the ground having what appeared to be a fit".

21. During the interview on the 12th January, 2009 it was put to Mr Jones that the explanation he had provided was not consistent with the presenting injuries. The issue of timing between when the injuries occurred and when the child was presented to the Redcliffe Hospital was also raised.
22. In response to this Mr Jones started banging the table and began yelling "you are all out to get me.... I can't fucking believe this..... I'm not saying anything else; you guys will just twist my words.... You don't know what happened and you're trying to pin it on me.....you've got no fucking proof....my kid's lying there nearly dead and you're trying to screw me for this.....this is so fucking typical of the cops and welfare". Mr Jones terminated the interview by walking out.
23. Prior to the conclusion of the interview Mr Jones once again indicated that he was not willing to discuss the events of the 9th January, 2009 again with either the Police or the Department.
24. Ms Sutton was also interviewed on the 11th and 12th January, 2009. These

interviews were also conducted in the presence of Police Officers, Jack Campbell and Susan Wall. I was also present during these interviews. During both interviews Ms Sutton maintained that she was in the living room with Mr Jones, when she heard a large bang come from the kitchen. She stated that whilst she did not witness the incident, Peter's injuries must have occurred whilst he was attempting to climb up on his high chair. Ms Sutton advised that when she and Mr Jones found Peter lying on the floor Mr Jones had immediately called an ambulance.

25. On the 12th January, 2009, Sharon Upton, Team Leader for Child and Family Team at the Caboolture Child Safety Service Centre, and myself participated in the Suspected Child Abuse and Neglect (SCAN) forum at the Mater Hospital (hereinafter referred to as "Mater SCAN"). Based on the inconsistencies between the presenting injuries and the explanations offered by Mr Jones and Ms Sutton the Mater SCAN team were of the opinion that the child was "at risk". Given that Mr Jones was no longer willing to cooperate with the Department and the Police's inquiries it was recommended that the Department apply for a court assessment order to gain custody of the child, whilst further assessments were undertaken.
26. On the 19th January, 2009 further attempts were made by Jack Campbell, Susan Wall, and myself to interview Mr Jones and Ms Sutton in relation to the alleged incident on the 9th January, 2009. Mr Jones and Ms Sutton refused to discuss the matter further.
27. Criminal history checks were undertaken in relation to both Mr Jones and Ms

Sutton. On the 2nd February, 2009 the Queensland Police Service advised me that neither Mr Jones nor Ms Sutton have any previous criminal history.

28. On the 7th February, 2009 I met with Dr Lewis to discuss Peter's current situation and rehabilitation requirements. Dr Lewis advised me of the following:
- a) It is difficult to say with any certainty the long-term prognosis for Peter.
 - b) It is highly likely that Peter will have some motor dysfunction on the left side of his body.
 - c) Peter may have difficulty walking.
 - d) Peter may have some long term learning problems.
 - e) Whilst Peter's rehabilitation needs are likely to be on-going throughout his childhood, they will be intensive over the next twelve to twenty-four months.
 - f) A more definitive prognosis could be given after one to two months of rehabilitation.
 - g) Peter will require a high level of support from his caregivers in order to assist him in the rehabilitation process.
 - h) Dependent upon his rate of recovery, Peter is likely to remain in hospital until mid-April, 2009.
29. On the 9th February, 2009, Jack Campbell advised me by telephone that he had arrested and charged Mr Jones with one count of Grievous Bodily Harm, as a result of the injuries that Peter had sustained. He further advised that Mr Jones had been granted watchhouse bail, and there were no conditions that would prohibit Mr Jones from having contact with Peter. I was further advised by Officer

Campbell that this matter has been listed for mention in the Caboolture Magistrates Court on the 22nd February, 2009.

30. The outcome of the initial investigation in relation to the notification received at the Caboolture Child Safety Service Centre on the 9th January, 2009 was substantiated for physical and emotional harm in relation to Peter and substantiated at risk of physical and emotional harm in relation to Gary.
31. On the 10th February, 2009, Mater SCAN recommended that the Department make application for a child protection order, granting custody of Peter to the Chief Executive for a period of two years. This recommendation was based on the following:
- a) Peter suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
 - b) Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Mr Jones and Ms Sutton, remain unresolved.
 - c) Inconsistencies exist between the timing of the child's injuries with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented to the Redcliffe Hospital. Mr Jones and Ms Sutton maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital.
 - d) Peter is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers to assist in his rehabilitation. This support will be intensive over the next twelve to

twenty-four months.

32. On the 10th February, 2009, Mater SCAN further recommended that the Department make application for a child protection order, granting custody of Gary to the Chief Executive for a period of one year. This recommendation was made on the basis that given the serious nature and the extent of Peter's injuries, Gary was also considered to be at risk.

Consultation with Recognised Aboriginal Agency

33. On the 17th January, 2009 I meet with Gloria Cobbo from the Karbul Indigenous Placement Agency, the recognised Aboriginal and Torres Strait Islander Agency. I advised her that Peter was subject to a court assessment order granting custody to the Chief Executive for a period of four weeks.
34. On the 6th February, 2009 I contacted Gloria Cobbo and invited the Karbul Indigenous Placement Agency to participate in a Family Meeting that was to be held on the 10th February, 2009, in relation to the Peter. Gloria Cobbo advised that she would be present.
35. On the 10th of February, 2009 I consulted with Gloria Cobbo from the Karbul Indigenous Placement Agency, regarding the Department's intention to make application for a child protection order, in relation to Peter, granting custody to the Chief Executive for a period of two years. I further advised Gloria that following his discharge from hospital it was the Department's intention to place Peter with Mr and Mrs Bond, indigenous carers. Gloria advised that the Karbul Indigenous Placement Agency were supportive of the Department's decision and the intended

placement. Gloria did state that it would be important for the Department to continue to attempt to locate Peter's mother, Ms Bell, as contact with his maternal family would be vital in terms of Peter's cultural and spiritual identity.

Family Group Meetings

36. A Family Group Meeting was held on the 17th January, 2009 at the Caboolture Child Safety Service Centre. In attendance were Mr Jones, Ms Sutton, Sharon Upton, Team Leader for Child and Family Team at the Caboolture Child Safety Service Centre and myself. The details of the court assessment order were explained to Mr Jones and Ms Sutton. Arrangements were made for Mr Jones and Ms Sutton to visit Peter twice per week for the duration of the court assessment order.
37. A further family Group Meeting was held on the 10th February, 2009. During this meeting it was explained to Mr Jones and Ms Sutton that in relation to Peter the Department would be applying for a child protection order granting custody to the Chief Executive for a period of two years. The current child protection concerns were discussed. It was explained to Mr Jones and Ms Sutton that given the inconsistencies between the extent of the injuries and explanation for how these injuries occurred the Department was of the opinion that Peter would be at risk if he was returned home at this time. It was further explained that the Department was seeking a two year order on the basis that Peter's rehabilitation needs are likely to be intensive over the next twelve to twenty-four months and that the Department currently held concerns in relation to Mr Jones and Ms Sutton's ability to meet

Peter's current rehabilitation needs.

38. Mr Jones and Ms Sutton were also advised that following his release from hospital it was the Department's intention to place Peter with indigenous carers, Mr and Mrs Bond. Mr Jones and Ms Sutton initially questioned the need for the carers to be indigenous. The details of the "Child Placement Principle" applied by the Department was then discussed with Mr Jones and Ms Sutton and it was explained to them that given Peter is Aboriginal the Department is required in the first instance to attempt to place Peter with indigenous carers. It was also explained to Mr Jones and Ms Sutton that Mr and Mrs Bond were experienced carers who had previously cared for children with physical disabilities and learning needs.
39. During this meeting Mr Jones and Ms Sutton were also advised that in relation to Gary, the Department would like the opportunity to further assess his care and protection needs and given they were not willing to consent to this process, the department is making an application for a Court Assessment Order in relation to Gary.
40. Mr Jones and Ms Sutton advised my Team Leader, Sharon Upton and myself that they would be contesting these applications.
41. I provided numbers to assist Mr Jones in accessing legal advice, to which he indicated that he would follow-up.

Contact

42. For the duration of the court assessment order Mr Jones and Ms Sutton have visited Peter Jones twice weekly at the Mater Children's Hospital. Pam Cassidy, a

Child Safety Support Officer, with the Caboolture Child Safety Service Centre has supervised these visits. Pam Cassidy has informed me that Mr Jones and Ms Sutton have acted appropriately during each of the visits and appear to be concerned for Peter's welfare.

Wishes of the Child

43. Peter is two and a half years of age. Given Peter's age, I have not discussed the details of this application with him.

Caseplan

44. The current departmental case plan is as follows:
- a) Following his discharge from hospital Peter will be placed with indigenous carers that will be able to support and assist him with his rehabilitation needs;
 - b) In consultation with the Mater Children's Hospital and the carers the Department will ensure that Peter attends all required medical and rehabilitation appointments;
 - c) In consultation with the Mater Children's Hospital and the carers the Department will ensure that Mr Jones and Ms Sutton have an opportunity to attend all medical and rehabilitation appointments with Peter;
 - d) Mr Jones and Ms Sutton will be advised on an on-going basis of Peter's medical and rehabilitation progress through involvement in regular case discussions between hospital staff, the Department and the carers;
 - e) Mr Jones and Ms Sutton, with the assistance of hospital staff, will be provided with education opportunities to assist in Peter's rehabilitation;

- f) The current contact arrangements which involve Mr Jones and Ms Sutton having supervised contact with Peter twice per week will remain in place in the short-term. Monthly reviews of the contact arrangements will occur, with a view to increasing contact, if considered appropriate;
- g) Attempts will be made to locate Peter's mother, Ms Bell and other maternal family members, with a view to establishing a positive relationship between Peter and his maternal family;
- h) Referrals for appropriate discipline and parenting strategy programs will be made for Mr Jones and Ms Sutton. The Department's expectation is that Mr Jones and Ms Sutton attend these programs and then demonstrate their understanding of age appropriate discipline techniques and parenting strategies. Consultation and feedback will be sought by the Department in relation to Mr Jones and Ms Sutton's participation and progress in relation to these programs.
- i) The case plan will be reviewed every three months to ensure that Peter's welfare and best interests remain paramount.
- j) A true copy of the case plan is attached and marked exhibit 'C'.

Conclusion

- 45. Peter Jones is a child who has suffered life-threatening injuries. There remains some doubt as to how these injuries were inflicted upon Peter but assessments undertaken by medical staff suggest that the injuries were nonaccidental.
- 46. Mr Jones has been charged by Police with Grievous Bodily Harm as a result of

Peter's injuries.

47. Once released from hospital Peter will be highly vulnerable and will need to be in an environment where he is safe. Peter will also need to be nurtured and encouraged to develop and rehabilitate from his injuries at his own pace. This will involve constant supervision of his learning and rehabilitation needs. It is assessed that Peter would be at too higher risk of further harm should he be returned to the care of Mr Jones and Ms Sutton at this time
48. I have formed the opinion that Peter Jones is a child in need of protection and that such protection is not likely to be ensured by any other less intrusive order the Court may make. I now make application, for a child protection order granting custody of the child Peter Jones to the Chief Executive for a period of two years.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by on Amanda Hall on the 19th January, 2009 at Brisbane in the presence of:

(signed by deponent)

Deponent

(signed by Justice of the Peace)

Justice of the Peace/Commissioner for
declarations

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

*Sworn / Affirmed by *(full name of deponent)* on *(date)* at *(place)* in the presence of:

(signed by deponent)

Deponent

(signed by Justice of the Peace)

Justice of the Peace/Commissioner for
declarations

Date

The Registrar
Brisbane Childrens Court
30 – 40 Quay Street
Brisbane Qld

Dear Sir/Madam

I am writing to advise of a change of applicant in the **NAME** matter listed for **mention/hearing** on **date** at 2.30pm.

NAME, Child Safety Officer, is currently listed as the applicant for this matter. **NAME**, Child Safety Officer of the **NAME** Child Safety Service Centre has had carriage of this matter since **date**.

I respectfully ask that the court adjust their records to now reflect that **NAME** is the applicant for Child Protection Orders in relation to **CHILDREN'S NAMES**.

If you wish to discuss my request please do not hesitate to contact me on **NUMBER**.

Regards

NAME
Team Leader or Manager
NAME Child Safety Service Centre

Example of Court Submission

Date:

Appearances:

Good afternoon Your Honour, my name is SURNAME, initials AB . I appear on behalf of the CE for the Department of Child Safety. If Your Honour would like to take the matter of _____ [name of the matter]. The applicant _____ [applicant's name] appears to my left.

For a new application:

The application/s is for a child protection order granting protective supervision or custody or short-term/ long-term guardianship of [name/s of child/ren] to the Chief Executive [or family member, or other suitable person, namely _____] for a period of _____.

OR

For an extension:

The application/s is to extend the current child protection order/s granting custody/guardianship of [name/s of child/ren] to the Chief Executive for a further period of _____. The child protection order/s expires on _____. [OR the child protection order/s expired on _____ and the application/s is subsequently for the making of a new child protection order].

OR

For an application where section 99 is being relied upon:

The application is for a child protection order granting _____. Your Honour, _____ [name/s of child/ren] was subject to an order granting temporary custody to the Chief Executive under the provision of a TAO/CAO/previous CPO. This order expired on _____ however the application for the child protection order was filed on ____ prior to the TAO/CAO/previous CPO expiring and custody has extended under the provision of section 99.

OR

For a change in order during proceedings:

The application is for a child protection order granting _____ which was filed on ____ by _____. During the process of further assessment, the most appropriate order for the child is now considered to be a _____ [eg long term guardianship order in favour of the CE]. An affidavit filed by _____ dated _____ outlines in paragraph ____ the reasons for the change of order.

Applicant:

Father: _____ **Rep:** _____

Other: Eg – grandparents, etc

— — — — —

- Family Group Meeting held: ____[date] and located in paragraph __ of ____'s affidavit dated_____
- Case Plan developed:____[date] and located as exhibit __ of ____'s affidavit dated_____
- Contact Arrangements:
- Placement:

If there are any errors which require noting by the court – If your Honour permits, I would like to have noted on the court records some minor amendments to the affidavit of _____ dated _____ pursuant to section 11 of the Children’s Court Rules.

Your Honour I have had an opportunity to speak with the parent/s prior to court and understand that they are consenting/contesting and or wish to/not wish to seek legal advice

I have not had an opportunity to speak with the parent/s as they have not attended court. The parent/s were served with the court material/updated affidavit/application and affidavit on ____ [if they have not been served, state clearly why].

Affidavits of service have been completed which have been filed/I would like to hand up to the court.

Your Honour, today we are seeking:

- An adjournment to ____ [date] with orders pursuant to section 67 or 68 of the CP Act for the purpose of ____ [eg holding a FGM, filing additional material with the court, awaiting assessments on the relative carers, to allow the parents to seek legal advice, to serve the parents etc.....];
- Proceedings be transferred to ____ court;
- Final order made;
- COC;
- Sep Rep;
- Withdrawal of the application.

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child/ren: Peter Jones – (DOB: 16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Patricia Jones, in the State of Queensland, make oath and say as follows:-

1. I am the paternal grandmother of Peter Jones, and mother of Barry Jones.
2. I love my grandson and am very worried about his care and health.
3. My son Barry has asked me to care for Peter and I am interested in offering some care to Peter.
4. I am a little worried of how I would be able to care all day, every day for Peter and meet his health needs given I am not a young woman and financially rely on the pension.

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall
30-40 Quay Street, Brisbane

5. I understand that Peter will require a lot of medical appointments and probably ongoing therapy and would struggle to transport him to these appointments without some financial and practical assistance.
6. I want what is best for Peter and would like to see him regularly if he is placed in foster care.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Patricia Jones on 19 February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall
30-40 Quay Street, Brisbane

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child/ren: Peter Jones – (DOB: 16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Kate Bond, in the State of Queensland, make oath and say as follows:-

1. I am a registered foster carer for the Department of Child Safety.
2. My husband, Gary and I have been foster carers for 12 years and have previously cared for children with physical disabilities and learning needs.
3. We currently care for Peter Jones and have done so since his release from Hospital.
4. We have had a number of conversations and meetings with officers from the department and medical professionals about Peter's current condition and possible future needs.

Sheet 1

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Affidavit

Filed on behalf of the Applicant

Amanda Hall
30-40 Quay Street, Brisbane

5. My understanding is that Peter sustained serious head injuries resulting in physical and developmental impairment. Dr Lewis has told us that it is likely Peter may have trouble walking, have learning difficulties and other physical delays, however a lot of his prognosis is unknown at this stage.
6. In order to provide the best opportunity for recovery, I understand that Peter will require ongoing medical and therapeutic appointments.
7. My husband and I appreciate the importance of these appointments and will continue to meet these needs while he is in our care.
8. We are happy to continue to provide care for Peter for as long as is necessary and will do our best to meet his needs and protect him from harm.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Kate Bond on 19 February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall
30-40 Quay Street, Brisbane

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child/ren: Peter Jones – (DOB:16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Anthony Mark Lewis, Paediatric Intensivist, of the Mater Children's Hospital, Annerley Road, South Brisbane, in the State of Queensland, make oath and say as follows:-

Qualifications

1. I hold a Bachelor of Medicine degree with First Class Honours from the University of New South Wales. I graduated with this degree in 1980.
2. I have held a Fellowship from the Royal College of Physicians, United Kingdom since 1984. I was registered as a Consultant Paediatrician in Queensland in

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall
30-40 Quay Street, Brisbane

1987. I have held a fellowship from the Australian College of Rehabilitation Medicine since 2000.

3. I am currently employed as a Paediatric Intensivist at the Mater Children's Hospital, South Brisbane.
4. This affidavit is sworn in support of the application by Amanda Hall for a child protection order granting custody of Peter Jones to the Chief Executive of the Department of Child Safety for a period of two years.

Report

5. On the 11th January, 2009 I prepared a medical report in relation to Peter Jones (born 16 December, 2006). Exhibit A to this affidavit is a true copy of the medical report.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Anthony Mark Lewis on the 19th January, 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall
30-40 Quay Street, Brisbane

RE: Peter JONES
Date of Birth: 16th December 2002
MCH Ur No 93456003

To Whom It May Concern:

I, Dr Anthony Mark Lewis, am a qualified medical practitioner registered in the state of Queensland, and employed full time as a medical officer at the Mater Children's Hospital.

I attended the above patient at the Mater Children's Hospital, on the 9th of January to the 15th of January 2009. The following injuries were documented by clinical examination and further investigation as required.

- 1) Severe cerebral oedema, particularly of the right cerebral hemisphere with some subdural collection of blood.
- 2) Bruising to Left facial cheek with 2 distinct marks of about 1 x 2 cms in size.
- 3) Bruising to Left leg with near circumferential nature at the level of the upper thigh.

Peter was retrieved from the Redcliffe Hospital Emergency Department on the morning of the 9th of January, 2009. He was intubated and ventilated at this time. He had presented with significant Right sided focal seizures. He had been investigated with a CT scan which demonstrated significant underlying cerebral oedema. He was retrieved by a specialised paediatric retrieval team. Upon arrival to the Mater Childrens Hospital he was reviewed by the Neurosurgeon Dr Robert Thompson. A decision was made to insert an intracranial pressure monitor to assist in the management of Peter's cerebral oedema.

Peter remained in the Intensive Care Unit for 7 days. Over the first 4 days he was managed with inotropic support of his blood pressure, therapeutic cooling, sedation and ventilation as well as anti-convulsant medication. On day 5 he was rewarmed and his pressure monitoring ceased. On day 6 he was extubated without problem. On day 7 Peter was transferred to the ward for further care. At the time of discharge from the Intensive Care Unit Peter was not moving the Left side of his body very well at all. He was not able to feed himself and he was still very drowsy. During his admission Peter had a repeat CT scan. This demonstrated that the severe cerebral oedema that was present on the original CT scan had reduced but not resolved completely. There was evidence of a collection of blood on this CT scan that could not be seen on his previous scan.

In view of the acute nature of Peter's injuries it is difficult to say with certainty the long term prognosis in his case. It is very likely that he will have some motor dysfunction on the Left side of his body. He may have difficulty in walking. He may have some long term learning problems and he may have some difficulty with fine motor problems with his Left hand in the long term. His prognosis will become more apparent after 1-2 months of rehabilitation. If he had not received medical attention when he did Peter would have died.

In view of his CT scan results and his clinical course in the Intensive Care Unit, it is most likely that Peter suffered a severe blow or blows to his head at some time in the 24-48 hours before his presentation to the Redcliffe Hospital. It could be that the severe swelling on the right cerebrum could have been caused by a severe blow or blows up to approximately 72 hours before presentation but this would be less likely.

Dr Anthony LEWIS FRACP
Paediatric Intensivist
Mater Children's Hospital

11 January, 2009

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child/ren: Peter Jones – (DOB: 16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Barry Jones, in the State of Queensland, make oath and say as follows:-

1. I am the father of Peter Jones.
2. I have not abused my son and deny any of the allegations saying that I was responsible for Peter's injuries. I have told officers of the department and will say again, that I wasn't even in the room at the time Peter got hurt.
3. I am going to fight this all the way.
4. The department officers took Peter unjustly and I just want them to return my child.

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall
30-40 Quay Street, Brisbane

5. I have told the workers many times that my mother can look after Peter but they just won't listen. If they won't return him home to me, then they should place him with my mother today.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Barry Jones on the 4th February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

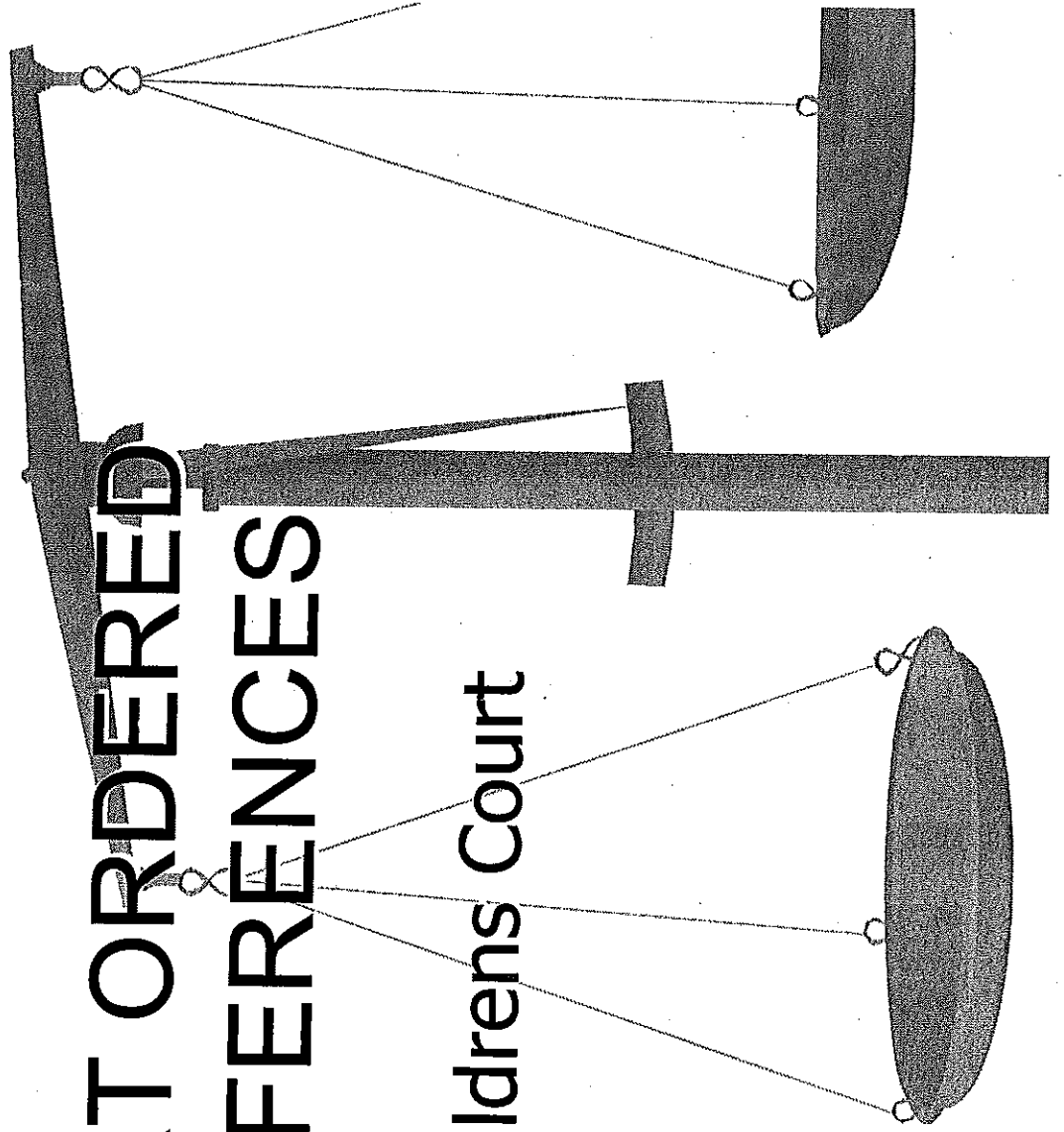
Affidavit

Filed on behalf of the Respondent

Amanda Hall
30-40 Quay Street, Brisbane

COURT ORDERED CONFERENCES

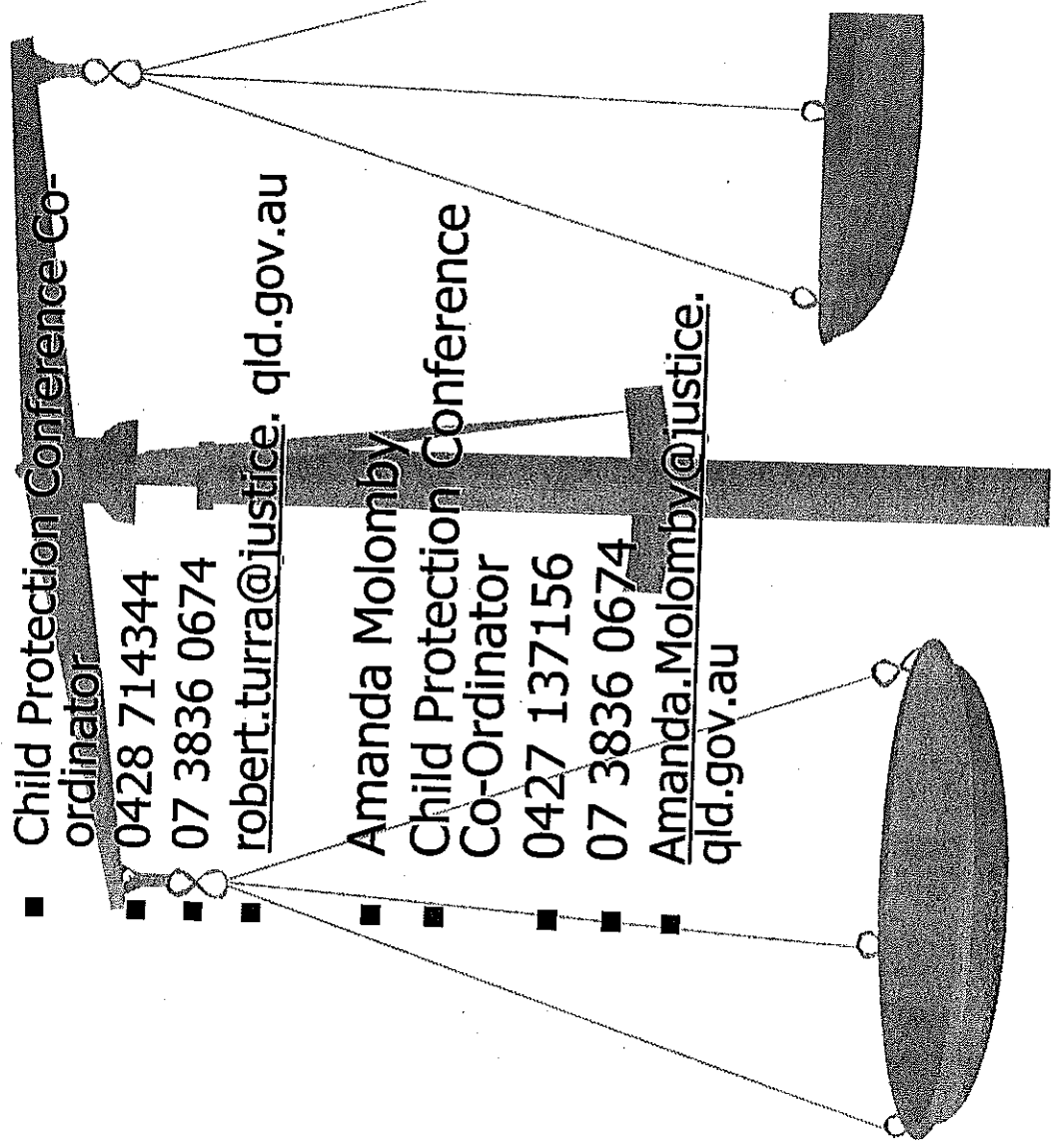
Childrens Court



Who are we?

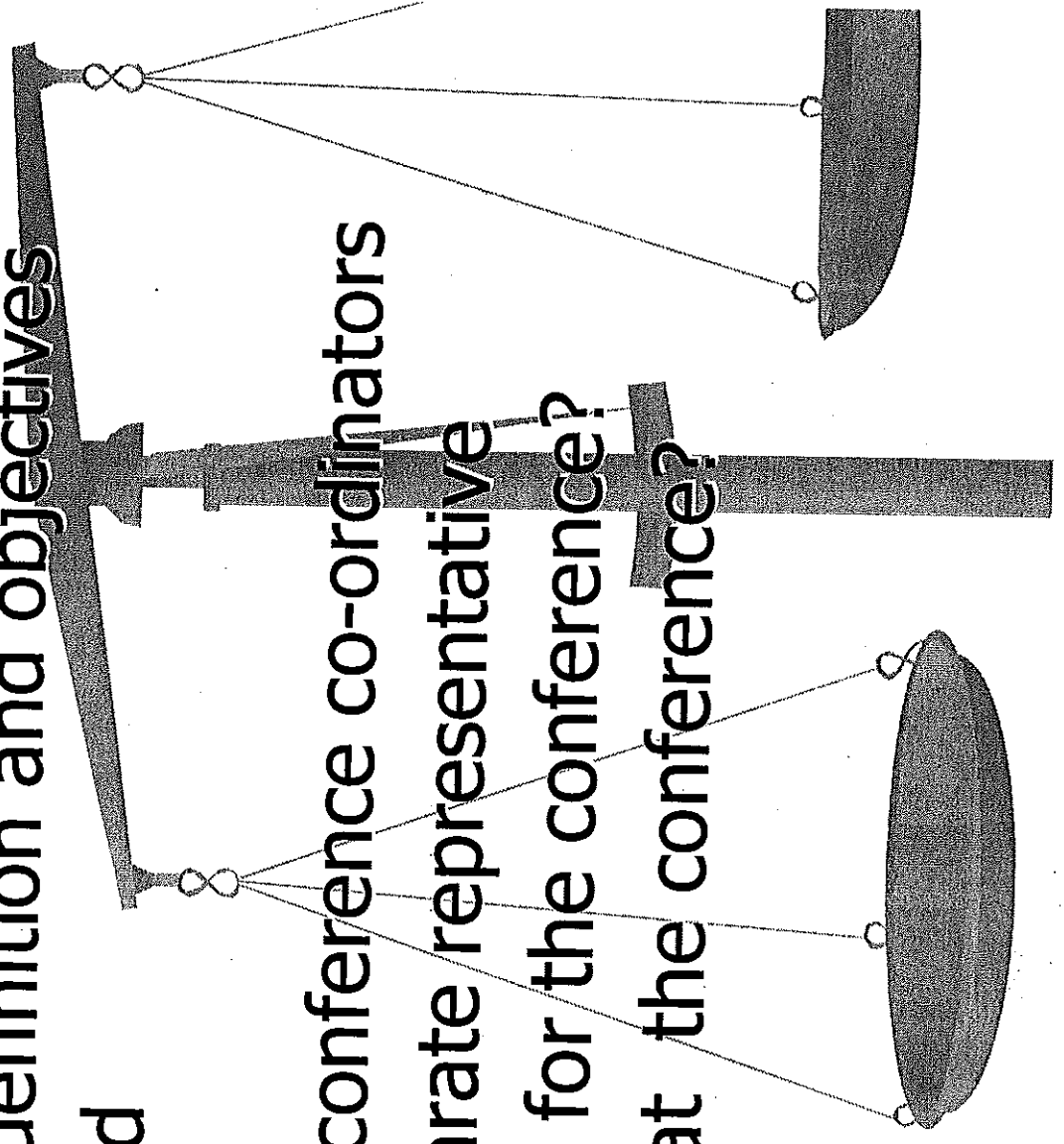
- Paul Malone
- Manager, Office of Child Protection Conferencing
- Children's Court
- 30-40 Quay Street
- Brisbane Qld 4000
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- 07 383 60674
- paul.malone@justice.qld.gov.au

- Rob Turra
- Child Protection Conference Co-ordinator
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- Amanda Molomby
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- 0427 137156
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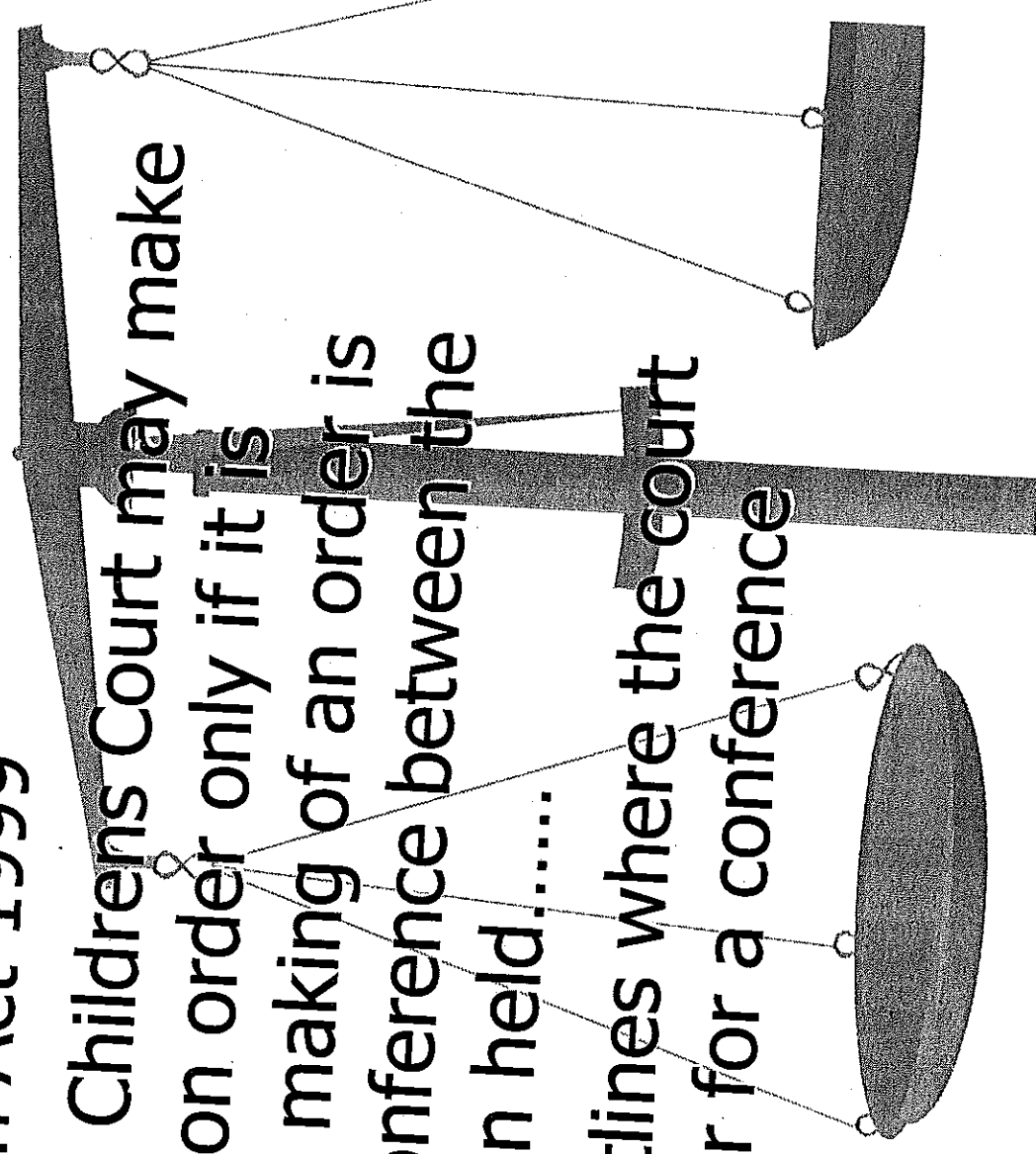
Today's Agenda

- Conferences – definition and objectives
- Who may attend
- Confidentiality
- Contacting the conference co-ordinators
- The child's separate representative
- How to prepare for the conference?
- What happens at the conference?
- Questions

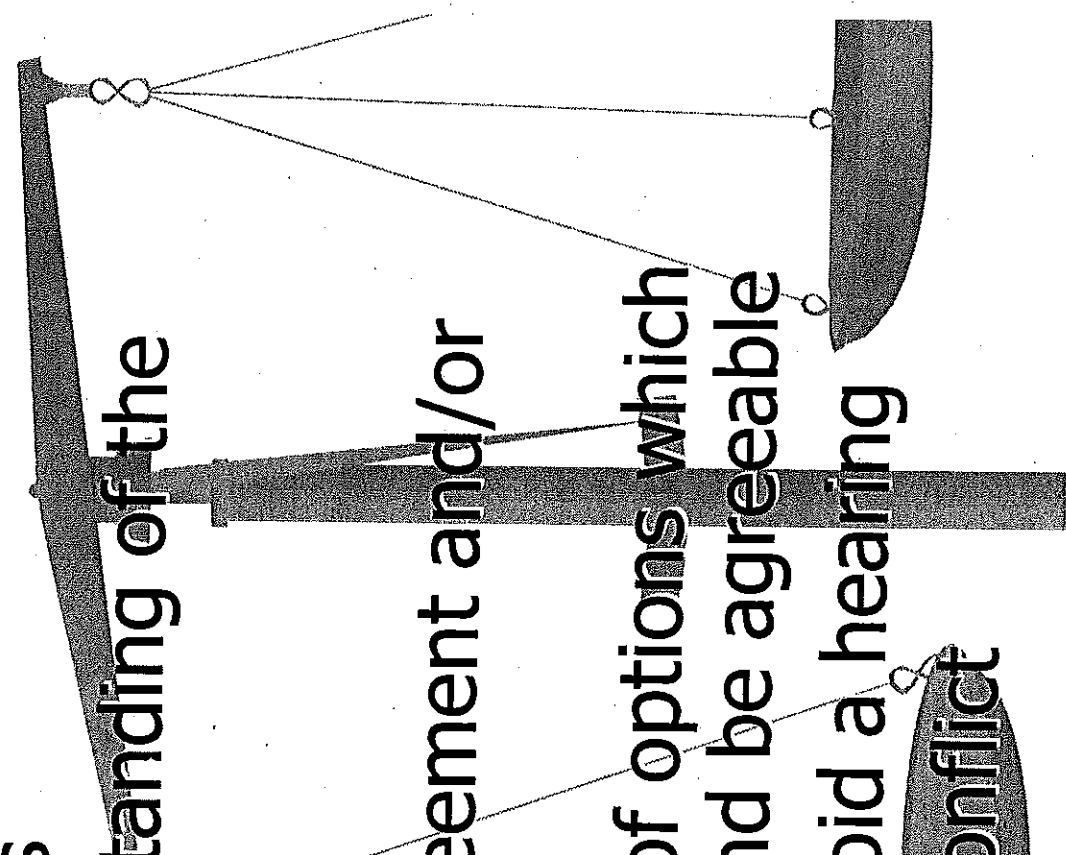


What is a court ordered conference?

- Child Protection Act 1999
- S.59(1)(c) The Childrens Court may make a child protection order only if it is satisfied- if the making of an order is contested, a conference between the parties has been held.....
- S.68(1) Outlines where the court makes the order for a conference

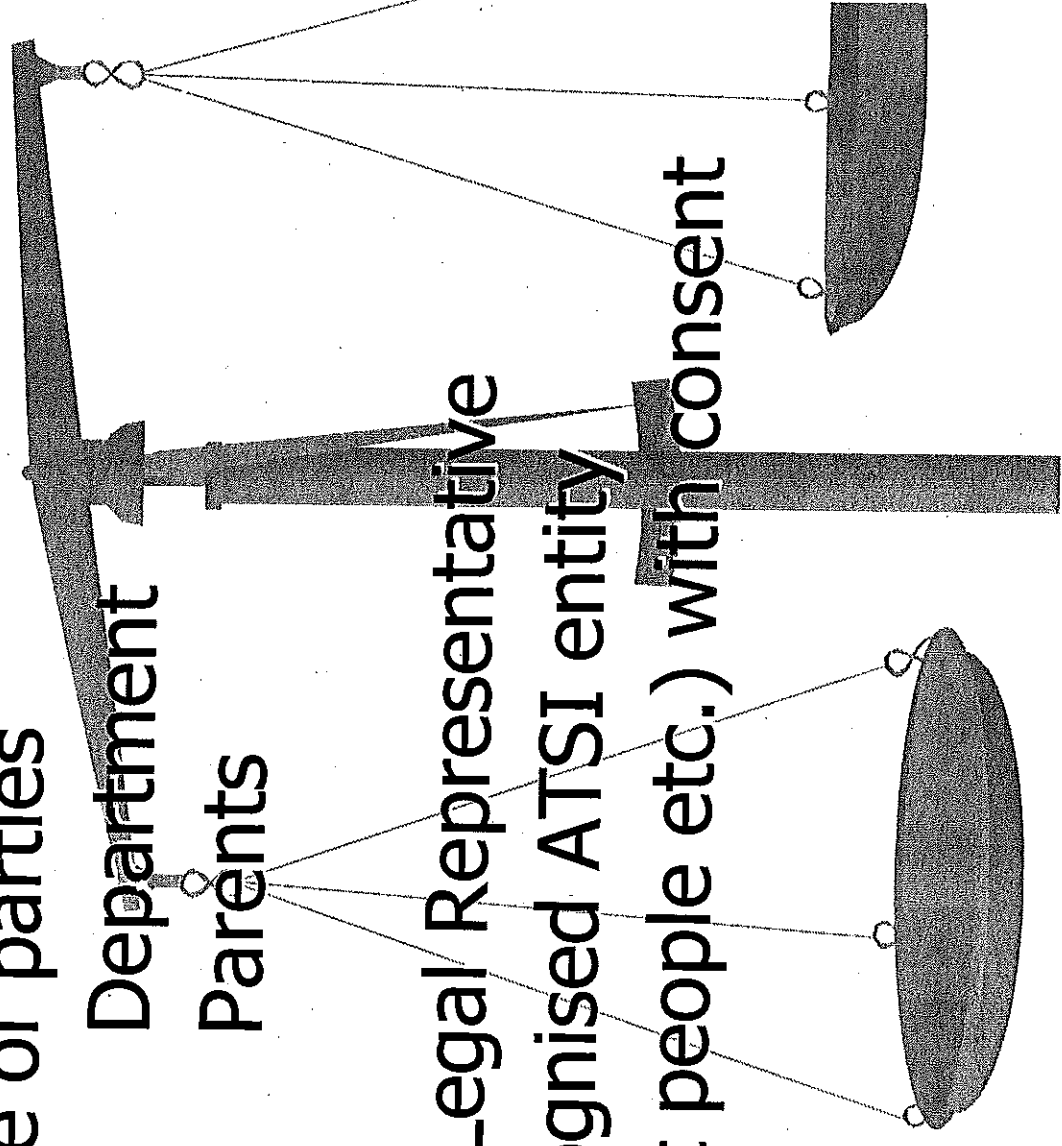


Objectives of a court ordered conference?

- Express views of parties
 - Improve parties understanding of the central issues
 - Clarify positions
 - Determine areas of agreement and/or disagreement
 - Facilitate identification of options which may protect the child and be agreeable
 - Reach agreement to avoid a hearing
 - Minimise the inherent conflict
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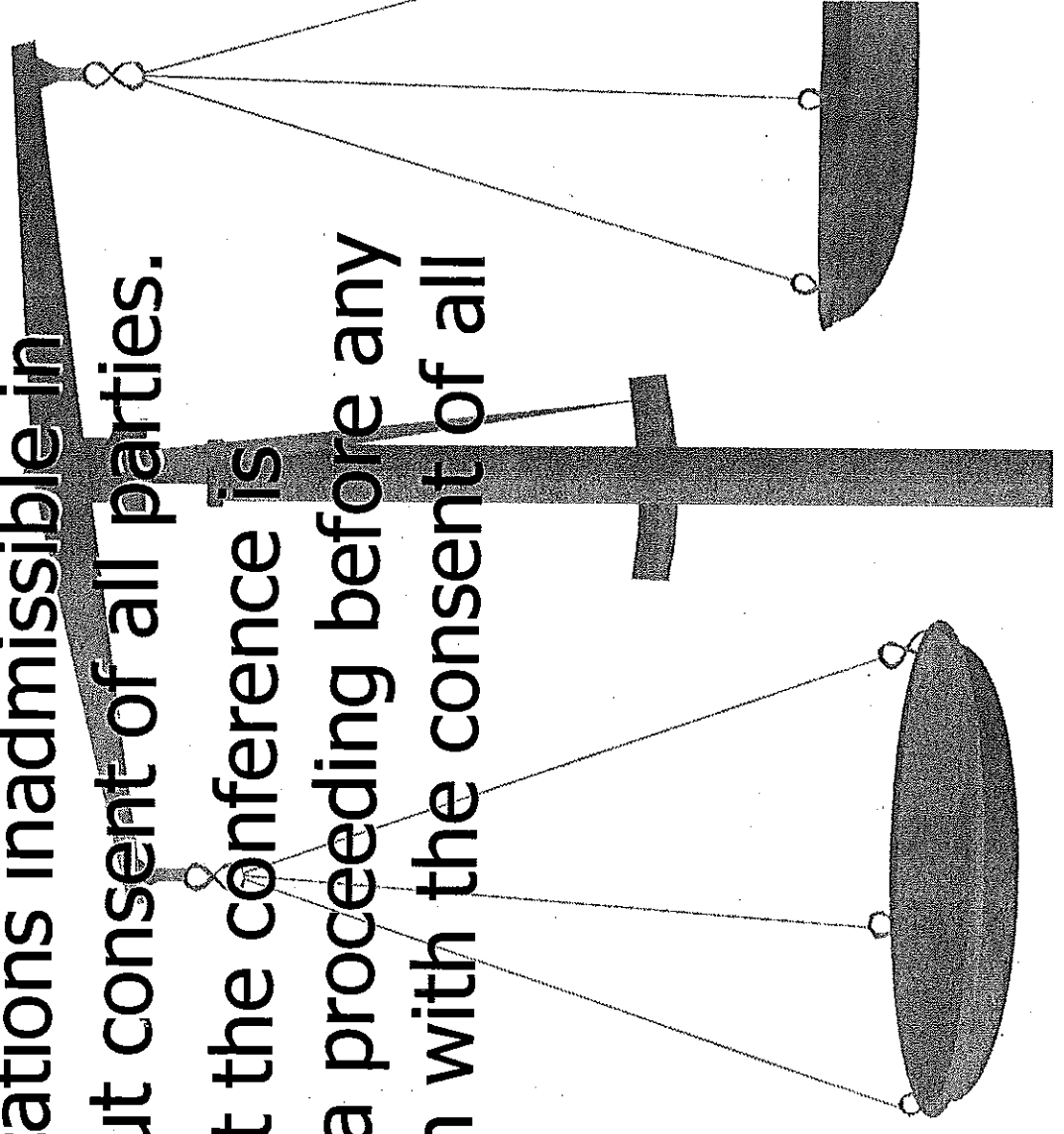
Who may attend the conference?

- S.70 Attendance of parties
- The parties
 - Department
 - Parents
- Legal Reps
- Child Separate Legal Representative
- Member of recognised ATSI entity
- Others (support people etc.) with consent of convenor.



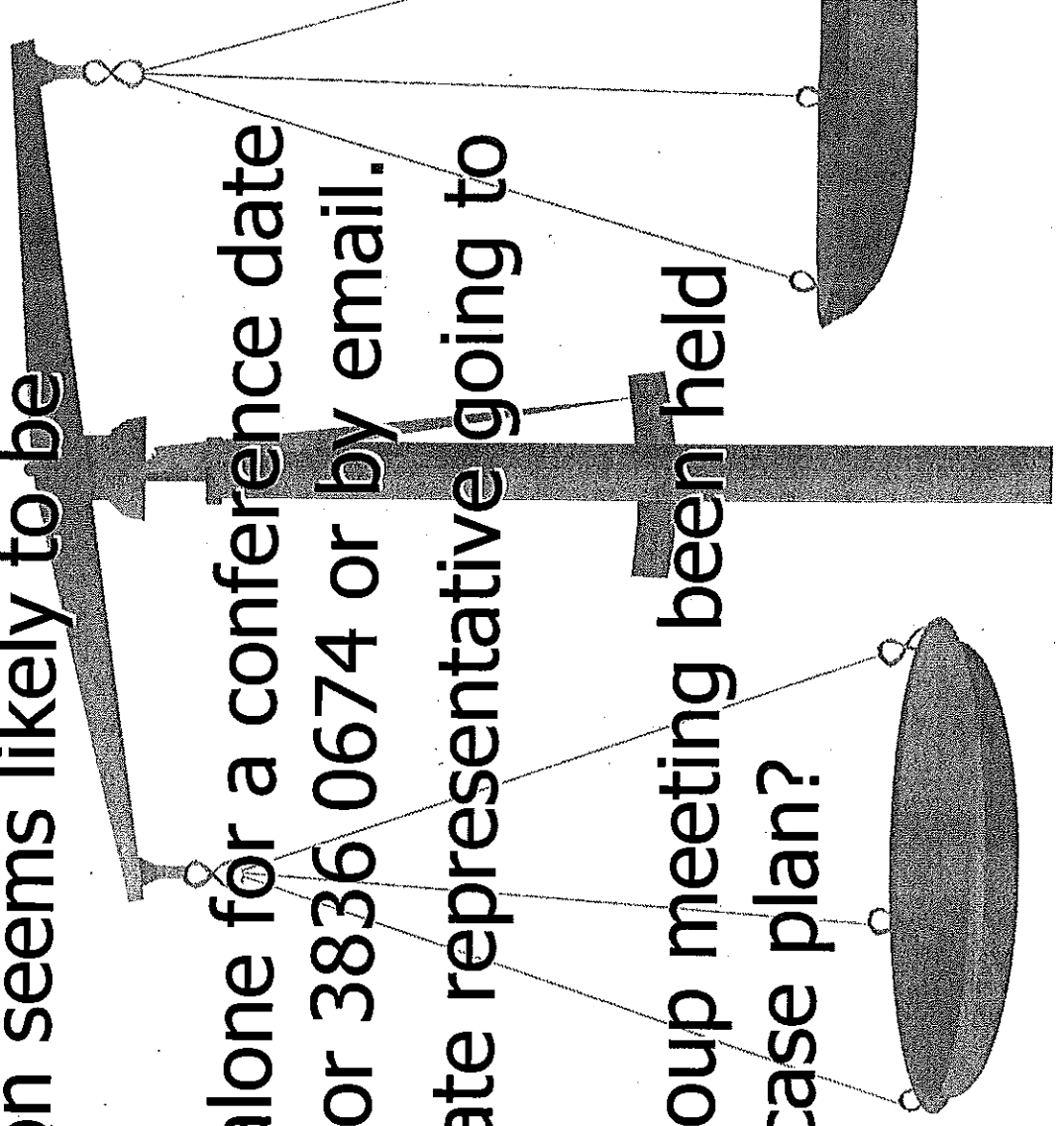
Confidentiality

- S.71 Communications inadmissible in evidence without consent of all parties.
- Anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties.



Contacting Office of Child Protection Conferencing

- When application seems likely to be contested
- Contact Paul Malone for a conference date
 - 0402 457351 or 3836 0674 or by email.
- Is a child separate representative going to be requested?
- Has a Family Group meeting been held yet? Is there a case plan?



SEPARATE REPRESENTATIVE

MEMO FROM: Paul Malone, Manager Office of Child Protection Conferencing
SUBJECT: Appointment of child separate representatives ('sep rep')
DATE: 22 October 2008

PURPOSE

- To develop consistent state-wide practices for the appointment of child sep reps in applications for child protection orders.

BACKGROUND

- Current practice for the appointment of sep reps often sees their appointment coincide with an adjournment and an order for a child protection conference.

ISSUES

- Feedback from Legal Aid suggests that appointed solicitors have difficulty in arranging for report writers to conduct social assessments prior to the court ordered conference.
- Separate Representatives may be reluctant to accept referrals where non-consultative time periods are imposed.
- Conferences often require rescheduling due to social assessment reports not being ready, causing:
 - Delay to the court process;
 - Wasting time for the conference convenors, solicitors and parties;
 - Further uncertainty, anxiety and confusion for those subject children who are able to comprehend the proceedings.

RECOMMENDATION

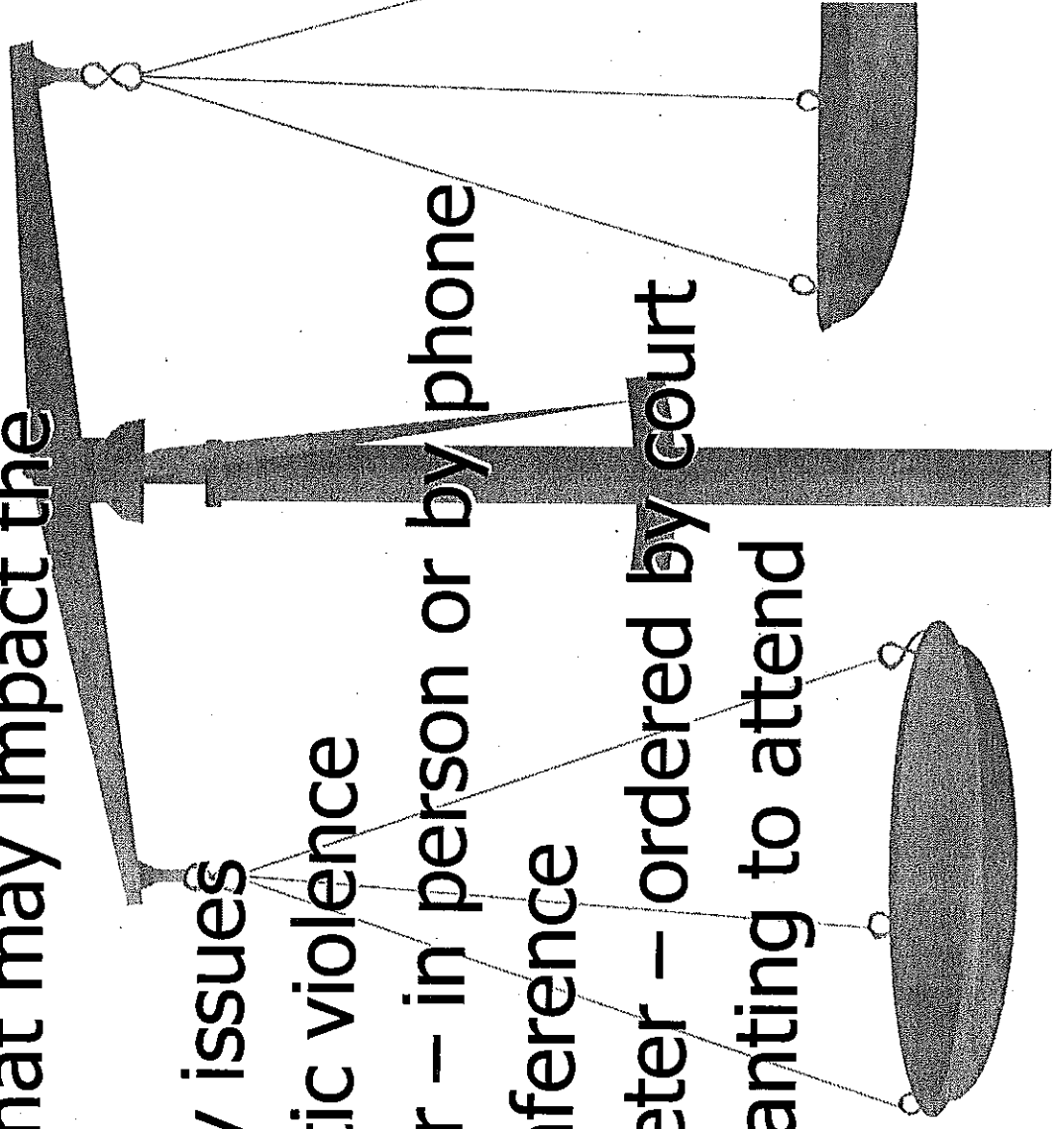
- It is requested that, if a sep rep is ordered, a conference is not ordered in the first instance. Instead the application is adjourned for mention in 4-5 weeks to:
 - Make the referral to Legal Aid (Grants Division), which includes the court registry furnishing a copy of the court file;
 - Enable the appointed sep rep to make inquiries with the Department of Child Safety – accessing their records to ascertain whether further processes are necessary in order to assist in forming a view;
 - Enable the sep rep to make enquiries with report writers if required, to make contact with the parties and to establish time-frames for the completion of the report which can then be conveyed to the court.
- It is recommended that the Department's Court Coordinator liaise with the sep rep in order to:
 - Be advised of expected time-frames;
 - Convey the expected time-frame to Paul Malone so that he can provide a conference time and date which may then be used by the court at the next mention.

SUMMARY

- Sep rep appointed
- No conference ordered in first instance
- Mention date in 4-5 weeks
- Sep rep to establish time-frames and liaise with Department
- Paul Malone contacted for conference date
- Court to be advised at mention
- Conference ordered

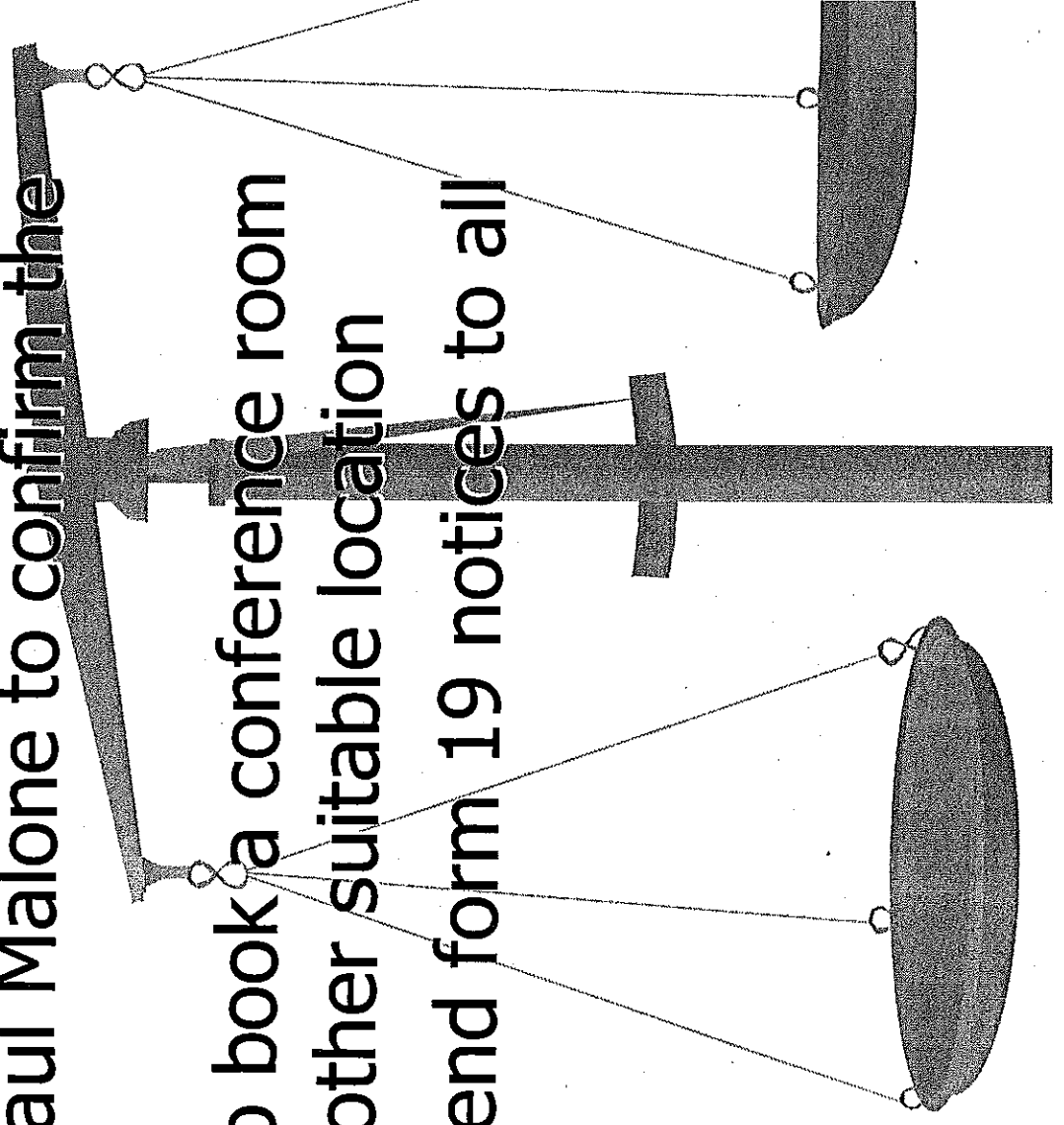
Contacting Conference Co-ordinator

- Other matters that may impact the conference?
 - Security issues
 - Domestic violence
 - Prisoner – in person or by phone
 - Teleconference
 - Interpreter – ordered by court
 - Child wanting to attend



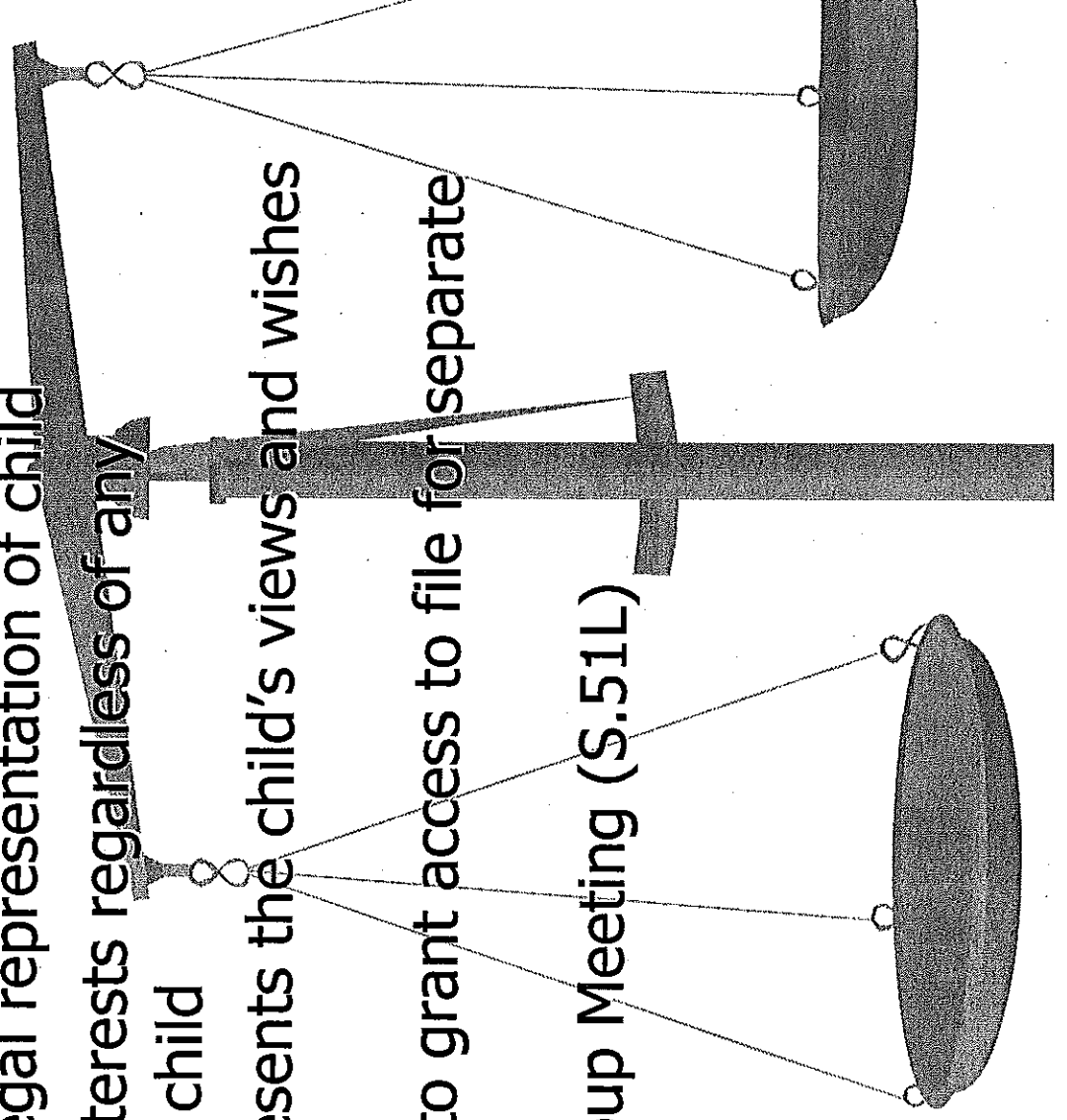
After the Court orders the conference

- Again contact Paul Malone to confirm the date and time
- Paul arranges to book a conference room at the Court or other suitable location
- The Court will send form 19 notices to all parties



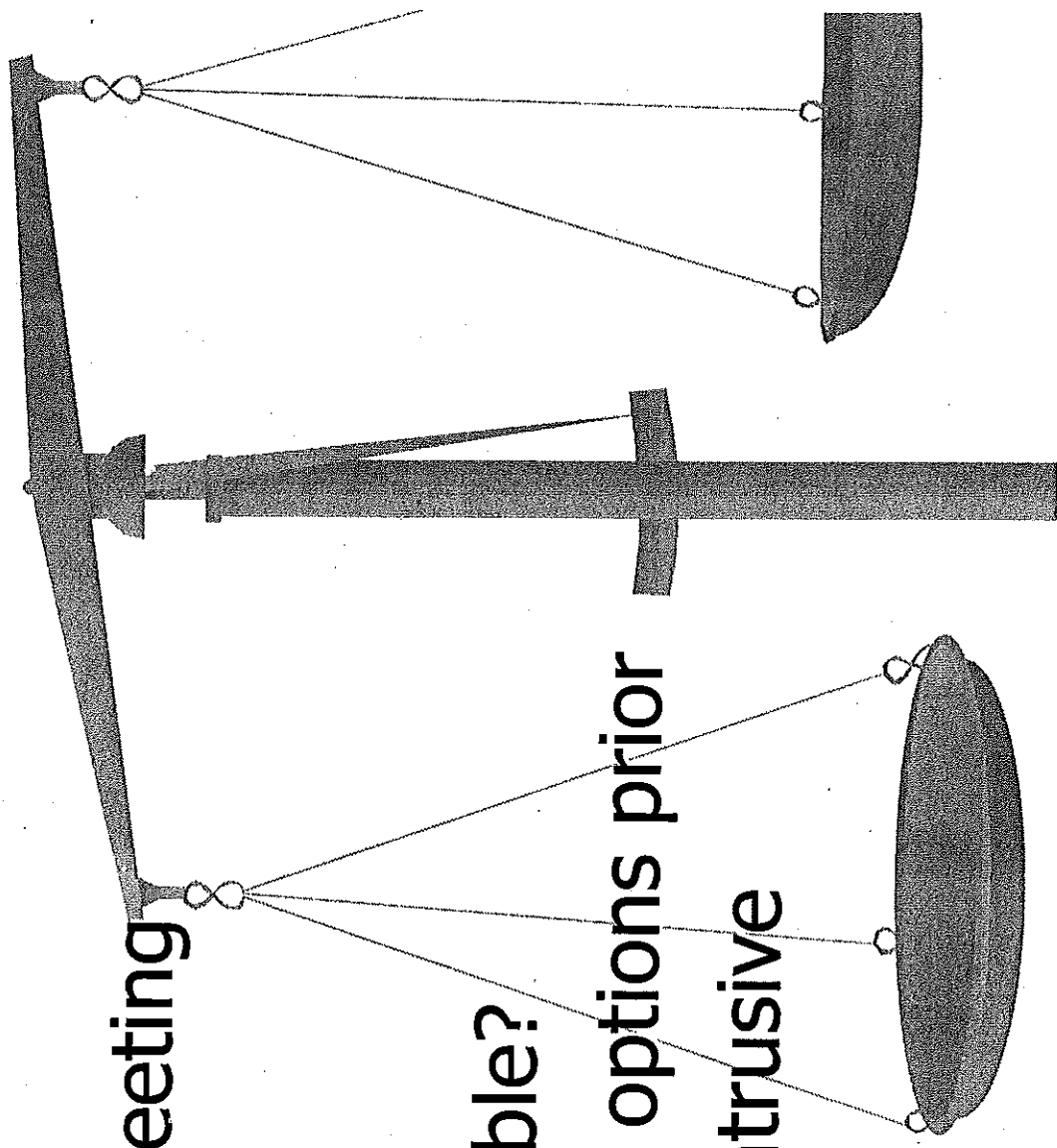
Child Separate Representatives

- S.110 (1) Separate legal representation of child
- Acts in child's best interests regardless of any instructions from the child
- As far as possible presents the child's views and wishes to the Court
- Dept of Child Safety to grant access to file for separate representative
- Include in Family Group Meeting (S.51L)



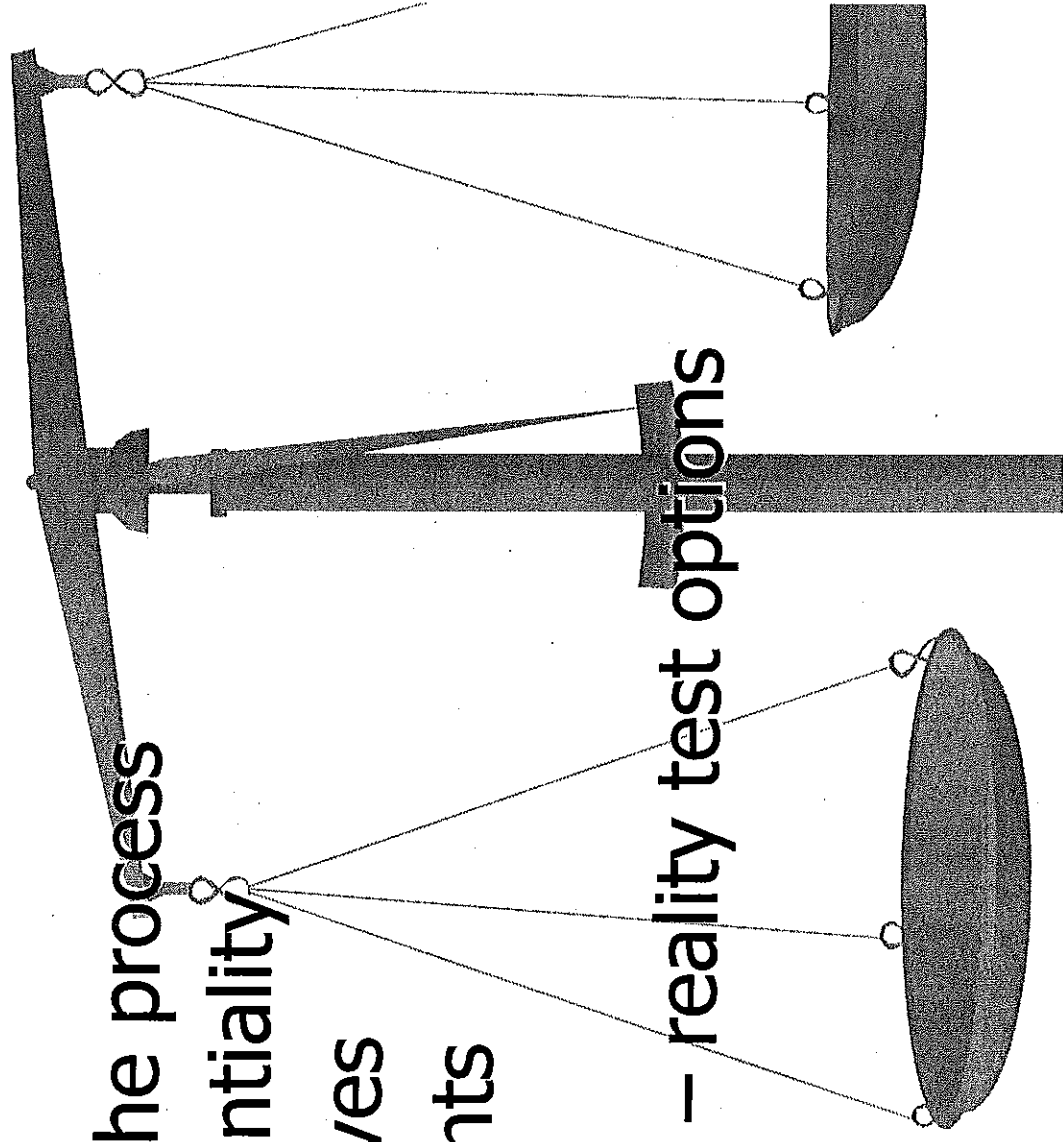
How to prepare for conference?

- Who's talking?
- Family Group Meeting
- Know your case
- CASE PLAN
- What is negotiable?
 - Discuss options prior
 - Least intrusive



The conference stages

- Introduction
- Explanation of the process
 - Confidentiality
 - Objectives
- Parties statements
- Discuss issues
- Identify options – reality test options
- Caucus



FORMAL GRIEVANCE PROCEDURE

- 1. Any complaint from a Child Service Safety Centre to be in writing through Court Services.
- 2. If complaint is in relation to either of my staff, to be raised with and addressed by myself through Court Services.
- 3. If the complaint is in relation to myself or if someone felt that I had not addressed the complaint properly, then with my manager Mr Sean Harvey, Regional Services Manager, Magistrates Courts Branch, South East Region, Brisbane. Phone Number (w)3006 8161 or (m) 0407 143525 Email address: sean.harvey@justice.qld.gov.au.
- 4. Similarly if there is some complaint or issue in regard to a Child Service Safety Centre that is not able to be addressed, that I would take it up with Court Services.

FAMILY GROUP MEETINGS & CASE PLANNING

What is a family group meeting?

A family group meeting is held by the department to develop a case plan when we believe that a child or young person is in need of protection.

It provides an opportunity for families to be involved in decisions about their child, and builds on the strengths and resources within the child or young person's family group, cultural community and wider community.

The family group meeting is organised by a convenor who prepares and facilitates the meeting. The convenor may be a departmental officer or a person independent of the department, but will not be the child safety officer involved with the child, young person or their family.

The family group meeting brings together the child or young person (where appropriate), the family, those who best know the child and their family, and other relevant persons and agencies, such as a Recognised Entity for an Aboriginal or Torres Strait Islander child or young person.

What is a Case Plan?

The case plan is a written document that identifies the goal of the ongoing intervention and the outcomes and actions required to achieve the goal. Case planning is a process of planning strategies to address a child's protection and care needs and promote a child's well-being. It is a cyclical and participative process. The family group meeting to develop the case plan will be held within 30 days of the decision being made that a child is in need of protection.

Case plans must be goal directed and clearly identify matters, such as outcomes, key actions and how the progress of the plan will be measured.

A parent for the purpose of case planning refers to 'the child's mother, father or someone else' (other than the chief executive) having or exercising parental responsibility for the child. For Aboriginal or Torres Strait Islanders the definition would include family members who may have been given cultural responsibility to care for the child (*Child Protection Act 1999*, section 11).

A recognised entity must be given the opportunity to participate in the decision-making process for an Aboriginal or Torres Strait Islander child.

Case planning requirements

Case planning is a process for managing ongoing intervention for a child in need of protection, in accordance with the *Child Protection Act 1999*, section 51A-Y, and the principles of case planning (*Child Protection Act 1999*, section 51D). It involves a cycle of assessment, planning, implementation, and review.

A case plan must be developed and regularly reviewed for any child considered in need of protection (*Child Protection Act 1999*, section 51H(1)). The case plan is a written document that outlines the reasons why the child is considered in need of protection and outlines strategies for addressing a child's protection and care needs during ongoing intervention. It is recorded in an approved form under the *Child Protection Act 1999*.

The requirement to develop a case plan applies, whether or not a parent is being criminally prosecuted for a matter relating to a child protection concern.

Family Group Meeting to develop a case plan

A family group meeting to develop a case plan may be initiated by the department (*Child Protection Act 1999*, section 51H(1)) or directed by the Children's Court (*Child Protection Act 1999*, section 68(1)(d)(i)). The family group meeting must be held **within 30 days of the decision that a child is in need of protection**, or within the timeframe set by the court on an adjournment.

The purposes of family group meetings are:

- to provide family-based responses to children's protection and care needs; and
- to ensure an inclusive process for planning and making decisions relating to children's well-being and protection and care needs.

A family group meeting may also be convened to:

- review the existing case plan and prepare a new case plan; and
- consider, make recommendations about, or deal with other matters relating to the child's well-being and protection and care needs.

People who must be given the opportunity to attend a family group meeting

All people who are significant to the child must be given a reasonable opportunity to participate in, and attend the family group meeting which is convened to develop a high quality and holistic case plan for the child. The case plan should reflect and combine the knowledge, strengths, resources and supports of the child's family and support network, with the professional expertise and resources of the department and other service providers.

The following people must be given the opportunity to participate in the family group meeting (*Child Protection Act 1999*, section 51L):

- the child, unless it would be inappropriate because of the child's age or ability to understand;
- the child's parents as defined in the *Child Protection Act 1999*, section 51F;
- members of the child's family group who the convenor considers likely to make a useful contribution to the plan's development at the meeting. A child's family group is defined broadly in the *Child Protection Act 1999*, section 51E;
- other people with whom the child has a significant relationship, for example, the approved carer for the child;
- any legal representative for the child;
- a member of the recognised Aboriginal and Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child;
- anyone else who the convenor considers likely to make a useful contribution to the development of the case plan at the meeting, for example:
 - a service provider who has an established working relationship with the child and family, including government child protection partners; and
 - a cultural representative or elder, who could assist in developing the case plan by providing information and advice;
 - if the convenor is a private convenor, the chief executive (or delegate); and
 - any support person nominated by the child or parent, for example: a youth worker;
 - an Aboriginal or Torres Strait Islander elder; or
 - a legal representative.

If a SCAN CI Team has been convened as a SCAN System strategy, members of that team should also be invited to attend the meeting.

The CSO who has case responsibility for the child must attend the family group meeting. If the case is to be transferred to another CSO, the CSO who will have ongoing case responsibility will also attend the family group meeting. In the rare circumstance that the CSO is not able to attend, both CSOs will ensure that the case plan developed is discussed with the family when the new CSO is introduced to the family.

These participants **must be sufficiently prepared and informed** for the meeting (*Child Protection Act 1999*, section 51D and 51M) so that they can fully participate in the development of the plan.

Participants are to be invited to the family group meeting, using either the 'FGM invitation letter' or 'FGM invitation and essential information letter'.

Case plan requirements for the Children's Court

Case plan requirement for a final child protection order

An application to the Children's Court for a child protection order can be made at any stage, with or without the consent of the child's parents, however, the court cannot grant a final child protection order for a child unless it is satisfied that there is an endorsed case plan that responds to the child's assessed needs.

Where possible, the CSO should not apply for a child protection order until a family group meeting has been convened to develop the case plan, however, the child's welfare and best interests must be of paramount importance at all times.

Where agreement is reached at the family group meeting that a child protection order will be sought, an application is then able to be made with the consent of the parent/s. In this case, the court must still be satisfied that the provisions in the *Child Protection Act 1999*, section 59, are fulfilled, before granting the child protection order.

Applying for a child protection order where there is no case plan

If an application for a child protection order must be made before a family group meeting, the CSO will lodge the application and the court may then adjourn the proceeding under the *Child Protection Act 1999*, section 67, and:

- make an interim order granting temporary custody of the child to the chief executive or a suitable person who is a member of the child's family; or
- make directions about a parent's contact with the child; and
- order that a family group meeting be convened to develop the case plan and that the plan be filed in court (*Child Protection Act 1999*, section 68(1)(d)(i)).

Note: the court cannot make an interim order for a protective supervision order.

Material to be provided with the case plan to the court

In cases where an application for a child protection order is made, an affidavit must be filed with the case plan and other evidence in support of the application attached, addressing the following:

- the process used to develop or review the case plan; and
- the child's assessed protection and care needs.

If the case plan has been reviewed, a copy of the most recent review report and the current case plan, must be filed with the court (*Child Protection Act 1999*, section 51X).

If the case plan and supporting material have been filed in court and the case plan is subsequently reviewed, all review reports and revised case plans prepared under the *Child Protection Act 1999*, section 51X, should be filed with the court, until such time as the court makes a final determination about the application for an order.

Case planning for sibling groups

Where there is a sibling group, one family group meeting will be held for all children, but a separate case plan will be developed for each child. Where children have different parents, however, separate family group meetings may be required.

Preparing the case plan if not developed at a family group meeting

If the case plan is not developed at a family group meeting because a meeting was unable to be convened, or people were unable to reach agreement about the matters to be addressed in the case plan, the CSO and the team leader will be responsible for preparing the case plan for the child, taking reasonable steps to obtain the views of the following people, if they were not obtained previously:

- the child, unless it would be inappropriate because of his or her age or ability to understand;
- the child's parents;
- other members of the child's family group who are considered likely to make a useful contribution;
- other significant people for the child (for example, a foster carer);
- any legal representative for the child;
- a recognised entity for an Aboriginal or Torres Strait Islander child;
- a relevant service provider; and
- anyone else considered likely to make a useful contribution to the plan.

Record why the case plan was developed without a family group meeting

Where the case plan has been developed by the convenor or team leader and an application for a child protection order is made, an authorised officer is required to provide the court with evidence about why the case plan was developed in this way.

Where a family group meeting was not convened, the CSO is required to satisfy the court that it was not possible to convene a meeting within the terms of the *Child Protection Act 1999*, section 51S(2).

The threshold of 'not possible to convene a family group meeting' is high, and will require a court to be satisfied that all steps were taken by the department to convene a meeting in compliance with the *Child Protection Act 1999*, chapter 2, part 3A. A lack of time and resources will not be sufficient criteria to meet this threshold.

Session Plan – Contested child protection applications

To be presented in conjunction with the power point presentation: N/A

Outcomes:

- To provide an overview of the process and procedures that are to be undertaken when the respondents are consenting to a child protection order.
- To provide an overview of process and procedures that are undertaken when the respondents are contesting an application for a child protection order.
- To provide an overview of the role of Court Co-ordinator in the process of contested child protection hearings.
- To provide an overview of how Court Co-ordinators will interface with Court Services and Crown Law in contested child protection applications.

Time	Content	Resources / Comments
	<p><u>Introduction</u></p> <ul style="list-style-type: none"> • Greetings <p>Welcome the participants to the next session regarding the process for managing contested child protection matters.</p> <ul style="list-style-type: none"> • Linkage <p>The previous two sessions have focused specifically on child protection orders. This session will focus on the process and procedures that should be followed when applications for CPO are made, firstly, by consent and secondly, when they are contested.</p> <ul style="list-style-type: none"> • Outcomes <ul style="list-style-type: none"> ➤ To provide an overview of the process and procedures that are to be undertaken when the respondents are consenting to a child protection order. ➤ To provide an overview of process and procedures that are undertaken when the respondents are contesting an application for a child protection order. ➤ To provide an overview of the role of Court Co-ordinator in the process of contested child protection hearings. ➤ To provide an overview of how Court Co-ordinators will interface with Court Services and Crown Law in contested child protection applications. <ul style="list-style-type: none"> • Strategy <ul style="list-style-type: none"> ➤ This session is to be presented in conjunction with Crown Law. ➤ Information will be provided in relation to processes and procedures that should be followed when parents/respondents are consenting to a child protection order being made. ➤ Information will be provided in relation to the processes and procedures that need to be undertaken when a child protection application is contested. ➤ The roles of the Child Safety Service Centre, Court Services and Crown Law will be canvassed. Within this the role of the Court Co-ordinator will also be canvassed. 	<p>All resources are already included in the Manuals</p>

Time	Content	Resources / Comments
	<p>➤ The participants will be required to undertake several exercises Including the drafting of "Requests for Subpoenas" and "Subpoenas"</p> <ul style="list-style-type: none"> • Stimulus <p>Court Co-ordinators will be involved in taking applications for CPO's through Court. In their local court they will be responsible for processing applications for CPO where the respondents have consented to the orders being made. Alternatively, Court Co-ordinators will have a role in co-ordinating the referral of contested applications to Court Services, in order for the legal representation to be obtained. Court Co-ordinators, in conjunction with Court Services and Crown Law will also have a role in overseeing the preparation of material for the hearing.</p> <p>Whilst some parents/respondents consent to child protection orders being made they do have a right to contest the Department's application and have the matter decided by a Magistrate. In the 2003 / 2004 financial year Court Services dealt with 212 new contested child protection applications from across the state.</p> <p><u>Applications for child protection orders by consent</u></p> <p>When parents/respondents are consenting to a child protection order it can be beneficial to get them to sign a document which outlines their consent.</p> <p>A signed consent by parents/respondents should only be used if parents/respondents are not attending court, or are not legally represented. This document is not intended to replace the parents' own appearance/representation at court. It is merely a tool that can:</p> <ul style="list-style-type: none"> ➤ Assist officers with pre and post court processes ➤ Assist the court ➤ Assist in meeting the information requirements of Section 106 – Court to ensure parties understand proceedings of the CPA, 1999. <p>Provide the participants with a copy of the "Draft Consent Form".</p> <p><i>Briefly go through the Draft Consent Form</i></p> <p>Explain that whilst this provides a template for developing a document that outlines the parents/respondents consent it is advisable that where possible written consent of the parents/respondents should be provided to the court in their own words and handwriting.</p> <p>Explain to the participants that whilst it is a useful for the Court Co-ordinator / Departmental Officer to be able to hand up to the court a signed consent form by the parents/respondents it is vital that when making submissions to the court in relation to the making of the child protection order that the Court Co-ordinator / Departmental Officer undertakes the following:</p> <ul style="list-style-type: none"> ➤ Advises the Court that parents/respondents are consenting to the order ➤ Outlines for Court that the relevant provisions of Section 59 – Making of a child protection order of the CPA, 1999 have been met. <p>This is due to the fact that whilst the parents may be consenting to a particular child protection order, the court still needs to be satisfied that the child is a child that is in need of protection and, it is therefore not enough to just submit to the court that the parents are consenting to the application.</p>	<p>Applications for child protection orders by consent.</p> <p>Draft Consent Form</p>

Time	Content	Resources / Comments
	<p>Note: There is no provision in the <i>CPA, 1999</i> for child protection orders to be made by consent.</p> <p>Role of Court Co-ordinator in relation to consent orders:</p> <ul style="list-style-type: none"> ➤ Assist Child Safety Officers to draft appropriate consent forms. ➤ Provide a quality assurance role in terms of checking the details of consent forms that have been drafted by Child Safety Officers. ➤ Ensure that prior to the matter being mentioned in Court that the relevant provisions of Section 59 – Making of a child protection order of the <i>CPA, 1999</i> have been complied with. <p><u>Contested Child Protection Applications</u></p> <p>When an application for a child protection order is contested there are a number of processes and procedures that need to be undertaken by staff from the Child Safety Service Centre, Court Services and Crown Law.</p> <p>Explain that remainder of this session will be spent focusing on these processes and procedures with a view to specifically clarifying the role of Court Co-ordinators in these processes.</p> <p>Refer the participants to the Checklist for Preparation for Contested CP matter and explain that this document will be used as a guide to work through the various task associated with preparing for a contested child protection hearing.</p> <p>❑ Case Discussions</p> <p>In some situations it may be of assistance to hold a case discussion in relation to a contested application with Court Services. The Child Safety Service Centre would normally initiate the request for a case discussion to held, following discussions at the local level.</p> <p>The Court Co-ordinator may have a role in terms of contacting Court Services to make arrangements for the case discussion. The expectation is that the Court Co-ordinator would definitely be involved in the case discussion with Court Services.</p> <p>Note: As per the checklist "case discussions" can be held at any stage during the court process.</p> <p>❑ Contact the Child Protection Team Leader, Court Services to inform that a Hearing has been ordered.</p> <p>Once the parents/respondents have informed the court that they are contesting the application the matter is normally referred to a court order conference. Once the matter has progressed through the Court Ordered Conference stage without resolution and hearing dates are scheduled, it is at this stage that the Court Co-ordinator would have responsibility for advising Court Services of the matter. This should occur as soon as possible following the matter being scheduled for hearing. The purpose of this being to allow adequate time for Court Services to brief Crown Law and make arrangements for the Department to be represented at the hearing.</p>	<p>Checklist for Preparation for Contested CP matters</p>

Time	Content	Resources / Comments
	<p>❑ Court Services to send contested CP summary to Child Safety Service Centre for completion</p> <p>The Team Leader will then forward the following document (electronically) for completion by the Court Co-ordinator:</p> <p>"Court Services: Request for additional information Re: Contested Child Protection Applications" (as known as the Contested CP Summary)</p> <p><i>Briefly go through the 'Court Services: Request for additional information Re: Contested Child Protection Applications' form</i></p> <p>❑ All material filed in current proceedings to be sent to Court Services, along with Contested CP Summary</p> <p>The "Contested CP Summary" should be completed as soon as possible and returned to Court Services with all relevant material from the court file.</p> <p>This material would include all material that has been filed in court in relation to the matter. For example:</p> <ul style="list-style-type: none"> • All applications including TAO's, CAOs and CPO's • Copies of any TAO or CAO's that have been made • All Affidavit material that has been filed • All Form 22's – Affidavits of Service • All Form 16's - notices of adjournment of proceeding • Form 17 – Aboriginal and Torres Strait Islander Recognised Entity (if applicable) • Any material filed by the parents/respondents <p>The expectation is that Court Co-ordinators will take responsibility for ensuring that the "Court Services: Request for additional information Re: Contested Child Protection Applications" and all relevant court material is forwarded to Court Services in a timely fashion.</p> <p>Highlight to participants the handout "The Jones Family - Summary of court proceedings, following the filing of the application for a Child protection order".</p> <p>Provide the participants with a copy of completed Contested CP Summary in relation to Peter Jones.</p> <p><i>Trainers Note: the information contained in the handout "The Jones Family - Summary of court proceedings, following the filing of the application for a child protection order" covers all court outcomes prior to the hearing. However, best practice would require the "Contested CP Summary" be completed following the mention on the 23rd December, 2004. Check to see whether participants took this in to account when preparing the Contested CP Summary.</i></p>	<p>Contested CP Summary</p> <p>Handout: The Jones Family - Summary of court proceedings, following the filing of the application for a child protection order"</p> <p>Handout: Contested CP Summary worksheet.</p>

Time	Content	Resources / Comments
	<p>❑ Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list</p> <p>Once the Court Services: Request for additional information Re: Contested Child Protection Applications" and all relevant material has been received by Court Services the file is allocated by the Team Leader to a Court Services Adviser/Officer.</p> <p>The first task undertaken by the Court Services Adviser is to complete a "Review of Court Material".</p> <p>The purpose of this document is to outline the following:</p> <ul style="list-style-type: none"> ➤ The name of the matter ➤ The Court Services Adviser with carriage of the matter ➤ The CPO sought ➤ Brief summary of the child protection issues ➤ Evidence provided to Court Services to date ➤ Suggestion for additional information to be obtained – including suggested timeframes for preparation of material (For example: prior to the court ordered conference) ➤ List of potential witnesses (if the matter proceeds to hearing) ➤ Any feedback in relation to material filed to date ➤ Other relevant information. <p>Upon completion, this document is then sent electronically to the relevant persons' at the Child Safety Service Centre. These would include:</p> <ul style="list-style-type: none"> ➤ Court Co-ordinator ➤ Team Leader ➤ Child Safety Officer <p>The Review of Court Material will identify any extra material that needs to be progressed prior to the Hearing to ensure all relevant information is sought as soon as possible. It is at this stage that Crown Law is engaged.</p>	<p>Handout: Contested Summary Jones CP for</p> <p>Handout: Review of court material.</p> <p>Handout: Review of Court Material Form</p>

Time	Content	Resources / Comments
	<p>❑ Brief to Crown Law (includes all material filed in the proceedings)</p> <p>If a matter has failed to resolve at the Court Co-ordered Conference it is then normally set for a hearing. When an application proceeds to hearing the Department will seek to be legal represented for the hearing. In the main Crown Law represents the Department.</p> <p>In order to engage Crown Law, the Court Services Adviser/Officer with carriage of the file prepares a brief in relation to the matter. A brief is basically a letter to the Crown Solicitor requesting that they represent the Department in relation to the matter.</p> <p><i>Provide the participants with a copy of the brief that has been prepared in relation to the Jones family as an example of this document. Talk through the document addressing each of the headings.</i></p> <p>Briefs canvas the following information:</p> <ul style="list-style-type: none"> ➤ Brief details in relation to the application – For example: details of the child protection order sought, the date, time and place for the hearing. ➤ Nature of the instructions ➤ Court History ➤ Current Status of the child ➤ Family constellation ➤ Summary of the child protection issues ➤ Case Plan ➤ Respondents ➤ Evidence obtained and attached ➤ Suggestions for further evidence to be obtained ➤ Potential witnesses ➤ Departmental contacts <p>A copy of the "Review of Court Material" will normally be attached to the brief for Crown Law.</p> <p>Briefs are prepared from information provided in the "Court Services: Request for additional information Re: Contested Child Protection Applications" and from the court material that has been sent to Court Services. <i>Hence, reiterate to the Court Co-ordinators the importance of providing all relevant court material to Court Services.</i></p>	<p>Handout: Briefs for Crown Law Included in the manuals</p> <p>Handout: Crown Law Brief – Jones Included in the manuals</p>

Time	Content	Resources / Comments
	<p>Briefs are also prepared by Court Services, when Crown Law advice/representation is required for any other child protection related matter.</p> <p>Explain that a copy of the brief is also</p> <ul style="list-style-type: none"> ➤ provided to the relevant Child Safety Service Centre. ➤ retained on the Court Services file. <p><input type="checkbox"/> Inform Child Safety Service Centre of which Crown Law Officer has been allocated the file</p> <p>Once the brief has been received by Crown Law, a Crown Law Officer will be allocated the file. This Crown Law Officer will then contact Court Services to advise that they have been allocated the file.</p> <p>The Court Services Adviser/Officer will in turn advise the relevant staff at the Child Safety Service Centre of the allocated Crown Law Officer</p> <p><input type="checkbox"/> Organisation of AIC with Crown Law and Child Safety Service Centre</p> <p>An "Advice in Conference" is a discussion that involves Crown Law, Court Services and the Child Safety Services Centre. The following persons' would participate in an "Advice in Conference":</p> <ul style="list-style-type: none"> ➤ Crown Law Officer – Crown Law ➤ Court Services Adviser/Officer – Court Services ➤ Child Safety Officer ➤ Team Leader ➤ Court Co-ordinator <p>Once a Crown Law Officer has been appointed Court Services will make arrangements to hold an Advice in Conference at a time, which is convenient to all parties.</p> <p><input type="checkbox"/> Preparation of memo for AIC relation to legal advice / case specific matters.</p> <p>As indicated this is a document that is prepared by Crown Law prior to the Advice in Conference. The purpose of this document is to offer legal advice in relation to the application and to address case specific matters.</p> <p>Note: these documents are not prepared for all cases.</p> <p><input type="checkbox"/> Advice in Conference with Crown Law</p> <p>Purpose of an Advice in Conference</p> <ul style="list-style-type: none"> ➤ Review available evidence ➤ Provide legal advice ➤ Planning and strategising the application ➤ Exploring alternative options ➤ Determining negotiation stance 	<p>Handout: Advice in Conference.</p>

Framework for an "Advice in Conference"

- The Court Services Adviser/Officer chairs the "Advice in Conference".
- The AIC will commence with an introduction of all participants
- Checks are made to ensure that all parties have the same material
- In some cases Crown Law will have prepared a memo that will form part of the discussions.
- The Child Safety Service Centre is required to summarise the child protection issues which form the basis of the application.
- The Child Safety Service Centre is required to provide a case update.
- The Child Safety Service Centre is required to provide confirmation of the child protection order being sought
- A review of the evidence to date and suggestions for further evidence required is undertaken
- A list of witnesses that would be required for the hearing is generated. This would include those to be subpoenaed and any file documents that need to be subpoenaed from external agencies.

In general "Advice in Conferences" are conducted by teleconference. However, for some of the Brisbane Child Safety Service Centres, participants may chose to attend Court Services, in person.

The expectation in relation to Court Co-ordinators would be that they actively participate in all "Advice in Conferences".

❑ Minutes of the Advice in Conference to be taken and sent to all participants

Following the "Advice in Conference" the Court Services Adviser/Officer will complete and circulate the minutes to all parties.

Provide the participants will a copy of template for the "Advice in Conference" minutes used by Court Services

Time	Content	Resources / Comments
	<p><u>Exercise Re: Potential witnesses for the Jones Matter (this could be done)</u></p> <p>Based on the information that has been provided to date in relation to the Jones family - undertake the following:</p> <ul style="list-style-type: none"> ➤ Generate a list of potential witnesses that could be called in relation to this matter. ➤ Advise as to whether there would be any file documents that would need to be subpoenaed from external agencies? <p><i>Allow the participants 10 minutes to complete this exercise.</i></p> <p><i>Seek feedback from the group in relation to the potential witnesses and documents that may need to be subpoenaed. Refer to the Trainers Notes</i></p> <p><input type="checkbox"/> Ensure task undertaken and affidavits obtained as per the Advice in Conference and review document.</p> <p>The expectation is that Court Co-ordinators will take responsibility for ensuring that all tasks identified in the Advice in Conference and the review document are undertaken.</p> <p>Provide participants with a copy of the "Contested Child Protection Work Plan" Explain that this is a simple tool that could be used to assist in the management of contested child protection cases.</p>	<p>Handout: Advice in Conference Minutes</p> <p>Handout: Exercise Re: Potential Witnesses for the Jones matter.</p> <p>Handout: Exercise Re: Potential Witnesses for the Jones matter – Trainers Notes</p>

Time	Content	Resources / Comments
	<p>Provide the participants with a copy of the Handout: Form 24: Subpoena</p> <p>Provide the participants with a copy of the Handout: Subpoena Checklist. Explain that this again is a simple tool that may assist Court Co-ordinators to assist staff with in the Child Safety Officers to organise the required subpoenas and ensure that there are served within a reasonable timeframe</p> <p>Crown Law advice Re: Service of Subpoenas</p> <p>Provide the participants with the handout Service of Subpoena –Crown Law Advice and discuss.</p> <p><u>Subpoena Exercise (not to be done but material to be referred to)</u></p> <p>Again drawing on the contested application for the Peter Jones get the participants to complete the following forms for the hearing on the basis that the Court Co-ordinator, Matthew Brown is preparing the documents.</p> <ul style="list-style-type: none"> ➤ Form 23: Request for a subpoena for Dr Anthony Lewis, Mater Children's Hospital, Annerley Road, South Brisbane. ➤ Form 23: Request for a subpoena for Peter Jones' medical records from the Mater Children's Hospital. This would be addressed to the Executive Director, Mater Children's Hospital, Annerley Road, South Brisbane. ➤ Form 24: Subpoena for Dr Anthony Lewis ➤ Form 24: Subpoena for Peter Jones medical records from the Mater Children's Hospital. <p>Allow the participants 15 minutes to complete this exercise</p> <p>Provide the participants with the following examples for the contested application for Peter Jones.</p> <ul style="list-style-type: none"> ➤ Form 23: Request for a subpoena for Dr Anthony Lewis, Mater Children's Hospital, Annerley Road, South Brisbane. ➤ Form 23: Request for a subpoena for Peter Jones' medical records from the Mater Children's Hospital. This would be addressed to the Executive Director, Mater Children's Hospital, Annerley Road, South Brisbane. ➤ Form 24: Subpoena for Dr Anthony Lewis ➤ Form 24: Subpoena for Peter Jones medical records from the Mater Children's Hospital. 	<p>Handout: Form 24: Subpoena</p> <p>Handout: Subpoena Checklist</p> <p>Handout: Service of Subpoenas – Crown Law Advice</p> <p>Handout: Exercise Re: Subpoenas for the Jones Matter</p> <p>Handout: Form 23 – Worksheet (x 2)</p> <p>Handout: Form 24 – Worksheet (x 2)</p> <p>Handouts: examples of Form 23's and Form 24's for the Jones matter.</p>

Time	Content	Resources / Comments
	<p>Telephone evidence</p> <p>Once subpoenaed some witnesses may request to provide their evidence by telephone.</p> <p>The provisions associated with providing evidence by telephone are outlined in "Practice Direction Magistrates Court No 3 of 2000 – Taking Evidence by Phone.</p> <p>If a witness requests to provide their evidence by telephone the party wishing to have the evidence taken by telephone should inform the other party accordingly 7 days before the trial, to determine whether there is any objection.</p> <p><input type="checkbox"/> Service of all material on all parties</p> <p>The Child Safety Service Centre is responsible for this task. From a "best practice" perspective all material should be filed and served at least 5 working days prior to the hearing date.</p> <p>Court Co-ordinators will have responsibility ensuring and overseeing that this occurs (links to CMC recommendations).</p> <p><input type="checkbox"/> Letter to other parties completed Re which witnesses are required for cross examination</p> <p>Provide the participants with a copy of the Handout: Notice of witnesses to parent – draft letter.</p> <p>Explain that this letter is sent to parents/respondents when they are unrepresented to attempt to establish what witnesses the parent/respondents may want to cross-examine.</p> <p>Note: when parents/respondents are legally represented Crown Law liaises with the respondents legal representative to establish which of the witnesses are required for cross-examination.</p> <p><input type="checkbox"/> Witness list completed including contact numbers, place of employment, qualifications and availability of witnesses organised to be provided to Court Services.</p> <p>The expectation is that Court Co-ordinators would have responsibility for completing this document and ensuring that this is forwarded to Court Services. The development of this document should be undertaken in conjunction with the Child Safety Officer.</p> <p><input type="checkbox"/> Complete list of all material with sworn and filed dates to be provided to Court Services</p> <p>The expectation is that Court Co-ordinators would have responsibility for completing this document and ensuring that this is forwarded to Court Services</p>	<p>Handout: Practice Direction – Magistrates Court – No 3 of 2000. Taking evidence by phone.</p> <p>Handout: Notice of witnesses to parents – draft letter</p>

Time	Content	Resources / Comments
	<p>❑ Ensure copies of all material filed is provided to Court Services</p> <p>The Court Co-ordinator would be responsible for ensuring that Court Services is provided with all updated material.</p> <p>❑ Ensure copies of all material filed is provided to Crown Law</p> <p>Once the relevant material is provided to Court Services this material will be forwarded to Crown Law.</p> <p>❑ Organisation and chairing of another Advice in Conference to finalise the arrangements for the hearing.</p> <p>This task will be undertaken by Court Services – Again Court Services, Crown Law and the Child Safety Service Centre will participate in this process.</p> <p>Court Co-ordinator will be involved in this Advice in Conference.</p> <p>Note: Prior to the hearing date the Child Safety Service Centre cannot communicate directly with Crown Law at any stage without the specific approval of Court Services. Approval is generally given in the days preceding the hearing.</p> <p>❑ Discussion with parties about which witnesses are required for cross examination</p> <p>As indicated the Child Safety Service Centre and Crown Law are responsible for this. The Court Co-ordinator could be involved in this process.</p> <p>❑ Organisation of witness order</p> <p>Crown Law has responsibility for deciding the order in which the witnesses could be called. At times this may be dependent on the availability of the witness.</p> <p>❑ Discussion of witnesses expenses with the relevant witnesses and approval memo to Manager, Court Services.</p> <p>Court Services has responsibility for payment of all witnesses' expenses for contested child protection applications. (Part of Court Services budget is allocated for this purpose).</p> <p>Whilst Court Services has responsibility for paying the witnesses, the expectation is that Court Co-ordinators will make the referrals to Court Services.</p> <p>❑ Arrangements made in relation to who will organise the witnesses</p> <p>The expectation is that the Court Co-ordinator will undertake this role, prior to and on the day of the actual hearing.</p>	

Time	Content	Resources / Comments
	<p>Role of Court Co-ordinator</p> <p>Provide the participants with a copy of the Handout: Role of Court Co-ordinators in Contested Child Protection Applications which provided a summary of the tasks that Court Co-ordinators will have responsibility for.</p> <p><u>Hearing of contested child protection applications on the papers.</u></p> <p>This involves the Magistrate making an order based on the written material that is before them. Hence, no witnesses are called. The expectation is that Court Co-ordinators will manage these types of hearings and Crown Law will not be briefed.</p> <p>The statewide practice in relation to these types of hearing varies depending on the location and the Magistrate. Court Co-ordinators will need to be guided by the practice of their local Magistrate.</p> <p>Any Questions?</p> <p><u>INFORMATION THAT MUST BE HIGHLIGHTED DURING THIS SESSION:</u></p> <ul style="list-style-type: none"> ○ Flowchart ???? ○ Review of court material – no particular format, needs to be a clear summary ○ Expectation of gaps in evidence being identified and appropriate preparation completed ○ Advise Court Services immediately after hearing dates for a matter are scheduled. No need to advise court services or have court material forwarded after a Court Ordered conference has been arranged. ○ Can someone be put on the same subpoena as production of documents? ○ Telephone Evidence ○ Hearings aren't briefed to Crown Law on papers only – Court Co-ordinators make submissions regarding this <p style="text-align: center;">❖ <u>Practice Issues Discussion – as required by participants</u></p>	<p>Role of Court Co-ordinators in Contested Child Protection Applications</p>

Contested Child Protection Matters

INTRODUCTION:

Upon the Court Services Unit receiving instructions from the CSSC that a child protection matter has been set down for a hearing, the following process occur:

1. The Court Coordinator to fill out the **"Request for additional information re contested child protection applications"** form and email it to Melissa.clarke@chidsafety.qld.gov.au

Please ensure that you provide **TWO** copies of all court material filed in the proceeding to date (including adjournment notices) to Court Services.

2. The matter will then be allocated to a Court Services Adviser
3. The Court Services Adviser will prepare a **"Review of Court Material"** document.
4. The Court Services Adviser will also prepare a **"Brief to Crown Law"**.
5. The Court Services Adviser will make arrangements to conduct an **"Advice in Conference"** between the CSSC and Crown Law.
6. The Court Services Adviser will provide ongoing consultation and support to the CSSC throughout the duration of the contested matter
7. During the review of court material and the advice in conference a number of witnesses will be identified. **Subpoenas** for those witnesses will need to be prepared. The witnesses themselves will need to be contacted, served with the subpoena document and provided with information and support to prepare them for **giving evidence**.

REVIEW OF COURT MATERIAL

This document is prepared by the Court Services Adviser upon the allocation of a contested child protection file. The purpose of this document is to outline the following:

- The name of the matter
- The Court Services Adviser with carriage of the matter
- The child protection order sought
- A brief summary of the child protection concerns
- Evidence provided to Court Services to date
- Suggestions for additional evidence to be obtained to support the application
- List of potential witnesses
- Feedback in relation to the current filed material
- Other relevant information and advise

Upon completion, this document is then electronically sent to the relevant persons including the Court Coordinator, Team Leader and the Child Safety Officer.

BRIEF TO CROWN LAW

Briefs for Crown Law are prepared by Court Services when advised that a contested child protection application has not resolved at the Court Ordered Conference, or when Crown Law advice or representation is required.

In relation to contested child protection applications the brief is basically a letter to the Crown Solicitor requesting that they legally represent the department in relation to the matter.

Briefs canvas the following information:

- Brief details in relation to the application – For example, details of the child protection order sought; the date, time and place of the hearing
- Nature of the instructions
- Court history
- Current Status of the child
- Family constellation
- Summary of the child protection concerns
- Case Plan
- Respondent details, including solicitor acting for the respondents
- Evidence obtained and attached
- Suggestions for further evidence to be obtained
- Potential witnesses
- Departmental contacts

Briefs are prepared from the information provided in the "Request for additional information re contested child protection applications" form and from the court material that has been sent to Court Services.

A copy of the "Review of Court Material" will normally be attached to the brief for Crown Law.

A hard copy of the brief for Crown Law is provided to the relevant CSSC and a copy is retained on the Court Services file.

ADVICE IN CONFERENCE (AIC)

An "Advice in Conference" (AIC) is a discussion that involves Crown Law, Court Services and the Child Safety Services Centre. The following persons' would participate in an "AIC":

- Crown Law Officer – Crown Law
- Court Services Adviser – Court Services
- Child Safety Officer
- Team Leader
- Court Co-ordinator

Purpose of an Advice in Conference

- Review available evidence
- Provide legal advice
- Planning and strategising the application
- Exploring alternative options
- Determining negotiation stance

Framework for an "Advice in Conference"

- The Court Services Adviser chairs the AIC.
- The AIC will commence with an introduction of all participants
- Checks are made to ensure that all parties have the same material
- In some cases, Crown Law will have prepared a memo that will form part of the discussions.
- The Child Safety Service Centre is required to summarise the child protection issues, which form the basis of the application.
- The Child Safety Service Centre is required to provide a case update.
- The Child Safety Service Centre is required to provide confirmation of the child protection order being sought
- A review of the evidence to date and suggestions for further evidence required is undertaken
- A list of witnesses that would be required for the hearing is generated. This would include those to be subpoenaed and any file documents that need to be subpoenaed from external agencies.

In general "Advice in Conferences" is conducted by teleconference. However, for some of the Brisbane Child Safety Service Centres, participants may chose to attend Court Services, in person.

Following the "Advice in Conference" the Court Services Adviser will complete and circulate the minutes to all parties.

In a complex matter, it may be necessary to have multiple AIC's.

In some case the Court Services Adviser may request a case discussion (without Crown Law being involved) if there are policy or procedural issues that need to be discussed prior to Crown Law involvement.

SUBPOENAS

The provisions in relation to subpoenas are outlined in Rule 27 – "Subpoenas" of the *Children's Court Rules, 1997*.

Rule 27 states: "On application by a party to a proceeding, the registrar may issue a subpoena requiring the attendance of person before the court to give evidence in the proceeding or produce stated documents or things".

A witness will require a subpoena to attend court if they refuse to attend. Some witnesses may request a subpoena in order for them to be released from their place of work.

Files of another Department or agency may also be required. If so, a subpoena is to be prepared in the name of the Director-General, Manager or Superintendent of that organisation. That particular person will not appear, but may delegate a representative to attend with the files.

The procedure for preparing and serving a subpoena involves:

- Completing a copy of the Form 23 – Request for a Subpoena
- A separate Form 23 needs to be completed for each witnesses

- Complete the Form 24 – Subpoena and make three copies of this document
- Keep copies of the Form 23 and the Form 24 for departmental records
- Take the original and the remaining copies to the Justice of the Peace at the court where the application is to be heard.

The Registrar will make a decision regarding the issue of the subpoena. If the subpoena is issued, two copies of the Form 24 are returned to the departmental officer for one for personal service on the witness and one for the departmental file.

Once the subpoena has been served on the witness the departmental officer that served the witness needs to complete a Form 22 – Affidavit of Service.

Note:

The applicant applying for the subpoena does not necessary need to be the applicant for the child protection order.

The person that serves the subpoena does not need to be the applicant for the subpoena or the applicant for the child protection order. However, the person who serves the subpoena needs to complete the Form 22 – Affidavit of Service.

PREPARING WITNESSES

Many professionals feel uncertain about their ability to give convincing testimony in court. This uncertainty often stems from a lack of knowledge and experience in either court procedures and/or on devices used by counsel during cross-examination.

This following information attempts to identify some of the more common procedural aspects and techniques used by counsel, to help the witness feel more confident and prepared when giving evidence.

Legislative bases for a witness to provide evidence:

All persons' that provide affidavit material for child protection court proceedings or statements for the Children Services Tribunal have the potential to be called as a witness for the hearing. This information should be provided to the potential witness at the time when they are preparing their material so that if the person is required to provide evidence to a children's court or the Children Services Tribunal, at some later stage, it will not come as a shock to the witness.

Proceedings in the Children's Court

Section 16 – Examination of person making an affidavit - *Children's Court Rules, 1997* states:

- (1) If an affidavit is to be relied on at a hearing, the court may order the person making it to be examined and cross-examined before the court and may order the person to attend the court for the purpose.

Proceedings in the Children Services Tribunal

Division 9 – witnesses generally of the *Children Services Tribunal Act, 2000* outlines the provisions in relation to witnesses.

Section 97 – Attendance of Witnesses

- (1) the presiding member may notify a person, other than a child to attend at a proceeding before the tribunal –
 - (a) as a witness; or
 - (b) to produce the thing stated in the notice.
- (2) The notice must be in the approved form and state the time at and the place where the person must attend.
- (3) The presiding member may act under subsection (1) on the member own initiative or on application by a party.

Section 102 – Tribunal may examine and cross-examine witnesses

- (1) The tribunal may examine and cross-examine an adult witness appearing before it.
- (2) The tribunal may also examine and cross-examine a child who elects to give evidence under section 95 or 96.

Preparation for Cross-Examination

1. Understanding the nature of the adversarial system:

A court of law is an arena in which parties compete, presenting their various perspective to be examined by an impartial arbiter (judge or jury), who then makes findings of fact and ultimately decides what the remedy should be.

It is assumed that a process in which parties can, by question and answer, develop their own case and challenge that of their adversaries maximises the presentation of the facts.

Cross-examination is seen as an accountability measure for the witness.

Solicitors/Barristers may distort the professional's findings to support their client or theory of the case as well as directly challenge the professional's techniques, assumptions, competence, assessment process, qualifications, validity of the data used, basis (organisational, confirmatory), use of suggestibility or coaching, professional's history and predisposition.

Often professional's are treated by Solicitors/Barristers in a manner that they are not use to within a professional arena. Both the tone of voice and the way questions are asked may be quite offensive.

Strategy:

It is important to anticipate that you are likely to be challenged in a range of areas and have a considered response prepared.

Maintain an up-to-date resume or curriculum vitae that includes all continuing education. Have relevant statistics in mind or recent publications that you have referred to as a means to support your assessment and opinions.

Be cautious not to provide one-sided testimony. Consider the weakness of your assessment and be prepared to respond. (eg: I did not have an opportunity to speak with the father therefore the results are inconclusive, none-the-less the child continues to present with anxiety in a range of environments ...)

2. Putting your point of view across:

Testifying to represent your view accurately is a difficult process.

Strategies:

Be prepared! Be very familiar with reports, notes ect. Have facts easily accessible or memorised as shuffling through records to ascertain case facts may interrupt the pace of the testimony and make the witness appear unprepared, indecisive or lacking in knowledge.

NB: However, this can be used as a strategy for the witness to control the pace of the cross-examination. If you need time to think, settle yourself down. You must seek leave from the Judge/Magistrate to refer to your notes.

Have the main points that you would like to get across in cross-examination in the forefront of your mind (even on notes that you bring in with you – eg: covering page to your report. Don't get flustered if the Barrister asks to see these notes, this is a common request and all material that is taken into court must be shared if asked.)

Remember, it is the judge whose opinion you want to influence, not the Solicitors /Barristers. Look to the judge to educate him/her about the topic you are addressing. Discuss concepts that are necessary for the judge to understand and then develop explanations of them in lay language, using concrete illustrations.

Finally, professionals should remember that although their role in the litigation is important, they are not responsible for the outcome of the case. They are responsible only for their testimony. The judge is the decision-maker.

3. The Courtroom as a Stage:

Witnesses must appreciate the importance of their performance in court.

Testimony is an opportunity to infuse the written word with the professional's competence, conviction, and integrity. Preparation, dress and demeanour are very important.

Strategy:

Don't be put off by theatrical performances by Solicitors/Barristers.

Be prepared to be speak with the solicitor that has subpoenaed you to discuss what kind of questions they are likely to ask you and what you may expect from the other side. Also ask them about the Judge/Magistrate's style of decision making. Every bit of information helps.

4. Organise an opportunity for debriefing and reflective learning's after each cross-examination experience.

Remember that cross-examination will be one of the most stressful parts of your job. As such the stress that may be induced by the experience needs to be taken seriously with opportunity to debrief and de-stress with colleagues and clinical supervisors. Every experience is a wealth of knowledge that you can draw from for you next cross-examination.

QUICK TIPS - Being a witness in the children's court

Upon entering the court always acknowledge the bench by bowing when entering and leaving the court room. Stand while the Magistrate or Judge is entering or leaving the court room. When crossing the court room never walk between the bench and the bar-table. Walk behind the bar-table.

A Magistrate and a Judge is to be addressed as "Your Honour".

Once you have entered the witness box you will be asked to take an oath or affirmation.

- **The Oath** - Take the bible in the right hand and look directly at the Magistrate or Judge and repeat the words of the oath, slowly and clearly. An affirmation may be taken by a non-Christian in lieu of an oath.
- **Witness box chair** - Never sit down until you are given permission from the bench to do so.

Once you have given an oath/affirmation there are three stages of questioning:

1. Evidence in chief – providing information to the Magistrate
2. Cross examination – to destroy, diminish, limit or explain away information
3. Re-examination – to re-establish credibility and clarify important points

DO

- (a) know your case and facts – be sure
- (b) think before you answer
- (c) answer the questions – only as much as you have to
- (d) maintain objectivity and balance – positives and negatives
- (e) be friendly and obliging and assist the court
- (f) concede points and make concessions
- (g) do state your ignorance if you don't know something – It's ok to say I don't know!
- (h) do qualify your answers first
- (i) do use simple language – no jargon
- (j) do dress sensibly – create a credible impression
- (k) do control your hands, voice, eyes and facial expression
- (l) do project your voice
- (m) do correct any misunderstanding or mistakes
- (n) do ask them to repeat the question if it is too long

DO NOT

- (a) get angry
- (b) ask questions back

- (c) be arrogant or defensive
- (d) be officious or have a closed mind
- (e) volunteer information
- (f) answer hastily or guess but answer when you're sure what the question is
- (g) try to outsmart the lawyer
- (h) be evasive

Please see examples of:

- Request for addition information re contested child protection application forms
- Review of Court Material
- Brief to Crown Law
- AIC
- Request for Subpoena – Form 23
- Subpoena – Form 24

GIVING EVIDENCE IN COURT

CROSS-EXAMINATION BY THE LAWYER REPRESENTING THE FAMILY

The Magistrate will not allow the cross-examination to become insulting or abusive. The opposing counsel is there to attempt to test your evidence by showing up any weaknesses or illogical or inconsistent statements. If you get into an argument or become angry at the counsel then you may limit the credibility of your evidence. To prevent this from occurring you should:

- Drill yourself to always pause before answering a question. Take this time to check your emotional state and think through your reply.
- Do something to remind yourself to do this (eg. hold your hands a particular way).

The following table outlines a number of common tactics used by counsel during cross-examination, and provides suggested responses on the part of the witness.

Counsel's tactics	Example	Purpose	Witness' response
Reversing the words of the witness	Witness: "We met on Wednesday & spoke by phone on Friday". Counsel: "You say you spoke by phone on the Wednesday and met on Friday"	To confuse the witness & demonstrate a lack of confidence in the witness.	Listen closely whenever counsel repeats back something you have said. If counsel makes an error then correct it.
Repetitive questions	The same question asked several times but slightly rephrased.	To obtain inconsistent or conflicting answers from the witness.	Listen carefully and answer "I have just answered that question".
Rapid questioning	Asking several questions one after the other with no time for the witness to answer.	To confuse the witness & force an inconsistent answer.	Pause & take time to answer. Ask to have any or all of the questions repeated. Ask counsel which question s/he wishes you to answer first.
Condescending manner or questions	Benevolent in his/her approach or questions to the point of ridicule.	To give the impression the witness is inept, lacks confidence in their opinion, or may not be reliable.	Respond with a firm, concise answer.
Friendly manner & questioning	Being very courteous, polite – questions, appear to be taking the witness into his/her confidence.	To lull the witness into a false sense of security where the witness may give answers favourable to his/her (counsel's) client.	Remember that the counsel's role is to discredit or diminish the effect of your testimony. Think through your reply even to questions that are apparently easy to answer.
Badgering	Counsel staring you right in the face and shouting "That is so, isn't it!"	To make the witness angry so that s/he loses his/her sense of calm & logic.	Make a conscious effort to remain calm, Speak deliberately and concisely, focusing on the facts.
Demanding a "yes" or "no" answer	Counsel: "In your opinion is this a safe medical procedure, yes or no?"	To prevent pertinent and mitigating details to be considered by the court.	Say that you believe a "yes" or "no" answer would mislead the court & request permission from the magistrate to answer the question in full.

Suggestive or leading questions.	Counsel: "In your opinion this would be considered normal behaviour?"	To suggest an answer to the question to confuse or lead the witness.	Concentrate on the facts. Answer the question from the facts. Disregard suggestions by counsel. Stick to the facts.
Mispronouncing witness name or incorrect position or title.	Counsel addresses the witness using a junior title.	To provoke or unnerve the witness. Minimise the credibility of the witness' evidence.	Wait for an appropriate opportunity & correct the mistake before answering any further questions.
Staring at the witness	After the witness has answered a question counsel stares as though was more to be said.	To create a long pause to provoke the witness to say more than is necessary.	Wait for the next question. Only provide information required to adequately answer the question.



Queensland Government
Department of **Child Safety**

Court Services: Request for additional information re contested Child Protection Applications

Subject child/ren:

Name/s:

DOB:

Child Safety Service Centre contact information:

Applicant:

Child Safety Officer (if different to the Applicant):

Team Leader:

Senior Practitioner:

Court Co-ordinator:

Direct Number:

Direct Number:

Direct Number:

Direct Number:

Court details:

Initial mention date:

Other mention dates:

Court ordered conference date:

Hearing date/s (*include all days allocated and start time*):

Filing dates:

Review mention (*if applicable*):

Existing order/s:

CPO sought:

Existing CPO (if relevant):

Any current Family Court order/s: Yes No

Residency in favour of:

Current status of child/ren:

Temporary custody to Chief Executive: Yes No

Temporary custody held pursuant to section _____ of the CPA99.

Placement:

Length of time the child/ren has been in this placement:

Family constellation:

Mother:

Father:

Siblings:

Non Party Status:

Indigenous: Yes No

Other cultural background:

Grounds of the application (*brief*):

Current concerns:

Current risk assessment:

Departmental case plan *(including when filed with the Court):*

Court material filed in proceedings to date and issued by the Court:

On behalf of the department:

➤

On behalf of the respondents:

➤

On behalf of the Separate Representative:

➤

Court documents issued *(including Form 16s, 19s, etc):*

➤

PLEASE ENSURE THAT 2 X COPIES OF ALL COURT MATERIAL FILED IN PROCEEDINGS TO DATE AND ISSUED BY THE COURT ARE INCLUDED WITH THIS FORM.

Parent's position and legal representative/s:

Contesting/consenting:

Name and contact details of legal rep/s:

Separate Representative's details *(if appointed):*

Name and contact details:

Is this family currently involved in any of the following forums?

Children Services Tribunal	Yes	No
----------------------------	-----	----

Family Court/Federal Magistrates Court	Yes	No
--	-----	----

Childrens Court of QLD	Yes	No
------------------------	-----	----

If yes, please provide details:

Are there any interstate components? (ie: family members in other state?)

Yes	No
-----	----

If yes, please provide details:

Has this family previously been subject to contested child protection proceedings?

Yes	No
-----	----

If yes, please provide details (including the year):

Your timely assistance in providing this information to Court Services will assist in securing Crown Law representation if required. Thank you.

REVIEW OF COURT MATERIAL

Matter:

Applicant:

Caseworker:

Team Leader:

Court Coordinator:

Court Services:

Date:

Order Sought:

Material provided to date:

On behalf of the department:

- ✓ **Form 10** – Application for a Child Protection Order, made by _____, dated _____.
- ✓ **Form 25** – Affidavit of _____, dated _____, including Exhibit 'A' - _____.

Child protection concerns:

The department has assessed that the subject child/ren would be at risk of harm should he/she/they be placed back into the care of the respondent parents due to the following:

- Physical Harm/Excessive Discipline;
- Domestic Violence;
- Failure to Engage;
- Ability to Parent;
- Minimisation of Harm;
- Drug/Alcohol Abuse;
- Age/Vulnerability.

Suggestions for further material to be obtained:

- Further material required to support the department's case, ensuring the rules of direct and relevant evidence are adhered to.
- Affidavit of _____;

For future reference:

- Include here what the CSSC should do next time to ensure model litigant/best practice procedures are adhered to.
- Affidavits are written in the "first person". Ensure that you use the statement "I...".

Potential witnesses if matter proceeds to hearing:

- 1) Departmental officers;
- 2) Anyone else who provides written material on our behalf.

Refer [REDACTED]
Telephone No: 3235 9859
Email: [REDACTED]@chidsafety.qld.gov.au

B/c: Manager
**CABOOLTURE
CHILD SAFETY SERVICE
CENTRE**

21 April 2009

For your information

The Crown Solicitor
State Law Building
50 Ann Street
BRISBANE QLD 4000

[REDACTED]
Court Services Adviser

Attention: Civil Advocacy and Family Law Group - [REDACTED]

Dear Sir / Madame,

Re: Application for a child protection order granting custody of Peter Jones (born 16/12/06), to the Chief Executive, Department of Communities (Child Safety Services), Queensland, pursuant to the *Child Protection Act 1999*, to be heard at the Brisbane Children's Court on 10th August 2009 at 10.00am.

On the 19th January, 2009 at the Brisbane Children's Court, [REDACTED] Child Safety Officer of the Caboolture Child Safety Service Centre, made an application for a child protection order granting custody of the abovenamed child to the Chief Executive, Department of Communities (Child Safety Services) for a period of two years. The application has been adjourned for hearing to the 10th August 2009.

Nature of instructions

It would be appreciated if one of your officers would represent the Chief Executive, Department of Communities (Child Safety Services) at the hearing on the 10th August 2009 at 10a.m. It would also be appreciated if one of your officers would participate in an Advice in Conference at your earliest convenience.

Court Services
GPO Box 806
Brisbane Queensland 4001
Telephone 3235 9859
Facsimile 3235 9851
Website
www.chidsafety.qld.gov.au
ABN 42 458 314 937

Court history

Initial mention: 22nd January, 2009
Adjourned to: 23rd February, 2009
3rd March, 2009
29th April, 2009 (COC and mention)
10th August, 2009 (Hearing)

Current status of child

The child is subject to an interim order granting temporary custody of the child to the Chief Executive, Department of Communities (Child Safety Services), Queensland, until the date fixed for hearing or further orders. The child is currently placed with departmental carers, [REDACTED]

Family constellation

Mother: Mary Bell (whereabouts unknown)
Father: Barry Jones
Subject child: Peter Jones
Father's Current Partner: Denise Sutton
Denise Sutton's Son: Gary Sutton

Summary of child protection issues

Peter Jones was presented to the Emergency Department of the Redcliffe Hospital on the 9th January, 2009 with head injuries and significant bruising to his body. The injuries were of such a serious nature that he was immediately transferred to the Mater Children's Hospital.

Medical professionals have assessed the injuries to be non-accidental.

Barry Jones has been charged with Grievous Bodily Harm in relation to the child's injuries.

The child is considered to be at risk if returned to the fathers' care due to the following:

- The child has suffered life-threatening injuries, to the extent that if medical assistance had not be sought it is likely that the child would have died;
- Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Barry Jones and his partner remain unresolved;
- Inconsistencies exist between the timing of the child's injuries, with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented at the Redcliffe Hospital. Barry

Jones and his partner maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital;

- The child is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers over the next twelve to twenty-four months. The Department has concerns regarding Barry Jones' ability to provide this level of care.

The child's mother allegedly suffered complications when giving birth to Peter. As a result she was left with an intellectual disability and requires twenty-four hour care. The mother's current whereabouts are unknown. Attempts have been made to locate the child's mother but to date these have been unsuccessful.

Respondents

Barry Jones is contesting this application. His legal representative is [REDACTED] of the Brisbane Legal Aid Office, telephone [REDACTED]

Mary Bell's current whereabouts are unknown and the Department has been unable to serve her with any material in relation to the Child Protection Application for Peter Jones.

Evidence obtained and attached

- Form 10 Application for a Child Protection Order
(Dated the 19th January, 2009)
- Form 16 Adjournment of proceeding for a Child Protection Order
- Form 19 Notice of Court Ordered Conference
- Form 20 Report of Court Ordered Conference
- Form 25 Affidavit by [REDACTED]
(Dated the 19th January 2009)
- Form 25 Affidavit by [REDACTED] Mater Children's Hospital
(Dated the 19th January 2009)
Exhibit 'A' – Medical report
- Form 25 Affidavit of [REDACTED]
(Dated 19th February 2009)

Material from the Respondents:

- Form 25 Affidavit of Barry Jones
(Dated 4th February 2009)

- Form 25 Affidavit of Patricia Jones
(Dated 19th February 2009)

Suggestions for evidence to be obtained.

Please refer to the "Review of court material" document.

Potential witnesses

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

Departmental contacts

The departmental contacts in relation to this matter are [REDACTED] Child Safety Officer [REDACTED], Team Leader, [REDACTED] Court Co-ordinator, Caboolture Child Safety Service Centre, phone [REDACTED] and [REDACTED] Court Services, telephone [REDACTED]

It would be appreciated if one of your officers would represent the department in this matter and as further evidence may be required; your advice is sought as to what evidence may strengthen the case.

Yours faithfully,

[REDACTED]
Manager
Court Services
Department of Communities (Child Safety Services)
Encs

Advice In Conference Minutes – [family name/s]

Date:

Present: Crown Law Officer
Court Services Adviser/Officer
CSO, Child Safety Service Centre
Team Leader, Child Safety Service Centre
Court Co-ordinator

Case update:

Material to be filed by [date – 5 days prior to hearing date/s]:

Material provided to Court Services/Crown Law to date:

Things to do:

Additional affidavits/material required:

Potential witnesses required (and order if possible):

*N.B. Witnesses to be subpoenaed.

**Court Services
[date]**

Form 23
Childrens Court Act 1992
Child Protection Act 1999

REQUEST FOR SUBPOENA

CHILD: (name)

(Please note – multiple children can be listed on the one subpoena. ie – multiple sibling groups).

Date of Birth:

Sex *Female/Male

APPLICANT: *(This is the person who is applying for the subpoena – this does not necessarily have to be the applicant for the court assessment order/ child protection order. For example it could be another authorised officer ie Team Leader)*

Address:

TO the Registrar of the Childrens Court at (place) –

In the matter of application/s *for / in relation to a *court assessment order / child protection order or orders made by (name of applicant) **(this is the applicant for the court assessment /child protection order)** an *authorised officer / police officer, in the Childrens Court at (place) on (date) **(this is the initial mention date)** in relation to the above-named child –

Please seal a subpoena on behalf of: **(This is the applicant applying for the subpoena)**

direct to:

of:

returnable before the Childrens Court at:

Place:

Date: *(this relates to the date of the hearing or the mention date if the court has ordered an earlier return date – particularly in relation to files).*

Time: *(this is the time the hearing is to start)*

***Applicant / Respondent** *(This is the applicant applying for the subpoena)*

Place:

Date:

*delete whichever is not applicable
Form 23 – Version 1, March 2000

Form 24
Childrens Court Act 1992
Child Protection Act 1999

SUBPOENA

CHILD: (name)
Date of Birth:
Sex *Female/Male

TO:
of:

In the matter of application/s *for / in relation to *a court assessment order / a child protection order or orders made by (name of applicant), an *authorised officer / police officer, in the Childrens Court at (place) on (date) in relation to the above-named child –

YOU ARE REQUIRED TO APPEAR *AND / OR PRODUCE DOCUMENTS
(specify documents to be produced)

before the Childrens Court at:
Place:
Date:
Time:

to provide *evidence in the above matter / produce documents.

Registrar
Date:

NOTE: IN DEFAULT OF YOUR ATTENDANCE THE COURT MAY ISSUE A WARRANT TO COMPEL YOUR ATTENDANCE

Form 24 – Version 1, March 2000

I am listing this matter for a interim hearing to determine the issue of interim custody.

Your Honour, can you indicate whether the interim hearing will be run on the papers of if witness's will be required

I will determine the matter on written material provided by all parties.

Hearing run on papers = No Crown Law Representation

I am listing this matter for a interim hearing to determine the issue of interim custody.

Your Honour, can you indicate whether the interim hearing will be run on the papers of if witness's will be required

Witness's who provide affidavit material will be required to be available to give evidence.

Witness's Required = Crown Law Representation

Checklist for Preparation for INTERIM Contested CP Hearing ON THE PAPERS

Task	Who is responsible?			Approximate timeframe	Date completed
	CC	CS	CL		
Seek clarification from Magistrate whether the matter will be heard on the papers or if witness's will be required to give evidence	X			At the time the matter is listed for an interim hearing	
CC to advise Court Services that an interim hearing has been listed and that the Magistrate has indicated the hearing will be <u>run on the papers</u> .	X			As soon as possible after matter is listed for interim hearing	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list	X	X			
CC and CSA to arrange Case Discussion	X	X			
Case Discussion record to be sent to CSSC		X			
Ensure tasks undertaken / affidavits obtained as per Case Discussion	X			Ongoing process (CS to support CSSC in this)	
Service of all material on all parties	X			At least 5 working days prior to hearing (or as directed by Court)	

CC = Court Coordinator
CS = Court Services
AIC = Advice In Conference

CL = Crown Law
CSSC = Child Safety Service Centre

Checklist for Preparation for INTERIM Contested CP Hearing

WITNESSES REQUIRED

Task	Who is responsible?			Approximate timeframe	Date completed
	CC	CS	CL		
Seek clarification from Magistrate whether the matter will be heard on the papers or if witness's will be required to give evidence – consider other directions that may be required.	X			At the time the matter is listed for an interim hearing	
CC to advise Court Services that an Interim Hearing has been listed and that witness's will be required	X			As soon as possible after matter is listed for interim hearing	
CC to send completed Contested CP summary, with two copies of all material filed, to CS	X			As soon as possible after matter is listed for interim hearing	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list		X			
Brief to Crown Law (includes all material filed in this proceedings)		X			
Inform CSSC of which CL officer has been allocated and arrange time for AIC		X		When CL have advised CS	
Participation in AIC by all relevant officers	X	X	X		
Preparation of memo detailing outcome of AIC in relation to legal advice / case specific matters		X			
Ensure tasks undertaken / affidavits obtained as per AIC and Review document	X			Ongoing process (CS to support CSSC in this)	
Subpoena all witnesses, documents, etc (if witnesses are being called)	X			As soon as possible	
Service of all material on all parties. Affidavits of Service to be required.	X			At least 5 working days prior to hearing (or as directed by Court)	
Letter to other parties completed re which witnesses required for Cross-examination (CS has a draft of this letter)	X			When material served on parties	

Witness list completed including contact numbers, place of employment, qualifications and order of witnesses organised to be provided to CS	X			As soon as possible	
Complete list of all material with sworn and filed dates to be provided to CS	X			After all material obtained	
Ensure copies of all material filed is provided to Court Services	X			As soon as possible after material is filed	
Ensure copies of all material filed is provided to Crown Law		X		As soon as possible after material is provided to CS	
Discussion with parties about which Witnesses are required for Cross Examination	X	X	X	(responsibility is dependent on situation) At least 2 days prior to hearing (if possible)	
Organisation of witness order			X	After availability known and evidence obtained	
Organisation of who will instruct CL at hearing and who will organise witnesses	X	X	X	Prior to hearing	

CC = Court Coordinator
CS = Court Services
AIC = Advice In Conference

CL = Crown Law
CSSC = Child Safety Service Centre

Checklist for Preparation for Contested CP matter

SC= Child Safety Service Centre
CS = Court Services
COC = Court Ordered Conference
AIC = Advice In Conference

CL = Crown Law

Task	Who is responsible?			Approximate timeframe	Date completed
	SC	CS	CL		
Contact CS to have a Case Discussion (if required)	X			At any point prior to or during the court process	
Contact CP Team Leader, CS to inform that a COC has been ordered	X			Straight after COC order made by court	
CS to send Contested CP summary to SC for completion		X		After CS informed of COC	
All Material filed in current proceedings to be sent to Court Services (including Affidavits of Service, Adjournment Orders, etc) along with completed Contested CP summary	X			Immediately after COC order made by court and prior to COC	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list		X		Approx 2 weeks after material sent to CS and prior to COC where possible	
Inform CS of the outcome of COC and provide information about next mention / further COC / hearing dates / etc.	X			As soon as possible after completion of COC	
Brief to Crown Law (includes all material filed in this proceedings)		X		After no resolution at COC or if hearing close in timeframe (eg less than 4 weeks)	
Inform SC of which CL officer has been allocated and arrange time for AIC		X		When CL have advised CS	
Organisation of AIC with CL and SC		X		When hearing definitely going ahead	
Preparation of memo for AIC in relation to legal advice / case specific matters			X	Prior to AIC	
First Advice in Conference with CL		X		As early as possible at least 4 weeks prior to hearing	

Task	Who is responsible?			Approximate timeframe	Date completed
	AO	CS	CL		
Minutes from AIC to be taken and sent to all participants		X		As soon as possible after AIC	
Ensure tasks undertaken / affidavits obtained as per AIC and Review document	X			Ongoing process (CS to support SC in this)	
Subpoena all witnesses, documents, etc	X			As soon as possible	
Service of all material on all parties	X			At least 5 working days prior to hearing (or as directed by Court)	
Letter to other parties completed re which witnesses required for Cross-examination (CS has a draft of this letter)	X			When material served on parties	
Witness list completed including contact numbers, place of employment, qualifications and availability of witnesses to be provided to CS	X			As soon as possible	
Complete list of all material with sworn and filed dates to be provided to CS	X			After all material obtained	
Ensure copies of all material filed is provided to Court Services	X			As soon as possible	
Ensure copies of all material filed is provided to Crown Law		X		As soon as possible	
Organisation and chairing of another Advice In Conference to finalise arrangements		X		Approx. 3 days prior to hearing and after all material filed	
Discussion with parties about which Witnesses are required for Cross Examination	X		X	(responsibility is dependent on situation) At least 2 days prior to hearing (if possible)	
Organisation of witness order			X	After availability known and evidence obtained	
Discussion of Witness expenses with relevant witnesses and approval memo to Manager, Court Services		X		Prior to hearing	
Arrangements made in relation to who will organise witnesses for the hearing	X			Prior to hearing	

Session Plan – Appeals

To be presented in conjunction with the power point presentation

Outcomes:

- To provide a framework for appealable decisions.
- To provide an overview of appeal process when the Department is the appellant.
- To provide an overview of the process when the party is the appellant.
- To clarify the role of Court Co-ordinators in appeal processes.

Time	Content	Resources / Comments
	<p><u>Introduction</u></p> <ul style="list-style-type: none"> • Greetings <p>Welcome the participants back to the Court Co-ordinators training program – Session Four– Day Four.</p> <ul style="list-style-type: none"> • Linkage <p>Previous session have covered the processes and procedures involved in applying for assessment and child protection orders. This session links to these previous sessions in that this session will canvass the process and procedures involved in appealing these types of orders.</p> <ul style="list-style-type: none"> • Outcomes <ul style="list-style-type: none"> ➤ To provide a framework for appealable decisions. ➤ To provide an overview of appeal process when the Department is the appellant. ➤ To provide an overview of the process when the party is the appellant. ➤ To clarify the role of Court Co-ordinators in the appeal processes. <ul style="list-style-type: none"> • Strategy <ul style="list-style-type: none"> ➤ General information in relation to appeals will be provided, which will include a framework for appealable decisions. ➤ Information will be provided in relation to the processes and procedures for departmental appeals and appeals by other parties. ➤ Large group discussion: several scenarios will be provided to demonstrate the types of matters that have been appealed in the past. <ul style="list-style-type: none"> • Stimulus <p>Court Co-ordinators will be directly involved in appeal processes – both in relation to departmental appeals and appeals by other parties. They will require a framework for considering the possibility of having a matter appealed. Court Co-ordinators will be required to have an understanding of the processes and procedures involved in departmental appeals and appeals by other parties. They will also need to have an understanding of their role in relation to appeals.</p>	<p>Overhead / Handout: Session Outcomes.</p>

Time	Content	Resources / Comments
	<p><u>Appeals</u></p> <p>An appeal is the process by which an original decision is examined by a higher court. To win an appeal, it must be shown that the Magistrate or Judge in the original hearing made an error that affected the outcome.</p> <p>If the original application was heard in the Childrens Court, the appeal is heard in the Childrens Court of Queensland, or the District Court presided by a Childrens Court of Queensland Judge.</p> <p>Sections 117 to 121 of the <i>Child Protection Act 1999</i> refer to appeals of decisions in relation to assessment orders and child protection orders.</p> <p><u>Framework for appealable decisions</u></p> <p>What are appealable decisions?</p> <p>An appealable decision made by a court may relate to:</p> <ol style="list-style-type: none"> 1. Merits of a case 2. Law and/or process <ol style="list-style-type: none"> 1. The merits of a case can include whether or not a child is in need of protection and whether the most appropriate order has been made to meet the child's protective needs. Determination of merits of a case incorporates quality and type of sworn evidence and facts provided to the court. 2. Errors in law and/or in court processes may be a basis to appeal a decision. Legislation and Rules guide courts in their decision making and non-compliance or misinterpretation of the law and court processes may incur an appeal of that decision. <p>Determinants:</p> <p>There are a number of determining factors which influence the merits of an appeal and guide decision-making around whether action will be taken to pursue an appeal. Some of these determining factors include:</p> <ul style="list-style-type: none"> • Quality of material – whether the information provided to the court is evidence/fact, which supports the application and provides a clear rational for the order sort. • Safety of child – whether or not the child's safety and protection is immediately affected by the order and/or places them at immediate risk of harm • Arguments made – whether the Department or other parties raised argument to the decision in court or challenged the decision making, providing evidence to support their argument. • Setting of a precedence – whether the decision is one where a precedent may adversely affect practice and future decision-making. 	<p>Handout: CPO/Assessment Order Appeal provisions</p> <p>Handout: Procedures for Appeals</p> <p>Handout: Practice Direction – Appeals</p>

Time	Content	Resources / Comments
	<p><u>Appeal process</u></p> <p>Notice of appeal to Court Services – where an other party is the appellant</p> <ul style="list-style-type: none"> • Child Safety Service Centre advises Team Leader (CP) of appeal application ASAP. • Team Leader requests copy of the <i>Notice of Appeal</i> and/or any material filed with the appeal. Team Leader also requests a copy of all material filed as part of the Children's Court proceedings and a summary of events that occurred at the court mention/hearing. This information will assist with briefing Crown Law. • Team Leader ascertains when/if the matter is listed before CCQ and if there is a Stay application as part of appeal proceedings. • Team Leader prepares a brief to Crown Law and attaches a copy of all material provided by the Child Safety Service Centre. • Team Leader schedules an Advice in Conference (AIC) at the earliest opportunity between Crown Law, Court Services and the Child Safety Service Centre. The Service Centre to provide or prepare any additional material requested as part of the AIC. Crown Law to initiate contact with the relevant court registry to advise of <i>Notice of Address</i> for service, <i>Outline of Argument</i> and <i>Certificate of Readiness</i> (as per Practice Direction No. 5 of 2001) • Child Safety Services Centre continues to liaise with Court Services re the preparation of additional material as part of the appeal proceedings (as per contested CP procedures). • The applicant from the Child Safety Service Centre will instruct Crown Law in the appeal proceedings. • The Court Co-ordinator's role is to support the applicant and provide regular updates to Court Services in relation to outcomes of mentions and hearings. <p>Notice of appeal application to Court Services – where application by Department</p> <ul style="list-style-type: none"> • Court Co-ordinator, Child Safety Service Centre to contact Court Services ASAP to discuss the option of an appeal and its merits. Team Leader requests a copy of all material filed as part of Children's Court proceedings and a summary of the events leading up to the decision (inclusive of any arguments made in court, whether the parents were legally represented etc). • Team Leader may request the Court Co-ordinator to obtain a copy of the transcript of proceedings. 	

Time	Content	Resources / Comments
	<ul style="list-style-type: none"> • Team Leader will review the material and consider the evidence and determine whether consultation with Legal Services Branch and/or Crown Law is required. • Team Leader prepares an urgent brief to Crown Law and attaches a copy of all material provided by the Child Safety Service Centre for the purposes of ascertaining the merits of appeal. • An urgent Advice in Conference (AIC) scheduled between Court Services, Crown Law, Child Safety Service Centre, relevant regional staff – if appropriate, to discuss the merits and prospects of an appeal. Option of an urgent Stay application also discussed. • Should Crown Law consider there are merits to appeal, a memo from the Manager, Court Services will be sent to the D-G seeking their approval to appeal the decision. Manager to brief Director, Statewide Services also. • Child Safety Service Centre to provide or prepare any additional material requested as part of the AIC. Crown Law to initiate Notice of Appeal with the relevant court registry (including preparing the necessary court documentation as part of the commencement of the proceedings). • Child Safety Service Centre to liaise with Court Services re the preparation of additional material as part of the appeal proceedings (as per contested CP procedures). <p><u>Information dissemination</u></p> <ul style="list-style-type: none"> • A register which circulates precedence and Crown Law advice will be set up to ensure these decisions are disseminated to Court Co-ordinators and Magistrates. <p><u>Case Examples</u></p> <p>Scenario/activity</p> <p><u>Finish</u></p>	

APPEALS

Part 4 Section 117 – 121 of the *Child Protection Act 1999*

Brief Overview

Once the Childrens Court has made a decision in relation to an application for a Court Assessment Order or Child Protection Order, any party to the proceedings who disagrees with the decision, can lodge an appeal.

An appeal can also be lodged against a magistrate's decision to grant a Temporary Assessment Order. However, only the department, a child or young person or a parent is able to lodge an appeal in these circumstances.

An appeal is started by filing a written notice of appeal in the Childrens Court, either in Brisbane if that is where the decision was made, or if it was outside of Brisbane, it is lodged with the nearest District Court Registry.

The notice of appeal must state the grounds of the appeal and the facts relied on. It is recommended that legal advice is sought when drafting an appeal document.

The notice must be lodged within 28 days of the decision being made and each party to the original proceedings must be served with a copy.

In deciding an appeal, the judge may make any of the following decisions:

- confirm the decision appealed against
- vary the decision appealed against
- set aside the decision and substitute another decision
- set aside the decision appealed against and refer the matter back to the Childrens Court for another hearing.

A Childrens Court Judge is an appointed District Court Judge who is commissioned for this purpose and has particular expertise in matters relating to children.

Where a Childrens Court Judge is not available, a District Court Judge can sit as a Childrens Court Judge.

APPEAL PROVISIONS:

Appeals

An appeal is the process by which an original decision is examined by a higher court. To win an appeal, it must be shown that the Magistrate or Judge in the original hearing made an error that affected the outcome.

If the original application was heard in the Children's Court, the appeal is heard in the Children's Court of Queensland, or the District Court presided by a Children's Court of Queensland Judge.

Relevant legislative provisions

Sections 117-121 of the *Child Protection Act 1999* refer to appeals of decisions in relation to assessment orders and child protection orders.

Framework for appealable decisions

What are appealable decisions?

An appealable decision made by a court may relate to:

- Merits of a case
- Law and/or process

Merits of a case: can include whether or not a child is in need of protection and where the most appropriate order has been made to meet the child's protective needs. Determination of merits of a case incorporates quality and type of sworn evidence and facts provided to the court.

Law and /or process: Errors in law/or in court processes may be a basis to appeal a decision. Legislation and Rules guide courts in their decision making and non-compliance or misinterpretation of the law and court processes may incur an appeal of that decision.

Determinants:

There are a number of determining factors which influence the merits of an appeal and guide decision-making around whether action will be taken to pursue an appeal. Some of these determining factors include:

Quality of material: whether the information provided to the court is evidence/fact, which supports the application and provides a clear rationale for the order sort.

Safety of the child: where or not the child's safety and protection is immediately affected by the order and/or places them at immediate risk of harm.

Arguments made: whether the Department or other parties raised argument to the decision in court or challenged the decision-making, providing evidence to support their argument.

Setting of precedence: whether the decision is one where a precedent may adversely affect practice and future decision-making.

Who may appeal

Section 117(1) *Child Protection Act 1999 (CPA 1999)* provides that the following parties may apply to appeal against a decision on an application of a TAO:

- The applicant (Department or police)
- The child
- The child's parent/s

Section 117(2) provides that a party to the proceeding for CAO or CPO application may also apply to appeal a Children's Court decision.

Jurisdiction for appeal application

An appeal against a decision is heard by an "appellate court". Appellate court is defined in Schedule 3 Dictionary of the *Child Protection Act 1999*. Where an order is made in the Children's Court, the appellate court is the Children's Court of Queensland (CCQ).

The Children's Court of Queensland currently sits in Brisbane, Rockhampton, Townsville, Cairns, Southport, Ipswich and Beenleigh (these are the locations where Children's Court Judges currently preside). Other regional areas have periodic circuit courts. Depending on the urgency of the matter the appeal application may be initiated at the closest CCQ (or in Brisbane).

How to start an appeal

Section 118(1) *CPA 1999* provides that an appeal may be started by filing a written *Notice of Appeal* with the Registrar of the District (CCQ) court.

Section 118(2) The notice must be served on the respondent/s to the application.

Section 118(3) The notice must be filed within 28 days of the decision being made.

Section 118(4) The court may at any time extend the time for filing.

Section 118(5) The notice must state fully the grounds for the appeal and the facts relied on.

Stay application

Section 119 *CPA1999* provides that the appellate court may stay a decision appealed against. This application is generally heard as a matter of urgency by the appellate court (CCQ). A Stay application determines the interim effect of the order made in the Children's Court until the appeal can be fully heard. Where a Stay application is sought by the Department, these arrangements will be undertaken by Crown Law. A Stay is applied for primarily when a child is considered at immediate risk of harm as a result of the decision.

Hearing an appeal

Section 120 provides that where there is an appeal against the decision of a Magistrate for a TAO, the appellate court is not restricted to the material before the Magistrate.

In relation to a CAO or CPO decision – an appeal must be decided on the evidence and proceedings before the Children's Court; or the appellate court may hear the matter afresh, in whole or in part.

Powers of appellate court

Section 121 CPA1999 provides that the appellate court may:

- Confirm the decision appealed
- Vary the decision appealed
- Set aside the decision and substitute another decision
- Set aside the decision and remit the matter to the Magistrate or Children's Court that made the decision.

APPEAL PROCESS:

Notice of Appeal to Court Services Unit (CSU): where another party is the appellant

- CSSC advises CSU of appeal application as soon as possible.
- CSU requests copy of *Notice of Appeal* and/or any material filed with the appeal. CSU also requests a copy of all material filed as part of the Children's Court proceedings and a summary of events that occurred at the court mention/hearing. The information will assist with briefing Crown Law.
- CSU ascertains when /if the matter is listed before the CCQ and if there is a Stay application as part of appeal proceedings.
- CSU prepares a brief to Crown Law and attached a copy of all material provided by the CSSC.
- CSU schedules an Advice in Conference (AIC) at the earliest opportunity between Crown Law, CSU and the CSSC. The CSSC is to provide and prepare any additional material requested as part of the AIC. Crown Law will initiate contact with the relevant court registry and advise of *Notice of Address* for service, *Outline of Argument* and *Certificate of Readiness*.
- CSSC continues to liaise with CSU re: the preparation of additional material as part of the appeals proceedings (as per contested CP procedures).
- The applicant from the CSSC will instruct Crown Law in the appeal proceedings.
- The Court Coordinators role is to support the applicant and provide regular updates to CSU in relation to outcomes of mentions and hearings.

Notice of appeal application to CSU: where application by the Department

- Court Coordinator to contact CSU as soon as possible to discuss the option of an appeal and its merits. CSU requests a copy of all material files as part of the Children's Court proceedings and a summary of the events leading up to the decision (inclusive on any arguments made in court; whether the parents were legally represented etc)

- CSU may request the Court Coordinator to obtain a copy of the transcript of proceedings.
- CSU will review the material and consider the evidence and determine whether consultation with Legal Services Branch (LSB) and/or Crown Law is required.
- CSU prepares an urgent brief to Crown Law and attaches a copy of all the material provided by the CSSC for the purposes of ascertaining the merits of appeal.
- An urgent Advice in Conference (AIC) scheduled between CSU, Crown Law, CSSC, and relevant regional staff – if appropriate, to discuss the merits and prospects of an appeal. The option of an urgent Stay application is also discussed.
- Should Crown Law consider there are merits to appeal, a memo from the Manager, CSU, will be sent to the DG seeking approval to appeal the decision. The manager of CSU is to also brief the Director, State Wide Services Branch.
- CSSC to provide or prepare any additional material requested as part of the AIC. Crown Law is to initiate Notice of Appeal with the relevant court registry (including preparing the necessary court documentation as part of the commencement of proceedings).
- CSSC to liaise with CSU re: the preparation of additional material as part of the appeal proceedings (as per contested CP procedures).

APPEALS SCENARIO'S

Scenario 1:

Indigenous family: where three children (two males and one female) were residing with maternal aunt and her partner on a voluntary arrangement with their mother. Following a substantiated notification of sexual abuse and neglect of the eldest child (female) an application for a child protection order was made and the child was eventually removed from her placement.

A period of time after, and following notifications raised in relation to further risk of sexual harm, emotional harm and neglect, applications for TAO's were taken on the boys and prior to their expiration, CPO's were applied for and made.

The relative carers sought legal advice and filed a Notice of Appeal in relation to the CPO arguing that there was no evidence and the boys were not at risk of harm. They also argued that they were not present at the determination of the applications and wished to make application through section 113 to be a non-party and that consultation with a recognised agency did not occur. Crown Law argued that in accordance with the definition of parent under section 117, the relatives were unable to appeal the decision. The appeal was dismissed.

The solicitor for the relatives then filed a Notice of Appeal on behalf of the children on the abovementioned grounds and the fact that the children "did not want to be under orders, and wanted to reside with their aunt". The matter proceeded to hearing.

Determination of the matter is pending.

This scenario raises a number of practice issues as well as legislative issues, including:

- Lack of consultation with a recognised agency
- Fair and justice processes in relation to the application and final determination at the initial mention
- Section 113 and rights
- Role of separate representative in proceedings
- Who is an appellant
- Quality of evidence and compliance with legislative requirements (section 59).

Scenario 2:

Both mother and father have shared care arrangements of their young daughter as determined through the Family Court. The mother has an intellectual disability.

A notification was received by the Department of Child Safety alleging the mother was stating the father had sexually abused her daughter and was reported to take the child to numerous doctors for the purpose of determining physical evidence.

No substantiated information suggested that her father or any other person had sexually abused the child. Concerns in relation to the emotional harm caused as a result of the mother inflicting numerous intrusive medical procedures on the child were substantiated. As a result of the assessment that the child was in need of protection from her mother and the father's inability to protect due to Family Court orders, an application for a child protection order was made.

The mother consented to the application, as did the father and a CPO granting custody to the CE for a period of six months was made. Following the making of this order, the mother sought legal advice and filed a Notice of Appeal on the grounds that she did not understand what she was consenting to and the implications of the child protection order.

The matter was mentioned in the CCQ and the department conceded to some of the grounds to the appeal and agreed for the matter to be remitted back to the Children's Court to enable a more thorough assessment of the situation and to determine further the mother's intellectual capacity and her ability to follow case plans.

This scenario raises a number of issues, including:

- A thorough assessment of the child protection concerns and 1) whether the child is in need of protection and 2) what the most appropriate order is to protect the child
- There were also issues raised about the decision making in this case and the quality of evidence to support the application
- Case work and court processes where parents have an impaired capacity
- Orders made with consent and requirements of section 59

Session Plan – Interface between the Department of Child Safety and the Family Court of Australia

To be presented in conjunction with the power point presentation

Learning Outcomes:

- Develop an understanding of the interface between the DChS and the Family Court.
- Clarify the role of Court Co-ordinators in relation to matters that interface with the Family Court.
- Clarify the role of Court Services in relation to matters that interface with the Family Court.

Time	Content	Resources / Comments
	<p><u>Introduction</u></p> <ul style="list-style-type: none"> • Greetings <p>Welcome the participants to the next session which will be focused on providing an overview of the interface between the Department of Child Safety and the Family Court.</p> <ul style="list-style-type: none"> • Linkage <p>A number of child protection cases that the Department are involved with have a link to the Family Court. This session will provide an opportunity to obtain an understanding of the interface, the key stakeholders, relevant legislation and where the Family Court sits within the court structure.</p> <p>Explain that a more indepth session regarding the new legislative amendments regarding the Family Court will be explored and discussed in the three day conference.</p> <ul style="list-style-type: none"> • Learning Outcomes <ul style="list-style-type: none"> ➤ <i>Develop an understanding of the interface between the Department of Child Safety and the Family Court.</i> ➤ <i>Clarify the role of Court Co-ordinators in relation to matters that interface with the Family Court.</i> ➤ <i>Clarify the role of Court Services in relation to matters that interface with the Family Court</i> <ul style="list-style-type: none"> • Strategy <ul style="list-style-type: none"> ➤ Information in relation to the interface between the DChS and the Family Court, from the Department's perspective, will be presented by staff from Court Services. 	

Time	Content	Resources / Comments
	<ul style="list-style-type: none"> • Stimulus <p>As Court Co-ordinators it will be inevitable that cases will arise within your Child Safety Service Centre that will have an interface with the family law jurisdiction. It is envisioned that other staff will seek advice and support from you in relation to how this jurisdiction interfaces with the Department.</p> <p><u>An Overview</u></p> <ul style="list-style-type: none"> • <i>The Jurisdiction of the Family Court</i> <p><i>The Family Court of Australia is a federal (Commonwealth) court established under the Family Law Act 1975.</i></p> <p>Clarify: the Family Court of Australia should be referred to as the "Family Court" – not the Family Law Court which is a term that is often used to referred to this jurisdiction.</p> <p><i>The Family Court deals with a range of matters arising out of relationship breakdowns including:</i></p> <ul style="list-style-type: none"> ➤ <i>Divorce</i> ➤ <i>Property Settlement</i> ➤ <i>The care of children of the relationship</i> <p><i>The Family Court has jurisdiction to make the following orders in relation to children:</i></p> <ul style="list-style-type: none"> ➤ <i>Residence Orders</i> – directs the person or persons with whom a child will live. ➤ <i>Contact Orders</i> – directs contact with the non-residence parents and other persons. ➤ <i>Specific Issues Orders</i> – directs parental responsibility for making daily and long-term decisions about a child's care, welfare and development. ➤ <i>Child Maintenance Orders</i> - child support. <p>The Court also has a broad welfare jurisdiction to deal with special matter such as:</p> <ul style="list-style-type: none"> • consent to medical treatment • certain powers under international conventions such as: <ul style="list-style-type: none"> - Hague Convention on the Civil Aspects of International Child Abduction - Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. - Hague Convention on Inter-country Adoption. <p>The Family Court has registries in Brisbane and Townsville. Sub registries are located in Rockhampton and Cairns.</p>	<p>PP Slide 2</p> <p>PP Slide 3</p>

Time	Content	Resources / Comments
	<p><u>Role of the Family Court in relation to children</u></p> <ul style="list-style-type: none"> ➤ To determine disputes between parents and other persons concerned with the child's welfare about the care of the child. ➤ When making decisions the Court's paramount consideration is the child's best interest. <p>Research indicates that a significant proportion of children's matters before the Family Court involve child protection issues.</p> <p><u>Legislative Changes - Terminology</u></p> <ul style="list-style-type: none"> ➤ This terminology will also be covered in session/s by guest speakers.. ➤ Independent child's lawyer is not a party to a case but must be treated as a party (Rule 8.02 Family Law Rules 2004). <p><u>Objectives of the Family Law Act</u></p> <ul style="list-style-type: none"> ➤ Two new objectives in the FLA (as outlined above). ➤ In relation to the first objective this doesn't necessarily mean 50/50 time spent with each parent; about longer term decision making for child/ren. <p><u>Role of Court Services</u></p> <p>Court Services manages the interface between the DChS and the Family Court of Australia.</p> <p>This involves the following:</p> <ul style="list-style-type: none"> ➤ The facilitation of requests for information/ action from the Family Court to the relevant Child Safety Service Centre. ➤ Providing information to the Family Court when the Department is also taking action under the Child Protection Act. ➤ Processing of 91B requests by the Family Court for the Department to intervene in a matter. ➤ Briefing and instructing Crown Law to represent the Director General in the Family Court on matters where the Department is served as a party or there is a decision that the Department applies to be a party to the proceedings. ➤ Preparing and delivering files subpoenaed for the Family Court. ➤ Providing advice and training to Child Safety Service Centres as to possible action in the Family Court jurisdiction that may negate the need for continued departmental involvement ➤ Court Services staff (Manager, Team Leaders, Court Services Advisers and Court Services Officers) have delegations to appear in the Family Court and represent the interest of the Director General. ➤ No action in the Family Court should be taken without prior consultation with Court Services. ➤ Advice must be sought from Court Services about the best way to proceed in each individual case. 	<p>PP Slide 4</p> <p>PP Slide 5</p> <p>PP Slide 6 & 7</p>

3pm
finish

PROTOCOL

BETWEEN

THE FAMILY COURT OF AUSTRALIA

AND

THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

AND

**THE DEPARTMENT OF CHILD SAFETY
QUEENSLAND**

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1 INTRODUCTION

This protocol has been established to facilitate co-operation and sharing of information and to clarify procedures between the Department of Child Safety in Queensland ("the Department") and the Family Court of Australia ("the Family Court"), and the Federal Magistrates Court of Australia ("the Federal Magistrates Court") referred to as "the Court(s)". It is intended to be used by other courts of summary jurisdiction, when they are exercising jurisdiction under the *Family Law Act 1975 (Cth)* ("the *Family Law Act*") as amended, in order to ensure that the protective needs of children are met.

The *Family Law Act* uses the term "child" but it does not define the term by reference to age. The relevant age is 18 years. The *Family Law Act* deals with parental responsibility with respect to children under 18 years, provides that parenting orders cannot be made, or stop being in force, once a child turns 18 years, marries or enters into a de facto relationship.

Matters concerning the interaction between the Department and the Family Court and the Federal Magistrates Court are primarily governed by the applicable laws contained in both the *Family Law Act* and the *Child Protection Act (Qld) 1999*. This protocol is not intended to override these provisions but to assist in their practical implementation.

Whilst every effort shall be made to comply with the terms of this protocol, the complexity and often urgency of these matters is acknowledged. Similarly, in some cases the volume of information required to be considered may require longer time frames or different approaches.

1.1 Objectives of the protocol

The protocol between the Department, the Family Court and the Federal Magistrates Court is established:

To assist both the Department and the Courts to fulfil their primary roles and responsibilities in order to ensure that a child's welfare and best interests including their protective needs are recognised and met;

To promote cooperation, consistency and guidance in dealings between the Courts and the Department; and

To facilitate contact and the exchange of relevant information between the agencies.

2 THE DEPARTMENT OF CHILD SAFETY

The Department has statutory responsibility pursuant to the provisions of the *Child Protection Act 1999* in relation to protective services for all children in Queensland under the age of 18. Protective services are established to ensure that children and young people who are in need of protection have their protective needs met.

A child is a child in need of protection if they have suffered harm, are suffering harm or are at an unacceptable risk of suffering harm and do not have a parent who is willing and able to protect them from the harm.

In cases where a person may have committed a criminal offence against a child, officers of the Department will, in accordance with the Act, immediately give details of the alleged harm to the police commissioner.

The *Child Protection Act 1999* must be administered under the principle that the welfare and best interests of a child are paramount. Subject to this principle, this Act is also to be administered under the following principles:

every child has a right to protection from harm;

families have the primary responsibility for the upbringing, protection and development of their children;

the preferred way of ensuring a child's wellbeing is through support of the child's family;

any action taken by the Department, while in the best interests of the child, should maintain family relationships and be supportive of individual rights and ethnic, religious and cultural identity or values;

if a child does not have a parent who is able and willing to protect the child the State has a responsibility to protect the child, but in doing so, the State must not take action that is unwarranted in the circumstances;

if a child is able to form and express views about his or her care, the views must be given consideration, taking into account the child's age or ability to understand.

The Department is the mandated agency to accept information that a child may be a child in need of protection in Queensland. The Department may then record this information as a notification.

After receiving information, if the Department reasonably suspects that the child is a child in need of protection the Department must investigate the allegation and assess the child's need for protection or take other action they consider appropriate.

If the Department is satisfied that a child is a child in need of protection and there is an ongoing need for intervention, the notification may be recorded as substantiated and the Department may take steps to ensure that the child's protective needs are met. Depending on the assessed risk to the child, this may include working with the agreement of the child's family to assist them to

meet the child's protective needs or filing an application for a child protection order in the Children's Court.

Applications for, and for the extension of, child protection orders can only be made by the Department. With some limitations, applications to vary, revoke, or revoke a child protection order and make another in its place can be made by the Department, a child's parent or the child.

If a child protection order, other than a long-term guardianship order is made for the child, the chief executive of the Department must take steps that are reasonable and practicable to help the child's family to meet the child's protective needs.

If a child protection order has been made for a child that grants custody or guardianship of the child to the chief executive of the Department, the chief executive must provide reasonable opportunity for the child to have contact with their parents and other appropriate members of their family as often as is appropriate in the circumstances.

3 FAMILY LAW COURTS

3.1 Powers and jurisdiction

The Family Court and the Federal Magistrates Court have jurisdiction under the *Family Law Act 1975* to make parenting orders for children in Australia under the age of 18 years.

The objective of the jurisdiction of the Courts is to ensure that children receive adequate and proper parenting to help them to achieve their full potential, and to ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare, and development of their children.

The Courts operate under the guiding principles set out in s 60B(2), that except where it is or would be contrary to a child's best interests:

- children have the right to know and be cared for by both of their parents;
- children have a right to spend time on a regular basis with and communicate on a regular basis with, both of their parents and other people significant to their care, welfare and development;
- parents jointly share duties and responsibilities concerning the care, welfare and development of their children;
- parents should agree about the future parenting of their children; and
- children have a right to enjoy their culture.

The Courts in exercising the jurisdiction in making a parenting order must regard the child's best interests as the paramount consideration.

The primary considerations in how a Court determines what is in a child's best interests under s 60CC(2) are:

- the benefit to the child of having a meaningful relationship with both of the child's parents; and
- the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

The Court must also consider the matters set out in s 60CC(3) by way of additional considerations.

Applications to the Court in respect of a child may be made in the following ways:

- by one or other of the child's parents;
- by or on behalf of the child;
- by a person having an appropriate interest in the welfare of the child; or

by an Independent Children's Lawyer appointed by the Family Court or Federal Magistrates Court.

3.2 Limitations to the jurisdiction of the Courts

The Courts' jurisdiction is limited by s 69ZK of the *Family Law Act 1975*. This provision provides that a court exercising jurisdiction must not make an order in relation to a child who is under the care (however described) of a person under a child welfare law, unless the order is expressed to come into effect when the child ceases to be under that care, or with the written consent of the chief executive.

Further, where it appears to the Family Court or Federal Magistrates Court that another court proposes to make an order by which a child is placed in the care of a person under a child welfare law, the Court may adjourn any proceedings before it in relation to that child.

4 THE EXCHANGE OF INFORMATION

Information may only be exchanged between the Family Court or the Federal Magistrates Court and the Department where law permits the disclosure of the information. This protocol itself does not authorise the disclosure of information, but rather seeks to establish agreed procedures to ensure the exchange of information in appropriate cases where that exchange is otherwise lawful.

When considering the exchange of information the following matters should be taken into consideration:

- the welfare and best interests of the child are the paramount consideration;

- any statutory requirements of privacy and security of personal information;

- the welfare and protection of children at risk is generally best secured by a free flow of information between those concerned with the child and the family;

- courts are in a better position to make appropriate orders if they are fully aware of proceedings in other jurisdictions;

- the Department is in a better position to conduct investigations and assessments and, if necessary, provide appropriate support to a family if they are fully aware of proceedings in other jurisdictions;

information exchange should be limited to only that which:

- is relevant to the respective roles of the Family Court or Federal Magistrates Court and the Department;

- is relevant to the specific purpose for which it is disclosed; and

- the best interests of the child or children involved in a particular matter.

Generally, the exchange of information between the Family Court or the Federal Magistrates Court and the Department will occur as follows:

Information to the Department:

- when information is forwarded from the relevant Court to the Department following a party making an allegation of abuse;

- when a member of the Family Court or Federal Magistrates Court personnel reasonably suspects a child has been or is at risk of being abused;

- following the Court making an order under s 91B requesting the Department to intervene in the proceedings;

if the Department requests to search, inspect and make copies of documents from the Court file under Rule 24.13 of the *Family Law Rules 2004* or Rule 2.08 of the *Federal Magistrates Court Rules 2001*;

where the Department makes an application in relation to proceedings that are or have been before the Family Court or Federal Magistrates Court for the publication of documents or information to them;

where the Department is or has become a party to proceedings before the Family Court or Federal Magistrates Court, through the process of disclosure between parties and the provision of admissible evidence by the Department as part of their case.

Information to the Courts:

where a subpoena has been issued to the Department, either at the request of a party to the proceedings or the Court itself, for the production of documents or to attend proceedings;

where a request is made pursuant to s 91B for the Department to intervene;

where an order is made pursuant to s 69ZW for evidence relating to child abuse or family violence;

and in respect of the Family Court, where a Magellan Report is provided.

5 THE DISCLOSURE OF INFORMATION TO THE DEPARTMENT OF CHILD SAFETY

5.1 Laws governing the disclosure of information by the Courts

Section 121 of the *Family Law Act 1975* prohibits the publication of Family Court proceedings. Information cannot be published which identifies:

- a party to the proceedings;
- a person who is related to or associated with a party to the proceedings;
or
- a witness in the proceedings.

Section 121(9) lists a number of circumstances to which this provision does not apply. These include:

communication to persons concerned in any court for use in connection with those proceedings; and

the publishing of a notice or report in pursuance of the direction of a court.

Rule 24.13 of the *Family Law Rules 2004* and Rule 2.08 of the *Federal Magistrates Court Rules 2001* provide that the following persons may search the Court record relating to a case, inspect documents or copy a document forming part of the record:

- the Attorney General;
- a party;
- a lawyer for a party;
- an Independent Children's Lawyer in a case; or

with the permission of the relevant Court, a person with a proper interest in the case or in information obtainable from the Court record in a case.

During the conduct of proceedings, the Family Court or Federal Magistrates Court may provide information about alleged child abuse or family violence, under a different section of the *Family Law Act 1975*, according to the source of the information.

Section 60K of the *Family Law Act 1975* requires the Court to take prompt action in relation to allegations of child abuse or family violence. The section applies if an application is made to a court for a Part VII parenting order in relation to a child and a document is filed on or after the commencement of this section, in relation to proceedings for the order, and the document alleges, as a consideration that is relevant to whether the court should grant or refuse the application, that:

there has been abuse of the child by one of the parties to the proceedings; or

there would be a risk of abuse of the child if there were to be a delay in applying for the order; or

there has been family violence by one of the parties to the proceedings; or

there is a risk of family violence by one of the parties to the proceedings.

5.2 Allegations of harm by a party to the proceedings

Under s 67Z, where a party to proceedings before the Court alleges that a child to whom the proceedings relate has been abused or is at risk of being abused:

that person must file a notice in a prescribed form in the Court; and

the Registry Manager or their nominee must, as soon as practicable, notify the Department.

The person making the allegation must file a Form 4 Notice of Child Abuse or Family Violence. When the Form 4 is filed, the next return date for the court proceedings will be written on the cover sheet of the Form 4 by the Family Law Courts Registry.

The Family Law Courts Registry Manager will then forward the Form 4 and cover sheet to the Manager, Data Management Services of the Department.

5.3 Court personnel in the course of carrying out their duties

Under s 67ZA(2), where a specified staff member of the Family Court or Federal Magistrates Court personnel in the course of carrying out his or her duties has reasonable grounds for suspecting that a child has been abused or is at risk of being abused, that member must, as soon as practicable:

notify the Department of his or her suspicions; and

the basis for the suspicion.

Under s 67ZA(3), a specified staff member of the Family Court or Federal Magistrates Court personnel may notify the Department of his or her suspicion and the basis for the suspicion, where in the course of carrying out his or her duties he or she has reasonable grounds for suspecting that a child has been:

ill treated or is at risk of being ill treated; or

exposed or subjected or is at risk of being exposed or subjected to behaviour which psychologically harms the child.

This information may be provided by the specified staff member of the Family Court or Federal Magistrates Court personnel to a departmental officer at the

Child Safety Service Centre closest to where the child resides and this should be confirmed in writing as soon as practicable.

5.4 Procedure for the provision of information from the Court to the Department under sections 67Z and 67ZA

Wherever possible the Court will set a next return date for the proceedings in relation to which information has been provided to the Department, which allows the Department at least 42 days subsequent to receipt of the information to respond to the provision of the information.

In order to assist the Department to forward the information to the correct location and to assist with deciding how to respond to the information, the following documents will be sent by the Registry Manager, Family Law Courts to the Manager, Data Management Services of the Department:

- a copy of either the Form 4 or the information provided by the court personnel;

- a letter stating:

- the full name, including any alias known to the Court, and date of birth of the child;

- the name of the child's parents;

- the current residential address of the child and the child's parents;

- the details of any orders that have been made by the Court, including the next return date for the matter before the Court.

Copies of these documents will be kept on behalf of the Registry Manager, Family Law Courts in a central register.



FCoA Notification
under section 67ZA.d

The Manager, Data Management Services for the Department will forward the documents received from the Court to the Manager of the Child Safety Service Centre closest to where the child resides.

The Department will deal with the information received from the Court under the provisions of the *Child Protection Act 1999*. The Department will determine its response in accordance with departmental policy and thresholds. The Department may record the information as a notification and if it reasonably suspects that the child is a child in need of protection the Department may:

- investigate the allegations and assess the child's need for protection; or

- take other action the Department considers appropriate.

In the course of its investigations and assessments the Department may generally obtain further information from:

the Family Court or Federal Magistrates Court (whichever Court made the relevant orders);

the child;

the child's parents;

a member of the child's family; or

other relevant persons.

The Department may obtain any further information from the Courts in accordance with Rule 24.13 of the *Family Law Rules 2004* or Rule 2.08 of the *Federal Magistrates Court Rules 2001*, by seeking permission to search, inspect and take copies of documents on the Court file.

The information provided to the Department may not meet the threshold of a notification, however, the information provided by the Court may:

form part of the information that leads to a future investigation or assessment of the matter; or

already be known to the department, and the subject of a current or previous investigation and assessment.

In order to assist the Court to consider whether an order under s 91B is necessary, and subject to the provisions of the *Child Protection Act 1999*, within 42 days of receiving the information from the Court the Manager, Child Safety Service Centre may notify the Court in writing:

whether there has been any previous departmental involvement with the family;

whether the Department has information in relation to the child that might assist the Court in their deliberations;

whether there are any current child protection orders for the child and, if so, the type of order and when it expires;

whether or not a decision has been made to investigate the matter at this stage;

whether or not the Department has assessed the child to be a child in need of protection and whether or not ongoing intervention is required to assist the family to meet the child's protective needs; and

if so, what intervention is proposed at this stage.



CSSC response letter

5.5 Magellan

The Magellan Project is a case management system for cases involving allegations of sexual abuse or serious physical abuse of children, which require particular judicial management and determination within prescribed time standards.

The trigger for a Magellan declaration is the filing of a Form 4 which is promptly referred for consideration by the Magellan Registrar in chambers and, where appropriate, an order is then made. Such order would include a s 91B order requesting the intervention of the Department and may include a s 68L order for the appointment of an Independent Children's Lawyer.

A new Magellan case must be listed as soon as practicable for a first return date before a Magellan Judge, who will consider what further procedural or interim orders should be made in order to deal with the issues raised by the allegation as expeditiously as possible.

All Magellan matters are referred to the Department's Court Services Unit in the first instance. Court Services will then undertake to liaise with the relevant Child Safety Service Centre regarding an appropriate response.

Where the Department has decided to intervene and become a party to the proceedings, a departmental officer will ordinarily attend and be legally represented and ready to make submissions in relation to the future course of the application.

Where the Department has provided information, and has decided to attend court, but does not propose intervening and becoming a party to the proceedings, the Magellan Judge will permit the designated officer of the Department to address the Family Court as a friend of the Court.

If at any stage during the course of the Magellan case proceedings, an officer of the Department brings an application under the *Child Protection Act 1999*, the Department will notify the Independent Children's Lawyer and the Magellan Registrar that such an application has been brought and provide details of the application within 7 days of the application being filed.

If the Magellan Registrar is notified that the Department has brought an application under the *Child Protection Act 1999*, the Magellan Registrar will notify the Magellan Judge who, may set the matter down for a procedural hearing as soon as practicable to discuss the effect of that application upon the application pending before the Family Court.

The Department will act in accordance with the applicable State child welfare laws in determining whether to bring an application under those laws. However in doing so, the Department acknowledges that it will give full faith and credit to the processes before the Family Court as a process designed to bring about an outcome consistent with the best interests of the children.



Magellan Notification

5.6 The disclosure of information to the Department upon the request of the Department

In cases where the Department becomes aware of past or current proceedings in the Family Court or the Federal Magistrates Court in relation to a child, to assist the Department to carry out its functions under the *Child Protection Act 1999*, it may request pursuant to Rule 24.13 of the *Family Law Rules 2004* or Rule 2.08 of the *Federal Magistrates Court Rules 2001* to search, inspect and make copies of documents from the relevant Court file in the matter by writing to the Duty Registrar. The letter should show why it is in the public interest for the Department to search, inspect and copy documents from the record and should outline:

that the Department is seeking the permission of the Court under Rule 24.13 of the *Family Law Rules 2004* or Rule 2.08 of the *Federal Magistrates Court Rules 2001* to search, inspect and copy a document forming part of the record;

the reason the information is required, including why it is in the public interest for the Department to be granted this leave;

what the Department wishes to use the information for, including specific leave for this purpose; and as far as possible:

the Court file number for the matter;

the documents, including orders, the Department wishes to search, inspect or copy;

the full name of at least one of the parties in the matter and their date of birth; and

the name of the child and their date of birth.

Where the Judicial Officer or Registrar considering the request forms the view that further information is required from the Department in relation to the request, the Judicial Officer (through their associate) or Registrar will contact the Department representative requesting the leave to seek that further information.

5.7 Information from the Independent Children's Lawyer

If an Independent Children's Lawyer has been appointed for the child in the case, and an order has also been made under s 91B of the *Family Law Act 1975*, and a subpoena has been issued for the production of documents to the Family Court or Federal Magistrates Court, subject to the provisions of the *Child Protection Act 1999*, the Department may conduct further discussions with the Independent Children's Lawyer. The Independent Children's Lawyer may also be invited to attend departmental Family Group Meetings, case discussions, SCAN AM Team meetings or other discussions about the child and their family.

5.8 Confidentiality of information received by the Department

In relation to any information obtained from the Court, the Department acknowledges the provisions of s 121 of the *Family Law Act 1975* which restricts the publication of any information which may form part of the Court record to the public or a section of the public.

6 THE DISCLOSURE OF INFORMATION TO THE COURT

6.1 Laws governing the disclosure of information by the Department

The law in relation to the disclosure of information by the Department of Child Safety is found in the *Child Protection Act 1999*.

The identity of a person who notifies the Department or the police that they suspect that a child has been, is being, or is likely to be harmed cannot be disclosed other than under the provisions of s 186 of the *Child Protection Act 1999*. For example, unless the disclosure is made by way of evidence in a legal proceedings where the court or tribunal has granted leave for the disclosure. In this circumstance, leave must not be granted unless the court or tribunal is satisfied that:

the evidence is of critical importance in the proceedings; and

there is a compelling reason in the public interest for the disclosure; or

the notifier agrees to the evidence being given in the proceeding.

Section 187 of the *Child Protection Act 1999* prohibits the use or disclosure of information, or giving access to a document, about another person's affairs, acquired whilst performing functions under that Act. The section does allow some restricted use or disclosure of the information or document including for a purpose directly related to the child's protection or welfare or is otherwise permitted by law.

Section 188 of the *Child Protection Act 1999* prohibits the receiver of information or a document from further using or disclosing information in , or giving of access to the document unless the use, disclosure or giving of access is directly related to the child's protection or welfare or is otherwise permitted by law. To give practical expression to this provision the Department will generally request that copying of documents be limited to the Independent Children's Lawyer.

Other than with the written approval of the chief executive of the Department of Child Safety, under s 189 of the *Child Protection Act 1999*, a person must not publish information that identifies or is likely to identify a child as a child:

who is or has been the subject of an investigation by the Department;

in the Department's custody or guardianship or for whom a child protection order is in force;

who has been harmed by a parent or step parent or another member of the child's family; or

who is at risk of being harmed by a parent, step parent or member of their family.

This provision may be relevant to the consideration by the Court of a publication order under s 121 of the *Family Law Act 1975*.

If a party to a proceedings in a court or tribunal requires the Department to produce records in relation to a child or a child's care, or requires another government entity to produce a document they have received performing functions under or in relation to the *Child Protection Act 1999*, s 190 of that Act sets out a number of requirements that must be satisfied.

Under s 191 of the *Child Protection Act 1999*, the Department may refuse to disclose information to a court or tribunal in a proceeding if:

- its disclosure may endanger a person's safety or psychological health;

- if may identify the source of the information;

- it is a record of therapeutic counselling with a child or a member of a child's family;

- it is personal information and the Department believes it is not materially relevant to the proceeding.

However, the court or tribunal may order the disclosure of the information if it is satisfied that it is materially relevant to the proceedings and its disclosure is in the public interest.

6.2 Section 69ZW orders

The Court may make an order under s 69ZW of the *Family Law Act* requiring the prescribed agency to provide the court with the documents or information specified in the order. The function of this provision is limited to documents or information in the possession or control of the agency and is not intended to duplicate other processes that require the creation of a document.

Under s 69ZW(2), the documents or information specified in the order must be about one or more of the following:

- any notifications of suspected abuse of a child or of suspected family violence affecting the child to whom the proceedings relate;

- any assessments of investigations into a notification of that kind or the findings or outcomes of those investigations;

- any reports commissioned in the course of investigating a notification.

Section 69ZW(6) provides that the court must not disclose the identity of a notifier unless the notifier consents to the disclosure, or the failure to disclose the information would prejudice the proper administration of justice. The Department must be notified about the intended disclosure and given an opportunity to respond.

6.3 Documents produced pursuant to a s 69ZW Court order

When the child related proceedings with which the court is concerned when it made an order under s 69ZW have been concluded:

Those documents which were not admitted into evidence will be destroyed after the conclusion of those proceedings unless the child welfare agency requested the return of those documents at the time the documents were produced in answer to the court order;

Those documents which were admitted into evidence shall be retained until the expiry of any applicable appeal period, or where an appeal is instituted, until the appeal is finalised and the expiry of any further appeal or application for special leave to appeal period has elapsed. After that time, the documents will be destroyed unless at the time documents were produced the child welfare agency requested their return at the conclusion of the proceedings.

The inclusion of the above provision in this protocol shall be taken as permission and sufficient authority for the Courts, their employees or agents to destroy the documents produced in answer to the s 69ZW court order in cases where no request was made for the return of the documents as set out in the above paragraph.

6.4 When a subpoena is issued to the Department

A party to proceedings before the Court, or an Independent Children's Lawyer in a particular case, may request the Court to issue a subpoena to the Department requesting the production of particular documents or the attendance of a representative at the Court.

Under s 190(2) of the *Child Protection Act 1999*, if a subpoena is issued to the Department requesting the production of a document, the request must describe the document to be produced:

by reference to the person or persons to whom it relates;

by general reference to the circumstances to which it relates; and

by stating the period to which the requirement relates.

The circumstances to which the document relates must be relevant to proceedings before the Court.

If the document is provided by the Department, under s 190(4) of the *Child Protection Act 1999* a person must not directly or indirectly disclose or make use of the information obtained other than for a purpose connected with the proceeding.

If the Department provides documents or information to the Court, following the issuing of a subpoena, the department will remove any reference to a notifier's identity including any information likely to lead to the identification of a notifier prior to its provision.

The release of a document or information to the Court following the issuing of a subpoena to the Department will also be subject to the provisions of the *Child Protection Act 1999* including those discussed above.

If a party to the Court proceedings or their legal representative wishes to inspect or take copies of material provided by the Department, specific leave must be requested. Under s 190(5) of the *Child Protection Act 1999* and despite any Act to the contrary, if a document in the Department's records under this Act in relation to a child or a child's carer is produced in a proceeding before a court, the document must not be made available for inspection to any person other than a party to the proceeding or a lawyer representing a party to the proceeding.

The Registry Manager of the Family Law Courts will ensure that all file inspections of subpoenaed Department material are carried out under supervision and that photocopying of case file material does not occur unless ordered by the Court.

6.5 When the Department becomes a party to Family Law proceedings

The Department may become a party to proceedings before the Court when:

the child is a child in the care of the Department;

the Department is entitled to intervene under s 92A of the *Family Law Act 1975*;

an order has been made under s 91B requesting the Department to intervene.

If the Department becomes a party to proceedings before the Family Court or Federal Magistrates Court, subject to the provisions of the *Child Protection Act 1999*, the Department will comply with the Rules of the relevant Court.

6.6 When the Department may elect to appear to assist the Court

Where the Department has provided information and has decided to attend court, but does not propose intervening and becoming a party to the proceedings, the Judicial Officer may permit the designated officer of the Department to address the Court.

6.7 Confidentiality of information received by the Court

In relation to any information obtained from the Department, the Family Court and Federal Magistrates Court acknowledge the provisions of the *Child Protection Act 1999* which restrict the disclosure and use of these documents and information.

When documents are provided to the Family Court or Federal Magistrates Court by the Department under subpoena the Courts acknowledge the provisions of s 190 of the *Child Protection Act 1999*.

When documents and information are provided to either the Family Court or Federal Magistrates Court by the Department they are then subject to the provisions of s 121 of the *Family Law Act 1975*.

7 THE INVOLVEMENT OF THE DEPARTMENT IN FAMILY LAW PROCEEDINGS

7.1 Where the proceedings relate to a child who is under the Department's care

If proceedings are initiated in the Family Court or Federal Magistrates Court in relation to a child who is the subject of a State child welfare order, the chief executive of the Department should be named as a party to the proceedings and served with a copy of the documents filed. The chief executive will be named as a Respondent to the proceedings.

These documents should be served on the Department via the Manager, Court Services Unit.

Depending on the circumstances of the case, the Department may at any stage throughout the proceedings request leave to withdraw from the proceedings.

7.2 Entitlement to intervene

Under s 92A of the *Family Law Act 1975*, if, in Family Court or Federal Magistrates Court proceedings it has been alleged that the child has been abused or is at risk of being abused, each of the following is entitled to intervene in the proceedings:

- a guardian of the child;

- a parent of the child with whom the child lives;

- a person who spends time with or communicates with the child;

- a person who has parental responsibility or shares parental responsibility for a child;

- the Department of Child Safety;

- a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

The Department may become aware that it has been alleged, during Court proceedings, that the child has been abused or is at risk of being abused, by the Family Court or Federal Magistrates Court having provided information to the Department as outlined in relation to sections 67Z and 67ZA of the *Family Law Act 1975*. The Department may then decide to exercise their entitlement to intervene in the proceedings.

If the Department wishes to exercise their entitlement to intervene in the proceedings under s 92A, an officer of the Crown (on behalf of the chief executive) will notify the Registry Manager, Family Law Courts in writing, as far as possible, of:

- the name and date of birth of the child;
- the name of the child's parents and the other parties to the Court proceedings;
- the Court file number;
- the next return date;
- the intention of the Department to intervene in the proceedings.

7.3 Orders requesting the Department to intervene

In any proceedings under the *Family Law Act 1975* that affect, or may affect, the welfare of a child, the Court may request the intervention of the Department. This would be a request to the chief executive of the Department made by an order under s 91B of the *Family Law Act 1975*. If such an order is made, the Department may intervene, and if so, it is considered to be a party to the proceedings and is therefore bound by the Rules of the relevant Court.

This provision enables the Court to:

- bring a particular case to the prompt attention of the Department;
- request the Department's consideration and assistance of the matters before the Court; and
- request the Department to actively take part in the proceedings as a party to them.

The Court will consider making an order under s 91B in circumstances where:

- allegations of harm or risk of harm have been made by one of the parties in the proceedings; or
- a specified staff member of the Family Court or Federal Magistrates Court personnel provides information to the Department under s 67ZA; or
- there is some evidence of the prior involvement of the Department with the child and the child's family; or
- an Independent Children's Lawyer has been appointed for the child.

Where the Court requests the chief executive of the Department to intervene under s 91B, the relevant Court will, as soon as practicable after making the order:

- send a sealed copy of the order to the parties;
- notify the Department in writing to the Manager, Court Services Unit.

The notification from the Court will, as far as possible:

- state the child's name (including any known alias) and date of birth;

state the parent's names;

state the current residential addresses of the child and the child's parents;

indicate that an order under s 91B has been made in the proceedings;

briefly outline the basis for the making of an order under s 91B;

to enable the Department to respond to the request to intervene appropriately, invite the chief executive of the Department to search and take copies of the relevant documents on the Court file, including affidavit material;

indicate whether an order appointing an Independent Children's Lawyer has been made.

The Department may exercise the Court's invitation to search and take copies of the relevant documents on the Court file and their request to intervene in the proceedings at any stage during the proceedings. The Manager, Court Services Unit or an officer of the Crown on behalf of the chief executive will contact the Registry Manager, Family Law Courts if this is the case.

Upon receiving a copy of the letter from the Court outlining the making of an order in accordance with s 91B, the Manager, Court Services Unit will:

- forward a copy of the pro-forma letter to the Manager of the relevant Child Safety Service Centre;

- if necessary, discuss the making of the order with the Manager of the Child Safety Service Centre;

- if necessary, may contact the Registry Manager, Family Law Courts to arrange to search and take copies of the relevant documents on the Court file; and

- forward a letter to the Independent Children's Lawyer advising them of the relevant Child Safety Service Centre.

Within 42 days of receiving the letter from the Court outlining the making of an order under s 91B, the Manager, Court Services Unit will notify the relevant Court in writing:

- whether or not the Department intends to intervene in the proceedings at that stage; and

- in order to assist the Court to assess whether a subpoena should be issued to the Department:

 - whether there has been any previous Departmental involvement with the child and the child's family;

 - whether there are any current child protection orders for the child and if so, the type of order and when it ceases;

any other relevant information that the Department may be able to provide at this stage.



CSSC response s 91B
letter

7.4 Issues for the Department when deciding whether to intervene

If the Department decides to intervene in the proceedings they are taken to be a party to the proceedings in the Court with all the rights, duties and liabilities of a party.

Costs and other responsibilities may be incurred by those who intervene and become a party to Family Court or Federal Magistrates Court proceedings. Officers of the Department must consult with the Manager, Court Services Unit whenever consideration is given to this option.



Key indicators for
intervention.doc



Intervention_diagram.ppt

7.5 Issues for the Family Court or Federal Magistrates Court when the Department decides to intervene in proceedings

If the Department advises the Court that it intends to intervene in the Court proceedings or file an application for a child protection order in the Children's Court, the Registry Manager of the Family Law Courts will, for the purposes of setting a date for a procedural hearing, forward the Department's response to:

if applicable, the Associate of the Judge Manager; or

the Case Manager and where appropriate, in conjunction with a Registrar; or

the Associate to the presiding Federal Magistrate.

A Judicial Officer or Registrar may in the Family Court order all parties and invite the Department to attend a case management conference. In the case of the Federal Magistrates Court, order all parties to attend a Directions Hearing to further determine the conduct of the proceedings before the Court.

8 THE RELATIONSHIP BETWEEN THE INDEPENDENT CHILDREN'S LAWYER AND THE DEPARTMENT OF CHILD SAFETY

8.1 Notification to the Department of who the Independent Children's Lawyer is

Where an order for an Independent Children's Lawyer is made in proceedings in either the Family Court or Federal Magistrates Court, Legal Aid Queensland is then responsible for the approval of legal aid funding and the appointment of a legal representative to perform this role. Upon the allocation of the matter by Legal Aid Queensland to a solicitor to act as the Independent Children's Lawyer, the Independent Children's Lawyer will then file and serve a Notice of Address for Service with the relevant Court.

Where the Court is aware that the Department has had some involvement with the child and their family, an order under s 91B will usually be made at the same time as an order appointing an Independent Children's Lawyer.

If an order under s 91B has also been made the Independent Children's Lawyer may forward a copy of the Notice of Address for Service they have filed in the Court to the Manager, Court Services Unit of the Department in order to inform the Department of their appointment.

The Manager, Court Services Unit of the Department will then forward this information to the Manager of the Child Safety Service Centre closest to where the child resides.

8.2 Information exchange between the Department and the Independent Children's Lawyer

If an Independent Children's Lawyer has been appointed in proceedings before the Court, and an order **has not** been made under s 91B of the *Family Law Act 1975*, and the Independent Children's Lawyer becomes aware of any Departmental involvement with the child and the child's family, the Independent Children's Lawyer may then make application to the Court for an order under s 91B.

In order to assist the Independent Children's Lawyer to determine whether such an application is necessary, the Independent Children's Lawyer may request information from the Department. Such a request may be made in writing and should then be accompanied by a copy of the Notice of Address for Service that has been filed in the relevant Court by the Independent Children's Lawyer. Subject to the provisions of the *Child Protection Act 1999*, the Manager of the Child Safety Service Centre may advise the Independent Children's Lawyer whether the Department has had any involvement with the child and their family.

If an order under s 91B **has** been made, the Independent Children's Lawyer will check the Court file to determine if an order under s 69ZW of the *Family Law Act* has been made or if a subpoena has already issued to the Department. If

the Department has already responded to a request for information in accordance with the provisions of any other part to this protocol and/or in response to a subpoena already issued or an order under s 69ZW of the *Family Law Act*, then the Independent Children's Lawyer will inspect the Court file to determine if any further requests for information are necessary and will monitor this until they are discharged from the proceedings.

Where information has already been provided by the Department prior to the appointment of the Independent Children's Lawyer, steps will be taken by the Court to enable the Independent Children's Lawyer to inspect and take copies of all documents or information provided by the Department. The Independent Children's Lawyer will take steps to avoid multiple requests for information or documentation from the Department.

In recognition of the special role of the Independent Children's Lawyer, prior to complying with the subpoena and in addition to it, subject to the provisions of the *Child Protection Act 1999*, the Department will photocopy the relevant parts of the file and forward these to the Independent Children's Lawyer. The Court Services Unit of the Department will facilitate this process. This may include documents relating to:

- information provided to the Department about the child and the child's family;

- the details and outcomes of the Department's assessments of this information;

- past and current case plans for the child; and

- any other relevant information.

Alternatively, in some matters, the Department may prepare a report for the Independent Children's Lawyer to be annexed to an Affidavit by the author of the report. The Department may decide this is appropriate in circumstances including:

- when the Department has had significant involvement with the family and considers the preparation of a report in the child's best interests; or

- when the Department considers the most appropriate way to present the information to the relevant Court is by way of a written report, for example, where there are a number of departmental files for the child but a small amount of relevant information.

Officers of the Department should consult with the Court Services Unit regarding the appropriateness of preparing a report, and seek assistance and guidance in the preparation of such a document.

Other parties to the proceedings before the Court must request leave to search, inspect and take copies of documents from the subpoenaed material from the Department's file.

Following the subpoena process, further discussions may be held between the Department and the Independent Children's Lawyer. It is acknowledged that although in different contexts, both the Department and the Independent

Children's Lawyer must act in the best interests of the child in order to meet the child's protective needs. The flow of information, within the provisions of the relevant legislation, between the Department and the Independent Children's Lawyer will assist this common goal to be met.

The Department will take reasonable steps to inform the Independent Children's Lawyer of all SCAN AM Team meetings held in relation to the child and may invite the Independent Children's Lawyer to attend. The Independent Children's Lawyer may also be invited to attend a Family Group Meeting or case discussion about the child and the child's family.

8.3 Confidentiality of information received by the Independent Children's Lawyer

If the Independent Children's Lawyer receives information from the Department in relation to the child, the Independent Children's Lawyer must not directly or indirectly disclose or make use of the information other than for a purpose connected with the proceedings before the Court. This may include providing this information to a person who the Independent Children's Lawyer has requested to prepare a report for the Court about the child and the child's family or a Family Consultant preparing such a report as ordered by the Court.

8.4 The appointment of legal representatives to perform the roles of an Independent Children's Lawyer in the Family Court or Federal Magistrates Court and a Separate Representative in the Children's Court

In some circumstances there may be simultaneous or subsequent proceedings in relation to a child in both the Family Court or Federal Magistrates Court and the Children's Court (in relation to the child's protection). In those circumstances there may be an Independent Children's Lawyer appointed for the child in the Family Court or Federal Magistrates Court and a Separate Representative appointed for the child in the proceedings before the Children's Court.

In these circumstances, if either the Department or the Court considers it appropriate for the same legal representative to be appointed to perform both roles, this information will be forwarded to Legal Aid Queensland. It is the responsibility of Legal Aid Queensland, at their discretion and subject to funding considerations, to appoint legal representatives to perform the roles of an Independent Children's Lawyer and a Separate Representative. This information may assist Legal Aid Queensland to appoint the most appropriate legal representative to perform either of these roles.

Where appropriate the Independent Child Lawyer may also be invited by the Department to attend the Children's Court as a *Friend of the Court* at their discretion. This may occur in situations where the Independent Child Lawyer has a long history of involvement with the family and where the Children's Court may be considering the appointment of a Separate Representative. It is acknowledged that the attendance of the Independent Children's Lawyer in these circumstances may be subject to funding considerations by Legal Aid Queensland.

Where appropriate the Department may also request that the Independent Children's Lawyer seek leave from the relevant Court to release a copy of their assessment report to the Department. This may assist the Department with informing its own decision making in relation to a family. Similarly it may assist in the provision of evidence as part of any subsequent Childrens Court proceedings, if appropriate.

Where appropriate, the Independent Children's Lawyer may request the Department to seek leave from the Childrens Court to release a copy of the Department's assessment reports, or supporting application and affidavit material, to the Independent Children's Lawyer, who may seek to rely upon that material in the Family Law proceedings. This may assist the relevant Court in forming its own decision.

Signed on:

Date

Director-General
Department of Child Safety
Queensland

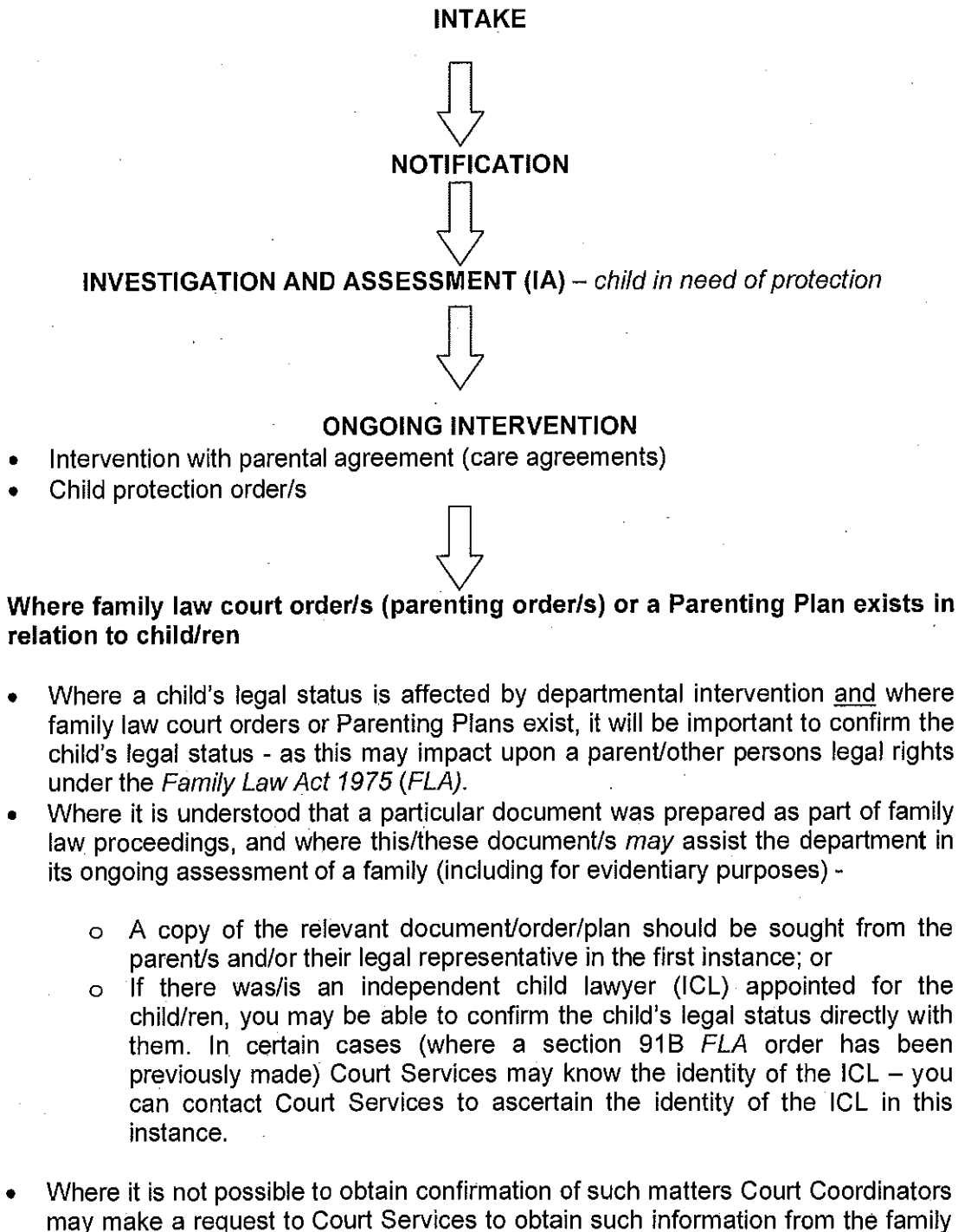
Chief Justice Diana Bryant
Family Court of Australia

Chief Federal Magistrate John Pascoe
Federal Magistrates Court of Australia

CHILD PROTECTION/FAMILY LAW INTERFACE

This document should be read in conjunction with chapter 15 of the Child Safety Practice Manual and the *Protocol between the Department of Child Safety, the Federal Magistrates Court of Australia, and the Family Court of Australia* (located on INFONET/core business/Court Services/Resources)

CHILD SAFETY FRAMEWORK



law court registry. Requests for this information/orders are made under the following provisions –

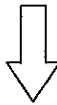
- Rule 24.13 (1) © *Searching court record and copying documents, of Family Law Rules 2004*
- Rule 2.08 (2) *Searching Records, of Federal Magistrates Court Rules 2001*
- Requests of this nature are only to be made to Court Services where there is a clear understanding that a court order/Parenting Plan exists between the parents/parties (not intended to be a 'fishing expedition' or 'discovery' process).
- Information provided through these provisions only relate to matters dealt with in the Federal Magistrates Court of Australia (FMC) or Family Court of Australia (FCT), not where (State) Magistrates convene under the *FLA*.

'Resident' parent is assessed as being unable to meet the child/ren's care and protective needs



Assessment is made of the 'non resident' parent to ascertain their willingness and ability to care for the child/ren

- 'Non resident' parent means not the parent from whom the child/ren were removed from.



'Non resident' parent assessed as willing and able (save for their legal position)

- Any assessment of a parent/s willingness and ability to care and protect for a child must be based on a sound decision making framework.



'Non resident' parent makes an application to a family law court for parenting orders

- If a non resident parent makes application for family law court orders whilst the department retains custody or guardianship of child (under a child protection care agreement, interim orders or final CPO) the department is regarded as a "necessary party" to any proceedings – therefore the applicant parent/other person must serve the department a copy of the family law court application (Rule 6.02, *Family Law Rules 2004* or Rule 11.01, *Federal Magistrates Court Rules 2001* – this provision does not make this explicit however, unlike the *Family Law Rules 2004*)
- The Director General, Department of Child Safety should be listed as the respondent to any application.
- Any application served upon the department should be attention to –

Manager
Court Services Unit
Department of Child Safety
30 to 40 Quay Street
BRISBANE QLD 4001
Fax 3235 9851

- Any CSSC who is advised of or provided with a copy of a family law application should immediately inform Court Services. This enables Court Services to provide Crown Law with sufficient notice if required to attend court, and provides the CSSC with sufficient notice if they are required to prepare any written material (eg affidavit) in response to an application.
- Upon receipt of the application Court Services, in consultation with the CSSC, will need to consider in what capacity the department may intervene in the proceedings in the family law court. For example –
 - as an 'intervenor' (under s92A FLA)
 - as a party to the proceedings
 - as a *friend of the court* (FOTC), or
 - to prepare a report detailing the department's involvement with the family (eg Magellan report).
- At times the CSSC may be requested by a parent to provide a 'statement of position' in respect of a prospective family law application. This may assist the parent in their application for legal aid funding (however the statement may also be written at any time during the court proceedings). Any written correspondence to the parent/s regarding family proceedings should only be written under the hand of the Manager of the CSSC. All such letters should also be forwarded to Court Services beforehand for quality assurance purposes (including considering the appropriateness of issuing such letters, as well as the content of such correspondence).

CHILD SAFETY FRAMEWORK FOR FAMILY LAW INTERFACE MATTERS – POSSIBLE SCENARIOS

Where department supports a parent's application to the family law court (and chief executive retains custody/guardianship of child/ren)

- If the department is listed as a respondent to the application, then the department is a party and therefore Court Services will need to brief Crown Law to appear in the matter. Upon receipt of the Crown Law brief the relevant Crown Law officer undertakes to file a *Notice of Address for Service* with the relevant family law court registry. This notice formally places the department on record as a party in the matter.
- Where the department is not listed as a respondent to the application however elects to intervene in the matter (under s92A FLA), it is not required to file a *Notice of Address for Service* - this is because we are not automatically granted party status, rather it is left to the court's discretion as to whether to allow the department party status. It should be noted that the Manager, Court Services Unit must provide prior consent to the department intervening in matters under this provision.
- When the department elects to intervene in proceedings it therefore carries all the roles and responsibilities attached to being a party (including any potential for having costs ordered against the department).
- The department's ongoing role as a party, intervenor or *friend of the court* will need to be determined (of course with the leave of the court). It would be extremely rare for the department to remain a party through to final determination of the matter, ie to trial.
- Becoming a party to the proceedings affords us the opportunity to formally file material before the family law court (unlike being a *friend of the court*).

- The CSSC may be required to prepare written material (affidavit) to court to assist it with making an informed decision in the best interests of the child. Any affidavit/report should include a holistic assessment of both parents (where possible). Where the department is supporting a parent to obtain 'live with' orders, it must also consider the issue of 'contact' with the non protective parent – as the court will need to turn its mind to both issues as it relates to the making of any parenting orders. For example, the department may consider that supervised contact is appropriate in the circumstances given the identified risk factors for the child. Any written material to court should also consider the alternative scenario, ie court may consider returning child to maltreating parent. Department's risk assessment critical to this end.
- It is important to note that where the department may be 'supporting' a protective parent's application to the family law court, it is necessary for the department to file all relevant information with the family law court, so that the court is fully informed of our concerns, and therefore better placed to make a decision that is in the best interests of the child/ren. It should also be noted that by conceding to the family law jurisdiction, that we are also conceding to the family law courts being the ultimate decision maker in respect of a child. Under no circumstances is it appropriate for an officer to make a subsequent application to a Childrens Court in the absence of any new child protection concerns.

Where department does not support a parent/s application to the family law court (and chief executive retains custody/guardianship of child/ren)

- It will be appropriate in these circumstances for the department (Court Services or relevant Court Coordinator outside Brisbane) to attend as a *friend of the court* and inform the court of its position in respect of any child protection involvement and case plan re child/ren. The appropriateness of this option must be discussed with Court Services beforehand however.
- It will be necessary for the relevant departmental officer to inform the family law court of the current status of the department's involvement with the family. It may also be appropriate to inform the court of the provisions of section 69ZK *Child welfare laws not affected, FLA*.
- Where the department is not willing to concede to the jurisdiction of the family law courts because it has assessed that the child/ren best interests will be served by keeping them on a child protection order, the family law court then has several options available to it –
 - Adjourn the family law proceedings (section 69ZK(3) *FLA*)
 - Dismiss the application
 - Make appropriate parenting orders (section 65D *FLA*)
- It should be noted that where the court elects to make a parenting order in accordance with the provisions of section 69ZK(1)(a) any order should be worded to come into effect upon the cessation of any Childrens Court orders (that grant the chief executive custody or guardianship).

Where there is an existing application to the family law court prior to the department's intervention

- Same principles apply (as above).
- Where there is an ICL appointed in the family law proceedings and they are in agreement with the department's position in respect of the family law application, it may also be appropriate in the circumstances for them to file an affidavit (prepared by the department) on behalf of the department. This step should only

be undertaken with the agreement of the ICL AND following consultation with Court Services.

RESPONSE ACCORDING TO STATUS OF CHILD

Where children are under custody/guardianship Order to CE or other

If the department is approached about a possible/intended application and the child/ren is in the department's care then we should refer to the requirement to serve the department under Rule 6.02 of the *Family Law Rules 2001* or Rule 11.01 of the *Federal Magistrates Court Rules 2001*.

If we are advised of an application after it has been filed then our role will be determined along the lines of:

- If not named as a respondent then we can decide whether our role is *friend of the court* or party and this will be decided in consultation with TL/Manager and turn on the facts of the case and the case plan. For example if we are wanting to remain involved as the child's custodian/guardian then a *friend of the court* role is most appropriate;
- It is more likely we will adopt a *friend of the court* role in matters where there is some choice as this is the most efficient and cost effective approach however at times the court may take a different view and this will need to be considered also;
- If we are named as a respondent then we are a party and need to brief Crown Law in the first instance. Our ongoing role (i.e party or *friend of the court*) in the matter will need to be determined (of course with leave of the court). It would be extremely rare for the department to remain a party through to final determination of a matter, i.e for the trial.

Where the department's involvement is limited to a notification/investigation & assessment

Department should mostly take on a role as *friend of the court*.

Where the department's involvement includes an Intervention with Parental Agreement (IPA) or Supervision Order

This one is harder to determine as some Federal Magistrates have seen this as equating to an "in care" order and so the extent of our role may be determined by which judicial officer is considering the matter.

Where the department's involvement includes a Directive Order

Department should mostly take on a role as *friend of the court*.

KEY FACTORS FOR THE DEPARTMENT WHEN CONSIDERING THE LEVEL OF INTERVENTION IN A FAMILY LAW COURT PROCEEDING

Where matters come before the family law courts and the department holds relevant information related to child protection matters involving any of the relevant parties, then it is highly desirable that this information is made available to the Court at the earliest opportunity.

It is understood that the making of an Order pursuant to section 91B *Intervention by Child Welfare Officer, FLA* requesting the intervention of the Director-General, enables the Court to alert the department to a current proceeding in that jurisdiction. This then enables there to be some investigation by a departmental officer as to what related information the department may hold, and how best this may be presented to the Court, without the onerous need for the department to intervene on every occasion.

In endeavouring to identify the matters which are considered pertinent when deciding the level of the Director-General's intervention in family law court proceedings, it is difficult to present a definitive set of factors.

Given the varied and fluid nature of matters that present across the jurisdictions, it becomes more about considering all the information as a whole at a given point in time. In doing so, some of the key indicators which would result in greater levels of intervention include:

- The more recent the information held by the department.
- The greater the level of concerns reported to the department – has there been an investigation and assessment of the reported concerns?
- The more extensive the assessments undertaken by the department
- The more intrusive the departmental intervention into the family
- The existence of any related Children's Court proceedings or orders

This is not an exhaustive list and it is intended that all matters are considered on their own unique set of facts and circumstances.

The above list and the attached diagrammatical representation are provided as a reference point only and intend to convey a flexible yet considered approach in determining the level of intervention by the department.

MAGELLAN / 91B Orders

Magellan Case Management Model

Historically, the Magellan Case Management Model came about as a result of research undertaken by Monash University (VIC) in family law matters involving allegations of child abuse and neglect. The research indicated that cases involving allegations of child abuse and family violence had become part of the core business of the Family Court, with a significant proportion of Family Court resources being expended on these intractable and complex cases.

The Magellan Case Management Model introduced a differentiated case management approach in the Family Court for children's matters where allegations of sexual abuse or serious physical abuse of child/ren arise in relation to child/ren who are the subject of family proceedings. It aims to expedite these matters to trial within six months. Normally this can take 18 months to two years to resolve.

Principles underlying the program include:

- an inter-organisational approach;
- a child centred focus;
- a priority on early intervention;
- the use of a Judge-led, tightly managed and time limited approach;
- the use of court-ordered expert investigations and assessments from the State child protection service and court counsellors;
- the use of a court-ordered legal representative for every child funded by legal aid; and
- the use of a multidisciplinary team.

In December 2008, the Director-General gave a commitment to the Department participating fully in the Magellan Case Management Model. The response will include, amongst other things, compiling Magellan reports for the Family Court, and liaising with key stakeholders such as Legal Aid Queensland, Independent Child Lawyers (ICLs), judicial officers, registry staff and Family Consultants from the Family Court of Australia. Court Services will coordinate the response to the Family Court. The content of the Magellan report is intended to include historical/current information in respect of the Department's involvement with a family, as well as any risk assessment and case plans (where applicable).

Project Magellan – procedures & processes

Court Services will undertake to inform (via email) the relevant CSSC once a matter is designated Magellan and there is a request for a Magellan report. The correspondence will in the first instance be forwarded to the Team Leader (IA), Court Coordinator, and (where relevant) the CSO. The contact details for these relevant officers is obtained from either/or ICMS or INFONET. If the receiving officer is not the appropriate contact it would be appreciated if they could advise Court Services, or alternatively forward the email onto the appropriate officer.

In addition to the advice of a matter being designated Magellan a copy of the relevant Family Court order will be attached. This information will need to be recorded on ICMS by the CSSC. Court Services will then engage the relevant CSSC regarding the preparation of the Magellan report. Of significance to the preparation of the Magellan report is whether the department is currently involved with the family and its

assessment of risk in respect of the parent/s. Upon completion of the report by Court Services, and endorsement by the CSSC, a copy of the report will be forwarded to the Family Court, ICL and CSSC. It should be noted that a copy of the Magellan report will also be provided by the court to the parties to the family law proceedings.

In addition to preparing the report the CSSC and Court Services may be required to liaise with the ICL. Court Services will advise the CSSC of who the appointed ICL is when they have been informed. Again, of significance is whether the department is currently involved with assessing or working with the family. It is appropriate that CSSC and ICL staff liaise with each other in respect of any involvement the department may have had with the family. (For confidentiality reasons it will be necessary for the ICL to confirm their appointment – this can be demonstrated by the providing a *Notice of Address for Service* form – this is a prescribed family law court form).

S91B ORDERS MADE UNDER THE FAMILY LAW ACT 1975

Generally speaking the department may only seek to 'intervene' in these matters where the child is the subject of a protective order under the *Child Protection Act 1999* and has a vested interest in the outcome of the family law proceedings. Like Magellan matters it is yet another vehicle by which the department can inform the family law courts of its involvement with a family. This is often done by liaising with the ICL and providing them with the relevant information. That said however there may be circumstances in which it is appropriate for the department to intervene on its own initiative to provide the relevant information.

The department's response to these matters is coordinated centrally at Court Services. Court Services response to these matters has only changed more recently to the extent that a significant part of its communication is now undertaken electronically (and through case discussions) with CSSC staff and ICLs. Historically the process has been more through written correspondence to CSSC staff and ICLs. This update is provided to CSSC staff so that they are aware of such matters when they come through via email. Again, Court Services will liaise with the CSSC regarding an appropriate response.

Role of Court Services:

The Court Services Unit manages the interface between the Department of Child Safety and the Family Court of Australia.

This involves various scenarios which can result from the initiative of the Family Court, the Independent Children's Lawyers (formerly Children's Representative), a parent and/or from a Child Safety Service Centre.

These include:

- The facilitation of requests for information/action from the Family Court to the relevant CSSC
- Providing information to the Family Court when the department is taking action under the *Child Protection Act 1999*
- Processing 91B requests made by the Family Court for the department to intervene in a matter
- Briefing and instructing Crown Law to represent the Director General in the Family Court on matters where the department is served as a party or there is a decision that the department applies to be a party to these proceedings
- Preparing and delivering files subpoenaed for the Family Court
- Providing advice and training to a CSSC as to possible action in the Family Court jurisdiction that may negate the need for continued departmental involvement.

Court Services staff has delegations to appear in the Family Court and represent the interest of the Director General.

- No Action in the Family Court should be taken without prior consultation with the Court Services Unit
- Advice must be sought from the Court Services Unit about the best way to proceed in each individual case
- Please refer to Chapter 15 of the Child Safety Practice Manual – "Working with the Family Court of Australia"

Role of Court Coordinators:

The Court Coordinator is responsible for alerting Court Services **as soon as possible** of any Family Court matters that may arise in their Child Safety Service Centre by forwarding the "**Request for information re family law/child protection interface matters**" form to the Unit.

Upon Court Services receiving the "Request for information" form, a Court Services Adviser will contact the Court Coordinator and discuss any further action required by the Child Safety Service Centre.

FAMILY COURT SUBPOENA'S

What is a subpoena?

A subpoena is a legal document issued by a court at the request of a party to a case. A subpoena compels a person to produce documents or give evidence at a hearing or trial.

There are 3 types of subpoena:

- a subpoena for production
- a subpoena to give evidence, and
- a subpoena for production and to give evidence.

When served with a subpoena, you must comply with it unless you were not served correctly under the court rules or were not provided with proper conduct money to attend court – see Rule 15.24 of the *Family Law Rules 2004*.

If you incur a substantial loss or expense greater than the set conduct money or witness fee, a court may order that the issuing party reimburse you for these expenses.

Any claims for costs in attending court or producing a document under the subpoena must be met by the party issuing the subpoena and not the court.

If you do not comply with a subpoena, a court may:

- issue a warrant for your arrest; and
- order you to pay any costs caused by your non-compliance.

A court may also find you guilty of contempt of court.

If you want to object to a subpoena, or have it set aside in whole or in part, you must still attend court on the date specified on the subpoena, at which time your objection will be heard.

How long does a subpoena remain in force?

A subpoena remains in force until the first of the following events occurs:

- you comply with the subpoena
- the issuing party or a court release you from the obligation to comply with the subpoena, or
- the hearing or trial is concluded.

The Law

In the Family Court, the law covering subpoenas is set out under Part 15.3.1 of the *Family Law Rules 2004*.

Some additional Family Law Court resources

- Protocol between the Family Court of Australia, Federal Magistrates Court and the Department of Child Safety
- *Family Law Act 1975*
- *Family Law Rules 2004*
- *Federal Magistrates Court Rules 2001*
- *Child Protection Act 1999*
- Child Safety Practice Manual, chapter 15
- www.familycourt.gov.au
- www.fmc.gov.au
- www.familyrelationships.gov.au
- Family Law National Inquiry Line, tel 1300 352 000
- Family Relationships Centres, tel 1800 050 321
- A new Family Law System. *Putting the focus on kids.* (information kit provided during conference)



**Request for information re family law/child protection
interface matters**

Subject child/ren

Name/s:

DOB:

Child Safety Service Centre

Child Safety Officer:

Team Leader:

Senior Practitioner:

Court Co-ordinator:

Status of existing orders/proceedings

Childrens Court (current order, application):

Any current family law order/s: Yes

No

Existing parenting orders: *lives with?*

has contact with?

(attach a copy if available)

Current status of child/ren

Temporary custody to Chief Executive: Yes

No

Placement:

Family constellation

Mother:

Father:

Siblings:

Indigenous: Yes

No

Other cultural background:

Court details

Next date in Childrens Court (if relevant):

Next date in family law court:

Orders sought in family law application (if known)

Department's position re family law application

Parent's legal representative/s

Contesting/consenting:

Name and contact details of legal rep/s:

Independent child lawyer (ICL) (if appointed):

Your timely assistance in providing this information to Court Services will assist in determining what response the department may take in respect of this matter in the family law jurisdiction. Thank you.



Queensland
Government

[date]

Department of
Child Safety

[Insert name of Notifying Associate/Registrar/Registry Manager]

[Address – Line 1]

[Address – Line 2]

Dear [insert name]

RE: Notification under section 67Z of the Family Law Act 1975
[insert parties names and reference no.]

I refer to the Form 4 (*Notice of Child Abuse or Family Violence*) filed in relation to the above Family Court proceedings, received by the Data Management Services of the Department of Child Safety on [date].

I wish to advise that this notice was forwarded to the [name] Child Safety Service Centre for a response as the child/ren's current address covers this catchment area.

Consideration of the above notice has now been undertaken by this office and based on the information provided, it has been determined that: [tick appropriate box]

- ☐ No investigation will be undertaken
- ☐ An investigation will be undertaken
- ☐ An investigation has been completed.

Please also note that the department: [tick appropriate box]

- ☐ has no history of involvement with this family
- ☐ has a child protection history with this family
- ☐ is currently involved with this family
- ☐ has existing child protection orders in respect of the subject child/ren.

It is hoped that this information is of assistance to the court.

Yours sincerely

[name]

Manager
Child Safety Service Centre
Department of Child Safety



[date]

Department of
Child Safety

[Insert Name of Notifying Associate]

[Address – Line 1]

[Address – Line 2]

Dear [insert name]

RE: [Insert Parties Names and Reference No.]

On [insert date] the Court Services Unit of the Department of Child Safety received a copy of correspondence from you attaching the Order of [insert judicial officers name] requesting the intervention of the Director-General in the above matter, pursuant to section 91B of the *Family Law Act 1975*.

A review of the departmental file material has [delete (A) or (B) – whichever is NOT applicable]:

(A) not been completed at this stage, and further time is required to assess the information held by this department prior to determining our level of intervention in this matter.

(B) now been completed, and as a result of this review the department will be [tick appropriate box/es]:

- ☐ forwarding all notifications and assessments to the Independent Child Lawyer [insert either their name or 'upon notification of their details from Legal Aid Queensland'] prior to the matter returning before the Court on [insert next date]. The department will also be providing further advice to the Independent Child's Lawyer at their request.
- ☐ taking no further action given that all notifications and assessments have been forwarded to the Court [insert either] pursuant to section 69ZW of the *Family Law Act* or as result of a subpoena by [insert name] on [insert date].
- ☐ have an officer of the department in attendance before the Court on the next return date in the capacity of 'friend of the court' to provide information as to the department's current intervention with this family.
- ☐ briefing Crown Law to seek leave to make certain submissions before the Court in this matter.
- ☐ briefing Crown Law to represent the Director-General and seek leave to become an intervenor in this matter.

- ☐ revealed no records of this family and we have therefore requested a copy of the Family Court file to assess the level of child protection concerns held therein. This request is made in accordance with Rule 24.13 of the *Family Law Rules 2004*.

Please note that the level of departmental response has been determined due to material held on file, and in recognition that the department: *[tick appropriate box]*

- ☐ is not currently involved with this family.
- ☐ is currently involved with this family.
- ☐ (s) involvement with this family is being reassessed and will be significantly influenced by the making of an Order under the *Family Law Act*, which is assessed as meeting the child's current protective needs.

Yours sincerely

Bernadette Smith
Manager
Court Services Unit
Department of Child Safety



17 April 2009

«address»

Department of
Child Safety

Dear Sir/Madam

Magellan case: Matter of «file name/no»

The above matter has been identified for Magellan Case Management.

On «date» the Honourable Justice «name» made an order including requests that your agency:

- intervene under s 91B of the *Family Law Act 1975* and investigate this matter;
- file a report by «date»;
- produce its file to the Family Court pursuant to a subpoena returnable by 4.00pm on «date».

A copy of this order is attached. Please note that this matter has been adjourned to «time» on «date» before «Judge».

Section 91B Notification

The following child/ren is/are the subject of this referral and live with the «parent_name» at «address».

Child's name

Date of Birth

In accordance with the protocols between your agency and the Family Court of Australia, copies of all affidavit material relevant to the current application are included for your information, together with the information sheet prepared by the Court indicating issues to be considered.

State/Territory Child Welfare Authority Report

The Court requests that your response to the s 91B order be incorporated in your report. The report should address the nature of the allegations, the investigation the agency has conducted, the parties interviewed, conclusions reached, and any recommendations or other information that may assist the Court.

For your convenience, you may submit your report to the registry by facsimile on «fax_no» for the attention of the Magellan Registrar.

Subpoena for Production of File(s)

This is an administrative subpoena for the purpose of inspection of your file by lawyers and Court Family Consultants prior to the next Court hearing. It is **not necessary** for you to attend personally at the Family Court with the file. The file may be delivered by courier or certified mail.

Please make arrangements for the subpoenaed agency file and the report to be delivered by the due date to:

«name_and_address»

Any queries in relation to Magellan case management may be addressed to Registrar «name» on «telephone_number».

If you require further assistance please contact «Client_Services_Officer_name» at «telephone_number».

Yours faithfully

«name»



**Framework for a section 69ZK letter/statement of position re Family
Court application**

[date]

[parent/s details]

Dear

**Re: Department's position re potential Family Court application – [child/ren
details]**

Further to our conversation on [date] I wish to confirm the department's position should you initiate an application in the Family Court/Federal Magistrate's Court (FMC) for a parenting order that determines with whom your child/ren, [name/s, dob], is to live with.

As you are aware your child/ren is/are currently the subject of a child protection order/application granting short/long term custody/guardianship to the Chief Executive. This/these order/s were made in the [name] Childrens Court on [date] for a period of [timeframe] and is/are due to expire on [date]. I attach a copy of the current order/s for your information.

The child/ren is/are currently placed with [whom].

[more contextual information re current departmental involvement]

Should you be successful in securing an interim or final parenting order that enables your child/ren to live with you the Department of Child Safety would seek to: [select an outcome]

- revoke the current child protection order in respect of your child/ren at the earliest opportunity before the Childrens Court ☐
- withdraw the current child protection application/s in the [name] Childrens Court.

Further, should a parenting order be sought by [non protective parent] that provides the child/ren spend time or communicate with them it would be the department's assessment that this contact should be supervised/unsupervised due to ongoing concerns regarding her/his capacity to act protectively towards the child/ren [include any other relevant information].

Given the current child protection order/s, I draw your attention to section 69ZK(1)(a) of the *Family Law Act 1975*, and would request that any order/s made by the Family Court/FMS be worded to come into effect upon the cessation of the child protection order/s.

To facilitate the department's response in this matter, I would also request that should subsequent orders be made in the Family Court/FMC that a copy of this order be provided to the department so that it may respond accordingly.

I wish to bring to your attention that should you initiate an application with the Family Court it will be necessary to provide a copy or serve a copy of any application to the Chief Executive, Department of Child Safety subject to the provisions of Rule 6.02 of the *Family Law Rules 2004*.

Further, I have no objection to this letter being tendered to the Family Court/FMC to clarify the department's current position in respect of our involvement with your family.

If you require further information please contact the CSO/Team Leader/Court Coordinator in this office on telephone *[number]*.

Yours sincerely

Manager
[name] **Child Safety Service Centre**
Department of Child Safety

Encs

CC: *[non protective parent]*
Manager, Court Services Unit, Department of Child Safety
Child's representative (if applicable)



FAMILY COURT OF AUSTRALIA

«FCA_LD03»
«FCA_LD04»
Telephone «FCA_LD05»
Facsimile «FCA_LD06»

«FCA_LD01»
«FCA_LD02»

NOTIFICATION UNDER SECTION 67ZA
FAMILY LAW ACT 1975

TO: «FCA_LQ259»

OFFICE: «FCA_LQ266»

TEL: «FCA_LQ260»

FAX: «FCA_LQ267»

I, <insert relevant Court Officer's name> <insert role> of the Family Court of Australia, <insert registry address> hereby notify you to be the prescribed child welfare authority pursuant to s67ZA of the Family Law Act in relation to the children referred to below.

This notification is made pursuant to:

«FCA_LQ262»

«FCA_LQ263»

«FCA_LQ264»

Confirmation of prior oral notification? ☐ Yes

☐ No

Date of prior oral notification:

Office notified:

Officer to whom notification made:

Name/s of child/ren subject to notification:

«FCA_LD216»

Name/s of siblings of child/ren subject to notification:

<Insert Name and D.O.B. of each child separated by a comma>

Name and address of mother:

«FCA_LD95»

«FCA_LD97»

Name and address of father:

«FCA_LD98»

«FCA_LD100»

Name of person with whom child/ren currently live/s:

«FCA_LQ268»

Address if not mother or father

«FCA_LQ269»

Circumstances giving rise to this notification:

Other information

Name of Court hearing matter:

Name and number of proceedings: «FCA_LD53» «FCA_LD07»

Date of next court appearance:

Has a report been ordered under s62G(2) of the Family Law Act? ☐ Yes ☐ No

Has an Expert Report been prepared or is there one pending? ☐ Yes ☐ No

Other organisations involved with the family:

Are there concerns about protective workers' safety in visiting the family? ☐ Yes ☐ No

Best time to find the parents at home:

Does the family know this notification is being made? ☐ Yes ☐ No

If no specify family members who do not know:

Language used in family (if not English):

Lawyers:

1. **For Mother:** «FCA_LD101»
2. **For Father:** «FCA_LD102»
3. **For Child/ren:**
4. **Other (specify)**

Please acknowledge receipt of this notification and advise the notifier as soon as possible of what action, if any, the Department proposes to take. Please direct the response to the Registry Manager.

Signature of Notifier:

Date:



Commonwealth Consolidated Acts

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FAMILY LAW ACT 1975 - SECT 69ZK

Child welfare laws not affected

(1) A court having jurisdiction under this Act must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law unless:

(a) the order is expressed to come into effect when the child ceases to be under that care; or

(b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer of the relevant State or Territory has been obtained.

(2) Nothing in this Act, and no decree under this Act, affects:

(a) the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law; or

(b) any such order made or action taken; or

(c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.



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FAMILY LAW ACT 1975 - SECT 69ZW

Evidence relating to child abuse or family violence

(1) The court may make an order in child-related proceedings requiring a prescribed State or Territory agency to provide the court with the documents or information specified in the order.

(2) The documents or information specified in the order must be documents recording, or information about, one or more of these:

(a) any notifications to the agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;

(b) any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;

(c) any reports commissioned by the agency in the course of investigating a notification.

(3) Nothing in the order is to be taken to require the agency to provide the court with:

(a) documents or information not in the possession or control of the agency; or

(b) documents or information that include the identity of the person who made a notification.

(4) A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent an agency complying with the order.

(5) The court must admit into evidence any documents or information, provided in response to the order, on which the court intends to rely.

(6) Despite subsection (5), the court must not disclose the identity of the person who made a notification, or information that could identify that person, unless:

(a) the person consents to the disclosure; or

(b) the court is satisfied that the identity or information is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.

(7) Before making a disclosure for the reasons in paragraph (6)(b), the court must ensure that the agency that provided the identity or information:

(a) is notified about the intended disclosure; and

(b) is given an opportunity to respond.



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FAMILY LAW ACT 1975 - SECT 91B

Intervention by child welfare officer

(1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of an officer of a State, of a Territory or of the Commonwealth, being the officer who is responsible for the administration of the laws of the State or Territory in which the proceedings are being heard that relate to child welfare.

(2) Where the court has, under subsection (1), requested an officer to intervene in proceedings:

(a) the officer may intervene in those proceedings; and

(b) where the officer so intervenes, the officer shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

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FAMILY LAW RULES 2004 - RULE 6.02

Necessary parties

(1) A person whose rights may be directly affected by an issue in a case, and whose participation as a party is necessary for the court to determine all issues in dispute in the case, must be included as a party to the case.

Example

If a party seeks an order of a kind mentioned in section 90AE or 90AF of the Act, a third party who will be bound by the order must be joined as a respondent to the case.

(2) If an application is made for a parenting order, the following must be parties to the case:

- (a) the parents of the child;
- (b) any other person in whose favour a parenting order is currently in force in relation to the child;
- (c) any other person with whom the child lives and who is responsible for the care, welfare and development of the child;
- (d) if a State child order is currently in place in relation to the child — the prescribed child welfare authority.

(3) If a person mentioned in subrule (2) is not an applicant in a case involving the child, that person must be joined as a respondent to the application.

Note The court may dispense with compliance with a rule (see rule 1.12).

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QUEENSLAND CIVIL & ADMINISTRATIVE TRIBUNAL (QCAT)

The announcement of QCAT

On 12 March 2008, the Premier, the Hon Anna Bligh MP, announced the establishment of a Queensland Civil and Administrative Tribunal (QCAT); and the establishment of an independent panel to report to Government about the implementation of a new Civil and Administrative Tribunal for Queensland.

QCAT amalgamates CST

QCAT will take over the functions of a number of different tribunals as well as some review functions of the courts and other administrative bodies - including the *Children Services Tribunal*.

Decisions made by the Department of Child Safety under the *Child Protection Act 1999 (CPA)* and *Adoption of Children Act 1964 (ACA)* are reviewable by the *Children Services Tribunal*. For example:

- removing a child from the care of the child's carer;
- refusing an application for, or to renew, a certificate of approval as an approved foster carer or an approved kinship carer; and
- removal of a person's name from an expression of interest register for adoptions.

QCAT Legislation

In order to establish QCAT, two pieces of legislation are being prepared:

- The Queensland Civil and Administrative Tribunal Bill 2009 (the QCAT Bill), which will establish QCAT and provide for its generic functions, powers and procedures; and
- The Queensland Civil and Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2009, which will amend over 160 pieces of legislation to transfer jurisdiction from existing tribunal and courts to QCAT, including the *CPA* and the *ACA*.

Jurisdictional scope of QCAT

- Because of the wide variety of matters that QCAT will deal with, the tribunal will be organised into three divisions:
 - Human Rights;
 - Civil; and
 - Administrative and Disciplinary Matters

Specialist provisions retained

QCAT legislation is to provide for the general users of the tribunal and includes provisions regarding children who may more generally come into contact with the tribunal.

However there are specialist provisions of the *Children Services Tribunal Act 2000* which need to be retained and for which do not fit with the more general approach of the QCAT legislation.

The specialist provisions will be placed in a new part (Tribunal Proceedings) of the CPA and ACA.

Registrar to give notice of review application

- The registrar must give notice of a review application to the decision maker.
- Within 7 days after receiving the notice, the decision maker must give the registrar notice of the names and addresses of all persons, apart from the applicant who are entitled to apply for a review of the reviewable decision concerned and of whom the decision maker is aware.
- Registrar must immediately on receipt of decision maker's notice, give an information notice to each person named in the decision maker's notice.

Review applications by Commissioner (CPA 1999)only

If the applicant for a review application is the Commissioner for Children and Young People and Child Guardian the review application must be made within 28 days after the commissioner gives notice under the *Commission for Children and Young People and Child Guardian Act 2000* section 140B(4), to the chief executive about the reviewable decision.

Government entity may nominate decision maker

The department may give the registrar a notice nominating an officer or employee of the department, or the holder for the time being of an office in the department, as the decision maker for a review.

Constitution of tribunal

- President may choose a member to constitute the tribunal only if the president considers the member is committed to the principles; has extensive professional knowledge and experience of children; and has demonstrated a knowledge of and has experience in 1 or more fields of the fields listed, for example child protection, social work, administrative review.
- A member is ineligible to be a constituting member if the member has been refused a certificate of approval, or a renewal of a certificate of approval, as an approved carer or has had a certificate of approval as an approved carer cancelled.
- Panel must be constituted by 3 members with at least 1 legally qualified member with at least 5 years experience. However for preliminary conference may be constituted by 2 members, one of whom is a legally qualified member.
- If a child to which a proceeding relates is Aboriginal or Torres Strait islander, the tribunal hearing the proceeding must include, if practicable, a member who is Aboriginal or Torres Strait Islander.

Hearing must usually be held in private

A hearing of a proceeding before the tribunal must be held in private. However, the following are entitled to be present at the proceeding-

- each party to the proceeding
- if, under the QCAT Act, a party is entitled to be represented by someone else at the proceeding, the party's representative;
- a separate representative representing a child in the proceeding;
- a witness while giving evidence;
- a support person for a party or a witness;
- a person allowed to be present by the tribunal.

When a proceeding may be held in public

Despite the provision that "Proceedings relating to this Act must usually be held in private" the tribunal may allow a proceeding before the tribunal to be held in public if information identifying, or likely to lead to the identification of, a particular child will not be given in the proceeding.

Adjournments CPA 1999 only

- In considering whether to adjourn a proceeding involving a child, the tribunal must take into account any impact that adjourning the proceeding will have on the child.
- When it adjourns a proceeding, the tribunal must:
 - Give reasons for the adjournment; and
 - State any matters it requires a party to the proceeding to address during the adjournment; and
 - Give directions and make orders it considers necessary or desirable.

When matter before Court

- If a review application is before the tribunal and some or all of the matters to which the reviewable decision relates are also before a court then on the president's own initiative or on application by a party to the review the president must suspend the tribunal's review if the president considers:
 - The court's decision about the matters would effectively decide the same issues to be decided by the tribunal; and
 - The matters will be dealt with quickly by the court.
- If the president suspends the tribunal's review and the **court decides the matters** and the decision effectively decides the issues before the tribunal then president must dismiss the review application.
- If the president has suspended the tribunal's review and the matters have not been decided by the court the president may cancel the suspension and the tribunal may continue to deal with the review application.

Requirements about ensuring proper understanding of tribunal proceedings

In addition to the QCAT legislation provisions that ensure the tribunal take all reasonable steps to ensure proper understanding and regard, the tribunal must take all reasonable steps to ensure each child taking part in a proceeding who is not a party to the proceedings understands the tribunal's procedures.

The QCAT legislation provisions include general steps that must be taken by the tribunal to ensure proper understanding and regard and include to ensure proceedings are conducted in a way that recognises and is responsive to the needs of a party or witness in a proceeding who is a child.

Review of applications of behalf of children CPA 1999 only

- A person may file a review application on behalf of a child only with the president's permission.
- The president may give permission only if the president considers:
 - the person is not, on the person's own behalf, entitled to apply for the decision to be reviewed by the tribunal; and
 - it is in the child's best interests that the application be made; and
 - it would be inappropriate for, or unreasonable to require, the child to make the application himself or herself.
- A review application filed on behalf of a child with the president's permission can only be withdrawn with the president or tribunal's permission. Such permission can only be given if the president or tribunal considers that, having regard to the child's views or wishes, if any, it is in the child's best interests that the application be withdrawn.

Representation of children by lawyers

- The QCAT legislation provides that parties are to represent themselves unless the interests of justice require otherwise.
- The QCAT legislation identifies those situations in which a party may be represented including when the party is a child or person with impaired capacity; or when an enabling Act or the rules states the person may be represented.
- The ACA and CPA (enabling Acts) provide that the child may be represented before the tribunal by a lawyer.

Separate representation of children

- The QCAT legislation provides that parties are to represent themselves unless the interests of justice require otherwise.
- The QCAT legislation identifies those situations in which a party may be represented including when the party is a child or person with impaired capacity; or when an enabling Act or the rules states the person may be represented.
- The ACA and CPA (enabling Acts) provide that the child may be represented before the tribunal by a lawyer.
- A separate representative must not in any proceeding be called to give evidence, and if called must not give evidence, about a communication between the representative and the child for whom the representative was appointed.

Children must not be compelled to give evidence

A child must not be compelled to give evidence in a proceeding.

Before a child gives evidence in a proceeding, the tribunal must satisfy itself that the child is willing to give the evidence.

Childs right to express views to the tribunal

- If a reviewable decision is about a child and the decision is being reviewed by the tribunal then whether or not the child is a party to the review or appears as a witness before the tribunal, the child has the right to express his or her views to the tribunal about matters relevant to the review.

Children providing evidence and expressing views

When a child is giving evidence or expressing the child's views to the tribunal the only persons who may be present are:

- the constituting members;
- the lawyer, if any, representing the child;
- the separate representative, if any, for the child;
- the child's support person if the child has a support person and agrees to that person's presence.

Despite this the child may elect to give evidence or express the child's views in the presence of the parties and their representatives if the child is 12 years or more; and is represented by a lawyer or a separate representative.

Questioning of children

- A child giving evidence or expressing the child's views in a proceeding must not be cross-examined.
- Also, only the following persons may ask questions of a child giving evidence or expressing the child's views in a proceeding:
 - the constituting members;
 - the lawyer, if any, representing the child;
 - the separate representative, if any, for the child.

Provisions applying if party to review is a child who is a parent of the child about whom the reviewable decision was made

- If a party to a review is a child who is a parent of the child about whom the reviewable decision was made; and in a proceeding for the review the parent elects to give evidence then the provisions regarding "Children giving evidence or expressing views to the tribunal" and "Questioning of children" do not apply to the parent.
- Before the parent gives evidence, the tribunal must tell the parent that:
 - he or she may be cross examined by the tribunal or a party to the proceeding; and
 - he or she may, at any time while the cross-examination is continuing, refuse to be further cross-examined; and
 - if he or she refuses to be further cross-examined then this may effect the weight given by the tribunal to his or her evidence.

President or tribunal may authorise a medical examination of a child (CPA only)

- For a review, the president or the tribunal may, by order, authorise a medical examination of a child and require a report of the examination of a child and require a report of the examination to be filed with the registrar.
- The order must state the particular issues the report must address.
- The president or tribunal must not make the order unless the president or tribunal is satisfied:
 - The medical information, if any, available to the tribunal about the child is insufficient to allow the tribunal to decide the review; and
 - The child's interests will be best served by making the order.
- In deciding whether the child's interests will be best served by the making the order, the president or tribunal must consider the child's views and wishes, if any, and the effect the medical examination may have on the child having regard to the number and frequency of any previous medical examinations the child has undergone.

Carrying out medical examinations

If the president or tribunal authorises a child's medical examination a doctor may medically examine the child even though the child's parents or guardian has not consented to the examination, subject to the rights the child has in relation to the examination.

In deciding any liability in relation to the carrying out of the examination, the doctor is taken to have the consent of the child's parents or guardian to the examination.

Parties to a review

The parties to a review are:

- the applicant for the review; and
- the decision maker; and
- a person who elects to become a party under the provision "Certain persons may elect to become parties".

Certain person may elect to become parties

- Persons who are given an information notice detailing a review application may elect to become a party to the review to which the notice relates by filing a notice of election with the registrar.
- The notice of election must be filed with the registrar within 7 days after the person receives the information notice.
- The tribunal may shorten the period for filing the notice of election only if satisfied that not to do so will result in a child's interests being adversely affected or another party to the review suffering hardship.

Joining of a person as a party to proceedings

The tribunal may join a person as a party to a review if it is satisfied the person is genuinely concerned in the subject matter of the review.

However, if the review concerns a child, the tribunal must not join a person as a party unless it is satisfied that to do so would be in the child's best interests.

The tribunal may join a person as a party to the review on its own initiative or on application by the person.

The tribunal may join a person as a party to the review at any time before the review application is finally decided by the tribunal.

Confidentiality Order

- On its own initiative or on application by a party to the review the tribunal may, by order (**a confidentiality order**), prohibit or restrict the disclosure to a party to a review of all or some of the evidence given before the tribunal, or of the whole or part of the contents of a document given to, or received in evidence by, the tribunal for the review. The tribunal must be satisfied that if it were not to issue the confidentiality order:
 - a child is likely to be harmed; or
 - the safety of another person is likely to be endangered; or
 - there would be undue interference with the privacy of a child or another person.

- In deciding whether to make a confidentiality order or giving effect to a confidentiality order the tribunal may exclude a party, and any representative of the party, from part of the review or deal with a document in a way that ensures it is not disclosed to a party.
- A confidentiality order does not act to prohibit or limit the disclosure of material to a separate representative in a review.

Certain information not to be published

- A person must not publish information given in evidence or otherwise in a proceeding before the tribunal unless the tribunal consents to the publication. To consent to the publication the tribunal must be satisfied the publication is in the public interest and does not conflict with the best interests of the child.
- A person must not publish information that is likely to identify a person who:
 - Appears as a witness before the tribunal in a proceeding; or
 - Is a party to the proceeding; or
 - Is mentioned, or otherwise involved, in the proceeding.

Confidentiality of Information

- A person who is, or was, a member, an expert, an independent inquirer or a member of the tribunal's staff and obtained information in the course of performing the person's functions under the Act must not disclose that information if the information is about another person's affairs. Maximum penalty 100 penalty units or 2 years imprisonment.
- However if the information is disclosed in the performance of the functions under the Act or the QCAT Act; or relates to an adult and the information is disclosed with the written consent of the adult and the information is unlikely to identify a child or the disclosure is otherwise authorised or permitted under an Act or required by law then the penalty does not apply.

Requests to the Chief Executive

- The president may ask the chief executive to notify the president, within a reasonable state time:
 - of the steps taken to give effect to the tribunal's decision; or
 - of the steps taken to give effect to the tribunal's recommendations and, if no steps have been taken, the reasons for this.

What happens if a decision is not given effect?

- If the president after considering the response of the chief executive given under "Requests to chief executive" is of the opinion that:
 - the tribunal's decision has not been given effect; or
 - no steps have been taken to give effect to the tribunal's recommendations or the steps taken are inadequate or inappropriate.
- The president may report on the matter to the Minister responsible for the department.
- The president must attach the following to the report:
 - if the report is about the tribunal's decision then must attach copies of the decision and response;
 - if the report is about the tribunal's recommendations then must attach copies of the recommendations and response.

Representation

- Generally people who file an application with QCAT will have to appear in person before the tribunal.
- Leave is to be sought should the person wish to have a lawyer, advocate or friend represent them at the tribunal.
- Where there are complex issues of fact and law then it is likely the tribunal will allow the person to be represented.
- Specific provisions relating to the representation of children will be included in the CPA and ACA.

Costs

- As a general rule each party to a QCAT matter will have to pay their own costs.
- QCAT will however be able to require a person to pay another party's costs.
- However the tribunal must not award costs against a child.
- Although a representative of a child may have costs awarded against them if the representative acted in a way which caused unnecessary costs to another party to the proceeding.

Rights of Appeal

- QCAT will have its own internal appeal jurisdiction (the Appeal Tribunal).
- However in certain situations a person will need to ask the QCAT President for permission to start the appeal.
 - E.g. if the appeal is based on a question of fact; question of mixed law and fact; decision that is not a final decision (stay); decision to award costs.
- A final decision of an appeal heard by the QCAT Appeal Tribunal can be appealed with leave of the Court of Appeal only on a question of law.

Vulnerable persons

- QCAT Bill includes provisions to help ensure the tribunal is responsive to all people that might appear before it. Such provisions include:
 - proceedings are to be responsive to parties with particular needs including children;
 - provisions for 'special witness' which allow the tribunal to protect children who may suffer disadvantage or trauma in the process of giving evidence, by ordering that the evidence is to be given in a particular way; and
 - that hearings can be closed to protect the privacy of parties in certain circumstances.

Commencement of the Legislation

- QCAT is to commence 1 December 2009.
- Some earlier provisions of QCAT legislation may commence earlier to allow key positions to be filled for the tribunal and for the rules to be prepared before the tribunal commences.

Want more information

- refer to the website www.tribunalsreview.qld.gov.au for further information. The website includes a summary sheet that sets out how the new legislation will affect the current operation of the Children Services Tribunal.

Session Plan – Children Services Tribunal – An Overview

Outcomes:

- To provide the participants with an overview of the Children Services Tribunal.
- To provide an overview of decisions which are reviewable by the Children Services Tribunal
- To understand the interface between Court Services Unit and the Children Services Tribunal
- To provide participants with Question and Answer time

Presenters:

Time	Content	Resources / Comments
	<p><u>Overview of the Children Services Tribunal</u></p> <p>Steps involving in the review process</p> <ul style="list-style-type: none"> • Time frame for filing a review • Notice of review sent to Court Services • Department's obligations around information provision (7 days & 21 days) • Statement of Reasons • Preliminary Conferences • Hearings – including tips around "Closing Submissions" <p><u>Reviewable Decisions</u></p> <ul style="list-style-type: none"> • What decisions can be reviewed (Schedule 2, <i>Child Protection Act 1999</i>) • Who can make application for a review under the <i>Child Protection Act 1999</i> • Commission for Children and Young People • Applications under s59 of the <i>Children Services Tribunal Act</i> <p><u>Interface between Court Services Unit and the Children Services Tribunal</u></p> <ul style="list-style-type: none"> • Role of Court Services Unit • CSSC as a party to the proceedings <p><u>Mindset of a Merit Review</u></p> <ul style="list-style-type: none"> • Speak to the Government Solicitor Article - Critical Analysis Tool <p><u>Question and Answer Time</u></p> <p>Ask participants to keep questions general</p> <p>End of Session</p>	<p>PowerPoint Presentation "What is the Children Services Tribunal?" (needs to be updated)</p> <p>Quick discussion where CC's state what decisions can be reviewed.</p> <p>PowerPoint presentation</p> <p>Handout. 'Role of Court Services as departmental liaison with the CST'</p> <p>CST Act Statement of Reasons – Good example</p> <p>Government Solicitor Article.</p> <p>Flowchart from TL training re: Phases of CST</p> <p>S140 & S140B CCYP & CG Act</p> <p>Foster Care Blue Card Table</p>

CHILDREN SERVICES TRIBUNAL

The Children Services Tribunal (the Tribunal) was established under the *Children Services Tribunal Act 2000* and seeks to provide merit reviews of specific reviewable decisions under a number of Acts including the *Child Protection Act 1999*. It is an independent body, with an appointed President, located within the Department of the Premier and Cabinet.

Reviewable decisions

One of the main roles of the Tribunal is to review certain decisions made by the Department of Child Safety. Reviewable decisions may relate to:

- the placement of children (*Child Protection Act 1999*, section 86(2));
- not telling parents where a child is living (*Child Protection Act 1999*, section 86(4)); or
- refusing to allow, restricting, or placing conditions on contact between a child and their parents, siblings or another member of the child's family (*Child Protection Act 1999*, section 87(2)).

The Tribunal is usually made up of three people who have experience in many areas including children's issues, law and health. The Tribunal, while similar to a court, operates in a less formal manner and seeks to avoid an overly legalistic approach to cases, for example, legal representation is at the discretion of the Tribunal, based on the issues of each case.

In reviewing a decision the Tribunal may:

- agree with a decision (the decision stays the same);
- disagree with a decision (as if the decision had never been made);
- change some aspects of a decision; or
- make a new decision.

Who may apply for a review?

Those who may apply for a review of decisions under the *Child Protection Act 1999*, include:

- children or, if the child is too young, another person may do this on their behalf;
- parents;
- the Child Guardian, Commission for Children and Young People and Child Guardian; and
- in specified circumstances, the child's carer.

An application for the review of a decision needs to be made to the required person/s within 28 days of the decision being communicated in writing by the department. The Tribunal's role is finalised once a decision has been handed down. The Tribunal is not able to follow up on a case or manage or oversee cases.

Decisions able to be reviewed by the Tribunal, and persons able to apply to have a decision reviewed, are specified in the *Child Protection Act 1999*, schedule 2.

Statement of Reasons for the Children Services Tribunal

Purpose:

The purpose of the Statement of Reasons is to assist the Tribunal. The statement is to be submitted within 21 days of receipt of the section 60(1) & 74 "Notice of a Review Application".

The statement of reasons must:

- Set out the findings on material questions of fact
- Refer to the evidence/material on which those findings were based and
- Give the reasons for the decision

The Statement of Reasons is the first written material that the Tribunal receives from the Department. After reading the Statement of Reasons, the Tribunal should have a clear understanding of:

- what the decision was, (authority and departmental policy relied on, who is the delegated officer etc)
- what was the sequence of events and assessments that lead up to the decision ,
- the decision making process,
- any review processes used,
- how the decision was communicated to the parties

It is useful to attach any relevant documents that were used to reach the decision. For example:

- Departmental policy documents
- Records of family meetings, letters provided to the parties
- Research, literature, training material that was read
- Chapter/sections from the Careprovider Handbook

Some brief background information is also useful to include such as:

- How the subject child came into care, family constellation
- Brief history of contact with the Department of Child Safety
- If careprovider, their placement history, any training attended, assessment process, recommendations from the assessment as relevant.

It is the responsibility of the department to provide as thorough information as possible. Although many of the Tribunal members have extensive experience in family law and child welfare, it should not be assumed that they have a background in departmental decision making, policy and procedures.

Style

- Language – Keep it simple and precise – remember it is as much for the parent and child as it is for the Tribunal.
- Font type and style – select a style that makes it easy to read
- Headings are useful
- Numbering pages and paragraphs is essential
- Authors name, date and signature are essential.

Role of Court Services Unit as departmental liaison with the Children's Services Tribunal

The role of the Court Services Unit (CSU) as departmental liaison can be divided into three major components:

- Role as Liaison with Tribunal registry
- Role in proceedings
- Role internal to the department.

Liaison

The role of CSU as departmental liaison includes:

- To act as point of liaison between the Tribunal and the department – act as point of reference for registry staff for example serving of Notices, clarification of date's etc.
- Negotiate with tribunal staff as required.

Role in proceedings

The role of CSU during proceedings is:

- To provide support to the departmental decision maker and witnesses.
- To address the tribunal directly at the initiation of the departmental liaison officer on issues of concern that requires a formal statement for the purposes of the record.

It is not the role of CSU to address the Tribunal concerning case management or case plans of the matter before the Tribunal.

Internal role

- Provide advice to departmental staff concerning all aspects of review applications.
- Where necessary seek legal advice or instruct Crown Law to represent the Director General in Tribunal matters.
- Assist in the preparation of departmental material for Tribunal proceedings.
- Attend preliminary conferences and hearing with departmental staff, unless specifically negotiated with the decision maker.
- Brief and prepare departmental witnesses.
- Debrief and provide feedback to departmental staff – focussing on the learning from the experience.
- Provide advice to senior management regarding any practice or policy issues of concern.
- Collate and analyse data and provide advice as to emerging issues.
- Prepare written correspondence where necessary.

Criteria for Court Services attendance and participation in Children Services Tribunal matters

Points of Consideration

The following criteria have been agreed as warranting the involvement of court services up to and including the Hearing of an application for review of a decision:

- the application has been brought by a carer/s
- the application has been brought under s59 on behalf of a child
- the application is made by the Child Guardian
- the application is a reviewable decision under the *Adoption of Children Act 1964*
- legal representation has been granted by the applicants by not the respondents
- the reviewable decision has a degree of complexity or contentious element (including any identified vulnerabilities) as assessed by the team leader and / or manager, CSU
- that key CSSC officers have no or very limited experience in managing an application before the Tribunal.

The following points are noted for consideration as to when Court Services **may or may not** remain involved in a matter beyond the Preliminary Conference stage, except to provide some level of quality assurance of material.

- the department has been granted leave for legal representation
- the application is straight forward, with no jurisdictional complexities
- the CSSC has a level of confidence in presenting the matter and speaking to the thoroughness of their assessments and decision-making
- the CSSC has previous experience in having a matter heard before the Tribunal
- the departmental practices and decision-making presents as sound.

Factors that are not be determinate in deciding Court Services level of involvement are:

- the location of the hearing and/or whether there is a requirement for an overnight stay outside of Brisbane
- the length of the hearing
- a difference of view between the CSU and the CSSC as to the CSSC's decision and/or processes of decision-making (this issue is to be managed internally).

The availability of CSU staff may at times impact on whether or not CSU can attend a hearing, however this would be a rare occurrence and the onus would remain with CSU to explore all other avenues of support to the CSSC.

Process for advising CSSC's

The above criteria or points of consideration still enable a level of discretion when applied to each case.

The decision to not participate beyond the Preliminary Conference is one made by the team leader (CSU) in consultation with the allocated CSA.

The team leader (CSU) must then advise (by email) the manager (CSU) of this decision along with the rationale and any differing views of staff. The team leader will communicate the decision to the CSSC and should there be a request for a review of the decision (which can be requested by the CSA and / or the CSSC), the manager (CSU) can then undertake a review.

The decision for CSU not to participate in the hearing of a matter will be made following the post preliminary conference case discussion with the CSSC and / or within 2 weeks of the Preliminary Conference, whichever is earlier.

Children Services Tribunal

Stage in Process	Court Services Adviser	Court Co-ordinator
Receipt of Notice of Review	<p>The CSA will assess the Notice to determine:</p> <ul style="list-style-type: none"> ▪ whether the application is within 28 day review period ▪ the jurisdiction of the Tribunal to review in accordance with Schedule 2 and/or if factual information is required from the CSSC to determine this matter ▪ if jurisdictional issues are identified, CSA will prepare legal submissions in writing to the CST Registrar for determination 	<p>The CC will</p> <ul style="list-style-type: none"> ▪ collate factual information as requested by CSA in support of jurisdictional submissions
Central Liaison Point for CST Re: Distribution of Notices of Review to the CSSC	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ identify the relevant CSSC and staff and issue the Notice of Review via facsimile ▪ the CSA will prepare advice email correspondence to CSSC staff identifying: <ul style="list-style-type: none"> ✓ (as required under section 60 (2) of the <i>CST Act 2000</i>, other aggrieved persons entitled to seek review for the purpose of filing Notice of Election details ✓ the filing date for the Statement of Reasons 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ ensure the Notice is received and filing dates are identified to the Manager/Team Leader ▪ facilitate a case discussion re: allocation of preparation tasks as raised by CSA, within identified filing deadlines ▪ provide feedback to CSA as required

	<ul style="list-style-type: none"> ✓ suggestions re: critical matters to be addressed ✓ identifying related reviewable decisions for action by CSSC in accordance with information notice provisions in <i>Child Protection Act 1999</i> 	
Preparation of Statement of Reasons Preparation of Statement of Reasons (continued)	The CSA will: <ul style="list-style-type: none"> ▪ provide 2nd level quality assurance of the Statement of Reasons having particular regard to the accuracy of <i>Child Protection Act 1999</i> and <i>Children Services Tribunal Act 2000</i> and departmental policy references within ▪ review and analyse evidence referred to in the Statement of Reasons in order to identify other information to be gathered and the overall strengths and weaknesses of the decision on review. If necessary prepare correspondence to the CSSC Manager in relation to any identified concerns ▪ review the Statement of Reasons to identify potential legal submissions to be made at the Preliminary Conference under Tribunal Legislation eg: Notice to Produce, Notice to Attend, Confidentiality Order, Order for 	The CC will: <ul style="list-style-type: none"> ▪ track preparation of the Statement of Reasons and associated tasks in accordance with filing deadlines ▪ provide 1st level quality assurance having particular regard to case content matters

	<p>Separate Representation etc</p> <ul style="list-style-type: none"> ▪ File the Statement of Reasons with the Children Services Tribunal Registry 	
<p>Preparation for Stay Hearing and/or Preliminary Conference</p>	<p>The CSA will facilitate a preparation telelink with CSSC Manager/Team Leader to:</p> <ul style="list-style-type: none"> ▪ explain the process of a Stay Hearing and/or Preliminary Conference ▪ provide clear guidelines about the Tribunal's expectation of their conduct and presentation during the Stay Hearing/Preliminary Conference ▪ distinguish the roles of the CSSC representative and the CSA when appearing before the Tribunal ▪ make suggestions to CSSC as to the content of oral submissions to be made to the Tribunal in support of their case ▪ identify and explain to the CSSC staff the nature and purpose of any legal submission to be made by the CSA ▪ discuss a preliminary witness list 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ Participate in preparation telelink ▪ track and assist Manager/Team Leader in preparation of oral submissions as suggested by the CSA during telelink

	<ul style="list-style-type: none"> ▪ provide information to the CSSC staff about the Tribunal Panel, their field of expertise and past impressions of them as Tribunal members ▪ provide an opportunity to the CSSC staff to address any questions they may have 	
Stay Hearing/Preliminary Conference	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ make submissions on behalf of the department (as respondent) and/or respond to questions raised by the Tribunal in relation to policy and legislative matters ▪ make submissions in relation to specific orders sought by the department (as respondent) ▪ assist the CSSC representatives in the delivery of their oral submissions ▪ following the Preliminary Conference identify and note Tribunal actions/decisions that may have broader implications for referral to Court Services Unit Manager/Team Leader and discussion at stakeholder forums 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ attend only with leave of the Tribunal and with the consent of the applicant for learning purposes

Post Stay Hearing/Preliminary Conference	<p>The CSA will provide a summary email of Stay/Preliminary Conference proceedings including</p> <ul style="list-style-type: none"> ▪ identifying and explaining the practical and/or legal implications of any Interim Orders made ▪ identifying filing deadlines <p>The CSA will:</p> <ul style="list-style-type: none"> ▪ distribute to CSSC any written Interim Orders of the Tribunal to the CSSC 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ ensure tasks identified are allocated and commenced having regard to filing deadlines
Hearing Preparation	<p>The CSA will convene a preparation telelink with all relevant CSSC staff making suggestions about:</p> <ul style="list-style-type: none"> ▪ witness statements required for hearing and relevant content ▪ identifying urgent tasks in relation to the gathering of additional evidence ▪ identifying other administrative matters to be addressed in preparation for Hearing. ▪ identifying filing deadlines ▪ following telelink prepare and issue via email, minutes of telelink to relevant CSSC staff ▪ if advised of necessity by CC, liaise with non-departmental and professional witnesses and 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ liaise with non-departmental and professional witnesses about preparing a witness statement and attending as a witness on behalf of the department. This should include providing a template witness statement and information about they type of content sought in their statement ▪ notify the CSA if any external witnesses are seeking witness expenses ▪ track preparation tasks in accordance with filing

<p>Hearing Preparation (Continued)</p>	<p>negotiate in writing witness expenses in accordance with the Legal Aid Queensland Schedule of Fees</p> <ul style="list-style-type: none"> provide 2nd level quality assurance of material to be filed by the department make any further legal submissions in writing as required. For example an application under section 97 of <i>CST Act 2000</i> for notices to produce documents or to attend as a witness file the material relied upon by the department (as respondent) with the Children Services Tribunal Registry in accordance with filing directions issued by the Tribunal <p>Post filing the CSA will:</p> <ul style="list-style-type: none"> meet with Manager/Team Leader and assist them to prepare opening submissions meet with Manager/Team Leader and assist them to prepare a framework of questions for departmental witnesses review material filed on behalf of the applicant in order to identify a framework of questions on cross examination of applicant witnesses and in order to identify additional 	<p>deadlines and advise CSA of emergent issues requiring their response or advice. For example, a witness requiring leave for telephone evidence</p> <ul style="list-style-type: none"> 1st level quality assurance of material to be filed by department <p>Post filing: the CC will:</p> <ul style="list-style-type: none"> assist Manager/Team Leader to action CSA advices about submissions with witness questions distribute proposed questions to departmental witnesses and provide information tips about giving evidence in a Tribunal prepare a timetable about the
--	---	--

	<p>matters to be clarified by departmental witnesses during oral evidence</p>	<ul style="list-style-type: none"> ▪ availability and contact details of departmental witnesses ▪ provide pre-hearing support to proposed departmental witnesses
<p>Full Hearing by Children Services Tribunal</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ assist the Manager to integrate matters raised by the applicant into the department's opening submissions ▪ assist the Manager to put questions to witnesses ▪ identify as evidence progresses any necessity for additional legal submissions and make those submissions on behalf of the department (as respondent) ▪ respond to questions raised by the Tribunal in relation to policy and legislative matters ▪ make submissions in relation to specific orders sought by the department (as respondent) ▪ assist the Manager to amend questions for witnesses in response to other evidence or 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ attend only with leave of the Tribunal and with the consent of the applicant for learning purposes ▪ depending on competing CSSC demands, CC may attend to organise witnesses and to seek information required as evidence progresses and to debrief witnesses post evidence

	<p>having regard to impressions of the matters the Tribunal seeks to inquire into</p> <ul style="list-style-type: none"> ▪ keep a log of key evidence to assist the Manager to prepare closing submissions ▪ assist the Manager to present oral closing submissions if required ▪ make notation of Tribunal actions/decisions that may have broader implications for referral to Court Services Unit Manager/Team Leader ▪ track timing of evidence by non-departmental witnesses and professional witnesses for the purpose of calculation of witness expenses 	
Post Hearing	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ provide 2nd level quality assurance to the CSSC manager re: draft written closing submissions in these have been ordered ▪ issue correspondence in writing to non-departmental and professional witness in relation to witness entitlements ▪ track administrative follow up of invoices received 	<ul style="list-style-type: none"> ▪ provide 1st level quality assurance of CSSC Manager's written closing submissions ▪ ensure preparation is completed having regard to filing deadlines

Provision of Tribunal Decision in Writing	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ issue copy of the Tribunal's written decision to the CSSC via facsimile ▪ identify and explain the practical and/or legal implications of the Tribunal's decision ▪ identify key comments by the Tribunal within the written decisions ▪ bring to the attention of the Court Services Unit Manager any particular criticisms of departmental actions/practice raised and respond as directed by the Court Services Manager ▪ identify to the Court Services Unit Manager if the Tribunal has or intends to exercise a power on review (section 38 (3)) to make written recommendations to the Chief Executive 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ ensure that the decision of the Tribunal is made known to all relevant people and the information is provided that the Tribunal's decision must be given effect to
Appeal of Tribunal Decision to District Court (department as respondent)	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ distribute the Notice and Grounds of Appeal to CSSC ▪ prepare a brief of Instruction to Crown Law ▪ liaise with the Children Services Tribunal Registry in relation to provision of Hearing 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ collate any additional information requested by the CSA

	<p>transcript</p> <ul style="list-style-type: none"> ▪ provide advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders ▪ if necessary or a dispute arises, facilitate a case discussion with Court Services Unit Manager, CSSC Manager and relevant staff in relation to Crown Law advice about prospects of success on defence of an appeal ▪ attend Hearing and Instruct Crown Law Officer <p>Upon determination of the Appeal the CSA will:</p> <ul style="list-style-type: none"> ▪ provide a copy of the District Court judgement to the CSSC ▪ provide further advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders 	<p>Upon determination of the Appeal the CC will:</p> <ul style="list-style-type: none"> ▪ ensure the District Court judgement is complied with
<p>Appeal of Tribunal Decision to the District (department as</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ facilitate discussion between the Court Services Unit Manager and CSSC Manager & relevant staff re: merits of appeal 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ will participate in Advice in Conference and collate information as required by

appellant)		CSA
	<ul style="list-style-type: none"> ▪ prepare requests in writing to the Children Services Tribunal in relation to provision of Hearing Transcript ▪ prepare a brief of instruction to Crown Law in relation to opinion about prospects of success on appeal ▪ assist in preparation of a brief to the Director General for authority to file appeal ▪ arrange and participate in an Advice in Conference with Crown Law ▪ attend Hearing and Instruct Crown Law Officer <p>Upon determination of the Appeal the CSA will:</p> <ul style="list-style-type: none"> ▪ provide a copy of the District Court judgement to the CSSC ▪ provide further advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders 	<p>Upon determination of the Appeal the CC will:</p> <ul style="list-style-type: none"> ▪ ensure the District Court judgement is complied with

As an auxiliary function Court Services Advisers provide a departmental intake service to the Children Service Tribunal Registry staff and maintain an intake register of Tribunal inquiries.

CASE EXAMPLE

Ms Mary Brown
131 Violet Parade
Evergreen QLD 4999

2 September 2006

Dear Mary,

As you are aware the following children have been placed in your care on the following child protection orders:

Jane Smith born 13 January 1994 – Long-term guardianship to the Chief Executive;
John Smith born 8 May 1999 – Long-term guardianship to the Chief Executive;
Jess Smith born 4 August 1996 – Long-term guardianship to the Chief Executive

When a child is subject to a Child Protection Order, under section 89 of the Child Protection Act 1999, the chief executive may decide to remove the child from the care of the child's carer if the chief executive is satisfied it is in the child's best interest.

It is under this authority that I have made the decision that the above named children be removed from your care.

My reasons for this decision are that:

- There have been two (2) previous matters of concern child protection notifications recorded and substantiated against you regarding your care of the children;
- On 1 September 2006 a further matter of concern child protection notification was recorded in relation to your care of the children on the basis of allegations that you struck the child, Jess Smith, about the face;
- Following joint interviews by the department and Queensland Police the decision was made to remove the children from your care after disclosures were made by Jess that you hit her about the face. Furthermore, you made admissions to the same.

If you disagree with this removal decision, you are entitled to request a departmental review of the decision. This can occur in the following ways:

- You can contact me to discuss your concerns. If necessary, I can arrange a meeting with relevant staff to talk with you about the decision.
- You can request an internal review of this decision through the department's complaints system – this is likely to involve a review of the decision by a senior departmental officer. If you wish, I can assist you to access the department's complaints system.

You are entitled to request a review of this decision by the Children Services Tribunal. If you decide you wish to access the Children Services Tribunal review process, you must do so within 28 days of receiving this letter. Please contact the Children's Services Tribunal on (07) 3225 8346 for further information.

If you have any queries regarding this information please contact myself on (07) 9999 9999

Yours Sincerely

Jasmine Green
Manager
Evergreen Child Safety Service Centre

CASE EXAMPLE

Children Services Tribunal
S 58(1), s 147 Children Services Tribunal Act 2000

Form 1 Version 3

REVIEW APPLICATION

Children Services Tribunal

FILED

08/10/2006

PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM

If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.

Applicant(s)**Name(s)**

Ms Mary Brown

Address

Include full
address
including
suburb

131 Violet Parade Evergreen QLD 4999

Postcode

Telephone

(07) 3366 3366

Facsimile

(07) 3366 3377

Mobile

0403 026 978

Email address

maryb@hotmail.com

Date/s of birth of applicant/s

07/07/1968

If your contact details change please advise the registry as soon as possible of your new contact details.

Commission for Children and Young People and Child Guardian Act 2000 applications under s 121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.

Section 1

Name and D.O.B of child(ren) decision is about	Name	D.O.B
(1) Jane Smith		(1) born 13 January 1994
(2) John Smith		(2) born 8 May 1999
(3) Jess Smith		(3) born 4 August 1996

Tick the box
that best
describes
your
relationship
with the
subject child

☐ Mother☐ Brother☒ Foster Carer☐ Father☐ Sister☒ Other (Please Specify) _____

Is this an application brought on behalf of a child YES ☐ NO ☒

(If you are entitled to apply on your own behalf, you are not able to bring an application on behalf of a child. If an application is brought on behalf of a child, the President's permission is required by the Children Services Tribunal Act 2000 s59(1)).

Section 2

The completed application form must be filed with the Tribunal's registry within 28 days after you receive notice of the decision. The President of the Tribunal may at any time extend the time for filing the application if the president is satisfied the reason for the delay is reasonable in the circumstances.

Do you need an extension of time for the filing of this application? YES ☐ NO ☒

If YES, you need to give reasons why the application was not made within the required time period.

Reasons
why

CASE EXAMPLE

application
was not filed
within time

Briefly
outline the
decision
that has
been made

I am an approved foster carer and these three siblings Jane, John and Jess Smith have been in my care since 2004. On 2 September 2006 I received a letter from Jasmine Green, the Manager of Evergreen Child Safety Service Centre advising me that she had decided to remove the children from my care. This letter is attached to this application.

See
Attachment A
for decisions
that can be
reviewed

Please attach a copy of the decision or letter notifying the reasons from the Department of Child Safety or Department of Communities or Commission for Children and Young People and Child Guardian. (Do not send originals)

Is a stay of the decision requested YES ☐ NO ☒ If you need help answering this question contact the Registry. A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. In making a decision about a stay, the Tribunal will have regard to the principle that the welfare and best interests of the child/ren are paramount. The Tribunal will also take into account the interests of other persons likely to be affected by the decision and the submissions received from the decision maker and other parties. A stay is not the final decision of the Tribunal.

A stay is not possible for decisions being reviewed under sections 121(1)(a) and 121 (1)b of the *Commission for Children and Young People and Child Guardian Act 2000*).

Reasons
why a stay is
requested

Complete this section if a stay is requested

Name,
Position and
Child Safety
Service
Centre of
Decision-
Maker

Jasmine Green Manager Evergreen Child Safety Service Centre

Have you
asked for an
internal
review of the
decision?

YES ☐ and the outcome was:

NO ☒ because

I don't see any point to asking for an internal review. It is my preference to have a more object party like the Tribunal review the facts of the matter.

CASE EXAMPLE

State briefly why you think the decision is wrong or not properly made

The children have been in my care since April 2004 and we are attached to each other.

Jess can be a difficult child and she requires a firm hand to contain her behaviours and it is not fair to the other children that they are removed from my care simply because of an isolated incident of behaviour on my part involving one child.

My history as a carer over time should be considered, not just this one event.

I am aware that since the children were removed from my care, they have been placed with foster carers who live about 30 minutes from my home so as a result the children have been required to attend a different school. This must be a difficult adjustment for them.

Briefly describe any other facts you think are important

The children's parents have never liked me.

I believe the department was motivated to make this decision, not because it is in the children's best interests but because they want to placate the parents.

The parent's views about me and/or about placement of the children in my care should not be the most relevant consideration because these children are subject to Child Protection Orders granting long term guardianship to the Chief Executive and only have contact with their parents for 4 hours each fortnight on a Saturday in any case. There is no case plan suggesting the children will ever return to their parent's care

Briefly describe what you want to happen

I want all three children returned to my care and I want the Tribunal to make the department stop providing contact between the children and their parents because I think it is this fortnightly contact which makes Jess behave so badly.

Section 3

The questions in this section will help us prepare for the hearing.

Cultural heritage or ethnicity

The applicant ☐, the child ☐ or another party interested in these proceedings ☐ identifies with Aboriginal ☐ or Torres Strait ☒ or other cultural or linguistic background ☐ (please identify background)

Please tick appropriate box(s)

Interpreter

Is an interpreter required YES ☐ NO ☒ If YES, please specify language:

Phone Hearing

Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose (07) 3366 3366

You are able to have a person with you to support you at the preliminary conference or the hearing. This person cannot talk to the Tribunal on your behalf and cannot be a party to the review. Do you wish to have a support person at the preliminary conference or the hearing? YES ☒ NO ☐ If YES, please supply these details:

Name of support person	Relationship to you	Do they have any personal involvement in the issues you want the Tribunal to consider? Describe their involvement.
Sarah Stiles	Shared Family Care Agency Support Worker	She has been visiting me and the children in their support role

CASE EXAMPLE

		since 2004 so can attest to how much the children love me
--	--	---

Will you be asking the Tribunal to listen to other people (witnesses) about the issues you want the Tribunal to consider? For example, will you be asking the Tribunal to listen to friends or relatives who may be able to confirm what you will be saying to the Tribunal? YES ☐ NO ☐ If YES, please supply these details for each witness:

Names and addresses of witnesses	Relationship to you	What will they be saying?
Darren Clementine	My defacto partner	Darren stays almost every night in my home so he can attest to Jess' difficult behaviours and how a firm hand is required

Signature of Applicant/s	Filed by (please print)	Mary Brown	
	Signature	M.Brown	Date 08 /10/2006
	Signature		Date / /

PLEASE ALSO COMPLETE ATTACHMENT A

CASE EXAMPLE

STATEMENT OF REASONS

CHILDREN SERVICES TRIBUNAL REVIEW APPLICATION NUMBER: 142 - 0607
BROWN and the DEPARTMENT OF CHILD SAFETY

Decision for Review

Ms Mary Brown is seeking a review of the decision, "removing child from carer's care" pursuant to section 89 of the *Child Protection Act 1999*.

On 2 September 2006, I Jasmine Green, Manager of the Evergreen Child Safety Service Centre, as the Chief Executive's delegated officer, made the decision to remove the subject children Jane Smith born 13 January 1994, John Smith born 8 May 1999 and Jess Smith born 4 August 1996 from the care of Ms Brown and place them in an alternative out of home care placement.

On 2 September 2006, a letter was sent to Ms Brown advising her of the decision to remove the Smith siblings from her care and her right to seek review of this decision by the Children Services Tribunal. A copy of this correspondence is annexed hereto and marked **Exhibit "A"**.

On 29 September 2006, a letter was sent to Ms Brown advising her of the outcome of the matter of concern, child protection notification recorded in relation to the subject children dated 1 September 2006. A copy of this correspondence is annexed hereto and marked **Exhibit "B"**.

Jane, John and Jess Smith are currently placed with approved foster carers Jessica and Joseph Graves.

Relevant Legislation and Policy

In making these decisions, consideration was given to sections 5, 6, 89, 90 and 91 of *Child Protection Act 1999* and Schedule 1 *Child Protection Act 1999*. A true and correct copy of these legislative provisions is annexed hereto and marked **Exhibit "C"**.

Further, consideration was given to the policies and procedures as outlined in Chapter 9 of the Department's Child Safety Practice Manual, relating to Matters of Concern.

Family Details/Relevant persons

.....

Legal Status of Child

On 5 December 2004 in the Children's Court at Evergreen, Child Protection Orders were made granting long term guardianship of Jane, John and Jess Smith to the Chief Executive. True copies of the Child Protection Orders in relation to each of the subject children are annexed hereto and collectively marked **Exhibit "D"**.

Ms Brown's Foster Carer Approval History

On 3 September 2000 Ms Mary Brown lodged an application for approval in the approved form for a certificate of approval as a foster carer.

A carer assessment was undertaken by Ms Bruce Wayne of "Kids First". A report of this assessment dated 25 November 2000 was provided.

Re-approval applications and assessments were completed for Ms Brown in December 2001, December 2003 and October 2005.

Copies of the original assessment report and subsequent re-approval assessment reports are annexed hereto and collectively marked **Exhibit "E"**.

Some key themes or issues identified in approval assessments for Ms Brown include:

.....

Ms Brown's most recent Certificate of Approval expired on 10 October 2006. A copy of her Certificate of Approval as a foster carer is annexed hereto and marked **Exhibit "F"**.

History of Placements with Ms Brown

Since her original approval in December 2000 eleven (11) children who have been in the custody or guardianship of the Chief Executive have been placed with Ms Brown.

.....

Key observations or issues identified in Ms Brown's placement history are:

.....

Child Protection Notifications & Investigation and Assessment Interviews & Outcomes

In total four (4) matter of concern child protection notifications have been recorded in relation to Ms Brown's care of children. These are as follows:

CPN 3 January 2005

.....

CPN 4 June 2006

.....

CPN 1 September 2006

.....

Action and/or Support Plans Implemented with Ms Brown

In response to the investigation and assessment outcomes recorded in relation to Ms Brown the following Action and/or Support Plans were developed and implemented:

CPN 3 January 2005

.....

CPN 4 June 2006

.....

Training History of Ms Brown

Ms Brown completed foster carer training between 15 September and 15 November 2000. A list of the training modules completed by Ms Brown is annexed hereto and marked **Exhibit "G"**.

Since her original approval Ms Brown has completed further training in the following.....

Contact between Ms Brown and Smith children since removal

Since removal from her care the Smith children have been having contact with Ms Brown on a weekly basis for a one (1) hour supervised period. The rationale for the decision to provide contact was:

.....

Key observations arising from this contact include:

.....

Identified needs of the Smith children

(eg. medical/therapeutic/educational/behavioural)

Jess Smith

.....

John Smith

.....

Jane Smith

.....

Annexed hereto and marked **Exhibit "H"** are reports confirming the medical/therapeutic/educational/behavioural needs of Jess, John and Jane Smith

Views of the Smith children

On 2 September 2006 Child Safety Officer Tracey Barrett met with each of the Smith children separately to discuss consideration that they be removed from Ms Brown's care. The key comments reported to have been made by the children included:

Jess Smith

.....

John Smith

.....

Jane Smith

.....

On 2 September 2006 Child Safety Officer Tracey Barrett met with each of the Smith children separately and provided each child with a letter advising them that a decision had been made to remove them from the care of Ms Brown and place them into the care of approved foster carers Jessica and John Graves. X

The letter provided advice to each child that if they were not satisfied with either the decision to remove them from Ms Brown's care and/or the decision regarding in whose care and where they were now to be placed they could seek a review of this decision by the Children Services Tribunal. Ms Barrett provided each of the children and a copy of the Children's Guide to the Children Services Tribunal.

During her discussions with the children about the above decisions, the key comments reported to have been made by them included:

Jess Smith

.....
John Smith

.....
Jane Smith

Other Consultation

In making the decision to remove the children subject from the care of Ms Brown I have consulted the following people and/or agencies:

- Recognised Entity
- Shared Family Care Coordinator
- Child Safety Officer
- Team Leader
- Department of Child Safety Out of Home Care Coordinator

Presentation of the Smith children since removal

In placement setting

.....

In education setting

.....

In therapeutic setting

.....

Reasons for reviewable decision

.....

Conclusion

.....

Jasmine Green
Manager
Evergreen Child Safety Service Centre
Department of Child Safety

9 October 2006

Information for Departmental Officers appearing in the Children Services Tribunal

- Remember the CST is equivalent to a court.
- Departmental officers must present before the CST in a manner consistent with other courts.
- Departmental officers need to display a high level of professionalism in the CST:
 - Your presentation and dress are important in conveying a professional identity.
 - You should speak clearly, respectfully to all, professionally and without personal judgement.
 - You should not express negative views in an emotive manner.
 - Your non verbal behaviour should remain appropriate and professional.
 - Workers should not eat lollies/gum etc and should drink out of a cup rather than a bottle.
 - Side conversations should be kept to an absolute minimum and should be at a whisper level if necessary. Otherwise, communication via written information is appropriate.
- You are not able to enter and leave CST proceedings without permission the of the panel.
- Do not interject.
- Remember the CST adopts an inquisitorial process, and unlike a court questioning is about exploring information rather than being adversarial.
- Be objective, and obliging to the CST.
- Remember the applicant has a right to review our decisions and this should be respected. Our decision making needs to be open and accountable.

CPA1999 INFORMATION PAPER

ADMINISTRATIVE REVIEWS TO THE CHILDREN SERVICES TRIBUNAL

1. PURPOSE

To provide staff with information about, and guidelines for, the application of provisions in the *Child Protection Act 1999* enabling review of certain administrative decisions to the Children Services Tribunal.

2. REVIEW PROVISIONS IN THE *CHILD PROTECTION ACT 1999*

Section 247 of the *Child Protection Act 1999* provides that an aggrieved person for an reviewable decision may apply to a tribunal to have the decision reviewed.

Aggrieved persons and reviewable decisions are listed in Schedule 2 of the Act. **A decision not listed in the Schedule cannot be formally reviewed by the Tribunal.**

Reviewable decisions can be categorised into the following groups:

- Decisions relating to child protection case management
- Decisions relating to the placement of a child in care
- Licensing of care services and approval of foster carers.

3. RELEVANT TERMS

Aggrieved person is the person who has review rights for a particular decision. This term is used to describe all persons who must be notified of their review rights – it is not limited to persons who are, in reality, aggrieved by a particular decision. Even in instances where a decision has been made with the full involvement and approval of the person who has review rights, it is still necessary to provide written notice of the decision and advise the person (**aggrieved person**) of their right of review.

Parent, for the purpose of Schedule 2, is defined in section 11. This is a broader definition than the definition contained in section 52 relating to applications for, and the granting of, child protection orders. Section 11 defines a 'parent' as the child's mother, father or someone exercising parental responsibility for the child. A person exercising parental responsibility would include a stepmother or stepfather. A parent of an Aboriginal or Torres Strait Islander child includes a person who, under Aboriginal tradition or Torres Strait Islander custom, is regarded as the parent of the child.

It does not include a person standing in the place of a parent on a temporary basis. For example, it would not include a relative or friend who was caring for a child for a 2 week period while the parent was away.

However, the definition of 'parent' in section 11 does not apply to decisions to transfer custody or guardianship to an interstate welfare authority under section 245.

'Parent' for the purpose of Part 7 of Chapter 7 is defined specifically in section 242 to mean a person who would be the child's guardian if an order under the Act was not in force.

Family member/relative are not defined terms in the *Child Protection Act 1999*. Members of the child's family are only aggrieved persons for decisions under section 87(2) (refusal to allow, or placing restrictions or imposing conditions on, contact with the child) and section 89 (removal of child from carer's care) if the person was regarded by the child as a member of his or her family before the child was placed in the person's care. Relatives are only aggrieved persons for decisions under section 89 (removal of child from carer's care).

Relatives would generally include grandparents, siblings, aunts and uncles and cousins. Family members would also include these people as well as others who may not be blood related but are regarded as a member of the child's family such as step parents.

Child is defined in section 8 as an individual under 18 years. For the purpose of the reviewable decisions listed in Schedule 2, the term 'child' usually refers to a child in care or a child with a child protection order requiring the chief executive to supervise the child's protection. This does not include children under a section 67 interim order granting temporary custody to the chief executive.

Foster carer refers to approved foster carers, ie a person who holds a certificate of approval as an approved foster carer. Does not include limited approval carers. A relative carer has a separate review right against a decision to remove a child from their care (see section 91(a)).

4. CASE MANAGEMENT DECISIONS

The *Child Protection Act 1999* provides for administrative review of certain case management decisions by the Children Services Tribunal. The following outlines the administrative review rights which exist in relation to these decisions.

Who	What can be reviewed	Notes
Parent	Directing a parent in relation to a supervision matter stated in a child protection order (section 78)	<ul style="list-style-type: none"> • Only includes the parent given the direction • Review relates to directions issued in writing by the Department, not to the matters stated in the order by the Court • The only ground on which the parent can seek a review is that the direction does not specifically relate to the supervision matters stated in the order • The Tribunal cannot grant a stay of the decision (section 78(4))
	Decision to refuse or restrict or impose conditions on contact between the child and the child's parents or a member of the child's family. (section 87(2))	<ul style="list-style-type: none"> • Applies to all orders • In practice, refers to situations where a parent's specific request is refused • Notice must be given as soon as practicable after the decision is made.
	Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 245)	<ul style="list-style-type: none"> • The arrangement cannot take effect until the 28 day review period is over or, if a review is made, until the review is decided. (section 245(5)) • Notice must be given as soon as practicable after the decision is made.
Member of child's family	Decision to refuse or restrict or impose conditions on contact between the child and the child's parents or a member of the child's family. (section 87(2))	<ul style="list-style-type: none"> • Applies to all orders • In practice, refers to situations where a family member's specific request is refused • Notice must be given as soon as practicable after the decision is made.

Child	Decision to refuse or restrict or impose conditions on contact between the child and the child's parents or a member of the child's family. (section 87(2))	<ul style="list-style-type: none"> • Applies to all orders • In practice, refers to situations where a child's, parent's or family member's specific request is refused • Notice must be given as soon as practicable after the decision is made.
	Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 245)	<ul style="list-style-type: none"> • The arrangement cannot take effect until the 28 day review period is over or, if a review is made, until the review is decided. (section 245(5)) • Notice must be given as soon as practicable after the decision is made.
Carer	Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 245)	<ul style="list-style-type: none"> • Includes all carers, not just approved foster carers • Applies only if the carer is moving interstate with the child (section 245(6) and (2)) • The arrangement cannot take effect until the 28 day review period is over or, if an review is made, until the review is decided. (section 245(5)) • Notice must be given as soon as practicable after the decision is made.

5. PLACEMENT DECISIONS

The *Child Protection Act 1999* provides for administrative review to the Children Services Tribunal when decisions are made about placements and the removal of children from placements.

The following outlines the administrative review rights which exist in relation to the placement of children and the removal of children from placements under the *Child Protection Act 1999*.

Administrative review provisions about placement only relate to placement of children in the custody or guardianship of the chief executive.

Who	What can be reviewed	Notes
Parent	Decision about whom the child is placed with. (section 86(2))	<ul style="list-style-type: none"> • Applies only when child is under a child protection order. (section 86(1)) • Includes all placements, not just those with carers. • Notice of the decision need not be given if the placement is less than 7 days. (section 86(6)) • Notice must be given as soon as practicable after the decision is made.
	Decision not to inform a parent about whom the child is placed with and where the child is living. (section 86(4))	<ul style="list-style-type: none"> • Applies only when child is under a child protection order. (section 86(1)) • Notice of the decision need not be given if the placement is less than 7 days. (section 86(6)) • No stated timeframe for giving notice but should be given as soon as practicable after the decision is made.
Relative carer	Decision to remove the child from the placement. (section 89)	<ul style="list-style-type: none"> • Includes 'relative carer –child's community' only if "carer was regarded by the child as a member of the child's family <i>before</i> the child was placed." (section 91(a)) • Notice must be given as soon as practicable after the decision is made. • Notice must be given only when child is under a child protection order. (section 90(1)) • Notice need not be given if the placement is less than 7 days. (section 90(2)(a))
Approved foster carer	Decision to remove the child from the placement (section 89) (case planning reasons)	<ul style="list-style-type: none"> • Applies only when child is under a long-term guardianship order (section 91(b)(i)) • Notice must be given as soon as practicable after the decision is made. • Notice need not be given if the placement is less than 7 days (section 90(2)(a)) • Notice need not be given if the removal is implementing a planned move recorded in a Placement Agreement (section 90(2)(b))

	Decision to remove the child from the placement (section 89) (standard of care reasons)	<ul style="list-style-type: none"> • Above restrictions do not apply (ie review available in all cases because the reason for the decision is that the carer is no longer suitable to care for the child or is no longer able to meet the standards of care (section 91(b)(ii)) • Notice must be given as soon as practicable after the decision is made. • Notice must be given only when child is under a child protection order. (section 90(1)) • Notice need not be given if the placement is less than 7 days. (section 90(2)(a))
Child or young person	The child or young person can initiate a review in relation to all the above decisions	<ul style="list-style-type: none"> • Decision under section 86(2) includes a decision to place the child or young person home • Includes all placements, not just those with carers • Notice of decision to remove child from carer's care must be given as soon as practicable after the decision is made • Notice of decision to remove child from placement must be given only when child is under a child protection order. (section 90(1)) • Notice of decision to remove child from placement need not be given if the placement is less than 7 days (section 90(2)(a)) • Notice of decision to remove child from placement need not be given if the removal is implementing a decision agreed in a Placement Agreement (section 90(2)(b))
Limited approval placement	Carer does not have any review rights	

6. LICENSING AND APPROVAL DECISIONS

The *Child Protection Act 1999* provides for administrative review to the Children's Services Tribunal when decisions are made about the licensing of care services and the approval of foster carers. There are some changes from the administrative review rights that existed under the *Children's Services Act 1965*.

The following outlines the administrative review rights, which exist in relation to licensing and approval decisions.

"Authority" is defined in Schedule 4 to mean licence (care services) and certificate of approval (foster carers).

It should be noted that prior to making a decision under sections 138 or 140, a notice must be sent to the authority holder (ie the licensed care service or the approved foster carer) outlining the amendment, suspension or cancellation of the licence or approval proposed by the Department. (see sections 138(2) and (3) and 140 (1)). The purpose of the notice is to give licensed care services and approved foster carers an opportunity to make representations to the Department about the proposed amendment, suspension or cancellation prior to the actual decision about being made.

Who	What can be reviewed	Notice period	Notes
Applicant for licence	Refusing an application for, or renewal of, a licence to provide care services (section 129)	Notice must be given within 10 days after the decision is made	<ul style="list-style-type: none"> • Notice should be given to the governing authority of the applicant corporation
Care service	Refusing an application for an amendment of authority (section 137)	Notice must be given within 10 days after the decision is made	<ul style="list-style-type: none"> • Notice should be given to the governing authority of the care service
	Amending an authority (section 138)		
	Suspending or cancelling an authority (section 140)		
Applicant for approval as foster carer	Refusing an application for, or renewal of, a certificate of approval (section 136)	Notice must be given within 10 days after the decision is made	<ul style="list-style-type: none"> • Notice must be given to the person/s whose application under s132 was refused • One notice for joint applicants will suffice
Approved foster carer	Refusing an application for an amendment of authority (section 137)	Notice must be given within 10 days after the decision is made	<ul style="list-style-type: none"> • Notice must be given to the person/s whose application under s137 was refused • One notice for joint applicants will suffice
	Amending an authority (section 138)		<ul style="list-style-type: none"> • Notice must be given to the approved foster carer/s
	Suspending or cancelling an authority (section 140)		<ul style="list-style-type: none"> • Notice must be given to the approved foster carer/s

7. PROVIDING NOTICES (LETTERS OF ADVICE) FOR PLACEMENT AND CONTACT DECISIONS

The various sections of the Act containing decision making powers and review rights against those decisions also set out requirements for the giving of notices about the decisions and the review rights of aggrieved persons. Generally the Act requires these notices to state-

- the decision
- the reasons for the decision
- that the person may apply to a tribunal for a review of the decision within 28 days after the person receives the notice; and
- how to initiate a review.

Parents – to assist with the provision of advice to parents about placement and contact decisions, 'letter guides' have been developed and are available in the Share directory. It is important that the content be made as case specific as possible and be personalised as much as possible.

Child or young person – letter guides have not been developed for the provision of advice to children and young people because of the overriding need to make these letters as personalised as possible. They will also need to cater for the range of age groups where it may be appropriate to provide the information in writing. (All children who can understand must be told of decisions about their placement, and this will be given in writing if they are mature enough to handle the concept of written advice).

Foster carers and other carers – draft guidelines and suggested wording for letters of advice to carers will be available for inclusion in the share directory.

Note that foster carers must be given notice (letter of advice) in *all* cases when a decision is made to remove a child from their care, unless the placement was for less than 7 days. The notice will include the reasons for the decision. However the notice will include information about their right of review *only when this applies*, as outlined above.

If the decision and reasons are recorded in documents which the carer is part of drafting and of which they are given a copy, eg the Placement Agreement, this can serve as the notice.

8. GIVING THE REASONS FOR PLACEMENT DECISIONS

While it is always the aim to act in the child's best interests when making a placement by matching the child to the most appropriate placement, the reality is that often the reason a placement is made is because it is the only placement available, or, sometimes because it is the only place the young person will agree to stay. This can make it difficult to articulate "the reasons for the decision" about where to place the child.

The letter guides to parents provide three broad options that can also be used when putting the reasons in writing to carers or the child/young person. They are:

because of the Department's duty of care to (child's name) under the *Child Protection Act 1999* to ensure that (he/she) is cared for

Use the above type of wording when there is no strong reason for the placement decision other than that it was an available placement which was suitable. This reason falls short of saying that the placement is in the child's best interests when another type of (unavailable) placement would have been better.

because it is in (child's name)'s best interests at this point in time to be placed with/at (name)

Use the above type of reason when the placement decision has been made to implement a considered decision as part of case planning. This will include when a child is placed in a new placement because of standard of care issues in a previous placement.

because placement with/at (name/facility) is considered necessary to meet (child's name)'s particular needs

Use the above option when the placement is in a particular facility (eg hospital) or is made as a special needs placement.

Obviously the way these types of reasons are expressed should be personalised where possible. Keep in mind however that the reasons given for a decision are the grounds upon which administrative appeal may occur. If a placement decision is appealed, you will need to be able to defend not just the decision but the reasons you gave for making the decision.

Letter guides for informing parents about placement decisions and decisions to withhold information about a placement are available in the Share directory.



**AUSTRALIAN GOVERNMENT SOLICITOR
GOVERNMENT LAW GROUP**

**The Hon. Justice Garry Downes AM
President of the Administrative Appeals Tribunal**

**Government Agencies as respondents in the
Administrative Appeals Tribunal**

3 February 2005

Introduction

1. The role of respondents in applications for review in the Administrative Appeals Tribunal has been the subject of many comments in decisions and papers but has not, so far as I am aware, been the subject of any comprehensive analysis. In its report *Managing Justice: A Review of the Federal Civil Justice System* (ALRC 89) the Australian Law Reform Commission did undertake a brief analysis of the "Duties of agency representatives" ([9.72]-[9.83], Rec 121) but this issue formed a very small part of a very substantial report to which it was only incidental. The proposal of the Government through its introduction into the Parliament of a provision in the *Administrative Appeals Tribunal Amendment Bill 2004* requiring decision-makers to use their "best endeavours to assist the Tribunal to make its decision" provides a suitable occasion for analysis of the issue.

Administrative Review contrasted with Litigation

Administrative Review

2. Any analysis of the exercise of Commonwealth power requires its constitutional basis to be addressed. Merits review under the *Administrative Appeals Tribunal Act 1975* (Cth) in which the Tribunal substitutes its own decision for the decision of the original decision-maker, is an exercise of the administrative power of the Commonwealth and not of the judicial power of the Commonwealth. The making of administrative decisions and the reviewing of them on the merits are functions regulated by Chapter II of the Constitution relating to the Executive Government and not Chapter III relating to the Judicature. Understanding this is fundamental to an understanding of administrative review.

3. Administrative decision-making, which is an important aspect of Executive Government, is not concerned with dispute resolution as such. There may be a dispute as to the decision which should be made but administrative decision-making must always focus on the making of the correct or preferable decision and not upon the resolution of the dispute relating to that decision. Administrative decisions usually have wider impact than their effect on those in dispute. Litigation concentrates on the resolution of disputes between parties. Administrative decision-making is much more closely allied to what the common law calls decisions "in rem", (which are rare) than it is to the usual role of courts of resolving disputes "in personam".

4. A decision as to who should be granted a licence will very often also be a decision as to who should be refused that licence. A decision to grant a visa to enter Australia to one person can be a decision to refuse the same visa to another. Migration decisions can broadly be seen as decisions as to the make up of the people of Australia as much as they can be seen to be decisions about individual claims. The conflict between claims for individual justice on the one hand and public policy based considerations on the other hand is an important aspect of administrative decision-making.

5. One indication that the function of dispute resolution is secondary to the making of the correct or preferable decision in merits review in the Tribunal is the requirement that a settlement reached between the parties can only be reflected in a new decision if the Tribunal makes a positive finding that the new decision is both within power and appropriate (s 42C).

6. It has many times been said that the Tribunal stands in the shoes of the original decision-maker in making its substituted decision (see, eg, *Costello v Secretary, Department of Transport* (1979) 2 ALD 934 at 943). The substituted decision becomes the decision of the decision-maker being reviewed for future purposes. It is the Commonwealth department or agency in which the original decision was made that deals with enforcement and variation or cancellation of the decision if future circumstances justify this.

7. The making and review of administrative decisions frequently involves the exercise of discretion. This is reflected by the phrase which is usually used to describe the decision-making function of the Administrative Appeals Tribunal, namely that the Tribunal must make the "correct or preferable decision": *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591 per Bowen CJ and Deane J. The conjunction is used to accommodate the difference between a matter susceptible of only one decision, in which the "correct" decision must be made and a decision which requires the exercise of a discretion or a selection between more than one available decision, in which case the word "preferable" is appropriate.

Litigation

8. The role of litigation is to resolve disputes. It is to determine existing rights and not to confer fresh benefits. There are times when litigation involves limited exercises of discretion such as refusing to grant relief which might otherwise have been justified but these issues of discretion are incidental to the dispute

resolution function and will not apply to the resolution of the principle issues in the litigation. Different judges assessing compensation for injury in the same fact circumstances might arrive at different assessments but they are not exercising a discretion. Their task in each case is to assess the proper amount of compensation for the injury.

9. Litigation is truly adversarial. I am not using the phrase in its popular sense in which it is usually contrasted with "inquisitorial" processes. In that sense it is used to describe a hearing process. All litigation is adversarial, even in civil code countries such as France. Litigation is adversarial because it must result from an assertion by one party which is rejected by another party which the first party then seeks to have adjudicated by a court. The assertion and rejection through a court process is the adversarial process. Since the subject matter for dispute is created by the parties they are equally free to resolve it without curial determination. Accordingly, parties to litigation can resolve their disputes by agreements for the payment of money or for the doing of work or in any other way they find acceptable and to do this without involving the court.

Judicial Review

10. The contrast between merits review of administrative decisions and litigation can be further illustrated by reference to judicial review of administrative decisions. Judicial review is litigation. It involves an assertion by a plaintiff against a government respondent which resists the claim that an administrative decision is unlawful. There is only one answer. Either the decision is unlawful or it is not. The court hearing the application has no power to consider the merits of the decision. Discretionary considerations can only arise in the limited way referred to above. For example, if a plaintiff has delayed in bringing proceedings so that third parties have acted on a decision to their detriment the court might decline to make a declaration as to invalidity. There cannot be a finding that the decision will be upheld because of the delay. If the decision is unlawful it cannot

be made lawful by a court engaged in judicial review (see, eg, *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597). Proceedings under the *Administrative Decisions (Judicial Review) Act 1977* are no different. Although jurisdiction under the Act is conferred by statute the jurisdiction is part of the judicial power of the Commonwealth and is conferred under Chapter III of the Constitution on courts. Nothing in the *Judicial Review Act* authorises a court to consider the merits of the decision it is considering. The question remains whether the decision subject to review is lawful or unlawful in accordance with the provisions of s 5 of the *Judicial Review Act*.

Practical considerations

11. Although all cases of merits review of administrative decisions can be contrasted with all litigation it does not follow that all merits review processes are alike. Applications for the review of licences such as radio and television licences are quite different from applications for the review of decisions relating to Commonwealth employees' compensation. Cases of the former kind have a high level of discretion in decision-making and can involve the need for expertise and reference to policy considerations. It is for this reason that the Tribunal has many members with expertise in areas outside the law such as accounting, aviation, defence, medicine and science. Cases of the latter kind are much closer to curial dispute resolution. Indeed, until comparatively recently most of the states conferred jurisdiction on workers' compensation courts to determine disputes relating to workers' compensation entitlements under State legislation. However, these cases involved true litigation in the sense that there was a dispute between the employer and the employee as to what entitlement the employee had to compensation and that dispute was determined by the court. The Commonwealth system adopts an administrative model so that the entitlement is not fully conferred by the legislation but arises from an administrative decision based on statutory provisions. When a Commonwealth employee's compensation matter is considered by the Tribunal on an application

for review of the original decision, the Tribunal is making a new administrative decision and is not simply resolving a dispute as to what are the applicant's rights under the statute.

Essential aspects of Administrative Review

12. In exercising its function the Tribunal is generally remaking the decision of a respondent or a decision of an intermediate review tribunal. It follows that the Tribunal is generally "standing in the shoes" of the original decision-maker. The Tribunal's new decision, once it has been substituted for the original decision, becomes the decision of the respondent. Enforcement of the decision is for the respondent. Variation and even cancellation, where possible, is for the respondent. The whole object of the process is to reach the correct or preferable decision.

13. It may be useful to look in a little more detail at the precise nature of merits review.

14. The process begins with a decision. It may relate to a right or entitlement. It may not. It may relate to the conferring of a licence or permit. The decision will be authorised by statute and have statutory force. A combination of the authorising legislation and s 25 of the Act will confer a right to seek review of the decision.

15. Once the right to review is invoked the fate of the decision is entirely in the hands of the Tribunal. The decision continues in force subject to the grant of a stay (s 41). However, it generally cannot be altered by the decision-maker and must ultimately be pronounced upon by the Tribunal (s 26). The parties cannot remake the decision. At most they can ask the Tribunal to remake it in accordance with their request (s 42C). Even if all parties wish the proceeding to

be discontinued the Tribunal has a discretion as to whether to accede to the request (s 42A).

16. This is quite unlike litigation where the parties always have ultimate control except in some special areas where governments have intruded and conferred special discretions on Courts. I think of testators' family maintenance or family provision legislation and infants settlements in personal injury litigation. These are the exceptions that prove the rule. Courts are not in these situations really exercising a judicial function.

Role of the respondent

17. These considerations compel a conclusion that the role of a respondent in the Tribunal is quite different to the role of a defendant in ordinary litigation, even when the defendant is a government department or agency. Once the Tribunal notionally becomes the decision-maker it follows that the decision-maker's and the respondent's interest is for the correct or preferable decision to be made. This is so even if that decision is different to the decision subject to review. Just as the staff of the departments or agencies will have turned their attention to assisting decision-makers in making the original decisions so too it is natural that they should adopt the same role so far as the Tribunal is concerned. The role of the support teams in the department or agency when the original decision was made was not a partisan role and it should not become a partisan role when the Tribunal is seeking to undertake precisely the same task as was undertaken by the original decision-maker.

18. Without the need to resort to the detail of the legislation or to government policy it is clear that the role of a respondent before the Tribunal is:

1. to assist the Tribunal to reach the correct or preferable decision; but

2. not simply to seek to uphold the existing decision, although that might be the approach which would be taken in litigation.

19. This role of the respondent has at least three aspects:

1. Reconsidering the original decision at the time of the Tribunal review for the purpose of determining whether it continues to represent the correct or preferable decision. This practice may involve informally referring the decision back to the decision-maker although that should not be allowed to delay review in the Tribunal;
2. Furnishing evidence and submissions to the Tribunal to ensure that the Tribunal is in the best position to make the correct or preferable decision. This may involve special assistance being given when an applicant is unrepresented but will continue to apply even though the applicant is represented; and
3. Responding to requests for assistance on particular issues from the Tribunal. In undertaking this task the respondent will simply be acting in the way that it would have acted if a similar request had been made by the original decision-maker.

20. In the early days of the Tribunal much of what I have said already had judicial approval. In *McDonald v Director-General of Security* (1983) 6 ALD 6 at 18, 19 Northrop J, forming part of a unanimous Full Federal Court, said:

"The Tribunal is not bound by the rules of evidence. It has before it all the material that was before the person who made the decision under the Act and which is the subject of the review before the AAT. Additional material may be placed before the AAT. As a matter of convenience, the Director normally appears to assist the Tribunal, but the Director-General is not to be treated in the same way as a party to proceedings before a Court. In Sordini v Wilcox (1982) 42 ALR 245, a review under the Administrative Decisions (Judicial Review) Act 1977, the administrative body whose decision was being reviewed appeared before the court. At 255 Northrop J said: "Counsel for the respondents stated that each of the first three-

named respondents, being the members of the Review Committee, would abide by the order of the court. Counsel for the respondents, very properly, made substantive submissions on behalf of the Commission. Where there are no adversary parties appearing before an administrative body, as in this case, it is important that the court receive assistance of counsel appearing for the administrative body making the decision which is being challenged under the Judicial Review Act."

It is equally important that in reviews by the AAT of decisions by administrative bodies such as the Director-General, or his delegate, in which there were no adversary parties, the AAT receive the assistance of persons acting on behalf of the administrative body. Likewise, in appeals of this court from the AAT on questions of law, it is important that the court receive the assistance of counsel appearing for the administrative body. This practice, however, which gives the outward appearance of an adversary system, should not be allowed to obscure the true position, and in particular to justify the introduction of concepts of onus of proof in to the determination of claims under the legislation where no onus of proof in the legal sense arises. This view, quite correctly, has been acted upon by the AAT in the past. The AAT has not departed from that practice in the present case.'

21. In a broadcasting or television licence hearing the respondent or authority might provide demographic evidence not available to the applicant which is not part of the respondent's case but is part of the applicant's case.
22. In an aviation matter the respondent authority might provide specialist evidence relating to matters not available to the applicant even though they assist the applicant.
23. In a security appeal, particularly where the applicant is not permitted to be present, the respondent should virtually adopt the role of counsel assisting and actively present evidence on all issues, particularly where this is requested by the Tribunal.
24. Where the Tribunal requests information on issues not considered to have arisen by the decision-maker but which the Tribunal considers to be relevant the respondent should present that material.

25. In a Veterans claim the respondent will present material both favourable and unfavourable to the applicant to which the applicant does not have access.
26. In a Comcare case where the respondent has material not favourable to the respondent but not available to the applicant the material will be presented.
27. In every case the object of the respondent should be to assist the Tribunal in coming to the correct or preferable decision and not to "win" or uphold a doubtful decision.

Other factors

28. This analysis has so far drawn only upon the nature of administrative review to draw its conclusions. However, the Model Litigant Policy of the Commonwealth is also relevant. The proposed amendments to the Act should also be addressed.

The Model Litigant Policy

29. Strictly, this policy does not apply to Tribunal review because it relates to litigation. The Policy itself, however, does purport to extend to "litigation ... before ... tribunals". This terminology demonstrates a misunderstanding of what Tribunal review is.
30. Not only is a reference to Tribunal litigation misleading, but equating merits review with litigation may cause parties and lawyers to think that the role of respondents in merits review is no different to their role in litigation. The whole of the burden of this paper so far has been to correct any such misapprehension. Respondents in merits review need to be more than model litigants; they need actively to assist the Tribunal.

31. Accepting the limited application of the Model Litigant Policy, these rules can still be of assistance in merits review. However, they must be understood as a minimum and as not covering the critical aspect of the role of a respondent in merits review, namely assisting the Tribunal.

32. It is to be noted that the Model Litigant Policy is directed to the attitude of the Commonwealth and its agencies to their opponents, not their attitude to the Court. This is the natural consequence of the distinctions I have drawn above. It is because of the adversarial nature of litigation. The Policy does not address the relationship of the Commonwealth with Courts or Tribunals. It is useful to look at the key obligations outlined in the Policy:

"2. The obligation requires that the Commonwealth and its agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or an agency by:

- (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation,*
- (b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid,*
- (c) acting consistently in the handling of claims and litigation,*
- (d) endeavouring to avoid litigation, wherever possible,*
- (e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:*
 - (i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true, and*
 - (ii) not contesting liability if the Commonwealth or the agency knows that the dispute is really about quantum,*
- (f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim,*
- (g) not relying on technical defences unless the Commonwealth's or the agency's interests would be prejudiced by the failure to comply with a particular requirement,*

(h) not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, and

(i) apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.

33. What emerges clearly is that this standard is dealing with litigation controlled by the parties not the making of an administrative decision.

34. The Model Litigant Policy, provides a useful context in which to consider the role of respondents in the Tribunal, and sets some minimum standards in one area. However it does not address the fundamental issue of the way in which the respondent should relate to the Tribunal itself.

The Administrative Appeals Tribunal Amendment Bill 2004

35. This bill is currently before the Commonwealth Parliament. It has been referred to the Senate Legal and Constitutional Committee for consideration. The Committee is due to report by 10 March 2005.

36. One provision in the Bill is particularly relevant to this topic:

"106 After subsection 33(1)

Decision-maker must assist Tribunal

(1AA) In a proceeding before the Tribunal for a review of a decision, the person who made the decision must use his or her best endeavours to assist the Tribunal to make its decision in relation to the proceeding."

37. This provision probably has its origins in Recommendation 21 *Managing Justice* report of the Australian Law Reform Commission report:

"Recommendation 121.

The federal Attorney-General should specify in the model litigant obligations, set down in legal services directions under the Judiciary Act 1903 (Cth), that agencies and agency representatives in the conduct of

federal review tribunal proceedings have duties to assist the tribunal to reach its decision."

38. The provision, if enacted, will serve the dual purpose of reminding parties, and particularly respondents, of the matters I have already discussed and imposing a positive statutory obligation to that end.

The Judicial Model

39. None of the above affects the essential independence of the Tribunal or the fact that the means by which the Tribunal is required to go about its task can be said to be based on the judicial model. The Tribunal is required to conduct a hearing (s 35). This can only be dispensed with when all parties agree and even then the Tribunal has a discretion (s 34B). The hearing must generally be in public (s 35). The Tribunal is bound by the rules of natural justice.

40. In the very earliest days of the Tribunal the first president, Brennan J, in *Becker and Minister for Immigration and Ethnic Affairs* (1977) 1 ALD 158 at 161, said this:

"The Legislature clearly intends that the Tribunal, though exercising administrative power, should be constituted upon the judicial model, separate from, and independent of, the Executive (see Pt II of the Act). Its function is to decide appeals, not to advise the Executive".

41. It has been recognised many times that the judicial aspects of the Tribunal's approach to decision-making enhances the quality of the approach. Sir Anthony Mason identified four such qualities (although he suggested there were five) (*Mason, "Administrative Review: The Experience of the First Twelve Years"* (1989) 18 Fed L Rev 122 at 130):

"Experience indicates that administrative decision-making falls short of the judicial model – on which the AAT is based – in five significant respects. First, it lacks the independence of the judicial process. The administrative decision-maker is, and is thought to be, more susceptible to political,

ministerial and bureaucratic influence than is a judge. Secondly, some administrative decisions are made out in the open; most are not. Thirdly, apart from statute, the administrator does not always observe the standards of natural justice or procedural fairness. That is not surprising; he is not trained to do so. Finally, he is inclined to subordinate the claims of justice of the individual to the more general demands of public policy and sometimes to adventitious political and bureaucratic pressures.

The five features of administrative decision-making which I have mentioned reveal why it is that administrative decision-making has never achieved the level of acceptance of the judicial process in the mind of the public."

42. The four qualities are:

1. Independence of the Tribunal;
2. Decision-making in public;
3. Natural justice applies; and
4. Individual justice will not be subordinated to public policy.

43. At a practical level one might add that the judicial model leads to a more thorough and detailed examination of the facts and a more rigorous consideration of the possible outcomes. I have been involved in hearings which took days where the time that could be devoted by the original decision-maker must have been very much less.

44. These qualities enhance a merits review process which already exemplifies the best aspects of the original process of decision-making. The judicial model is important to decision-making in the Tribunal but it does not deny the proposition that merits review is an exercise of administrative power which ought to continue to possess attributes appropriate to that process.

The Uniqueness of the Australian System

45. The fact that the Tribunal proceeds in accordance with the "judicial model" is one of its great virtues. It was an essential aspect of its uniqueness at the time it was created. The burgeoning number of similar tribunals now seen in the states of Australia mean that it is no longer unique here. However, it remains unique in the rest of the world.

46. Review of administrative decision-making elsewhere in the world is either confined to judicial review or is limited to specific subjects. Review on the European continent is generally confined to judicial review even though carried out by a separate court structure. In the United Kingdom there is limited merits review but only before specialist tribunals. However, all that is about to change as the United Kingdom adopts a system of general tribunal review substantially influenced by the Australian system.

47. The unique aspect of the Australian system is to give to a court-like body some of the functions of the Executive. It is not part of the conventional Executive although it exercises executive power. It exercises some executive power which is denied to the conventional Executive. The part of the executive function which the legislature has seen fit to confer upon court-like Tribunals is generally that part where individuals are making claims against Government. It is when, for example, they are seeking to make a claim for a licence to operate a television station or for a social security payment or for compensation for injury in a motor accident while delivering the mail.

48. The importance of the court-like process should not mask the essential nature of the exercise in the Administrative Appeals Tribunal, namely administrative decision-making. It does not undermine any of the conclusions I have drawn about the process. It should not be allowed to confuse participants into thinking that the court analogy is more complete than it is.

Conclusion

49. The burden of this paper has been to demonstrate that respondents in the Administrative Appeals Tribunal have a positive obligation to assist the Tribunal in its process of forming its opinion of what is the correct or preferable decision in the matters before it.

50. This paper has necessarily been preoccupied with generalisations. Generalisations are always subject to qualifications. All of the observations I have made must be tempered with practical realities. The grant of a commercial licence must be dealt with differently to a compensation case where there are experienced counsel on both sides. Both must be dealt with differently to a social security case in which the applicant is unrepresented and may be mentally ill. One important way in which respondents can assist the Tribunal is by testing applicants' cases and subjecting them to critical examination. That is not, however, an area in which respondents' activities before the Tribunal have generally been lacking. The purpose of this paper has been to highlight and examine another aspect of the respondent's role. If respondents address the issues I have covered in this paper and frame their preparation and evidence to take account of them and, where necessary, to act on them, administrative decision-making will be the beneficiary.

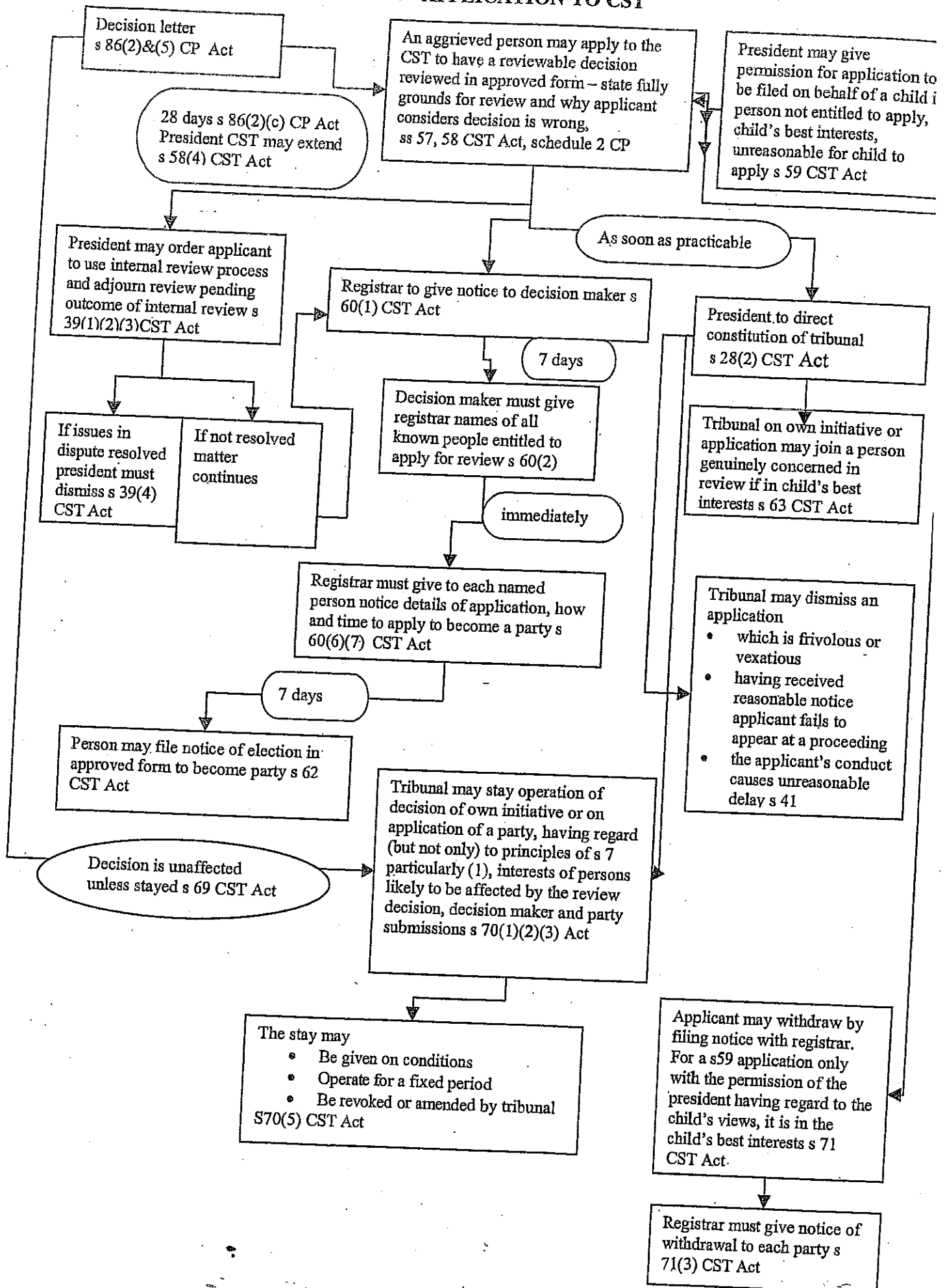
Events in the Tribunal Process / Roles and Responsibilities (Hand Out 3)

Decision	Team Leader/Manager Reviewable decision made (see schedule 2)	Court Services Adviser (CSA)	Court Coordinator
Advice of Decision Letter	<ul style="list-style-type: none"> • preparation of letter to aggrieved person – signed by Manager • Team Leader will need to peruse for content accuracy 	<ul style="list-style-type: none"> • Intake clarification e.g. is it reviewable • Related reviewable decisions <p>CSA will proof for</p> <ul style="list-style-type: none"> • Legislation & policy requirement • Logic and presentation • Correct CST information 	<ul style="list-style-type: none"> • Advise as per CSA • As per CSA
Notice of Review Issued by CST		<ul style="list-style-type: none"> • Coordinated by CSA setting out requirements & timeframes 	
Preparation of Statement of Reasons (SOR)	<ul style="list-style-type: none"> • CSO/Team Leader prepare Why? Because you have the case knowledge and the assessment framework that informed the decision • Ensuring CSO is engaging with child re: Tribunal process and using Children's Guides etc 	<ul style="list-style-type: none"> • Proof for accurate legal references • Check that formatting is in accordance with CST requirements • Fresh eye over view checking for logic and information gaps • QA of decision making in order to identify strengths/weaknesses • Preparation telelink 	<ul style="list-style-type: none"> • Tracking that preparation is progressing in accordance with deadlines • Tracking of associated tasks

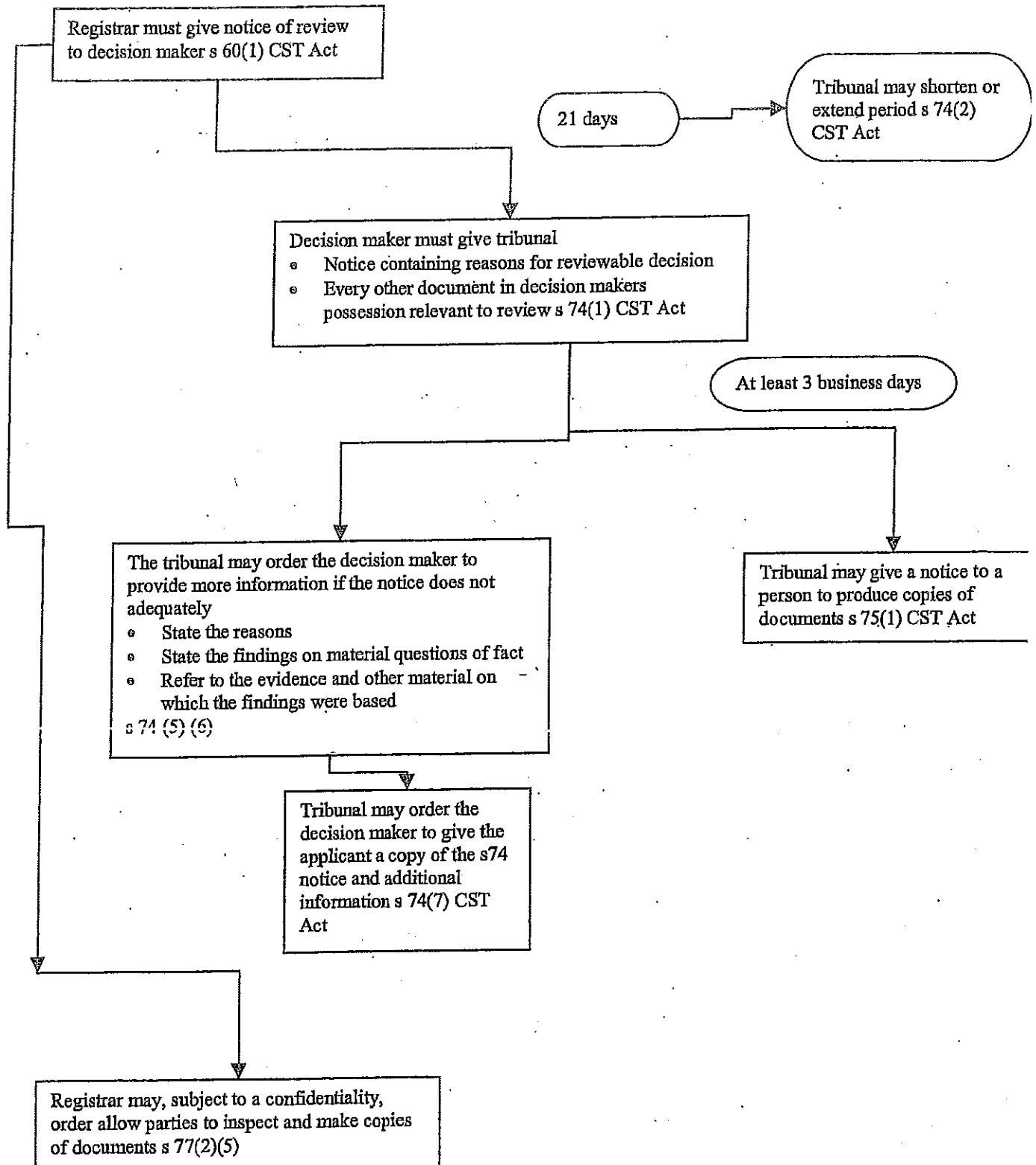
<p>Preliminary Conference/Stay (PC)</p>	<ul style="list-style-type: none"> • Oral submissions primarily made by Manager • Team Leader often required to answer specific content questions • Need to come with good overall content knowledge of case and key people in the child's life 	<ul style="list-style-type: none"> • Responsible for legal submissions 	<ul style="list-style-type: none"> • No role currently, but could be utilised in regional locations where CSA is absent
<p>Hearing Preparation</p>	<ul style="list-style-type: none"> • identifying the most appropriate person to support manager • identifying key witnesses and statements required (CSA will not know who are the key information holders) • identifying the relevant information these witnesses need to present in support of decision made • proofing of statements for content • raising potential challenges or concerns with CSA eg, <ul style="list-style-type: none"> - gaps in information - HR issues eg leave, work performance • preparation of opening and closing statements • preparation of questions for witnesses with CSA (after 	<ul style="list-style-type: none"> • Co-ordinating preparation telelink • Written legal submissions to CST • Proofing of statements (see previous description re: SOR) • Witness expenses and timing • Liaison with Tribunal • Filing with Tribunal including filing of witness list 	<ul style="list-style-type: none"> • Requesting statements and providing feedback to CSA re problems e.g. refusal to be witness • Tracking compliance with specific CST directions from PC e.g. filing certain documents • assisting Team Leader/Manager in question preparation • Proofing • Briefing witnesses

Hearing	<p>reading and identifying key information in statements)</p> <ul style="list-style-type: none"> • Present opening statement • Question witnesses • Integrating new information arising from evidence into - other questions - closing submission 	<ul style="list-style-type: none"> • Assistance to TL/Manager with preparation tasks • Legal submissions • Note taking during hearing proceedings 	<ul style="list-style-type: none"> • Brief and debrief witnesses • Co-ordinating witnesses on day
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PHASE 1 - APPLICATION TO CST



PHASE 2- PRODUCTION OF DOCUMENTS



PHASE 3 - PRELIMINARY CONFERENCE AND STAY OF DECISION

President, tribunal or registrar may require parties to attend one or more preliminary conference s 79(1) CST

Registrar must give notice of the preliminary conference to the parties.
The notice must state the matters to be dealt with at the conference. S 81CST Act

Reasonable notice must be given having regard to the matters to be dealt with s 81(3)

For a **STAY HEARING**, if the decision maker opposes staying the decision, the panel must be constituted by three members s 80(3) CST Act

For a **PRELIMINARY CONFERENCE** a tribunal may be constituted by one or two members s 80(2) CST Act.

The tribunal may on application or of own initiative **STAY** a decision:

- On conditions
- For a fixed period
- Revoke or amend the stay.

The tribunal must consider CST principles, interests of affected persons, parties submissions. S70

At a **PRELIMINARY CONFERENCE**, the tribunal may do 1 or more of the following—
(a) decide issues about representation under section 66 or 68;
(b) stay the operation of a reviewable decision under section 70;
(c) identify and clarify the issues in dispute;
(d) identify the questions of fact and law to be decided by the tribunal;
(e) identify information to be given to the tribunal by the parties;
(f) give the parties information about the tribunal's practice and procedures;
(g) refer the parties to alternative dispute resolution;
(h) give directions and make orders about the conduct of the review.
S 70(1) CST Act

The tribunal may meet with a party separately

- If it considers this may avoid escalation of the conflict between the parties
- If a party is a child, having regard to the child's views, the child's best interests s 79(4) CST Act

Registrar provides parties with a copy of the order

SUBPOENAS

What is a subpoena?

A subpoena (or summons in a lower Court) is an order issued by the Court requesting the production of documents or individuals be brought before a Court to assist in the resolution of litigation.

There are 3 types of subpoena:

1. A subpoena to appear & give evidence:
 - when the department has been served with a subpoena to appear and give evidence, someone from the department must attend court on the date and time specified
 - a subpoena for individual officers to appear should be served on those officers personally.
2. A subpoena for production of documents and to appear and give evidence:
 - someone from the department must attend court on the date and time indicated, give evidence in the proceeding and produce the documents set out in the subpoena schedule
 - the subpoena should be service on that officer personally
 - the production of documents refers to **limited** file material to be taken by the officer to court. (eg Initial Assessment or affidavit the officer subpoenaed to give evidence has authored)
 - the officer is usually asked to speak to these documents
 - where the entire file is required a separate subpoena for production of these documents is requested.
3. A subpoena for production of documents:
 - if the department has been served with a subpoena to produce documents the department has a choice as to how the subpoena will be complied with.
 - the documents may be produced to the court registry before the return date (court date)
 - if this is done, the subpoena has been complied with and someone from the department will not have to appear in court on the date specified in the subpoena.
 - Alternatively, someone from the department may appear in court on the date specified if we objected to having to produce the material or having the parties inspect or copy the documents.

The Director-General is the lawful owner and controller of all departmental records including case records, emails, file notes and all other written and electronic material.

Subpoena's for documents should be served at Court Services and addressed to the Director-General. A departmental officer cannot be required to produce any of the departmental records as they are not the owner or controller of those records.

If an officer is service with a subpoena to produce documents addressed to that officer, then this should not be complied with and the person serving the subpoena should be advised to have the subpoena re-issued and addressed to the Director-General and directed to the Subpoena Team.

**** Cheques for conduct money /witness expenses made out to individual officers to attend court should be signed over to the department and then banked or forwarded to finance.**

What information is privileged?

- notifier and linking information
- sensitive or personal information
- information which may impact on deliberative process
- information which attracts legal privilege

Notifier information is strictly confidential, disclosure can only occur:

- in the course of performing functions under the *CPA 1999* to someone else performing functions under the Act eg police officer involved in a joint investigation.
- to the Ombudsman when an investigation is being conducted
- when giving evidence in legal proceedings – only with the leave of the court.

For most subpoenas sensitive or identifying information is deleted prior to production in court. Section 191(1)(b)&(d) of the *CPA 1999* allows for refusal of disclosure of certain information during proceedings.

Personal information not relevant to the proceedings (eg foster carer or other persons information) is also withheld.

All notifier identities should be withheld unless they are statutory officers with delegations under the *Child Protection Act 1999*. This is because only statutory officers have the power to act under the *CPA 1999* – it is their job and the public perception is that these officers report and assess child abuse and neglect.

Notifier information which is usually not privileged:

- when police are notifiers

- when a CSO is the notifier

Search warrants / Orders:

- Police / Coroners Search Warrants to produce documents are service upon the individual CSSC or YJC.
- Warrants / Orders require that all relevant information be provided to them. However, if the officer serving the warrant agrees or the Department has some notice, attempts should be made to privilege notifier identities.
- In the event of this being unable to occur, a letter should be attached to the files stating that the information ordered contains confidential and sensitive information and that the police should adhere to the confidentiality provisions of the *CPA 1999*.

SUBPOENA TABLE

State	served on	send to	cost	contact	notes
QLD	Director General Department of Child Safety	Department of Child Safety, Subpoena Team, Court Services 30-40 Quay St Brisbane 4000	\$60 Cheque payable to Director General, Dept of Child Safety	James Spreadborough Ph 07 32359697	Can be faxed initially to 07 3235 9851 and subsequently mailed.
NSW	Director General Department of Community Services 4-6 Cavill Ave Ashfield NSW 1300	The Proper Officer, Legal Services Dept of Community Services Locked Bag 4028 Ashfield NSW 1300	Cheque for \$55 made payable to Department of Community Services	02 9716 2310	7 days' notice required from when subpoena and fees received in NSW. Please ensure children's birthdates are clearly marked on request. Do not accept service by fax.
VIC	Attention The Proper officer (Subpoena officer) Department of Human Services	Dept of Human Services, Business Records Level 5, 50 Lonsdale Street Melbourne 3000	\$55	Subpoena officer 03 90961708	Mail form and include a covering letter Can be faxed initially to 03 9096 9120 and subsequently mailed
ACT	Chief Executive Department of Disability, Housing and Community Services	Manager, Integrated Court Services, GPO Box 817, Canberra ACT 2601	TBA	02 6207 8025 – speak to Manager, Integrated Court Services	Can be faxed initially to 02 3207 1501 and subsequently mailed

TAS	Manager, Child Protection Services	Manager, Child Protection Services Upper Woodhouse, St John's Park Newtown Tas 7008	No charge	03 6230 7650	Can be faxed initially to 03 6230 7653 and subsequently mailed
SA	Executive Director, Families SA Department for Families and Communities	Subpoena Officer, GPO Box 292 Adelaide 5001	No specific charge	David Tucker 08 8124 4110	Can be faxed initially to 08 8226 7098 and subsequently mailed
NT	Director, Family and Children's Services,	Director, Family and Children's Services, PO Box 40596, CASUARINA NT 0811 2 nd floor Casuarina Plaza, Casuarina	No charge	08 89992887	Can be faxed initially to 08 89992546 and subsequently mailed
WA	Director General Department for Child Protection nt	Legal Services Department for Community Protection , Ground Floor,# 2 Brook Street Perth WA 6004	No charge Courier charge approx \$25	Tonia Murphy Legal Services ph 08 92220 7300 Fax 08 9325 3830 Email: tonia.murphy@ dcp.wa.gov.au	Fax request directly to Tonia
NZ	NZ files can be subpoenaed only through application to each state's Supreme Court				

Enacting a Queensland warrant in another state or territory

Authority

- Child Protection Act 1999, section 171 and 172
- Service and Execution of Process Act 1992
- Interstate Child Protection Warrants Protocol (21 March 2002)

Why a warrant?

When a child subject to a child protection order in Queensland has been unlawfully removed or withheld from a person's custody or guardianship in Queensland, and is currently in another state or territory, the child may be recovered from the other state or territory using the Interstate Child Protection Warrants Protocol (Warrants Protocol).

When seeking to recover a child subject to a child protection order in Queensland from another state or territory:

- follow the procedures outlined in the Child Safety Practice Manual, in consultation with the ILO;
- apply for a warrant under the Child Protection Act 1999, section 171;
- refer to the Child Protection Act 1999, section 172, for an explanation of the matters the court must be satisfied with before a warrant can be issued; and
- ensure that a departmental staff member is available to travel interstate at the time of the child's apprehension.

Warrant process – Queensland enacting our warrant in another jurisdiction

- A warrant for the recovery of a child from another jurisdiction can only be made when the child has been unlawfully removed or withheld from a person's custody or guardianship under the Child Protection Act 1999, section 171(1). A warrant for recovery can not be obtained if the child has voluntarily moved interstate, for example, a 15 year old voluntarily moving interstate to live with her boyfriend.
- The child must be located interstate before the warrant recovery process can be initiated.
- If the child's whereabouts are not known, the child must be listed as a missing person with the QPS, who will then notify their interstate colleagues.
- Once the child has been located interstate, and a decision has been made by the CSSC that the child is to be returned to Queensland, it is best to try to negotiate with all parties to see if the child can be returned without the instigation of the warrant process.
- If this is not successful and a decision is made to return the child to Queensland using the warrant process, the CSO **should contact the Queensland ILO to discuss the process** and for guidance regarding the procedures to be followed. The ILO will not make decisions for the CSSC, but will guide and assist with the decision making and recovery process.
- If it is agreed that the child should be recovered via the warrant process, the CSO will complete a 'Form 27 - Application for Warrant for Apprehension of Child' and make an application to the Children's Court for a warrant to be issued for the apprehension of the child from another jurisdiction.

Additional notes

- Sometimes assistance is requested from the other jurisdiction's child protection department with attending court. This would normally only occur when the Queensland CSO travelling to the other jurisdiction is delayed.
- In this instance it is possible for the Magistrate to make an order giving temporary custody of the child to a child protection worker in the other jurisdiction, with the child to be handed to the Queensland CSO as soon as possible.

INTERSTATE

CHILD PROTECTION WARRANTS

PROTOCOL

21 MARCH 2002

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INTERSTATE CHILD PROTECTION WARRANTS PROTOCOL

Introduction

1. *Purpose*

The purpose of this Protocol is to:

- a) improve the provision of services to children and young persons who are the subject of an interstate child protection warrant of apprehension;
- b) provide guidance to Departmental and Police Officers and improve the co-ordination of Departmental and Police operations; and

Decisions made under this Protocol should promote the care, protection and best interests of children and young persons who are subject to Child Protection Warrants.

Whilst this Protocol is not legally binding on the Parties, all Parties undertake to comply with its terms.

2. *Definitions*

For the purposes of this protocol:

"Accompanying Child Protection Officer" means the Child Protection Officer who is referred to in clause 14(b)(iv) below;

"Child Protection Officer" means a person who has statutory authority or responsibility for undertaking child protection work within a Department;

"Child Protection Warrant" means a warrant, which is issued under a Child Welfare Law, for the apprehension of a child;

"Child Welfare Law" means State child protection legislation;

"Children's Court Magistrate" means a magistrate who, in that capacity, deals with cases relating specifically to children. If there are no such magistrates in a State, then for that State it means a magistrate who can make orders in that State pursuant to the Child Welfare Laws;

"Department" means a State Department which has responsibility for administering the Child Welfare Law of the State or which has officers who have such responsibility;

"Interstate Departmental Liaison Officer" means a person appointed pursuant to clause 11 below;

"Interstate Liaison Officer" means an Interstate Departmental Liaison Officer and/or an Interstate Police Liaison Officer;

"Interstate Police Liaison Officer" means a person appointed pursuant to clause 12 below;

"Justice of the Peace who is able to issue warrants" means a justice of the peace who has power to issue warrants under a law of the State in which the office is held;

"Victorian Bail Justice" means a person who is appointed under section 120 of the *Magistrates' Court Act 1989* (Vic) as a bail justice;

"Person under a Restraint" is defined in section 3 of SEPA and includes a person on bail or most other non-custodial sentences;

"Police" means a State police force or service or the Australian Federal Police;

"SEPA" means the *Service and Execution of Process Act 1992* (Cth); and

"State" includes the Northern Territory and the Australian Capital Territory.

"Warrant" includes the original document and subsequent copies made and distributed to Interstate Police

The Role of Police and the Departments in Relation to Interstate Child Protection Warrants

3. *The Role of Police*

Police are responsible for finding a child who is referred to in a Child Protection Warrant, executing that warrant, taking the child into safe custody and seeking the orders referred to in this Protocol.

4. *The Role of the Departments*

The Departments are responsible for seeking Child Protection Warrants and providing care to the children who are apprehended pursuant to those warrants in accordance with the directions of a Magistrate or Justice of the Peace who is able to issue warrants (or a Victorian Bail Justice).

Outline of SEPA

5. *SEPA's Applicability to Interstate Child Protection Warrants*

- a) SEPA is a Commonwealth Act which enables, amongst other things, for warrants from one State to be executed in another State. If a warrant is executed interstate, it must be executed in accordance with SEPA. SEPA addresses issues such as who can execute the warrant, taking the apprehended person before the Court and the orders that the Court can then make.
- b) SEPA enables valid child protection warrants to be executed interstate.
- c) Warrant is defined in section 3 of SEPA to include "a process issued by a court ... in accordance with a law of a State ... that authorises the apprehension of a person."

- d) A person who is named in a Child Protection Warrant issued in a State may be apprehended in another State, if that person is not in gaol: s.82(1) & (2).

6. *Who May Apprehend a Person Under SEPA*

The person may be apprehended by:

- a) a police officer in the State in which the person is found; or
- b) the Sheriff of that State or any of the Sheriff's officers; or
- c) a member of the Australian Federal Police: s.82(3).

7. *When Must the Person be Taken Before a Magistrate or Justice of the Peace Who Is Able To Issue Warrants (or Victorian Bail Justice)*

Section 83(1)(a) provides that:

"As soon as practicable after being apprehended, the person is to be taken before a magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "of the State in which the person was apprehended."

8. *Adjourning an Application*

Section 83(14)(a) has the following provision for adjournments:

"the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "may adjourn the proceeding and remand the person on bail, or in such custody as the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "specifies, for the adjournment."

9. *Final Orders*

Section 83(8) provides, amongst other things, that if:

- * a Child Protection Warrant is valid and produced to the court (the warrant can be either a copy or the original); and
 - * the magistrate or justice of the peace who is able to issue warrants [or Victorian bail justice] does not adjourn the hearing; and
 - * the magistrate or justice of the peace who is able to issue warrants [or Victorian bail justice] does not place the child on bail; and
 - * the person is not a Person Under Restraint or in a gaol:
- "the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "must order*

... (b) *that the person be taken, in such custody or otherwise as the magistrate or justice of the peace who is able to issue warrants* [or Victorian bail justice] *"specifies, to a specified place in the place of issue of the warrant."*

10. *Ancillary Provisions*

Sub-sections 83(9),(11) & (12) also provide that:

- (9) *The order may be subject to other specified conditions.*
- (11) *The magistrate or justice of the peace who is able to issue warrants [or a Victorian bail justice] may suspend an order made under Section 83 paragraph (8)(b) for a specified period.*
- (12) *On suspending the order, the magistrate or justice of the peace [or Victorian bail justice] must order that the person be remanded ...*
 - (a) *in such custody as the magistrate or justice of the peace [or Victorian bail justice] specifies ... until the end of that period.*

Interstate Liaison Officers

11. *Interstate Departmental Liaison Officer*

Each Department must nominate a position which will be referred to in this Protocol as the **"Interstate Departmental Liaison Officer"**. This position must have either a 24 hour number or there must be an alternative number which is an after hours number.

12. *Interstate Police Liaison Officer*

Each Police Force and Service must nominate a position which will be referred to in this Protocol as the **"Interstate Police Liaison Officer"**. This position must have either a 24 hour number or there must be an alternative number which is an after hours number.

13. *Providing Information Regarding Officers*

- a) Each Police and Department must provide:
 - i) the contact details of each Interstate Liaison Officer to all of the other Police and Departments; and
 - ii) the details of the senior officer referred to in clause 24 (b) below;
- b) If any of the above details change, the Police or Department (as the case may be) must notify the other Police and Departments of the new details within 2 weeks of the change.

- c) The Interstate Liaison Officer is responsible for:
 - i) ensuring that this clause is complied with in relation to his or her Department or Police Force or Service; and
 - ii) promoting knowledge of, and compliance with, this Protocol.

Process

14. *The Initial Steps for the Child Protection Officer*

If a Child Protection Officer obtains a Child Protection Warrant which is to be executed interstate:

- a) the Child Protection Officer must arrange for the the original warrant to be forwarded to the Interstate Police Liaison Officer from his or her own State;
- b) the Child Protection Officer must inform the Interstate Departmental Liaison Officer from his or her own State and the Police Liaison Officer from his or her own State of:
 - i) the type of warrant and child protection order, if any, that applies to the child; and
 - ii) where the child may be located, who may be with the child; and
 - iii) any special circumstances regarding the child; and
 - iv) if available, the details of the Child Protection Officer who is likely to accompany the child from the place where the child is apprehended to the State where the Child Protection Warrant was issued ("Accompanying Child Protection Officer").
- c) If any of the above details change, the Child Protection Officer must inform the Interstate Departmental Liaison Officer from her/his State of the changes.
- d) The Child Protection Officer must ensure that the warrant contains the details of the person who applied for the warrant and, if possible, the details of the Interstate Departmental Liaison Officer from the officer's State.

15. *The Interstate Departmental Liaison Officer Informs Interstate Officers*

The Interstate Departmental Liaison Officer (from the State where the warrant was issued) will provide the information which he or she received pursuant to clause 14 above to:

- a) the Interstate Departmental Liaison Officer from the State where the child is believed to have gone; and

- b) the Interstate Police Liaison Officer from the State where the child is believed to have gone; and
- c) the Interstate Police Liaison Officer from the State where the warrant was issued.

16. *Interstate Police Liaison Officer Overseeing Control of the Warrant*

The Interstate Police Liaison Officer (from the State where the warrant was issued) oversees the control of the warrant and is responsible for copying the warrant and, where appropriate, arranging for the destruction of the warrant.

When the Interstate Police Liaison Officer provides a copy of the warrant to interstate police, the warrant should have a coversheet which :

- a) provides the details of the warrant; and
- b) provides contact details from the Department where the warrant was sought; and
- c) refers to this Protocol; and
- d) any other information that would assist in the execution of this warrant, such as where the child may be located, who may be with the child and any special circumstances regarding the child.

17. *Once Police Apprehend a Child*

Once Police have apprehended the child, the police must promptly notify the Interstate Departmental Liaison Officer from the State where the child was apprehended of:

- a) the place and time of the apprehension of the child; and
- b) the likely place and time when the child will be taken before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice).

The Interstate Departmental Liaison Officer from the State where the child was apprehended must then promptly provide this information to the Interstate Departmental Liaison Officer from the State where the warrant was issued and the Accompanying Child Protection Officer.

18. *Bringing the Child Before a Magistrate or Justice of the Peace who is able to issue warrants [or Victorian bail justice]*

As soon as practicable after the child is taken into safe care, the police must have the child brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice). If practicable, the police should seek to have the matter heard by a Children's Court Magistrate.

19. *Order if the Accompanying Child Protection Officer is Present*

If, at the time that the child is brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is present, the police should seek an order that the child is placed in the custody of the Accompanying Child Protection Officer.

20. Interim Order if the Accompanying Child Protection Officer is Not Present

If, at the time that the child is brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is not present, the police should seek an interim order which provides that:

- a) the child is placed in the custody of the Department Head or a Child Protection Officer from the Department in the State where the child was apprehended until the earlier of:
 - i) custody is transferred to the person referred to in paragraph "(b)" below; or
 - ii) a specified period (eg 5 working days);
- b) the Department Head or a Child Protection Officer (as the case may be) from the Department in the State where the warrant was issued shall have custody of the child when custody is transferred by the person referred to in paragraph "(a)".

21. Varying the Process - General Principles

The process outlined in this protocol is based on the actions which the parties believe are in the best interests of the child who is subject to an Interstate Child Protection Warrant. The process may be varied in the following situations:

- a) If the following people agree to a varied process:
 - i) a Child Protection Officer from the State where the warrant was issued;
 - ii) a Child Protection Officer from the State where the child is apprehended to the extent (if any) that the decision relates to the care of a person pursuant to an order referred to in clause 20 above; and
 - iii) a Police Officer to the extent (if any) that the decision would impose further obligations upon the relevant officer from the Police.
- b) If:
 - i) the child is in gaol;

- ii) the child is a Person Under Restraint; or
- iii) a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice) notes that he or she is unwilling to grant the orders which are sought by the police officer,

the orders sought should reflect what the officers, referred to in clause "21(a)" above, believe is appropriate and in the best interests of the child.

22. *Varying the Process - Illustrative examples:*

If the child is apprehended very close to the office of the Department which sought the warrant, the police force which apprehended the child may deal directly with that Department. For instance, the police may apprehend a child in Albury in accordance with a warrant issued in Wodonga. In this case, the police who apprehend the child may deal directly with the Departmental Liaison Officer in Wodonga (this is different to the process contained in clause 17 above);

After the execution of the warrant, the child could be placed on a plane in the State where the child was apprehended and the relevant officer in the State which issued the child protection warrant could collect the child at the airport. This approach would need to be consistent with the order of a magistrate or justice of the peace who is able to issue warrants (or a Victorian bail justice);

If, at the time that the child is brought before the magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is not present and the Magistrate is not prepared to grant the order outlined in clause 20 above, the police should seek an order adjourning the hearing and placing the child in the custody of the Department Head or a Child Protection Officer from the Department in the State where the child was apprehended. Upon the return of the matter, the child could be placed with the Department Head or a Child Protection Officer from the Department in the State which sought the order.

These examples are not exhaustive. They illustrate the capacity for some flexibility in ensuring the best interests of the child who is subject to an Interstate Child Protection Warrant.

Financial Arrangements

23. *Costs*

Each Department and Police Force or Service shall be responsible for the costs it incurs in relation to any proceeding under SEPA.

Dispute Resolution Process

24. *Dispute Resolution*

- a) Any dispute in relation to a party's compliance with this protocol should initially be dealt with by the relevant Interstate Liaison Officers.
- b) If the dispute cannot be settled by the respective Interstate Liaison Officers, then the matter shall be referred to people who are senior officers nominated by each Department and Police Force or Service as the appropriate officers to resolve such disputes.

Review & Withdrawal

25. *Commencement of the Protocol*

This protocol will commence operation on 1 June 2002.

26. *Review of the Protocol*

The parties will constantly monitor the Protocol and will commence a formal review of the Protocol 12 months after it comes into effect.

27. *Amendments to the Protocol*

The Protocol can be amended if all of the Interstate Liaison Officers agree to the change.

28. *Withdrawal*

A party to this protocol may withdraw from the protocol with 12 months notice. If a party withdraws from the protocol, the protocol continues to apply to all other parties.

Form 28
Childrens Court Act 1992
Child Protection Act 1999
(Section 172, 173)

WARRANT FOR APPREHENSION OF A CHILD

TO: All police officers
All authorised officers under the *Child Protection Act 1999*

Information has been supplied upon oath before me, and I am satisfied that –

- * a warrant is necessary to enable an authorised officer or police officer to take the child (name and date of birth) into the chief executive's custody;
- * the child (name and date of birth) has been unlawfully removed from a person's custody or guardianship under the *Child Protection Act 1999*;

YOU ARE required to apprehend the child and you are authorised, for that purpose to –

- a) enter any 1 or more places you reasonably believe the child to be;
- b) search the places to find the child;
- c) remain in the places for as long as you consider is reasonably necessary to find the child;
- d) take the child to a safe place.

For the purpose of executing this warrant the person executing the warrant may exercise powers under the warrant with the help, and using the force, that is reasonable in the circumstances.

This warrant ends on (day and date).

Magistrate

Place:

Date:

This warrant was made by means of *telephone/ /radio/other pursuant to section 173 of the *Child Protection Act 1999*.

I hereby certify that this document is a true representation of the warrant issued by the above-named Magistrate.

Signed:

Name:

*Authorised officer / police officer

Form 27
Childrens Court Act 1992
Child Protection Act 1999
(Section 171)

APPLICATION FOR WARRANT FOR APPREHENSION OF CHILD

THE INFORMATION OF:

(Name), *an authorised officer / a police officer,
of:

*sworn / affirmed this day before the undersigned Magistrate, who says –

- * Under an order made pursuant to the *Child Protection Act 1999*, the chief executive has been granted *custody / guardianship of the child (name and date of birth), and the chief executive has not been able to take the child into the chief executive's custody
- * Under an order made pursuant to the *Child Protection Act 1999*, *the chief executive / (name of relative or other person) has been granted *custody / guardianship of the child (name and date of birth), and the child has been unlawfully removed from the custody of *the chief executive / (name of relative or other person).

The grounds of this application are as follows:

I request that the Magistrate issue a warrant for apprehension of the child authorising an authorised officer or police officer to, for that purpose –

- a) enter any 1 or more places the officer reasonably believes the child is;
- b) search the places to find the child;
- c) remain in the places for as long as the officer considers is reasonably necessary to find the child;
- d) take the child to a safe place.

Signature of Applicant:

SWORN / AFFIRMED before me:

Magistrate

Place:

Date:

*delete whichever is not applicable
Form 27 – Version 2, November 2003.

UNDERSTANDING EVIDENCE:

The evidence necessary to include in an Affidavit in support of an Application for a Child Protection Order, will typically require the following to be established:

1. The child is a child in need of protection. See s.10 *Child Protection Act 1999* (hereinafter "CPA 1999") definition of "child in need of protection":-
 - a) Child has suffered harm, is suffering harm or is at an unacceptable risk of suffering harm; and
 - b) The child does not have a parent able and willing to protect them from harm ["Harm" is defined at s.9 CPA 1999]
2. That the Order being sought is the most appropriate and least intrusive Order to protect the child; and
3. That the Department taken reasonable steps to assist the family in addressing the protective concerns prior to seeking the Order (an assessment of the case plan and that it is appropriate for meeting the protection and care needs of the child).

Many of you will recognise that the above canvasses matters that are outlined in s.59 (1) (a) – (e) *Child Protection Act 1999*:-

- (a) the child is a child in need of protection and the order is appropriate and desirable for the child's protection; and
- (b) there is a case plan for the child-
 - (i) that has been developed or revised under Part 3A; and
 - (ii) That is appropriate for meeting the child's assessed protection and care needs; and
- (c) if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made; and
- (d) the child's wishes or views, if able to be ascertained, have been made known to the court; and
- (e) the protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms.

The reason that proving these elements is of utmost importance is that s.59(1) clearly states that the Childrens Court **may only** make a Child Protection Order **if it is satisfied** that these matters have been established.

Do not however forget that there are other elements of s.59 that also need to be established by the evidence, predominantly when the Application is for Long-Term Guardianship (and may be relevant for a custodial Child Protection Order if it is sought in favour of another suitable person).

1. Consider the elements of s.59 *Child Protection Act 1999* when preparing to draft an Affidavit;

2. Ensure that the evidence exists to establish these elements and importantly, that it supports the nature of the Child Protection Order that you are seeking;
3. In addition to s.59, also have regard to sections 5, 9, 10 *Child Protection Act 1999* and remember sections 6 & 83 for indigenous children;
4. In determining what Order to make, the Court must have regard to the welfare and best interests of the child as paramount (s.104 *Child Protection Act 1999*).

Rules of Evidence

Evidence is the cornerstone of a legal system and without it, nothing can be proved or disproved. As a result, strict rules have developed to ensure that the legal process is fair to all.

These rules apply to written, oral and recorded evidence, which is allowed to be admissible in a court if it complies with these rules. Given that the focus of this lecture is on Affidavits, we will briefly look at the rules of evidence, as they apply to Affidavit writing.

Relevant Evidence

- The most fundamental rule is **relevance**.
- What is relevant or not is determined by what you have to prove to get the Order you seek.
- In the previous slide regarding necessary elements any evidence that goes to proving any of those points will be considered "relevant".
- There are no specific legal formulas to determine if something is relevant or not.
- Everything which you do put in an Affidavit should be relevant.

The three ways of putting written evidence before the Court are:

1. Direct Evidence

Direct evidence is when the person who saw/heard/smelt or felt the information **is the actual person** who provides the evidence to the Court.

E.g. An Affidavit from a neighbour who witnessed a fight between parents in front of the children. That neighbour will provide the information in their Affidavit in the first person – "I saw/heard...." In other words, that neighbour will give **direct** evidence regarding the fight.

2. Admissions

An **admission** is a statement of fact made by a parent, contrary to their interests, in relation to a factual issue that the Applicant is attempting to prove.

For Example – The Mother stated to the Applicant that she took drugs whilst the children were in her care.

3. Hearsay Evidence

Hearsay evidence is a *minefield!* Hearsay is evidence of something reported to the Court indirectly.

R v Hennessey (1978) 68 CrAppR419

"Witnesses, whether for the prosecution or the defence, are required to testify to what they saw, heard, smelt or felt and not what they know because of what they have been told"

Hearsay Evidence & the Evidence of Children

s.112 CPA 1999 provides that children are **not** called to give evidence in child protection proceedings without leave of the Court. Given that it is necessary to place the evidence of children before the Court, as it is not coming directly from the mouth of the child, or by way of written Affidavit of the child, the evidence of the child is **hearsay**.

Best Evidence Rule

This rule requires that the best evidence is to be used to prove a fact and that the best evidence is **Direct Evidence**.

But! Can't we use hearsay evidence anyway?– s.105 CPA 1999

The Court can "inform itself in any way that it sees fit"

Queensland has **not** dispensed with the rules of evidence. Rather, the Childrens Court has a *discretion* to relax the operation of the rules of evidence as it sees fit in appropriate cases (see *Dale v Scott ex parte*; *Dale* (1985) 1 QdR 406 @ 413, 414)

AND

In *Taylor v L*, Thomas J, emphasising the Court's need for caution when allowing hearsay material into evidence stated:

"...I agree that the liberty to tender hearsay could be abused. I cannot imagine any judge would allow a grave allegation against a parent be proved solely by hearsay, at any rate in a case in which direct evidence could be produced..."

Further –

It is open for the Legal Representatives for Respondent parents to make objections to hearsay evidence given that the Rules of Evidence have not been dispensed with.

Remember that a party to the proceeding has the right to challenge every piece of evidence by asking questions such as:

- ✓ Who said this? To whom? Who else was there?
- ✓ What was the context in which this happened?
- ✓ What were your observations of this person at the time?
- ✓ How can you make an assessment on any of the above if you were not their in person?

REMEMBER:

- Best to get direct evidence;
- Admission evidence is useful;
- Disclosures made by children are hearsay but can & do carry weight; and
- Use hearsay as a last resort.

AFFIDAVITS

Purpose

The purpose of an affidavit is to provide sworn, factual information, to assist the magistrate in making a decision in relation to the application before the court. The *Childrens Court Rules 1997* dictate what an affidavit should look like, and the information that it should contain. A Form 25 is the prescribed form for Childrens Court matters. In most cases a departmental officer is the applicant, and the information provided in an affidavit is aimed at supporting the application.

It is the responsibility of the CSO, in consultation with a court coordinator, to provide an acceptable standard of evidentiary material and ensure the most relevant information is before the court to inform their decision.

When is an affidavit required

An affidavit is always required when an application for a child protection order is filed with the Childrens Court.

- Intervention with a child protection order
- Applying for a directive order
- Applying for a supervision order
- Applying for a short-term custody order
- Applying for a short-term guardianship order
- Applying for a long-term guardianship order
- Long-term guardianship to a suitable person

An affidavit may also be required after an initial application and supporting affidavit have been filed in the following circumstances:

- updating the court on any relevant assessments or change in circumstances, during an adjournment period, including but not limited to:
 - changes in applicant status (for example, when another CSO assumes case responsibility for a matter)
 - proposed dates and/or outcomes of family group meetings
 - attempts to locate and/or serve parents with court documents
 - a new case plan and/or updates (review) of an existing case plan
- in preparation for a child protection hearing, in response to affidavits filed by respondents, including but not limited to:
 - affidavits (written and filed separately to departmental affidavits) by witnesses, that the department intends to rely and/or call at the hearing
 - attaching relevant documents informing the other parties as to the evidence the department intends to rely at the hearing
- when an application is made to revoke a child protection order
- when an application is made to revoke a child protection order and make a new order

- in support of extending a CAO, for the purpose/s of outlining the reasons for the need to extend the order, including but not limited to:
 - the additional information and assessment that is required to make a decision as to whether the child is in need of protection
 - what attempts have been made by the department to ascertain the required information (for example, a scheduled professional assessment)
 - the likelihood of information becoming available during the course of the extension of the CAO
- responding to applications filed by parents (for example, an application by the parents/respondents to revoke a child protection order)
- where a party has initiated an appeal of a decision made by the court.

Writing an affidavit

An affidavit outlines the evidence of the case to the court. It is important to set the scene and to ensure the evidence is written in a clear manner, without departmental jargon, so that the child's parents, the court and all relevant legal representatives are able to understand the content.

The following information is provided to guide and assist departmental officers in the process of completing an affidavit:

Purpose of an affidavit

When drafting an affidavit, the CSO needs to keep in mind:

- that an affidavit tells the story of a matter to someone who knows nothing about it, and who has little time to get across the relevant and pertinent issues
- wherever possible, the affidavit must always be simple to read and easy to follow
- that the reader does not have the same level of knowledge of the case that you do, and therefore, the affidavit must 'set the scene'.

Establishing the grounds of the application

The CSO will outline in the affidavit the following evidence, taking into consideration the *Child Protection Act 1999*, section 9, 10, 59 and 61.

1. What are the child protection concerns? Wherever possible, this should be 'new' information and should not merely duplicate 'old' information. The court is interested only in what justifies the current application and not what was used to justify a previous application.
2. Why the child is in need of protection.
3. Why the order sought is the least intrusive (for example, the most appropriate, taking into account all the circumstances).
4. The case plan for the child.
5. The evidence you are relying on to support your decision-making.
6. Wherever possible, the child's views and wishes in regards to the child protection order sought.

Where the application is in relation to an Aboriginal or Torres Strait Islander child, the CSO will also include evidence, having considered the *Child Protection Act 1999*, section 6 and 83.

Do's when completing an affidavit

- Ask yourself, why do you want that information before the court?
- Why is it relevant?
- What does it tell the court?
- Is the information your best evidence, or do you need to seek further reports, affidavits or assessments?
- Consider seeking affidavits from persons who have direct knowledge about the matter. At the time of seeking these affidavits, advise the author of their likelihood to be subpoenaed, or required for cross examination by other parties should the application proceed.
- Inform the other parties (parent/s legal representatives and the separate representative) of the department's assessment, and what order you are seeking.

Do not's when completing an affidavit

- Do not simply include a paragraph by paragraph summary of events on the file since you have had responsibility for the matter.
- Do not only attach or include a case history (for example, a copy and paste case notes) of a family into an affidavit without ensuring relevance and whether it supports the application.
- Do not identify notifier details in the affidavit, in accordance with the confidentiality provisions of the *Child Protection Act 1999*, section 186.

Contents and structure of an affidavit

1. Basic chronology

A chronology is a good starting point for working on your affidavit. A basic timeline (which you should be able to establish from your file notes) will give you the skeleton outline of what you need to cover.

At this point, a CSO needs to:

- establish who, what, why and how
- outline relevant dates, names of parties and places.

The above details are what lawyers and the court will be interested in. If it is not there, you will be asked about it.

Note: If you do not have **direct** knowledge of this information, then the chronology should be exhibited to your affidavit, with a brief summary contained in the body of the affidavit, linking the relevance of the chronology to the application.

2. Headings

Use headings to assist in understanding, but carefully consider whether headings placed at random (for example, family group meetings) actually break the flow of the story and make it disjointed.

Other options could be to bold the words family group meeting where they appear in the text of the affidavit to make them easy to find or cross refer the reader to other paragraphs of the affidavit where you deal with family group meetings. Requiring the reader to move all over the document should be avoided.

3. Family trees (genograms)

Ask the question, with complex family units, do you need to exhibit a family tree? The answer is **yes** because:

- you are telling the other parties, and ultimately the decision-maker, 'who is who' in this family
- providing this detail from the outset helps, especially with issues like sibling or extended family member contact.

Note: Wherever possible, provide full names, dates of birth, ages and clearly define relationships between family members (for example, biological father, half brother or step sister).

Case plans

A CSO must:

- attach a current case plan for the child and summarise the key points to ensure you explain why you seek the current proposed order
- ensure that the affidavit clearly outlines the rationale for the case planning and the order sought
- ensure that the case plan goal, outcomes and actions match the child protection order sought and address the stated child protection concerns detail:
 - the particulars for how the case plan will be implemented
 - whether the services noted and/or sought are available
 - whether the case-plan has been discussed with the parents
 - consideration of the viability and/or workability of the plan?

Note: The *Child Protection Act 1999*, section 59, requires that an order should not be made without a case plan. A case plan will evolve over time and may need to change and adapt to the family's progression. A thorough and detailed case plan may mean that a matter can settle and will get the support of the parent's legal representative and the separate representative, so that a hearing is unnecessary and the application can be dealt with in a timely manner. For further information, refer to the procedures on case planning.

Rational for current application being the 'least intrusive' order

A CSO must:

1. Be clear that 'least intrusive' does not mean that you should not be seeking a long-term order. Be realistic, and with thorough case planning, it will be easier to determine the appropriate order to seek.
2. Remember that the ultimate question is whether the order you seek addresses the child protection concerns, and clearly justify why that is so. The principles of the *Child Protection Act 1999*, section 5, need to be addressed, and ultimately ask, what is in this child's best interests?

Completing an affidavit

When completing an affidavit:

1. The applicant for a matter is responsible for the completion of an affidavit as supporting material for the application.
2. The CSO with case responsibility, is responsible for the completion of an affidavit for subsequent mention dates, to assist the court with updated evidence during the adjournment period (for example, a 'supplementary affidavit').
3. **The court co-ordinator is responsible for ensuring:**
 - the correct structure and format are used
 - the content provides the best evidence and is consistent with the nature of the order applied for.
4. The team leader is responsible for approving the content of the affidavit.

Filing of an affidavit

The applicant **must ensure** that the supporting affidavit is filed:

- with an application (without exception)
- **on or before the expiry** of an existing order
- for supplementary affidavits, a minimum of **three business days** before the next mention.

Note: The information contained in the application form for a child protection order is an unsworn document and is not considered evidence. Therefore, the applicant can **not** rely solely on it. Further, and **only** where necessary (for example, where something relevant and/or significant has occurred necessitating updating the court) for a subsequent mention date, the CSO will file an affidavit outlining any updated evidence during the adjournment period.

Service of an affidavit

All affidavits must be served on the respondents (*Child Protection Act 1999*, section 23, 37 and 52) and the separate representative. The *Childrens Court Rules 1997*, rule 22, requires a Form 22 Affidavit of Service to be filed in the court, as proof of service, as soon as possible following service of the documents.

Natural justice requires that affidavits must **(without exception)** be served on the respondents and, where applicable, the separate representative, **three business days** before the initial mention of the matter in the Childrens Court.

Legal Aid Queensland Tips for Affidavit Writing

Tip 1: It is not that tricky all an affidavit does is tell the story:

- Remember from the outset that an affidavit tells the story of a matter to someone who knows nothing about it and who has little time to get across the issues.
- Make it easy to read and easy to follow.
- Don't assume the reader has the same level of knowledge of the case that you do. You may know who Jack is in the story but they don't so make sure you set the scene.
- Precedents are useful but don't rely on the precedent to the detriment of the story telling.

Tip 2: Establish your case with reference to the evidence and the case plan:

- It should establish your case:
 - what are the child protection concerns?,
 - why is this is a child in need of protection?,
 - why is the order sought the most appropriate?,
 - what is the case plan?
 - what **evidence** are you relying on to support your decision making?
- It should address the issues set out in s 9,10,59 and 61 of the Child Protection Act 1999 and for indigenous families remember s 6 and 83. Always keep those sections in mind when you are drafting or critiquing an affidavit. Print a copy of the sections off and have them next to you when you are going through the affidavit.
- Simply doing a paragraph by paragraph summary of events on the file since you have had it is not enough. Simply attaching a care history of a family is not enough. Why do you want that information before the court? **Why is it relevant?** What does it tell you? Is it your **best evidence** or do you need to seek further reports or affidavits or assessments?
- Letting the other parties (parent's legal reps and the Sep Rep) know what your case is, what order you are seeking and a well reasoned, researched and detailed case plan could mean you can settle a matter and not end up in a fully contested trial. Ultimately too it could mean a better and more timely result for the child (and for their family) which should be the aim for all parties.

Tip 3: Start with a Basic Chronology

- A chronology is a good way to start working on your affidavit. This basic timeline (which you should be able to establish from your file notes) will give you the skeleton outline of what you need to cover and provides a good starting point.
- But remember this is the starting point and will evolve over time.
- Keep thinking whether you have established who, what, where, why and how. Dates, names, places, details are what lawyers are interested in. If it is not there you will be asked about it.

Tip 4: Your story should flow in chronological order

Use headings to assist in understanding but carefully consider whether arbitrarily placed headings (eg family meetings) actually break the flow of the story and make it disjointed.

Other options could be to bold the words **family case planning meeting** where they appear in the text of the affidavit to make them easy to find or cross refer the reader to other paras of the affidavit where you deal with family meetings. But remember you don't really want to send your reader all over the document!

Tip 5: Family Trees

- With complex family units do you need to exhibit a family tree?
- Remember you are telling the other parties and ultimately the decision maker "who is who" in this family. It makes life a lot easier for everyone.
- Working all this out from the outset helps especially with issues like sibling or extended family member contact.
- Full names if you have them, dates of birth if you have them, state the age and state the relationship eg biological father or half brother or step sister.

Tip 6: CASE PLAN/ CASE PLAN/ CASE PLAN

- What is the case plan? Why do you seek the order? Does your affidavit clearly set out the rationale for case planning and the order sought?
- Remember the amendment to section 59 says an order should not be made without a case plan. But don't be afraid of that be prepared for it so that it doesn't happen to you and the best way is to make sure your plan is reasoned, researched and detailed- will it work?

- Case Plans should be detailed with the particulars for how this is all going to occur. How is this going to occur? What does it all involve? Are the services you seek available? Have you discussed all this with the parents?
- A case plan will evolve over time it is a living document, a moveable feast. It can be hard to manage but if the work and preparation is there then adapting it will be easier over time. You may have to change the game plan.
- Again remember that a detailed and well organised and researched case plan may mean that a matter can settle and will get the support of the parent's legal rep and the sep rep so that a full blown trial is unnecessary.

Tip 7: Least Intrusive Order

- Least intrusive does not mean that you should not be seeking a long term order.
- Be realistic and with well reasoned and researched case planning it will be easier to determine the appropriate order to seek.
- A long term order might be the most appropriate rather than 12 month or 2 year orders when you come back to get another order every time putting the child through the trauma of another separate representative another report writer.
- The ultimate question is whether the order you seek addresses the child protection concerns then clearly justify why that is so.
- Remember to that the principles in s5 are what need to be addressed and ultimately ask ***what is in this child's best interests?***

AFFIDAVIT WRITING

Introduction



In your capacity as a statutory, departmental worker, no doubt you will be required at some stage in your career, to produce an affidavit for the Children's Court. Most likely, you will be the applicant of a Child Protection Order due to a child experiencing unacceptable harm, or at risk of significant harm by either or both parents.

You will find that prior planning and preparation for writing your affidavit will assist in the process. Prior to starting to draft your affidavit, ensure that you have clear, up-to-date records about the factual events that have occurred, that you have a clear assessment of the child protection concerns and the risks to the children, and that you also have a clear plan for future involvement with the family. This future planning should include specific information about how you will meet the department's legislative responsibility to work with families, and what casework should occur with the family to address the concerns.

The aim of this document is to assist you in the process of completing your affidavit.



Purpose

Essentially, the purpose of an affidavit is to provide sworn, factual information to the court, to assist the Magistrate in making his/her decision in relation to the application before the court. In most cases the department is the applicant, therefore the information provided in your affidavit is aimed at supporting your application.

Your affidavit is your 'evidence in chief', that is **relevant** information which is sworn/affirmed with respect to the application. Fundamentally, 'relevance' is determined by what you have to prove to obtain the order you seek.



Body

Microsoft Word (home/share directory/cp act resources/samples of court documents/sample affidavit) provides an example of an affidavit format for Childrens Court applications. This example includes suggested headings relevant to our statutory work and indicates the approved form (Form 25) as legislatively required under the *Children's Court Rules 1997*, section 8.

You should write your affidavit on the assumption that the application will be contested and you will be rigorously cross-examined on the information included. As such, you should always ensure that your information is grounded in facts, and that you check that your information is accurate and consistent throughout. You should also make sure that any opinions expressed are clearly marked as opinions and are within your expertise. Also, always include information about the basis on which you have formed the opinion.

Affidavits need to be clearly formatted, reader-friendly and include specific and relevant content.

Essentially, you have to prove three things:

- 1) The existence of the child protection concerns, for example, that the child has been subjected to harm, domestic violence, physical abuse etc;
- 2) That the order which you seek is the least intrusive order which can be made in the circumstances; and
- 3) That the department has taken reasonable steps to keep the family together before seeking the order in which you seek.

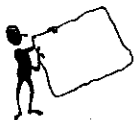


How do you do this?

Section 105(1) of the *Child Protection Act 1999* provides –

“In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in anyway it thinks appropriate.”

You can prove this information, particularly in relation to the child being harmed or at risk of significant harm in the following ways:



Direct Evidence

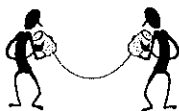
This is evidence of the facts in issue themselves, documentation given by a person of events, which they have personally observed or, of matters of which the person has personal knowledge. For example obtaining an affidavit from a neighbour who witnessed an incident of domestic violence. That neighbour will simply say what they saw and heard – therefore this is direct evidence.



Admissions

These are direct statements by the respondent parent, for example the mother may have admitted to you that an episode of domestic violence occurred. As far as relevant, you need to put the details of the conversation which you had with the mother in your affidavit, including the details of when, where and very briefly, under what circumstances the conversation took place.

If your recollection is accurate, or if you have kept notes of the conversation, preferably you would set out the relevant part of the conversation verbatim, using the direct speech used. Failing that, you would set out the gist of the conversation to the best of your recollection.

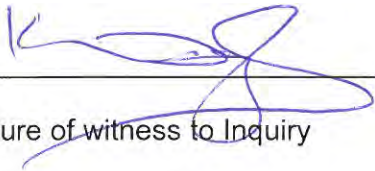


Hearsay Evidence

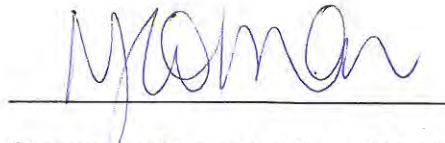
Hearsay evidence is evidence of something reported to the court indirectly. For example if someone tells you ‘something’ and in your evidence you report that ‘something’ to the court, as an item of evidence, that ‘something’ may be hearsay evidence – given it has not been provided directly to the court by the person with that information. Consequently, as an item of proof, Children’s Courts are bound to give hearsay evidence less credence than that which they give to direct evidence.

Attachment Marking

The preceding 509 pages is the annexure mentioned and referred to as ATTACHMENT 2a
in the statement of Kenneth Dagley taken on 25/10/2012



Signature of witness to Inquiry



Signature of person witnessing statement



An Introduction to.....

MAGELLAN



October 2009

History of Magellan

- **Named after the Portuguese Explorer who circumnavigated the world and chartered new waters**
- **Late 1990's, research and reports into matters where abuse and/or allegations of abuse of children in Family Court proceedings identified the need for a specific approach to these matters**
- **Reports recommended judicial management, timely resolution, appointment of an ICL, and involvement of State child protection authorities.**
- **Pilot of "Project Magellan" was launched in Victoria in 1998 and subsequently rolled out to other Registries including Brisbane**

What is Magellan?

- **Magellan is a case management system used in Family Court to ensure that cases involving the most vulnerable children are dealt with effectively, efficiently and appropriately**
- **It is run by a multi-disciplined team consisting of:-**
 - o Magellan Judge (Justice Murphy)
 - o Magellan Associate (Lee-Anne McMurray)
 - o Magellan Registrar (Leanne Turner)
 - o Manager Child Dispute Services (David Hugall)
 - o Magellan Case Coordinator (Ebony Brown)
- **ICL's are appointed in each case**
- **S91B order made in every case to ensure involvement of State child protection authorities**
- **The target is a six month time line**

Criteria for Magellan

- **Allegations of sexual abuse of a child**
- **Sexual abuse of a child**
- **Allegations of serious physical abuse of a child (including threats to kill)**
- **Serious physical abuse of a child**

How and when is a matter declared Magellan?

- **Matter is designated Magellan by the Magellan Registrar in chambers and orders then issue**
- **Decision is based on:**
 - o The Form 4 Notice of Child Abuse and/or
 - o Affidavit material and/or
 - o Recommendation of a judicial officer
- **A matter can be declared Magellan:-**
 - o After the filing of the initial application
 - o After filing of a Form 4
 - o After transfer from the FMC
 - o At any time before judicial determination of a matter

Role of the Magellan Registrar

- **Declare a matter as Magellan**
- **Make directions for filing of a Form 4 Notice of Child Abuse if required**
- **Order the appointment of an ICL**
- **Order the preparation of a family report from a Family Consultant**
- **Make a s91(B) order requesting intervention of an officer of the relevant State child protection authority**
- **List for directions before Magellan Judge**
- **Ongoing active file management including issue of subpoenas, listing of interim applications, and conduct of the pre trial conference**
- **Request a report under S69ZW**

Role of the Magellan Judge

- Ongoing judicial management to ensure the appropriate and timely determination of the matter
- Consider whether parties should attend family dispute resolution or other services under s13C
- Make procedural orders where appropriate to obtain the necessary evidence in respect to the allegations
- Make interim orders where appropriate to protect the child and any party to the proceedings
- Make s65L orders where appropriate
- List the matter for hearing (Trial Judge may be a Judge other than the Magellan Judge)

Role of the Family Consultant

- **Where required prepare a family report for the first return date**
- **The purpose of the report is to:**
 - o Address the issue of abuse or risk of abuse
 - o Report where possible on the impact of the alleged abuse
 - o Make an assessment of the harm the child has or may suffer from the alleged abuse
 - o Assess the safety of the child
 - o Ascertain wishes of the child where appropriate
 - o Assess whether an expert in child abuse and family violence, or psychological or psychiatric evaluation should be utilised
 - o Analyse the family dynamics and needs of the children and how that may be reflected in interim/final orders
- **Be available as required by the judge**

Role of the Independent Children's Lawyer

- **An ICL is appointed in every Magellan matter**
- **ICL's role is to assist the court in ensuring the best interests of the child/ren are met during the proceedings**
- **Meet with the children where appropriate**
- **Liaise with the Family Consultant and State child protection authorities as required**
- **Obtain the necessary information as required**
- **Obtain expert family reports as required**

Role of the Department of Communities (Child Safety Services)

- **To intervene pursuant to s91B *Family Law Act 1975* and when needed be a party to the proceedings**
- **To provide short reports to the Family Court to assist at directions hearings**
- **To confer with Independent Children's lawyers and Family Consultants of necessary**
- **To provide a s69ZW report if required**

Snapshot of Magellan in Brisbane

- In February 2008 there were six matters in Magellan
- Numbers have steadily increased and currently there are in excess of 95 Magellan matters in the Brisbane
- Increase due to:-
 - Change in Magellan Judge and Magellan Registrar
 - Education of Profession in Magellan resulting in appropriate filing of matters in Family Court
 - Appropriate transfer of matters from Federal Magistrates Court to Family Court.

Questions?

Department of **Communities**

safe, valued and empowered communities

Can we make a difference? A proposed model for instigating and measuring change

Barry Morris

Court Coordinator

Emerald CSSC

Department of Communities (Child Safety Services)

barry.morris@communities.qld.gov.au



Introduction

- Why this topic?
- Purpose of workshop
 - Recognise that Court Coordinators do have a positive impact on the Child Protection process
 - Propose a model for Planning for Change through implication of court related goals and evaluating outcomes



Prior to Court Coordinators

CMC report – Protection Children: An Inquiry into Abuse of Children in Foster Care (2004)

“A society can rightly be judged on how it treats its children. After all, they are the citizens of the future. The recommendations in this report provide a timely opportunity to redress the inadequacies of the past and benefit all children who are at risk.”

Brendan Butler SC, Chairperson of CMC



Prior to Court Coordinators

Legal Aid Qld (p106-7)

- Court preparation not occurring – poor outcomes for children, orders not granted, wrong orders granted
- CSOs not trained in preparation of affidavits – courts making decisions based on incomplete information, decision may not be best for child
- CSOs not clear on what order sought – order granted may not be best for child, orders granted when not necessary
- No case plans prior to application – “lost in the system”, needs of children not met



Prior to Court Coordinators

Record Keeping (p109)

- Few standardised forms

Due Process Issues (p122)

- Parents not advised of court hearing dates
- Parents not advised of rights
- Parents not advised of court outcomes



CMC Recommendations

- Department consider court work by specialist staff
- Legal officers employed to
 - assist with the preparation of documentation for court and tribunal proceedings
 - Provide advice and resources to CSOs
 - Participate in statewide network – training and monitoring trends
 - Ensure children and young people consulted re applications



Court Coordinators Enhancement to Service Delivery

Handout

Court Coordinators:

- Specifically devoted to court preparation
- Provide quality assurance and training to staff
- Provide feedback re adequacy, relevance etc
- Specialise in court matters and ensure processes followed in timely manner



Court Coordinators Enhancement to Service Delivery

Court Coordinators:

- Resource staff with templates etc
- Provide outcome letters and orders to parents
- Ensure views of child/YP are obtained and included
- Assist manager/TL in preparation for CST, liaise with Court Services



Reflecting on Impact

- Discussion: Changes in CSSCs and Court
- Small groups (10mins)
 - Reflect on your time as Court Coordinator
 - Needs when you started
 - Planned actions to address needs
 - How it went – what worked, what didn't

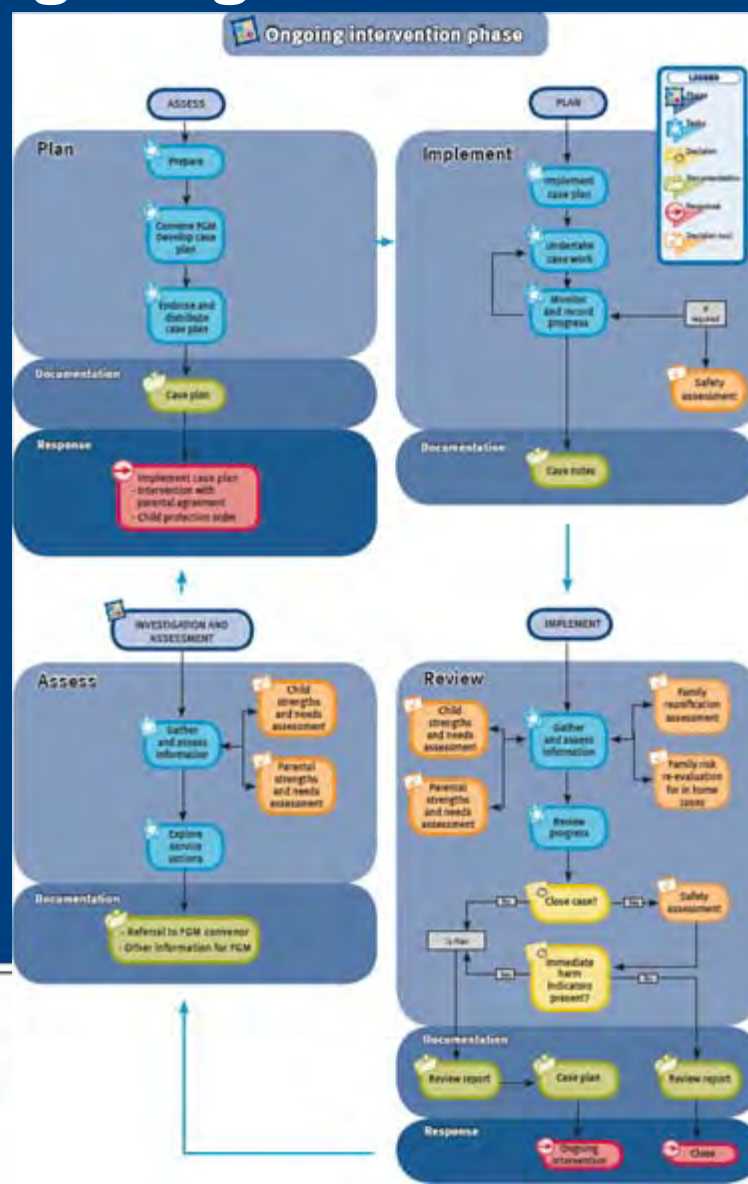


Model for Instigating and Measuring Change

- Appreciative Inquiry – 4D model
 - Dream Develop Deliver Discover
- Ongoing Intervention Cycle
 - Assess Plan Implement Review



Model for Instigating and Measuring Change

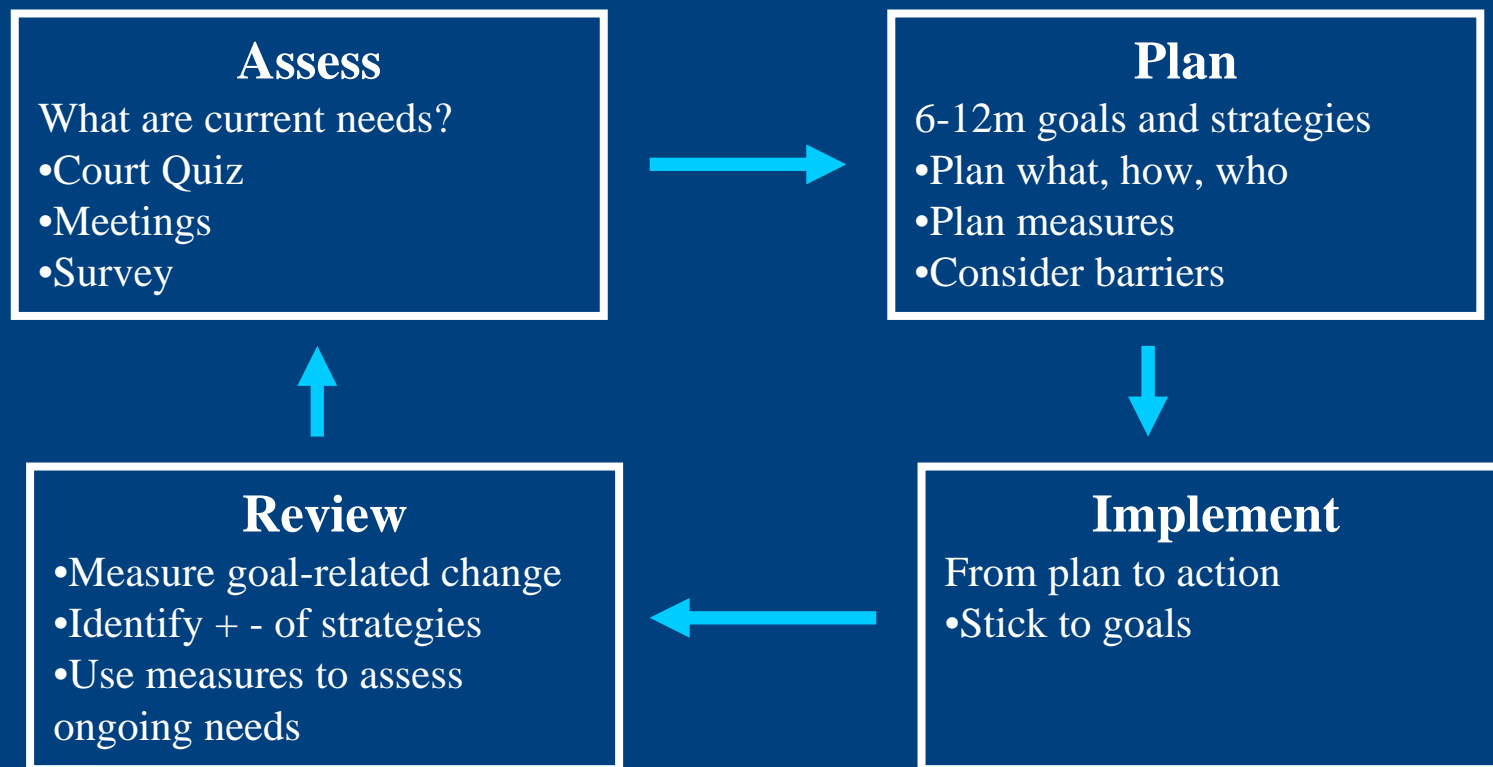


Model for Instigating and Measuring Change

- Goal of Ongoing Intervention – bring about change in children and families
- Changes – address CP concerns, reduce risk
- Cycle can be applied to any attempt to instigate change
- Often done without thinking



Model for Instigating and Measuring Change



See also 4D model of Appreciative Inquiry <http://www.mellish.com.au/Resources/lizarticle.htm#4D%20Model>





Model for Instigating and Measuring Change

Assessing need

- What level? Child, family, staff, Department, court, service providers? Relationships, processes?
- *CPA 1999* – Child's best interests are paramount
- Within Department's responsibility of considering child's best interest, Court Coordinators are responsible for:
 - Service Strategy
 - People Development
 - Systems Development
- Why? Better outcomes for kids



Model for Instigating and Measuring Change

Case example

- 14yo “Sarah”
- Chronic neglect, sexual abuse
- In care since 2002, placed with kin
- 2 short term orders
- LTG applied for in 2007
- Child does not want any contact with her mother
- Mother contesting order, other kin want child placed with them
- Child expressed her views clearly in a letter...



Assess

Assessment of Needs – Child/Family, Department, Stakeholders

- Child
 - Stability, a sense of control, connection
- Department
 - Prioritise child's needs
 - Consider needs and interests of parties/stakeholders
 - Adhere to legislation and policy requirements
 - Operate in accordance with natural justice principles
 - Make decisions based on good evidence
- Stakeholders (court, solicitors, service providers)
 - Informed regarding hearing/processes
 - Assistance in hearing preparation
 - Adequate information to inform decision making



Plan

Planning Goals and Strategies

– Goals:

- Child to feel she is influencing decisions
- LTG granted to Chief Executive
- Current placement with kin maintained
- Other potential kinship carers to be assessed and discounted as placement option prior to hearing
- Mother fully informed of process and rights
- Court provided all relevant information as obtained



Plan

Planning Goals and Strategies

- Strategies (e.g.)
 - Ask questions about child's views during case discussions. Seek feedback from child following hearing.
 - Obtain information via 159 letters or subpoena
 - Affidavits from service providers/carers/Dept staff – direct evidence
 - Hearing date to be set by end of 2008
 - Monitor progress of kinship carer assessment process, to be commenced and finalised prior to hearing
 - Provide witnesses with 3 months notice of hearing
 - Maintain contact with witnesses and prepare witnesses as necessary
 - Training and quality assurance re affidavits – concise, direct evidence, legislation, thorough etc
 - Monitor casework, ensure tasks being completed
 - Ensure mother and sep rep receive all material 5 days prior to any mention



Implement

Implement

- Case discussions/AICs
- Follow up with CSO/TL
- Regular contact with Court Services
- Close communication with witnesses
- Etc



Review

- LTG granted June 2009
- Feedback from child
- Preparing witnesses paid off – all available for hearing, all presented well
- Feedback from Sep Rep Barrister – well prepared file
- 159 letters – successful. No subpoenas for info required
- All material provided, only once within 3 days of mention
- Kinship carer assessment – has not occurred



Assessing – What are the current needs

- Discussion – what are current needs/expectations in your office?



Planning – Goals and Strategies

- Discussion – 6-month goals
- SMART goals – specific, measurable, attainable, realistic, timely
E.g. “Enhance staff practice” – not smart
 - 80% affidavits filed 7 days prior to court
 - Affidavit of CSO Jones – 2 hours editing only
 - Words “we’ll support you in Family Court” not used prior to case discussion





Planning – Goals and Strategies

- Small groups (6mins)
 - What are your SMART goals for next 6 months?
 - What are some strategies to achieve goals?
- Feedback to large group



Reviewing – Measuring change

- Discussion – what are some ways you measure whether or not you have met your goals?
- Obtaining feedback
 - 360° feedback aka multisource assessment
 - Feedback from subordinates, peers and supervisors
 - Self reflection v performance appraisal



Reviewing – Measuring change

360° feedback for Court Coordinators



Reviewing – Measuring change

360° Feedback Research

- Best done after 12 months, prior to 3 years (long enough to get past first impressions, but not so long as to begin to generalize favourably) (Eichinger, 2004).
- Controversy regarding application – personal improvement v workplace assessment (Waldman et al., 1998)
- Opinions may differ, whose is correct? (Vinson, 1996)

So...Keep It Simple



Reviewing – Measuring change

Feedback tools

- Based on Court Coordinator Workplace Competency document
- Developed for Staff, Court Services, Solicitors, Court Staff
- Starting point – CC role as prescribed
- Yes/No paradigm – forced decision (v likert scale)
- Not “statewide” document – not distributed by Court Services, not a review of the position (more complex process)
- For your modification and use, development/training needs



Reviewing – Measuring change

- Benefits?
- Drawbacks?



Reviewing – Measuring change

- Other measures
 - Peer feedback/mentors
 - Self reflection
 - Practice measures (analysis etc)
 - Court quiz to test knowledge
 - Look at adjournment lengths and reasons
 - Cooperation and information sharing with stakeholders
 - Verbal feedback through meetings



Putting it all together...

- Court Coordinators make a difference – with staff, with stakeholders, and most importantly with children and families
- Important for Court Coordinators to plan for and measure change – personal satisfaction, best use of time
- Several ways to review change, e.g. feedback surveys



"The most important thing in life is not to capitalise on your successes - any fool can do that. The really important thing is to profit from your mistakes."

(William Bolitho, from 'Twelve against the Gods')





Children's Court in remote communities

Can we make a difference?



**CLOSE FOR COURT
IN PROCESS.
RE-OPEN WHEN
FINISH.**

THANK YOU
IBIS MANAGER

View from Thursday Island branch
office



Thursday Island Courthouse





Runway Yorke Island



Court plane



"Closed" Court on Yorke Island

Court Yorke Island





Mornington Island Police
Station and Courthouse



Mornington Island



Coen Airport



AURUKU



Kowanyama Justice Centre



Pormpuraaw Justice Centre

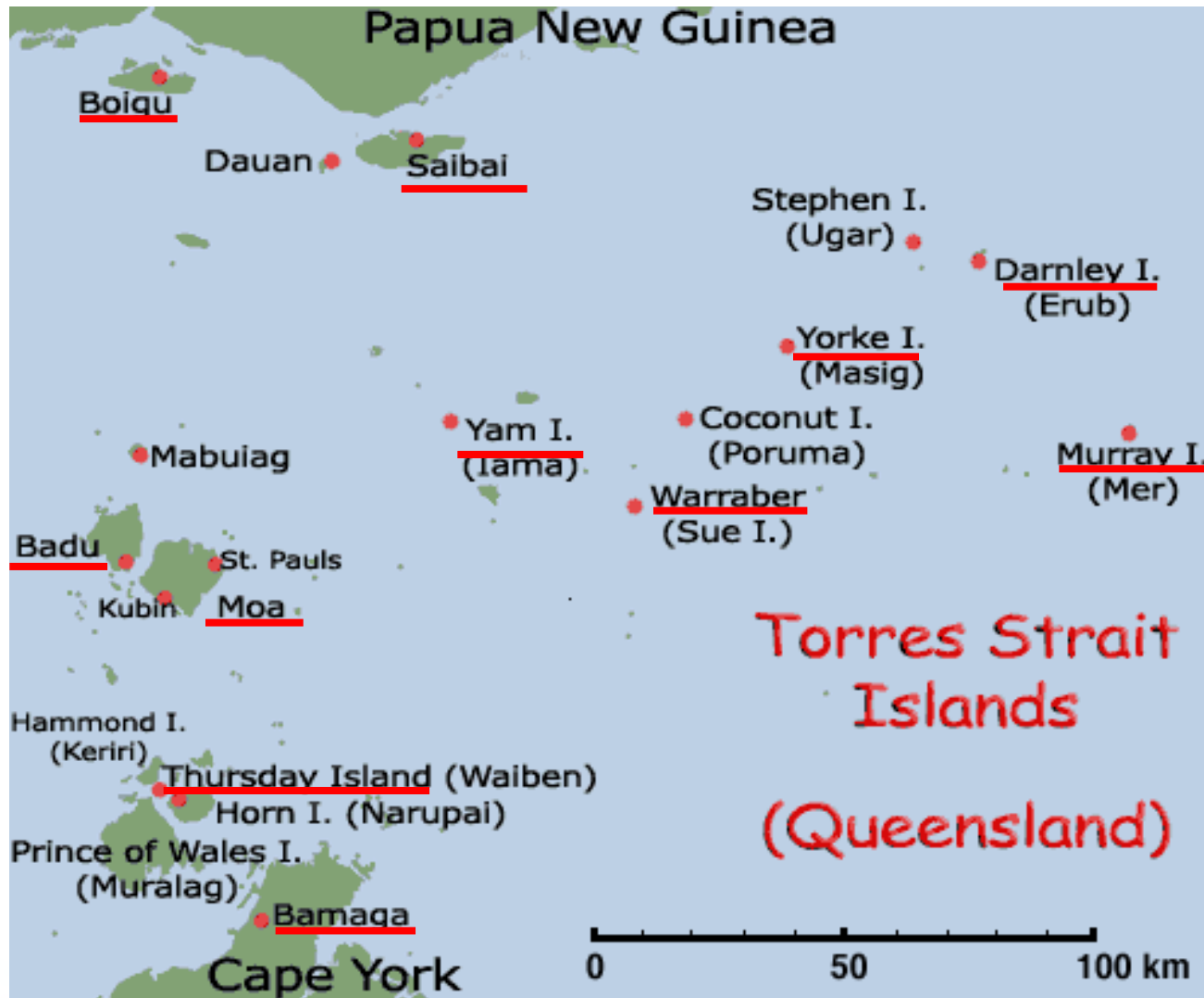
Court Calendar Cape York and Torres Strait Islands CSSC

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
SA								1				
SUN		1	1					2			1	
MON		2 Cairns	2 Cairns			1 Cairns		3 Cairns			2 Cairns	
TUE		3 Cooktown	3 Cooktown			2 Cooktown		4 Cooktown	1 Cooktown		3 Cooktown	1 Cooktown
WED		4 Wujal Wujal	4 Hopevale	1		3 Wujal Wujal	1	5 Wujal Wujal	2 Hopevale		4 Hopevale	2 Wujal Wujal
THU	1	5	5	2		4	2	6	3	1	5	3
FRI	2	6	6	3	1	5	3	7	4	2	6	4
SAT	3	7	7	4	2	6	4	8	5	3	7	5
SUN	4	8	8	5	3	7	5	9	6	4	8	6
MON	5 Cairns	9 Cairns / TI	9 Cairns / TI	6 Cairns	4 Cairns	8 Cairns	6 Cairns	10 Cairns / TI	7 Cairns / TI	5 Cairns	9 Cairns / TI	7 Cairns / TI
TUE	6 Cooktown	10	10	7 Cooktown	5 Cooktown	9 Cairns / TI	7 Cooktown	11	8	6 Cooktown	10	8
WED	7 Hopevale	11 Bamaga	11 Bamaga	8 Wujal Wujal	6 Hopevale	10 Bamaga	8 Hopevale	12 Bamaga	9 Bamaga	7 Wujal Wujal	11 Bamaga	9 Bamaga
THU	8	12	12	9	7	11	9	13	10	8	12	10
FRI	9	13	13	10	8	12	10	14	11	9	13	11
SAT	10	14	14	11	9	13	11	15	12	10	14	12
SUN	11	15	15	12	10	14	12	16	13	11	15	13
MON	12 Cairns / TI	16 Cairns/Weipa	16 Cairns/Weipa	13 Cairns	11 Cairns / TI	15 Cairns/Weipa	13 Cairns / TI	17 Cairns/Weipa	14 Cairns/Weipa	12 Cairns / TI	16 Cairns/Weipa	14 Cairns/Weipa
TUE	13	17 Aurukun	17 Aurukun	14 TI	12	16 Aurukun	14	18 Aurukun	15 Aurukun	13	17 Aurukun	15 Aurukun
WED	14 Bamaga	18	18 Kowanyama	15 Bamaga	13 Bamaga	17	15 Bamaga	19	16 Kowanyama	14 Bamaga	18 Kowanyama	16
THU	15	19 Kow/Lockhart	19 Lockhart	16	14	18 Kow/Lockhart	16	20 Kow/Lockhart	17 Lockhart	15	19 Lockhart	17 Kow/Lockhart
FRI	16	20 Pormpuraaw	20 Coen/Pormp	17	15	19 Pormpuraaw	17	21 Pormpuraaw	18 Coen/Pormp	16	20 Coen/Pormp	18 Pormpuraaw
SAT	17	21	21	18	16	20	18	22	19	17	21	19
SUN	18	22	22	19	17	21	19	23	20	18	22	20
MON	19 Cairns/Weipa	23 Cairns/Moa Isl	23 Cairns	20 Cairns/Weipa	18 Cairns/Weipa	22 Cairns	20 Cairns/Weipa	24 Cairns/Yam Isl	21 Cairns	19 Cairns/Weipa	23 Cairns	21 Cairns
TUE	20 Aurukun	24 Boigu Isl	24	21 Aurukun	19 Aurukun	23	21 Aurukun	25 Boigu Isl	22	20 Aurukun	24	22
WED	21 Kowanyama	25 Yorke Isl	25	22	20 Kow/Lockhart	24	22 Kowanyama	26 Darnley Isl	23	21	25	23
THU	22 Lockhart	26 Mer Isl	26	23 Kow/Lockhart	21 Coen/Pormpuraaw	25	23 Lockhart	27 Mer Isl	24	22 Kow/Lockhart	26	24
FRI	23 Coen/Pormp	27	27	24 Pormpuraaw	22	26	24 Coen/Pormp	28	25	23 Pormpuraaw	27	25
SAT	24	28	28	25	23	27	25	29	26	24	28	26
SUN	25		29	26	24	28	26	30	27	25	29	27
MON	26 Cairns		30 Cairns	27 Cairns/Warraber Isl	25 Cairns/Yam Isl	28	27 Cairns/Warraber Isl	31 Cairns	28 Cairns	26 Cairns/Warraber Isl	30 Cairns	28 Cairns
TUE	27 Yam Isl		31	28 Saibai Isl	26 Boigu Isl	30	28 Saibai Isl		29	27 Moa Isl		29
WED	28 Badu Isl			29 Badu Isl	27 Moa Isl		29 Badu Isl		30	28 Badu Isl		30
THU	29 Saibai Isl			30 Darnley Isl	28 Mer Isl		30 Yorke Isl			29 Yorke Isl		31
FRI	30				29		31					
SAT	31				30					31		
SUN					31							

Communities North West Queensland (Gulf CSSC)



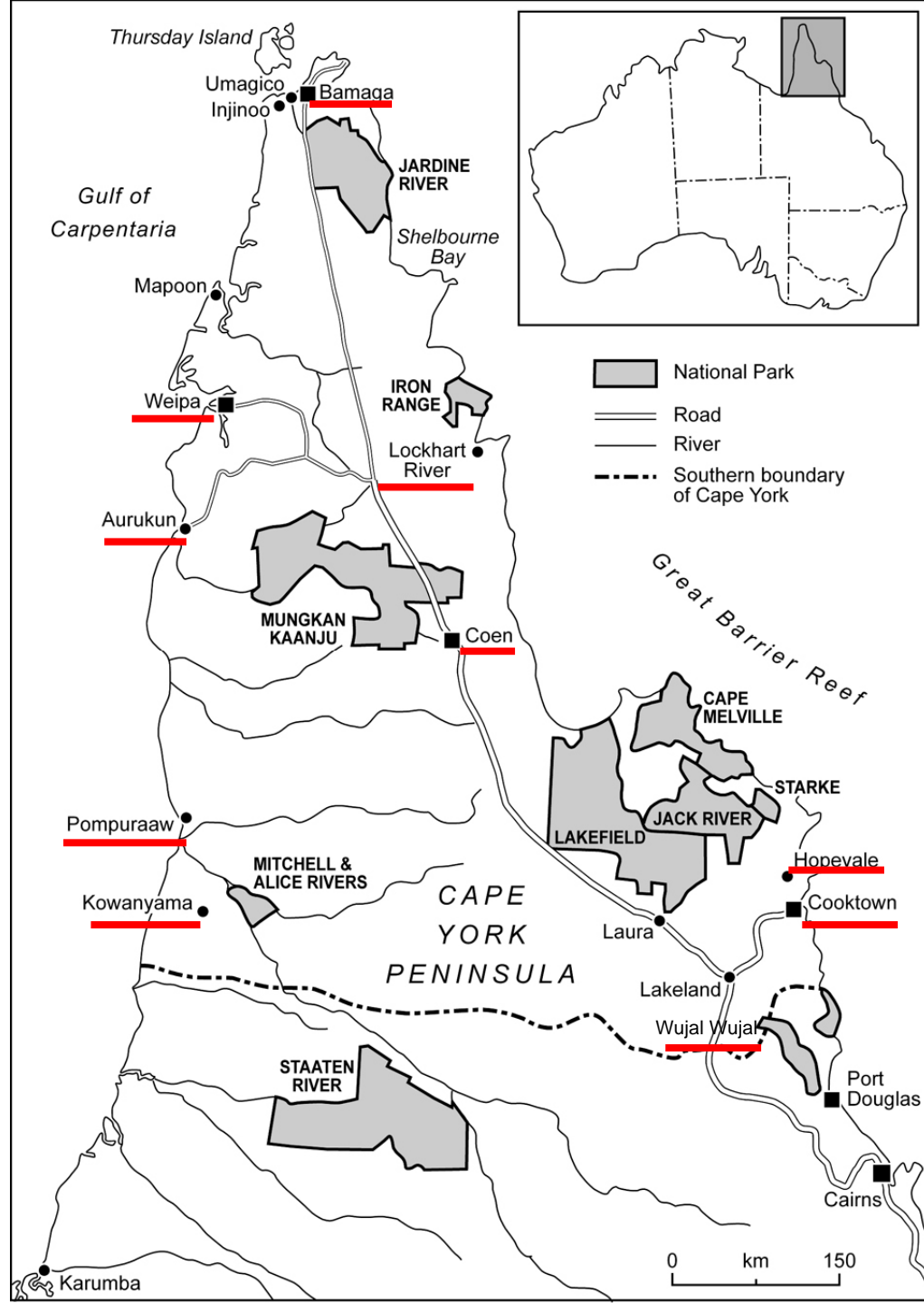
Torres Strait Islands



= 3 monthly
courts
available

Communities Cape York

= monthly
courts
available





Time in motion

- **Examples of estimated travel time per Court:**

Weipa: 6,5 hours return by plane to and from Cairns

Cooktown: 5 hours return by plane to and from Cairns

Kowanyama: 4,5 hours return by plane to and from
Weipa

Thursday Isl: 8 hours return by plane/ferry to and
from Cairns

Bamaga: 5 hours return by ferry to and from Thursday
Isl

- On average Court Coordinators in the Cape York and Torres Strait Islands service centres spend 25-30% of their work hours travelling.

- The average amount of mentions for the Cape York and

Where to file?

Application	Court Location	Court Registry for filing
CAO or CPO	Cairns →	Cairns Registry - Sheridan Street Cairns Phone: 4039 8900 Fax: 4039 8933 Email: courthouse.cairns@justice.qld.gov.au
	Aurukun Kowanyama Lockhart River Coen Pormpuraaw	
	Cooktown →	Cooktown Registry - Charlotte Street Phone: 4069 5333 Fax: 4069 5864 Email: courthouse.cooktown@justice.qld.gov.au
	Laura Hopevale Wujal Wujal	
	Thursday Island →	Thursday Island Registry - Douglas Street Phone: 4069 1503 Fax: 4069 1438 Email: courthouse.thursdayisland@justice.qld.gov.au
	Outer Islands Bamaga Injinoo Umagico Seisia New Mapoon	
	Weipa →	Weipa Registry - Central Avenue Phone: 4069 9999 Fax: 4069 9160 Email: courthouse.weipa@justice.qld.gov.au
	Old Mapoon Napranum	

Gulf CSSC – some interesting facts

- Since June 2008 only two matters have proceeded to COC in this time; both resolved at the COC.
- Approximately 6 contested interim orders or CAO applications in this time; in all cases the orders granted were the orders sought.
- From 2007 to June 2008 legal representation for parents was about 10-15%
- Currently, approximately 40-45% of matters involve legal representatives at the end of proceedings. Half of these include representation for both parents; in the other cases it is generally the mother who is represented.



Gulf CSSC – Current court work experience

- There are currently only two CSO's in the office who have written more than 6 affidavits of any kind (including supplementary/addendum affidavits)
- About 85% of CSO's have written no more than one CAO application or an affidavit.

CP Act 1999 and working in remote and isolated areas

- 1) Sections 23, 37, 51F, 52, 67(3), 117(3), 205 and 242 *Child Protection Act 1999*; these definitions of a parent do not acknowledge persons who are regarded as parents under Island custom or Aboriginal tradition.
- 2) Section 30 *Child Protection Act 1999*; Magistrates' reluctance to making temporary assessment orders without a sworn or affirmed written application before them.
- 3) Section 195(3) and (4) *Child Protection Act 1999*; What constitutes "reasonably practicable" and/or "reasonable inquiries" in remote settings vs urban settings?



Case example

A 12 year old girl from Dauan Island, who was traditionally adopted at birth, is believed to be at immediate risk of harm. The CSO who is currently on the Island has advised you that a TAO is needed to ensure her safety. The child protection concerns relate to the traditional adoptive parents. The whereabouts of the biological parents are unknown and they have no input in the child's life. The girl does not know she is traditionally adopted.

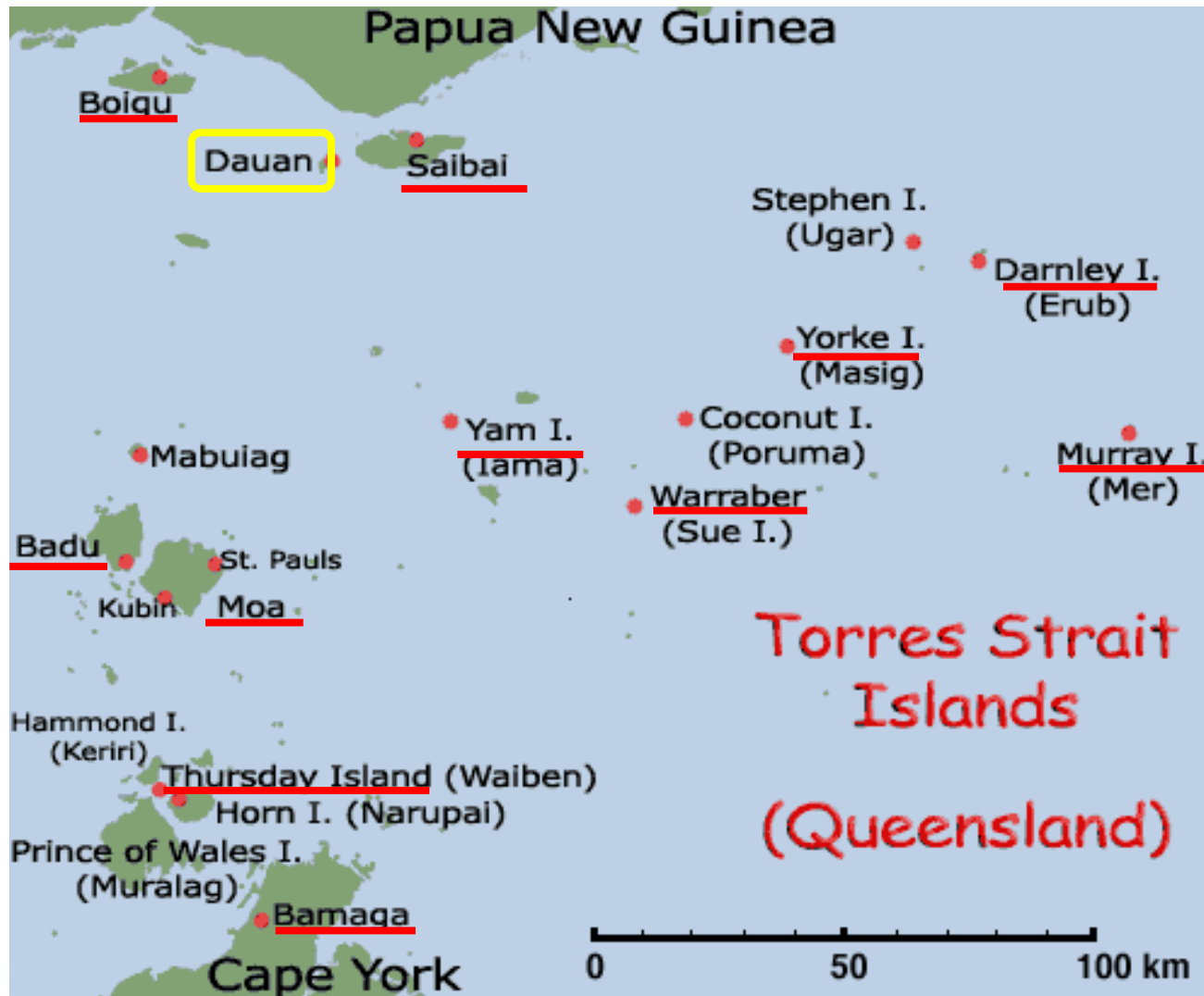


Case example - continued

Dauan Island:

- Is located approximately 150km from mainland Australia;
- Has a population of approximately 100;
- Has no runway;
- Is only accessible by ferry three days a week from Saibai Island or by helicopter;
- Has no permanent Police officer or other support services available.

Torres Strait Islands



= 3 monthly
courts
available



Case example - continued

- The CSO has further informed you that it is also likely that an application for a CPO will be made.
- During the initial stages of the investigation no suitable placements have been located on Dauan Island or surrounding Islands.
- There is no Recognised Entity available for the area.
- The nearest court on Saibai Island sits three times a year; a monthly court sits on Thursday Island 120km away.



Things that Court Coordinator considered

- Do we inform the child of the fact that she has been traditionally adopted?
- Do we serve and include the biological parents in the court process despite the fact they have had no involvement in the child's life since birth?
- How do we ensure appropriate service of the documents?
- How do we access a Magistrate whilst the applicant is on Dauan Island?



Things that Court Coordinator considered - continued

- In what registry do we file the court material?
- How do we ensure natural justice?
- How can appropriate evidence be gathered given the remoteness of location and limited resources available?
- How do we comply with section 6 and 83 of the *Child Protection Act 1999*?



Activity 1

- Please divide in small groups

- Discuss in small groups:

What do you believe are the key issues or challenges faced by:

- Court coordinators working in remote courts

- Families

- Feedback from small groups



Identified key issues and challenges

- 1) Limited access to legal services
- 2) Difficulties in complying with section 83
- 3) Difficulties in complying with section 6



Identified key issues and challenges - continued

- 4) Lack of infrastructure and resources
- 5) Difficulties in filing and serving court material
- 6) Cultural difficulties
- 7) Attendance of parents at court



Activity 2

- Please divide in the same small groups

- Discuss in small groups:

How can we make a difference?

Identify possible strategies or solutions to the key issues and challenges

- Feedback from small groups



How can we make a difference?

1. “fax back system”. Encourage parents to seek legal advice.
2. Establishment of Safe House project in communities ; elaborate on placement in affidavits; liaising with solicitors generally but particularly with regard to possible placements early in the process.
3. Provide training; built relationships;
Invite member of the Community Justice Group?



FAX BACK REFERRAL FORM

Name of Client(s): _____

(only list multiple clients on one form if they live together; ie husband and wife or de facto's)

Signature of Client(s): _____

(only refer if the client consents to the referral and is prepared to sign the form)

Name of Other Party(ies): _____

(Other parents/respondents): _____

Date of Birth of Client(s): _____

Address of Client(s): _____

Best phone contact for Client(s): _____

(if any available)

Matters for which client is being referred to IFSU - (Please tick appropriate boxes in addition to Child Protection)

Legal

- ☐ Domestic or Family Violence
- ☐ Family Law
- ☒ Child Protection
- ☐ Criminal Injuries Compensation (Victims Compensation)
- ☐ Sexual Assault Matters

Counselling

- ☐ Positive Parenting Program
- ☐ Grief Counselling
- ☐ Anger Management
- ☐ Stress, anxiety, depression

Other Issues, Relevant Information or Comments:

Referred by: _____

Gulf Office of the Department of Child Safety (name)
Phone 07 4747 3491 (organization)

Date: _____

Please note: Do not hesitate to refer even if you are unsure as to whether or not we can assist.

FAX COMPLETED FORM TO IFSU ON: 07 4749 5955.

Fax back referral form



How can we make a difference? - continued

4. Video conferencing; predictive planning; training; pro-active attitude
5. “Filing fact sheet”; training; “smart” ways of serving material.



How can we make a difference? - continued

6. Use of RE as interpreter; include cultural adoptive parents in casework; use of section 113 non-party.
7. Initial discussions with the family violence prevention legal service about the potential for the provision of transport to parents to attend court.



Questions / Comments

“Unacceptable risk of harm”

Relevant provisions of the *Child Protection Act 1999* (Qld)

Facilitated by:
Poonam Wijesoma (Court Services Adviser)

Relevant provisions of the *Child Protection Act 1999* (Qld) – (“CP Act”)

- Section 4;
- Section 5 (1) & (2);
- Section 9;
- Section 10;
- Section 104;
- Section 105;



Sections 4 & 5 of the CP Act

- Section 4:
 - The purpose of this Act is to provide for the protection of children.
- Section 5:
 - s.5(1) – This Act is to be administered under the principle that the welfare and best interests of a child are paramount;
 - s.5(2) – Principles for administering the Act

Section 5 continued

- *Child Protection Bill 1998* – Explanatory notes in relation to section 5:

*The Bill's administration will be founded on the principles that **every child has a right to protection from harm** and that therefore **the welfare and best interests of the child are paramount**.*

The Bill establishes the responsibility of the State to intervene to protect children while recognising that the primary responsibility for the care and protection of children rests with the family. The principles clarify how these competing factors should be balanced. For example, the Bill indicates that intervention should be at the least intrusive level necessary to protect the child and that intervention should be aimed at supporting the child's family to meet the child's protective needs.



Section 9 – definition of “*harm*”

- Section 9(1):

Harm, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional well-being



Section 10 – Who is a “*child in need of protection*”

A ***child in need of protection*** is a child who –

- (a) **has suffered** harm, **is suffering** harm, or is **at unacceptable risk** of suffering harm; **and**
- (b) does not have a parent able and willing to protect the child from harm

- Section 10 enlivens our intervention in the Childrens Court and is the threshold question that must be satisfied before the Court can make a Child Protection Order – see ss 53(2) and 59(1)

CP Act;

Section 104 – Paramount consideration for Court

“In exercising its jurisdiction or powers, the Childrens Court must regard **the welfare and best interests of the child as paramount**”



Section 105 – Rules of Evidence & Onus of Proof

- “(1) In a proceeding, the Childrens Court is **not bound by the rules of evidence**, but may inform itself in any way it thinks appropriate.

- (2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court **need only be satisfied** of the matter **on the balance of probabilities**;

Section 105(2) continued

Briginshaw Test

- The degree of satisfaction demanded may depend on the nature of the issue.

*“Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. **But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.** In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences.”*

Briginshaw v Briginshaw (1938) 60 CLR 336 per Dixon J

Section 105(2) continued

Re H & Ors (minors) [1996] 1 All ER 1 at 17 per Lord Nicholls of Birkenhead

*“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that **the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence** before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.”*

Affidavits & Presenting Best Evidence Gathering, Assessing, Preparing

Department of Communities (Child Safety Services)
Court Coordinator Training
19 – 21 October 2009

Learning Objectives?

You will:

- appreciate the Human Rights Framework for Child Protection litigation
- appreciate the overall considerations of the Children's Court in making Child Protection Orders
- understand the importance of Affidavits and the presentation of "best evidence"
- learn tips about the presentation of "best evidence"
- learn tips about the preparation of Affidavits
- participate in a Socratic Workshop

Establishing the Human Rights Framework for Child Protection Litigation

Fundamental Human Rights Interference

- Removing a child from their family of origin affects the basic human rights of children and young people - it is one of the most fundamental human rights interference that could ever occur
- Decisions and actions in Child Protection litigation should ALWAYS operate in the “best interests” of children and young people

Convention of the Rights of the Child (CROC)

- Right not to be discriminated against (Article 2)
- Right of a child to have their best interests considered (Article 3)
- Right to be protected from being hurt or mistreated (Article 19)
- Right to live with their parents unless it is unsafe to do so (Article 9) and right to be raised by their parents, if possible (Article 18)
- Right to special care and help if they can not live with their parents (Article 20)
- Right to care and protection if they are in out of home care or are adopted (Article 21)
- **Right to have a say and participate in the decisions made about them (Article 12)** and to find out things (Article 13)
- A right to care and protection if they are in out of home care or are adopted (Article 21) and if in out of home care, the right to have these arrangements looked at and reviewed regularly (Article 25)

What are the Charter Rights for Children and Young People in care?

- be provided with a safe and stable living environment
- be placed in care that best meets their needs and is most culturally appropriate
- maintain relationships with their family and community
- be consulted about, and take part in making decisions affecting their life (having regard to their age or ability to understand), particularly decisions about where they are living, contact with their family and their health and schooling
- be given information about decisions and plans concerning their future and personal history, having regard to their age or ability to understand
- privacy, including, for example, in relation to their personal information
- if they are under the long-term guardianship of the chief executive, to regular review their care arrangements
- have access to dental, medical and therapeutic services, necessary to meet their needs
- have access to education appropriate to their age and development
- have access to job training opportunities and help in finding appropriate employment
- receive appropriate help with the transition from being a child in care to independence, including, for example, help about housing, access to income support and training and education

Where is CROC in the Child Protection Act 1999?

- Section 5 - Principles
- Sections 6 and 83 - Indigenous Families
- Section 74 and Schedule 1 - Charter of Rights
- Section 122 - Standards of Care

What must the Court consider
before making a Child
Protection Order?

Who makes the final decision?

- Each party must tell the Court what outcome it seeks and upon what evidence is relied upon to achieve that outcome
- Once all of the evidence is before the Court then the **COURT** determines whether and what sort of Child Protection Order should be made

Child Protection is important work!

- it is important to get a result for the child that protects them, is in their best interests and does no further harm
- the Court needs evidence to make a decision as to whether, and if so, what Order should be made
- “Evidence” comes from the:
 1. written material filed (AFFIDAVITS)
 2. questioning that happens in the Court of any witnesses (EXAMINATION)
 3. tendering of documents or other exhibits (SUBPOENAED MATERIAL)

Four Key Questions & Section 59 Factors

Have you answered the Four Key Questions?

Be guided by the Four Key Questions in everything you do!

1. Is there a *child* in *need of protection from harm* and *what is the harm?* (*past, present & future*) [Sections 9 and 10]
2. Is there a parent *willing* and *able* to protect the child from that harm?
3. Is there an appropriate *Case Plan* to address the child or young person's needs?
4. What is the *least intrusive Order* that secures that protection? (remember that the least intrusive is not always the shortest or only seeking custody - sometimes it is long term guardianship)

Have all the Section 59 Factors been attended to?

- Has a **Family Group Meeting** been held? The Court has the power to order a FGM be held [Section 68]
- Has a **Court Ordered Conference** been held?
- Has the **Case Plan or Review Report & Revised Case Plan** been filed? [Sections 51X, 51Y and 59 (2)]
- Have the **child's views and wishes** been established?

What is the best way to assist
the Court in its decision
making?

MIND THE GAP!

- * **GATHER** all relevant information
- * **ASSESS** the information gathered and establish your case theory
- * **PREPARE** your case thoroughly and present the Court with the most relevant, the best and expert evidence which addresses the key questions that the Court must consider

GATHER

Do not leave evidence gathering until
a matter is before the Court!

THOUGHT SHOULD BE GIVEN TO...

- the Four Key Questions
- what is your case theory and how are you going to demonstrate that to the Court?
- where are the best sources of information?

Where do you go for Evidence?

- Review the Integrated Client Management System (IMCS) for previous history (inclusive of the history of the parents, step-parents and other any relevant party)
- Determine whether the family may have had prior involvement with Child Protection Agencies in other jurisdictions – contact Interstate Liaison Officers for assistance
- Have there been previous Child Protection Orders? If so, locate copies of all Case Plans and determine what were the Case Plan goals and have those goals been met

Where do you go for Evidence?

- Obtain Criminal History, Domestic Violence History & Traffic History checks (obtain final advices, including interstate checks)
- Has there been Family Law Court proceedings? If so, obtain copies of Orders and Judgments (if available), together with any other relevant documents. Seek advice from Court Services about how to use the information contained in these documents
- Parentage testing? Remember it is important to establish who is a “parent” for the purposes of the proceedings and that you will need to serve any person who is established as being a parent with copies of all documents filed in the proceedings

What can the Department do to gather Evidence?

- Obtaining consent from the parents or other relevant parties for third parties to release of information (e.g. General Medical Practitioners, Counsellors)
- Issuing Notices pursuant to Section 159
- Issuing Subpoenas
- Obtaining reports from relevant parties (e.g. Community Support Agencies, Schools or other therapeutic interveners)
- Briefing an Assessor (e.g. Psychologist, Psychiatrist) – remember that the best assessment comes from a well briefed Assessor

ASSESS

What should you do to assess the Evidence?

- **Read and Review** all of the information that is gathered
- Keep at the forefront of your mind the **Four Key Questions** and the **Section 59 Factors** when assessing the information
- **Ground your case theory in evidence** – if you say something has to happen, there should be sufficient information to demonstrate why
- Do not be afraid to change your case theory, if necessary. This is not weak, it is strong! Don't be afraid to concede a weak point - it makes your strong points even stronger AND better yet it makes you a model and fair litigant
- Take a stand where you have to! BUT make sure you are on solid ground, not quicksand!

Establish the probative value of any Child Protection History

- If previous Child Protection history is to be relied upon, then there should be a clear rationale as to why (e.g. why is it necessary to include Child Protection history whereby no further intervention was given to the family) - what does this history tell you? If you want the Court to properly understand the risk of harm, it is your job as the Applicant to explain it to the Court and the other parties to the proceedings properly
- If previous Child Protection history is to be included, then ALL information about this previous history should be included in the decision making process and provided to the Court and the other parties to the proceedings

PREPARE

THE CASE PLAN IS... A KEY PIECE OF EVIDENCE!!

- Remember Section 59 says an Order should not be made without a developed or revised Case Plan. Therefore the development of a Case Plan is not optional – it is mandatory. But do not be afraid of that - be prepared!
- In short Case Plans should be well reasoned, researched and detailed, including full particulars of how things are going to occur, what is involved, full particulars of the available services and how those services are to be involved?
- Remember you can be cross examined on what you have and haven't done in the Case Plan! So is it clear? Does it make sense? Has the Department done what it said it would do?

THE CASE PLAN IS... A KEY PIECE OF EVIDENCE!!

- A Case Plan will evolve over time - it is a living document, a moveable feast. Remember you may have to change the game plan! What you thought was the right approach at the start, may change as the Case Plan is actioned and implemented. Good case work makes what Order you are seeking a lot clearer!
- Also remember that a well prepared Case Plan may mean that a matter can settle, as it is more likely to get the support of the parent's Lawyer and the Separate Representative – thus a full blown Trial will become unnecessary
- It will be hard to manage, but if the work and preparation is there, then adapting the Case Plan will be easier over time

The presentation of Affidavits
and “best” evidence is
CRITICAL

Good Presentation is not...

“The Vibe of the Thing”

- It's the Vibe of thing – scene

Never underestimate the critical importance
of **WELL PREPARED** Affidavits

If Affidavits do not contain the best evidence
to support a Child Protection Order,
the Order may not be granted!

Affidavits form the basis of your case before the Court

- Affidavits are your “evidence-in-chief” - that is, all of the information sought to be relied upon should be reduced to writing in proper form, filed with the Court and served in a timely way on the other parties involved in the proceedings
- With limited expectations, there should be no other information that you would seek to have the Court know about other than that which has been included in the Affidavits filed with the Court
- And you should give the other parties a chance to consider it. Service on the door of the Court is “Trial by ambush” and is not in line with the Section 5 Principles!

Myth or Reality?

The longer the Affidavit is the
better the Evidence!

Myth Busted

Bigger is not better!!

- Long/ “a cut and paste” from the precedent or prior Affidavit is generally lazy evidence presentation
- Short & sweet and to the point is the way to go
- Answer the Four Key Questions and address the Section 59 Factors

Myth or Reality?

Using big words

(like Departmental jargon or Legalese)

makes the Affidavit much
more convincing!

Myth Busted

Plain English is the way to go!!

- Families read Affidavits - make the content simple
- Don't you want the family to understand what the Department is saying?
- This is part of a child's life story! Think about a child reading what you have said when they are older - their file is their family album and their history

Myth or Reality?

Children and Young People's participation is all about them picking sides...

- if they don't want to go home? The Department wins!
- if they do want to go home? The parent wins!

...so if you have a Child or Young Person disclosing, make sure you identify their disclosures in your Affidavit so that their parents can hear what they are saying!

Myth Busted

Participation is about having a say - not taking sides or running your case!!

- Do not put Children and Young People in the middle
- Do not vilify them or their parents to make a point
- NEVER identify the disclosures they make and put them in Affidavits - it is not only in breach of the law, it may put them at risk of harm!

Affidavit Dos

- Tell the story of the case
- Ideally be chronological and also clearly address the matters that need to be proved
- Set out, in a clear, concise and logical format all of the matters which are relevant to the case and which are known to the author of the Affidavit
- Allow the reader (who knows nothing about the facts of the case, or the identity of the persons involved) to understand the material points within their proper context
- Clearly address the important issues
- Use headings to make the issues clear to the reader

Affidavit Dos

- Explain your Qualifications (**done once and can cut and paste**)
- Explain your role (**done once and can cut and paste**)
- Explain your involvement, including length of time
- Explain the family (**establish a Genogram - this could be an Exhibit and is also an extremely useful tool for working with the family, talking to the child and handing over the file**)
- Identify the Order you are seeking
- Explain why you want that type of Order, addressing the Four Key Questions
- Show the Court that you have addressed the Section 59 Factors
- Carefully analyse what your Exhibits tell the Court and choose your Exhibits carefully (**what do you want the Court to draw from a Child Protection history? Criminal history? Domestic Violence Orders?**)
- Provide a clear concise summary, so in a couple of paragraphs the Court knows what you are asking it to do

Affidavits Don'ts

- Factual ambiguity – unclear/generalised statements
- Non-child focused statements – these Affidavits are usually self serving
- A lack of particulars - these Affidavits have a tendency to provide a summary of the matter without including the evidence underpinning it
- A failure to disclose all information that should be disclosed
- Statements that “slam” or “blame” the other party/do not take responsibility for things that have gone wrong (e.g. saying that poor communication between the parties is all the fault of the other side) or that fail to give credit where it is due

Affidavit Don'ts

- Material that is “cut and pasted” from the author’s earlier Affidavit – usually there is more paragraphs added in, but these Affidavits do not tell anyone what has been done

This can be easily rectified – feel free to rely on an earlier Affidavits and do a short updating Affidavit which sets out the new information. The shorter Affidavit can begin with a phrase such as, *“I rely on the contents of my Affidavit filed with this Honourable Court on 14 May 2009. I confirm its contents are true and correct. This Affidavit provides information that has come to hand since that time.”*

Writing Affidavits

- Everyone will have their own system and style, but it is true to say that all good Affidavits take time and it is also true to say how you keep the file assists greatly in Affidavit preparation
- **ALWAYS REMEMBER:**
 - the Four Key Questions and the Section 59 Factors
 - Sections 5, 9 & 10 and Sections 6 & 83 for indigenous children
- Ensure that the evidence exists to establish these elements, and importantly that the evidence supports the case theory behind the specific Child Protection Order being sought
- Also remember to clearly provide details of the rationale for the Case Plan, together with the particulars of who participated in the Case Planning and how they participated

Writing Affidavits

- Plan the structure and the contents - the Affidavit should clearly detail the facts/information you have gathered and which support the case theory underlining the Orders being sought
- Write your Affidavit on the assumption that the Application will be contested and that you will be rigorously cross examined
- Check the accuracy and consistency of your information
- Identifying your notifiers is in breach of the legislation
- Putting children and young people's clearly identified disclosures in Affidavits is not only in breach of the legislation it could put their lives at risk- NEVER DO IT!

Writing Affidavits

- Information contained in your Affidavit should be verifiable – in these circumstances maintain up to date records and ensure that the information contained in the Affidavit is accurately reflected as that which is recorded in Departmental records, if this is the source of information relied upon
- Ensure that any opinions expressed are within your expertise and include the basis on which you have formed the opinion
- Avoid hearsay evidence where possible, it carries less weight than direct evidence - apply the best evidence rule
- If you have to use acronyms, **always** provide a definition (e.g. Child Safety Support Officer = CSSO)

Writing Affidavits

- Prepare more than one draft
- Ensure that Affidavits are completed in time for Court Services/Crown Law to be properly involved
- Always apply “Model Litigant Principles” – e.g. ensure that the information provides a balanced view of the situation, remember it may be necessary to include information that does not go toward supporting the Child Protection Order

Testing Affidavits in the Examination of Witnesses

- The process of testing the evidence in the Affidavits happens by the person who has written the Affidavit being asked questions in Court. This process is called **Cross Examination**
- Every author of every Affidavit (deponent) must be prepared to come along to Court and to answer questions on oath, meaning they swear on a bible, or by affirmation to the truth of the evidence they give
- Sometimes another party will choose to say that they do not require a particular deponent to be made available for cross-examination. In that instance, the Affidavit is placed before the Magistrate with no real contest as to its contents
- For each point that you really want the Court to pay attention to you need the most relevant and pertinent witness to write the Affidavit and be ready and willing to come to Court

So what are the main messages?

- each legal proceedings have different factual issues that must be proved
- an Applicant seeking a Child Protection Order should always address the Four Key Questions & the Section 59 Factors
- an Applicant also should be aware of the concepts which are set out in Sections 6, 8, 9 & 83
- Sections 61 and 62 are also important in understanding what Orders the Court can make
- at all times an Applicant should adhere to the principles which are set out in Section 5 and the Model Litigant Principals

Ultimately though...

At the centre of all this litigation...

is a child or young person...

It may be a file to you, but to them this is their family and their life...

think of the life story that litigation helps create for them!!

Workshop Scenario

Learning Plan for Court Coordinators

Creating a pathway of learning in
the Children Services Tribunal

The Future

- As we move into QCAT what does the future hold?
- As a Court Coordinator how can we engage in a meaningful learning process around those duties which arise from the Tribunal program area.



Motivations

- Need to recognise CSSC have varying exposure to this jurisdiction
- Court Services will always maintain a role which includes coordination and quality assurance mechanisms
- However want to enable Court Coordinators to develop professionally, and build capacity in this area

Creation of a Learning Plan

- Work in progress
- Seeking feedback
- Need to read the 'Learning Plan' in conjunction with 'Role of Court Coordinator' document in manual



Introductory Level

- Read Government Solicitor's article
- Complete Ct Coord Induction program
- Do Quiz (x2) as provided to you by CSA
- Participate in a case discussion with CSA and CSSC at point of receiving Notice of Review
- Critique a Statement of Reasons
- Observe a Preliminary Conference

Intermediary Level

- Co facilitate a case discussion with CSA, prior to a PC
- Critique a Statement of Reasons, which requires minimal input from CSA
- Manage a case discussion in present of CSA prior to a PC
- Observe a second PC
- Manage a PC in presence of CSA
- Observe (part of) a Hearing

Experienced Level

- Undertake a post PC email that identifies outcomes, tasks, and related issues in consultation with CSA
- Co manage with CSA a file through preparation process for hearing, including drafting correspondence to tribunal as required
- Observe a hearing
- Manage a hearing with CSA present.

Feedback

- What are your thoughts?



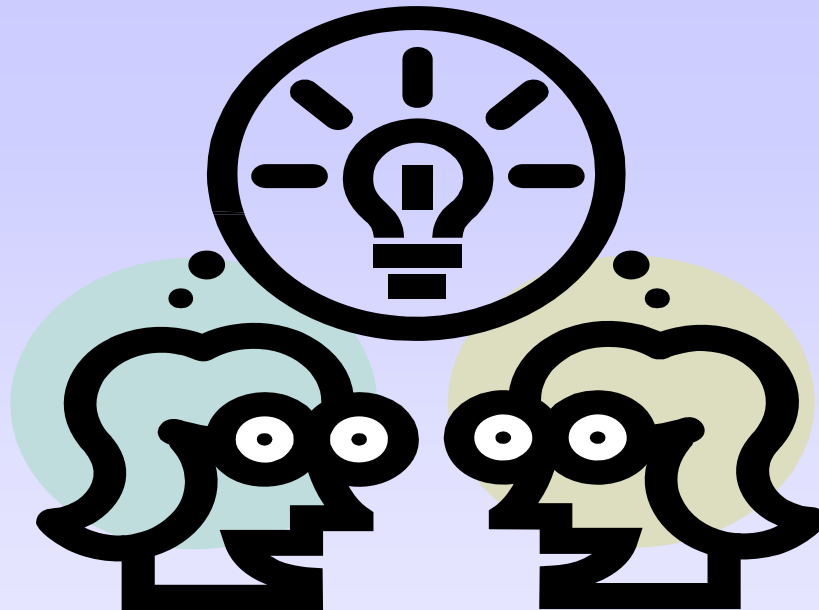
The Art of Questioning in a Tribunal Hearing



Pose a Question....



1. Who has attended a Tribunal hearing?
2. What would be your tip to share with your colleagues about developing or presenting questions in this forum?



Tribunal's conduct of proceedings....



s6 (c) of the Children Services Tribunal Act 2000

Says as follows:

To conduct proceedings in a way that –

- (i) Promotes the interests, rights and well being of the child involved in the proceedings; and
- (ii) Uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances

Purpose to Questions...



1. To reiterate
2. To clarify
3. To discredit or call into question
4. To elaborate
5. To inform

Types of Questions...



1. **Open ended** – is asked to get the person talking and open up and explain fully a scenario etc
2. **Closed** – is asked to usually achieve a one word or a yes/no response. Used to maintain control of the situation.
3. **Rhetorical** - is asked in order to make a point, and does not expect an answer (often the answer is implied or obvious).
4. **Leading** - is asked usually to suggest an answer or directs a witness to a particular answer

Examples!



1. Open ended examples –

- a) What did you do on the weekend?
- b) Tell me about your trip to Movie World?

2. Closed question examples –

- a) Did you drive your car to work today?
- b) What is the colour of your hair?

3. Rhetorical question examples –

- a) How much longer do I need to wait here?
- b) Have you not got eyes to see what I'm wearing?

4. Leading question examples –

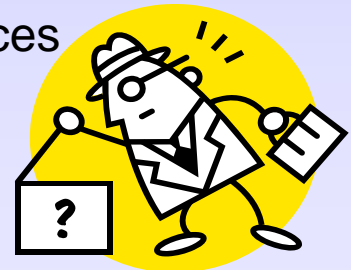
- a) Was it Joel Brodie that stole your car?
- b) So your mother smacked you with a tennis racket on your back?

Anticipating who.....



Who will you need to prepare questions for??

- ∞ Each departmental witness who has provided a statement
- ∞ Each applicant regardless of whether they have provided a formal statement. Read through any material they have provided during the proceeding or as part of their application, or on comments made during the PC proceedings to assist in directing the development of your questions
- ∞ The Separate Representative's social assessment report
- ∞ Any unexpected witnesses from the applicant ie character references



HINT.....



The development of your witness statements should already have been compiled to answer any identified questions that you would want answered.

What evidence do you want this witness to speak to?



TRIBUNAL KEY QUESTIONS.....



What will be the key questions that the Tribunal wants answered during the hearing?

Obviously this will be dependent upon the decision being reviewed.

Carer refusal or removal decision – suitability criteria s 9 Regs, meeting statement of standards, support provided to address any issues etc, demonstrated insight, understanding consequences

Contact decision – is it meaningful for the child/ren, is it safe for the child/ren, is it meeting the child's needs for bonding/attachment/maintaining relationship/reunification

Placement decision – is this placement meeting the needs of this child, facilitation of educational/medical/therapeutic needs, implementation of behaviour management strategies

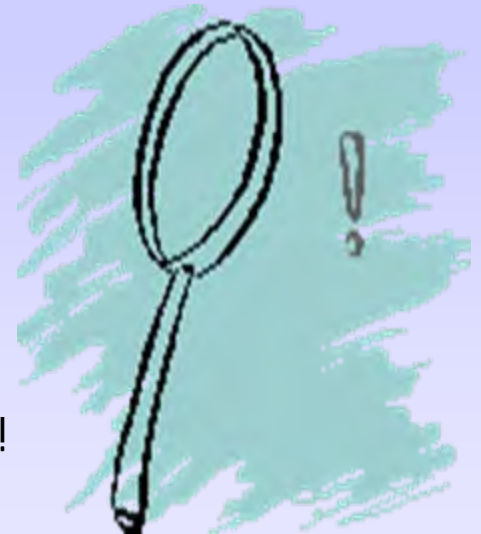
THE ULTIMATE QUESTION POSED BY THE TRIBUNAL WILL BE.....

IS THIS DECISION IN THE BEST INTERESTS OF THE CHILD/REN??

CRITICAL ANALYSIS FRAMEWORK....



- ⊗ Playing devil's advocate
- ⊗ Drawing inferences from evidence
- ⊗ Pre-empt statements that might be made by the applicant
- ⊗ Put yourself in the shoes of the Tribunal
- ⊗ Identify the strengths in the evidence
- ⊗ Identify the gaps in the evidence
- ⊗ Identify the solutions or strategies (if possible)
- ⊗ Identify linkages of evidence between witness statements
- ⊗ Don't fear challenging your own witnesses if required – the Tribunal will!



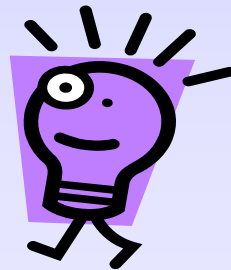
ACTIVITY.....



Break into six groups of 5

Your group has 5 minutes to do the following:

1. Read through the scenario and the witness statement that was compiled for the hearing
2. In your group compile a list of your top 5 questions that you would ask this witness
3. Each table to read out one question
4. Explain what information you wanted to source from that question and why it is relevant to the Tribunal to consider



TIPS.....



1. Be prepared
2. Write out questions verbatim pertaining to each witness – including the unexpected
3. Be as short and succinct as possible
4. Use plain language – where you can avoid departmental jargon
5. One fact per question
6. Be clear about the purpose of your question
7. Listen to the answer – this will probably lead you into the next question
8. Know your case and who owns what evidence – chronology of events
9. Be flexible with your line of questions



SUGGESTION....



For each witness statement develop a table to assist in comprehensive preparation

Witness	Key points of evidence	Strengths	Gaps	Solutions or Strategies	Questions to pose
Robe Tribe	Supervised contact visit on 28/08/09	Mother presented as drug affected, she tripped over child when entered the room		Focus upon the department's casework decisions regarding facilitating contact if mother presents in the future as drug affected	Tell me everything about the mother's presentation at this contact visit Tell me everything about how the child interacted with the mother during this visit



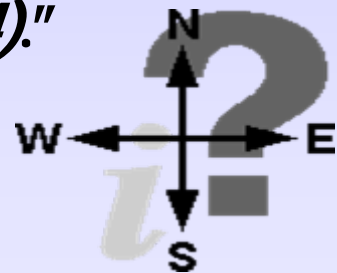
Cross - examination....



Cross-examination is the process whereby you seek:

- a) To test the veracity and accuracy of the evidence in chief;
and**
- b) To elicit from that witness any relevant facts, which may be
favourable to you and your case.**

It is then plain that it is of paramount importance to establish in advance of commencement of your cross-examination to know where you want to go – vide – it is "*better to understand a little than to misunderstand a lot – Anatole France (1844-1924).*"



TEAM WORK IS KEY.



Don't forget that we are here to assist.

You are not alone!



Cumulative Harm: A Conceptual Overview



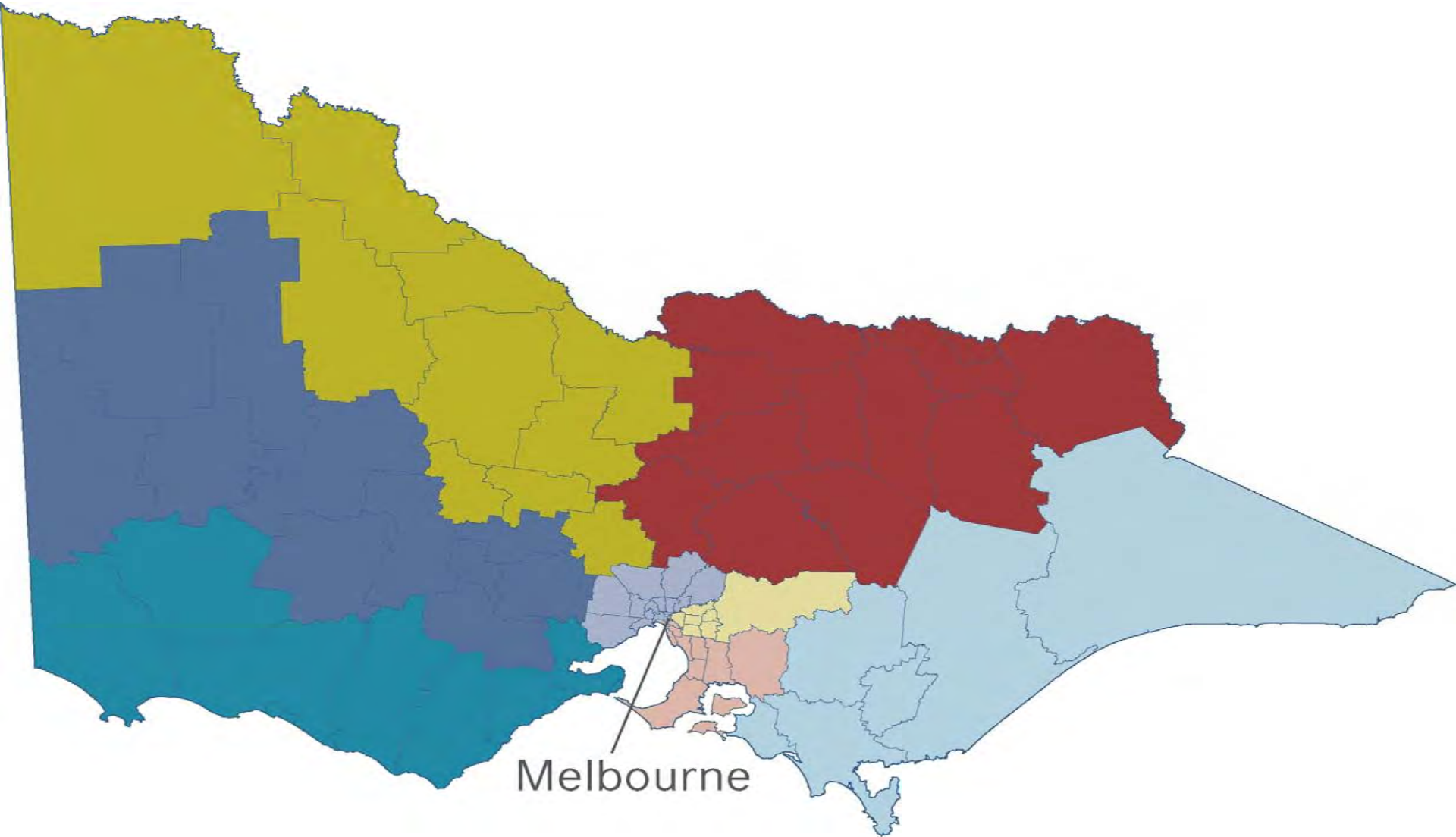
Court Coordinator Conference 2009

The Department of Communities – ChildSafety Services

Robyn Miller
Principal Practitioner
Children, Youth and Families Division

Monday 19 October 2009

Victoria



A note on the Victorian context

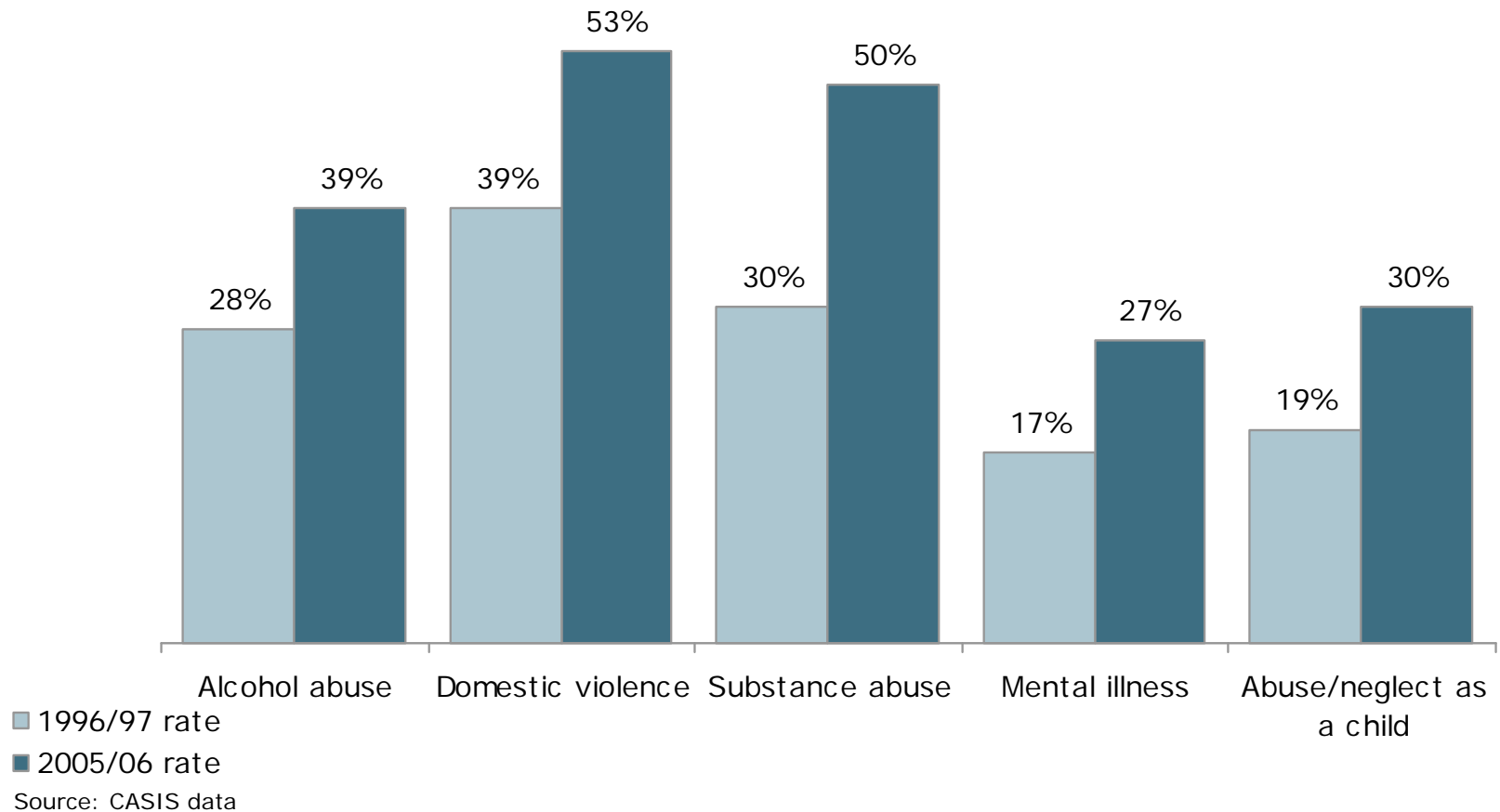
- Victoria – population 5 million, 1 million children
- Capital – Melbourne
- 8 Regions, 5 rural + 3 metro
- Family Support and Placement services delivered by Victorian CSOs
- Child protection services are delivered by the Department of Human Services
- Since 2003 there has been significant new investment in the Victorian child protection and family services system, including legislative change

Key data supporting the change

It was clear (in 2001-02) that we faced a number of challenges in Victoria:

- **Growing demand** – in particular through child protection renotifications, running at 62% and rising
- **Notifications** from professionals were **increasing**, especially schools and police (doubling every 4 years)
- **Compelling evidence** of increasing client complexity (Drug and Alcohol/Family Violence in particular)
- Projections based on **unchanged policy settings** indicated continued growth in front-end demand...
- Even 'IF' notifications stabilised, still looking at **19% of Victorian children notified to child protection during their childhood**

Family violence, substance abuse and alcohol abuse continuing to be the key family characteristics



Expert Analysis

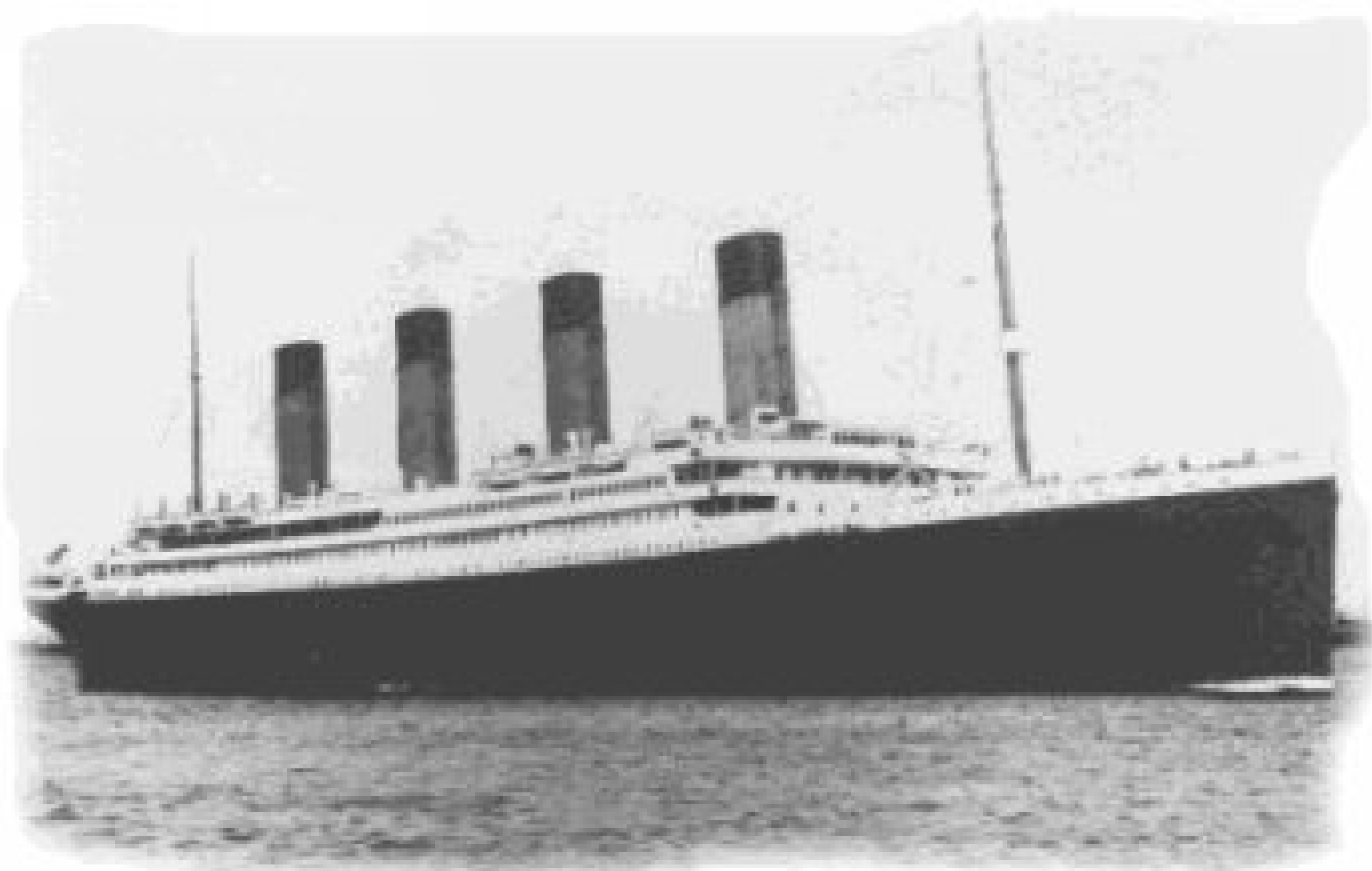
- It is not the people working in child protection who are at fault; it is the policy framework in which they operate that is fatally flawed. Rarely is this examined. Instead, more money is poured into bigger child protection systems and more inappropriate referrals flood in.

Professor Dorothy Scott

The Australian

Wednesday, 14 November 2007

Unsinkable?



THE LEGISLATION

- The CYFA 2005 states (s.10) the best interests must always be paramount when making a decision, or taking action with regard to a child. Included in these principles is section 10(3)(e) *which must consider 'the effects of cumulative patterns of harm on a child's safety and development'*.
- The grounds for statutory intervention when a child is in need of protection have not changed, however they now *encompass accumulated harm*, as well as crises or a single serious incident, and focus on the impact of the harm on a child's development and wellbeing.

THE LEGISLATION (cont.)

- Section 162(2) determines that: *'the harm may be constituted by a single act, omission or circumstance or accumulate through a series of continuing acts, omissions or circumstances'*.
- Sections 10 and 162 enable earlier intervention and prevention to promote wellbeing and development, *and* recognition of the cumulative impact of continuous acts, omissions or circumstances that may result in significant harm whereby a child is in need of protection.

REFORM AGENDA

- early intervention and prevention
- incorporates developmental approaches to children's wellbeing and safety,
- works together with family services to share responsibility for the protection and wellbeing of children.
- Innovations; Child/FIRST

Policy and practice changes continue to evolve

A NEW VISION FOR VICTORIA'S CHILDREN
PREMIER'S CHILDREN'S ADVISORY COMMITTEE
REPORT TO THE PREMIER OF VICTORIA
SEPTEMBER 2004

Joining the dots

protecting children

first steps

Children, Youth and Families Act 2005
Act No. 96/2005

The state of Victoria's children report 2006

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COUNCIL OF AUSTRALIAN GOVERNMENTS'

NATIONAL REFORM AGENDA

VICTORIA'S PLAN TO IMPROVE
OUTCOMES IN EARLY CHILDHOOD

One of Victoria's proposals under the National Reform Agenda

March 2007

nance

FOR VICTORIA

ing opportunity and
essing disadvantage



First



To guide a paradigm change

- Families, communities, professionals and Government share responsibility for improving the outcomes of vulnerable children
- Multi-service response
 - Inclusion of vulnerable children and youth in universal early childhood, health and education services
 - Improved access to more intensive family support
 - Promoting a whole of family focus in specialist adult services

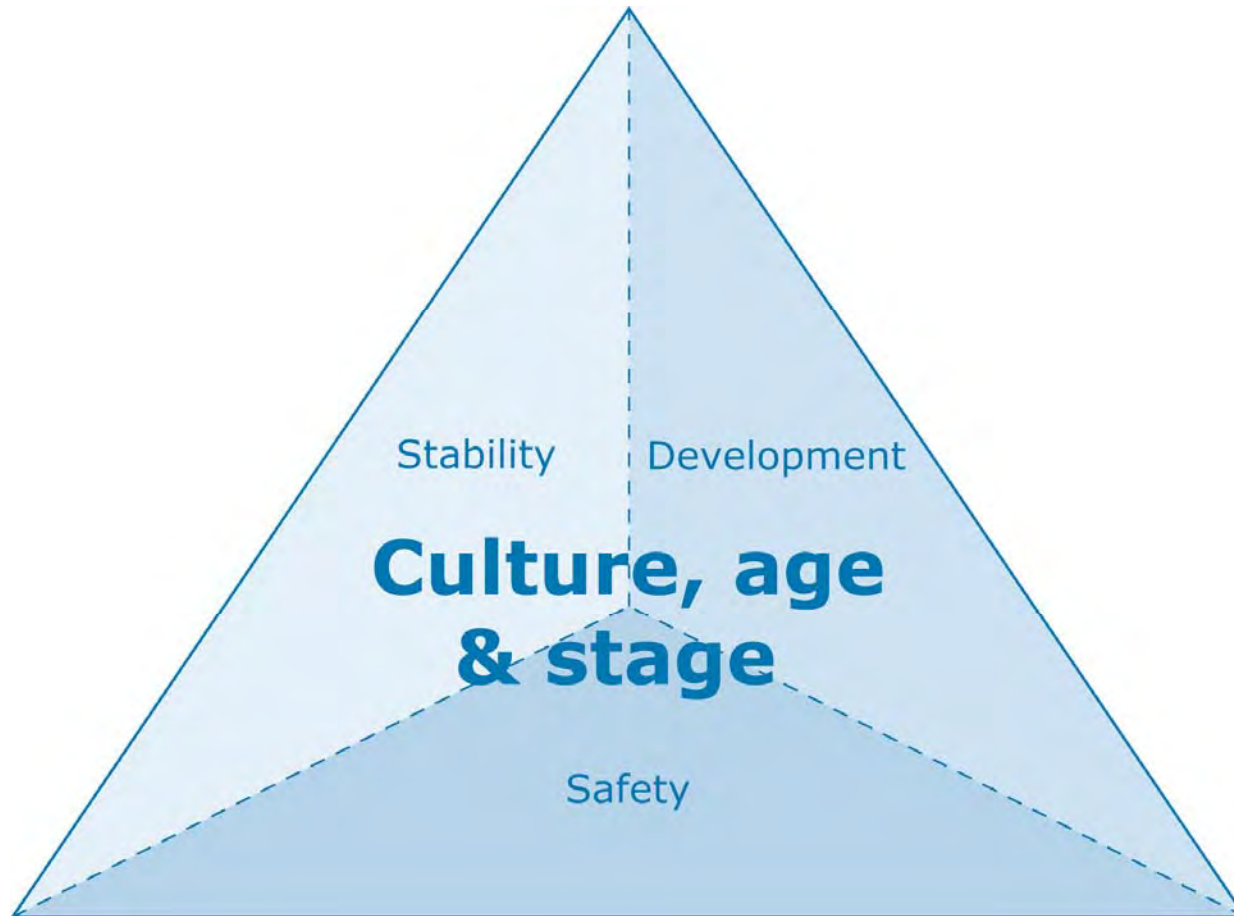
Family services/Child Protection interface - now?



Child Protection- Child FIRST interface - in the future



Child's Best Interests

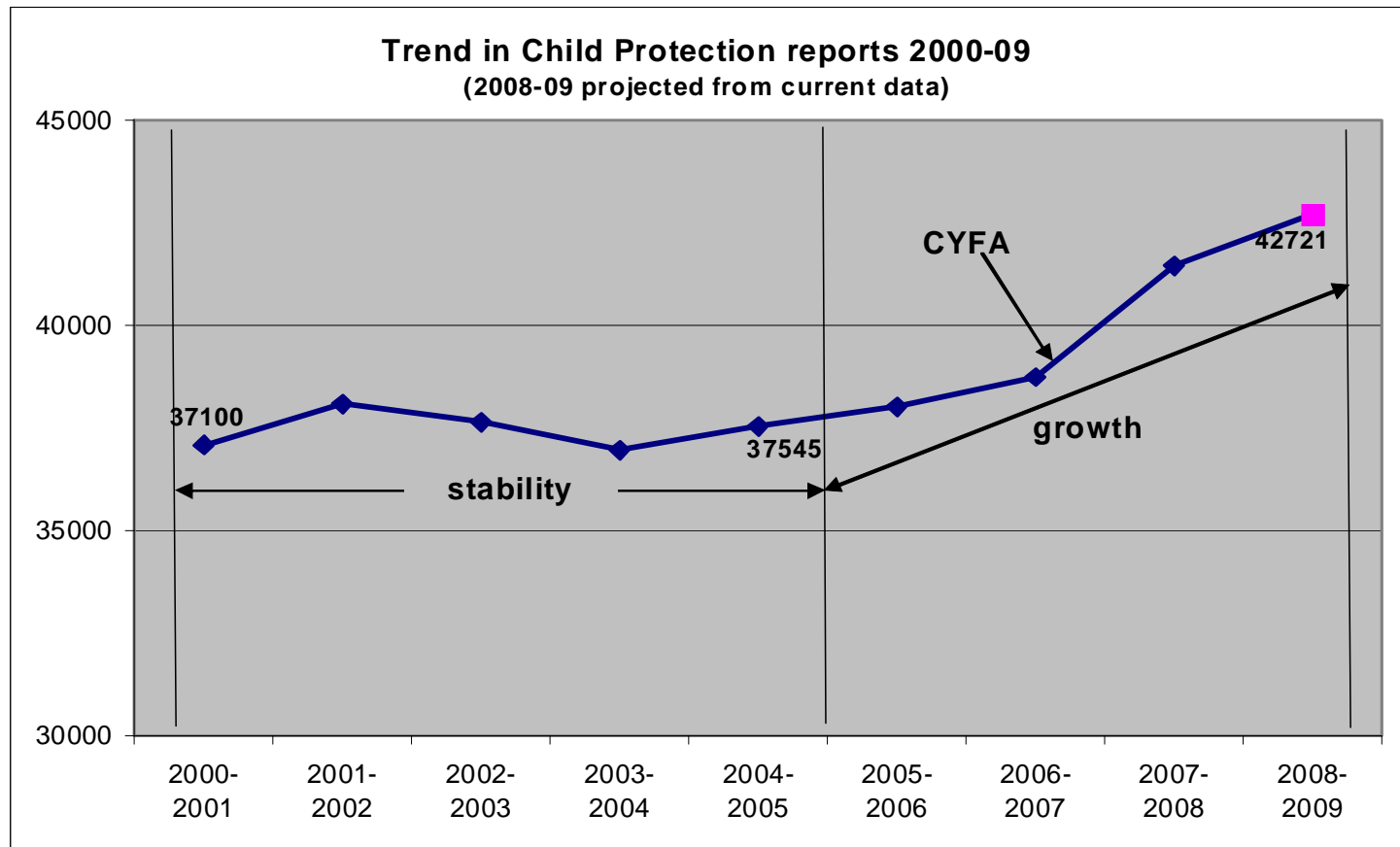


500 Unborn reports per year



- Working earlier and in partnership with the mother and appropriate support services to address the need or risk factors
- The guiding practice principle is one of supportive intervention, rather than interference with the rights of the pregnant woman

The challenge of demand



Holding our nerve

- About 12% in the two years after CYFA was introduced, but most growth was in the first year. Currently reports are increasing at about 5% per year.
- Still a lot lower than other Australian jurisdictions

Best Interests Case Practice Model – accepted across sectors in Victoria



Relationship Based Practice

every child every chance
a good childhood is in everyone's best interests

Child development and trauma guide

Some important points about this guide

This guide has been prepared because of the importance of professionals in the Family Services, Child Protection and Placement and Support areas understanding the typical developmental pathways intended to inform a developmental or knowledge from child appropriate advice as to the

child well as a source have accurate in a child belongs,

to ride a bicycle unless

a straight line or evenly, sequential manner; that while the path of predictable, there is variation development. That is to exactly the same way. more rapid in the very time in life.

impacts on other areas. area will impact on the skills and progress mental stage. both nature and nurture very significant aspect

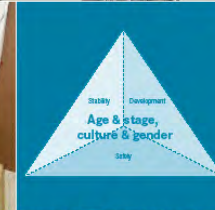
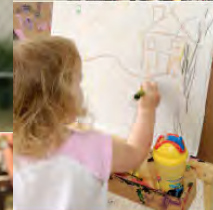
ment and behaviour: to medium term conditions can have deficiencies will also developmental progression. behaviours are indicative child's behaviour, which closely, if a child is not refer to the Best relevant specialist ing further assessments

A Victorian Government Initiative 

every child every chance
a good childhood is in everyone's best interests

The Best Interests principles: a conceptual overview

Best interests series



every child every chance
a good childhood is in everyone's best interests

Cumulative harm: a conceptual overview

Best interests series



A Victorian Government Initiative 

every child every chance
a good childhood is in everyone's best interests

Best interests case practice model

Summary guide



A Victorian Government Initiative 

A Victorian Government Initiative 

Embedding the Reform: Partnership with Family Violence Services

- A key feature of legislative and policy reforms for Family Violence and Child Protection is the establishment of multi service approaches
- Research confirms family violence and child abuse frequently co-occur. Victorian Child Protection data shows that for non-Aboriginal families in 2005-06, 53% of substantiated child protection cases identified family violence as a risk factor. For Aboriginal families this was 64%.

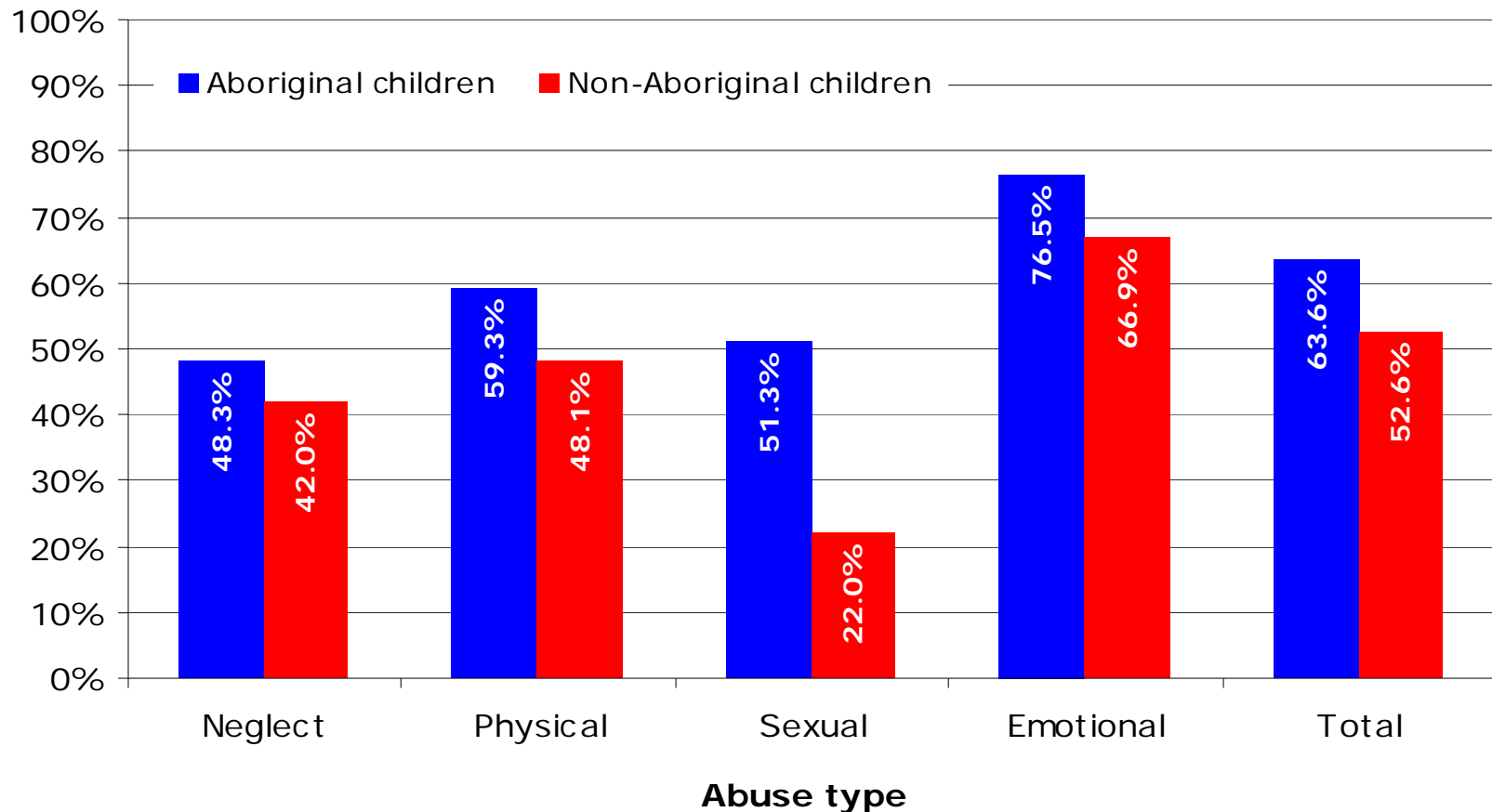
Embedding the Reform

- Agreements will be developed to facilitate collaborative working relationships between Family Violence, Child FIRST/Family Services and Child Protection services at the local level.
- Agreements to reflect a shared vision and approach
 - Safety of children;
 - Safety and empowerment for victims of family violence (mainly women and children); and
 - Responsibility and accountability of perpetrators of family violence (mainly men).

Child Protection data

Family violence and abuse type

Percentage of substantiated cases with family violence as a risk factor in Victoria, 2005-06



Earlier Intervention



- The Children, Youth and Families Act 2005 (CYFA) establishes two pathways in Victoria for people to report or refer an unborn child where they have 'a significant concern for the wellbeing of the child after his or her birth'
- Report to Child Protection
- Report to Child and Family Information Referral and Support Teams (Child FIRST)

What is cumulative harm?

- Cumulative harm may be caused by an accumulation of a single adverse circumstance or event, or by multiple different circumstances and events
- The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child's sense of safety, stability and wellbeing.

(Bromfield and Miller 2007)

Cumulative harm: multiple abuse types

- ... a significant proportion of maltreated individuals experience not just repeated episodes of one type of maltreatment, but are likely to be the victim of other forms of abuse or neglect (Higgins 2004:51).
- Maltreatment types are also noted to be inter-related, or overlapping (Higgins, 2004). As many forms of maltreatment co-occur and could have joint effects, their cumulative impact should not be overlooked (Hamilton & Browne, 1999; Rossman & Rosenberg, 1998).

- 'When a case has numerous notifications either not investigated or not substantiated, assumptions can be readily made that this case is not one of significant risk.
- A cumulative risk perspective requires a re-examination of each of these notifications every time a new notification is made in order to assess whether a multitude of low-level risk factors is demonstrating significant cumulative harm'.

(Frederico, Jackson and Jones 2006: 39)

Systemic barriers to recognising cumulative harm

- Each departmental involvement treated as a discrete event
 - Information not accumulated from one report to the next
 - Information lost over time
 - Assumption that previous presenting problems were resolved at case closure
 - Files not scrutinised for pattern of harm
- Departmental language used to describe events – reduces context and meaning

Bromfield, Gillingham and Higgins (2007)

Language

- Departmental language is used to describe events
- Technical jargon not understood by outsiders
- In reframing the experiences of children and family into departmental language, the subjective experience is lost

Schultz 2009

Original Case Plan

- Summary of Child Protection concerns:
 - Ongoing concerns of alcohol and drug misuse
 - Risk of emotional harm
 - Risk of physical harm
 - Limited parenting skills – behaviour management
 - Limited participation in support services

Schulz 2009

Re-worked case plan

- Summary of current child protection concerns
 - Paris has not experienced consistent routines; day-to-day life in Mum's home is chaotic with many people in and out. Often these people are drunk or stoned, which exposes Paris to other risks.
 - The changes that Mum has attempted to make have not been enough for Paris to return safely home. Stressors in Mum's life reduce her ability to make protective choices for Paris.

Schulz 2009

The use of 'plain English'

- Schulz (2009) argues that the impact of events on the child's daily life can be better seen and understood if an assessment is recorded and communicated in language free from jargon.
- This benefits:
 - The child
 - Parents
 - Other service providers
 - The courts
 - Other practitioners reading the file

Implications for practice

- Unlikely to receive a report explicitly due to cumulative harm
- The majority of children who experience maltreatment experience:
 - Multiple incidents; and
 - Multiple types
- Need to be alert to possibility of cumulative harm in all reports

Indicators of cumulative harm in case history

- Include:
 - Multiple reports
 - Previous substantiations
 - Multiple sources alleging similar problems
 - Reports from professionals
 - Evidence of children not meeting developmental milestones
 - Allegations of inappropriate parenting in public

Bromfield, Gillingham and Higgins 2007

Parental and family indicators of cumulative harm

- Families who experience cumulative harm have:
 - Multiple inter-linked problems (ie. Risk factors) such as DV, A&D and MH)
 - An absence of protective factors
 - Social isolation/exclusion
 - Enduring parental problems impacting their capacity to provide adequate care (eg ID, A&D)

Bromfield, Gillingham and Higgins 2007

Identifying cumulative harm

- *Frequency* – Have there been previous allegations for similar issues?
- *Type* – Signs that child has experienced other types of CA/N in addition to those reported?
- *Severity* – Has caused or likely to cause significant harm if repeated over a prolonged period?
- *Source of harm* – Does current situation make child more vulnerable to other perpetrators?
- *Duration* – How long have problems that led to current involvement been present?

Bromfield 2005

Impact of cumulative harm on children

- Primary theories to help understand cumulative harm are:
 - Child development (early brain development)
 - Trauma (including complex trauma) and
 - Attachment
- Prolonged stress can damage the developing brain
- Children experiencing chronic maltreatment are in 'toxic' environments

Making your assessment

- Short and long term effects matter
- What has been the impact on the child to date?
 - Is the child meeting developmental milestones?
 - Are there any signs of trauma?
 - What is the quality of parent-child relationship?
 - What has been the impact on the child to date?
 - What are the likely outcomes for the child should their circumstances remain unchanged?
 - Refer to the *Child Development and Trauma Guide* to aid your assessment

When parents can't or won't change

- Hard to witness parents' struggle to change
- Desire to change does not equal change
- Effects matter whether there is intent or not
- If parent can't change, won't change, or it will take too long to change – need to prioritise child needs
- Need to review circumstances and the effectiveness of our interventions
 - Have circumstances changed for **the child**?

Bromfield and Miller 2007

Preparing matters for court

- Not enough to say a child has experienced cumulative harm
 - Need to present evidence to the court that shows the effects of cumulative harm on children
- Court will also want to know the
 - Previous assistance that has been provided to the family
 - Outcomes of previous interventions

Bromfield and Miller 2007

Assisting recovery in children

- Cumulative harm can overwhelm even the most resilient child and particular attention needs to be given to understanding the complexity of the child's experience
 - Remember to consider what interventions or services might assist the child towards recovery

Bromfield and Miller 2007

In summary . . .

- Inadequate to make assessments on the basis of individual reports – particularly in cases of neglect and emotional abuse
- Use pattern and history to establish harm to children
- Broaden thinking from immediate to long-term harm to children

Family violence - the children are watching

- Children witnessed the abuse of their mothers in as many as 85% of cases (*Minnesota Program Development, 1997*).
- 65% of family violence incidents recorded by police in each of the years 1999-2000 and 2003-2004, there were records of at least one child present.

Victorian Family Violence Database 2008

Unborn children are impacted

The ABS Women's Safety Survey found that

- 42% of women who experienced partner violence experienced violence during pregnancy.
- 20% of these women experienced the violence for the first time during pregnancy (*ABS 1996, p.8*).
- 400 pregnant women found that 27% experienced physical and psychological violence.
- 20% experiencing physical violence.

Walsh & Weeks 2004, p.139

International research confirms frequent co-existence of child abuse and family violence

- *Edleston (2001)* estimates that between 30 and 60 percent of children whose mothers are subjected to family violence are also being abused.
- *Brown and Endekov (2005)* estimate that between 30 and 60 per cent of children who witness family violence also experience some form of abuse.
- This is consistent with the findings of Australian research. *Laing (2003)*



Co-existence of child abuse and family violence

Lit Review by Bancroft & Silverman (2002) report:

- An extensive collection of published studies indicates that batterers are several times more likely than other men to physically abuse children
- Straus (1990) Large scale study 6,000 subjects reported that 49% of batterers physically abused children; only 7% of non-battering men do so
- Risk increases with severity and frequency of partner violence



Co-existence of child abuse and family violence

“One study in North America found that children who were exposed to violence in the home were 15 times more likely to be physically, and/or sexually assaulted than the national average”

Volpe, J.S. 'Effects of Domestic Violence on Children and Adolescents; An Overview', The American Academy of Experts in Traumatic Stress, 1996.



Co-existence of child sexual abuse and family violence

- Multiple studies demonstrate that mothers of incest victims are likely to be victims of family violence
- Other studies indicate children of violent men have unusually high rates of child sexual abuse victimization
- When studying the sex offender literature the only factor which correlates in the research is that the offender is more likely to be violent in the home

Impact of Family Violence

Infants and small children who are exposed to violence in the home experience so much added emotional stress that it can harm the development of their brains and impair cognitive and sensory growth

Osofsky, Joy D. 'The Impact of Violence on Children', The Future of Children – Domestic Violence and Children, Vol. 9 No. 3, 1999; Koenen, K.C., et al., 'Domestic Violence is Associated with Environmental Suppression of IQ in Young Children', Development and Psychopathology, Vol. 15, 2003, pp. 297-311; Perry, B.D. 'The neurodevelopmental impact of violence in childhood', Chapter 18 in: Textbook of Child and Adolescent Forensic Psychiatry, (Eds., D. Schetky and E.P. Benedek) American Psychiatric Press Inc., Washington, D.C., pp. 221-238, 2001; James, M. 'Domestic Violence as a Form of Child Abuse: Identification and Prevention', Issues in Child Abuse Prevention, 1994

Impact of Family Violence

- When traumatised, the brain secretes an array of potent chemicals in an attempt to physiologically mediate the overwhelming sense of fear and perceived threat to life (Schoore, 2003b)
- FREEZE – FLIGHT – FIGHT - RESPONSE
- The emotional states aroused to cope with the trauma over an extended period of time can develop into longstanding personality traits (Perry, Bollard, Blakely, Baker & Vigilante, 1995)
- The most rapid time of neural development for the brain is within the first few years of life (Greenfield, 1997)
- The need to survive becomes the organising principal

Helping Babies from the Bench

Impact of Family Violence

Behaviour changes can include excessive irritability, sleep problems with toilet training and language development.

Osofsky, Joy, D., 'The Impact of Violence on Children', The Future of Children – Domestic Violence and Children, Vol. 9, No. 3, 1999.

Impact of Family Violence

- Primary-school-age children may have more trouble with school work, and show poor concentration and focus. They tend not to do as well in school.
- In one study, forty percent had lower reading abilities than children from non-violent homes.

*James, M., 'Domestic Violence as a Form of Child Abuse: Identification and Prevention',
Issues in Child Abuse Prevention, 1994.*

Cont'd

- Learning is also compromised by **lowered auditory processing**, resulting from trauma or poor attachment experiences.
- The child appears to selectively hear and does only partially hear, due to difficulties with the cognitive and perceptual aspects of auditory processing, especially when background noise is present, as in a classroom situation (Kier, 2003).

Impact of Family Violence

Personality and behavioural problems among children exposed to violence in the home can take the forms of psychosomatic illnesses, depression, suicidal tendencies, and bed-wetting

Fantuzzo John W. and Wanda K. Mohr, 'Prevalence and Effects of Child Exposure to Domestic Violence', The Future of Children – Domestic Violence and Children, vol. 9, no. 3, 1999; Kerric, M.A. et al., 'Behavioural Problems among Children whose Mothers are Abused by an Intimate Partner', Child Abuse and Neglect, Vol. 27, No. 11, 2003, pp. 1231-1246.

Impact of Family Violence

Later in life, these children are at greater risk for substance abuse, juvenile pregnancy and criminal behaviour than those raised in homes without violence

Felitti, V.J. et al, 'The Relationship of Adult Health Status to Childhood Abuse and Household Dysfunction', American Journal of Preventive Medicine, Vol. 14, 1998, pp. 245-258; James, M., 'Domestic Violence as a Form of Child Abuse: Identification and Prevention', Issues in Child Abuse Prevention, 1994; Herrera, V. and McCloskey, L. 'Gender Differentials in the Risk for Delinquency among Youth Exposed to Family Violence', Child Abuse and Neglect, Vol. 25, No. 8, 2001, pp. 1037-1051; Anda, R.F., Felitti, V.J. et al, 'Abused Boys, Battered Mothers, and Male Involvement in Teen Pregnancy', Paediatrics, Vol. 107, No. 2, 2001, pp. 19-27.

Impact of Family Violence

- Some children lose the ability to feel empathy for others.
- Socially isolated, unable to make friends as easily or confusion over what is acceptable.
- Many studies have noted that children from violent homes exhibit signs of more aggressive behaviour, such as bullying.
- Up to three times more likely to be involved in fighting.

Baldry, A.C., 'Bullying in Schools and Exposure to DV', Child Abuse and Neglect, Vol. 27, No. 7, 2003, pp. 713-732; Fantuzzo John W. and Wanda J. Mohr, 'Prevalence and Effects of Child Exposure to Domestic Violence', The Future of Children – Domestic Violence and Children, Vol. 9, No. 3, 1999.

Impact of Family Violence

One Australian study showed that up to 40 percent of chronically violent teenagers have been exposed to extreme domestic violence

James, M., 'Domestic Violence as a Form of Child Abuse: Identification and Prevention'
Issues in Child Abuse Prevention, 1994

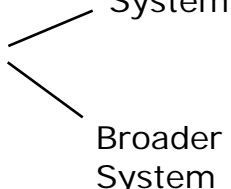
Impact: PTSD # Two

- *Gilund (1990)* found that the presence of confidants and supportive people in a child's life were more important in affecting outcomes than were aspects of the abuse.

Cont'd

- It is not the presence of trauma in childhood either, but the ability to form a coherent story about that trauma, that leads to security of attachment in adulthood.
- It's not just what happens in life that has an impact, it's the meaning the child makes.....
"it's what you do with it."

Recovery

- Understand that surviving the violence becomes the organising principle in the family.
- Privilege the voice/needs of the children
- Requires systemic thinking and practice

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graph LR; A[Requires systemic thinking and practice] --- B[Family System]; A --- C[Broader System]
```

Cont'd

- A multi-theoretical perspective
- Engaging offender in taking responsibility
- Support the mother, use empathy not blame

Children Managing in the Face of Adversity

- 'Resilience' – not an individual trait – children live in different contexts of severity and protection
- In any sample of children between one third and a half are doing as well as or better than children not living with family violence.

The Relationship with Women's Mental Health

- One intervening variable in the protective factors available to children is their mother's mental health.
- *Moore and Pepler, 1998; Hughes et al, 2001; Hughes and Lukes, 1998* suggest a link between the emotional well-being of women and children.

The Role of the Perpetrator

- The perpetrator may be the intervening variable (*Sullivan 2000*). The direct negative effect is due to the man's abuse and is not mediated by the mother's well-being.

Cont'd

- Domestic violence is an attack on the mother-child relationship – an indirect effect is undermining the women's emotional well-being so that she is not in a good position to parent.
- Essential to provide assessment and support for women experiencing mental health problems.

Recovery

- The provision of an environment that is "*relationally enriched, safe, predictable and nurturing.*"
(Perry, 2006).

Touching, holding child



Cont'd

- The underpinning theory privileges the importance of **relationship** as the **primary agent of change**.
- Dyadic Developmental Psychotherapy (DDP) is an approach developed by Daniel Hughes and is used as a modality for therapeutic interaction.

Recovery for the Child and the Family

A process of resolution of grief and loss

- Loss of **past** safety
- Loss of **present** stability
- Loss of **future**, expected development

A process of reclaiming safety, strong connections and hopeful future.

Recovery for the Child and the Family

- Integration of Memories and Affect
- Peace between the head and the heart
- Trauma fragments the self, families, communities, RESILIENCE DEVELOPS and **healing** happens through **connection** to carer, family, school, community, CULTURE

The Healing Process:

How parents and therapists can help children

- Expect regression
- Respect a child's fears
- Provide active help for flashback and panic

Cont'd

- Provide opportunities for talking about feelings
- Expect and tolerate repetitious rebelling
- Provide opportunities and props for play
- Limit and monitor play

Cont'd

- Expect some difficult behaviour
- Communicate with school and child care staff
- Maintain routines, avoid the new

Cont'd

- Set limits on re-exposure
- Be mindful of triggers
- Use detective skills

Cont'd

- Provide physical outlets
- Keep anniversary reactions in mind
- Listen to the child's misunderstandings and magical thinking

Cont'd

- Parental self care
- Focus on strength and competence

What Children Need

- Safety
- Support and belief, especially at disclosure
- Clarity around your role
- Assessment
- Appropriate Treatment
- The involvement of non-offending family members and significant others



Against the Odds : How Women Survive Domestic Violence (Office of the Status of Women, 1998)

- These findings strongly suggest that family violence was experienced by the women as a continuum where circumstances changed over time
- Women not passive
- Multiple coping strategies adopted
- Ultimately most women left

Against the Odds : How Women Survive Domestic Violence (Office of the Status of Women, 1998)

- Two distinct pathways to separation
 1. After having exhausted all other possibilities to have made the relationship work
 2. "The defining moment"

Professor Edward Gandolf's Research - 2004

- A longitudinal 4 year follow-up evaluation in four cities, of batterer programs
- n = 840 men and their female partners
- variety of qualitative and quantitative approaches
- Nearly $\frac{3}{4}$ of the re-assaults occurred within the first six months
- Clear de-escalation of re-assault and other abuse

- Vast majority of men referred to batterer counselling stop their violent behaviour
- Gender based, cognitive-behavioural programs appropriate for 80% of the violent men
- The system matters; program effectiveness depends on intervention system of which the program is a part

“Evaluating batterer counselling: A difficult task showing some effectiveness and implications”

Aggression and Violent Behaviour
9(2004) p.605-631

“Some observers, in fact, argue that such components cannot be separated since they combine in a synergetic effect toward a **TIPPING POINT** of change”

*(Gladwell, 2000 cited in
Gandolf, 2004)*

Cautions re Couple Work

- Needs to be grounded in feminist concerns for justice and safety
- May re-victimize the woman physically and psychologically
- May provide the offender with a platform for self-justification
- May convey the message that the victim is co-responsible for the abuse
- Needs to be based on zero tolerance for violence and commitment to safety, accountability and equity
- Requires a core distinction between the crime of violence and the “relationship issues”

A Both/And Perspective

Violence is **both** wilful **and** impulse ridden

instrumental and expressive/dissociative

taking/forcing control and losing control

intentional/planned and reactive

powerful and powerless



Trauma Dynamics

- A potent longing in the victim for kindness and for relief from the fear or terror
- The person who brings a soothing relief is the one that perpetrated the abuse
- At this moment the perpetrator is perceived by the victim as a rescuer who is then grateful
- "Stockholm Syndrome" (*Graham et al, 2001*)
- Hostages become bonded to and protective of their captors

Challenge of family violence for the Child Protection System

- Historically Child Protection intervention has tended to focus on women “mothers”
- Men are responsible for the majority of the most serious physical abuse of children

Lowenthal 1996; Aron & Olson 1997; Edleston 1999b

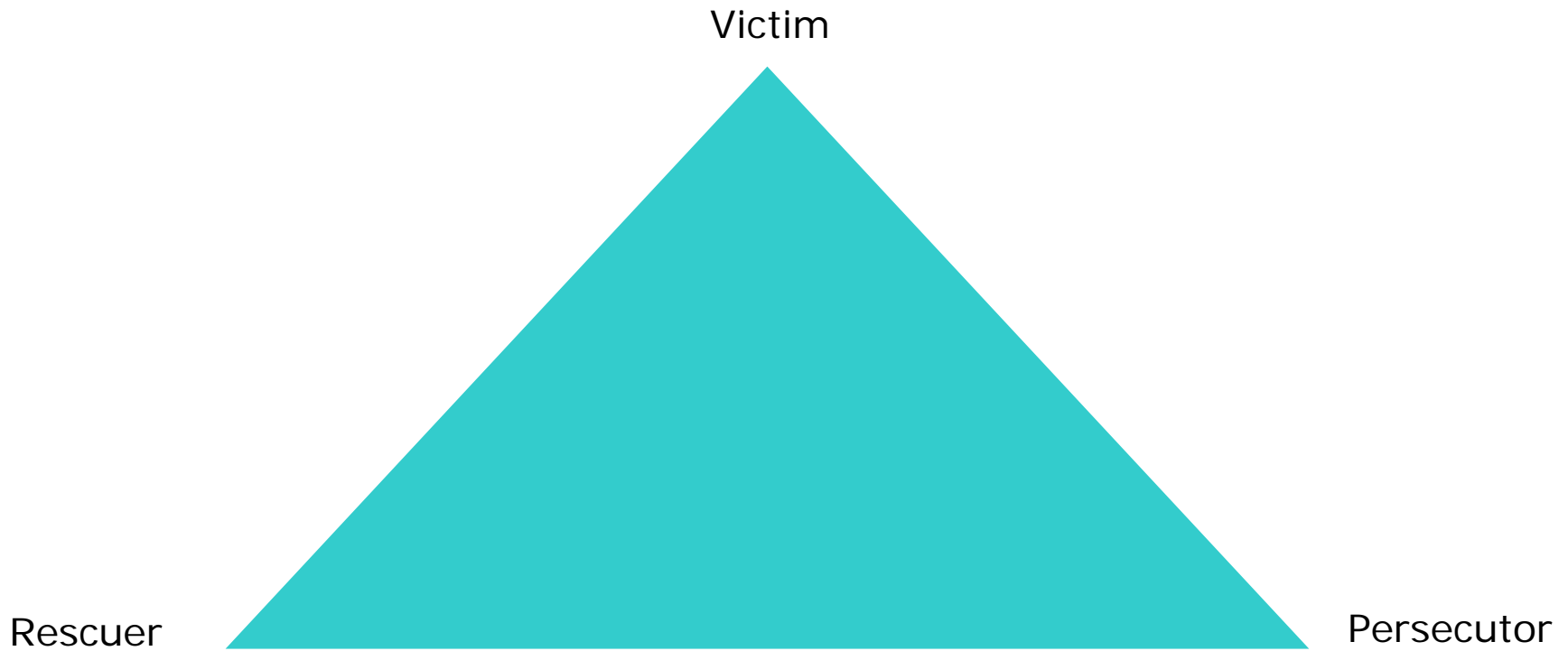
- Often ‘gender bias’ *Burke (1999)*

- Women “failing to protect” their children

Stak & Flitcraft 1988; Burke 1999; Mills 2000

Cited by Lesley Laing 2003

Keeping it Real : Holding the Child in mind in the complexity of family violence



Karpman's Triangle (1968)



Recovery from Trauma

“It is important to understand that the brain altered in destructive ways by trauma and neglect can also be altered in reparative healing ways. Exposing the child, over and over again, to developmentally appropriate experiences is the key. With adequate repetition, this therapeutic healing process will influence those parts of the brain altered by developmental trauma”

Bruce Perry (2006)

References

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Child development and trauma guide

0 - 12 months

Developmental trends		
The following information needs to be understood in the context of the overview statement on child development:		
0-2 weeks		
<ul style="list-style-type: none"> anticipates in relationship with caregivers through facial expression, gazing, fussing, crying 	<ul style="list-style-type: none"> is unable to support head unaided hands closed involuntarily in the grasp reflex 	<ul style="list-style-type: none"> startles at sudden loud noises reflexively asks for a break by looking away, arching back, frowning, and crying
By 4 weeks		
<ul style="list-style-type: none"> focuses on a face 	<ul style="list-style-type: none"> follows an object moved in an arc about 15 cm above face until straight ahead 	<ul style="list-style-type: none"> changes vocalisation to communicate hunger, boredom and tiredness
By 6-8 weeks		
<ul style="list-style-type: none"> participates in and initiates interactions with caregivers through vocalisation, eye contact, fussing, and crying 	<ul style="list-style-type: none"> may start to smile at familiar faces may start to 'coo' 	<ul style="list-style-type: none"> turns in the direction of a voice
By 3-4 months		
<ul style="list-style-type: none"> increasing initiation of interaction with caregivers begins to regulate emotions and self soothe through attachment to primary carer can lie on tummy with head held up to 90 degrees, looking around can wave a rattle, starts to play with own fingers and toes 	<ul style="list-style-type: none"> may reach for things to try and hold them learns by looking at, holding, and mouthing different objects laughs out loud follows an object in an arc about 15 cm above the face for 180 degrees (from one side to the other) notices strangers 	May even be able to: <ul style="list-style-type: none"> keep head level with body when pulled to sitting say "ah", "goo" or similar vowel consonant combinations blow a raspberry bear some weight on legs when held upright object if you try to take a toy away
By 6 months		
<ul style="list-style-type: none"> uses carer for comfort and security as attachment increases is likely to be wary of strangers keeps head level with body when pulled to sitting 	<ul style="list-style-type: none"> says "ah", "goo" or similar vowel consonant combinations sits without support makes associations between what is heard, tasted and felt 	<ul style="list-style-type: none"> may even be able to roll both ways and help to feed himself learns and grows by touching and tasting different foods
By 9 months		
<ul style="list-style-type: none"> strongly participates in, and initiates interactions with, caregivers lets you know when help is wanted and communicates with facial expressions, gestures, sounds or one or two words like "dada" and "mamma" watches reactions to emotions and by seeing you express your feelings, starts 	<ul style="list-style-type: none"> to recognise and imitates happy, sad, excited or fearful emotions unusually high anxiety when separated from parents/carers is likely to be wary of, and anxious with, strangers expresses positive and negative emotions 	<ul style="list-style-type: none"> learns to trust that basic needs will be met works to get to a toy out of reach looks for a dropped object may even be able to bottom shuffle, crawl, stand knows that a hidden object exists waves goodbye, plays peekaboo



0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months

Child development and trauma guide

0 - 12 months

Possible indicators of trauma

- | | | |
|---|---|---|
| <ul style="list-style-type: none"> • increased tension, irritability, reactivity, and inability to relax • increased startle response • lack of eye contact • sleep and eating disruption | <ul style="list-style-type: none"> • loss of eating skills • loss of acquired motor skills • avoidance of eye contact • arching back/inability to be soothed • uncharacteristic aggression | <ul style="list-style-type: none"> • avoids touching new surfaces eg. grass, sand and other tactile experiences • avoids, or is alarmed by, trauma related reminders, eg sights, sounds, smells, textures, tastes and physical triggers |
| <ul style="list-style-type: none"> • fight, flight, freeze response • uncharacteristic, inconsolable or rageful crying, and neediness • increased fussiness, separation fears, and clinginess • withdrawal/lack of usual responsiveness • limp, displays no interest | <ul style="list-style-type: none"> • unusually high anxiety when separated from primary caregivers • heightened indiscriminate attachment behaviour • reduced capacity to feel emotions – can appear ‘numb’ • ‘frozen watchfulness’ | <ul style="list-style-type: none"> • loss of acquired language skills |
| | | <ul style="list-style-type: none"> • genital pain: including signs of inflammation, bruising, bleeding or diagnosis of sexually transmitted disease |

Trauma impact

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|---|--|--|
| <ul style="list-style-type: none"> • neurobiology of brain and central nervous system altered by switched on alarm response • behavioural changes | <ul style="list-style-type: none"> • regression in recently acquired developmental gains • hyperarousal, hypervigilance and hyperactivity | <ul style="list-style-type: none"> • sleep disruption • loss of acquired motor skills • lowered stress threshold • lowered immune system |
| <ul style="list-style-type: none"> • fear response to reminders of trauma • mood and personality changes • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe | <ul style="list-style-type: none"> • insecure, anxious, or disorganised attachment behaviour • heightened anxiety when separated from primary parent/carer • indiscriminate relating • reduced capacity to feel emotions – can appear ‘numb’ | <ul style="list-style-type: none"> • cognitive delays and memory difficulties • loss of acquired communication skills |

Parental/carer support following trauma

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|--|--|
| <p>Encourage parent(s)/carers to:</p> <ul style="list-style-type: none"> • seek, accept and increase support for themselves, to manage their own shock and emotional responses • seek information and advice about the child’s developmental progress • maintain the child’s routines around holding, sleeping and eating • seek support (from partner, kin, MCH nurse) to understand, and respond to, infant’s cues | <ul style="list-style-type: none"> • avoid unnecessary separations from important caregivers • maintain calm atmosphere in child’s presence. Provide additional soothing activities • avoid exposing child to reminders of trauma • expect child’s temporary regression; and clinginess – don’t panic • tolerate clinginess and independence • take time out to recharge |
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0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months

Child development and trauma guide

12 months - 3 years

Developmental trends		
The following information needs to be understood in the context of the overview statement on child development:		
By 12 months		
<ul style="list-style-type: none"> enjoys communicating with family and other familiar people seeks comfort, and reassurance from familiar objects, family, carers, and is able to be soothed by them begins to self soothe when distressed understands a lot more than he can say expresses feelings with gestures sounds and facial expressions expresses more intense emotions and moods 	<ul style="list-style-type: none"> does not like to be separated from familiar people moves away from things that upset or annoy can walk with assistance holding on to furniture or hands pulls up to standing position gets into a sitting position claps hands (play pat-a-cake) indicates wants in ways other than crying learns and grows in confidence by doing things repeatedly and exploring 	<ul style="list-style-type: none"> picks up objects using thumb and forefinger in opposition (pincer) grasp is sensitive to approval and disapproval <p>May even be able to:</p> <ul style="list-style-type: none"> understand cause and effect understand that when you leave, you still exist crawl, stand, walk follow a one step instruction – “go get your shoes” respond to music
By 18 months		
<ul style="list-style-type: none"> can use at least two words and learning many more drinks from a cup can walk and run 	<ul style="list-style-type: none"> says “no” a lot is beginning to develop a sense of individuality needs structure, routine and limits to manage intense emotions 	<p>May even be able to:</p> <ul style="list-style-type: none"> let you know what he is thinking and feeling through gestures pretend play and play alongside others
By 2 years		
<ul style="list-style-type: none"> takes off clothing ‘feeds’/‘bathes’ a doll, ‘washes’ dishes, likes to ‘help’ builds a tower of four or more cubes recognises/identifies two items in a picture by pointing 	<ul style="list-style-type: none"> plays alone but needs a familiar adult nearby actively plays and explores in complex ways 	<p>May even be:</p> <ul style="list-style-type: none"> able to string words together eager to control, unable to share unable to stop himself doing something unacceptable even after reminders tantrums
By 2 1/2 years		
<ul style="list-style-type: none"> uses 50 words or more combines words (by about 25 months) 	<ul style="list-style-type: none"> follows a two-step command without gestures (by 25 months) alternates between clinginess and independence 	<ul style="list-style-type: none"> helps with simple household routines conscience is undeveloped; child thinks “I want it, I will take it”
By 3 years		
<ul style="list-style-type: none"> washes and dries hands identifies a friend by naming throws a ball overhand speaks and can be usually understood half the time 	<ul style="list-style-type: none"> uses prepositions (by, to, in, on top of) carries on a conversation of two or three sentences helps with simple chores may be toilet trained 	<ul style="list-style-type: none"> conscience is starting to develop; child thinks “I would take it but my parents will be upset with me”



12 months - 3 years • 12 months - 3 years • 12 months - 3 years • 12 months - 3 years • 12 months - 3 years

Child development and trauma guide

12 months - 3 years

Possible indicators of trauma

- | | | |
|--|--|---|
| <ul style="list-style-type: none">• behavioural changes, regression to behaviour of a younger child• increased tension, irritability, reactivity, and inability to relax• increased startle response• reduced eye contact | <ul style="list-style-type: none">• sleep and eating disruption• loss of eating skills• loss of recently acquired motor skills• avoidance of eye contact• inability to be soothed | <ul style="list-style-type: none">• uncharacteristic aggression• avoids touching new surfaces eg. grass, sand and other tactile experiences• avoids, or is alarmed by, trauma related reminders, eg sights, sounds, smells textures, tastes and physical triggers |
| <ul style="list-style-type: none">• fight, flight, freeze• uncharacteristic, inconsolable, or rageful crying, and neediness• fussiness, separation fears, and clinginess• withdrawal/lack of usual responsiveness• loss of self-confidence | <ul style="list-style-type: none">• unusually anxious when separated from primary caregivers• heightened indiscriminate attachment behaviour• reduced capacity to feel emotions – can appear ‘numb’, apathetic or limp• ‘frozen watchfulness’ | <ul style="list-style-type: none">• loss of acquired language skills• inappropriate sexualised behaviour/ touching• sexualised play with toys• genital pain, inflammation, bruising, bleeding or diagnosis of sexually transmitted disease |

Trauma impact

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|--|--|--|
| <ul style="list-style-type: none">• neurobiology of brain and central nervous system altered by switched on alarm response• behavioural changes | <ul style="list-style-type: none">• regression in recently acquired developmental gains• hyperarousal, hypervigilance and hyperactivity• sleep disruption | <ul style="list-style-type: none">• loss of acquired motor skills• lowered stress threshold• lowered immune system• greater food sensitivities |
| <ul style="list-style-type: none">• fear response to reminders of trauma• mood and personality changes• loss of, or reduced capacity to attune with caregiver• loss of, or reduced capacity to manage emotional states or self soothe | <ul style="list-style-type: none">• insecure, anxious, or disorganised attachment behaviour• heightened anxiety when separated from primary parent/carer• indiscriminate relating• increased resistance to parental direction | <ul style="list-style-type: none">• memory for trauma may be evident in behaviour, language or play• cognitive delays and memory difficulties• loss of acquired communication skills |

Parental/carer support following trauma

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|--|---|
| <p>Encourage parent(s)/carers to:</p> <ul style="list-style-type: none">• seek, accept and increase support for themselves to manage their own shock and emotional responses• seek information and advice about the child's developmental progress• maintain the child's routines around holding, sleeping and eating.• avoid unnecessary separations from important caretakers | <ul style="list-style-type: none">• seek support (from partner, kin, MCH nurse) to understand, and respond to, infant's cues.• maintain calm atmosphere in child's presence. Provide additional soothing activities.• avoid exposing child to reminders of trauma.• expect child's temporary regression; and clinginess - don't panic• tolerate clinginess and independence• take time out to recharge |
|--|---|



12 months - 3 years • 12 months - 3 years • 12 months - 3 years • 12 months - 3 years • 12 months - 3 years

Child development and trauma guide

3 - 5 years

Developmental trends

The following information needs to be understood in the context of the overview statement on child development:

Between 3-4 years

- communicates freely with family members and familiar others
- seeks comfort, and reassurance from familiar family and carers, and is able to be soothed by them
- has developing capacity to self soothe when distressed
- understands the cause of feelings and can label them
- extends the circle of special adults eg. to grandparents, baby-sitter
- needs adult help to negotiate conflict
- is starting to manage emotions
- is starting to play with other children and share
- has real friendships with other children
- is becoming more coordinated at running, climbing, and other large-muscle play
- can walk up steps, throw and catch a large ball using two hands and body
- use play tools and may be able to ride a tricycle
- holds crayons with fingers, not fists
- dresses and undresses without much help
- communicates well in simple sentences and may understand about 1000 words
- pronunciation has improved, likes to talk about own interests
- fine motor skill increases, can mark with crayons, turn pages in a book
- day time toilet training often attained

Between 4-5 years

- knows own name and age
- is becoming more independent from family
- needs structure, routine and limits to manage intense emotions
- is asking lots of questions
- is learning about differences between people
- takes time making up his mind
- is developing confidence in physical feats but can misjudge abilities
- likes active play and exercise and needs at least 60 minutes of this per day
- eye-hand coordination is becoming more practised and refined
- cuts along the line with scissors/can draw people with at least four 'parts'
- shows a preference for being right-handed or left-handed
- converses about topics and understands 2500 to 3000 words
- loves silly jokes and 'rude' words
- is curious about body and sexuality and role-plays at being grown-up
- may show pride in accomplishing tasks
- conscience is starting to develop, child weighs risks and actions; "I would take it but my parents would find out"



3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years

Child development and trauma guide

3 - 5 years

Possible indicators of trauma

- | | | |
|--|--|---|
| <ul style="list-style-type: none">• behavioural change• increased tension, irritability, reactivity and inability to relax• regression to behaviour of younger child• uncharacteristic aggression• Reduced eye contact | <ul style="list-style-type: none">• loss of focus, lack of concentration and inattentiveness• complains of bodily aches, pains or illness with no explanation• loss of recently acquired skills (toileting, eating, self-care)• enuresis, encopresis | <ul style="list-style-type: none">• sleep disturbances, nightmares, night terrors, sleepwalking• fearfulness of going to sleep and being alone at night• inability to seek comfort or to be comforted |
| <ul style="list-style-type: none">• mood and personality changes• obvious anxiety and fearfulness• withdrawal and quieting• specific, trauma-related fears; general fearfulness• intense repetitive play often obvious• involvement of playmates in trauma-related play at school and day care• separation anxiety with parents/others• loss of self-esteem and self confidence | <ul style="list-style-type: none">• reduced capacity to feel emotions – may appear ‘numb’, limp, apathetic• repeated retelling of traumatic event• loss of recently acquired language and vocabulary• loss of interest in activities• loss of energy and concentration at school | <ul style="list-style-type: none">• sudden intense masturbation• demonstration of adult sexual knowledge through inappropriate sexualised behaviour• genital pain, inflammation, bruising, bleeding or diagnosis of sexually transmitted disease• sexualised play with toys• may verbally describe sexual abuse, pointing to body parts and telling about the ‘game’ they played• sexualised drawing |

Trauma impact

- | | | |
|--|---|---|
| <ul style="list-style-type: none">• behavioural changes• hyperarousal, hypervigilance, hyperactivity• loss of toileting and eating skills | <ul style="list-style-type: none">• regression in recently acquired developmental gains• sleep disturbances, night terrors | <ul style="list-style-type: none">• enuresis and encopresis• delayed gross motor and visual-perceptual skills |
| <ul style="list-style-type: none">• fear of trauma recurring• mood and personality changes• loss of, or reduced capacity to attune with caregiver• loss of, or reduced capacity to manage emotional states or self soothe• increased need for control• fear of separation | <ul style="list-style-type: none">• loss of self-esteem and self confidence• confusion about trauma evident in play...magical explanations and unclear understanding of causes of bad events• vulnerable to anniversary reactions set off by seasonal reminders, holidays, and other events | <ul style="list-style-type: none">• memory of intrusive visual images from traumatic event may be demonstrated/ recalled in words and play• at the older end of this age range, children are more likely to have lasting, accurate verbal and pictorial memory for central events of trauma• speech, cognitive and auditory processing delays |

Parental/carers support following trauma

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|--|--|
| <p>Encourage parent(s)/carers to:</p> <ul style="list-style-type: none">• seek, accept and increase support for themselves to manage their own shock and emotional responses• remain calm. Listen to and tolerate child’s retelling of event• respect child’s fears; give child time to cope with fears• protect child from re-exposure to frightening situations and reminders of trauma, including scary T.V. programs, movies, stories, and physical or locational reminders of trauma | <ul style="list-style-type: none">• accept and help the child to name strong feelings during brief conversations (the child cannot talk about these feelings or the experience for long)• expect and understand child’s regression while maintaining basic household rules• expect some difficult or uncharacteristic behaviour• seek information and advice about child’s developmental and educational progress• take time out to recharge |
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3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years

Child development and trauma guide

5 - 7 years

Developmental trends

The following information needs to be understood in the context of the overview statement on child development:

Physical skills

- active, involved in physical activity, vigorous play
- may tire easily
- variation in levels of coordination and skill
- many become increasingly proficient in skills, games, sports
- some may be able to ride bicycle
- may use hands with dexterity and skill to make things, do craft and build things

Social-emotional development

- has strong relationships within the family and integral place in family dynamics
- needs caregiver assistance and structure to regulate extremes of emotion
- generally anxious to please and to gain adult approval, praise and reassurance
- conscience is starting to be influenced by internal control or doing the right thing "I would take it, but if my parents found out, they would be disapproving"
- not fully capable of estimating own abilities, may become frustrated by failure
- reassured by predictable routines
- friendships very important, although they may change regularly
- may need help moving into and becoming part of a group
- some children will maintain strong friendships over the period
- may be mood swings
- able to share, although not all the time
- perception of, and level of regard for self, fairly well developed

Cognitive and creative characteristics

- emerging literacy and numeracy abilities, gaining skills in reading and writing
- variable attention and ability to stay on task; attends better if interested
- good communication skills, remembers, tells and enjoys jokes
- may require verbal, written or behavioural cues and reminders to follow directions and obey rules
- skills in listening and understanding may be more advanced than expression
- perspective broadens as experiences at school and in the community expand
- most valuable learning occurs through play
- rules more likely to be followed if he/she has contributed to them
- may have strong creative urges to make things

Possible indicators of trauma

- behavioural change
- increased tension, irritability, reactivity and inability to relax
- sleep disturbances, nightmares, night terrors, difficulty falling or staying asleep
- regression to behaviour of younger child
- lack of eye contact
- 'spacey', distractible, or hyperactive behaviour
- toileting accidents/enuresis, encopresis or smearing of faeces
- eating disturbances
- bodily aches and pains – no apparent reason
- accident proneness
- absconding/truanting from school
- firelighting, hurting animals
- obvious anxiety, fearfulness and loss of self esteem
- frightened by own intensity of feelings
- specific fears
- efforts to distance from feelings of shame, guilt, humiliation and reduced capacity to feel emotions
- reduced capacity to feel emotions – may appear 'numb', or apathetic
- 'frozen watchfulness'
- vulnerable to anniversary reactions caused by seasonal events, holidays, etc
- repeated retelling of traumatic event
- withdrawal, depressed affect
- 'blacking out' or loss of concentration when under stress at school with lowering of performance
- explicit, aggressive, exploitive, sexualised relating/engagement with other children, older children or adults
- verbally describes experiences of sexual abuse pointing to body parts and telling about the 'game' they played
- sexualised drawing
- excessive concern or preoccupation with private parts and adult sexual behaviour
- hinting about sexual experience and sexualised drawing
- verbal or behavioural indications of age-inappropriate knowledge of adult sexual behaviour
- running away from home

5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years

Child development and trauma guide

5 - 7 years

Trauma impact

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|---|--|--|
| <ul style="list-style-type: none"> • changes in behaviour • hyperarousal, hypervigilance, hyperactivity • regression in recently acquired developmental gains • sleep disturbances due to intrusive imagery • enuresis and encopresis | <ul style="list-style-type: none"> • trauma driven, acting out risk taking behaviour • eating disturbances • loss of concentration and memory • flight into driven activity or retreat from others to manage inner turmoil | <ul style="list-style-type: none"> • post-traumatic re-enactments of traumatic event that may occur secretly and involve siblings or playmates • loss of interest in previously pleasurable activities |
| <ul style="list-style-type: none"> • fear of trauma recurring • mood or personality change • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe • increased self-focusing and withdrawal • concern about personal responsibility for trauma • wish for revenge and action oriented responses to trauma | <ul style="list-style-type: none"> • may experience acute distress encountering any reminder of trauma • lowered self-esteem • increased anxiety or depression • fearful of closeness and love | <ul style="list-style-type: none"> • child is likely to have detailed, long-term and sensory memory for traumatic event. Sometimes the memory is fragmented or repressed • factual, accurate memory may be embellished by elements of fear or wish; perception of duration may be distorted • intrusion of unwanted visual images and traumatic reactions disrupt concentration and create anxiety often without parent awareness • vulnerable to flashbacks of recall and anniversary reactions to reminders of trauma • speech and cognitive delays |

Parental/carer support following trauma

Encourage parent(s)/carers to:

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| <ul style="list-style-type: none"> • seek, accept and increase support for themselves to manage their own shock and emotional responses • listen to and tolerate child's retelling of event – respect child's fears; give child time to cope with fears • increase monitoring and awareness of child's play, which may involve secretive re-enactments of trauma with peers and siblings; set limits on scary or harmful play • permit child to try out new ideas to cope with fearfulness at bedtime: extra reading time, radio on, listening to a tape in the middle of the night to undo the residue of fear from a nightmare • reassure the older child that feelings of fear or behaviours that feel out of control or babyish eg. night wetting are normal after a frightening experience and that the child will feel more like himself or herself with time • encourage child to talk about confusing feelings, worries, daydreams, mental review of traumatic images, and disruptions of concentration by accepting the feelings, listening carefully, and reminding child that these are normal but hard reactions following a very scary event • maintain communication with school staff and monitor child's coping with demands at school or in community activities | <ul style="list-style-type: none"> • expect some time-limited decrease in child's school performance and help the child to accept this as a temporary result of the trauma • protect child from re-exposure to frightening situations and reminders of trauma, including scary television programs, movies, stories, and physical or locational reminders of trauma • expect and understand child's regression or some difficult or uncharacteristic behaviour while maintaining basic household rules • listen for a child's misunderstanding of a traumatic event, particularly those that involve self-blame and magical thinking • gently help child develop a realistic understanding of event. Be mindful of the possibility of anniversary reactions • remain aware of your own reactions to the child's trauma. Provide reassurance to child that feelings will diminish over time • provide opportunities for child to experience control and make choices in daily activities • seek information and advice on child's developmental and educational progress • provide the child with frequent high protein snacks/meals during the day • take time out to recharge |
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5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years

Child development and trauma guide

9 - 12 years

Developmental trends		
The following information needs to be understood in the context of the overview statement on child development:		
Physical skills		
<ul style="list-style-type: none"> large and fine motor skills becoming highly coordinated enjoys risk taking 	<ul style="list-style-type: none"> does well at games/sports requiring skill, strength and agility 	<ul style="list-style-type: none"> may look more adult-like in body shape, height and weight risk taking
Social-emotional development		
<ul style="list-style-type: none"> growing need and desire for independence and separate identity may challenge parents and other family members parents and home important, particularly for support and reassurance growing sexual awareness and interest in the opposite gender 	<ul style="list-style-type: none"> may experience embarrassment, guilt, curiosity and excitement because of sexual awareness girls may reach puberty during this time belonging to a group is extremely important; peers largely influence identity/self-esteem 	<ul style="list-style-type: none"> often interact in pairs or small groups; each member has status and position groups generally one gender, although interact with the other strong desire to have opinions sought and respected
Cognitive and creative characteristics		
<ul style="list-style-type: none"> beginning to think and reason in a more logical adult-like way capable of abstract thinking, complex problem solving, considers alternative possibilities and broadening perspectives 	<ul style="list-style-type: none"> concentrates for long periods of time if interested, but needs worries to be sorted may have sophisticated literacy and numeracy skills popular culture of great interest and major influence 	<ul style="list-style-type: none"> uses language in sophisticated ways; for example, tells stories, argues, debates knows the difference between fantasy and what is real has some appreciation of the value of money

Possible indicators of trauma		
<ul style="list-style-type: none"> increased tension, irritability, reactivity and inability to relax sleep disturbances, nightmares, night terrors, difficulty falling or staying asleep regression to behaviour of younger child 	<ul style="list-style-type: none"> reduced eye contact 'spacey' or distractible behaviour toileting accidents/enuresis, encopresis or smearing of faeces eating disturbances 	<ul style="list-style-type: none"> bodily aches and pains - no reason accident proneness absconding or truanting from school firelighting, hurting animals
<ul style="list-style-type: none"> obvious anxiety, fearfulness and loss of self-esteem/self confidence frightened by own intensity of feelings specific post-traumatic fears efforts to distance from feelings of shame, guilt, humiliation and reduced capacity to feel emotions reduced capacity to feel emotions - may appear 'numb' or apathetic vulnerable to anniversary reactions caused by seasonal events, holidays, etc. repeated retelling of traumatic event 'frozen watchfulness' 	<ul style="list-style-type: none"> withdrawal, depressed affect, or black outs in concentration 'blanking out' or lacks concentration when under stress at school with lowering of performance 	<ul style="list-style-type: none"> explicit, aggressive, exploitive, sexualised relating/engagement with other children, older children or adults verbally describes experiences of sexual abuse and tells 'stories' about the 'game' they played excessive concern or preoccupation with private parts and adult sexual behaviour hinting about sexual experience and telling stories verbal or behavioural indications of age-inappropriate knowledge of adult sexual behaviour sexualised drawing or written 'stories' running away from home

Child development and trauma guide

9 - 12 years

Trauma impact

<ul style="list-style-type: none"> • behavioural changes • hyperarousal, hypervigilance, hyperactivity • regression in recently acquired developmental gains • sleep disturbances due to intrusive imagery 	<ul style="list-style-type: none"> • enuresis and encopresis • eating disturbances • loss of concentration and memory • post-traumatic re-enactments of traumatic event that may occur secretly and involve siblings or playmates 	<ul style="list-style-type: none"> • trauma driven, acting out risk taking behaviour • flight into driven activity or retreat from others to manage inner turmoil • loss of interest in previously pleasurable activities
<ul style="list-style-type: none"> • fear of trauma recurring • mood or personality changes • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe • increased self-focusing and withdrawal • concern about personal responsibility for trauma • wish for revenge and action oriented responses to trauma 	<ul style="list-style-type: none"> • may experience acute distress encountering any reminder of trauma • lowered self-esteem • increased anxiety or depression • fearful of closeness and love 	<ul style="list-style-type: none"> • child is likely to have detailed, long-term and sensory memory for traumatic event. Sometimes the memory is fragmented or repressed • factual, accurate memory may be embellished by elements of fear or wish; perception of duration may be distorted • intrusion of unwanted visual images and traumatic reactions disrupt concentration and create anxiety often without parent awareness • vulnerable to flashbacks of recall and anniversary reactions to reminders of trauma • speech and cognitive delays

Parental/carers support following trauma

Encourage parent(s)/carers to:

- seek, accept and increase support for themselves to manage their own shock and emotional responses
- remain calm. Listen to and tolerate child's retelling of event - respect child's fears; give child time to cope with fears
- increase monitoring and awareness of child's play, which may involve secretive re-enactments of trauma with peers and siblings; set limits on scary or harmful play
- permit child to try out new ideas to cope with fearfulness at bedtime: extra reading time, radio on, listening to a tape in the middle of the night to undo the residue of fear from a nightmare
- reassure the older child that feelings of fear or behaviours that feel out of control or babyish eg. night wetting are normal after a frightening experience and that the child will feel more like himself or herself with time
- encourage child to talk about confusing feelings, worries, daydreams, mental review of traumatic images, and disruptions of concentration by accepting the feelings, listening carefully, and reminding child that these are normal but hard reactions following a very scary event
- maintain communication with school staff and monitor child's coping with demands at school or in community activities
- expect some time-limited decrease in child's school performance and help the child to accept this as a temporary result of the trauma
- protect child from re-exposure to frightening situations and reminders of trauma, including scary television programs, movies, stories, and physical or locational reminders of trauma
- expect and understand child's regression or some difficult or uncharacteristic behaviour while maintaining basic household rules
- listen for a child's misunderstanding of a traumatic event, particularly those that involve self-blame and magical thinking
- gently help child develop a realistic understanding of event. Be mindful of the possibility of anniversary reactions
- remain aware of your own reactions to the child's trauma. Provide reassurance to child that feelings will diminish over time
- provide opportunities for child to experience control and make choices in daily activities
- seek information and advice on child's developmental and educational progress
- provide the child with frequent high protein snacks/meals during the day
- take time out to recharge



Child development and trauma guide

12 - 18 years

Developmental trends		
The following information needs to be understood in the context of the overview statement on child development:		
Physical development		
<ul style="list-style-type: none"> significant physical growth and body changes develops greater expertise/skills in sport 	<ul style="list-style-type: none"> changing health needs for diet, rest, exercise, hygiene and dental care puberty, menstruation, sexuality and contraception 	<ul style="list-style-type: none"> nutritious balanced diet including adequate calcium, protein and iron
Self concept		
<ul style="list-style-type: none"> can be pre-occupied with self secondary sex characteristics affect self concept, relationships with others and activities undertaken 	<ul style="list-style-type: none"> dealing with own sexuality and that of peers developing identity based on gender and culture 	<ul style="list-style-type: none"> becoming an adult, including opportunities and challenges
Social-emotional development		
<ul style="list-style-type: none"> empathy for others ability to make decisions (moral) values and a moral system become firmer and affect views and opinions spends time with peers for social and emotional needs beyond parents and family peer assessment influences self concept, behaviour/need to conform girls have 'best friends', boys have 'mates' 	<ul style="list-style-type: none"> may explore sexuality by engaging in sexual behaviours and intimate relationships develops wider interests seeks greater autonomy personally, in decision making more responsible in tasks at home, school and work experiences emotional turmoil, strong feelings and unpredictable mood swings 	<ul style="list-style-type: none"> interdependent with parents and family conflict with family more likely through puberty able to negotiate and assert boundaries learning to give and take (reciprocity) focus is on the present - may take significant risks understands appropriate behaviour but may lack self control/insight
Cognitive and creative characteristics		
<ul style="list-style-type: none"> thinks logically, abstractly and solves problems thinking like an adult may take an interest in/develop opinions about community or world events 	<ul style="list-style-type: none"> can appreciate others' perspectives and see a problem or situation from different angles 	<ul style="list-style-type: none"> career choice may be realistic, or at odds with school performance and talents



12 - 18 years • 12 - 18 years • 12 - 18 years • 12 - 18 years • 12 - 18 years • 12 - 18 years • 12 - 18 years • 12 - 18 years

Child development and trauma guide

12 - 18 years

Possible indicators of trauma

<ul style="list-style-type: none"> • increased tension, irritability, reactivity and inability to relax • accident proneness • reduced eye contact • sleep disturbances, nightmares 	<ul style="list-style-type: none"> • enuresis, encopresis • eating disturbances/disorders • absconding or truanting and challenging behaviours • substance abuse 	<ul style="list-style-type: none"> • aggressive/violent behaviour • firelighting, hurting animals • suicidal ideation • self harming eg. cutting, burning
<ul style="list-style-type: none"> • efforts to distance from feelings of shame and humiliation • loss of self-esteem and self confidence • acute psychological distress • personality changes and changes in quality of important relationships evident 	<ul style="list-style-type: none"> • increased self-focusing and withdrawal • reduced capacity to feel emotions – may appear ‘numb’ • wish for revenge and action oriented responses to trauma • partial loss of memory and ability to concentrate 	<ul style="list-style-type: none"> • trauma flashbacks • acute awareness of parental reactions; wish to protect parents from own distress • sexually exploitive or aggressive interactions with younger children • sexually promiscuous behaviour or total avoidance of sexual involvement • running away from home

Trauma impact

<ul style="list-style-type: none"> • sleep disturbances, nightmares • hyperarousal, hypervigilance, hyperactivity • eating disturbances or disorders • trauma acting out, risk taking, sexualised, reckless, regressive or violent behaviour 	<ul style="list-style-type: none"> • flight into driven activity and involvement with others or retreat from others in order to manage inner turmoil • vulnerability to withdrawal and pessimistic world view 	<ul style="list-style-type: none"> • vulnerability to depression, anxiety, stress disorders, and suicidal ideation • vulnerability to conduct, attachment, eating and behavioural disorders
<ul style="list-style-type: none"> • mood and personality changes and changes in quality of important relationships evident • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe • lowered self-esteem 	<ul style="list-style-type: none"> • flight into adulthood seen as way of escaping impact and memory of trauma (early marriage, pregnancy, dropping out of school, abandoning peer group for older set of friends) • fear of growing up and need to stay within family orbit 	<p>Memory for trauma includes:</p> <ul style="list-style-type: none"> • acute awareness of and distress with intrusive imagery and memories of trauma • vulnerability to flash backs, episodes of recall, anniversary reactions and seasonal reminders of trauma • may experience acute distress encountering any reminder of trauma • partial loss of memory and concentration

Parental/carer support following trauma

<p>Encourage parent(s)/carers to:</p> <ul style="list-style-type: none"> • seek, accept and increase support for themselves to manage their own shock and emotions • remain calm. Encourage younger and older adolescents to talk about traumatic event with family members • provide opportunities for young person to spend time with friends who are supportive and meaningful • reassure young person that strong feelings – whether of guilt, shame, embarrassment, or wish for revenge – are normal following a trauma • help young person find activities that offer opportunities to experience mastery, control, and self-esteem • encourage pleasurable physical activities such as sports and dancing • monitor young person's coping at home, school, and in peer group 	<ul style="list-style-type: none"> • address acting-out behaviour involving aggression or self destructive behaviour quickly and firmly with limit setting and professional help • take signs of depression, self harm, accident proneness, recklessness, and persistent personality change seriously by seeking help • help young person develop a sense of perspective on the impact of the traumatic event and a sense of the importance of time in recovering • encourage delaying big decisions • seek information/advice about young person's developmental and educational progress • provide the young person with frequent high protein snacks/meals during the day • take time to recharge
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PRACTICE SKILLS DEVELOPMENT WORKSHOP

CUMULATIVE HARM - ASSESSING RISK AND MAKING INFORMED TRANSPARENT DECISIONS

HANDOUT: SYSTEMIC AND PRACTICE BARRIERS TO IDENTIFYING AND RESPONDING TO CUMULATIVE HARM

Systemic barriers

- Legislative threshold may lead to children at low immediate risk not being identified in criteria of significant harm.
- System tends to focus more on high impact, low frequency events as easier to see the impact. Legal focus emphasises a need to prove cause and effects between parental behaviour and harm consequences. Requirement to present evidence of cumulative impacts of emotional harm can be difficult.
- ICMS systems summarise and categorise previous contact into events - with demanding workloads, the assumption may be made that reading case files is not necessary / a priority.
- Pressure on resources, so they go to the most visible issue/concern (high impact but may be low frequency).

Practice barriers

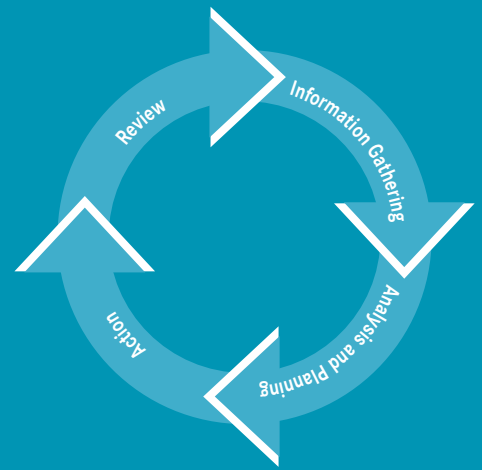
- Practitioners working in an event oriented way, not observing patterns of harm – event based assessment and immediate safety rather than the cumulative nature of harm and its long term impacts.
- Information not being carried over from one CCR / notification to the next - information is lost over time.
- Assumptions are made that the problems presented in previous notifications are resolved at closure.
- Risk frameworks consider pattern and history with the aim of predicting future behaviour of parents and likelihood of harm; rather than establishing the cumulative harm already suffered.

- When only seeing is believing – insufficient use of well-grounded theories to help us understand beyond what we observe - including restricted understanding of child development.
- Harmful consequences of chronic neglect minimised or discounted including limited understanding of the critical nature of early developmental impacts for infants.
- Support services in the community aren't available – including practical and material assistance to the family
- ...we run out of steam / ideas for strategies...

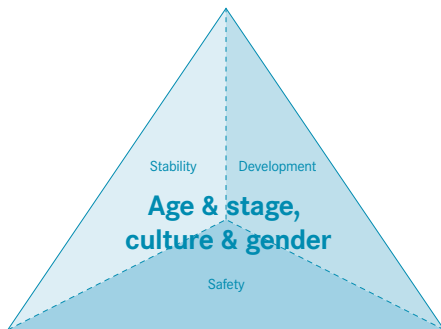
From Bromfield, L., Gillingham, P. and Higgins, D. (2003). Families who re-enter the child protection system: Data from an Australian sample. Conference Paper presented at the *Ninth Australasian Conference on Child Abuse and Neglect*. November 2003. Sydney: ACCAN.

Available from:

<http://pandora.nla.gov.au/pan/42706/20040617-0000/www.community.nsw.gov.au/documents/accan/presentations/2S5C-1.pdf>



Specialist Practice Guide Cumulative Harm



Key message: Refer to the *Best Interests Case Practice Model* for a general case practice guide.

Introduction

This guide is designed to work in two parts: an overview on cumulative harm and a practice tool to guide you.

The Best Interests Case Practice Model provides your foundation for working with children and families. Practice guides are designed to provide additional guidance on information gathering, analysis and planning, action, and review in cases where specific complex problems exist or with specific vulnerable sub-groups.

To promote children's best interests, Family Services, Child Protection and Placement and Support Services need to take account of a child's age and stage of life, and their culture and gender. Together these considerations provide a lens through which to view children's safety, stability and development and understand the unique circumstances and experiences of a child.

Effective practice requires good working relationships between services, working in partnership with the family wherever possible - where the child's best interests are at the centre.

Analysis is on going throughout the involvement with the family and is a dynamic process, which evolves as new information comes to light. From the first point of contact with the family, we are acting to intervene and influence the family dynamics. Planning is a continuous process, inclusive of the child and family, which is based on available assessment/s and on our review of the effectiveness of our previous actions and the outcomes for the child.

The process focuses practitioners attention on

- What are the facts?
- What is our analysis of the facts?
- What will we do about the facts?
- Were our interventions helpful?
- What are the outcomes for the child and family?
- Do we need to do anything differently?

The focus of any assessment and intervention must now be to answer the question "Is this child safe?" as well as "How is this child developing?"



Key message: To guide the assessment of the impact of cumulative harm on children refer to the Child development and trauma guide, which identifies developmental milestones and indicators of trauma at different ages and stages.

Overview

Cumulative harm and the *Children, Youth and Families Act 2005*

The CYFA (s. 10) states the best interests must always be paramount when making a decision, or taking action with regard to a child. Included in these principles is s. 10(3)(e) which must consider ‘the effects of cumulative patterns of harm on a child’s safety and development’.

Section 162(2) determines that: ‘harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances’.

The grounds for statutory intervention when a child is in need of protection outlined in Section 162 (1) (c)-(f) do not change. Cumulative harm may be a factor in any one ground (e.g., failure to provide basic care) or a combination of different grounds (e.g., physical injury and emotional harm) where the prolonged and repeated experience of these circumstances or events have or are likely to cause the child significant harm.

The focus on identifying and responding to cumulative harm is likely to have a greater impact in responses to cases of ‘omission’ (i.e., neglect) that may have previously been considered as low risk when considered episodically.

What is cumulative harm?

Cumulative harm refers to the effects of multiple adverse circumstances and events in a child’s life. The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child’s sense of safety, stability and wellbeing.

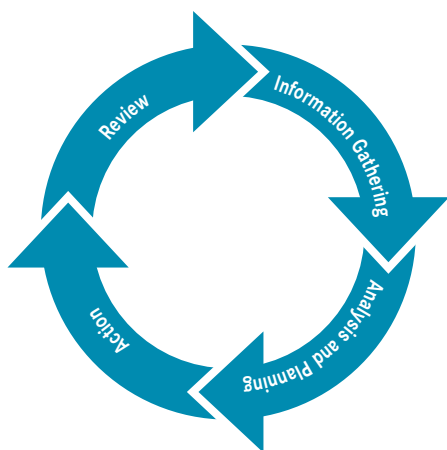
Cumulative harm may be caused by an accumulation of a single recurring adverse circumstance or event (e.g., unrelenting low level care), or by multiple different circumstances and events (e.g., persistent verbal abuse and denigration, inconsistent or harsh discipline and/or exposure to family violence).

This means cumulative harm may be a factor in any protective concern (e.g., neglect, physical abuse, emotional abuse, sexual abuse and or witnessing family violence). Also, because cumulative harm can be caused by a pattern of harmful events, it is unlikely that a child will be reported to Child Protection explicitly due to concerns about ‘cumulative harm’. This means that practitioners need to be alert to the possibility of multiple adverse circumstances and events in all reports, and to consider, not just the information presented in the current report, but the past history of involvement that may be indicative of cumulative harm.

How does cumulative harm impact on children?

The main theories that have helped us to understand the way in which cumulative harm impacts on children are child development (including early brain development), trauma and attachment theories.

Researchers investigating brain development have used the term ‘toxic stress’ to describe prolonged activation of stress management systems in the absence of support. Stress prompts a cascade of neurochemical changes to equip us to survive the stressful circumstance or event. If prolonged (e.g., if a child experienced multiple adverse circumstances or events) stress can disrupt the brain’s architecture and stress management systems. In children, ‘toxic stress’ can damage the developing brain (Shonkoff & Phillips, 2001).





Key message: Refer to the risk profile guide for parent, child and family factors commonly associated with the occurrence of child abuse and neglect; and the Guide to Assessing Parental Capacity to assist your assessment.

Key message: Refer to the Best Interests Case Practice Model for guidance on working with Aboriginal children and families and other culturally and linguistically diverse groups.

Chronic child maltreatment

Bromfield and Higgins (2005) defined chronic child maltreatment as recurrent incidents of maltreatment over a prolonged period of time (i.e., multiple adverse circumstances and events) and argued that chronic child maltreatment caused children to experience cumulative harm.

Critically, they found that the majority of children who are abused or neglected experience multiple incidents and multiple types of child maltreatment. This research highlights the critical need to be alert to the possibility that a child is experiencing cumulative harm if they are the subject of repeated referrals to Child Protection.

Parental and family indicators of cumulative harm

Research has shown that families who experience cumulative harm have:

- Multiple inter-linked problems (i.e., risk factors) such as mental health problems, substance use and family violence.
- An absence of protective factors.
- Social isolation and or exclusion.
- Enduring parental problems impacting their capacity to provide adequate care (e.g., intellectual disability, substance abuse).

Engaging Aboriginal and other culturally and linguistically diverse children and families

Cultural competence and respect is essential in any intervention with families. Practitioners need to explore the particular meaning events hold within the families' cultural traditions.

- Section 12(a) of the CYFA provides guidance on principles for engaging Aboriginal families.
- Section 11(g)-(j) of the CYFA provides guidance on principles for engaging other culturally diverse families.

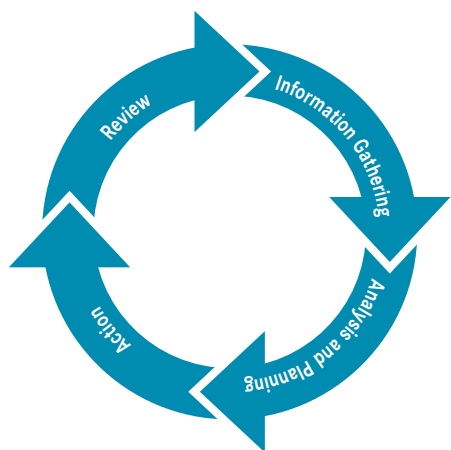
Preparing matters for court

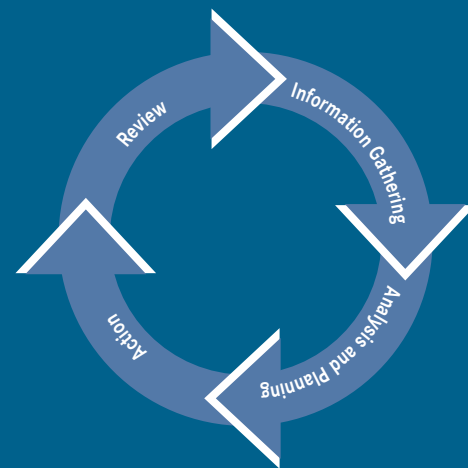
Child Protection need to be able, when required, to present evidence to the court that shows the effects of cumulative harm on children. The court will also want to know what assistance has been provided to the family and the outcomes of previous interventions.

Assisting recovery in children

Cumulative harm can overwhelm the most resilient child and particular attention needs to be given to understanding the complexity of the child's experience. These children require calm, patient, safe and nurturing parenting in order to recover, and may well require a multi-systemic response to engage the required services to assist.

The recovery process for children and young people is enhanced by the belief and support of non-offending family members and significant others. They need to be made safe and given opportunities to grieve for the loss and pain they have experienced and to reconnect with their parents and/or carer, school, community and culture.





Practice Tool Cumulative Harm

Key message: Refer to the Best Interests Case Practice Model for a general case practice guide.

The aim of this tool is to provide some additional guidance about specific things you might consider in cases involving cumulative harm. The tool has four parts (Information gathering, analysis and planning, action and review) which reflect the dynamic process of working with families.

Information gathering

Information gathering is ongoing throughout the life of a case, and includes gathering information about the child and their family from existing case files, professionals involved with the family and most importantly from children and families themselves. Information also needs to be gathered about previous attempts to resolve the problems within the family by the family themselves, by Child Protection and by other professionals and agencies involved with the child and family. Case conferences are an excellent strategy for gathering information.

Key message: Cases involving cumulative harm are complex. You need to access appropriate supervision throughout the process of information gathering, analysis and planning, action, and review.

Identifying cumulative harm

The majority of children who experience child abuse and neglect experience multiple incidents and multiple types of child maltreatment. In order to identify whether a child is experiencing cumulative harm it is important to consider the following elements:

- Frequency - number of incidents.
- Type - number of types and the different types (physical abuse, neglect, sexual abuse, emotional abuse and witnessing family violence).
- Severity - severity of the adult behaviour, and the severity of the impact on the child, including the impact on the child's development.
- Source of harm - number of different people responsible and relationship of person responsible to child (intra- or extra-familial).
- Duration - period of time over abuse and neglect occurred.

To explore these dimensions you might ask questions such as:

- Have there been previous allegations for similar issues?
- Are there indicators that the child has experienced other types of maltreatment in addition to the type(s) mentioned in the report?
- Has the alleged maltreatment caused, or is it likely to cause, significant harm if it were repeated over a prolonged period?
- Does the child's current situation make them more vulnerable to other perpetrators?
- How long have the problems in the family that lead to Child Protection's current involvement been present?
- If relevant, what has been the previous pattern in relation to placement and reunification?



Key message: *When considering cumulative harm practitioners are required to assess each report as bringing new information, which needs to be carefully integrated into the history.*



Key message: *Given most children are scared or ambivalent about disclosure, and experience confusion and loyalty even when parents are abusive, what is the best way to build rapport with the child? Be thoughtful, creative and purposeful in your contact with the child and try to help them to understand your role and the process. Where possible, give the child choices over the process and timing of events.*

Indicators of cumulative harm in the case history

Well-documented case histories are critical to inform future assessments of the possible presence of cumulative harm. The details matter.

Remember, these assessments inform your analysis and decision making, rather than direct it. Assessments need to be critiqued in the light of other information and observations held by Child Protection.

- Have you summarised the file under the criteria of: frequency, type, severity, source of harm and duration of abuse/neglect/violence?
- Have you been reflective and critical regarding whether interventions have been or are effective?
- If there is a sibling group, is there a summary for each child? Have you reflected on the developmental trajectory for other children within the family?

Assessing cumulative harm in children

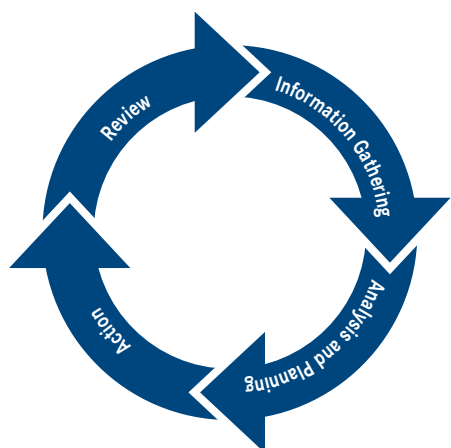
The child's subjective experience has to become central to the analysis of the impact of cumulative harm. Put the child at the centre of your assessment. Are there early signs that might indicate that a child is experiencing cumulative harm?

Talk to and or observe the child

- How does the child present? How is the child behaving? What is the child saying? What does this tell us?
- Is he or she developmentally 'on track' (i.e., able to relate, play, concentrate, participate and belong)?
- What are the child's experiences, fears and supports?
- Is he or she displaying any signs of trauma?
- What do the children or young people say about the risk of future violence? Have they had the opportunity to speak alone? Have we explored their experience?
- What meaning has the child or young person made of the trauma they have experienced?

Talk to key people in the child's life

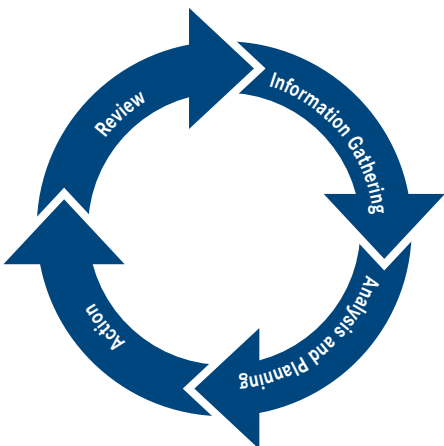
- Who has insight into the child's story and understands the meaning the child attributes to the abuse, violence and or neglect the child has experienced?
- If there is a sibling group, have you considered each child's individual development and experience?
- Have there been any recent changes in the child's presentation and behaviour? Who is closest to the child and able to comment on the changes over time? The parents or carers are usually the starting point for this discussion. However, the extended family, child-care practitioner, maternal and child health nurse, teacher, family support practitioners, family violence practitioner, housing practitioners, G.P., paediatrician, counsellor, speech therapist, neighbour and any other significant adult in the life of the child or family, should be considered as a valuable source of information and often as a partner in the decision making and process of recovery.



Key message: Refer to the risk profile guide for parent, child and family factors commonly associated with the occurrence of child maltreatment; and the Guide to Assessing Parental Capacity to assist in assessing in parental capacity.



Key message: Genograms and Eco maps are very useful to develop early in the response process. They are visual reminders to think and act systemically.



What is happening in the child's daily life?

- Does the child's current situation make him or her more vulnerable to harm or other perpetrators?

In order to recognise and respond to cumulative harm, the assessment must present the outcomes for the child should their circumstances remain unchanged. This process will identify the probability for future harm to the child, including the impact of harm on their safety, stability and development.

Tips for gathering information effectively

Child Protection practitioners need to gather information from multiple sources. Case conferences are an excellent way of doing this and will usually inform your analysis and planning more effectively than individual phone calls. Any professional opinion is of itself limited by the time, role and focus of the practitioner (e.g., maternal and child health nurses that only sees infant for brief periods once a fortnight, or the drug and alcohol practitioner who is focused on the adults recovery not their parenting capacity).

- Have you spoken to other professionals and services involved with the family?
- Have you consulted the High Risk Infant Manager or Specialist Infant Protective Worker if appropriate? Have you followed through with their recommendations?
- Is the child or young person an Aboriginal or Torres Strait Islander? If so, what is the ACSASS/Lakidjeka practitioner's (Aboriginal) perspective on this child's safety, stability and development?
- Have you consulted with other cultural services if appropriate?
- How have other service systems intervened into the life of the family? The involvement of Police and other adult focused services such as Drug and Alcohol, Mental Health, Homelessness, and Family Violence and Sexual Assault Services is highly relevant.

Parental and family indicators of cumulative harm

In addition consider:

- The family's experience holistically. What have the parents' experiences been?
- How has the abuse and or violence impacted on the parent's mental, emotional and physical wellbeing?
- What is the repeating and or current pattern around the problem behaviours? Who does what, to whom, when?
- How has the abuse, neglect and or violence impacted on the parent's relationship with the child?
- Is the problem an enduring problem (e.g., disability) or situational (e.g., homelessness)?
- How has the problem impacted on the parent's capacity to parent?
- With appropriate support, is the parent likely to be able to provide an adequate level of care to their child?

The following questions might help you to explore the problem from the family's perspective:



Key message: Refer to the Best Interests Case Practice Model for a general case practice guide.

- How has the family tried to manage the problems before coming to the attention of the Child Protection system?
- What are/were the exceptions to the problem behaviour/s being repeated? What was different? What was the context that enabled the family strengths to be enacted?

Analysis and planning

Decision-making needs to grapple with the complexity of each situation rather than hastily arriving at an overly optimistic or overly negative position. If the previous service response was unhelpful, then we need to do something different. We need to find another intervention or process that is more effective and engaging.

Practitioners must find the balance between providing support and validation whilst being able to directly challenge neglectful and other aspects of poor parenting (Frederico, Jackson, & Jones, 2006). Cousins (2005) writes, we need

to be careful we are not being confused by the illusion of change. Sometimes, in our own hope to see things improve, we can focus on improvements that are not actually about change for the child. This can also be a form of collusion – where the practitioner and the parent know deep down they cannot do it, but no one is prepared to shatter the dream (p. 5).

Do other professional's opinions vary? How do these contrast with your own observations? What does this mean for your analysis of risk of harm?

Decisions about progress are particularly difficult in cases of chronic neglect that are characterised by an unrelenting low-level of care ... The term 'abuse' connotes a ring of urgency that 'neglect' does not and the effects of neglect are usually not as obvious. Frederico, Jackson and Jones (2006) caution:

It is critical that neglect is not considered a lesser problem than other forms of maltreatment given the evidence that its consequences can be damaging. It is also important that the presence of chronic neglect does not obscure other forms of maltreatment (Frederico, Jackson, & Jones, 2006, p. 18).

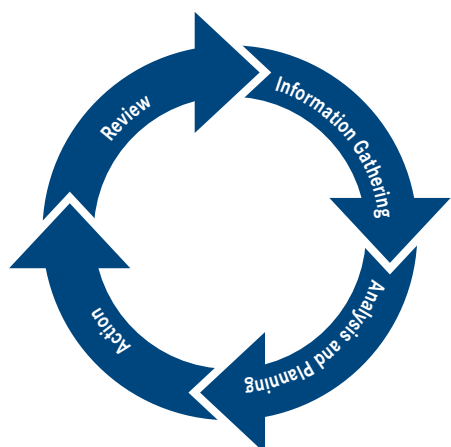
The child's subjective experience has to become central to the analysis of the impact of cumulative harm.

Indicators of cumulative harm in the case history

The types of reports received and the sources of information may provide indicators that a child is experiencing cumulative harm. Indicators of cumulative harm in the types of reports might include:

- Multiple reports.
- Previous substantiations.
- Multiple sources alleging similar problems.
- Reports from professionals.
- Evidence of children not meeting developmental milestones.
- Allegations of inappropriate parenting in public.

When a case has previous reports either not investigated or not substantiated, inaccurate assumptions can be made that this case is not one of significant risk.





Key message: Refer to the Best Interests Case Practice Model for a general case practice guide.

A cumulative harm perspective requires a re-examination of each of these reports every time a new report is made, in order to assess whether a number of low-level risk factors is demonstrating significant cumulative harm.

At intake, the rationale for 'no further action' on previous report(s) needs to be challenged and a different analysis developed based on the new information provided in the current report.

- Why was there no further action?
 - Because the alleged event when considered in isolation fell below the threshold for statutory intervention?
 - Because there was insufficient information gathering and analysis?
 - Because the available evidence was not sufficient to enable the allegation to be substantiated?
- What does the information in the new report tell you about the possibility of a pattern of inadequate parenting being present?

Consider the use of multi-disciplinary assessments for children and for parents. For example, assessments by the: paediatrician, maternal and child health nurse, school, health service, occupational therapist, speech therapist, drug and alcohol service, disability service, general practitioner, physiotherapist, psychologist, and/or psychiatrist. Be purposeful in regard to how these will add value to your analysis.

Remember, these assessments inform your analysis and decision making, rather than direct it. Assessments need to be critiqued in the light of other information and observations held by Child Protection.

If the child is of Aboriginal or Torres Strait Islander descent, remember to consult with the ACSASS/Lakidjeka practitioner when formulating your plan.

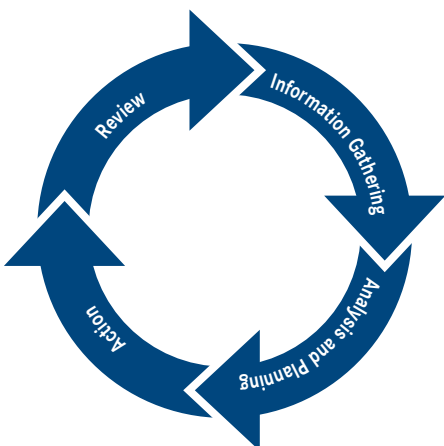
Action

Practitioners need to make every effort to engage the families cooperatively to address issues of cumulative harm. Coercive forms of intervention will sometimes be necessary, but this is a last resort. Where there is cumulative harm practitioners are reminded that a referral to another service will not ensure that the family will engage with that service or that change will occur. Families in which cumulative harm is an issue often experience multiple inter-linked problems - joined up problems need joined up solutions, and a single service may not be able to assist families to change.

Planning the intervention

What interventions might assist the child and family, in the short and long-term? Note that any action should be based on sound analysis and be purposeful towards engaging the family members in a change process. Have you considered:

- Engaging the absent parent
- Engaging violent partners (providing practitioner safety issues have been managed)
- Engaging the extended family
- Case conference
- Family group meeting
- Aboriginal family decision making meeting



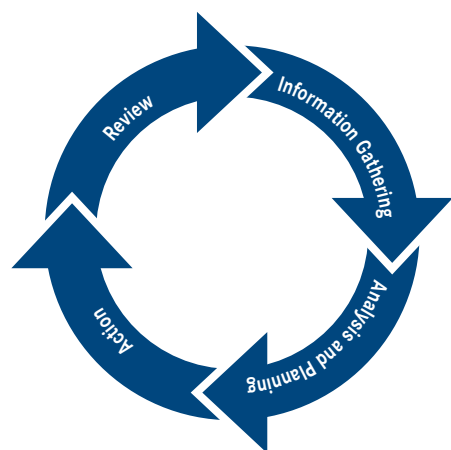


Key message: Remember to consider what interventions or services might assist the child towards recovery.

Key message: Remember to coordinate between services and clarify roles and communication processes. Who will do what, for whom, by when? At every stage, have you included parents, carers, teachers, childcare practitioners and any other significant person in the child's life?

Key message: All agencies need to be clear about their role and responsibilities. These should be agreed to and put in writing and distributed to the participants.

Key message: For guidance on providing emotional first aid to parents and children refer to the Child development and trauma guide.



- Referral to other agency/agencies (e.g., home visiting, family services, drug and alcohol, mental health, drug and alcohol, family violence, men's behaviour change, victims of crime assistance services, sexual assault services, CAMHS, family counselling services, refugee services, culturally specific services)
- Connections to universal services or community programs/clubs (e.g., schools, maternal and child health nurse, health services, child care, mentoring programs, sporting clubs, community centres, neighbourhood houses, first mothers groups, playgroups, parenting groups, toy library)
- Respite placement
- Discharge planning meeting
- Application for a court order
- If the child is in care, have you made a reunification plan or considered intensive family preservation services?
- If reunification cannot occur, are you preparing the stability plan within the child's timeframes? (refer to the online *Child Protection Practice Manual* for guidance).

If the child is of Aboriginal or Torres Strait Islander descent, remember to consult with the ACSASS/Lakidjeka practitioner.

Working in partnership

Hold case conferences regularly when there are a number of professionals involved.

It is critical that the professional best placed to engage strongly with the family is identified. This may or may not be the same person who has responsibility for coordinating cross-service responses. The strongest determinate of good outcomes in practice with families is the quality of the relationship between the practitioner and the family members.

Working with children and families

The Best Interests principles of the CYFA 2005 clearly state that we must give the widest possible protection and assistance to the parents and the child as the fundamental unit of society and strengthen and preserve and promote positive relationships between family members. Practice needs to be strength-based and forensically astute and be respectful and courteous at all times. The goals of the intervention need to be developed with the family and extended family and it is critical that they are concrete, behavioural and measurable. The parents need to know when they have been successful and the practitioners need to engage them in meaningful ways which build confidence.

In partnership with the parents or carers, we need to develop a rich understanding of the past experiences of the child, champion their cause in the present, and develop plans for the future that enables opportunities for healthy development.

It is important to acknowledge that parents may be experiencing trauma symptoms and need ongoing support. Practitioners need to engage parents in managing their responses to their own and their children's trauma. It is normal for parents to feel overwhelmed and suffer shock, anger, severe grief, sleep disturbances and other trauma related responses.

Key message: *Refer to the Best Interests Case Practice Model for a general case practice guide.*

Key message: *Refer to the Best Interests Case Practice Model for guidance on working with Aboriginal children and families and other culturally and linguistically diverse groups.*

Key message: *If family problems that have prevented children from receiving adequate care are overwhelming and intractable, despite ‘the widest possible assistance’ (s.10), then the child’s needs for safety and stability must be met by engaging the support of kith and kin or Out-of-Home Care services.*



Key message: *The court will want to hear evidence about the assistance that has been made available to the family and the outcomes of previous interventions by Child Protection. This evidence is particularly important if Child Protection is recommending that a different course of action is required.*

Identifying relevant evidence for any court proceeding requires a great deal of skill. It is highly recommended that workers engage with their solicitor as early as possible to assist in identifying the relevant evidence, and to advise what additional evidence may be required for court proceedings

Engage families in solution focussed thinking. Ask families the miracle question: If you woke up in the morning and a miracle had happened and all your problems were fixed, what would be different? What would there be more or less of in your life? How would we know? Who would notice? Alternatively, you could ask families: How will you know when the nightmare is over? What are your dreams for your child? What gets in the way of these becoming real?

If a child of Aboriginal or Torres Strait Island descent is to be placed in care, we must adhere to the Aboriginal Child Placement Principle and ensure a child’s connection to their natural family and/or community. This may mean thinking outside administratively defined geographic regions and working collaboratively with other regions to place the child with their family or community.

When parents can’t or won’t change

As hard as it can be to witness the struggles of some parents attempting to change their situations, ultimately if a parent won’t change, can’t change, or it will take too long, then the needs of the most vulnerable family members, the children, have to be prioritised. The short and long term effects matter, whether there is intent to harm or not. Remember that the desire to change dangerous and or neglectful behaviours does not equal capacity to change. Sustaining change is hard work and requires commitment and consistent evidence of changed behaviours.

Preparing matters for court

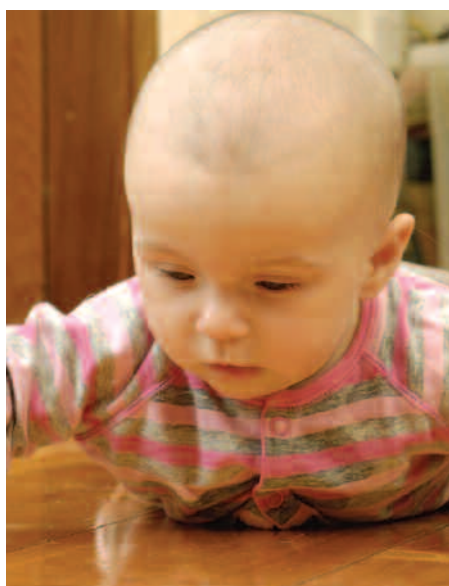
When Child Protection are seeking to establish the existence of cumulative harm and the detrimental effect of this harm on children, they must present evidence to the court that supports this assessment and shows the effects of cumulative harm on children.

Firstly, the court must be satisfied that the cumulative harm to the child exists, and this is done by the court accepting the evidence presented. So, using an example of a child who has suffered chronic neglect and low level physical abuse, the evidence is likely to be records of repeat medical treatments, indicating a pattern of injuries; or it may be evidence from a school teacher, or from the protective worker. Other evidence may include records that show the parents failure to attend to the medical needs of the child.

Secondly, the court must be satisfied that the cumulative harm has or is likely to impact on the child in a detrimental way. Again, using our example, the evidence in support of the impact of the harm maybe from the treating doctor as to the harmful effect of the injury, or it may be from the teacher as to the child’s delayed academic, physical or social development that they have observed in the school environment. It will also include evidence from the protective worker and their understanding of the relevant research in relation to the impact of the cumulative harm on a child. In some instances, additional expert evidence will be required to satisfy the court. For instance, if the child is suffering a particular medical condition because of the harm, a relevant medical practitioner who has treated the child would be appropriate. If the impact of the harm is psychological, it may be appropriate to call a treating psychologist or psychiatrist.

Key message: For further guidance in preparing matters for court, Refer to the *Guide to court practice for Child Protection practitioners 2007*.

Key message: Refer to the *Best Interests Case Practice Model for a general case practice guide*.



Finally, the court needs to be provided with evidence of the likely future outcomes for the child, should their circumstances remain unchanged. Again, this evidence may be from the protective worker and their understanding of relevant research as to the likely prognosis for children who are not assisted when this type of harm exists. In some circumstances, expert evidence from within the medical profession or social sciences will be beneficial. This process will identify the probability for future harm to the child, including the impact of harm on their safety, stability and development.

Review

We need to remain curious about our effectiveness, and constantly review our assessments and planning, in the light of emerging information and the outcomes of our actions. All families are different and there is not a single solution. Good practice may involve trying several strategies or interventions before coming up with an approach that works. It is critical to constantly integrate new information as it comes to light. We need routinely reassess both the circumstances for the child and family and the effectiveness of our actions.

Previous service system responses and outcomes of interventions need to be realistically assessed:

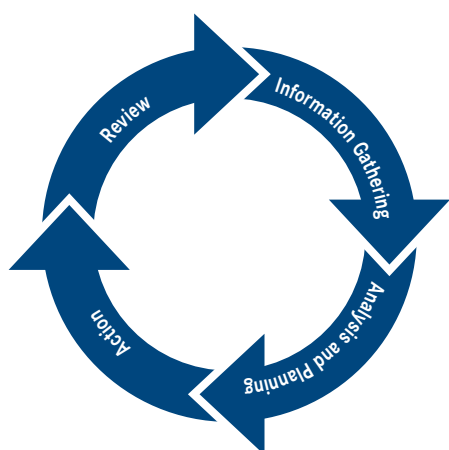
- What have been your previous responses as a Child Protection practitioner?
- What services and approaches have been most effective? Are there any strategies that are not working, well? What needs to change?
- How would the parents and other significant others rate themselves in terms of 'where they're at' in relation to where they want to get to?
- Have we provided practical and material help?

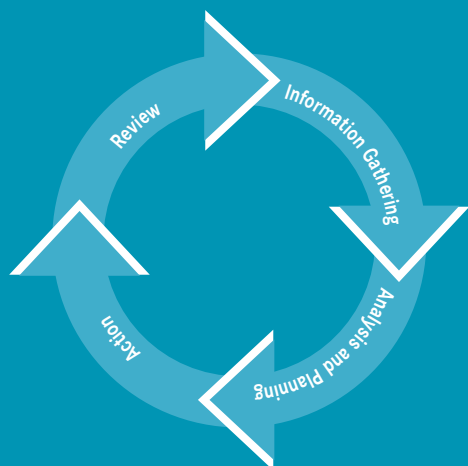
Parents do need to be given a chance to improve their situation, but practitioners need to continually ask the key questions:

- Have parents been provided "the widest possible assistance"?
- What is their capacity for change?
- Will it be fast enough given the child's age and stage?
- Practitioners also need to give themselves permission to say 'enough is enough' (Cousins, 2005, p. 6).

Keep in mind the need to assess the responses and outcomes for children.

- What treatment or support have the children received to help them process the overwhelming events?
- What's changed for the child? How do we know?
- Is the child more able to play, concentrate, relate, participate and belong?





More about the research

For a comprehensive discussion of the literature on cumulative harm that underpins this Specialist Practice Guide refer to *Cumulative harm: A conceptual overview* (Miller, 2007).



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- Shonkoff, J. P., & Phillips, D. A. (Eds.). (2001). *From neurons to neighbourhoods: The science of early childhood development* (Second ed.). Washington, D.C.: National Academy Press.
- Turnell, A., & Edwards, S. (1999). *Signs of safety: A solution and safety oriented approach to child protection*. New York: Norton & Company.

Other relevant departmental resources

- Risk profile guide
- Child development and trauma guide
- Best interests principles: A conceptual overview
- Best interests case practice model

Authors

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PRACTICE SKILLS DEVELOPMENT WORKSHOP

CUMULATIVE HARM - ASSESSING RISK AND MAKING INFORMED TRANSPARENT DECISIONS

HANDOUT: BEST PRACTICE PRINCIPLES FOR RESPONDING EFFECTIVELY TO CHRONIC NEGLECT

These best practice principles have been developed through examination of ten child deaths and a literature review undertaken in New South Wales in 2006.

The principles are:

- The best interests of the child must always remain central in any assessment, planning and intervention process
- Focus on safety for the child from all forms of harm
- Focus on meeting the child's developmental needs and enhancing their wellbeing
- A family focus, not just parents or child - for both assessment and intervention. Child-centred, family focused
- Effectively engage the family in the process of change
- Assess the family's history of use of services and analyse what has worked or not worked over time and therefore what needs to be different
- Work pro-actively through identified barriers
- Base interventions on thorough assessment of the family and the needs and development of the child
- Use of multi-disciplinary assessments may assist, for example, maternal and child health nurse, schools, health services, occupational therapist, physiotherapist, psychologist, psychiatrist
- Balance between providing support and validation whilst being able to directly challenge neglectful and other aspects of poor parenting
- Provide access to practical, concrete assistance to deal directly with concerns related to poverty
- Set and monitor achievable goals and clearly articulated responsibilities

- Enlist informal as well as formal support networks that will remain involved after services have ceased
- Make effective referrals to appropriate and targeted services
- Coordinate between services and clarify roles and communication processes, or establish clear coordination processes before closure
- Ensure that those services involved are informed regarding the risk assessment and what would constitute significant harm for the child
- Understand both the usefulness and limitations of legal action to mobilise the parents towards change, and to ensure the child's safety.

From Frederico, M., Jackson A. and Jones, S. (2006:38). Child Death Group Analysis: Effective responses to chronic neglect. Melbourne: Office of the Child Safety Commissioner, Victorian Child Death Review Committee.

Can we make a difference? – A proposed model for change, one family at a time.

Barry Morris, Court Coordinator – Emerald Child Safety Service Centre

This workshop examines the role of the Court Coordinator and how it has had an impact on:

- The ability of departmental staff to meet their legislative obligations;
- The culture of the organisation
- The judiciary, and
- Children and families.

Since the introduction of these specialist positions, Court Coordinators have worked hard to improve the Department's practice in relation to courts and tribunals. In attempting to do so, Court Coordinators face various challenges and setbacks which can lead to doubts regarding the effectiveness of the role. Despite these challenges, Court Coordinators can and do have a positive impact on the Department, staff, the judiciary and, more importantly on children and families.

This workshop explores the positive impact Court Coordinators have made to the child protection process and proposes a model for successful implication of court related goals and evaluating outcomes.

What are we risking? - A case study that outlines the risk of harm to a non-injured sibling.

Denise Giles, Court Coordinator - Nerang Child Safety Service Centre

One of the most controversial and difficult legal arguments to mount in child protection proceedings is the concept of 'risk of harm' towards children. For example, risk of harm to a non-injured sibling.

This argument is becoming more and more common with the increase in contested child protection matters due, in part, to parents exercising their legal rights.

The *Child Protection Act 1999* states that the Act is to be administered under the principle that the welfare and best interests of a child are paramount. Furthermore, the Act conceptualises harm and that a child is in need of protection if the child "has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm".

Despite this legislative basis, successful outcomes for 'at risk of harm' child protection matters are few and far between. It appears that evidence to support "unacceptable risk" of children remains one of the most difficult issues to prove, not only for child protection practitioners and other professionals working with children, but particularly for Magistrates sitting in the Childrens Court jurisdiction. It is difficult to prove, on the balance of probabilities, that a child is likely to suffer significant harm because of past abuse allegations to another child.

This presentation will outline, through an in-depth analysis of a case study, that the fundamental elements of a successful legal submission lies in the quality of direct evidence provided to the court, not only from Child Safety Officers but also from professionals engaged to work with the child and family.

The Role of Court Coordinators travelling to Remote Communities for Childrens Court.

Dallas Brown, Eelco Vugs – Cape Torres Child Safety Service Centre
Jim McKenzie – The Gulf Child Safety Service Centre

Court Coordinators in western and Far North Queensland travel to remote communities to appear in Childrens Court child protection matters.

The Aboriginal and/or Torres Strait Islander families involved in these child protection proceedings have varying levels of literacy, speak English as a second or third language, limited access to resources and have extremely limited access to support and legal services. In addition to these barriers are the issues of Stolen Generation, distrust of government, communication issues and disempowerment. There are also barriers facing the work of the court coordinator – such as lack of legal representation; lack of approved recognised entities; the involvement of Justice Groups in proceedings; practical difficulties caused by distances such as filing of court material, service of documents and court schedules.

Do we as court coordinators have a role in addressing the barriers facing families? And if so, how can we go about it?

This session will provide an overview of the issues facing both families and Court Coordinators working in remote settings, and how these issues sometimes play out in proceedings and court mentions. Court Coordinator efforts to address the challenges and encourage participation in the court process will be shared.

Attendees will be encouraged to consider the issues facing their remote colleagues, and think laterally about ways in which these challenges could be addressed.

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child: Bailey WALKER (02/06/2008)
Jack WALKER (24/08/2006)
Johnnie WALKER (DOB: 10/04/2005)

Applicant: Rachael Smith
AND

[First] Respondent: Sherrie Walker
AND

[Second] Respondent: Paul Bell

I, Sherrie Walker, home duties of 84 Midori Drive, Stones Corner in the State of Queensland, solemnly and sincerely affirm and declare as follows:-

1. I am the biological mother of (all children).

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations/Solicitor

Response to prescription drug issues

2. I acknowledge and confirm that I have been on the subutex program since October 2003 in order to address my previous use of heroin. I am willing to undergo drug testing if I am requested to do so.
3. I dispute the contents of paragraph 23 (c) of Ms Smith's affidavit and state that I have never been asked by the department to undertake random urine tests.
4. I deny that I have been doctor shopping but do acknowledge that I have been prescribed Valium and am also taking Diazepam.
5. I do not think that my prescription drug use impacts on my ability to care for my children and I do not believe that they should remain in the care of the department. I have been on the subutex program since October 2003 and in that time, apart from the times when the department removed the children, I have cared for them and kept them safe.

Children's behaviours

6. I do not dispute that both Jasper and Johnnie have Attention Deficit Hyperactive Disorder ("ADHD") and they were diagnosed with this sometime in 2007. I do not recall the name of the doctor who diagnosed them.
7. Due to his ADHD Johnnie can not sit still for long periods of time. He will start jumping up and down and generally misbehaving. When he does this, he cannot control himself and often will fall over, sustaining minor cuts and bruises.
8. Johnnie has been attending The Village Day Care Centre since 2006 and his day care

worker, Ms Donna Karen ("Ms Karen") has told me on a number of occasions that Johnnie has fallen over during the day and hurt himself. Attached and marked as **Exhibit 'A'** are true and correct copies of the notes from The Village Day Care Centre.

9. Attached and marked as **Exhibit 'B'** is a true and correct copy of a letter from Ms Karen from The Village Day Care Centre.

10. I acknowledge that in the past I have sought assistance in the form of respite to help me with managing the children's behaviours. Despite my requests, I have never been offered any help.

11. I confirm that I have been charged with assault occasioning bodily harm in relation to injuries to Johnnie. The matter is before the courts and I am defending those charges.

Engagement with the department

12. When the department took the children under the Temporary Assessment Order ("TAO") I told Ms Smith that I was willing to do whatever I had to do to keep them with me but said I would need help.

13. I acknowledge that in the past when the department has become involved I have not worked well with them but this is because I believe they do not help me like they should.

14. When I asked Ms Smith to help me with Johnnie's behaviour, she gave me a telephone number to ring. I did not receive any support from Ms Smith in arranging an appointment and because I only have limited credit on my mobile, I was not able to call the number to make an appointment for the children.

15. I have tried to call Ms Smith five or six times whilst the children have been subject to the

TAO. None of my calls have been returned. This makes it hard for me because I feel as though Ms Smith is not really working with me to get the children back into my care.

16. I dispute the contents of paragraph 26 of Ms Smith's affidavit and state that since Johnnie has been on the Protective Supervision Order, I have always made sure that the department are able to visit the home. The times that I have not been home have been limited and I never received a note from the department advising that they had attempted to visit the house.

Supervision of the children

17. I acknowledge that Jack and Johnnie were found unsupervised on 15 October 2009.

18. I have attempted to secure the interior doors, cupboards and the front gate and believe that my actions demonstrate I am a protective parent.

19. The children have remained in my care and I believe it is in their best interests to stay with me. When the department applied for the Court Assessment Order back in May 2009, the Court did not grant custody to the department and the children stayed with me.

20. I believe I am able to provide supervision and care of my children and state that one unfortunate incident while I was asleep should not reflect on my overall supervision and care of the children.

Domestic violence concerns

21. I state that I am no longer in a relationship with Paul Bell ("Mr Bell"). Mr Bell helps me with respite when he visits and has contact with the children.

22. There are no domestic violence orders in place between us because we have addressed the previous domestic violence concerns and I do not believe the children are at risk of harm if they are in my care.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Affirmed by Sherrie Walker on 17 October 2009 at Wishart in the presence of:

(signed by deponent)

(signed by Solicitor)

Deponent

Solicitor

FOR TRAINING ONLY

6TH August 2009

Ms Walker
84 Midori Drive
Stones Corner Qld 4132

Dear Ms Walker

Re: Appointment with Child Safety Officer, Anna Maxwell on the 11th August 2009 at 10.00am.

I would like to take this opportunity to introduce myself as your new case worker whilst Rachael Smith is away on leave.

I look forward to meeting you on Tuesday the 11th of August 2009 at 10.00am at your place of residence.

I would like to talk to you about the following things:

- (a) Child Care needs
- (b) Random urine drug screens
- (c) Housing needs
- (d) Health needs of the children
- (e) Support needs for yourself

This would be a good opportunity to ask me any questions that you may have about the Department of Communities (Child Safety Services) involvement with your family.

If you are unable to make this appointment, I would appreciate 24 hours notice. You can contact me on Ph: 3235 9859 or on my mobile 0414 234 567 during business hours.

Yours sincerely,

Anna Maxwell
Child Safety Officer

Form 26
Childrens Court Act 1992
Child Protection Act 1999

CERTIFICATE OF EXHIBIT

Exhibit I to the affidavit of *Anna Maxwell* affirmed on *15 October 2009*:

Deponent
(signed)

Lawyer
(signed)



**Request for information
pursuant to Chapter 5A
Child Protection Act 1999**

Pursuant to section 159M ☒ or section 159N ☐ of the *Child Protection Act 1999*,

I, Bernadette Smith, Manager of the The City Child Safety Service Centre, am requesting that you provide the following information concerning Ms Sherrie Walker.

My contact details are as follows:

Telephone 3235 9859

Fax 3235 9851

Email B.Smith@communities.qld.gov

Address 30 Makerston St, Brisbane

Brief description of information sought:

- 1) All prescriptions presented for medication to Ms Sherrie Walker over the last five years.
- 2) All chemists Ms Walker has accessed in the last five years for prescription medication.

The reason for this request is to assist the Department of Communities to:

- ☒ investigate an allegation of harm or risk to a child or assess a child's need for protection
- ☐ take immediate action, where a child is in need of protection
- ☐ investigate or assess the likelihood an unborn child will need protection after birth
- ☐ offer help and support to a pregnant woman
- ☒ develop or review a child's case plan
- ☐ assess or respond to health, educational or care needs of a child in need of protection or subject to a child protection order
- ☐ make plans or decisions relating to, or provide services to, a child in need of protection or subject to a child protection order or their family

PLEASE NOTE: The information you provide may be used for court purposes.



**Request for information
pursuant to Chapter 5A
*Child Protection Act 1999***

In order to establish the relevance of the information requested the following information is provided:

- ☐ name and age of the child
- ☐ cultural identity
- ☐ disability
- ☐ siblings
- ☐ school child attends
- ☒ name and address of parent and/or carer Ms Sherrie Walker
- ☒ nature of the department's current or proposed intervention Developing case plans in relation to Ms Walker's children that will assist Ms Walker address the child protection concerns and work towards reunification.
- ☐ urgency of the request and preferred response time, including the reason for the urgency

For future reference, records of this request and the provision of information should be kept by the sender as well as the receiver. Note that information forwarded to the Department of Communities is protected by the confidentiality provision of the *Child Protection Act 1999*.

Signed (full name)

Date

Consent form – Parent's participation in substance testing

I, Sherrie Walker, have been requested by Anna Maxwell, of The City Child Safety Service Centre, 30 Makerston St, Brisbane, fax: 3235 9851, Department of Communities, to undertake substance testing, in accordance with the departmental case plan for my child/ren, Johnnie, Jack and Bailey.

The nature and effect of substance testing has been explained to me by Anna Maxwell, Child Safety Officer, The City Child Safety Service Centre and I understand that:

- I am not obligated to provide consent to this request;
- should I provide consent, I may cease participation in substance testing at any future stage; and
- this request for consent incorporates the screening test and where a positive test result is received, a confirmatory test.

After consideration of this request, I have decided to:

- consent to participating in substance testing in accordance with the departmental case plan for my child/ren; or (select appropriate option)

Signed: (Signature of Parent)

Dated: (Date of Parent's decision)

Signed: Anna Maxwell (Signature of CSO)

Dated: 11 August 2009 (Date of Parent's decision)

Form 26
Childrens Court Act 1992
Child Protection Act 1999

CERTIFICATE OF EXHIBIT

Exhibit A to the affidavit of *Sherrie Walker* affirmed on *17 October 2009*:

Deponent
(signed)

Lawyer
(signed)

Form 10
Childrens Court Act 1992
Child Protection Act 1999
(Sections 54)

APPLICATION FOR A CHILD PROTECTION ORDER

CHILD: JOHNNIE WALKER

Date of Birth: 10/04/2005

☐ **Aboriginal but not Torres Strait
Islander origin**

☐ Both Aboriginal and Torres Strait
Islander origin

☐ Not stated/inadequately described

Sex: Male

☐ Torres Strait Islander but not
Aboriginal origin

☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

This application is made by Rachael Smith of Mt Gravatt Child Safety Service Centre, Brisbane, an authorised officer under the *Child Protection Act 1999*.

APPLICATION DETAILS:

This is an application for a child protection order.

Departmental History

A child protection history dates back to 2004 and outlines significant child protection concerns including:

- Ms Walker and Mr Bell demonstrating a pattern of misusing illicit drugs and prescription medication which has placed the children in their care at risk of physical harm, emotional and neglect;
- Inappropriate and unsafe living environment, including periods of homelessness;
- Significant domestic violent history between Ms Walker and Mr Bell, with risk of physical harm and emotional harm substantiated for the subject children;
- Inappropriate and excessive behaviour management techniques utilised by Ms Walker and Mr Bell, leading to physical harm and risk of physical harm of the subject children. This includes Ms Walker being charged with Assault Occasioning Body Harm.

Additionally, the children have been removed from Ms Walker and Mr Bell's care eight (8) times since Johnnie's birth in 2006.

CURRENT DEPARTMENTAL INVOLVEMENT

Bailey is currently subject to a Child Protection Order requiring the Chief Executive to supervise his protection. This order is due to expire on 29/11/2009. It is my professional opinion that Ms Walker continues to actively disengage from the Department, even though she has advised the court that she is willing to work with the department in the best interest of the children. Ms Walker and Mr Bell have continued to disengage with the Department over the past six (6) months. Departmental files indicate that Ms Walker has made these undertakings on several occasions throughout the child protection history, however has on every occasion failed in her endeavours.

Due to Ms Walker's limited engagement and refusal to attend Family Group Meetings, the Department has been unable to initiate any further Departmental intervention for Johnnie and Jack.

Recent child protection concerns were raised on 27 August 2009. Concerns included:

- Inappropriate and derogatory language being directed at the children by Mr Bell, sometimes up to midnight.
- Lack of supervision of the children, including Jack regularly leaving the home and is either found by Mr Bell or returned by neighbours. Jack has been seen in the middle of a busy nearby road.
- Two months ago Mr Bell informed neighbours he had lost his children. A car later turned up at the residence with the children. It is unclear if the person who delivered was pre-arranged as the father appeared under the influence of a substance. The father told neighbours the mother was in bed asleep at the time he went looking for the children.

The outcome of the notification for all children was substantiated – children in need of protection, with Ms Walker and Mr Bell being named persons responsible for the following reasons-

- Ms Walker and Mr Bell have demonstrated an ongoing inability to provide an adequate level of supervision to the children. There is a significant history within this family of limited supervision being provided to the children resulting in harm and risk of harm. Given the young ages of the children currently residing in the family home there is ongoing risk that they will be harmed as a result of lack of parental supervision
- This pattern of harm has been ongoing with extensive child protection concerns being raised since 2003.
- Ms Walker provides limited insight into the ongoing child protection concerns and has a history of disengaging from departmental interventions.
- Ms Walker is currently identified as experiencing a high degree of stress given her mother's terminal illness

CURRENT CHILD PROTECTION NOTIFICATIONS

On 15 September 2009 a child protection notification was recorded by the Child Safety After Hours Service Centre in relation to the inappropriate supervision of Johnnie, Jack and Bailey by Ms Walker. A summary of the concerns were as follows:

- Johnnie and Jack were located unattended at a building site prior to 8am. These children were assessed as being at immediate risk of harm whilst wandering around the building site unsupervised.
- Police attended the family home, however, attempts to raise the mother were unsuccessful. Police were requested to attend the family home again given the departmental records indicated Ms Walker also had care of a fourteen-month-old child, Bailey.
- Police returned to the family home at 10:20am and entered the house through an unlocked door to wake Mr Walker. Police found Ms Walker asleep. She advised police she had gotten up earlier and fed the children and had gone back to sleep. Police observed that attempts had been made by the Mother to secure interior doors, cupboards and the front gate.
- Bailey was located in his cot where it appeared he had been for a number of hours.

All the children were removed from Ms Walker's care under section 18 of the Child Protection Act 1999 and a Temporary Assessment Order was granted by the after hours Magistrate P.M Gordon later this same day. The grounds of the order included serious concerns in relation to Ms Walker's inability to provide appropriate supervision and care of their children.

This incident reflects a long pattern of entrenched behaviour despite extensive support services being made available to Ms Walker. The level of risk of harm to these children continues despite this.

CHILD PROTECTION CONCERNS

Johnnie, Jack and Bailey have been assessed as children in need of protection for the following reasons:

- Bailey is currently subject to a child protection order requiring the Chief Executive to supervise Bailey's protection. The grounds for this order relate to Bailey's vulnerability due to his age, as well as his parents history of drug use, domestic violence, neglect and physical harm to children in their care due to excessive discipline.
- Serious concerns continue to be raised in relation to Ms Walker's ongoing inability to provide appropriate supervision and care of their children. There is significant history with this family of limited supervision being provided, resulting in an unacceptable level of harm and risk of harm. Given the young ages of the children currently residing in the family home, there is ongoing risk that they will be harmed as a direct result of lack of parental supervision.

- Ms Walker has been charged with assault occasioning bodily harm after allegedly using excessive physical discipline on children in her care.
- Ms Walker has limited parenting strategies to assist her in managing the children's behaviour. This places children in her care at risk of physical and emotional harm and neglect
- Ms Walker and Mr Bell have a history of using illicit drugs which negatively impact on their parenting and their ability to supervise children in their care.
- Ms Walker requires a high degree of support to enable her to provide an adequate standard of care for the children. Without this level of support the children are at risk of neglect. Ms Walker has consistently stated she finds it difficult to parent her three (3) children.
- Ms Walker relies on support from Mr Bell. Ms Walker and Mr Bell have a relationship characterised by domestic violence. Ms Walker lacks insight into the risk Mr Bell poses to the children should he continue to be unable to manage his anger.

A child protection order granting custody to the Chief Executive would provide an opportunity for Ms Walker and Mr Bell to work with the Department to address the child protection concerns and to demonstrate that they are able to maintain a physically and emotionally stable and safe environment for Johnnie, Jack and Bailey.

I have formed the opinion that Johnnie Walker (DOB: 10/04/2005), Jack Walker (DOB: 24/08/2006) and Bailey Walker (DOB: 02/06/2008) are children in need of protection, and that such protection is not likely to be ensured by any other less intrusive order the Court may make. In accordance with section 61(d) (ii) I now make application for a Child Protection Order granting custody to the Chief Executive. This order is sought for a period of two (2) years.

On 15 August 2009, the child protection concerns were discussed with the Indigenous Family and Child Support Service (IFACSS) representative, Ms Elaine Tanaka (herein after known as Ms Tanaka). Ms Tanaka indicated her support for the Department's intention to apply for a Child Protection Order.

On 15 September 2009 I discussed the application again with Ms Tanaka and she indicated she was still in support of the application for a two (2) year Child Protection Order on all the children.

The subject children have been identified as Indigenous, despite this Ms Walker has indicated she does not wish to engage with a Recognised Entity.

Ms Tanka supports the placement of the children with Departmentally approved carers, however culturally appropriate placements continue to be sought.

This application seeks an order:

Granting custody of Johnnie Walker to the chief executive.

The order is sought for a period of 2 years

Signature of Applicant:

Place:

Date:

RESPONDENTS' NAME/S

Mother's name: Sharon Walker

Father's name: Paul Bell

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the Childrens Court at

Place: Brisbane Childrens Court situated at 30-40 Quay Street,
Brisbane QLD 4000, Australia

Date: Monday 19th October 2009

Time: 2:00pm

NOTE: IF YOU DO NOT ATTEND, THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.

Registrar:

Date:

Form 26
Childrens Court Act 1992
Child Protection Act 1999

CERTIFICATE OF EXHIBIT

Exhibit B to the affidavit of *Sherrie Walker* affirmed on *17 October 2009*:

Deponent
(signed)

Lawyer
(signed)

Form 10
Childrens Court Act 1992
Child Protection Act 1999
(Sections 54)

APPLICATION FOR A CHILD PROTECTION ORDER

CHILD: JACK WALKER

Date of Birth: 24/08/2006

☐ **Aboriginal but not Torres Strait
Islander origin**

☐ Both Aboriginal and Torres Strait
Islander origin

☐ Not stated/inadequately described

Sex: Male

☐ Torres Strait Islander but not
Aboriginal origin

☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

This application is made by Rachael Smith of Mt Gravatt Child Safety Service Centre, Brisbane, an authorised officer under the *Child Protection Act 1999*.

APPLICATION DETAILS:

This is an application for a child protection order.

Departmental History

A child protection history dates back to 2004 and outlines significant child protection concerns including:

- Ms Walker and Mr Bell demonstrating a pattern of misusing illicit drugs and prescription medication which has placed the children in their care at risk of physical harm, emotional and neglect;
- Inappropriate and unsafe living environment, including periods of homelessness;
- Significant domestic violent history between Ms Walker and Mr Bell, with risk of physical harm and emotional harm substantiated for the subject children;
- Inappropriate and excessive behaviour management techniques utilised by Ms Walker and Mr Bell, leading to physical harm and risk of physical harm of the subject children. This includes Ms Walker being charged with Assault Occasioning Body Harm.

Additionally, the children have been removed from Ms Walker and Mr Bell's care eight (8) times since Johnnie's birth in 2006.

CURRENT DEPARTMENTAL INVOLVMENT

Bailey is currently subject to a Child Protection Order requiring the Chief Executive to supervise his protection. This order is due to expire on 29/11/2009. It is my professional opinion that Ms Walker continues to actively disengage from the Department, even though she has advised the court that she is willing to work with the department in the best interest of the children. Ms Walker and Mr Bell have continued to disengage with the Department over the past six (6) months. Departmental files indicate that Ms Walker has made these undertakings on several occasions throughout the child protection history, however has on every occasion failed in her endeavours.

Due to Ms Walker's limited engagement and refusal to attend Family Group Meetings, the Department has been unable to initiate any further Departmental intervention for Johnnie and Jack.

Recent child protection concerns were raised on 27 August 2009. Concerns included:

- Inappropriate and derogatory language being directed at the children by Mr Bell, sometimes up to midnight.
- Lack of supervision of the children, including Jack regularly leaving the home and is either found by Mr Bell or returned by neighbours. Jack has been seen in the middle of a busy nearby road.
- Two months ago Mr Bell informed neighbours he had lost his children. A car later turned up at the residence with the children. It is unclear if the person who delivered was pre-arranged as the father appeared under the influence of a substance. The father told neighbours the mother was in bed asleep at the time he went looking for the children.

The outcome of the notification for all children was substantiated – children in need of protection, with Ms Walker and Mr Bell being named persons responsible for the following reasons-

- Ms Walker and Mr Bell have demonstrated an ongoing inability to provide an adequate level of supervision to the children. There is a significant history within this family of limited supervision being provided to the children resulting in harm and risk of harm. Given the young ages of the children currently residing in the family home there is ongoing risk that they will be harmed as a result of lack of parental supervision
- This pattern of harm has been ongoing with extensive child protection concerns being raised since 2003.
- Ms Walker provides limited insight into the ongoing child protection concerns and has a history of disengaging from departmental interventions.
- Ms Walker is currently identified as experiencing a high degree of stress given her mother's terminal illness

CURRENT CHILD PROTECTION NOTIFICATIONS

On 15 September 2009 a child protection notification was recorded by the Child Safety After Hours Service Centre in relation to the inappropriate supervision of Johnnie, Jack and Bailey by Ms Walker. A summary of the concerns were as follows:

- Johnnie and Jack were located unattended at a building site prior to 8am. These children were assessed as being at immediate risk of harm whilst wandering around the building site unsupervised.
- Police attended the family home, however, attempts to raise the mother were unsuccessful. Police were requested to attend the family home again given the departmental records indicated Ms Walker also had care of a fourteen-month-old child, Benjamin.
- Police returned to the family home at 10:20am and entered the house through an unlocked door to wake Mr Walker. Police found Ms Walker asleep. She advised police she had gotten up earlier and fed the children and had gone back to sleep. Police observed that attempts had been made by the Mother to secure interior doors, cupboards and the front gate.
- Bailey was located in his cot where it appeared he had been for a number of hours.

All the children were removed from Ms Walker's care under section 18 of the Child Protection Act 1999 and a Temporary Assessment Order was granted by the after hours Magistrate P.M Gordon later this same day. The grounds of the order included serious concerns in relation to Ms Walker's inability to provide appropriate supervision and care of their children.

This incident reflects a long pattern of entrenched behaviour despite extensive support services being made available to Ms Walker. The level of risk of harm to these children continues despite this.

CHILD PROTECTION CONCERNS

Johnnie, Jack and Bailey have been assessed as children in need of protection for the following reasons:

- Bailey is currently subject to a child protection order requiring the Chief Executive to supervise Bailey's protection. The grounds for this order relate to Bailey's vulnerability due to his age, as well as his parents history of drug use, domestic violence, neglect and physical harm to children in their care due to excessive discipline.
- Serious concerns continue to be raised in relation to Ms Walker's ongoing inability to provide appropriate supervision and care of their children. There is significant history with this family of limited supervision being provided, resulting in an unacceptable level of harm and risk of harm. Given the young ages of the children currently residing in the family home, there is ongoing risk that they will be harmed as a direct result of lack of parental supervision.

- Ms Walker has been charged with assault occasioning bodily harm after allegedly using excessive physical discipline on children in her care.
- Ms Walker has limited parenting strategies to assist her in managing the children's behaviour. This places children in her care at risk of physical and emotional harm and neglect
- Ms Walker and Mr Bell have a history of using illicit drugs which negatively impact on their parenting and their ability to supervise children in their care.
- Ms Walker requires a high degree of support to enable her to provide an adequate standard of care for the children. Without this level of support the children are at risk of neglect. Ms Walker has consistently stated she finds it difficult to parent her three (3) children.
- Ms Walker relies on support from Mr Bell. Ms Walker and Mr Bell have a relationship characterised by domestic violence. Ms Walker lacks insight into the risk Mr Bell poses to the children should he continue to be unable to manage his anger.

A child protection order granting custody to the Chief Executive would provide an opportunity for Ms Walker and Mr Bell to work with the Department to address the child protection concerns and to demonstrate that they are able to maintain a physically and emotionally stable and safe environment for Johnnie, Jack and Bailey.

I have formed the opinion that Johnnie Walker (DOB: 10/04/2005), Jack Walker (DOB: 24/08/2006) and Bailey Walker (DOB: 02/06/2008) are children in need of protection, and that such protection is not likely to be ensured by any other less intrusive order the Court may make. In accordance with section 61(d) (ii) I now make application for a Child Protection Order granting custody to the Chief Executive. This order is sought for a period of two (2) years.

On 15 August 2009, the child protection concerns were discussed with the Indigenous Family and Child Support Service (IFACSS) representative, Ms Elaine Tanaka (herein after known as Ms Tanaka). Ms Tanaka indicated her support for the Department's intention to apply for a Child Protection Order.

On 15 September 2009 I discussed the application again with Ms Tanaka and she indicated she was still in support of the application for a two (2) year Child Protection Order on all the children.

The subject children have been identified as Indigenous, despite this Ms Walker has indicated she does not wish to engage with a Recognised Entity.

Ms Tanka supports the placement of the children with Departmentally approved carers, however culturally appropriate placements continue to be sought.

This application seeks an order:

Granting custody of Jack Walker to the chief executive.

The order is sought for a period of 2 years

Signature of Applicant:

Place:

Date:

RESPONDENTS' NAME/S

Mother's name: Sharon Walker

Father's name: Paul Bell

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the Childrens Court at

Place: Brisbane Childrens Court situated at 30-40 Quay Street,
Brisbane QLD 4000, Australia

Date: Monday 19th October 2009

Time: 2:00pm

NOTE: IF YOU DO NOT ATTEND, THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.

Registrar:

Date:

Form 10
Childrens Court Act 1992
Child Protection Act 1999
(Sections 54)

APPLICATION FOR A CHILD PROTECTION ORDER

CHILD: BAILEY WALKER

Date of Birth: 02/06/2008

☐ **Aboriginal but not Torres Strait
Islander origin**

☐ Both Aboriginal and Torres Strait
Islander origin

☐ Not stated/inadequately described

Sex: Male

☐ Torres Strait Islander but not
Aboriginal origin

☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

This application is made by Rachael Smith of Mt Gravatt Child Safety Service Centre, Brisbane, an authorised officer under the *Child Protection Act 1999*.

APPLICATION DETAILS:

This is an application for a child protection order.

Departmental History

A child protection history dates back to 2004 and outlines significant child protection concerns including:

- Ms Walker and Mr Bell demonstrating a pattern of misusing illicit drugs and prescription medication which has placed the children in their care at risk of physical harm, emotional and neglect;
- Inappropriate and unsafe living environment, including periods of homelessness;
- Significant domestic violent history between Ms Walker and Mr Bell, with risk of physical harm and emotional harm substantiated for the subject children;
- Inappropriate and excessive behaviour management techniques utilised by Ms Walker and Mr Bell, leading to physical harm and risk of physical harm of the subject children. This includes Ms Walker being charged with Assault Occasioning Body Harm.

Additionally, the children have been removed from Ms Walker and Mr Bell's care eight (8) times since Johnnie's birth in 2006.

CURRENT DEPARTMENTAL INVOLVMENT

Bailey is currently subject to a Child Protection Order requiring the Chief Executive to supervise his protection. This order is due to expire on 29/11/2009. It is my professional opinion that Ms Walker continues to actively disengage from the Department, even though she has advised the court that she is willing to work with the department in the best interest of the children. Ms Walker and Mr Bell have continued to disengage with the Department over the past six (6) months. Departmental files indicate that Ms Walker has made these undertakings on several occasions throughout the child protection history, however has on every occasion failed in her endeavours.

Due to Ms Walker's limited engagement and refusal to attend Family Group Meetings, the Department has been unable to initiate any further Departmental intervention for Johnnie and Jack.

Recent child protection concerns were raised on 27 August 2009. Concerns included:

- Inappropriate and derogatory language being directed at the children by Mr Bell, sometimes up to midnight.
- Lack of supervision of the children, including Jack regularly leaving the home and is either found by Mr Bell or returned by neighbours. Jack has been seen in the middle of a busy nearby road.
- Two months ago Mr Bell informed neighbours he had lost his children. A car later turned up at the residence with the children. It is unclear if the person who delivered was pre-arranged as the father appeared under the influence of a substance. The father told neighbours the mother was in bed asleep at the time he went looking for the children.

The outcome of the notification for all children was substantiated – children in need of protection, with Ms Walker and Mr Bell being named persons responsible for the following reasons-

- Ms Walker and Mr Bell have demonstrated an ongoing inability to provide an adequate level of supervision to the children. There is a significant history within this family of limited supervision being provided to the children resulting in harm and risk of harm. Given the young ages of the children currently residing in the family home there is ongoing risk that they will be harmed as a result of lack of parental supervision
- This pattern of harm has been ongoing with extensive child protection concerns being raised since 2003.
- Ms Walker provides limited insight into the ongoing child protection concerns and has a history of disengaging from departmental interventions.
- Ms Walker is currently identified as experiencing a high degree of stress given her mother's terminal illness

CURRENT CHILD PROTECTION NOTIFICATIONS

On 15 September 2009 a child protection notification was recorded by the Child Safety After Hours Service Centre in relation to the inappropriate supervision of Johnnie, Jack and Bailey by Ms Walker. A summary of the concerns were as follows:

- Johnnie and Jack were located unattended at a building site prior to 8am. These children were assessed as being at immediate risk of harm whilst wandering around the building site unsupervised.
- Police attended the family home, however, attempts to raise the mother were unsuccessful. Police were requested to attend the family home again given the departmental records indicated Ms Walker also had care of a fourteen-month-old child, Benjamin.
- Police returned to the family home at 10:20am and entered the house through an unlocked door to wake Mr Walker. Police found Ms Walker asleep. She advised police she had gotten up earlier and fed the children and had gone back to sleep. Police observed that attempts had been made by the Mother to secure interior doors, cupboards and the front gate.
- Bailey was located in his cot where it appeared he had been for a number of hours.

All the children were removed from Ms Walker's care under section 18 of the Child Protection Act 1999 and a Temporary Assessment Order was granted by the after hours Magistrate P.M Gordon later this same day. The grounds of the order included serious concerns in relation to Ms Walker's inability to provide appropriate supervision and care of their children.

This incident reflects a long pattern of entrenched behaviour despite extensive support services being made available to Ms Walker. The level of risk of harm to these children continues despite this.

CHILD PROTECTION CONCERNS

Johnnie, Jack and Bailey have been assessed as children in need of protection for the following reasons:

- Bailey is currently subject to a child protection order requiring the Chief Executive to supervise Bailey's protection. The grounds for this order relate to Bailey's vulnerability due to his age, as well as his parents history of drug use, domestic violence, neglect and physical harm to children in their care due to excessive discipline.
- Serious concerns continue to be raised in relation to Ms Walker's ongoing inability to provide appropriate supervision and care of their children. There is significant history with this family of limited supervision being provided, resulting in an unacceptable level of harm and risk of harm. Given the young ages of the children currently residing in the family home, there is ongoing risk that they will be harmed as a direct result of lack of parental supervision.

- Ms Walker has been charged with assault occasioning bodily harm after allegedly using excessive physical discipline on children in her care.
- Ms Walker has limited parenting strategies to assist her in managing the children's behaviour. This places children in her care at risk of physical and emotional harm and neglect
- Ms Walker and Mr Bell have a history of using illicit drugs which negatively impact on their parenting and their ability to supervise children in their care.
- Ms Walker requires a high degree of support to enable her to provide an adequate standard of care for the children. Without this level of support the children are at risk of neglect. Ms Walker has consistently stated she finds it difficult to parent her three (3) children.
- Ms Walker relies on support from Mr Bell. Ms Walker and Mr Bell have a relationship characterised by domestic violence. Ms Walker lacks insight into the risk Mr Bell poses to the children should he continue to be unable to manage his anger.

A child protection order granting custody to the Chief Executive would provide an opportunity for Ms Walker and Mr Bell to work with the Department to address the child protection concerns and to demonstrate that they are able to maintain a physically and emotionally stable and safe environment for Johnnie, Jack and Bailey.

I have formed the opinion that Johnnie Walker (DOB: 10/04/2005), Jack Walker (DOB: 24/08/2006) and Bailey Walker (DOB: 02/06/2008) are children in need of protection, and that such protection is not likely to be ensured by any other less intrusive order the Court may make. In accordance with section 61(d) (ii) I now make application for a Child Protection Order granting custody to the Chief Executive. This order is sought for a period of two (2) years.

On 15 August 2009, the child protection concerns were discussed with the Indigenous Family and Child Support Service (IFACSS) representative, Ms Elaine Tanaka (herein after known as Ms Tanaka). Ms Tanaka indicated her support for the Department's intention to apply for a Child Protection Order.

On 15 September 2009 I discussed the application again with Ms Tanaka and she indicated she was still in support of the application for a two (2) year Child Protection Order on all the children.

The subject children have been identified as Indigenous, despite this Ms Walker has indicated she does not wish to engage with a Recognised Entity.

Ms Tanka supports the placement of the children with Departmentally approved carers, however culturally appropriate placements continue to be sought.

This application seeks an order:

Granting custody of Bailey Walker to the chief executive.

The order is sought for a period of 2 years

Signature of Applicant:

Place:

Date:

RESPONDENTS' NAME/S

Mother's name: Sharon Walker

Father's name: Paul Bell

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the Childrens Court at

Place: Brisbane Childrens Court situated at 30-40 Quay Street,
Brisbane QLD 4000, Australia

Date: Monday 19th October 2009

Time: 2:00pm

NOTE: IF YOU DO NOT ATTEND, THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.

Registrar:

Date:



**Request for information
pursuant to Chapter 5A
Child Protection Act 1999**

Pursuant to section 159M of the *Child Protection Act 1999*,

I, Bernadette Smith, Manager of the The City Child Safety Service Centre, am requesting that you provide the following information concerning Ms Sherrie Walker.

My contact details are as follows:

Telephone 3235 9859
Fax 3235 9851
Email B.Smith@communities.qld.gov
Address 30 Makerston St, Brisbane

Brief description of information sought:

- 1) All progress notes relating to Ms Walker dating back to 2003.
- 2) Any assessments of Ms Walker dating back to 2003.
- 3) Any drug testing results of Ms Walker dating back to 2003.
- 4) A record of Ms Walker's attendances at the service dating back to 2003.

The reason for this request is to assist the Department of Child Safety to:

- ☒ investigate an allegation of harm or risk to a child or assess a child's need for protection
- ☐ take immediate action, where a child is in need of protection
- ☐ investigate or assess the likelihood an unborn child will need protection after birth
- ☐ offer help and support to a pregnant woman
- ☒ develop or review a child's case plan
- ☐ assess or respond to health, educational or care needs of a child in need of protection or subject to a child protection order
- ☐ make plans or decisions relating to, or provide services to, a child in need of protection or subject to a child protection order or their family

PLEASE NOTE: The information you provide may be used for court purposes.

**Request for information
pursuant to Chapter 5A
*Child Protection Act 1999***

In order to establish the relevance of the information requested the following information is provided:

- ☐ name and age of the child
- ☐ cultural identity
- ☐ disability
- ☐ siblings
- ☐ school child attends
- ☒ name and address of parent and/or carer Ms Sherrie Walker
- ☒ nature of the department's current or proposed intervention Developing case plans in relation to Ms Walker's children that will assist Ms Walker address the child protection concerns and work towards reunification.
- ☐ urgency of the request and preferred response time, including the reason for the urgency

For future reference, records of this request and the provision of information should be kept by the sender as well as the receiver. Note that information forwarded to the Department of Communities is protected by the confidentiality provision of the *Child Protection Act 1999*.

Signed (full name) _____

Date _____

14 August 2009

Ms Dorsall
Triple P Program
Southside Region
PO Box 666
Brisbane 4001

Dear Ms Dorsall,

Re: Referral on behalf of Ms Sherrie Walker.

Ms Sherrie Walker's three youngest children, Johnnie (DOB: 10/04/2005), Jack (DOB: 24/08/2006) and Bailey Walker (DOB: 02/06/2008) are currently subject to Interim Orders granting temporary custody of them to the Chief Executive.

Ms Walker has expressed an interest in learning parenting techniques, particularly in relation to behaviour management. Ms Walker has agreed to attend the program and understands she will be required to attend once a week, for a period of four hours, over a course of twelve weeks.

I would like to enrol Ms Walker into your next course as a matter of urgency. Ms Walker would be assisted with transport to and from the program each week.

If Ms Walker is accepted into your program, it would be part of her case plan and as such, there may be a requirement for the department to assess a report about Ms Walker's participation and progress in the program AND that this report may be used in court.

Please do not hesitate to contact me on 3235 9859 if you require further information. I look forward to hearing from you in the near future.

Yours sincerely,

Anna Maxwell
Child Safety Officer

14 August 2009

Paediatric Assessment Unit
Mater Childrens Hospital

Dear Dr Feelgood,

Re: Request for full paediatric assessments of Johnnie, Jack and Bailey Walker.

Johnnie (DOB: 10/04/2005), Jack (DOB: 24/08/2006) and Bailey (DOB: 02/06/2008) are currently subject to Interim Orders granting temporary custody of them to the Chief Executive.

As such I am requesting a full paediatric assessment of the children including all necessary tests and examinations required for completion of the Child Health Passport and should include assessment of any behavioural or developmental issues.

The children's mother, Ms Sherrie Walker, has advised that Johnnie has allegedly been diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD) and that he requires medication. Ms Walker is of the opinion that Jack and possibly Bailey also suffer from ADHD. Please assess all three children for ADHD or any other behavioural disorder that may be present.

If you could advise a suitable day / time for these assessments, I will transport the children and Ms Walker to the Paediatric Assessment Unit for the appointments.

Please do not hesitate to contact me on 3235 9859 if you require further information. I look forward to hearing from you in the near future.

Yours sincerely,

Anna Maxwell
Child Safety Officer

25TH August 2009

Ms Walker
84 Midori Drive
Stones Corner Qld 4132

Dear Ms Walker

Re: appointments

Please find details regarding your appointment:

1. Mater Parent Aide Program:

Please contact **SHARON WHITE** on Ph: **3235 8767** to arrange a time for them to come out and talk to you.

2. Triple P Parenting Program:

Please contact **MARION DORSALL** on Ph: **3534 1222** to arrange a time for them to come and visit you. They can start the week of the 7 September 2009.

3. Paediatric Assessments for the Johnnie, Jack and Bailey:

You and the children have an appointment with:

Name: **Dr. Feelgood**
Date: 14 October 2009
Time: 11.00am
Address: Mater Childrens Hospital,
Paediatric Assessment Unit:
Level 3, 114 Stanley Street
South Brisbane QLD 4101
(07) 3163 8195

If you require assistance with transport or with the children on this day, please contact me one week prior to this appointment so I can make those arrangements.

4. Child Care:

Johnnie and Jack are now able to attend The Village Day Care Centre three days per week – Monday, Tuesday and Wednesday. Bailey is able to attend child care one day per week on Wednesday. These arrangements are available immediately commencing the week beginning 31 August 2009.

5. Housing:

Please contact **Trudie Mann** from Mt Gravatt Community Care Inc on Ph: **8765 9384** to discuss your housing situation.

If you would like to discuss any of the referrals or appointment times please contact me on Ph: 3235 9859 or on my mobile 0414 234 567 during business hours.

Yours sincerely,

Anna Maxwell
Child Safety Officer

14 August 2009

Ms Hope
84 Daquiri Drive
Stones Corner Qld 4132

Dear Ms Hope,

Re: Enrolment of JACK and BAILEY WALKER at The Village day care centre.

I am writing on behalf of Ms Sherrie Walker and her children, Johnnie, Jack and Bailey. I am aware that Johnnie Walker attends your centre three days a week and am enquiring about vacancies for Johnnie's younger brothers, Jack and Bailey, to attend the centre, on one or more of the more days that coincide with Johnnie's attendance.

The City Child Safety Service Centre is currently engaged with Ms Walker and her children and it has been assessed that the children's attendance at the day care centre would be highly beneficial for the family. Given the department's involvement with this family, the service centre manager has agreed to meet the costs of the children's attendance at the centre.

Please do not hesitate to contact me on 3235 9859 if you require further information. I look forward to hearing from you in the near future.

Yours sincerely,

Anna Maxwell
Child Safety Officer

PBS Third Party Summary

Name: Sherrie Walker Date from: 01/09/2008 Page: 1 of 3
 Sex: Female Date to: 31/12/2008
 DOB: 26/02/1971

Script Date	Supply Date	Item	Qty	Location
04/09/08	04/09/08	Tramadol hydrochloride	20	Mt Gravatt
04/09/08	04/09/08	Diazepam	50	Mt Gravatt
04/09/08	04/09/08	Domperidone	25	Mt Gravatt
11/07/08	04/06/08	Venlafaxine hydrochloride	28	Buranda
07/09/08	07/09/08	Diazepam	50	Fortitude Valley
12/09/08	12/09/08	Amoxicillin	20	Mt Gravatt
12/09/08	12/09/08	Tramadol hydrochloride	20	Mt Gravatt
12/09/08	12/09/08	Domperidone	25	Mt Gravatt
13/09/08	15/09/08	Tramadol hydrochloride	20	Buranda
05/09/08	18/09/08	Tramadol hydrochloride	20	Fortitude Valley
05/09/08	18/09/08	Diazepam	50	Fortitude Valley
05/09/08	18/09/08	Domperidone	25	Fortitude Valley
21/09/08	21/09/08	Diazepam	50	Annerley
21/09/08	21/09/08	Domperidone	25	Annerley
27/09/08	27/09/08	Diazepam	50	Fortitude Valley
27/09/08	27/09/08	Domperidone	25	Fortitude Valley
04/10/08	04/10/08	Diazepam	50	Buranda
04/10/08	04/10/08	Ranitidine hydrochloride	30	Buranda
04/10/08	04/10/08	Ibuprofen	30	Buranda

04/10/08	04/10/08	Domperidone	25	Buranda
04/08/08	10/10/08	Venlafaxine hydrochloride	28	Mt Gravatt
04/08/08	10/10/08	Clarythromycin	14	Inala
07/11/08	07/11/08	Chloramphenicol	1	Mt Gravatt
04/08/08	21/11/08	Venlafaxine hydrochloride	28	New Farm
04/08/08	21/12/08	Venlafaxine hydrochloride	28	Buranda

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: ALPM234509

Child/ren: Bailey WALKER (02/06/2008)
Jack WALKER (24/08/2006)
Johnnie WALKER (10/04/2005)

Applicant: Rachael Smith

AND

[First] Respondent: Sherrie Walker

AND

[Second] Respondent: Paul Bell

I, Anna Maxwell, Child Safety Officer of level 13, 30 Makerston Street, Brisbane in the State of Queensland, make oath and say as follows:-

1. I am an officer of the Department of Communities (Child Safety Services) (hereinafter referred to as "the Department"). I am an authorised officer under the *Child Protection Act 1999*. I hold a Bachelor of Social Work (Honours) from the University of Queensland

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Bernadette Smith
50 Makerston Street, Brisbane

conferred in 1995 and a Bachelor Arts (Majoring in Psychology) from the University of Queensland conferred in 1992. I am a Winston Churchill Fellow (1999) and completed study in the area of paediatric trauma in the United States of America and England. I have 15 years professional experience working with children and families.

2. On 3 August 2009, I was allocated case work responsibilities for this matter whilst Child Safety Officer Rachael Smith was away on leave. I worked with the family from 3 August until Ms Smith's return to work on 7 September 2009.

CURRENT CASE WORK:

3. On 4 August 2009 I contacted Ms Walker via the telephone and introduced myself as her new case worker whilst Ms Smith was away on leave. I outlined my role as a Child Safety Officer and explained the limits of confidentiality stating that any information shared with me may be used in court. Ms Walker stated that she understood this as she was 'use to dealing with people like [me]'.
4. During this telephone conversation I asked Ms Walker if I could visit her and the children to discuss the child protection concerns as outlined to me by Ms Smith. Ms Walker agreed that I could visit her at her home on Thursday 6 of August at 2.00pm.
5. On 6 August 2009 I arrived at Ms Walkers home at the arranged time of 2pm. I approached the house and knocked on the door. It appeared that there was no one at home. I could not hear any voices or movement in the house. I knocked on the front door a number of times and then I rang the home phone from my mobile phone whilst I waited outside of the door. I heard the phone ring inside the home. No one answered

the phone. No one answered the door. I concluded that Ms Walker was not at home, or unable to answer the door or phone. I left my business card in a sealed envelope and slid it under the front door. I left Ms Walkers home at approximately 2.20pm.

6. At approximately 4.00pm I received a phone call from Ms Walker. Ms Walker apologised for missing our appointment. She stated that she was at home, but she had fallen asleep and did not hear me knock on the door or ring her phone. We made further arrangements for me to meet with her on Tuesday 11 August at 10.00am. I stated that I would write her a letter outlining the day and time of our appointment and post it that very afternoon. **Exhibit A** to this affidavit is a true copy of the letter sent to Ms Walker on 6 August 2009.
7. On 11 August 2009 at 10.00am, I attended the home of Ms Walker for our second arranged appointment. I approached the house and knocked on the door. I could hear the television in the background but no other movement in the house. It appeared that there was no one at home. I knocked on the front door a number of times and then I rang the home phone from my mobile phone whilst I waited outside of the door. I heard the phone ring inside the home. No one answered the phone. No one answered the door. I concluded that Ms Walker was not at home, or unable to answer the door or phone. I left my business card in a sealed envelope and slide it under the door. I left Ms Walkers home at approximately 10.30am.
8. At approximately 3.30pm, I contacted Ms Walker by telephone. Ms Walker stated that she had forgotten about the appointment and that she had been out shopping. During this conversation the following issues where discussed:

(a) I requested that Ms Walker undertake a random drug test and that I was available to assist her to attend her local GP and Queensland Medical Laboratory (QML) if she required transport and assistance with child care. Ms Walker stated that she did not require transport or child care assistance and that she would go to doctor and QML on her way to picking up Johnnie from child care that afternoon. **Exhibit B** is the letter outlining the request for the random drug test.

(b) Ms Walker acknowledged that she has been involved in the Subutex program at ATODS since October 2003 to address her previous heroin use. She stated that she had not attended the program for "a while" but was unable to say when she last attended the program in person. She also stated that she has been prescribed Valium and Diazepam by her local doctor to assist with panic attacks and anxiety symptoms.

(c) I asked Ms Walker if she would consent to signing a release of information form so I could contact her local doctor to discuss her anxiety diagnosis and current treatment plan. Ms Walker refused to identify her GP and refused to sign the consent form, stating that she do not think that her prescription drug use impacted on her ability to care for her children and therefore was not relevant to the child protection concerns.

(d) I advised Ms Walker that I was seeking a written report from Alcohol, Tobacco and Other Drugs Services (ATTODS) outlining her participation in the program and I was also requesting Pharmaceutical Benefits Scheme (PBS) information form Medicare Australia to ascertain her prescription drug use. **Exhibit C** is a

true copy of the Section 159 letter that I sent to the Department of Health requesting a report on Ms Walkers from ATODS. **Exhibit D** is a true copy of the Section 159 letter sent to Medicare Australia requesting PBS information.

(e) I asked Ms Walker if I could arrange a home visit on 13 August 2009 at 10.00am.

She agreed to participate in the home visit.

9. On 13 August 2009 I met with Ms Walker at her home. We discussed the following issues:

Child Care:

(a) Ms Walker advised that Johnnie attends 'The Village Day Care Centre' three (3) days a week whilst the other two children stay home with her during the day. She stated that she would like the other children to attend child-care but she could not afford it.

(b) I stated to Ms Walker that I would make a referral to "The Village Day Care Centre" for her other two children and seek approval from my Manager for financial assistance to met the additional child-care costs. **Exhibit E** is a true copy of the referral I made to "The Village Day Care Centre".

Children's Health:

(c) Ms Walker informed me that Johnnie had been diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD) and that medication is the only thing that works to keep Johnnie "from bouncing off the walls and destroying the house". Ms Walker stated that she believe that Jack also has ADHD and would not be surprised if Bailey "turns out the same way too".

- (d) I asked Ms Walker when she had last had the children assessed by a paediatrician in regards to the alleged ADHD diagnosis. She stated that she could not remember.
- (e) I asked if she would agree to take the children to a paediatrician to assess the children's health needs and review the ADHD diagnosis if I made the arrangements and assisted her with transport. She stated that she would because she believed that "Jack needs medication now too to calm him down.... The children don't do anything I ask them.....They run away all the time. They just go feral". **Exhibit F** is a referral letter to the Mater Children's Hospital requesting an appointment for all three children for a full paediatric assessment, including an assessment on possible ADHD.

Children's Behaviour:

- (f) I asked Ms Walker if she would consider participating in the Triple P Parenting Program. I provided Ms Walker with some information that I had downloaded from the internet about what Triple P Parenting may be able to offer her. She stated that she had already done a parenting course but would "give another one a go, but I doubt it will make much of a difference". **Exhibit G** is the referral letter to the Triple P parenting program and the information that I provided to Ms Walker.
- (g) I also suggested that the Mater Parent Aide Service may be able to assist her with practical support with the children and home chores. I provided Ms Walker with a pamphlet about the services and explained in detail my understanding of

what a parent aide may be able to offer her in the way of assistance. Ms Walker stated that she would accept that referral because "she will take any help she can get". **Exhibit H** is the referral letter to the Mater Parent Aide Services.

Housing:

(h) Ms Walker stated that she was feeling very depressed because she had been given notice to vacate her current address but she had no where else to go.

"The department of housing won't help because I owe them too much money".

(i) I asked her what attempts she had made to find alternative accommodation. She stated that she had not had time yet to look for anything else and that the whole idea of moving was just too overwhelming.

(j) I stated that I would contact Mt. Gravatt Community Care Inc. to see what further assistance they could offer in relation to housing.

Mental Health:

(k) I was aware that Ms Walker had used terms such as 'depressed', 'anxiety', 'panic attacks' and feeling 'overwhelmed' during her conversations with me. I mentioned this to Ms Walker and asked if she generally felt hopeless or helpless; experienced a general lack of energy; cried a lot or felt agitated; experienced many headaches or stomach aches, noticed any changes to her sleeping and eating patterns; generally felt sad and low most of the time.

(l) She stated that she felt like that most of the time.

(m) I strongly encouraged her to speak with her GP about these feelings and asked her if she thought she would benefit from seeing a counsellor to talk about her

feelings associated with depression and anxiety.

(n) Ms Walker declined but said that she would talk to her doctor.

Drug Use:

(o) I reminded Ms Walker that on the 11th August I had requested a random drug test; however I had not yet received any results. She stated that she forgot to go to the GP and QML that afternoon.

(p) I once again requested that Ms Walker submit to a random drug test. I provided her with a referral letter to her GP requesting a drug test.

(q) Ms Walker became upset in relation to this request stating that she did not have time to "just drop and run every time you want a drug test. You mob just keep hounding me about drugs. I keep telling you that I don't do drugs anymore and that I just take what I'm supposed to take from the doctor".

(r) I responded to Ms Walker by saying that one of the significant ongoing child protection concerns is her alleged drug use, both prescription drug use and illicit drug use and the impact this may have on her ability to look after her three young children whilst she may be under the influence of drugs. By submitting to random drug tests she can once and for all clear up this allegation.

(s) Ms Walker snatched the referral letter from my hands and said: "fine – I'll see what I can do".

(t) I once again asked if Ms Walker would consent to signing a release of information form so I could speak with her GP about her prescription drug use. She told me to "mind your own bloody business".

(u) Ms Walker then stated that she was feeling tired and would I please leave. I ended the home visit by ensuring Ms Walker that I would follow-up on the referrals mentioned above and asked if I could visit her again on 20 August 2009 at 10.00am. She stated that that would be fine.

Home Environment:

(v) Whilst I was conducting the home visit I observed that the home was generally tidy. Ms Walker offered me a cup of tea whilst we spoke and I noticed that there was ample fresh food and vegetables in the fridge.

(w) Ms Walker showed me the children's rooms which were comfortably furnished with a range of toys observed.

(x) The baby's cot was in her bedroom next to her bed.

(y) I did not observe any evidence of another adult person living in the house.

Ms Walker's Presentation:

(z) Ms Walker was generally pleasant and cooperative during the home visit.

(aa) She was well presented and spoke clearly and articulately. She was able to ask me a number of questions concerning the departments authority to get private information from government departments such as Medicare and ATODS.

10. On 18 August 2009 I phoned Ms Walker to update her on the referrals that I had made and to confirm our appointment on 20 August 2009. She did not answer and I left a message on her home message service.

11. On 20 August 2009 I attended the home of Ms Walker for our scheduled appointment. I approached the house and knocked on the door. I could hear someone moving around

the house; however no one answered the door. I knocked on the front door a number of times and then I rang the home phone from my mobile phone whilst I waited outside of the door. I heard the phone ring inside the home. No one answered the phone. No one answered the door despite my repeated knocks. I left my business card in a sealed envelope and slide it under the door. I left Ms Walkers home at approximately 10.30am.

12. On 24 August 2009 I rang and spoke with Ms Walker. I updated her on the referrals I had made and rescheduled our home visit for Thursday 27 August 2009 at 4.00pm.

13. On 27 August 2009 I met with Ms Walker. Ms Walker presented as dishevelled. Her eyes were blood shot and droopy; her hair was messy; she was wearing stained tracksuit top and pants. Her speech was slurred. She appeared to be unsteady on her feet. I asked Ms Walker if she was feeling well, she stated in a slurred manner that she was fine.

14. I observed the house to be in disarray. There were discarded plates, cups and cutlery on the kitchen table, kitchen benches, sink and floor. There were clothes and children's toys covering the lounge and lounge room floor and in the bedrooms covering the beds and floor. I observed used nappies on the kitchen floor and piled up in the rubbish bin. I observed partially eaten food covering plates, tables, kitchen floor and bathroom floor.

15. I asked Ms Walker where the children were. She stated that Mr Bell (the children's father) had come to collect the children and had taken them to Southbank for the day. I did not observe any children in the house.

16. Given Ms Walkers presentation on that day I made the decision not to proceed with the home visit. I contacted Child Safety After House Service and made a referral for follow-

up. I also contacted the police and asked them to do a welfare check later that evening.

17. On 27 August 2009, a Child Protection Notification was recorded by the Child Safety

After Hours Service Centre in relation to alleged drug use by the parents and

inappropriate supervision of Johnnie, Jack and Bailey. A summary of the concerns were as follows:

- (a) Notifier stated that they observed two young children wandering around Midori Drive, Stones Corner at approximately 11.00pm. The children were dressed in shorts, t-shirts and no shoes.
- (b) Often there is inappropriate and derogatory language being directed at the children by Mr Bell, sometimes up to midnight;
- (c) Regular lack of supervision of the children, including Jack regularly leaving the home and is often returned by neighbours. Jack is often seen in the middle of a busy nearby road;
- (d) Two (2) months ago, Mr Bell informed neighbours that he had lost his children. A car later turned up at the residence with the children. It is unclear if the person who returned the children home was pre-arranged as Mr Bell appeared under the influence of a substance. Mr Bell indicated that Ms Walker was asleep at the time he went looking for the children.
- (e) The Child Safety After Hours Service Centre further reported that police were called and attended the home.
- (f) Police spoke to Mr Bell who stated that he was unaware that the children had left the home. He thought that they were asleep in bed. Police observed Ms Walker

on the lounge. They found it difficult to rouse her. When she woke up the police reported that her speech was slurred and that she was difficult to keep awake.

(g) Mr Bell stated that she had taken some sleeping tablets to help her sleep and that is why she was not fully awake and that he was staying the night to look after the children.

(h) The baby was observed to be asleep in the cot.

(i) Police noticed a number of bottles of beer on the kitchen table and on the kitchen benches. They also reported seeing half a bottle of Bourbon on the table and Mr Bell holding a glass full of liquid whilst he spoke to police.

18. The outcome of this assessment undertaken by Clare Jones was, Substantiated – Children In Need of Protection, Risk of Emotional harm, Physical harm due to Neglect with Ms Walker and Mr Bell named as persons responsible.

19. On 28 August 2009 I went to the home of Ms Walker at 10.00am. I met with Ms Walker. I observed all three children were present at the home.

20. Ms Walker presented as tired and lethargic, however she was articulate and cooperative during the home visit.

21. I outlined to Ms Walker my understanding of the notification recorded the previous night regarding the children being unsupervised, outside on the street late at night with herself being difficult to wake and Mr Bell appearing completely unaware of the children's whereabouts and allegedly consuming excessive alcohol.

22. Ms Walker stated that it was all a big misunderstanding and that any parent can make a mistake. I requested that Ms Walker comply with a random drug test that day and I

offered her transport assistance and child-care assistance so she could comply with this request. Ms Walker stated that she thought she may be coming down with the flu and did not feel well enough to leave the house and would not agree to complete a drug test that day.

23. I reminded Ms Walker that it will be recorded that she has failed to comply with three requests for random drug tests. She stated that she did not care what was recorded "you are all out to get me anyway".

Children's Behaviour:

24. During the home visit I observed the following behaviour of the children:

- (a) Bailey was sitting on the floor in the lounge room playing with a toy. Jack quickly approached Bailey, pushed him over and grabbed the toy. Bailey hit his head on the floor and started to scream. The bump on the head was forceful enough that I heard a thud. Ms Walker did not approach Bailey, she did not offer him any comfort or support; she did not investigate his injuries; she did not pick him up. She did not reprimand Jack or provide any consequence to his behaviour. She appeared to ignore the whole incident. I observed Johnnie to pick up Bailey and rub his head. Bailey appeared to be comforted by this interaction by his brother.
- (b) I observed that Johnnie and Jack constantly yell, hit and kick each other to gain access to toys, food and what appears to be a single bean-bag on the lounge room floor.
- (c) I observed that Ms Walker did not intervene with this behaviour until Jack bit Johnnie on the back because he would not get off the bean-bag. I observed

teeth marks on Johnnie's back. Johnnie retaliated by hitting Jack on the side of his face with his hand. I observed that Jack's face was red. Both children were crying. Ms Walker yelled at the children and told them to go to their room. The children refused. Johnnie went and cried on his mother's bed. Jack went outside and started playing in the back yard with a ball. Ms Walker then commented to me "See what I have to deal with... they don't do anything I say".

(d) I was at the home from 10.00am to 12.00pm. At no time did I observe Ms Walker directly interacting with the children.

(e) At approximately 11.30am I observed Jack climbing onto a chair and trying to reach into a cupboard to get a box a cereal down. He was successful and proceeded to eat the cereal out of the box. At no time did Ms Walker attempt to assist jack despite my comments about it being dangerous for Jack to be climbing onto a chair.

25. During this home visit I updated Ms Walker on the referrals that I had made and gave her the following information:

Update on Referrals:

(a) I advised Ms Walker that the Mater Parent Aide program had accepted her referral and advised that she needed to contact the Coordinator of the Program, Ms Sharon White, to make direct arrangements with this service. I provided Ms Walker with the contact details and a brochure about the service.

(b) I provided Ms Walker with a letter that outlined the date and time of the paediatric appointment for the children at the Mater Childrens Hospital and offered her

assist with childcare and transport. Ms Walker declined this assistance but took the letter with the appointment details.

(c) I was also successful in gaining further child-care days for both Jack and Bailey.

Johnnie and Jack are now able to attend child-care three days per week being Monday, Tuesday and Wednesday. Bailey is able to attend child-care one day per week on Wednesday. Those arrangements are available immediately commencing the week beginning 31 August 2009.

(d) Ms Marion Dorsall from the Triple P Parenting Program was available to commence home visits starting the week of the 7th September 2009. Ms Walker was required to contact Ms Dorsall to make the specific arrangements. I provided Ms Walker with the contact details and a brochure about the service.

(e) Ms Trudie Mann from Mt Gravatt Community Care Inc advised me that Ms Walker needed to contact their service in relation to her housing situation and they could assist her in finding private rental accommodation by providing her with a reference and assisting her in accessing real estate agencies in her local area.

I provided this information in writing to Ms Walker. **Exhibit I** is a true copy of the letter that I provided Ms Walker that outlined all the referral details as outlined above.

26. On 1 September 2009 I rang Ms Walker to see how she was getting on with the new child-care arrangements, however the phone went to message bank so I left a message for her to call me.

27. On 3 of September 2009 I rang Ms Walker to remind her that Ms Smith was returning on

7 September and will resume case work for her family. I asked her to contact me so I can make one last visit prior to handing the case back to Ms Smith.

28. Ms Walker rang me later that day and we made arrangements for me to visit her on Friday 4 of September 2009 at 10.00am.

29. On 4 of September 2009 I attended the home of Ms Walker for our scheduled appointment. I approached the house and knocked on the door. I could not hear anyone at the house. I knocked on the front door a number of times and then I rang the home phone from my mobile phone whilst I waited outside of the door. I heard the phone ring inside the home. No one answered the phone. No one answered the door despite my repeated knocks. I left my business card in a sealed envelope and slid it under the door. I left Ms Walkers home at approximately 10.30am.

30. Ms Smith returned to work on 7 September 2009.

31. On 8 September 2009 I completed a handover with Ms Smith, including the details of the referrals and the follow-up required to assist Ms Walker in engaging with these services. For example, I asked Ms Smith to ensure that she phone the services to make sure that Ms Walker has made the necessary appointments to progress the referrals. I also asked her to follow-up on whether Ms Walker had spoken to her doctor about feeling depressed.

32. On 17 September 2009 at approximately 9.30am I attended the home of Ms Walker with Child Safety Officer Ms Smith for the purposes of assisting in a child protection notification assessment. I approached the house and knocked on the door. I could hear someone moving around the house; however no one answered the door. I knocked on

the front door a number of times and then I rang the home phone from my mobile phone whilst I waited outside of the door. I heard the phone ring inside the home. No one answered the phone. No one answered the door despite my repeated knocks. Ms Smith called out "Sherrie I know you're in there", however no one answered in response. I left a business card in a sealed envelope and slid it under the front door. I left Ms Walkers home at approximately 10.00am.

33. I have had no further direct dealing with Ms Walker, Mr Bell or the children since 17 September 2009.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Anna Maxwell on 15 October 2009 at Brisbane in the presence of:

Deponent

Justice of the Peace / Commissioner for
declarations

FOR TRAINING ONLY

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: ALPM234509

Children: Bailey WALKER (02/06/2008)
Jack WALKER (24/08/2006)
Johnnie WALKER (10/04/2005)

Applicant: Rachael Smith
AND

First Respondent: Sherrie Walker
Mother
AND

Second Respondent: Paul Bell
Father

I, Rachael Smith, Child Safety Officer of Level 13, Makerston Street, Brisbane in the State of Queensland, make oath and say as follows:

1. I am an officer of the Department of Child Safety (hereinafter referred to as "the Department"). I am an authorised officer under the *Child Protection Act 1999*. I hold a

Sheet 1

Deponent

Affidavit
Filed on behalf of the Applicant
Form 25 – Version 1, March 2000

A Justice of the Peace

Kylie Maree Allan
643 Kessels Road,
Upper Mount Gravatt 4122

Bachelor of Behavioural Studies from University of Queensland which was conferred in 2005.

2. I am the assigned Child Safety Officer with case management responsibility for this matter. I have held case responsibility for this family since February 2009.
3. I am the applicant seeking Child Protection Orders granting custody of Johnnie Walker (DOB 10/04/2005), Jack Walker (DOB 24/08/2006) and Bailey Walker (DOB 02/06/2008) to the Chief Executive for a period of two (2) years.

FAMILY DETAILS

4. Bailey Walker (DOB 02/06/2008) is one (1) year of age and a subject child. Bailey Walker (hereinafter referred to as Bailey) is currently residing with his mother, Ms Sherrie Walker in the Brisbane suburb of Stones Corner.
5. Johnnie Walker (DOB 10/04/2005) is four (4) years of age and a subject child. Johnnie Walker (hereinafter referred to as Johnnie) is currently residing with his mother, Ms Sherrie Walker in the Brisbane suburb of Stones Corner. Johnnie is the brother of Bailey.
6. Jack Walker (DOB 24/08/2006) is three (3) years of age and a subject child. Jack Walker (hereinafter referred to as Jack) is currently residing with his mother, Ms Sherrie Walker in the Brisbane suburb of Stones Corner. Jack is the brother of Bailey and Johnnie.
7. Ms Sherrie Walker (hereinafter referred to as Ms Walker) identifies herself as the biological mother of Bailey, Jack and Johnnie. I have met Ms Walker face to face in my role as caseworker. Ms Walker currently resides in Stones Corner.

8. Mr Paul Bell (hereinafter referred to as Mr Bell) identifies himself as the biological father of Bailey, Jack and Johnnie. I have not met Mr Bell. Mr Bell currently resides in Warwick.
9. Ms Walker is the mother of eight (8) other children. These children are:
Tony Walker (22), Jason Walker (18), Sam Walker (15), Emma Walker (14), Jane Walker and Lisa Walker (12), James Walker (9), and Jerry Walker (8). Departmental records indicate that these children reside with their biological father Mr Jack Daniels.

CURRENT CHILD PROTECTION ORDER

10. Bailey is currently subject to a Child Protection Order requiring the Chief Executive to supervise his protection. This order was made in the Brisbane Childrens Court on 30 November 2008, and is due to expire on 29 November 2009. Johnnie and Jack are not currently subject to Child Protection Orders.

CHILD PROTECTION HISTORY

11. On the 19 September 2009, Ms Melissa Clark (hereinafter referred to as Ms Clark) Acting Team Leader, prepared a summary report outlining the child protection history in relation to this family. This report was compiled from departmental files and records. A true copy of this report is attached and marked as "EXHIBIT A".
12. This report identifies a child protection history which dates back to 2001 and outlines significant child protection concerns including:

- a) Ms Walker and Mr Bell demonstrating a pattern of misusing illicit drugs and prescription medication which has placed the children in their care at risk of physical harm, emotional and neglect;
 - b) Inappropriate and unsafe living environment, including periods of homelessness;
 - c) Significant domestic violent history between Ms Walker and Mr Bell, with risk of physical harm and emotional harm substantiated for the subject children; and
 - d) Inappropriate and excessive behaviour management techniques utilised by Ms Walker and Mr Bell, leading to physical harm and risk of physical harm of the subject children. This includes Ms Walker being charged with Assault Occasioning Body Harm.
13. Between 2005 and 2009, the subject children have been removed from the care of Ms Walker and Mr Bell on a number of occasions.

RECENT DEPARTMENTAL CONCERNS

14. On 15 September 2009, a child protection notification was recorded by the Child Safety After Hours Service Centre in relation to the inappropriate supervision of Johnnie, Jack and Bailey by Ms Walker. A summary of the concerns were as follows:
- a) Johnnie and Jack were located unattended at a building site prior to 8am. These children were assessed as being at immediate risk of harm whilst wandering around the building site unsupervised.
 - b) Police then attended the family home, however, attempts to raise the mother were unsuccessful. Police were requested to attend the family home again given that

departmental records indicated Ms Walker also had care of an eighteen-month-old child, Bailey.

c) Police returned to the family home at 10.20am and entered the house through an unlocked door to wake Ms Walker. Police found Ms Walker asleep. She advised Police she had gotten up earlier and fed the children and had gone back to sleep. Police observed that attempts had been made by the mother to secure interior doors, cupboards and the front gate.

d) Bailey was located in his cot where it appeared he had been for a number of hours.

15. Departmental files indicate that consent was obtained from Ms Walker to place Johnnie and Jack in Departmental care; however this consent was not viewed as enabling the Department to carry out a thorough investigation due to Ms Walker being resistant to Departmental intervention and resistance to engaging with other community agencies.
16. All the children were removed from Ms Walker's care under Section 18 of the *Child Protection Act 1999* and a Temporary Assessment Order was granted by after hours Magistrate, P.M.Gordon, later this same day. The grounds of the order included serious concerns in relation to Ms Walker's inability to provide appropriate supervision and care of their children.
17. This incident reflects a long pattern of entrenched behaviour despite extensive support services being made available to Ms Walker. The level of risk of harm to these children continues despite this.

18. On 17 September 2009, Child Safety Officer Anna Maxwell and myself attended the family home to discuss the child protection concerns. Ms Walker could be heard walking around the house, however refused to answer the door. At this time, the notified concerns have been unable to be assessed.
19. On 27 August 2009, a child protection notification was recorded by the Child Safety After Hours Service Centre in relation to the inappropriate supervision of Johnnie, Jack and Bailey by Ms Walker. A summary of the concerns were as follows:
- a) Notifier stated that they observed two young children wandering around Midori Drive, Stones Corner, at approximately 11.00pm. The children were dressed in shorts, t-shirts and no shoes.
 - b) Often there is inappropriate and derogatory language being directed at the children by Mr Bell, sometimes up to midnight.
 - c) Regular lack of supervision of the children, including Jack regularly leaving the home and is often returned by neighbours. Jack has been seen in the middle of a busy nearby road.
 - d) Two (2) months ago, Mr Bell informed neighbours he had lost his children. A car later turned up at the residence with the children. It is unclear if the person who returned the children home was pre-arranged as Mr Bell appeared under the influence of a substance. Mr Bell advised the neighbours that Ms Walker was asleep at the time he went looking for the children.
 - e) The Child Safety After Hours Service Centre further reported that police were called and attended the home.

- f) Police spoke to Mr Bell who stated that he was unaware that the child had left the home. He thought they were asleep in bed. Police observed Ms Walker on the lounge. They found it difficult to rouse her. When she woke up the police reported that her speech was slurred and that she was difficult to keep awake.
- g) Mr Bell stated that she had taken some sleeping tablets to help her sleep and that is why she was not fully awake and that he was staying the night to look after the children.
- h) The baby was observed to be asleep in the cot.
- i) Police noticed a number of bottle of beer on the kitchen table and on the kitchen benches. They also reported seeing half a bottle of Bourbon on the table and Mr Bell holding a glass full of liquid whilst he spoke with them.
20. The outcome of this assessment was Substantiated – Children In Need Of Protection, Risk of Emotional Harm and Physical Harm due to Neglect with Ms Walker and Mr Bell named as persons responsible.
21. On 19 May 2009, a child protection notification was recorded by the Child Safety After Hours Service Centre in relation to the inappropriate supervision of Johnnie, Jack and Bailey by Ms Walker and Mr Bell. A summary of the concerns were as follows:
- a) Ms Walker and Mr Bell dropped Johnnie and Jack at the Village Child Care Centre and were due to collect the children at 3:00pm. Ms Walker and Mr Bell failed to collect Johnnie and Jack from the Child Care Centre;

- b) Notifier provided information that a member of the Child Care Centre returned Johnnie and Jack to the family home between 6:30pm – 7:00pm after repeated telephone calls to the family home were unanswered;
- c) Notifier advised that uniform police officer's and Child Protection Investigation Unit Officer's (hereinafter referred to as CPIU officer's) were in attendance at the family home when Johnnie and Jack were returned home. Ms Walker and Mr Bell were also present;
- d) Notifier advised that at 6:00pm Ms Walker and Mr Bell contacted the police as they had woken up and noticed that Johnnie and Jack were missing from the home and suspected that they may have possibly been "abducted".
- e) Ms Walker and Mr Bell advised the CPIU officer's that they had both taken prescribed anti-depressants after taking Johnnie and Jack to Child Care, had fallen asleep and awoken disorientated. Ms Walker and Mr Bell stated that they had forgotten the children were at Child Care and subsequently contacted the police;
- f) CPIU officers observed children had eaten dinner and all children appeared well nourished, clean and appropriately dressed;
- g) Ms Walker was observed to be coherent and alert, however Mr Bell appeared to be "a bit spaced out" (possibly affected by a substance), although he was able to respond to the children's requests.

22. On 20 May 2009, following interviews with Ms Walker and Mr Bell, the children were removed from Ms Walker and Mr Bell's care under Section 18 of the *Child Protection*

Act 1999 and a Temporary Assessment Order was granted by after hours Magistrate, A.J. Bordello, later this same day.

23. On 26 May 2009, the application for the Court Assessment Order was heard before Magistrate Shiraz at the Brisbane Children's Court. During the mention Ms Walker and Mr Bell made the following undertakings for the adjournment period:

- a) Ms Walker would have a mobile phone active by 8am on 27 May 2009, enabling contact to be more accessible for the Department;
- b) Ms Walker agreed to allow access to her home and the children after 3.30pm three (3) times per week;
- c) Ms Walker and Mr Bell agreed to undergo random urine drug screens as requested by the Department;
- d) Ms Walker and Mr Bell stated they are willing to co-operate with the Department in the best interests of the subject children.

24. This Court Assessment Order was adjourned until the 11 June 2009, however custody was granted to the parents. The children returned to their parents on the 26 June 2009.

25. During the period of the Court Assessment Order, Ms Walker and Mr Bell did not complete any random urine drug screens as requested by the department.

26. During the period of the Court Assessment Order, Ms Walker and Mr Bell did not allow the Department to visit three times per week as they had agreed. Despite attempts by the Department to visit the parents, the parents often made excuses as to why they were unable to be home and were often not present at the home when Departmental workers

visited. Ms Walker continued to be difficult to contact on her mobile telephone which often did not answer and rang out.

27. The Court Assessment Order expired on the 24 May 2009. Ms Walker and Mr Bell agreed to continue to work with the Department, via an Intervention with Parental Agreement case for Johnnie and Jack and continue with the Child Protection Order for Bailey, requiring the Chief Executive to supervise his protection.

28. Departmental files indicate that the outcome of this assessment for the children was Substantiated – Children In Need of Protection, Risk of Physical Harm caused by Neglect and Risk of Emotional Harm caused by Neglect with Ms Walker and Mr Bell named as person's responsible for the following reasons:

- a) Ms Walker and Mr Bell advised the CPIU officer's that they had both taken prescribed anti-depressants after taking Johnnie and Jack to Child Care, had fallen asleep and awoken disorientated. Ms Walker and Mr Bell stated that they had forgotten the children were at Child Care and subsequently contacted the police, with the belief that Johnnie and Jack had been abducted;
- b) It has been assessed that Ms Walker and Mr Bell were unable to provide adequate supervision of Bailey (1 year), who was at home with them, due to their use of prescription medication. This placed Bailey at significant risk of harm;
- c) Ms Walker and Mr Bell have a significant history of using both prescription medication and illicit drugs, including valium and morphine. This use continues to impact on their ability to appropriate supervise the young and vulnerable children in their care;

- d) Ms Walker and Mr Bell's relationship has historically been characterised by significant domestic violence. At present Mr Walker and Mr Bell deny being in a relationship, however observations and conversations with Ms Walker, Mr Bell and the children indicate that it is likely that Ms Walker and Mr Bell are in a relationship;
- e) Ms Walker has advised that Johnnie and Jack have been diagnosed with Attention Deficit Hyperactivity Disorder which increases their vulnerability due to Ms Walker's history of inappropriate parenting practises, including a current charge of Assault Occasioning Bodily Harm of Johnnie in 2006.
- f) Ms Walker continues to indicate that she has difficulty managing Johnnie and Jack's behaviour's and has requested respite on numerous occasions;
- g) Bailey is currently subject to a Child Protection Order requiring the Chief Executive to supervise his care needs, however since Mr Bell's prison release in April 2007, Ms Walker has increasingly been unwilling to engage with the Department.
- h) The family have significant child protection history between 2001-2009, primarily in relation to domestic violence, over use of prescription medication and illegal substances, inappropriate physical discipline and neglect.

CHILD PROTECTION CONCERNS

29. The following are grounds for the Application for Child Protection Order;

- a) Bailey is currently subject to a Child Protection Order requiring the Chief Executive to supervise Bailey's protection. The grounds for this order relate to Bailey's vulnerability

due to his age, as well as his parents history of drug use, domestic violence, neglect and physical harm to children in their care due to excessive discipline.

- b) Serious concerns continue to be raised in relation to Ms Walker's ongoing inability to provide appropriate supervision and care of their children. There is significant history with this family of limited supervision being provided, resulting in an unacceptable level of harm and risk of harm. Given the young ages of the children currently residing in the family home, there is ongoing risk that they will be harmed as a direct result of lack of parental supervision.
- c) Ms Walker has been charged with assault occasioning bodily harm after allegedly using excessive physical discipline on children in her care.
- d) Ms Walker has limited parenting strategies to assist her in managing the children's behaviour. This places children in her care at risk of physical and emotional harm and neglect.
- e) Ms Walker and Mr Bell have a history of using illicit drugs which negatively impact on their parenting and their ability to supervise children in their care.
- f) Ms Walker requires a high degree of support to enable her to provide an adequate standard of care for the children. Without this level of support the children are at risk of neglect. Ms Walker has consistently stated she finds it difficult to parent her three (3) children.
- g) Ms Walker relies on support from Mr Bell. Ms Walker and Mr Bell have a relationship characterised by domestic violence. Ms Walker lacks insight into the risk Mr Bell poses to the children should he continue to be unable to manage his anger.

30. Since April 2009, Ms Walker's willingness to engage with the Department has observably decreased. I have made numerous phone calls which have been unanswered and numerous attempts to conduct home visits which have been unsuccessful.
31. It is in my professional opinion that Ms Walker is actively disengaging from the Department, even though she has advised the court that she is willing to work with the Department in the best interest of the children. Ms Walker has made these undertakings on several occasions during her long child protection history, however has on every occasion failed in her endeavours.
32. During Ms Walker's limited contact with the Department she has indicated that she is having difficulty coping with Johnnie and Jack's behaviour and requested respite on several occasions. Concerns continue to be raised regarding Ms Walker being able to provide a safe home environment for the children, considering she is clearly stating that she is currently not coping with the children's behaviours, however is not engaging with a number of support services currently being offered to her.
33. On 19 July 2009, I was successful in conducting a home visit with all the children. Ms Walker answered the door from the direction of the bedrooms. The children were observed to be 'running' through the home uncontrollably, at which point Ms Walker asked them to stop their behaviours, however neither were observed to comply with her requests.
34. On 24 July 2009, CSO Mr Omar Simpson and I attended the family home. Discussion was initiated with Ms Walker about her history of drug use and misuse and Ms Walker

stated, 'I will never go back to how I was then'. I asked Ms Walker if she thought there would be times of temptation and weakness, with Ms Walker replying that she would never 'slide back' and it was not her choice back then to go on morphine. Ms Walker stated she could have gone 'cold turkey', but decided to enter the subutex program as she stated "I would have been too sick, if I did it 'cold turkey'".

35. On the 28 September 2009, I enquired if Mr Bell had been in contact with the family, Ms Walker advised that he had not been in touch for 'some time'. Ms Walker advised he was working in Warwick and residing with family members.
36. On the 10 October 2009, Ms Walker was given final notice on her present home of two (2) months to vacate the home supplied by Mount Gravatt Community Care Inc. Ms Walker has been residing in this residence for a substantial amount of time and has come to the end of her tenure in the property.
37. Ms Walker has informed the Department that she has a debt to the Department of Housing and until this has been significantly decreased they will not consider Ms Walker's application for Priority housing.
38. Ms Walker is reluctant to move into a house without secure high fencing. Ms Walker has stated on several occasions that she can not watch the children constantly and has described her children as 'runners' who escape easily without secure fencing.
39. Ms Walker has been aware for greater than four (4) months that she would be required to vacate her present home, and she has been observed to not actively seek alternative accommodation for herself and the subject children.

40. During a home visit on 12 October 2009, Ms Walker admitted she had not been looking actively over the past couple of weeks as had been tired and feeling depressed.
41. On 12 October 2009, I received a report from Ms Marion Dorsall of the Triple P parenting program in relation to her case work with Ms Walker. The following is a summary of the report:
- a) Ms Dorsall has made observations that Ms Walker presents as tired and lethargic and her presentation has been dishevelled.
 - b) The home presented as cluttered with children's toys, clothes, discarded plates or partially eaten food and other miscellaneous items.
 - c) Ms Dorsall was unable to comment on Johnnie and Jack's behaviours and presentation as they were at Child Care.
 - d) On two (2) occasions during her home visits she has observed Ms Walker to allow Bailey to play on the floor at her feet, with Ms Walker providing some supervision.
 - e) Ms Dorsall has suggested strategies to implement in regards to Ms Walker's parenting and household routines.
 - f) Ms Dorsall advised in her opinion and Ms Walker has agreed that she experiences ongoing difficulty following through with these strategies without extensive support.
 - g) Ms Dorsall believes that Ms Walker struggles daily to cope with the behaviours of the children and has been unsuccessful / unwilling to implement strategies / suggestions made to better manage her parenting, household demands and the behaviours of the subject children.

42. On 24 September 2009, I contacted Brisbane ATODS whom advised to call the Child Protection Unit (CPU) at Mater Hospital to obtain the relevant information in regards to Ms Walker's engagement with their service.
43. On 28 September 2009, I received a call from Ms Brown. Ms Brown advised Ms Walker was a participant in the Opiate program and had last been seen by the service February 2009. At this time the service were considering a suspension of the Subutex dosages for Ms Walker. This suspension was disclosed to be due to Ms Walker's lack of engagement with the service and difficulty to contact Ms Walker on all supplied contact phone numbers.
44. On 20 September 2009, I made a home visit to Ms Walker with Ms Leen of Mater Parent Aide Service. On this day I observed Ms Walker to be unwell with a cold and with an eye infection. Ms Walker stated that she had not seen a doctor as she had no time or money. The following information was obtained:
- a) Ms Walker was engaged in a conversation with Ms Leen about the children and her strategies to control their behaviours. Ms Walker stated that both Johnnie and Jack ignore her when she gives them instructions. For example, it took her six (6) times of the same instruction for Johnnie to have him cease his behaviour, with Johnnie continuing the behaviour soon after. Ms Leen provided alternate suggestions; however, Ms Walker stated 'they just will not work with my boys', 'they need to be medicated to control their behaviours'.
 - b) Ms Walker disclosed that Johnnie and Jack had been found 'awhile ago' (no date disclosed) on the next door neighbour's trampoline late at night. Ms Walker was of

the belief that the boys went out the back door, and climbed the fence and were subsequently found by her neighbour jumping on the trampoline. These neighbours at the time were entertaining friends. Ms Walker advised the neighbour knocked on her door, awaking her and advised Johnnie and Jack were at his home.

- c) Ms Walker minimised this concern and stated, 'I can not stay awake all the time, I have to sleep some time', 'I did not think they could get out of the house'.
- d) This admission and minimisation by Ms Walker is an indication of Ms Walkers limited ability and insight into how her parenting, lack of supervision and neglect impacts on the safety of children in her care.
- e) In regards to Ms Walker's current financial position, Ms Walker advised that she was not coping at this time, as she had lost her rental assistance, due to her paying fifty dollars (\$50) per week to rent and one hundred dollars (\$100) per week to her Department of Housing debt. Ms Walker advised this was a suggestion by Mount Gravatt Community Care, as her eligibility for priority housing through the Department of Housing will not be considered until her debt is at an acceptable level.
- f) Ms Walker advised she has limited money to provide the basic requirements for the children and has had to contact Mount Gravatt Community care to request assistance and to negotiate her payments to the Department of Housing.
- g) Ms Walker stated that Johnnie and Jack are consuming three (3) litres of milk per day, with Jack having 3-4 bottles over the night. I asked how the children consume such large amounts when they are in child care between 9am and 3pm each week day. Ms Walker advised 'they just do, I do not stop them from having a drink of milk, milk

is good for them'. Ms Leen discussed this amount and commented that she was of the belief that, this was a high amount for the children's ages. Ms Walker said once again, 'I thought milk was good for them at their ages'.

45. A Family Group Meeting is to be convened to develop case plans for the children.

46. On 15 August 2009, the child protection concerns were discussed with the Indigenous Family and Child Support Service (IFACSS) representative, Ms Elaine Tanaka (herein after known as Ms Tanaka). Ms Tanaka indicated her support for the Department's intention to apply for a Child Protection Order.

47. On 15 September 2009 I discussed the application again with Ms Tanaka and she indicated she was still in support of the application for a two (2) year Child Protection Order on all the children.

48. On 15 September 2009 I received from Medicare a report outlining the prescribed substances, quantities and source of drugs. The PBS report is attached as Exhibit B.

49. I have requested the criminal history of Ms Walker and Mr Bell from the Queensland police but I have not yet received a copy.

CUMULATIVE HARM

50. As already highlighted the child protection concerns in relation to Bailey, Jack and Johnnie reflect a significant pattern of emotional harm, exposure to inadequate parenting skills and neglect.

51. Neglect is defined as where a child's basic needs, being their developmental, physical and emotional well being and safety remain unmet. (Frederico, Jackson and Jones 2006)
52. Harm may be constituted by a single act, omission or circumstance or accumulate through a series of continuing acts, omissions or circumstances (Victoria Children, Youth and Families Act 2005).
53. The report sourcing this information is attached to this affidavit and marked Exhibit "A".

CONCLUSION

54. A Child Protection Order granting custody to the Chief Executive would provide an opportunity for Ms Walker and Mr Bell to work with the Department to address the child protection concerns and to demonstrate that they are able to maintain an physically and emotionally stable and safe environment for Johnnie, Jack and Bailey.
55. I have formed the opinion that Johnnie Walker, Jack Walker and Bailey Walker are children in need of protection, and that such protection is not likely to be ensured by any other less intrusive order the Court may make. In accordance with Section 61 (d) (ii) I now make application for a Child Protection Order granting custody to the Chief Executive. This order is sought for a period of two (2) years.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Rachael Smith on 14 October 2009 at Brisbane in the presence of:

Deponent

Justice of the Peace

THE VILLAGE DAY CARE CENTRE

3456 Logan Road
Stones Corner QLD 4120

12 October 2009

To Whom It May Concern:

My name is Donna Karen and I am the assistant at the preschool room at The Village Day Care Centre where Johnnie Walker attends.

I have had constant contact with Sherrie and the Department of Communities since the family started with this centre.

Due to Johnnie having surgery on his fingers on 21 September 2009, he was unable to attend our centre up until Wednesday 30 September 2009 for ½ a day. He has attended full time since. During this time, I was informed by staff and Sherrie that Bailey was also in hospital during this time.

It wasn't very often that I would see Sherrie in the morning when she dropped Jack off but in the afternoon that I was on late shift she would tell that she had been up to the hospital to see the baby, but because of Johnnie's behaviour, they were unable to stay for long periods. Johnnie has a very short attention span and is unable to sit quietly for a period of time. Johnnie finds it extremely difficult to sit still long enough to listen to one story during our group sessions.

Sherrie told me that the hospital and the department wanted her to spend more time at the hospital with baby, but didn't know how she was going to do that with Johnnie.

I told her that I felt it was extremely unfair that the department would expect a child of Johnnie's status to stay in a quiet place like a hospital for a long period of time. And since she had no-one to look after Johnnie and due to him not being able to attend our centre she said she was finding it difficult.

I have asked for the department to come and view Johnnie at The Village Day Care Centre to help me get assistance for Johnnie and to have his behaviour assessed however, I have not heard anything from the department in relation to this.

I feel that if Sherrie did take Johnnie up to the hospital and he behaved as he does, then the hospital staff would of also complained about that. I feel that she has been put into a very difficult position by the hospital and the department as I feel that she was trying to do the best by all her children, remembering that she did have three that lived with her at the time.

Yours sincerely,

Donna Karen

“Top Ten” (or so) regarding court gaffs

1. Facts of case often being diluted by the lack of (supportive) cogent evidence
2. Authorised Officer appears to have an “axe to grind”:
 - a. Makes no concessions;
 - b. Offers no positives in respect of the Respondent parents;
 - c. “Must win” ethos – there is a need to define what a “win” actually is;
 - d. Personalising the issue(s).
3. Inability to make decisions (i.e. CSO not in a position to make decisions);
4. Materials not being checked for typos/inconsistencies prior to filing;
5. Authorised Officer not familiar with the legislation (duties & obligations);
6. No continuity in the case;
7. (Lack of) understanding of the types of evidence, particularly best evidence (but also forensic evidence, expert evidence, hearsay evidence, circumstantial etc);
8. Authorised Officer not understanding the court process(es);
9. Often allowing the child to make the decision(s) – one cannot abdicate responsibility to a child. The child’s views and wishes are to be respected but they are one of a number of considerations;
10. Authorised Officer not following through with family (kinship) carers potential;
11. MUST seek least intrusive order and have a rationale for the order sought (often defined in timeframes) – some cases are presented on a “hunch” re least intrusive order.

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY:

NUMBER:

Child/ren: Bailey WALKER (02/06/2008)
Jack WALKER (24/08/2006)
Johnnie WALKER (10/04/2005)

Applicant: Rachael Smith

AND

[First] Respondent: Sherrie Walker

AND

[Second] Respondent: Paul Bell

I, Detective Senior Sergeant Christine Patterson, of the Mt Gravatt Child Protection Investigation Unit, 50 Makerston Street, Brisbane in the State of Queensland, make oath and say as follows:-

1. I am a Detective Senior Sergeant with the Queensland Police Service currently stationed at the Stones Corner Child Protection Investigation Unit.

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Bernadette Smith
50 Makerston Street, Brisbane

2. I have met the subject children Johnnie, Jack and Bailey Walker and have also met their mother, Ms Sherrie Walker.
3. I can recall an incident on 15 September 2009, at approximately 7:45am, when I was requested by uniform police to attend a building site located on the corner of Logan Rd and Gardenway Parade, Stones Corner.
4. Upon my arrival at this location, I observed two young children playing at the site. I was unable to locate any supervising adult for these children. Whilst talking with the children, they advised me their names were Johnnie and Jack. Johnnie was able to tell me where he lived and I transported both children to their home address.
5. No-one responded at the family home and I contacted Clarke Kent at the Child Safety After Hours Service Centre to advise of the situation. Mr Kent requested I transport the children to The City Child Safety Service Centre. Upon my arrival at the service centre, I met with Ms Rachel Smith, Child Safety Officer and was advised the children had an eighteen month old brother, Bailey. Ms Smith requested I attend the family home again and attempt to locate this child. Johnnie and Jack were left in the care of Ms Smith.
6. I returned to the home of Ms Walker with Plains Clothes Constable Croft. Again, there was no response to knocks on the front door. Officer Croft found the back door unlocked and entered the house. I located the child Bailey in his cot. He was awake and appeared to have been there some time, as demonstrated by his saturated nappy and red face.
7. Officer Croft had by then located Ms Walker asleep in another room in the house and was able to rouse her.

8. Ms Walker advised Officer Croft and myself that she had woken earlier and fed the children, including Bailey, their breakfast. Ms Walker stated she had changed Bailey's nappy and returned him to his cot for his morning nap. Ms Walker advised she was on medication that made her sleepy however she had done her best to ensure the children would not be able to wander away. I observed attempts by Ms Walker to secure interior doors and cupboards with rope and the front gate with a chain.
9. I advised Ms Walker that Johnnie and Jack had been located at a building site a few streets away and that they were currently with a worker at the City Child Safety Service Centre. Ms Walker agreed to Officer Croft and myself transporting her and Bailey to this office for further discussions with Child Safety staff.
10. I have had no further involvement with this matter since providing this transport.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Christine Patterson on 15 October 2009 at Mt Gravatt in the presence of:

(signed by deponent)

Deponent

(signed by Justice of the Peace)

Justice of the Peace/Commissioner for
declarations

FOR TRAINING ONLY

EXHIBIT A CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER'S CHILDREN

Date of Assessment	Children	Concerns Received:	Summary of Assessment:	Outcome Taken
16/11/2003	<p>Tony (16 years old)</p> <p>Jason (13 years old),</p> <p>Sam (10 years old),</p> <p>Emma (8 years old),</p> <p>Jane and Lisa (6 years old),</p> <p>James (3 years old),</p> <p>Jerry (1 year old)</p>	<ul style="list-style-type: none"> • Mother is addicted to prescribed drugs - crushes up and injects. • Mother uses drugs everyday. Mother was injecting while breast feeding children. • The children have not been attending school over the last few weeks. • Only some children attend school. • SC Tony has taken on mother's responsibility in looking after the children. Notifier believes that the cot of SC Jerry is in SC Tony's room. • SC James and SC Jerry have been seen on the road unsupervised. • Children have been left home alone unsupervised up to a full day on occasions. • Notifier believes this situation has been ongoing for approximately 10 years with SC Tony caring for younger children since she was 7 years old. 	<p>This notification was unable to be completed due to workload issues.</p>	<p>Unable to complete due to workload issues</p> <p>Child Safety Service Centre: Ipswich CSSC</p>
06/02/2004	<p>Tony (16 years old)</p> <p>Jason (13 years old),</p> <p>Sam (10 years old),</p> <p>Emma (8 years old),</p>	<p>Concerns raised 29/11/2003</p> <ul style="list-style-type: none"> • Mother and Father have recently separated after 12 years. • Mother has intravenous drug habit that results in her staying in bed all day. • Mother has injected in front of children. • Children are cared for by oldest daughter, Tony, who does all the work caring for the family. • SC Jerry in SC Tony's room. Mother has taken in a male boarder who smokes dope and flirts with the girls. • Mother has fibromyalgia and is attending the pain clinic at Ipswich 	<p>Substantiated Risk of Neglect</p> <ul style="list-style-type: none"> • Mother disclosed of previously injecting herself with morphine for the purpose of pain management. • Mother's current physical and mental health conditions (ie. fibromyalgia, anxiety, depression and agoraphobia) is assessed as placing a high level of stress on familial and individual functioning as well as affecting her ability of 	<p>Schools to monitor the situation and advise Department if further concerns. No further follow-up by Department.</p> <p>Persons</p>

CP summary for Walker Children

EXHIBIT A CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER' CHILDREN

<p>Jane and Lisa (6 years old), James (3 years old), Jerry (2 years old)</p>	<p>Hospital.</p> <ul style="list-style-type: none"> • SC Tony hardly ever attends school, however when she does attend, she is always neat and tidy. • SChn Jane, Lisale and Emma often attend school in dirty uniforms, and often without lunch. <p>Concerns raised 02/01/2004</p> <ul style="list-style-type: none"> • Notifier is aware that the current home situation is deteriorating rapidly. • Mother has been abusing prescribed medication for a few years. • Mother attends a pain clinic and also another GP for medication. Mother is now injecting pain killers and abusing this medication. Mother is also on anti-depressants. • Mother drinks alcohol daily and provides alcohol to SC Tony • Children appear thin - no food in house. • Children are not supervised by mother. The older children are responsible for day to day care of younger children. • SC Jerry seems to have infection around eye area that has not been treated. <p>Concerns raised 08/01/2004</p> <ul style="list-style-type: none"> • Mother is breaking down the capsules and injecting her prescription drugs. Mother also suffers from anxiety attacks, however notifier is unsure of any mental health diagnosis. • Mother goes into her bedroom to inject and because of her drug affected remains in her bedroom for long periods of time (either stoned or sleeping). • A majority of care and supervision is left to SC Tony who is threatening to move out. • Mother does not prepare meals for the children. • Washing is piled high (3/4's up the wall). • There are no sleeping or eating routines and it is not uncommon for the younger children to sleep on the floor all night when they become tired. • A male in the household is doing taking the children to school whilst mother spends time in bedroom. • There are no support services currently engaged with the family. • No regular family support. • Notifier does not believe that mother is providing adequate care and supervision of the children. 	<p>parenting the children.</p> <ul style="list-style-type: none"> • Mother has recently had an acrimonious separation from the children's father. • Mother's lack of familial and financial support from children's father and extended paternal family • Mother's reliance on prescription medication to support daily functioning and pain management. • Mother's disclosure that scarcity of food is a problem prior to receiving fortnightly government payments. • Mother's disclosure that older children Tony and Jason are expected to assist with parenting younger children when mother is unwell 	<p>Responsible: Sherrie Walker</p> <p>Child Safety Service Centre: Ipswich CSSC</p>
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EXHIBIT A CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER'S CHILDREN

07/03/2005	<p>Tony (17 years old)</p> <p>Jason (14 years old),</p> <p>Sam (11 years old),</p> <p>Emma (9 years old),</p> <p>Jane and Lisa (7 years old),</p> <p>James (4 years old),</p> <p>Jerry (3 year old)</p>	<ul style="list-style-type: none"> • Neglect issues identified: Mother has a neurological disorder and is not coping with the parenting of the children. • Notifier is aware that the mother was called to the school yesterday in relation to her youngest child who is not coping with his school work. • The children have presented at school on several occasions without food for lunch. Notifier is aware that SC Emma stole a bike from school one day last week and took it home and told mother that someone had given it to her. Notifier is aware that the school had to retrieve the bike and return to owner. • Notifier is aware that the mother has told the school that she has huge debts. • Mother has a partner (name unknown) living with her who is provides no assistance in the home. • SC Tony has a new baby. 	<p>Substantiated at risk of neglect</p> <ul style="list-style-type: none"> • Single mother of nine children (eight at home) surviving totally on social security payments. • Little family support. • Mother has no support, financial or otherwise from the father of the eight children. • Mother has crippling financial debts. • Mother has a painful condition which requires heavy pain-killing medication. • Mother uses heroin on a regular basis. 	<p>Intervention through Child Protection Follow-Up to address the child protection concerns (currently named Intervention with Parental Agreement)</p> <p>Persons Responsible: Sherrie Walker</p> <p>Child Safety Service Centre: Ipswich CSSC</p>
11/4/2005	<p>Jason (14 years old)</p>	<ul style="list-style-type: none"> • On 9 April 2005, at approximately 7:30 pm a 13 year old friend of SC Jason's was rushed from the family home to Mater Children's Hospital in an alcohol induced coma. • Jason was at the house without any parental or adult supervision. • All of the young people in the house appeared to have been drinking. • The house was a pigsty with broken glass and mess all over the floors. There were four adolescent males at the house (names unknown). • Police have told notifier that the address is well known to them (it has been raided previously for drugs). • Mother is in Ipswich Hospital as she has given birth. • Jason's younger siblings have been housed out while mother is in hospital. 	<p>Unsubstantiated</p>	<p>Continue with intervention</p> <p>Child Safety Service Centre: Inala</p>

CP summary for Walker Children

EXHIBIT A
CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER' CHILDREN

25/4/2005	<p>Jason (15 years old),</p> <p>Sam (11 years old),</p> <p>Emma (10 years old),</p> <p>Jane and Lisa (8 years old),</p> <p>James (5 years old),</p> <p>Jerry (4 years old),</p> <p>Johnnie (14 days old)</p>	<ul style="list-style-type: none"> Parents presented at Ipswich hospital "stoned". During Easter weekend parents were seen on hospital security cameras at Ipswich Hospital dealing drugs and shooting up. Mother has falsified scripts to obtain morphine. Mother observed to be "vague during hospital 'rooming in'". On 21/04/2005 mother and father were charged with failing to dispose of a syringe. 	<p>Substantiated at risk of Neglect – Johnnie Walker</p> <ul style="list-style-type: none"> Mother denied allegations of drug use advising that she had not used drugs in over a month. Mother advised that she had an appointment with a drug and alcohol counsellor and both parent's were on the waiting list for Subutex treatment. <p>During the assessment it was found that Johnnie was born addicted to his mother's medication.</p> <p>Johnnie on high dose of Phenobarbital due to drug withdrawal, this medication is being compromised by the drugs in the mother's system (Johnnie being breast fed). Baby needs 8 weeks monitoring to come off Phenobarbital.</p> <p>Medical staff believe Johnnie is too vulnerable at this stage and an assessment was made that if the parents were unable to monitor Johnnie's situation, he could become drowsy and die.</p>	<p>Johnnie was removed from his parents care under a TAO</p> <p>Persons Responsible: Sherrie Walker and Paul Bell</p> <p>Child Safety Service Centre: Inala</p>
01/08/2005	<p>Jason (15 years old),</p> <p>Sam (11 years old),</p> <p>Emma (10 years old),</p> <p>Jane and Lisa (8 years old),</p>	<ul style="list-style-type: none"> Living conditions within the family home have deteriorated with empty bottles of soft drink and alcohol littering the floors as well as cigarette butts, washing piled high in the laundry, old food on the benches and floors. Lack of adequate supervision of the children with mother and father spending most of the day locked in their bedroom. On other occasions, mother and father go out without making appropriate arrangements for the care of the children. Lack of food in the house despite ongoing weekly financial assistance from a Church organisation. Father is prone to violent outbursts as demonstrated father allegedly ramming into the stationed car of mother's eldest daughter for no 	<p>Substantiated Risk Neglect and Emotional Harm</p> <ul style="list-style-type: none"> Parents spend excessive time in their bedroom expecting the children to fend for themselves. Parents rely on the teenage children in the family to perform the parenting role. Parents have a history of drug abuse. Parents obtain welfare payments as their main source of income and are heavily in debt. Parents rely on regular charity from their local church. Paul has a history of violence to other persons. Jerry, James and Johnnie are at further risk due 	<p>TAO Taken 31/07/2005</p> <p>Continue intervention through Child Protection Follow-Up to address the child protection concerns (currently named Intervention with</p>

CP summary for Walker Children

EXHIBIT A CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER'S CHILDREN

	James (5 years old), Jerry (4 years old), Johnnie (1 month old)	<p>apparent reason.</p> <ul style="list-style-type: none"> On or around 6/04/2005, father injected ratsac into his arm. This allegedly occurred in front of mother's daughter, Emma. Children have chronic absenteeism from school. 	<p>to young ages.</p> <ul style="list-style-type: none"> Johnnie is at further risk again due to his present high support needs. 	<p>Parental Agreement)</p> <p>Persons Responsible: Sherrie Walker and Paul Bell</p> <p>Child Safety Service Centre: Inala</p>
21/08/2005	<p>Jason (15 years old), Sam (11 years old), Emma (10 years old), Jane and Lisa (8 years old), James (5 years old), Jerry (4 years old), Johnnie (4 months old)</p>	<p>Notification raised 12/05/2005</p> <ul style="list-style-type: none"> Notifier alleged that Mother and her partner, Paul are heroin addicts. Paul had "written off" two cars previously due to driving whilst drug affected. On 14/05/2005, Paul was again driving whilst heavily affected by drugs. Notifier is aware that mother overdosed on the 11/05/2005. Mother was observed to be blue around the lips and a friend had to roll her onto her side and administer first aid. Notifier believes Paul had similar problems on 10/05/2005. Notifier is aware that Paul has extreme mood swings which include extreme highs, then extreme lows. Lows are often associated with suicidal ideation/attempts. Notifier is aware that the children are often left in the care of SC Emma for extended periods of time as SC Jason refuses to care for the younger siblings and leaves the house at the same time parents leave. <p>Notification raised 20/08/2005</p> <ul style="list-style-type: none"> Notifier is aware that SC Jerry was transported to the family home by the Child Care Centre, however only 2 young children (approximately 6-7 years old) were at home. The driver returned SC Jerry to the Centre and was later transported to the police station when no adult came to collect him. Police attended the family home and spoke with SC Jason who advised that she is left to care for the younger siblings frequently Mother was located at approximately 7:30 pm and collected SC Jerry from the police station. 	<p>Substantiated Neglect, Emotional Harm and Physical Harm of all children</p> <p>Notification 12/05/2005:</p> <p>The specifics of these concerns were not addressed with the parents, however the issue of the parents' drug usage was assessed within the context of casework undertaken with the family (case work started 02/05/2005).</p> <p>At the time the notification was received SC Johnnie was placed with departmental carers under an Assessment Order following drug withdrawal symptoms being present at the time of his birth.</p> <p>Notification dated 20/08/2005:</p> <p>Sherrie and Paul admitted that they were not at home to care for the children; Sherrie feels she has done the right thing by telling Jason to care for the children and places all the blame on Jason.</p> <p>Notification 13/09/2005:</p> <p>Mother's partner, Paul admitted that he had an argument with SC Jason. Mother placed blame on SC Jason, stating she was as much to blame as</p>	<p>Continue intervention through Child Protection Follow-Up to address the child protection concerns (currently named Intervention with Parental Agreement)</p> <p>Persons Responsible: Sherrie Walker and Paul Bell</p> <p>Child Safety Service Centre: Inala</p>

CP summary for Walker Children

EXHIBIT A

CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER' CHILDREN

	<ul style="list-style-type: none"> • Mother advised police that she had instructed SC Jason to be at home when the children arrived in the afternoon. <p>Notification raised 13/9/2005</p> <ul style="list-style-type: none"> • Notifier is aware that SC Jason presented at the Ipswich Police Station with her 18yo sister Tony. SC Jason stated that she was leaving home due to abuse and moving in with her sister. • SC Jason stated that her step-father, Paul pushes her, Paul pushes her hair and has head-butted her. • It was alleged that both mother and her partner, Paul regularly use speed, heroin and marijuana. Consequently most days they are drowsy and sleepy. Most mornings they do not get out of bed, and the preparation of meals and the bathing of the other children are left up to SC Jason. • Recently, mother and her partner, Paul went to the Sunshine Coast for 2 days and left SC Jason responsible for the other children. <p>Notification raised 05/10/2005</p> <ul style="list-style-type: none"> • At approximately 8.30 pm, the mother and her partner, Paul attended a friend's home. SC Johnnie and SC Jerry were left in the family vehicle with the keys in the ignition. • An acquaintance of the parents attended the friend's home and was allegedly "drunk" and stole the car. The parents heard their car start the mother's partner attempted to intervene by trying to climb into the window of the vehicle, however, fell onto the road. • Both children were still in the vehicle when it was stolen. The children and the vehicle were located in Carole Park 2 hours after the theft of the vehicle by a member of the public. This person saw SC Jerry flicking the lights on and off and took him to the police station unaware that SC Johnnie was in the car. The police attended the vehicle immediately to retrieve SC Johnnie. Both children were physically unharmed. Both children were returned to their parents care. <p>Concerns raised 20/11/2005</p> <ul style="list-style-type: none"> • Notifier advised of DV incident in the family home where mothers partner Paul was arrested and taken to the watch house. DV incident included mother's partner kicking and hitting walls where a picture fell from one of the walls and hit mother and 1 of the children in the head. • The family are being evicted this weekend. Although there is a home 	<p>Paul. Mother's ability to act protectively is compromised due to her minimisation of the harm.</p> <p>Mother was expecting SC Jason to take on a parenting role for the other children.</p> <p>Notification 05/10/2005: Mother and her partner, Paul admitted they left the children in the car while they went inside the house. The vehicle was stolen with the children inside and was not located for 2 hours.</p> <p>This incident placed the children at significant risk of harm.</p> <p>Notification 20/11/2005 Both mother and her partner, Paul admitted to having a Domestic Violence incident with the children present. Mother was holding SC Johnnie at the time of the incident and it was ascertained a picture did fall of the wall, hitting mother.</p>
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EXHIBIT A CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER'S CHILDREN

10/09/2005	<p>Jason (15 years old), Sam (11 years old), Emma (10 years old), Jane and Lisa (8 years old), James (5 years old), Jerry (4 years old), Johnnie (5 months old)</p>	<p>available, the family have no money and have been unable to obtain financial assistance.</p> <ul style="list-style-type: none"> • Notifier advised that all SCChn are at home in the care of their 14 year old sister, Jason. On Monday, SC Jason wanted to put SC Johnnie on the day care bus with the older children, however was advised that there was no vacancy. • SC Jason stated that mother and her partner, Paul had gone away, however mother organised with the Centre for SC Johnnie to attend the full week. • SC Jason was unable to care for SC Johnnie as she attends school. • Notifier is aware that SC Jerry and SC James were taken home by bus at 3:30 pm, however no-one was home so they returned to the Day Care Centre. SC Jerry and SC James were taken home at 5:45pm when the centre contacted a young person who is staying with the family. 	<p>Substantiated Neglect</p> <p>Conflicting stories provided by mother, father and neighbours. Independent persons' advised that SC Jason had primary care for the children, with no adult being observed.</p> <p>Mother and her partner place age inappropriate expectations on SC Jason. SCChn placed at risk of harm due to being left unsupervised.</p>	<p>Persons Responsible: Sherrie Walker</p> <p>Child Safety Service Centre: Inala</p>
18/11/2005	<p>Johnnie (7 months old)</p>	<ul style="list-style-type: none"> • Notifier is aware that SC Johnnie has presented with dark bruising to his left arm near the wrist. Bruising was characteristic of finger imprints. 	<p>Unsubstantiated</p> <p>Whilst bruising was evident to Johnnie, bruising appears to have been accidental. Bruising is consistent with explanation provided by parents. Nil evidence to indicate bruising was non-accidental.</p> <p>Day Care Centre advised SC Emma is now assuming the parenting role of the children. She is responsible for getting the younger children on and off the day care bus, packing their bags and providing lunches. Ongoing concerns exist in relation to the children being collected by an adult</p>	<p>Child Safety Service Centre: Inala</p>

CP summary for Walker Children

EXHIBIT A
CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER' CHILDREN

28/05/2006	<p>Johnnie (13 months old)</p> <p>Other SChn residing with biological father</p>	<ul style="list-style-type: none"> Father was seen hitting SC Johnnie around the head last week. Father was also seen holding SC Johnnie by the feet upside down and shaking him. Mother appeared to say something to him and he yelled this will teach him not to play in the dirt. Father has been observed to stare at girls next door only wearing a towel. A couple of days later, father was observed looking through the bushes at girls riding bikes. Mother is currently pregnant. 	after day care.	<p>Substantiated risk neglect</p> <p>Both parents admit to using illicit substance previously, however been clean for a number of months. Father admitted to handling the child inappropriately and causing the child to cry. Father denied looking at the girls.</p>	<p>Persons Responsible: Paul Bell</p> <p>Child Safety Service Centre: Inala</p>
02/09/2006	<p>Johnnie (19 months old),</p> <p>Jack (1 month old)</p>	<ul style="list-style-type: none"> Mother gave birth to baby on 24.08.06. Sherrie is currently on a Subutex program for heroin addiction. Baby does not appear to be born drug affected. Sherrie has extensive previous child protection history in relation to her older children (now in the care of their father). Sherrie and Paul have previous child protection concerns in relation to SC Johnnie, including domestic violence Sherrie and Paul's relationship is characterised by domestic violence and the children have been exposed to this. Paul is prone to violent outbursts that the children witness. 		<p>Substantiated risk of Emotional Harm</p> <p>Mother stated that father yells at her when the children are present. Father yelled at mother when he came to see her at hospital after she had given birth and security was called. An AVO is now in place.</p> <p>Father has spent very little time with SC Jack.</p> <p>Mother is fearful that if she returns home, father will stalk her and verbally abuse her.</p> <p>Mother voiced concerns over father absconding with SC Johnnie.</p>	<p>Persons Responsible: Paul Bell</p> <p>Child Safety Service Centre: Inala</p>
11/04/2007	<p>Sam (12 years old),</p> <p>Emma (11 years old),</p> <p>Jane and Lisa (9 years old),</p> <p>James (6 years old),</p>	<ul style="list-style-type: none"> Notifier is aware that mother had moved to an address in Yamanito due to her electricity being cut off as a result of non-payment Mother suffering depressive symptoms and she was having difficulty coping with the children's daily care. Departmental Officers offered mother a Voluntary Care Agreement and she agreed, however failed to show up at Inala Office. A placement was found for SC Emma, SC Jerry, SC James, SC Lisa and SC Jane. Mother and father absconded with SC Jack. 		<p>Substantiated Neglect and Physical Harm of SC Johnnie</p> <p>Substantiated Risk Emotional and Neglect of SC Lisa, SC Jane, SC Jerry and SC James</p> <p>Substantiated Risk of Neglect SC Emma and SC Jack</p> <ul style="list-style-type: none"> Children were residing in a house with no electricity; 	<p>Persons Responsible: Sherrie Walker and Paul Bell</p> <p>Child Safety Service Centre: Inala</p> <p>TAO taken 11/03/2007</p>

CP summary for Walker Children

EXHIBIT A CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER' CHILDREN

	<p>Jerry (5 years old),</p> <p>Johnnie (2 years old)</p> <p>Jack (16 months old)</p>	<p>A Warrant for Apprehension of a Child – SC Jack Walker was sought and granted by Magistrate Wessling at Richlands Children's Court on 30/03/2007. This warrant expired on 11/04/2007.</p>	<ul style="list-style-type: none"> • Mother left the children with friends who were strangers to the children and assessed as inappropriate; • Mother is currently in a depressive state, placing the children at risk of harm; • It has been assessed that mother is unable to meet the children's daily care needs and is having difficulty coping with the children; • Mother has no supports. 	<p>Johnnie and Jack subject to a Protective Supervision Order and removed under a TAO.</p> <p>Inala Area Office applied for a Child Protection Order for SC Johnnie and SC Jack.</p> <p>All other siblings now residing with father.</p>
07/08/2008	<p>Johnnie (3 years old)</p> <p>Jack (1 year old)</p> <p>Bailey (2 months old)</p>	<p>Notification received 01/08/2008</p> <ul style="list-style-type: none"> • Mother is breast feeding SC Bailey after being advised by the hospital that she must not breast feed as she is continuing to use Vallum. • Mother is believed to be taking both Vallum and subutex. • Mother has previously appeared to have little or no insight into how her risk behaviours may impact on her children, especially when they are very young and fragile. • Mother missed another appointment this week and she had to make an emergency one; SC Bailey's weight is low and it has been decided to admit him to hospital for observation and maintenance of his morphine. • SC Bailey was discharged from hospital approximately one week ago. Mother advised that she is sleeping with the baby in her bed. <p>* SC Johnnie and SC Jack currently on Protection Supervision Order through Inala CSSC. Inala CSSC have case work responsibility.</p>	<p>Substantiated, Child In Need of Protection - Risk of Physical Harm caused by Neglect for SC Bailey</p> <ul style="list-style-type: none"> • Mother was found to neglect Ben's medical needs which include attending weekly appointments with the same treating doctor to ensure that his withdrawal of morphine is monitored consistently. Mother has missed a number of appointments and has not contacted the hospital to date to advise she is not attending. • SC Ben was admitted to hospital as he is not putting on weight. • Mother minimises the child protection concerns and this indicates she will not be vigilant in addressing them and ensuring Ben attends medical appointments. 	<p>Persons Responsible: Sherrie Walker</p> <p>Child Safety Service Centre: Mt Gravatt</p> <p>Mother advised she is willing to work with the Department in a voluntary capacity to support her in the management of Ben's medical needs.</p>

CP summary for Walker Children

EXHIBIT A
CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER' CHILDREN

		<ul style="list-style-type: none"> Mother has an extensive history of neglecting her children's needs that has not been addressed to date. <p>Unsubstantiated for SC Jack and SC Johnnie</p> <p>Whilst they are listed as SChn (because they reside in the same house), the concerns outlined in this notification do not relate and therefore, not assessed.</p>	<ul style="list-style-type: none"> Mother has an extensive history of neglecting her children's needs that has not been addressed to date. <p>Unsubstantiated for SC Jack and SC Johnnie</p>	<p>Persons Responsible: Sherrie Walker</p> <p>Child Safety Service Centre: Inala</p>
24/08/2008	<p>Johnnie (3 years old)</p> <p>Jack (1 year old)</p> <p>Bailey (2 months old)</p>	<p>Notification received 02/06/2008</p> <ul style="list-style-type: none"> Mother has given birth by Caesarean Section to a baby boy. The baby is a healthy weight however is having difficulty breathing and is in the special care nursery. He will need to withdraw from Subutex and will not be discharged for at least seven days. Mother will be homeless from 16/06/06. Mother has history of drug use and using excessive amounts of Vallum. Mother advised she will continue to breastfeed. Mother also having frequent panic attacks. History of limited parenting capacity and very resistant to engage with Department. <p>* SC Johnnie and SC Jack currently on Protection Supervision Order through Inala CSSC. Inala CSSC have case work responsibility.</p>	<p>Substantiated, Child In Need of Protection - Risk of Physical Harm caused by Neglect for SC Bailey</p> <ul style="list-style-type: none"> Mother was using vallium throughout her pregnancy and as a result, SC Ben was positive for diazepam in his blood and suffered withdrawals. Ms Walker appears to use between 3-5 Vallium tablets a day. Drug use can impact on a person's ability to appropriately supervise and care for children, particularly young children who require higher levels of supervision and care. <p>Unsubstantiated for SC Jack and SC Johnnie</p>	<p>Persons Responsible: Sherrie Walker</p> <p>Child Safety Service Centre: Inala</p>
08/09/2008	<p>Bailey (3 months old)</p>	<ul style="list-style-type: none"> Notifier is aware that SC Bailey was admitted to the Logan Hospital as he was underweight (below his birth discharge weight); During the past 6 days SC Bailey has gained 790gms. This is the expected weight gain over a 4 week period; Based on SC Bailey's significant weight gain it is the opinion of medical staff that SC Bailey was "starving"; SC Bailey has also been receiving morphine since birth due to withdrawal 	<p>Substantiated Child In Need of Protection</p> <ul style="list-style-type: none"> SC Bailey has been harmed by the mother and the mother has failed to seek appropriate medical intervention. Mother continued to breast-feed SC Bailey against the advice of medical staff directly resulting in Bailey failing to thrive. Mother refused to obtain medical assistance to 	<p>Assessed that there is no parent able and willing to meet the care and protective needs of SC Bailey – application for TAO, CAO and CPO</p>

CP summary for Walker Children

EXHIBIT A CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER'S CHILDREN

		<p>from Subutex. Since SC Bailey's initial discharge from hospital he has been receiving this morphine as an outpatient. Mother has missed 4 out of 5 out-patient appointments for Bailey;</p> <ul style="list-style-type: none"> When Mother has missed SC Bailey's outpatient appointments, hospital staff have had to contact Mother and make arrangements for urgent appointments/deliveries of morphine to ensure SC Bailey does not suffer withdrawal symptoms; During SC Bailey's current hospital admission, Mother has only visited SC Bailey 3 times for approximately half an hour at a time. <p>* Departmental records indicate that at this time, Inala CSSC removed Bailey's siblings and made an application for a court assessment order based on severe bruises on SC Johnnie's thigh that was indicative of being smacked with a hand.</p>	<p>assist with SC Bailey's significant withdrawal symptoms.</p> <ul style="list-style-type: none"> Mother has not demonstrated insight into the long term effects of her behaviour on Bailey. 	<p>Persons Responsible: Sherrie Walker</p> <p>Child Safety Service Centre: Mt Gravatt</p>
12/9/2008	<p>Johnnie (3 years old)</p> <p>Jack (1 year old)</p> <p>Bailey (3 months old)</p>	<p>Concerns raised 29/08/2008</p> <ul style="list-style-type: none"> On the 28/08/2008, car door was closed on SC Johnnie's fingers causing deep laceration to right middle fingers and laceration to right ring finger. SC Johnnie was required to go to theatre for sedation, suturing and washout. Mother was uncontactable on the 29/08/2008 as hospital needed to obtain consent for procedure to occur. Mother only contacted Child Protection Unit at 2pm, stating that she had slept through the phone ringing as she had turned down the volume. Mother had not inquired about the well-being of SC Johnnie from hospital staff. There were concerns that mother would not present for follow up treatment in the morning and therefore, SC Johnnie was admitted to hospital overnight. Mother appeared 'spaced out' and sweaty. This caused significant delay in the ambulance taking SC Johnnie to the hospital as she needed to make child care arrangements. <p>Concerns raised 11/09/2008</p> <ul style="list-style-type: none"> SC Johnnie has bruising on his bottom, which are purple/red in colour. Bruising on left side, is the size of a 50c coin. The bruising on the right side looks like a hand print. 	<p>Substantiated Physical Harm and Neglect of SC Johnnie and Substantiated at Risk of Physical Harm of SC Jack</p> <ul style="list-style-type: none"> Mother disclosed that she did hit SC Johnnie twice to the buttocks although had changed her explanation for his bruising on a 4 occasions. Mother did not believe that she hit SC Johnnie hard. SC Johnnie disclosed that he had fallen down and his mother had hit him. SC Johnnie further disclosed that his mother has hit him to his face and body with her hand. SC Johnnie had extensive bruising to his buttocks. All SCN are all aged under 5 years old and are unable to exercise any self protective behaviours and self care. Mother appears to use extensive quantities of Valium and Tramadol tablets a day. Drug use can impact on a person's ability to appropriately 	<p>Persons Responsible: SC Johnnie and SC Jack removed under a TAO. Both children remained in Departmental care until 28/9/2008</p> <p>Persons Responsible: Sherrie Walker</p> <p>Child Safety Service Centre: Inala</p> <p>Mother was charged with Assault Occasioning Bodily Harm.</p>

EXHIBIT A
CHILD PROTECTION HISTORY IN RELATION TO SHERRIE WALKER' CHILDREN

		<ul style="list-style-type: none"> • SC Johnnie had stated that "mum hit me and then something about a blue stick". • Notifier does not know what a blue stick is. * There is an increase in frequency of harm occurring to SC Johnnie Walker. 	<p>supervise and care for children, particularly young children who require higher levels of supervision and care.</p> <ul style="list-style-type: none"> • In a 2 month period Ms Walker was prescribed 530 tablets of Valium and 300 of Tramadol from several different doctor's. Mother's usage appears to have increased throughout the year as opposed to decreased as mother has stated. 	
			No outcome for SC Bailey provided	

14 August 2009

Ms White
Coordinator
Mater Parent Aide Service
Mater Childrens Hospital

Dear Ms White,

Re: Referral on behalf of Ms Sherrie Walker.

Ms Sherrie Walker's three youngest children, Johnnie (DOB: 10/04/2005), Jack (DOB: 24/08/2006) and Bailey Walker (DOB: 02/06/2008) are currently subject to Interim Orders granting temporary custody of them to the Chief Executive.

During my case work discussions with Ms Walker I have mentioned your services and the assistance you may be able to provide. Ms Walker has expressed an interest in receiving some practical assistance from a parent aide in relation to her children (including developing a routine for children; healthy eating tips and parenting advice) as well as budgeting and domestic assistance.

I would like to refer Ms Walker to your service.

I understand that a meeting between Ms Walker and a representative from the department is required prior to acceptance into the program. Can you please contact me on 3235 9859 to discuss this referral and to make arrangements for a meeting between myself, Ms Walker and your service?

Looking forward to hearing from you soon.

Yours sincerely,

Anna Maxwell
Child Safety Officer

Session Plan

CHILDREN SERVICES TRIBUNAL

Outcomes:

(for example)

- To provide participants with improved knowledge of the complexity in defining what is a reviewable decision and skills in determining jurisdiction of the Tribunal
- To engage participants in developing a framework around questioning witnesses
- To provide participants with a sense of how their role can and should develop as we move into QCAT

Presenters: Helen Tooth, Nicole Karger, Poonam Pratap, Tracey Barrett, Dellene Kefford, Rachael Smith

Time	Content	Resources / Comments
11 to 1.00		
5 min	<u>Introduction</u> Introduction and checking in with participants about level of experience. Who has attend PC, Hearing - frequency and what role did you play etc. Structure of the session <ul style="list-style-type: none"> • Quiz • Small group analysis of Notice of Review, case facts and developing submissions on jurisdiction • Developing Questions exercise • Role of Court Coordinator – emphasis on professional development and building capacity, and not about reducing CSA functions 	
20 min	<u>Activity 1 – How to identify a reviewable decision in casework continuum.</u> Quiz - all participants to take 15 min to complete Quiz (group task) and then presenters to go round and ask tables to identify answers (any issues to be documents on whiteboard for follow up later in session)	Handout Whiteboard
40 min	<u>Activity 2 – Jurisdictional limitation of the CST</u> Break into groups of 5. Each group will be given a case scenario which includes a Notice of Review. Group needs to consider information and then <ol style="list-style-type: none"> 1. As a group consider the type of questions they would need to be asking TL/CSO in order to understand facts of the matter and jurisdiction of Tribunal, the 2. Presenters to provide additional 'Case Information' document to each group, and ask 3. Each individual to put together formal written submissions to the CST registry as to how the application should be managed in line with the appropriate legislation. Examples of written submissions contained in manual. Then, 4. Each group to select a representative who will then rely on theirs (and others within the group if req'd) written submission to make an oral argument to the CST Panel (presenters) NB – presenters may depending on time constraints engage in role play/questioning. NB – depending on groups energy level may offer a 'dance break' at end of	Notice of Review (6 Scenarios), and some case facts. Butcher's paper/markers

<p>40 min (shorter if required)</p>	<p>session</p> <p><u>I put it to you.....– Questioning of Witness in CST</u></p> <p>Facilitators to go through powerpoint framework reference for developing questions (15 min), and then in accordance with powerpoint do activity.</p> <p>In same groups, you will need to read the witness statements provided and then develop 5 questions you would pose to this witness.(15 min)</p> <p>Facilitators to act as witness and have a person from each group pose a question (or 2) to them.(15 min)</p>	<p>Power point/Handout</p>
<p>15 min</p>	<p><u>Ct Coord role in the CST/QCAT</u></p> <p>Short introduction which highlights Ct Cord Job description and need to ensure a pathway for progression and professional development, hence CS has begun developing a "learning plan" for Ct Coord which will structure learning in this area. Walk through with participants a document (learning plan) prepared by Court Services which correlates the professional development of a CC with their developing role in the Tribunal as an <u>experienced</u> Ct Coord (role document)</p> <p>NB. <u>6 Scenarios for Activity 2 – 1 for each group</u> <u>And 1 presenter for each 2 tables.</u></p>	<p>Powerpoint/Handout</p>

QUIZ. Please answer the following questions.

1. If a case plan outlining contact arrangements is provided to the parents, is a reviewable decision letter still required?
2. A case plan is developed for a child and contact arrangements are established. If these contact arrangements do not change following a review of the case plan six months later, is a reviewable decision letter outlining the same contact arrangements required?
3. Contact was occurring two times per week for two hours, and was changed to three times per week for two hours. Is this a reviewable decision? Should a reviewable decision letter be sent to the parents?
4. The children have been placed with foster carers for the last 12 months. CPO applications were finalised last week (S/TC CE). Do reviewable decision letters in relation to the placement (and/or contact) need to be sent following the making of the CPO's?
5. Child is subject to S/T order and has been with foster carers for 6 months. Information notices issued to parents re in whose care at time of this placement. Mother would like child to be placed with maternal grandmother in NSW. Department decide that child will continue in current placement (due to short term nature of order and grandmother is not approved carer). Is this a new decision?.
6. Department is considering a reunification plan between child and father and are currently increasing contact. Should contact progress to plan, child is likely to return to father's care in two months. Has a new placement decision been made?
7. New born baby is subject to a CAO for three weeks and in the CE's custody (placed with foster carers). The paternal aunt requests to see the child during the CAO period, and the department responds that facilitating contact between child and aunt at this time is not a priority. Is the aunt entitled to review a contact decision in the Tribunal?

- 8.** Child is on s/t order and with foster carer. Department positively assess an Aunt and approve her as a kinship carer for child. Child is moved to the Aunt. Is the carer entitled to make application to the Tribunal pursuant to section 89 (removal decision). Would this answer change if child was subject to a long term guardianship order?
- 9.** A child was subject to a child protection order and prior to its expiry a further application was filed with the Childrens Court. The child was subject to custodial provisions, pursuant to section 99 until the matter was due for initial mention the following week. During this time, the department moved the child from their placement. Is this a decision the parents are entitled to have reviewed by the Tribunal?
- 10.** A contact decision is made that a subject child and their mother have telephone contact each day at 3.30pm. Can the kinship (Aunt) carer file an application to have this contact decision reviewed on the basis that they are required to be at home at 3.30pm every afternoon and therefore affected by the decision?

TRAINERS COPY

The CP Act requires a delegated decision maker to issue a formal information notice of their decision which must include details of the persons review rights etc.

An information notice (= reviewable decision letter) is only one type of letter which the department is obliged to issue, and good casework practice should see us regularly write to all effected people upon the making of an administrative (casework) decision even when there does not exist a right of review.

For example a letter to a carer advising of the decision to place a child elsewhere (except when under section 91)

QUIZ. Please answer the following questions.

1. If a case plan outlining contact arrangements is provided to the parents, is a reviewable decision letter still required? **YES**
2. A case plan is developed for a child and contact arrangements are established. If these contact arrangements do not change following a review of the case plan six months later, is a reviewable decision letter outlining the same contact arrangements required? **Turns on whether there has been new information considered at time of review. If we are simply continuing decision because nothing has changed then no, but if we have considered something new and decide to confirm our decision then answer is yes**
3. Contact was occurring two times per week for two hours, and was changed to three times per week for two hours. Is this a reviewable decision? Should a reviewable decision letter be sent to the parents? **View is that this is not a reviewable decision but a letter should still be issued (without right of review information) to confirm casework decision**
4. The children have been placed with foster carers for the last 12 months. CPO applications were finalised last week (S/TC CE). Do reviewable decision letters in relation to the placement (and/or contact) need to be sent following the making of the CPO's? **Need to issue placement reviewable decision letters if they have not been issued (required**

at point of i/cpo). Contact letters should have been sent at time child removed from parents by tao/cao/cpca

5. Child is subject to S/T order and has been with foster carers for 6 months. Information notices issued to parents re in whose care at time of this placement. Mother would like child to be placed with maternal grandmother in NSW. Department decide that child will continue in current placement (due to short term nature of order and grandmother is not approved carer). Is this a new decision? **Given gm not approved it cannot be a new reviewable decision. If gm approved and then we decided to not place this would be a new 'in whose' care decision.**
6. Department is considering a reunification plan between child and father and are currently increasing contact. Should contact progress to plan, child is likely to return to father's care in two months. Has a new placement decision been made? **If there is only an intent answer is no, however if there is more than an intent and the caseplan/ct order dictate placement is inevitable then it could be. Factors like timeframes, current information to support reunification will possibly determine if a submission that application is premature could be made –difficult reality this one and intention is to amend CP Act so placement with and removal from parent is not reviewable.**
7. New born baby is subject to a CAO for three weeks and in the CE's custody (placed with foster carers). The paternal aunt requests to see the child during the CAO period, and the department responds that facilitating contact between child and aunt at this time is not a priority. Is the aunt entitled to review a contact decision in the Tribunal? **Yes as Aunt falls into definition of family member.**
8. Child is on s/t order and with foster carer. Department positively assess an Aunt and approve her as a kinship carer for child. Child is moved to the Aunt. Is the carer entitled to make application to the Tribunal pursuant to section 89 (removal decision). Would this answer change if child was subject to a long term guardianship order? **Strictly speaking no, however child can and so carer could bring application on behalf of child for removal and 'in whose care'. If on LTG carer has right of review and so decision would be Yes**

9. A child was subject to a child protection order and prior to its expiry a further application was filed with the Childrens Court. The child was subject to custodial provisions, pursuant to section 99 until the matter was due for initial mention the following week. During this time, the department moved the child from their placement. Is this a decision the parents are entitled to have reviewed by the Tribunal? **When child is in our care due to Section 99 provisions there is no right of review attached to decisions around placement however onus on dept to secure S67 interim order so as to enliven CST jurisdiction sooner rather than later.**

10. A contact decision is made that a subject child and their mother have telephone contact each day at 3.30pm. Can the kinship (Aunt) carer file an application to have this contact decision reviewed on the basis that they are required to be at home at 3.30pm **every** afternoon and therefore affected by the decision? **There is indeed an argument that carer is person effected by decision but must remember decision needs to be under S87(2) as the starting point. Department has tried to keep the definition of an aggrieved person very tight but if an application was made then this would be one for the Tribunal to consider. If carer aggrieved then obligation on us to identify this as a 'last resort' option but would first encourage them to explore other options and seek guidance through FCQ. QCAT likely to emphasise ADR so we should be trying to resolve where possible**

CHILDREN SERVICES TRIBUNAL
Children Services Tribunal Act 2000

Application Number: CSR198-08

Subject Child: **Lisa BARNES (DOB: 14/09/1992)**
 Ali BARNES (DOB: 09/10/1995)

Applicant: **David BARNES (Father)**

Respondent: **Department of Child Safety – B. Child Safety Service
Centre**

**SUBMISSIONS REGARDING OUT OF TIME AND DISMISSAL OF THE
APPLICATION**

In the matter of an application to review, number 198 of 08 filed by Mr David Barnes ("Mr Barnes") on 16 December 2008 in the Children's Services Tribunal, the following submissions are made on behalf of the Department:

GENERAL

1. Section 35(1) of the *Children Services Tribunal Act 2000* ("CST Act") gives the Children Services Tribunal ("the Tribunal") jurisdiction to review a reviewable decision on an application made under the CST Act.
2. Schedule 2 of the *Child Protection Act 1999* ("CP Act") sets out the reviewable decisions pertinent to decisions that can be made by the Chief Executive in its administration of the CP Act.
3. Mr Barnes is purporting to review the following decisions:
 - a) *Deciding in whose care to place a child under a child protection order granting the Chief Executive custody or guardianship* - section 86(2) CP Act;
 - b) *Refusing to allow, restricting, or imposing conditions on, contact between a child and the child's parents or a member of the child's family* – section 87(2) CP Act.
4. For decisions made under section 86 of the CP Act, the aggrieved persons are the child or the parents of the child. For decisions made under section 87 of the CP Act, the aggrieved persons are persons who are affected by the decision.

SUBMISSIONS

No jurisdiction – no new “in whose care” decision

5. The department contends that the Tribunal has no jurisdiction to hear the review with respect to the in whose care decision in this matter as there has been no new reviewable placement decision made.
6. The children, Lisa and Ali were placed in the care of approved foster carers on 24 January 2008. This placement remains ongoing and stable for the children.
7. On 22 July 2008, Mr Barnes was formally advised of this placement in writing. This letter also advised Mr Barnes of his review rights with the Tribunal. Mr Barnes had the right to review the placement decision within 28 days of the receipt of the letter. The right to review expired on 28 August 2008. Annexed hereto and marked **Attachment A** is a true and correct copy of the decision letter sent to Mr Barnes on 22 July 2008.
8. On 16 December 2008 Mr Barnes filed his application to review, number CSR198-08 with the Tribunal. The application was filed approximately five months outside the review period.
9. Section 58(4) of the CST Act provides that the time for filing of an application may be extended if the president is satisfied that the reason for the delay is reasonable in the circumstances. For the president to accept this application out of time Mr Barnes is required to provide the Tribunal with reasons for the delay and that the reasons for the delay were reasonable in the circumstances.
10. Mr Barnes has not provided any reasons for the delay therefore the question of reasonableness of the reasons cannot be satisfied. Furthermore the delay in filing is not a minimal delay but rather a delay of some five months
11. The department submits that Mr Barnes's application does not provide any reasons for the delay in filing the review application. It must be noted that in the application itself, Mr Barnes did not indicate that he was requesting an extension of time for the filing of the application. The department maintains the proposition that on this basis, the Tribunal cannot review the decision as requested by Mr Barnes as the application was lodged outside of the 28 day time frame without any reasons for the delay.
12. It is on this basis that the department submits that the president should not exercise her discretion to accept this application out of time.

No jurisdiction – contact decision

Lisa

13. As noted above, Mr Barnes is purporting to also review the decision to restrict his contact with the children, Lisa and Ali.
14. The department submits that the department cannot make any decisions regarding Mr Barnes's contact with Lisa as Mr Barnes is currently subject to bail conditions which stipulate that he is to have no contact with Lisa pending the finalisation of his criminal matters for offences against Lisa. In that regard, the

department submits that the Tribunal has no jurisdiction to conduct a review with respect to Mr Barnes's contact with Lisa.

Thank you for considering these submissions on behalf of the Department of Child Safety. Should the president accept this application out of time the department would seek written reasons for the decision as well as written reasons should the Tribunal determine it has jurisdiction to review the decision in the absence of a new reviewable decision.

**Court Services Advisor
Court Services Unit
Department of Child Safety**

Children Services Tribunal
Children Services Tribunal Act 2000

Application: XX-0708

Subject children: Zoe Jones born 31 March 1999

Applicant: Petra Jones

Respondent: Department of Child Safety – XXXXXXXXXX Child Safety Service Centre

In the matter of an application for review filed by Petra Jones on 29 August 2007, the following submissions are made on behalf of the Department of Child Safety.

Submissions

1. I refer to the application for review lodged by Ms Petra Jones on 29 August 2007 and the Notice of Review issued to the Department of Child Safety on the same date. The application relates to the Ms Jones's daughter, Zoe Jones born 31 March 2007.
2. The Notice of Review issued to the Department of Child Safety refers to a reviewable decision under section 87 (2) of the *Child Protection Act 1999*, that is a decision to refuse, restrict or impose conditions on contact between a child and the child's parents.
3. On the 13 August 2007, an Information Notice was forwarded to Ms Jones advising of a decision made by the Chief Executive's delegated officer to restrict Ms Jones' contact to Zoe.
4. Ms Jones has completed the application for review (Form 1 and 2) attached to the Notice of Review and beyond attaching the aforementioned Information Notice, makes no reference to the department's contact decision. Rather Ms Jones articulates her grievance around the removal of Zoe from her care and her desire that she be returned home with "at the most a one year supervised order" (DER-004).
5. Ms Jones clearly objects to the department's actions in removing Zoe from her care and would seem to be seeking review of the current child protection proceedings before the Children's Court.
6. Zoe was removed from Ms Jones's care by way of Temporary Assessment Order (dated 11 July 2007), followed by a Court Assessment Order (dated 18 July 2007).

Currently the department has before the Childrens Court an application for a Child Protection Order and this application was mentioned for the first time on the 15 August 2007.

7. On the 15 August 2007, an interim Child Protection Order granting custody of Zoe to the Chief Executive was granted. This order continues to have effect until the matter returns before the Children's Court on the 14 November 2007.
8. In addition to the interim Child Protection Order, the Magistrate made an Order in respect of Ms Jones's contact with Zoe, pursuant to Section 68 (1) (c) of the Child Protection Act

68 Court's other powers on adjournment of proceedings for child protection orders

(1) On the adjournment of a proceeding for a child protection order, the Childrens Court may also make 1 or more of the following orders—

(c) subject to subsection (5), an order about the child's contact with the child's family during the adjournment;

.....

(5) The court must not make an order under subsection (1)(c) requiring the chief executive to supervise family contact with the child unless the chief executive agrees to supervise the contact.

9. A copy of the above Order is attached outlining the specific provisions as to how the Court requires the Department to provide and progress Ms Jones's contact to Zoe. The Magistrate in making the Order considered evidence of Ms Jones's behaviour, including a recent assault of a departmental officer in the presence of the child, and accordingly ordered a regime of contact to be overseen by the department. The Magistrate ordered the department to consider and assess all aspects of contact in the best interests of the child.
10. Whilst the Order can be considered quite broad in nature, it is submitted that the very breadth of the Order has the effect of preventing the department from exercising its administrative powers under Section 87(2) of the Child Protection Act. This being in contrast to the interplay between a directive order in relation to the supervision of a parent's contact, which still requires the department to exercise its administrative powers under Section 87(2) to determine frequency, venue and duration. These latter aspects being reviewable decision in accordance with Schedule 2 of the Act.

11. It is submitted that the making of the current interim Child Protection Order on the 15 August 2007 supersedes the department's administrative decision made on the 13 August 2007, in regards to Ms Jones's contact to Zoe, and on this basis the matter no longer falls within the jurisdiction of the Tribunal.
12. Given that since Ms Jones initiated the current application for review, a decision regarding the placement of Zoe has been made which is reviewable before the Children Services Tribunal (as of 15 August upon Zoe becoming subject to the interim Child Protection Order), it is now open to Ms Jones to seek review of this decision. If the Tribunal were of a mind to interpret Ms Jones's grievances as outlined in the current review application as more readily being addressed through a review of 'in whose care' Zoe is placed, then the department would request that an amended Notice of Review be forwarded to the department.
13. Should an amended Notice of Review be issued, it is foreshadowed that the department would be seeking to make submissions pursuant to Section 40 of the Children Services Tribunal Act, given the proceedings currently before the Children Court and the ancillary orders therein in respect of the appointment of a Separate Representative, completion of a Social Assessment report, and the convening of a Family Group Meeting.

Thank you for considering these submissions on behalf of the Department of Child Safety.

Court Services Unit
Department of Child Safety

CHILDREN SERVICES TRIBUNAL
Children Services Tribunal Act 2000

Application Number: CSR0-09 & CSR1-09

Subject Child: **AT (DOB: 14 August 1991)**

Applicant: **PT**
 AT

Respondent: **Department of Child Safety**
 Child Safety Service Centre

In the matter of an application to review, numbers 0-09 and 1-09, filed by PT and AT respectively, on 9 December 2009 in the Childrens Services Tribunal, the following submissions are made on behalf of the Department of Child Safety:

Submissions:

1. On 8 December 2008, the Child Safety Service Centre issued a notice to Mr PT advising the circumstances of contact between himself and his daughter, AT.
2. Pursuant to section 87 (1) of the *Child Protection Act* 1999, the department must provide opportunity for contact between a child and the child's parents. The letter of the 8 December 2008 outlines weekend contact where departmental officers are responsible for facilitating transport through Relate Human Services. Additionally, departmental officers and Relate Human Services have agreed that Mr PT may visit AT at her residence with Relate Human Services; however Mr PT will need to make his own arrangements regarding transportation.
3. The letter also outlines suitable occasions for telephone contact conducive to AT's current living arrangements. A copy of this decision letter is attached to Mr PT's application.
4. No further subsequent decisions have been made in relation to contact. On the 19 December 2008 a case plan was approved further extending contact from 11:00am to 6:30pm where departmental officers are responsible for facilitating transport through Relate Human Services. A copy of this case plan was provided to both Mr PT and AT via mail, week beginning 5 January 2009.

5. In accordance with Schedule 2 of the *Child Protection Act* 1999, a person may make application to review a decision in accordance with section 87 (2) of the said Act where the decision refuses to allow, restricts or imposes conditions on contact between a child and the child's parents or a member of the child's family. It is my respectful submission that the contact arrangements outlined in the letter to Mr PT does not meet the criteria of Schedule 2 and therefore the decision is not reviewable.
6. The Department provides the following information to the Tribunal regarding Ms AT's living circumstances and case plan:
 - (a) AT is currently living on her own in supported accommodation provided by Relate Human Services within a transitional placement package model of care. This model of care provides 24 hour youth work support and therapeutic intervention;
 - (b) AT has recently been discharged from Barrett Adolescent Centre week beginning 8 December 2008 due to her refusal to attend and Barrett Adolescent Centre assessing that it is unlikely to be therapeutic and quite dangerous to coerce AT to continue at the Centre under an Involuntary Treatment Order. Up until this date, AT was an inpatient at the Barrett Adolescent Centre and was only released for weekend community access in an attempt to ensure she was not institutionalised. During her weekend community access, she would have contact with Mr PT.
 - (c) As AT is approaching 18 years of age, a significant component of her Transition From Care Plan is for AT to establish herself in independent living.
 - (d) Efforts will also be made to ensure AT develops and maintains safe peer relationships and relationships with her family.
 - (e) Until such time that AT has transitioned out of care, departmental officers will continue to facilitate reasonable contact between AT and her father with an acknowledgement that AT and her father make arrangements to have frequent contact with each other outside of this time.
7. In conclusion, it is respectfully submitted that no refusal, restrictions or conditions are imposed on Mr PT and AT's contact. Mr PT and AT are able to have contact at their own frequency and duration in addition to those occasions that the department arranges transport. Mr PT and AT are also able to telephone each other three times per week and this frequency is respectful to AT's current living arrangements.
8. If the Tribunal accepts the applications by Mr PT and AT, the Department requests reasons as to the Tribunal findings.

Thank you for considering these submissions on behalf of the Department of Child Safety. I look forward to advice from the Tribunal in response.

Court Services Adviser
Court Services Unit

Example of Questions for carer

Julie Aitken – foster carer

- ☐ What training have you done to be carer?
- ☐ Explain the behaviours you have observed in relation to
 - ❖ Heidi
 - ❖ Mya
 - ❖ Lilo
- ☐ Have you observed any patterns in regards to when the behaviours of each of the children would escalate or settle?
- ☐ How often would you expect to see such behaviours from the children?
- ☐ Explain the behaviour management strategies you've implemented to manage
 - ❖ Heidi's behaviours
 - ❖ Mya's behaviours
 - ❖ Lilo's behaviours
- ☐ From your observations/interactions, describe the children's sibling relationship
- ☐ How do you describe your relationship with
 - ❖ Lilo
 - ❖ Mya
 - ❖ Heidi
- ☐ Describe the interactions/behaviours that you observe when the children are together?
- ☐ Paragraph 5 – Tell me more about the comments and behaviours of Lilo when she told you about this incident
- ☐ Paragraph 5 – Tell me more about the comments and behaviours of Mya when she told you about this incident
- ☐ Paragraph 5 – Tell me more about the comments and behaviours of Heidi when she told you about this incident
- ☐ In paragraph 6 – you describe Lilo's attitude towards contact with her father. Tell me how did Lilo come to tell you about her views about having contact with her father

- ☐ When Lilo was telling you about the stories that Paul told her, what emotions was she exhibiting at this time?
- ☐ When Lilo told you that she didn't want to see her father because he upsets me – did she elaborate about what she meant by he upsets me?
- ☐ Did she elaborate about the statement – “he says nasty things”
- ☐ When the children make such statements to you, what is the process that you follow to provide this information to the department?
- ☐ When Heidi is preparing to have contact with her father – describe her presentation
- ☐ When Mya is preparing to have contact with her father – describe her presentation
- ☐ When Lilo is preparing to have contact with her father – describe her presentation
- ☐ Tell me about what Heidi enjoys about going to contact with her father
- ☐ Tell me about what Mya enjoys about going to contact with her father
- ☐ Tell me about what Lilo enjoys about going to contact with her father
- ☐ In regards to the children attending counselling what improvements have you observed in their behaviours
- ☐ Has Lilo told you recently her views about having contact with her father? If so, what has she said?
- ☐ Has Mya told you recently her views about having contact with her father? If so, what has she said?
- ☐ Has Heidi told you recently her views about having contact with her father? If so, what has she said?

REVIEW APPLICATION

Please print clearly. If insufficient space, use separate numbered sheets. Sheets attached ().

PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM

If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.

Applicant(s)

Name(s)

Jeremy and Maureen CRICKET

Address

5 Mary Street, Brisbane

Postcode

4000

Telephone

(07) 3244 1153

Facsimile

Mobile

Date of Birth

10/5/1953 and 12/2/1950

Commission for Children and Young People Act 2000 applications under s121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.

Section 1

Name and
D.O.B of
child(ren)
decision is
about

(1) Ronald CRICKET

(1) 4/10/1999

(2)

(2)

(3)

(3)

Tick the box
that best
describes
your
relationship
with the
subject child

☐ Mother

☐ Brother

☒ Kinship
Foster Carer

☐ Father

☐ Sister

☐ Other (Please Specify) _____

Is this an application brought on behalf of a child YES ☒ NO ☐

(If an application is brought on behalf of a child, the President's permission is required by the Children Service Tribunal Act 2000 s59(1) before this application is filed).

Do you need the President's permission to file this application? YES ☐ NO ☐

Section 2

Briefly
outline the
decision
that has
been made

At an Fgm held 24/4/09 CSO told us that reunification of Ronald to his dad would occur. In 6 weeks he goes to live there full time and we don't have a say.

See
Attachment A
for decisions
that can be
reviewed

Please attach a copy of the decision or letter notifying the reasons from the Department of Families or Commission for Children and Young People. (Do not send originals)

Is a stay of the decision required YES ☒ NO ☐

(A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. Stays are only granted in exceptional circumstances. A stay is not the final decision of the Tribunal. If you need help answering this question contact the Registry. A stay hearing is not possible for decisions being reviewed under sections 121(1)(a) and 121(1)(b) of the Commission for Children and Young People Act 2000).

URGENT as CSO plans to tell Ronald at the end of the week.

Children Services Tribunal

Children Services Tribunal Act 2000

APPLICATION NO: CSR00-09

APPLICANT: Mr Jeremy Cricket
Mrs Maureen Cricket

RESPONDENT: Department of Communities (Child Safety Services)

In the matter of an application for a review of a reviewable decision: "Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship" pursuant to section 86(2) of the *Child Protection Act 1999*. Application lodged under section 59 of the *Childrens Services Tribunal Act 2000*.

NOTICE OF A REVIEW APPLICATION

TO: Ms Bernadette Smith
Manager – Court Services
Department of Communities (Child Safety Services)
GPO Box 806
BRISBANE QLD 4001

ATTENTION: Helen Tooth

TAKE NOTICE that a Review Application has been filed.

A copy of that Review Application is attached.

Within **7 days** of receipt of this notice, please provide a notice of the names and addresses of all other persons, who are entitled to apply for a review.

Within **21 days** please provide a notice containing the reasons for the reviewable decision, together with every other document in the decision maker's possession or control that is relevant to the review.

Is this matter before any other Court? Family Court ☐ Children's Court ☐
Other _____

Has a Separate Representative been appointed? Yes ☐ No ☐

If yes, please provide contact details of the representative:

Registrar
Children Services Tribunal
Ph: (07) 3225 8346

ATTACHMENT A (Must be included with Form 1)

The following is a list of decisions that can be reviewed by the Children Services Tribunal. Please contact the Tribunal on (07) 3225 8346 to discuss any questions.

Reviewable decisions: Child Protection Act 1999 (right of review is conferred by s 247)

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Directing a parent in relation to a supervision matter stated in a child protection order (s78 CPA) (<i>Aggrieved party must be parent given the direction</i>) <input checked="" type="checkbox"/> Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship (s86(2) CPA) (<i>Aggrieved party must be child's parent or the child</i>) <input type="checkbox"/> Not informing a child's parents of person in whose care the child is and where the child is living (s86(4) CPA) (<i>Aggrieved party must be parent given the notice or the child</i>) <input type="checkbox"/> Refusing to allow, restricting, or imposing conditions on, contact between a child and the child's parents or a member of the child's family (s87(2) CPA) (<i>Aggrieved party must be person affected by the decision</i>) | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Removing child from carer's care (s89 CPA) (<i>Aggrieved party must be carer as defined in s 91 or the child given notice under s 90(4)</i>) <input type="checkbox"/> Refusing application for, or renewal of, licence unless refused because person mentioned in s126(b)(i) or (ii) does not have current positive prescribed notice "blue card" (s129 CPA) (<i>Aggrieved party must be applicant or existing licensee</i>) <input type="checkbox"/> Refusing application for, or renewal of, a certificate of approval as an approved foster carer or an approved kinship carer unless refused because a person mentioned in s 135(1)(a)(iii) or (b)(iv) does not have a current positive prescribed notice "blue card" (s136 CPA) (<i>Aggrieved party must be applicant or existing certificate holder</i>) <input type="checkbox"/> Cancelling an authority (s 140A(3) or (4) or 140AH) (<i>Aggrieved party must be authority holder</i>) | <ul style="list-style-type: none"> <input type="checkbox"/> Refusing an application for an amendment of authority other than a provisional certificate (s137 CPA) (<i>Aggrieved person must be authority holder</i>) <input type="checkbox"/> Amending an authority other than a provisional certificate (s138 CPA) (<i>Aggrieved person must be authority holder</i>) <input type="checkbox"/> Suspending or cancelling an authority other than a provisional certificate (s140 CPA) (<i>Aggrieved person must be authority holder</i>) <input type="checkbox"/> Arranging for an interstate welfare authority to assume custody of guardianship of a child (s245 CPA) (<i>Aggrieved party must be a person issued a notice under s245(6)</i>) |
|--|--|---|

Reviewable decisions: Commission for Children and Young People and Child Guardians Act 2000 (right of review is conferred by ss121 and 140B)

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> The issue of a negative notice (s 102(4) or (7)) <input type="checkbox"/> The cancellation of a positive notice and substitution of a negative notice (119B(2)) <input type="checkbox"/> The cancellation of a positive notice which was suspended (119D(3)) <p>For these applications:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The applicant is the person issued with the negative notice or the cancellation of the positive notice. <input type="checkbox"/> The decision under review is the decision by the Commissioner as to whether or not there is an exceptional case under one of sections s121 (2) prohibits the Tribunal from issuing a stay. <input type="checkbox"/> The suspension of a positive notice under s. 119C(1) because the person had been charged with an excluding offence (s 121) (<i>The applicant must be claiming he or she has not been charged with the relevant excluding offence</i>) <input type="checkbox"/> Application made by the Commissioner for review of a reviewable decision specified in s140A (<i>Applicant is the Commissioner</i>) | <ul style="list-style-type: none"> <input type="checkbox"/> A decision to remove a person's name from an adoption list, expression of interest register or assessment register on the basis of eligibility or non compliance with a regulation (ss 13AA, 13AC, 13E) (<i>Applicant is a person's whose name is removed</i>) <input type="checkbox"/> An unfavourable assessment of a person whose name is in adoption list or expression of interest register (ss 13AE 13AF & 13B) (<i>Applicant is a person unfavourably assessed</i>) <input type="checkbox"/> An unfavourable assessment based on criminal history alone (s 14B) (<i>Applicant is a person's unfavourably assessed</i>) <input type="checkbox"/> An assessment of a prospective adopter whose name is in an assessment register or in whose favour and interim order is made (s14) (<i>Applicant is a person unfavourably assessed</i>) |
|--|---|

Reviewable decisions: Child Care Act 2002 (right of review is conferred by s 163)

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> Refusing to issue the licence or to issue the licence on a condition (s 19) (<i>Applicant is an applicant for a licence</i>) <input type="checkbox"/> Refusing to renew the licence (s 21) (<i>Applicant is a licensee</i>) <input type="checkbox"/> Refusing to amend the licence in a way the licensee has applied for (s 40) (<i>Applicant is a licensee</i>) <input type="checkbox"/> Amending the licence other than in a way the licensee has applied for or agreed to (s 42) (<i>Applicant is a licensee</i>) <input type="checkbox"/> Amending the licence other than in a way the licensee has applied for or agreed to (s 43) (<i>Applicant is a licensee</i>) <input type="checkbox"/> Suspending or revoking the licence (after issue of a show cause notice) (s 45) (<i>Applicant is a licensee</i>) <input type="checkbox"/> Refusing to amend the licence in a way the licensee has applied for (s 51) (<i>Applicant is a licensee</i>) <input type="checkbox"/> Suspending a licence immediately (s 46) (<i>Applicant is a licensee</i>) | <ul style="list-style-type: none"> <input type="checkbox"/> Refusing to lift the suspension of the licence (s 50) (<i>Applicant is a licensee</i>) <input type="checkbox"/> Refusing to extend the transitional licence period or to extend the transitional licence period other than for the further period the personal representative has applied for (s 54) (<i>Applicant is a personal representative of the estate of a licensee who has died</i>) <input type="checkbox"/> Giving a prohibition notice to a person (s 107) (<i>Applicant is a person given notice</i>) <input type="checkbox"/> Refusing to cancel a prohibition notice in force for the person (s 108) (<i>Applicant is a person given notice</i>) <input type="checkbox"/> Refusing application for an approval of qualification mentioned in s 109 or s 110 of the Child Care Regulation 2003 (s111) (<i>Applicant is a person whose application is refused</i>) |
|--|--|

Section 3

Name, Position and Area Office of Decision-Maker	Bob Grey CEO Brisbane Centre
--	---------------------------------

State briefly why you think the decision is wrong or not properly made	Decision made despite Ronald telling us he doesn't want to live with his dad. we have cared for Ronald for two years. Ronald will be traumatised if he is removed.
--	--

Briefly describe any other facts you think are important	we have dealt with his Dad's drug addiction over many years. What has he done to prove himself clean. How can he be trusted not to return to drugs?
--	---

Briefly describe what you want to happen	Some thought should be given to what Ronald wants and should not be rushed. we have cared for Ronald and helped him settle in life and we think it would be best for Ronald if he stayed with us for another year.
--	--

Aboriginal or Torres Strait Islander	The applicant <input type="checkbox"/> , the child <input type="checkbox"/> or another party interested in these proceedings <input type="checkbox"/> Identifies with Aboriginal <input type="checkbox"/> or Torres Strait <input type="checkbox"/> heritage Please tick appropriate box(s)
--------------------------------------	---

Interpreter	Is an interpreter required YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If YES, please specify language: _____
-------------	--

Phone Hearing	Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose _____
---------------	---

Signature of Applicant	Filed by (please print) <u>Jeremy CRICKET & Maureen CRICKET</u> Signature <u>Jeremy cricket</u> <u>maurencricket</u> Date <u>27. 4. 09</u>
------------------------	---

CASE EXAMPLE

Children Services Tribunal

S 58(1), s 147 Children Services Tribunal Act 2000

Form 1 Version 3

REVIEW APPLICATION

Children Services Tribunal

FILED

15/10/2009

PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM*If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.***Applicant(s)****Name(s)**

Mr Lance and Mrs Selina Reardon

AddressInclude full
address
including
suburb

Lot 569 Rainforest Drive Iron Range QLD 4859

Postcode

Telephone

(07) 4907 2985

Facsimile

(07) 4907 3399

Mobile

0467 902 853

Email address

reardon_83@hotmail.com

Date/s of birth of applicant/s

28/09/1965 (Lance)

01/12/168 (Selina)

If your contact details change please advise the registry as soon as possible of your new contact details.Commission for Children and Young People and Child Guardian Act 2000 applications under s 121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.**Section 1**Name and
D.O.B of
child(ren)
decision is
aboutName

(1) Abigail Longsdale

(2) Trent Longsdale

D.O.B

(1) born 25 May 1999

(2) born 25 May 1999

Tick the box
that best
describes
your
relationship
with the
subject child☐ Mother☐ Brother☒ Foster Carer☐ Father☐ Sister☐ Other (Please Specify) _____**Is this an application brought on behalf of a child. YES ☐ NO ☒***(If you are entitled to apply on your own behalf, you are not able to bring an application on behalf of a child. If an application is brought on behalf of a child, the President's permission is required by the Children Services Tribunal Act 2000 s59(1)).***Section 2****The completed application form must be filed with the Tribunal's registry within 28 days after you receive notice of the decision. The President of the Tribunal may at any time extend the time for filing the application if the president is satisfied the reason for the delay is reasonable in the circumstances.****Do you need an extension of time for the filing of this application? YES ☐ NO ☒****If YES, you need to give reasons why the application was not made within the required time period.****Reasons**

Children Services Tribunal

Children Services Tribunal Act 2000

APPLICATION NO: 202 - 09

APPLICANT: Mr Lance and Mrs Selina Reardon

RESPONDENT: Department of Communities (Child, Youth and Family Service)

In the matter of an application for a review of a reviewable decision: Removing a child from a carer's care pursuant to s89 of the *Child Protection Act 1999*.

NOTICE OF A REVIEW APPLICATION

TO: Ms Bernadette Smith
Manager – Court Services
Department of Communities (Child, Youth and Family Services)
GPO Box 806
BRISBANE QLD 4001

ATTENTION: Helen Tooth

TAKE NOTICE that a Review Application has been filed.

A copy of that Review Application is attached.

Within **7 days** of receipt of this notice, please provide a notice of the names and addresses of all other persons, who are entitled to apply for a review.

Within **21 days** please provide a notice containing the reasons for the reviewable decision, together with every other document in the decision maker's possession or control that is relevant to the review.

Is this matter before any other Court? Family Court ☐ Children's Court ☐
Other _____

Has a Separate Representative been appointed? Yes ☐ No ☐

If yes, please provide contact details of the representative:

Registrar
Children Services Tribunal
Ph: (07) 3225 8346
Fax: (07) 3225 8345

Date: 15 October 2009

CASE EXAMPLE

State briefly why you think the decision is wrong or not properly made

The children have been in our care since June 2009 and they are a significant part of our family and our lives. We love them and care for them like our own children. We are related and they should be living with us because we are family.

Abigail and Trent came to reside with us after having to live with lots of different people, changing schools and being unsettled. When they were placed in our care, they asked us for weeks whether they would have to leave us soon. They didn't unpack their belongings until at least a month after they came to live with us. They were very fearful that they would be moved again. We promised them that they would live with us for as long as they needed to. We have broken our promise to them and the department made us do that. The department are horrible to cause such pain for these children so unnecessarily.

Briefly describe any other facts you think are important

Logan and Taylor hate us for taking their children away from them and stopping them from coming to our home whenever they wanted. We don't speak anymore. We did as the department asked and now we're being punished with them being removed from our care.

Briefly describe what you want to happen

We want Abigail and Trent returned to our care immediately. The department need to get into trouble for causing such heartache for these children.

Section 3

The questions in this section will help us prepare for the hearing.

Cultural heritage or ethnicity

The applicant ☐, the child ☐ or another party interested in these proceedings ☐ identifies with Aboriginal ☐ or Torres Strait ☐ or other cultural or linguistic background ☐ (please identify background)

Please tick appropriate box(s)

Interpreter

Is an interpreter required YES ☐ NO ☒ If YES, please specify language:

Phone Hearing

Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose (07) 4907 2985

You are able to have a person with you to support you at the preliminary conference or the hearing. This person cannot talk to the Tribunal on your behalf and cannot be a party to the review. Do you wish to have a support person at the preliminary conference or the hearing? YES ☐ NO ☐ If YES, please supply these details:

Name of support person	Relationship to you	Do they have any personal involvement in the issues you want the Tribunal to consider? Describe their involvement.

Will you be asking the Tribunal to listen to other people (witnesses) about the issues you want the Tribunal to consider? For example, will you be asking the Tribunal to listen to friends or relatives who may be able to confirm what you will be saying to the Tribunal? YES ☐ NO ☐ If YES, please supply these details for each witness:

CASE EXAMPLE

why
application
was not filed
within time

Briefly
outline the
decision
that has
been made

See
Attachment A
for decisions
that can be
reviewed

We are kinship carers and these two children Abigail and Trent have been in our care since June 2009. These children are our niece and nephew by Selina's brother Logan and his partner Taylor. This is the only stable placement these children have had since coming into care in November 2008. They have been placed with other carers for only days or weeks at time. We have given them a safe home not like their mother and father where there were drugs, alcohol and violence. The children were very happy living with us. When the department took them away they were screaming and yelling that they didn't want to leave us.

Please attach a copy of the decision or letter notifying the reasons from the Department of Child Safety or Department of Communities or Commission for Children and Young People and Child Guardian. (Do not send originals)

Is a stay of the decision requested YES ☐ NO ☒ If you need help answering this question contact the Registry. A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. In making a decision about a stay, the Tribunal will have regard to the principle that the welfare and best interests of the child/ren are paramount. The Tribunal will also take into account the interests of other persons likely to be affected by the decision and the submissions received from the decision maker and other parties. A stay is not the final decision of the Tribunal.

A stay is not possible for decisions being reviewed under sections 121(1)(a) and 121 (1)b of the *Commission for Children and Young People and Child Guardian Act 2000*.

Reasons
why a stay is
requested

Complete this section if a stay is requested

Name,
Position and
Child Safety
Service
Centre of
Decision-
Maker

Miley Snowski Manager Weymouth Child Safety Service Centre

Have you
asked for an
internal
review of the
decision?

YES ☐ and the outcome was:

NO ☒ because

I have tried to speak with them but they don't answer my calls. Someone separate from the department needs to look into this terrible decision

Children Services Tribunal

Children Services Tribunal Act 2000

APPLICATION NO: CSR 143-09

APPLICANT: Tracey Barrett

RESPONDENT: Department of Communities (Child Safety Services)

In the matter of an application for a review of a reviewable decision: "Removing child from carer's care" pursuant to section 89 of the *Child Protection Act 1999*.

NOTICE OF A REVIEW APPLICATION

TO: Ms Bernadette Smith
Manager – Court Services
Department of Communities (Child Safety Services)
GPO Box 806
BRISBANE QLD 4001

ATTENTION: Helen Tooth

TAKE NOTICE that a Review Application has been filed.

A copy of that Review Application is attached.

Within **7 days** of receipt of this notice, please provide a notice of the names and addresses of all other persons, who are entitled to apply for a review.

Within **21 days** please provide a notice containing the reasons for the reviewable decision, together with every other document in the decision maker's possession or control that is relevant to the review.

Is this matter before any other Court? Family Court ☐ Children's Court ☐
Other _____

Has a Separate Representative been appointed? Yes ☐ No ☐

If yes, please provide contact details of the representative:

Registrar
Children Services Tribunal
Ph: (07) 3225 8346
Fax: (07) 3225 8345

Date: 9 October 2009

CASE EXAMPLE

Names and addresses of witnesses	Relationship to you	What will they be saying?
Albert Wilder	Best friend	How much the kids were happy residing with us and how much we love eachother
Sila Longsdale	Selina's mother	Saw the children regularly when they lived with us and can tell the Tribunal how happy she is that they are now normal grandchildren
Fleur Holdsworthy	Abigail and Trent's Lifeline counsellor	Will tell the Tribunal how settled and happy the children are in our care and how much they better their behaviours are

Signature of Applicant/s	Filed by (please print) Lance and Selina Reardon		
	Signature	L. Reardon	Date 15 /10/2009
	Signature	S. Reardon	Date 15 /10/ 2009

PLEASE ALSO COMPLETE ATTACHMENT A

Children Services Tribunal

Children Services Tribunal Act 2000

APPLICATION NO: CSR 142-09
APPLICANT: Mary Brown
RESPONDENT: Department of Communities (Child Safety Services)

In the matter of an application for a review of a reviewable decision: "Suspending or cancelling an authority" under section 140 of the Child Protection Act 1999 *Child Protection Act 1999*.

NOTICE OF A REVIEW APPLICATION

TO: Ms Bernadette Smith
Manager – Court Services
Department of Communities (Child Safety Services)
GPO Box 806
BRISBANE QLD 4001

ATTENTION: Helen Tooth

TAKE NOTICE that a Review Application has been filed.

A copy of that Review Application is attached.

Within **7 days** of receipt of this notice, please provide a notice of the names and addresses of all other persons, who are entitled to apply for a review.

Within **21 days** please provide a notice containing the reasons for the reviewable decision, together with every other document in the decision maker's possession or control that is relevant to the review.

Is this matter before any other Court? Family Court ☐ Children's Court ☐
Other _____

Has a Separate Representative been appointed? Yes ☐ No ☐

If yes, please provide contact details of the representative:

Elena Robbins

Registrar
Children Services Tribunal
Ph: (07) 3225 8346
Fax: (07) 3225 8345

Date: 9 September 2009

You are entitled to apply to the Children Services Tribunal for a review of this decision. If you decide you wish to access the Children Services Tribunal review process, you must do so within 28 days of receiving this letter. Please contact the Children Services Tribunal on 07 3225 8326 for further information.

Yours faithfully,



MANAGER,

CANNES CHILD SAFETY SERVICE CENTRE

DEPARTMENT OF COMMUNITIES

Encs.

Court Services
Level 13, 30 Makerston Street
Brisbane Queensland 4000

GPO Box 806
Brisbane Queensland 4001
Telephone 3235 9859
Facsimile 3235 9851
Website
www.childsafety.qld.gov.au
ABN 42 458 314 937



Refer to: Name
Telephone No: 3235 9859
Email: first.lastname@communities.qld.gov.au

23 December 2008
Mr James Harris
12 Bronte Road
Cannes

Dear Mr Harris

As you are aware Jenny and Wallace are subject to interim child protection orders granting custody to the children to the Chief Executive.

When children are in the custody of the Chief Executive, delegated officers of the department have the authority under S87(2) of the Child Protection Act to refuse, restrict or place conditions on family contact. Such a decision is only made when it is considered in the best interests of the child.

It is under this authority that I have made a decision to restrict your contact with Jenny and Wallace.

My reasons for this decision are that the department has now recorded two notifications (2/11/08 and 16/12/08) alleging that whilst Jenny was in your care you have sexually harmed her. The outcome of these notifications has been recorded as substantiate emotional harm caused by sexual abuse.

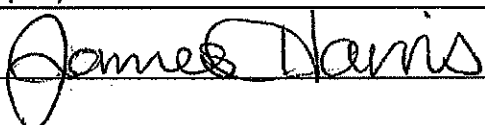
At the present time the children need therapeutic intervention in relation to the harm they have experienced and further assessment needs to occur to determine how their contact with you should progress.

Until these assessments occur, your contact with the children will be restricted to one hour a week to be supervised by a departmental officer.

It is my intention to review your contact on the 19 January 2009.

If you disagree with this contact decision, you are entitled to request a departmental review of the decision, this can occur in a number of ways:

- You can contact me to discuss your concerns. If necessary, I can arrange a meeting with relevant staff to talk with you about the decision.
- You can request an internal review of this decision through the department's client complaints system – this is likely to involve a review of the decision by a senior departmental officer. If you wish, I can assist you to access the department's complaints system.

Signature of Applicant/s	Filed by (please print) James Harris	
	Signature 	Date 24/12/08
	Signature	Date / /

REVIEW APPLICATION

Children Services Tribunal

FILED

24/12/2008

PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM

If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.

Applicant(s)

Name(s)

Mr James Harris

Address

Include full
address
including
suburb

25 Smith Road Evergreen QLD 4999

Postcode

Telephone

(07) 3235 9867

Facsimile

Mobile

0423 025 678

Email address

Date/s of birth of applicant/s

07/07/1968

If your contact details change please advise the registry as soon as possible of your new contact details.

Commission for Children and Young People and Child Guardian Act 2000 applications under s 121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.

Section 1

Name and D.O.B of child(ren) decision is about	Name	D.O.B
(1) Jenny Sophia Harris	(1) Jenny Sophia Harris	(1) born 6 January 2000
(2) Wallace Grant Harris	(2) Wallace Grant Harris	(2) born 6 January 2000

Tick the box
that best
describes
your
relationship
with the
subject child

☐ Mother

☐ Brother

☐ Foster Carer

☒ Father

☐ Sister

☐ Other (Please Specify) _____

Is this an application brought on behalf of a child YES ☐ NO ☒

(If you are entitled to apply on your own behalf, you are not able to bring an application on behalf of a child. If an application is brought on behalf of a child, the President's permission is required by the Children Services Tribunal Act 2000 s59(1)).

Section 2

The completed application form must be filed with the Tribunal's registry within 28 days after you receive notice of the decision. The President of the Tribunal may at any time extend the time for filing the application if the president is satisfied the reason for the delay is reasonable in the circumstances.

Do you need an extension of time for the filing of this application? YES ☐ NO ☒

If YES, you need to give reasons why the application was not made within the required time period.

Children Services Tribunal

Children Services Tribunal Act 2000

APPLICATION NO: CSR 032-09

APPLICANT: Mr James Harris

RESPONDENT: Department of Communities (Child Safety Services)

In the matter of an application for a review of a reviewable decision: "Refusing to allow, restricting, or imposing conditions on a child's parents or a member of the child's family" pursuant to section 87(2) of the *Child Protection Act 1999*.

NOTICE OF A REVIEW APPLICATION

TO: Ms Bernadette Smith
Manager – Court Services
Department of Communities (Child Safety Services)
GPO Box 806
BRISBANE QLD 4001

ATTENTION: Helen Tooth

TAKE NOTICE that a Review Application has been filed.

A copy of that Review Application is attached.

Within **7 days** of receipt of this notice, please provide a notice of the names and addresses of all other persons, who are entitled to apply for a review.

Within **21 days** please provide a notice containing the reasons for the reviewable decision, together with every other document in the decision maker's possession or control that is relevant to the review.

Is this matter before any other Court? Family Court ☐ Children's Court ☐
Other _____

Has a Separate Representative been appointed? Yes ☐ No ☐

If yes, please provide contact details of the representative:



Registrar
Children Services Tribunal
Ph: (07) 3225 8346
Fax: (07) 3225 8345

Date: 6 January 2009

Children Services Tribunal

Children Services Tribunal Act 2000

APPLICATION NO: CSR 123-09

APPLICANT: Simon ALLEN

RESPONDENT: Department of Communities (Child Safety Services)

In the matter of an application for a review of a reviewable decision: "Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship" pursuant to section 86(2) of the *Child Protection Act 1999*

And 'Not informing a child's parent in whose care a child is and where the child is living', pursuant to S86(4) of the *Child Protection Act 1999*.

NOTICE OF A REVIEW APPLICATION

TO: Ms Bernadette Smith

ATTENTION: Helen Tooth

Manager – Court Services

Department of Communities (Child Safety Services)

GPO Box 806

BRISBANE QLD 4001

TAKE NOTICE that a Review Application has been filed.

A copy of that Review Application is attached.

Within **7 days** of receipt of this notice, please provide a notice of the names and addresses of all other persons, who are entitled to apply for a review.

Within **21 days** please provide a notice containing the reasons for the reviewable decision, together with every other document in the decision maker's possession or control that is relevant to the review.

Is this matter before any other Court? Family Court ☐ Children's Court ☐
Other _____

Has a Separate Representative been appointed? Yes ☐ No ☐

If yes, please provide contact details of the representative:

Registrar
Children Services Tribunal

Ph: (07) 3225 8346

Fax: (07) 3225 8345

Date: 11 September 2009

REVIEW APPLICATION

Children Services Tribunal

FILED

09/09/2009

PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM

If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.

Applicant(s)

Name(s)

Ms Mary Brown

Address

Include full
address
including
suburb

131 Violet Parade Evergreen QLD 4999

Postcode

Telephone

(07) 3366 3366

Facsimile

(07) 3366 3377

Mobile

0403 026 978

Email address

maryb@hotmail.com

Date/s of birth of applicant/s

07/07/1968

If your contact details change please advise the registry as soon as possible of your new contact details.

Commission for Children and Young People and Child Guardian Act 2000 applications under s 121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.

Section 1

Name and D.O.B of child(ren) decision is about	Name	D.O.B
	(1) Jane Brown	(1) born 13 January 1994
	(2) John Brown	(2) born 8 May 1999
	(3) Jess Brown	(3) born 4 August 1996

Tick the box
that best
describes
your
relationship
with the
subject child

☐ Mother

☐ Brother

☒ Foster Carer

☐ Father

☐ Sister

☐ Other (Please Specify) _____

Is this an application brought on behalf of a child YES ☐ NO ☒

(If you are entitled to apply on your own behalf, you are not able to bring an application on behalf of a child. If an application is brought on behalf of a child, the President's permission is required by the Children Services Tribunal Act 2000 s59(1)).

Section 2

The completed application form must be filed with the Tribunal's registry within 28 days after you receive notice of the decision. The President of the Tribunal may at any time extend the time for filing the application if the president is satisfied the reason for the delay is reasonable in the circumstances.

Do you need an extension of time for the filing of this application? YES ☒ NO ☐

If YES, you need to give reasons why the application was not made within the required time period.

Reasons why application was not filed within time	I did not file the application within the timeframe as I was confused at the time after I received the letter that I had been labelled as harming the Brown children which is just untrue.
---	--

Briefly
outline the
decision
that has
been made

On 2 January 2009 Jasmine Green, the Manager of the Evergreen Child Safety Service Centre removed these children from my care and by 6 March 2009 Jasmine Green had also cancelled my certificate of approval as a kinship carer.

See
Attachment A
for decisions
that can be
reviewed

Please attach a copy of the decision or letter notifying the reasons from the Department of Child Safety or Department of Communities or Commission for Children and Young People and Child Guardian. (Do not send originals)

Is a stay of the decision requested YES ☐ NO ☒ If you need help answering this question contact the Registry. A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. In making a decision about a stay, the Tribunal will have regard to the principle that the welfare and best interests of the child/ren are paramount. The Tribunal will also take into account the interests of other persons likely to be affected by the decision and the submissions received from the decision maker and other parties. A stay is not the final decision of the Tribunal.

A stay is not possible for decisions being reviewed under sections 121(1)(a) and 121 (1)b of the *Commission for Children and Young People and Child Guardian Act 2000*).

Reasons
why a stay is
requested

Complete this section if a stay is requested

Name,
Position and
Child Safety
Service
Centre of
Decision-
Maker

Jasmine Green Manager Evergreen Child Safety Service Centre

Have you
asked for an
internal
review of the
decision?

YES ☐ and the outcome was:

NO ☒ because

I don't see any point to asking for an internal review. It is my preference to have a more objective party like the Tribunal review the facts of the matter.

State briefly why you think the decision is wrong or not properly made

The children have been in my care since April 2004.

I did not breach any standards and the Brown children's stay with me was the longest they have had with any carer. I believed in treating all the children the same and not to favour one over the other. However the Brown children liked to blame other children when it was them that teased or got my kids upset.

The Brown children also like to make up stories and exaggerate which often makes the situation sound very serious. The department's decision is wrong because the concerns raised by the Brown children were untrue and my own children were present when the incidents that were supposed to have happened went down and my children witnessed something quite different to what they (the Brown children) told the department.

Briefly describe any other facts you think are important

I took the Brown children in because they are related to me and my children and persisted in caring for them for a long time despite their problem behaviours and tendency to lie.

Briefly describe what you want to happen

I want to be reinstated as a foster carer, although not the Brown children's kinship carer after what happened

Section 3

The questions in this section will help us prepare for the hearing.

Cultural heritage or ethnicity

The applicant ☐, the child ☐ or another party interested in these proceedings ☐ identifies with Aboriginal ☐ or Torres Strait ☒ or other cultural or linguistic background ☐ (please identify background)

Please tick appropriate box(s)

Interpreter

Is an interpreter required YES ☐ NO ☒ If YES, please specify language:

Phone Hearing

Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose (07) 3366 3366

You are able to have a person with you to support you at the preliminary conference or the hearing. This person cannot talk to the Tribunal on your behalf and cannot be a party to the review. Do you wish to have a support person at the preliminary conference or the hearing? YES ☒ NO ☐ If YES, please supply these details:

Name of support person	Relationship to you	Do they have any personal involvement in the issues you want the Tribunal to consider? Describe their involvement.
Sarah Stiles	Shared Family Care Agency Support Worker	Sarah Stiles has been visiting me and the children in her support role since 2004 and she can attest to how the Brown children were dishonest

Will you be asking the Tribunal to listen to other people (witnesses) about the issues you want the Tribunal to consider? For example, will you be asking the Tribunal to listen to friends or relatives who may be able to confirm what you will be saying to the Tribunal? YES ☐ NO ☐ If YES, please supply these details for each witness:

Names and addresses of witnesses	Relationship to you	What will they be saying?
----------------------------------	---------------------	---------------------------

Darren Clementine	My defacto partner	Darren stays almost every night in my home so he can also attest to what happened with the Brown children
-------------------	--------------------	---

Signature of Applicant/s	Filed by (please print) Mary Brown	
	Signature <i>M. Brown</i>	Date 08/09/2009
	Signature	Date / /

Please also complete Attachment "A"

REVIEW APPLICATION

Please print clearly. If insufficient space, use separate numbered sheets. Sheets attached ().

PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM

If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.

Applicant(s)

Name(s)

Simon Allen

Address

Lot 12 Gein Rd, Cannes

Postcode 4129

Telephone

3171 2960

Facsimile

Mobile

0611 000 439

Date of Birth

Commission for Children and Young People Act 2000 applications under s121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.

Section 1

Name and
D.O.B of
child(ren)
decision is
about

Name

D.O.B

(1) David Lancaster

(1) 20 Dec 2000

(2) Allen

(2)

(3)

(3)

Tick the box
that best
describes
your
relationship
with the
subject child

☐ Mother

☐ Brother

☐ Foster Carer

☒ Father

☐ Sister

☐ Other (Please Specify) _____

Is this an application brought on behalf of a child YES ☒ NO ☐

(If an application is brought on behalf of a child, the President's permission is required by the Children Service Tribunal Act 2000 s59(1) before this application is filed).

Do you need the President's permission to file this application? YES ☐ NO ☒

Section 2

Briefly
outline the
decision
that has
been made

Dept have moved David
to 'Sal' - who is she
Where is he?

See
Attachment A
for decisions
that can be
reviewed

Please attach a copy of the decision or letter notifying the reasons from the Department of Families or Commission for Children and Young People. (Do not send originals)

Is a stay of the decision required YES ☐ NO ☐

(A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. Stays are only granted in exceptional circumstances. A stay is not the final decision of the Tribunal. If you need help answering this question contact the Registry. A stay hearing is not possible for decisions being reviewed under sections 121(1)(a) and 121(1)(b) of the Commission for Children and Young People Act 2000).

Section 3

Name, Position and Area Office of Decision-Maker	Sue Gable Manager Carnes's Office
--	---

State briefly why you think the decision is wrong or not properly made	I don't know where David is. He is my son.
--	--

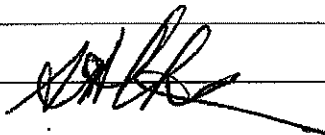
Briefly describe any other facts you think are important	The department tell her they are corrupt.
--	---

Briefly describe what you want to happen	Full investigation into the Carnes Office
--	---

Aboriginal or Torres Strait Islander	The applicant <input type="checkbox"/> , the child <input type="checkbox"/> or another party interested in these proceedings <input type="checkbox"/> identifies with Aboriginal <input type="checkbox"/> or Torres Strait <input type="checkbox"/> heritage Please tick appropriate box(s)
--------------------------------------	--

Interpreter	Is an interpreter required YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If YES, please specify language: _____
-------------	--

Phone Hearing	Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose _____
---------------	---

Signature of Applicant	Filed by (please print) _____
	Signature  Date 11/9/9

REVIEW APPLICATION

Children Services Tribunal

FILED

09/09/2009

PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM

If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.

Applicant(s)

Name(s)

Mrs Tracey Barrett

Address

Include full
address
including
suburb

25 Smith Road Evergreen QLD 4999

Postcode

Telephone

(07) 3366 3366

Facsimile

(07) 3366 3377

Mobile

0403 026 978

Email address

maryb@hotmail.com

Date/s of birth of applicant/s

07/07/1968

If your contact details change please advise the registry as soon as possible of your new contact details.

Commission for Children and Young People and Child Guardian Act 2000 applications under s 121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.

Section 1

Name and D.O.B of child(ren) decision is about	Name	D.O.B
(1) Jess Brown	(1) born 6 January 2006	(

Tick the box that best describes your relationship with the subject child	<input type="checkbox"/> Mother	<input type="checkbox"/> Brother	<input checked="" type="checkbox"/> Foster Carer
	<input type="checkbox"/> Father	<input type="checkbox"/> Sister	
	<input type="checkbox"/> Other (Please Specify) _____		

Is this an application brought on behalf of a child YES ☐ NO ☒

(If you are entitled to apply on your own behalf, you are not able to bring an application on behalf of a child. If an application is brought on behalf of a child, the President's permission is required by the Children Services Tribunal Act 2000 s59(1)).

Section 2

The completed application form must be filed with the Tribunal's registry within 28 days after you receive notice of the decision. The President of the Tribunal may at any time extend the time for filing the application if the president is satisfied the reason for the delay is reasonable in the circumstances.

Do you need an extension of time for the filing of this application? YES ☐ NO ☒

If YES, you need to give reasons why the application was not made within the required time period.

Reasons
why
application
was not filed
within time

Briefly outline the decision that has been made

On 2 September 2009 Jasmine Green, the Manager of the Evergreen Child Safety Service Centre removed little Jess Brown the care of me and my husband George Barrett

See Attachment A for decisions that can be reviewed

Please attach a copy of the decision or letter notifying the reasons from the Department of Child Safety or Department of Communities or Commission for Children and Young People and Child Guardian. (Do not send originals)

Is a stay of the decision requested YES ☒ NO ☐ If you need help answering this question contact the Registry. A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. In making a decision about a stay, the Tribunal will have regard to the principle that the welfare and best interests of the child/ren are paramount. The Tribunal will also take into account the interests of other persons likely to be affected by the decision and the submissions received from the decision maker and other parties. A stay is not the final decision of the Tribunal.

A stay is not possible for decisions being reviewed under sections 121(1)(a) and 121 (1)b of the *Commission for Children and Young People and Child Guardian Act 2000*.

Reasons why a stay is requested

Complete this section if a stay is requested

Jess had been placed with my husband George and me since she was 5 days olds and we are the only parents she knows.

All the allegations of George sexually abusing another child are false and when the truth comes out in court, the department and the police and the Children's Commissioner will realise what a mistake they have all made.

In any case, because of the criminal charges the police have put a bail condition on George that he is not allowed to have any contact with children, not even his own children, so he can't live in our house at the moment. I am there alone with our kids.

Surely Jess could stay in my care at the only house she has ever known, until this all gets sorted out. The department can't say George would be a risk to her because he isn't even allowed to be there because of the bail condition.

Name, Position and Child Safety Service Centre of Decision-Maker

Jasmine Green Manager Evergreen Child Safety Service Centre

Have you asked for an internal review of the decision?

YES ☐ and the outcome was:

NO ☒ because

Why bother, no one in the department is honouring to principle that you are innocent until proven guilty and are already punishing George by taking her out of our care.

State briefly why you think the decision is wrong or not properly made

Jess Brown has been in our care since she was five days olds.

George and I love her like our own and have never breached any standards of care and have never had any matter of concerns recorded against us as foster carers.

The child who has made up these allegations is a very disturbed girl who is jealous of the love George and I have for each other and our little Jess and our own children.

The department's decision is wrong because the false allegations made by this girl are untrue and our own children were present when some of these false incidents were supposed to have happened and our kids can testify that this girl is lying about George.

Briefly describe any other facts you think are important

As I have said the girl who has made up these false allegations has a history of lying and that department have this on their records

Briefly describe what you want to happen

I want Jess back in at least my care immediate and I want George and I both to be reinstated as a foster carers

Section 3

The questions in this section will help us prepare for the hearing.

Cultural heritage or ethnicity

The applicant ☐, the child ☐ or another party interested in these proceedings ☐ identifies with Aboriginal ☐ or Torres Strait ☐ or other cultural or linguistic background ☐ (please identify background)

Please tick appropriate box(s)

Interpreter

Is an interpreter required YES ☐ NO ☒ If YES, please specify language:

Phone Hearing

Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose (07) 3366 3366

You are able to have a person with you to support you at the preliminary conference or the hearing. This person cannot talk to the Tribunal on your behalf and cannot be a party to the review. Do you wish to have a support person at the preliminary conference or the hearing? YES ☒ NO ☐ If YES, please supply these details:

Name of support person	Relationship to you	Do they have any personal involvement in the issues you want the Tribunal to consider? Describe their involvement.
Amanda and Liam Barrett	My teenage children	Liam and Amanda will be able to tell the Tribunal what a good father George is and of how none of the false allegations are true.

Will you be asking the Tribunal to listen to other people (witnesses) about the issues you want the Tribunal to consider? For example, will you be asking the Tribunal to listen to friends or relatives who may be able to confirm what you will be saying to the Tribunal? YES ☐ NO ☐ If YES, please supply these details for each witness:

Names and addresses of witnesses	Relationship to you	What will they be saying?
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Signature of Applicant/s	Filed by (please print) Tracey Barrett	
	Signature Tracey N Barrett	Date 08/09/2009
	Signature	Date / /

Reasons why application was not filed within time

Briefly outline the decision that has been made

On 23 December, Sue Gable made a decision preventing me from having contact with my children.

See Attachment A for decisions that can be reviewed

Please attach a copy of the decision or letter notifying the reasons from the Department of Child Safety or Department of Communities or Commission for Children and Young People and Child Guardian. (Do not send originals)

Is a stay of the decision requested YES ☒ NO ☐ If you need help answering this question contact the Registry. A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. In making a decision about a stay, the Tribunal will have regard to the principle that the welfare and best interests of the child/ren are paramount. The Tribunal will also take into account the interests of other persons likely to be affected by the decision and the submissions received from the decision maker and other parties. A stay is not the final decision of the Tribunal.

A stay is not possible for decisions being reviewed under sections 121(1)(a) and 121 (1)b of the *Commission for Children and Young People and Child Guardian Act 2000*.

Reasons why a stay is requested

Complete this section if a stay is requested

I haven't done anything wrong

Name, Position and Child Safety Service Centre of Decision-Maker

Sue Gable Cannes Child Safety Service Centre

Have you asked for an internal review of the decision?

YES ☐ and the outcome was:

NO ☒ because

Not enough time

State briefly why you think the decision is wrong or not properly made

The children's mother is making the kids lie because she hates me – the department are only listening to her and are not wanting to even speak with me. I am the children's father..

Briefly describe any other facts you think are important	I am there father and they would be confused and missing me.
--	--

Briefly describe what you want to happen	I want to see the children over the weekend and on Wednesday nights, as I have done ever since their mother and I separated last year.
--	--

Section 3

The questions in this section will help us prepare for the hearing.

Cultural heritage or ethnicity	The applicant <input type="checkbox"/> , the child <input type="checkbox"/> or another party interested in these proceedings <input type="checkbox"/> identifies with Aboriginal <input type="checkbox"/> or Torres Strait <input type="checkbox"/> or other cultural or linguistic background <input type="checkbox"/> (please identify background) <i>Please tick appropriate box(s)</i>
--------------------------------	---

Interpreter	Is an interpreter required YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If YES, please specify language: _____
-------------	--

Phone Hearing	Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose <u>(3236 9867)</u>
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You are able to have a person with you to support you at the preliminary conference or the hearing. This person cannot talk to the Tribunal on your behalf and cannot be a party to the review. Do you wish to have a support person at the preliminary conference or the hearing? YES ☒ NO ☐ If YES, please supply these details:

Name of support person	Relationship to you	Do they have any personal involvement in the issues you want the Tribunal to consider? Describe their involvement.
Bill and Roz Harris	My parents and the children's grandparents	

Will you be asking the Tribunal to listen to other people (witnesses) about the issues you want the Tribunal to consider? For example, will you be asking the Tribunal to listen to friends or relatives who may be able to confirm what you will be saying to the Tribunal? YES ☐ NO ☐ If YES, please supply these details for each witness:

Names and addresses of witnesses	Relationship to you	What will they be saying?

ATTACHMENT A (Must be included with Form 1)

The following is a list of decisions that can be reviewed by the Children Services Tribunal. Please contact the Tribunal on (07) 3225 8346 to discuss any questions.

Reviewable decisions: Child Protection Act 1999 (right of review is conferred by s 217)

- | | | |
|---|--|---|
| <input type="checkbox"/> Directing a parent in relation to a supervision matter stated in a child protection order (s 78 CPA) (<i>Aggrieved party must be parent given the direction</i>)
<input checked="" type="checkbox"/> Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship (s 86(2) CPA) (<i>Aggrieved party must be child's parent or the child</i>)
<input checked="" type="checkbox"/> Not informing a child's parents of person in whose care the child is and where the child is living (s 86(4) CPA) (<i>Aggrieved party must be parent given the notice or the child</i>)
<input type="checkbox"/> Refusing to allow, restricting, or imposing conditions on, contact between a child and the child's parents or a member of the child's family (s 87(2) CPA) (<i>Aggrieved party must be person affected by the decision</i>) | <input type="checkbox"/> Removing child from carer's care (s 89 CPA) (<i>Aggrieved party must be carer as defined in s 91 or the child given notice under s 90(4)</i>)
<input type="checkbox"/> Refusing application for, or removal of, licence unless refused because person mentioned in s 126(b)(i) or (ii) does not have current positive prescribed notice "blue card" (s 129 CPA) (<i>Aggrieved party must be applicant or existing licensee</i>)
<input type="checkbox"/> Refusing application for, or renewal of, a certificate of approval as an approved foster carer or an approved kinship carer unless refused because a person mentioned in s 135(1)(a)(iii) or (b)(iv) does not have a current positive prescribed notice "blue card" (s 136 CPA) (<i>Aggrieved party must be applicant or existing certificate holder</i>)
<input type="checkbox"/> Cancelling an authority (s 140AG(3) or (4) or 140AH) (<i>Aggrieved party must be authority holder</i>) | <input type="checkbox"/> Refusing an application for an amendment of authority other than a provisional certificate (s 137 CPA) (<i>Aggrieved person must be authority holder</i>)
<input type="checkbox"/> Attending an authority other than a provisional certificate (s 138 CPA) (<i>Aggrieved person must be authority holder</i>)
<input type="checkbox"/> Suspending or cancelling an authority other than a provisional certificate (s 140 CPA) (<i>Aggrieved person must be authority holder</i>)
<input type="checkbox"/> Arranging for an interstate welfare authority to assume custody of guardianship of a child (s 245 CPA) (<i>Aggrieved party must be a person issued a notice under s 245(6)</i>) |
|---|--|---|

Reviewable decisions: Commission for Children and Young People and Child Guardian Act 2000 (right of review is conferred by ss 11 and 14(8))

- | | |
|--|---|
| <input type="checkbox"/> The issue of a negative notice (s 102(4) or (7))
<input type="checkbox"/> The cancellation of a positive notice and substitution of a negative notice (119B(2))
<input type="checkbox"/> The cancellation of a positive notice which was suspended (119D(3))
For these applications:
▪ The applicant is the person issued with the negative notice or the cancellation of the positive notice.
▪ The decision under review is the decision by the Commissioner as to whether or not there is an exceptional case under one of sections mentioned above.
▪ s 121 (2) prohibits the Tribunal from issuing a stay.
<input type="checkbox"/> The suspension of a positive notice under s. 119C(1) because the person had been charged with an excluding offence (s 121) (<i>The applicant must be claiming he or she has not been charged with the relevant excluding offence</i>)
<input type="checkbox"/> Application made by the Commissioner for review of a reviewable decision specified in s 140A (<i>Applicant is the Commissioner</i>) | <input type="checkbox"/> A decision to remove a person's name from an adoption list, expression of interest register or assessment register on the basis of eligibility or non compliance with a regulation (ss 13AA, 13AC, 13E) (<i>Applicant is a person's whose name is removed</i>)
<input type="checkbox"/> An unfavourable assessment of a person whose name is in adoption list or expression of interest register (ss 13AE, 13AF & 13B) (<i>Applicant is a person unfavourably assessed</i>)
<input type="checkbox"/> An unfavourable assessment based on criminal history alone (s 14B) (<i>Applicant is a person's unfavourably assessed</i>)
<input type="checkbox"/> An assessment of a prospective adopter whose name is in an assessment register or in whose favour and interim order is made (s 14) (<i>Applicant is a person unfavourably assessed</i>) |
|--|---|

Reviewable decisions: Child Care Act 2002 (right of review is conferred by s 163)

- | | |
|--|---|
| <input type="checkbox"/> Refusing to issue the licence or to issue the licence on a condition (s 19) (<i>Applicant is an applicant for a licence</i>)
<input type="checkbox"/> Refusing to renew the licence (s 21) (<i>Applicant is a licensee</i>)
<input type="checkbox"/> Refusing to amend the licence in a way the licensee has applied for (s 40) (<i>Applicant is a licensee</i>)
<input type="checkbox"/> Amending the licence other than in a way the licensee has applied for or agreed to (s 42) (<i>Applicant is a licensee</i>)
<input type="checkbox"/> Amending the licence other than in a way the licensee has applied for or agreed to (s 43) (<i>Applicant is a licensee</i>)
<input type="checkbox"/> Suspending or revoking the licence (after issue of a show cause notice) (s 45) (<i>Applicant is a licensee</i>)
<input type="checkbox"/> Refusing to amend the licence in a way the licensee has applied for (s 51) (<i>Applicant is a licensee</i>)
<input type="checkbox"/> Suspending a licence immediately (s 46) (<i>Applicant is a licensee</i>) | <input type="checkbox"/> Refusing to lift the suspension of the licence (s 50) (<i>Applicant is a licensee</i>)
<input type="checkbox"/> Refusing to extend the transitional licence period or to extend the transitional licence period other than for the further period the personal representative has applied for (s 54) (<i>Applicant is a personal representative of the estate of a licensee who has died</i>)
<input type="checkbox"/> Giving a prohibition notice to a person (s 107) (<i>Applicant is a person given notice</i>)
<input type="checkbox"/> Refusing to cancel a prohibition notice in force for the person (s 108) (<i>Applicant is a person given notice</i>)
<input type="checkbox"/> Refusing application for an approval of qualification mentioned in s 109 or s 110 of the Child Care Regulation 2003 (s 111) (<i>Applicant is a person whose application is refused</i>) |
|--|---|

CHILDREN SERVICES TRIBUNAL
Children Services Tribunal Act 2000

Application Number: 01 – 09

Subject Child: **Ronald Crickett (born 4 October 1999)**

Applicant: **Jeremy Crickett**
 Maureen Crickett

Respondent: **Department of Child Safety – Brisbane Child Safety**
 Service Centre

**SUBMISSIONS REGARDING JURISDICTION AND DISMISSAL OF THE
APPLICATION**

In the matter of an application to review, number 01 – 09 filed by Jeremy Crickett and Maureen Crickett on 27 April 2009 in the Children's Services Tribunal, the following submissions are made on behalf of the Department:

GENERAL

1. Section 35(1) of the *Children Services Tribunal Act 2000* ("CST Act") gives the Children Services Tribunal ("the Tribunal") jurisdiction to review a reviewable decision on an application made under the CST Act.
2. Schedule 2 of the *Child Protection Act 1999* ("CP Act") sets out the reviewable decisions pertinent to decisions that can be made by the Chief Executive in its administration of the CP Act.
3. The Applicants through their application are purporting to review the decision of the Department under section 86 of the CP Act with respect to the department's decision regarding in whose care to place the child.
4. The Applicants are the paternal grandparents of the child and as such do not possess review rights as aggrieved person for the reviewable decision under section 86(2) of the CP Act. It is implied that the President has granted leave for Mr and Mrs Crickett to bring this application on behalf of Ronald pursuant to section 59 of the CST Act.

SUBMISSIONS

No new "in whose care" decision

5. The department contends that the Tribunal has no jurisdiction to hear this matter as there has been no new reviewable placement decision made.
6. The child has been placed since May 2007 with his paternal grandparents, Mr Jeremy and Mrs Maureen Crickett, who hold authority as kinship carers.

7. Since this time, the department has continued case work with this family in an attempt to reunify Ronald with either or both of his parents. A number of reports have been completed in relation to assessments of Ronald's parents' progress in addressing the child protection issues and appropriate case work and planning for Ronald, with the most recent social assessment report completed in March 2009.
8. In this report, recommendations are made that an increased period of contact between Ronald and his father occur with the goal of returning to his father's care.
9. As a result, the department has developed a plan to comply with these recommendations and ensure necessary support is available to Ronald and his father. The department's current goal is to reunify Ronald with his father, after implementing a plan of increased support, contact and monitoring. Ongoing assessment will occur throughout this process to determine the progress of the reunification plan. As such, no decision has been made regarding the date Ronald will be placed in his father's care.

Case plan

10. The department has assessed that Ronald's father is willing to provide care for Ronald and has articulated skill and ability to protect Ronald. It is on this basis and the recommendations of the social assessment report, along with feedback from external stakeholders and counsellors, that the department has developed a case plan to intensively increase the contact between Ronald and his father in order to provide Mr Crickett (Jnr) with an opportunity to demonstrate his parenting ability, and therefore an opportunity for Ronald to reside with his father.
11. On 24 April 2009 a family group meeting was held to discuss Ronald. The department at this time discussed time frames and increased contact arrangements between Ronald and his father, with those in attendance. Mr Jeremy Crickett and Mrs Maureen Crickett were present during these discussions.
12. Since this meeting the department has met with Ronald on two (2) separate occasions to obtain his views and wishes. Ongoing discussions have occurred with the immediate family members and key external stakeholders to ensure that the transition plan meets Ronald's needs and is sensitive to any anxiety that Ronald may experience. The reunification plan developed at the Family Group Meeting is currently on hold while further intervention occurs with Ronald and the family.

CONCLUSION

13. In reference to the factors noted above it is the department's submission that first and foremost, the Tribunal does not possess the necessary jurisdiction to hear this application. The department has not made a decision when to place Ronald home with his father and as such, there has been no reviewable decision made recently that would enliven the Tribunal's jurisdiction to hear this matter.
14. If the Tribunal accepts the application by Mr and Mrs Crickett, the Department requests reasons as to the Tribunal findings.

15. Furthermore, the department respectfully informs the Tribunal that in the event a new decision in relation to Ronald's placement is made, and in acknowledgement that Mr and Mrs Crickett are aggrieved by the current process, it would be the department's intention to not implement any decision without proper notice to Ronald via his carers. This formal notice would occur at least two weeks prior to implementation of the decision.

CSA
Court Services Unit

Case Discussion Information
No jurisdiction – Crickett

- Ronald was placed with his grandparents, who hold kinship carer status in May 2007.
- Ronald is currently subject to a child protection order granting custody to the CE. This order is due to expire in September 2009. A copy of CPO provided by CSSC.
- The department has received feedback of the father's progress in addressing his reforming and the identified child protection concerns, from a number of external stakeholders including drug screening, a drug counsellor/ATODS, a psychologist and an independent social worker who has completed a holistic social assessment report.
- Ronald has demonstrated mixed views regarding a return to his father's care. It has been assessed that these views are both genuine, and reflective of the anxiety demonstrated by his grandparents. Contact visits between Ronald and his father have been positive and Ronald speaks of his time with his father with his school teacher and CSO. Ronald does suffer encopresis following contact with his father, as well as picking at his skin causing sores (as reported by his grandparents).
- The social assessment report finalised in March 2009 outlined recommendations to increase contact between Ronald and his father with the view to a reunification without significant delay. This was based on the father's positive progress and insight, the risk of the grandparents sabotaging the return plan as well as the necessity that Ronald's current counsellor increases the frequency of his appointments as a means to support Ronald in the transition.
- The department has developed a plan to comply with these recommendations and ensure necessary support is available to Ronald and his father. The department's current goal is to reunify Ronald with his father, after implementing a plan of increased support, contact and monitoring. Ongoing assessment will occur throughout this process to determine the progress of the reunification plan.
- No decision has been made regarding the definitive date Ronald will be placed in his father's care.
- CSSC to provide the grandparents reasonable notice (two weeks) if any new decision is made in relation to Ronald's placement.
- FGM held on 24 April 2009 to discuss the contact arrangements envisioned for the next 8 weeks and recap over case work/progress. Grandparents were in attendance as was the father.

**Children Services Tribunal
Children Services Tribunal Act 2000**

Application: CSR 202 – 09

Subject children: Abigail Longsdale born 25 May 1999
Trent Longsdale born 25 May 1999

Applicant: Mr Lance and Mrs Selina Reardon

Respondent: Department of Communities (Child, Youth and Family Services) – Weymouth Child Safety Service Centre

The following submissions are made on behalf of the Department of Communities (Child, Youth and Family Services).

Submissions

1. I refer to the application for review lodged by Mr and Mrs Reardon that were received at the Tribunal on the 15 October 2009. Mr and Mrs Reardon seek review of a decision by the delegated officer to remove the subject children from their care. The notice of review issued to the department on the same date similarly refers to a review of this nature.
2. It is the case that the applicants Mr and Mrs Reardon held a certificate of approval as provisionally approved carers for the subject children. The certificate was initially issued on 3 June and expired on 3 September 2008. (A copy of this Provisional Certificate is attached for your reference).
3. Section 89 of the *Child Protection Act 1999* makes provision for the Chief Executive to remove a child from a carer's care.
4. Section 91 of the *Child Protection Act 1999* identifies when a carer may make application for review of a removal decision to the Tribunal. Section 91 (b) clearly establishes that Mr and Mrs Reardon, as the holder of only a provisional carer certificate is not a person entitled to seek review of the removal decision.
5. It is noted that Abigail and Trent Longsdale remained in the care of Mr and Mrs Reardon beyond their provisional carer status expiry date of the 3 September

2009. Abigail and Trent did not leave the care of Mr and Mrs Reardon until 12 October 2009.

6. Therefore it is respectfully submitted that the application by Mr and Mrs Reardon to review a decision to remove Abigail and Trent from their care has no legal basis to proceed and should be dismissed.
7. The department sincerely regrets the apparent administrative oversights in managing Mr and Mrs Reardon's carer status and is working together with them to resolve matters.
8. In attempt to address the department's administrative errors in this matter, and to afford Mr and Mrs Reardon some recourse in reviewing the department's decisions (or lack thereof) the following is proposed:
 - Mr and Mrs Reardon lodged a new APA to become kinship carers for Abigail and Trent on the 15 October 2009
 - The department undertakes to progress the new APA within the 90 days and to communicate their decision to Mr and Mrs Reardon in writing.
 - Should the department decide to refuse Mr and Mrs Reardon a carer authority, then they will be able to exercise a right of review in respect of this decision before the Tribunal.
 - Furthermore, it will be upon resolution of this review by the Tribunal, in favour of Mr and Mrs Reardon that a right to review the placement of Abigail and Trent will be enlivened for Mr and Mrs Reardon.

Thank you for considering these submissions on behalf of the Department of Communities (Child Safety Services). I look forward to advice from the Tribunal in response.

Ebony Barnes
Court Services Adviser
Court Services Unit
Department of Communities (Child, Youth and Family Services)
16 October 2009

Case Discussion Information

- Abigail and Trent are subject to a child protection order granting custody to the Chief Executive for a period of 2 years. This is due to expire on the 8 April 2011.
- Mr and Mrs Reardon were provisionally approved on the 3 June 2009 and the children were subsequently placed with them on that date.
- Mr and Mrs Reardon are the children's paternal aunt and uncle.
- Abigail and Trent were removed from Mr and Mrs Reardon's care on the 12 October 2009.
- Mr and Mrs Reardon have lodged their new APA documents on the 15 October 2009. They want to be approved as kinship carers for the children to remain residing with them.
- It is a departmental administrative oversight that a kinship carer approval process was not undertaken during the period of the provisional carer authority.
- Abigail and Trent's parents want the children placed with Mr and Mrs Reardon.

**Children Services Tribunal
Children Services Tribunal Act 2000**

Application: 143-09

Subject children: Jess Brown born 6 January 2006

Applicant: Tracey Barrett

Respondent: Department of Communities - Evergreen
Child Safety Service Centre

In the matter of an application for review filed by Tracey Barrett on 9 September 2009, the following submissions are made on behalf of the Department of Communities

Purported Decision

1. The applicant Tracey Barrett seeks review of a purported decision by the delegated officer Jasmine Green under section 89 of the *Child Protection Act 1999* to remove the subject child Jess Brown from her care.

Background

2. The applicant Tracey Barrett and her husband George Barrett held a joint certificate as foster carers issued on 10 June 2008 and expiring 10 June 2010. The certificate was held jointly in accordance with section 132 (3) of the *Child Protection Act 1999*.
3. On 1 September 2009, the delegated officer Jasmine Green received notice from the Central Screen Unit of the department, that the Commissioner for Children and Young People and Child Guardianship had taken action under its Act and had suspended the positive prescribed notice (Blue Card) held by Mr Barrett as a result of criminal prosecutions commenced by Queensland police against him.

Submissions

4. In accordance with the definitions set out in section 140AB of the *Child Protection Act 1999*, the above action by the Commissioner constitutes a "disqualifying event".
5. On the facts above, section 140AC (1) and 140AC (2) of the *Child Protection Act 1999* required the delegated officer Ms Green to immediately suspend the jointly held authority of Tracey and George Barrett as foster carers as soon as practicable after receiving notice from the Commissioner about the disqualifying event.
6. Section 82 of the *Child Protection Act 1999* prohibits a delegated officer from placing or in this case, leaving a child in the care of any person or entity who is not described in this provision of the Act.
7. Given the mandatory immediate suspension of Mr and Mrs Barrett's authority as foster carers (meaning the applicant Tracey Barrett is no longer a current approved foster carer), the operation of section 82 legally obligated the delegated officer Ms Green to remove the subject child from the applicant's care.
8. It is significant to note that a removal that arises from an immediate suspension under section 140AC, is different from a removal that occurs as a result of a delegated officer forming a view about the child's best interest and exercising the discretionary power to

remove a child from a carer's care described a section 89 of the *Child Protection Act 1999*.

9. It is from a decision under section 89 of the *Child Protection Act 1999* that review rights before this Tribunal flow as set out in sections 90 (3) (b) and 91 of the Act and as noted, Ms Green did not exercise her authority under section 89 in removing Jess Brown from the care of the applicant Tracey Barrett
10. Therefore it is respectfully submitted that no reviewable decision under the *Child Protection Act 1999* has been made that would give rise to the Tribunal's jurisdiction and that accordingly, application 143-09 should be dismissed.

Thank you for considering these submissions on behalf of the department.

Tracey Barrett
Adviser
Court Services Unit
Department of Communities (Child Safety Services)
13 September 2009

Case Discussion Information
Disqualifying Event – No Jurisdiction

- Tracey & George Barrett hold a joint certificate of approval as foster carers issued in accordance with section 132 (3) of the CPA 1999.
- Tracey & George Barrett's certificate is current till 10 June 2010.
- On 1 September 2009 the Manager of the Central Screening Unit issued letter correspondence to the CSSC Manager confirming suspension of George Barrett's positive prescribed notice (Blue Card) by the CCYP & CG, ie the "disqualifying event" including a copy of the Notice to CSU issued by the CCYP & CG
- On 2 September 2009 the CSSC Manager sent a letter to Tracey & George Barrett explaining the "disqualifying event" and related to this her legal obligation as a result of the operation of section 82 of the CPA 1999 to remove the child Jess Brown from their care.
- Under section 159N on 2 September 2009, the CSSC obtained written confirmation from QPS that on 31 August 2009 George Barrett was charged with 2 x counts of indecent dealing of a child under 12 years and was bailed with a condition that he was not to have any contact with children aged less than 16 years
- Jess Stone was physically removed from the care of Tracey and George Barrett on 2 September 2009
- Copy of Bail Conditions applying to George Barrett confirming criminal charges and nature of bail conditions in place.

**Submissions on behalf of the Department of Child Safety
In Harris and Department of Communities
CHILDREN SERVICES TRIBUNAL REVIEW NO: 032-09**

Decision

- 1.1 The decision that Mr James Harris is seeking to be reviewed is a decision of the Chief Executive pursuant to Section 87(2) of the *Child Protection Act 1999* "refusing to allow, restricting, or imposing conditions on a child's parents or a member of the child's family".

Background

- 1.2 On 23 December 2008, Ms Sue Gable, Manager of the Cannes Child Safety Service Centre (CSSC) provided a formal notice to Mr Harris, outlining his contact with the children Jenny and Wallace over the ensuing 4 week Christmas/New Year period, 2008. Mr Harris was advised in this letter that his contact with the children would be reviewed in the week commencing the 19 January 2009.
- 1.3 On the 6 January 2009, a Notice of Review filed by Mr Harris was forwarded to the Department.
- 1.4 On the 7 January 2009, a Notice of Preliminary Conference was forwarded to the department, advising the matter was scheduled for 12.00noon on the 9 February 2009.

Other Relevant Facts

- 1.5 An application for a child protection order is currently before the Brisbane Childrens Court and is set for a further mention on the 3 February 2009.
- 1.6 Ms Mann, the children's mother, has commenced proceedings before the Federal Magistrates Court which have been set for an interim hearing on the 23 February 2009. Mr Harris is a respondent to this application.
- 1.7 The department intends to formally intervene in the Federal Magistrate Court proceedings for the purpose of the interim hearing, to ensure the department's assessments and information is readily available to this jurisdiction. The department's decision to intervene in these proceedings is based on the recognition that this is the more appropriate jurisdiction to assume ongoing management of the issues relating to the children's living and contact arrangements.

Submissions

- 1.8 It is submitted that this matter is currently in 3 jurisdictions, all sharing (at least partially) a similar focus, that being the children's living and contact arrangements with their parents.
- 1.9 On the 3 February 2009, the Childrens Court is readily able to consider submissions from all parties in respect of the appropriate contact

arrangements for the children with Mr Harris. It is suggested that this would be the more appropriate venue to resolve Mr Harris' current concerns in respect of his contact to the children pending the imminent interim hearing in the Federal Magistrates Court. Furthermore this would ensure that the issues in dispute are not unnecessarily litigated in other forums, creating an avoidable imposition for all concerned.

- 1.10 The department intends to make submissions to the Childrens Court that it should exercise its power to make conditions around Mr Harris' contact with the children in accordance with S68 (1) (c) . The nature of what these conditions should be is open to all parties to make their respective submissions.
- 1.11 Should the Childrens Court upon hearing from all parties make an Order for contact under S68(1)(c), then this would effectively remove the jurisdiction of the Tribunal
- 1.12 Regardless of the Childrens Court decision to exercise its power under S68(1)(c), it is respectfully submitted that in accordance with S40 of the *Children Services Tribunal Act 2000*, the date for the Preliminary Conference should currently be vacated and the review application suspended on the basis that the substantive issues regarding contact are being considered in a timely manner in the Federal Magistrates Court.

Signed:

Hannah Brown
Court Coordinator
15 January 2009

Background facts

Matter before BCC and is set for next mention on 3/2

Mother has applies to FMC to vary orders and this is listed for 23/2

CST have listed PC for 9 /2

Contact has increased since 19/1 to 3 hours, twice per week supervised by PGP's

Children Services Tribunal
Children Services Tribunal Act 2000

Application: 142-09

Subject children: Not applicable

Applicant: Mary Brown

Respondent: Department of Communities – Evergreen Child Safety Service Centre

In the matter of an application for review filed by Mary Brown the following submissions are made on behalf of the Department of Communities.

Submissions

1. The applicant Ms Brown is the former kinship carer of Jane, John and Jess Brown
2. Ms Brown seeks review of an historical decision by the delegated officer Jasmine Green dated 6 March 2009 to cancel her authority as a kinship carer for the above named children.
3. The review application filed by Ms Brown is dated stamp received at the Tribunal Registry on 9 September 2009, some 26 weeks or approximately 6 ½ months after the decision of Ms Green was made.
4. Clearly the application is made well outside the 28 day period required under section 140 (5) (b) of the *Child Protection Act 1999* and section 58 (3) (a) of the *Children Services Tribunal Act 2000* for the filing of a review application.
5. It is acknowledged that section 58 (4) of the *Children Services Tribunal Act 2000* identifies that the President of the Tribunal may at any time extend the time for filing of an application for review if satisfied the reason for delay is reasonable in the circumstances.
6. The Department of Communities submits that Ms Brown's application discloses no reasonable basis for the President to extend the time for filing and therefore her application should be refused as out of time. In taking this position the following is noted.
7. In accordance with section 140 (1) of the *Child Protection Act 1999* on 5 February 2009 Ms Brown was properly issued with a written notice by Ms Green under this provision of a decision by her to propose cancellation of her kinship authorities (A copy of this notice is attached for your reference and marked "A")
8. In this notice Ms Green identified the events and reasons why she proposed cancellation of the authorities and provided Ms Brown with a 28 day period within which to consider the matters raised in her letter and to provide a written response.
9. Ms Brown formulated a reply and submitted this to Ms Green in a timely way on 3 March 2009.
10. On 6 March 2009 having considered the reply provided by Ms Brown, the delegated officer Ms Green still made a decision to cancel the kinship authorities.

11. On the same date Ms Green properly issued Ms Brown with written notice of her decision to cancel the authorities and this notice clearly identified to Ms Brown that it was open to her to seek review of the decision by the Children Services Tribunal and that if she sought review any application must be made within 28 days of receiving her notice. (A copy of this notice is attached for your reference and marked "B")
12. The department notes a brief comment by Ms Brown in Section 2 of her application (BRO - 001) acknowledging that she did not file the application within the required timeframe and noting her personal confusion arising from a finding that she had harmed the children. Significantly Ms Brown identifies that her confusion related to the findings of harm, not information about her right to seek review or of how she might do this.
13. The Tribunal will note from Ms Green's correspondence to the applicant of 5 February and 6 March 2009 that substantiated allegations of harm have been recorded in relation to Ms Brown from 2007 onwards to early January 2009.
14. Thus by 3 April 2009, the 28 day deadline for the filing of a review application, Ms Brown had already had approximately 4 months to consider the department's most recent findings, on a history of advice to her about the outcome of other substantiated allegations of harm from earlier Matters of Concern, Child Protection Notifications.
15. It is also relevant to note that when Ms Green issued written notice of a proposal to cancel her kinship authorities on 5 February 2009 with information almost identical in content to her final cancellation notice, Ms Brown was able on that occasion to provide a timely response to the matters raised by Ms Green.
16. The department does not dispute that the cancellation decision of 6 March 2009 may have distressed Ms Brown but it is reasonable to assert that this would be the case for all applicants affected by a similar decision, yet those people are still able to make their review applications in a timely way.
17. In totality the department submits that Ms Brown's application provides no meaningful explanation for the significant delay in the filing of her review application that would warrant the President exercising the discretion described in section 58 (4) of the Act. It is submitted that to do so would be to compromise the integrity of the 28 day filing requirement. Accordingly, the Department of Communities respectfully submits the application should be refused as out of time.

Thank you for considering these submissions on behalf of the department.

Tracey Barrett
Adviser
Court Services Unit
Department of Communities (Child Safety Services)
13 September 2009

Case Discussion Information
Refusal of Application - Out of Time

- On 2 January 2009 the CSSC Manager issued a written notice to Mary Brown under section 90 (3) of the *CPA 1999* in relation to her decision to remove the Brown siblings from Mary Brown's care as she is authorised to do under section 89 of the Act.
- On 5 February 2009 the CSSC Manager issued a written notice to Mary Brown under section 140 (1) of the *CPA 1999* setting out her decision to propose cancellation of Mary Brown's kinship certificates and inviting Mary Brown to make written representations to her as to why the certificates should not be cancelled..
- In response to the Manager's notice of 5 February, on 5 March 2009 Mary Brown provided to the CSSC Manager a written response to the Manager's proposal to cancel her kinship certificates
- On 6 March 2009 having considered Mary Brown's written response, the CSSC Manager still decided to cancel the kinship certificates.
- On the same date ie 6 March 2009 the CSSC Manager issued a written notice to Mary Brown under section 140 (3) to section 140 (6) of the *CPA 1999*, in relation to her decision to cancel the kinship certificates.
- The written notice of cancellation dated 6 March 2009 was delivered by courier to Mary Brown the same day and an acknowledgement of receipt slip signed by Mary Brown was provided by the Courier Company to the CSSC on 7 March 2009.
- At the time of cancellation, the kinship certificates held by Mary Brown were valid till March 2010.

Submissions
Children Services Tribunal
Children Services Tribunal Act 2000

Application: 123 - 09

Subject child: David ALLEN born 20 December 2000

Applicant: Simon ALLEN (father)

Respondent: Department of Communities – Cannes Child Safety Service Centre

In the matter of application for review filed by Mr ALLEN on 11 September 2009, the following submissions are provided to assist the Children Services Tribunal (Tribunal) in their decision regarding the review application 123-09.

On the 11 September the Court Services Unit received by way of facsimile a Notice of Review filed by Mr Allen. In this application Mr Allen sought to review a decision by the Cannes Child Safety Service Centre regarding the placement of his son, David.

The Notice of Review and supporting application identifies that the decisions sought to be reviewed by Mr Allen are:

- a) Deciding in whose care to place a child, and
- b) Deciding not to inform a parent in whose care to place a child.

Relevant Provisions of the Child Protection Act 1999

The application indicates that the decision sought to be reviewed by Mr Allard relates to the following sections of the *Child Protection Act 1999*:

86 Chief executive to notify parents of placing child in care—child protection order

(1) This section applies if the child is in the chief executive's custody or guardianship under a child protection order.

(2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the

child, give written notice of the decision to the child and the child's parents stating the following—

- (a) the person in whose care the child is placed and where the child is living;*
- (b) the reasons for the decision;*
- (c) that the child and the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;*
- (d) how to apply to have the decision reviewed.*

(3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.

(4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive may decide not to comply with the subsection.

It is the department's submission that the wording and intent of section 86 of the Child Protection Act, was that a delegated decision maker could only exercise their authority on S86 (2) OR S86(4), and that because of the compliance test set out in S86(4) it is not possible to exercise a power to make the decisions jointly.

Furthermore it is the department's view that in only providing Mr Allen with details of whose care the child is placed, and not full details of their address, that there has not been proper compliance with S86(2).

The department submits that Mr Allen is only entitled at this point to seek review of the delegated officers decision to withhold details of the placement in accordance with S86(4), and that this decision had been made giving regard to the provisions of Section 8, of the Child Protection Regulations 2000.

8 Matters to consider before telling parents about child placed in care—Act, ss 85(3) and 86(3)

(1) This section states the matters that the chief executive must consider for sections 85(3) and 86(3) of the Act.

(2) The chief executive must consider whether a parent of the child, a partner of a parent of the child, or another person closely associated with a parent of the child—

- (a) has a history of violence relevant to the safety of the child or anyone else with whom the child is living; or*

(b) has recently made a threat to harm the child or anyone else with whom the child is living; or
(c) is likely to behave in a way that is likely to intimidate or frighten the child or another child with whom the child is living; or
(d) is likely to attempt to intimidate or otherwise adversely influence the child in relation to future court proceedings; or
(e) is likely to attempt to remove the child from the chief executive's custody or guardianship; or
(f) has previously engaged in violent behaviour, harassment or other harmful behaviour in response to an action taken to protect a child.

The above matter is raised for your information and consideration in management of the application by Mr Allard.

Hannah Brown
Court Coordinator
Cannes Child Safety Service Centre

Case Discussion Information - ALLEN

- Child is placed with carer and father has been told carer's first name only = 'Sal'
- Father is heavy drug user and known to use Ice
- Last placement broke down as father seen driving by property at night and decision made to move David due to perceived risks
- Father has history of violence and is associated with bikie gang.
- Current carer is a single mother and has other children placed with her.
- If placement details revealed, then carer could not continue to provide care.
- Department is working towards reunification with mother. Possible placement with mother in next 5 to 6 weeks if caseplan continues as is.
- Submission need to focus on what is currently reviewable but could go to extend of identifying new placement being considered and requesting matter be adjourned pending new placement OR no reasonable basis to current application.
-
- NB. In actual case DVO was in place preventing father having contact with child and mother and also included provision that father was not to 'take steps to locate' child (and mother) so argument existed that father's action in seeking review was a breach of DVO. Wording of our CP Act does not give any discretion to NOT issue an information notice with details of person's right of review.



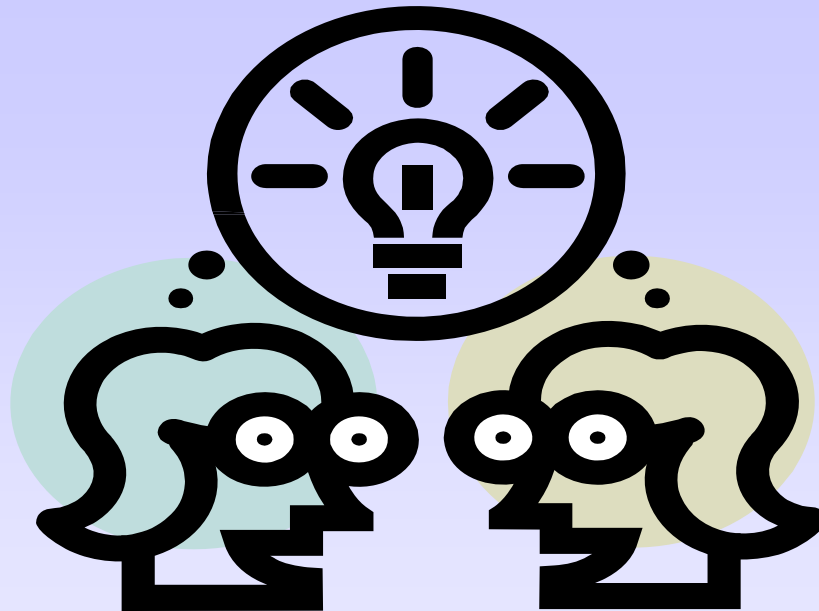
The Art of Questioning in a Tribunal Hearing



Pose a Question....



1. Who has attended a Tribunal hearing?
2. What would be your tip to share with your colleagues about developing or presenting questions in this forum?



Tribunal's conduct of proceedings....



s6 (c) of the Children Services Tribunal Act 2000

Says as follows:

To conduct proceedings in a way that –

- (i) Promotes the interests, rights and well being of the child involved in the proceedings; and
- (ii) Uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances

Purpose to Questions...



1. To reiterate
2. To clarify
3. To discredit or call into question
4. To elaborate
5. To inform

Types of Questions...



1. **Open ended** – is asked to get the person talking and open up and explain fully a scenario etc
2. **Closed** – is asked to usually achieve a one word or a yes/no response. Used to maintain control of the situation.
3. **Rhetorical** - is asked in order to make a point, and does not expect an answer (often the answer is implied or obvious).
4. **Leading** - is asked usually to suggest an answer or directs a witness to a particular answer

Examples!



1. Open ended examples –

- a) What did you do on the weekend?
- b) Tell me about your trip to Movie World?

2. Closed question examples –

- a) Did you drive your car to work today?
- b) What is the colour of your hair?

3. Rhetorical question examples –

- a) How much longer do I need to wait here?
- b) Have you not got eyes to see what I'm wearing?

4. Leading question examples –

- a) Was it Joel Brodie that stole your car?
- b) So your mother smacked you with a tennis racket on your back?



Anticipating who.....



Who will you need to prepare questions for??

- ∞ Each departmental witness who has provided a statement
- ∞ Each applicant regardless of whether they have provided a formal statement. Read through any material they have provided during the proceeding or as part of their application, or on comments made during the PC proceedings to assist in directing the development of your questions
- ∞ The Separate Representative's social assessment report
- ∞ Any unexpected witnesses from the applicant ie character references



HINT.....



The development of your witness statements should already have been compiled to answer any identified questions that you would want answered.

What evidence do you want this witness to speak to?



TRIBUNAL KEY QUESTIONS....



What will be the key questions that the Tribunal wants answered during the hearing?

Obviously this will be dependent upon the decision being reviewed.

Carer refusal or removal decision – suitability criteria s 9 Regs, meeting statement of standards, support provided to address any issues etc, demonstrated insight, understanding consequences

Contact decision – is it meaningful for the child/ren, is it safe for the child/ren, is it meeting the child's needs for bonding/attachment/maintaining relationship/reunification

Placement decision – is this placement meeting the needs of this child, facilitation of educational/medical/therapeutic needs, implementation of behaviour management strategies

THE ULTIMATE QUESTION POSED BY THE TRIBUNAL WILL BE.....

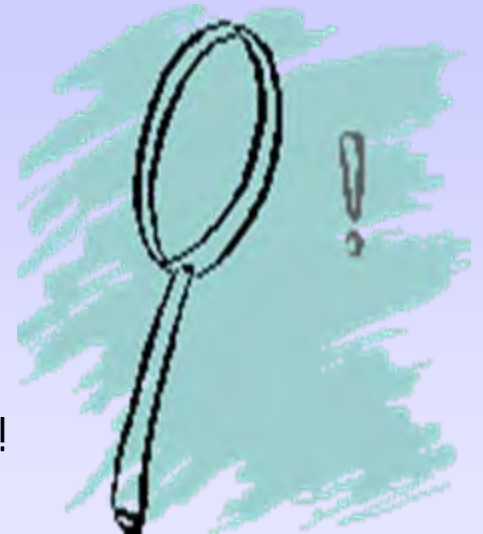
IS THIS DECISION IN THE BEST INTERESTS OF THE CHILD/REN??



CRITICAL ANALYSIS FRAMEWORK....



- ⚙ Playing devil's advocate
- ⚙ Drawing inferences from evidence
- ⚙ Pre-empt statements that might be made by the applicant
- ⚙ Put yourself in the shoes of the Tribunal
- ⚙ Identify the strengths in the evidence
- ⚙ Identify the gaps in the evidence
- ⚙ Identify the solutions or strategies (if possible)
- ⚙ Identify linkages of evidence between witness statements
- ⚙ Don't fear challenging your own witnesses if required – the Tribunal will!



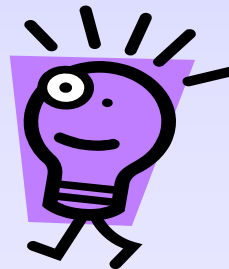
ACTIVITY.....



Break into six groups of 5

Your group has 5 minutes to do the following:

1. Read through the scenario and the witness statement that was compiled for the hearing
2. In your group compile a list of your top 5 questions that you would ask this witness
3. Each table to read out one question
4. Explain what information you wanted to source from that question and why it is relevant to the Tribunal to consider



TIPS.....



1. Be prepared
2. Write out questions verbatim pertaining to each witness – including the unexpected
3. Be as short and succinct as possible
4. Use plain language – where you can avoid departmental jargon
5. One fact per question
6. Be clear about the purpose of your question
7. Listen to the answer – this will probably lead you into the next question
8. Know your case and who owns what evidence – chronology of events
9. Be flexible with your line of questions



SUGGESTION...



For each witness statement develop a table to assist in comprehensive preparation

Witness	Key points of evidence	Strengths	Gaps	Solutions or Strategies	Questions to pose
Robe Tribe	Supervised contact visit on 28/08/09	Mother presented as drug affected, she tripped over child when entered the room		Focus upon the department's casework decisions regarding facilitating contact if mother presents in the future as drug affected	Tell me everything about the mother's presentation at this contact visit Tell me everything about how the child interacted with the mother during this visit





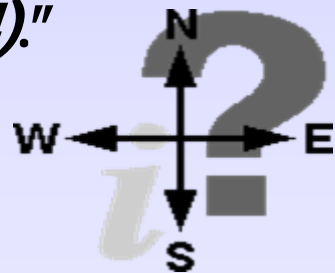
Cross - examination....



Cross-examination is the process whereby you seek:

- a) To test the veracity and accuracy of the evidence in chief;
and**
- b) To elicit from that witness any relevant facts, which may be
favourable to you and your case.**

**It is then plain that it is of paramount importance to establish in
advance of commencement of your cross-examination to know
where you want to go – vide – it is "*better to understand a little
than to misunderstand a lot – Anatole France (1844-1924).*"**



TEAM WORK IS KEY.



Don't forget that we are here to assist.

You are not alone!



TASKS	FILE NAME	TIMEFRAMES	COMPLETED	
Read Government solicitors (model litigant role in merit review)article				
Attend Ct Coord Induction Program				
Do Quiz (x2). 1. What is a rev dec, and 2. Relevant Tribunal legislation				
Participate in a case discussion with CSA and CSSC at point of receiving Notice of Review.				
Critique a Statement of Reasons				
Observe a PC				
Co-facilitate a case discussion prior to a PC				
Critique a second Statement of Reasons				
Manage a case discussion in presence of experienced CSA.				
Observe second PC				
Manage a PC in presence of CSA				
Undertake a post PC email outlining outcomes of PC and tasks, in consultation with CSA				
Co-manage a file with CSA through hearing preparation including witness expenses				
Observe a hearing				
Manage a hearing with CSA present for 1/2 day				

Session Plan

Mock Childrens Court – Cumulative harm

Outcomes:

- To engage participants in discussion that critics the preparation, process and outcome of a mock child protection matter.
- To engage participants in how they will translate knowledge about cumulative harm into case work and court practice.

Presenters: John Selfridge, Robin Slade Jones, Anna Maxwell, Tim Ferguson, Rachael Smith, Poonam Wijesoma, Dellene Kefford, Emma Rahemtula, Tim Ferguson,

Time	Content	Resources / Comments
3.30-4.00	<p>Open up discussion in response to this question:</p> <p>What do you think the outcome of the hearing will be?</p> <p>Key concepts to introduce:</p> <ol style="list-style-type: none"> 1. Quality of evidence provided to the court 2. Differences in affidavits 3. How the differences in affidavits relates to the difference experiences of cross-examination 4. What further evidence could / should have been provided 5. Other critical factors that may sway the Magistrate 6. What were the parts of the legislation that were being relied upon to justify that the children were in need of protection? 7. What parts of the legislation were used to counter-act this argument? 	
4.00-4.30	<p>Cumulative Harm:</p> <p>What did people take away from that presentation?</p> <p>How can we translate these learning's into our court practice?</p> <p>What potential challenges may we face and how will be overcome these?</p> <p>How can we educate Magistrates about the impact of cumulative harm on children?</p>	
4.30-5.00	<p>COURT RESUMES:</p> <p>Please head back into court to hear the Judgement being handed down.</p> <p>Magistrate will outline his/her reasons for the decision.</p>	

**What does the
Child Protection Act (Qld) 1999
and case law say about cumulative
harm?**



**Legal concepts and language to assist in
preparing submissions to support a cumulative
harm/risk of harm argument.**

Court Services Unit
Department of Communities

Court Coordinator Conference
Brisbane 2009

Introduction¹

The purpose of this paper is to act as a catalyst or a primer for delegates to refresh their engagement with the CPA in the context of this Conference's thematic exploration of the concept of "cumulative harm". The paper represents a survey of the statutory framework in Victoria which has enthusiastically embraced the concept of "cumulative harm" in the *Children, Youth and Families Act 2005* ("CYFA") and a comparative examination of the statutory framework in Queensland where, legislatively at least, it yet remains a mere aspiration. The concept represents a sophisticated evolution in child protection both legislatively and in terms of practice. For this reason, there are natural limits to what can be done to shape and mould the language and concepts used in the *Child Protection Act 1999* ("CPA") to accommodate the concept. One of the primary goals of the paper is to pin down why that is the case so that delegates might develop an understanding of the nature of the problem and on a practical level, look towards structuring your approach to your legal and forensic role to engage with the issue in appropriate cases.

Forensically, there are two absolutely essential requirements for persons occupying the role of Court Coordinator. The first is a preparedness to come to grips with the language of the Act. There is no substitute for a knowledge of the legislation and an ability to confidently operate the concepts it uses and apply the law to each individual matter that comes before you. This often needs a conservative, "black letter" approach to statutory interpretation within a jurisdiction that throws up problems that in some ways exceed the capacity of the law to resolve. The second is a preparedness to push the boundaries of the limitations of the statutory framework to deal with an apparently never-ending emergence of unique and novel factual situations. The practice framework informing child protection characteristically uses sometimes complicated or ever-evolving concepts arising out of the behavioural and social sciences. While the law itself has its own evolutionary rhythm in a general sense, the law on child protection right now (and over the course of this decade) has been under direct and sustained pressure to change and refine. One of those areas within child protection has been around the issue of cumulative harm. It will be your challenge to come to grips with it.

This paper is not presented as an authoritative, exhaustive statement of the law in this jurisdiction. Its purpose is to provide a toolbox of concepts and ideas that might be useful in engaging with the Conference workshops and in enhancing your ability to deal with the cases involving "cumulative harm" under the present legislation and with an eye on the anticipated evolution of the law in the future.

Cumulative harm – conceptual meaning

Cumulative harm has been described as follows:

"Cumulative harm refers to the effects of multiple adverse circumstances and events in a child's life. The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child's sense of safety, stability and wellbeing.

Cumulative harm may be caused by an accumulation of a single recurring adverse circumstance or event (e.g., unrelenting low level care), or by multiple different circumstances and events (e.g., persistent verbal abuse and denigration, inconsistent or harsh discipline and/or exposure to family violence).

This means cumulative harm may be a factor in any protective concern (e.g., neglect, physical abuse, emotional abuse, sexual abuse and or witnessing family violence). Also, because cumulative harm can be caused by a pattern of harmful events, it is unlikely that a child will be reported to Child Protection explicitly due to concerns about 'cumulative

¹ No discussion of this subject would be possible without the acknowledgement of Dr Leah Bromfield, Manager, National Child Protection Clearinghouse and Robyn Miller, Principal Child Protection Practitioner, Department of Human Services, Victoria. A recently discovered paper written by Mr Murray Green, Barrister (erstwhile Crown Law Officer, currently Registrar of the Family Court of Australia (Brisbane)) has been of considerable assistance in framing this paper. Ms Jessica Tysack's considerable skills in marshalling background source material are also gratefully acknowledged. Any underlined text in this paper represents my addition of emphasis.

harm'. This means that practitioners need to be alert to the possibility of multiple adverse circumstances and events in all reports, and to consider, not just the information presented in the current report, but the past history of involvement that may be indicative of cumulative harm."¹

Cumulative harm – the Victorian legislation

Within the *Children, Youth and Families Act 2005* a great deal of the work done to give "cumulative harm" its legislative presence is carried by just two sections (ss 10 and 162).

Section 10 outlines a very long list of "best interests" principles that must be considered in relation to decisions about a child. Relevantly, section 10(3)(e) provides that "in determining what decision to make or action to take in the best interests of the child, consideration must be given to (...) (e) the effects of cumulative patterns of harm on a child's safety and development (...)."

Section 162 of the Act describes the grounds necessary to establish that a child is a "child in need of protection." In essence, the provision describes a list of types of harms (physical, psychological, emotional and sexual abuse and neglect) and contains a further qualification about how those harms can be constituted. The express qualification in section 162(2) is that, in relation to any of the identified and described harms, "the harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances."

Cumulative harm – proposed amendments to Queensland legislation

In a document released publically last year called a "Policy paper proposing amendments to the *Child Protection Act 1999*"² a suite of changes were outlined to give effect to a number of changes in the Queensland Government's policies on child protection. One of the proposed amendments was to include a statutory recognition of "cumulative harm." The policy position was described as follows:

"Section 9 of the CPA defines harm as 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing', which can be caused by 'physical, psychological or emotional abuse or neglect or ... sexual abuse or exploitation'. The definition does not limit harm to a particular event or to events at a point in time. (...)

While a child's history is already taken into account in practice, the CPA should reflect that harm can be of a cumulative nature. This will make it clear the Department must recognise the effects over time of accumulated instances of harm in determining whether a report is a notification and in investigating a notification and assessing whether a child is in need of protection."³

The same discussion paper also dealt with a related proposal to enhance the paramountcy principle with a number of terminological amendments and an express framework of best interests principles. The policy was outlined as follows:

"An amendment is proposed to strengthen the paramount principle and to state more clearly the Department's commitment to children who have been abused or neglected. The proposed wording of the principle is that a child's *safety, wellbeing and best interests are paramount*. This proposed change removes the archaic concept of "welfare" and reinforces that the Department's focus is on both children's immediate safety from harm as well as their long-term development and wellbeing."

¹ Bromfield, L & Miller, R. *Specialist Practice Guide: Cumulative Harm*, Victorian Government Department of Human Services, Melbourne, 2007, p 2. See also, Miller, R. *Cumulative harm: a conceptual overview*, Victorian Government Department of Human Services, Melbourne, 2007. Both documents and other resource are available on the Department's website: www.dhs.vic.gov.au

² Department of Child Safety, "Policy paper proposing amendments to the *Child Protection Act 1999*", Brisbane, 2008.

³ Op cit, p 4.

The inclusion of a legislated framework of best interests principles would state more clearly the Government's commitment to children who have been abused or neglected and importantly, would reinforce the balance between the Department's focus on children's immediate safety from harm and their long-term development and wellbeing. Crucial to the determination of the best interests of a particular child could be the need to consider the views of the child, having regard to their age and development, when determining what is in the best interests of the particular child.

The principles would be child-focussed and place due emphasis on the issue of stability. This would include consideration of the child's developmental needs, their need to form secure attachments in a stable and nurturing home, existing attachments and the need to maintain continuity in relationships with relatives and other significant people. The principles could also specifically require that if parents are to have care of their child they must clearly have capacity to protect the child from harm and to provide adequately for their long-term care needs. Importantly, the framework would include specific principles for decision making for Aboriginal and Torres Strait Islander children.”¹

The problem

Section 59 of the CPA sets out the matters of which the Court must be satisfied before making a child protection order. Relevantly (and focussing solely upon the primary threshold requirement) s 59(1) provides:

59 Making of child protection order

- (1) The Childrens Court may make a child protection order only if it is satisfied—
 - (a) the child is a child in need of protection and the order is appropriate and desirable for the child's protection; (...)

The concept of “child in need of protection” (which contains the key “child/parent” formulaic couplet) is described in s 10 as follows:

10 Who is a *child in need of protection*

A *child in need of protection* is a child who—

- (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
- (b) does not have a parent able and willing to protect the child from the harm.

The concept of “harm” is defined in s 9 as follows:

9 What is *harm*

- (1) **Harm**, to a child, is any detrimental effect of a significant nature on the child's physical, psychological, or emotional wellbeing.
- (2) It is immaterial how the harm is caused.
- (3) Harm can be caused by—
 - (a) physical, psychological or emotional abuse or neglect; or
 - (b) sexual abuse or exploitation.

¹ Op cit, 2-3.

The issue is whether the Queensland Act in its current form can accommodate a concept of "cumulative harm." As noted, the Victorian Act contains an express statement of the concept and imports a mandatory requirement that, in making a decision about the "best interests" of a child, the effects of cumulative patterns of harm on a child's safety and development be considered, where relevant (s 10(3)(e)). In addition, in order to liberate a Court from any necessary adherence to a presumption that harm occurs episodically, as "point in time" events, section 162(2) rearranges the conceptual architecture so that "harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances" (s 162(2)).

In analysing this issue, it needs to be noted that "cumulative harm" is not a new type, species or genre of harm. It is simply a different way of conceptualising the experiential effect of multiple harms and representing and assessing that effect on a child both in the present (in terms of the child's immediate safety needs) and longitudinally (in terms of the likely damage to the child developmentally). The real feature of the concept is the emphasis on the cumulative effect of a multitude of harms, possibly not particularly "significant" in themselves, but having a ramified concentrated effect on the child's functioning both now and in the future. In other words, seen cumulatively, the effect can be assessed to be "significant". That is one of the necessary threshold hurdles that needs to be overcome in both the Victorian and Queensland Acts. In Queensland, there must be evidence of "a detrimental effect of a significant nature" (s 9(1)).

It was this perspective on harm that was the target of the Government's proposed amendments. The ultimate policy position was stated as:

"The CPA should specifically recognise the cumulative nature of harm and make it clear that the Department is required to take into account the effects over time of accumulated instances of harm in deciding whether a report meets the threshold for a notification and in determining whether a child is in need of protection."¹

One of the objections voiced to the Queensland proposal to amend the definition of "harm" was that the current section 9 definition was not an exhaustive one which excluded consideration of harms occurring over a period of time. It was claimed that this was a matter of placing appropriate evidence before the Court rather than an issue that required a conceptual re-definition to be enshrined in the legislation. The point is certainly well made.

However, there is an even more fundamental difficulty at play which takes the discussion beyond one which conceives of the mischief to be addressed as arising from an over-emphasis on the "crisis-driven, single incident perspective" on harms to children. The difficulty, which was made very clear in the history to the Victorian amendments, is that the concept of cumulative harm almost necessarily requires a holistic and developmental perspective upon the child that is largely lacking in the Queensland legislation. This was part and parcel of the reforms in Victoria.

In a discussion on this history, Robyn Miller notes:

"The intention of the previous Act was to respond to vulnerable children and families in respectful, appropriate ways using the minimum intervention required. One of the unintended consequences of the practice, which developed from the *Children and Young Persons Act 1989*, is that intake and initial investigations were increasingly based on episodic assessments, which were focused on immediate risk and safety, and less focused on the developmental wellbeing of children, and patterns of abuse and neglect over time."²

¹ Op cit, p 4.

² Miller, R. *Cumulative harm: a conceptual overview*, Victorian Government Department of Human Services, Melbourne, 2007, p 11.

Referring to the findings of a 2005 case study¹ that "most maltreatment within families was chronic, and that notifications describing isolated events were frequently inadequate because events were interrelated" and that there was a need for a conceptual shift "to better incorporate the on-going nature of maltreatment", Miller notes

"This was particularly evident in cases where the neglect or abuse issues were viewed as discrete episodes rather than as part of a repeating pattern, which may be having serious consequences on the child's development and wellbeing; or in cases where a developmental lens has not been applied, and the lack of care giving has not been viewed as serious enough to warrant assertive intervention."²

This developmental dimension that informs the Victorian Act (and other jurisdictions) is substantially absent from the Queensland legislation. Section 10 of the CYFA provides as follows:

10 Best interests principles

- (1) For the purposes of this Act the best interests of the child must always be paramount.
- (2) When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered. (...)

Section 5 of the CPA provides as follows:

5 Principles for administration of Act

- (1) This Act is to be administered under the principle that the welfare and best interests of a child are paramount. (...)
- (2) Subject to subsection (1), this Act is also to be administered under the following principles—
 - (a) every child has a right to protection from harm;
 - (b) families have the primary responsibility for the upbringing, protection and development of their children;

In other words, where a "developmental perspective" is mentioned in the Queensland Act, it is largely mortgaged to a general motherhood statement concerning the privileged status of the "family" as the primary and preferred locus a child's upbringing rather than something that needs to be expressly taken into account in considering the best interests of the child. Accordingly, the substantial focus in the Queensland Act, (notwithstanding numerous statements to the contrary) falls upon a child's immediate safety needs rather than upon a child's developmental needs and impairment.

The *Guide to court practice for Child Protection practitioners 2007*³ published by the Department of Human Services, teases out some of the practical and forensic implications of the "developmental" nomenclature as follows:

"Judicial interpretation of what development encompasses is likely after the CYFA commences. Judicial officers may consider the intent of the legislature in replacing the

¹ Bromfield, L. and Higgins, D. Chronic and isolated maltreatment in a child protection Sample: Mand children who are maltreated experience multiple incidents of maltreatment over a prolonged period of time. *Family Matters*, 2005, 70, p 38-45

² Miller, R. *Cumulative harm: a conceptual overview*, Victorian Government Department of Human Services, Melbourne, 2007, p 12.

³ Department of Human Services, *Guide to court practice for Child Protection practitioners 2007* Victorian Government Publishing Service, Melbourne, 2007.

term 'welfare' (Section 87 CYPA) with 'development'. Further, consideration of 'development' in other jurisdictions may be relevant. As the major applicant in the Children's Court, Child Protection has a significant interest in the judicial interpretation of the phrase. In considering children's development, decision makers must take account of the age and stage of development of the child. This requires the Child Protection workforce to focus on the particular development of the child in question. While a good understanding of theoretical frameworks is essential, the Child Protection practitioner should relate theory to the specific child, while demonstrating flexibility and a real understanding of the development issues for the particular child. The promotion of development as a paramount consideration presents an opportunity for Child Protection to lead evidence about child development theory, the observations of the child in question and how development issues have guided their decision-making. Further, it allows an opportunity to emphasise to the court the importance of healthy development in promoting a child's best interests. Child Protection can lead evidence from witnesses who can articulate the various elements of development (health, emotional and behavioural, educational and learning, family and social relationships, identity, social presentation and self-care skills) in the context of children before the court."¹

Can "cumulative harm" be accommodated in the Queensland legislation notwithstanding the lack of an express, legislatively enshrined, developmental perspective?

The paramountcy principle

In the absence an express legislative platform making provision for a developmental perspective that is sufficient to capture both (a) present harm (assessed as cumulatively "significant") as well (b) a vulnerability to likely future harm (which cumulative harm necessarily entails), advocates in child protection in Queensland need to structure submissions in such a way the "best interests" principles are forced to accommodate a developmental perspective. It is arguable that because the best interests principles are so all-encompassing in relation to the dimensions of a child's day to day and long term welfare, they are elastic enough to encompass such a perspective. Ordinarily, it will be a matter of evidence (of fact and expert opinion) being presented to the Court sufficient to support persuasive and concretely articulated submissions directed to the present and future wellbeing of the child.

Significant harm – past, present and unacceptable risk of harm

The concept of "harm" is defined in s 9 as follows:

9 What is harm

- (1) **Harm**, to a child, is any detrimental effect of a significant nature on the child's physical, psychological, or emotional wellbeing (...).

The Explanatory Notes to the 1999 Bill elaborate upon the meaning of the "concept of significant harm".

*"Clause 9 clarifies the meaning of the term "harm" as being any detrimental effect on the child's well-being, ie its common usage. However for the purposes of this Bill, "harm" is to be read as "significant" harm, ie the injury or other detrimental effect must be significant in nature. The type of harm may be physical, psychological or emotional. It may be the result of physical, psychological or emotional abuse or neglect of a child, or the result of sexual abuse or exploitation, but is not limited as to its cause."*²

The concept of "unacceptable risk of harm" contained in section 10 was described in the Explanatory Notes as follows:

¹ Op cit, p 17.

² Child Protection Bill 1998, Explanatory Notes, p 11.

"This definition (of "a child in need of protection") includes situations where the risk of harm is caused by the child's own actions or someone outside the home. It includes circumstances where, despite a parent's conscientious efforts and through no neglect or action on their part, the child remains exposed to risk of harm. It also includes circumstances where the parent does not have the capacity to care safely for the child despite a desire to do so, and circumstances where a child has no parent or family available to them.

Risk of harm includes circumstances where no harm has yet occurred but is likely to occur if no action is taken to protect the child. This may include circumstances where past evidence relating to other children indicates risk to the current child. It also includes circumstances where a child is abandoned, or where actions of the child or parent expose the child to risk of harm by others.

When determining whether a child is "a child in need of protection" the main focus of the court is upon the child's needs and whether an order is required to meet them, rather than upon the parents' actions, omissions or incapacity which may have led to the harm or risk of harm."¹

The then Minister's reply to the debate following the Second Reading Speech provided further indicators of the Government's thinking around the concept of "harm" in the Bill. She stated:

"Members have raised questions about the concept and definition of "harm" in the Bill and how to determine harm, who will determine the harm and what is "significant harm". It is important to note that the key concept of this Bill when acting to protect children is not harm in itself, but rather an assessment of whether the child is in need of protection. The definitions incorporate both "significant harm" or "risk of significant harm" and not having a parent able or willing to protect the child from that harm. When a parent can and will protect a child, for example, from further sexual abuse by a relative, that child is not in need of protection and there is no justification for action under this Bill.

In relation to harm, "significant" has its normal meaning. It will be one that has to be assessed on a professional basis by officers of the department and by the courts. I should inform members that the word "significant" was actually added after consultation. A number of people felt that we were providing fairly extensive and serious powers to both police officers and officers of my department and we should make sure that a substantial hurdle has to be jumped before those extensive powers could be used. "Significant" was added to make it clear that those sorts of intrusive powers can be used only where serious and significant harm is likely to occur.

As I said, it is ultimately a professional judgment that will be overseen by the court, which will decide whether the level of harm warrants one of the orders available to the court under the Act. But the concept of "significant harm" is used in the United Kingdom's *Children Act* of 1989, and significant case law is actually building around the use of the term "significant". That case law will guide authorised officers and the courts."²

It is presumed that the English case law to which the Minister was referring was the decision of the English High Court in *Humberside County Council v B* [1993] 1 FLR 257. In that case, Booth J sitting in the Family Division discussed the concept of "significant harm" in the analogous English legislation, the *Children Act* 1989. [Ironically and in spite of the Minister's tacit expectation that the development of case law would guide the courts, it took some 15 years for the issue of "significant harm" to return to the English courts to again receive judicial consideration.]

Although the *Humberside* decision was made in a legislative framework that included a concept of developmental impairment, his comments are worth stating at length. He said:

¹ Ibid.

² HANSARD VOL 349, 1st Session of the 49th Parliament, pp 550-551

"Section 31(2) of the Children Act 1989 provides the criteria as to which a court must be satisfied before it can make a care or supervision order. The material part of that subsection reads:

'A court may only make a care order or supervision order if it is satisfied --

- (a) that the child concerned is suffering or is likely to suffer significant harm; and
- (b) that the harm or likelihood of harm is attributable to --
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him . . .'

(...)

In a case such as this, it appears to me that the approach must be to consider first what happened to N when she was in the care of her parents, and then go on to consider whether in the event of her return to them she would be likely to suffer what could properly come within the category of significant harm. Significant harm was defined by Miss Black, in accordance with dictionary definitions, first as being harm that the court should consider was either considerable or noteworthy or important. Then she expressed it as harm which the court should take into account in considering a child's future. I think that is a very apt and helpful submission. There is of course in the circumstances of this case no question that N is presently suffering any harm in the care of Mrs H.

(...)

The submission is made on behalf of the appellant that whether or not a child may be likely to suffer significant harm must be seen in the context of all the circumstances of the case and in relation to the particular child with whom the court is concerned. The child may be exceptionally vulnerable in one way or another. For example, if a child suffers from brittle bones then a push or a slap might be of great significance, whereas in the case of a child who does not so suffer it may be a minimal incident."¹

Two comments may be made about these remarks.

Firstly, the holistic perspectives expressed by Booth J in the concluding paragraph are reflected in the frequently quoted remarks of Lord Nicholls of Birkenhead in the House of Lords decision of *In re H and Ors (Minors)* [1996] 1 FLR 80; [1995] UKHL 16 where he discussed the all-encompassing matters that could be taken into consideration in assessing the "significant harm" threshold test under the English Act. He stated:

"I must now put this into perspective by noting, and emphasising, the width of the range of facts which may be relevant when the court is considering the threshold conditions. The range of facts which may properly be taken into account is infinite. Facts include the history of members of the family, the state of relationships within a family, proposed changes within the membership of a family, parental attitudes, and omissions which might not reasonably have been expected, just as much as actual physical assaults. They include threats, and abnormal behaviour by a child, and unsatisfactory parental responses to complaints or allegations. And facts, which are minor or even trivial if considered in isolation, when taken together may suffice to satisfy the court of the likelihood of future harm. The court will attach to all the relevant facts the appropriate weight when coming to an overall conclusion on the crucial issue."²

Secondly, the reference by Booth J to a child of "exceptional vulnerability"³ underlines the judicially sanctioned need to focus of the specific characteristics of the subject child – his or

¹ *Humberside County Council v B* [1993] 1 FLR 257 at 261 – 265.

² *In re H and Ors (Minors)* [1995] UKHL 16 at [95]

³ The reference to "exceptional vulnerability" in this context is interesting in the way it resonates (in a very limited way) with the "egg-shell skull" theory of liability in criminal law in Queensland. That theory arises in the context of section 23 of the Queensland *Criminal Code* which provides that "a person is not criminally responsible for an event that occurs by accident" (s 23(1)(b)). In the decision of *R v Martyr* [1962] Qd R 398 it was held that "accident" does not include an existing or

her needs and strengths, rather than measuring the child against any generically conceptualised, "reasonably resilient peer child" of a certain age and gender category. On the issue of "presently existing vulnerability", the forensic question, and more specifically, the evidentiary challenge becomes, in what way is this particular child suffering the cumulative effects of significant harm? This will clearly be an issue going to expert evidence.

This raises a key issue in this jurisdiction concerning the nexus between unacceptable risk and the standard of proof. Both of these concepts involve issues of probability which are prone to becoming conflated. That they are separate can be illustrated quite simply. Section 10 provides *inter alia* that a "child in need of protection" is a child who is at unacceptable risk of suffering harm" (s 10(a)). That is a fact to be proved. The standard of proof sufficient to satisfy a Court that the fact is proven is expressed in section 105(2) as being the balance of probabilities. The problem however is that both section 10(a) and section 105(2) contain assessments of probability. If, for argument's sake, we take a formulation of unacceptable risk of harm as meaning "probability of harm", we end up with a test which contains a double probability, namely, "is it more probable than not (the civil standard) that it is more probable than not that a child will suffer harm (unacceptable risk)?" The pertinence of this in seeking to import the concept of "cumulative harm" into child protection practice in Queensland (in the absence of specific legislative amendments) is that for the purposes of section 10(a), a good many "cumulative harm" type cases (involving multiple lower level "notifications" over a period of time, none of which are sufficient in themselves to cross the threshold into the category of "significant harm"), may end up being a vigorously disputed contest over the primary factual test of whether the child is, in all probability, suffering harm in the *present* (a standard of proof issue) *and* whether the child, because of their alleged (but undoubtedly, disputed) *present* vulnerability, is at risk of suffering harm in the future (an unacceptable risk issue). For evidentiary reasons, it is necessary to keep the two issues at least theoretically separate. The first fact to be proven is whether the child is presently (a) suffering harm (of a "significant nature") and (b) by reason of the impact of the harm at an elevated state of vulnerability. The second fact to be proven is whether because of the established vulnerability, the child is at an unacceptable risk of harm in the future. It would ordinarily be necessary to pursue both issues in the one case.

Risk

The language of risk in both the Victorian and the English Acts is "likely to suffer significant harm." As you will be aware, in the CPA and in many other Australian jurisdictions, including family law, this is known as "unacceptable risk" test. In terms of the guidance which may be derived from the Victorian experience, it is necessary to bear in mind the differences in the language used. The Queensland Act in fact uses the concept of both "unacceptable risk" (in section 10) as well as the concept of "significant" (in section 9).

In the High Court, the test for "unacceptable risk" was authoritatively described in *M and M* (1988) 12 Fam LR 606 and *B v B* (1988) 12 Fam LR 611. Although the case concerned the issue of an allegation of sexual abuse, it is submitted that the remarks in *M and M* are applicable to all "risk" cases. There it was stated:

"(It) is a mistake to think that the Family Court is under the same duty to resolve in a definitive way the disputed allegation of sexual abuse as a court exercising criminal jurisdiction would be if it were trying the party for a criminal offence. Proceedings for custody or access are not disputes *inter partes* in the ordinary sense of that expression: *Reynolds v. Reynolds* (1973) 47 ALJR 499; 1 ALR 318; *McKee v. McKee* (1951) AC 352,

underlying, constitutional defect or weakness in the victim (eg an eggshell skull) so that if a victim dies as a result from a blow (which would not have caused the death of a person of normal health) in circumstances where unknown to the attacker the victim had a particular vulnerability that made him more susceptible, then it is not an "accident" (and will not support a defence of accident). The effect of the decision was subsequently reversed by the High Court in *R v Van Den Bergh* (1994) 179 CLR 137, but then the Queensland Parliament reinstated the principle by amending the *Criminal Code* in 1997 (with the insertion of s 23(1A)). No other State followed suite and accordingly, only Queensland operates the "eggshell skull" theory in criminal law. Colloquially, it is sometimes encapsulated in the phrase, "one takes one's victim as one finds them". The parallels end there however since the theory is concerned with causation.

at pp 364-365. In proceedings of that kind the court is not enforcing a parental right of custody or right to access. The court is concerned to make such an order for custody or access which will in the opinion of the court best promote and protect the interests of the child. In deciding what order it should make the court will give very great weight to the importance of maintaining parental ties, not so much because parents have a right to custody or access, but because it is *prima facie* in a child's interests to maintain the filial relationship with both parents: cf. *J. v. Lieschke* [1987] HCA 4; (1987) 162 CLR 447, at pp 450, 458, 462, 463-464.

Viewed in this setting, the resolution of an allegation of sexual abuse against a parent is subservient and ancillary to the court's determination of what is in the best interests of the child. The Family Court's consideration of the paramount issue which it is enjoined to decide cannot be diverted by the supposed need to arrive at a definitive conclusion on the allegation of sexual abuse. The Family Court's wide-ranging discretion to decide what is in the child's best interests cannot be qualified by requiring the court to try the case as if it were no more than a contest between the parents to be decided solely by reference to the acceptance or rejection of the allegation of sexual abuse on the balance of probabilities.

In considering an allegation of sexual abuse, the court should not make a positive finding that the allegation is true unless the court is so satisfied according to the civil standard of proof, with due regard to the factors mentioned in *Briginshaw v. Briginshaw* [1938] HCA 34; (1938) 60 CLR 336, at p 362. There Dixon J. said:

"The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences."

His Honour's remarks have a direct application to an allegation that a parent has sexually abused a child, an allegation which is often easy to make, but difficult to refute. It does not follow that if an allegation of sexual abuse has not been made out, according to the civil onus as stated in *Briginshaw*, that conclusion determines the wider issue which confronts the court when it is called upon to decide what is in the best interests of the child.

No doubt there will be some cases in which the court is able to come to a positive finding that the allegation is well-founded. In all but the most extraordinary cases, that finding will have a decisive impact on the order to be made respecting custody and access. There will be cases also in which the court has no hesitation in rejecting the allegation as groundless. Again, in the nature of things there will be very many cases, such as the present case, in which the court cannot confidently make a finding that sexual abuse has taken place. And there are strong practical family reasons why the court should refrain from making a positive finding that sexual abuse has actually taken place unless it is impelled by the particular circumstances of the case to do so.

In resolving the wider issue the court must determine whether on the evidence there is a risk of sexual abuse occurring if custody or access be granted and assessing the magnitude of that risk. After all, in deciding what is in the best interests of a child, the Family Court is frequently called upon to assess and evaluate the likelihood or possibility of events or occurrences which, if they come about, will have a detrimental impact on the child's welfare. The existence and magnitude of the risk of sexual abuse, as with other risks of harm to the welfare of a child, is a fundamental matter to be taken into account in deciding issues of custody and access. In access cases, the magnitude of the risk may be less if the order in contemplation is supervised access. Even in such a case, however, there may be a risk of disturbance to a child who is compulsorily brought into contact with a parent who has sexually abused her or whom the child believes to have sexually abused her. But that is not the issue in this case.

Efforts to define with greater precision the magnitude of the risk which will justify a court in denying a parent access to a child have resulted in a variety of formulations. The degree of risk has been described as a "risk of serious harm" (*A v. A* (1976) VR 298, at p 300), "an element of risk" or "an appreciable risk" (*Marriage of M* (1987) 11 Fam LR 765, at p 770 and p 771 respectively), "a real possibility" (*B. v. B. (Access)* (1986) FLC 91-758, at p 75,545), a "real risk" (*Leveque v. Leveque* (1983) 54 B CLR 164, at p 167), and an "unacceptable risk" (*In re G. (a minor)* (1987) 1 WLR 1461, at p 1469). This imposing array indicates that the courts are striving for a greater degree of definition than the subject is capable of yielding. In devising these tests the courts have endeavoured, in their efforts to protect the child's paramount interests, to achieve a balance between the risk of detriment to the child from sexual abuse and the possibility of benefit to the child from parental access. To achieve a proper balance, the test is best expressed by saying that a court will not grant custody or access to a parent if that custody or access would expose the child to an unacceptable risk of sexual abuse."¹

It was further elaborated to include all cases of abuse and neglect in the Family Court decision of *Re Karen and Rita* (1995) FLC 92-632.

It should be noted here (without further comment) that there are significant differences between *M and M* on the one hand and *In re H* on the other, with the former being authority for a considerably lower threshold of probability than the latter. It may be that the law in Australia is still evolving in relation to "risk".²

As noted above, the issue of "unacceptable risk" will necessarily be a live issue in each child protection case involving an allegation of cumulative harm. If a child is suffering harm but is not at risk of suffering harm in the future, then clearly there can be no finding that the child is a child in need of protection. The key forensic focus must be on presenting evidence and making submissions in relation to a child's elevated vulnerability, that establishes both the existence of the risk to the child and (in terms of *M v M*) the magnitude of that risk.

¹ *M and M* (1988) 12 Fam LR 606 at 610-611.

² See for example the vigorously argued paper by former Justice Carmody in "Removing Obstructions to Justice in Family Law Sexual Abuse Cases," delivered at the 4th World Conference on Family Law and Children's Rights, 20-23 March 2005, Cape Town, South Africa.

Session Plan
Children's court in remote communities

Outcomes:

- To provide participants with knowledge and experience of working in remote children's courts and with families involved;
- To provide participants with an overview of the challenges both families, Court Coordinators and other Departmental workers face in remote settings;
- To engage participants in identifying and addressing challenges whilst working in remote settings and/or remote children's courts; how can we make a difference?

Presenters: Dallas Brown (Court Coordinator, Cape York and Torres Strait Islands CSSC)
James McKenzie (Court Coordinator, Gulf CSSC)
Eelco Vugs (Court Coordinator, Cape York and Torres Strait Islands CSSC)

Time	Content	Resources / Comments
Tuesday 20/10/09		
9:30-9:45	<u>Introduction:</u> <ul style="list-style-type: none"> - Introduce self / area of work - Outline geographical area and remote courts - Legislation most relevant to working in remote areas - Case example 	PowerPoint
9:45-9:55	<u>Activity 1:</u> What are the main issues you can identify whilst working in remote courts and remote settings? <ul style="list-style-type: none"> - Discuss in small groups the possible issues or challenges both court coordinators and families face in remote courts/settings. 	Hand out
9:55-10:10	<u>Presenters:</u> <ul style="list-style-type: none"> - Feedback from small groups and provision of feedback - Provide summary of key issues/challenges - Provide link to possible strategies/solutions to some of these issues. 	PowerPoint
10:10-10:20	<u>Activity 2:</u> How can we make a difference? <ul style="list-style-type: none"> - Discuss in small groups possible strategies/solutions to key issues/challenges 	Hand Out
10:20-10:45	<u>Presenters:</u> <ul style="list-style-type: none"> - Feedback from small groups and provision of feedback - Provide overview of some of the strategies/solutions presenters have used - Group discussion / questions /comments 	PowerPoint

Time	Content	Resources / Comments
Tuesday 20/10/09		
9:30-9:45	Introduction: <ul style="list-style-type: none"> - Introduce self / area of work - Outline geographical area and remote courts (provide map / court calendar / photos of remote courts) - Legislation most relevant to working in remote areas (briefly outline section 11, 30, 52 etc and how this impacts on our work) - Case example – demonstrating complexity and challenges 	PowerPoint
9:45-9:55	Activity 1: What are the main issues you can identify whilst working in remote courts and remote settings? <ul style="list-style-type: none"> - Discuss in small groups the possible issues or challenges both court coordinators and families face in remote courts/settings. - Possibly divide group in three small groups, one group identifies issues facing families, second group issues facing CC's, third group identifies issues for remote courts. 	Hand out
9:55-10:10	Presenters: <ul style="list-style-type: none"> - Feedback from small groups and provision of feedback - Provide summary of key issues/challenges (access/referrals to legal services, court attendance, role of RE / Justice Groups, "closed court", difficulties with service, (CAO and) court dates, filing court material, COC / FGM delays, budgetary restraints, traditional adoption vs CP Act. - Provide link to possible strategies/solutions to some of these issues. 	PowerPoint
10:10-10:20	Activity 2: How can we make a difference? <ul style="list-style-type: none"> - Discuss in small groups possible strategies/solutions to key issues/challenges - Again split in groups of three and provide each group with one particular issue (for example 1. lack of or limited access to legal services 2. budgetary restraints 3. delays in court process (COC/FGM/Filing/Service) 	Hand Out
10:20-10:45	Presenters: <ul style="list-style-type: none"> - Feedback from small groups and provision of feedback - Provide overview of some of the strategies/solutions presenters have used (Phone appearance, "fax back system", creative closed court, use of RE as interpreter, broad interpretation by court of third party - Group discussion / questions /comments 	PowerPoint

Advanced Affidavit Writing

Presentation by Kevin Parrot, Crown Law
to the Court Coordinator Training Program
February 2005

LAW OF EVIDENCE

The law of evidence deals with four main areas. These are:

- a. The **type** of evidence which will be accepted by the Court
- b. The **standard** of evidence which will be required by the Court
- c. The **manner** in which evidence will be presented to the Court
- d. The **persons** who may or must give evidence.

DEFINITIONS

Evidence

Evidence is those, statements (oral or written), documents or things (e.g. knives, photos, computer records, torn clothing, the scene of the crime etc.) that tend to prove a fact in issue.

Admissible Evidence

Admissible evidence is evidence of a fact in a form, and from a source, which is acceptable as evidence by the Court.

The statement of the person giving the evidence, contrary to the interests of the Respondent, in relation to an issue of fact, which the Applicant must prove.

"A statement of fact made by the Respondent..." is actually an admission against interest which is one type of evidence that may be given. The evidence of the statement would be given by the person who heard the Respondent make the statement. The statement of the person giving the evidence would tend to prove the fact that the Respondent made the statement.

Facts in Issue

Facts in issue are those facts that an Applicant must prove in order to succeed or a Respondent to establish a defence. They are those facts that go to the core of the dispute between the parties.

RULES OF EVIDENCE

1. Best Evidence Rule

The best evidence rule requires that the best evidence available, that the nature of the case allows, be used to prove the issues in fact.

Best Evidence Rule requires the best evidence be used to prove a fact (eg. original documents rather than photocopies – assuming they are available).

For example: it is not permissible to use hearsay evidence of a statement, such as "It is recorded in Departmental files that Respondent said to a Child Safety Officer – yada yada yada". Such a statement would not be the best evidence where the Child Safety Officer was available to give evidence personally. The best evidence of that statement is the actual evidence of the Child Safety Officer.

Original/Direct Evidence

The best evidence is that which a witness can say they have seen (or read in relation to some documents), heard, felt, tasted or smelled. It is evidence that the person has experienced directly through their senses.

Original/Direct evidence is evidence of the facts in issue and may include:

- The testimony of a witness who witnessed the event, or
- The production of a document which tends to establish that fact in issue.

The rule requires the best evidence to be used to prove a fact.

2. Hearsay Rule

Hearsay evidence consists of evidence someone else has said or a document has recorded about an event. For example "he told me that so and so said I or did..." This statement is inadmissible as to providing the truth or otherwise of what so and so said/or did.

It is acceptable for the evidence of children to be given by another person. Hearsay can be used when it is difficult to bring the evidence before the Court by direct means – it does carry less weight however.

It should also be noted that evidence of what a child said should be given by the person that heard the child say the statement. There are various tests that can be used to determine how much weight can or should be given to that evidence.

Hearsay should be avoided where possible rather evidence from the direct source should be obtained.

Preferable that conversations be recorded in the first person in Affidavits (i.e. I said " ". He said " ").

Case precedent decisions regarding the Hearsay Rule

Case of ***Dale and Scott ex parte: Dale*** (1985) 1 QdR 406 at 413, 414

It is acceptable for the evidence of children to be given by another person. This licence is specifically discussed in the case of Dale v Scott. For completeness it should also be noted that hearsay may be used when it is difficult to bring the evidence before the court by direct means. Administrative convenience is not sufficient to support the use of hearsay. This is not a blanket exemption from the rules of evidence however.

Case of ***Taylor v L ex parte L*** (1988) 1QdR 406 at 713, 714

Emphasising the Court's need for caution when allowing hearsay into evidence and

quoting from legal precedent, the Judge adopted the following statement:

"I agree that the liberty to tender hearsay could be abused. I cannot imagine that any Judge would allow a grave allegation against a parent to be proved solely by hearsay, at any rate in a case in which direct evidence could be produced..."

It is also worth noting the comments of Nicholson CJ in **Re Karen and Rita** (1995) FLC 982-632 at page 82,349:

"He said that once the Court was satisfied that the risk was unacceptable, then it followed that in proceedings of this nature that an Order should be made. Mr Ponder supported Mr Vitali's submissions as to the law. So also did Mrs Spender, although she sought to argue, on the basis of some remarks by Thomas J in Taylor's case (supra) at 714 that convincing evidence would be required to remove a child from his or her natural parent. The remarks in question were made before the decision of the High Court in M and M (Supra) was published and I do not believe that they represent the law in light of that decision."

This matter involved a hearing of a custody dispute and a cross vested Child Protection Application, notwithstanding the decision of the High Court in **Gould vs Brown** it is likely that this statement accurately states the law to be applied in these applications.

3. Rule of Relevance

The most essential rule is relevance. Everything put into an Affidavit should be relevant. There are no legal formulas to determine relevance. Just need to rely on logic and commonsense. Relevance is a question of degree. For example, in Child Protection matters Affidavits should focus on the protective concerns for the child/ren, and not the parent/s relationship with the Department.

The primary rule of admissibility is that any evidence sought to be led must be relevant to an issue in question. If it is not relevant, it is not admissible.

To be admissible an item of evidence must be directly or indirectly relevant to a fact in issue. A fact will be regarded as relevant if it tends to prove a fact.

Courts retain a discretion to exclude evidence which is more prejudicial than probative. However, given the Courts paramount consideration is expressed in s.104 of the *Child Protection Act 1999* ("the Act") and the ability to receive evidence in a manner it thinks is appropriate under s.105 of the Act, Courts tend to not to exclude evidence.

Courts will sometimes exclude evidence that may prove a fact, as it is of minimal value to make it worth considering as evidence.

Relevance and proof of the three (3) essentials

Relevance is determined by what you have to prove in order to achieve the desired Court outcome. In Child Protection Applications, the (3) essential elements should be proved:

1. The child is a child in need of protection (eg. child has been physically harmed) (s. 59(1)(a) of the Act)

2. The Order sought is the most appropriate and least intrusive in the circumstances (s. 59(1)(e) of the Act)
3. The Department has taken reasonable steps to assist the family in addressing the protective concerns prior to seeking the Order

Example – child has been physically harmed

1. The child is a child in need of protection
 - **Direct evidence** – obtain an Affidavit from the person who witnessed the incident.
 - **Admission/s** – the parent/s may admit to a Departmental officer that the harm occurred. In this instance the Departmental officer should record this conversation in an Affidavit – quoting parent/s where possible. While this conversation is a form of direct evidence – it is not a first hand observation – it is compelling evidence. Evidence of this nature is referred to as admission evidence or an admission. An admission is a statement of fact made by the Respondent (parent) in relation to an issue of fact, which the Applicant has to prove.
 - **Admissions and social assessment reports** – Social Assessment Reports often contain useful admission evidence. The only difficulty with admissions of this nature, and invariably its admissibility as evidence, is that the Assessment author often doesn't provide greater detail regarding the circumstances in which the admission was made. Therefore the admission may lack weight.
 - **Hearsay evidence** – obtain any information from Police if called to respond. Where possible the investigating Police Officer should provide an Affidavit of their involvement. Where the Officer is not required as a witness for the proceedings, their evidence is regarded as hearsay. Alternatively, a copy of their report of the incident may be exhibited to the Applicant's Affidavit.

Undertake a domestic violence check if appropriate. Reports may be exhibited to the Applicant's Affidavit – ensure that it is referred to in the body of the Applicant's Affidavit.

 - **Opinion evidence** – obtain a medical report from the examining Medical Practitioner. When seeking to prove physical harm to a child the examining Medical Practitioner should record their observation (eg. bruising), as well as an opinion (eg. non accidental, therefore constitutes harm) and their rational.
2. Order sought least intrusive – need to prove that Order sought, having regard to the provisions of the Act and considering the question on a reasonable and rational basis, unlikely to achieve child's protection on less intrusive terms.
3. Attempts to address protective issues – need to state the Departmental case plans, their purpose and any outcomes.

Are rules of evidence relevant?

It is essential that in every Application going before the Children's Court, given that the Department of Child Safety is an organ of the State of Queensland and, therefore required to behave as the model litigant, that the Applicant commences every Application by attempting to strictly apply the rules of evidence. Only in the circumstance where there is sufficient reason to depart from those rules, should leave be sought of the Court to do so.

Case precedent decision regarding Rule of Relevance

Decision relating to the Tribunal very much transposes the circumstances in the Childrens Court.

In the case of *Rodriguez v Telstra Corporation Ltd* [2002] FCA 30, 25.1.02 [Kiefel J]

Administrative law [103] – Administrative Appeals Tribunal (Cth) – Evidence – Effect of rules of evidence

Issues: Are the rules of evidence relevant?

Held: (allowing the appeal)

1. The Administrative Appeals Tribunal is not bound by the rules of evidence (Administrative Appeals Tribunal Act 1975 (Cth), s33) and may inform itself in such a manner as it thinks appropriate. This does not mean that the rules of evidence are to be ignored. The more flexible procedure provided for does not justify decisions made without a basis in evidence having probative force.
2. The drawing of an inference without evidence is an error of law. Similarly, such error is shown when the Tribunal bases its conclusion on its own view of a matter that requires evidence.
3. It may be said that expert evidence is sometimes over-utilised and is called in situations where an arbiter of fact is in a position to determine the matter for itself. Sometimes all that is necessary is for a method or process to be explained, so that the Court or Tribunal can then apply it to the facts it finds.
4. On the other hand, there are cases where a whole question is, in effect, relegated to experts to give evidence upon it. This case, concerning a claim for workers' compensation, was such a case. The Tribunal was not put in a position where it could simply draw on its own inferences. In an area that required an understanding of a major depressive disorder it could only receive the opinion, have the basis for them explained if they differed, and apply logic to determine which were to be accepted.
5. The Tribunal's decision to limit the period of compensation was not supported by probative evidence. Error of law was shown. Additionally, it was obliged to disclose its concerns or provisional opinion and allow the parties to deal with it. It did not do so.

OBTAINING EVIDENCE FROM EXPERTS

When obtaining evidence from expert's attention should be directed to the matters that the applicant seeks to prove. For example, when seeking to prove physical harm to a child the examining Medical Practitioner should record their observations (eg. bruising), as well as an opinion (eg. non accidental, therefore constitutes child abuse) and rationale.

Opinion evidence is only admissible if it pertains to an area of professional expertise. If the Court accepts an opinion on a layman's knowledge, and without expert assistance, then the evidence is not professional expertise and is not admissible. In Child Protection matters however, some evidence may not be admissible but may be admitted. Proper expert opinion should be called where possible.

Example

- The Paediatrician who examined the child is able (in their medico legal report) to indicate their findings on examination, diagnosis, indicated treatment and prognosis.
- The Paediatrician may also be able to give an opinion on various other medical issues within their speciality.
- Paediatrician would not normally be able to offer opinions in relation to matters that do not fall within their speciality (eg. Psychiatry).
- If psychiatric evidence is needed, then consideration should be given to obtaining the expertise of a Psychiatrist.

AUSTRALIAN LAW REFORM COMMISSION'S REPORT

The ALRC has spoken about the quality of evidence called in Child Protection cases: see the Australian Law Reform Commission Report No. 84 of 30 September 1997, *Seen and Heard: Priority for Children in the Legal Process*, paras 17.59, 17.60 and Recommendation 171.

Evidence

17.59 Legislation in **most jurisdictions encourages cases to be conducted as informally as possible** [109]. One result of this is that **most jurisdictions have dispensed with rules of evidence in care and protection proceedings** [110]. The informality of the Courts may benefit children and assist in the appropriate resolution of care and protection matters in the best interests of the child. However, some **concern was expressed in submissions that avoiding strict rules of evidence leads to a dangerous lack of rigour in the presentation of evidence**. One submission noted that '[a]t present, unsworn documents [such as Court Report] are tendered... Such documents contain a mix of observations, hearsay and opinion [111]. The Children's Court of Victoria was critical of the support and training given to care and protection workers presenting cases in Court. It noted:

"... it is not unusual to see words attributed to very young children which are well beyond the child's vocabulary. This practice can only detract from the probative value of the child's words and affect the credit of the evidence being given.

Protective workers have difficulty in determining what is relevant. *This probably relates to a difference in perspective with regard to what is relevant in a social work sense and what is legally relevant to the issues a Court must decide...While the Children's Court is able to be flexible concerning the admissibility of evidence, it is not a matter of 'open slather'. Workers do not have adequate training...[112]."*

17.60 Care and protection proceedings should be as informal as possible. Strict rules of evidence are not appropriate in determining issues of fact in this jurisdiction. However, decisions should be transparent and based upon acceptable standards of information and proof. Some degree of rigour should be required in the presentation and assessment of evidence in care and protection matters. Preference should be given to the direct evidence of the witness concerned. **Evidence should always be relevant to the issues to be decided.** Because **children should not generally be required to give evidence in these proceedings, it is appropriate that hearsay statements by children should be admissible.** However, the form of the hearsay statement should as far as possible reflect the words of the child. The process by which children are interviewed during investigations and by which they might give evidence in these cases is discussed in Chapter 14.

Recommendation 171. The national care and protection standards should specify that direct evidence by a witness should be referred, except when the witness is the subject child. Hearsay evidence of statements by the subject child should as far as possible be presented in the child's own words.

According to the ALRC, "most jurisdictions have dispensed with the rules of evidence in care and protection proceedings". S.105 of the Act provides:

"In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate."

Queensland has not dispensed with rules of evidence. Rather, the Childrens Court has discretion to relax the operation of the rules of evidence as it sees fit in appropriate cases.

HEARSAY AND THE EVIDENCE OF CHILDREN

In practice children are not called to give evidence in child protection proceedings. Legislative basis also supports this position. S. 112 of the Act states that a Court may only give leave for a child to give evidence where:

- Child is at least twelve (12) years;
- Is represented by a lawyer, and
- Agrees to give evidence.

Otherwise evidence of a child is hearsay. Evidence can have great weight. However, where a child makes disclosures this evidence should be put to the Court without embellishment. Disclosures should be recorded in the (receiver's) Affidavit using the child's own words and circumstances in which the disclosure was made (i.e. when, where, what prompted the child to make the disclosure). Note: it can be important for the Court to know that the child made the disclosure spontaneously.

Do not use hearsay if you can avoid it – use it only as a last resort.

Use the personal pronoun (eg. "I did this..." or "...I contacted the police and they told me...". Not "...the police were contacted and it was reported...".
Identify the source of the hearsay (eg. "I spoke with Mr Smith from...and he gave me the following information...").

Case precedent decisions

Case of ***Dale v Scott ex part: Dale*** (1985) 1 QdR 406 at 413, 414

It is acceptable for the evidence of children to be given by another person. This licence is specifically discussed in the case of *Dale v Scott*. This is not a blanket exemption from the rules of evidence however.

Case of ***Taylor v L ex parte L*** (1988) 1 QdR 706 at 713, 714

Emphasises the Court's need for caution when allowing hearsay material into evidence.

PLANNING THE CONTENTS OF AN AFFIDAVIT – some practical tips!

Remember – it is usual for a case to be built around the evidence of a number of witnesses. Each witness contributes to the total picture.

Amending Affidavit material

Correcting information in Affidavit material determined largely by the extent of the amendment required – option to amend in Court, or to re-file document. Affidavits should not contain any blotted out words or deletions. If an alteration is made after the Affidavit has been sworn the alteration must be initialled by the deponent and the witness to the Affidavit.

Direct evidence – example

On 20 May 2003, I arrived at 24 Smith Street, Milton with Lisa Smith at approximately 10:00am. The front door was opened by a person I now know to be Kelly Thomas. I saw that her eyes were bloodshot and she was unsteady on her feet. When she spoke to me her words were slurred and I could smell alcohol on her breath.

The temptation is to go on to give an opinion on the sobriety of Miss Thomas. Such an opinion may or may not be admissible. This depends on the Court's view as to whether the deponent can give such an opinion. To strengthen the likelihood that such an opinion will be admitted evidence, it is important to lay a proper basis for the opinion.

Opinion evidence – example

During my five (5) years employment as a Child Safety Officer and from my general experience I have had the opportunity of observing many people who were effected by alcohol. From my observations of Miss Thomas, I formed the opinion that she was well affected by alcohol.

The important point to note is that usually witnesses should only give evidence of what they experienced from their senses (eg. smell, sound, sight, taste, touch), unless they are expert witnesses who can give opinions about matters falling within their speciality. If an opinion is to be given by either an expert or a witness, remember to elicit from them the factual basis upon which their opinion is based. By adopting this course, if the other side objects to the evidence a stronger argument can be mounted to have the Court accept the evidence either under the general rules of evidence, or by the Court exercising its discretion under s. 105 of the Act.

Take time to plan the structure and contents of Affidavits. Affidavits should follow some logical sequence. This is usually determined by the material to be presented. The sequence might be by issues, although it is more usual for Affidavits to be based on chronological sequence of events.

Dealing with witnesses

It is usual for a case to be built around the evidence of a number of witnesses. Each witness contributes to the total picture. If you have drafted an Affidavit on behalf of a witness it is important that you give a copy to the person to read. If the person cannot read ensure that it is read to them, preferably by a person who did not draft the document.

After the person has read the draft ask whether it accurately reflects the facts as the person saw them. If it is not accurate it puts an inaccurate slant upon the facts – it is not a problem to make any necessary changes.

An Affidavit should not be sworn unless the deponent is satisfied it is accurate and correct.

In taking a statement from a proposed witness be careful not to coach the person. The contents of the Affidavit must only reflect the honest and accurate recollection of the person who is swearing as to its truth.

Timeframes

Drafting Affidavits is a time consuming process. Where ever possible prepared all relevant Affidavits as soon as possible. Do not leave it until just before the Hearing. Many reasons for obtaining Affidavit as soon as possible, including:

- People's memories fade and recollections of events & conversations do too
- People are mobile – don't assume they will be available for Hearing
- Where evidence of witness is discrete and specific it is easier to draft and finish document early
- If events/circumstances change after an Affidavit is sworn a person can swear an updating Affidavit.

Exhibits

In drafting an Affidavit it is often necessary, or appropriate, to refer to a document which is relevant (eg. where the respondent did not comply with an agreement made with the Department). In this instance exhibit the document to an Affidavit (eg. Family Meeting Minutes). If this is done it is usual for the context of the document to be introduced into the Affidavit – refer the reader to the relevant Exhibit.

The *Childrens Court Rules 1997*, Section 12 deals with Exhibits.

Example A

On 20 January 2003, a Family Meeting was held between Ms Jane Tank, Mrs Vera Patterson, Team Leader and myself. I was present throughout the meeting. As result of the discussions held at this meeting it was agreed that Ms Tank would ensure her son Ben would attend pre-school three days a week. This agreement was recorded in writing. I was present when the Family Meeting Minutes were signed by Ms Tank. I also saw Ms Patterson sign the document. My signature also appears on the document. Exhibit "A" to this Affidavit is a true copy of the Family Meeting Minutes.

Exhibits to Affidavits are a convenient way of setting out discrete information that is difficult to put in the body of an Affidavit (eg. chronology of Departmental contact, an earlier assessment, Affidavit/s relied upon as part of previous proceedings). Care should be exercised when exhibiting documents however. The rules relating to relevance and hearsay apply as much to an Exhibit as they do to the Affidavit itself.

Example B

On 16 June 2003, Ms Audrey Martin of the Fortitude Valley Child Safety Service Centre, prepared a Family Assessment Report in relation to Ms Tank and her children. Exhibit B to this Affidavit is a true copy of the Family Assessment Report.

It is not good practice to present evidence of a lay witness in a statement exhibited to a short form Affidavit. Reason being, it is likely the statement will contain both relevant and irrelevant material. Besides, this approach does not find favour with Magistrates.

Exhibiting the reports of expert witnesses, however appears to be an acceptable practice. This is not only timesaving, but has the effect of leaving the evidence of the expert in its original form. Besides, experts such as Doctors are not skilled in the preparation of Affidavits and find the process uncomfortable. Where possible however, covering Affidavits should be affixed to the Reports and sworn by the author.

Use of literature in Affidavit material

Expert literature may be referred to in an Affidavit, with the document exhibited. This practice is only encouraged if the deponent has a good degree of experience in the particular area, and can offer an opinion on the document being relied upon. Need to establish some degree of expertness or experience in the area.

Example

May be referred to in the body of an Affidavit as follows:

Exhibit A to this Affidavit is a true copy of a paper by [paper's author] entitled, "[article title]". Generally speaking, I rely upon the contents of that paper. I say that the contents of that paper are consistent with my own experience over many years and many cases. I say that that paper now expresses the views of the great majority of

Social Workers and that the views expressed are valid scientific views in the academic field of the study of Social Work.

In particular I rely on the following excerpts from the paper by [author's name]:

Page 2 “ “

Page 4 “.....”etc

Link literature to particular issue discussed.

Preparation of Court material from Subpoenaed files

Where Child Protection Applications proceed to hearing it may be necessary, from an evidentiary point of views, to issue a Subpoena for documents. For example, where multiple Police contacts have occurred it may be appropriate to Subpoena the Police files.

The Childrens Court may issue Subpoenas when matters are set down for hearing – this may include interim hearings (eg. arguing temporary custody). The practice of the Brisbane Childrens Court, however, is that Subpoenas will only be issued by the Court when the matter is set down for a final hearing. Individual courts appear to adopt their own practices.

Subpoenas are returnable to the Childrens Court by the hearing date. There may be circumstances however, in which the Department may seek an earlier return date for the Subpoenaed files/documents. Seeking an earlier return date necessitates the Court's permission – at the time of requesting the Subpoena from the Court. This request may be sought in Court or “in Chambers” – largely determined by the protocol adopted by the individual Courts. When seeking an earlier return date for a Subpoena, the timeframe for the return must be considered reasonable in the circumstances. Any consideration of an earlier return date for a Subpoena should firstly be discussed with Court Services and Crown Law.

Upon receipt of the subpoenaed documents at the Court registry, the Departmental Applicant (or Crown Law representative) must seek the Court's permission to inspect, take notes or photocopy the subpoenaed file/s. Court Services and Crown Law must be consulted regarding the most appropriate course of action in this instance. Generally speaking, only legal representatives are entitled to view subpoenaed files, however in recent times Departmental Officers have been permitted to. Again, this issue should be discussed with Court Services and Crown Law. Copies of any information obtained from the subpoenaed documents may be exhibited to an Affidavit and relied upon as evidence.

Note: Although Child Safety Officers may have been given permission to inspect files, unless they are the actual Applicant, there is still the question about their legal right to appear as a legal representative in any capacity. In any event it is by far preferable that the Crown Law Officer conducting the hearing inspect the files personally.

QUT ADVOCACY TRAINING

Contents:

- (1) What is your role as Separate Representative?
- (2) What is your Case Theory or Ultimate Position in this matter?
- (3) Assessment of Department's material and witnesses to be called
 - Putting the Department and the parent to proof- you should not be running their respective cases for them
 - What evidence is the witness going to give and what relevance is their evidence to your ultimate case theory?
 - Rules of evidence
 - (1) Best evidence
 - (2) Hearsay evidence
 - (3) Rule of relevance
 - (4) Expert evidence

(4) Preparation of Submissions

(1) Relevant Background Information

- Section 53 (2)
- Section 104
- Section 105
- Section 5 Principles
- Section 10 A child in need of protection
- Section 9 Harm

(2) Factors to consider before making a child protection order

- Section 59 factors:

(1) The child is a child in need of protection and the order is appropriate and desirable for the child's protection

(2) There is a case plan for the child

(3) A court ordered conference has been held;

(4) The child's wishes or views, if able to be ascertained, have been made available to the court;

(5) The protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms

(6) Recommendation

Appendix A: Harm, Significant Harm and unacceptable risk

(1) What is your role as Separate Representative?

Section 110 (3) of the *Child Protection Act 1999* provides that the Separate Representative must:

- (a) act in the child's best interests regardless of any instructions from the child; and
- (b) as far as possible, present the child's views and wishes to the court.

The Separate Representative should:

- act in an independent and unfettered way in the best interests of the child;
- act impartially;
- if appropriate make submissions suggesting the adoption by the court (or tribunal) of a particular course of action if they consider the action is in the best interests of the child;
- inform the court (or tribunal) by proper means of the child's views and wishes in relation to any matter in the proceedings. The Separate Representative is not bound to make submissions on the instructions of the child, but is bound to bring the child's expressed wishes to the attention of the court (or tribunal);
- arrange the collation of expert evidence and ensure all evidence relevant to child's welfare is before the court;
- where appropriate, test the evidence of the parties and their witnesses by cross-examination;
- ensure the views and attitudes presented on the issues before the court (or tribunal) are drawn from the evidence and not from a personal view or opinion of the case;
- minimise the trauma to the child associated with the proceedings; and facilitate an agreed resolution to the proceedings where possible

(2) What is your Case Theory or Ultimate Position in this matter?

After considering the evidence what do you think your ultimate position advocating for the child's best interests is going to be keeping in mind the 4 main points on child protection matters are:

- (1) Is there a child in need of protection from harm?
- (2) Is there a parent willing and able to protect the child from harm?
- (3) What is the most appropriate and least intrusive order to protect the child?
- (4) Has the Department taken reasonable steps to assist the family in addressing the protective concerns prior to seeking the order (an assessment of the case plan)?

In considering this you should have regard to sections 5, 9, 10 and 59 of the *Child Protection Act 1999* and remember sections 6 and 83 for indigenous children.

(3) Assessment of Department's material and witnesses to be called

- **Putting the Department and the parent to proof- you should not be running their respective cases for them**

It is important in your preparation to identify those witnesses you want to cross examine.

It is often the case that the Department has not done this identification process themselves so it is a good idea to get on to the Court Coordinator at an early stage to talk to them about the witnesses they are calling.

It is not your job to prove the Department's case.

If you are not getting anywhere with the Court Coordinator then contact the relevant Crown Law officer and discuss your requirements with them directly. It is not uncommon for you to know more about the matter than Crown Law.

- **What evidence is the witness going to give and what relevance is their evidence to your ultimate case theory?**

For example you submit that the parent is not able because the children have extreme behavioural problems. The foster carer can give first hand evidence of these extreme behavioural problems. Their affidavit does not depose to this so you may want to question the foster carer about this in more detail.

- **Rules of evidence**

Whilst the court can go beyond the strict rules of evidence to inform itself as it sees fit it is still advisable in your preparation to use the rules to assist focussing your cross examination and submissions.

(1) Best Evidence Rule

The Best Evidence Rule requires that the best evidence available to be used to prove a fact eg. original documents rather than photocopies.

In child protection matters you should call for the original source documents for a child protection history especially where the matter is controversial and not necessarily rely on a summary of a child protection history.

For example best evidence is that given by the person to whom a statement was made rather than an affidavit saying that "it is recorded in the departmental files that the parent said X to Child Safety Officer B".

Best evidence is what the witness can say they have seen (or read in relation to some documents) and heard.

Original/Direct evidence is evidence of the facts in issue and may include:

- the testimony of a witness who witnessed the event
- the production of a document which tends to establish that fact in issue.

(2) Hearsay Rule

Hearsay evidence consists of evidence someone else has said or a document has recorded about an event.

For example "he told me so and so said/or did..." This statement is generally inadmissible as to providing the truth or otherwise of what so and so said/or did.

It can be used when it is difficult to bring the evidence before the court by direct means- it does carry less weight however.

Case of *Taylor v L ex parte L* (1988) 1 QDR 706 at 713,714:

Emphasising the court's need for caution when allowing hear hearsay into evidence and quoting from legal precedent the judge adopted the following statement:

"I agree that the liberty to tender hearsay could be abused. I cannot imagine that any judge would allow a grave allegation against a parent to be proved solely by hearsay, at any rate in a case in which direct evidence could be produced..."

(3) Rule of Relevance

The most essential rule is relevance. The Department should put into an affidavit everything that is relevant to the issues at hand. There are no legal formulas to determine relevance.

Relevance is a question of degree. For example in child protection matters affidavit material from the Department should focus on the protective concerns for the children and not solely on the parent's relationship with the Department.

The primary rule of admissibility is that any evidence sought to be led must be relevant to an issue in question. If it is not relevant it is not admissible. To be admissible an item of evidence must be directly or indirectly relevant to a fact in issue.

The Court retains a discretion to exclude evidence which is more prejudicial than probative. However the courts paramount consideration is expressed in s 104 of the *Child Protection Act 1999* and the Children's Court has the ability to receive evidence in a manner that it thinks is appropriate under section 105 of the *Child Protection Act 1999* which means that in the child protection jurisdiction the exclusion of evidence is rare.

(4) Expert Evidence

When obtaining evidence from experts you should ask what the applicant seeks to prove by calling the witness.

For example when seeking to prove physical harm to a child the examining medical practitioner should record their observations (eg bruising) as well as an opinion (eg non accidental, therefore suspects child abuse) and their rationale for their conclusion.

Opinion evidence is only admissible if it pertains to an area of professional expertise. If the court accepts an opinion on a layperson's knowledge and without expert assistance then the evidence is not professional expertise and is not admissible. In child protection matters however some evidence may not be

admissible but may be admitted. Proper expert opinion should be called where possible.

For example:

- The paediatrician who examined the child is able (in their report/affidavit) to indicate their findings on examination, diagnosis, indicated treatment and prognosis
- The paediatrician may also be able to give an opinion on various other medical issues within their speciality
- The paediatrician would not normally be able to offer opinions in relation to matters not within their speciality (eg psychiatry)
- If psychiatric evidence is needed then consideration should be given to obtaining the expertise of a psychiatrist.

[Please note that all this material on evidence has been taken from the document prepared by Crown Law for the Court Coordinator Training on Advanced Affidavit Writing Feb 2005]

(4) Preparation of Submissions

(1) Relevant Background Information

- The starting point in child protection proceedings is s53(2) of the *Child Protection Act 1999*:

A child protection order is made to ensure the protection of a child the (Court) decides is a child in need of protection

- In determining what order to make, the Court must regard the welfare and best interests of the child as paramount – s104.
- Section 105 **Evidence** of the *Child Protection Act 1999*:

- (1) in a proceeding, the Children's Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.
- (2) If, on an application for an order, the Children's Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

- Section 5 **Principles for Administration of Act** of the *Child Protection Act 1999*:

"(1) This Act is to be administered under the principle that the welfare and best interests of a child are paramount.

Example—

The Chief Executive is making a decision under this Act, concerning a child, in circumstances where there is a conflict between the child's welfare and best interests and the interests of an adult caring for the child. The conflict must be resolved in favour of the child's welfare and best interests.

(2) Subject to subsection (1), this Act is also to be administered under the following principles—

- (a) every child has a right to protection from harm;

- (b) *families have the primary responsibility for the upbringing, protection and development of their children;*
- (c) *the preferred way of ensuring a child's wellbeing is through the support of the child's family;*
- (d) *powers conferred under this Act should be exercised in a way that is open, fair and respects the rights of people affected by their exercise, and, in particular, in a way that ensures—*

 - (i) *actions taken, while in the best interests of the child, maintain family relationships and are supportive of individual rights and ethnic, religious and cultural identity or values; and*
 - (ii) *the views of the child and the child's family are considered; and*
 - (iii) *the child and the child's parents have the opportunity to take part in making decisions affecting their lives;*
- (e) *if a child does not have a parent able and willing to protect the child, the State has a responsibility to protect the child, but in protecting the child the State must not take action that is unwarranted in the circumstances;*
- (f) *if a child is removed from the child's family—*

 - (i) *the aim of authorised officers' working with the child and the child's family is to safely return the child to the family if possible; and*
 - (ii) *the child's need to maintain family and social contacts, and ethnic and cultural identity, must be taken into account;*
- (g) *a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;*
- (h) *if a child is able to form and express views about his or her care, the views must be given consideration, taking into account the child's age or ability to understand;*

(i) if a child does not have a parent able and willing to give the child ongoing protection, the child has a right to long-term alternative care."

- A "**child in need of protection**" is defined in s10 as a child who:
 - (a) *has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and*
 - (b) *does not have a parent able and willing to protect the child from the harm*
- "**Harm**" is defined in s9 as;
 - (1) *Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.*
 - (2) *It is immaterial how the harm is caused.*
 - (3) *Harm can be caused by –*
 - (a) *physical, psychological or emotional abuse or neglect; or*
 - (b) *sexual abuse or exploitation.*

(2) Factors to consider before making a child protection order

The relevant mandatory provisions that the Court must be satisfied of before making a child protection order are detailed at s59(1) of the *Child Protection Act 1999* and those matters are dealt with under the following headings:

(1) The child is a child in need of protection and the order is appropriate and desirable for the child's protection

- The child is a child in need of protection as at the very least, at unacceptable risk of suffering harm if a custody order is not made due to;

"Harm" is defined in s9 as:

Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.

It is immaterial how the harm is caused.

[This means that there is no requirement for a direct casual link to be established between any act or omission on the part of the child's parent, carer or any person and the significant detrimental effect on the child.]

Harm can be caused by –

- (c) physical, psychological or emotional abuse or neglect; or*
- (d) sexual abuse or exploitation.*

Refer to Appendix A for further consideration of the concepts of harm, significant harm and unacceptable risk. **[Source: Caxton Lawyers Practice Manual]**

List relevant factual matters and summarise the evidence that establishes the relevant factual matters

- There is no parent able to protect the child

List relevant factual matters and summarise the evidence that establishes the relevant factual matters

- The order is appropriate and desirable for the child's protection

List relevant factual matters and summarise the evidence that establishes the relevant factual matters in relation to the order sought

(2) There is a case plan for the child

- that has been developed or revised under part 3A

-Consider whether or not there has been delays in the case planning

-Consider whether or not the Department has not delivered on what they said they were going to do in terms of the case planning

- An child protection order should not be made without a case plan being filed

-Consider whether a review report under section 51 X has been prepared and filed in proceedings

- that is appropriate for meeting the child's assessed protection and care needs

-Does the case plan actually assist the parent in addressing the protection and care needs of the child?

List relevant factual matters and summarise the evidence that establishes the relevant factual matters in relation to the order sought

(3) A court ordered conference has been held:

- *"A Court ordered conference was held between the parties and their respective legal representatives on _____."*
- Anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties under section 71 of the *Child Protection Act 1999*.

(4) The child's wishes or views, if able to be ascertained, have been made available to the court:

- *"The child is too young to express wishes or views."*

Or

- *"It is submitted that the report of _____ provides the basis upon which any protection order should be made. Significantly, at paragraph _____"*

(5) The protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms:

- In this regard, the alternatives to the Court are:

(1) to make no order

In the absence of a child protection order then jurisdiction concerning where the child should live would be in the family law.

Or

- (2) make an order of the kind referred to in sub-sections 61(a) or (b) of the *Child Protection Act 1999*

Section 61 of the *Child Protection Act 1999* provides that the Children's Court may make any of the following child protection orders it considers to be appropriate in the circumstances—

(a) an order directing a parent of the child to do or refrain from doing something directly related to the child's protection (**Directive order- 1 year - section 62**) ;

(b) an order directing a parent not to have contact, direct or indirect—

- (i) with the child; or
- (ii) with the child other than when a stated person or a person of a stated category is present;

(c) an order requiring the chief executive to supervise the child's protection in relation to the matters stated in the order (**Protective Supervision Order- 1 year - section 62**);

(d) an order granting custody of the child to—

- (i) a suitable person, other than a parent of the child, who is a member of the child's family; or
- (ii) the chief executive (**Short term custody order-up to 2 years - section 62**);

(e) an order granting short-term guardianship of the child to the chief executive (**Short term guardianship- up to 2 years - section 62**) ;

(f) an order granting long-term guardianship of the child to—

- (i) a suitable person, other than a parent of the child, who is a member of the child's family; or
- (ii) another suitable person, other than a member of the child's family, nominated by the chief executive; or
- (iii) the chief executive (**long term guardianship- must be the end of the day before the child turns 18 years - section 62**)

For long term guardianship section 59 (4) of the *Child Protection Act 1999* further provides that the court must be satisfied-

- (a) *there is no parent able and willing to protect the child within the foreseeable future; or*
- (b) *the child's need for emotional security will be best met in the long-term by making the order.*

Section 59 of the *Child Protection Act 1999* also provides that before making a child protection order granting custody or guardianship to a person other than the chief executive the court must have regard to any report given or recommendation made to the court by the chief executive about the person including a report about the person's criminal history, domestic violence history and traffic history.

95 Report about person's criminal history etc.

(1) *Subsection (2) applies if—*

- (a) *the chief executive intends to give a report or make a recommendation to the Childrens Court, or is asked or required by the court to give a report or make a recommendation to the court, about—*
 - (i) *a child's parents; or*
 - (ii) *a person to whom the court is considering granting custody or guardianship of a child; or*
- (b) *the chief executive proposes to place a child who is in the chief executive's custody or guardianship in the care of a person, other than an approved foster carer, who has agreed to be the child's carer (the **proposed carer**).*

(2) *For ensuring the chief executive or court has all relevant information the chief executive or court needs for assessing the suitability of a person to have the custody, guardianship or care of a child who is found to be a child in need of protection, the chief*

executive may ask—

- (a) the commissioner of the police service to give the chief executive a written report about the criminal history and domestic violence history of—*
 - (i) the parents, person to whom the court is considering granting custody or guardianship or an adult member of the parents' or person's household;*
or
 - (ii) the proposed carer or an adult member of the proposed carer's household; and*
- (b) the chief executive for transport to give the chief executive a written report about the traffic history of the parents, person to whom the court is considering granting custody or guardianship of the child or proposed carer.*

(3) Also, if an authorised officer is investigating an allegation of harm or risk of harm to a child or assessing a child's need of protection under section 14, the chief executive may—

- (a) ask the commissioner of the police service to give the chief executive a written report about the criminal history and domestic violence history of—*
 - (i) a parent of the child; or*
 - (ii) an adult member of a parent's household; or*
 - (iii) an adult against whom the allegation of harm or risk of harm has been made; and*
- (b) ask the chief executive for transport to give the chief executive a written report about the traffic history of a parent of the child.*

(4) The commissioner of the police service or chief executive for transport must comply with a request under subsection (2) or (3).

(5) Subsections (2)(a) and (3)(a) apply to the criminal history or domestic violence history in the commissioner's possession or to which the commissioner has access.

(6) Subsection (4) applies despite the Transport Operations (Road Use Management) Act 1995, section 77

(7) Subsection (8) applies to a person in relation to whom the commissioner of the police service must give a report mentioned in subsection (2) or (3).

(8) Also, the commissioner may give the chief executive a copy of, or extract from, the commissioner's records in relation to—

(a) the commission or alleged commission of the following offences by the person—

- (i) a personal offence against anyone;*
- (ii) an offence against the Drugs Misuse Act 1986;*
- (iii) an offence against section 162, 164, 166, 167 or 168;32 or*

(b) an application for a protection order under the Domestic and Family Violence Protection Act 1989 in which the person is an aggrieved or respondent under that Act.

List relevant factual matters and summarise the evidence that establishes the relevant factual matters

Refer to the relevant affidavit material, expert reports (including Social Assessment Report) and criminal/domestic violence and traffic histories

(6) Recommendation

"The Separate Representative supports a child protection order granting....."

[Please note that these draft submissions were prepared with the assistance of a pro forma provided by Bruce Thiele]

Appendix A: Harm, Significant Harm and Unacceptable Risk

The question of what constitutes "harm" was the subject of much comment by the then Honourable Members of Parliament during the second reading speech debate of the then, *Child Protection Bill 1998*. In her speech in reply in the second reading speech debate, the then Minister for Families, Youth and Community Care, the Honourable A Bligh stated (Hansard Volume 349, 1st Session of the 49th Parliament, page 550-51):

"Members have raised questions about the concept and definition of "harm" in the bill and how to determine harm, who will determine harm and what is "significant" harm. It is important to note that the key concept of this Bill when acting to protect child is not harm in itself, but rather an assessment of whether the child is in need of protection. The definitions incorporate both "significant harm" and risk of significant harm" and not having a parent able and willing to protection the child from that harm. When a parent can and will protect the child, for example, from further sexual abuse by a relative, that child is not in need of protection and there is no justification for action under this Bill.

1. Significant harm

It is important to note that the detrimental effect must be of a significant nature. This necessarily involves some assessment of the circumstances of the particular case including, for example:

- the age and vulnerability of the child;
- the immediacy and level of the harm;

- any previous involvement with the Department of Child Safety or child protection history;
- the availability of extended family or other support;
- the willingness of the family to acknowledge the child protection concerns and to work to address them.

The issue of “significant harm” was also commented upon by the then Minister for Families, Youth and Community Care, the Honourable A Bligh stated in her speech in reply in the second reading speech debate (Hansard Volume 349, 1st Session of the 49th Parliament, page 550-51):

“In relation to harm, “significant” has its normal meaning. It will be one that has to be assessed in a professional basis by officers of the department and by the courts. I should inform members that the word “significant” was actually added after consultation. A number of people felt that we were providing fairly extensive and serious powers to both police officers and officers of my department and we should make sure that a substantial hurdle has to be jumped before those extensive powers could be used. “Significant” was added to make it clear that those sorts of intrusive powers can be used only where serious and significant harm is likely to occur.

As I said, it is ultimately a professional judgement that will be overseen by the court, which will decide whether the level of harm warrants one of the orders available to the court under the Act. But the concept of “significant harm” is used in the United Kingdom’s Children Act 1989, and significant case law is actually building around the use of the term “significant”. That case law will guide authorised officers and the courts.”

The case of Humberside County Council v. B [1993]1 FLR 257, decision of the English High Court, Family Division considered the section of the United Kingdom legislation which uses the term "significant harm". At page 263 Booth J considered the Counsel's submission on the meaning of "significant harm":

"Significant harm was defined by Miss Black, in accordance with dictionary definitions, first as being harm that the court should consider was either considerable or noteworthy or important. The she expressed it as harm which the court should take into account in considering a child's future. I think that is a very apt and helpful submission. There is of course in the circumstances of this case no question that N is presently suffering any harm in the care of Mrs H....

The submission is made on behalf of the appellant that whether or not a child may be likely to suffer significant harm must be seen in the context of all of the circumstances of the case and in relation to the particular child with whom the court is concerned. The child may be exceptionally vulnerable in one way or another. For example, if a child suffers from brittle bones then a push or a slap might be of great significance, whereas in the case of a child who does not so suffer it may be a minimal incident."

At page 265 Booth J indicated de accepted Counsel's submission:

"I accept "significant harm" has the meaning that Miss Black suggests, and is harm which the court should take into account in considering N's future."

If the harm is assessed to be not significant the Department of Families may respond by providing protective advice to a notifier, parent or carer or by working voluntarily with the family to meet the child's protective needs.

2. *Unacceptable risk.*

[1.45] There has been much discussion of the assessment of current or future risk of harm to a child being the "unacceptable risk" test in the Family Court. The High Court in the case of In the Marriage of M and M [1988] 166 CLR 69, when considering the issue of access (as it then was) in light of allegations of sexual abuse, stated at page 78:

"To achieve a proper balance, the test is best expressed by saying that a court will not grant custody or access to a parent if that custody or access would expose the child to an unacceptable risk of sexual abuse."

The direct inclusion of this term in section 10 of the *Child Protection Act 1999* alleviates any need for discussion about its appropriateness as a test. What it actually entails may be a little more difficult to define.

Guidance may again be sought from the family law jurisdiction and in the case of In the Marriage of M and M the High Court said it was not necessary for the court to determine definitively the disputed allegation of sexual abuse. In that case it was stated that an allegation of sexual abuse does not alter the court's paramount consideration of whether the order sought is in the best interests of the child. The court viewed this as, at page 76:

"a wide-ranging discretionthat cannot be qualified by requiring the court to try the case as if it were no more than a contest between the parents to be decided solely by reference to the acceptance or rejection of the allegation of sexual abuse on the balance of probabilities."

The High Court said that the court must determine whether there was a risk of abuse occurring if custody or access were granted and assess the magnitude of that risk. This would involve some assessment of the likelihood or possibility of occurrences that would have a detrimental impact on the child's welfare.

A consideration of the magnitude of the risk may involve a consideration of the type of order requested for example, an order for supervised contact may pose less of a risk. However, this would also have to involve consideration of the risk of emotional or psychological harm to the child.



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Educating future practitioners of social work and law: Exploring the origins of inter-professional misunderstanding

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Abstract

Lawyers and social workers working with disadvantaged populations frequently collaborate to assist clients as they navigate such bureaucratic institutions as child dependency courts. Collaboration in the child welfare field is often characterized by conflict as professionals negotiate roles, duties, and varying ethical responsibilities. One overlooked cause of this conflict involves the difference in how practitioners are socialized. This descriptive, exploratory study describes how the graduate education experiences of future lawyers and social workers differ in both content and process. Eight law and social work classes were observed. The results indicate that the education of lawyers and social workers differs substantially in classroom environment, student–professor interactions, educational techniques, and explicit reference to group process. These differences have implications for the education of future professionals with respect to understanding authority, discretion, and collaboration.

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1. Introduction

Lawyers and social workers working with disadvantaged populations collaborate often to assist clients in gaining access to resources and in supporting clients as they navigate bureaucratic institutions. This collaboration is often characterized by conflict as professionals negotiate roles, duties, and varying ethical responsibilities. The conflict between lawyers and social workers received some attention by researchers over a decade ago who looked at division of duties and attitudes as causes of the problem (Fogelson, 1970; Russell, 1988; Sloane, 1967; Smith, 1970). However, little current empirical research attempts to explain this conflict.

The lack of current research is especially evident in the area of child dependency. Child welfare and legal professionals involved in the adjudication of dependency cases have been required to collaborate more frequently since the passage of the 1980 Adoption Assistance and Child Welfare Act (AACWA) and 1997 Adoption and Safe Families Act (ASFA). This federal legislation expanded judicial oversight of child welfare agencies, and therefore increased the number of hearings necessary to settle a child dependency case. Given the need for more collaboration, it is surprising that so little research is available on the working relationship of lawyers and child welfare workers who specialize in child dependency cases today.

It is important to study the challenges faced by child welfare workers and lawyers in fostering collaboration for at least two main reasons. First, the conflicts between the members of these two professions can prevent the system from adequately meeting the needs of children and families. These conflicts can cause delays and prevent the judge from hearing all of the information necessary to make the best decision (Weinstein, 1997). Second, conflicts may contribute to high levels of stress and staff turnover for members of both professions (Carnochan et al., 2002).

There are many potential causes of tension between lawyers and child welfare workers such as role conflict, attitudes about one another's profession, and the nature of the work itself. Differences in professional cultures are also a potential source of conflict. An understanding of professional culture among inter-disciplinary workgroups can facilitate collaboration (Meyerson, 1994; Russell, 1988).

One approach to studying these differences is to focus on professional education programs. While in graduate school, students begin to understand and practice their roles. The students' relationships with one another and the professor, their terms of address, their use of language, and their dress are all factors that can contribute to the emergence of a professional identity. In addition to the technical information taught in classes, the organization of the classroom experience communicates ideas about status, beliefs about the roles of colleagues within and outside of the profession, and expectations about the amount of autonomy and discretion they will have as professionals.

Two research questions guided this study: 1) How do the educational processes of social work and law school differ? 2) To what extent do the professional training experiences of lawyers and social workers reflect distinct cultures that may influence their future interactions?

2. Literature review

The literature review for this study is divided into three sections. Conflicts between social workers and lawyers are reviewed in the First section. The Second section is a brief overview of organizational culture and social identity theories that are relevant to this study. The Last section highlights reasons for focusing on the artifacts level of organizational culture.

2.1. *Conflicts between lawyers and social workers*

The conflict between lawyers and social workers received some attention by researchers over a decade ago who looked at division of duties and attitudes as causes of conflict (Brennan & Khinduka, 1971; Fogelson, 1970; Russell, 1988; Sloane, 1967; Smith, 1970; Weil, 1982). Brennan and Khinduka (1971) developed a list of tasks to be completed in a dependency case, and surveyed lawyers and social workers about who assumes primary responsibility for each task, who should assume primary responsibility, and what each expected the other professional group to say about who should complete a specific task. As hypothesized by the researchers, social workers and lawyers disagreed significantly about who was responsible for several duties. Russell (1988) repeated this study with a modified version of the Brennan and Khinduka scale and found similar results, reflecting the persistence of these conflicts.

Other empirical studies looked at attitudes of members of one profession towards the other (Fogelson, 1970; Sloane, 1967; Smith, 1970; Weil, 1982). For example, social workers viewed lawyers as overly analytical, inflexible, and uncaring (Fogelson, 1970; Sloane, 1967), and lawyers saw social workers as too emotional and unprofessional (Sloane, 1967). It is not clear how these attitudes have changed in the past three decades. Is it possible that they have shifted in response to the dramatic increase in the number of women pursuing legal careers? No current research on the attitudes of lawyers and social workers towards one another was found for this literature review.

Several recent articles have noted the high degree of conflict between child welfare and legal professionals (Herring, 1993; Johnson & Cahn, 1992; Weinstein, 1997). While Herring (1993) and Johnson and Cahn (1992) presented research on models of collaboration designed to strengthen professional relationships between lawyers and social workers, they do not explain the causes of this conflict, and make only passing reference to organizational culture. Similarly, Weinstein (1997) reviews the literature and her own experiences as a lawyer to conclude that the cultural differences between social workers and lawyers include: 1) attitudes about the value of an adversarial process; 2) future versus past orientations when thinking about cases; and 3) beliefs about use of professional discretion in making decisions. However, no empirical research on differences in professional culture was presented.

2.2. *Social identity and organizational culture theory*

Social identity theory helps to explain how people become associated with various group memberships, and what the meaning of that association is for the individual. This

discussion of social identity has been summarized from Hogg and Terry (2001). They note that people adjust their perceptions and behavior according to group norms, and differentiate themselves from members of other groups by observing how groups exhibit different norms. Hogg and Terry (2001) describe self-categorization, which is the process of becoming part of the group:

This transformation of the self is the process underlying group phenomena, because it brings self-perception and behavior in line with the contextually relevant ingroup prototype. It produces, for instance, normative behavior, stereotyping, ethnocentrism, positive ingroup attitudes and cohesion, cooperation and altruism, emotional contagion and empathy, collective behavior, shared norms, and mutual influence (p. 5).

Identifying with a group is advantageous in several ways: 1) joining a group perceived to be high status can contribute to increased self-esteem for members; 2) adopting group norms can reduce anxiety about how to feel, think, and behave by allowing individuals to conform to a standard; and 3) sharing group practices can encourage cohesion.

Hogg and Terry (2001) argue that "...professional and/or organizational identity may be more pervasive and important than ascribed identities based on age, ethnicity, race, or nationality" (p. 2). Since professional social identity can serve so many functions for individual workers and the workgroup, it is important to consider how professional identification and acculturation may be critical to the individual's success in the organization. How do the social identities of social work and law students evolve in graduate school and ultimately reflect their organizational work roles?

In contrast to social identity theory, organizational culture theory provides a framework for understanding variation in beliefs and rituals of workgroups and other associations. Schein (1992) defined organizational culture as being composed of the artifacts, espoused values, and tacit assumptions of an organization. Artifacts include observable objects such as clothing, office space, behaviors, events, and language. Explicitly stated principles, as described in the organization's mission statement, practice literature, and formal communications make up the espoused values. Tacit assumptions are the most difficult to detect, as they are the underlying meanings associated with the artifacts and values.

Given that outsiders to any group typically encounter the other group's artifacts and espoused values first, and misunderstandings often occur when outsiders misinterpret the meaning of another group's artifacts, this study examined how the artifacts and espoused values of professional training programs for lawyers and social workers differ.

2.3. Artifacts and organizational culture

Schein (1992) recommended beginning an assessment of an organization's culture by describing its artifacts. Schein defined artifacts broadly to include "...dress codes, desired modes of behavior in addressing the boss, the physical layout of the workplace, how time and space are used, what kinds of emotions one would notice, and so forth" (p. 151).

While I failed to locate any studies on the artifacts level of professional culture for child welfare workers or lawyers, Gummer (1998) reviewed the literature on the importance and meaning of dress in organizations. The review discusses two studies, one of nurses and the

other of administrative support staff, and describes how dress helps to establish identity, express the degree of organizational control on the individual, and convey status to co-workers and clients. Workers invest significant time and money in creating an appropriate professional appearance since dress is an important symbol in performance of the social role (Gummer, 1998). This implies that one reason for looking at the artifacts level of organizational culture is that artifacts are very meaningful both to members of a given culture and to outsiders.

3. Methods

A qualitative, observation-based, exploratory study was designed to focus on the educational experiences of lawyers and social workers, and to understand the intangible aspects of social identity formation and evolution of professional cultures. As Lofland and Lofland (1995) wrote:

The central reason for undertaking this ongoing witnessing of the lives of others is the fact that a great many aspects of social life can be seen, felt, and analytically articulated only in this manner. . . The epistemological foundation of fieldstudies is indeed the proposition that only through direct experience can one know much about social life (p. 3).

The results demonstrate the value in studying professional culture through observation. As I sat in my first class for this study, I noticed the use of humor in the classroom and began to document it throughout that first observation and all subsequent ones. I found important differences in the content and process of the humor used in law and social work classes. Had I been conducting an interview study, I may not have thought to include questions about humor, and even if I had, it is unlikely that respondents would have been able to tell me accurately who makes the jokes in their classes and what exactly makes everyone laugh.

3.1. Sampling

In the spring of 2002, I observed two class meetings of two law and two social work classes, totaling eight observations. In the law school, one large lecture course (75 students) and one small seminar (25 students) were selected for the study. Both social work classes observed were small seminars (25 students). A law lecture class was chosen because first-year law students are required to take several of these large classes, and it is an important part of their professional training experience. In comparison, social work students are required to take only two large lecture classes, and all of their other classes are seminars of approximately twenty-five students or less.

The sampling plan was purposive. I selected classes based on the focus of this study (lawyers and social workers who work with child dependency cases), and on the advice of key informants in the law and social work schools who recommended classes relevant to the study.

I observed each class twice to prevent gathering atypical data. For example, I observed one law class the day after spring break, and several students were unprepared when the

professor called on them. When I made my second observation, all students who were called on were prepared to summarize the cases being discussed that day. If I had only seen the first class, I might have concluded that lack of preparation was a classroom norm.

An observation log (see Appendix) was developed and completed at each observation to insure consistency of data collected. The final page of the observation log was reserved for “subjective impressions and data not included elsewhere” to allow space to note any unexpected or unusual data.

3.2. *Data collection*

The observation log was developed through a process of “global organization” as described in Lofland and Lofland (1995). Relying on both a general body of knowledge about culture and ethnography and a specific body of knowledge from the literature review completed for this study, I created a log divided into broad categories such as settings, classroom norms, and student qualities. Each log also began with a cover sheet describing the objective facts about the class such as start time and number of students present.

Due to time constraints and limited resources, data was collected at one law and one social work school in the San Francisco Bay Area (names of schools, professors, and courses are excluded for reasons of confidentiality). These sites were selected for the study because of their prominence as training programs for many lawyers and social workers practicing in the Bay Area.

In keeping with Schein’s (1992) model of organizational culture described in the literature review, the study focused on observing cultural artifacts and espoused values. The artifacts studied included, but were not limited to: humor in the classroom, teacher–student interactions, terms of address, use of language, dress, layout of classroom, number of students in class, credentials of the teacher leading the class, time class is scheduled to begin versus actual start time, length of class, breaks offered during class, eating and drinking during class, and type of classroom instruction (i.e. lecture, open discussion, breaking into small groups, etc.).

Classroom data was collected through direct observation. Attempts to increase the consistency of the results from each observation were made through documenting observations in the same way each time, and by having one researcher complete all the observations. Since memory can be an unreliable data source, notes were taken while sitting in classes, not afterwards. I checked the notes after each class for accuracy and comprehensiveness while the memory of the observation was still very accessible to the researcher.

3.3. *Analysis*

Since this is a qualitative study, analysis was an inductive process done through careful reading and sorting of the data collected. I read each log twenty to thirty times, identifying categories of data as I went along. For example, all comments that described student participation were placed into one category. Then all pieces of data that fit under a particular theme were typed into a word processor. This categorized data was also read multiple times. At this stage of the analysis, I asked myself questions such as, “What do I

see going on here [in a given category]?” (Lofland & Lofland, 1995:186). Based on this type of analysis, I developed propositions about the social environment of the classroom. In comparing the data, I looked for significant similarities, differences, and emergent themes in the professional training experiences of lawyers and social workers.

3.4. *Limitations*

Several factors limited the design of this study. As classes continued at their usual pace while I took notes, it is possible that I missed some important information while writing. It is likely that another researcher would have chosen to record different pieces of information than I did. In future observational studies, it would be ideal to have a team of observers take and compare notes to address these limitations in the method. Though I made efforts to approach both social work and law classes as an outsider, as a social work student, it is inevitable that my perspective was influenced by my own professional identity. Due to time and budget constraints, I was unable to observe classes in more than one school, or to observe more classes, so it is possible that the classes or schools I observed were atypical. As with any observational research, there is a possibility that participants behaved differently *because* they were being observed, so that is also a limitation of the study. Finally, because this study did not include surveys or interviews, I cannot comment on what kind of students are drawn to law and social work. It is likely that the individuals in a given profession have some common characteristics that contribute to the group's culture.

4. Findings

The findings on the education of lawyers and social workers are reported in five areas: 1) classroom environment; 2) student–professor interactions; 3) educational techniques; 4) explicit references to the group process; and 5) response to my presence as an observer. Before describing differences in law and social work education, two similarities should be noted. First, the dress was casual in both law and social work classes. Second, students in both disciplines appeared to be focused on the material being presented, and most students took notes and/or participated in discussion when appropriate. Only a few students in each of the classes appeared to be engaging in sidebar conversations or unrelated activities.

4.1. *Classroom environment*

The social work classes selected for this study were both first-year practice classes, each with an enrollment of approximately 25 students. One of the courses was for students specializing in child welfare. Both of these classes were held in one-level seminar rooms with moveable desks and chairs. During my observations, both of these classes had their desks and chairs arranged in a semi-circle. In one of the classes, there was an outer and inner ring of chairs. Chairs were moved to establish a scene for a role play in one of the classes. In both classes, the professor alternated between standing at the front of the room, sometimes writing at the chalkboard, and at other times sitting in the semi-circle at the same kind of desk occupied by the students. Seats were not assigned in either social work class.

One of the law classes was a practice seminar for second- and third-year students specializing in family law. This seminar had about 25 students, and was also held in a one-level seminar room. However, the desks and chairs were fixed, so the room was permanently arranged in a semi-circle containing two rows. The professor in this seminar class either stood at the chalkboard or sat at an instructor's desk. The other law class was a lecture with approximately 75 first-year students. This classroom included about fifteen rows arranged into three sections, and the classroom was multi-level, like a theater. The professor stood on an elevated platform and alternated between standing at the chalkboard and at a podium. Seats were assigned in the law lecture class, but not in the seminar.

4.2. Student–professor interactions in social work classes

In the social work classes I observed, students and the professor divided air time roughly equally. The typical professor's response to a student question or comment was a paraphrase of the remark and a clarifying or information-gathering question to the specific student or the group. For example, when a student described the assessment tools used at her field placement, the professor responded by asking the student how the use of those tools impacted her work with clients. Following that exchange, other students were encouraged to share their experiences with similar assessment tools. All participants waited for one another to finish speaking before beginning to speak. Students were not called upon unless they signaled a desire to speak. The exception was a role play exercise in which too few students volunteered to participate, and the professor assigned roles.

Humorous comments resulting in group laughter were more equally initiated by professors and students in social work classes than in law classes. The humorous comments would have been understandable to an outsider, were lacking in sarcasm, and seemed intended to ease anxiety. For example, a social work professor attempted to decrease apprehension about an upcoming assignment by joking about it. Another occurrence of group laughter took place during a role play when students used the words "hippie" and "commune" in a clichéd manner.

4.3. Student–professor interactions in law classes

In law classes, the professor used the majority of the air time. The typical professor response to a student question or comment was a "Yes, but..." An example of this was when a student summarized a case, and the professor said, "Yes, correct, you said almost everything there is to say about this case, but let me add..." Participants occasionally interrupted one another's speech in law classes, and students were regularly called on without having volunteered.

The humorous comments resulting in group laughter were most often initiated by the professor and frequently included content specific to legal concepts. These jokes often contained some elements of sarcasm. One example of a law school joke was when a professor commented on whether or not a question about a case was a fact of law or a *de novo* review. A second example of law school humor was a professor-initiated joke about the dissolution of an unmarried, cohabitating couple: "They lived, the loved, they left; that's it".

Fig. 1 summarizes these differences in professor–student interactions in law and social work classes.

4.4. Educational techniques in social work classes

In social work classes, the main educational process was a highly interactive discussion facilitated by professor. In one social work class observed, role play was also incorporated into the educational process. Personal field experiences of both professors and students were intertwined with reading material and professor-generated factual content. For example, the professor in one class encouraged students to “use one another” as resources in gathering information about social work groups. Students were encouraged to share

	Law	Social Work
Division of “air time” between professor and students	Professor spoke for majority of class.	Students and professor appeared to be sharing air time roughly equally.
Most frequent manner of interaction	Professor called on students who did not volunteer to participate and paused lecture to take questions.	Majority of class time was spent in discussion in which professor acted as facilitator of dialogue.
Most frequent content of interaction	Factual question or comment	Comments and questions about current and past field experiences as related to topic of discussion.
Does professor call on students who do not volunteer?	Yes, in all classes observed.	Yes, in one class meeting observed, for a role play.
Do speakers interrupt one another while speaking?	Occasional interruptions were observed.	No interruptions were observed.
Most frequent professor response to student comment or question	“Yes, but...”	Paraphrase of student question or comment, then additional question to individual student or class intended to elicit further information.
Most frequent initiator of group laughter	Professor	Fairly evenly divided between professor and student
Most frequent content of humor	Professional jokes featuring references difficult for outsider to understand. Some sarcastic comments.	Situational humor (i.e. awkwardness of doing a role play) & sharing of humorous personal experiences.

Fig. 1. Student–professor interaction in law and social work classes.

their experiences as leaders of groups. Students were asked to describe personal responses to and feelings about material being presented. The professor invited to talk about how they *felt* about using various assessment tools or assuming a part in a role play. In the social work classes observed, there was no written or oral testing of students' completion of reading assignments.

4.5. Educational techniques in law classes

The main educational process in large and small law classes was lecture by the professor. While the seminar featured more interactive discussion than the law lecture, the professor still spoke more often than students, and there was less discussion than in either of the social work classes observed. Another classroom technique was the professor's calling upon students to summarize readings or cases, then asking follow-up questions focused on facts of the case or "what if" scenarios. There was little emphasis on personal reactions to material, and there was little emphasis on the inclusion of personal experience. For example, when a professor began to tell a personal story related to the class discussion, he corrected himself by saying, "I digress..." When the professor called on students to summarize a case, they were implicitly tested or assessed in terms of how well they had completed the reading assignment.

Fig. 2 summarizes the differences in educational techniques in law and social work classes.

4.6. Explicit references to group process

In social work, explicit references to the group process seemed intended to facilitate group cohesion and student buy-in, whereas comments about group process in law classes tended to emphasize the professor's role as an authority figure. Fig. 3 provides some examples of explicit references to group process in law and social work classes.

Law	Social Work
Lecture	Discussion
Summarization of cases	Role play
Little intertwining of personal experiences with material.	Intertwining of personal experiences with material was emphasized.
Little emphasis on personal reactions to material.	Personal reactions to material were emphasized.
Students were "tested" on materials by being asked to summarize cases assigned as reading.	Students were not asked to summarize or report on reading assignments.

Fig. 2. Educational techniques in law and social work classes.

Law	Social Work
The professor called on a student by looking at the seating chart, and when the student raised his hand, the professor said, "You're in the wrong seat."	Class began with discussion of an upcoming written assignment. This discussion lasted for twenty minutes. During this discussion, the instructor said the goal was for all students to "do okay."
The professor told students that if they did not have the syllabus, they had "2 options: you can get it from the person on your right or the person on your left." Then the professor said he would e-mail it to students who could not get it from classmates.	At one point, the instructor wanted to share a student field experience that the student and professor had discussed privately during the instructor's office hours, and the professor asked the student's permission first.
The professor commented, "We have three minutes left and that's plenty of time to get through these [three] cases." (And then he did get through the remainder of the outline - three cases were covered in the remaining time.)	The instructor took a vote at the beginning of the class to decide whether the class should break into small groups to discuss the readings. The majority voted no.

Fig. 3. Explicit references to group process in law and social work classes.

4.7. Response to my presence as an observer

In both social work classes, the professor requested that I describe the study, and gave students some time to ask questions. In both classes, three to four students asked questions about the courses being sampled and the meaning of "professional culture". The tone of these interactions was friendly and curious. Also in both social work classes, the professors expressed a lot of interest in seeing the results of the study because it would give them some insight into their group process.

In the large law lecture class, the professor introduced the study and paused only briefly to determine if any students objected to my presence. In the law seminar, the professor allowed the students to ask questions that were similar to those asked by social work students, except that a few of the students also offered advice as to which classes I should visit. While the tone of these interactions was also very friendly, it was interesting to note that the law students provided advice, whereas none of social work students made such an offer. Though the results of the study were made available to both law professors, they indicated little interest in receiving them (in contrast to the enthusiastic interest of the social work professors).

5. Discussion

The results suggest that social work and law classes have distinct educational cultures, in which professors explicitly model a type of professional behavior to be emulated in the students' future practices. As mentioned in the Introduction, outsiders to any group typically encounter the other group's artifacts and espoused values first, and

misunderstandings often occur when outsiders misinterpret the meaning of another group's artifacts. Despite the study's limitations, preliminary implications about law and social work classroom culture can be drawn from the differences in the artifacts observed and provide insight into how emerging professionals understand authority and collaboration with others.

The social work classroom culture de-emphasizes the professor's authority, whereas law culture emphasizes it. This can be seen by the discussion-oriented nature of the social work classroom and the lecture-oriented nature of the law classroom. The social work professor emphasizes "using one another" to elicit information while the law professor provides information by him or herself. Similarly, the social work professor promotes the norm of student involvement in decision-making (e.g. voting about whether or not to break into small groups) while the law professor maintains more control over decision-making in law classes (e.g. determining when and how cases will be discussed — three cases in 3 min).

The differences in the types of classroom environments are also notable. The social work classrooms were generally smaller and included desks that could be arranged in a variety of different ways. The law classrooms featured fixed furniture, and the lecture class took place in a large, multi-level room. These classrooms appear to be designed or equipped to enhance the socialization experience most appropriate to each profession. Thus, social work classrooms can be used flexibly in order to facilitate interaction (i.e. chairs can be moved to make room for a role play), as in many social work meetings and case conferences. In contrast, law classrooms emphasize the professor's role as lecturer with all chairs permanently arranged to provide an audience, as in a courtroom.

The structure of authority relationships (student–professor) on campus can have major implications for the structuring of inter-professional relationships in practice. If, through the socialization experiences of the classroom, lawyers are oriented to the authority of the judge and Socratic process, and social workers are oriented to the collective authority of the group and the collaborative process, then it is not surprising to find them in conflict with each other in the child dependency courtroom. The research on social identity theory presented in the literature review suggests that these socialization experiences are likely to influence the emerging professional's development and his or her adoption of group norms.

6. Implications for teaching, practice, and research

6.1. Teaching

As noted in the Introduction, when professionals of various disciplines understand their differences in professional culture, they may work together more harmoniously (Meyerson, 1994; Russell, 1988). As students are trained in working with people from various ethnic, racial, and cultural groups, they should also be trained on working with professionals from other disciplines. Madden (2003) presents an excellent model for training social workers in key knowledge and skill areas necessary for collaborating with legal professionals. An understanding of socialization experiences of lawyers and social workers could complement Madden's recommended curriculum.

To bring the findings of this study more directly into the classroom, law and social work students could observe one another's classes using the log provided in the Appendix to document their findings. This would provide an opportunity to reflect on professional culture and strengthen critical thinking skills as students compare what they found with one another's observations and the material presented here. Students can also be trained to observe professional culture in case conferences, courtrooms, or other inter-disciplinary meetings, using a version of the observation log adapted for these settings.

6.2. Practice

The findings of this study are relevant for professionals working in child dependency as well as other practice areas characterized by frequent inter-professional collaboration including domestic violence, immigration, substance abuse, and family. Lawyers and social workers have been required to work together more frequently in these and other areas of practice due to case complexity and a policy environment that emphasizes inter-disciplinary collaboration (Madden, 2003).

This study has been presented at several inter-disciplinary conferences in California, partially through the support of the Bay Area Academy, a child welfare training institute. At most of these conferences, the study has been used as an "icebreaker" to help lawyers and social workers who may be experiencing inter-professional conflicts to reflect on their difficulties in collaboration. Conference participants seem to find the observations about their own socialization experiences humorous (as evidenced by the laughter that erupts during the presentation of this study), while gaining insight into the occasionally confounding behaviors exhibited by members of the other discipline. After the presentation, conference participants convene in small groups to discuss the findings and how they view differences in professional culture as contributing to difficulties in collaboration.

6.3. Research

As described in the Methods section, this study had a number of limitations. Future studies should include additional observations in more classes and schools, as well as an inter-disciplinary team of researchers to conduct observations. Research on combined M.S.W.–J.D. programs could provide a rich perspective on the socialization experiences of students who choose this specialized training. There is also a need for research on what precedes and evolves from these different classroom cultures: What are the characteristics of students who choose law or social work? How does classroom culture influence the professional culture created by lawyers and social workers in the workplace?

In addition to research on professional culture, more scholarship on inter-disciplinary collaboration would make a significant contribution to the literature. What problems do lawyers and social workers encounter in collaboration? How do difficulties in collaboration influence client satisfaction, case outcomes, or worker retention? Given the increase in inter-disciplinary collaboration, and the limited literature available about this topic, it is an essential area of focus for researchers, practitioners, and instructors.

Acknowledgments

I would like to express my gratitude to Amy D'Andrade, for assisting me in developing this research project, and to Michael J. Austin for his extensive editing of the manuscript.

Appendix A. Observation recording instrument

Note: in order to conserve paper, this is a condensed version of the log. It does not include the large blank spaces I used to record observations.

-
- Name of school being observed:
Title of course:
Date:
Time class is scheduled to begin:
Actual start time:
Time of instructor's arrival:
Length of class:
Scheduled end of class:
Actual end of class:
of times per week this class meets:
Number of students present:
Number of students enrolled:
of students arriving after class begins:
Title of person leading the class:
Degree held by person leading the class:
Gender of person leading the class:
Degrees, title, and gender of additional instructors, if applicable:
Describe student response to my presence:
- I. School qualities:
A. Appearance of building where class is held including number of stories, landscaping around building, and availability of parking near building:
B. Location of building on campus including proximity to center of campus:
- II. Classroom qualities:
A. Layout of room:
Diagram including X to indicate student seating and Y to indicate professor's location:
Written description of room's layout and seating chart:
B. Are seats assigned?
C. Type of lighting — note brightness, type of lighting, whether or not there is natural lighting, size of windows and view through them.
D. Other notable aspects of the classroom including type of floor, color of walls, presence of any posters or artwork, and subjective experience of the classroom:
- III. Student qualities:
A. Approximate age of students including presence of individuals who appear to be much older or younger than most other students:
B. Approximate female-to-male ratio:
C. Formality of dress of students, including presence of students whose appearance is significantly more or less formal than most other students:
D. Subjective feeling about student group:

IV. Classroom norms:

- A. If the class was over 1 h long, did the class take a break?
- B. Scheduled length of break:
- C. Actual length of break:
- D. Describe break activity including whether or not students interact with one another, whether or not most students leave the room, whether or not students continue working during break, and whether or not students use cell phones during break.
- E. Describe type of instruction — lecture, discussion, role-play, small group discussion, etc.
- F. Do students raise their hands to answer or ask questions? If not, is there another way in which students initiate participation?
- G. Does the instructor call on students who do not volunteer to participate?
- H. How does the instructor address students?
- I. Describe the behavior of the majority of the students including note-taking, engagement in activities not directly related to the classroom activity such as working in planners or reading non-course-related material, any disruptive behavior, apparent attention to the instructor, and eating or drinking in class.
- J. Does the instructor comment on any student behavior?
- K. Overall, to what degree are students responsive and cooperative? How competitive does the classroom seem?
- L. Humor — record incidences of group laughter, including humorous content, initiator(s) of group laughter, and tone of group laughter

V. Content:

- A. What is the general topic of the class?
- B. Describe any references made to “the profession” and professional expectations:

VI. Other subjective impressions not noted elsewhere:

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1. Background:

Child Safety Service Centres are busy places. The work done there is stressful, difficult and complex. Children, young people, their families, carers and placements and Departmental Officers all get stressed preparing to go to the Childrens Court.

Court Coordinators are a critical support for Departmental Officers preparing matters for Court.

Would you like to learn how you can support Child Safety Officers and Team Leaders to tell the story that the Childrens Court needs to hear? Would you like to share your experiences? Then let's go to "Law School"...

2. Socratic Workshop presented by Legal Aid Queensland:

Many of you may have seen Elle Wood (Reese Witherspoon) in "Legally Blonde" participate in the Socratic Workshop method. It is a time honoured tradition in American Law Schools, but let's face it everyone uses the format in their own special way and in their own University Degrees across a range of disciplines. The concept is a pretty simple one:

- * You complete some pre-reading **in your own time** - *please do because you will get more out of the Workshop!*
- * Legal Aid Queensland will present a Power Point bringing together the themes of the pre-reading and to help you build a structure **[60 mins]**
- * We will then consider a factual scenario using what has been covered in small groups **[45 mins]**
- * We will then all come back together to debrief and discuss some themes of what has been learned **[15 mins]**

3. What are the learning objectives for this Training Program?

You will:

- * appreciate the Human Rights framework for Child Protection litigation
- * appreciate the overall considerations of the Childrens Court in making Child Protection Orders
- * understand the importance of Affidavits and the presentation of "best evidence"
- * learn tips for gathering, assessing and presenting "best evidence"
- * learn tips about the preparation of Affidavits
- * participate in a Workshop Scenario

4. Here is your homework:

You will get a lot more out of the Workshop if you take some time to do some pre-reading. It means you will be able to immediately and actively engage in the Workshop.

What are the challenges of Lawyers and Social Scientists working together?

(Taylor, 2006) "Educating Future Practitioners of Social Work and Law: Exploring the Origins of Inter-Professional Misunderstanding" (Children and Youth Services Review)

But what is natural justice and procedural fairness?

(Bevan, 2008) "Practical Guide to Informed Administrative Decision Making" (Presentation by Queensland Ombudsman to the Queensland Law Society Government Lawyers Conference)

How do Lawyers think?

(Parrot, 2005) "Advanced Affidavit Writing" (Presentation by Crown Law to the Court Coordinator Training Program, February 2005)

(Moynihan, 2006) "Child Protection Hearings" (Presentation to QUT Advocacy Training)

Tip sheets?

- Tips for Affidavit Writing
- Tips About Evidence

The Child Protection Act 1999!!

In particular, Sections 5, 6, 9, 10, 59, 61, 83 & 159 and Part 3A, Divisions 1 to 5

5. Who are your Presenters and Workshop Facilitators?

Catherine Moynihan, Youth Advocate, Legal Aid Queensland:

Catherine has been a practising Solicitor since 1996 with a significant practice focus on the legal rights and representation of children and young people. For the last three (3) years, she has been the Youth Advocate at Legal Aid Queensland and has advocated for a refined focus for that position to the most marginalised and disadvantaged young people, particularly those in the Child Protection and Youth Justice systems. In 2008 she began a casework practice that is focused on the direct representation of children and young people in the care system. In 2009 she was successful in obtaining a Churchill Fellowship to travel to the United Kingdom and United States of America to look at advocacy and representation for children and young people in the care system. Catherine has a broad range of experience in the private practice, government and the community sector including:

- a casework Lawyer with the Youth Advocacy Centre, with a focus on casework in Juvenile Justice and Child Protection law with a client base of ten (10) – seventeen (17) years,
- a Lawyer advising and acting for a Local Authority in the United Kingdom (the equivalent of the Department of Communities), which included making Applications for Child Protection Orders,
- a Ministerial Advisor for the then Minister for Justice and Attorney General Mr Rod Welford, managing the parts of his portfolio that dealt with issues affecting children and young people, such as juvenile justice,
- a Policy Advisor in the Children's Commission and Department of Premiers and Cabinet working on the legislative reforms that arose from the 2004 Crime and Misconduct Commission's Inquiry into Foster Care; and
- Coordinator of Legal Aid Queensland's Child Protection Unit acting as a Separate Representative in Child Protection proceedings and responsibilities in community education and policy and law reform approaches to the legal issues in Child Protection law.

Kyle Terrance, Child Protection Unit, Legal Aid Queensland:

Kyle has been practicing in the Family Law and Child Protection area for over fifteen (15) years, having commenced employment as an Article Clerk in 1993 and being admitted as a Solicitor in 1995. During this time, Kyle's practice has focused on Family Law and Child Protection matters and she has been involved in many diverse and complex cases. She has over seven (7) years

experience acting in the role of Independent Children's Lawyer in the Family Law Courts and as Separate Representative in the Child Protection arena. Kyle's work history includes:

- Solicitor of Grant & Simpson Lawyers, Rockhampton;
- Principal Solicitor of the Central Queensland Community Legal Centre;
- Casework Lawyer with Legal Aid Queensland, Rockhampton;
- Principal Solicitor of Paul Hoolihan & Company, Solicitors; and
- more recently as a Casework Lawyer with the Independent Children's Lawyer Team and as Acting Coordinator of the Child Protection Unit at Legal Aid Queensland, Brisbane.

Leah Harrap, Child Protection Unit, Legal Aid Queensland:

Leah has been practicing in Youth Justice and Child Protection areas since 2001. After completing a dual Degree {Bachelor of Arts (Applied Ethics Major) / Bachelor of Laws} at the Queensland University of Technology, Leah's working life commenced with a focus on Youth Justice matters in both Queensland and ACT, with a particular focus on young people within the custodial context. After further post-graduate studies at the Australian National University, Leah was admitted as a Solicitor in 2003 and she continued her focus on children and young people through employment as a Senior Youth Justice Policy Officer within the ACT Government. At the commencement of 2005 Leah began work at the Department of Child Safety (as then known) ["the Department"] and until June 2008 she held the position of Court Coordinator at the Mermaid Beach Child Safety Service Centre – this period included a secondment to the Court Services Unit of the Department as a Court Services Advisor. Since June 2008 Leah has been employed as a casework Lawyer with the Child Protection Unit, Legal Aid Queensland, Brisbane.

Belinda Wilkie, Child Protection Unit, Legal Aid Queensland:

Belinda has practiced in a wide range of jurisdictions since commencing her Articles of Clerkship in 2001, though in more recent years her practice has been predominantly in the Child Protection jurisdiction. Since admission as a Solicitor, Belinda has also been involved in Community Legal Volunteer work, including legal advisory work for a number of years at the Women's Legal Service. Belinda's work history includes:

- KA Taylor Solicitor, primarily in Family Law & Domestic Violence;
- Director of Public Prosecutions as both an instructing clerk & ex-officio clerk;

Katrina was admitted as a Solicitor in 1998. Prior to becoming a Solicitor, Katrina worked with the Disability Services Council of the ACT. She was also employed as a Policy Adviser with Ina Torres Strait Islander Corporation, where she co-authored the National Torres Strait Islander Prevention of Child Abuse Campaign. Since becoming a Solicitor, Katrina has worked in private practice as a Family Lawyer. She has also been employed as Principal Solicitor at the Women's Legal Service and at the Aboriginal and Torres Strait Islander Women's Legal Service. Katrina commenced work in the Child Protection Unit of Legal Aid Queensland in 2005 and became Coordinator of the Unit in 2006. She has lectured in the areas of Family Law and Child Protection at Griffith University. Katrina is presently seconded to a project reviewing the participation of Legal Aid Queensland in and funding of Child Protection matters.

Tips about Evidence

Department of Communities
Child Court and Community
18-21 October 2018



Evidence is your friend!!!

Evidence in its broadest sense includes everything that is used to determine or demonstrate the truth of an assertion.

It is important from the outset to make a key connection between the work of a Departmental Officer and the work of a Lawyer:

The evidence you gather for a risk assessment is the evidence that is most likely relevant to be presented to the Childrens Court to support your case

The most fundamental rule that should concern you is whether a piece of evidence is relevant or not. There are no specific legal formulas to determine if something is relevant or not.

This goes back to your Case Theory - what are you trying to say and where are the pieces of evidence to be found to assist you in saying it?

In Child Protection law these rules are generous, but this does not mean that evidence gathering, assessment and presentation should be lazy.

Best Evidence Rule

This rule requires that the best evidence is to be used to prove a fact and that the best evidence is ***Direct Evidence***.

But! Can't we use ***Hearsay Evidence*** anyway? Section 105 of the *Child Protection Act 1999* - the Court "*is not bound by the rules of evidence, but may inform itself in any way that it thinks appropriate*".

Child Protection law has not dispensed with the rules of evidence! Rather, the Childrens Court of Queensland has a *discretion* to relax the operation of the rules of evidence as it sees fit in appropriate cases see :

- *Dale v Scott ex parte; Dale* (1985) 1 QdR 406 @ 413, 414; and
- In *Taylor v L*, Thomas J, emphasised the Court's need for caution when allowing hearsay material into evidence and stated:

"...I agree that the liberty to tender hearsay could be abused. I cannot imagine any Judge would allow a grave allegation against a parent be proved solely by hearsay, at any rate in a case in which direct evidence could be produced..."

Important Disclaimer!!

***The content of this Tip Sheet is just a simple guide -
it is not intended as an exhaustive exploration of case law or the rules of evidence.***

Important messages:

- It is best to get direct evidence
- Admission evidence is useful, but be careful how it is used
- Try to use hearsay as a last resort

What sort of Evidence is there?

The four (4) ways of putting written evidence before the Court are:

1. Direct Evidence
2. Admissions
3. Hearsay Evidence
4. Expert Evidence

1. **Direct Evidence**

Direct Evidence is when the person who saw/heard/smelt or felt the information *is the actual person* who provides the evidence to the Court.

For example:

An Affidavit from a neighbour who witnessed a fight between parents in front of the children. That neighbour can provide the information in their Affidavit in the first person "I saw/heard..." In other words, that neighbour will give *direct* evidence regarding the fight.

2. **Admissions**

An *admission* is a statement of fact made by a parent, contrary to their interests, in relation to a factual issue that the Applicant is attempting to prove.

For example:

The Mother stated to the Applicant that she took drugs whilst the children were in her care.

3. **Hearsay Evidence**

Hearsay is evidence of something reported to the Court indirectly and can be a tricky minefield.

R v Hennessey (1978) 68 CrAppR419:

"Witnesses, whether for the prosecution or the defence, are required to testify to what they saw, heard, smelt or felt and not what they know because of what they have been told"

Tips about Evidence

Department of Communities
Child Support and Child Welfare
18-19-2020



Case Example - Hearsay Evidence

Buffy Summers, Child Safety Officer ("CSO") told Xander Harris, Team Leader about a conversation she had with Anya Silver, Child Support Safety Officer ("CSSO"). Anya Silver said she saw the parents get into a fight outside the Department's Offices the previous day when they attended contact.

Question – If all three (3) were to give evidence, who would be giving Hearsay Evidence? See answer below.

Challenging Hearsay Evidence

It is open for the Lawyers for the other parties to make objections to Hearsay Evidence, given that the rules of evidence have not been dispensed with. Remember that a party to the proceeding has the right to challenge every piece of evidence by asking questions such as:

- ✓ Who said this? To whom? Who else was there?
- ✓ What was the context in which this happened?
- ✓ What were your observations of this person at the time?
- ✓ How can you make an assessment on any of the above, if you were not there in person?

4. Expert evidence

Expert Evidence is part of the evidence puzzle. You must consider whether the Child Safety Officer or Team Leader should be giving evidence as an expert on a particular point or whether you need another professional? A Social Assessment Report Writer is an expert witness.

Answer to Case Example – Hearsay Evidence

Buffy Summers, CSO = Hearsay Evidence (informed of the fight by Anya Silver - Buffy Summers did not observe the fight herself)

Xander Harris, Team Leader = Hearsay Evidence (would be considered "double" hearsay, being informed about a conversation in which Buffy Summers was informed by Anya Silver of the fight)

Anya Silver, CSSO = Direct Evidence (would be able to provide direct evidence of the fight that she witnessed)

Important Disclaimer!!

*The content of this Tip Sheet is just a simple guide -
it is not intended as an exhaustive exploration of case law or the rules of evidence.*

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Tips for Affidavit Writing

Department of Communities
Child Care Conference
19 - 21 October 2009



A good Affidavit:

- never puts a child or young person at risk of harm
- does not vilify or demonise children, young people or their families
- tells a clear and succinct story and gives the parties an idea of the Department's case using evidence sensitively and appropriately
- assists Lawyers acting for parents, children and young people to get a clear picture of what the Department's case is and the evidence relied on
- can assist settlement negotiations

Tip 1: It is not that tricky - all an Affidavit does is tell the story

Remember from the outset that an Affidavit tells the story of a matter to someone who knows nothing about it and who has little time to get across the issues. So please, make it easy to read and easy to follow.

Handy Tip? Don't assume the reader has the same level of knowledge of the case that you do. For example, you may know who Jack is in the story - but the reader doesn't! So make sure you establish the players clearly, including use of a Genogram.

Handy Tip? Precedents are useful, but don't rely on precedent Affidavits to the detriment of the story you have to tell.

Tip 2: Establish your case with reference to the Evidence and the Case Plan

Make sure you address the law!

An Affidavit should address the issues that you are required to address by law. Especially Sections 9, 10, 59 & 61 of the *Child Protection Act 1999* ("the Act") and for indigenous families remember Sections 6 & 83 of the Act.

Handy Tip? ALWAYS keep those key Sections in mind when you are drafting or critiquing an Affidavit. Print a copy of the Sections off and have them next to you when you are going through the Affidavit.

Tips for Affidavit Writing

Department of Communities
Court Coordination Conference
18-21 October 2024



Tell the story to establish your case:

- What are the child protection concerns?
- Why is this is a child in need of protection?
- What **evidence** are you relying on to support your decision making?
- What is the Case Plan?
- Why is the Order sought the most appropriate?

Handy tip? Simply doing a paragraph by paragraph summary of events on the file since you have had it, is not enough. Simply attaching a summary of the entire care history of a family is not enough. Why do you want that information before the Court? Why is it **relevant**? What does it tell you? Is it your **best evidence** or do you need to seek further Reports or Affidavits or Assessments?

Tip 3: Start with a Basic Chronology and your story should flow in chronological order

Working out a Chronology is a good way to start working on your Affidavit. This basic timeline (which you should be able to establish from the file) will give you the skeleton outline of what you need to cover and provides a good starting point. But remember this is the starting point and it will evolve over time. Keep it simple!

Handy tip? Keep thinking whether you have established who, what, where, why and how. Dates, names, places, details are what Lawyers are interested in. If this information is not there, you will be asked for it.

In terms of formatting an Affidavit, use headings to assist in understanding but carefully consider whether arbitrarily placed headings (e.g. Family Group Meeting) actually break the flow of the story and make it disjointed and hard to follow.

Handy tip? It is about making the Affidavit easy to read. So explore your options – for example you could bold the words (e.g. **Family Group Meeting**) where they appear in the text of the Affidavit to make them easy to find or cross refer the reader to other paragraphs of the Affidavit where you deal with Family Group Meetings. But be careful remember you do not really want to send your reader all over the document!



Tip 4: Genograms or Family Trees

Remember you are telling the other parties and ultimately the decision maker “who is who” in this family. If it is a complex family consider exhibiting a Genogram that can be constantly referred to. It should include full names (if you have them), dates of birth (if you have them), relationship to the child (e.g. biological Father or half Brother or step Sister) and extended family members. This is just factual - it should not include any opinion.

Handy Tip? Working all this out from the outset also helps the Child Safety Officer, especially with issues like sibling or extended family member contact. And you can adapt it to be a “contacts sheet” for the details of all the family members.

Tip 5: Case Plan! Case Plan! Case Plan!

Despite all that you may have heard your Case Plan is a key piece of evidence. A Case Plan will evolve over time - it is a living document, a moveable feast. It will be hard to manage, but if the work and preparation is there, then adapting it will be easier over time. Remember you may have to change the game plan! What you thought was the right approach at the start, may change as the Case Plan is actioned and implemented. Good case work makes what Order you are seeking a lot clearer.

Handy Tip? Section 59 of the Act says an Order should not be made without a Case Plan. Sections 51 X, 51 Y and 59 (2) of the Act say that a Review Report and Revised Case Plan must also be filed. This is not optional - this is mandatory!

Handy Tip? You can be cross examined on what you have and haven't done in the Case Plan! So is it clear? Does it make sense? Has the Department done what it said it would do?

Tip 6: Least Intrusive Order

The ultimate question is whether the Order you seek addresses the Child Protection concerns – if so then clearly justify why that is so. Be realistic and with well reasoned and researched case planning, it will be easier to determine the appropriate Order to seek.

Handy Tip? You may need to change the Order you seek (i.e. you may need to amend your Application). Remember the least intrusive Order is not necessarily the shortest – for example long term guardianship might be the most appropriate.

Court Coordinators Making a Difference

Issue prior to introduction of Court Coordinators, 2004	Court Coordinator Enhancement to Service Delivery, 2009
Court preparation not occurring	CC role specifically devoted to preparation for court and assisting staff in preparation for court
CSOs not trained in preparation of affidavits	CCs provide quality assurance for affidavits, assist staff in affidavit preparation, provide templates, provide training
CSOs not trained in rules of evidence	CCs provide training, feedback and advice to staff regarding good evidence, and discuss further evidence to be obtained
CSOs not clear on what order sought	CCs involved in case discussions and/or provide advice to TLs and CSOs regarding most appropriate order
No case plans prior to application	CCs ensure material meets requirements of section 59 CPA 1999, including case plan completion
No review of evidence occurs	CCs provide feedback regarding evidence, adequacy, relevance etc
CSOs conducting all court related tasks	CCs specialise in court related tasks, ensuring court processes adhered to
Process delays due to lack of expertise	CCs specialise in court matters and court process, ensure all relevant tasks completed in timely manner and liaise with Court Services
Few standardised forms for staff to prepare submissions	CCs provide templates for affidavits, consent letters, reviewable decision letters etc.
Parents not advised of court hearing dates	CCs ensure parents are served and affidavits of service completed
Children and young people not consulted regarding applications	CCs ensure affidavits articulate views and wishes of children and young people
CSOs not trained in tribunal matters	CCs assist managers/TLs in preparation for tribunal matters and liaise with Court Services
Parents not advised of rights in relation to court	CCs provide parents with letters recommending legal support and detailing rights.
Parents not advised of court outcomes	CCs provide parents with court outcome letters and a copy of order made

Presentation by David Bevan, Queensland Ombudsman

**Queensland Law Society Government Lawyers Conference
17 April 2008**

Practical Guide to Informed Administrative Decision Making

Introduction

As lawyers in the public sector we are all used to reviewing and advising on the lawfulness of decisions and actions. It's our bread and butter. It's something I've been doing in various capacities since being admitted as a barrister in 1973 and it's something I've continued to do since being appointed Queensland Ombudsman in 2001.

However, assessing the lawfulness of decisions is only one part of the Ombudsman's role. In fact, it's a relatively minor part of the role.

On most occasions when I recommend to the head of an agency that a decision be revoked or that action be taken to mitigate the effect of a decision, it's because I have formed the opinion that the decision, although lawful, is unreasonable or unfair or otherwise wrong. That's how broad my jurisdiction is - I can intercede if I believe an agency's decision is wrong.

Before I address the topics listed on the program, I will give you a few more details of the Ombudsman concept and role.

The first Ombudsman in Queensland was appointed in 1974.

The Ombudsman is not a public servant but is an independent officer of the Parliament¹ reporting to an all-party parliamentary committee (the Legal, Constitutional and Administrative Review Committee).

The Ombudsman's role is not a determinative one – that is, although we commonly review the merits of administrative decisions, we can only make recommendations about decisions we consider defective.²

Nonetheless, the principal officers of agencies implement my recommendations in more than 95% of cases.

My role under the Ombudsman Act is a dual one – first of all, I investigate the decisions and actions of agencies and recommend remedial action and changes to procedures and practices.³

My second function is to take action to help agencies improve their decision-making and administrative practice.⁴

In carrying out this function, my officers provide training for agencies on good decision-making and effective complaints management. We have also spent

¹ s.11(2) *Ombudsman Act 2001*

² ss 49 and 50 *Ombudsman Act 2001*

³ s.12(a) and (b) *Ombudsman Act 2001*

⁴ s.12(c) *Ombudsman Act 2001*

significant resources helping agencies to improve their internal complaint systems so that they comply with recognised standards for complaint handling.

My jurisdiction covers the actions of:

- departments of the Queensland Government
- public authorities (essentially, an entity established under an Act for a public purpose), and
- the 73 local councils throughout the State.

I cannot investigate:

- the decisions of Ministers or Cabinet,⁵
- the courts⁶ or
- the actions of tribunals in performing their deliberative functions.⁷

Some of you may also be relieved to know that I cannot investigate administrative action taken by “a person acting as legal adviser to the State or as counsel for the State in any legal proceedings”.⁸

First topic:

Making the right decision the first time – practical strategies for good decision-making

Much of what I say about this topic is relevant to the next topic about the internal reviewer’s role.

It’s useful for decision-makers to think about the decision-making process as comprising four steps:

- preparing to make the decision
- developing the decision – that is carrying out all the steps you need to take before making the decision, which includes any information gathering
- making the decision
- communicating the decision.

Record-keeping is relevant to all four steps and it is a topic I will return to later.

Preparing to make the decision

The first question you need to ask yourself is whether you have the power to make the decision. In answering that question, you should consider any relevant:

- Legislation
- Policies and procedures
- Delegations.

Even if you have the power to make the decision, should you be the one making it? For example, do you have a conflict of interest so that you would be unable to make an impartial decision or would you be perceived as being unable to do so?

⁵ s.16(1)(a) *Ombudsman Act 2001*

⁶ s.9(2)(c) *Ombudsman Act 2001*

⁷ s.16(2)(a) *Ombudsman Act 2001*

⁸ s.16(2)(b) *Ombudsman Act 2001*

If you are exercising a delegated power, the delegation should be in writing.⁹ We received a complaint from the unsuccessful tenderer in a tender let by a local council for the management of the local tip. During our investigation, we examined the tender documents as well as the delegation the council's Waste Management Committee had purported to issue to the officer who awarded the contract.

We concluded not only that the Committee did not have the power to delegate its decision-making power to the officer but also that the Council had not formally delegated its power to the Committee to make the decision.

Of course, even if you have the power to make the decision, your decision also has to be lawful. So it's important to properly understand not only the statutory power you are exercising but also other legislation relevant to the decision.

This next case study demonstrates the significant consequences that can flow from a simple misinterpretation of the law. I'm sure it's one that will appeal to you as it demonstrates that lawyers sometimes come in handy.

We received a complaint about a decision by Queensland Transport to charge a late fee for the complainant's vehicle registration renewal. The renewal was due to be paid on a Sunday. The complainant did not have a credit card or access to BPay or other electronic payment options and so he went to an office of Australia Post to pay the registration in full on the next business day (Monday).

He was told he had to pay a late registration fee (as required under the Department's Registration Renewal Reinstatement Fee Policy).

The complainant complained to Queensland Transport and the Premier before being referred to our Office.

We advised Queensland Transport that it was our view that, as the due date for payment fell on a Sunday, by law (s.38(2) *Acts Interpretation Act 1954*), the complainant should have been able to pay on the next business day without any penalty.

Queensland Transport obtained advice from both Crown Law and the Solicitor General that supported the Ombudsman's view.

The Minister publicly announced that the complainant and others who had been charged a late fee in similar circumstances (from March 2003, when the scheme commenced, to April 2006) would be issued a letter of apology and a refund. Refunds were issued to 128,000 people totalling approximately \$4.5 million.

Of course Queensland Transport also changed its policy and systems to stop incorrectly charging the late fee.

The next piece of advice I have for government decision-makers is don't look solely at what you are obliged to do by law but also consider whether your decision is fair and reasonable in all the circumstances. I will use another case we investigated to illustrate this point.

Some members of the community performed voluntary work for a public sector agency on weekends. They were told by their supervisor that, if they were injured,

⁹ s.27A(3) of the Acts Interpretation Act

they would be covered for death, injury and loss of income by the agency through the workers compensation scheme.

The complainant was injured while working as a volunteer and sought workers compensation covering his medical expenses and loss of income. Acting on Crown Law advice, the agency rejected the claim on the basis that the complainant was not a worker within the meaning of the workers compensation scheme at that time. The department offered the complainant compensation in accordance with its personal accident indemnity for volunteers. However the amount claimed by the complainant was reduced by approximately 75% because of his alleged contributory negligence. Any negligence on his part would not have been relevant under the "no fault" workers compensation scheme.

I formed the view that, had the agency correctly advised the complainant and the other volunteers that workers compensation cover was not available, they could have withdrawn their services or sought their own insurance cover. Therefore, I considered that it would be unfair for the department to resile from the undertaking given to the volunteers that they were fully covered.

I recommended that the agency make an ex gratia payment for the full amount sought by the complainant in the absence of evidence that the amount was not accurately calculated. The agency accepted my recommendation.

We can also investigate whether a decision, although made in accordance with a policy, was unfair in the circumstances of the particular case. This next case is one we reported on in our last Annual Report and demonstrates that decision-makers should not slavishly follow policy if it will lead to an unfair outcome.

A grandmother was asked by the Department of Child Safety to care for her two grandchildren or they would be placed into foster care. She and her husband were not formally approved as carers by the department at the time.

Although she received advice from the department that she would receive a carer's payment from the date she commenced to care for the children until she was approved as a carer, no payment was received for the intervening eight months up to the time she was approved as a carer.

She complained to us about the department's refusal to provide carer's payments for that period. The department based this decision on its policy that only an approved carer could receive the carer's payment. As a result of our intervention, the department reviewed its decision and made an ex gratia payment to the grandmother of more than \$6,000 to cover the relevant period.

The point I am making here is neatly explained by Kirby J in *Neat Domestic Trading Pty Ltd v AWB Ltd*:¹⁰

A policy that structures the discretion and provides guidance for its exercise will usually be lawful and can often be desirable. ...

However, he went on to say that:

The essence of lawful public administration in the exercise of a discretion (as of good decision-making generally) is to keep an open mind concerning the

¹⁰ *Neat Domestic Trading Pty Ltd v AWB Ltd* [2003] HCA 35

justice, reasonableness and lawfulness in the particular case, even if this sometimes involves a departure from a general policy.

In gathering the material on which you will base your decision, you should:

- Comply with statutory procedures
- Comply with reasonable administrative procedures
- Pursue lines of inquiry relevant to ascertaining the material facts
- If your decision is likely to adversely affect someone's interests, afford the person natural justice, including by acting impartially at all times.

The only one of these I will discuss further is natural justice or procedural fairness.

Natural justice

I am reluctant to cover ground that many of you have been over many times, but natural justice is such an important consideration for administrative decision-makers, I feel obliged to allocate a short time to it.

Natural justice or procedural fairness is 'giving a person who might be affected by a decision, a fair hearing before a decision is made'.

'Hearing the other side of the story' before you make your decision is also one of the best ways of testing the reliability of the information you have obtained for the purpose of making a decision.

In the English case of *John v Rees*, Megarry J. said:¹¹

... the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion suffered a change.

Kirby J made a similar observation in *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB*:¹²

The experience of the law is that adherence to fair procedures is an important safeguard against erroneous conclusions. It also has its own value in helping secure acceptance of outcomes and thereby to quell controversies.

In *Kioa v West*, Mason J said:¹³

... recent decisions illustrate the importance which the law attaches to the need to bring to a person's attention the critical issue or factor on which the administrative decision is likely to turn so that he may have an opportunity of dealing with it.

¹¹ [1970] Ch. 345

¹² [2004] HCA 32

¹³ [1985] HCA 81

Unfortunately, although natural justice is a well known legal concept, it will often be difficult for the decision-maker to ascertain what needs to be done to ensure compliance with it in particular cases.

The three minimum requirements of a fair hearing (or three limbs are) are clear enough. They are:

- Disclosure
- Reasonable opportunity to respond
- Absence of bias.

However, the requirements of a fair hearing are flexible and vary from case to case – you must take account of the legislative framework/power, the subject matter, the particular circumstances of the case and the potential consequences.

The requirements may also be affected by legitimate expectations – for example, expectations arising from an agency's policy/practices and public statements, and its advice or representations to the affected person.

A decision-maker must give a person who may be adversely affected by a decision natural justice:

- When required by legislation – for example, the Ombudsman Act says that the Ombudsman “is not bound by the rules of evidence, but must comply with natural justice”.¹⁴
- When required by common law – that is, in relation to decisions that will affect a person's rights, interests or legitimate expectations (personal reputation/status is within the ambit of the term “interests”).

The trend in the law is that natural justice is presumed to apply to administrative decisions unless there is a clear contrary legislative intention. As Mason J said in *Kioa v West*¹⁵:

The law has now developed to a point where it may be accepted that there is a common law duty to act fairly, in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary intention.

Of relevance to the position in Queensland is the Judicial Review Act which authorizes an application to be made for review of a decision to which the Act applies on the ground that there has been a breach of the rules of natural justice.¹⁶ The meaning of “decision to which this Act applies” is defined very widely in the Act.¹⁷

Legislation may specify the procedures to be followed in order to give natural justice, for example, the form, contents and timing of a notice to be given or hearing to be held.

If natural justice is not excluded by legislation, then common law requirements of natural justice will operate alongside and supplement any statutory procedures - for example, by requiring a further hearing in relation to additional evidence the decision-

¹⁴ s.25(2)(b) *Ombudsman Act 2001*

¹⁵ *Kioa v West* [1985] 159 CLR 550 at 584

¹⁶ s.20(2)(a) *Judicial Review Act 1991*

¹⁷ s.4 *Judicial Review Act 1991*

maker has obtained or by requiring that an extension of time be given in which a person may respond.

If natural justice is required and not observed, the decision-maker commits a legal error and the decision may be set aside.

The Ombudsman can also make a recommendation if there has been a breach of the rules of natural justice. However, the circumstances in which I can intervene are not limited to those in which a court would hold there has been a breach of natural justice. One of the limitations of the rules is that, even though their purpose is to assist decision-makers to make fair and reasonable decisions, a decision-maker could comply with the rules but still make an unfair or unreasonable decision. I can intervene in such cases even though a court may be unable to.

The following case illustrates the point I am making. In December 2007, my report called the *Councillor Code of Conduct Report* was tabled in Parliament. The report relates to my investigation of the Redland Shire Council's management of a complaint against one of its councillors. The Council had disciplined the councillor under its Code of Conduct by way of a formal reprimand in public session. The councillor alleged that the council had conducted the investigation unfairly.

The complaint had been made by the representative of a local quarry who claimed that the councillor had trespassed on the quarry property and failed to report to the quarry office as directed by a sign. The councillor and two council officers had driven to the site to take photographs of water catchment areas.

The council appointed one of its own officers to investigate the complaint. Although the officer interviewed the councillor, she was given no opportunity to consider the contents of the report on the investigation or make a submission before the report was considered by council at its general meeting. Nor was she told which provision of the Code of Conduct she was alleged to have breached.

The Council intended to make its decision at that meeting which would have been a breach of natural justice. However, the councillor said she had legal advice that the land on which she had allegedly trespassed, though inside the gates of the quarry, was public land designated for road purposes. The matter was adjourned for further investigation which confirmed this to be the case.

The wording of the alleged breach was then changed to read that she had committed a minor breach of the Code of Conduct by being "on land under the safety control of the (quarry operator) contrary to the lawful signage requiring visitors to report to the site". Once again, the provision of the code she was alleged to have breached was not specified.

I found that this failure amounted to a breach of natural justice as it prevented the councillor from making an informed submission to council and that she had been further denied procedural fairness because the council did not give her an opportunity to be heard on the appropriate action it should take in relation to the breach.

I recommended that council amend its general complaint process to require that councillors the subject of such proceedings be given reasonable notice of, and a reasonable opportunity to respond to, the issues the subject of proceedings.

I was also able to look beyond the procedures followed to the actual decision. I formed the opinion that the decision itself was wrong because it simply wasn't supported by the evidence. I would have reached this conclusion even if the Council had afforded the councillor procedural fairness.

Making the decision

In making decisions, decision-makers should ensure that:

- Decisions are based on the facts
- Facts are based on relevant evidence
- Legislation is interpreted having regard to its context and purpose
- Only relevant matters are considered and given appropriate weight
- They make their own assessment of the information and not act at the direction of another person
- Their decisions and reasons for the decision are properly recorded.

In relation to the last point, decision-makers need to keep in mind s.27B of the Acts Interpretation Act. It provides as follows:

Content of statement of reasons for decision

If an Act requires a tribunal, authority, body or person making a decision to give written reasons for the decision (whether the expression 'reasons', 'grounds' or another expression is used), the instrument giving the reasons must also—

(a) set out the findings on material questions of fact; and

(b) refer to the evidence or other material on which those findings were based.

You should also be aware of the Judicial Review Act, which authorises persons adversely affected by many administrative decisions to apply to the court for a statement of reasons for a decision if the decision-maker has not complied with a request for such a statement.

Even if you are not required or requested to provide reasons, it is good administrative practice to do so. I can intervene and recommend remedial action if I consider a decision is one for which reasons should have been given but were not given. My power to make a recommendation is not limited to circumstances in which reasons are required to be given by law.

Decision-makers should also inform persons adversely affected by a decision of any statutory right of review or appeal that exists in respect of decision. Such information should include the time allowed to apply for review/appeal and how to apply. You should also inform them about any internal review process if they express dissatisfaction with your decision.

Record keeping

You should make a record of every contact of any significance, for example, phone calls, meetings, inspections, emails.

As a public officer you have many matters to deal with whereas the person you are dealing with may have only one matter. Don't place yourself in the position of not

being able to explain your decision or of having poorer records than the person challenging your decision.

Records should be made either at the time the event occurs or as soon as possible after the event.

Poor record keeping of a systemic nature was exposed during my investigation of inadequacies in the actions taken by the then Department of Families in relation to the safety of a baby we called baby Kate, who died at the age of ten weeks.¹⁸

Here is an example of a handwritten note made by a case officer of a telephone conversation in which she inquired about the well being of the baby and her intellectually impaired mother read "All OKAY".

Forty-nine days later, after the child had died while in her mother's sole care, the case officer entered the following entry in the case management system:

Case note – phone call to group home 24 July 2001

House mother reports that all is going well. Lisa is in good spirits and has demonstrated that she is capable of caring for Kate. The only problem seems to be that Lisa is reluctant to get up to Kate in the night for feeding.

House mother has informed Lisa that she is reporting back to the department and this could be a concern if it continues. House mother also stated that sometimes in the morning Lisa needs a bit of a 'shove' to fix Kate if Lisa is playing on the Nintendo, **but there are no significant concerns regarding the care of Kate.** [emphasis added]

If adequate and timely records are not made and/or kept, the basis or reasoning for a decision may be susceptible to challenge.

To summarise my advice for decision-makers on record-keeping:

- Make and keep full, accurate and timely records
- Always remember that your records may be reviewed internally or externally
- Remember that your records may be accessed by an FOI applicant
- The standard of your records reflects on your professionalism and on your agency's.

Finally, be aware of the *Public Records Act 2002*, particularly s.7, which relevantly states:

7 Making and keeping of public records

- (1) A public authority must—
 - (a) make and keep full and accurate records of its activities;
and
 - (b) have regard to any relevant policy, standards and guidelines made by the archivist ...

Following these few tips on record keeping will stand you in good stead as you will be able to defend your decisions if they are subjected to internal or external scrutiny.

¹⁸ *Report of the Queensland Ombudsman: An investigation into the adequacy of the actions of certain government agencies in relation to the safety, well being and care of the late baby Kate, who died aged 10 weeks, October 2003*

Communicating the decision

My last piece of advice for decision-makers is to take care in how you communicate your decision. You may make the right decision but still be the subject of a complaint because you have communicated it poorly. Good communication enhances accountability and openness. As I've already mentioned, it is best practice to give reasons whether required to or not and also to advise a person of any formal review or appeal rights.

Topic 2:

What to do when things go wrong – the role of the internal reviewer

Everything I have just said about decision-making also applies to the decisions made by the internal reviewer.

A 3-tier model is common to most complaints management systems. Looking left-to-right, a complaint could travel through all 3 tiers, depending on the nature, complexity, severity or other factors impacting upon the resolution of the complaint. A complaint could also be received by an external review body and referred back to the agency for internal review. This is how we dealt with more than a quarter of the 7084 complaints we received last financial year.

Remember, frontline complaint handlers may not normally receive complaints. Therefore their role should be clear and realistic – for example, it may be limited to:

- Explaining the complaints management system and how people can access it
- Referring a complainant to the correct officer in the agency
- Registering complaints.

Based on our experience, people making a complaint want one or more of the following:

- that an agency amend or revoke its decision
- that an agency take some action to rectify the impact of an action or decision it has taken - for example, to pay financial compensation
- that an agency take action in circumstances where there has been no action - for example, to address a dangerous traffic situation
- an apology
- an explanation for the agency's decision or action
- to ensure that action is taken so that the complainant and/or others are not adversely affected by similar decisions by the agency in the future – for example, by the agency amending its policies or practice
- fairness in the decision-making process – for example, by the agency consulting with those who will be affected by its decision, including in cases where natural justice is not required, such as community consultation for major infrastructure projects.

If you are the internal review officer, you have to identify the outcome the complainant is seeking and dispel any unrealistic expectations.

There are a number of benchmarks for complaints management systems including international and Australian standards for complaint handling.

For state government agencies, the Public Service Commissioner's Directive 13/06 specifies minimum standards for a complaint management systems. These standards are consistent with the international and Australian standards.

You should also note that under Information Standards 42 and 42A, most state government agencies are also required to have a complaints handling mechanism in place for dealing with privacy complaints.

For local government, the *Local Government Act* requires councils to establish a "General Complaints Process".

The five recognised principles for complaints management systems (which are incorporated into the Commissioner's Directive) are:

1. **Visibility and access** – agencies must provide to the public readily available information on where and how to complain.
2. **Responsiveness** – agencies must ensure staff understand the complaint system, respond to complaints in a timely manner, and advise parties of progress.
3. **Assessment and action** – agencies must assess complaints, decide how they will be dealt with and by whom, refer them to external agencies where required, and deal with the remainder fairly and objectively.
4. **Feedback** – agencies must provide complainants with timely feedback on outcomes, notify them of any statutory review mechanism, and notify relevant areas of the agency of any potential system improvements that have been identified.
5. **Monitoring effectiveness** – agencies must ensure their system is working effectively, including by identifying complaint trends and monitoring the time taken to resolve complaints.

A complaints management system:

- Comprises the agency's complaints policy and procedures
- Should be supported by a database
- Should be adequately resourced – with equipment and trained officers.

Within a complaint management system, the internal review officer (IRO) is someone tasked with formally assessing, investigating and recommending, or making, a decision about a complaint.

A level of autonomy or independence is critical if the IRO is to have credibility. The review or investigation process must be conducted in an impartial and objective manner. If in doubt, an IRO should seek advice from their supervisor or from a lawyer in the agency.

An IRO should generally be senior to the original decision-maker and have had no previous involvement in the matter.

The IRO needs to be able to recognise and address conflicts of interest. It is also important that the IRO be clearly identified (to the complainant and to relevant agency officers) and not be replaced during the process. Effective communication skills, both oral and written, are invaluable.

If you are the IRO, first consider whether the complaint raises, on its face, issues for review? If it doesn't, is it really a complaint or is it something else (for example, an expression of disapproval about the operation of a section of an Act)?

Before you can assess a complaint, you must understand it. If you don't, contact the complainant and clarify what their concern is. You may need to write to or email the complainant to confirm your discussion. This is a critical step. If you get this wrong, your review may be a waste of time.

The IRO needs to be aware that some types of complaint have to be handled in a certain way – for example, complaints involving official misconduct and complaints that are public interest disclosures.

For a public officer, "official misconduct" is conduct that:

- is not honest or impartial
- is a breach of trust
- is a misuse of official information.

A public interest disclosure (PID) can be information, an allegation or a report provided by a person (almost always a public officer) that brings to light:

- **Official misconduct** – PID can only be made by a public officer
- **Serious maladministration** – PID can only be made by a public officer
- **Substantial waste of public funds** – PID can only be made by a public officer
- **Substantial danger to public health, safety or the environment** – PID can only be made by a public officer
- **Substantial danger to health or safety of a person with a disability** – PID can be made by any person
- **Specific danger to the environment (where it is an offence)** – PID can be made by any person.

PIDs are not always immediately obvious, but they still attract the protections afforded by the *Whistleblowers Protection Act 1994*.

An agency can investigate PIDs about its own conduct. Each agency should have a process for this. An agency's general complaints management policy should highlight where to find the whistleblower/PID process, in order to assist in the proper assessment of a complaint.

The Crime and Misconduct Commission is responsible for receiving PIDs about official misconduct. Your agency's principal officer has an obligation to notify the CMC about any PIDs that allege official misconduct before you investigate.

The Ombudsman often receives PIDs about maladministration. A PID about maladministration must involve an administrative act or omission by a public sector entity which is unlawful, arbitrary, unjust, oppressive, improperly discriminatory, or taken for an improper purpose. Someone's interests must be adversely affected in a substantial and specific way.

Keep the following in mind if you are handling a PID:

- Deal with the disclosure in a confidential manner (it is an offence for any officer to intentionally or recklessly disclose information about a PID to unauthorised persons)
- Take steps to ensure detrimental action is not taken against any person (a reprisal) because the PID has been made.
- An agency must have reasonable procedures in place to protect its officers from reprisals.
- You must not refer a disclosure to another agency unless you first consider whether there is an unacceptable risk that a reprisal would be taken against any person because of the referral. You must consult with the whistleblower if this is practicable.
- You must provide reasonable information to the whistleblower about action taken and the results.
- You must keep records of disclosures
- The agency must report annually on the number of disclosures received and whether they have been substantiated.
- A person does not have to claim to be a whistleblower or to be making a PID to come within the Act.

Agencies have a responsibility to deal with PIDs in a way that protects the whistleblower from unnecessary exposure to adverse treatment. Agencies must avoid the following:

- Failing to observe the confidentiality of a PID by passing the information through various hands, for example, forwarding the PID through the chain of command.
- Interpreting natural justice to mean that persons about whom a disclosure is made have an immediate right to details of it.
- Allowing personal biases about the personality of the whistleblower to influence the assessment of the disclosure.
- Not taking seriously concerns expressed by whistleblowers about the possibility of reprisal.
- Ignoring potential conflicts of interest when deciding who should assess or investigate the disclosure.

I will conclude this topic by summarising my tips for reviewing complaints. They are:

- Plan your approach
- Refer complaints immediately to the appropriate agencies
- Gather relevant and reasonably available information
- Evaluate the facts objectively
- Make a logical decision based on the facts
- Consider and decide the appropriate remedy for substantiated complaints
- Consider whether recommendations should be made for administrative improvement
- Maintain confidentiality and uphold privacy principles

- Afford natural justice where required
- Properly manage the information you obtain.

Topic 3:

Coping with external review – the Ombudsman perspective

Now I'll move on to the final topic in my presentation.

Almost invariably, we conduct our investigations without recourse to the evidence gathering powers provided by the Ombudsman Act. In the few cases where an agency has baulked at providing information in response to our informal request, it is usually because they have not understood my functions and powers. These are some of the powers I have:

- I can investigate a decision even if an Act says the decision is final.¹⁹
- I can investigate on the basis of a complaint received or on my own initiative.²⁰
- No obligation of confidentiality applies to information disclosed to the Ombudsman.²¹
- An agency cannot rely on legal professional privilege as a ground for not giving information relevant to an investigation.²²
- I have the power to compel disclosure of information or documents or the creation of a document.²³
- I have the power to investigate formally or informally.²⁴
- Agencies are obliged to give reasonable assistance to me when I am undertaking my preliminary inquiries.²⁵

During investigations my officers may:

- hold discussions with a decision-maker, manager and/or other officers
- inspect files and other records and obtain copies
- ask for a written response to issues raised.

Sometimes, we conduct formal records of interview.

It should also be noted that, although I am not bound by the rules of evidence, I have to comply with natural justice and to conduct investigations confidentially.²⁶

I am obliged to give the principal officer of an agency I am investigating an opportunity to comment on my investigation if I am considering making a recommendation to the principal officer.²⁷

¹⁹ s.14(2) *Ombudsman Act 2001*

²⁰ s.12(a) *Ombudsman Act 2001*

²¹ s.45(1) *Ombudsman Act 2001*

²² s.45(2) *Ombudsman Act 2001*

²³ s.28 *Ombudsman Act 2001*

²⁴ s.24 *Ombudsman Act 2001*

²⁵ s.22(2) *Ombudsman Act 2001*

²⁶ s.25(2) *Ombudsman Act 2001*

I must also give a person who may be adversely named in my report an opportunity to comment.²⁸ I then take those comments into account (and incorporate them where necessary) when formulating my final report.

My expectations of agencies are that they:

- respond to requests for information from my Office in a timely way
- make, keep and are able to retrieve appropriate records of decisions and actions
- give proper consideration to recommendations in my reports.

My report to a principal officer of an agency may contain recommendations for rectification or administrative improvement. The report may be tabled in Parliament if I consider it deals with matters of serious public concern or widespread maladministration.

An example of this was the report on my investigation into the Miriam Vale Shire Council's management of development applications under the *Integrated Planning Act 1997*.

Our investigation revealed difficulties faced by applicants and the council in dealing with the Act. I made recommendations to the State Government to address these difficulties. I also made recommendations to the Council.

I made my report public because the sorts of difficulties the council was experiencing are most likely being experienced by many small councils, particularly those in areas experiencing rapid growth – that is, the maladministration was likely to be widespread.

As I said earlier, more than 95% of my recommendations to agencies are accepted and implemented.

I can require a principal officer to advise why a recommendation has not been implemented. I can send a report to the Minister and/or the Premier if dissatisfied with an agency's response.²⁹

I have not had to use that power although agencies do not always rush to implement my recommendations.

For example, in the Councillor Code of Conduct investigation I recommended that Council rescind its motion to reprimand the councillor.

Initially, the Council voted not to accept my recommendation but did not provide any reasons for its decision.

I therefore wrote to Council, reiterating that it did not have a proper basis for its finding that the councillor had breached the Councillor Code of Conduct. Had the need arisen, I could also have issued a further report to Parliament

²⁷ s.50(1) *Ombudsman Act 2001*

²⁸ s.55(2) *Ombudsman Act 2001*

²⁹ s.51(3) *Ombudsman Act 2001*

Ultimately, the council resolved that the councillor's action did not constitute a breach of the Code of Conduct and that it would advise her in writing that the previous finding and the reprimand would be withdrawn.

Conclusion

Thank you for your attention this morning. I hope that what I've said will help you make decisions that are less likely to attract complaints or, at least, well-founded complaints. I also trust you now have a better understanding of my Office's role in Queensland's accountability framework.

Court Coordinator Survey

Purpose: To annually review the position of Court Coordinator in relation to seeking advice when appropriate and liaison during contested and tribunal matters.

Please indicate your response to the below statements by circling the number that matches your response.

1 = Agree; 2 = Unsure; 3 = Disagree

1	The Court Coordinator advises Court Services at appropriate times in relation to contested matters	1 2 3
2	The Court Coordinator contributes appropriately to Advice in Conference discussions	1 2 3
3	The Court Coordinator is able to effectively identify the need for Crown Law involvement	1 2 3
4	CSSC material shows evidence of effective quality assurance by the Court Coordinator	1 2 3
5	The Court Coordinator is open to constructive feedback	1 2 3
6	The Court Coordinator contributes appropriately to Regional Teleconferences	1 2 3
7	The Court Coordinator provides relevant updates regarding contested/CST matters	1 2 3
8	The Court Coordinator assists witnesses in preparation for giving evidence	1 2 3
9	The Court Coordinator provides adequate assistance to the Manager in preparation for CST matters	1 2 3
10	The Court Coordinator appropriately seeks advice as necessary	1 2 3
11	The Court Coordinator contacts Court Services appropriately in relation to Family Court/FMC matters	1 2 3

Please provide your comments in response to the below questions.

What areas is the Court Coordinator doing well in?

What areas could be improved, and how?

Recommendations for further training and development:

Name of CSA: _____

Contact number: _____

Court Coordinator Survey

Purpose: To annually review the position of Court Coordinator in relation to collaboration with the court and areas for improvement.

Please indicate your response to the below statements by circling the number that matches your response.

1 = Agree; 2 = Unsure; 3 = Disagree

1	Current written communication with the Court is effective	1 2 3
2	The role of Court Coordinator assists the Court's relationship with the Department	1 2 3
3	The Court Coordinator is professional in his/her conduct	1 2 3
4	The material filed by the Department is of a high quality	1 2 3
5	Court material is filed in a timely manner	1 2 3
6	The Court Coordinator makes significant contributions during stakeholder meetings	1 2 3
7	Having one person represent the Department improves consistency in practice	1 2 3

Please provide your comments in response to the below questions.

What is working well with the role?

What could be improved?

What additional tasks/processes etc could the Court Coordinator be involved in that would be useful?

Name: _____

Role/Organisation: _____

Contact number: _____

Court Coordinator Survey

Purpose: To annually review the position of Court Coordinator in relation to current collaboration with solicitors and areas for improvement.

Please indicate your response to the below statements by circling the number that matches your response.

1 = Agree; 2 = Unsure; 3 = Disagree

1	The material filed by the Department is of a high quality	1 2 3
2	Departmental staff follow natural justice principles	1 2 3
3	The Court Coordinator is a useful contact person	1 2 3
4	The Court Coordinator ensures adequate information is provided to my client/s in relation to court	1 2 3
5	(Sep Reps only) Court Coordinator assists me in accessing Departmental information as required	1 2 3
6	I have a good working relationship with the Court Coordinator	1 2 3
7	Training organised by the Court Coordinator is beneficial and informative	1 2 3

Please provide your comments in response to the below questions.

What is working well with the role?

What could be improved?

What additional tasks/processes etc could the Court Coordinator be involved in that would be useful?

Name:

Company:

Contact number:

Court Coordinator Survey

Purpose: To annually review the functions of the Court Coordinator

Please indicate your response to the below statements by circling the number that matches your response.

1 = Agree; 2 = Unsure; 3 = Disagree

1	The Court Coordinator helps me understand the purpose of court work	1 2 3
2	The Court Coordinator assists me in meeting court related deadlines	1 2 3
3	The Court Coordinator provides me with advice that assists me with decision making	1 2 3
4	The Court Coordinator assists me in understanding court processes	1 2 3
5	The Court Coordinator has a sound knowledge of the <i>Child Protection Act 1999</i>	1 2 3
6	The Court Coordinator is available for advice and case discussions when required	1 2 3
7	The advice given by the Court Coordinator leads to good court outcomes	1 2 3
8	I feel more able to prepare applications and affidavits following assistance from the Court Coordinator	1 2 3
9	The Court Coordinator provides constructive feedback	1 2 3
10	The Court Coordinator assists me in a way that suits my individual needs	1 2 3
11	I have more confidence in my ability to handle the challenges associated with court	1 2 3
12	I am now more able to help others with their court work	1 2 3
13	I am more motivated to completing good quality court material	1 2 3
14	The Court Coordinator reminds me about the importance of serving parents	1 2 3
15	I have a greater understanding of the importance of good evidence	1 2 3
16	I understand the Court Coordinator's responsibility in relation to court work	1 2 3
17	I understand my responsibilities in relation to court work	1 2 3
18	Having a Court Coordinator has improved the quality of court work in the office	1 2 3
19	I know who is responsible for providing court related paperwork to parents	1 2 3
20	I know how long prior to a mention that an affidavit must be filed	1 2 3
21	I understand what good evidence is	1 2 3
22	I can clearly identify hearsay	1 2 3
23	I know where to access court related resources	1 2 3
24	I understand how to present information in an affidavit	1 2 3
25	When speaking with parents I am confident in explaining court processes	1 2 3

26	I know how to obtain good evidence	1 2 3
27	I feel comfortable approaching the Court Coordinator if I have issues relating to court	1 2 3
28	The Court Coordinator ensures my court documentation is consistent with the <i>Child Protection Act 1999</i>	1 2 3
29	The Court Coordinator ensures that I am aware of any follow up required during interim orders	1 2 3
30	The Court Coordinator explains relevant legislation in a way I understand	1 2 3
31	The Court Coordinator ensures I have all relevant information in court material	1 2 3
32	The Court Coordinator is committed to ensuring the best interests of the child are prioritised	1 2 3
33	The Court Coordinator clearly identifies areas for improvement across the CSSC in relation to court	1 2 3
34	Training delivered by the Court Coordinator meets my learning needs	1 2 3
35	I know where to find information on upcoming court dates	1 2 3
36	The Court Coordinator represents the Department in a professional manner	1 2 3

Please provide your comments in response to the below questions.

What is working well with the role?

What could be improved?

What additional assistance/tasks/training/processes etc could the Court Coordinator be involved in that would be useful?

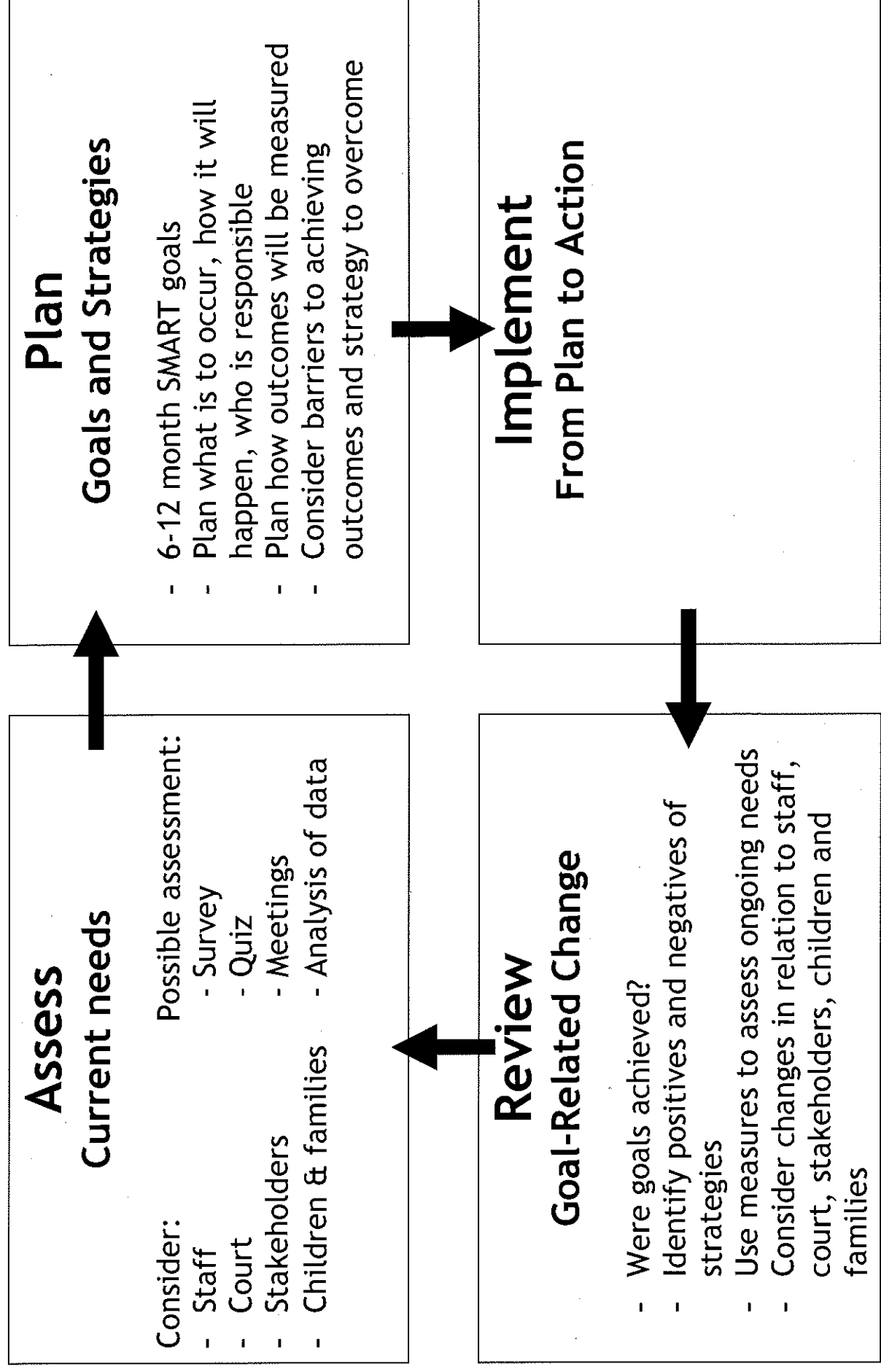
Providing your details below is optional, however this will enable the Court Coordinator to follow up with you to assist with your specific needs.

Name: _____

Role: _____

Team: _____

Planning For Change



Session Plan

Can we make a difference? A proposed model for instigating and measuring change

Outcomes:

- To explore the impact of Court Coordinators on the Department, staff, the judiciary, and children and families.
- To propose a model for instigating change
- To engage participants in developing a tool for measuring the impact of Court Coordinators

Presenters: Barry Morris, Dellene Kefford

Time	Content	Resources / Comments
9.30	<u>Introduction:</u> <ul style="list-style-type: none"> - Introduce self / experience - Why this topic? - Purpose of workshop 	
	Presentation <ul style="list-style-type: none"> - The Department prior to Court Coordinators - Original CMC recommendations - Current benefits of Court Coordinator presence 	Ppt
9.45	Activity 1 <ul style="list-style-type: none"> - Large group discussion – Court Coordinators making a difference 	
	<u>Reflecting on impact</u>	
	Activity 2 <ul style="list-style-type: none"> - Small group – 4 per group (10mins) - Reflection on your time as CC - discuss in small groups the needs of your office when you started, and what actions you have taken to address the needs and how it went – things that worked and things that didn't work. In 10 minutes I'll ask each group to choose one example to share. 	Whiteboard
10.00	Prompts on whiteboard: <ul style="list-style-type: none"> - Needs when you started - What you planned - What you did - How it went 	
	<u>Planning for change</u>	
10.10	Presentation – Proposed model for instigating change Including case example	Ppt
	On whiteboard, 4 columns "Assess" "Plan" Implement" "Review"	Whiteboard
	<i>Assessing – what are the current needs</i>	
	Activity 3 Large group discussion of different expectations of staff, management, court, Court Services etc What are the current needs in your office (write examples on whiteboard)	

Creating S.M.A.R.T. Goals

Specific Measurable Attainable Realistic Timely

Specific - A specific goal has a much greater chance of being accomplished than a general goal. To set a specific goal you must answer the five "W" questions:

- *Who: Who is involved?
- *What: What do I want to accomplish?
- *Where: Identify a location.
- *When: Establish a time frame.
- *Why: Specific reasons, purpose or benefits of accomplishing the goal.

EXAMPLE: A general goal would be, "Get in shape." But a specific goal would say, "Join a health club and workout 3 days a week."

Measurable - Establish concrete criteria for measuring progress toward the attainment of each goal you set. When you measure your progress, you stay on track, reach your target dates, and experience the exhilaration of achievement that spurs you on to continued effort required to reach your goal.

To determine if your goal is measurable, ask questions such as.....How much? How many? How will I know when it is accomplished?

Attainable - When you identify goals that are most important to you, you begin to figure out ways you can make them come true. You develop the attitudes, abilities, skills, and financial capacity to reach them. You begin seeing previously overlooked opportunities to bring yourself closer to the achievement of your goals.

You can attain most any goal you set when you plan your steps wisely and establish a time frame that allows you to carry out those steps. Goals that may have seemed far away and out of reach eventually move closer and become attainable, not because your goals shrink, but because you grow and expand to match them. When you list your goals you build your self-image. You see yourself as worthy of these goals, and develop the traits and personality that allow you to possess them.

Realistic - To be realistic, a goal must represent an objective toward which you are both *willing* and *able* to work. A goal can be both high and realistic; you are the only one who can decide just how high your goal should be. But be sure that every goal represents substantial progress. A high goal is frequently easier to reach than a low one because a low goal exerts low motivational force. Some of the hardest jobs you ever accomplished actually seem easy simply because they were a labour of love.

Your goal is probably realistic if you truly *believe* that it can be accomplished. Additional ways to know if your goal is realistic is to determine if you have accomplished anything similar in the past or ask yourself what conditions would have to exist to accomplish this goal.

Timely - A goal should be grounded within a time frame. With no time frame tied to it there's no sense of urgency. If you want to lose 10 kgs, when do you want to lose it by? "Someday" won't work. But if you anchor it within a timeframe, "by May 1st", then you've set your unconscious mind into motion to begin working on the goal.

Case Discussion

Child Protection/Family Court Interface matters

Matter: Star Jasmine Patta Norman (Female) (DOB: 17/01/01)
Moon Ray Patta Norman (Male) (DOB: 9/11/04)
Storm Norman Father
Peita Patta Mother

Jurisdiction: Federal Magistrates Court

Date/Time: 4 October 2009

Participants: Fiona Day – Child Safety Officer, Toowong Child Safety Service Centre
Tamara Richards -Team Leader, Toowong Child Safety Service Centre
Jodi Borg - Court Co-ordinator, Toowong Child Safety Service Centre

Is there existing Family Court orders: YES
In favour of Mother

Is there existing Children's Court orders: YES
Interim CPO. Next mention 20 November 09

-
- The parents divorced in 2007;
 - Department has a history with the Mother dating back to 2000 – neglect, risk of physical harm, mental health issues and drug use;
 - The children were removed from the Mother in March 2008 – concerns about risk of physical harm caused by neglect due to the Mothers drug use and domestic violence between the Mother and her new partner;
 - CPO granted May 2008. An application to extend the existing order was made in May 2009 and the children are currently subject to a interim CPO;
 - Mother has failed to engage with the department and has not met the case plan goals;
 - Various referrals have been made for the Mother to attend drug and alcohol counselling and Domestic Violence counselling, however she has failed to take up the referrals.
 - Child placed with Father pursuant to Section 82 (2) in January 2009.
 - No child protection concerns in relation to Father. He has been assessed as willing and able to protect the children;
 - The Mother has recently advised that she has a family court order in her favour that was made by consent on 1 April 2008. She has now provided a copy to the department;
 - The Father has said that he will make application to amend the existing FMC orders but hasn't in the past however he now has and the department has been served with an application;
 - The Father is seeking that the children live with him and he has full parental responsibility of the child;
 - The matter for mention on 20 November 2009;
 - The CSO has assessed that the Father is willing and able to protect the children and thinks that the orders he is seeking should be made;
 - The CSO doesn't think that the Mother would make appropriate guardianship decisions, however has no evidence to support this;

- The Grandmother has been assessed as able to supervise contact between the children and the Mother. Contact has progressed well – when the Mother attends;

**Case Discussion held on [date]
Child Protection/Family Law Interface matters**

Family: *(include child/ren and parent/s name/s, dates of birth)*

Participants:

[Name] – Child Safety Officer, [name] Child Safety Service Centre
[Name] - Team Leader, [name] Child Safety Service Centre
[Name] - Court Co-ordinator, [name] Child Safety Service Centre
[Name] – Court Services Adviser, Court Services

Jurisdiction: [Family Court/Federal Magistrates Court]

Date/time/nature of proceeding: [next return date to court – if known; is matter listed for mention, hearing etc]

Existing family law orders/new applications: [give brief details including applicant and any respondents and orders sought]

Child/ren's legal status: [give details of any Children's Court proceedings or orders – including next return date to court, or when CPO due to expire]

Prompts to use to guide case discussion:

- What has prompted the family law application? Has CSSC encouraged the parent/party to seek the order/s?
- What are the child protection concerns? Who was the alleged maltreater? What assessment have we done of both parents?
- Relevant to the case plan: What was expected of the parents to address the child protection concerns? Have we allowed the non protective parent/s to address the concerns? Have the parent/s addressed the concerns? How has the change been measured?
- How often does contact occur with both parents? Is it supervised or unsupervised? Would the department have concerns if contact was unsupervised?

Please note the above is a guide only – please remove once the case discussion minutes have been completed.

Current placement of the child/ren

-

Assessment conducted and outcomes

-

CP concerns current and historical

-

Progress of Case Plan Goals

-

Department's position re family law application (should consider lives with and contact arrangements)

-

Court Coordinator Network Forum 2009 Family Law Team Session Outline

Principles:

- The same scenarios will be used throughout the training, however dependent on the experience of each CC will depend on what sessions that they attend.
- Timings will be different for each group. We expect that session 2 will run for longer for Group A then it will for Group B.
- The group would be split into 2 groups – **Group A** inclusive of Court Coordinators who have not attended induction training or are new to the role and **Group B** inclusive of Court Coordinators who have attended a number of network forums.
- We would like participants to gain an understanding of the different assessment

Of the below session outlines, Group A will run through Sessions 1 and 2 and Group B will run through Sessions 2 and 3.

Resources required:

Session 1

- *CP/Family Law Interface Summary Form*
- Noddy's notes on the family law jurisdiction - what is the FC in under 1000 words
- Reading & interpreting a family law order
- *CP/Family Law Case Discussion Template Form*
- Diagram/flow chart of CP/family law proceedings
- Assessment Considerations Tool - relevant sections of the *FLA*
- Glossary of Terms

Jodi
Angelica
Fiona
Jodi
Angelica (Jess)
Angelica (Jess)
Angelica

Session 2

- Scenario and family law order

Ange/Tam

Session 3

- Case Discussion Minutes
- Application and supporting Affidavit
- Departments Affidavit for QA'ing
- Departments Affidavit for QA'ing – with track changes

Fiona
Fiona
Fiona
Fiona

SESSION PLAN

	<u>GROUP A</u>	<u>GROUP B</u>
1) The role of the Court Coordinator in CP/family law interface matters TOOLBOX SESSION Introduction a. <i>CP/Family Law Interface Summary Form</i> b. Noddy's notes on the family law jurisdiction c. <i>CP/Family Law Case Discussion Template Form</i> d. Diagram/flow chart of CP/family law proceedings e. Assessment Considerations Tool f. Discussion	Jodi/Angelica 2 minutes 2 minutes 2 minutes 2 minutes 2 minutes 5 minutes 10 minutes 20 minutes	 10 minutes 10 minutes
2) The CP/Family Law Interface – how we can make it run smoothly! a. Handout scenario and ask participants to read b. Brainstorm about what additional information the CC will need to know c. Fill out <i>CP/Family Law Interface Summary Form</i> (from your CSSC) d. Discussion – What does the family law court have to be satisfied with before making an order? Assessments for family law court must be broader than CP assessments Summarise relevant sections of the <i>FLA</i> , EG. Section 60CC - primary considerations for family law court e. Submission writing? Fill in an <i>Attendance Slip</i> . And read out a couple	Ange/Tam 15 minutes 10 minutes 15 minutes 30 minutes 20 minutes 90 minutes	 20 minutes 20 minutes 60 minutes
3) How to QA a family law affidavit a. Using scenario, provide participants with case discussion minutes (detail dept's position), EG family law order and copy of application and affidavit of applicant and ask to read b. Brainstorm on what should be included in Dept's affidavit c. QA CSO's affidavit & feedback	Fiona/Angelica 15 minutes 5 minutes 5 minutes	 15 minutes 20 minutes 50 minutes
TOTAL TIMES:	120 minutes	120 minutes

Definitions commonly used in Family Court/Federal Magistrates Court	
Best Interests of the Child	The child's best interests are considered by the court when making a particular parenting order. The child's best interests are determined by taking into account the primary and additional considerations (ss 60CA and 60CC(1) FLA)
Consent Order	An agreement between the parties to a proceeding. A consent order can cover a wide range of issues including; property issues, spousal maintenance issues and parenting matters. When it is approved by the court it becomes a court order
Equal Shared Parental Responsibility (ESPR)	ESPR means both parents can make major long-term decisions about the child, including medical, religious and cultural matters, their education, name and changes to their living arrangements (s 4(1) FLA). Day-to-day decisions regarding what the child eats or wears is not included. The court presumes that both parents have ESPR (s 61DA(1) FLA; note: this presumption does not apply if there has been child abuse or violence s 61DA(2) FLA). If ESPR is presumed, the court must consider whether it is practical and in the child's best interests for the child to spend equal time or substantial and significant time with each parent (s 65DAA FLA).
'Equal Time'	The child spends equal time with the parents, whether that be on a week about or month about basis etc (s 65DAA(1)).
Ex parte Hearing	A hearing where one party is not present and has not been given notice of the application before the court. This hearing is often reserved for urgent cases.
Family Consultant	A psychologist and/or social worker who specialises in child and family issues that may occur after separation and divorce. There are often required to provide the court with family reports.
Family Court of Australia (FCA)	If a matter is predicted to last more than 3 days (i.e. it is complex) it will be listed for hearing in the FCA
Family Dispute Resolution (FDR)	FDR is a process where those affected by separation are helped by a family dispute resolution practitioner to resolve their disputes (s 10F FLA). A court must not hear any application under Part VII of the FLA (children's matters) unless the parties have attended FDR (s 60I(7) FLA; note: FDR is not compulsory in cases where there are reasonable grounds to believe there has been abuse s 60I(9)(b) FLA). Three hours of free FDR will be provided to all new or reopened cases
Family Report	A written assessment of a family by a family consultant to assist the court in making a decision about a case. It may include information regarding the background of the dispute, the current relationship between the parents, and between the parents and the children and, the children's views.
Federal Magistrates Court of Australia (FMC) –	If a matter is predicted to last less than 3 days (i.e. it is not complex) it will be listed for hearing in the FMC.

FLA	Family Law Act 1975 (Cth)
Independent Children's Lawyer (ICL)	a lawyer appointed by the court to represent the child's interests in a case (similar function to a Separate Representative in the Children's Courts). They can obtain relevant information from teachers, doctors and counsellors, talk with the child and arrange for family or psychological reports (s 68L FLA).
'Lives With' Parental Responsibility	Where the child is to live (previously known as 'custody' or 'residence'). a parent's responsibility to make decisions about the care, welfare and development of the child (s 61B FLA). It involves making decisions about the child's education, religion, medical treatment, name and living arrangements.
Parenting Plan	A written agreement between the parties setting out parenting arrangements for children. It is neither approved by, nor filed with the court (s 63C FLA).
Parenting Order	A court order which sets out the particular responsibilities of parents and carers, after taking into account the best interests of the child. They include who the child lives with, who they spend time and communicate with, and any other issues relevant to the child's care such as schooling, religious affiliation and medical treatment (s 64B FLA).
Sole Parental Responsibility	if the presumption of ESPR is not applied (s 61DA(1) and (2) FLA), one parent is granted sole parental responsibility of the child to make decisions regarding long-term issues, including education, religion, health, name and changes to a child's living arrangements (s 4(1) FLA)
Spends Time With'	Who the child is to spend time with (previously known as 'access' or 'contact').
'Substantial and Significant Time'	To be 'substantial and significant time' the child must spend time with both parents that include days that do and days that do not fall on weekends and holidays, which allows both parents to be involved with the child's daily routine and significant events (s 65DAA(2) and (3) FLA)

Federal Magistrates Court
SCENARIO

Relevant Persons

Children:	Star Jasmine Patta Norman (Female)	(DOB: 17/01/01)
	Moon Ray Patta Norman (Male)	(DOB: 9/11/04)
Father:	Storm Norman	
Mother:	Peita Patta	

Background Information

The children were previously subject to Child Protection Orders granting custody to the Chief Executive for a period of 12 months. In May 2009, an application to extend the existing orders was mentioned in the Brisbane Children's Court and the matter was adjourned for further mentions on 3 September 2009 and 6 November 2009. The children are currently subject to Interim Child Protection Orders granting custody to the Chief Executive.

Prior to their removal from the parent's care, the subject children lived with her mother Mrs Peita Patta.

The Department first had contact with Ms Patta and Mr Storm in 2000. The parents commenced living together in 1998 and separated in 2006. Since this time, the Department has recorded 6 child protection notifications in relation to the subject children and 1 child concern report. The theme of the child protection concerns has been the ongoing neglect of the subject children by Ms Patta. Departmental records indicated that Star and Moon were initially exposed to domestic violence between their parents and placed at risk of physical harm.

The children were most recently removed from their mother's care in March 2008 initially subject to Temporary Assessment Orders and then Court Assessment Orders. Ultimately they became subject to Child Protection Orders because of concerns related to the risk of physical harm of the children by the mother Ms Patta. The concerns at the time the notification was received in March 2008 was that the Mother had entered into a domestically violent relationship and that she had started using drugs. The concerns stated that the Mother's drug use, together with her existing mental health condition had placed the children at risk of physical and emotional harm as the Mother was unable to care for them appropriately.

An assessment of the concerns was conducted and it was determined that the children had suffered harm while living with the Mother, as evidenced by bruising Moon Ray and a burn on Star, which is alleged that she received while trying to cook dinner for herself and her brother. Both children made disclosures of witnessing domestic violence between their Mother and her new partner, as well as often needing to find food for themselves and having witnessed their Mother's drug use.

At the time of the children's removal from the mother's care, they were placed with departmentally approved foster carers. On 9 January 2009 the children were placed with their father Mr Norman and the placement is considered very stable.

Mr Norman has engaged with the department and has acknowledged the harm to the children by him and Ms Patta in the past and the children to live in a safe environment, free of drug use and domestic violence. The mother Mrs Patta continues to deny any harm to the children and risk of harm to the children.

During a significant part of the previous Child Protection Order, Mrs Patta failed to engage with the department and was sporadic in her contact with the children.

On 10 April 2009 a Family Group Meeting is conducted with both parents and it is determined that applications to extend the existing Child Protection Orders will be sought for a further period of one year and that the goal of case planning will be reunification of the children into the father's care subject to him achieving various outcomes identified in the case plan.

The children are now having 1 hour supervised contact with the mother Ms Patta each Saturday, supervised by her Mother.

On 25 August 2009, the Director General of the Department of Child Safety is served at the Court Services Unit as third respondent to an application by the father Mr Norman to the Federal Magistrates Court of Australia for orders that the subject children live with him and spend time with their mother Ms Patta each week.

It remains the Department's assessment that:

- the subject children remain children in need of protection at this time as they do not have a parent who is willing and able to protect them from harm. The Father has demonstrated his ability and willingness, however as the children were primarily in the residence of the mother and the Mother has indicated that she would remove them from the Father should the department withdraw, it has been assessed that the Father is unable to meet the children's protective needs;
- an application to extend the existing Child Protection Orders granting custody to the Chief Executive is appropriate to achieve the children's protection at this time, as it has been assessed that –
 - there is a risk of physical harm to the children if the children were removed from their Father by the Mother, due to her ongoing drug use and mental health concerns;
 - there is a risk of emotional harm to the children if the children were not able to spend time with their mother and/or were at this time removed from the care of their Father as they have developed a positive attachment too him.



Referral Summary of Family Law/Child Protection Interface Matters

Date:

Child Safety Service Centre making referral:

Relevant staff with current involvement:

Subject Child/ren Names/DOB: Indigenous status:	
Family Details Mother: Father: Other: Are the parents legally rep? <i>give details</i>	
Current Status of Children Interim orders: Current Placement:	
Children's Court Status Court: Current order/app: Parents contesting etc: Next mention date: FGM/COC/Sep Rep:	
Case Management What CSSC holds case management/case work? <i>Please list people, roles & contact details</i>	
Family Court Orders Do you have a copy of the orders? Date of existing order? Grounds of existing order Is there a new applicant pending by either parent – what are the details? Does the existing order include any other parties other than the parents?	
Briefly Outline department's position and details of assessment undertaken to support position	

Please ensure you forward all relevant documentation with this form. A copy of the application and any orders would be relevant – you may also want to include the Children's Court material. This will help Court Services in determining what response the department may take in respect of this matter in the family law jurisdiction.

Thankyou.

**IN THE FEDERAL MAGISTRATES COURT
OF AUSTRALIA**

REGISTRY: ROCKHAMPTON

File number: BRC 629 / 2009

COURT USE ONLY

Court
Location

Court date

Court time

PEITA PATTÀ
Applicant

STORM NORMAN
Respondent

DEPARTMENT OF COMMUNITIES
Other party

AFFIDAVIT

Name of deponent: Fiona Day

Date sworn / affirmed:/...../.....

I, Fiona Day of Level 13, 30 Mackeston Street, Brisbane, QLD, 4001 and Child Safety Officer at the Department of Communities (hereinafter referred to as 'the department) affirm and say as follows:

1. I am the Child Safety Officer with case management responsibility for Star Jasmine Patta Norman (DOB: 17/01/01) and Moon Ray Patta Norman (DOB: 9/11/04).
2. I am currently employed by the Department of Communities, (hereinafter referred to as "the Department"). I am appointed as an authorised officer under the *Child Protection Act 1999*. I hold a Bachelor of Social Science (Psychology) from Queensland University, Brisbane. This degree was conferred in 2006.

Filed on behalf of The Department of Child Safety
Prepared by Fiona Day Lawyer's code _____
Name of law firm Crown Law
Address for service in Australia State Law Building, 50 Ann Street
Brisbane State QLD Postcode 4001
Email _____ DX _____
Tel _____ Fax _____ Attention _____

3. I have been employed with the Department since July 2006.

CURRENT CHILD PROTECTION ORDER

4. On 1 April 2008 I applied to the Brisbane Childrens Court for a Child Protection Order granting custody of Star Jasmine Patta Norman and Moon Ray Patta Norman to the Chief Executive for a period of 1 year.
5. The order was granted on 5 May 2008.
6. On 3 May 2009 I applied to extend this order for a further period of 2 years.
7. The application was last mentioned on 3 September 2009 in the Brisbane Childrens Court and was adjourned to 6 November 2009.
8. Attached to this affidavit and marked **Exhibit A & B** are true copies of the Interim Child Protection Order granted on 3 September 2009.

CHILD PROTECTION HISTORY

6. The Department first had contact with Ms Patta in 2000.
7. Since this time, the Department has recorded 6 child protection notifications in relation to the subject children and 1 child concern report. The theme of the child protection concerns has been the ongoing neglect of the subject children by Ms Patta.
8. Departmental records indicated that Star and Moon were initially exposed to domestic violence between their parents and placed at risk of physical harm.

CURRENT CHILD PROTECTION CONCERNS

9. The 9 March 2008 the Towoong Child Safety Service Centre recorded a child protection notification in relation to Star and Moon. The concerns related to the risk of physical harm of Star and Moon by Ms Patta.
10. A full investigation and assessment was conducted and an outcome of Substantiated, children in need of protection was recorded in relation to Star and Moon. It was determined that Star and Moon would be at risk of future harm if they remained in the care of their Mother.

PROPOSED CONTACT BETWEEN CHILD AND HER MOTHER

11. Currently the department supports and facilitates supervised contact between the children and their Mother on a weekly basis since Star and Moon have been in the care of the department.

Signature of person making this affidavit (deponent)

Signature of witness

12. Departmental records indicate that Star and Moon have consistently advised officers that they want to see their mother and miss her.
13. This contact is supervised over a 4 hour period by youth workers in Redland Bay. It is assessed that this contact must be supervised due to the risks associated with Ms Patta failing to protect her children in the past.
14. I have assessed that Star and Moon would be at risk of harm during any period of unsupervised contact with their Mother.

PROPOSED PLACEMENT OF CHILD

15. Cameron was placed with their Father, Mr Storm Norman, on 9 January 2009, pursuant to Section 82 (2) of the Child Protection Act 1999. At this time, Mr Norman was assessed as is both willing and able to meet Star and Moon's physical, emotional and protective needs.
16. Departmental records indicate that there have been no child protection concerns raised in relation to Mr Norman's care of the children since they were placed in his care.
17. It is the department's assessment that the orders sought by Mr Norman in the Family Court of Australia would meet Star and Moon's ongoing and long term permanency care needs.
18. Should the orders sought by Mr Norman be granted in the Family Court, Cameron would no longer be assessed as a child in need of protection, and the Department would apply to revoke the current Child Protection Order.

DEPARTMENTS POSITION ON FATHER'S APPLICATION TO HAVE SOLE GUARDIANSHIP RESPONSIBILITY FOR THE CHILD

19. It is assessed that Ms Peita has the capacity to participate in making guardianship decisions in relation to Star and Moon.

CHILD SAFETY SERVICE CASE PLAN

20. Attached and marked **Exhibit C** to this affidavit is a copy of the children's current case plan.

Signature of person making this affidavit (deponent)

Signature of witness

Sworn / Affirmed by the deponent
at (place) Brisbane
on (date) 1 / 10 / 2009

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

Signature of person making this affidavit (deponent)

Signature of witness

REGISTRY: ~~ROCKHAMPTON~~BRISBANE

COURT USE ONLY

DEPARTMENT OF COMMUNITIES
Other party

Filed on behalf of The Department of Child Safety
 Prepared by Fiona Day Lawyer's code _____
 Name of law firm Crown Law
 Address for service in Australia State Law Building, 50 Ann Street
 Brisbane _____ State QLD Postcode 4001
 Email _____ DX _____
 Tel _____ Fax _____ Attention _____

2. I am currently employed by the Department of Communities, (hereinafter referred to as "the Department"). I am appointed as an authorised officer under the *Child Protection Act 1999*. I hold a Bachelor of Social Science (Psychology) from Queensland University, Brisbane. This degree was conferred in 2008.
3. I have been employed with the Department since July 2006.

CURRENT CHILD PROTECTION ORDER

4. On 1 April 2007 I made an application in the applied to the Brisbane Childrens Court for a Child Protection Order granting custody of Star Jasmine Patta Norman to the Chief Executive for a period of 1 year.
5. The application was adjourned to 5 May 2007 at which time the order was granted with the consent of both parents.
6. Attached to this affidvait and marked Exhibit A is a true copy of the Child Protection Order granted on 5 May 2007.
5. ~~This order was due to expire on 4 May 2008. The order was granted on 5 May 2007.~~
7.
8. On 3 May 2008 I applied to extend this order for a further period of 2 years.
9. The application was adjourned to 6 June 2008.
- 6-10. Attached to this affidvait and marked Exhibit B is a true copy of the Interim Child Protection Order granted on 3 May 2008.

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CHILD PROTECTION HISTORY

6. Departmental records indicate that theThe Department first had contact with Ms Patta and Mr Norman in November 2000.
7. Since this time, the Department has recorded 6 child protection notifications in relation to the subject children and 1 child concern report. The theme of the child protection concerns has been the ongoing neglect of the subject children by Ms Patta and risk of physical harm to the children caused by domestic violence between Ms Patta and Mr Norman.
8.
8. ~~Departmental records indicated that Star Jamine was initially exposed to domestic violence between her parents and placed at risk of physical harm.~~

Comment [f1]: More information required about the history. For example, on the 6 notifications, how many were substantiated? Have we worked with the parents in the past to try and address the concerns?

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Signature of person making this affidavit (deponent)

Signature of witness

CURRENT CHILD PROTECTION CONCERNS

9. The 9 January 2007 the Towoong Child Safety Service Centre recorded a child protection notification in relation to Star. The concerns related to the risk of physical harm of Star by Ms Patta.

Comment [f2]: Insert more details about the notification.

10. |

Comment [f3]: More information is required about the assessment process. Interviews with the Mother, Child and Father, interviews with schools, QPS. Evidence of why the child was assessed as in need of protection.

10-11. A full investigation and assessment was conducted and an outcome of Substantiated, child in need of protection was recorded in relation to Star. It was determined that Star would be at risk of future harm if she remained in the care of her Mother.

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PROPOSED CONTACT BETWEEN CHILD AND HER MOTHER ASSESSMENT OF MS PATTA

12. |

Comment [f4]: Insert more information about why it is assessed that Ms Patta is not able to care for Star

13. Currently the department supports and facilitates supervised contact between Star and her Mother on a weekly basis since Star has been in the care of the department.

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14. |

Comment [f5]: Need more information about how many contacts the Mother has attended, her commitment to contact, what occurs, any behaviour issues, her ability to supervise Star, and other issues.

15. Departmental records indicate that Star has consistently advised officers that she wants to see her mother and misses her.

16. This contact is supervised over a 4 hour period by youth workers in Redland Bay. It is assessed that this contact must be supervised due to the risks associated with Ms Patta failing to protect her in the past.

Comment [f6]: Need more information here about how this assessment was made.

17. I have assessed that Star would be at risk of harm during any period of unsupervised contact with her Mother.

PROPOSED PLACEMENT OF CHILD ASSESSMENT OF MR NORMAN

18. Cameron Star was placed with her Father, Mr Storm Norman, on 9 January 2009, pursuant to Section 82 (2) of the *Child Protection Act 1999*. At this time, Mr Norman was assessed as is both willing and able to meet Star's physical, emotional and protective needs.

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19. |

Comment [f7]: More information required about how this assessment was made

20. Departmental records indicate that there have been no child protection concerns raised in relation to Mr Norman's care of Star since she was placed in his care.

21. It is the department's assessment that the orders sought by Mr Norman in the Family Court of Australia would meet Star's ongoing and long term permanency care needs.

Signature of person making this affidavit (deponent)

Signature of witness

18.22. Should the orders sought by Mr Norman be granted in the Family Court, Cameron would no longer be assessed as a child in need of protection, and the Department would apply to revoke the current Child Protection Order.

DEPARTMENTS POSITION ON FATHER'S APPLICATION TO HAVE SOLE GUARDIANSHIP RESPONSIBILITY FOR THE CHILD

19.23. It is assessed that Star's mother Ms Peita has the capacity to participate in making guardianship decisions in relation to Star.

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24. _____

Comment [f8]: Any further information about this – examples.

DEPARTMENTS ASSESSMENT ON MATERNAL GRANDMOTHERS ABILITY TO SUPERVISE CONTACT

25. _____

CHILD SAFETY SERVICE CASE PLAN

20.25. Attached and marked Exhibit C to this affidavit is a copy of the child's current case plan.

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Sworn / Affirmed by the deponent
at (place)
on (date)/...../.....

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

Signature of person making this affidavit (deponent)

Signature of witness

**IN THE FEDERAL MAGISTRATES COURT
OF AUSTRALIA
REGISTRY: BRISBANE**

File number: BRC 11 / 2009

COURT USE ONLY

Court
Location

Court date

Court time

STORM NORMAN
Applicant

PEITA PATTÀ
Respondent

DEPARTMENT OF CHILD SAFETY

AFFIDAVIT

Name of deponent: STORM NORMAN

Date sworn / affirmed: 20 / 08 / 2009

I, (full name) Storm Norman of 124 Gladstone Road, Brisbane, QLD and labourer make oath and say / affirm:

1. I am the biological Father of Star Jasmine Patta Norman (DOB: 17/1/07) and Moon Ray Patta Norman (DOB: 9/11/04).
2. The children have been in my care since the Department of Communities intervened and removed them from their Mother in March 2008.
3. Since the children have been in my care, they have been well looked after and have everything that they need.

Filed on behalf of STORM NORMAN

Prepared by Erma Lawyer

Lawyer's code _____

Name of law firm Family Matters Lawyers

Address for service in Australia North Quay
Brisbane

State QLD

Postcode 4000

Email _____

DX _____

Tel _____

Fax _____

Attention _____

4. They both have their own rooms and toys and are very happy living with me.
5. I am aware that the Mother has been working with the Department of Communities so that she can have unsupervised contact with the children.
6. I am concerned that the Mother might harm the children if she has this contact at the moment.
7. I am seeking that the children live with me and that I make all decision making about the children, although I am happy to ensure that the Mother is kept up to date on the children's progress.
8. At this stage, I feel that it would be safer for the children if their Maternal Grandmother supervised contact between them and the Mother.

Affirmed by the deponent
at (place) Brisbane
on (date) 20 / 08 / 2009

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

INITIATING APPLICATION (Family Law)

Filed in:

- ☐ Family Court of Australia
☐ Family Court of Western Australia
☒ Federal Magistrates Court of Australia
☐ Other (specify): _____

IMPORTANT: Information for respondents to the application is on page 10.

COURT USE ONLY

Client ID
File Number
Filed at
Filed on
Court location
Court date
Time
Type of hearing

STORM NORMAN
Applicant's Name
Father

PEITA PATTA
Respondent's Name
Mother

DEPARTMENT OF CHILD SAFETY

Part A: The orders sought

Type of orders sought (mark all boxes that apply)

- ☒ Children (parenting) ☐ Financial (property and/or maintenance)
☐ Child support ☐ Other (specify): _____
☐ Declaration

Filed on behalf of: The Applicant

Prepared by Erma Lawyer Lawyer's Code _____

Name of law firm Family Matters Lawyers

Address for service in Australia North Quay

Brisbane State QLD Postcode 4001

Email* _____ DX _____

Tel _____ Fax* _____ Attention _____

* Please do not include email or fax details unless you are willing to receive documents from the Court and other parties in that way.

Final orders sought (state precisely and briefly the final orders sought by the applicant – give a number to each order sought)

1. That the child Star Jasmine Patta Norman (DOB: 17/01/07) and Moon Ray Patta Norman (DOB: 9/11/04) live with the Father, Storm Norman.
2. That the Father have sole long term responsibility for the major long term decisions in relation to the children, including, but not limited to, the school or schools that the children are to attend; the religious instruction and upbringing of the children; and the medical and psychological treatment of the children.
3. That the children spend time with and communicate with the Mother, supervised by the Maternal Grandmother, at such times as ordered by the Court.

Interim or procedural orders sought (These orders can only be sought in this form if you are seeking final orders as well; otherwise, leave blank. State precisely and briefly the orders sought – give a number to each order sought.)

1. As above

Part B: Details of the Parties

Details of Applicant/s

	Applicant 1	Applicant 2
Family name as used now	NORMAN	
Given names	STORM	
Sex	<input checked="" type="checkbox"/> male <input type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
Residential address (incl postcode)	124 Gladstone Road, Brisbane, QLD	
Telephone number (home and mobile)	07 3216 8964	
Date of birth (day / month / year)	24 / 10 / 1971	/ /
Usual occupation	Labourer	
Mark box as applicable for each applicant	<input checked="" type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input checked="" type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia
Description	<input checked="" type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):	<input type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):
Is an interpreter required?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:	<input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:
*Is the applicant of Aboriginal and/or of Torres Strait Islander origin?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander

*You are not required to answer this question, but it will greatly assist the Court if you do. The information sought is being collected to assist the Court in planning and delivering client services. It is possible that you may be contacted to participate in a review of a particular aspect of the Court's services, although your right not to participate will be respected. The information you provide may be shared with researchers approved by the Court, and may be included in publications in statistical form in a way that does not identify you.

Details of Respondent/s

	Respondent 1	Respondent 2
Family name as used now	PEITA	
Given names	PATTA	
Sex	<input type="checkbox"/> male <input checked="" type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
Residential address (incl postcode)	Unknown	
Date of birth (day / month / year)	16 / 08 / 1976	/ /
Usual occupation	Unemployed	
Mark box as applicable for each respondent	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input checked="" type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia
Description	<input type="checkbox"/> husband/father <input checked="" type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):	<input type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):
Is an interpreter required?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:	<input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:
*Is the respondent of Aboriginal and/or of Torres Strait Islander origin?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander

* You are not required to answer this question, but it will greatly assist the Court if you do. The information sought is being collected to assist the Court in planning and delivering client services. It is possible that you may be contacted to participate in a review of a particular aspect of the Court's services, although your right not to participate will be respected. The information you provide may be shared with researchers approved by the Court, and may be included in publications in statistical form in a way that does not identify you.

Part C: Relationship of Parties

Date parties commenced to live together (day / month / year)	12 / 12 / 1993	or <input type="checkbox"/> Not applicable
Date of marriage (day / month / year)	01 / 07 / 1999	or <input type="checkbox"/> Not applicable
Place of marriage (town, city, country)	Brisbane	or <input type="checkbox"/> Not applicable
Date of final separation (day / month / year)	12 / 02 / 2006	or <input type="checkbox"/> Not applicable
Date of divorce (day / month / year)	25 / 02 / 2007	or <input type="checkbox"/> Not applicable

Part D: Children

(Complete details for each child. If more space is required for extra children, attach an extra page)

	Child 1	Child 2
Family name	NORMAN	NORMAN
Given names	STAR JASMINE PATTA	MOON RAY PATTA
Date of birth (day / month / year)	17 / 01 / 2001	9 / 11 / 2004
Sex	<input type="checkbox"/> male <input checked="" type="checkbox"/> female	<input checked="" type="checkbox"/> male <input type="checkbox"/> female
Mother's family name	PATTA	PATTA
Mother's given names	PIETA	PIETA
Father's family name	NORMAN	NORMAN
Father's given names	STORM	STORM
With whom does the child live?	FATHER	FATHER

	Child 3	Child 4
Family name		
Given names		
Date of birth (day / month / year)	/ /	/ /
Sex	<input type="checkbox"/> male <input type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
Mother's family name		
Mother's given names		
Father's family name		
Father's given names		
With whom does the child live?		

Part E: For applications for parenting orders

Has the applicant obtained a certificate from a registered family dispute resolution practitioner?
(Refer to section 60I of the *Family Law Act 1975*).

☒ No ☐ Yes

If yes, attach a copy of the certificate to this application and go to Part F of this form.

If no, to obtain an exemption from filing a certificate you must either complete and file the form *Affidavit - Non-Filing of Family Dispute Resolution Certificate* or include the factual basis for the exemption in the affidavit you file in support of any order you are seeking.

Has the applicant received advice from a family counsellor or a family dispute resolution practitioner about the services and options (including alternatives to court action) available in circumstances of abuse or violence? (Refer to section 60J of the *Family Law Act 1975*).

☒ No ☐ Yes

Part F: Other court cases and orders

Ongoing cases

Are there any ongoing cases in this or any other court about family law, child support, family violence or child welfare issues that involve any of the parties or children listed in this application?

☐ No ☒ Yes

If yes, provide the following details for each ongoing case. (Attach extra pages as required.)

Court name and place

BRISBANE CHILDRENS COURT

Next Court date

6 / 06 / 2008

Names of parties

AS ABOVE

State the nature of the orders sought (eg property settlement, parenting orders, child support)

CHILD PROTECTION APPLICATION

Existing orders, agreements or undertakings

Are there any existing orders, agreements, parenting plans or undertakings to a court about family law, child support, family violence or child welfare issues concerning any of the parties or children listed in this application?

☒ No ☒ Yes

If yes, either **attach copies** of any orders, agreements, parenting plans or undertakings or provide details below.

(If there is more than one order etc, attach extra pages as required.)

Court name and place

Rockhampton

Date

01 / 04 / 2008

Names of parties to the order, agreement, parenting plan or undertaking

As per application

Part G: For property and/or spouse/de facto partner maintenance applications

If the parties were in a de facto relationship that has broken down, complete Part H)

Have the parties entered into a financial agreement or a part VIIIAB Financial Agreement under the *Family Law Act 1975* or under any relevant state or territory legislation?

☐ No ☐ Yes

If either party has a superannuation interest, have the parties entered into a binding superannuation agreement in relation to that superannuation interest?

☐ No ☐ Yes

Is any party currently bankrupt or currently a debtor in bankruptcy proceedings started by either a creditor's petition or a debtor's petition or currently a debtor subject to a personal insolvency agreement?

☐ No ☐ Yes

Is there a proceeds of crime order or current forfeiture application in relation to any of the property of any of the parties?

☐ No ☐ Yes

If yes, attach a sealed copy of the order or application.

Part H: De facto relationship jurisdiction – financial causes

(subsection 4(1) of Family Law Act 1975 defines de facto relationship cause)

Complete **all** the boxes below if relying on the Court's jurisdiction to make orders for the benefit of a party to de facto relationship that has broken down.

Entitlement to apply and geographic requirements

(a) Did your de facto relationship break down on or after 1 March 2009?

☐ No ☐ Yes

(b) Is the period or the total of the periods of the de facto relationship at least 2 years?

☐ No ☐ Yes

(c) Is there is a child of the de facto relationship?

☐ No ☐ Yes

(d) Has the applicant made substantial contributions and a failure to make an order or declaration would result in serious injustice to the applicant?

☐ No ☐ Yes

(e) Is, or was, the relationship registered under a prescribed law of a State or Territory of Australia?

☐ No ☐ Yes

(f) Were both parties to the relationship ordinarily resident in one or more of the Australian Territories or New South Wales, Queensland, Victoria or Tasmania for at least one third of the domestic relationship, or at the date the relationship broke down?

☐ No ☐ Yes

(g) Did the applicant make substantial contributions in one or more of the Australian Territories or New South Wales, Queensland, Victoria, or Tasmania?

☐ No ☐ Yes

Part I: Cross-vested jurisdiction

(Complete only if relying on cross-vested jurisdiction. Note: An affidavit *must* be filed – see Rule 4.06 of the *Family Law Rules 2004*)

If relying on a cross-vesting law, specify the Territory law relied on

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Part J: Lawyer's declaration

If the applicant is filing this application without a lawyer, this part need not be completed.

However the applicant should obtain a copy of the information brochure *Marriage, Families and Separation* from Court staff when filing the application. If a lawyer is filing the application, then the lawyer must give the applicant a copy of the brochure and sign the following declaration.

I gave the applicant(s) a copy of the Family Law Courts' brochure *Marriage, Families and Separation*.

Signature of lawyer

Full name of lawyer:

Date: / /

Part K: Affidavit of Applicant(s)

Affidavits must be sworn or affirmed before a person authorised to witness affidavits

Applicant 1	Applicant 2
<p>I <input checked="" type="checkbox"/> swear / <input type="checkbox"/> affirm that:</p> <ol style="list-style-type: none">1. I am the applicant.2. I have read this Application.3. The facts of which I have personal knowledge are true.4. All other facts are true to the best of my knowledge, information and belief and the orders sought in this application are supported by evidence.5. I am aware that I have a duty to the Court and to each other party to give full and frank disclosure – in a timely manner - of all information relevant to the issues in the case.	<p>I <input type="checkbox"/> swear / <input type="checkbox"/> affirm that:</p> <ol style="list-style-type: none">1. I am the applicant.2. I have read this Application.3. The facts of which I have personal knowledge are true4. All other facts are true to the best of my knowledge, information and belief and the orders sought in this application are supported by evidence.5. I am aware that I have a duty to the Court and to each other party to give full and frank disclosure – in a timely manner - of all information relevant to the issues in the case.

Signature of Applicant 1

Place: Brisbane

Date 19 /08 /2009

Signature of Applicant 2

Place:

Date / /

Before me (signature of witness)

Erma Lawyer

Full name of witness (please print)

Qualification of witness

- ☒ Lawyer
☐ Notary Public
☐ Justice of the Peace
☐ Other (specify)

Before me (signature of witness)

Full name of witness (please print)

Qualification of witness

- ☐ Lawyer
☐ Notary Public
☐ Justice of the Peace
☐ Other (specify)

IMPORTANT NOTICE TO RESPONDENT(S)

You should seek legal advice about this application.

If you do not want the court to make the orders sought in this application or if you want the court to make other orders, **YOU MUST:**

For proceedings in the Federal Magistrates Court of Australia

- file at the court a response, an affidavit and other relevant documents – including, in financial matters, a *Financial Statement*
- deliver a copy of the response, affidavit and other relevant documents to the applicant's address for service within 14 days, and
- attend at the hearing. **Please note: If you do not attend the hearing orders may be made in your absence.**

For proceedings in the Family Court of Australia

- within 14 days of service on you of the *Initiating Application*, file at the court a *Response to Initiating Application* and in a financial case, a *Financial Statement*. These forms are available at any family law registry or on the Family Law Courts' website www.familylawcourts.gov.au
- file an affidavit if interim or procedural orders are sought by either party. A form of affidavit in support of a response seeking or opposing interim parenting orders is available at any family law registry or on the Family Law Courts' website www.familylawcourts.gov.au
- file other documents, as required, depending on the orders you seek (see Rule 4.18 of the *Family Law Rules 2004*)
- serve on all other parties copies of the documents filed, at least 7 days before the court date shown on page one of this application, and
- attend at the hearing. **Please note: If you do not attend the hearing orders may be made in your absence.**

IJIS

Electronic Transfer of Court Results Initiative

The Electronic Transfer of Court Results (ETCR) initiative went live in November 2009 and enables court results as they are captured in DJAG's Queensland-wide interconnected courts (QWIC) system to be electronically sent to agencies depending upon their entitlement or interest.

The ETCR initiative enables Child Safety Services to electronically receive court results for children and young people subject to departmental intervention (IA's, IPA's, and Child Protection Orders).

Child Safety Services will receive court result messages that meet the following criteria:

Message Filter Rules

- An application that has been made under either the *Child Protection Act* or *Juvenile Justice Act* or:
- Charges made under the *Child Protection Act* (pending change request).
- The message contains a participant type of Defendant, Respondent, Applicant, Victim, Respondent Child, DV Aggrieved, DV Respondent or Children of the Aggrieved that is under 18 years of age at the date of the court event.

We will receive court results for our children/young people under the age of 18 years (subject to departmental involvement) where they are a participant in a child protection matter, domestic violence matter, youth justice matter, or adult criminal matter.

In addition:

- We will also receive court information pertaining to adults who have offended against children/young people subject to departmental involvement who are victims in criminal court matters; and
- Court information relating to adults whose children are listed as aggrieved children on domestic violence orders.

What is happening currently?

Business Processes in relation to the receipt of this information are currently being developed.

The court information will be available via a report within ICMS in November/December and/or that email alerts will be sent out to CSSC Management Team Members via the CSSC_IJIS Email Group advising of receipt of this information.

Current issue regarding the receipt of Domestic Violence Court Results

Department of Justice (DJAG) recently raised an issue in relation to children of the aggrieved in domestic violence applications. The concerns centre on DJAG's privacy disclosure statement. DJAG believe this may act as a disincentive for lodging domestic violence applications, putting victims and children at risk and preventing them from taking necessary protective action.

To date, DJAG have not altered their privacy disclosure statement to include comments that Child Safety staff may receive the court results. This matter is under discussion and advice will be provided as soon as possible.

Communities staff (Child Safety and Domestic Violence Prevention) share the concerns raised by DJAG and have implemented the following short term strategies pending further assessment and the development of longer term strategies:

- a) The domestic violence court results will not be forwarded to CSSC staff at this point in time but will be managed centrally by Child Safety staff at Data Management Services (DMS);
- b) The results will be assessed centrally for a three (3) month period by Child Safety practitioners;
- c) A Communities working party is in the process of being established to follow through with the assessment of the domestic violence court results and any subsequent policy and practice preparation work;
- d) Following the assessment period, a decision will be made to further assess the results centrally OR to forward the results to two pilot sites (CSSCs) for a determined period of time for further assessment.

Legal advice was sought on this matter and the strategies have been approved by the Executive Director. Updates will be provided via a newsletter.

Child Safety & IJIS Initiatives

Your newsletter updating key staff on the changing landscape

Edition 1: September 2009

Welcome to the first edition of the Child Safety IJIS Initiatives newsletter.

You are receiving this newsletter as you are part of the IJIS email group for your CSSC.
If you are no longer part of the CSSC Management Team, please complete a SIS Access Request to have your name removed from this email group.

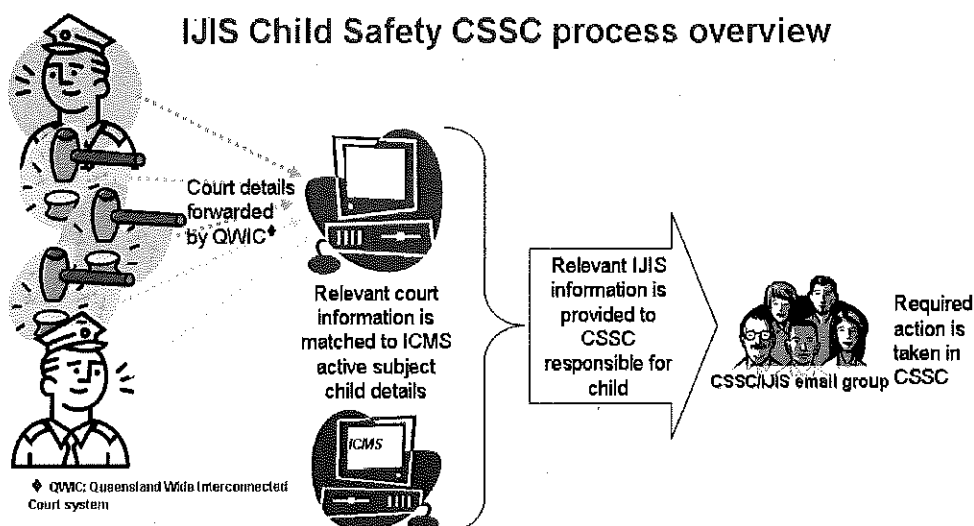
This newsletter will be a key form of communication about the delivery of IJIS initiatives, in particular Notifications Initiative (Court Matter Alert) and ETCR (Electronic Transfer of Court Results) Initiative. There will be a number of changes coming over the next 3-6 months. Please read below to ensure you are familiar with changes that are coming and possible activity that you need to engage in, now or in the future. These newsletters will provide you with regular updated information.

1. WHAT IS IJIS?



The Integrated Justice Information Strategy (IJIS) is a whole-of-government program designed to create a better coordinated criminal justice system. IJIS is broken down into a number of initiatives that will each deliver incremental business changes to improve information sharing across criminal justice agencies, including Queensland Police Service, Department of Justice and Attorney-General, Department of Community Safety and Department of Communities (Child Safety Services & Youth Justice Services).

IJIS process overview:



IJIS NOTIFICATIONS (Court Matter Alert) Initiative delivered July 2008

Child Safety Services staff are now notified of the first scheduled court appearance of a child or young person (subject to departmental intervention - Open IA's, IPA, and Child Protection and Assessment Orders) who has been charged by the police. Currently, CSSC staff are notified by

means of an email sent from DMU/DMS to the relevant CSSC who has case management responsibility for the child/young person via the IJIS CSSC Email Group. Currently, there are a number of people within a CSSC who are receiving these IJIS Notifications Emails from DMU/DMS. CSSC Managers were asked prior to the initiative being rolled out to Child Safety to nominate a couple of staff members to receive these emails. Generally, Team Leaders, Senior Practitioners and Court Coordinators were nominated.

IJIS NOTIFICATIONS (Court Matter Alert)

New Business Process as of 28 September 2009

1. There will be no manual intervention by DMU/DMS staff with respect to sending the Notifications (Court Matter Alert) email to the relevant CSSC with case management responsibility for the child/young person regarding their first court appearance.
⇒ This process will now be automated
2. There will be additional people in each CSSC receiving these Notifications (Court Matter Alert) emails for the first time. Now the entire CSSC Management Team including Court Coordinators will be the recipients, rather than just a few members of the management team. This was a decision made on the advice of the Practice Development and Support Branch and the Policy and Practice Development Branch.
3. There are a number of business processes that will need to occur with respect to the receipt of these Notifications (Court Matter Alert) emails.

Court Coordinators will be responsible for:

- viewing the Notification information contained in the email;
- recording a case note under type Court, with sub title 'IJIS Court Matter Alert' in ICMS, on most current event ie. OI or IA;
- forwarding an email to the CSO/TL responsible for child/young person advising that IJIS court result information has been recorded in a case note on ICMS;
- printing the IJIS Court Matter Alert sent from DMS and filing on child / young person's paper copy file;
- recording the court appearance detail in the CSSC court diary or equivalent (if departmental representation is required) and liaising with T/L and CSO as to who should attend court; and
- Court Coordinator/CSO may need to liaise /follow up with Youth Justice staff if required.

2. WHAT HAS IJIS ALREADY DELIVERED?

ECLQ was delivered November 2008

Enhancements to Court List Query (ECLQ) provides Court Coordinators with the ability to electronically access Children's and Magistrates court lists for child protection and criminal court matters across the state by logging on to a web portal to access Justice's Queensland-Wide Interconnected Courts system (QWIC).

This court list information allows Court Coordinators the ability to validate diaries, advise Justice of date reconciliation issues and prepare for court.

If you are a Court Coordinator and do not have access to CLQ, please contact Meta Jackman, Child Safety Services IJIS Agency Liaison Officer on 3404 3506 for assistance with this matter.

**COURT COORDINATOR CONFERENCE 2009
CASE SCENARIO: RISK OF HARM**

FAMILY CONSTELLATION

Biological mother

Biological father

Baby R; born premature and aged less than six months when first came to attention of the Department.

Baby M came to the attention of the Department as an unborn notification.

CHILD PROTECTION HISTORY

Nil

INITIAL CONCERNS – BABY R

1. A child protection notification was received by the Department with the following concerns;

- a. Baby R had been admitted to hospital with a series of concerning injuries;
- b. Baby R had swelling to her brain and a fractured skull;
- c. Baby R had a suspicious bruise to her right shoulder which appeared to be consistent with a bite or a pinch;
- d. Baby R had a graze to her face;
- e. Baby R had not been eating and had been vomiting over the last couple of days;
- f. Baby R had been sleeping a lot; and
- g. The parent's explanations of the injuries were not consistent with medical advice.

2. A day later the Department was granted a TAO.

During the TAO the child remained in hospital with the parents having supervised contact during this time.

3. Three days later an application for a CAO was made to the Children's court and this was granted a week later.

During the CAO period the following assessments took place;

- a. Information was obtained from hospital paediatric staff in relation to the current health status of Baby R;
- b. Senior Staff Paediatrician (Child Protection) carried out a full medical examination and skeletal survey of Baby R and provided a full report to the Department in relation to his assessment of the injuries;
- c. Queensland Police informed the Department that a criminal investigation in relation to Baby R's injuries was continuing;
- d. The parents were interviewed;
- e. An ongoing assessment of the parents ability to act protectively to ensure the physical, psychological and emotional wellbeing of Baby R continued;
- f. Follow up occurred with the General Practitioner, who initially saw Baby R prior to her admission to hospital;
- g. An inter-state child protection history check was conducted in relation to the father; and
- h. Observations of contact occurred between Baby R and her parents in order to make an assessment around the appropriateness and attachment during this contact.

APPLICATION FOR CHILD PROTECTION ORDER – BABY R

4. A decision was made to apply for a Child Protection Order granting Short-term custody of Baby R to the Chief Executive for a period of two (2) years based on the following information gathered during the

Assessment period:

Medical evidence:

- Report from Senior Staff Paediatrician (Child Protection) for the Hospital, detailing severity of Baby R's injuries:
- Baby R was admitted to hospital in the evening under the care of the neurosurgery unit;
 - Mother informed him that Baby R's injuries occurred two days prior;
 - The Doctors report informed that the parent's explanation for Baby R's current head injury does not adequately explain her injuries. The report also states that no explanation for the old injuries had been given by the parents;
 - a small contusion on the right side of the nose, a few shallow abrasions and a slight bruise on the right cheek, a bruise on the right shoulder, which was consistent with a bite or a pinch, and a fracture to her skull;
 - A skeletal survey showed a healing fracture to the right femur which was more than two weeks old;
 - Femur fracture could not occur with normal handling, and that it would have taken considerable force to cause the injury
 - MRI scan of the brain showed a bilateral subdural haemorrhage that was more than two weeks old;
 - There were also small areas of fresh bleeding;
 - Baby R's two separate subdural haematomas cannot occur with normal handling and are the result of tearing of cerebral veins during forceful movement of the brain within the skull. The possibility that they were caused by an adult was high
 - Baby R has suffered a minimum of two separate injuries. Baby R's skull fracture noted in her current admission could also

have occurred previously and not on the same day as the fresh brain bleeding, bruising, or abrasion to her face;

➤ Expert medical advice from Dr. [redacted] advising that the severity of Baby R's injuries were such that they could have been life threatening;

➤ Information from family's General Practitioner:

- Mother had phoned her surgery on the morning of the day before the notification, on two occasions; in order to obtain advice in relation to Baby R;
- Mother informed the surgery that Baby R had been injured on two days earlier after falling from her bouncer and that over the last couple of days Baby R had been vomiting, not feeding well, and was sleeping a lot;
- Mother also advised the surgery that Baby R had bruising to her face;
- Mother was advised, on both occasions, to take Baby R directly to the hospital for urgent medical attention;
- Mother phoned the surgery a third time requesting that she bring Baby R to the surgery for medical attention instead of the hospital;
- Mother again advised to take Baby R to the hospital as she may have a serious head injury;

➤ *Assessment of gathered medical evidence:*

- Parents did not seek medical attention for Baby R until two days after suffering a serious injury;
- Medical evidence suggests that Mother did not take Baby R directly to the hospital as advised by General Practitioner's surgery that morning, and waited until that evening before seeking medical attention for Baby R;
- Based on this information, it was assessed that the parents neglected to provide Baby R with adequate and timely

medical attention therefore placing her at unacceptable risk, and failed to protect her from harm

Department contact with parents

➤ One day after the notification was received, the Department met with the father:

- Father advised that some time ago he and the mother were bathing Baby R. During this bath Baby R was screaming and struggling, they (the parent's) were holding baby down and they heard the babies leg crack;
- Father advised that they thought they had broken Baby R's leg;
- Advised that Baby R had not been in the care of any other adult prior to the investigation by the Department;

➤ *Assessment of contact with parents:*

- Given parents advised department that Baby R had not been in the care of any other adult, it was assessed that on the balance of probabilities Baby R's significant physical injuries was the result of improper handling by either the father or the mother or both;
- Assessed that Baby R had been significantly harmed in the care of the parents and was at an unacceptable risk of future harm in their care;

Assessment considering all information gathered

- Parents did not provide an explanation to Dr at the hospital, Queensland Police, or the Department for Baby R's injuries that could be supported by medical assessment and expert opinion of Dr at the hospital;
- The Department have not received any information or made any observation that the parent's have gained any insight

into the ongoing potential harms to Baby R. Therefore the risk of future harm to Baby R is unacceptable and significant;

- o Baby R is an infant of less than 6 months of age and due to baby's age is completely dependent upon carer's to protect from harm;
- o Given that the concerns are of significant nature, an order is necessary to secure the physical safety of Baby R; and
- o In accordance with section 59(1)(e), the protection sought to be achieved by the Order is unlikely to be achieved by an Order under this part on less intrusive terms;

UNBORN BABY NOTIFICATION - BABY M

Approx six months later the Department filed an application for a child protection order in respect of Baby R's new sibling Baby M. This application was based on the following rationale;

- a. It was alleged that Baby M would be at an unacceptable risk of harm due to the fact that her sibling Baby R had suffered severe injuries, and the explanation provided by the parents did not satisfy medical opinion in relation to how the injuries occurred.
- b. In accordance with section 59(1) (a), it was the Department's belief that Baby M was a child in need of protection and that the Order being sought was appropriate and desirable for the baby's protection. The baby's sibling Baby R had suffered severe injuries that had a high probability of being inflicted by an adult.

This assessment was supported by Dr at the hospital. Further, neither parent erred in their original explanation as to how the injuries to Baby R occurred. Further, their explanation was discounted by Dr at the hospital as "inadequate to explain the severity" of the said injuries. Additionally, the Department had assessed that Baby R was harmed by either the mother and or the father. It was therefore the Department's assessment that

any young child in the care of either parent at this stage was at an unacceptable risk of harm.

In accordance with section 59 (1) (e) it was assessed that the protection sought to be achieved by the order (2yrs custody to CE) was unlikely to be achieved by an order on least intrusive terms for the following reasons:

- a. The level of supervision required to ensure Baby M's care and protective needs was assessed to be a two (2) year custodial order;
- b. Contact between Baby R and the parent's was still fully supervised indicating that the Department held the view that baby R was at an unacceptable risk of harm if left unsupervised with either parent. Thus, any younger child, even more vulnerable would be subject to similar risks, such as, unexplained inflicted injuries and failure to provide adequate medical care;
- c. The parents continued to ignore medical opinion in relation to how the injuries to Baby R were sustained demonstrating the parents' limited insight in relation to the serious harm suffered by Baby R;
- d. Parents failed to provide an alternate explanation consistent with Baby R's injuries as medically assessed. In the absence of such an explanation the Department maintained significant concerns for the care and protective needs of Baby M;
- e. It was acknowledged that the parents had been compliant and engaged with the Department and support services in relation to addressing the needs of Baby R;
- f. However, most importantly neither mother nor father provided a reasonable explanation consistent with medical opinion in relation to the causes of Baby R's injuries. It was this fact, despite

any other progress made by either mother or father that places Baby M at an unacceptable risk of harm;

- g. The parents failure to acknowledge that there was a risk within the household that previously caused severe injuries to Baby R. Evidently, it was assessed that neither mother or father were able to meet Baby M's safety and protective needs; and
- h. Despite the parent's being willing to work voluntarily with the Department with Baby M in their care, it was assessed as impracticable as the parents both perceive no risks, thus, the effectiveness of a voluntary intervention would not meet the needs of Baby M.

FOR TRAINING ONLY

Session Plan

“What are we risking? - A case study that outlines a ‘risk of harm’ argument to a non-injured sibling”.

Outcomes:

- To provide participants with an overview of the tasks required in preparing departmental documentation and submissions in relation to cases with a non-injured sibling
- To engage participants in developing confidence when there is an interface between the legal and welfare frameworks.
-

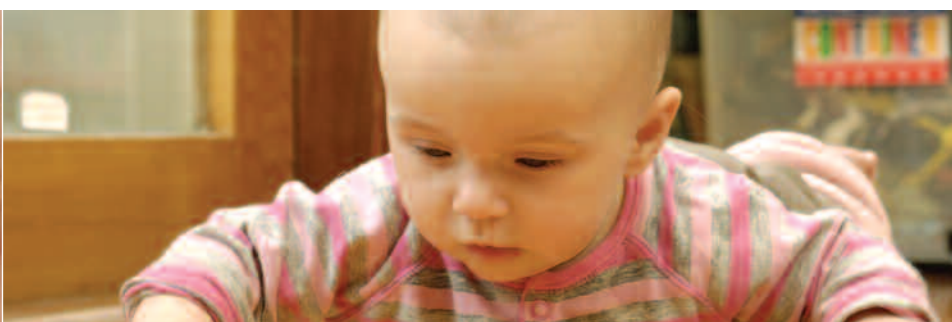
Presenters: Denise Giles and Poonam Wijesoma

Time	Content	Resources / Comments
5mins	<u>Introduction:</u> Introduce self / experiences/trends at Gold Coast having to argue risk of harm to non-injured siblings and matters running parallel to criminal investigations.	
15mins	<u>Activity 1: What is evidence-base child protection practice:</u> What are the key components of gathering evidence regarding non-injured siblings? What stakeholders do we rely upon and can we work together with?	Power Point
10mins	<u>Activity 2:</u> Discuss in small groups what you see are the trends emerging in arguments regarding risk of harm to non-injured siblings.	
10mins	<u>Activity 3: What does the legislation say:</u> What do you think are the key components of legislation in regards to arguing risk of harm and any key practice components?	Power Point
25mins	<u>Activity 4: Case study of current child protection matter before children’s court</u> <ul style="list-style-type: none"> ▪ Case example – what worked well and what didn’t? ▪ When does the Department confidently reunify children following serious injury? 	Handouts Eg de-identified affidavits
10mins	<u>Questions / Comments:</u>	

Child development and trauma guide

0 - 12 months

Developmental trends		
The following information needs to be understood in the context of the overview statement on child development:		
0-2 weeks		
<ul style="list-style-type: none"> anticipates in relationship with caregivers through facial expression, gazing, fussing, crying 	<ul style="list-style-type: none"> is unable to support head unaided hands closed involuntarily in the grasp reflex 	<ul style="list-style-type: none"> startles at sudden loud noises reflexively asks for a break by looking away, arching back, frowning, and crying
By 4 weeks		
<ul style="list-style-type: none"> focuses on a face 	<ul style="list-style-type: none"> follows an object moved in an arc about 15 cm above face until straight ahead 	<ul style="list-style-type: none"> changes vocalisation to communicate hunger, boredom and tiredness
By 6-8 weeks		
<ul style="list-style-type: none"> participates in and initiates interactions with caregivers through vocalisation, eye contact, fussing, and crying 	<ul style="list-style-type: none"> may start to smile at familiar faces may start to 'coo' 	<ul style="list-style-type: none"> turns in the direction of a voice
By 3-4 months		
<ul style="list-style-type: none"> increasing initiation of interaction with caregivers begins to regulate emotions and self soothe through attachment to primary carer can lie on tummy with head held up to 90 degrees, looking around can wave a rattle, starts to play with own fingers and toes 	<ul style="list-style-type: none"> may reach for things to try and hold them learns by looking at, holding, and mouthing different objects laughs out loud follows an object in an arc about 15 cm above the face for 180 degrees (from one side to the other) notices strangers 	May even be able to: <ul style="list-style-type: none"> keep head level with body when pulled to sitting say "ah", "goo" or similar vowel consonant combinations blow a raspberry bear some weight on legs when held upright object if you try to take a toy away
By 6 months		
<ul style="list-style-type: none"> uses carer for comfort and security as attachment increases is likely to be wary of strangers keeps head level with body when pulled to sitting 	<ul style="list-style-type: none"> says "ah", "goo" or similar vowel consonant combinations sits without support makes associations between what is heard, tasted and felt 	<ul style="list-style-type: none"> may even be able to roll both ways and help to feed himself learns and grows by touching and tasting different foods
By 9 months		
<ul style="list-style-type: none"> strongly participates in, and initiates interactions with, caregivers lets you know when help is wanted and communicates with facial expressions, gestures, sounds or one or two words like "dada" and "mamma" watches reactions to emotions and by seeing you express your feelings, starts 	<ul style="list-style-type: none"> to recognise and imitates happy, sad, excited or fearful emotions unusually high anxiety when separated from parents/carers is likely to be wary of, and anxious with, strangers expresses positive and negative emotions 	<ul style="list-style-type: none"> learns to trust that basic needs will be met works to get to a toy out of reach looks for a dropped object may even be able to bottom shuffle, crawl, stand knows that a hidden object exists waves goodbye, plays peekaboo



Child development and trauma guide

0 - 12 months

Possible indicators of trauma

- | | | |
|---|---|---|
| <ul style="list-style-type: none"> • increased tension, irritability, reactivity, and inability to relax • increased startle response • lack of eye contact • sleep and eating disruption | <ul style="list-style-type: none"> • loss of eating skills • loss of acquired motor skills • avoidance of eye contact • arching back/inability to be soothed • uncharacteristic aggression | <ul style="list-style-type: none"> • avoids touching new surfaces eg. grass, sand and other tactile experiences • avoids, or is alarmed by, trauma related reminders, eg sights, sounds, smells, textures, tastes and physical triggers |
| <ul style="list-style-type: none"> • fight, flight, freeze response • uncharacteristic, inconsolable or rageful crying, and neediness • increased fussiness, separation fears, and clinginess • withdrawal/lack of usual responsiveness • limp, displays no interest | <ul style="list-style-type: none"> • unusually high anxiety when separated from primary caregivers • heightened indiscriminate attachment behaviour • reduced capacity to feel emotions – can appear ‘numb’ • ‘frozen watchfulness’ | <ul style="list-style-type: none"> • loss of acquired language skills |
| | | <ul style="list-style-type: none"> • genital pain: including signs of inflammation, bruising, bleeding or diagnosis of sexually transmitted disease |

Trauma impact

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> • neurobiology of brain and central nervous system altered by switched on alarm response • behavioural changes | <ul style="list-style-type: none"> • regression in recently acquired developmental gains • hyperarousal, hypervigilance and hyperactivity | <ul style="list-style-type: none"> • sleep disruption • loss of acquired motor skills • lowered stress threshold • lowered immune system |
| <ul style="list-style-type: none"> • fear response to reminders of trauma • mood and personality changes • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe | <ul style="list-style-type: none"> • insecure, anxious, or disorganised attachment behaviour • heightened anxiety when separated from primary parent/carer • indiscriminate relating • reduced capacity to feel emotions – can appear ‘numb’ | <ul style="list-style-type: none"> • cognitive delays and memory difficulties • loss of acquired communication skills |

Parental/carer support following trauma

- | | |
|--|--|
| <p>Encourage parent(s)/carers to:</p> <ul style="list-style-type: none"> • seek, accept and increase support for themselves, to manage their own shock and emotional responses • seek information and advice about the child’s developmental progress • maintain the child’s routines around holding, sleeping and eating • seek support (from partner, kin, MCH nurse) to understand, and respond to, infant’s cues | <ul style="list-style-type: none"> • avoid unnecessary separations from important caregivers • maintain calm atmosphere in child’s presence. Provide additional soothing activities • avoid exposing child to reminders of trauma • expect child’s temporary regression; and clinginess – don’t panic • tolerate clinginess and independence • take time out to recharge |
|--|--|



0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months • 0 - 12 months

Child development and trauma guide

12 months - 3 years

Developmental trends

The following information needs to be understood in the context of the overview statement on child development:

By 12 months

- enjoys communicating with family and other familiar people
- seeks comfort, and reassurance from familiar objects, family, carers, and is able to be soothed by them
- begins to self soothe when distressed
- understands a lot more than he can say
- expresses feelings with gestures sounds and facial expressions
- expresses more intense emotions and moods
- does not like to be separated from familiar people
- moves away from things that upset or annoy
- can walk with assistance holding on to furniture or hands
- pulls up to standing position
- gets into a sitting position
- claps hands (play pat-a-cake)
- indicates wants in ways other than crying
- learns and grows in confidence by doing things repeatedly and exploring
- picks up objects using thumb and forefinger in opposition (pincer) grasp
- is sensitive to approval and disapproval

May even be able to:

- understand cause and effect
- understand that when you leave, you still exist
- crawl, stand, walk
- follow a one step instruction – “go get your shoes”
- respond to music

By 18 months

- can use at least two words and learning many more
- drinks from a cup
- can walk and run
- says “no” a lot
- is beginning to develop a sense of individuality
- needs structure, routine and limits to manage intense emotions

May even be able to:

- let you know what he is thinking and feeling through gestures
- pretend play and play alongside others

By 2 years

- takes off clothing
- ‘feeds’ / ‘bathes’ a doll, ‘washes’ dishes, likes to ‘help’
- builds a tower of four or more cubes
- recognises/identifies two items in a picture by pointing
- plays alone but needs a familiar adult nearby
- actively plays and explores in complex ways

May even be:

- able to string words together
- eager to control, unable to share
- unable to stop himself doing something unacceptable even after reminders
- tantrums

By 2 1/2 years

- uses 50 words or more
- combines words (by about 25 months)
- follows a two-step command without gestures (by 25 months)
- alternates between clinginess and independence
- helps with simple household routines
- conscience is undeveloped; child thinks “I want it, I will take it”

By 3 years

- washes and dries hands
- identifies a friend by naming
- throws a ball overhand
- speaks and can be usually understood half the time
- uses prepositions (by, to, in, on top of)
- carries on a conversation of two or three sentences
- helps with simple chores
- may be toilet trained
- conscience is starting to develop; child thinks “I would take it but my parents will be upset with me”



12 months - 3 years • 12 months - 3 years • 12 months - 3 years • 12 months - 3 years • 12 months - 3 years

Child development and trauma guide

12 months - 3 years

Possible indicators of trauma

- | | | |
|--|--|---|
| <ul style="list-style-type: none">• behavioural changes, regression to behaviour of a younger child• increased tension, irritability, reactivity, and inability to relax• increased startle response• reduced eye contact | <ul style="list-style-type: none">• sleep and eating disruption• loss of eating skills• loss of recently acquired motor skills• avoidance of eye contact• inability to be soothed | <ul style="list-style-type: none">• uncharacteristic aggression• avoids touching new surfaces eg. grass, sand and other tactile experiences• avoids, or is alarmed by, trauma related reminders, eg sights, sounds, smells textures, tastes and physical triggers |
| <ul style="list-style-type: none">• fight, flight, freeze• uncharacteristic, inconsolable, or rageful crying, and neediness• fussiness, separation fears, and clinginess• withdrawal/lack of usual responsiveness• loss of self-confidence | <ul style="list-style-type: none">• unusually anxious when separated from primary caregivers• heightened indiscriminate attachment behaviour• reduced capacity to feel emotions – can appear ‘numb’, apathetic or limp• ‘frozen watchfulness’ | <ul style="list-style-type: none">• loss of acquired language skills• inappropriate sexualised behaviour/ touching• sexualised play with toys• genital pain, inflammation, bruising, bleeding or diagnosis of sexually transmitted disease |

Trauma impact

- | | | |
|--|--|--|
| <ul style="list-style-type: none">• neurobiology of brain and central nervous system altered by switched on alarm response• behavioural changes | <ul style="list-style-type: none">• regression in recently acquired developmental gains• hyperarousal, hypervigilance and hyperactivity• sleep disruption | <ul style="list-style-type: none">• loss of acquired motor skills• lowered stress threshold• lowered immune system• greater food sensitivities |
| <ul style="list-style-type: none">• fear response to reminders of trauma• mood and personality changes• loss of, or reduced capacity to attune with caregiver• loss of, or reduced capacity to manage emotional states or self soothe | <ul style="list-style-type: none">• insecure, anxious, or disorganised attachment behaviour• heightened anxiety when separated from primary parent/carer• indiscriminate relating• increased resistance to parental direction | <ul style="list-style-type: none">• memory for trauma may be evident in behaviour, language or play• cognitive delays and memory difficulties• loss of acquired communication skills |

Parental/carer support following trauma

- | | |
|--|---|
| <p>Encourage parent(s)/carers to:</p> <ul style="list-style-type: none">• seek, accept and increase support for themselves to manage their own shock and emotional responses• seek information and advice about the child's developmental progress• maintain the child's routines around holding, sleeping and eating.• avoid unnecessary separations from important caretakers | <ul style="list-style-type: none">• seek support (from partner, kin, MCH nurse) to understand, and respond to, infant's cues.• maintain calm atmosphere in child's presence. Provide additional soothing activities.• avoid exposing child to reminders of trauma.• expect child's temporary regression; and clinginess - don't panic• tolerate clinginess and independence• take time out to recharge |
|--|---|



12 months - 3 years • 12 months - 3 years • 12 months - 3 years • 12 months - 3 years • 12 months - 3 years

Child development and trauma guide

3 - 5 years

Developmental trends

The following information needs to be understood in the context of the overview statement on child development:

Between 3-4 years

- communicates freely with family members and familiar others
- seeks comfort, and reassurance from familiar family and carers, and is able to be soothed by them
- has developing capacity to self soothe when distressed
- understands the cause of feelings and can label them
- extends the circle of special adults eg. to grandparents, baby-sitter
- needs adult help to negotiate conflict
- is starting to manage emotions
- is starting to play with other children and share
- has real friendships with other children
- is becoming more coordinated at running, climbing, and other large-muscle play
- can walk up steps, throw and catch a large ball using two hands and body
- use play tools and may be able to ride a tricycle
- holds crayons with fingers, not fists
- dresses and undresses without much help
- communicates well in simple sentences and may understand about 1000 words
- pronunciation has improved, likes to talk about own interests
- fine motor skill increases, can mark with crayons, turn pages in a book
- day time toilet training often attained

Between 4-5 years

- knows own name and age
- is becoming more independent from family
- needs structure, routine and limits to manage intense emotions
- is asking lots of questions
- is learning about differences between people
- takes time making up his mind
- is developing confidence in physical feats but can misjudge abilities
- likes active play and exercise and needs at least 60 minutes of this per day
- eye-hand coordination is becoming more practised and refined
- cuts along the line with scissors/can draw people with at least four 'parts'
- shows a preference for being right-handed or left-handed
- converses about topics and understands 2500 to 3000 words
- loves silly jokes and 'rude' words
- is curious about body and sexuality and role-plays at being grown-up
- may show pride in accomplishing tasks
- conscience is starting to develop, child weighs risks and actions; "I would take it but my parents would find out"



3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years

Child development and trauma guide

3 - 5 years

Possible indicators of trauma

- | | | |
|--|--|---|
| <ul style="list-style-type: none">• behavioural change• increased tension, irritability, reactivity and inability to relax• regression to behaviour of younger child• uncharacteristic aggression• Reduced eye contact | <ul style="list-style-type: none">• loss of focus, lack of concentration and inattentiveness• complains of bodily aches, pains or illness with no explanation• loss of recently acquired skills (toileting, eating, self-care)• enuresis, encopresis | <ul style="list-style-type: none">• sleep disturbances, nightmares, night terrors, sleepwalking• fearfulness of going to sleep and being alone at night• inability to seek comfort or to be comforted |
| <ul style="list-style-type: none">• mood and personality changes• obvious anxiety and fearfulness• withdrawal and quieting• specific, trauma-related fears; general fearfulness• intense repetitive play often obvious• involvement of playmates in trauma-related play at school and day care• separation anxiety with parents/others• loss of self-esteem and self confidence | <ul style="list-style-type: none">• reduced capacity to feel emotions – may appear ‘numb’, limp, apathetic• repeated retelling of traumatic event• loss of recently acquired language and vocabulary• loss of interest in activities• loss of energy and concentration at school | <ul style="list-style-type: none">• sudden intense masturbation• demonstration of adult sexual knowledge through inappropriate sexualised behaviour• genital pain, inflammation, bruising, bleeding or diagnosis of sexually transmitted disease• sexualised play with toys• may verbally describe sexual abuse, pointing to body parts and telling about the ‘game’ they played• sexualised drawing |

Trauma impact

- | | | |
|--|---|---|
| <ul style="list-style-type: none">• behavioural changes• hyperarousal, hypervigilance, hyperactivity• loss of toileting and eating skills | <ul style="list-style-type: none">• regression in recently acquired developmental gains• sleep disturbances, night terrors | <ul style="list-style-type: none">• enuresis and encopresis• delayed gross motor and visual-perceptual skills |
| <ul style="list-style-type: none">• fear of trauma recurring• mood and personality changes• loss of, or reduced capacity to attune with caregiver• loss of, or reduced capacity to manage emotional states or self soothe• increased need for control• fear of separation | <ul style="list-style-type: none">• loss of self-esteem and self confidence• confusion about trauma evident in play...magical explanations and unclear understanding of causes of bad events• vulnerable to anniversary reactions set off by seasonal reminders, holidays, and other events | <ul style="list-style-type: none">• memory of intrusive visual images from traumatic event may be demonstrated/ recalled in words and play• at the older end of this age range, children are more likely to have lasting, accurate verbal and pictorial memory for central events of trauma• speech, cognitive and auditory processing delays |

Parental/carers support following trauma

- | | |
|--|--|
| <p>Encourage parent(s)/carers to:</p> <ul style="list-style-type: none">• seek, accept and increase support for themselves to manage their own shock and emotional responses• remain calm. Listen to and tolerate child’s retelling of event• respect child’s fears; give child time to cope with fears• protect child from re-exposure to frightening situations and reminders of trauma, including scary T.V. programs, movies, stories, and physical or locational reminders of trauma | <ul style="list-style-type: none">• accept and help the child to name strong feelings during brief conversations (the child cannot talk about these feelings or the experience for long)• expect and understand child’s regression while maintaining basic household rules• expect some difficult or uncharacteristic behaviour• seek information and advice about child’s developmental and educational progress• take time out to recharge |
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3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years • 3 - 5 years

Child development and trauma guide

5 - 7 years

Developmental trends

The following information needs to be understood in the context of the overview statement on child development:

Physical skills

- active, involved in physical activity, vigorous play
- may tire easily
- variation in levels of coordination and skill
- many become increasingly proficient in skills, games, sports
- some may be able to ride bicycle
- may use hands with dexterity and skill to make things, do craft and build things

Social-emotional development

- has strong relationships within the family and integral place in family dynamics
- needs caregiver assistance and structure to regulate extremes of emotion
- generally anxious to please and to gain adult approval, praise and reassurance
- conscience is starting to be influenced by internal control or doing the right thing "I would take it, but if my parents found out, they would be disapproving"
- not fully capable of estimating own abilities, may become frustrated by failure
- reassured by predictable routines
- friendships very important, although they may change regularly
- may need help moving into and becoming part of a group
- some children will maintain strong friendships over the period
- may be mood swings
- able to share, although not all the time
- perception of, and level of regard for self, fairly well developed

Cognitive and creative characteristics

- emerging literacy and numeracy abilities, gaining skills in reading and writing
- variable attention and ability to stay on task; attends better if interested
- good communication skills, remembers, tells and enjoys jokes
- may require verbal, written or behavioural cues and reminders to follow directions and obey rules
- skills in listening and understanding may be more advanced than expression
- perspective broadens as experiences at school and in the community expand
- most valuable learning occurs through play
- rules more likely to be followed if he/she has contributed to them
- may have strong creative urges to make things

Possible indicators of trauma

- behavioural change
- increased tension, irritability, reactivity and inability to relax
- sleep disturbances, nightmares, night terrors, difficulty falling or staying asleep
- regression to behaviour of younger child
- lack of eye contact
- 'spacey', distractible, or hyperactive behaviour
- toileting accidents/enuresis, encopresis or smearing of faeces
- eating disturbances
- bodily aches and pains – no apparent reason
- accident proneness
- absconding/truanting from school
- firelighting, hurting animals
- obvious anxiety, fearfulness and loss of self esteem
- frightened by own intensity of feelings
- specific fears
- efforts to distance from feelings of shame, guilt, humiliation and reduced capacity to feel emotions
- reduced capacity to feel emotions – may appear 'numb', or apathetic
- 'frozen watchfulness'
- vulnerable to anniversary reactions caused by seasonal events, holidays, etc
- repeated retelling of traumatic event
- withdrawal, depressed affect
- 'blacking out' or loss of concentration when under stress at school with lowering of performance
- explicit, aggressive, exploitive, sexualised relating/engagement with other children, older children or adults
- verbally describes experiences of sexual abuse pointing to body parts and telling about the 'game' they played
- sexualised drawing
- excessive concern or preoccupation with private parts and adult sexual behaviour
- hinting about sexual experience and sexualised drawing
- verbal or behavioural indications of age-inappropriate knowledge of adult sexual behaviour
- running away from home

5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years

Child development and trauma guide

5 - 7 years

Trauma impact

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> • changes in behaviour • hyperarousal, hypervigilance, hyperactivity • regression in recently acquired developmental gains • sleep disturbances due to intrusive imagery • enuresis and encopresis | <ul style="list-style-type: none"> • trauma driven, acting out risk taking behaviour • eating disturbances • loss of concentration and memory • flight into driven activity or retreat from others to manage inner turmoil | <ul style="list-style-type: none"> • post-traumatic re-enactments of traumatic event that may occur secretly and involve siblings or playmates • loss of interest in previously pleasurable activities |
| <ul style="list-style-type: none"> • fear of trauma recurring • mood or personality change • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe • increased self-focusing and withdrawal • concern about personal responsibility for trauma • wish for revenge and action oriented responses to trauma | <ul style="list-style-type: none"> • may experience acute distress encountering any reminder of trauma • lowered self-esteem • increased anxiety or depression • fearful of closeness and love | <ul style="list-style-type: none"> • child is likely to have detailed, long-term and sensory memory for traumatic event. Sometimes the memory is fragmented or repressed • factual, accurate memory may be embellished by elements of fear or wish; perception of duration may be distorted • intrusion of unwanted visual images and traumatic reactions disrupt concentration and create anxiety often without parent awareness • vulnerable to flashbacks of recall and anniversary reactions to reminders of trauma • speech and cognitive delays |

Parental/carer support following trauma

Encourage parent(s)/carers to:

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|--|--|
| <ul style="list-style-type: none"> • seek, accept and increase support for themselves to manage their own shock and emotional responses • listen to and tolerate child's retelling of event – respect child's fears; give child time to cope with fears • increase monitoring and awareness of child's play, which may involve secretive re-enactments of trauma with peers and siblings; set limits on scary or harmful play • permit child to try out new ideas to cope with fearfulness at bedtime: extra reading time, radio on, listening to a tape in the middle of the night to undo the residue of fear from a nightmare • reassure the older child that feelings of fear or behaviours that feel out of control or babyish eg. night wetting are normal after a frightening experience and that the child will feel more like himself or herself with time • encourage child to talk about confusing feelings, worries, daydreams, mental review of traumatic images, and disruptions of concentration by accepting the feelings, listening carefully, and reminding child that these are normal but hard reactions following a very scary event • maintain communication with school staff and monitor child's coping with demands at school or in community activities | <ul style="list-style-type: none"> • expect some time-limited decrease in child's school performance and help the child to accept this as a temporary result of the trauma • protect child from re-exposure to frightening situations and reminders of trauma, including scary television programs, movies, stories, and physical or locational reminders of trauma • expect and understand child's regression or some difficult or uncharacteristic behaviour while maintaining basic household rules • listen for a child's misunderstanding of a traumatic event, particularly those that involve self-blame and magical thinking • gently help child develop a realistic understanding of event. Be mindful of the possibility of anniversary reactions • remain aware of your own reactions to the child's trauma. Provide reassurance to child that feelings will diminish over time • provide opportunities for child to experience control and make choices in daily activities • seek information and advice on child's developmental and educational progress • provide the child with frequent high protein snacks/meals during the day • take time out to recharge |
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5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years • 5 - 7 years

Child development and trauma guide

7 - 9 years

Developmental trends		
The following information needs to be understood in the context of the overview statement on child development:		
Physical skills		
<ul style="list-style-type: none"> improved coordination, control and agility compared to younger children skilled at large motor movements such as skipping and playing ball games 	<ul style="list-style-type: none"> often practises new physical skills over and over for mastery enjoys team and competitive sports and games 	<ul style="list-style-type: none"> improved stamina and strength
Social-emotional development		
<ul style="list-style-type: none"> strong need to belong to, and be a part of, family and peer relationships is increasingly able to regulate emotions increasingly independent of parents; still needs their comfort and security begins to see situations from others perspective – empathy able to resolve conflicts verbally and knows when to seek adult help 	<ul style="list-style-type: none"> conscience and moral values become internalised “I want it, but I don’t feel good about doing things like that” increased confidence, more independent and takes greater responsibility needs reassurance; understands increased effort leads to improvements humour is component of interactions with others 	<ul style="list-style-type: none"> peers seen as important spends more time with them friendships are based on common interests and are likely to be enduring feelings of self worth come increasingly from peers friends often same gender, friendship groups small
Self concept		
<ul style="list-style-type: none"> can take some responsibility for self and as a family member increasingly influenced by media and by peers learns to deal with success and failure 	<ul style="list-style-type: none"> may compare self with others and find self wanting, not measuring up can exercise self control and curb desires to engage in undesirable behaviour – has understanding of right and wrong 	<ul style="list-style-type: none"> can manage own daily routines may experience signs of onset of puberty near end of this age range (girls particularly)
Cognitive and creative characteristics		
<ul style="list-style-type: none"> can contribute to long-term plans engages in long and complex conversations 	<ul style="list-style-type: none"> has increasingly sophisticated literacy and numeracy skills 	<ul style="list-style-type: none"> may be a competent user of computers or play a musical instrument

Possible indicators of trauma		
<ul style="list-style-type: none"> behavioural change increased tension, irritability, reactivity and inability to relax sleep disturbances, nightmares, night terrors, difficulty falling or staying asleep Regression to behaviour of younger child 	<ul style="list-style-type: none"> lack of eye contact ‘spacey’ or distractible behaviour ‘blinking out’ or lacks concentration when under stress at school with lowering of performance eating disturbances 	<ul style="list-style-type: none"> toileting accidents/enuresis, encopresis or smearing of faeces bodily aches and pains – no apparent reason accident proneness absconding/truanting from school firelighting, hurting animals
<ul style="list-style-type: none"> obvious anxiety, fearfulness and loss of self-esteem frightened by own intensity of feelings specific post-traumatic fears efforts to distance from feelings of shame, guilt, humiliation reduced capacity to feel emotions – may appear ‘numb’ vulnerable to anniversary reactions caused by seasonal events, holidays, etc. 	<ul style="list-style-type: none"> repeated retelling of traumatic event withdrawal, depressed affect or black outs in concentration blinking out/loss of ability to concentrate when under learning stress at school with lowering of performance explicit, aggressive, exploitive, sexualised relating/engagement with other children, older children or adults hinting about sexual experience 	<ul style="list-style-type: none"> verbally describes experiences of sexual abuse and tells stories about the ‘game’ they played excessive concern or preoccupation with private parts and adult sexual behaviour verbal or behavioural indications of age-inappropriate knowledge of adult sexual behaviour sexualised drawing or written ‘stories’ running away from home

Child development and trauma guide

7 - 9 years

Trauma impact

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> • changes in behaviour • hyperarousal, hypervigilance, hyperactivity • regression in recently acquired developmental gains • sleep disturbances due to intrusive imagery | <ul style="list-style-type: none"> • enuresis and encopresis • eating disturbances • loss of concentration and memory • post-traumatic re-enactments of traumatic event that may occur secretly and involve siblings or playmates | <ul style="list-style-type: none"> • trauma driven, acting out risk taking behaviour • flight into driven activity or retreat from others to manage inner turmoil • loss of interest in previously pleasurable activities |
| <ul style="list-style-type: none"> • fear of trauma recurring • mood or personality changes • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe • increased self-focusing and withdrawal • concern about personal responsibility for trauma • wish for revenge and action oriented responses to trauma | <ul style="list-style-type: none"> • may experience acute distress encountering any reminder of trauma • lowered self-esteem • increased anxiety or depression • fearful of closeness and love | <ul style="list-style-type: none"> • child is likely to have detailed, long-term and sensory memory for traumatic event. Sometimes the memory is fragmented or repressed • factual, accurate memory may be embellished by elements of fear or wish; perception of duration may be distorted • intrusion of unwanted visual images and traumatic reactions disrupt concentration and create anxiety often without parent awareness • vulnerable to flashbacks of recall and anniversary reactions to reminders of trauma • speech and cognitive delays |

Parental/carer support following trauma

Encourage parent(s)/carers to:

- | | |
|---|--|
| <ul style="list-style-type: none"> • seek, accept and increase support for themselves to manage their own shock and emotional responses • remain calm. Listen to and tolerate child's retelling of event - respect child's fears; give child time to cope with fears • increase monitoring and awareness of child's play, which may involve secretive re-enactments of trauma with peers and siblings; set limits on scary or harmful play • permit child to try out new ideas to cope with fearfulness at bedtime: extra reading time, radio on, listening to a tape in the middle of the night to undo the residue of fear from a nightmare • reassure the older child that feelings of fear or behaviours that feel out of control or babyish eg. night wetting are normal after a frightening experience and that the child will feel more like himself or herself with time • encourage child to talk about confusing feelings, worries, daydreams, mental review of traumatic images, and disruptions of concentration by accepting the feelings, listening carefully, and reminding child that these are normal but hard reactions following a very scary event • maintain communication with school staff and monitor child's coping with demands at school or in community activities | <ul style="list-style-type: none"> • expect some time-limited decrease in child's school performance and help the child to accept this as a temporary result of the trauma • protect child from re-exposure to frightening situations and reminders of trauma, including scary television programs, movies, stories, and physical or locational reminders of trauma • expect and understand child's regression or some difficult or uncharacteristic behaviour while maintaining basic household rules • listen for a child's misunderstanding of a traumatic event, particularly those that involve self-blame and magical thinking • gently help child develop a realistic understanding of event. Be mindful of the possibility of anniversary reactions • remain aware of your own reactions to the child's trauma. Provide reassurance to child that feelings will diminish over time • provide opportunities for child to experience control and make choices in daily activities • seek information and advice on child's developmental and educational progress • provide the child with frequent high protein snacks/meals during the day • take time out to recharge |
|---|--|



7 - 9 years • 7 - 9 years • 7 - 9 years • 7 - 9 years • 7 - 9 years • 7 - 9 years • 7 - 9 years • 7 - 9 years

Child development and trauma guide

9 - 12 years

Developmental trends		
The following information needs to be understood in the context of the overview statement on child development:		
Physical skills		
<ul style="list-style-type: none"> large and fine motor skills becoming highly coordinated enjoys risk taking 	<ul style="list-style-type: none"> does well at games/sports requiring skill, strength and agility 	<ul style="list-style-type: none"> may look more adult-like in body shape, height and weight risk taking
Social-emotional development		
<ul style="list-style-type: none"> growing need and desire for independence and separate identity may challenge parents and other family members parents and home important, particularly for support and reassurance growing sexual awareness and interest in the opposite gender 	<ul style="list-style-type: none"> may experience embarrassment, guilt, curiosity and excitement because of sexual awareness girls may reach puberty during this time belonging to a group is extremely important; peers largely influence identity/self-esteem 	<ul style="list-style-type: none"> often interact in pairs or small groups; each member has status and position groups generally one gender, although interact with the other strong desire to have opinions sought and respected
Cognitive and creative characteristics		
<ul style="list-style-type: none"> beginning to think and reason in a more logical adult-like way capable of abstract thinking, complex problem solving, considers alternative possibilities and broadening perspectives 	<ul style="list-style-type: none"> concentrates for long periods of time if interested, but needs worries to be sorted may have sophisticated literacy and numeracy skills popular culture of great interest and major influence 	<ul style="list-style-type: none"> uses language in sophisticated ways; for example, tells stories, argues, debates knows the difference between fantasy and what is real has some appreciation of the value of money

Possible indicators of trauma		
<ul style="list-style-type: none"> increased tension, irritability, reactivity and inability to relax sleep disturbances, nightmares, night terrors, difficulty falling or staying asleep regression to behaviour of younger child 	<ul style="list-style-type: none"> reduced eye contact 'spacey' or distractible behaviour toileting accidents/enuresis, encopresis or smearing of faeces eating disturbances 	<ul style="list-style-type: none"> bodily aches and pains - no reason accident proneness absconding or truanting from school firelighting, hurting animals
<ul style="list-style-type: none"> obvious anxiety, fearfulness and loss of self-esteem/self confidence frightened by own intensity of feelings specific post-traumatic fears efforts to distance from feelings of shame, guilt, humiliation and reduced capacity to feel emotions reduced capacity to feel emotions - may appear 'numb' or apathetic vulnerable to anniversary reactions caused by seasonal events, holidays, etc. repeated retelling of traumatic event 'frozen watchfulness' 	<ul style="list-style-type: none"> withdrawal, depressed affect, or black outs in concentration 'blanking out' or lacks concentration when under stress at school with lowering of performance 	<ul style="list-style-type: none"> explicit, aggressive, exploitive, sexualised relating/engagement with other children, older children or adults verbally describes experiences of sexual abuse and tells 'stories' about the 'game' they played excessive concern or preoccupation with private parts and adult sexual behaviour hinting about sexual experience and telling stories verbal or behavioural indications of age-inappropriate knowledge of adult sexual behaviour sexualised drawing or written 'stories' running away from home

Child development and trauma guide

9 - 12 years

Trauma impact

<ul style="list-style-type: none"> • behavioural changes • hyperarousal, hypervigilance, hyperactivity • regression in recently acquired developmental gains • sleep disturbances due to intrusive imagery 	<ul style="list-style-type: none"> • enuresis and encopresis • eating disturbances • loss of concentration and memory • post-traumatic re-enactments of traumatic event that may occur secretly and involve siblings or playmates 	<ul style="list-style-type: none"> • trauma driven, acting out risk taking behaviour • flight into driven activity or retreat from others to manage inner turmoil • loss of interest in previously pleasurable activities
<ul style="list-style-type: none"> • fear of trauma recurring • mood or personality changes • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe • increased self-focusing and withdrawal • concern about personal responsibility for trauma • wish for revenge and action oriented responses to trauma 	<ul style="list-style-type: none"> • may experience acute distress encountering any reminder of trauma • lowered self-esteem • increased anxiety or depression • fearful of closeness and love 	<ul style="list-style-type: none"> • child is likely to have detailed, long-term and sensory memory for traumatic event. Sometimes the memory is fragmented or repressed • factual, accurate memory may be embellished by elements of fear or wish; perception of duration may be distorted • intrusion of unwanted visual images and traumatic reactions disrupt concentration and create anxiety often without parent awareness • vulnerable to flashbacks of recall and anniversary reactions to reminders of trauma • speech and cognitive delays

Parental/carers support following trauma

Encourage parent(s)/carers to:

- seek, accept and increase support for themselves to manage their own shock and emotional responses
- remain calm. Listen to and tolerate child's retelling of event - respect child's fears; give child time to cope with fears
- increase monitoring and awareness of child's play, which may involve secretive re-enactments of trauma with peers and siblings; set limits on scary or harmful play
- permit child to try out new ideas to cope with fearfulness at bedtime: extra reading time, radio on, listening to a tape in the middle of the night to undo the residue of fear from a nightmare
- reassure the older child that feelings of fear or behaviours that feel out of control or babyish eg. night wetting are normal after a frightening experience and that the child will feel more like himself or herself with time
- encourage child to talk about confusing feelings, worries, daydreams, mental review of traumatic images, and disruptions of concentration by accepting the feelings, listening carefully, and reminding child that these are normal but hard reactions following a very scary event
- maintain communication with school staff and monitor child's coping with demands at school or in community activities
- expect some time-limited decrease in child's school performance and help the child to accept this as a temporary result of the trauma
- protect child from re-exposure to frightening situations and reminders of trauma, including scary television programs, movies, stories, and physical or locational reminders of trauma
- expect and understand child's regression or some difficult or uncharacteristic behaviour while maintaining basic household rules
- listen for a child's misunderstanding of a traumatic event, particularly those that involve self-blame and magical thinking
- gently help child develop a realistic understanding of event. Be mindful of the possibility of anniversary reactions
- remain aware of your own reactions to the child's trauma. Provide reassurance to child that feelings will diminish over time
- provide opportunities for child to experience control and make choices in daily activities
- seek information and advice on child's developmental and educational progress
- provide the child with frequent high protein snacks/meals during the day
- take time out to recharge



Child development and trauma guide

12 - 18 years

Developmental trends		
The following information needs to be understood in the context of the overview statement on child development:		
Physical development		
<ul style="list-style-type: none"> significant physical growth and body changes develops greater expertise/skills in sport 	<ul style="list-style-type: none"> changing health needs for diet, rest, exercise, hygiene and dental care puberty, menstruation, sexuality and contraception 	<ul style="list-style-type: none"> nutritious balanced diet including adequate calcium, protein and iron
Self concept		
<ul style="list-style-type: none"> can be pre-occupied with self secondary sex characteristics affect self concept, relationships with others and activities undertaken 	<ul style="list-style-type: none"> dealing with own sexuality and that of peers developing identity based on gender and culture 	<ul style="list-style-type: none"> becoming an adult, including opportunities and challenges
Social-emotional development		
<ul style="list-style-type: none"> empathy for others ability to make decisions (moral) values and a moral system become firmer and affect views and opinions spends time with peers for social and emotional needs beyond parents and family peer assessment influences self concept, behaviour/need to conform girls have 'best friends', boys have 'mates' 	<ul style="list-style-type: none"> may explore sexuality by engaging in sexual behaviours and intimate relationships develops wider interests seeks greater autonomy personally, in decision making more responsible in tasks at home, school and work experiences emotional turmoil, strong feelings and unpredictable mood swings 	<ul style="list-style-type: none"> interdependent with parents and family conflict with family more likely through puberty able to negotiate and assert boundaries learning to give and take (reciprocity) focus is on the present - may take significant risks understands appropriate behaviour but may lack self control/insight
Cognitive and creative characteristics		
<ul style="list-style-type: none"> thinks logically, abstractly and solves problems thinking like an adult may take an interest in/develop opinions about community or world events 	<ul style="list-style-type: none"> can appreciate others' perspectives and see a problem or situation from different angles 	<ul style="list-style-type: none"> career choice may be realistic, or at odds with school performance and talents



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Child development and trauma guide

12 - 18 years

Possible indicators of trauma

<ul style="list-style-type: none"> • increased tension, irritability, reactivity and inability to relax • accident proneness • reduced eye contact • sleep disturbances, nightmares 	<ul style="list-style-type: none"> • enuresis, encopresis • eating disturbances/disorders • absconding or truanting and challenging behaviours • substance abuse 	<ul style="list-style-type: none"> • aggressive/violent behaviour • firelighting, hurting animals • suicidal ideation • self harming eg. cutting, burning
<ul style="list-style-type: none"> • efforts to distance from feelings of shame and humiliation • loss of self-esteem and self confidence • acute psychological distress • personality changes and changes in quality of important relationships evident 	<ul style="list-style-type: none"> • increased self-focusing and withdrawal • reduced capacity to feel emotions – may appear ‘numb’ • wish for revenge and action oriented responses to trauma • partial loss of memory and ability to concentrate 	<ul style="list-style-type: none"> • trauma flashbacks • acute awareness of parental reactions; wish to protect parents from own distress • sexually exploitive or aggressive interactions with younger children • sexually promiscuous behaviour or total avoidance of sexual involvement • running away from home

Trauma impact

<ul style="list-style-type: none"> • sleep disturbances, nightmares • hyperarousal, hypervigilance, hyperactivity • eating disturbances or disorders • trauma acting out, risk taking, sexualised, reckless, regressive or violent behaviour 	<ul style="list-style-type: none"> • flight into driven activity and involvement with others or retreat from others in order to manage inner turmoil • vulnerability to withdrawal and pessimistic world view 	<ul style="list-style-type: none"> • vulnerability to depression, anxiety, stress disorders, and suicidal ideation • vulnerability to conduct, attachment, eating and behavioural disorders
<ul style="list-style-type: none"> • mood and personality changes and changes in quality of important relationships evident • loss of, or reduced capacity to attune with caregiver • loss of, or reduced capacity to manage emotional states or self soothe • lowered self-esteem 	<ul style="list-style-type: none"> • flight into adulthood seen as way of escaping impact and memory of trauma (early marriage, pregnancy, dropping out of school, abandoning peer group for older set of friends) • fear of growing up and need to stay within family orbit 	<p>Memory for trauma includes:</p> <ul style="list-style-type: none"> • acute awareness of and distress with intrusive imagery and memories of trauma • vulnerability to flash backs, episodes of recall, anniversary reactions and seasonal reminders of trauma • may experience acute distress encountering any reminder of trauma • partial loss of memory and concentration

Parental/carers support following trauma

<p>Encourage parent(s)/carers to:</p> <ul style="list-style-type: none"> • seek, accept and increase support for themselves to manage their own shock and emotions • remain calm. Encourage younger and older adolescents to talk about traumatic event with family members • provide opportunities for young person to spend time with friends who are supportive and meaningful • reassure young person that strong feelings – whether of guilt, shame, embarrassment, or wish for revenge – are normal following a trauma • help young person find activities that offer opportunities to experience mastery, control, and self-esteem • encourage pleasurable physical activities such as sports and dancing • monitor young person's coping at home, school, and in peer group 	<ul style="list-style-type: none"> • address acting-out behaviour involving aggression or self destructive behaviour quickly and firmly with limit setting and professional help • take signs of depression, self harm, accident proneness, recklessness, and persistent personality change seriously by seeking help • help young person develop a sense of perspective on the impact of the traumatic event and a sense of the importance of time in recovering • encourage delaying big decisions • seek information/advice about young person's developmental and educational progress • provide the young person with frequent high protein snacks/meals during the day • take time to recharge
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PRACTICE SKILLS DEVELOPMENT WORKSHOP

CUMULATIVE HARM - ASSESSING RISK AND MAKING INFORMED TRANSPARENT DECISIONS

HANDOUT: BEST PRACTICE PRINCIPLES FOR RESPONDING EFFECTIVELY TO CHRONIC NEGLECT

These best practice principles have been developed through examination of ten child deaths and a literature review undertaken in New South Wales in 2006.

The principles are:

- The best interests of the child must always remain central in any assessment, planning and intervention process
- Focus on safety for the child from all forms of harm
- Focus on meeting the child's developmental needs and enhancing their wellbeing
- A family focus, not just parents or child - for both assessment and intervention. Child-centred, family focused
- Effectively engage the family in the process of change
- Assess the family's history of use of services and analyse what has worked or not worked over time and therefore what needs to be different
- Work pro-actively through identified barriers
- Base interventions on thorough assessment of the family and the needs and development of the child
- Use of multi-disciplinary assessments may assist, for example, maternal and child health nurse, schools, health services, occupational therapist, physiotherapist, psychologist, psychiatrist
- Balance between providing support and validation whilst being able to directly challenge neglectful and other aspects of poor parenting
- Provide access to practical, concrete assistance to deal directly with concerns related to poverty
- Set and monitor achievable goals and clearly articulated responsibilities

- Enlist informal as well as formal support networks that will remain involved after services have ceased
- Make effective referrals to appropriate and targeted services
- Coordinate between services and clarify roles and communication processes, or establish clear coordination processes before closure
- Ensure that those services involved are informed regarding the risk assessment and what would constitute significant harm for the child
- Understand both the usefulness and limitations of legal action to mobilise the parents towards change, and to ensure the child's safety.

From Frederico, M., Jackson A. and Jones, S. (2006:38). Child Death Group Analysis: Effective responses to chronic neglect. Melbourne: Office of the Child Safety Commissioner, Victorian Child Death Review Committee.

PRACTICE SKILLS DEVELOPMENT WORKSHOP

CUMULATIVE HARM - ASSESSING RISK AND MAKING INFORMED TRANSPARENT DECISIONS

HANDOUT: SYSTEMIC AND PRACTICE BARRIERS TO IDENTIFYING AND RESPONDING TO CUMULATIVE HARM

Systemic barriers

- Legislative threshold may lead to children at low immediate risk not being identified in criteria of significant harm.
- System tends to focus more on high impact, low frequency events as easier to see the impact. Legal focus emphasises a need to prove cause and effects between parental behaviour and harm consequences. Requirement to present evidence of cumulative impacts of emotional harm can be difficult.
- ICMS systems summarise and categorise previous contact into events - with demanding workloads, the assumption may be made that reading case files is not necessary / a priority.
- Pressure on resources, so they go to the most visible issue/concern (high impact but may be low frequency).

Practice barriers

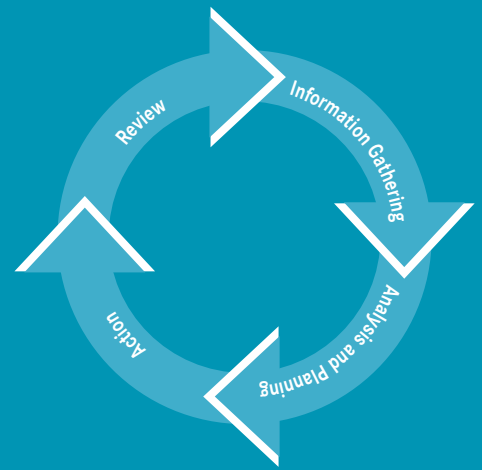
- Practitioners working in an event oriented way, not observing patterns of harm – event based assessment and immediate safety rather than the cumulative nature of harm and its long term impacts.
- Information not being carried over from one CCR / notification to the next - information is lost over time.
- Assumptions are made that the problems presented in previous notifications are resolved at closure.
- Risk frameworks consider pattern and history with the aim of predicting future behaviour of parents and likelihood of harm; rather than establishing the cumulative harm already suffered.

- When only seeing is believing – insufficient use of well-grounded theories to help us understand beyond what we observe - including restricted understanding of child development.
- Harmful consequences of chronic neglect minimised or discounted including limited understanding of the critical nature of early developmental impacts for infants.
- Support services in the community aren't available – including practical and material assistance to the family
- ...we run out of steam / ideas for strategies...

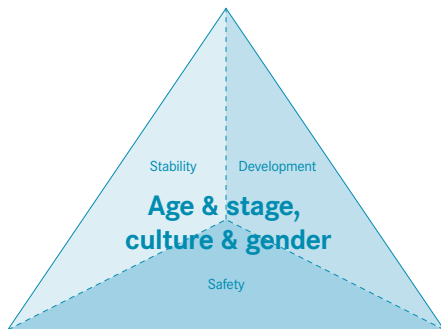
From Bromfield, L., Gillingham, P. and Higgins, D. (2003). Families who re-enter the child protection system: Data from an Australian sample. Conference Paper presented at the *Ninth Australasian Conference on Child Abuse and Neglect*. November 2003. Sydney: ACCAN.

Available from:

<http://pandora.nla.gov.au/pan/42706/20040617-0000/www.community.nsw.gov.au/documents/accan/presentations/2S5C-1.pdf>



Specialist Practice Guide Cumulative Harm



Key message: Refer to the *Best Interests Case Practice Model* for a general case practice guide.

Introduction

This guide is designed to work in two parts: an overview on cumulative harm and a practice tool to guide you.

The Best Interests Case Practice Model provides your foundation for working with children and families. Practice guides are designed to provide additional guidance on information gathering, analysis and planning, action, and review in cases where specific complex problems exist or with specific vulnerable sub-groups.

To promote children's best interests, Family Services, Child Protection and Placement and Support Services need to take account of a child's age and stage of life, and their culture and gender. Together these considerations provide a lens through which to view children's safety, stability and development and understand the unique circumstances and experiences of a child.

Effective practice requires good working relationships between services, working in partnership with the family wherever possible - where the child's best interests are at the centre.

Analysis is on going throughout the involvement with the family and is a dynamic process, which evolves as new information comes to light. From the first point of contact with the family, we are acting to intervene and influence the family dynamics. Planning is a continuous process, inclusive of the child and family, which is based on available assessment/s and on our review of the effectiveness of our previous actions and the outcomes for the child.

The process focuses practitioners attention on

- What are the facts?
- What is our analysis of the facts?
- What will we do about the facts?
- Were our interventions helpful?
- What are the outcomes for the child and family?
- Do we need to do anything differently?

The focus of any assessment and intervention must now be to answer the question "Is this child safe?" as well as "How is this child developing?"



Key message: To guide the assessment of the impact of cumulative harm on children refer to the Child development and trauma guide, which identifies developmental milestones and indicators of trauma at different ages and stages.

Overview

Cumulative harm and the *Children, Youth and Families Act 2005*

The CYFA (s. 10) states the best interests must always be paramount when making a decision, or taking action with regard to a child. Included in these principles is s. 10(3)(e) which must consider ‘the effects of cumulative patterns of harm on a child’s safety and development’.

Section 162(2) determines that: ‘harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances’.

The grounds for statutory intervention when a child is in need of protection outlined in Section 162 (1) (c)-(f) do not change. Cumulative harm may be a factor in any one ground (e.g., failure to provide basic care) or a combination of different grounds (e.g., physical injury and emotional harm) where the prolonged and repeated experience of these circumstances or events have or are likely to cause the child significant harm.

The focus on identifying and responding to cumulative harm is likely to have a greater impact in responses to cases of ‘omission’ (i.e., neglect) that may have previously been considered as low risk when considered episodically.

What is cumulative harm?

Cumulative harm refers to the effects of multiple adverse circumstances and events in a child’s life. The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child’s sense of safety, stability and wellbeing.

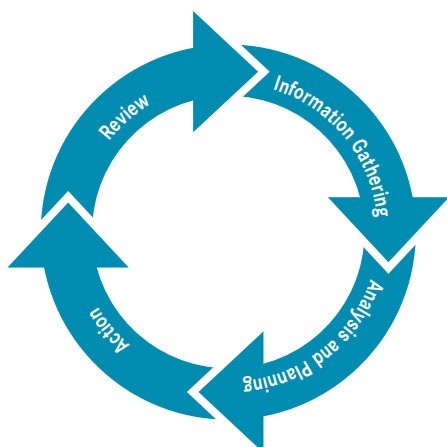
Cumulative harm may be caused by an accumulation of a single recurring adverse circumstance or event (e.g., unrelenting low level care), or by multiple different circumstances and events (e.g., persistent verbal abuse and denigration, inconsistent or harsh discipline and/or exposure to family violence).

This means cumulative harm may be a factor in any protective concern (e.g., neglect, physical abuse, emotional abuse, sexual abuse and or witnessing family violence). Also, because cumulative harm can be caused by a pattern of harmful events, it is unlikely that a child will be reported to Child Protection explicitly due to concerns about ‘cumulative harm’. This means that practitioners need to be alert to the possibility of multiple adverse circumstances and events in all reports, and to consider, not just the information presented in the current report, but the past history of involvement that may be indicative of cumulative harm.

How does cumulative harm impact on children?

The main theories that have helped us to understand the way in which cumulative harm impacts on children are child development (including early brain development), trauma and attachment theories.

Researchers investigating brain development have used the term ‘toxic stress’ to describe prolonged activation of stress management systems in the absence of support. Stress prompts a cascade of neurochemical changes to equip us to survive the stressful circumstance or event. If prolonged (e.g., if a child experienced multiple adverse circumstances or events) stress can disrupt the brain’s architecture and stress management systems. In children, ‘toxic stress’ can damage the developing brain (Shonkoff & Phillips, 2001).





Key message: Refer to the risk profile guide for parent, child and family factors commonly associated with the occurrence of child abuse and neglect; and the Guide to Assessing Parental Capacity to assist your assessment.

Key message: Refer to the Best Interests Case Practice Model for guidance on working with Aboriginal children and families and other culturally and linguistically diverse groups.

Chronic child maltreatment

Bromfield and Higgins (2005) defined chronic child maltreatment as recurrent incidents of maltreatment over a prolonged period of time (i.e., multiple adverse circumstances and events) and argued that chronic child maltreatment caused children to experience cumulative harm.

Critically, they found that the majority of children who are abused or neglected experience multiple incidents and multiple types of child maltreatment. This research highlights the critical need to be alert to the possibility that a child is experiencing cumulative harm if they are the subject of repeated referrals to Child Protection.

Parental and family indicators of cumulative harm

Research has shown that families who experience cumulative harm have:

- Multiple inter-linked problems (i.e., risk factors) such as mental health problems, substance use and family violence.
- An absence of protective factors.
- Social isolation and or exclusion.
- Enduring parental problems impacting their capacity to provide adequate care (e.g., intellectual disability, substance abuse).

Engaging Aboriginal and other culturally and linguistically diverse children and families

Cultural competence and respect is essential in any intervention with families. Practitioners need to explore the particular meaning events hold within the families' cultural traditions.

- Section 12(a) of the CYFA provides guidance on principles for engaging Aboriginal families.
- Section 11(g)-(j) of the CYFA provides guidance on principles for engaging other culturally diverse families.

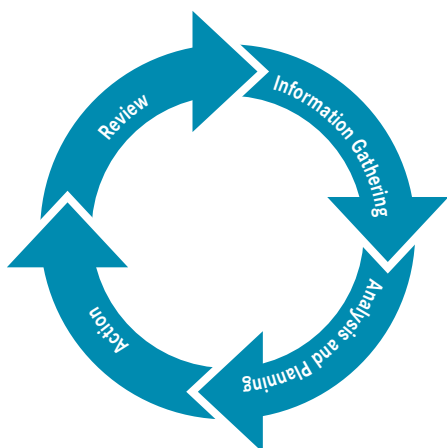
Preparing matters for court

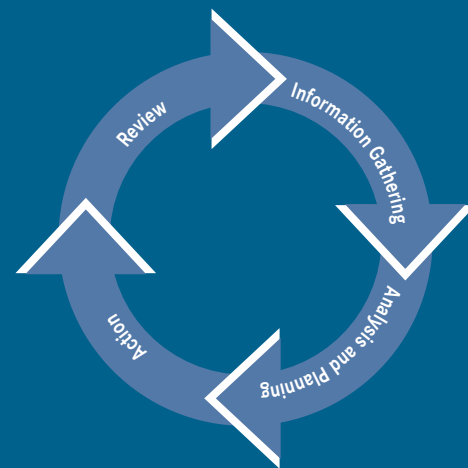
Child Protection need to be able, when required, to present evidence to the court that shows the effects of cumulative harm on children. The court will also want to know what assistance has been provided to the family and the outcomes of previous interventions.

Assisting recovery in children

Cumulative harm can overwhelm the most resilient child and particular attention needs to be given to understanding the complexity of the child's experience. These children require calm, patient, safe and nurturing parenting in order to recover, and may well require a multi-systemic response to engage the required services to assist.

The recovery process for children and young people is enhanced by the belief and support of non-offending family members and significant others. They need to be made safe and given opportunities to grieve for the loss and pain they have experienced and to reconnect with their parents and/or carer, school, community and culture.





Practice Tool Cumulative Harm

Key message: Refer to the Best Interests Case Practice Model for a general case practice guide.

The aim of this tool is to provide some additional guidance about specific things you might consider in cases involving cumulative harm. The tool has four parts (Information gathering, analysis and planning, action and review) which reflect the dynamic process of working with families.

Information gathering

Information gathering is ongoing throughout the life of a case, and includes gathering information about the child and their family from existing case files, professionals involved with the family and most importantly from children and families themselves. Information also needs to be gathered about previous attempts to resolve the problems within the family by the family themselves, by Child Protection and by other professionals and agencies involved with the child and family. Case conferences are an excellent strategy for gathering information.

Key message: Cases involving cumulative harm are complex. You need to access appropriate supervision throughout the process of information gathering, analysis and planning, action, and review.

Identifying cumulative harm

The majority of children who experience child abuse and neglect experience multiple incidents and multiple types of child maltreatment. In order to identify whether a child is experiencing cumulative harm it is important to consider the following elements:

- Frequency - number of incidents.
- Type - number of types and the different types (physical abuse, neglect, sexual abuse, emotional abuse and witnessing family violence).
- Severity - severity of the adult behaviour, and the severity of the impact on the child, including the impact on the child's development.
- Source of harm - number of different people responsible and relationship of person responsible to child (intra- or extra-familial).
- Duration - period of time over abuse and neglect occurred.

To explore these dimensions you might ask questions such as:

- Have there been previous allegations for similar issues?
- Are there indicators that the child has experienced other types of maltreatment in addition to the type(s) mentioned in the report?
- Has the alleged maltreatment caused, or is it likely to cause, significant harm if it were repeated over a prolonged period?
- Does the child's current situation make them more vulnerable to other perpetrators?
- How long have the problems in the family that lead to Child Protection's current involvement been present?
- If relevant, what has been the previous pattern in relation to placement and reunification?



Key message: *When considering cumulative harm practitioners are required to assess each report as bringing new information, which needs to be carefully integrated into the history.*



Key message: *Given most children are scared or ambivalent about disclosure, and experience confusion and loyalty even when parents are abusive, what is the best way to build rapport with the child? Be thoughtful, creative and purposeful in your contact with the child and try to help them to understand your role and the process. Where possible, give the child choices over the process and timing of events.*

Indicators of cumulative harm in the case history

Well-documented case histories are critical to inform future assessments of the possible presence of cumulative harm. The details matter.

Remember, these assessments inform your analysis and decision making, rather than direct it. Assessments need to be critiqued in the light of other information and observations held by Child Protection.

- Have you summarised the file under the criteria of: frequency, type, severity, source of harm and duration of abuse/neglect/violence?
- Have you been reflective and critical regarding whether interventions have been or are effective?
- If there is a sibling group, is there a summary for each child? Have you reflected on the developmental trajectory for other children within the family?

Assessing cumulative harm in children

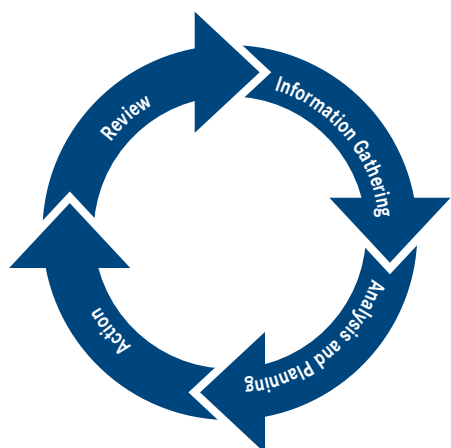
The child's subjective experience has to become central to the analysis of the impact of cumulative harm. Put the child at the centre of your assessment. Are there early signs that might indicate that a child is experiencing cumulative harm?

Talk to and or observe the child

- How does the child present? How is the child behaving? What is the child saying? What does this tell us?
- Is he or she developmentally 'on track' (i.e., able to relate, play, concentrate, participate and belong)?
- What are the child's experiences, fears and supports?
- Is he or she displaying any signs of trauma?
- What do the children or young people say about the risk of future violence? Have they had the opportunity to speak alone? Have we explored their experience?
- What meaning has the child or young person made of the trauma they have experienced?

Talk to key people in the child's life

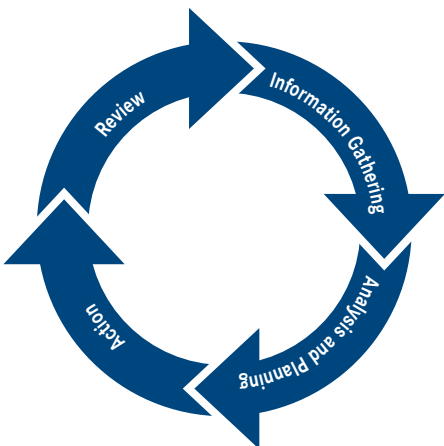
- Who has insight into the child's story and understands the meaning the child attributes to the abuse, violence and or neglect the child has experienced?
- If there is a sibling group, have you considered each child's individual development and experience?
- Have there been any recent changes in the child's presentation and behaviour? Who is closest to the child and able to comment on the changes over time? The parents or carers are usually the starting point for this discussion. However, the extended family, child-care practitioner, maternal and child health nurse, teacher, family support practitioners, family violence practitioner, housing practitioners, G.P., paediatrician, counsellor, speech therapist, neighbour and any other significant adult in the life of the child or family, should be considered as a valuable source of information and often as a partner in the decision making and process of recovery.



Key message: Refer to the risk profile guide for parent, child and family factors commonly associated with the occurrence of child maltreatment; and the Guide to Assessing Parental Capacity to assist in assessing in parental capacity.



Key message: Genograms and Eco maps are very useful to develop early in the response process. They are visual reminders to think and act systemically.



What is happening in the child's daily life?

- Does the child's current situation make him or her more vulnerable to harm or other perpetrators?

In order to recognise and respond to cumulative harm, the assessment must present the outcomes for the child should their circumstances remain unchanged. This process will identify the probability for future harm to the child, including the impact of harm on their safety, stability and development.

Tips for gathering information effectively

Child Protection practitioners need to gather information from multiple sources. Case conferences are an excellent way of doing this and will usually inform your analysis and planning more effectively than individual phone calls. Any professional opinion is of itself limited by the time, role and focus of the practitioner (e.g., maternal and child health nurses that only sees infant for brief periods once a fortnight, or the drug and alcohol practitioner who is focused on the adults recovery not their parenting capacity).

- Have you spoken to other professionals and services involved with the family?
- Have you consulted the High Risk Infant Manager or Specialist Infant Protective Worker if appropriate? Have you followed through with their recommendations?
- Is the child or young person an Aboriginal or Torres Strait Islander? If so, what is the ACSASS/Lakidjeka practitioner's (Aboriginal) perspective on this child's safety, stability and development?
- Have you consulted with other cultural services if appropriate?
- How have other service systems intervened into the life of the family? The involvement of Police and other adult focused services such as Drug and Alcohol, Mental Health, Homelessness, and Family Violence and Sexual Assault Services is highly relevant.

Parental and family indicators of cumulative harm

In addition consider:

- The family's experience holistically. What have the parents' experiences been?
- How has the abuse and or violence impacted on the parent's mental, emotional and physical wellbeing?
- What is the repeating and or current pattern around the problem behaviours? Who does what, to whom, when?
- How has the abuse, neglect and or violence impacted on the parent's relationship with the child?
- Is the problem an enduring problem (e.g., disability) or situational (e.g., homelessness)?
- How has the problem impacted on the parent's capacity to parent?
- With appropriate support, is the parent likely to be able to provide an adequate level of care to their child?

The following questions might help you to explore the problem from the family's perspective:



Key message: Refer to the Best Interests Case Practice Model for a general case practice guide.

- How has the family tried to manage the problems before coming to the attention of the Child Protection system?
- What are/were the exceptions to the problem behaviour/s being repeated? What was different? What was the context that enabled the family strengths to be enacted?

Analysis and planning

Decision-making needs to grapple with the complexity of each situation rather than hastily arriving at an overly optimistic or overly negative position. If the previous service response was unhelpful, then we need to do something different. We need to find another intervention or process that is more effective and engaging.

Practitioners must find the balance between providing support and validation whilst being able to directly challenge neglectful and other aspects of poor parenting (Frederico, Jackson, & Jones, 2006). Cousins (2005) writes, we need

to be careful we are not being confused by the illusion of change. Sometimes, in our own hope to see things improve, we can focus on improvements that are not actually about change for the child. This can also be a form of collusion – where the practitioner and the parent know deep down they cannot do it, but no one is prepared to shatter the dream (p. 5).

Do other professional's opinions vary? How do these contrast with your own observations? What does this mean for your analysis of risk of harm?

Decisions about progress are particularly difficult in cases of chronic neglect that are characterised by an unrelenting low-level of care ... The term 'abuse' connotes a ring of urgency that 'neglect' does not and the effects of neglect are usually not as obvious. Frederico, Jackson and Jones (2006) caution:

It is critical that neglect is not considered a lesser problem than other forms of maltreatment given the evidence that its consequences can be damaging. It is also important that the presence of chronic neglect does not obscure other forms of maltreatment (Frederico, Jackson, & Jones, 2006, p. 18).

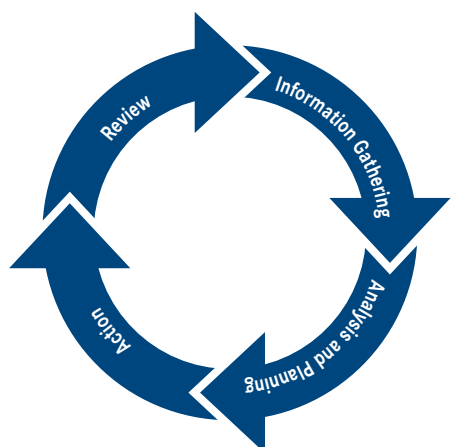
The child's subjective experience has to become central to the analysis of the impact of cumulative harm.

Indicators of cumulative harm in the case history

The types of reports received and the sources of information may provide indicators that a child is experiencing cumulative harm. Indicators of cumulative harm in the types of reports might include:

- Multiple reports.
- Previous substantiations.
- Multiple sources alleging similar problems.
- Reports from professionals.
- Evidence of children not meeting developmental milestones.
- Allegations of inappropriate parenting in public.

When a case has previous reports either not investigated or not substantiated, inaccurate assumptions can be made that this case is not one of significant risk.





Key message: Refer to the Best Interests Case Practice Model for a general case practice guide.

A cumulative harm perspective requires a re-examination of each of these reports every time a new report is made, in order to assess whether a number of low-level risk factors is demonstrating significant cumulative harm.

At intake, the rationale for 'no further action' on previous report(s) needs to be challenged and a different analysis developed based on the new information provided in the current report.

- Why was there no further action?
 - Because the alleged event when considered in isolation fell below the threshold for statutory intervention?
 - Because there was insufficient information gathering and analysis?
 - Because the available evidence was not sufficient to enable the allegation to be substantiated?
- What does the information in the new report tell you about the possibility of a pattern of inadequate parenting being present?

Consider the use of multi-disciplinary assessments for children and for parents. For example, assessments by the: paediatrician, maternal and child health nurse, school, health service, occupational therapist, speech therapist, drug and alcohol service, disability service, general practitioner, physiotherapist, psychologist, and/or psychiatrist. Be purposeful in regard to how these will add value to your analysis.

Remember, these assessments inform your analysis and decision making, rather than direct it. Assessments need to be critiqued in the light of other information and observations held by Child Protection.

If the child is of Aboriginal or Torres Strait Islander descent, remember to consult with the ACSASS/Lakidjeka practitioner when formulating your plan.

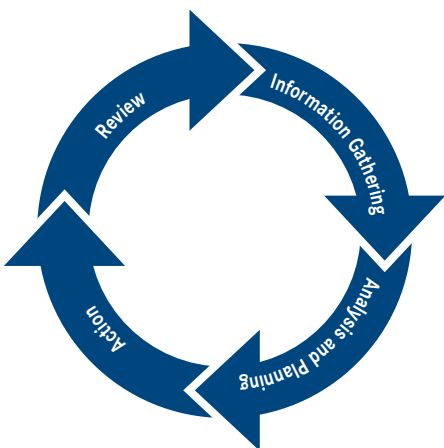
Action

Practitioners need to make every effort to engage the families cooperatively to address issues of cumulative harm. Coercive forms of intervention will sometimes be necessary, but this is a last resort. Where there is cumulative harm practitioners are reminded that a referral to another service will not ensure that the family will engage with that service or that change will occur. Families in which cumulative harm is an issue often experience multiple inter-linked problems - joined up problems need joined up solutions, and a single service may not be able to assist families to change.

Planning the intervention

What interventions might assist the child and family, in the short and long-term? Note that any action should be based on sound analysis and be purposeful towards engaging the family members in a change process. Have you considered:

- Engaging the absent parent
- Engaging violent partners (providing practitioner safety issues have been managed)
- Engaging the extended family
- Case conference
- Family group meeting
- Aboriginal family decision making meeting



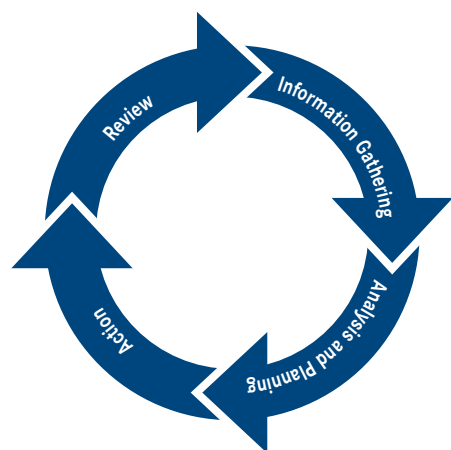


Key message: Remember to consider what interventions or services might assist the child towards recovery.

Key message: Remember to coordinate between services and clarify roles and communication processes. Who will do what, for whom, by when? At every stage, have you included parents, carers, teachers, childcare practitioners and any other significant person in the child's life?

Key message: All agencies need to be clear about their role and responsibilities. These should be agreed to and put in writing and distributed to the participants.

Key message: For guidance on providing emotional first aid to parents and children refer to the Child development and trauma guide.



- Referral to other agency/agencies (e.g., home visiting, family services, drug and alcohol, mental health, drug and alcohol, family violence, men's behaviour change, victims of crime assistance services, sexual assault services, CAMHS, family counselling services, refugee services, culturally specific services)
- Connections to universal services or community programs/clubs (e.g., schools, maternal and child health nurse, health services, child care, mentoring programs, sporting clubs, community centres, neighbourhood houses, first mothers groups, playgroups, parenting groups, toy library)
- Respite placement
- Discharge planning meeting
- Application for a court order
- If the child is in care, have you made a reunification plan or considered intensive family preservation services?
- If reunification cannot occur, are you preparing the stability plan within the child's timeframes? (refer to the online *Child Protection Practice Manual* for guidance).

If the child is of Aboriginal or Torres Strait Islander descent, remember to consult with the ACSASS/Lakidjeka practitioner.

Working in partnership

Hold case conferences regularly when there are a number of professionals involved.

It is critical that the professional best placed to engage strongly with the family is identified. This may or may not be the same person who has responsibility for coordinating cross-service responses. The strongest determinate of good outcomes in practice with families is the quality of the relationship between the practitioner and the family members.

Working with children and families

The Best Interests principles of the CYFA 2005 clearly state that we must give the widest possible protection and assistance to the parents and the child as the fundamental unit of society and strengthen and preserve and promote positive relationships between family members. Practice needs to be strength-based and forensically astute and be respectful and courteous at all times. The goals of the intervention need to be developed with the family and extended family and it is critical that they are concrete, behavioural and measurable. The parents need to know when they have been successful and the practitioners need to engage them in meaningful ways which build confidence.

In partnership with the parents or carers, we need to develop a rich understanding of the past experiences of the child, champion their cause in the present, and develop plans for the future that enables opportunities for healthy development.

It is important to acknowledge that parents may be experiencing trauma symptoms and need ongoing support. Practitioners need to engage parents in managing their responses to their own and their children's trauma. It is normal for parents to feel overwhelmed and suffer shock, anger, severe grief, sleep disturbances and other trauma related responses.

Key message: *Refer to the Best Interests Case Practice Model for a general case practice guide.*

Key message: *Refer to the Best Interests Case Practice Model for guidance on working with Aboriginal children and families and other culturally and linguistically diverse groups.*

Key message: *If family problems that have prevented children from receiving adequate care are overwhelming and intractable, despite ‘the widest possible assistance’ (s.10), then the child’s needs for safety and stability must be met by engaging the support of kith and kin or Out-of-Home Care services.*



Key message: *The court will want to hear evidence about the assistance that has been made available to the family and the outcomes of previous interventions by Child Protection. This evidence is particularly important if Child Protection is recommending that a different course of action is required.*

Identifying relevant evidence for any court proceeding requires a great deal of skill. It is highly recommended that workers engage with their solicitor as early as possible to assist in identifying the relevant evidence, and to advise what additional evidence may be required for court proceedings

Engage families in solution focussed thinking. Ask families the miracle question: If you woke up in the morning and a miracle had happened and all your problems were fixed, what would be different? What would there be more or less of in your life? How would we know? Who would notice? Alternatively, you could ask families: How will you know when the nightmare is over? What are your dreams for your child? What gets in the way of these becoming real?

If a child of Aboriginal or Torres Strait Island descent is to be placed in care, we must adhere to the Aboriginal Child Placement Principle and ensure a child’s connection to their natural family and/or community. This may mean thinking outside administratively defined geographic regions and working collaboratively with other regions to place the child with their family or community.

When parents can’t or won’t change

As hard as it can be to witness the struggles of some parents attempting to change their situations, ultimately if a parent won’t change, can’t change, or it will take too long, then the needs of the most vulnerable family members, the children, have to be prioritised. The short and long term effects matter, whether there is intent to harm or not. Remember that the desire to change dangerous and or neglectful behaviours does not equal capacity to change. Sustaining change is hard work and requires commitment and consistent evidence of changed behaviours.

Preparing matters for court

When Child Protection are seeking to establish the existence of cumulative harm and the detrimental effect of this harm on children, they must present evidence to the court that supports this assessment and shows the effects of cumulative harm on children.

Firstly, the court must be satisfied that the cumulative harm to the child exists, and this is done by the court accepting the evidence presented. So, using an example of a child who has suffered chronic neglect and low level physical abuse, the evidence is likely to be records of repeat medical treatments, indicating a pattern of injuries; or it may be evidence from a school teacher, or from the protective worker. Other evidence may include records that show the parents failure to attend to the medical needs of the child.

Secondly, the court must be satisfied that the cumulative harm has or is likely to impact on the child in a detrimental way. Again, using our example, the evidence in support of the impact of the harm maybe from the treating doctor as to the harmful effect of the injury, or it may be from the teacher as to the child’s delayed academic, physical or social development that they have observed in the school environment. It will also include evidence from the protective worker and their understanding of the relevant research in relation to the impact of the cumulative harm on a child. In some instances, additional expert evidence will be required to satisfy the court. For instance, if the child is suffering a particular medical condition because of the harm, a relevant medical practitioner who has treated the child would be appropriate. If the impact of the harm is psychological, it may be appropriate to call a treating psychologist or psychiatrist.

Key message: For further guidance in preparing matters for court, Refer to the *Guide to court practice for Child Protection practitioners 2007*.

Key message: Refer to the *Best Interests Case Practice Model for a general case practice guide*.



Finally, the court needs to be provided with evidence of the likely future outcomes for the child, should their circumstances remain unchanged. Again, this evidence may be from the protective worker and their understanding of relevant research as to the likely prognosis for children who are not assisted when this type of harm exists. In some circumstances, expert evidence from within the medical profession or social sciences will be beneficial. This process will identify the probability for future harm to the child, including the impact of harm on their safety, stability and development.

Review

We need to remain curious about our effectiveness, and constantly review our assessments and planning, in the light of emerging information and the outcomes of our actions. All families are different and there is not a single solution. Good practice may involve trying several strategies or interventions before coming up with an approach that works. It is critical to constantly integrate new information as it comes to light. We need routinely reassess both the circumstances for the child and family and the effectiveness of our actions.

Previous service system responses and outcomes of interventions need to be realistically assessed:

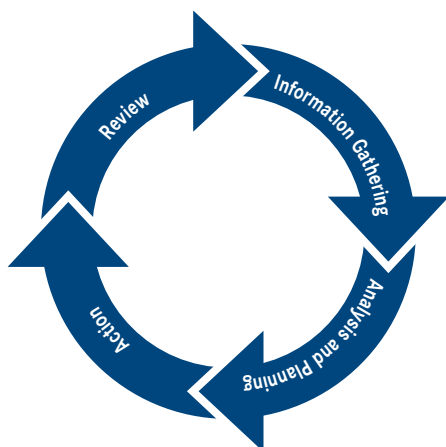
- What have been your previous responses as a Child Protection practitioner?
- What services and approaches have been most effective? Are there any strategies that are not working, well? What needs to change?
- How would the parents and other significant others rate themselves in terms of 'where they're at' in relation to where they want to get to?
- Have we provided practical and material help?

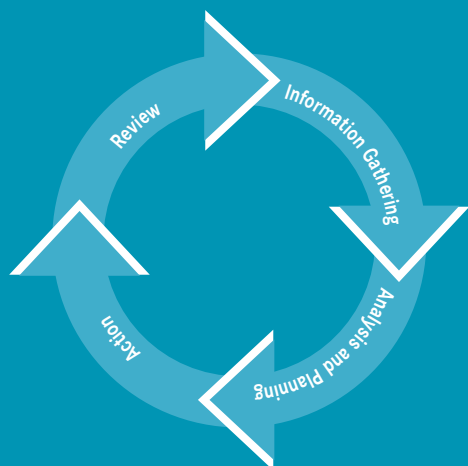
Parents do need to be given a chance to improve their situation, but practitioners need to continually ask the key questions:

- Have parents been provided "the widest possible assistance"?
- What is their capacity for change?
- Will it be fast enough given the child's age and stage?
- Practitioners also need to give themselves permission to say 'enough is enough' (Cousins, 2005, p. 6).

Keep in mind the need to assess the responses and outcomes for children.

- What treatment or support have the children received to help them process the overwhelming events?
- What's changed for the child? How do we know?
- Is the child more able to play, concentrate, relate, participate and belong?





More about the research

For a comprehensive discussion of the literature on cumulative harm that underpins this Specialist Practice Guide refer to *Cumulative harm: A conceptual overview* (Miller, 2007).



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- Shonkoff, J. P., & Phillips, D. A. (Eds.). (2001). *From neurons to neighbourhoods: The science of early childhood development* (Second ed.). Washington, D.C.: National Academy Press.
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Other relevant departmental resources

- Risk profile guide
- Child development and trauma guide
- Best interests principles: A conceptual overview
- Best interests case practice model

Authors

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Welcome

To the 2009 Court Coordinator Network Conference

“Can we make a difference?”



Can we make a difference?

Housekeeping

- Starting times
- Breaks:
 - Morning tea 10:45 – 11:00
 - Lunch 1:00 – 1:45
 - Afternoon tea 3:15 – 3:30

Sessions following breaks will start **ON TIME!**

Can we make a difference?

- Changes to the program
- Manuals – disk (training tool)
- Suggestion board
- Evaluations
- Dissemination of information via email for those participants that do not receive a manual

Can we make a difference?

- Mobiles

- Please turn them OFF or on to SILENT. Please do not take any calls in the room during sessions

- Messages – can be left at reception.

- Toilets

- Emergency Exits

Can we make a difference?

During the lecture sessions
questions

MUST be kept until the end!

Can we make a difference?

Don't forget about the **Conference Dinner tonight!**



If you need assistance in finding the venue, please meet in the Holiday Inn Foyer at 6pm sharp and a Court Services Adviser will escort you to the dinner.



Once upon a time

There were NO Court Coordinators!



I love my job







CAN WE MAKE A DIFFERENCE?



Can we make a difference?

Yes we can!

- By understanding that case work and court work are **not** separate and distinct undertakings with no relationship to each other.
- Demonstrating how good case work translates into good evidence which translates into successful outcomes in court.



Can we make a difference?

Yes we can!

- By effectively educating Magistrates, through our evidence, about the impact of child abuse to ensure that decisions are made in the best interests of the child's well-being.



Activity One:

Please explain to the court what the term
'Substantiated' means?



Can you please explain to the Court the criteria that was used to reach a 'Substantiated' outcome?



- Departmental records indicate.....
- The IA harms had an outcome recorded as risk of emotional and psychological harm....
- The children displayed sexualised behaviours.....
- The parents displayed inappropriate behaviour at contact.....
- The parents failed to engage with the department.....



- The parents have failure to meet case plan goals....
- The subject child was the subject of a 93A interview....
- The child exhibits extreme behaviours
- The father became extremely aggressive and abusive during the interview process.....
- The child exhibited an attachment disorder.....



“I’m not going to simply swallow blanket statements by the Department that say to me, trust us, what we say is true but we’re not going to tell you why we think it is true or why we think you should trust us..... The Department has developed a jargon of their own apparently without reference to any identifiable definitions for such terms.....Unfortunately the attitude of the Department seems to be that if the Department considers a notification to be substantiated (whatever that means) then the Court should accept the information as reliable without further questions.”



PLEASE EXPLAIN.....!





From this.....





To this!



Cumulative Harm: A Conceptual Overview



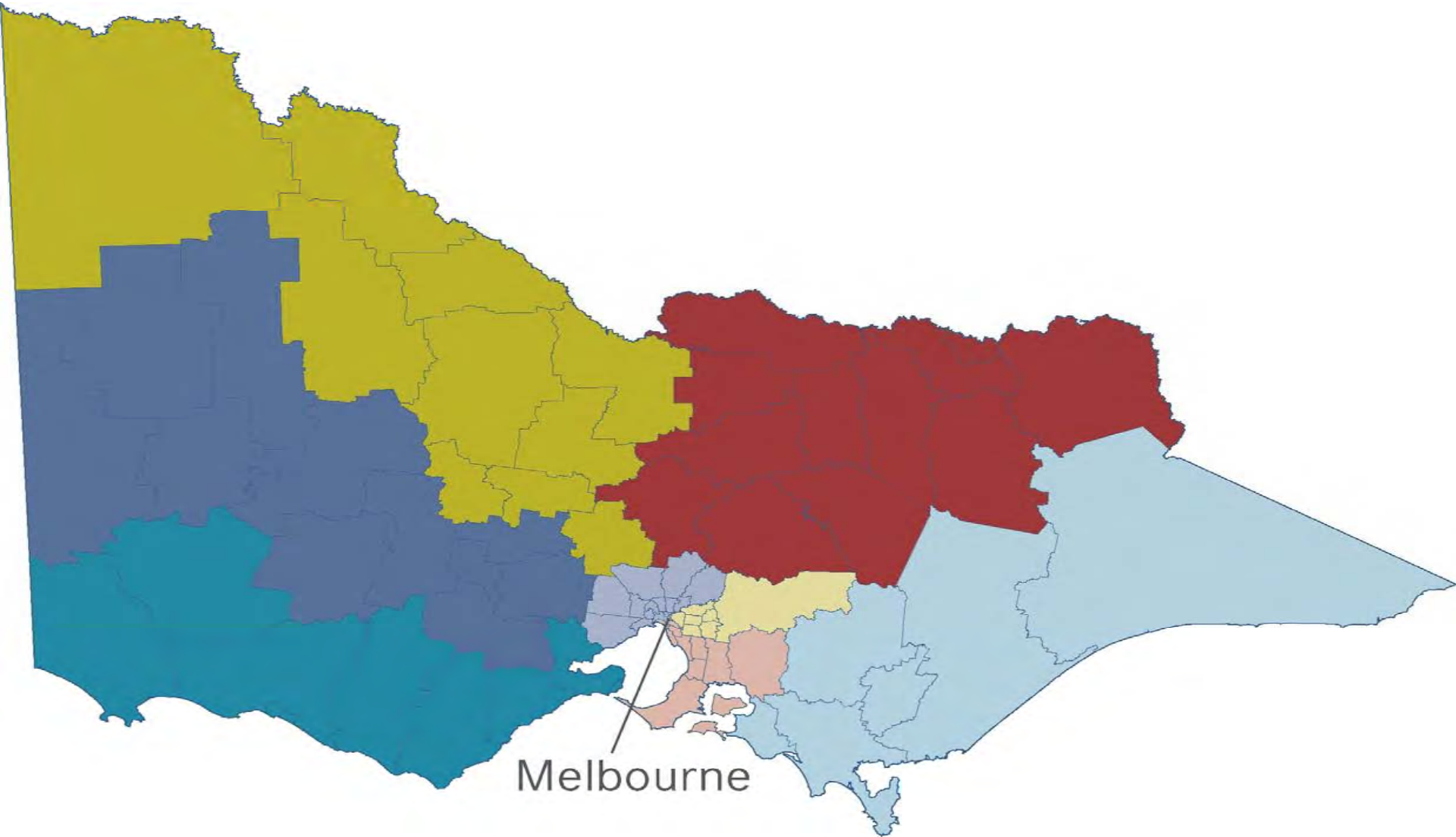
Court Coordinator Conference 2009

The Department of Communities – ChildSafety Services

Robyn Miller
Principal Practitioner
Children, Youth and Families Division

Monday 19 October 2009

Victoria



A note on the Victorian context

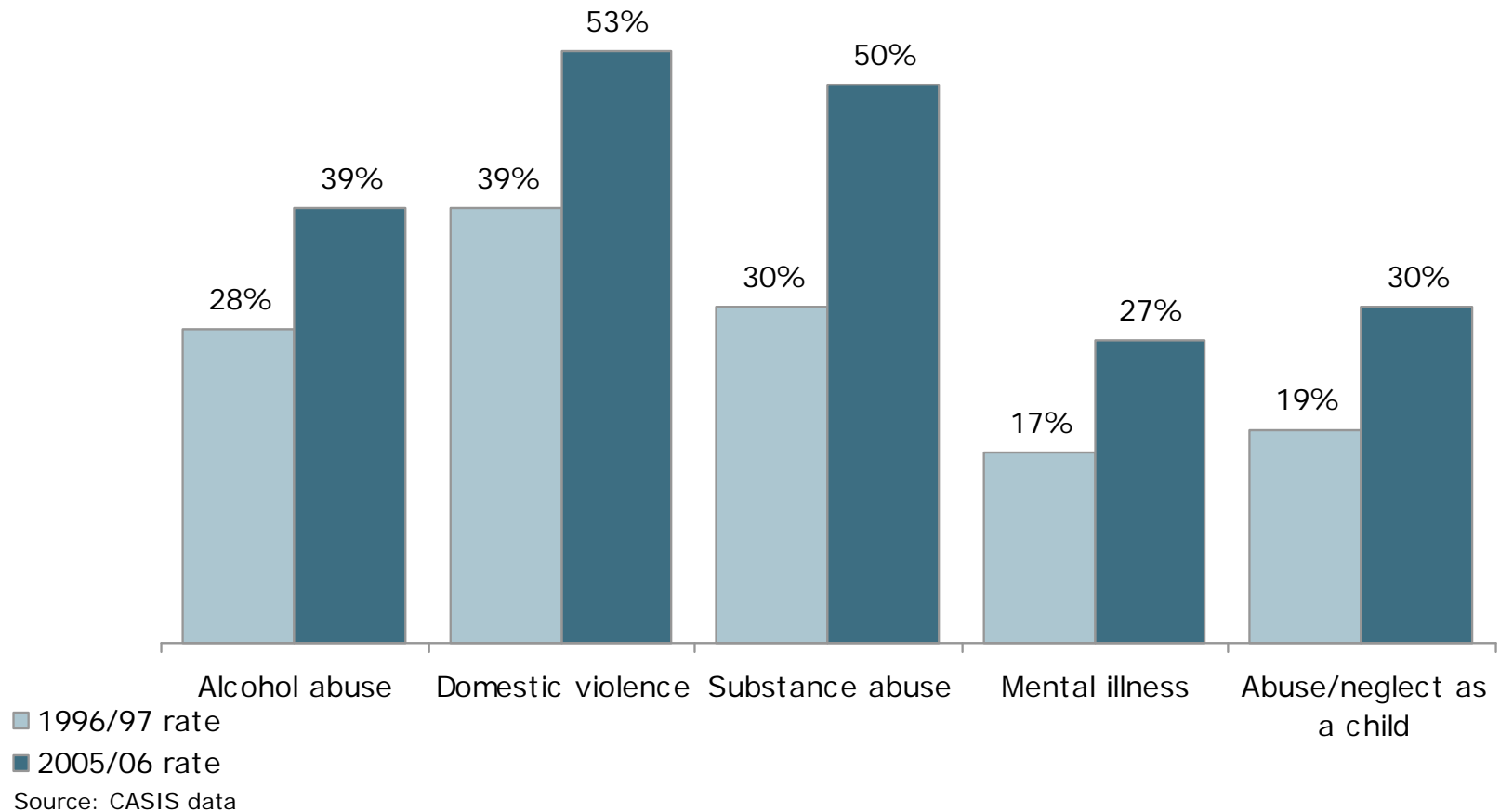
- Victoria – population 5 million, 1 million children
- Capital – Melbourne
- 8 Regions, 5 rural + 3 metro
- Family Support and Placement services delivered by Victorian CSOs
- Child protection services are delivered by the Department of Human Services
- Since 2003 there has been significant new investment in the Victorian child protection and family services system, including legislative change

Key data supporting the change

It was clear (in 2001-02) that we faced a number of challenges in Victoria:

- **Growing demand** – in particular through child protection renotifications, running at 62% and rising
- **Notifications** from professionals were **increasing**, especially schools and police (doubling every 4 years)
- **Compelling evidence** of increasing client complexity (Drug and Alcohol/Family Violence in particular)
- Projections based on **unchanged policy settings** indicated continued growth in front-end demand...
- Even 'IF' notifications stabilised, still looking at **19% of Victorian children notified to child protection during their childhood**

Family violence, substance abuse and alcohol abuse continuing to be the key family characteristics



Expert Analysis

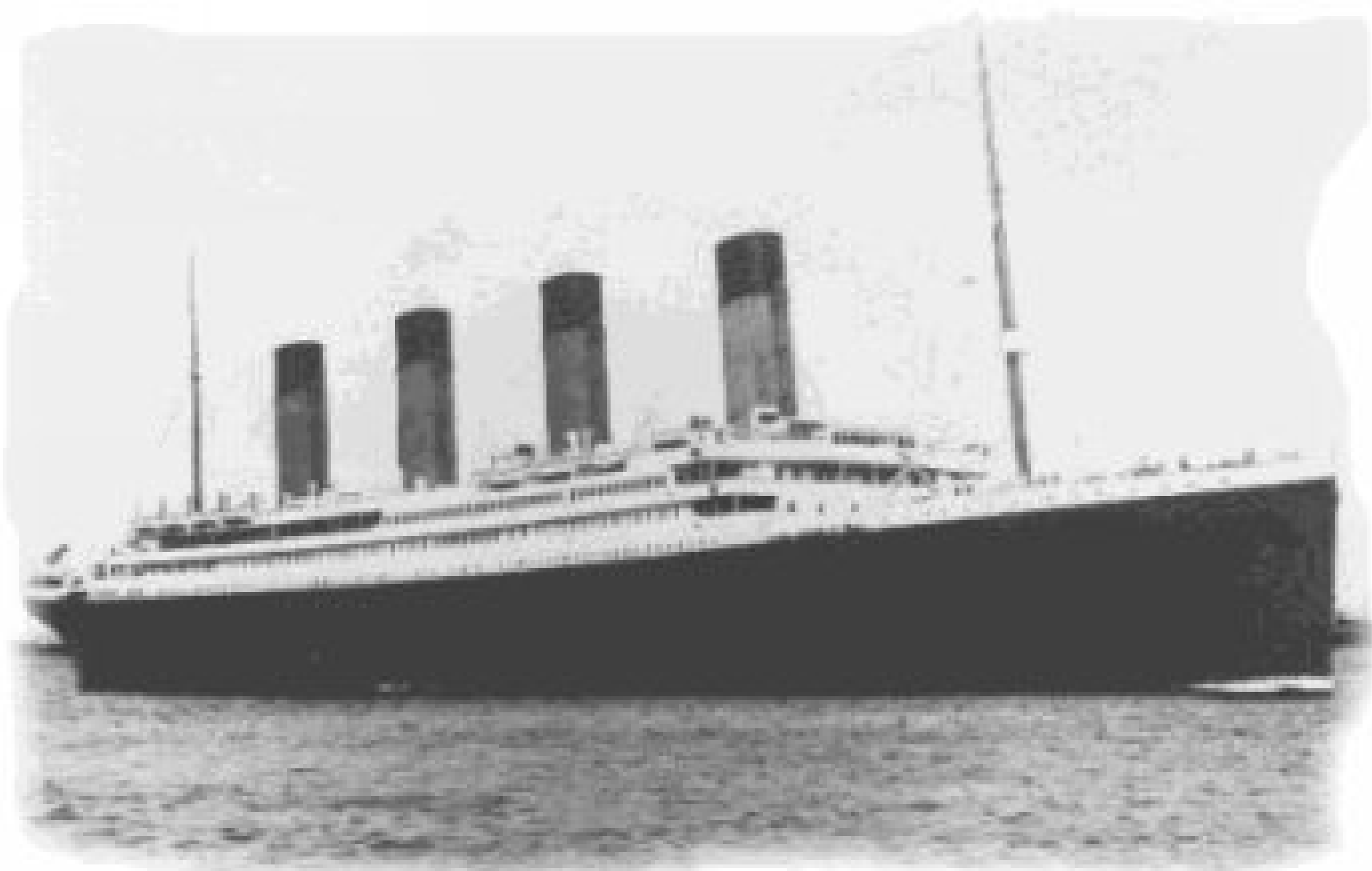
- It is not the people working in child protection who are at fault; it is the policy framework in which they operate that is fatally flawed. Rarely is this examined. Instead, more money is poured into bigger child protection systems and more inappropriate referrals flood in.

Professor Dorothy Scott

The Australian

Wednesday, 14 November 2007

Unsinkable?



THE LEGISLATION

- The CYFA 2005 states (s.10) the best interests must always be paramount when making a decision, or taking action with regard to a child. Included in these principles is section 10(3)(e) *which must consider 'the effects of cumulative patterns of harm on a child's safety and development'*.
- The grounds for statutory intervention when a child is in need of protection have not changed, however they now *encompass accumulated harm*, as well as crises or a single serious incident, and focus on the impact of the harm on a child's development and wellbeing.

THE LEGISLATION (cont.)

- Section 162(2) determines that: *'the harm may be constituted by a single act, omission or circumstance or accumulate through a series of continuing acts, omissions or circumstances'*.
- Sections 10 and 162 enable earlier intervention and prevention to promote wellbeing and development, *and* recognition of the cumulative impact of continuous acts, omissions or circumstances that may result in significant harm whereby a child is in need of protection.

REFORM AGENDA

- early intervention and prevention
- incorporates developmental approaches to children's wellbeing and safety,
- works together with family services to share responsibility for the protection and wellbeing of children.
- Innovations; Child/FIRST

Policy and practice changes continue to evolve

A NEW VISION FOR VICTORIA'S CHILDREN
PREMIER'S CHILDREN'S ADVISORY COMMITTEE
REPORT TO THE PREMIER OF VICTORIA
SEPTEMBER 2004

Joining the dots

protecting children

first steps

Children, Youth and Families Act 2005
Act No. 96/2005

The state of Victoria's children report 2006

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COUNCIL OF AUSTRALIAN GOVERNMENTS'

NATIONAL REFORM AGENDA

VICTORIA'S PLAN TO IMPROVE
OUTCOMES IN EARLY CHILDHOOD

One of Victoria's proposals under the National Reform Agenda

March 2007

nance

FOR VICTORIA

ing opportunity and
essing disadvantage



First



To guide a paradigm change

- Families, communities, professionals and Government share responsibility for improving the outcomes of vulnerable children
- Multi-service response
 - Inclusion of vulnerable children and youth in universal early childhood, health and education services
 - Improved access to more intensive family support
 - Promoting a whole of family focus in specialist adult services

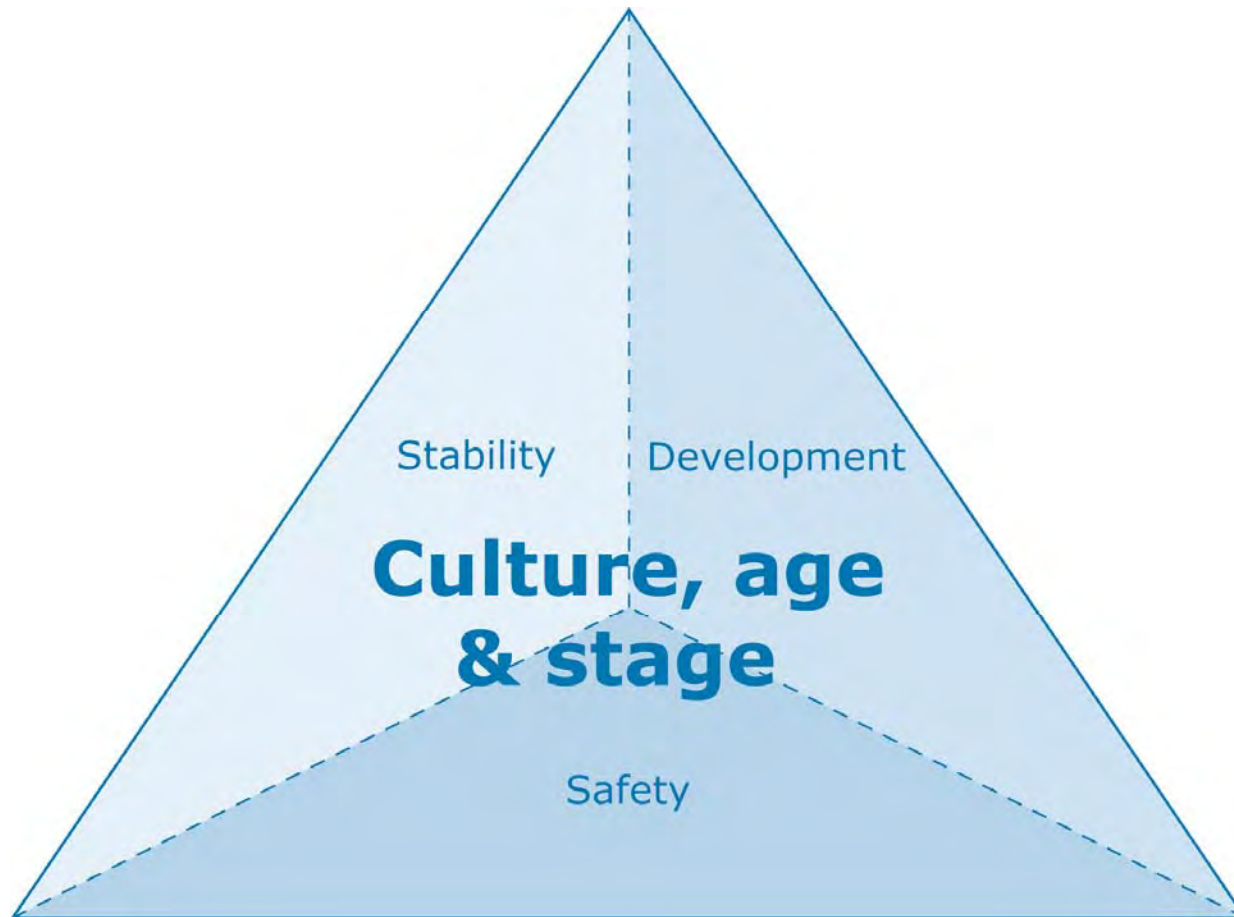
Family services/Child Protection interface - now?



Child Protection- Child FIRST interface - in the future



Child's Best Interests

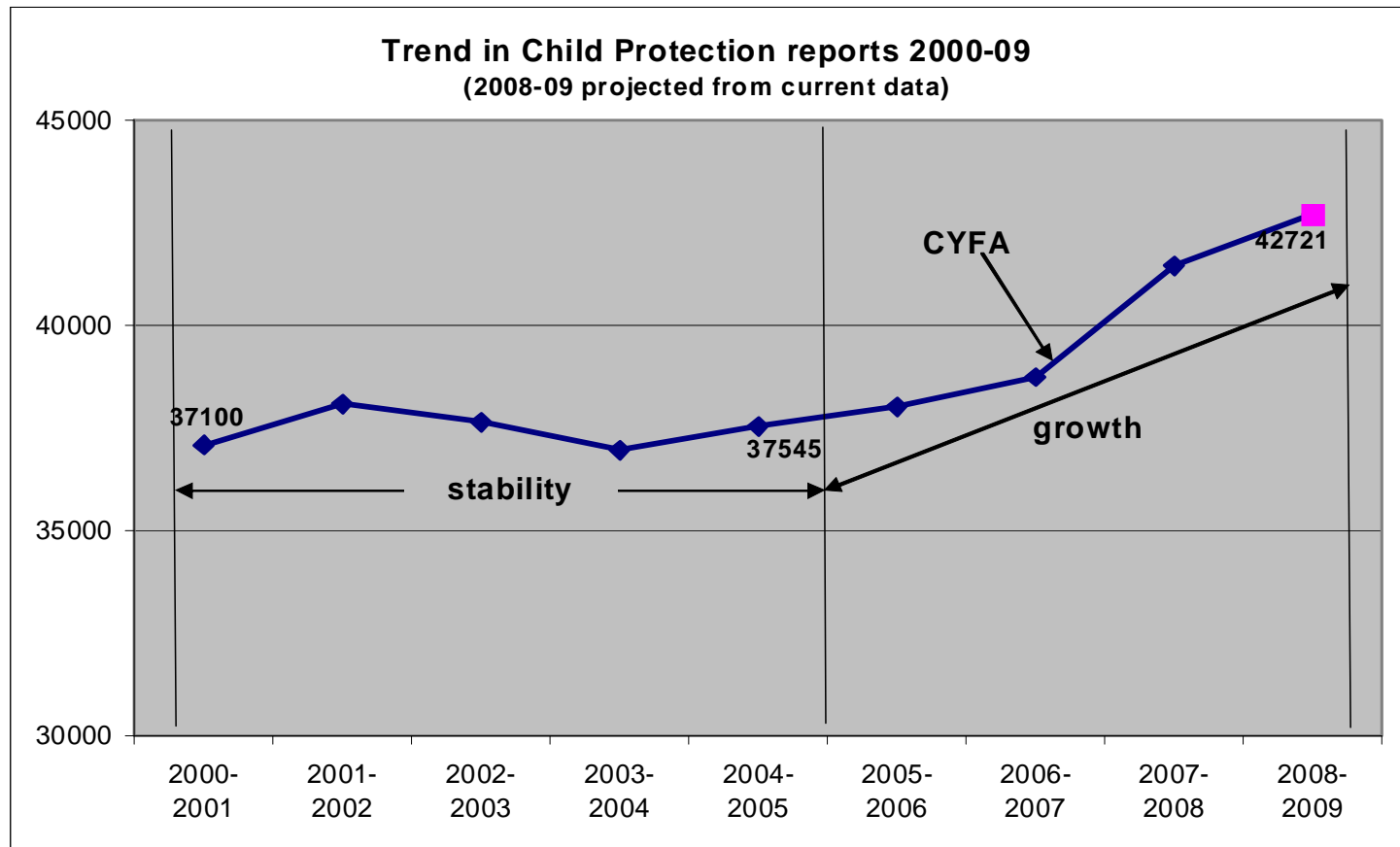


500 Unborn reports per year



- Working earlier and in partnership with the mother and appropriate support services to address the need or risk factors
- The guiding practice principle is one of supportive intervention, rather than interference with the rights of the pregnant woman

The challenge of demand



Holding our nerve

- About 12% in the two years after CYFA was introduced, but most growth was in the first year. Currently reports are increasing at about 5% per year.
- Still a lot lower than other Australian jurisdictions

Best Interests Case Practice Model – accepted across sectors in Victoria



Relationship Based Practice

every child every chance
a good childhood is in everyone's best interests

Child development and trauma guide

Some important points about this guide

This guide has been prepared because of the importance of professionals in the Family Services, Child Protection and Placement and Support areas understanding the typical developmental pathways intended to inform a developmental or knowledge from child appropriate advice as to the

child well as a source have accurate in a child belongs,

to ride a bicycle unless

a straight line or evenly, sequential manner; that while the path of predictable, there is variation development. That is to exactly the same way. more rapid in the very time in life.

ffects on other areas. area will impact on the skills and progress mental stage. both nature and nurture very significant aspect

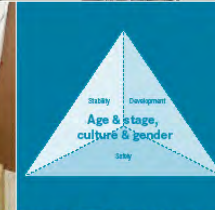
ment and behaviour: to medium term conditions can have deficiencies will also developmental progression. behaviours are indicative al characteristics child's behaviour, which closely, if a child is not refer to the Best and relevant specialist ing further assessments

A Victorian Government Initiative 

every child every chance
a good childhood is in everyone's best interests

The Best Interests principles: a conceptual overview

Best interests series



every child every chance a good childhood is in everyone's best interests

Cumulative harm: a conceptual overview

Best interests series



every child every chance
a good childhood is in everyone's best interests

Best interests case practice model

Summary guide



A Victorian Government Initiative 

A Victorian Government Initiative 

A Victorian Government Initiative 

Embedding the Reform: Partnership with Family Violence Services

- A key feature of legislative and policy reforms for Family Violence and Child Protection is the establishment of multi service approaches
- Research confirms family violence and child abuse frequently co-occur. Victorian Child Protection data shows that for non-Aboriginal families in 2005-06, 53% of substantiated child protection cases identified family violence as a risk factor. For Aboriginal families this was 64%.

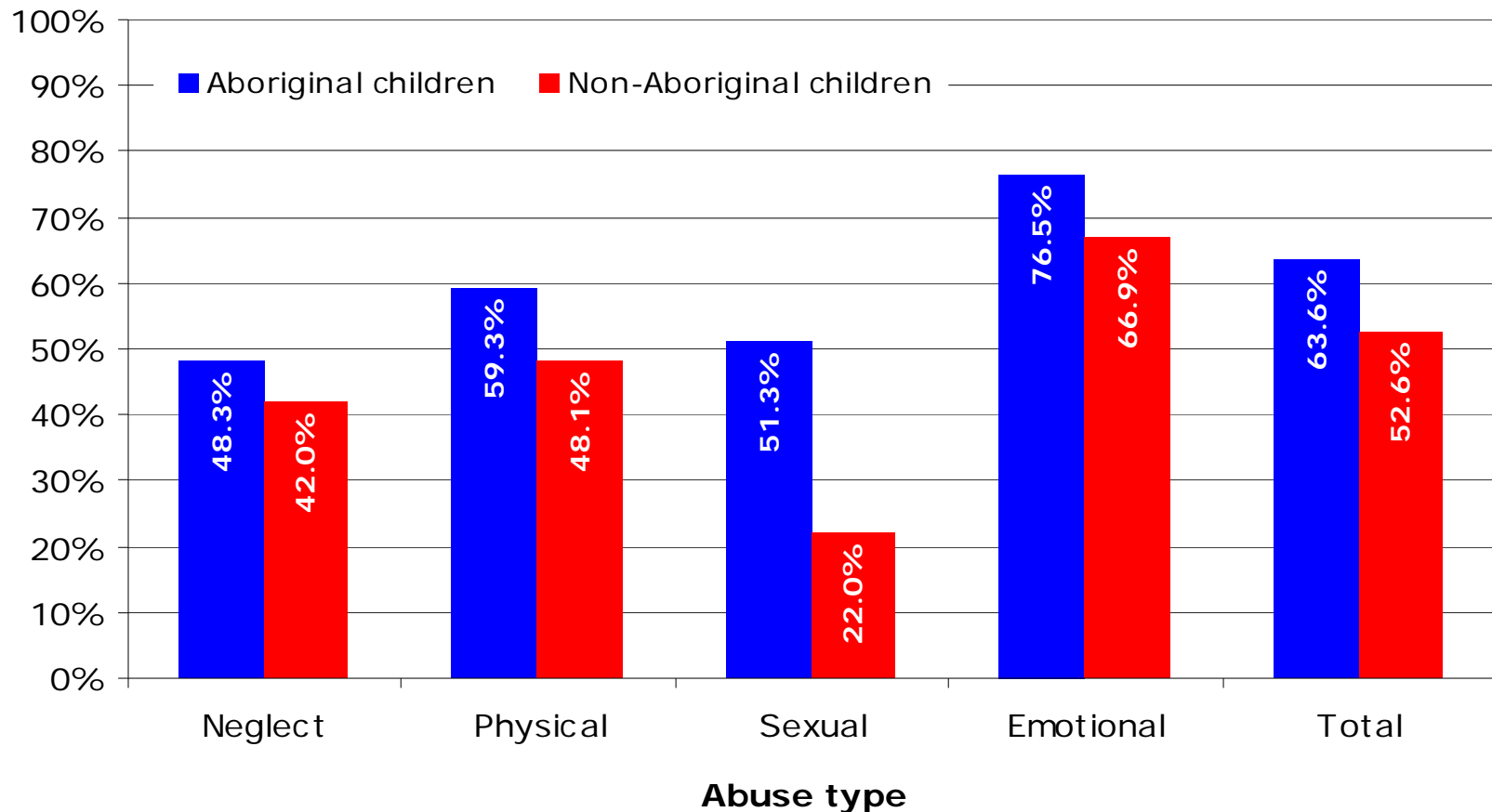
Embedding the Reform

- Agreements will be developed to facilitate collaborative working relationships between Family Violence, Child FIRST/Family Services and Child Protection services at the local level.
- Agreements to reflect a shared vision and approach
 - Safety of children;
 - Safety and empowerment for victims of family violence (mainly women and children); and
 - Responsibility and accountability of perpetrators of family violence (mainly men).

Child Protection data

Family violence and abuse type

Percentage of substantiated cases with family violence as a risk factor in Victoria, 2005-06



Earlier Intervention



- The Children, Youth and Families Act 2005 (CYFA) establishes two pathways in Victoria for people to report or refer an unborn child where they have 'a significant concern for the wellbeing of the child after his or her birth'
- Report to Child Protection
- Report to Child and Family Information Referral and Support Teams (Child FIRST)

What is cumulative harm?

- Cumulative harm may be caused by an accumulation of a single adverse circumstance or event, or by multiple different circumstances and events
- The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child's sense of safety, stability and wellbeing.

(Bromfield and Miller 2007)

Cumulative harm: multiple abuse types

- ... a significant proportion of maltreated individuals experience not just repeated episodes of one type of maltreatment, but are likely to be the victim of other forms of abuse or neglect (Higgins 2004:51).
- Maltreatment types are also noted to be inter-related, or overlapping (Higgins, 2004). As many forms of maltreatment co-occur and could have joint effects, their cumulative impact should not be overlooked (Hamilton & Browne, 1999; Rossman & Rosenberg, 1998).

- 'When a case has numerous notifications either not investigated or not substantiated, assumptions can be readily made that this case is not one of significant risk.
- A cumulative risk perspective requires a re-examination of each of these notifications every time a new notification is made in order to assess whether a multitude of low-level risk factors is demonstrating significant cumulative harm'.

(Frederico, Jackson and Jones 2006: 39)

Systemic barriers to recognising cumulative harm

- Each departmental involvement treated as a discrete event
 - Information not accumulated from one report to the next
 - Information lost over time
 - Assumption that previous presenting problems were resolved at case closure
 - Files not scrutinised for pattern of harm
- Departmental language used to describe events – reduces context and meaning

Bromfield, Gillingham and Higgins (2007)

Language

- Departmental language is used to describe events
- Technical jargon not understood by outsiders
- In reframing the experiences of children and family into departmental language, the subjective experience is lost

Schultz 2009

Original Case Plan

- Summary of Child Protection concerns:
 - Ongoing concerns of alcohol and drug misuse
 - Risk of emotional harm
 - Risk of physical harm
 - Limited parenting skills – behaviour management
 - Limited participation in support services

Schulz 2009

Re-worked case plan

- Summary of current child protection concerns
 - Paris has not experienced consistent routines; day-to-day life in Mum's home is chaotic with many people in and out. Often these people are drunk or stoned, which exposes Paris to other risks.
 - The changes that Mum has attempted to make have not been enough for Paris to return safely home. Stressors in Mum's life reduce her ability to make protective choices for Paris.

Schulz 2009

The use of 'plain English'

- Schulz (2009) argues that the impact of events on the child's daily life can be better seen and understood if an assessment is recorded and communicated in language free from jargon.
- This benefits:
 - The child
 - Parents
 - Other service providers
 - The courts
 - Other practitioners reading the file

Implications for practice

- Unlikely to receive a report explicitly due to cumulative harm
- The majority of children who experience maltreatment experience:
 - Multiple incidents; and
 - Multiple types
- Need to be alert to possibility of cumulative harm in all reports

Indicators of cumulative harm in case history

- Include:
 - Multiple reports
 - Previous substantiations
 - Multiple sources alleging similar problems
 - Reports from professionals
 - Evidence of children not meeting developmental milestones
 - Allegations of inappropriate parenting in public

Bromfield, Gillingham and Higgins 2007

Parental and family indicators of cumulative harm

- Families who experience cumulative harm have:
 - Multiple inter-linked problems (ie. Risk factors) such as DV, A&D and MH)
 - An absence of protective factors
 - Social isolation/exclusion
 - Enduring parental problems impacting their capacity to provide adequate care (eg ID, A&D)

Bromfield, Gillingham and Higgins 2007

Identifying cumulative harm

- *Frequency* – Have there been previous allegations for similar issues?
- *Type* – Signs that child has experienced other types of CA/N in addition to those reported?
- *Severity* – Has caused or likely to cause significant harm if repeated over a prolonged period?
- *Source of harm* – Does current situation make child more vulnerable to other perpetrators?
- *Duration* – How long have problems that led to current involvement been present?

Bromfield 2005

Impact of cumulative harm on children

- Primary theories to help understand cumulative harm are:
 - Child development (early brain development)
 - Trauma (including complex trauma) and
 - Attachment
- Prolonged stress can damage the developing brain
- Children experiencing chronic maltreatment are in 'toxic' environments

Making your assessment

- Short and long term effects matter
- What has been the impact on the child to date?
 - Is the child meeting developmental milestones?
 - Are there any signs of trauma?
 - What is the quality of parent-child relationship?
 - What has been the impact on the child to date?
 - What are the likely outcomes for the child should their circumstances remain unchanged?
 - Refer to the *Child Development and Trauma Guide* to aid your assessment

When parents can't or won't change

- Hard to witness parents' struggle to change
- Desire to change does not equal change
- Effects matter whether there is intent or not
- If parent can't change, won't change, or it will take too long to change – need to prioritise child needs
- Need to review circumstances and the effectiveness of our interventions
 - Have circumstances changed for **the child**?

Bromfield and Miller 2007

Preparing matters for court

- Not enough to say a child has experienced cumulative harm
 - Need to present evidence to the court that shows the effects of cumulative harm on children
- Court will also want to know the
 - Previous assistance that has been provided to the family
 - Outcomes of previous interventions

Bromfield and Miller 2007

Assisting recovery in children

- Cumulative harm can overwhelm even the most resilient child and particular attention needs to be given to understanding the complexity of the child's experience
 - Remember to consider what interventions or services might assist the child towards recovery

Bromfield and Miller 2007

In summary . . .

- Inadequate to make assessments on the basis of individual reports – particularly in cases of neglect and emotional abuse
- Use pattern and history to establish harm to children
- Broaden thinking from immediate to long-term harm to children

Family violence - the children are watching

- Children witnessed the abuse of their mothers in as many as 85% of cases (*Minnesota Program Development, 1997*).
- 65% of family violence incidents recorded by police in each of the years 1999-2000 and 2003-2004, there were records of at least one child present.

Victorian Family Violence Database 2008

Unborn children are impacted

The ABS Women's Safety Survey found that

- 42% of women who experienced partner violence experienced violence during pregnancy.
- 20% of these women experienced the violence for the first time during pregnancy (*ABS 1996, p.8*).
- 400 pregnant women found that 27% experienced physical and psychological violence.
- 20% experiencing physical violence.

Walsh & Weeks 2004, p.139

International research confirms frequent co-existence of child abuse and family violence

- *Edleston (2001)* estimates that between 30 and 60 percent of children whose mothers are subjected to family violence are also being abused.
- *Brown and Endekov (2005)* estimate that between 30 and 60 per cent of children who witness family violence also experience some form of abuse.
- This is consistent with the findings of Australian research. *Laing (2003)*



Co-existence of child abuse and family violence

Lit Review by Bancroft & Silverman (2002) report:

- An extensive collection of published studies indicates that batterers are several times more likely than other men to physically abuse children
- Straus (1990) Large scale study 6,000 subjects reported that 49% of batterers physically abused children; only 7% of non-battering men do so
- Risk increases with severity and frequency of partner violence



Co-existence of child abuse and family violence

“One study in North America found that children who were exposed to violence in the home were 15 times more likely to be physically, and/or sexually assaulted than the national average”

Volpe, J.S. 'Effects of Domestic Violence on Children and Adolescents; An Overview', The American Academy of Experts in Traumatic Stress, 1996.



Co-existence of child sexual abuse and family violence

- Multiple studies demonstrate that mothers of incest victims are likely to be victims of family violence
- Other studies indicate children of violent men have unusually high rates of child sexual abuse victimization
- When studying the sex offender literature the only factor which correlates in the research is that the offender is more likely to be violent in the home

Impact of Family Violence

Infants and small children who are exposed to violence in the home experience so much added emotional stress that it can harm the development of their brains and impair cognitive and sensory growth

Osofsky, Joy D. 'The Impact of Violence on Children', The Future of Children – Domestic Violence and Children, Vol. 9 No. 3, 1999; Koenen, K.C., et al., 'Domestic Violence is Associated with Environmental Suppression of IQ in Young Children', Development and Psychopathology, Vol. 15, 2003, pp. 297-311; Perry, B.D. 'The neurodevelopmental impact of violence in childhood', Chapter 18 in: Textbook of Child and Adolescent Forensic Psychiatry, (Eds., D. Schetky and E.P. Benedek) American Psychiatric Press Inc., Washington, D.C., pp. 221-238, 2001; James, M. 'Domestic Violence as a Form of Child Abuse: Identification and Prevention', Issues in Child Abuse Prevention, 1994

Impact of Family Violence

- When traumatised, the brain secretes an array of potent chemicals in an attempt to physiologically mediate the overwhelming sense of fear and perceived threat to life (Schoore, 2003b)
- FREEZE – FLIGHT – FIGHT - RESPONSE
- The emotional states aroused to cope with the trauma over an extended period of time can develop into longstanding personality traits (Perry, Bollard, Blakely, Baker & Vigilante, 1995)
- The most rapid time of neural development for the brain is within the first few years of life (Greenfield, 1997)
- The need to survive becomes the organising principal

Helping Babies from the Bench

Impact of Family Violence

Behaviour changes can include excessive irritability, sleep problems with toilet training and language development.

Osofsky, Joy, D., 'The Impact of Violence on Children', The Future of Children – Domestic Violence and Children, Vol. 9, No. 3, 1999.

Impact of Family Violence

- Primary-school-age children may have more trouble with school work, and show poor concentration and focus. They tend not to do as well in school.
- In one study, forty percent had lower reading abilities than children from non-violent homes.

*James, M., 'Domestic Violence as a Form of Child Abuse: Identification and Prevention',
Issues in Child Abuse Prevention, 1994.*

Cont'd

- Learning is also compromised by **lowered auditory processing**, resulting from trauma or poor attachment experiences.
- The child appears to selectively hear and does only partially hear, due to difficulties with the cognitive and perceptual aspects of auditory processing, especially when background noise is present, as in a classroom situation (Kier, 2003).

Impact of Family Violence

Personality and behavioural problems among children exposed to violence in the home can take the forms of psychosomatic illnesses, depression, suicidal tendencies, and bed-wetting

Fantuzzo John W. and Wanda K. Mohr, 'Prevalence and Effects of Child Exposure to Domestic Violence', The Future of Children – Domestic Violence and Children, vol. 9, no. 3, 1999; Kerric, M.A. et al., 'Behavioural Problems among Children whose Mothers are Abused by an Intimate Partner', Child Abuse and Neglect, Vol. 27, No. 11, 2003, pp. 1231-1246.

Impact of Family Violence

Later in life, these children are at greater risk for substance abuse, juvenile pregnancy and criminal behaviour than those raised in homes without violence

Felitti, V.J. et al, 'The Relationship of Adult Health Status to Childhood Abuse and Household Dysfunction', American Journal of Preventive Medicine, Vol. 14, 1998, pp. 245-258; James, M., 'Domestic Violence as a Form of Child Abuse: Identification and Prevention', Issues in Child Abuse Prevention, 1994; Herrera, V. and McCloskey, L. 'Gender Differentials in the Risk for Delinquency among Youth Exposed to Family Violence', Child Abuse and Neglect, Vol. 25, No. 8, 2001, pp. 1037-1051; Anda, R.F., Felitti, V.J. et al, 'Abused Boys, Battered Mothers, and Male Involvement in Teen Pregnancy', Paediatrics, Vol. 107, No. 2, 2001, pp. 19-27.

Impact of Family Violence

- Some children lose the ability to feel empathy for others.
- Socially isolated, unable to make friends as easily or confusion over what is acceptable.
- Many studies have noted that children from violent homes exhibit signs of more aggressive behaviour, such as bullying.
- Up to three times more likely to be involved in fighting.

Baldry, A.C., 'Bullying in Schools and Exposure to DV', Child Abuse and Neglect, Vol. 27, No. 7, 2003, pp. 713-732; Fantuzzo John W. and Wanda J. Mohr, 'Prevalence and Effects of Child Exposure to Domestic Violence', The Future of Children – Domestic Violence and Children, Vol. 9, No. 3, 1999.

Impact of Family Violence

One Australian study showed that up to 40 percent of chronically violent teenagers have been exposed to extreme domestic violence

James, M., 'Domestic Violence as a Form of Child Abuse: Identification and Prevention'
Issues in Child Abuse Prevention, 1994

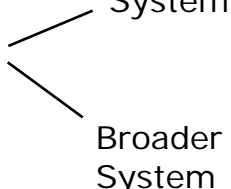
Impact: PTSD # Two

- *Gilund (1990)* found that the presence of confidants and supportive people in a child's life were more important in affecting outcomes than were aspects of the abuse.

Cont'd

- It is not the presence of trauma in childhood either, but the ability to form a coherent story about that trauma, that leads to security of attachment in adulthood.
- It's not just what happens in life that has an impact, it's the meaning the child makes.....
"it's what you do with it."

Recovery

- Understand that surviving the violence becomes the organising principle in the family.
- Privilege the voice/needs of the children
- Requires systemic thinking and practice

```
graph LR; A[Requires systemic thinking and practice] --- B[Family System]; A --- C[Broader System];
```

Cont'd

- A multi-theoretical perspective
- Engaging offender in taking responsibility
- Support the mother, use empathy not blame

Children Managing in the Face of Adversity

- 'Resilience' – not an individual trait – children live in different contexts of severity and protection
- In any sample of children between one third and a half are doing as well as or better than children not living with family violence.

The Relationship with Women's Mental Health

- One intervening variable in the protective factors available to children is their mother's mental health.
- *Moore and Pepler, 1998; Hughes et al, 2001; Hughes and Lukes, 1998* suggest a link between the emotional well-being of women and children.

The Role of the Perpetrator

- The perpetrator may be the intervening variable (*Sullivan 2000*). The direct negative effect is due to the man's abuse and is not mediated by the mother's well-being.

Cont'd

- Domestic violence is an attack on the mother-child relationship – an indirect effect is undermining the women's emotional well-being so that she is not in a good position to parent.
- Essential to provide assessment and support for women experiencing mental health problems.

Recovery

- The provision of an environment that is "*relationally enriched, safe, predictable and nurturing.*"
(Perry, 2006).

Touching, holding child



Cont'd

- The underpinning theory privileges the importance of **relationship** as the **primary agent of change**.
- Dyadic Developmental Psychotherapy (DDP) is an approach developed by Daniel Hughes and is used as a modality for therapeutic interaction.

Recovery for the Child and the Family

A process of resolution of grief and loss

- Loss of **past** safety
- Loss of **present** stability
- Loss of **future**, expected development

A process of reclaiming safety, strong connections and hopeful future.

Recovery for the Child and the Family

- Integration of Memories and Affect
- Peace between the head and the heart
- Trauma fragments the self, families, communities, RESILIENCE DEVELOPS and **healing** happens through **connection** to carer, family, school, community, CULTURE

The Healing Process:

How parents and therapists can help children

- Expect regression
- Respect a child's fears
- Provide active help for flashback and panic

Cont'd

- Provide opportunities for talking about feelings
- Expect and tolerate repetitious rebelling
- Provide opportunities and props for play
- Limit and monitor play

Cont'd

- Expect some difficult behaviour
- Communicate with school and child care staff
- Maintain routines, avoid the new

Cont'd

- Set limits on re-exposure
- Be mindful of triggers
- Use detective skills

Cont'd

- Provide physical outlets
- Keep anniversary reactions in mind
- Listen to the child's misunderstandings and magical thinking

Cont'd

- Parental self care
- Focus on strength and competence

What Children Need

- Safety
- Support and belief, especially at disclosure
- Clarity around your role
- Assessment
- Appropriate Treatment
- The involvement of non-offending family members and significant others



Against the Odds : How Women Survive Domestic Violence (Office of the Status of Women, 1998)

- These findings strongly suggest that family violence was experienced by the women as a continuum where circumstances changed over time
- Women not passive
- Multiple coping strategies adopted
- Ultimately most women left

Against the Odds : How Women Survive Domestic Violence (Office of the Status of Women, 1998)

- Two distinct pathways to separation
 1. After having exhausted all other possibilities to have made the relationship work
 2. "The defining moment"

Professor Edward Gandolf's Research - 2004

- A longitudinal 4 year follow-up evaluation in four cities, of batterer programs
- n = 840 men and their female partners
- variety of qualitative and quantitative approaches
- Nearly $\frac{3}{4}$ of the re-assaults occurred within the first six months
- Clear de-escalation of re-assault and other abuse

- Vast majority of men referred to batterer counselling stop their violent behaviour
- Gender based, cognitive-behavioural programs appropriate for 80% of the violent men
- The system matters; program effectiveness depends on intervention system of which the program is a part

“Evaluating batterer counselling: A difficult task showing some effectiveness and implications”

Aggression and Violent Behaviour
9(2004) p.605-631

“Some observers, in fact, argue that such components cannot be separated since they combine in a synergetic effect toward a **TIPPING POINT** of change”

*(Gladwell, 2000 cited in
Gandolf, 2004)*

Cautions re Couple Work

- Needs to be grounded in feminist concerns for justice and safety
- May re-victimize the woman physically and psychologically
- May provide the offender with a platform for self-justification
- May convey the message that the victim is co-responsible for the abuse
- Needs to be based on zero tolerance for violence and commitment to safety, accountability and equity
- Requires a core distinction between the crime of violence and the “relationship issues”

A Both/And Perspective

Violence is **both** wilful **and** impulse ridden

instrumental and expressive/dissociative

taking/forcing control and losing control

intentional/planned and reactive

powerful and powerless



Trauma Dynamics

- A potent longing in the victim for kindness and for relief from the fear or terror
- The person who brings a soothing relief is the one that perpetrated the abuse
- At this moment the perpetrator is perceived by the victim as a rescuer who is then grateful
- "Stockholm Syndrome" (*Graham et al, 2001*)
- Hostages become bonded to and protective of their captors

Challenge of family violence for the Child Protection System

- Historically Child Protection intervention has tended to focus on women “mothers”
- Men are responsible for the majority of the most serious physical abuse of children

Lowenthal 1996; Aron & Olson 1997; Edleston 1999b

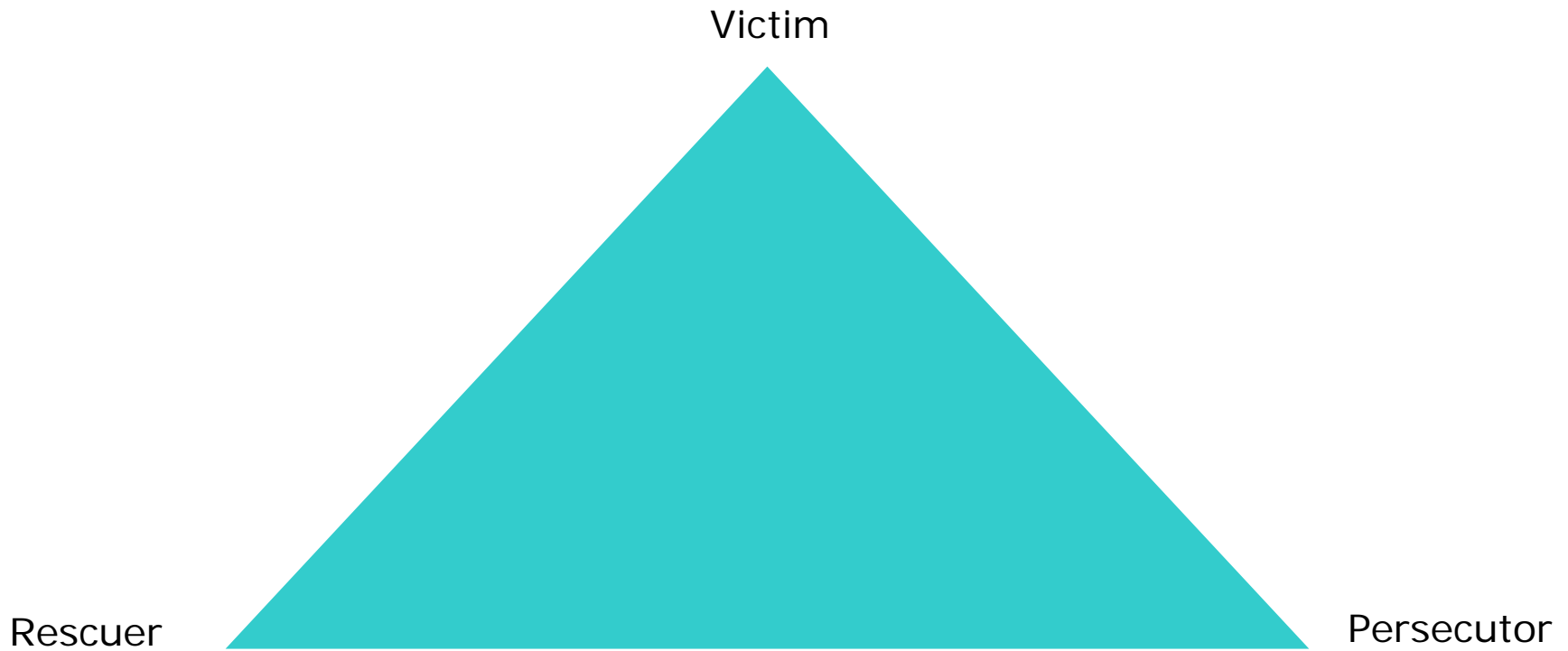
- Often ‘gender bias’ *Burke (1999)*

- Women “failing to protect” their children

Stak & Flitcraft 1988; Burke 1999; Mills 2000

Cited by Lesley Laing 2003

Keeping it Real : Holding the Child in mind in the complexity of family violence



Karpman's Triangle (1968)



Recovery from Trauma

“It is important to understand that the brain altered in destructive ways by trauma and neglect can also be altered in reparative healing ways. Exposing the child, over and over again, to developmentally appropriate experiences is the key. With adequate repetition, this therapeutic healing process will influence those parts of the brain altered by developmental trauma”

Bruce Perry (2006)

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- Bromfield, L. M., & Miller, R. (2007). *Specialist Practice Guide: Cumulative Harm*. Melbourne: Victorian Government Department of Human Services.
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COURT COORDINATORS CONFERENCE

20 October 2009

Sandra van Schagen, Assoc Director-General RSDO

Department of Communities

Our vision

Fair, cohesive and vibrant Queensland communities

Our purpose

Providing integrated community services that strengthen Queensland

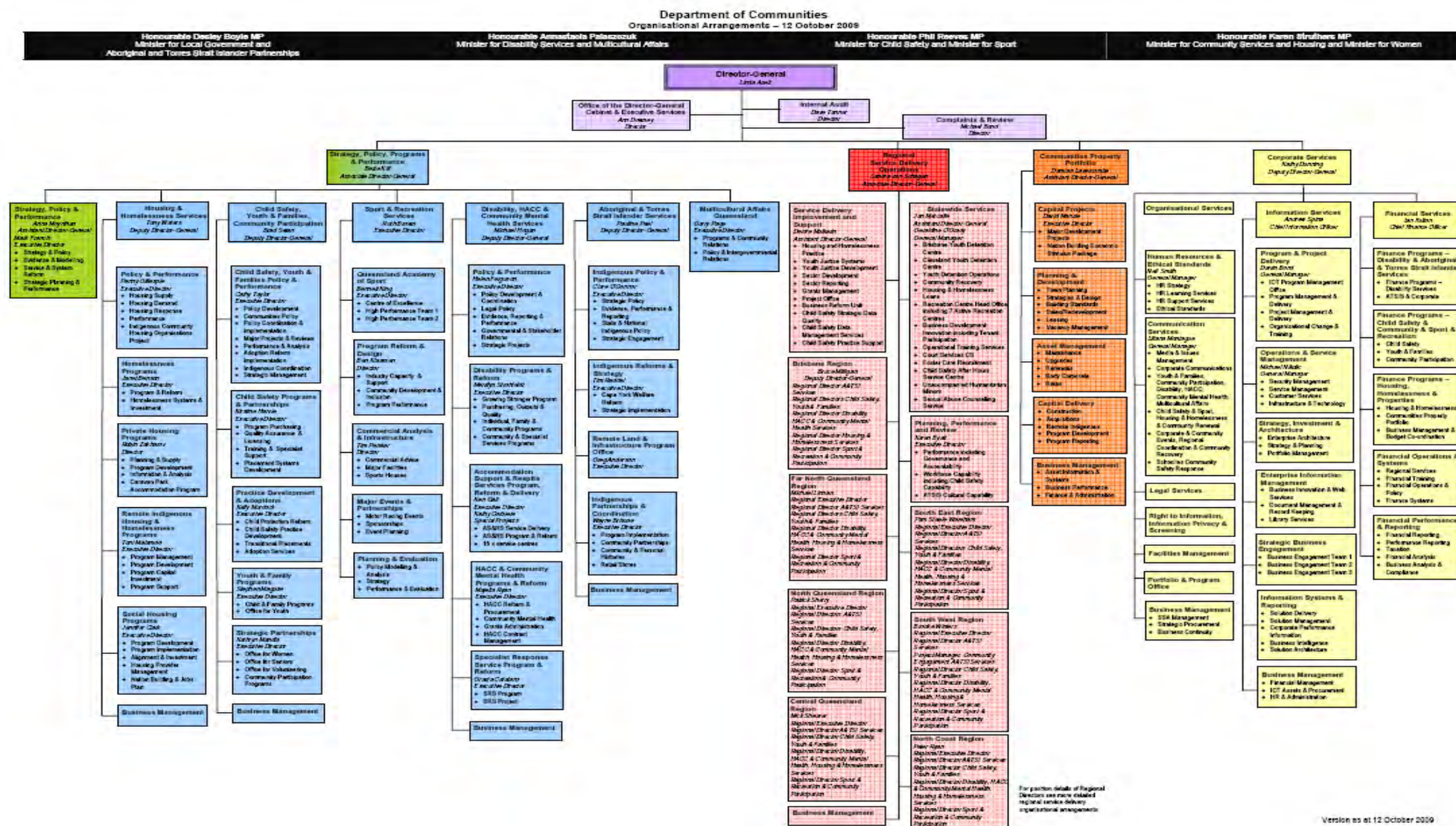
Supports Government Toward Q2: Tomorrow's Queensland

Key contributor to social inclusion and development across Queensland - particularly for:

- women***
- people from culturally and linguistically diverse backgrounds***
- seniors and older frail people***
- young people, children and families***
- Aboriginal and Torres Strait Islanders***
- people with a mental illness***
- volunteers***
- people with a disability and their families and carers***
- people who are homeless***

Our values

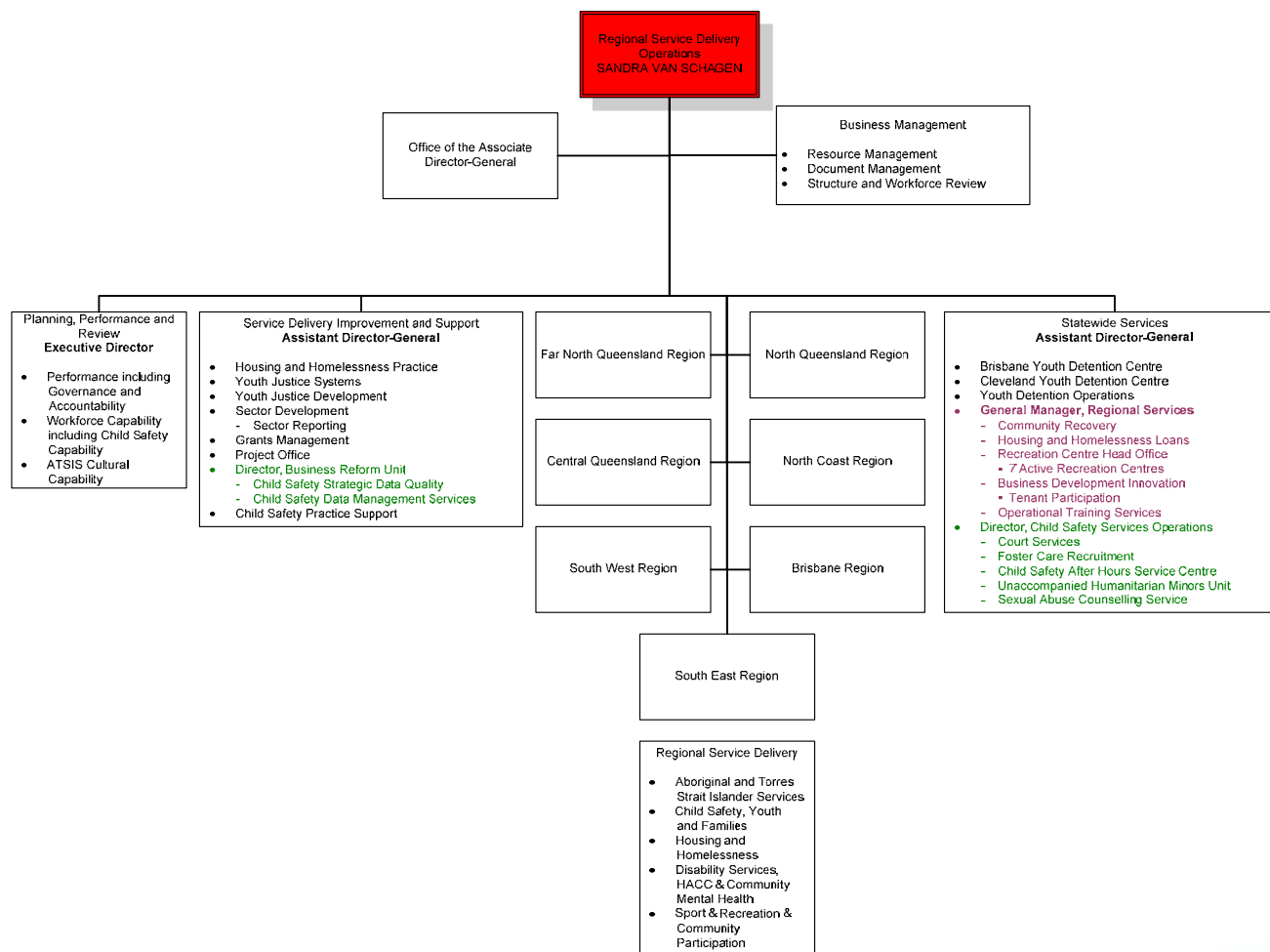
- ***Client Focus***
- ***Collaboration***
- ***Diversity***
- ***Innovation***
- ***Professional Integrity***



9th October 2009

REGIONAL SERVICE DELIVERY OPERATIONS STRUCTURAL ARRANGEMENTS

DRAFT
V0907.15



RSDO coordinates the delivery of the range of services for which the Department is accountable for across the seven regions by:

- managing coordinated approaches to community services for clients, including departmental service delivery and services provided by non-government organisations
- working collaboratively with other government departments, local government and community organisations to support and develop services that best meet the needs of individuals, families and local communities.

High level functional arrangements

Regions

Far North Queensland
North Queensland
Central Queensland
North Coast
Brisbane
South West
South East



Organisational priorities

Governance

Culture “No wrong door to client services”

Systems development

Establishment and staffing

It will be a change journey.....we are at our new beginning

Department of **Communities**

safe, valued and empowered communities

Can we make a difference? A proposed model for instigating and measuring change

Barry Morris

Court Coordinator

Emerald CSSC

Department of Communities (Child Safety Services)

barry.morris@communities.qld.gov.au



Introduction

- Why this topic?
- Purpose of workshop
 - Recognise that Court Coordinators do have a positive impact on the Child Protection process
 - Propose a model for Planning for Change through implication of court related goals and evaluating outcomes



Prior to Court Coordinators

CMC report – Protection Children: An Inquiry into Abuse of Children in Foster Care (2004)

“A society can rightly be judged on how it treats its children. After all, they are the citizens of the future. The recommendations in this report provide a timely opportunity to redress the inadequacies of the past and benefit all children who are at risk.”

Brendan Butler SC, Chairperson of CMC



Prior to Court Coordinators

Legal Aid Qld (p106-7)

- Court preparation not occurring – poor outcomes for children, orders not granted, wrong orders granted
- CSOs not trained in preparation of affidavits – courts making decisions based on incomplete information, decision may not be best for child
- CSOs not clear on what order sought – order granted may not be best for child, orders granted when not necessary
- No case plans prior to application – “lost in the system”, needs of children not met



Prior to Court Coordinators

Record Keeping (p109)

- Few standardised forms

Due Process Issues (p122)

- Parents not advised of court hearing dates
- Parents not advised of rights
- Parents not advised of court outcomes



CMC Recommendations

- Department consider court work by specialist staff
- Legal officers employed to
 - assist with the preparation of documentation for court and tribunal proceedings
 - Provide advice and resources to CSOs
 - Participate in statewide network – training and monitoring trends
 - Ensure children and young people consulted re applications



Court Coordinators Enhancement to Service Delivery

Handout

Court Coordinators:

- Specifically devoted to court preparation
- Provide quality assurance and training to staff
- Provide feedback re adequacy, relevance etc
- Specialise in court matters and ensure processes followed in timely manner



Court Coordinators Enhancement to Service Delivery

Court Coordinators:

- Resource staff with templates etc
- Provide outcome letters and orders to parents
- Ensure views of child/YP are obtained and included
- Assist manager/TL in preparation for CST, liaise with Court Services



Reflecting on Impact

- Discussion: Changes in CSSCs and Court
- Small groups (10mins)
 - Reflect on your time as Court Coordinator
 - Needs when you started
 - Planned actions to address needs
 - How it went – what worked, what didn't

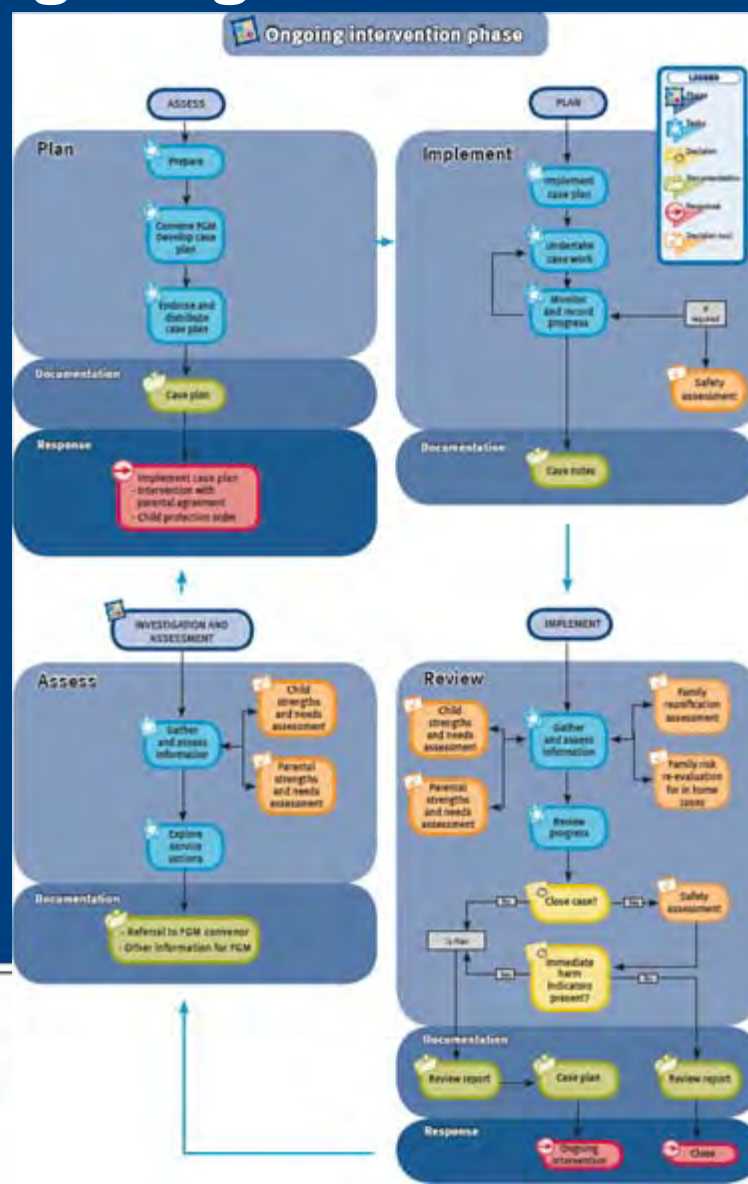


Model for Instigating and Measuring Change

- Appreciative Inquiry – 4D model
 - Dream Develop Deliver Discover
- Ongoing Intervention Cycle
 - Assess Plan Implement Review



Model for Instigating and Measuring Change

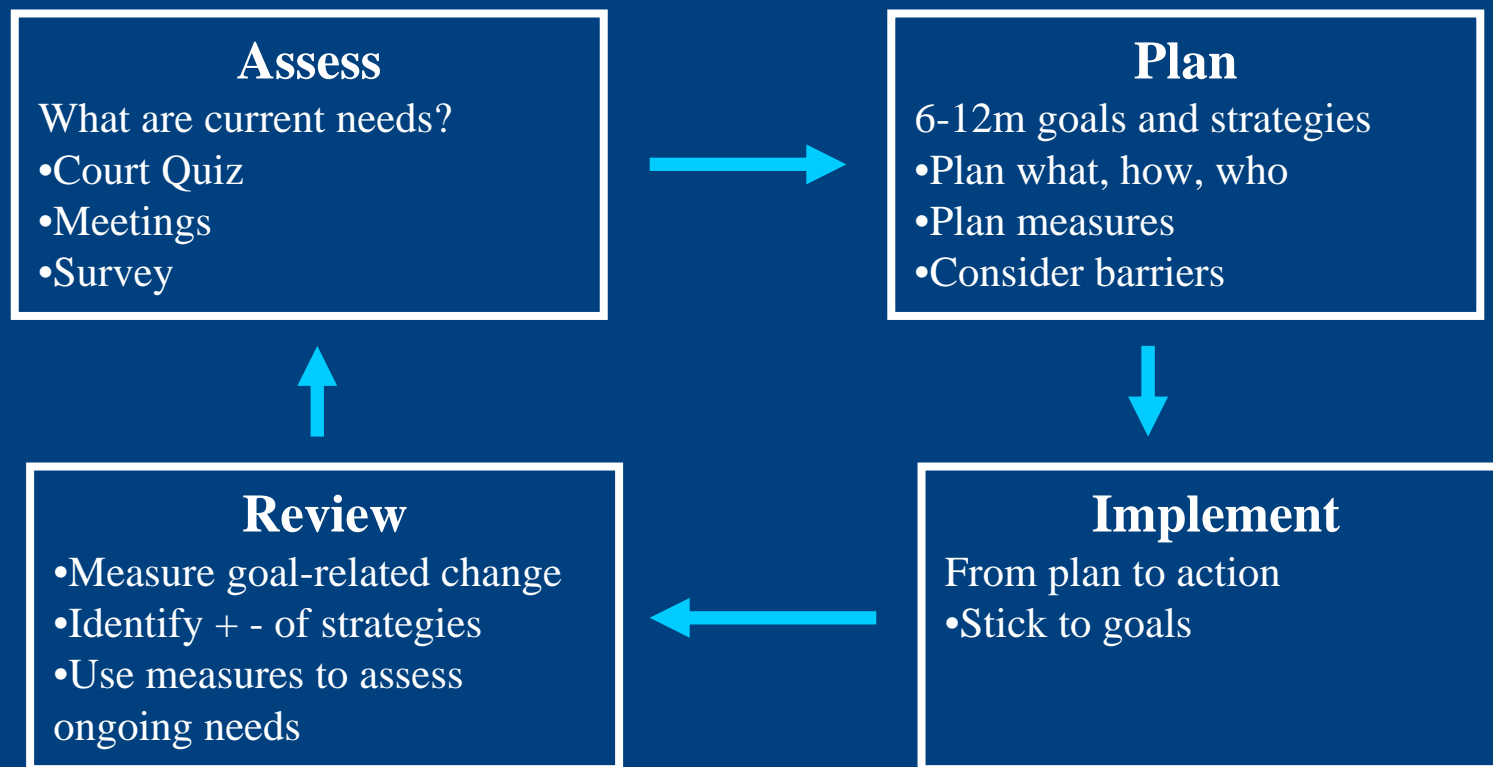


Model for Instigating and Measuring Change

- Goal of Ongoing Intervention – bring about change in children and families
- Changes – address CP concerns, reduce risk
- Cycle can be applied to any attempt to instigate change
- Often done without thinking



Model for Instigating and Measuring Change



See also 4D model of Appreciative Inquiry <http://www.mellish.com.au/Resources/lizarticle.htm#4D%20Model>





Model for Instigating and Measuring Change

Assessing need

- What level? Child, family, staff, Department, court, service providers? Relationships, processes?
- *CPA 1999* – Child's best interests are paramount
- Within Department's responsibility of considering child's best interest, Court Coordinators are responsible for:
 - Service Strategy
 - People Development
 - Systems Development
- Why? Better outcomes for kids



Model for Instigating and Measuring Change

Case example

- 14yo “Sarah”
- Chronic neglect, sexual abuse
- In care since 2002, placed with kin
- 2 short term orders
- LTG applied for in 2007
- Child does not want any contact with her mother
- Mother contesting order, other kin want child placed with them
- Child expressed her views clearly in a letter...



Assess

Assessment of Needs – Child/Family, Department, Stakeholders

- Child
 - Stability, a sense of control, connection
- Department
 - Prioritise child's needs
 - Consider needs and interests of parties/stakeholders
 - Adhere to legislation and policy requirements
 - Operate in accordance with natural justice principles
 - Make decisions based on good evidence
- Stakeholders (court, solicitors, service providers)
 - Informed regarding hearing/processes
 - Assistance in hearing preparation
 - Adequate information to inform decision making



Plan

Planning Goals and Strategies

– Goals:

- Child to feel she is influencing decisions
- LTG granted to Chief Executive
- Current placement with kin maintained
- Other potential kinship carers to be assessed and discounted as placement option prior to hearing
- Mother fully informed of process and rights
- Court provided all relevant information as obtained



Plan

Planning Goals and Strategies

– Strategies (e.g.)

- Ask questions about child's views during case discussions. Seek feedback from child following hearing.
- Obtain information via 159 letters or subpoena
- Affidavits from service providers/carers/Dept staff – direct evidence
- Hearing date to be set by end of 2008
- Monitor progress of kinship carer assessment process, to be commenced and finalised prior to hearing
- Provide witnesses with 3 months notice of hearing
- Maintain contact with witnesses and prepare witnesses as necessary
- Training and quality assurance re affidavits – concise, direct evidence, legislation, thorough etc
- Monitor casework, ensure tasks being completed
- Ensure mother and sep rep receive all material 5 days prior to any mention



Implement

Implement

- Case discussions/AICs
- Follow up with CSO/TL
- Regular contact with Court Services
- Close communication with witnesses
- Etc



Review

- LTG granted June 2009
- Feedback from child
- Preparing witnesses paid off – all available for hearing, all presented well
- Feedback from Sep Rep Barrister – well prepared file
- 159 letters – successful. No subpoenas for info required
- All material provided, only once within 3 days of mention
- Kinship carer assessment – has not occurred



Assessing – What are the current needs

- Discussion – what are current needs/expectations in your office?



Planning – Goals and Strategies

- Discussion – 6-month goals
- SMART goals – specific, measurable, attainable, realistic, timely
E.g. “Enhance staff practice” – not smart
 - 80% affidavits filed 7 days prior to court
 - Affidavit of CSO Jones – 2 hours editing only
 - Words “we’ll support you in Family Court” not used prior to case discussion





Planning – Goals and Strategies

- Small groups (6mins)
 - What are your SMART goals for next 6 months?
 - What are some strategies to achieve goals?
- Feedback to large group



Reviewing – Measuring change

- Discussion – what are some ways you measure whether or not you have met your goals?
- Obtaining feedback
 - 360° feedback aka multisource assessment
 - Feedback from subordinates, peers and supervisors
 - Self reflection v performance appraisal



Reviewing – Measuring change

360° feedback for Court Coordinators



Reviewing – Measuring change

360° Feedback Research

- Best done after 12 months, prior to 3 years (long enough to get past first impressions, but not so long as to begin to generalize favourably) (Eichinger, 2004).
- Controversy regarding application – personal improvement v workplace assessment (Waldman et al., 1998)
- Opinions may differ, whose is correct? (Vinson, 1996)

So...Keep It Simple



Reviewing – Measuring change

Feedback tools

- Based on Court Coordinator Workplace Competency document
- Developed for Staff, Court Services, Solicitors, Court Staff
- Starting point – CC role as prescribed
- Yes/No paradigm – forced decision (v likert scale)
- Not “statewide” document – not distributed by Court Services, not a review of the position (more complex process)
- For your modification and use, development/training needs



Reviewing – Measuring change

- Benefits?
- Drawbacks?



Reviewing – Measuring change

- Other measures
 - Peer feedback/mentors
 - Self reflection
 - Practice measures (analysis etc)
 - Court quiz to test knowledge
 - Look at adjournment lengths and reasons
 - Cooperation and information sharing with stakeholders
 - Verbal feedback through meetings



Putting it all together...

- Court Coordinators make a difference – with staff, with stakeholders, and most importantly with children and families
- Important for Court Coordinators to plan for and measure change – personal satisfaction, best use of time
- Several ways to review change, e.g. feedback surveys



"The most important thing in life is not to capitalise on your successes - any fool can do that. The really important thing is to profit from your mistakes."

(William Bolitho, from 'Twelve against the Gods')





An Introduction to..... **MAGELLAN**



October 2009

History of Magellan

- **Named after the Portuguese Explorer who circumnavigated the world and chartered new waters**
- **Late 1990's, research and reports into matters where abuse and/or allegations of abuse of children in Family Court proceedings identified the need for a specific approach to these matters**
- **Reports recommended judicial management, timely resolution, appointment of an ICL, and involvement of State child protection authorities.**
- **Pilot of "Project Magellan" was launched in Victoria in 1998 and subsequently rolled out to other Registries including Brisbane**

What is Magellan?

- **Magellan is a case management system used in Family Court to ensure that cases involving the most vulnerable children are dealt with effectively, efficiently and appropriately**
- **It is run by a multi-disciplined team consisting of:-**
 - o Magellan Judge (Justice Murphy)
 - o Magellan Associate (Lee-Anne McMurray)
 - o Magellan Registrar (Leanne Turner)
 - o Manager Child Dispute Services (David Hugall)
 - o Magellan Case Coordinator (Ebony Brown)
- **ICL's are appointed in each case**
- **S91B order made in every case to ensure involvement of State child protection authorities**
- **The target is a six month time line**

Criteria for Magellan

- **Allegations of sexual abuse of a child**
- **Sexual abuse of a child**
- **Allegations of serious physical abuse of a child (including threats to kill)**
- **Serious physical abuse of a child**

How and when is a matter declared Magellan?

- **Matter is designated Magellan by the Magellan Registrar in chambers and orders then issue**
- **Decision is based on:**
 - o The Form 4 Notice of Child Abuse and/or
 - o Affidavit material and/or
 - o Recommendation of a judicial officer
- **A matter can be declared Magellan:-**
 - o After the filing of the initial application
 - o After filing of a Form 4
 - o After transfer from the FMC
 - o At any time before judicial determination of a matter

Role of the Magellan Registrar

- **Declare a matter as Magellan**
- **Make directions for filing of a Form 4 Notice of Child Abuse if required**
- **Order the appointment of an ICL**
- **Order the preparation of a family report from a Family Consultant**
- **Make a s91(B) order requesting intervention of an officer of the relevant State child protection authority**
- **List for directions before Magellan Judge**
- **Ongoing active file management including issue of subpoenas, listing of interim applications, and conduct of the pre trial conference**
- **Request a report under S69ZW**

Role of the Magellan Judge

- Ongoing judicial management to ensure the appropriate and timely determination of the matter
- Consider whether parties should attend family dispute resolution or other services under s13C
- Make procedural orders where appropriate to obtain the necessary evidence in respect to the allegations
- Make interim orders where appropriate to protect the child and any party to the proceedings
- Make s65L orders where appropriate
- List the matter for hearing (Trial Judge may be a Judge other than the Magellan Judge)

Role of the Family Consultant

- **Where required prepare a family report for the first return date**
- **The purpose of the report is to:**
 - o Address the issue of abuse or risk of abuse
 - o Report where possible on the impact of the alleged abuse
 - o Make an assessment of the harm the child has or may suffer from the alleged abuse
 - o Assess the safety of the child
 - o Ascertain wishes of the child where appropriate
 - o Assess whether an expert in child abuse and family violence, or psychological or psychiatric evaluation should be utilised
 - o Analyse the family dynamics and needs of the children and how that may be reflected in interim/final orders
- **Be available as required by the judge**

Role of the Independent Children's Lawyer

- **An ICL is appointed in every Magellan matter**
- **ICL's role is to assist the court in ensuring the best interests of the child/ren are met during the proceedings**
- **Meet with the children where appropriate**
- **Liaise with the Family Consultant and State child protection authorities as required**
- **Obtain the necessary information as required**
- **Obtain expert family reports as required**

Role of the Department of Communities (Child Safety Services)

- **To intervene pursuant to s91B *Family Law Act 1975* and when needed be a party to the proceedings**
- **To provide short reports to the Family Court to assist at directions hearings**
- **To confer with Independent Children's lawyers and Family Consultants of necessary**
- **To provide a s69ZW report if required**

Snapshot of Magellan in Brisbane

- In February 2008 there were six matters in Magellan
- Numbers have steadily increased and currently there are in excess of 95 Magellan matters in the Brisbane
- Increase due to:-
 - Change in Magellan Judge and Magellan Registrar
 - Education of Profession in Magellan resulting in appropriate filing of matters in Family Court
 - Appropriate transfer of matters from Federal Magistrates Court to Family Court.

Questions?



Children's Court in remote communities

Can we make a difference?



**CLOSE FOR COURT
IN PROCESS.
RE-OPEN WHEN
FINISH.**

THANK YOU
IBIS MANAGER

View from Thursday Island branch
office



Thursday Island Courthouse





Runway Yorke Island



Court plane



"Closed" Court on Yorke Island

Court Yorke Island





Mornington Island Police
Station and Courthouse



Mornington Island



Coen Airport



AURUKU



Kowanyama Justice Centre



Pormpuraaw Justice Centre

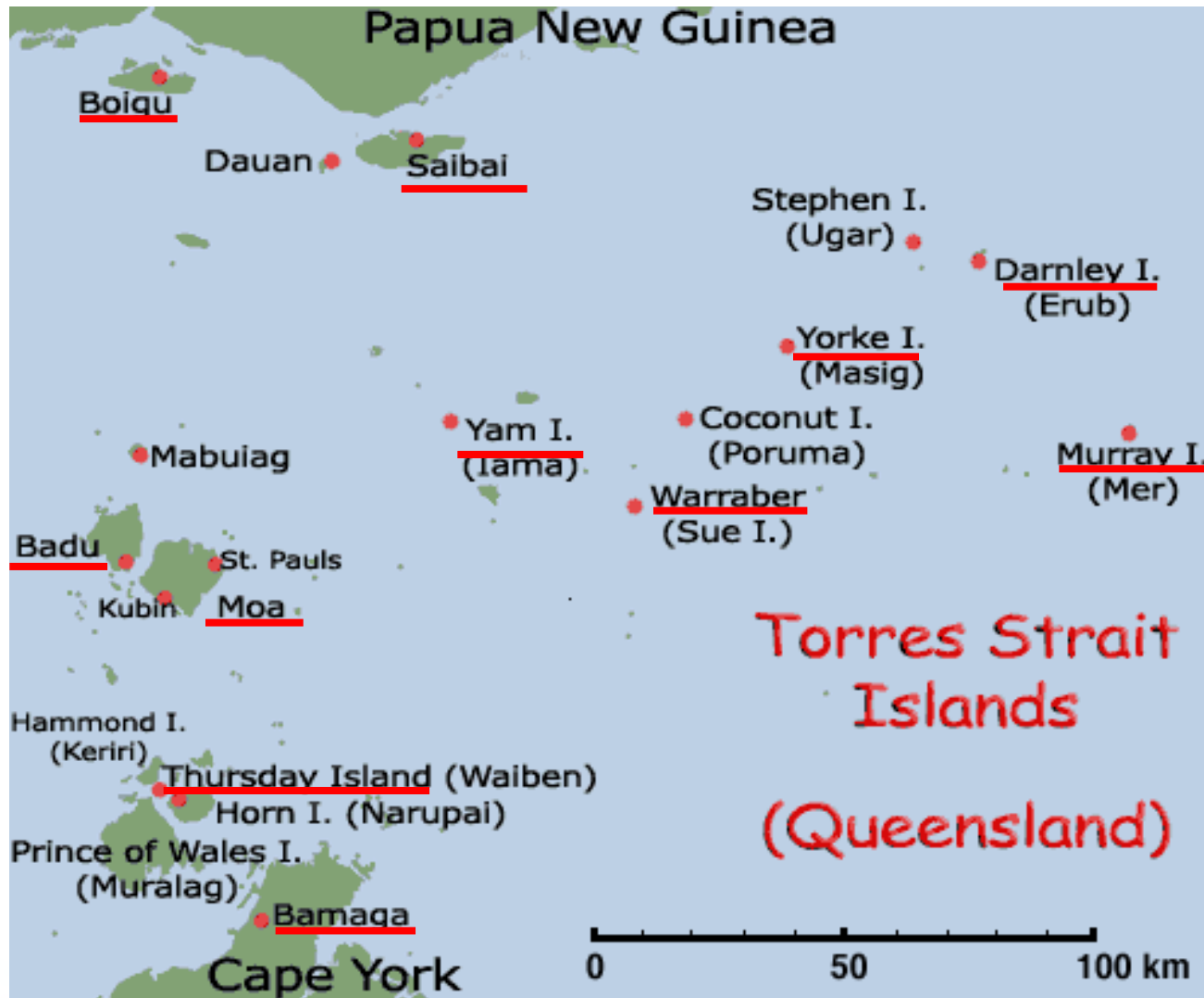
Court Calendar Cape York and Torres Strait Islands CSSC

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
SA								1				
SUN		1	1					2			1	
MON		2 Cairns	2 Cairns			1 Cairns		3 Cairns			2 Cairns	
TUE		3 Cooktown	3 Cooktown			2 Cooktown		4 Cooktown	1 Cooktown		3 Cooktown	1 Cooktown
WED		4 Wujal Wujal	4 Hopevale	1		3 Wujal Wujal	1	5 Wujal Wujal	2 Hopevale		4 Hopevale	2 Wujal Wujal
THU	1	5	5	2		4	2	6	3	1	5	3
FRI	2	6	6	3	1	5	3	7	4	2	6	4
SAT	3	7	7	4	2	6	4	8	5	3	7	5
SUN	4	8	8	5	3	7	5	9	6	4	8	6
MON	5 Cairns	9 Cairns / TI	9 Cairns / TI	6 Cairns	4 Cairns	8 Cairns	6 Cairns	10 Cairns / TI	7 Cairns / TI	5 Cairns	9 Cairns / TI	7 Cairns / TI
TUE	6 Cooktown	10	10	7 Cooktown	5 Cooktown	9 Cairns / TI	7 Cooktown	11	8	6 Cooktown	10	8
WED	7 Hopevale	11 Bamaga	11 Bamaga	8 Wujal Wujal	6 Hopevale	10 Bamaga	8 Hopevale	12 Bamaga	9 Bamaga	7 Wujal Wujal	11 Bamaga	9 Bamaga
THU	8	12	12	9	7	11	9	13	10	8	12	10
FRI	9	13	13	10	8	12	10	14	11	9	13	11
SAT	10	14	14	11	9	13	11	15	12	10	14	12
SUN	11	15	15	12	10	14	12	16	13	11	15	13
MON	12 Cairns / TI	16 Cairns/Weipa	16 Cairns/Weipa	13 Cairns	11 Cairns / TI	15 Cairns/Weipa	13 Cairns / TI	17 Cairns/Weipa	14 Cairns/Weipa	12 Cairns / TI	16 Cairns/Weipa	14 Cairns/Weipa
TUE	13	17 Aurukun	17 Aurukun	14 TI	12	16 Aurukun	14	18 Aurukun	15 Aurukun	13	17 Aurukun	15 Aurukun
WED	14 Bamaga	18	18 Kowanyama	15 Bamaga	13 Bamaga	17	15 Bamaga	19	16 Kowanyama	14 Bamaga	18 Kowanyama	16
THU	15	19 Kow/Lockhart	19 Lockhart	16	14	18 Kow/Lockhart	16	20 Kow/Lockhart	17 Lockhart	15	19 Lockhart	17 Kow/Lockhart
FRI	16	20 Pormpuraaw	20 Coen/Pormp	17	15	19 Pormpuraaw	17	21 Pormpuraaw	18 Coen/Pormp	16	20 Coen/Pormp	18 Pormpuraaw
SAT	17	21	21	18	16	20	18	22	19	17	21	19
SUN	18	22	22	19	17	21	19	23	20	18	22	20
MON	19 Cairns/Weipa	23 Cairns/Moa Isl	23 Cairns	20 Cairns/Weipa	18 Cairns/Weipa	22 Cairns	20 Cairns/Weipa	24 Cairns/Yam Isl	21 Cairns	19 Cairns/Weipa	23 Cairns	21 Cairns
TUE	20 Aurukun	24 Boigu Isl	24	21 Aurukun	19 Aurukun	23	21 Aurukun	25 Boigu Isl	22	20 Aurukun	24	22
WED	21 Kowanyama	25 Yorke Isl	25	22	20 Kow/Lockhart	24	22 Kowanyama	26 Darnley Isl	23	21	25	23
THU	22 Lockhart	26 Mer Isl	26	23 Kow/Lockhart	21 Coen/Pormpuraaw	25	23 Lockhart	27 Mer Isl	24	22 Kow/Lockhart	26	24
FRI	23 Coen/Pormp	27	27	24 Pormpuraaw	22	26	24 Coen/Pormp	28	25	23 Pormpuraaw	27	25
SAT	24	28	28	25	23	27	25	29	26	24	28	26
SUN	25		29	26	24	28	26	30	27	25	29	27
MON	26 Cairns		30 Cairns	27 Cairns/Warraber Isl	25 Cairns/Yam Isl	28	27 Cairns/Warraber Isl	31 Cairns	28 Cairns	26 Cairns/Warraber Isl	30 Cairns	28 Cairns
TUE	27 Yam Isl		31	28 Saibai Isl	26 Boigu Isl	30	28 Saibai Isl		29	27 Moa Isl		29
WED	28 Badu Isl			29 Badu Isl	27 Moa Isl		29 Badu Isl		30	28 Badu Isl		30
THU	29 Saibai Isl			30 Darnley Isl	28 Mer Isl		30 Yorke Isl			29 Yorke Isl		31
FRI	30				29		31					
SAT	31				30					31		
SUN					31							

Communities North West Queensland (Gulf CSSC)



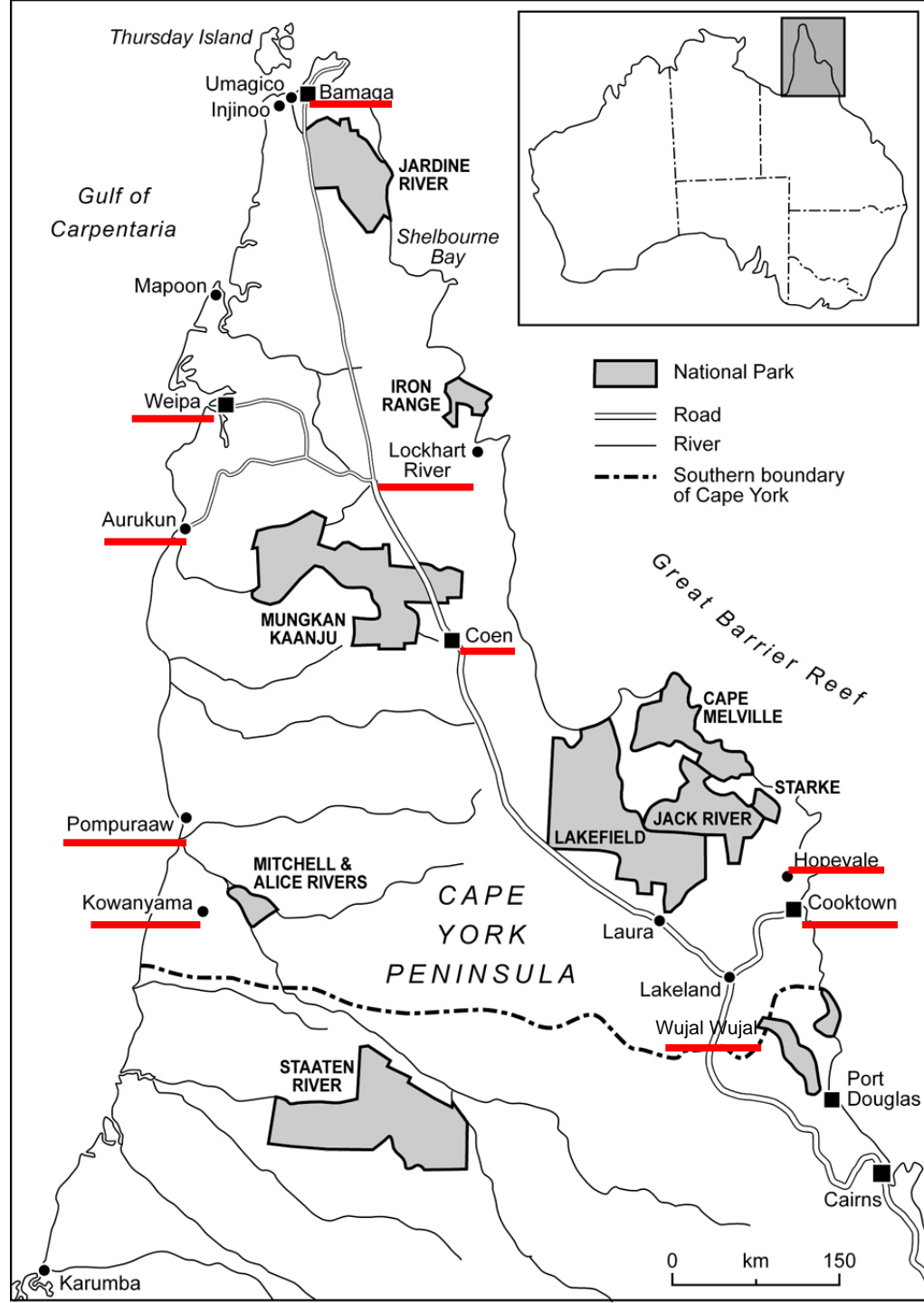
Torres Strait Islands



= 3 monthly
courts
available

Communities Cape York

= monthly
courts
available





Time in motion

- **Examples of estimated travel time per Court:**

Weipa: 6,5 hours return by plane to and from Cairns

Cooktown: 5 hours return by plane to and from Cairns

Kowanyama: 4,5 hours return by plane to and from
Weipa

Thursday Isl: 8 hours return by plane/ferry to and
from Cairns

Bamaga: 5 hours return by ferry to and from Thursday
Isl

- On average Court Coordinators in the Cape York and Torres Strait Islands service centres spend 25-30% of their work hours travelling.

- The average amount of mentions for the Cape York and

Where to file?

Application	Court Location	Court Registry for filing
CAO or CPO	Cairns →	Cairns Registry - Sheridan Street Cairns Phone: 4039 8900 Fax: 4039 8933 Email: courthouse.cairns@justice.qld.gov.au
	Aurukun Kowanyama Lockhart River Coen Pormpuraaw	
	Cooktown →	Cooktown Registry - Charlotte Street Phone: 4069 5333 Fax: 4069 5864 Email: courthouse.cooktown@justice.qld.gov.au
	Laura Hopevale Wujal Wujal	
	Thursday Island →	Thursday Island Registry - Douglas Street Phone: 4069 1503 Fax: 4069 1438 Email: courthouse.thursdayisland@justice.qld.gov.au
	Outer Islands Bamaga Injinoo Umagico Seisia New Mapoon	
	Weipa →	Weipa Registry - Central Avenue Phone: 4069 9999 Fax: 4069 9160 Email: courthouse.weipa@justice.qld.gov.au
	Old Mapoon Napranum	

Gulf CSSC – some interesting facts

- Since June 2008 only two matters have proceeded to COC in this time; both resolved at the COC.
- Approximately 6 contested interim orders or CAO applications in this time; in all cases the orders granted were the orders sought.
- From 2007 to June 2008 legal representation for parents was about 10-15%
- Currently, approximately 40-45% of matters involve legal representatives at the end of proceedings. Half of these include representation for both parents; in the other cases it is generally the mother who is represented.



Gulf CSSC – Current court work experience

- There are currently only two CSO's in the office who have written more than 6 affidavits of any kind (including supplementary/addendum affidavits)
- About 85% of CSO's have written no more than one CAO application or an affidavit.

CP Act 1999 and working in remote and isolated areas

- 1) Sections 23, 37, 51F, 52, 67(3), 117(3), 205 and 242 *Child Protection Act 1999*; these definitions of a parent do not acknowledge persons who are regarded as parents under Island custom or Aboriginal tradition.
- 2) Section 30 *Child Protection Act 1999*; Magistrates' reluctance to making temporary assessment orders without a sworn or affirmed written application before them.
- 3) Section 195(3) and (4) *Child Protection Act 1999*; What constitutes "reasonably practicable" and/or "reasonable inquiries" in remote settings vs urban settings?



Case example

A 12 year old girl from Dauan Island, who was traditionally adopted at birth, is believed to be at immediate risk of harm. The CSO who is currently on the Island has advised you that a TAO is needed to ensure her safety. The child protection concerns relate to the traditional adoptive parents. The whereabouts of the biological parents are unknown and they have no input in the child's life. The girl does not know she is traditionally adopted.

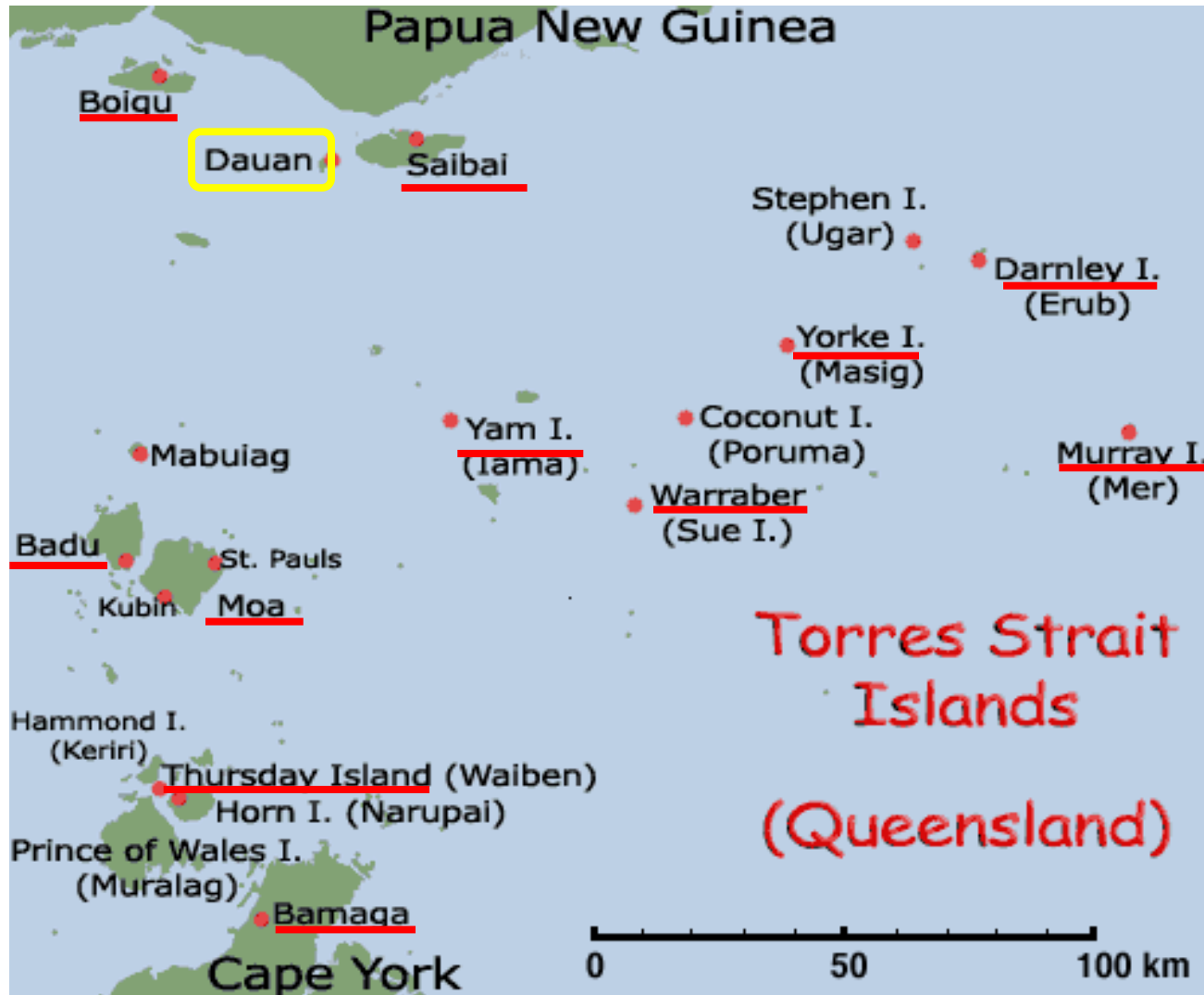


Case example - continued

Dauan Island:

- Is located approximately 150km from mainland Australia;
- Has a population of approximately 100;
- Has no runway;
- Is only accessible by ferry three days a week from Saibai Island or by helicopter;
- Has no permanent Police officer or other support services available.

Torres Strait Islands



= 3 monthly
courts
available



Case example - continued

- The CSO has further informed you that it is also likely that an application for a CPO will be made.
- During the initial stages of the investigation no suitable placements have been located on Dauan Island or surrounding Islands.
- There is no Recognised Entity available for the area.
- The nearest court on Saibai Island sits three times a year; a monthly court sits on Thursday Island 120km away.



Things that Court Coordinator considered

- Do we inform the child of the fact that she has been traditionally adopted?
- Do we serve and include the biological parents in the court process despite the fact they have had no involvement in the child's life since birth?
- How do we ensure appropriate service of the documents?
- How do we access a Magistrate whilst the applicant is on Dauan Island?



Things that Court Coordinator considered - continued

- In what registry do we file the court material?
- How do we ensure natural justice?
- How can appropriate evidence be gathered given the remoteness of location and limited resources available?
- How do we comply with section 6 and 83 of the *Child Protection Act 1999*?



Activity 1

- Please divide in small groups

- Discuss in small groups:

What do you believe are the key issues or challenges faced by:

- Court coordinators working in remote courts

- Families

- Feedback from small groups



Identified key issues and challenges

- 1) Limited access to legal services
- 2) Difficulties in complying with section 83
- 3) Difficulties in complying with section 6



Identified key issues and challenges - continued

- 4) Lack of infrastructure and resources
- 5) Difficulties in filing and serving court material
- 6) Cultural difficulties
- 7) Attendance of parents at court



Activity 2

- Please divide in the same small groups

- Discuss in small groups:

How can we make a difference?

Identify possible strategies or solutions to the key issues and challenges

- Feedback from small groups



How can we make a difference?

1. “fax back system”. Encourage parents to seek legal advice.
2. Establishment of Safe House project in communities ; elaborate on placement in affidavits; liaising with solicitors generally but particularly with regard to possible placements early in the process.
3. Provide training; built relationships;
Invite member of the Community Justice Group?



FAX BACK REFERRAL FORM

Name of Client(s): _____

(only list multiple clients on one form if they live together; ie husband and wife or de facto's)

Signature of Client(s): _____

(only refer if the client consents to the referral and is prepared to sign the form)

Name of Other Party(ies): _____

(Other parents/respondents): _____

Date of Birth of Client(s): _____

Address of Client(s): _____

Best phone contact for Client(s): _____

(if any available)

Matters for which client is being referred to IFSU - (Please tick appropriate boxes in addition to Child Protection)

Legal

- ☐ Domestic or Family Violence
- ☐ Family Law
- ☒ Child Protection
- ☐ Criminal Injuries Compensation (Victims Compensation)
- ☐ Sexual Assault Matters

Counselling

- ☐ Positive Parenting Program
- ☐ Grief Counselling
- ☐ Anger Management
- ☐ Stress, anxiety, depression

Other Issues, Relevant Information or Comments:

Referred by: _____

Gulf Office of the Department of Child Safety (name)
Phone 07 4747 3491 (organization)

Date: _____

Please note: Do not hesitate to refer even if you are unsure as to whether or not we can assist.

FAX COMPLETED FORM TO IFSU ON: 07 4749 5955.

Fax back referral form



How can we make a difference? - continued

4. Video conferencing; predictive planning; training; pro-active attitude
5. “Filing fact sheet”; training; “smart” ways of serving material.



How can we make a difference? - continued

6. Use of RE as interpreter; include cultural adoptive parents in casework; use of section 113 non-party.
7. Initial discussions with the family violence prevention legal service about the potential for the provision of transport to parents to attend court.



Questions / Comments

“Unacceptable risk of harm”

Relevant provisions of the *Child Protection Act 1999* (Qld)

Facilitated by:
Poonam Wijesoma (Court Services Adviser)

Relevant provisions of the *Child Protection Act 1999* (Qld) – (“CP Act”)

- Section 4;
- Section 5 (1) & (2);
- Section 9;
- Section 10;
- Section 104;
- Section 105;



Sections 4 & 5 of the CP Act

- Section 4:
 - The purpose of this Act is to provide for the protection of children.
- Section 5:
 - s.5(1) – This Act is to be administered under the principle that the welfare and best interests of a child are paramount;
 - s.5(2) – Principles for administering the Act

Section 5 continued

- *Child Protection Bill 1998* – Explanatory notes in relation to section 5:

*The Bill's administration will be founded on the principles that **every child has a right to protection from harm** and that therefore **the welfare and best interests of the child are paramount**.*

The Bill establishes the responsibility of the State to intervene to protect children while recognising that the primary responsibility for the care and protection of children rests with the family. The principles clarify how these competing factors should be balanced. For example, the Bill indicates that intervention should be at the least intrusive level necessary to protect the child and that intervention should be aimed at supporting the child's family to meet the child's protective needs.



Section 9 – definition of “*harm*”

- Section 9(1):

Harm, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional well-being



Section 10 – Who is a “*child in need of protection*”

A ***child in need of protection*** is a child who –

- (a) **has suffered** harm, **is suffering** harm, or is **at unacceptable risk** of suffering harm; **and**
- (b) does not have a parent able and willing to protect the child from harm

- Section 10 enlivens our intervention in the Childrens Court and is the threshold question that must be satisfied before the Court can make a Child Protection Order – see ss 53(2) and 59(1)

CP Act;

Section 104 – Paramount consideration for Court

“In exercising its jurisdiction or powers, the Childrens Court must regard **the welfare and best interests of the child as paramount**”



Section 105 – Rules of Evidence & Onus of Proof

- “(1) In a proceeding, the Childrens Court is **not bound by the rules of evidence**, but may inform itself in any way it thinks appropriate.

- (2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court **need only be satisfied** of the matter **on the balance of probabilities**;

Section 105(2) continued

Briginshaw Test

- The degree of satisfaction demanded may depend on the nature of the issue.

*“Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. **But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.** In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences.”*

Briginshaw v Briginshaw (1938) 60 CLR 336 per Dixon J

Section 105(2) continued

Re H & Ors (minors) [1996] 1 All ER 1 at 17 per Lord Nicholls of Birkenhead

*“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that **the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence** before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.”*

Affidavits & Presenting Best Evidence Gathering, Assessing, Preparing

Department of Communities (Child Safety Services)
Court Coordinator Training
19 – 21 October 2009

Learning Objectives?

You will:

- appreciate the Human Rights Framework for Child Protection litigation
- appreciate the overall considerations of the Children's Court in making Child Protection Orders
- understand the importance of Affidavits and the presentation of "best evidence"
- learn tips about the presentation of "best evidence"
- learn tips about the preparation of Affidavits
- participate in a Socratic Workshop

Establishing the Human Rights Framework for Child Protection Litigation

Fundamental Human Rights Interference

- Removing a child from their family of origin affects the basic human rights of children and young people - it is one of the most fundamental human rights interference that could ever occur
- Decisions and actions in Child Protection litigation should ALWAYS operate in the “best interests” of children and young people

Convention of the Rights of the Child (CROC)

- Right not to be discriminated against (Article 2)
- Right of a child to have their best interests considered (Article 3)
- Right to be protected from being hurt or mistreated (Article 19)
- Right to live with their parents unless it is unsafe to do so (Article 9) and right to be raised by their parents, if possible (Article 18)
- Right to special care and help if they can not live with their parents (Article 20)
- Right to care and protection if they are in out of home care or are adopted (Article 21)
- **Right to have a say and participate in the decisions made about them (Article 12)** and to find out things (Article 13)
- A right to care and protection if they are in out of home care or are adopted (Article 21) and if in out of home care, the right to have these arrangements looked at and reviewed regularly (Article 25)

What are the Charter Rights for Children and Young People in care?

- be provided with a safe and stable living environment
- be placed in care that best meets their needs and is most culturally appropriate
- maintain relationships with their family and community
- be consulted about, and take part in making decisions affecting their life (having regard to their age or ability to understand), particularly decisions about where they are living, contact with their family and their health and schooling
- be given information about decisions and plans concerning their future and personal history, having regard to their age or ability to understand
- privacy, including, for example, in relation to their personal information
- if they are under the long-term guardianship of the chief executive, to regular review their care arrangements
- have access to dental, medical and therapeutic services, necessary to meet their needs
- have access to education appropriate to their age and development
- have access to job training opportunities and help in finding appropriate employment
- receive appropriate help with the transition from being a child in care to independence, including, for example, help about housing, access to income support and training and education

Where is CROC in the Child Protection Act 1999?

- Section 5 - Principles
- Sections 6 and 83 - Indigenous Families
- Section 74 and Schedule 1 - Charter of Rights
- Section 122 - Standards of Care

What must the Court consider
before making a Child
Protection Order?

Who makes the final decision?

- Each party must tell the Court what outcome it seeks and upon what evidence is relied upon to achieve that outcome
- Once all of the evidence is before the Court then the **COURT** determines whether and what sort of Child Protection Order should be made

Child Protection is important work!

- it is important to get a result for the child that protects them, is in their best interests and does no further harm
- the Court needs evidence to make a decision as to whether, and if so, what Order should be made
- “Evidence” comes from the:
 1. written material filed (AFFIDAVITS)
 2. questioning that happens in the Court of any witnesses (EXAMINATION)
 3. tendering of documents or other exhibits (SUBPOENAED MATERIAL)

Four Key Questions & Section 59 Factors

Have you answered the Four Key Questions?

Be guided by the Four Key Questions in everything you do!

1. Is there a *child* in *need of protection from harm* and *what is the harm?* (*past, present & future*) [Sections 9 and 10]
2. Is there a parent *willing* and *able* to protect the child from that harm?
3. Is there an appropriate *Case Plan* to address the child or young person's needs?
4. What is the *least intrusive Order* that secures that protection? (remember that the least intrusive is not always the shortest or only seeking custody - sometimes it is long term guardianship)

Have all the Section 59 Factors been attended to?

- Has a **Family Group Meeting** been held? The Court has the power to order a FGM be held [Section 68]
- Has a **Court Ordered Conference** been held?
- Has the **Case Plan or Review Report & Revised Case Plan** been filed? [Sections 51X, 51Y and 59 (2)]
- Have the **child's views and wishes** been established?

What is the best way to assist
the Court in its decision
making?

MIND THE GAP!

- * **GATHER** all relevant information
- * **ASSESS** the information gathered and establish your case theory
- * **PREPARE** your case thoroughly and present the Court with the most relevant, the best and expert evidence which addresses the key questions that the Court must consider

GATHER

Do not leave evidence gathering until
a matter is before the Court!

THOUGHT SHOULD BE GIVEN TO...

- the Four Key Questions
- what is your case theory and how are you going to demonstrate that to the Court?
- where are the best sources of information?

Where do you go for Evidence?

- Review the Integrated Client Management System (IMCS) for previous history (inclusive of the history of the parents, step-parents and other any relevant party)
- Determine whether the family may have had prior involvement with Child Protection Agencies in other jurisdictions – contact Interstate Liaison Officers for assistance
- Have there been previous Child Protection Orders? If so, locate copies of all Case Plans and determine what were the Case Plan goals and have those goals been met

Where do you go for Evidence?

- Obtain Criminal History, Domestic Violence History & Traffic History checks (obtain final advices, including interstate checks)
- Has there been Family Law Court proceedings? If so, obtain copies of Orders and Judgments (if available), together with any other relevant documents. Seek advice from Court Services about how to use the information contained in these documents
- Parentage testing? Remember it is important to establish who is a “parent” for the purposes of the proceedings and that you will need to serve any person who is established as being a parent with copies of all documents filed in the proceedings

What can the Department do to gather Evidence?

- Obtaining consent from the parents or other relevant parties for third parties to release of information (e.g. General Medical Practitioners, Counsellors)
- Issuing Notices pursuant to Section 159
- Issuing Subpoenas
- Obtaining reports from relevant parties (e.g. Community Support Agencies, Schools or other therapeutic interveners)
- Briefing an Assessor (e.g. Psychologist, Psychiatrist) – remember that the best assessment comes from a well briefed Assessor

ASSESS

What should you do to assess the Evidence?

- **Read and Review** all of the information that is gathered
- Keep at the forefront of your mind the **Four Key Questions** and the **Section 59 Factors** when assessing the information
- **Ground your case theory in evidence** – if you say something has to happen, there should be sufficient information to demonstrate why
- Do not be afraid to change your case theory, if necessary. This is not weak, it is strong! Don't be afraid to concede a weak point - it makes your strong points even stronger AND better yet it makes you a model and fair litigant
- Take a stand where you have to! BUT make sure you are on solid ground, not quicksand!

Establish the probative value of any Child Protection History

- If previous Child Protection history is to be relied upon, then there should be a clear rationale as to why (e.g. why is it necessary to include Child Protection history whereby no further intervention was given to the family) - what does this history tell you? If you want the Court to properly understand the risk of harm, it is your job as the Applicant to explain it to the Court and the other parties to the proceedings properly
- If previous Child Protection history is to be included, then ALL information about this previous history should be included in the decision making process and provided to the Court and the other parties to the proceedings

PREPARE

THE CASE PLAN IS... A KEY PIECE OF EVIDENCE!!

- Remember Section 59 says an Order should not be made without a developed or revised Case Plan. Therefore the development of a Case Plan is not optional – it is mandatory. But do not be afraid of that - be prepared!
- In short Case Plans should be well reasoned, researched and detailed, including full particulars of how things are going to occur, what is involved, full particulars of the available services and how those services are to be involved?
- Remember you can be cross examined on what you have and haven't done in the Case Plan! So is it clear? Does it make sense? Has the Department done what it said it would do?

THE CASE PLAN IS... A KEY PIECE OF EVIDENCE!!

- A Case Plan will evolve over time - it is a living document, a moveable feast. Remember you may have to change the game plan! What you thought was the right approach at the start, may change as the Case Plan is actioned and implemented. Good case work makes what Order you are seeking a lot clearer!
- Also remember that a well prepared Case Plan may mean that a matter can settle, as it is more likely to get the support of the parent's Lawyer and the Separate Representative – thus a full blown Trial will become unnecessary
- It will be hard to manage, but if the work and preparation is there, then adapting the Case Plan will be easier over time

The presentation of Affidavits
and “best” evidence is
CRITICAL

Good Presentation is not...

“The Vibe of the Thing”

- It's the Vibe of thing – scene

Never underestimate the critical importance
of WELL PREPARED Affidavits

If Affidavits do not contain the best evidence
to support a Child Protection Order,
the Order may not be granted!

Affidavits form the basis of your case before the Court

- Affidavits are your “evidence-in-chief” - that is, all of the information sought to be relied upon should be reduced to writing in proper form, filed with the Court and served in a timely way on the other parties involved in the proceedings
- With limited expectations, there should be no other information that you would seek to have the Court know about other than that which has been included in the Affidavits filed with the Court
- And you should give the other parties a chance to consider it. Service on the door of the Court is “Trial by ambush” and is not in line with the Section 5 Principles!

Myth or Reality?

The longer the Affidavit is the
better the Evidence!

Myth Busted

Bigger is not better!!

- Long/ “a cut and paste” from the precedent or prior Affidavit is generally lazy evidence presentation
- Short & sweet and to the point is the way to go
- Answer the Four Key Questions and address the Section 59 Factors

Myth or Reality?

Using big words

(like Departmental jargon or Legalese)

makes the Affidavit much
more convincing!

Myth Busted

Plain English is the way to go!!

- Families read Affidavits - make the content simple
- Don't you want the family to understand what the Department is saying?
- This is part of a child's life story! Think about a child reading what you have said when they are older - their file is their family album and their history

Myth or Reality?

Children and Young People's participation is all about them picking sides...

- if they don't want to go home? The Department wins!
- if they do want to go home? The parent wins!

...so if you have a Child or Young Person disclosing, make sure you identify their disclosures in your Affidavit so that their parents can hear what they are saying!

Myth Busted

Participation is about having a say - not taking sides or running your case!!

- Do not put Children and Young People in the middle
- Do not vilify them or their parents to make a point
- NEVER identify the disclosures they make and put them in Affidavits - it is not only in breach of the law, it may put them at risk of harm!

Affidavit Dos

- Tell the story of the case
- Ideally be chronological and also clearly address the matters that need to be proved
- Set out, in a clear, concise and logical format all of the matters which are relevant to the case and which are known to the author of the Affidavit
- Allow the reader (who knows nothing about the facts of the case, or the identity of the persons involved) to understand the material points within their proper context
- Clearly address the important issues
- Use headings to make the issues clear to the reader

Affidavit Dos

- Explain your Qualifications (**done once and can cut and paste**)
- Explain your role (**done once and can cut and paste**)
- Explain your involvement, including length of time
- Explain the family (**establish a Genogram - this could be an Exhibit and is also an extremely useful tool for working with the family, talking to the child and handing over the file**)
- Identify the Order you are seeking
- Explain why you want that type of Order, addressing the Four Key Questions
- Show the Court that you have addressed the Section 59 Factors
- Carefully analyse what your Exhibits tell the Court and choose your Exhibits carefully (**what do you want the Court to draw from a Child Protection history? Criminal history? Domestic Violence Orders?**)
- Provide a clear concise summary, so in a couple of paragraphs the Court knows what you are asking it to do

Affidavits Don'ts

- Factual ambiguity – unclear/generalised statements
- Non-child focused statements – these Affidavits are usually self serving
- A lack of particulars - these Affidavits have a tendency to provide a summary of the matter without including the evidence underpinning it
- A failure to disclose all information that should be disclosed
- Statements that “slam” or “blame” the other party/do not take responsibility for things that have gone wrong (e.g. saying that poor communication between the parties is all the fault of the other side) or that fail to give credit where it is due

Affidavit Don'ts

- Material that is “cut and pasted” from the author’s earlier Affidavit – usually there is more paragraphs added in, but these Affidavits do not tell anyone what has been done

This can be easily rectified – feel free to rely on an earlier Affidavits and do a short updating Affidavit which sets out the new information. The shorter Affidavit can begin with a phrase such as, *“I rely on the contents of my Affidavit filed with this Honourable Court on 14 May 2009. I confirm its contents are true and correct. This Affidavit provides information that has come to hand since that time.”*

Writing Affidavits

- Everyone will have their own system and style, but it is true to say that all good Affidavits take time and it is also true to say how you keep the file assists greatly in Affidavit preparation
- **ALWAYS REMEMBER:**
 - the Four Key Questions and the Section 59 Factors
 - Sections 5, 9 & 10 and Sections 6 & 83 for indigenous children
- Ensure that the evidence exists to establish these elements, and importantly that the evidence supports the case theory behind the specific Child Protection Order being sought
- Also remember to clearly provide details of the rationale for the Case Plan, together with the particulars of who participated in the Case Planning and how they participated

Writing Affidavits

- Plan the structure and the contents - the Affidavit should clearly detail the facts/information you have gathered and which support the case theory underlining the Orders being sought
- Write your Affidavit on the assumption that the Application will be contested and that you will be rigorously cross examined
- Check the accuracy and consistency of your information
- Identifying your notifiers is in breach of the legislation
- Putting children and young people's clearly identified disclosures in Affidavits is not only in breach of the legislation it could put their lives at risk- NEVER DO IT!

Writing Affidavits

- Information contained in your Affidavit should be verifiable – in these circumstances maintain up to date records and ensure that the information contained in the Affidavit is accurately reflected as that which is recorded in Departmental records, if this is the source of information relied upon
- Ensure that any opinions expressed are within your expertise and include the basis on which you have formed the opinion
- Avoid hearsay evidence where possible, it carries less weight than direct evidence - apply the best evidence rule
- If you have to use acronyms, **always** provide a definition (e.g. Child Safety Support Officer = CSSO)

Writing Affidavits

- Prepare more than one draft
- Ensure that Affidavits are completed in time for Court Services/Crown Law to be properly involved
- Always apply “Model Litigant Principles” – e.g. ensure that the information provides a balanced view of the situation, remember it may be necessary to include information that does not go toward supporting the Child Protection Order

Testing Affidavits in the Examination of Witnesses

- The process of testing the evidence in the Affidavits happens by the person who has written the Affidavit being asked questions in Court. This process is called **Cross Examination**
- Every author of every Affidavit (deponent) must be prepared to come along to Court and to answer questions on oath, meaning they swear on a bible, or by affirmation to the truth of the evidence they give
- Sometimes another party will choose to say that they do not require a particular deponent to be made available for cross-examination. In that instance, the Affidavit is placed before the Magistrate with no real contest as to its contents
- For each point that you really want the Court to pay attention to you need the most relevant and pertinent witness to write the Affidavit and be ready and willing to come to Court

So what are the main messages?

- each legal proceedings have different factual issues that must be proved
- an Applicant seeking a Child Protection Order should always address the Four Key Questions & the Section 59 Factors
- an Applicant also should be aware of the concepts which are set out in Sections 6, 8, 9 & 83
- Sections 61 and 62 are also important in understanding what Orders the Court can make
- at all times an Applicant should adhere to the principles which are set out in Section 5 and the Model Litigant Principals

Ultimately though...

At the centre of all this litigation...

is a child or young person...

It may be a file to you, but to them this is their family and their life...

think of the life story that litigation helps create for them!!

Workshop Scenario

Learning Plan for Court Coordinators

Creating a pathway of learning in
the Children Services Tribunal

The Future

- As we move into QCAT what does the future hold?
- As a Court Coordinator how can we engage in a meaningful learning process around those duties which arise from the Tribunal program area.



Motivations

- Need to recognise CSSC have varying exposure to this jurisdiction
- Court Services will always maintain a role which includes coordination and quality assurance mechanisms
- However want to enable Court Coordinators to develop professionally, and build capacity in this area

Creation of a Learning Plan

- Work in progress
- Seeking feedback
- Need to read the 'Learning Plan' in conjunction with 'Role of Court Coordinator' document in manual



Introductory Level

- Read Government Solicitor's article
- Complete Ct Coord Induction program
- Do Quiz (x2) as provided to you by CSA
- Participate in a case discussion with CSA and CSSC at point of receiving Notice of Review
- Critique a Statement of Reasons
- Observe a Preliminary Conference

Intermediary Level

- Co facilitate a case discussion with CSA, prior to a PC
- Critique a Statement of Reasons, which requires minimal input from CSA
- Manage a case discussion in present of CSA prior to a PC
- Observe a second PC
- Manage a PC in presence of CSA
- Observe (part of) a Hearing

Experienced Level

- Undertake a post PC email that identifies outcomes, tasks, and related issues in consultation with CSA
- Co manage with CSA a file through preparation process for hearing, including drafting correspondence to tribunal as required
- Observe a hearing
- Manage a hearing with CSA present.

Feedback

- What are your thoughts?





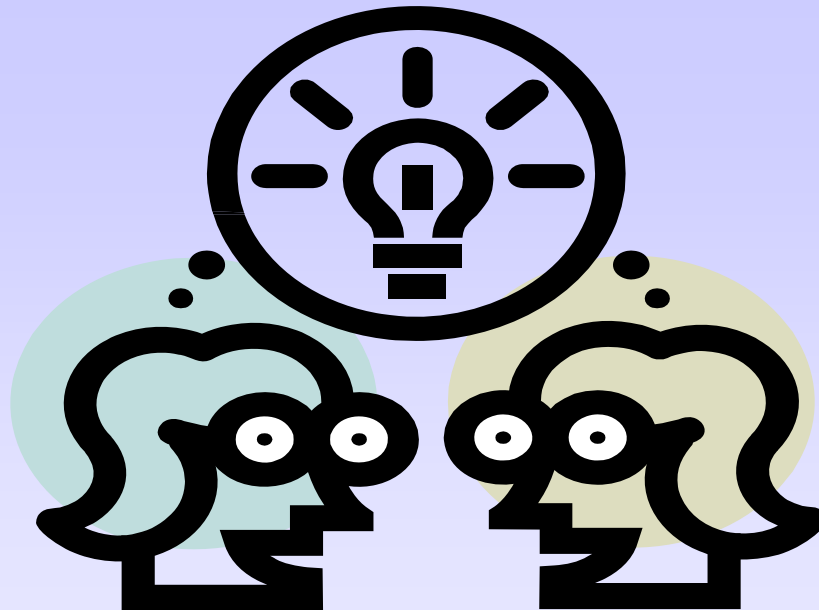
The Art of Questioning in a Tribunal Hearing



Pose a Question....



1. Who has attended a Tribunal hearing?
2. What would be your tip to share with your colleagues about developing or presenting questions in this forum?



Tribunal's conduct of proceedings....



s6 (c) of the Children Services Tribunal Act 2000

Says as follows:

To conduct proceedings in a way that –

- (i) Promotes the interests, rights and well being of the child involved in the proceedings; and
- (ii) Uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances

Purpose to Questions...



1. To reiterate
2. To clarify
3. To discredit or call into question
4. To elaborate
5. To inform

Types of Questions...



1. **Open ended** – is asked to get the person talking and open up and explain fully a scenario etc
2. **Closed** – is asked to usually achieve a one word or a yes/no response. Used to maintain control of the situation.
3. **Rhetorical** - is asked in order to make a point, and does not expect an answer (often the answer is implied or obvious).
4. **Leading** - is asked usually to suggest an answer or directs a witness to a particular answer

Examples!



1. Open ended examples –

- a) What did you do on the weekend?
- b) Tell me about your trip to Movie World?

2. Closed question examples –

- a) Did you drive your car to work today?
- b) What is the colour of your hair?

3. Rhetorical question examples –

- a) How much longer do I need to wait here?
- b) Have you not got eyes to see what I'm wearing?

4. Leading question examples –

- a) Was it Joel Brodie that stole your car?
- b) So your mother smacked you with a tennis racket on your back?

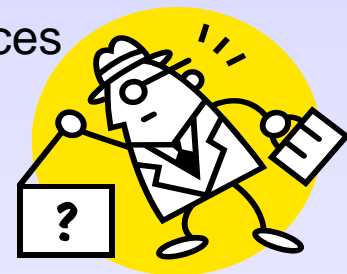


Anticipating who.....



Who will you need to prepare questions for??

- ∞ Each departmental witness who has provided a statement
- ∞ Each applicant regardless of whether they have provided a formal statement. Read through any material they have provided during the proceeding or as part of their application, or on comments made during the PC proceedings to assist in directing the development of your questions
- ∞ The Separate Representative's social assessment report
- ∞ Any unexpected witnesses from the applicant ie character references



HINT.....



The development of your witness statements should already have been compiled to answer any identified questions that you would want answered.

What evidence do you want this witness to speak to?



TRIBUNAL KEY QUESTIONS....



What will be the key questions that the Tribunal wants answered during the hearing?

Obviously this will be dependent upon the decision being reviewed.

Carer refusal or removal decision – suitability criteria s 9 Regs, meeting statement of standards, support provided to address any issues etc, demonstrated insight, understanding consequences

Contact decision – is it meaningful for the child/ren, is it safe for the child/ren, is it meeting the child's needs for bonding/attachment/maintaining relationship/reunification

Placement decision – is this placement meeting the needs of this child, facilitation of educational/medical/therapeutic needs, implementation of behaviour management strategies

THE ULTIMATE QUESTION POSED BY THE TRIBUNAL WILL BE.....

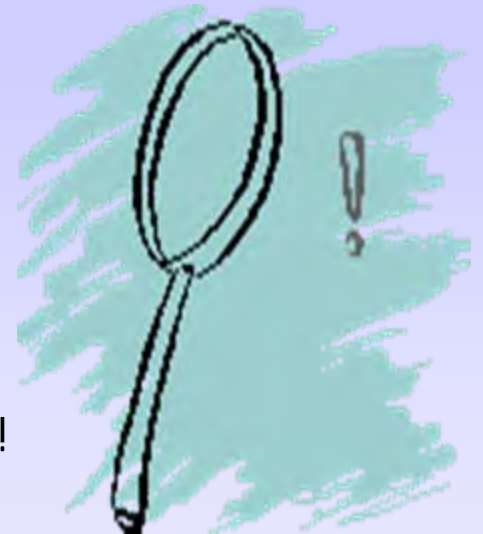
IS THIS DECISION IN THE BEST INTERESTS OF THE CHILD/REN??




CRITICAL ANALYSIS FRAMEWORK....



- ⚙ Playing devil's advocate
- ⚙ Drawing inferences from evidence
- ⚙ Pre-empt statements that might be made by the applicant
- ⚙ Put yourself in the shoes of the Tribunal
- ⚙ Identify the strengths in the evidence
- ⚙ Identify the gaps in the evidence
- ⚙ Identify the solutions or strategies (if possible)
- ⚙ Identify linkages of evidence between witness statements
- ⚙ Don't fear challenging your own witnesses if required – the Tribunal will!





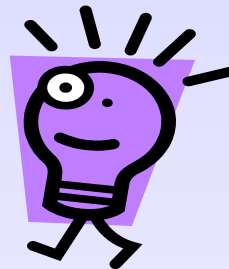
ACTIVITY.....



Break into six groups of 5

Your group has 5 minutes to do the following:

1. Read through the scenario and the witness statement that was compiled for the hearing
2. In your group compile a list of your top 5 questions that you would ask this witness
3. Each table to read out one question
4. Explain what information you wanted to source from that question and why it is relevant to the Tribunal to consider



TIPS.....



1. Be prepared
2. Write out questions verbatim pertaining to each witness – including the unexpected
3. Be as short and succinct as possible
4. Use plain language – where you can avoid departmental jargon
5. One fact per question
6. Be clear about the purpose of your question
7. Listen to the answer – this will probably lead you into the next question
8. Know your case and who owns what evidence – chronology of events
9. Be flexible with your line of questions



SUGGESTION...



For each witness statement develop a table to assist in comprehensive preparation

Witness	Key points of evidence	Strengths	Gaps	Solutions or Strategies	Questions to pose
Robe Tribe	Supervised contact visit on 28/08/09	Mother presented as drug affected, she tripped over child when entered the room		Focus upon the department's casework decisions regarding facilitating contact if mother presents in the future as drug affected	Tell me everything about the mother's presentation at this contact visit Tell me everything about how the child interacted with the mother during this visit





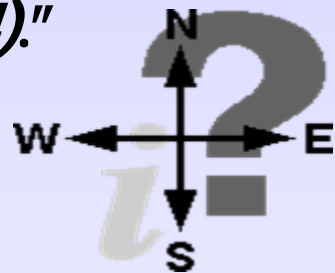
Cross - examination....



Cross-examination is the process whereby you seek:

- a) To test the veracity and accuracy of the evidence in chief;
and**
- b) To elicit from that witness any relevant facts, which may be
favourable to you and your case.**

**It is then plain that it is of paramount importance to establish in
advance of commencement of your cross-examination to know
where you want to go – vide – it is "*better to understand a little
than to misunderstand a lot – Anatole France (1844-1924).*"**



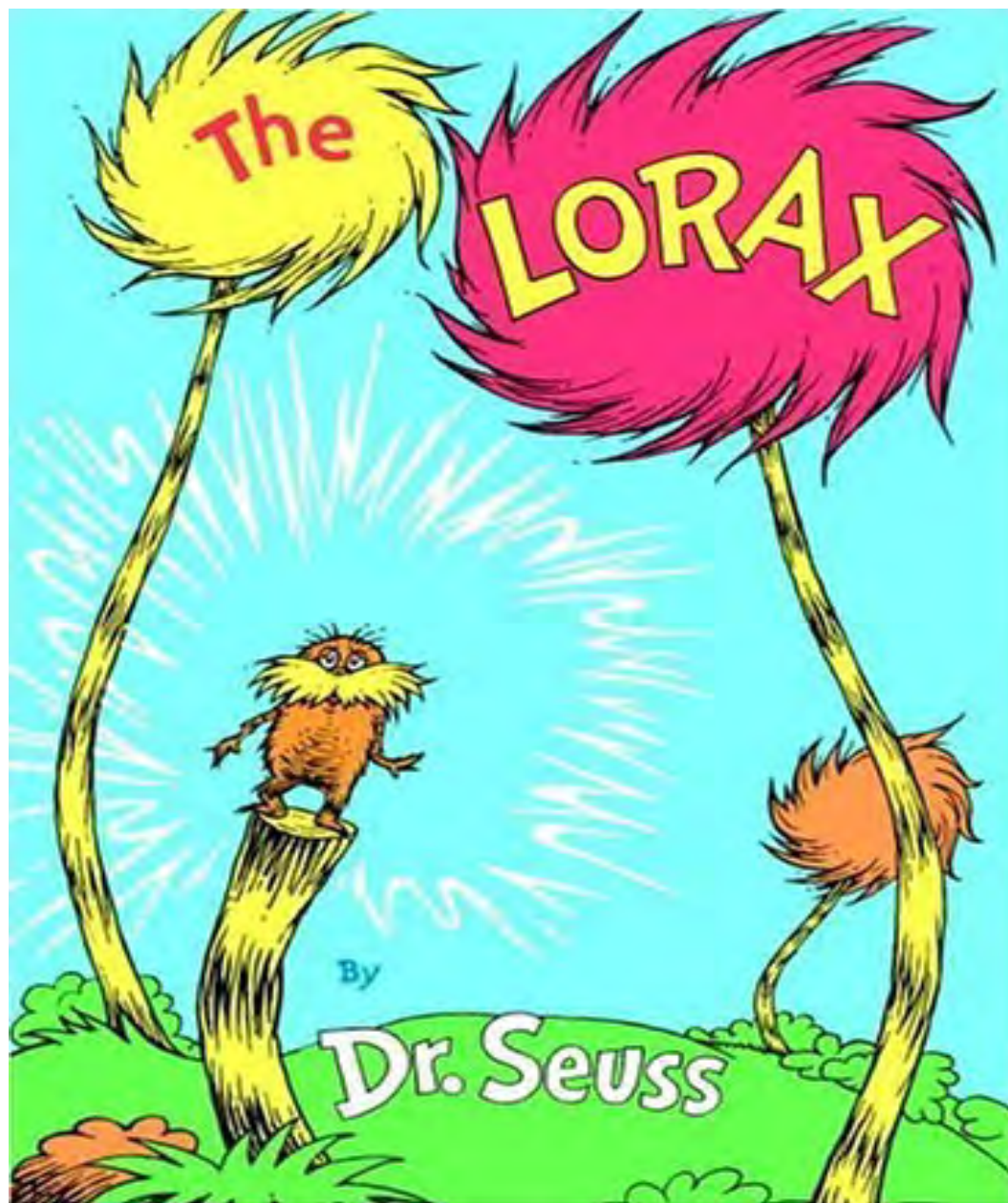
TEAM WORK IS KEY.



Don't forget that we are here to assist.

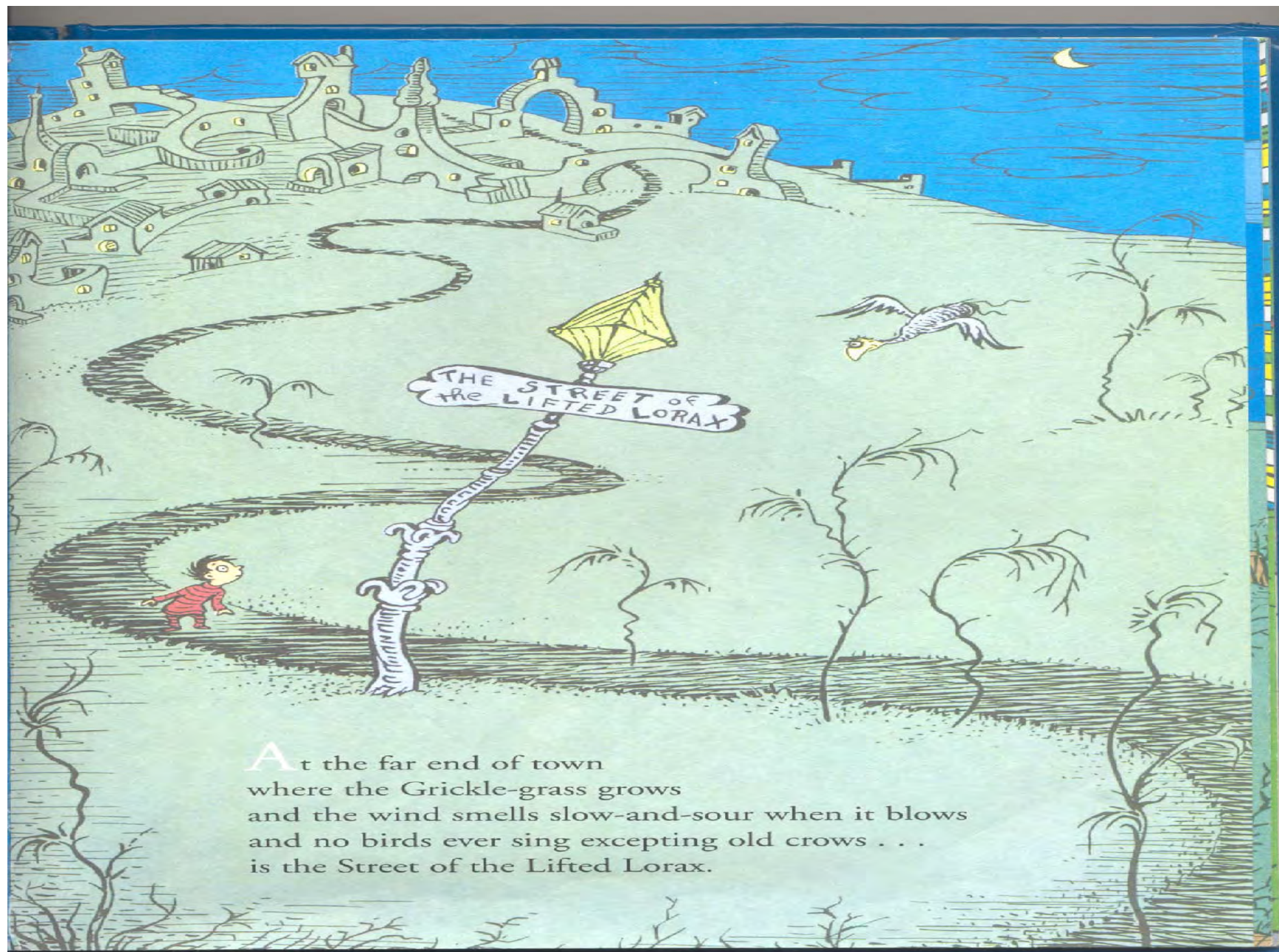
You are not alone!







Let me tell you a story
As old as time,
A story about
Well - I'll let you make
up your mind?
But I have to start at the
beginning you see
The beginning is where we all need to
be.....



At the far end of town
where the Grickle-grass grows
and the wind smells slow-and-sour when it blows
and no birds ever sing excepting old crows . . .
is the Street of the Lifted Lorax.

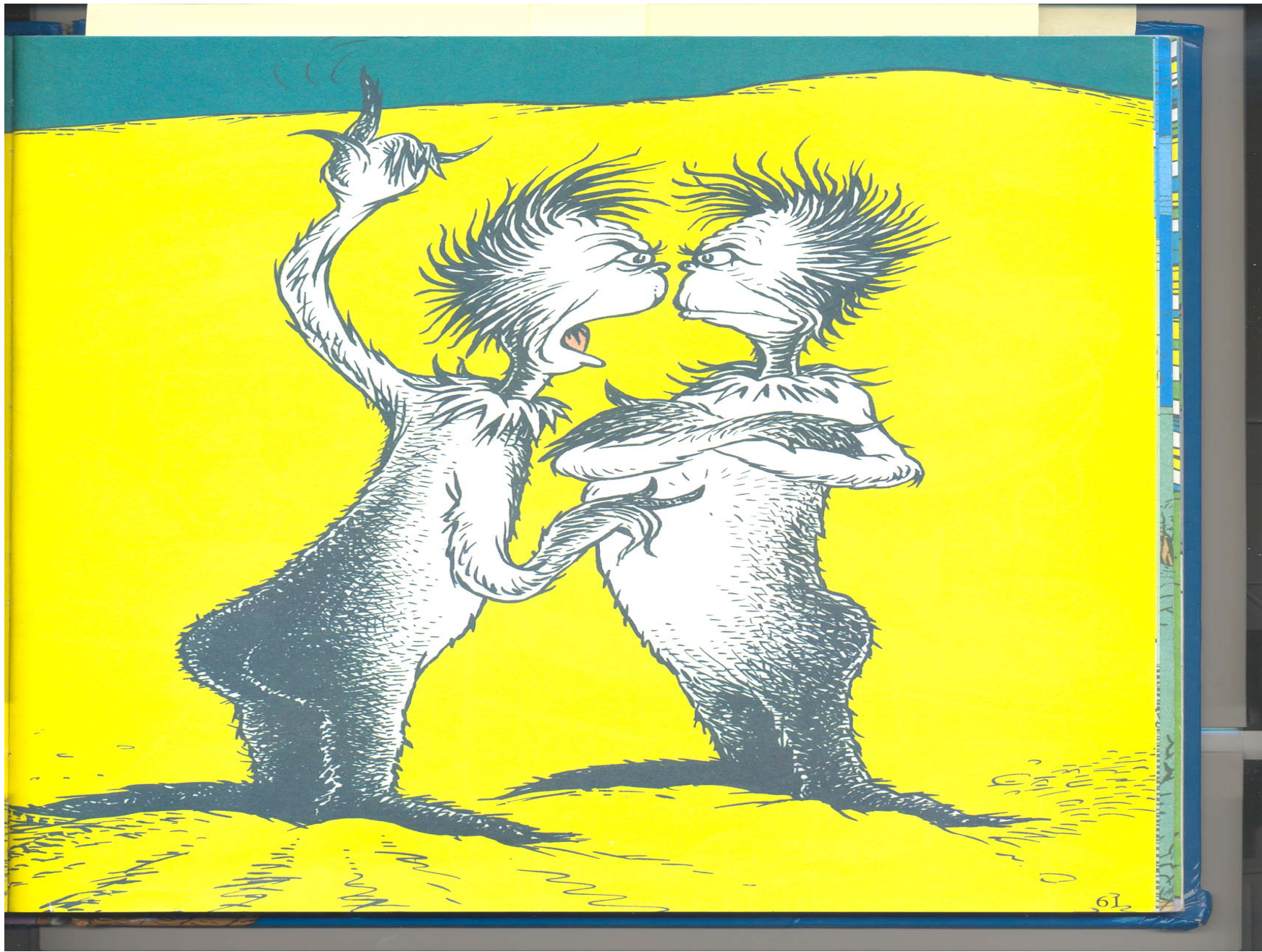
And deep in the Grickle-grass, some people say,
if you look deep enough you can still see, today,
where the Lorax once stood
just a long as it could
before somebody lifted the Lorax away.



I'll tell you the secret...









He was shortish. And oldish.
And brownish. And mossy.
And he spoke with a voice
that was sharpish and bossy.

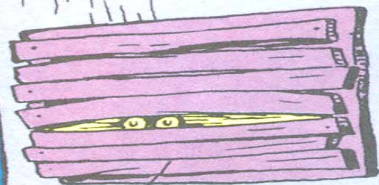




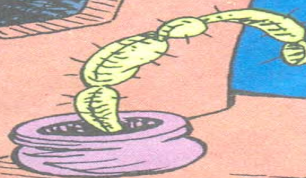
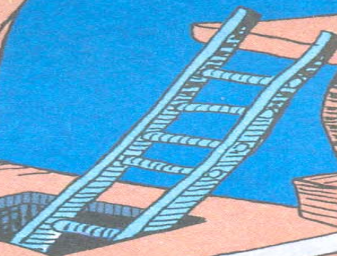




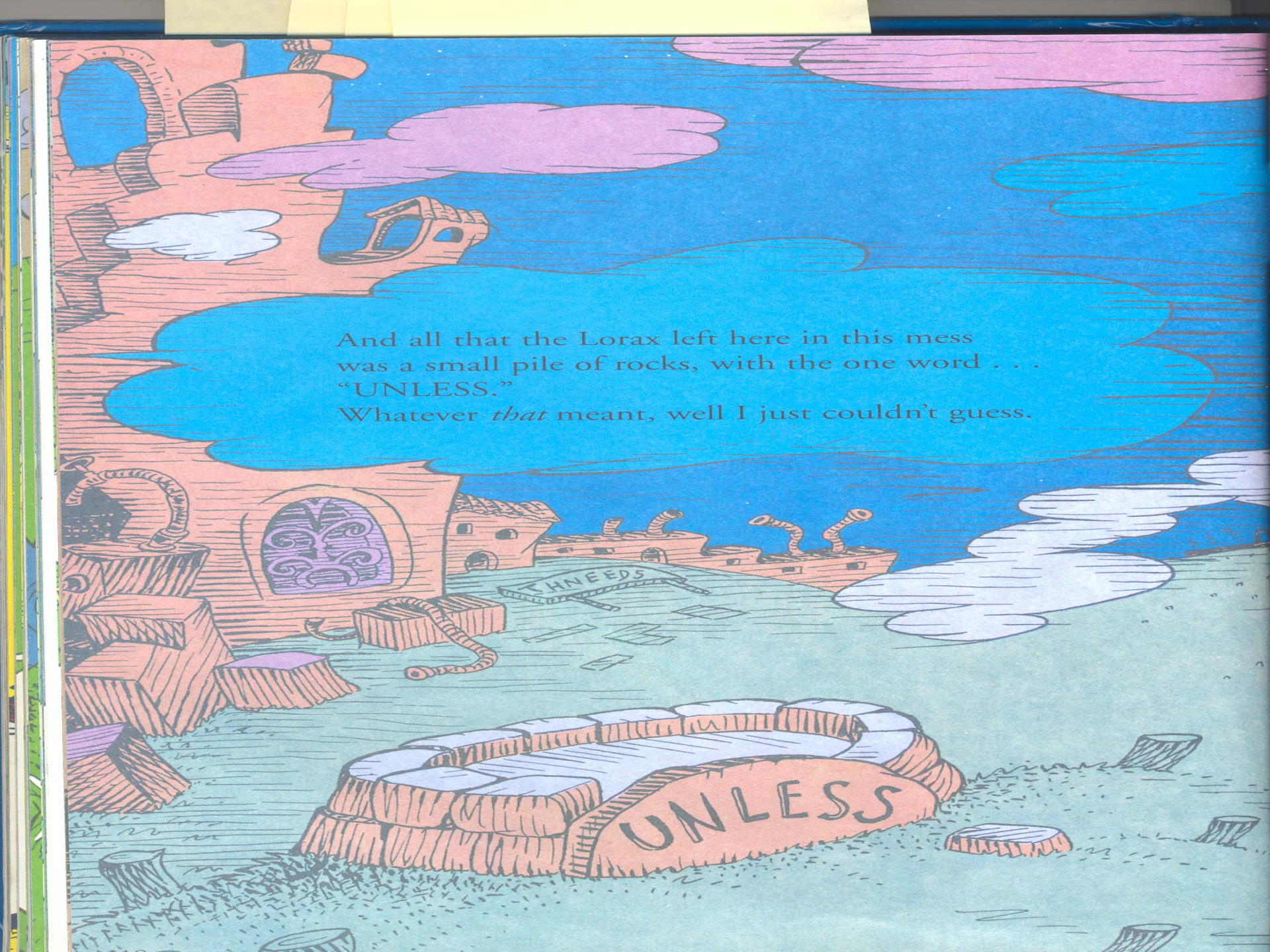




The
ONCE-
LER







And all that the Lorax left here in this mess
was a small pile of rocks, with the one word . . .
“UNLESS.”
Whatever *that* meant, well I just couldn't guess.

And all that the Lorax left here in this mess
was a small pile of rocks, with the one word...
"UNLESS."



UNLESS someone like you
cares a whole awful lot,
nothing is going to get better.
It's not.











The End



Vision for the role of Court Coordinators in
the future

Evaluations

Farewell!

“Can we make a difference?”





Suggestions/ideas for how we can make a difference

- Once chance at childhood (OCC) - case reviews & undertake the role of 'experts' in articulating harms
- Undertake medical assessments on child/ren to assess stress hormones, psychological impact of trauma
- Incorporate in practice the review of matters where 3 notifications raised in 12 months
- Familiarise yourself with current literature – make this an inclusive process with other staff



Can we make a difference?

Yes!



Can we make a difference?

“Our society teaches us that the only reality is the one that we can hold onto. It values material possessions and experiences. Accordingly we look for contentment “out there” and live with a “just as soon as mentality”. Just as soon as I get my work done I’ll be happy. Just as soon as I get a nice house I’ll be content. Just as soon as I earn enough money I can have more time with the kids, just as soon as I get a new car, just as soon as I get a spare weekend I’ll introduce myself to the neighbours or take the family on a weekend outing... And so contentment slips through our fingertips like quicksilver, another time, a different place, a better circumstance.”

Jungian Analyst – Robert Johnstone

“Never doubt that small groups of committed people can change the world. In fact, it is the only thing that ever has.”

Margaret Mead





- short-term and intensive intervention for up to 18 months
- highly trained and supported direct care staff – including their access to ongoing supervision and support from clinicians.

What are the benefits for young people accessing Therapeutic Residential Services?

The Therapeutic Residential Services will offer young people:

- intensive and coordinated therapeutic care and intervention
- support and strategies to enhance their understanding and management of behaviours and emotions
- educational support and re-engagement with school and other significant community supports
- support transitioning to less-intensive and longer-term placement options.

How can referrals be made to Therapeutic Residential Services?

The services are statewide resources, and child safety service centres can make referrals to any of the four services.

Related referral, assessment, decision-making and placement review processes are outlined in the Therapeutic Residential Services' Statewide Protocol. A copy of the protocol can be obtained from your respective Director, Placement Services Unit.

Before completing an approved referral form, child safety staff should seek advice from their respective Director, Placement Services Unit, as to the appropriateness of the proposed referral.

During this initial stage, key consideration should be given to the current case plan for the young person, including any assessed and identified therapeutic needs, and how these needs could be met within a therapeutic residential care setting.

Following submission of a referral to the relevant panel, the referring officer may be requested to provide additional information.

What will Child Safety Services ongoing responsibility be following the placement of a young person in a Therapeutic Residential Service?

Child safety staff will be required to work closely and intensively with the service provider, and other care team members, following acceptance of a child into the service until their exit.

Child safety staff will continue to have case management and case work responsibilities for young people placed within Therapeutic Residential Services. This is to include ongoing reviews of child protection case plans, as well as additional involvement in the development and review of therapeutic care plans.

Due to the short-term nature of the service (i.e. maximum 18 months), and with an emphasis on transitioning young people back to their community of origin, it is important that the service centre with case management responsibility maintain a relationship with the young person.

As per Child Safety Services current case transfer policy, case management for young people placed in Therapeutic Residential Services must be retained by the child safety service centre with case management responsibility. Only under extenuating circumstances, such as geographical barriers, can negotiations occur between service centres to transfer some, or all, case work activities.

For more information contact Bradley Van Der Ryken, Program Coordinator, Child Safety Services on (07) 3224 2202.

Therapeutic Residential Services





The Department of Communities (Child Safety Services) is establishing four Therapeutic Residential Services across the state as part of enhancing therapeutic responses for children in care with complex psychological and behavioural needs.

The services have been informed by research findings on the link between abuse and neglect, and trauma and disrupted attachment. They will offer the most intensive and highest level of coordinated therapeutic care and support within Child Safety Services' out-of-home care system.

Two services have been established in Cairns and Townsville, and have commenced operations in April and May 2009, respectively. The remaining two services, located in Goodna and Morayfield, will be operational in the 2009–10 and 2010–11 financial years.

Services are being targeted to children who have complex or extreme needs, and who have been identified as being able to achieve therapeutic benefit from the service. It is recognised that this group of children are often not suited to family-based placements.

Services will be available to 12–15 year olds for up to 18 months. Siblings and other children younger than 12 may also be considered, provided there are therapeutic benefits identified. All four services are statewide resources, and as such, will be required to consider referrals from any child safety service centre.

The implementation of these services is part of Child Safety Services broader goal to enhance therapeutic care for all children in care, and includes delivery of the trauma informed train-the-trainer package, Transforming the Care, to funded placement services.

Why Therapeutic Residential Services?

Research shows that children and young people who experience significant abuse or neglect often develop disrupted attachments, and experience the cumulative effects of trauma. The effects of this can be seen in a variety of ways including lack of placement stability, self harm, aggression, offending or withdrawn behaviour, social isolation, disengagement from education/vocational pursuits and mental health issues.



Research further indicates that children's attachment issues and challenging behaviours are most effectively responded to by creating a controlled, safe, consistent and dependent relationship between children and their carer/s.

Staff working in these services will have a high level of theoretical knowledge on trauma and attachment. They will receive comprehensive training, as well as ongoing support and supervision as part of providing safe and consistent day-to-day therapeutic care to children.

Key features of the new Therapeutic Residential Services

The two North Queensland services each have four residential, and two specialist foster care placements, while the South East Queensland services will have six residential placements each.

Services will provide highly coordinated therapeutic care which will include in-house clinical staff and other specialist positions. Critical supports and interventions including psychological and behavioural assessments, as well as education and cultural supports will be available to meet the needs of children.

Direct care staff will have a central role in assisting children make sense of, and manage their emotions and behaviours to help them improve their relationships and attachments.

Therapeutic care teams will be established for each child and will be made up of key people in the child's life – including child safety staff, and relevant stakeholders such as Evolve Interagency Services, Indigenous Recognised Entities, school, family and/or significant others.

Other features include:

- the establishment of referral and transition panels which will consider referrals and assess the therapeutic benefit and 'right-fit' of young people for each of the services – each location will have a panel consisting of funded service providers, child safety services and Evolve representation
- an emphasis on identifying longer-term placement options at the child's point of entry to the service, with business processes having been developed to trigger formal transition planning
- planned entry and exit of children to and from the services

1 of 1 DOCUMENT: All England Law Reports/1996/Volume 1 /Re H and others (minors) (sexual abuse: standard of proof) - [1996] 1 All ER 1

[1996] 1 All ER 1

Re H and others (minors) (sexual abuse: standard of proof)

HOUSE OF LORDS

LORD GOFF OF CHIEVELEY, LORD BROWNE-WILKINSON, LORD MUSTILL, LORD LLOYD OF BERWICK AND LORD NICHOLLS OF BIRKENHEAD

17, 18 JULY, 14 DECEMBER 1995

Family proceedings - Orders in family proceedings - Care order - Conditions to be satisfied before care order made - Child likely to suffer significant harm if order not made - 'Likely' - Test of likelihood - Whether real possibility of significant harm sufficient - Whether local authority required to show probability that child likely to suffer significant harm - Burden and standard of proof - Whether care order can be made if no proof but merely suspicion of abuse - Children Act 1989, s 31(2).

In September 1993 C, the eldest of the mother's four daughters, alleged that her stepfather had sexually abused her since the age of seven or eight and had raped her four times. C was placed with foster parents and the stepfather was charged with rape. In February 1994 the local authority applied for care orders under s 31(2)^a of the Children Act 1989 in respect of the other three children on the grounds that they were 'likely to suffer significant harm' if the orders were not made. Interim care orders were made pending a full hearing of the application. In October the stepfather was acquitted at the trial of the rape charge. In November the judge hearing the local authority's application held that because he could not be sure to the 'requisite standard of proof' that C's allegations were true he had no jurisdiction to make care orders in respect of the three younger children. An appeal by the local authority was dismissed by the Court of Appeal. The local authority appealed to the House of Lords.

^a Section 31(2) is set out at p 5 f, post

Held - (1) The threshold condition for the making of a care order set out in s 31(2) of the 1989 Act, was fulfilled if it was shown that there was a real possibility that the child would suffer significant harm. The higher threshold of such harm having to be shown to be probable, in the sense of more likely than not, did not apply. The burden of proof of showing to the court's satisfaction that the child was likely to suffer significant harm lay on the applicant and the standard of proof was the ordinary civil standard, ie the balance of probabilities. However (Lord Lloyd dissenting), the more serious or improbable the allegation of abuse the more convincing was the evidence required to prove the allegation (see p 3 d f, p 5 b, p 7 h, p 8 d e, p 9 b, p 13 c, p 15 a j to p 16 b d to g and p 17 j, post).

(2) (Lord Browne-Wilkinson and Lord Lloyd dissenting) A conclusion that the child was suffering or was likely to suffer harm had to be based on facts, not just suspicion and if the case for making a care order rested on an

[1996] 1 All ER 1 at 2

allegation of past abuse which was not proved, it was not open to the court to make a care order merely because the facts raised a suspicion that there might have been past abuse. Since the three younger girls were not at risk unless it was shown that C had been abused by her stepfather and since that had not been shown the judge had been right to refuse the local authority's application for a care order. A suspicion that C might have been abused was not sufficient to cross the threshold conditions set out in s 31(2). The appeal would therefore be dismissed (see p 3 *d*, p 5 *b*, p 19 *e* to *g*, p 20 *c* to *e*, p 22 *a b h* to p 23 *a*, post).

Notes

For the threshold criteria for making a care order, see 5(2) *Halsbury's Laws* (4th edn reissue) para 787, and for cases on the subject, see 28(3) *Digest* (2nd reissue) 418-424, 3549-3575.

For the Children Act 1989, s 31, see 6 *Halsbury's Statutes* (4th edn) (1992 reissue) 431.

Cases referred to in opinions

A (a minor) (care proceedings), Re [1993] 1 FCR 824.

B and anor (minors) (termination of contact: paramount consideration), Re [1993] 3 All ER 524, [1993] Fam 301, [1993] 3 WLR 63, CA.

Bater v Bater [1950] 2 All ER 458, [1951] P 35, CA.

Blyth v Blyth [1966] 1 All ER 524, [1966] AC 643, [1966] 2 WLR 634, HL.

Davies v Taylor [1972] 3 All ER 836, [1974] AC 207, [1972] 3 WLR 801, HL.

Dellow's Will Trusts, Re, Lloyds Bank Ltd v Institute of Cancer Research [1964] 1 All ER 771, [1964] 1 WLR 451.

Dunning v Board of Governors of the United Liverpool Hospitals [1973] 2 All ER 454, [1973] 1 WLR 586, CA.

F (minors) (wardship jurisdiction), Re [1988] 2 FLR 123, CA.

G (a minor) (child abuse: standard of proof), Re [1987] 1 WLR 1461.

H v H and C (Kent CC intervening) (child abuse: evidence), K v K (Haringey London BC intervening) (child abuse: evidence) [1989] 3 All ER 740, [1990] Fam 86, [1989] 3 WLR 933, CA.

Hornal v Neuberger Products Ltd [1956] 3 All ER 970, [1957] 1 QB 247, [1956] 3 WLR 1034, CA.

M (a minor) (appeal), Re (No 2) [1994] 1 FLR 59.

M (a minor) (care order: threshold conditions), Re [1994] 3 All ER 298, [1994] 2 AC 424, [1994] 3 WLR 558, HL.

Newham London BC v A-G [1993] 1 FLR 281, CA.

P (a minor) (care: (evidence), Re [1994] 2 FLR 751.

Preston-Jones v Preston-Jones [1951] 1 All ER 124, [1951] AC 391, HL.

Serio v Serio [1983] 4 FLR 756, CA.

W (minors) (sexual abuse: standard of proof), Re [1994] 1 FLR 419, CA.

W (minors) (wardship: (evidence), Re [1990] 1 FLR 203, CA.

Appeal

Nottinghamshire County Council appealed with leave granted by the Appeal Committee from the decision of the Court of Appeal (Sir Stephen Brown P and Millett LJ; Kennedy LJ dissenting) ([1995] 1 FLR 643) delivered on 14 December 1994 dismissing the local authority's appeal from the decision of Judge Davidson QC sitting in the Nottingham County Court on 23 November

[1996] 1 All ER 1 at 3

1994 dismissing its application for care orders in respect of three children. The respondents were the mother and the father of two of the children and the guardian ad litem representing all the children. The facts are set out in the opinion of Lord Nicholls of Birkenhead.

James Munby QC (instructed by Sharpe Pritchard, agents for Nottinghamshire County Council) for the local authority.

Allan Levy QC and Judith Claxton (instructed by Fletchers and Freeth Cartwright Hunt Dickinson) for the mother and the father.

Lindsey Kushner QC (instructed by German & Soar) for the guardian ad litem.

Their Lordships took time for consideration.

14 December 1995. The following opinions were delivered.

LORD GOFF OF CHIEVELEY.

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Nicholls of Birkenhead. For the reasons which he gives I too would dismiss this appeal.

LORD BROWNE-WILKINSON.

My Lords, I have the misfortune to disagree with the view reached by the majority of your Lordships. Although the area of disagreement is small, it is crucial both to the outcome of this appeal and to the extent to which children at risk can be protected by the courts.

I agree with my noble and learned friend Lord Nicholls of Birkenhead that the requirement in s 31(2) of the Children Act 1989, that the court must be satisfied that the child 'is likely to suffer significant harm' does not require the court to find that such harm is more likely than not: it is enough if the occurrence of such harm is a real possibility. I further agree with him that the burden of proving any relevant fact is on the applicant and that the standard of proof is the ordinary civil standard, ie balance of probabilities. The point on which I differ is how those principles fall to be applied by a judge faced with the decision whether he is 'satisfied' that the child is likely to suffer significant harm. Even on this point, I agree that the judge can only act on evidence and on facts which, so far as relevant, have been proved. He has to be satisfied by the evidence before him that there is a real possibility of serious harm to the child.

Where I part company is in thinking that the facts relevant to an assessment of risk ('is likely to suffer ... harm') are not the same as the facts relevant to a decision that harm is in fact being suffered. In order to be satisfied that an event has occurred or is occurring the evidence has to show on balance of probabilities that such event did occur or is occurring. But in order to be satisfied that there is a *risk* of such an occurrence, the ambit of the relevant facts is in my view wider. The combined effect of a number of factors which suggest that a state of affairs, though not proved to exist, may well exist is the normal basis for the assessment of future risk. To be satisfied of the existence of a risk does not require proof of the occurrence of past historical events but proof of facts which are relevant to the making of a prognosis.

Let me give an example, albeit a dated one. Say that in 1940 those responsible for giving air raid warnings had received five unconfirmed

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sightings of approaching aircraft which might be enemy bombers. They could not, on balance of probabilities, have reached a conclusion that any one of those sightings was of an enemy aircraft: nor could they logically have put together five non-proven sightings so as to be satisfied that enemy aircraft were in fact approaching. But their task was not simply to decide whether enemy aircraft were approaching but whether there was a risk of an air raid. The facts relevant to the assessment of such risk were the reports that unconfirmed sightings had been made, not the truth of such reports. They could well, on the basis of those unconfirmed reports, have been satisfied that there was a real possibility of an air raid and given warning accordingly.

So in the present case, the major issue was whether D1 had been sexually abused (the macro fact). In the course of the hearing before the judge a number of other facts (the micro facts) were established to the judge's satisfaction by the evidence. The judge in his careful judgment summarised these micro facts: that D1 had been consistent in her story from the time of her first complaint; that her statement was full and detailed showing 'a classic unfolding revelation of progressively worse abuse'; that there were opportunities for such abuse by Mr R and that he had been lying in denying that he had ever been alone either with D1 or with any of the other children; that D2 had made statements which indicated that she had witnessed 'inappropriate' behaviour between Mr R and D1; that the mother (contrary to her evidence) also suspected that something had been going on between Mr R and D1 and had sought to dissuade D2 from saying anything to the social workers. The judge also found a number of micro facts pointing the other way. Having summarised all these micro facts pointing each way, he reached his conclusion on the macro fact: 'I cannot be sure to

the requisite high standard of proof that [D1's] allegations are true.' But he also made further findings (which he thought to be irrelevant in law) on the basis of the micro facts:

'This is far from saying that I am satisfied the child's complaints are untrue. I do not brush them aside as the jury seem to have done. I am, at the least, more than a little suspicious that [Mr R] has abused her as she says. If it were relevant, I would be prepared to hold that there is a real possibility that her statement and her evidence are true. Nor has [Mr R] by his evidence and demeanour, not only throughout the hearing but the whole of this matter, done anything to dispel those suspicions ...'

That conclusion that there was a real possibility that the evidence of D1 was true was a finding based on evidence and the micro facts that he had found. It was not a mere suspicion as to the risk that Mr R was an abuser: it was a finding of risk based on facts.

My Lords, I am anxious that the decision of the House in this case may establish the law in an unworkable form to the detriment of many children at risk. Child abuse, particularly sex abuse, is notoriously difficult to prove in a court of law. The relevant facts are extremely sensitive and emotive. They are often known only to the child and to the alleged abuser. If legal proof of actual abuse is a prerequisite to a finding that a child is at risk of abuse, the court will be powerless to intervene to protect children in relation to whom there are the gravest suspicions of actual abuse but the necessary evidence legally to prove such abuse is lacking. Take the present case. Say that the proceedings had related to D1, the complainant, herself. After a long hearing a judge has reached the conclusion on evidence that there is a 'real possibility'

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that her evidence is true, ie that she has in fact been gravely abused. Can Parliament really have intended that neither the court nor anyone else should have jurisdiction to intervene so as to protect D1 from any abuse which she may well have been enduring? I venture to think not.

My Lords, for those reasons and those given by my noble and learned friend Lord Lloyd of Berwick I would allow the appeal.

LORD MUSTILL.

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Nicholls of Birkenhead. For the reasons which he gives I would dismiss this appeal.

LORD LLOYD OF BERWICK.

My Lords, in this case we are concerned with two sisters and two half-sisters. In September 1993 the eldest sister, C, then aged 15, gave a detailed written statement to the police in which she alleged that she had been subject to sexual abuse by her stepfather since the age of 7 or 8, culminating in four acts of rape. The stepfather (whom I shall refer to as 'the father') was arrested and charged. C gave evidence at his trial. In October 1994 he was acquitted on all six counts. The jury took only 14 minutes to reach their verdict.

Meanwhile in February 1994 Nottinghamshire County Council applied for care orders in respect of the three younger sisters. It was decided not to apply for a care order in respect of C, since she had been living with foster-parents since November 1993, following a short period under police protection, and the placement appeared to be satisfactory.

The hearing took place before Judge Davidson QC in November 1994. It lasted seven days. The question he had to decide was whether the threshold criteria set out in s 31(2) of the Children Act 1989 were satisfied. That sub-section provides:

'A court may only make a care order or supervision order if it is satisfied--(a) that the child concerned is suffering, or is likely to suffer, significant harm; and (b) that the harm, or likelihood of harm, is attributable to--(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control.'

Since it was not suggested that the three younger sisters had suffered or were suffering any harm, the question was whether, on the evidence before the court, the judge was satisfied that they were likely to suffer significant harm in the future.

The judge heard from the mother (who came from prison to give her evidence) as well as the father. As to the mother, he found that he could not rely on her evidence, since she had been untruthful in at least three respects in the witness box. As to the father, he said that he had seldom been less impressed by a witness. But, as he went on to point out, the fact that the mother and the father told material lies in the witness box did not mean that C was necessarily telling the truth.

As to C herself, the judge set out carefully and comprehensively the factors which told for or against her evidence. It was clearly a most anxious case. But in the event he found that he could not be sure to the 'requisite high standard of proof' that C's allegations were true. Accordingly, he held that he had no jurisdiction to make a care order. The threshold test was not met. But the

[1996] 1 All ER 1 at 6

judge did not leave it there. He went on to say that he was far from satisfied that C's complaint was untrue:

'I am at the least more than a little suspicious that the [father] has abused her as she says. If it were relevant, I would be prepared to hold that there is a real possibility that her statement and her evidence are true, nor has the [father] by his evidence and demeanour, not only throughout the hearing but the whole of this matter, done anything to dispel those suspicions.'

The Court of Appeal (Sir Stephen Brown P and Millett LJ; Kennedy LJ dissenting) ([1995] 1 FLR 643) dismissed the local authority's appeal. There is now an appeal to your Lordships' House. The parties have helpfully identified five points for decision. The first three are of general importance. I will take them in the reverse order, since it is only the third which gives rise to any difficulty.

In order to establish that a child is 'likely' to suffer significant harm in the future, is it necessary to establish the likelihood of such harm on a balance of probabilities, ie to establish that it is more likely than not that the child will suffer such harm in the future, or is it enough that there is a 'substantial' as opposed to a 'speculative' risk?

The word 'likely' in ordinary language may mean probable, in the sense of more likely than not; or it may include what

might well happen. Thus in *Davies v Taylor* [1972] 3 All ER 836, [1974] AC 207 one of the questions was whether the judge had applied the correct test in a case under the Fatal Accidents Acts 1846 to 1959. In the course of his judgment he had used the word 'likely' to indicate the test which he was applying. Lord Cross of Chelsea said ([1972] 3 All ER 836 at 847, [1974] AC 207 at 222):

'The word "likely" which occurs in the last two of the three passages from the judgment which I have quoted above, may be used in different senses. Sometimes it may be used to mean "more likely than not" at other times to mean "quite likely" or "not improbable" although less likely than not.'

Similarly, in *Dunning v Board of Governors of the United Liverpool Hospitals* [1973] 2 All ER 454, [1973] 1 WLR 586 the question was whether a claim in respect of personal injuries was 'likely to be made' for the purposes of s 31 of the Administration of Justice Act 1970. Lord Denning MR said that 'likely to be made' should be construed as meaning 'may' or 'may well be made' (see [1973] 2 All ER 454 at 457, [1973] 1 WLR 586 at 590). James LJ said that he would construe 'likely' as meaning a 'reasonable prospect' (see [1973] 2 All ER 454 at 460, [1973] 1 WLR 586 at 594).

Coming to s 31(2)(a) of the 1989 Act itself, the Court of Appeal in *Newham London BC v A-G* [1993] 1 FLR 281 rejected an argument that 'likely to suffer significant harm' was to be equated with 'on the balance of probabilities'. In *Re A (a minor) (care proceedings)* [1993] 1 FCR 824 it was again argued that 'likely' meant more probable than not. Thorpe J held that the argument was not open to the appellants in the light of *Newham London BC v A-G*, a decision which he regarded as of great importance.

[1996] 1 All ER 1 at 7

In the present case the Court of Appeal have held unanimously, in line with the *Newham* case, that the threshold test is satisfied if, in the court's view, there is a real or substantial risk of significant harm in the future.

Mr Levy QC for the mother and father submitted that the *Newham* case was wrongly decided. He pointed out that both halves of s 31(2)(a) are governed by the words, 'if [the court] is satisfied'. Since, as was common ground, the court has to be satisfied on a balance of probabilities under the first half of the clause, ie that the child *is* suffering harm, it must follow (so he argued) that the court must be satisfied on a balance of probabilities that the child *will* suffer harm under the second half of the clause. Therefore 'likely' in the second half of the clause must mean more likely than not. But this is a non sequitur. It confuses what has to be proved under the second half of the clause, ie the likelihood of significant harm, with the standard of proof required under the first half of the clause. There is no necessary connection between the two.

As for the word 'satisfied' on which Mr Levy placed reliance, it does not throw any light on the degree of risk contemplated by the second half of the clause. It is a word with a range of meanings covering the criminal burden of proof ('satisfied so as to be sure') through the civil burden of proof ('satisfied on a balance of probabilities') to a synonym for 'conclude' or 'determine'. In *Blyth v Blyth* [1966] 1 All ER 524, [1966] AC 643 the House had to consider s 4(2) of the Matrimonial Causes Act 1950. That subsection provided:

'If the court is satisfied on the evidence that--(a) the case for the petition has been proved; and (b) where the ground of the petition is adultery, the petitioner has not in any manner ... condoned, the cruelty ... the court shall pronounce a decree of divorce ...'

Lord Pearson said ([1966] 1 All ER 524 at 541, [1966] AC 643 at 676):

'The phrase "is satisfied" means, in my view, simply "makes up its mind"; the court on the evidence comes to a conclusion which, in conjunction with other conclusions, will lead to the judicial decision.'

Lord Pearce regarded 'satisfied' as a neutral word allowing of proof to a different degree in relation to the two halves of the subsection, ie proof of adultery and proof that the petitioner has not condoned the adultery (see [1966] 1 All ER 524 at 538, [1966] AC 643 at 672). So here, the word 'satisfied' in s 31(2)(a) is neutral. It means that the court must make up its mind. It thus bears the same meaning in relation to both halves of the clause, but, as I have said, throws no light on the meaning of 'likely'.

I therefore conclude that the decision of the Court of Appeal as to the meaning of 'likely to suffer significant harm' was correct.

In so far as it is either relevant or necessary in proceedings under the Act to prove an allegation of sexual abuse, is the standard of proof required (i) a standard higher than the ordinary civil standard though falling short of the criminal standard of proof, (ii) the balance of probabilities, but so that the more serious the allegation the more convincing is the evidence needed to tip the balance in respect of it, or (iii) the simple balance of probabilities?

All three counsel were agreed that the correct answer to the above question should be (ii). As a result there was no argument as to the theoretical difference between the three possible answers, or, perhaps more important,

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the practical consequences. Nor was there any citation of earlier authority on the point, of which there is a great deal.

In the course of his judgment at first instance Judge Davidson QC referred to and followed the headnote in *Re W (minors) (sexual abuse: standard of proof)* [1994] 1 FLR 419 at 420, which reads:

'Charges of sexual abuse in civil proceedings must be proved to a standard beyond a mere balance of probability, but not necessarily a standard as demanding as the criminal standard.'

In other words, the judge favoured solution (i). In the Court of Appeal Millett LJ ([1995] 1 FLR 643 at 659) said that in all civil cases there is only one standard of proof, namely proof on the balance of probabilities, and that, contempt of court apart, it is never necessary to prove facts to a standard beyond the balance of probabilities. Since we have heard no argument on the point, I am not for my part prepared to indorse so wide a proposition. It will have to await a future occasion when authorities in other branches of the civil law, including decisions of your Lordships' House, can be considered. So I propose to confine what I am about to say to the standard of proof under s 31(2) of the Act.

In my view the standard of proof under that subsection ought to be the simple balance of probability, however serious the allegations involved. I have reached that view for a number of reasons, but mainly because s 31(2) provides only the threshold criteria for making a care order. It by no means follows that an order will be made even if the threshold criteria are satisfied. The court must then go on to consider the statutory checklist in s 1(3) of the Act. But if the threshold criteria are not met, the local authority can do nothing, however grave the anticipated injury to the child, or however serious the apprehended consequences. This seems to me to be a strong argument in favour of making the threshold lower rather than higher. It would be a bizarre result if the more serious the anticipated injury, whether physical or sexual, the more difficult it became for the local authority to satisfy the initial burden of proof, and thereby ultimately, if the welfare test is satisfied, secure protection for the child.

Another indirect pointer may be found in s 26 of the Family Law Reform Act 1969. At common law the presumption of

legitimacy could only be rebutted by proof beyond reasonable doubt. This was one of the considerations which led the House to its conclusion in *Preston-Jones v Preston-Jones* [1951] 1 All ER 124, [1951] AC 391. By s 26 of the 1969 Act the presumption can now be rebutted on a simple balance of probabilities. Although in *Serio v Serio* [1983] 4 FLR 756 at 763 the Court of Appeal held that the standard of proof should be 'commensurate with the seriousness of the issue involved' (in other words, that it might require more than a mere balance of probabilities), this seems to read words into the statute which are not there. If the legislature has ordained that the presumption of legitimacy can be rebutted on a simple balance of probabilities, I have no great difficulty in concluding that s 31(2) requires a simple balance of probabilities, and no more, even when there is a serious allegation of sexual abuse.

There remains the question whether anything should be said about the cogency of the evidence needed to 'tip the balance'. For my part I do not find these words helpful, since they are little more than a statement of the obvious; and there is a danger that the repeated use of the words will harden into a

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formula, which, like other formulae (especially those based on a metaphor), may lead to misunderstanding. The formula seems to owe its origin to the need to qualify or explain Denning LJ's judgments in *Bater v Bater* [1950] 2 All ER 458, [1951] P 35 and *Hornal v Neuberger Products Ltd* [1956] 3 All ER 970, [1957] 1 QB 247. But once it is accepted that the standard of proof under s 31(2) is the simple balance of probabilities, and that the subsection does not require a degree of probability commensurate with the seriousness of the allegation, then the need for the qualification disappears. Despite the unanimity of counsel's preference for answer (ii) to the second question, I would prefer (iii), and leave the rest to the good sense of judges and magistrates. They will be well aware of, and pay full regard to, the factual context in which they must reach their difficult decisions.

As for the present case, I can have no doubt that the judge applied a higher than ordinary standard of proof. It is what he says in plain terms. Sir Stephen Brown P said that the judge may nevertheless have applied the right test and drew attention to the reference in his judgment to *Re W (minors) (sexual abuse: standard of proof)* [1994] 1 FLR 419. But *Re W* is the very case in which the Court of Appeal held that a higher than ordinary standard is required. Millett LJ also thought that the judge had applied the correct test, despite what the judge said. I fear that in this respect the majority of the Court of Appeal were being overgenerous to the judge.

Where the allegation that a child is 'likely to suffer significant harm' within the meaning of the second limb of s 31(2)(a) of the Act arises solely out of alleged sexual abuse in the past, is it first necessary to prove to the appropriate standard of proof (see (2) above) that such abuse has in fact occurred?

The third question is the one that gives rise to difficulty. The problem can be stated quite simply. The case has been fought on the basis that the sole cause for concern are the allegations of sexual abuse made by C. It may be that in that respect the case is unusual, and that in many, if not most, cases a local authority applying for a care order will rely on a number of contributing factors. It is only when the local authority relies, as here, on a single incident or series of incidents relating to the same child that the problem arises in a stark form. If the court finds on the balance of probabilities that the incidents did not occur, how can it go on to hold that by reason of those incidents there is a real or substantial risk of significant harm in the future?

Before giving my answer to that conundrum, it is helpful to look at the background to s 31 of the Act. A feature of the 1970s and 1980s was the sudden and very rapid increase in the number of applications for wardship in the High Court, mainly due to the increased use of wardship by local authorities: see the government White Paper *The Law on Child Care and Family Services* (1987) (Cm 62) p 15, para 59 published in January 1987, and the table set out in *Bromley's Family Law* (8th edn, 1992) p 477. One of the purposes of the 1989 Act, as I understand it, was to abrogate the power of the High Court to place a ward of court in care (see s 100 of the Act, which repealed s 7 of the Family Law Reform Act

1969 and placed tight restrictions on the High Court's inherent jurisdiction), while at the same time making the benefits of the old wardship jurisdiction more generally available. As Butler-Sloss LJ said in *Re B and anor (minors) (termination of contact: paramount consideration)* [1993] 3 All ER 524 at 531, [1993] Fam 301 at 310, the Act 'aims to incorporate the best of the wardship jurisdiction within the statutory framework'. The consequence was

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that Pts IV and V of the Act became the only route open to a local authority for protecting children at risk.

A number of cases prior to 1991 (when the 1989 Act came into force) illustrate the old wardship approach. Thus in *H v H and C (Kent CC intervening) (child abuse: evidence)*, *K v K (Haringey London BC intervening) (child abuse: evidence)* [1989] 3 All ER 740 at 750, [1990] Fam 86 at 101, a case concerning access, Butler-Sloss LJ said:

'[The judge] may have found individual facts, such as inappropriate knowledge or behaviour, which constitute a high degree of concern about the child without being able to say on the test that they amount to actual abuse. They are, however, relevant to the exercise of the discretion. He may have sufficient evidence of concern about the past care of the child to be satisfied that the child was in a potentially abusing situation without having sufficient evidence to be satisfied as to the extent of the abuse in the past or the identity of the abuser.'

Stuart-Smith LJ said ([1989] 3 All ER 740 at 765, [1990] Fam 86 at 121):

'In the type of case with which we are concerned in these appeals there may be insufficient evidence on which the judge can conclude that the father *has* sexually abused his children, nevertheless there may be sufficient evidence to show that there is a real chance, possibility or probability *that he will do so in the future* if granted access.' (Stuart-Smith LJ's emphasis.)

In *Re W (minors) (wardship: evidence)* [1990] 1 FLR 203 at 215, another wardship case, Butler-Sloss LJ said:

'It is not necessary to make a finding of sexual abuse against a named person in order for the judge to assess the risks to the child if returned to that environment. He is engaged in a different exercise, that of the assessment of the possibilities for the future.'

Neill LJ said (at 228):

'There may also be cases, however, where the court may not be in a position to make a positive finding on the evidence as to what has happened in the past, but may, nevertheless, come to the conclusion that a child may be at risk for the future.'

Although these cases were decided in wardship, and not under the Children Act, they underline a general point. Evidence which is insufficient to establish the truth of an allegation to a required standard of proof, nevertheless remains evidence in the case. It need not be disregarded. The point will be familiar to anyone who has taken part in a criminal trial. It is not uncommon for defence counsel to tell the jury that unless they are sure that a particular witness is telling the truth, they must reject his evidence altogether. But this is quite wrong. The witness's evidence remains evidence in the case. The jury are entitled to take it into account in deciding whether on *all* the evidence they are sure of the defendant's guilt.

I now return to the second half of s 31(2)(a). It requires the court to be satisfied that the child is likely to suffer significant harm in the future. There is nothing in the second half of the subsection which requires the court to make a finding about anything in the past or present. The finding of future risk

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must, of course, be based on evidence. It cannot be based on a hunch. If there is no evidence to support a finding of risk, the finding will be set aside. But if there is such evidence, then a finding may be made, even though the same evidence is insufficient to support a finding of past fact. In the present case the judge was not persuaded by C's evidence that she had been sexually abused. But that does not mean that he rejected her evidence as worthless. On the contrary, he went out of his way to find that she might well have been telling the truth. He was prepared to hold that this was a real possibility.

In those circumstances it would, I think, have been open to him to find, on C's evidence, that there was a real possibility of one or more of C's sisters suffering significant harm so as to satisfy the threshold test. But the judge never asked himself that question. He adopted what has been called the two-stage approach. Once he had decided not to make a finding of sexual abuse on the balance of probabilities, he never asked himself the vital question posed by the second half of the subsection, whether, on such evidence as there was, he should make a finding of serious risk for the future. I quote from his judgment:

'Bearing in mind all these factors ... I find myself in the position that I cannot be sure to the requisite high standard of proof that C's allegations are true. It must follow that the statutory criteria for the making of a care order are not made out.'

With great respect this does not follow. The fact that the first half of s 31(2)(a) is not satisfied on the balance of probabilities does not mean that the second half may not be satisfied. The two halves of the subsection are not interlinked, logically or linguistically. They could as well have been contained in separate sub-paragraphs.

Sir Stephen Brown P and Millett LJ ([1995] 1 FLR 643 at 652, 657) upheld and adopted the judge's two-stage approach. Millett LJ said (at 658):

'If the likelihood of the child suffering harm in the future depends upon the truth of disputed allegations, the court must investigate the allegations and determine, on the balance of probabilities, whether they are true or false. It is not sufficient that there is a real possibility that the allegations may be true if the probability is that they are not.'

The fallacy, if I may respectfully say so, lies in the protasis. The likelihood of future harm does not depend on proof that disputed allegations are true. It depends on the evidence. If the evidence in support of the disputed allegations is such as to give rise to a real or substantial risk of significant harm in the future, then the truth of the disputed allegation need not be proved.

In another passage Millett LJ (at 658) refers to the two different factual situations covered by s 31(2)(a):

'In the first it is plain that the court must be satisfied, on a balance of probabilities, that the child is suffering significant harm. It is not enough for the court to conclude that there is a real possibility that the child may be suffering significant harm. The same test must be applied to the second factual situation.'

I have difficulty with the last sentence for two reasons. In the first place, there is nothing in the subsection which requires the same test to be applied to both halves of the subsection: see *Blyth v Blyth* [1966] 1 All ER 524, [1966]

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AC 643. The argument accepted by the majority in the court below is very similar, if not identical, to the argument rejected by the majority of the House in that case. Secondly, I am not clear in what sense the future, which is the subject matter of the second half of the subsection, can ever be said to be a 'factual situation' subject to proof in the same way as

past or present fact: see *Davies v Taylor* [1972] 3 All ER 836 at 839, [1974] AC 207 at 212 per Lord Reid.

I confess that I much prefer the simpler one-stage approach adopted by Kennedy LJ. Although a two-stage approach may come naturally to lawyers, the same cannot necessarily be said for magistrates, social workers, and others who have got to understand and apply s 31. It may not be too difficult when there is an isolated issue of fact on which alone the outcome depends. But this will seldom, if ever, be the case in practice. Facts are always surrounded by other facts. Macro facts, to adopt my noble and learned friend Lord Browne-Wilkinson's vivid terminology, are surrounded by micro facts. In the usual case, there will be a number of interlocking considerations, all of which will give rise to separate issues of fact, and on all of which, if the Court of Appeal be right, the court would have to make separate findings on the balance of probabilities before proceeding to the second stage. Suppose, for example, there are three or four matters for concern which have led the social services to the belief that a child is at risk, on each of which there is credible evidence, supported, it may be, by evidence from a child psychiatrist, but suppose the evidence is insufficient on any of them to justify a finding that the child has been abused. Is the court powerless to proceed to the second stage? This is not what Parliament has said, and I do not think it is what Parliament intended. Parliament has asked a simple question: is the court satisfied that there is a serious risk of significant harm in the future? This question should be capable of being answered without too much over-analysis.

In an unusual case such as the present, which has been fought on the basis of a single issue of past fact, it will no doubt make sense for the court to start by deciding whether that issue has been proved to its satisfaction, or not. But this is only the beginning. Even if the evidence falls short of proof of the fact in issue, the court must go on to evaluate the evidence on that issue, together with all the other evidence in the case, and ask itself the critical question as to future risk.

In *Newham London BC v A-G* [1993] 1 FLR 281 at 289 Sir Stephen Brown P said:

'I very much hope that in approaching cases under the Children Act 1989 courts will not be invited to perform in every case a strict legalistic analysis of the statutory meaning of s 31.'

The editors of *Clarke Hall and Morrison on Children* (10th edn, 1985) vol 1, para 612, commented: 'This strongly suggests the court should be flexible in interpreting s 31 and then exercise its discretion in the light of ss 1 and 8.' I agree.

I have left to the end an argument which Millett LJ regarded as confirming his approach. Under s 43 of the 1989 Act, a court may make an assessment order if it is satisfied that the local authority has 'reasonable cause to suspect' that a child is likely to suffer significant harm. Under s 44 the court may make an emergency order if it is satisfied that there is 'reasonable cause to believe' that the child is likely to suffer significant harm. Similarly, under s 38 it may make an interim care order if it is satisfied that there are 'reasonable grounds

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for believing' that a child is likely to suffer significant harm. Finally, under s 31(2) the court may make an order if it is satisfied that the child is likely to suffer significant harm.

These sections represent progressive stages on the road to the making of a care order, from 'cause to suspect' through 'ground for belief' to the substantive finding. Little evidence suffices at the early stages. Much more evidence is required at the later stages. But it will be noticed that at all the stages the court has to be 'satisfied' on whatever evidence there is. So the use of the word 'satisfied' at the final stage does not, I think, point a contrast with the earlier stages; nor does it

show, as Millett LJ thought, that the likelihood of significant harm has to be proved on a balance of probabilities before a care order can be made. For the reasons which I have attempted to state in answer to the first question 'satisfied' is a neutral word which means no more than conclude or determine or decide.

I can summarise my views as follows.

(1) 'Likely' in s 31(2)(a) means that there is a serious risk or real possibility that the child will suffer significant harm.

(2) Where it is claimed that the child has suffered or is suffering significant harm the standard of proof is the simple balance of probabilities, no matter how serious the underlying allegation.

(3) Where it is claimed that the child is likely to suffer significant harm, the simple one-stage approach suffices. The question is whether, on all the evidence, the court considers that there is a real possibility of the child's suffering significant harm in the future. If so, the threshold criterion is satisfied. The court does not have to be satisfied on the balance of probabilities that the child has in fact suffered significant harm in the past, whether by sexual abuse or otherwise, even where the allegation of abuse is the foundation of the local authority's case for a care order.

It follows that the judge fell into error in two respects. First, he applied a standard of proof in respect of C's allegation of sexual abuse which was manifestly too high. Secondly, he never asked himself the right question about significant harm in the future. He was misled by the two-stage approach, as a consequence of which he held that the second and vital question did not arise.

For the reasons which I have given, as well as those given by Kennedy LJ, I would allow this appeal. If I have not quoted at length from Kennedy LJ's judgment, it is only because I have read it with admiration, and agree with every word.

I would therefore have remitted the case to the judge for a further hearing if there be continuing cause for concern. But as a majority of your Lordships take a different view, this will not be necessary.

LORD NICHOLLS OF BIRKENHEAD.

My Lords, the subject of this appeal is the care of children. Section 31 of the Children Act 1989 empowers the court to make an order placing a child in the care of a local authority or putting a child under the supervision of a local authority or a probation officer. Section 31(2) provides that a court may only make such an order--

'if it is satisfied--(a) that the child concerned is suffering, or is likely to suffer, significant harm; and (b) that the harm, or likelihood of harm, is attributable to--(i) the care given to the child, or likely to be given him if

[1996] 1 All ER 1 at 14

the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control.'

In short, the court must be satisfied of the existence or likelihood of harm attributable either to the care the child is receiving or likely to receive or to the child being beyond parental control. Harm means ill-treatment or impairment of health or development (see s 31(9)). This appeal concerns the need for the court to be 'satisfied' that the child is suffering significant harm or is 'likely' to do so.

The facts are set out in the judgment of Sir Stephen Brown P sitting in the Court of Appeal ([1995] 1 FLR 643). For present purposes I can summarise them shortly. The mother has four children, all girls. D1 and D2 were children of her marriage to Mr H in 1979. D1 was born in June 1978 and D2 in August 1981. Mr H and the mother then separated. In 1984 she commenced living with Mr R and they had two children: D3, born in March 1985, and D4, born in April 1992.

In September 1993, when she was 15, D1 made a statement to the police. She said she had been sexually abused by Mr R ever since she was 7 or 8 years old. She was then accommodated with foster-parents, and Mr R was charged with having raped her. In February 1994 the local authority applied for care orders in respect of the three younger girls. Interim care orders were made, followed by interim supervision orders.

In October 1994 Mr R was tried on an indictment containing four counts of rape of D1. D1 was the principal witness for the Crown. The jury acquitted Mr R on all counts after a very short retirement. Despite this the local authority proceeded with the applications for care orders in respect of D2, D3 and D4. These girls were then aged 13, 8 and 2 years. The local authority's case, and this is an important feature of these proceedings, was based solely on the alleged sexual abuse of D1 by Mr R. Relying on the different standard of proof applicable in civil and criminal matters, the local authority asked the judge still to find that Mr R had sexually abused D1, or at least that there was a substantial risk he had done so, thereby, so it was said, satisfying the s 31(2) conditions for the making of a care order in respect of the three younger girls.

The applications were heard by Judge Davidson QC sitting in the Nottingham County Court. On 23 November, after a hearing lasting seven days, he dismissed the applications. He was not impressed by the evidence of Mr R or of the mother. Nevertheless he concluded he could not be sure 'to the requisite high standard of proof' that D1's allegations were true. He added:

'It must follow that the statutory criteria for the making of a care order are not made out. This is far from saying that I am satisfied the child's complaints are untrue. I do not brush them aside as the jury seem to have done. I am, at the least, more than a little suspicious that [Mr R] has abused her as she says. If it were relevant, I would be prepared to hold that there is a real possibility that her statement and her evidence are true, nor has [Mr R] by his evidence and demeanour, not only throughout the hearing but the whole of this matter, done anything to dispel those suspicions, but this in the circumstances is nihil ad rem.'

By a majority, comprising Sir Stephen Brown P and Millett LJ, the Court of Appeal dismissed an appeal by the local authority. Kennedy LJ disagreed.

[1996] 1 All ER 1 at 15

'Likely' to suffer harm

I shall consider first the meaning of 'likely' in the expression 'likely to suffer significant harm' in s 31. In your Lordships' House Mr Levy QC advanced an argument not open in the courts below. He submitted that 'likely' means probable, and that the decision of the Court of Appeal to the contrary in *Newham London BC v A-G* [1993] 1 FLR 281 was wrong. I cannot accept this contention.

In everyday usage one meaning of the word 'likely', perhaps its primary meaning, is probable, in the sense of more likely than not. This is not its only meaning. If I am going walking on Kinder Scout and ask whether it is likely to rain, I am using 'likely' in a different sense. I am inquiring whether there is a real risk of rain, a risk that ought not to be ignored. In which sense is 'likely' being used in this subsection?

In s 31(2) Parliament has stated the prerequisites which must exist before the court has power to make a care order. These prerequisites mark the boundary line drawn by Parliament between the differing interests. On one side are the interests of parents in caring for their own child, a course which *prima facie* is also in the interest of the child. On the other side there will be circumstances in which the interests of the child may dictate a need for his care to be entrusted to others. In s 31(2) Parliament has stated the minimum conditions which must be present before the court can look more widely at all the circumstances and decide whether the child's welfare requires that a local authority shall receive the child into its care and have parental responsibility for him. The court must be satisfied that the child is already suffering significant harm. Or the court must be satisfied that, looking ahead, although the child may not yet be suffering such harm, he or she is likely to do so in the future. The court may make a care order if, but only if, it is satisfied in one or other of these respects.

In this context Parliament cannot have been using 'likely' in the sense of more likely than not. If the word 'likely' were given this meaning, it would have the effect of leaving outside the scope of care and supervision orders cases where the court is satisfied there is a real possibility of significant harm to the child in the future but that possibility falls short of being more likely than not. Strictly, if this were the correct reading of the Act, a care or supervision order would not be available even in a case where the risk of significant harm is as likely as not. Nothing would suffice short of proof that the child will probably suffer significant harm.

The difficulty with this interpretation of s 31(2)(a) is that it would draw the boundary line at an altogether inapposite point. What is in issue is the prospect, or risk, of the child suffering *significant* harm. When exposed to this risk a child may need protection just as much when the risk is considered to be less than fifty-fifty as when the risk is of a higher order. Conversely, so far as the parents are concerned, there is no particular magic in a threshold test based on a probability of significant harm as distinct from a real possibility. It is otherwise if there is no real possibility. It is eminently understandable that Parliament should provide that where there is no real possibility of significant harm, parental responsibility should remain solely with the parents. That makes sense as a threshold in the interests of the parents and the child in a way that a higher threshold, based on probability, would not.

In my view, therefore, the context shows that in s 31(2)(a) 'likely' is being used in the sense of a real possibility, a possibility that cannot sensibly be

[1996] 1 All ER 1 at 16

ignored having regard to the nature and gravity of the feared harm in the particular case. By parity of reasoning the expression 'likely to suffer significant harm' bears the same meaning elsewhere in the Act: for instance, in ss 43, 44 and 46. 'Likely' also bears a similar meaning, for a similar reason, in the requirement in s 31(2)(b) that the harm or likelihood of harm must be attributable to the care given to the child or 'likely' to be given him if the order were not made.

The burden of proof

The power of the court to make a care or supervision order only arises if the court is 'satisfied' that the criteria stated in s 31(2) exist. The expression 'if the court is satisfied', here and elsewhere in the Act, envisages that the court must be judicially satisfied on proper material. There is also inherent in the expression an indication of the need for the subject

matter to be affirmatively proved. If the court is left in a state of indecision the matter has not been established to the level, or standard, needed for the court to be 'satisfied'. Thus in s 31(2), in order for the threshold to be crossed, the conditions set out in paras (a) and (b) must be affirmatively established to the satisfaction of the court.

The legal burden of establishing the existence of these conditions rests on the applicant for a care order. The general principle is that he who asserts must prove. Generally, although there are exceptions, a plaintiff or applicant must establish the existence of all the preconditions and other facts entitling him to the order he seeks. There is nothing in the language or context of s 31(2) to suggest that the normal principle should not apply to the threshold conditions.

The standard of proof

Where the matters in issue are facts the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability. This is the established general principle. There are exceptions such as contempt of court applications, but I can see no reason for thinking that family proceedings are, or should be, an exception. By family proceedings I mean proceedings so described in the 1989 Act, ss 105 and 8(3). Despite their special features, family proceedings remain essentially a form of civil proceedings. Family proceedings often raise very serious issues, but so do other forms of civil proceedings.

The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

[1996] 1 All ER 1 at 17

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungood-Thomas J expressed this neatly in *Re Dellow's Will Trusts, Lloyds Bank Ltd v Institute of Cancer Research* [1964] 1 All ER 771 at 773, [1964] 1 WLR 451 at 455:

'The more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.'

This substantially accords with the approach adopted in authorities such as the well-known judgment of Morris LJ in *Hornal v Neuberger Products Ltd* [1956] 3 All ER 970 at 978, [1957] 1 QB 247 at 266. This approach also provides a means by which the balance of probability standard can accommodate one's instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters.

No doubt it is this feeling which prompts judicial comment from time to time that grave issues call for proof to a standard higher than the preponderance of probability. Similar suggestions have been made recently regarding proof of

allegations of sexual abuse of children: see *Re G (a minor) (child abuse: standard of proof)* [1987] 1 WLR 1461 at 1466 and *Re W (minors) (sexual abuse: standard of proof)* [1994] 1 FLR 419 at 429. So I must pursue this a little further. The law looks for probability, not certainty. Certainty is seldom attainable. But probability is an unsatisfactorily vague criterion because there are degrees of probability. In establishing principles regarding the standard of proof, therefore, the law seeks to define the degree of probability appropriate for different types of proceedings. Proof beyond reasonable doubt, in whatever form of words expressed, is one standard. Proof on a preponderance of probability is another, a lower standard having the inbuilt flexibility already mentioned. If the balance of probability standard were departed from, and a third standard were substituted in some civil cases, it would be necessary to identify what the standard is and when it would apply. Herein lies a difficulty. If the standard were to be higher than the balance of probability but lower than the criminal standard of proof beyond reasonable doubt, what would it be? The only alternative which suggests itself is that the standard should be commensurate with the gravity of the allegation and the seriousness of the consequences. A formula to this effect has its attraction. But I doubt whether in practice it would add much to the present test in civil cases, and it would risk causing confusion and uncertainty. As at present advised I think it is better to stick to the existing, established law on this subject. I can see no compelling need for a change.

I therefore agree with the recent decisions of the Court of Appeal in several cases involving the care of children, to the effect that the standard of proof is the ordinary civil standard of balance of probability (see *H v H and C (Kent CC intervening) (child abuse: evidence)*, *K v K (Haringey London BC intervening) (child abuse: evidence)* [1989] 3 All ER 740 at 745, 750, [1990] Fam 86 at 94, 100, *Re M (a minor) (appeal) (No 2)* [1994] 1 FLR 59 at 67, and *Re W* [1994] 1 FLR 419 at 424

[1996] 1 All ER 1 at 18

per Balcombe LJ). The Court of Appeal were of the same view in the present case. It follows that the contrary observations already mentioned in *Re G* [1987] 1 WLR 1461 at 1466 and *Re W* [1994] 1 FLR 419 at 429 are not an accurate statement of the law.

The threshold conditions

There is no difficulty in applying this standard to the threshold conditions. The first limb of s 31(2)(a) predicates an existing state of affairs: that the child is suffering significant harm. The relevant time for this purpose is the date of the care order application or, if temporary protective arrangements have been continuously in place from an earlier date, the date when those arrangements were initiated. This was decided by your Lordships' House in *Re M (a minor) (care order: threshold conditions)* [1994] 3 All ER 298, [1994] 2 AC 424. Whether at that time the child was suffering significant harm is an issue to be decided by the court on the basis of the facts admitted or proved before it. The balance of probability standard applies to proof of the facts.

The same approach applies to the second limb of s 31(2)(a). This is concerned with evaluating the risk of something happening in the future: aye or no, is there a real possibility that the child will suffer significant harm? Having heard and considered the evidence, and decided any disputed questions of relevant fact upon the balance of probability, the court must reach a decision on how highly it evaluates the risk of significant harm befalling the child, always remembering upon whom the burden of proof rests.

Suspicion and the threshold conditions

This brings me to the most difficult part of the appeal. The problem is presented in stark form by the facts in this case. The local authority do not suggest that the first limb of s 31(2)(a) is satisfied in respect of D2, D3 or D4. They do not seek a finding that any of the three younger girls is suffering harm. Their case for the making of a care order is based exclusively on the second limb. In support of the allegation that D2, D3 and D4 are likely to suffer significant harm, the

local authority rely solely upon the allegation that over many years D1 was subject to repeated sexual abuse by Mr R.

The judge held that the latter allegation was not made out. Mr R did *not* establish that abuse did *not* occur. The outcome on this disputed serious allegation of fact was that the local authority, upon whom the burden of proof rested, failed to establish that abuse *did* occur. However, the judge remained suspicious and, had it been relevant, he would have held there was a reasonable possibility that D1's allegations were true. The question arising from these conclusions can be expressed thus: when a local authority asserts but fails to prove past misconduct, can the judge's suspicions or lingering doubts on that issue form the basis for concluding that the second limb of s 31(2)(a) has been established?

In many instances where misconduct is alleged but not proved this question will not arise. Other allegations may be proved. The matters proved may suffice to show a likelihood of future harm. However, the present case is not unique. *Re P (a minor) (care: evidence)* [1994] 2 FLR 751 is another instance where the same problem arose. There the only matter relied upon was the death of the child's baby brother while in the care of the parents. Douglas

[1996] 1 All ER 1 at 19

Brown J held that it was for the local authority to prove that the death was non-accidental and that, since they failed to do so, there was no factual basis for a finding of likelihood of harm to the surviving child.

In the Court of Appeal in the present case Sir Stephen Brown P adopted the same approach (see [1995] 1 FLR 643 at 652). Since the judge rejected the only allegation which gave rise to the applications for care orders, it was not then open to him to go on and consider the likelihood of harm to the children. Millett LJ agreed. He said (at 657):

'... where the risk of harm depends on the truth of disputed allegations, the court must investigate them and determine whether they are true or false. Unless it finds that they are true, it cannot be satisfied that the child is likely to suffer significant harm if the order is not made.'

Kennedy LJ reached a different conclusion. To satisfy the second limb there must be acceptable evidence of a real risk that significant harm will be sustained, but he added (at 654):

'I ... do not accept that if the evidence relates to alleged misconduct ... that misconduct must itself be proved on a balance of probabilities before the evidence can be used to satisfy the threshold criteria in s 31(2)(a).'

A conclusion based on facts

The starting point here is that courts act on evidence. They reach their decisions on the basis of the evidence before them. When considering whether an applicant for a care order has shown that the child is suffering harm or is likely to do so, a court will have regard to the undisputed evidence. The judge will attach to that evidence such weight, or importance, as he considers appropriate. Likewise with regard to disputed evidence which the judge accepts as reliable. None of that is controversial. But the rejection of a disputed allegation as not proved on the balance of probability leaves scope for the possibility that the non-proven allegation may be true after all. There remains room for the judge to have doubts and suspicions on this score. This is the area of controversy.

In my view these unresolved judicial doubts and suspicions can no more form the basis of a conclusion that the second threshold condition in s 31(2)(a) has been established than they can form the basis of a conclusion that the first has been established. My reasons are as follows.

Evidence is the means whereby relevant facts are proved in court. What the evidence is required to establish depends upon the issue the court has to decide. At some interlocutory hearings, for instance, the issue will be whether the plaintiff has a good arguable case. The plaintiff may assert he is at risk of the defendant trespassing on his land or committing a breach of contract and that, in consequence, he will suffer serious damage. When deciding whether to grant an interlocutory injunction the court will not be concerned to resolve disputes raised by the parties' conflicting affidavit evidence.

At trials, however, the court normally has to resolve disputed issues of relevant fact before it can reach its conclusion on the issue it has to decide. This is a commonplace exercise, carried out daily by courts and tribunals throughout the country. This exercise applies as much where the issue is whether an event may happen in the future as where the issue is whether an

[1996] 1 All ER 1 at 20

event did or did not happen in the past. To decide whether a car was being driven negligently, the court will have to decide what was happening immediately before the accident and how the car was being driven and why. Its findings on these facts form the essential basis for its conclusion on the issue of whether the car was being driven with reasonable care. Likewise, if the issue before the court concerns the possibility of something happening in the future, such as whether the name or get-up under which goods are being sold is likely to deceive future buyers. To decide that issue the court must identify and, when disputed, decide the relevant facts about the way the goods are being sold and to whom and in what circumstances. Then, but only then, can the court reach a conclusion on the crucial issue. A decision by a court on the likelihood of a future happening must be founded on a basis of present facts and the inferences fairly to be drawn therefrom.

The same, familiar approach is applicable when a court is considering whether the threshold conditions in s 31(2)(a) are established. Here, as much as anywhere else, the court's conclusion must be founded on a factual base. The court must have before it facts on which its conclusion can properly be based. That is clearly so in the case of the first limb of s 31(2)(a). There must be facts, proved to the court's satisfaction if disputed, on which the court can properly conclude that the child is suffering harm. An alleged but non-proven fact is not a fact for this purpose. Similarly with the second limb: there must be facts from which the court can properly conclude there is a real possibility that the child will suffer harm in the future. Here also, if the facts are disputed the court must resolve the dispute so far as necessary to reach a proper conclusion on the issue it has to decide.

There are several indications in the Act that when considering the threshold conditions the court is to apply the ordinary approach, of founding its conclusion on facts, and that nothing less will do. The first pointer is the difference in the statutory language when dealing with earlier stages in the procedures which may culminate in a care order. Under Pt V of the Act a local authority are under a duty to investigate where they have 'reasonable cause to suspect' that a child is suffering or is likely to suffer harm. The court may make a child assessment order if satisfied that the applicant has 'reasonable cause to suspect' that the child is suffering or is likely to suffer harm. The police may take steps to remove or prevent the removal of a child where a constable has 'reasonable cause to believe' that the child would otherwise be likely to suffer harm. The court may make an emergency protection order only if satisfied there is 'reasonable cause to believe' that the child is likely to suffer harm in certain eventualities. Under s 38 the court may make an interim care order or an interim supervision order if satisfied there are 'reasonable grounds for believing' that the s 31(2) circumstances exist.

In marked contrast is the wording of s 31(2). The earlier stages are concerned with preliminary or interim steps or orders. Reasonable cause to believe or suspect provides the test. At those stages, as in my example of an application for an interlocutory injunction, there will usually not have been a full court hearing. But when the stage is reached of making a care order, with the far-reaching consequences this may have for the child and the parents, Parliament

prescribed a different and higher test: 'a court may only make a care or supervision order if it is satisfied ... that ... the child ... is suffering, or is likely to suffer, significant harm.' This is the language of proof, not

[1996] 1 All ER 1 at 21

suspicion. At this stage more is required than suspicion, however reasonably based.

The next pointer is that the second threshold condition in para (a) is cheek by jowl with the first. Take a case where a care order is sought in respect of a child on the ground that for some time his parents have been maltreating him. Having heard the evidence, the court finds the allegation is not proved. No maltreatment has been established. The evidence is rejected as insufficient. That being so, the first condition is not made out, because there is no factual basis from which the court could conclude that the child is suffering significant harm attributable to the care being given to him. Suspicion that there may have been maltreatment clearly will not do. It would be odd if, in respect of the selfsame non-proven allegations, the selfsame insufficient evidence could none the less be regarded as a sufficient factual basis for satisfying the court there is a real possibility of harm to the child in the future.

The third pointer is that if indeed this were the position, this would effectively reverse the burden of proof in an important respect. It would mean that once apparently credible evidence of misconduct has been given, those against whom the allegations are made must disprove them. Otherwise it would be open to a court to hold that, although the misconduct has not been proved, it has not been disproved and there is a real possibility that the misconduct did occur. Accordingly, there is a real possibility that the child will suffer harm in the future and, hence, the threshold criteria are met. I do not believe Parliament intended that s 31(2) should work in this way.

Thus far I have concentrated on explaining that a court's conclusion that the threshold conditions are satisfied must have a factual base, and that an alleged but unproved fact, serious or trivial, is not a fact for this purpose. Nor is judicial suspicion, because that is no more than a judicial state of uncertainty about whether or not an event happened.

I must now put this into perspective by noting, and emphasising, the width of the range of facts which may be relevant when the court is considering the threshold conditions. The range of facts which may properly be taken into account is infinite. Facts include the history of members of the family, the state of relationships within a family, proposed changes within the membership of a family, parental attitudes, and omissions which might not reasonably have been expected, just as much as actual physical assaults. They include threats, and abnormal behaviour by a child, and unsatisfactory parental responses to complaints or allegations. And facts, which are minor or even trivial if considered in isolation, when taken together may suffice to satisfy the court of the likelihood of future harm. The court will attach to all the relevant facts the appropriate weight when coming to an overall conclusion on the crucial issue.

I must emphasise a further point. I have indicated that unproved allegations of maltreatment cannot form the basis for a finding by the court that either limb of s 31(2)(a) is established. It is, of course, open to a court to conclude there is a real possibility that the child will suffer harm in the future although harm in the past has not been established. There will be cases where, although the alleged maltreatment itself is not proved, the evidence does establish a combination of profoundly worrying features affecting the care of the child within the family. In such cases it would be open to a court in appropriate circumstances to find that, although not satisfied the child is yet suffering

[1996] 1 All ER 1 at 22

significant harm, *on the basis of such facts as are proved* there is a likelihood that he will do so in the future.

That is not the present case. The three younger girls are not at risk unless D1 was abused by Mr R in the past. If she was not abused, there is no reason for thinking the others may be. This is not a case where Mr R has a history of abuse. Thus

the one and only relevant fact is whether D1 was abused by Mr R as she says. The other surrounding facts, such as the fact that D1 made a complaint and the fact that her mother responded unsatisfactorily, lead nowhere relevant in this case if they do not lead to the conclusion that D1 was abused. To decide that the others are at risk because there is a *possibility* that D1 was abused would be to base the decision, not on fact, but on suspicion: the suspicion that D1 *may* have been abused. That would be to lower the threshold prescribed by Parliament.

Conclusion

I am very conscious of the difficulties confronting social workers and others in obtaining hard evidence, which will stand up when challenged in court, of the maltreatment meted out to children behind closed doors. Cruelty and physical abuse are notoriously difficult to prove. The task of social workers is usually anxious and often thankless. They are criticised for not having taken action in response to warning signs which are obvious enough when seen in the clear light of hindsight. Or they are criticised for making applications based on serious allegations which, in the event, are not established in court. Sometimes, whatever they do, they cannot do right.

I am also conscious of the difficulties facing judges when there is conflicting testimony on serious allegations. On some occasions judges are left deeply anxious at the end of a case. There may be an understandable inclination to 'play safe' in the interests of the child. Sometimes judges wish to safeguard a child whom they fear may be at risk without at the same time having to fasten a label of very serious misconduct onto one of the parents.

These are among the difficulties and considerations Parliament addressed in the 1989 Act when deciding how, to use the fashionable terminology, the balance should be struck between the various interests. As I read the Act, Parliament decided that the threshold for a care order should be that the child is suffering significant harm, or there is a real possibility that he will do so. In the latter regard the threshold is comparatively low. Therein lies the protection for children. But, as I read the Act, Parliament also decided that proof of the relevant facts is needed if this threshold is to be surmounted. Before the s 1 welfare test and the welfare 'checklist' can be applied, the threshold has to be crossed. Therein lies the protection for parents. They are not to be at risk of having their child taken from them and removed into the care of the local authority on the basis only of suspicions, whether of the judge or of the local authority or anyone else. A conclusion that the child is suffering or is likely to suffer harm must be based on facts, not just suspicion.

It follows that I would dismiss this appeal. In his judgment, when deciding that the alleged sexual abuse was not proved, the judge referred to the headnote in *Re W (minors) (sexual abuse: standard of proof)* [1994] 1 FLR 419 and the need for a higher than ordinary standard of proof. Despite these references the Court of Appeal were satisfied that the judge applied the right test. I agree. Reading his judgment overall, I am not persuaded he adopted a materially

[1996] 1 All ER 1 at 23

different standard of proof from the standard I have mentioned above. Sexual abuse not having been proved, there were no facts upon which the judge could properly conclude there was a likelihood of harm to the three younger girls.


I have not referred to the wardship cases such as *Re F (minors) (wardship jurisdiction)* [1988] 2 FLR 123, *H v H and C (Kent CC intervening) (child abuse: evidence)* [1989] 3 All ER 740, [1990] Fam 86 and *Re W (minors) (wardship: evidence)* [1990] 1 FLR 203. I do not consider they assist in arriving at the proper meaning of the relevant provisions of the 1989 Act. In the material respects the Act set up a new code. It is to be approached and interpreted accordingly.

Appeal dismissed.


Celia Fox Barrister.

Attachment Marking

The preceding 746 pages is the annexure mentioned and referred to as ATTACHMENT 2b
in the statement of Kenneth Dagley taken on 25/10/2012



Signature of witness to Inquiry



Signature of person witnessing statement

Course Participation Report

Number of recorded course participation occurrences by Child Safety staff per Financial Year (online and offline sessions)

Department of Communities, Child Safety and Disability Services

Child Safety Staff (as below *)

01-Jul-2009 to 23-Oct-2012

as at 23-Oct-2012

Summary by Course Name

Course Name	Training Area	No. of individual course participations per FY				
		FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	Grand Total
Interactive Ochre - Aboriginal and Torres Strait Islander Cultural Awareness - ATSICC	Aboriginal and Torres Strait Islander Cultural Capability			116		116
Interactive Ochre - Aboriginal and Torres Strait Islander Cultural Awareness [Online] - ATSICC	Aboriginal and Torres Strait Islander Cultural Capability	5	65		29	99
Community Recovery - Western Queensland Tropical Low January 2012 REFRESHER - CRU	Community Recovery			10		10
Community Recovery for Queensland Flood and Cyclone deployment - CRU	Community Recovery		106			106
Community Recovery Operational Skills - CRU	Community Recovery	40	47	142	9	238
Community Recovery Operational Skills - Disaster Assistance Financial Forms (Part B) - CRU	Community Recovery	36	45			81
Introduction to Community Recovery - CRU	Community Recovery	6				6
Administrative File Procedures & RecFind (Child Safety) - DM&R	Records & Information Management Training			1		1
Recordkeeping Awareness Forum 2010 - DM&R	Records & Information Management Training	37	29			66
Titling files with the DoCToR - DM&R	Records & Information Management Training	1				1
Using eDocs and the DoCToR - DM&R	Records & Information Management Training		1	1		2
Advanced Public Sector Writing - DOCOTS	Operational Training Services	12				12
Code of Conduct - DOCOTS	Operational Training Services	1				1
COMPLAINTS MANAGEMENT (FRONTLINE) - DOCOTS	Operational Training Services	10				10
Dealing with Complex Clients - DOCOTS	Operational Training Services	15				15
Disaster Connect - DOCOTS	Operational Training Services	1				1
Facilitating Positive Outcomes - DOCOTS	Operational Training Services	3				3
Interview Techniques - DOCOTS	Operational Training Services	3				3
Negotiating: Getting to Yes - DOCOTS	Operational Training Services	8				8
Selection Panel Training - DOCOTS	Operational Training Services	12				12
Time Management Using Microsoft Outlook - DOCOTS	Operational Training Services	4				4
WRITING JOB APPLICATIONS - DOCOTS	Operational Training Services	6				6
NBPRAF-COMSIG TRAINING - DOCSPP	COMSIG (Communities Statistical Information System) Training	1				1
Asset Management - FIN	Financial Training	1				1
Cabcharge - FIN	Financial Training	1				1
Financial Administration and Reporting SESSION 2 - FIN	Financial Training	1				1
Financial Compliance and Awareness for Managers Workshop - FIN	Financial Training	5				5
Financial Fundamentals [Online] - FIN	Financial Training			1		1
Financial Responsibilities [Online] - FIN	Financial Training	1		1		2
Motor Vehicle Logbooks - FIN	Financial Training	1				1
Motor Vehicle Logbooks [Online] - FIN	Financial Training		5	9		14
QGCP Awareness Training - FIN	Financial Training			4		4
SAP General Navigation - FIN	Financial Training	3				3
SAP Purchasing (1/2 day course) - FIN	Financial Training	3				3
SAP Reporting (1/2 day course) - FIN	Financial Training	2				2
Travel Approval and Reimbursement - FIN	Financial Training	1				1
Administrative File Procedures IM	Information Management		2			2
Client File Procedures IM	Information Management		1	1		2
Introduction to Records Management IM	Information Management		35	100	7	142
RecFind Child Safety Training (NEW & CLIENT) IM	Information Management		3		1	4
Recordkeeping Awareness 2012 IM	Information Management			6		6

Course Participation Report

Number of recorded course participation occurrences by Child Safety staff per Financial Year (online and offline sessions)

Department of Communities, Child Safety and Disability Services

Child Safety Staff (as below *)

01-Jul-2009 to 23-Oct-2012

as at 23-Oct-2012

Summary by Course Name

Course Name	Training Area	No. of individual course participations per FY				
		FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	Grand Total
Using Disabilities Recfind (DSQ_Regional) IM	Information Management		1			1
Using eDocs IM	Information Management	1				1
ACP Online Information Session Brisbane Region - L&OD	Learning & Organisational Development			12		12
Building Integrity Project - L&OD	Learning & Organisational Development		2	2		4
Capability and Leadership Framework Workshop - L&OD	Learning & Organisational Development	37	2			39
Code of Conduct - 2007 - L&OD	Learning & Organisational Development	3	30			33
Code of Conduct - 2010 - L&OD	Learning & Organisational Development		105	2		107
Code of Conduct Review - 2011 - L&OD	Learning & Organisational Development		621	437		1058
Corporate Induction (Brisbane) - L&OD	Learning & Organisational Development	4	24	7		35
DOC Induction - L&OD	Learning & Organisational Development	1	233			234
DSQ Code of Conduct - L&OD	Learning & Organisational Development		1	1		2
DSQ Induction - L&OD	Learning & Organisational Development	1	1			2
Emerging Leaders Forum (ELF) - L&OD	Learning & Organisational Development			1		1
Ethical Decision Making 2012 [Online] - L&OD	Learning & Organisational Development			61	26	87
Introduction to Learning Station - Managers - L&OD	Learning & Organisational Development		4			4
Leadership Links - Achievement and Capability Planning - L&OD	Learning & Organisational Development	2	1			3
Leadership Links - Change - L&OD	Learning & Organisational Development	4				4
Leadership Links - Managing Difficult Conversations - L&OD	Learning & Organisational Development		9	8		17
Leadership Links - Team Management - L&OD	Learning & Organisational Development		3			3
Leading Change (2 hours) - L&OD	Learning & Organisational Development			17		17
Managing with Confidence - L&OD	Learning & Organisational Development		46	40		86
New Course Administrators for Learning Station Workshop - L&OD	Learning & Organisational Development			1	1	2
Online ACP Pilot Workshop - L&OD	Learning & Organisational Development			9		9
Practical People Management - 2009 - L&OD	Learning & Organisational Development	7				7
Practical People Management - 2010 - L&OD	Learning & Organisational Development	2				2
Practical People Management - 2011 - L&OD	Learning & Organisational Development			2		2
QSUPER and Voluntary Redundancy Information - L&OD	Learning & Organisational Development				2	2
Queensland Public Sector Young Leaders Conference - L&OD	Learning & Organisational Development			2		2
Regional Facilitator Learning Station Training for CSO ELT - L&OD	Learning & Organisational Development		2			2
Resume Restaurant [Online] - L&OD	Learning & Organisational Development	1	3	2		6
Selection Panel Capability Training - L&OD	Learning & Organisational Development			1		1
Senior Officer Masterclass: Session 2 - L&OD	Learning & Organisational Development		1			1
Senior Officer Masterclass: Session 3 - L&OD	Learning & Organisational Development		1			1
Senior Officer Masterclass: Session 5 - L&OD	Learning & Organisational Development			1		1
Supervision Essentials 2009 - L&OD	Learning & Organisational Development	2				2
Supervision Essentials 2010 - L&OD	Learning & Organisational Development	9				9
Supervision Essentials 2011 - L&OD	Learning & Organisational Development		16	12		28
The Internal Review Officer - L&OD	Learning & Organisational Development		2			2
Webinar: Leading Change - L&OD	Learning & Organisational Development			2		2
Webinar: Managing Stress - L&OD	Learning & Organisational Development			2		2
Foundation Studies - Face to face - LSU	Learning Solutions Unit			35	5	40

Course Participation Report

Number of recorded course participation occurrences by Child Safety staff per Financial Year (online and offline sessions)

Department of Communities, Child Safety and Disability Services

Child Safety Staff (as below *)

01-Jul-2009 to 23-Oct-2012

as at 23-Oct-2012

Summary by Course Name

Course Name	Training Area	No. of individual course participations per FY				
		FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	Grand Total
Foundation Studies - Module 1 - LSU	Learning Solutions Unit			45	4	49
Foundation Studies - Module 2 - LSU	Learning Solutions Unit			38	7	45
Foundation Studies - Module 3 - LSU	Learning Solutions Unit			33	6	39
Foundation Studies - Module 4 - LSU	Learning Solutions Unit			32	5	37
Foundation Studies - Module 5 - LSU	Learning Solutions Unit			30	5	35
Foundation Studies - Module 6 - LSU	Learning Solutions Unit			30	4	34
Foundation Studies - Module 7 - LSU	Learning Solutions Unit			28	4	32
ACMS General Childrens Adoption - OC&T	Organisational Change & Training		1			1
ACMS Role based training - Interountry Adoptions - OC&T	Organisational Change & Training		2			2
ACMS Role based training - Services to Adults - OC&T	Organisational Change & Training		1			1
ACMS Step-parent Adoption - OC&T	Organisational Change & Training		1			1
BIS 3.1 Intake Officer and Support Linker - OC&T	Organisational Change & Training		1			1
BIS Intake Course - OC&T	Organisational Change & Training			1		1
BIS Introduction - OC&T	Organisational Change & Training		1			1
BIS New staff course - OC&T	Organisational Change & Training		1	3		4
BIS Support linker course - OC&T	Organisational Change & Training			3		3
BIS Team Based Offsite - OC&T	Organisational Change & Training			1		1
BIS Team Based Onsite - OC&T	Organisational Change & Training			2		2
DCOIS Section Supervisor course - OC&T	Organisational Change & Training		1			1
DCOIS Youth Worker Accommodation course - OC&T	Organisational Change & Training		1			1
ICMS Child Safety - Regulation of care - Information Session - OC&T	Organisational Change & Training		300	7		307
ICMS Child Safety - Regulation of care - OC&T	Organisational Change & Training			8	1	9
ICMS Child Safety - Regulation of care - One Day course - OC&T	Organisational Change & Training		272	19		291
ICMS Child Safety Court - OC&T	Organisational Change & Training		66	110	11	187
ICMS Child Safety Intake - OC&T	Organisational Change & Training		16	23	6	45
ICMS Child Safety Investigation & Assessment - OC&T	Organisational Change & Training		22	27	3	52
ICMS Child Safety Manage Care Services - OC&T	Organisational Change & Training		2			2
ICMS Child Safety Managers, Team Leaders and Snr Practitioners - OC&T	Organisational Change & Training		9	9		18
ICMS Child Safety New Staff - OC&T	Organisational Change & Training		129	245	43	417
ICMS Child Safety Ongoing Intervention - OC&T	Organisational Change & Training		61	87	18	166
ICMS Child Safety Placement Services Unit - OC&T	Organisational Change & Training		4	1	3	8
ICMS Child Safety Placements and MOCs - OC&T	Organisational Change & Training		39	35	12	86
ICMS Child Safety Read Only - OC&T	Organisational Change & Training		1	3		4
ICMS Child Safety Regulation of care (including PSU) - OC&T	Organisational Change & Training				1	1
ICMS CP Team Based Offsite - OC&T	Organisational Change & Training			7	1	8
ICMS CP Team Based Onsite - OC&T	Organisational Change & Training			17		17
ICMS CP Team Based Onsite - OC&T	Organisational Change & Training		23	33	2	58
ICMS CPE3 ROC2 course - OC&T	Organisational Change & Training			376	12	388
ICMS YJ Court Management CSAHSC course - OC&T	Organisational Change & Training			1		1
ICMS YJ Court Management Information Session - OC&T	Organisational Change & Training			3		3
ICMS YJ Court Management Team Leader Course - OC&T	Organisational Change & Training			1		1

Course Participation Report

Number of recorded course participation occurrences by Child Safety staff per Financial Year (online and offline sessions)

Department of Communities, Child Safety and Disability Services

Child Safety Staff (as below *)

01-Jul-2009 to 23-Oct-2012

as at 23-Oct-2012

Summary by Course Name

Course Name	Training Area	No. of individual course participations per FY				
		FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	Grand Total
ICMS YJ Court Management YJ Officer attending court course - OC&T	Organisational Change & Training			4		4
ICMS Youth Justice - Case Management Enhancements (CME) - OC&T	Organisational Change & Training			1		1
ICMS Youth Justice - Case Management Enhancements Information Session - OC&T	Organisational Change & Training			1		1
ICMS Youth Justice New Staff Case Management - OC&T	Organisational Change & Training		3	2		5
ICMS Youth Justice Read Only - OC&T	Organisational Change & Training			1		1
ICMS Youth Justice SME Information Session - OC&T	Organisational Change & Training			1		1
ICMS Youth Justice Youth Worker - OC&T	Organisational Change & Training		1	1		2
Introduction to ACMS - OC&T	Organisational Change & Training		2	2		4
Microsoft Upgrade - Office 2010 - Excel - Online Microsoft Introductory Overview - OC&T	Organisational Change & Training			1		1
Microsoft Upgrade - Office 2010 - Outlook - Online Microsoft Introductory Overview - OC&T	Organisational Change & Training			2		2
Microsoft Upgrade - Office 2010 - PowerPoint - Online Microsoft Introductory Overview - OC&T	Organisational Change & Training			1		1
Microsoft Upgrade - Office 2010 - Word - Online Microsoft Introductory Overview - OC&T	Organisational Change & Training			1		1
MinCor Key Contacts - OC&T	Organisational Change & Training		8			8
Free half day workshop: Starting Up and Initiating A Project - PPO	Portfolio & Program Office	1	1			2
Free Workshop : Project Management - Plan Your Project - A Practical Approach - PPO	Portfolio & Program Office	2				2
Free Workshop : Streamlined Project Management for Smaller Projects - PPO	Portfolio & Program Office	1				1
Managing Successful Programmes (3 day training course) - PPO	Portfolio & Program Office	1				1
Analysing Policy Documents and Proposals KILT - SCA	Strategic Capability	1				1
Benefit Cost Analysis Principles - SCA	Strategic Capability			1		1
Developing Your Insight and Skills In Problem Solving KILT - SCA	Strategic Capability	5				5
Doing Better with Data - SCA	Strategic Capability			1		1
Effectively Managing Time and Workload KILT - SCA	Strategic Capability	5				5
Elements of Effective Writing - SCA	Strategic Capability			1		1
Executive Correspondence - North Qld - SCA	Strategic Capability			22		22
Executive Correspondence - SCA	Strategic Capability		1			1
Gender Analysis Lunchbox Session - SCA	Strategic Capability		1			1
Influencing and Negotiation with Strategic Partners - SCA	Strategic Capability			1		1
Integrated Ways of Working ? Strategic Thinking - SCA	Strategic Capability			2		2
Optimising Your Personal and Organisational Strengths in a Dynamic Environment KILT - SCA	Strategic Capability	1				1
Policy Development (3) - Consultation - SCA	Strategic Capability			1		1
Project Management Fundamentals (3 day workshop) - SCA	Strategic Capability			1	1	2
Refreshing Grammar Basics, Proof Reading and Editing KILT - SCA	Strategic Capability		1			1
Writing for Policy Officers - SCA	Strategic Capability			1		1
Procurement Awareness Training Workshops SP	Strategic Procurement			1		1
Managing Stressful situations in the workplace (for administrative staff) 2 hours - SWIM	Safety Wellbeing and Injury Management			1		1
Mental Health Awareness in the Workplace (2 hours) - SWIM	Safety Wellbeing and Injury Management	5	18	14	8	45
Mental Health First Aid - SWIM	Safety Wellbeing and Injury Management	8	66	12		86
Psychological Health Safety & Wellbeing - SWIM	Safety Wellbeing and Injury Management			1		1
Resiliency (for Managers & team leaders) (2 hours) - SWIM	Safety Wellbeing and Injury Management			24		24
Self Care in Human Services (2 hours) - SWIM	Safety Wellbeing and Injury Management			74		74
Sustaining yourself in Human Services (2 Hours) - SWIM	Safety Wellbeing and Injury Management			14	7	21

Course Participation Report

Number of recorded course participation occurrences by Child Safety staff per Financial Year (online and offline sessions)

Department of Communities, Child Safety and Disability Services

Child Safety Staff (as below *)

01-Jul-2009 to 23-Oct-2012

as at 23-Oct-2012

Summary by Course Name

		No. of individual course participations per FY				
Course Name	Training Area	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	Grand Total
TMS Training - North & Far North Qld - TMS	Travel Management System		2			2
Peer Support Officer (PSO) Refresher 2011 - WH&S	Internal Employee Support and Wellbeing		5	1		6
Sustaining yourself in Child Protection - WH&S	Internal Employee Support and Wellbeing	8	43			51
Grand Total		332	2553	2498	244	5627

* This report is for Child Safety staff from the following position titles:

- Child Safety Officers
- Child Safety Support Officers
- Court Officers
- Court Coordinatorw
- Team Leaders
- Managers
- Senior Practitioners

Also, please note:

- Participation data reflected is based in individual attendances, not on individuals themselves. ie. one person may have attended three separate sessions so the attendance count is three not one.
- Multiple participations are counted. ie. an attendee who successfully participates in the same course twice on different dates is counted as two recorded participations.

Course Participation Report

Number of recorded course participation occurrences by Child Safety staff per Financial Year (online and offline sessions)

Department of Communities, Child Safety and Disability Services

Child Safety Staff (as below *)

01-Jul-2009 to 23-Oct-2012

as at 23-Oct-2012

Summary by Training Area	No. of individual course participations per FY				
Training Area	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	Grand Total
Aboriginal and Torres Strait Islander Cultural Capability	5	65	116	29	215
Community Recovery	82	198	152	9	441
Records & Information Management Training	38	30	2		70
Operational Training Services	75				75
COMSIS (Communities Statistical Information System) Training	1				1
Financial Training	19	5	15		39
Information Management	1	42	107	8	158
Learning & Organisational Development	73	1107	622	29	1831
Learning Solutions Unit			271	40	311
Organisational Change & Training		968	1040	113	2121
Portfolio & Program Office	5	1			6
Strategic Capability	12	3	31	1	47
Strategic Procurement			1		1
Safety Wellbeing and Injury Management	13	84	140	15	252
Travel Management System		2			2
Internal Employee Support and Wellbeing	8	48	1		57
Grand Total	332	2553	2498	244	5627

* This report is for Child Safety staff from the following position titles:

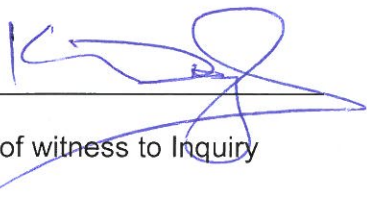
- Child Safety Officers
- Child Safety Support Officers
- Court Officers
- Court Coordinatorw
- Team Leaders
- Managers
- Senior Practitioners

Also, please note:

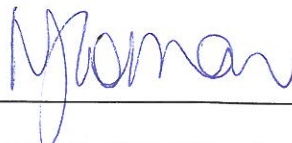
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Attachment Marking

The preceding 6 pages is the annexure mentioned and referred to as ATTACHMENT 3a
in the statement of Kenneth Dagley taken on 25/10/2012

A handwritten signature in blue ink, appearing to be 'K. Dagley', written over a horizontal line.

Signature of witness to Inquiry

A handwritten signature in blue ink, appearing to be 'Myoman', written over a horizontal line.

Signature of person witnessing statement

Course Participation Report

Number of recorded course participation occurrences by Child Safety staff per Finan

Department of Communities, Child Safety and Disability Services

Child Safety Staff (as below *)

01-Jul-2009 to 23-Oct-2012

as at 23-Oct-2012

Count by course participation			
Year	Current Staff	Former Staff	Grand Total
2009-2010	277	55	332
2010-2011	2213	340	2553
2011-2012	2216	282	2498
2012-2013	237	7	244
TOTALS	4943	684	5627

*** This report is for Child Safety staff from the following position titles:**

- Child Safety Officers
- Child Safety Support Officers
- Court Officers
- Court Coordinators
- Team Leaders
- Managers
- Senior Practitioners

Also, please note:

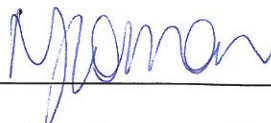
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Attachment Marking

The preceding 1 page is the annexure mentioned and referred to as ATTACHMENT 3b
in the statement of Kenneth Dagley taken on 25/10/2012

A handwritten signature in blue ink, consisting of a large, stylized 'K' followed by a series of loops and a long horizontal stroke.

Signature of witness to Inquiry

A handwritten signature in blue ink, appearing to read 'M. Man' with a stylized, cursive script.

Signature of person witnessing statement

Court Coordinator - Induction

Financial Year	Date	Attendance Numbers	Resources
2010-2011 Financial Year	2 – 4 Aug 2010	12 Frontline Staff	1 x Induction Manual 2010 updated February 2010
	12 – 13 Oct 2010 Condensed Version Run - North & Far North Queensland	12 Frontline Staff on Day 1 / 16 Frontline Staff on Day 2	Marked as attachment 4a
	23 – 25 May 2011	21 Frontline Staff	

Court Coordinator - Conference

Financial Year	Date	Attendance Numbers	Resources
2010-2011 Financial Year	13 – 14 Oct 2010	46 Frontline Staff / 1 Other	Agenda + PowerPoint Presentations Marked as attachment 4b

Court Coordinator Induction Training Program

**This resource package is to provide
information and learning material to support
the Court Coordinator role within Child Safety
Service Centres**

**Prepared by:
Court Services Unit
Updated February 2010**



Queensland Government
Department of Communities

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Organisational Structures
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Preparing Witnesses

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- Example of a Brief to Crown Law
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- Template letter – Section 91B
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- Template letter – Section 69ZK
- Family Court of Australia – Notification
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BACKGROUND

In January 2004 the Crime and Misconduct Commission (CMC) delivered a report "*Protecting Children: An Inquiry into Abuse of Children in Foster Care*" which contained a number of recommendations specially aimed at improving the lives of children and young people at risk in Queensland.

The CMC recommended that the Department of Child Safety consider the advantages of specialist Court Workers.

The "*Blueprint*" identified the strategies, plans and processes from implementing the CMC recommendations in order to improve the child protection system in Queensland. It proposed that dedicated Court Coordinator positions be part of the staff establishment of each Child Safety Service Centre, reporting directly to the manager and identified the duties of a Court Coordinator as including:

- representing the Chief Executive Officer (CE) in local non-contested child protection proceedings;
- resourcing and supporting staff and departmental witnesses to prepare court and Tribunal material;
- quality assuring affidavits, statements and other evidence;
- establishment and maintenance of systems to ensure the efficient management of upcoming court and Tribunal proceedings (eg Court Diary, bring-up systems re filing dates, order expiry dates etc);
- training local staff in court related matters; and
- liaising and networking with key local service providers (eg attending Court Management meetings; liaising with Legal Aid).

It was also noted in the *Blueprint* that most of these functions were not then undertaken by Service Centre staff and therefore the introduction of Court Coordinators would:

- represent and enhancement to the quality of service delivery;
- free-up team leaders and enable them to be dedicated to the core functions of case work and case work supervision.

The *Blueprint* further proposed that Court Coordinators be line managed locally, however, be resourced and supported by the Court Services Unit (CSU) to ensure a skilled specialist workforce and consistency of practice statewide.

Court Coordinators are now key positions within the organisation and are heavily relied upon by Child Safety Service Centre Staff AND specialist Courts and Tribunals.

ROLE OF THE COURT CO-ORDINATOR

The role of the Court Coordinator is to assist Child Safety Service Centre staff and the Director General to meet their legal obligations in courts, tribunals and to adhere to various protocols and conventions and promote quality practice that protects children.

Court Coordinators do this by being involved in the following:

1. Actively participate and assist with:

- Childrens Court mentions
- Coordination and preparation of contested child protection matters
- Coordination and preparation of Children Services Tribunal matters
- Family Law matters
- Appeals
- Warrants
- Interstate matters
- Judicial transfers of orders interstate
- Interstate transfer of proceedings

2. Undertake and assist others to undertake the necessary interviews, assessments and written material to formulate court submissions and provide post court advice which is consistent with departmental policies and practice standards by actively assisting with and participating in:

- Case discussions with internal and external stakeholders
- Considering the evidence
- Providing a quality assurance role – checking and proofing all material prior to lodgement at court
- "Advice in Conferences"
- Liaising with Separate Representatives
- Working with external witnesses
- Participating in discussions with Recognised Entities as required
- Ensuring departmental staff are aware of the requirements of any interim court orders which need to be followed up eg social assessments, medical examinations
- Completing court outcomes in the Integrated Client Management System (ICMS)

3. Provide information and advice on court and Tribunal related matters, including resourcing and supporting staff and departmental witnesses in the preparation of evidence and quality assuring material for court and the Children's Services Tribunal by providing:

- Information and advice on Court and Tribunal matters, including resourcing and supporting staff and departmental witnesses in the preparation of evidence
- Providing quality assurance in relation to TAO, CAO and CPO applications

4. Liaise with a range of internal and external stakeholders including Magistrates, Judges, legal representatives and community organisations to ensure the provision of quality court services at the local level by:

- Being proactive in developing and participating in local court management meetings with key stakeholders involved in the court process
- Actively attempting to resolve local issues at the local level through relationship building with other key stakeholders
- Attending meetings with Legal Aid and other legal representatives as required
- Liaising with CSU in relation to difficult or specific court issues
- Liaising with Separate Representatives
- Providing information and training sessions for key stakeholders
- Attending other forums eg SCAN as required

5. Develop, implement, monitor and maintain office systems in relation to court and Children's Services Tribunal matters to ensure the efficient management of court and Tribunal appearances, timely recording of outcomes and monitoring of relevant trends and issues by:

- Effective use of court diary for matters before the children's court
- Completion of all Client Information / Client Outcome forms
- Developing and coordinating systems to ensure that orders don't lapse without being brought back before the court
- Developing and coordinating systems to ensure timely responses to Children's Services Tribunal matters
- Recording relevant statistics
- Preparing monthly / quarterly reports as required
- Developing systems within the office to record significant decisions

6. Providing a consultancy resource service to department staff and other key local stakeholders in relation to court and Tribunal related matters including the development and delivery of local training initiatives by:

- Mentoring new staff in relation to court processes
- Developing resources
- Identifying local training needs
- Developing and delivering training in relevant areas
- Participating in Management Team Meetings
- Consultation with colleagues throughout the state

7. Monitor and contribute to the development of practice standards, operational guidelines, and review mechanisms to promote effective and efficient departmental services to courts and the Children's Services Tribunal, and actively participate in the Statewide Court Coordinator Network by:

- Actively participating in Zonal meetings



Child Protection Act 1999

INSTRUMENT OF DELEGATION AND AUTHORISATION

I, NORELLE DEETH, Director-General, Department of Child Safety, do now, under the provisions of Sections 149 and 155 of the *Child Protection Act 1999*,

- 1) authorise the person who is from time to time the holder of the office set out in Schedule A below to exercise and perform the powers, authorities, functions and duties conferred, or imposed on me by, or under the provisions specified in Schedule C below;
- 2) delegate to the person who is from time to time the holder of the office set out in Schedule A below, the powers, authorities, functions and duties arising out of me being made a respondent or party to proceedings under the *Child Protection Act 1999*.

SCHEDULE A

Court Coordinator, Child Safety Service Centre

SCHEDULE B

Nil

SCHEDULE C

Child Protection Act 1999, Section 108A.

- I. This Instrument of Delegation and Authorisation revokes any other Instrument of Delegation and Authorisation issued pursuant to the aforementioned Acts and Regulations, held by you.
- II. This Delegation and Authorisation shall be effective from the date of execution of this instrument until revoked.
- III. The exercise of powers, authorities, functions and duties delegated under this instrument are subject to directions issued under my hand from time to time.

Executed at BRISBANE this thirty-first day of January 2008.

Signed

Norelle Deeth
Director-General



Child Protection Act 1999

INSTRUMENT OF DELEGATION AND AUTHORISATION

I, **NORELLE DEETH**, Director-General, Department of Child Safety, do now, under the provisions of Sections 149 and 156 of the *Child Protection Act 1999*.

- 1) authorise the person who is from time to time the holder of the office set out in Schedule A below to exercise and perform the powers, authorities, functions and duties conferred, or imposed on me by, or under the provisions specified in Schedule C below;
- 2) delegate to the person who is from time to time the holder of the office set out in Schedule A below, the powers, authorities, functions and duties arising out of me being made a respondent or party to proceedings under the *Child Protection Act 1999*.

SCHEDULE A

Court Coordinator, Child Safety Service Centre

SCHEDULE B

Nil

SCHEDULE C

Child Protection Act 1999, Section 108A.

- I. This Instrument of Delegation and Authorisation revokes any other Instrument of Delegation and Authorisation issued pursuant to the aforementioned Acts and Regulations, held by you.
- II. This Delegation and Authorisation shall be effective from the date of execution of this instrument until revoked.
- III. The exercise of powers, authorities, functions and duties delegated under this instrument are subject to directions issued under my hand from time to time.

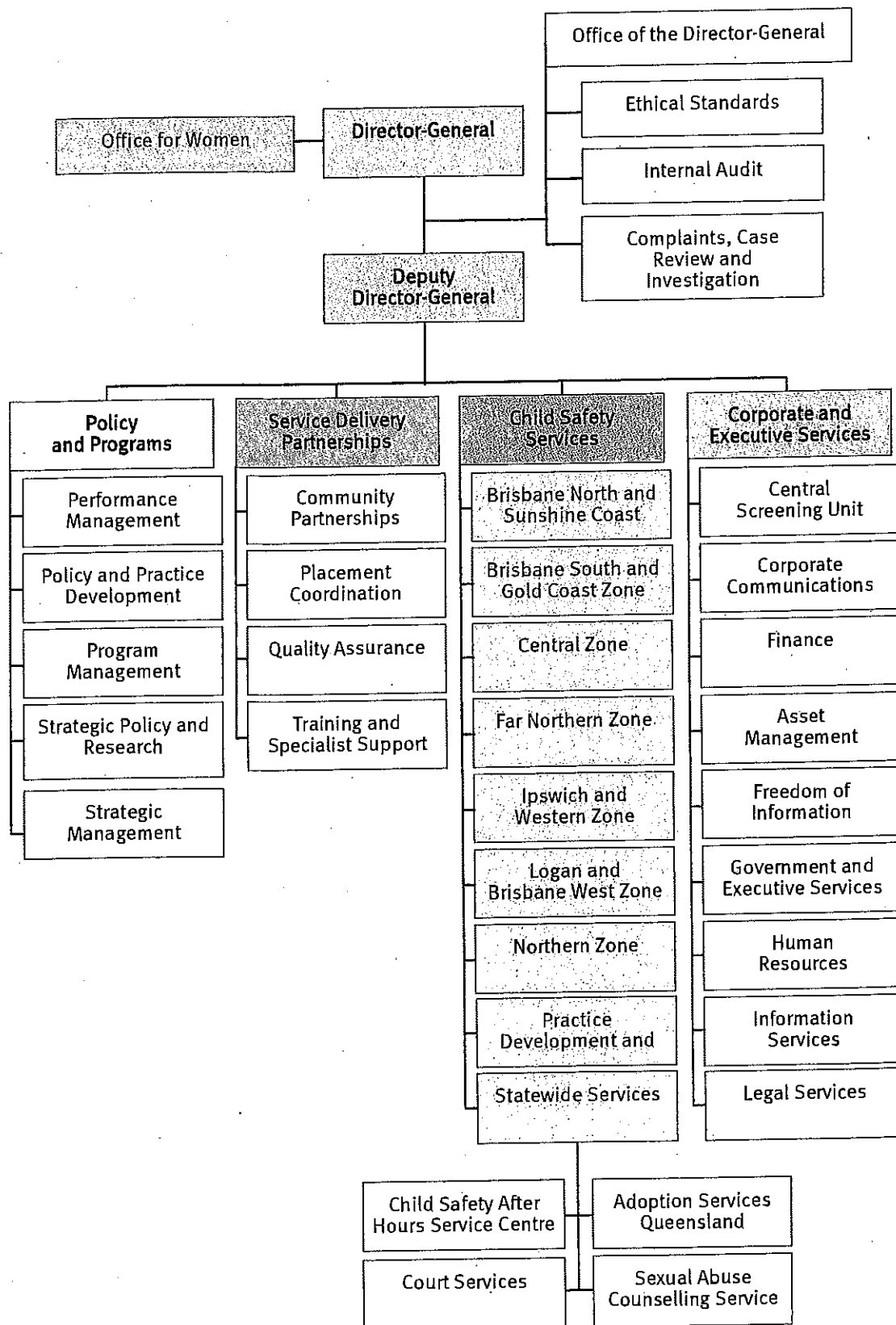
Executed at BRISBANE this thirty-first day of January 2008.

Signed

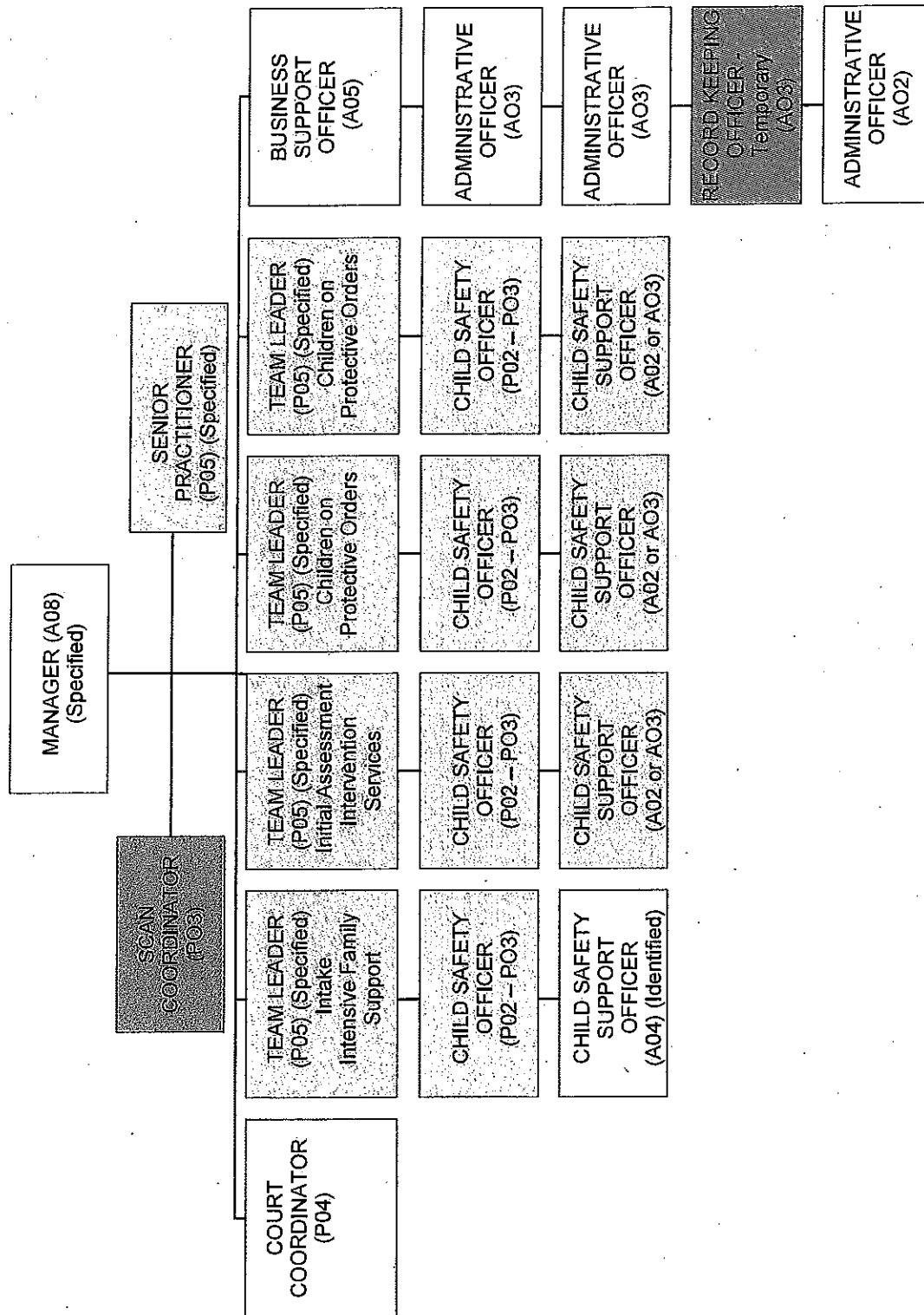
Norelle Deeth
Director-General

Department of Child Safety

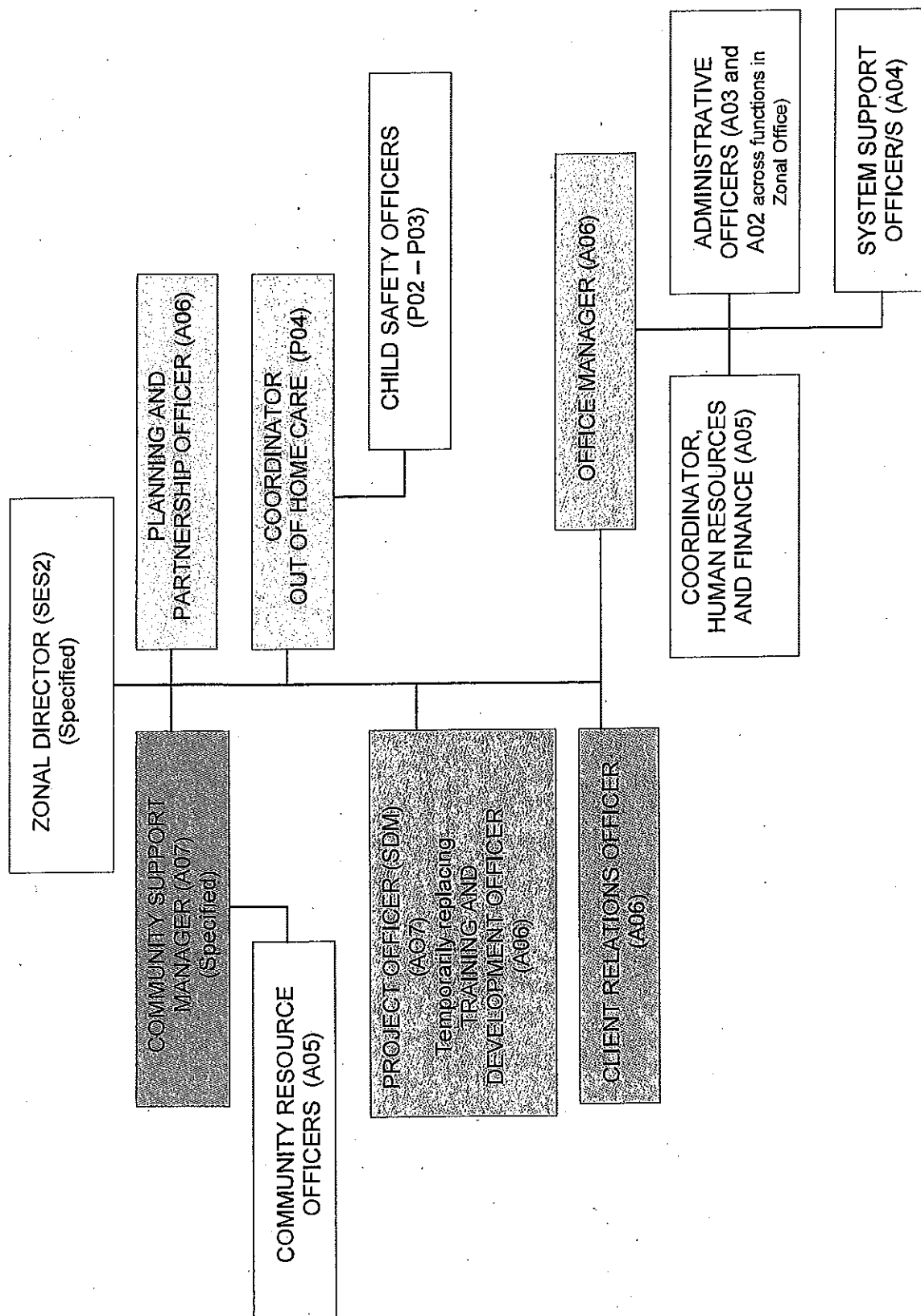
Organisational structure



Child safety service centre (CSC) - example organisational structure



Zonal office - organisational structure





Queensland Government
Department of **Child Safety**

Court Coordinator

Workplace Assessment

NAME	POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment

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Court Coordinator Workplace Competency Assessment

How to Use this Document



Queensland
Government
Department of
Child Safety

This document contains 4 sections:

- Guidelines
- Summary of ongoing competency assessment
- Workplace activities
- Completion certificate.

SECTION 1 – GUIDELINES

These guidelines contain information for Court Coordinators and Service Centre Managers on how to complete the competency assessment document. This includes ways in which evidence can be collected for workplace assessment.

SECTION 2 – WORKPLACE ACTIVITIES

Each workplace activity contains four parts:

- competency development
- assessment guide
- evidence guide
- competency assessment.

PART 1 – COMPETENCY DEVELOPMENT

You are required to document tasks you have completed for each workplace activity by providing examples from current experience and/or relevant training. There should be at least four examples from your work that are different in some way and show a range of experiences.

For example: Disseminate Material and Monitor Outcomes - Task 3 (Practice trends are identified)

- Attended Statewide Court Coordinator Training re: practice trends
- Provide Training relating to practice trends to CSSC staff
- Copies of practice trend reports provided to Management Team Meetings
- Feedback from key stakeholders

PART 2 – ASSESSMENT GUIDE

These pages detail the elements of each workplace activity that must be performed to the standard as outlined in the Department's Practice Guidelines and Policy and Procedures. You must be able to show evidence to the person assessing your performance that you have completed all tasks. Evidence can be provided by the person watching you do the task, by providing examples from case notes, forms, another person verifying that they have seen you perform the elements of the task or by asking you questions.

PART 3 – EVIDENCE GUIDE

Types of evidence that might be collected and the knowledge and skills required are included at the end of each task.

PART 4 – COMPETENCY ASSESSMENT

This section must be signed off by you and your Service Centre Manager or nominated officer.

SECTION 3– COMPLETION CERTIFICATE

Once the Court Coordinator has achieved competence in all workplace activities and these have been signed off by the Service Centre Manager, the back page of this document (completion certificate) is to be returned to the Court Services Unit. The results will be recorded on the Human Resource Management System. A copy of the completion certificate is to be held on the officer's personnel file at the Service Centre. The workplace assessment must be completed within the 12 month period of the completion of the Court Coordinator Induction Training.

If you have any questions about the completion of the Workplace Competency Assessment contact the Court Services Unit in Brisbane on (07) 3235 9859.

Court Coordinator Workplace Competency Assessment

Section 1 - Guidelines



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INFORMATION FOR COURT CO-ORDINATOR AND SERVICE CENTRE MANAGER

COURT CO-ORDINATOR

Congratulations on your appointment to the Court Coordinator role. Over the next 12 month period you will be required to gather evidence to confirm your competence in each of the Workplace Activities within this booklet. Your Service Centre Manager or other nominated staff within your zone will work with you to further develop your knowledge and skills in a range of situations to consolidate what you have learnt in the Court Coordinator Training Program.

Your on-the-job assessment will focus on the following Workplace Activities of the Court Coordinator role:

SERVICE STRATEGY	PEOPLE DEVELOPMENT	SYSTEMS DEVELOPMENT
<ul style="list-style-type: none">▪ Appear in Court▪ Provide a quality assurance mechanism / Monitor Practice Standards▪ Manage evidence collection and preparation for courts	<ul style="list-style-type: none">▪ Delivery of training▪ Liaise with key stakeholders / Provide a consultancy service / Networking	<ul style="list-style-type: none">▪ Disseminate material and monitor outcomes▪ Develop, implement, monitor and maintain office systems

The planning and monitoring of your learning and development needs should take place on a regular basis through supervision and Performance Planning and Review.

During your on-the-job assessment period, you will be observed and assessed against the Workplace Activities, by your Service Centre Manager and the Zonal Court Services Advisor may assist in this process.

At a minimum you will participate in formal workplace assessment meetings with your Service Centre Managers at three monthly intervals. Your Service Centre Manager will outline the preparation that you should undertake prior to the formal assessment meeting. At each meeting, your Service Centre Manager will explain the assessment process, context and purpose of the assessment, the competency tasks to be assessed and the evidence that will be relied upon. After each meeting the outcomes relating to areas of competence to be

achieved and strategies to meet these should be recorded in your Performance and Learning Plan, as well as the negotiated time for the assessment process.

In those instances where you are unable to have your competence confirmed, your Service Centre Manager, in consultation with the Manager Court Services Unit, will develop a program to enable you to gain the necessary competencies.

TIPS FOR COURT CO-ORDINATOR

- Make a time to discuss your Performance and Learning plan with your Service Centre Manager.
- Plan out your 12 months in terms of how you will meet each Workplace Activity and use that as a basis for discussions with your Service Centre Manager.
- Don't let the time slip by, work at this at a steady pace over the 12 months.

SERVICE CENTRE MANAGERS

It is suggested that you meet with each Court Coordinator to map out a plan for the 12 month period. The plan should enable the Court Coordinator to effectively complete the tasks and meet the assessment requirements within the timeframes. You are required to develop and review the Performance and Learning Plan at three monthly intervals based on the Workplace Competency Assessment and Behavioural tools.

You must provide feedback and direction to the Court Coordinator, as required, regarding the assessment outcome or process including guidance on further options. This feedback also needs to include information on the reassessment and review process.

Failure to meet the competencies after opportunities for development and improvement should be appropriately addressed through the performance improvement framework.

The process of workplace assessment needs to take into account any special needs relevant to people from non-English speaking backgrounds, Aboriginal and Torres Strait Islander people, and people with disabilities. Assessment procedures need to be culturally appropriate for the individual and the situation. Reasonable adjustments need to be made to assessment procedures for people with special needs such as people with disabilities.

TIPS FOR SERVICE CENTRE MANAGERS

- Plan your supervision and book times with Court Coordinators in your diary.
- Take a longer-term view about how the Court Coordinator will be able to complete all the Work Activities in the 12 month period.

ASSESSMENT EVIDENCE

Your Service Centre Manager will draw on a number of different strategies in order to assess your competency. These may include:

DIRECT OBSERVATION

The assessor watches or has watched the Court Coordinator do a particular task or procedure, complete a form etc. as part of the Court Coordinator normal day-to-day duties.

WORK SAMPLE

These are products that the Court Coordinator has completed or developed. They may be memoranda, case notes or workplace forms that have been completed by the Court Coordinator.

3RD PARTY OBSERVATION

Your Service Centre Manager may ask your colleagues to verify that you have performed a task or components of a task to the standard required. This should be in writing, or have notes taken by the manager during the conversation.

QUESTIONING

Whilst using any of the above-mentioned strategies, the assessor may ask you questions about the activity or item to determine your underpinning knowledge and understanding. These questions need to be noted, as do the answers given.

GATHERING EVIDENCE

Your Service Centre Manager will establish a plan for gathering sufficient quality evidence about your performance in order to make and substantiate the assessment outcomes. He/she may need to coordinate and brief other personnel involved in this evidence gathering process to ensure that the evidence is valid, reliable and fair. Final judgments about your competence will be based on the evidence and the relevant unit of competency.

You will receive clear and constructive feedback on the assessment decision, including information on ways of overcoming any identified gaps in competency revealed by the assessment. During the feedback session you will have an opportunity to discuss the assessment process and outcome. If reassessment is required you will be given information about this as well as the process to have the assessment decision reviewed.

The outcome of the workplace assessment process will be formally recorded and all records relating to the workplace assessment process will be maintained according to departmental policy and procedures, including confidentiality requirements.

Court Coordinator Workplace Competency Assessment

Section 2 – Summary of Competency Assessment



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SERVICE STRATEGY

WORKPLACE ACTIVITIES		
Workplace Activity	Competent	Not Yet Competent
Appear in Court		
Provide a quality mechanism / Monitor practice standards		
Manage Evidence collection and preparation for courts/tribunal		

PEOPLE DEVELOPMENT

Workplace Activity	Competent	Not Yet Competent
Delivery of Training		
Liaise with key stakeholders / Provide a consultancy service		

SYSTEMS DEVELOPMENT

Workplace Activity	Competent	Not Yet Competent
Disseminate material and monitor outcomes		
Develop, Implement, Monitor and Maintain Office Systems		

Court Coordinator Workplace Competency Assessment

Section 3 - Workplace Activities

WORKPLACE ACTIVITIES

SERVICE STRATEGY

Appear in Court.....	11
Provide a quality assurance mechanism / Monitor Practice Standards.....	17
Manage evidence collection and preparation for courts.....	28

PEOPLE DEVELOPMENT

Delivery of Training.....	42
Liaise with key stakeholders / Provide a consultancy service / Networking...	37

SYSTEMS DEVELOPMENT

Disseminate material and monitor outcomes.....	23
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Court Coordinator Workplace Competency Assessment

APPEAR IN COURT



PART 1 – COMPETENCY DEVELOPMENT

APPEAR IN COURT

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – 'APPEAR IN COURT' (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Attend and represent the Department in court for all matters requiring interface with the Court <i>Comments:</i> _____
[]	Negotiate with the Court as to suitable times to have matters listed for mention <i>Comments:</i> _____
[]	Prepare submissions in consultation with Team Leaders and CSO's <i>Comments:</i> _____
[]	Review material filed <i>Comments:</i> _____
[]	Liaise and consult with Departmental officers <i>Comments:</i> _____
[]	Attend and organise pre-court and post court interviews with parents and/or legal representatives <i>Comments:</i> _____

Method	Tasks
[]	Co-ordinate pre and post court preparation with Departmental staff Comments: _____
[]	Disseminate information to all staff re: court outcomes Comments: _____
[]	Ensure Court documents meet legislative requirements Comments: _____
[]	Participate in case discussions with Child Safety Officers, Team Leaders, Senior Practitioners in relation to any matter requiring intervention in the legal system Comments: _____
[]	Ensure that all relevant court material is lodged within appropriate timeframes Comments: _____
[]	Advise court services in situations where there may be issues and which may have the potential to require the involvement of Crown Law Comments: _____
[]	Participate in forums scheduled to discuss the progress and management of the matter Comments: _____
[]	Liaise with all key stakeholders in relation to court matters when necessary Comments: _____
[]	Make arrangements with Court Services for representation by Crown Law as required Comments: _____
[]	Ensure that departmental staff are aware of the requirements of any interim court orders which need to be followed up during the adjournment Comments: _____

Method	Tasks
[]	<p>Operate within a statutory framework</p> <p>Comments: _____</p>
[]	<p>Prepare legal documents to meet departmental administrative and legal requirements</p> <p>Comments: _____</p>
[]	<p>Communicate legal issues and the technical language it is expressed in to Departmental staff and key stakeholders in appropriate ways</p> <p>Comments: _____</p>

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Court documentation
- ☐ Participation and attendance at court
- ☐ Case discussion minutes
- ☐ Feedback from Team Members, Peers, and Supervisor
- ☐ Appearance in Court has resulted in appropriate child protection orders granted
- ☐ Feedback from Team Members, Peers and Supervisor
- ☐ Feedback from stakeholders and community partners
- ☐ Other
specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Admissible Evidence
- ☐ Burden of Proof
- ☐ Rules of evidence
- ☐ Workings of courts and legal process
- ☐ Understanding of different court jurisdictions and how they interface
- ☐ Detailed understanding of different legislation impacting on statutory work
- ☐ Court hearing procedures
- ☐ Providing constructive feedback to TL's, CSO's and Managers
- ☐ Collation and compilation of court documentation
- ☐ Ability to articulate rationale for decision making
- ☐ Report and Submission Preparation
- ☐ Negotiation
- ☐ Techniques to seek agreement between parties
- ☐ Report Writing
- ☐ Detailed understanding of different legislation impacting on statutory work
- ☐ Legal implications and responsibilities of statutory work
- ☐ Ability to manage crisis, competing demands, priorities and agendas

PART 4 – COMPETENCY ASSESSMENT**APPEAR IN COURT**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity – "APPEAR IN COURT"	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – "APPEAR IN COURT"	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment



PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS

PART 1 – COMPETENCY DEVELOPMENT

PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – ‘**PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS**’ (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

PART 2 – ASSESSMENT GUIDE**PROVIDE A QUALITY ASSURANCE
MECHANISM / MONITOR PRACTICE
STANDARDS**

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Ensure court material filed meets legislative requirements ie S59, S6 Comments: _____
[]	Collation of evidence is co-ordinated with departmental staff Comments: _____
[]	Provide information and advice in relation to what issues/areas need to be canvassed within court material Comments: _____
[]	Ensure that all material is referred to Court Services as soon as a Court Ordered Conference is scheduled Comments: _____
[]	Participate in case discussions regarding Departmental intervention within the court system Comments: _____
[]	Consider evidence that the Department currently has to present before the court and provide feedback Comments: _____

Method	Tasks
[]	<p>Check and proof all material prior to lodging with the court and/or Tribunal</p> <p>Comments: _____</p>
[]	<p>Provide feedback on areas that may require further development or may need to be reworked to both Team Leader and Child Safety Officers</p> <p>Comments: _____</p>
[]	<p>Ensure the court paperwork has been served on all parties prior to court and the appropriate documents in relation to service of this material have been completed</p> <p>Comments: _____</p>
[]	<p>Check interim and final orders that are received from the court to ensure that they are correct and match with the record of the court outcome held by the Department</p> <p>Comments: _____</p>
[]	<p>Liaise with court services regarding the quality of the material</p> <p>Comments: _____</p>
[]	<p>Receive feedback from key stakeholders regarding quality of material ie magistrates, court services, crown law, tribunal</p> <p>Comments: _____</p>
[]	<p>Ensure that regional Court coordinator forums are established</p> <p>Comments: _____</p>
[]	<p>Participate in forums to contribute to practice developments</p> <p>Comments: _____</p>
[]	<p>Share resources and tools that enhance best practice</p> <p>Comments: _____</p>
[]	<p>Ensure court orders and other legal interventions are reflective of the best interests of the child</p> <p>Comments: _____</p>

Method	Tasks
[]	Document all decision making processes Comments: _____
[]	Report on significant court outcomes to Court Services Comments: _____
[]	Prepare court material to meet the standards of Departmental policy and procedures Comments: _____

PART 3 – EVIDENCE GUIDE

PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Quality assurance of court documentation
- ☐ Participation and attendance at court
- ☐ Case Discussion Minutes
- ☐ Feedback from TL's, CSO's, Managers
- ☐ Appearance in Court has resulted in appropriate child protection orders granted
- ☐ Benchmark documents are created for quality assurance purposes
- ☐ Role modelling of positive/negative feedback to improve service delivery
- ☐ Developed system to identify practice trends, gaps in service delivery
- ☐ Inclusion of all relevant stakeholders in decision making forums
- ☐ Case plans are child focussed and reflect best practice
- ☐ Other

specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Admissible evidence, Rules of Evidence, Burden of Proof
- ☐ Workings of court and legal processes
- ☐ Organisational policy and procedures
- ☐ Detailed understanding of different legislation impacting upon statutory work
- ☐ Superior written and interpersonal communication skills
- ☐ Understanding of different court jurisdictions and how they interface
- ☐ Report Writing
- ☐ Techniques to seek agreement between parties
- ☐ Analytical and strategic thinking/planning
- ☐ Providing constructive feedback
- ☐ Report and Submission preparation
- ☐ Understanding of indicators of harm, definitions and dynamics of harm
- ☐ Questioning and clarifying techniques
- ☐ Case management framework, practice standards

PART 4 – COMPETENCY ASSESSMENT

PROVIDE A QUALITY ASSURANCE
MECHANISM / MONITOR PRACTICE
STANDARDS

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager

Tasks were completed and I assess the officer as **competent / not competent** in the Workplace Activity
– **"PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE STANDARDS"**

SIGNATURE**NAME/POSITION****WORKPLACE****DATE****ACKNOWLEDGEMENT – To be completed by the Court Coordinator**

I **agree / disagree** with my assessment result that I am competent in performing the tasks in the
Workplace Activity – **"PROVIDE A QUALITY ASSURANCE MECHANISM / MONITOR PRACTICE
STANDARDS"**

SIGNATURE**NAME/POSITION****WORKPLACE****DATE**

Court Coordinator Workplace Competency Assessment



DISSEMINATE MATERIAL AND MONITOR OUTCOMES

PART 1 – COMPETENCY DEVELOPMENT

DISSEMINATE MATERIAL AND MONITOR OUTCOMES

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – 'DISSEMINATE MATERIAL AND MONITOR OUTCOMES' (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Strategies are identified and employed Comments: _____
[]	Data analysis occurs Comments: _____
[]	Practice trends are identified Comments: _____
[]	Management team meetings are attended Comments: _____
[]	Key stakeholder meetings are attended Comments: _____
[]	Constructive feedback is provided to all departmental staff Comments: _____
[]	Court Outcome Forms are completed Comments: _____

Method	Tasks
[]	<p>Training is developed and delivered to meet learning needs that are identified in the Child Safety Service Centre</p> <p>Comments: _____</p>
[]	<p>Pre and post court procedures are completed and documented</p> <p>Comments: _____</p>
[]	<p>Court diary is used</p> <p>Comments: _____</p>

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Reports on practice trends are generated
- ☐ Management Team Meetings Minutes
- ☐ Feedback from CSO's, TL's, Managers and key stakeholders
- ☐ Completion of Court documentation
- ☐ Training schedule is organised
- ☐ Court diary
- ☐ Court Outcomes Forms
- ☐ Team and Staff Meeting Minutes
- ☐ Case Discussion Minutes
- ☐ Appearance in Court has resulted in appropriate child protection orders granted
- ☐ Other

specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Adult Learning Principles
- ☐ Understanding of recording and reporting strategies
- ☐ Networking, Liaison, Consultation
- ☐ Record Keeping Policy
- ☐ Organisational policy and procedures
- ☐ Ability to use a range of communication strategies (BE SPECIFIC)
- ☐ Providing constructive feedback
- ☐ Collation and compilation
- ☐ Report Writing
- ☐ Analytical and strategic thinking/planning
- ☐ Report and submission preparation
- ☐ Other

specify _____

PART 4 – COMPETENCY ASSESSMENT**DISSEMINATE MATERIAL AND MONITOR OUTCOMES**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager

Tasks were completed and I assess the officer as **competent / not competent** in the Workplace Activity – **“DISSEMINATE MATERIAL AND MONITOR OUTCOMES”**

SIGNATURE**NAME/POSITION****WORKPLACE****DATE****ACKNOWLEDGEMENT - To be completed by the Court Coordinator**

I **agree / disagree** with my assessment result that I am competent in performing the tasks in the Workplace Activity – **“DISSEMINATE MATERIAL AND MONITOR OUTCOMES”**

SIGNATURE**NAME/POSITION****WORKPLACE****DATE**

Court Coordinator Workplace Competency Assessment



MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL

PART 1 – COMPETENCY DEVELOPMENT

MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – 'MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL' (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

PART 2 – ASSESSMENT GUIDE**MANAGE EVIDENCE COLLECTION AND
PREPARATION FOR COURTS/TRIBUNAL**

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

- | | |
|--|---------------------------|
| 1. Direct observation in the workplace | 2. Recent samples of work |
| 3. Third Party Verification | 4. Oral questioning |

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Ensure court material is filed to meet departmental and legislative standards <i>Comments:</i> _____
[]	Provide support to departmental staff to complete court documentation <i>Comments:</i> _____
[]	Review of material is conducted <i>Comments:</i> _____
[]	Guide and direct departmental staff about rules of evidence <i>Comments:</i> _____
[]	Prepare and co-ordinate witnesses and their court material <i>Comments:</i> _____
[]	Ensure referral to court services is completed and co-ordinate management of any appeals filed by parents or the Department <i>Comments:</i> _____
[]	Provide information and advice on Court and Children Services Tribunal <i>Comments:</i> _____

Method	Tasks
[]	<p>Provide resources and support to staff and departmental witnesses in the preparation of evidence</p> <p><i>Comments:</i> _____</p>
[]	<p>Assist Managers and Team Leaders to identify the key issues that could be put to witnesses in the Children's Services Tribunal</p> <p><i>Comments:</i> _____</p>
[]	<p>Prepare and review admissible evidence</p> <p><i>Comments:</i> _____</p>

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Feedback from CSO's, TL's, Managers and key stakeholders
- ☐ Completion of court documentation
- ☐ Appropriate Child Protection Orders are being made
- ☐ Training sessions are provided to improve practice
- ☐ Staff and Team Meeting Minutes
- ☐ Advice in Conference Meeting Minutes
- ☐ Case discussion Minutes
- ☐ Other

specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Superior written and interpersonal skills
- ☐ Providing constructive feedback
- ☐ Admissible evidence, rules of evidence, burden of proof
- ☐ Workings of court and legal processes
- ☐ Understanding of different court jurisdictions and how they interface
- ☐ Organisational policies and procedures
- ☐ Detailed understanding of different legislation impacting upon statutory work
- ☐ Analytical and strategic thinking
- ☐ Questioning and clarifying techniques
- ☐ Consultation and Liaising
- ☐ Other

specify _____

PART 4 – COMPETENCY ASSESSMENT**MANAGE EVIDENCE COLLECTION AND
PREPARATION FOR COURTS/TRIBUNAL**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager

Tasks were completed and I assess the officer as **competent / not competent** in the Workplace Activity
– “**MANAGE EVIDENCE COLLECTION AND PREPARATION FOR COURTS/TRIBUNAL**”

SIGNATURE**NAME/POSITION****WORKPLACE****DATE****ACKNOWLEDGEMENT – To be completed by the Court Coordinator**

I **agree / disagree** with my assessment result that I am competent in performing the tasks in the
Workplace Activity – “**MANAGE EVIDENCE COLLECTION AND PREPARATION FOR
COURTS/TRIBUNAL**”

SIGNATURE**NAME/POSITION****WORKPLACE****DATE**

Court Coordinator Workplace Competency Assessment



DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE

PART 1 – COMPETENCY DEVELOPMENT

DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer.
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – **DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE**
(tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal Study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

PART 2 – ASSESSMENT GUIDE**DEVELOP, IMPLEMENT, MONITOR AND
MAINTAIN COURT SYSTEMS WITHIN THE
CHILD SAFETY SERVICE CENTRE**

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

1. Direct observation in the workplace
2. Recent samples of work
3. Third Party Verification
4. Oral questioning

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Review and/or establish court systems within the Child Safety Service Centre <i>Comments:</i> _____
[]	Record and report court systems data to the Child Safety Service Centre Manager <i>Comments:</i> _____
[]	Ensure use of court diary for efficient documentation of court matters <i>Comments:</i> _____
[]	Review, co-ordinate and/or develop a bring-up system to monitor all court orders and expiry dates including Children Services Tribunal matters <i>Comments:</i> _____
[]	Prepare a monthly and/or quarterly reports on workflow <i>Comments:</i> _____
[]	Use trends analysed from data to improve your own and Child Safety Officer practice <i>Comments:</i> _____

PART 3 – EVIDENCE GUIDE

DEVELOP, IMPLEMENT, MONITOR AND
MAINTAIN COURT SYSTEMS WITHIN THE
CHILD SAFETY SERVICE CENTRE

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Physical photo of filing cabinet and filing system
- ☐ Court diary
- ☐ Excel spreadsheet
- ☐ Practice trend reports
- ☐ Feedback from TL's, Managers and key stakeholders
- ☐ Management Team meeting Minutes
- ☐ Resource/Systems Manual
- ☐ Other

specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ IT systems
- ☐ Document management ie record keeping
- ☐ Organisational policy and procedures
- ☐ Court hearing procedures
- ☐ EXCEL – bring up system
- ☐ Time management and Work Planning
- ☐ Ability to implement systems that are categorised appropriately
- ☐ Application of information technology

PART 4 – COMPETENCY ASSESSMENT**DEVELOP, IMPLEMENT, MONITOR AND
MAINTAIN COURT SYSTEMS WITHIN THE
CHILD SAFETY SERVICE CENTRE**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity – "DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE"	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – "DEVELOP, IMPLEMENT, MONITOR AND MAINTAIN COURT SYSTEMS WITHIN THE CHILD SAFETY SERVICE CENTRE"	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment



LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE/ NETWORKING

PART 1 – COMPETENCY DEVELOPMENT

LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE/ NETWORKING

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – 'LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE / NETWORKING' (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training/Formal Study
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

- | | |
|--|---------------------------|
| 1. Direct observation in the workplace | 2. Recent samples of work |
| 3. Third Party Verification | 4. Oral questioning |

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Identify key stakeholders in child protection <i>Comments:</i> _____
[]	Assist Separate Representatives and report writers commissioned by Sep Rep's to access departmental information as required for court submissions/reports <i>Comments:</i> _____
[]	Participate, establish and/or co-ordinate a local court management meeting <i>Comments:</i> _____
[]	Resolve local issues at the local level <i>Comments:</i> _____
[]	Attend meetings with Legal Aid and other legal representatives as required <i>Comments:</i> _____
[]	Liaise with Court Services in relation to difficult or specific court issues <i>Comments:</i> _____
[]	Attend and participate in SCON meetings <i>Comments:</i> _____

Method	Tasks
[]	Provide information and/or training sessions for key stakeholders <i>Comments:</i> _____
[]	Mentor new Child Safety Officers in relation to court processes, preparation of material <i>Comments:</i> _____
[]	Assist staff to complete the "workplace based competency assessment" in relation to the court components for Child Safety Officers <i>Comments:</i> _____
[]	Develop a resource package for staff to access re: good examples, templates <i>Comments:</i> _____
[]	Liaise and consult with staff members within the Child Safety Service Centre <i>Comments:</i> _____
[]	Support all staff within the Child Safety Service Centre regarding court and legal issues <i>Comments:</i> _____
[]	Attend, participate and/or co-ordinate key stakeholder meetings and/or other forums as required <i>Comments:</i> _____
[]	Build and maintain relationships with key stakeholders <i>Comments:</i> _____
[]	Represent the organisation in a professional manner in external forums <i>Comments:</i> _____

PART 3 – EVIDENCE GUIDE

LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE/ NETWORKING

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Schedule of training programs
- ☐ Feedback from Departmental staff and key stakeholders
- ☐ Resource package for new staff
- ☐ Workplace Base Assessment Document for CSO's re: court work is completed
- ☐ Court Management Meeting Minutes
- ☐ Team Meeting Minutes
- ☐ Case Discussion Meeting Minutes
- ☐ Other

specify _____

KEY KNOWLEDGE AND SKILLS TO BE ASSESSED

- ☐ Knowledge of key stakeholders
- ☐ Organisational policy and procedures
- ☐ Court hearing procedures
- ☐ Detail understanding of child protection policy and procedures including interagency protocols
- ☐ Consultation skills to maintain effective relationships/networking
- ☐ Understanding and appreciation of the role of other party's legal representatives and separate representatives
- ☐ Ability to articulate the rationale for decision making
- ☐ Knowledge of existing networks
- ☐ The values and limitations of networks
- ☐ Negotiation and consultation
- ☐ Analytical and strategic thinking/planning
- ☐ Questioning and clarifying techniques
- ☐ Engagement of staff across diverse backgrounds
- ☐ Interpreting legalese into language understood by a range of people

PART 4 – COMPETENCY ASSESSMENT**LIAISE WITH KEY STAKEHOLDERS /
PROVIDE A CONSULTANCY SERVICE/
NETWORKING****Note:** All evidence must support your assessment recommendation and result**RESULT – To be completed by the Manager**Tasks were completed and I assess the officer as **competent / not competent** in the Workplace Activity
– **“LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE / NETWORKING”****SIGNATURE****NAME/POSITION****WORKPLACE****DATE****ACKNOWLEDGEMENT - To be completed by the Court Coordinator**I **agree / disagree** with my assessment result that I am competent in performing the tasks in the
Workplace Activity – **“LIAISE WITH KEY STAKEHOLDERS / PROVIDE A CONSULTANCY SERVICE /
NETWORKING”****SIGNATURE****NAME/POSITION****WORKPLACE****DATE**

Court Coordinator Workplace Competency Assessment



DELIVERY OF TRAINING

PART 1 – COMPETENCY DEVELOPMENT

DELIVERY OF TRAINING

To be completed by the Court Coordinator

RELEVANT TRAINING AND EXPERIENCE

As evidence of your competency development, record all relevant training and practical experience including the assessment situation.

Date	Brief details of training or experience	Mentor/Observer
/ /		
/ /		
/ /		
/ /		

CHECKLIST OF EVIDENCE

Tick each box that is relevant

Use the following as a checklist of the evidence you can provide which will support your competence in Workplace Activity – 'DELIVERY OF TRAINING' (tick each box that is relevant)

<input type="checkbox"/>	Reading/Self Assessment	<input type="checkbox"/>	Training
<input type="checkbox"/>	Practical Experience in the Workplace	<input type="checkbox"/>	Verified by Others
<input type="checkbox"/>	Practical Experience in Training (role play)	<input type="checkbox"/>	Work Samples
<input type="checkbox"/>	Other, specify		

Each task will be assessed in accordance to the standard provided in the Department's policies and procedures manual.

Methods of assessment for each task:

- | | |
|--|---------------------------|
| 1. Direct observation in the workplace | 2. Recent samples of work |
| 3. Third Party Verification | 4. Oral questioning |

Mark each task according to the methods of assessment used

e.g. [1, 3]

Method	Tasks
[]	Identify learning and training needs of both Departmental staff and key stakeholders Comments: _____
[]	Develop and deliver local training initiatives with both children's court and tribunal Comments: _____
[]	Participate in Management Team meetings to discuss training needs in relation to court process Comments: _____
[]	Build capacity within the local CSSC for other departmental staff to undertake the role of Court Coordinator as required. Comments: _____
[]	Develop and act on outcomes in your Performance and Learning Plan Comments: _____
[]	Review delivery of training session Comments: _____

Method	Tasks
[]	Facilitate group and individual learning <i>Comments:</i> _____
[]	Promote training opportunities ie internal or external <i>Comments:</i> _____
[]	Develop and gather training resources/materials <i>Comments:</i> _____
[]	Provide opportunities for practice and feedback <i>Comments:</i> _____
[]	Evaluate and report on training and it's impacts on practice <i>Comments:</i> _____

EVIDENCE CHECKLIST

Tick evidence that has been collected as relevant

- ☐ Calendar of training programs both
- ☐ Evaluations of training completed
- ☐ Feedback from CSO's, TL's and Managers
- ☐ Feedback from key stakeholders
- ☐ A range of CSSC staff are attending Children's Court
- ☐ Performance and Learning Plans
- ☐ Management Team Meeting Minutes
- ☐ Training Material and Resources
- ☐ Other

specify _____**KEY KNOWLEDGE AND SKILLS TO BE ASSESSED**

- ☐ Understanding of the Adult Learning Principles
- ☐ Organisational policies and procedures
- ☐ Knowledge of training delivery and methods
- ☐ Ability to manage crisis, competing demands, priorities and agendas
- ☐ Provide constructive feedback
- ☐ Designing tasks and activities to facilitate learning
- ☐ Facilitate individual and group learning
- ☐ Active listening
- ☐ Ability to identify learning needs
- ☐ Engagement of staff from diverse backgrounds
- ☐ Knowledge of different learning styles

PART 4 – COMPETENCY ASSESSMENT**DELIVERY OF TRAINING**

Note: All evidence must support your assessment recommendation and result

RESULT – To be completed by the Manager	
Tasks were completed and I assess the officer as competent / not competent in the Workplace Activity - 'DELIVERY OF TRAINING'	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

ACKNOWLEDGEMENT - To be completed by the Court Coordinator	
I agree / disagree with my assessment result that I am competent in performing the tasks in the Workplace Activity – 'DELIVERY OF TRAINING'	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Court Coordinator Workplace Competency Assessment

Section 4 - Completion Certification



COMPETENCY ASSESSMENT - COMPLETION CERTIFICATE

(For all workplace activities)

TO BE COMPLETED BY THE COURT CO-ORDINATOR	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

TO BE COMPLETED BY THE CHILD SAFETY SERVICE CENTRE MANAGER	
I certify that I have conducted the assessment of the Team Leader named above to the standards specified in this assessment document.	
<input type="checkbox"/> Competent <input type="checkbox"/> Not yet competent (In all workplace activities)	
Reason: (if not yet competent)	
SIGNATURE	NAME/POSITION
WORKPLACE	DATE

Original of this certificate to be retained by the Assessee

Forward a copy of this certificate by fax or mail to:

Ms Bernadette Smith
Manager
Court Services Unit
Department of Child Safety
Children's Court Building
30 - 40 Quay Street
BRISBANE QLD 4000
Fax: (07) 3235 9851

OVERVIEW OF THE COURT SERVICES UNIT (CSU)

The Court Services Unit sits under the Statewide Services Branch and has responsible for the following program areas:

Child Protection:

- Represents the Director-General in all child protection matters in the Brisbane Children's Court, the Children's Court of Queensland, District Court and the Supreme Court;
- Trains, consults and advises on matters concerning the management of child protection cases before the courts;
- Coordinates all contested child protection matters across the state;
- Coordinates all appeals across the state;
- Coordinates Crown Law representation and advice in case related matters; and
- Provides quality consultation on child protection legal system interface.

Adoptions:

- Manage the dispensation of Adoption consents.

Queensland Civil and Administrative Tribunal matters (Children Services Tribunal):

- Promotes accountable and transparent decision making through the coordination of reviews to the Queensland Civil and Administrative Tribunal (Children Services Tribunal).

Interstate Liaison:

Court Coordinators or Child Safety Officers may require the services of an Interstate Liaison Officer (ILO) to:

- request an interstate jurisdiction to complete an initial assessment
- notify an interstate jurisdiction about child protection concerns in relation to a child/family living interstate
- assess a prospective carer who resides interstate
- assess a parent who resides interstate, for the purposes of contact visits or to consider reunification

- request an interstate jurisdiction to undertake casework with a child/young person and their carer, if the child/young person is under a QLD CPO and is residing interstate
- transfer an Order to an interstate jurisdiction, where a child/young person is under a QLD CPO and residing interstate
- locate an interstate placement for a child/young person under a QLD CPO
- obtain a warrant for the return of a child/young person under a QLD CPO from interstate
- obtain a child protection history or criminal history check for a family being assessed or a carer applicant who has resided in NZ.

Each state and territory has an ILO with protocols in place around requests for assessments, transfers etc.

Any requests from interstate jurisdictions should come to CSSC's **via the Queensland ILO**. If you receive any requests directly from interstate, you should check whether they have been in contact with their state ILO, and also advise the QLD ILO of the request.

Any requests for **interstate child protection histories** should be directed to **Data Management Services**.

Checks of criminal histories, including interstate, should be done using the Request for criminal history form.

Please refer to:

- **The Transfer of Orders table**
- **The Request for Interstate Transfer document and**
- **The Protocol of Transfers document**

Subpoena Team

- Process subpoenas for all departmental documents;
- Carry responsibility for ensuring that an appropriate response is arranged in order for the material to be produced on time to the court or for the subpoena to be contested.

Family Law:

- Coordinate departmental interface with the Family Court of Australia and the Federal Magistrates Court.
- Trains, consults and advises on matters concerning the management of child protection cases before the Family Court of Australia and Federal magistrates Court;
- Coordinates Crown Law representation and advice in case related matters; and
- Provides quality consultation in relation to child protection matters within the Family Court of Australia and Federal magistrates Court.

International Child Abduction:

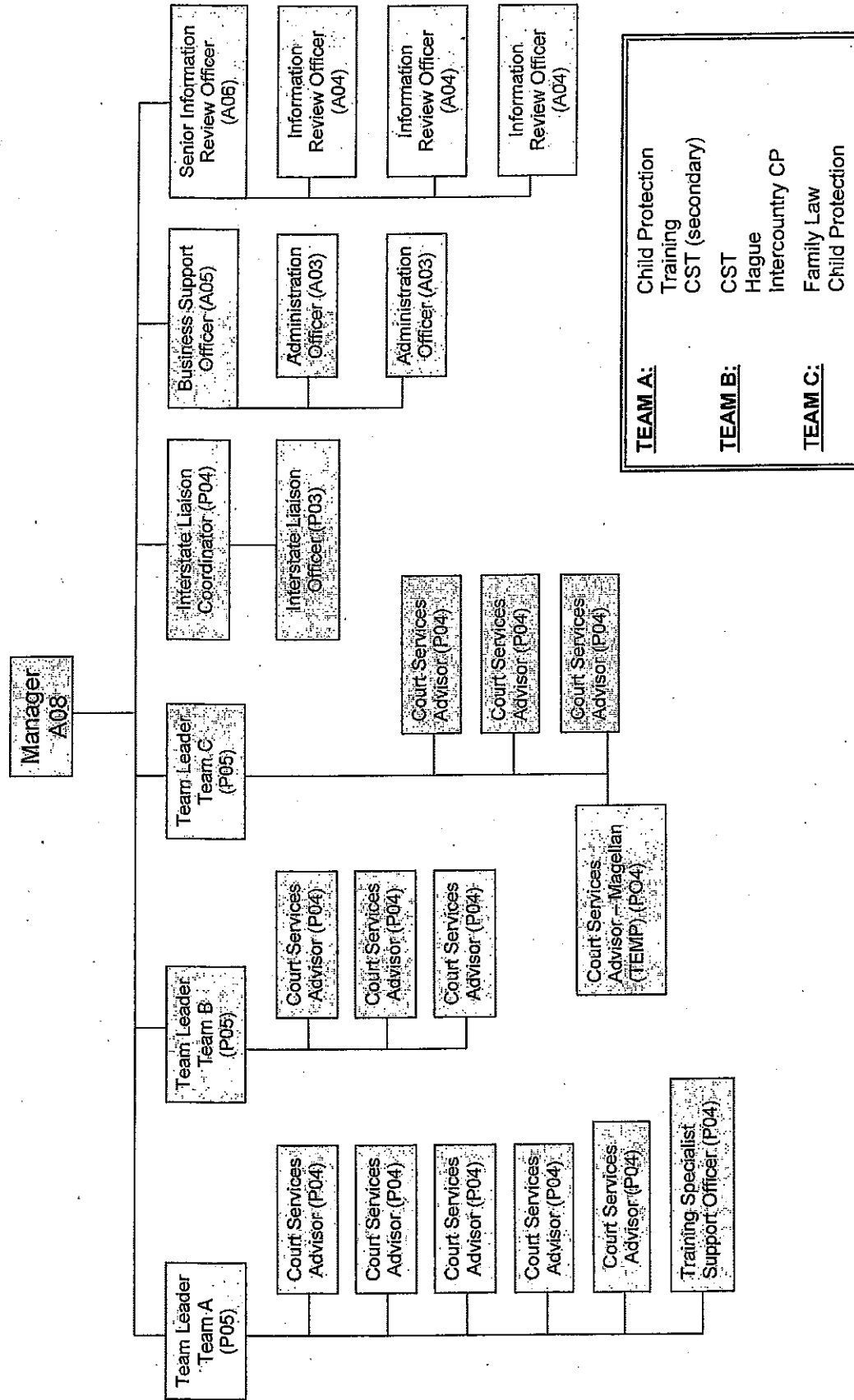
- Act as the State Central Authority in the Hague Convention of the Civil Aspects of International Child Abduction.

International Child Protection Matters:

- Coordinate requests in relation to international child protection matters.

The Court Services Unit also provides quality consultation to Child Safety Service Centre's on any legal aspects in relation to the above jurisdictions.

COURT SERVICES (CHILD SAFETY) UNIT



ROLE AND RESPONSIBILITIES OF THE COURT SERVICES UNIT

The Court Services Unit (CSU) coordinates the provision of the legal services of Crown Law who are engaged to advise and represent the Child Safety Service Centres in connection with contested matters before the Courts.

Therefore it is important that CSU obtains AS SOON AS POSSIBLE from the Child Safety Service Centres the dates for mentions, Court Ordered Conferences and Hearings at which Crown Law will be required.

The CSU provide instructions at the earliest possible date for Advice in Conferences, Court Ordered Conferences and Hearings.

The purpose of the Advice in Conference is to record and clarify, where necessary, the use of various evidence; time-frames for the preparation of evidence; and raise any other difficulties that may be noteworthy either in obtaining the evidence or in the conduct of the Hearing.

After the Advice in Conference, the CSU confirms with the Court Coordinator, Applicant and Team Leader the material sought and the timeframes for the supply of the material in email or letter and further liaises with the office to ensure that the material is prepared on time.

If material is filed late, the CSU liaise with the Child Safety Service Centre and Crown Law to negotiate an appropriate filing strategy to ensure that relevant material is before the court.

The CSU also liaise with the Child Safety Service Centre for the purposes of settling any affidavit material and where necessary seeking Crown Law assistance in the same; assisting the Court Coordinator in making arrangements for witnesses for Hearings together with dates and times for specific witnesses; to liaise with witnesses in relation to their entitlements AND to advise Crown Law of any changes in hearing dates.

The Child Safety Service Centre is responsible for providing all relevant information to Court Services and Crown Law for the purposes of the conduct of contested hearings.

Relevant staff MUST attend any Advice in Conference, providing the information referred to above together with alternative sources of information including expert information where required.

The Court Coordinator and the applicant are to assist to coordinate witnesses in conjunction with Court Services, in respect of preparation and filing of affidavits along with the preparation and service of subpoenas on witnesses to be had for the Hearing.

INTERFACE BETWEEN COURT SERVICES AND COURT COORDINATORS:

Once the Child Safety Service Centre has informed Court Services of a hearing date, the matter is then allocated to a Court Services Adviser. The Court Services Adviser then contacts the Court Coordinator and commences the consultation and coordination between the Child Safety Services Centre and Crown Law in relation to that specific case.

Furthermore, two Court Services Advisers are allocated to an Intake Roster to respond to any general enquiries, however Court Coordinators are encouraged to contact their Zonal Court Services Advisor at the first instance in relation to obtaining advice.

COURT COORDINATOR ZONAL LINKS

Each Court Services Adviser is allocated to particular Zonal areas including:

Logan and Brisbane West
Ipswich and Western Area
Brisbane South and Gold Coast
Brisbane North and Sunshine Coast
Central
Northern and;
Far Northern

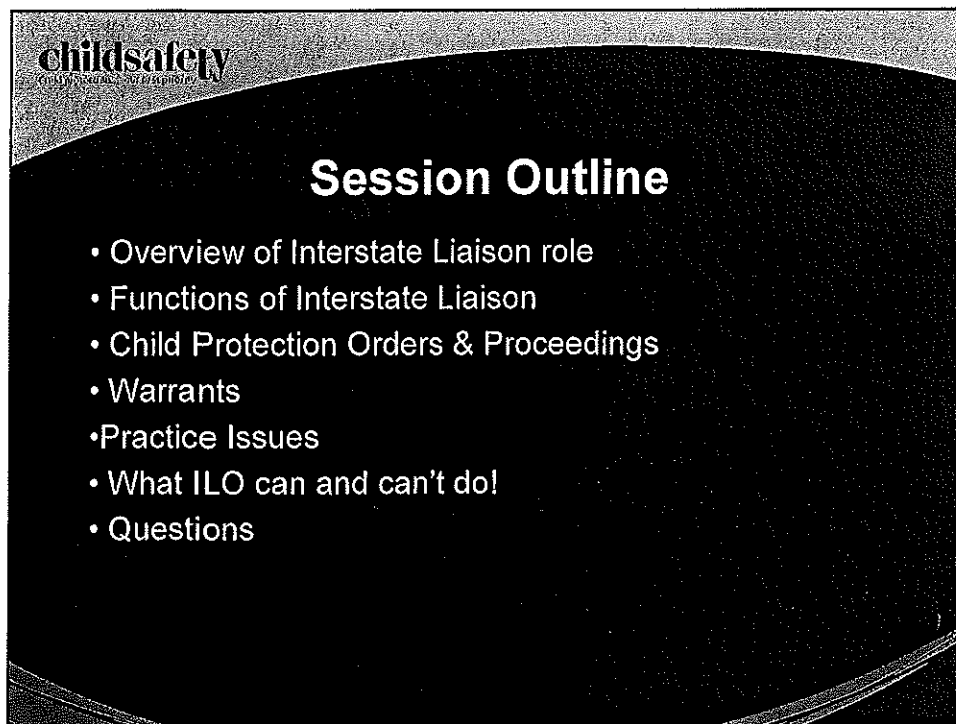
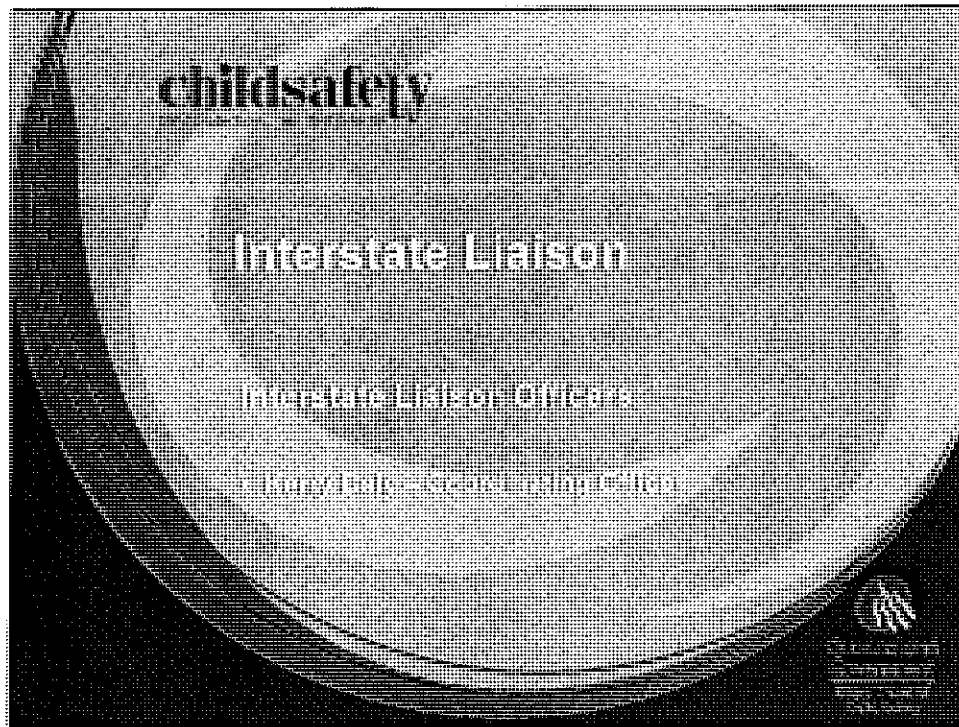
Each Court Services Adviser is responsible for arranging a meeting with all the Court Coordinators that sit in positions in the Child Safety Services Centre in each Zone. These meetings are generally held every 6-8 weeks.

The purpose of these meetings is to have a forum where Court Coordinators can discuss practice issues, receive assistance and support from CSU and their colleagues on a regular basis, discuss complex cases as a professional development strategy and to give and receive any updated on legislation, appeal decisions, policy and practice.

TRAINING AND CONFERENCES

The Court Services Unit delivers Court Coordinator Induction Programs four times a year.

It also organises the annual Court Coordinator Conference.



Overview of Interstate Liaison Officers Role

- Court Services Unit
- Role:
 - Guide and process Interstate requests
 - Assistance and advice
- Liaise with various stakeholders (e.g. CSSC Staff, other ILO's)
- Practice guided by:
 - *Protocol for the Transfer of Care & Protection Orders & Proceedings and Interstate Assistance 2007.*
 - *Chapter 7, Child Protection Act 1999*
 - *Chapter 17, Child Safety Practice Manual*
 - *The Warrants Protocol 2000*

Functions of the ILO

- Interstate requests:
Tasks we can request Interstate and NZ Departments to assist with:
 - Alerts
 - Notifications
 - Assessments
 - Locating a placement
 - Casework Tasks/Assistance
 - Transfer of order/proceedings
 - Warrants

INTERSTATE TRANSFER INFORMATION

Transfer of Orders Table

Request for Interstate Transfers Document

Protocol for the Transfer of Care and Protection Orders
and Proceedings and Interstate Assistance August 2007

Transfer of Orders from QLD to another State:

[illegible]



Queensland
Government

Department of Child Safety

REQUEST FOR INTERSTATE TRANSFER

TRANSFER OF GUARDIANSHIP FROM QUEENSLAND TO NEW SOUTH WALES

Section 207 and 208 *Child Protection Act 1999*

• **Child/Young Person Details:**

Family Name	
Given Names	
Date of Birth	
Place of Birth	
Type of Child Protection Order (do not use acronyms eg STGCE)	
Date of Child Protection Order	
Date of Expiry of Order	

The abovenamed child is currently under an order placing him/her in the Guardianship of the Chief Executive, pursuant to Section 59 of the ***Child Protection Act 1999***

I,, Manager of the Child Safety Service Centre, Department of Child Safety, request the transfer of Guardianship administratively to the Department of Community Services, NSW, pursuant to the relevant section of the Queensland Child Protection legislation and under s 231W(1) of the ***Children and Young Persons (Care and Protection) Act 1998 (New South Wales)***

Signed at this day of 200

Manager,CSSC

REQUEST FOR INTERSTATE TRANSFER OF CHILD PROTECTION ORDER

(To be used for: Administrative transfers of child protection orders under sections 207 & 245
Judicial transfers of child protection orders under section 214
Judicial transfers of child protection proceedings under section 228)

Originating State

Receiving State

1. Interstate Details:

Name of Carer:.....

Relationship to child:.....

Address:.....
.....

Phone:.....

Date child moved to placement with this carer

2. If you are seeking to transfer Current Proceedings, (Child Protection Act 1999 s 228), please give details

.....
.....
.....

3. Network of family members/other significant people

Name	Age/dob	Address	R'Ship	Contact Arrangements
			mother	
			father	

4. If transfer is between Australia and New Zealand:

- ☐ **Nationality:**.....
- ☐ **Residency:**.....
- ☐ **Citizenship:**.....

5. Is the child indigenous?

No ☐

Yes ☐

Aboriginal ☐

Torres Strait Islander ☐

Maori ☐

Other eg Vietnamese, Samoan ☐

-
- ☐ **Has any organisation with expertise in the child welfare matters of the relevant indigenous community been involved with the child?**

Yes ☐

No ☐

If yes, name of organisation and phone contact

.....

(Please attach relevant reports)

- ☐ **Has the organisation expressed any views about the placement/proposed transfer of the order? (Please provide relevant reports)**

.....

.....

.....

6. Have all relevant appeal or review periods expired eg Children Services Tribunal?

Yes ☐

No ☐

If no, give details:

.....

.....

7. Please provide the following information as an attachment—

- ☐ A - Genogram of the child's family, including significant people in the child's life.
- ☐ B - A signed, stamped copy of the child protection order – please ensure the order shows its expiry date.
- ☐ C - Originals of consents, countersigned by the Manager: parents, child over 12 years, carers if child has moved from Queensland with the carer. If a parent cannot be located, please indicate on the consent form the attempts made to locate the parent/s or obtain the consent
- ☐ D - Copy of current case plan including maintaining of cultural links (see Q 6) and an assessment of the child's protective needs. Please note: If the goal of the case plan is reunification and the parent does not live in NSW, you will need to provide details of how reunification will be achieved.
- ☐ E - Copy of the carer assessment report to facilitate payment of the carer by the interstate office once the order has been transferred.

8. Please provide the following information by typing directly onto this document

- ☐ A - Summary of child protection history and Departmental involvement
- ☐ B - Indications that child's interstate placement is stable – please provide details as appropriate:
 - ☐ Regular contact by caseworker with carers/child
 - ☐ Carer meets child's emotional/physical/psychological needs

- ☐ **C - Specific information regarding the child eg:**

- (Please attach all relevant current reports as available)**

Please list here all reports that are included with this request.

.....

- ☐ **D -Reasons for proposed transfer of child protection order**
- ☐ **E -Arrangements for the birth family, extended family or relevant others to maintain contact with the child.**
- ☐ **F - Any known youth justice criminal proceeding or order which relates to the child and is still current.**
- ☐ **G -Details of current carer payments**

Fortnightly fostering payments	\$
Other regular fortnightly payments	\$
Is child in receipt of High Support Needs Allowance or other additional payments given child's individual needs. If yes, please give details of amount paid and enclose a copy of the latest application for allowance funding, outlining child's requirements	Yes No
Any other child related costs met	

by the Department

- ☐ H – Details of the proceedings at the time the current order was granted:

Party to the proceedings	Name & Address	Legal Rep Yes/No	Contact Details for Legal Representation (name/address/phone/fax/email)
Mother	As above		
Father	As above		
Child	As above		
Applicant (e.g. CSO)			
Other (R'ship to child)			

Signature of Manager:
(Delegated Officer)

Date:

Signature of Interstate Liaison Officer:

Date:

Protocol for the Transfer of

Care and Protection Orders

and Proceedings

and Interstate Assistance

13 August 2007

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Preamble

The Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance (the Protocol), provides the framework for parties to work together in order to promote the interests and well-being of children. Parties recognise the desirability of working collaboratively as fundamental to achieving this goal. The Protocol is therefore based on the principle that all parties to it operate on a basis of mutual respect and co-operation for the benefit of the children to whom it applies.

Introduction

1. Purpose of Protocol

The purpose of this Protocol is to:

- a) Improve the provision of care and protection services to children and young people who
 - i. are the subject of a child protection order or proceeding which is proposed to be transferred interstate; or
 - ii. are the subject of a child protection intervention where there is a proposal for the child to move interstate, without involving the transfer of an order.
- b) Provide guidance for Departmental workers and improve the co-ordination of the operations of the relevant Department to facilitate:
 - i. the protection of children in need of care; and
 - ii. the promotion of the best interests of such children.
- c) Provide for cooperation between jurisdictions to facilitate the care and protection of children and young people.

2. Legislative Basis

In each participating State the basis for transfer of Orders and Proceedings are contained in the relevant child protection legislation of that State. This Protocol should be read in conjunction with provisions contained within each State's respective legislation and the processes contained therein be adhered to.

3. Definitions

For the purposes of this Protocol:

"Child" means children and young people under the age of 18;

"Child Welfare Law" means State child protection legislation;

"Co-ordinating Interstate Liaison Officer" has the meaning given to it in paragraph 5 below;

"Department" means a State Department, Ministry or agency however described which has responsibility for administering the child protection legislation of the State or has officers with such responsibility;

"Indigenous child" means a child identified as being of Aboriginal or Torres Strait Islander ancestry in Australia, and Māori ancestry in New Zealand

"Interstate Liaison Officer" has the meaning given to it in paragraph 5 below;

"National Co-ordinating Interstate Liaison Officer" has the meaning given to it in Paragraph 6 below;

"receiving State" means the State which receives a request for:

- a) transfer of child protection order;
- b) transfer of child protection proceeding;
- c) transfer of child without transferring orders (casework transfer);
- d) assessment
- e) assistance in locating a placement

from the sending State;

"sending State" means the State which sends a request for:

- a) transfer of child protection order;
- b) transfer of child protection proceeding;
- c) transfer of child without transferring orders (casework transfer);
- d) assessment;
- e) assistance in locating a placement

to the receiving State;

"Senior Officer" means a very senior officer nominated by the Chief Executive Officer or equivalent of a Department as the Senior Officer for the purpose of this Protocol;

"State" means New Zealand or any State or Territory of Australia and "interstate" has the corresponding meaning.

"Welfare benefits" includes Australian Commonwealth and New Zealand government supports, payments, entitlements and other benefits.

"Whānau, hapū, iwi" are New Zealand Māori words to describe family groups:

- Whānau is a wider concept than just immediate family made up of parents and siblings. Whānau links families to a common ancestor/tīpuna.
- Hapū is a sub-tribe or cluster of family/whānau groups that have a common ancestor.
- Iwi is a tribal group composed of many hapū led by an Ariki or paramount chief.

4. *Operating Procedures*

The Operating Procedures exist as a separate document to provide support and guidance for implementation of this protocol. They are guidelines for practice and are not enforceable provisions.

The operating procedures may be varied from time to time as necessary.

Interstate Liaison Structure

5. *Interstate Liaison Officers*

Each State shall appoint one or more officers who are referred to as "**Interstate Liaison Officers**". If there are a number of Interstate Liaison Officers in a State, there must be an officer who has the role of **Co-ordinating Interstate Liaison Officer**.

If Interstate Liaison Officers are appointed for distinct regions, a reference to the Interstate Liaison Officer of a State shall be read as the Interstate Liaison Officer of the relevant region.

The Interstate Liaison Officer, or if there is more than one Interstate Liaison Officer, the Co-ordinating Interstate Liaison Officer, is responsible for:

- a) ensuring that paragraph 7 is complied with in relation to his or her State; and
- b) promoting knowledge of, and compliance with, this Protocol.

6. *National Coordinating Interstate Liaison Officer*

The National Coordinating Interstate Liaison Officer has the role of compiling, maintaining and distributing on a regular basis:

- a) The Interstate Liaison Officer contact register
- b) The register of Senior Officers
- c) Any other information which may be of assistance to the other Interstate Liaison officers

The National Coordinating Interstate Liaison Officer will be appointed annually from the membership of the respective state Interstate Liaison Officers.

7. *Providing Information Regarding Officers*

Each State must provide the following information to the National Coordinating Interstate Liaison Officer:

- a) the contact details of the Interstate Liaison Officer(s), and, if applicable, the National Co-ordinating Interstate Liaison Officer;
- b) details of the Senior Officer or officers of each respective state; and
- c) if any of the above details change, the new details within 10 working days of the change.

General Provisions for the Interstate Transfer of Child Protection Orders and Proceedings

8. *General Principles*

Decisions regarding the interstate transfer of child protection orders and proceedings and the interstate placement of children will be made in accordance with each State's interstate transfer legislative provisions and case planning principles and include the following principles:

- a) The best interests of the child are paramount.
- b) It is the responsibility of the sending State to ensure that all legislative requirements necessary for the transfer of child protection orders or proceedings from that state are complied with for the purpose of the transfer, including required consents.
- c) Delay is contrary to the interests of a child and should, where possible, be minimised. Accordingly, all requests and responses must be made promptly. As a general observation, a transfer of an order and all associated tasks would occur within 6 months of a child being placed interstate and would often be done more quickly.

- d) Settled care and protection arrangements are considered to be in the best interests of a child and to this end the orders to be transferred should, dependent on the specific needs of the child, have not less than 6 months remaining before expiry of such order.
- e) Planning an interstate placement, where the child is subject to a child protection order, should include the involvement of the receiving State prior to the interstate placement.
- f) A child protection order should be enforceable and effective pursuant to the child protection legislation of the State where the child resides.

9. *Relocating Children Between New Zealand and Australia: Immigration Officials*

Where a State is considering relocating a child between New Zealand and Australia, the sending State must contact the Immigration Officials of the receiving State and seek information regarding any immigration issues/ entitlement to welfare benefits that relate to the child prior to:

- a) relocating a child between New Zealand and Australia; or
- b) seeking a judicial or administrative transfer of a child protection order or proceeding between Australia and New Zealand.

10. *Interstate Placement of Indigenous Children*

- a) Subject to paragraph 11 below, where the transfer of a child protection order or proceeding occurs or is proposed, a State should comply with the Indigenous Child Placement Principle in its own jurisdiction.
- b) The planning of an interstate placement of an Indigenous child, whether the child is subject to a child protection order or not, should involve one or more relevant Indigenous organisations.
- c) If there is no organisation with the appropriate knowledge or expertise, consultation should occur with an appropriate Indigenous Departmental/Ministry officer or employee and/or an appropriate representative of the Indigenous community to which the child belongs.

11. *Interstate Placement of Indigenous Children Between New Zealand and Australia*

- a) Where a transfer of a child protection order or proceeding between New Zealand and an Australian State occurs or is proposed, this paragraph applies to the following States:
 - i. New Zealand, if the child is an Aboriginal or Torres Strait Islander child; and
 - ii. an Australian State, if the child is a Māori child.
- b) Subject to sub-paragraph (c) below, a State to which this paragraph applies must:
 - i. apply the Indigenous Child Placement Principle, either as carried out within that State's jurisdiction, or, if there is no Indigenous Child Placement Principle for the Indigenous child, in accordance with Schedule A to this Protocol
 - ii. where practicable, maintain and strengthen the relationship between the child and his or her family, whānau, hapū, iwi, family groups and/or community group.

- c) If a State to which this paragraph applies is a Sending State, the State may:
 - i. contact the receiving State; and
 - ii. subject to the paramount interests of the child and any provisions in the law of the sending State, comply with the Indigenous Child Placement Principle in the receiving State in relation to the placement of the child.

12. Information Provided When Requesting a Transfer

Prior to the transfer of a child protection order or proceeding or interstate placement of a child, the Interstate Liaison Officer of the sending State must provide to the Interstate Liaison Officer of the receiving State all information necessary for the request to be considered. The Interstate Liaison Officer of the sending state should ensure that the request contains information that is comprehensive, accurate and up to date.

13. Exchange of Information & Obtaining Consent to a Transfer from a Receiving State

- a) When considering an interstate transfer of a child protection order or proceeding, the Interstate Liaison Officers will communicate as required, including:
 - i. discussing what further information (if any) is required;
 - ii. the Interstate Liaison Officer in the receiving State informing the sending State that it intends to accept the proposed transfer of the child protection order or proceeding, as soon as practicable after forming that intention; and
 - iii. the Interstate Liaison Officer in the receiving State notifying the sending State as soon as practicable after the court in the receiving State:
 - 1. registers or files a transferred child protection order or proceeding;
 - 2. revokes the registration of a registered child protection order; or
 - 3. orders that a child protection proceeding should be returned to the sending State.
- b) Unless there are exceptional circumstances, a decision by the receiving State whether to accept or decline a transfer of a child protection order or proceeding will be made within 3 months of the receipt of the request for transfer provided all required documentation has been provided by the sending State.
- c) If a decision to accept or decline a transfer of a child protection order or proceeding is not made within 3 months of the receipt of the request for transfer, the sending State may request the decision proceed to the dispute resolution process.
- d) Where, because of exceptional circumstances, there is a delay in acceptance of the transfer of a child protection order, the receiving state should, wherever possible, offer to provide casework assistance until such time as formal transfer occurs.
- e) If a child protection order or proceeding is transferred the sending State must provide a copy of the Departmental file, including a hard copy of any electronic files, to the Department in the receiving State within 28

days of receipt of advice of finalisation of the transfer. In many cases the Departmental file could be forwarded to the receiving State upon the receiving State advising that they consent to the transfer of the child protection order or proceedings.

- f) Until such time as the a child protection order or proceeding transfers to a receiving State the sending State is responsible for all case management decisions.

14. *Declining to Accept Transfer*

- a) The receiving State must agree to the transfer of the child protection order or proceeding unless it:
 - i. would be contrary to the interests of the child; or
 - ii. is an exceptional case where it is clearly impracticable to accept the transfer; or
 - iii. is not legally possible.
- b) Where the receiving State declines to accept transfer of a child protection order or proceeding, the receiving State will provide a written statement outlining the reasons why the transfer cannot be accepted.
- c) If the receiving State declines a proposed transfer, the sending State may subsequently request the Senior Officer to review that decision.

15. *Costs*

- a) If a child protection order or proceeding is transferred to a receiving State, the receiving State must generally bear all costs associated with the administration of the matter after the transfer of the child protection order or proceeding has occurred.
- b) In special cases, the receiving and sending States may agree that the sending State makes some payments during a specified transition period. The specified transition period should be agreed prior to acceptance of the transfer.
- c) If a sending State requests a transfer of orders for a child where the costs required to be met by the receiving State will be highly in excess of the norm, the receiving State Interstate Liaison Officer will refer the issue of costs directly to the Senior Officer of that State to negotiate an agreement with the Senior Officer of the sending State prior to acceptance of the transfer.
- d) Until such time as the a child protection order or proceeding transfers to a receiving State, the sending State is responsible for all costs associated with that child.
- e) Unless otherwise agreed, where a Department provides assistance to the State that retains case management responsibility, any costs external to the Department are borne by the State with the case management responsibility.

Where Child is Placed Interstate, but the Child Protection Order is not Transferred

16. *Transferring Child Without Transferring the Order*

- a) If a child subject to a child protection order is placed interstate, the receiving and sending States would generally negotiate the transfer of the child protection order in accordance with paragraphs 8 - 15 above.

However, if a sending State is unable to transfer a child protection order or the transfer of the order (at that time) is contrary to the interests of the child, the sending State may place the child interstate without transferring the order.

- b) If a child on a child protection order is placed, or proposed to be placed, interstate without transferring the child protection order:
 - i. the receiving State, to the best of their ability, shall co-operate with the sending State and provide all services reasonably requested by the sending State. Such services would include support and supervision/monitoring of a placement; and
 - ii. the sending State must provide the receiving State with all information that is required by the receiving State.
- c) Where the receiving State has agreed to provide services for a child without transfer of the order, the sending State will request transfer of order to the receiving State within 12 months of the original request except in exceptional circumstances.
- d) Where guardianship/parental responsibility has been conferred solely upon a carer and the carer is located in the receiving State, the sending State may as necessary request specific time limited casework tasks of the receiving State subject to discussion with and agreement by the receiving State Interstate Liaison Officer.

17. *Interstate Placement or Movement of a Child Who is Not on a Child Protection Order*

- a) ***Within or from Australia:*** If a State is involved in a child being placed interstate due to protective concerns, where there is not a child protection order or proceeding, the sending State must, prior to the placement being made, inform the receiving State of the placement. The sending State must provide sufficient information, including the child protection concerns, so that the receiving State can determine whether to take any action, under relevant child protection legislation, in relation to the welfare of the child. If the child is an Indigenous child, the information provided must include an outline of any prior involvement of any organisation with expertise in the child welfare matters of the relevant Indigenous community.
- b) ***From New Zealand:*** If a child is not the subject of a child protection order, but:
 - i) a Family Group Conference (FGC) has made decisions or recommendations and plans in relation to a child; and
 - ii) a recommendation of the FGC is that the child is placed with caregivers in another state; and
 - iii) where the necessary agreements to the FGC decisions or recommendations or plans have been obtained,

then, if the child is or will be placed interstate, the receiving State shall where possible provide an assessment of the proposed caregivers and the provision of a report on the placement if it is reasonably requested by New Zealand. If the child is Māori, the receiving State shall where possible include with the assessment, an outline of the proposed

involvement of any organisation with relevant cultural and social work expertise. The provision of other support and services would be provided by negotiation being mindful of the principles noted in paragraph 8 above and the obligations that are placed on New Zealand.

Assessments

18. Placement Assessments

- a) A sending State may request a receiving State to undertake an assessment of a proposed caregiver located in the receiving State.
- b) The sending and receiving states are each individually responsible for such checks as they require as part of the assessment, unless otherwise negotiated.
- c) Provided the receiving state is satisfied that the information provided by the sending State is sufficient to undertake the assessment, the receiving State should complete the assessment within 8 weeks of receipt of the request unless other wise agreed between the relevant states.
- d) If the receiving State is unable to complete the requested assessment internally within the above timeframe it will meet the costs of contracting a private practitioner/agency to undertake the assessment.
- e) The assessment writer must make a recommendation as to the suitability of the proposed placement but any decision whether to proceed with the placement rests solely with sending State.

19. Requests for urgent assessments

- a) Should the sending State require an urgent assessment to be completed in less than 4 weeks, the receiving state may elect to have the assessment completed by a private practitioner and the sending State will bear any cost involved in completing the assessment.

20. Holiday/Contact Assessments

- a) A sending State may request a receiving State to undertake an assessment of a proposed caregiver located in the receiving State (for the purpose of a holiday/contact visit).
- b) The sending and receiving states are each individually responsible for such checks as they require as part of the assessment, unless otherwise negotiated.
- c) For requests for a holiday/placement over the Christmas/ summer school holiday period, the request should be forwarded to the receiving State's Interstate Liaison Officer by the end of September. For holidays at other times of the year, the request should be with the receiving State's Interstate Liaison Officer two months before the proposed holiday/contact visit.
- d) Provided the receiving state is satisfied that the information provided by the sending State is sufficient to undertake the assessment, the receiving State should complete the assessment within 4 weeks of receipt of the request unless other wise agreed between the relevant states at the time of the request.

Other Interstate Assistance

21. Assistance with Locating Interstate Placement

- a) A sending State may request a receiving State to assist in locating a suitable long term non-relative placement when the sending State considers that locating the child in the receiving State is in the best long term interests of the child. Particulars of the request will be subject to negotiation and agreement between the Interstate Liaison Officers of the respective States.
- b) A request for locating a suitable long term placement should be treated by the receiving State as though it were a request for placement made within the receiving State and reasonable and active efforts should be made to locate a placement.
- c) If, after 6 months of receipt of the request, a placement is not located, the Interstate Liaison Officer of the receiving State will advise the sending State in writing that no placement has been located and advise of the attempts that have been made to locate a suitable placement. Should the sending State still desire a suitable placement to be sought, it will renew the request providing reasons why it remains in the best interests of the child for the placement to be sought.

22. Interstate Notification of a Child in Need of Protection

A Department ("Notifying Department") may believe that a child known to them has gone interstate, and that it would be appropriate for the Department in the State where the child is believed to be located to be aware of child protection concerns relating to that child. The Notifying Department should provide an outline of these concerns and any other information to the state where the child is now located for the Department of that state to take such action as it considers appropriate.

23. Child Temporarily in Non Resident State

This provision applies where a child who:

- i. is normally resident in one state, (the resident State) or, in the case of a newborn child, where the parents normally reside in the resident State; and
- ii. is temporarily present in another state (the non resident State), eg. for reason of medical attention in a regional hospital; and
- iii. is subject to statutory child protection intervention by the non resident State.

If the family indicate they wish to immediately return to the resident State, the non resident State may request the resident State to assume responsibility for the care and protection of the child. Where the resident State receives such a request the resident State will do whatever is necessary to assume responsibility, unless it is not in the interests of the child to do so or there are statutory limitations preventing the requested assistance. It is noted however that it is always the responsibility of the state where the child is located to take action to secure the immediate care and protection of the child if necessary.

24. General Assistance

In the spirit of co-operation agreed to under this Protocol, a State may at any time request another State to provide specific assistance in regard to a child protection

matter and, where required, the other State should provide such assistance as is practicable.

Information Sharing

25. Interstate Provision of Information

Subject to confidentiality/privacy provisions in a State's legislation:

- a) A Department will provide information it holds relevant to a particular child if requested to do so by another interstate Department for the purpose of enabling the interstate Department to undertake its responsibilities under that State's child protection legislation.
- b) A Department will provide information it holds relevant to the safety, welfare and wellbeing of a child or children to any or all States party to this protocol as agreed between the Departments of the respective States.

26. Confidentiality of Information Received by an Interstate Officer

Subject to contrary provisions in a State's legislation, if a Departmental officer in a State receives information from an interstate Department pursuant to paragraph 25 above, the received information should be dealt with as if it was directly obtained by the Departmental officer in that State.

A State Amending its Child Protection Legislation

27. If a State amends provisions relating to child protection orders and interstate matters, the Interstate Liaison Officer from that State must, as soon as possible, inform the National Co-ordinating Interstate Liaison Officer when the legislation comes into force. The National Co-ordinating Interstate Liaison Officer will subsequently advise the Interstate Liaison Officer/Co-ordinating Interstate Liaison Officer of each State.

Dispute Resolution

28. Dispute Resolution Process

- a) Any dispute or complaint should be dealt with, in the first instance, between the respective Interstate Liaison Officers/Co-ordinating Interstate Liaison Officers from the States which have the dispute.
- b) If the dispute is still unresolved the following process should be adopted:
 - i. The Interstate Liaison Officers involved will refer the matter to their respective line managers for resolution.
 - ii. If resolution of the problem is not achieved at this level, the matter will be dealt with by the Senior Officers from the respective Departments.

Review & Withdrawal

29. Review of the Protocol

The respective state Interstate Liaison Officers as a group will be responsible for review of the Protocol within each three-year period of the date of the last review.

30. Withdrawal

A party to this Protocol may withdraw from the Protocol with 12 months notice in writing. If a party withdraws from the Protocol, the Protocol continues to apply to all other parties.

Official Endorsement Process

The Department Heads listed below in the table individually signed and endorsed the Protocol.

Jurisdiction	Sign Off and Endorsed by:	Date
NSW	Neil Shepherd, Director General, NSW Department of Community Services	07/06/2007
ACT	Sandra Lambert, Chief Executive, Department of Disability, Housing and Community Services	29/06/2007
TAS	Simon John Barnsley, Secretary, Department of Health and Human Services	13/06/2007
VIC	Gill Callister, Executive Director, Department of Human Services	26/06/2007
SA	Sue Vardon, Chief Executive, Department of Families and Communities	07/06/2007
WA	Judith Anne Hogben, A/Director General, Department for Child Protection	13/06/2007
NT	David Ashbridge, Chief Executive Officer, Department of Health and Community Services	15/06/2007
QLD	Robin Sullivan, Director General, Department of Child Safety	13/06/2007
NZ	Peter Stanley Hughes, Chief Executive, Ministry of Social Development. Child, Youth and Family	16/07/2007

SCHEDULE A

INDIGENOUS CHILD PLACEMENT PRINCIPLE

Placement is to be made in accordance with the paramount interests of the child. Subject to the paramount interests of the child, placement is to be made according to the following order of preference:

1. Placement with a member of the child's family (as defined by local custom and practice) in the correct relationship to the child in accordance with Aboriginal, Torres Strait Islander or Maori custom.
2. Placement with a member of the child's community, whanau, hapu or iwi in a relationship of responsibility for the child according to local custom and practice.
3. Placement with another member of the child's community, whanau, hapu or iwi.
4. Placement with another Indigenous carer.

The preferred placement may be displaced where:

- a. subject to an assessment of a child's best interests, and having regard to the maturity of the child, the child objects to that placement; or
- b. no carer in the preferred category is appropriate or currently available.

Where placement is with a non-Indigenous carer, the following principles must guide the choice of carer:

- i. continuing contact with the child's Indigenous family, community, whanau, hapu or iwi and the child's culture should be ensured;
- ii. proximity to the child's Indigenous family, community, whanau, hapu or iwi is desirable; and
- iii. there is regular review of the appropriateness of the placement.

Any placement should be made in consultation with an Indigenous organisation with expertise in the child welfare matters of the relevant Indigenous community. If there is no organisation with the appropriate knowledge or expertise, it may be appropriate to consult with an Indigenous Departmental officer or employee from any State who has such knowledge and expertise.

THE LEGAL SERVICES BRANCH (LSB)

Overview of the Role, Function and Interface of the Legal Services Branch:

The Legal Services Branch is part of Corporate and Executive Services Division. As the name of the Division suggests, the Legal Services Branch serves as a primary role the Executive of the department.

The branch will take care, for the executive, of all of its legal requirements

One of the major matters that the branch administers is the litigation that exists, essentially with the department being nominated as defendant. In fact it is the State of Queensland that is actually named as defendant in any such proceedings.

What litigation do we do?

Currently there are a number of legal claims against the department. The majority of these are "abuse" claims. Of these, some legal claims have been progressed by the claimants in the past year. The other matters remain current as they have not been removed from the legal process by the claimants.

The majority of the claims are personal injuries claims brought by former residents of Queensland institutions as well as former children in foster care.

Overall there are four main types of claims:

1. **First**, and in the majority, are **"abuse" claims** where the **statute of limitations does apply**. Claims have been brought by former residents of Queensland institutions as well as former children in foster care. The claimants will have to demonstrate to a court why they should not be barred from bringing their claims because the claims have been commenced "out of time". The claimants allege that they were abused whilst in care of the State and that the State failed in its duty of care to them. Most of the claims have been made in the last four years

There is a new scheme that will become operational soon whereby an administrative process can be followed by previous foster children that have been in an orphanage. If an application is lodged and some money is received there is the possibility to claim an extra amount, however once the process is finalised the person cannot go to sue the State of Queensland separately.

2. **Second**, there are **abuse claims** where the **statute of limitations does not apply** - that is, the claims have been commenced within the time limits provided for by the *Limitation of Actions Act 1974*. Where the alleged abuse is said to have occurred within the limitation period and the Director-General is still the guardian of the child then the State will refer the matter to the Public Trustee to act in the child's interests.

The Public Trustee would normally brief the matter to a private firm of solicitors to act for the child. This is appropriate as the State would have a conflict of interest and could not provide instructions on behalf of the child.

3. There are claims by foster carers who have been injured by children in our care. This commonly occurs where we have placed a difficult or violent child with the carer. In the current financial year no such matters were finalised.
4. There are claims where the claimants allege that they have suffered as a result of the adoption process. Most of the claims have been made in the last four years.
5. There are some claims where a person alleges that the State of Queensland failed to remove them from their parents and or care situation in breach of the duty of care owed by the Department to all children in Queensland.
6. Last, there are a small number of miscellaneous claims, such as work related stress injuries etc.

Who represents the Department in these matters?

In relation to these matters Crown Law acts on behalf of the department, and performs a significant amount of the legal work. However, the Legal Services Branch locates relevant evidence, considers advice provided, interprets the advice for relevant persons such as the Director General and Minister and will provide opinions on the advice given by Crown Law, suggest the most appropriate course to adopt so that the executive can provide proper instructions back to Crown Law .

Quite separately there are cases where the chief executive of the department acts as litigation guardian for children. In these cases, the department is not being sued. The child is suing someone else for a wrong that it is alleged that other person has committed against the child.

What else does Legal Services Do?

The branch also carries out the following function:

- Legal advice - provide legal advice to the Minister, Minister's Office, Director-General and senior executive in relation to the department's statutory responsibilities.

- Casework - manage and participate in ongoing legal casework as required.
- Policy and strategic legal compliance - contribute to the development of departmental policy and other strategic initiatives that involve a significant level of legal content, hence ensuring consistency in legal compliance.
- Instruction on legislation to Parliamentary Counsel - provide instruction to Parliamentary Counsel in respect of new or amending departmental legislation for which the branch has been allocated responsibility.
- Cabinet submissions - draft submissions on behalf of the Director-General for consideration by Cabinet.

The branch provides services including:

- in-house legal advice in relation to corporate, case related and policy development issues.
- Management of department's instruction of Crown Law in relation to legal representation and advice.
- case related and policy development issues
- advice on legislative development

Interface:

In the first instance Court Coordinators should consult with the Court Services Unit prior to contacting the Legal Services Branch. **NO Child Safety Officer should contact the Branch directly.**

Any contact with the LSB should be instigated by CSU who will advise when contact is appropriate.

CROWN LAW

The purpose of Crown Law is to provide competent, high quality, efficient, cost-effective advice and/or representation by experienced legal officers at Court Ordered Conferences and before the Courts and Tribunals of Queensland.

Overview of the Role, Function and Interface of Crown Law:

Upon receipt of instructions from the Court Services Unit, Crown Law will allocate an officer who will have carriage of that particular file. This officer will liaise with the Court Services Adviser who has also been allocated this file, on all matters concerning the hearing.

The officer with carriage of the matter will review the instructions and provide a brief initial response (wish list, issues, problems, evidence to be adduced, and strategy for case management) within 7 days and in any event prior to the Advice in Conference.

The officer will participate in all 'Advice in Conferences' and provide advice in detail in relation to:

- relevant legal issues
- evidentiary issues
- strategies for the conduct of the case
- prospects of success
- timetable for various witnesses
- set a timetable for completion of tasks discussed such as preparation of evidence.

After the Advice in Conference the officer will confirm, in writing, the evidentiary material to be obtained by the CSSC.

The officer will attend a Court Ordered Conferences ONLY where instructed by Court Services.

Crown Law undertakes to provide an efficient and cost effective legal service in that they:

- will only seek the evidence necessary to establish a case (eg. they will not seek to have 3 or more witnesses establish the same factual point, unless the circumstances of the case require it).
- will only seek to issue subpoenas for the purposes of having specified documents available to be tendered before the Court (ie they will not seek to use subpoenas as a method of establishing or creating a case to be made before the Court, or seeking to search for information to be used before the Court.

LEGAL AID QUEENSLAND

What does the Child Protection Unit (CPU) do?

The CPU is set up to do separate representation and direct representation of children and young people (not parents) incorporating:

- Separate representation for children in the Children's Court and Children Services Tribunal;
- Consulting on Family Law, child protection and social work issues relating to all sectors of LAQ, external providers and the community sector;
- Training and information dissemination (internal and external) in relation to the above fields;
- Maintenance of internal and external networks with providers or stakeholders;
- Responding to policy development and law reform.

What is a Separate Representative?

A separate representative is a solicitor appointed to represent the child's best interests before the Children's Court or Children's Services Tribunal. They are party to the proceedings. When the order is made their role is finalised.

How does a Separate Representative get involved?

The court/tribunal decided whether there should be a Separate Representative appointed and makes the order – it is not the decision of the Department or the parents.

Court Coordinators may need to consult with the CSO about whether you should make a recommendation for an order to be made. Section 110 in the *Child Protection Act 1999* gives the Magistrate the power in the Children's Court. Section 68 in the *Children Services Tribunal Act 2000* gives the Tribunal power in the Children Services Tribunal.

When does a Separate Representative get involved?

Children's Court

The Court must consider appointing a Separate Representative where the matter is contested or where the child opposes and it must be in the child's best interests to appoint one. The types of matters where the court may consider appointing a Separate Representative vary but include:

- where there are complex issues like mental illness;
- where the child is particularly vulnerable;
- where the child is of an age where they are expressing clear views about what they want to happen; and

- matters involving a number of siblings where orders are sought for some and not others.

Children Services Tribunal

The Tribunal must consider whether it would be in the child's best interests to appoint one. The types of matters where the Tribunal may consider appointing are similar to where the Children's Court orders the appointment of a Separate Representative.

What is the process once a Separate Representative is ordered?

The Children's Court/CST sends a copy of the order and all the material filed to date to the GRANTS DIVISION of LAQ. In most cases the appointment will be made but it is a grants decision about funding.

The grants officer must allocate the file to someone in-house or on a preferred supplier list of private solicitors. There is a limited pool of solicitors in Queensland who do this sort of work so sometimes it is a struggle to find someone who is willing and available.

What does a Separate Representative actually do?

- They are independent with no vested interest in the proceedings and the outcome;
- They are like a 'devil's advocate' checking the Department's position and the parent's position on matters along the way;
- How they perform their role is a matter for each Separate Representative to work out for themselves depending on their professional style and the circumstances of the case;
- They act in the child's best interests and make their recommendations based on all the evidence which is why it is important to keep them in the loop by providing information along the way (eg family meeting invitations and minutes) and timely provision of affidavit material;
- Sometimes in a matter the Court, the Department and the Separate Representative may all have different views about what is in the child's best interests – and that's ok;
- Sometimes what is in the child's best interests changes over the course of a matter – and that's also ok.

What do the cases say?

The Full Court of Family Court in *P&P* (1995) FLC 92-615 commented on the role of the Separate Representative, as it was then known in the family law jurisdiction, saying:

The Separate Representative ought to:

- Act in an independent and unfettered way in the best interests of the child.
- Act impartially, but if thought appropriate, make submissions suggesting the adoption by the Court of a particular course of action if s/he considers that the adoption of such course is in the best interests of the child.
- Inform the Court by proper means of the child's wishes in relation to any matter in the proceedings. In this regard the Separate Representative is not bound to make submissions on the instructions of the child or otherwise but is bound to bring the child's expressed wishes to the attention of the Court.
- Arrange for the collation of expert evidence and otherwise ensure that all evidence relevant to the welfare of the child is before the Court.
- Test by cross examination where appropriate the evidence of the parties and their witnesses.
- Ensure that the views and attitudes brought to bear on the issues before the Court are drawn from the evidence and not from a personal view or opinion of the case.
- Minimise the trauma to the child associated with the proceedings.
- Facilitate an agreed resolution to the proceedings.

How do they represent the child's best interests?

Direct Representative – doing what the child wants:

When acting as a direct representative the child gives you instructions, you reality test them, give them advice about their options but you are required to act on their instructions. Solicitor / client relationship is privileged.

Separate Representative - doing what you think is in the child's best interests:

The Separate Representative should find out what the child's wishes are (usually through a report writer) and consider them in the context of all the other evidence from the Department and the parents.

The Separate Representative may organise their own evidence, test the other parties' evidence (eg cross examination) and make a recommendation to assist the court or tribunal in making the final decision.

Do they meet with the child?

There is a decision made depending on the child and the nature of the matter about whether there is a benefit to the child in meeting with them. When the decision is made the Separate Representative will meet the child with the report writer or sometimes (rarely) with the caseworker.

The reason that the Separate Representative will not meet with a child on their own is to ensure independence and reliance on evidence not on personal opinion. Separate Representatives are lawyers not social scientists.

What does the Sep Rep do along the way?

- Inspects the files
- Has dealings with the Department and parents
- May attend SCAN meetings and Family Meetings
- Attends Court events (mentions, conferences and hearings, appeals)

Inspecting the files

Why?

- To find out how we got to this point
- The only information given to the Sep Rep in the beginning is what has been filed in the Court / Tribunal
- To see the original source material

What do they want to look at?

- Initial Assessments
- Assessment of Protective Needs
- SCAN team minutes
- Record of Family Meetings minutes
- External reports / assessments (eg medical, school)
- Information about suicide risk
- Case notes (eg observation of contact)
- Correspondence – this includes phone messages and emails (eg suspension of contact)
- Birth certificates
- Relevant police checks
- Carer assessments
- Placement meetings
- Any previous Court proceedings

How?

- Looking through computer and paper files
- Requesting notes and copies of what is needed to take away
- There is an inter-agency protocol that support the exchange of information

Dealing with the Parties

The Sep Rep will talk to both separately and together; they will write to both parties. They may deal with the parents through their lawyers if they have them. They may ask parents to complete questionnaire and authorities.

The Sep Rep needs all the material that develops along the way and in a timely manner. The Sep Rep will be interested in the details of case planning for the child.

SCAN team and Family Meetings

The Sep Rep may ask to be invited to SCAN team meetings.

The Sep Rep would like to be given the opportunity to attend family meetings and at the very least the timely provision of minutes.

Court Events

The Sep Rep attends mentions; conferences (court ordered and preliminary – may just listen and observe, may reality test what the parties are saying, may not be prepared to state their position at that stage).

The Sep Rep also attends the hearings – may call expert evidence, may cross examine witnesses, may make submissions making recommendations.

Report Writers

A report writer is a professional person (usually an accredited social worker or psychologist) who has been asked by a Sep Rep to prepare a report for the Children's Court / CST. This person is considered by the Court / Tribunal to be an independent expert in child protection matters. This is no confidentiality in communications with the report writer.

In order to assess the child's best interests the report writer will need to collect information about:

- The child or young person's relationship with significant people (eg parents, siblings, extended family and friends)
- The child or young person's views and wishes, if they want to share this with the report writer.
- The child or young person's personal history and emotional attachments
- The child or young person's family history, including any significant issues which have impacted on the child.
- The child or young person's needs.
- What is currently happening in the child or young person's life.
- If the report is required for the CST, what matters were taken into consideration when the Department made the decision about the child or young person?

- The report writer has a limited amount of time to collect this information and prepare the report. They will decide what is the most information to be included.

The report writer will conduct a series of interviews which may include interviewing the following people:

- the child or young person alone;
- the child or young person with a parent, CSO, foster carer or other significant person;
- the child or young person's parent, and their current partners, separately or together;
- the CSO for the child; and
- other relevant professionals such as teachers, counsellors or doctors.

The interviews may occur at a LAQ office or at the offices of other professional people involved. Some interviews may occur over the telephone. A home visit may be necessary and they will contact those involved to arrange a suitable date and time for the interview. Sometimes the report writer may also want to observe the child or young person on contact visits.

Legal Advice / Legal Representation

All parents should be referred to legal advice to get some assistance in understanding the legal process. Not all parents will get legal aid for legal representation for the whole proceedings. How a parent's legal representative advocates is a matter of personal style – some are negotiators, some are more adversarial - Don't take it personally!

Lawyers for the parents will want to know why and how the Department have come to decisions and they are entitled to ask. The timely disclosure and service of your material makes everyone's job easier – trial by ambush is not in the child's best interests.

See also LAQ factsheets 7 & 19

SEPARATE REPRESENTATIVE

This factsheet provides information for parents about the role of the Separate Representative in Child Protection cases.

What is a Separate Representative?

A Separate Representative is a solicitor appointed to represent your child's best interests before the Children's Court when the Court is asked to decide whether a child protection order should be made. The Separate Representative's role is to act in your child's best interests and as far as possible place their views and wishes before the court during the proceedings.

How is a Separate Representative appointed?

Separate Representatives can be appointed by the court during child protection order proceedings if the court considers it necessary to protect the best interests of the child.

If this is the case, the Children's Court will request Legal Aid Queensland to appoint a lawyer to be the Separate Representative.

How will the Separate Representative recognise my child's best interests?

The Separate Representative is responsible for representing your child's best interests. They may gather information about the case by:

- reading the material that has been given to the court by you and by the Department of Families;
- meeting your child personally;
- requesting a Social Assessment Report. A Social Assessment Report is prepared by a social worker or other professional to help the court understand your family situation and the child's wishes and emotional attachments;
- seeking information from teachers, guidance officers or other people who have had a significant amount of contact with your child;
- requesting reports from other professionals.

If your child has already been required to talk to lots of different people, the Separate Representative may not talk to them again or request new reports. Sometimes it can be quite harmful for children to have to talk to lots of different people.

How will I be involved with the Separate Representative?

It is important that the Separate representative remains independent from the parties involved in the case.

If you have your own solicitor, the Separate Representative will communicate with you through your solicitor. Do not contact the Separate Representative yourself. If you do not have a lawyer, the Separate Representative will contact you either in person, by phone or in writing.

The Separate Representative may request you to take part in the preparation of a social assessment report.

The Children's Court may also order that a conference be held between you and the Department of Families. There is a chairperson at the conference and the Separate Representative will also attend. Conferences are held before a hearing to try to decide what issues are in dispute and to try to resolve them.

What happens in court?

The Separate Representative presents evidence to the court about the wishes of your child. They must also "test" the evidence before the court about what appears to be in the best interests of the child. This means that sometimes the child's wishes are not always followed.

It is important that you avoid questioning your child about what they say to their Representative. The child's discussions with their Representative are confidential.

If the matter does proceed to court, your child does not have to appear because a Separate Representative has been appointed. Any information required for the court will be contained in reports and affidavits before the hearing.

CHILD PROTECTION AND CHILDREN'S SERVICES TRIBUNAL

This factsheet will answer your questions about the Social Assessment Report.

What is a report writer?

A report writer is a professional person (usually an accredited social worker or psychologist) who has been asked by a separate representative for a child or young person to prepare a report for the Children's Court or the Children's Services Tribunal. This person is considered by the Court or Tribunal to be an independent expert in child protection matters.

What does the report writer do?

The report writer is asked by the separate representative to help them represent the child or young person's best interests. In order to assess the child's best interests the report writer will need to collect information about:

- the child or young person's relationship with significant people (eg, parents, brothers and sisters, extended family and friends);
- the child or young person's views and wishes, if they want to tell the report writer this;
- the child or young person's personal history and emotional attachments;
- the child or young person's family history, including any significant issues which have impacted on the child;
- the child or young person's needs;
- what is currently happening in the child or young person's life; and
- if the report is required for the Children's Services Tribunal, what matters were taken into consideration when the Department of Families made the decision about the child or young person.

The report writer has a limited amount of time to collect this information and prepare the report. The report writer will not include all of the information they collect in the report. They will decide what is the most important information to be included in it.

Interviews - who, where, when and how?

The report writer will conduct a series of interviews. This may include the report writer interviewing the following people:

- the child or young person alone;
- the child or young person with a parent, Department of Families officer, foster carer or another significant person;
- the child or young person's parents, and their current partners, separately and together;
- the Department of Families officer for the child; and
- other relevant professionals such as teachers, counsellors or doctors.

The interviews may occur at a Legal Aid Queensland office or at the offices of other professional people involved. Some interviews may occur over the telephone. A home visit may be necessary. You will be contacted to arrange suitable dates and times for interviews. Sometimes the report writer may also want to observe you and the child or young person on your usual contact together.

How will they write the report?

The report writer will take notes and may tape interviews. This information is then used as a record for the report writer and may be used in a hearing. All information obtained by the report writer is reportable to the Court or Tribunal. The report writer may be required to give evidence in the Court or Tribunal at a hearing.

In assessing the best interests of the child or young person, a detailed report will be prepared which may contain recommendations to the Court about whether or not a child protection order should be made and other matters.

Once the report is completed the writer will give a copy to the child or young person's separate representative who will file it in the Court or Tribunal. If you are a party to the proceedings, you or the solicitor acting for you if you are legally represented, will also be given a copy of the report. A copy will also be given to the Department of Families and other parties to the proceedings. If you are not a party to the proceedings you will not be given a copy because of the confidentiality provisions of the legislation.

Child Protection & the Children Services Tribunal

Are you under 18? Have the Department of Child Safety become involved in your problems at home? Are they making decisions about you? Has there been a child protection order made for you? You have rights, too!

WHY IS THE DEPARTMENT OF CHILD SAFETY INVOLVED WITH ME?

The Department of Child Safety becomes involved if they are concerned about your safety and whether there is anyone who can look after you.

WHAT HAPPENS WHEN THE DEPARTMENT BECOMES INVOLVED?

The Department of Child Safety may want to talk to you at home or at school. They may want to talk to you without your parents being there. If your parents won't allow this, the department may apply to the Children's Court for an order allowing them to talk to you or take you to see a doctor if they think you've been harmed, or for you to stay somewhere while they check things out.

If the department thinks you need protection and they think it is in your best interests for you to live with someone else for a while, they may also apply to the Children's Court for a child protection order.

If a child protection order has been made for you the department may be able to make some decisions about you. For example, they may be able to decide who you live with and how often you see your family.

WHAT HAPPENS WHEN THE DEPARTMENT MAKES A DECISION ABOUT ME?

When the Department of Child Safety makes a decision about you, they need to take into consideration what you say you want to happen. Sometimes this is not the same as what is best for you and the decision made may not be what you wanted.

When a decision is made about you (like where you should live or who you can have contact with) the department should tell you about the decision and may give you a letter explaining it to you.

If you are not happy about the decision that has been made, in some decisions, you can ask the Children Services Tribunal to think about things and make the decision again. This is called an "application for review". Your foster carer, parents or other people affected by the decision may also be able to do this.

WHAT ARE MY RIGHTS?

If this sounds like what is happening to you, you have rights, too!

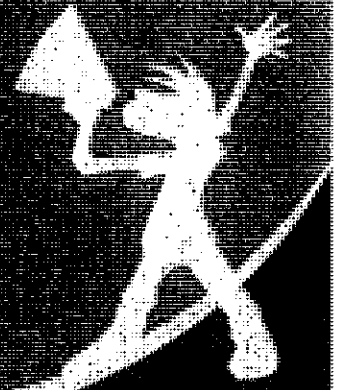
The Department of Child Safety, the Children's Court and the Children Services Tribunal must all act in your best interests.

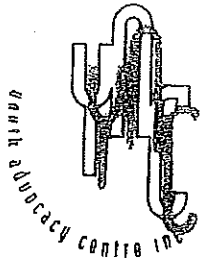
You have the right to:

- be protected from harm;
- have your views and wishes heard;
- have your religious beliefs and cultural values taken into account;
- take part in the making of decisions that affect your life;
- maintain contact with your family;
- appear and be legally represented in court; and
- apply to court or the Children Services Tribunal to have certain decisions reviewed.

If you are in the care of the department ask your Child Safety Officer to give you information about the *Charter of Rights for Children in Care*.

"The department, the court and the tribunal must all act in your best interests"





CAN YOUNG PEOPLE UNDER 18 MAKE THEIR OWN DECISIONS?

This sheet is intended to provide general information only, not advice. If you have a particular legal problem you should contact a solicitor. Each section ends with a list of agencies who might be able to assist you, including legal agencies. The Youth Advocacy Centre does not accept responsibility for any action arising out of reliance on this information. This section was last updated on 1 January 2004. This legal information is relevant to Queensland, Australia.

The answer to this question can be found in the *Gillick* Case, an English House of Lords decision which has been approved by the High Court of Australia. Sometimes legal advocates refer to young people as *Gillick competent*, which means that they have met the test as to whether they are able to make their own decisions.

The *Gillick* Case

The *Gillick* Case¹ centred on the issues of contraception and abortion. Mrs Victoria *Gillick*, the mother of ten children including five girls, lived in the area of the West Norfolk and Wisbech Area Health Authority. She wrote to the Health Authority requesting that no daughter of hers under 16 years be provided with contraception or an abortion, and that if any of her children did contact the authority that she automatically be informed. The Health Authority, acting on a Department of Health and Social Security directive, informed Mrs *Gillick* that, whilst they would encourage her children to discuss the matter with her, they could not give a categorical assurance to her, because consultations were confidential and therefore the final decision must rest on the doctor's judgment. Mrs *Gillick* sought a declaration in the court that the Department's directive was unlawful. Justice Kirby (1984)² has summarised the arguments thus:

Mrs Gillick's Queen's counsel told the court that she found the circular 'quite intolerable'. According to her it encouraged the secret provision of the Pill or other contraceptives to under-aged girls. She wanted to retain her right and duty as a mother, to the exclusion of any other person, to advise her children on sexual matters. Specifically, she wanted to retain her right to prevent other persons doing things that would encourage her children to have a sexual relationship 'which the law forbids'.

Mrs Gillick asserted her 'fundamental right' to concern herself with the moral upbringing of her children and a 'fundamental right' to rebuke, and even prevent, interference. Though professional secrecy between the doctor and his patient was important, confidentiality should not be permitted to 'cloak illegalities'. To do so would be to abandon completely the protection of the law against under age sexual relationships.

Mr Simon Brown, Counsel for the Department, rejected Mrs Gillick's argument. He drew upon a competing area of the law. He said that, as long as young people knew the consequences of their decision, they could give valid consent for medical treatment. An under-aged girl who had sexual intercourse was not herself guilty of a criminal offence though the man might be guilty. Therefore, in giving the girl advice and medical treatment, the doctor could not be said to be encouraging or procuring a criminal offence.

¹ *Gillick v. West Norfolk & Wisbech Area Health Authority* (1985) 3AU ER 402

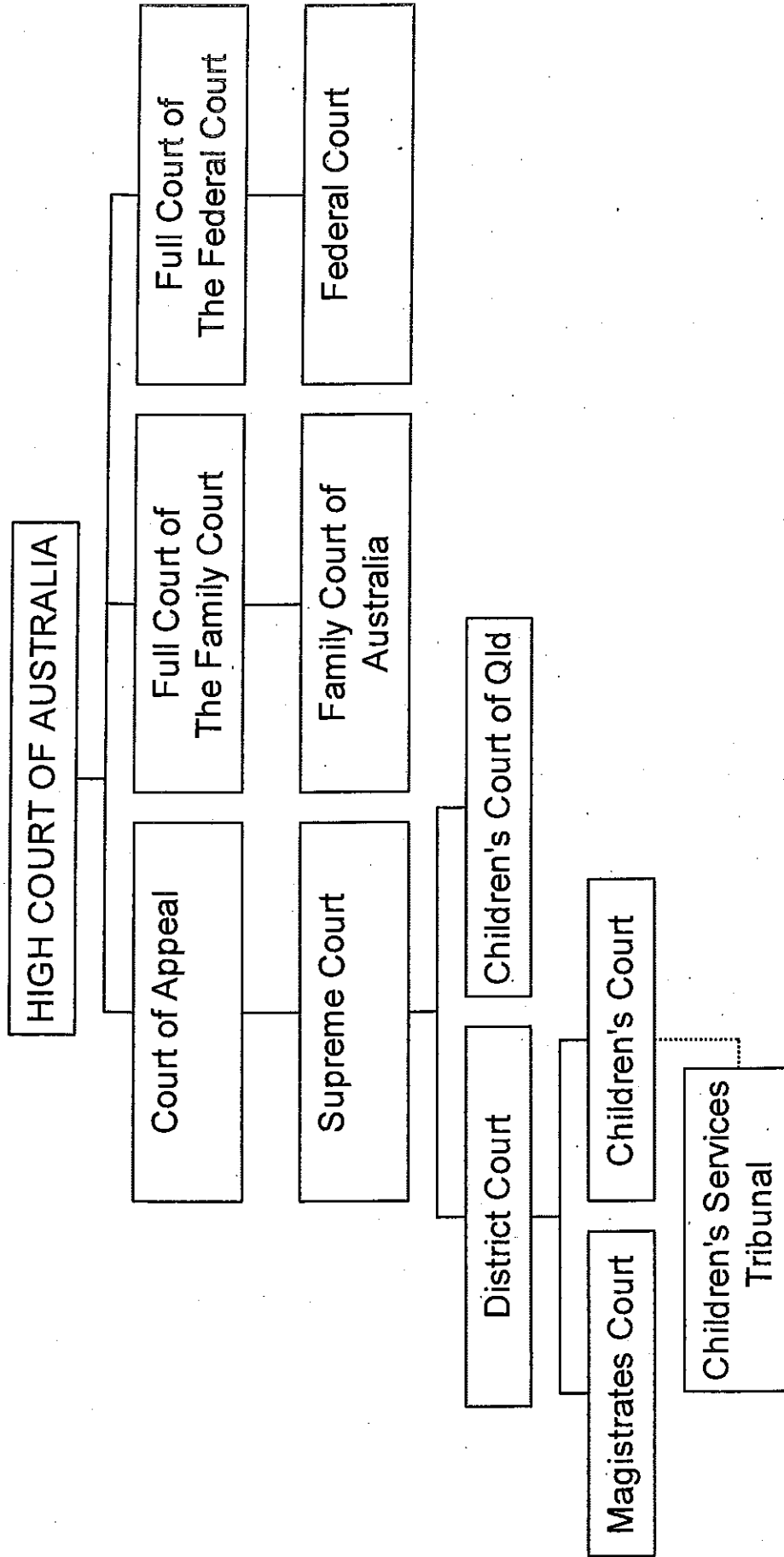
² Kirby, M. (1984) 'Law and Family Planning' *Medical Journal of Australia* March 17, p.358

benefits and risks, the doctor can make a Judgement as to the child's competence (Wilson et al, NC & YLC, 1995).

In addition, if the doctor is satisfied as to the child's ability to make choices and decisions and agrees to provide medical assistance, the doctor is then bound by confidentiality in the same way as she would if treating an adult.

Youth workers should be aware that the *Gillick* Case is not limited to the work of doctors giving people under 18 contraceptive advice. The reasoning behind the decision was drawn from a recognition by the Court of children's increasing ability, as they gain in maturity, to make their own decisions about their lives in general.

COURT HIERARCHY



OVERVIEW OF COURT SYSTEMS

Although Parliament decides what the laws will be, it is the courts' role to decide how these laws will be applied to particular cases.

Some courts, such as the Family Court and the High Court, are a federal court, which means they have been established by the Federal Government.

However, most cases in Queensland are decided in the State courts: the Supreme Court, the District Courts or the Magistrates Courts.

Cases are described as being either criminal or civil. A civil case is one in which a person, a company or the Government claims that another party has acted contrary to the law.

A criminal case is one in which the police or the Government says that a person has broken the criminal law, for example by killing someone or stealing property.

STATE COURT SYSTEMS

1. Children's Court

A Childrens Court is presided over by a magistrate or two Justices of the Peace (Qualified). The Children's Court has separate jurisdiction from the adult jurisdiction of the Magistrates, District and Supreme Courts. The Childrens Court has the jurisdiction to:

- determine certain offences against young people under 17 years who have offended
- determine child protection matters in accordance with the Child Protection Act 1999.

Childrens Courts are convened in the same locations as Magistrates Courts throughout Queensland - except in central Brisbane where there is a separate Childrens Court building.

The Childrens Court is a closed court and therefore only certain persons are allowed to be present. Those who are allowed to attend court include:

- the magistrate (or judge in the Childrens Court of Queensland)
- court clerk
- representatives from the Department of Child Safety - applicant and court officer/legal representative
- parents and their legal representative
- the child (if old enough) and their legal representative
- the Separate Representative (lawyer) appointed by the court to represent the child's interests

- a representative of a Recognised Entity if the child is an Aboriginal or Torres Strait Islander child or young person
- non-parties who the magistrate would like to hear from.

The child safety officer of the Department of Child Safety is known as the 'Applicant' in court.

Parents are referred to as the 'Respondents'.

Magistrates in the Childrens Court must be addressed as 'Your Honour'.

In Summary:

- presided over by a Magistrate (address as "Your Honour")
- child protection matters
- dispensation of consent to adopt
- children's criminal matters (10-16 years) where it has jurisdiction

2. Childrens Court of Queensland

The Childrens Court of Queensland (CCQ) deals with all juveniles who commit criminal offences while under the age of 17 years, unless the court orders that the matter be dealt with in an adult court.

Matters involving children can be heard in the adult District Court of Queensland if:

- the child is charged as an adult
- the proceedings have been committed up to the District Court following an application under the Juvenile Justice Act 1992, for example, if a child is co-accused with an adult.

CCQ matters are usually heard in a closed court. This means that only people who are directly involved in the case can be present. Members of the public are not usually allowed to be in court and no one is permitted to publish identifying information about the accused.

The CCQ is presided over by judges who have been appointed from the District Court. Matters are heard in accordance with the guidelines set down in the Childrens Court Act 1992 and the Juvenile Justice Act 1992.

Matters involving children can also be heard in the Magistrates or Supreme Court. These cases are also heard in accordance with the guidelines set out in both of these acts.

Child protection matters

The CCQ also deals with appeals against child protection orders made by a magistrate. In these cases, the court will make a directive to protect a child from harm.

In Summary:

- appeals from Children's Court (child protection / youth justice)
- summary of trials / sentences
- appeals on matters of law from CST

3. Magistrates Court

A magistrate presides over a Magistrates Court. There is no jury. These courts deal with less serious offences. More serious criminal matters are decided in the higher courts, that is, the District or Supreme Courts.

In less serious criminal cases, the magistrate must decide whether the accused person is guilty or not. If he or she is guilty, the magistrate also fixes the penalty.

If a criminal case is too serious to be dealt with in a Magistrates Court, it must be decided in the District or Supreme Court. However, the accused is first charged in a Magistrates Court and the magistrate must then decide whether there is enough evidence to justify sending the matter for trial in one of the higher courts. This is called a committal for trial.

Magistrates Courts deal with civil matters if the amount in dispute is \$50,000 or less.

In Summary:

- presided over by a Magistrate
- adult criminal matters
- family court matters (uncontested)
- orders (exercising federal jurisdiction)
- civil matters up to \$40,000

4. District Court

Serious criminal cases, such as rape and armed robbery, are decided in a District Court. A District Court also handles civil disputes where the amount in dispute is between \$50,000 and \$250,000.

Appeals against some decisions of a Magistrates Court may also be dealt with by a District Court.

A District Court judge presides over a District Court. In criminal trials, a jury decides whether the person charged is guilty or not. If the person is found guilty, the judge then decides on the penalty. Most civil cases

are decided by a judge sitting without a jury. Some Judges of the District Court also sit in the Planning and Environment Court and in the Childrens Court.

In Summary:

- presided over by a Judge (addressed as "Your Honour")
- civil and criminal (middle range offences)

5. Supreme Court

The Supreme Court is the highest court in the Queensland court system. It consists of the Chief Justice and two divisions, the Trial Division and the Court of Appeal.

Presiding over the court is a justice (judge) of the Supreme Court. The Supreme Court hears serious criminal offences, such as murder and certain serious drug offences. The Supreme Court hears civil disputes where the amount in dispute is more than \$250,000.

Like the District Courts, the Trial Division of the Supreme Court must use a jury to determine guilt or innocence in criminal cases. Civil cases are usually decided by a judge without a jury.

In certain circumstances, parties may dispute the decision of a court or the sentence imposed through a process called an appeal. Most appeals are heard in the Court of Appeal. It is part of the Supreme Court and handles only appeals; it does not decide cases initially. The Court of Appeal does not have a jury. Three justices of the Supreme Court make the decisions.

In Summary:

- presided over by a Judge
- serious criminal matters (adults and children)
- civil matters (eg custody / guardianship issues)
- appeals are dealt with by 3 x Supreme Court Judges
- sits in Brisbane, Townsville, Rockhampton. The Judge also travels on circuit to other major cities.

FEDERAL COURT SYSTEMS

1. Family Court

The Family Court of Australia was created by the Family Law Act 1975 (Cth) to interpret and apply that law to individual cases. The Family Court has registries in Brisbane and Townsville and sub-registries in Rockhampton and Cairns. This initiative was aimed not only at improving the manner in which separation and marriage dissolution were managed but also aimed at providing specialised facilities and services concerned with the welfare of children of the separating couples.

The Court also has jurisdiction in some matters under other legislation such as the *Marriage Act 1961* (Cth) and the Child Support legislation. The jurisdiction and the administration of the Court has changed over time as a result of changes to the Family Law Act, in response to recommendations of reviews both internal and external, and the creation of the Federal Magistrates Court.

The Family Law Act defines the jurisdiction of the Family Court and of the State Courts which may also exercise some jurisdiction under it. For example, the Family Court has jurisdiction to hear matters related to divorce whereas the Federal Court does not have this power because these matters are not within its jurisdiction.

The Family Court's jurisdiction in relation to children includes the power to make parenting orders, which may include one or more of the following:

the person or persons with whom a child is to live (*Family Law Act 1975*, section 64B(2)(a));

the time the child is to spend with another person or other persons (*Family Law Act 1975*, section 64B(2)(b));

- the allocation of parental responsibility for a child for making daily and long-term decisions about a child's care, welfare and development (*Family Law Act 1975*, section 64B(2)(c));
- if two or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility (*Family Law Act 1975*, section 64B(2)(d));
- the communication a child is to have with another person or other persons (*Family Law Act 1975*, section 64B(2)(e)); and
- maintenance of a child (*Family Law Act 1975*, section 64B(2)(f)).

The Family Court also has a broad welfare jurisdiction to deal with special matters such as consent to medical treatment and certain powers under international conventions.

The roles of the Family Court and the Department of Child Safety:

The role of the Family Court is to determine disputes between separated parents and other persons concerned with the child's welfare or about the care of the child. In deciding whether to make a particular parenting order, the Family Court must regard the best interests of the child as the paramount consideration.

If there is suspected harm or risk of harm to a child, the department is the mandated authority to investigate the allegations. The Family Court

does not have the expertise, role or resources to perform this function. Whether or not there are proceedings in the Family Court, the department has the lead responsibility to ensure the child's safety and need for protection. A child of separated parents has the same right to protection and to receive departmental services, as do other children.

The *Family Law Act 1975* recognises the child protection role of the state in the following ways:

- Family Court personnel are mandated to report cases of suspected harm and risk of harm, and family violence, to the state welfare authority (*Family Law Act 1975*, section 67Z, 67ZA);
- the Family Court cannot make a parenting order in relation to a child in the care of a person under the *Child Protection Act 1999*, unless the order is to come into effect when the child ceases to be in that care or the chief executive consents to the application proceeding in the Family Court (*Family Law Act 1975*, section 69ZK(1));

Nothing in the *Family Law Act 1975* or any order under that Act affects:

- the jurisdiction of the Childrens Court to make an order by which a child is placed in the care of a person under the *Child Protection Act 1999*; or
- the power of the department under the *Child Protection Act 1999* to take any action by which a child is placed in the care of a person under the Act; or
- the operation of the *Child Protection Act 1999* in relation to a child (section 69ZK(2));

The department has the right to intervene in Family Court proceedings and deal with child protection issues in the Family Court if it chooses (*Family Law Act 1975*, section 92A);

The Family Court may request the department to intervene in the proceedings (*Family Law Act 1975*, section 91B); and under the *Family Law Rules 2004*, rule 6.02(2), the chief executive of the department must be served as a respondent to any application relating to a child for whom a care agreement, assessment order or child protection order under the *Child Protection Act 1999* is in place.

In Summary:

- presided over by a Judge, Judicial Registrar, Registrar; 3 Judges for an Appeal (Full Court)
- deals with child and family matters
- international child abduction matters (Hague matters)

2. Federal Magistrate Court

The Federal Magistrates Service and state Magistrates Courts also have jurisdiction under the *Family Law Act 1975* to deal with children's matters. The Federal Magistrates Court, which shares registries with the Family Court in Brisbane and Townsville, can deal with contested children's matters provided the consent of all parties has been provided. For the purpose of this procedure, the Family Court also refers to the Federal Magistrates Service. The State Magistrates Court has jurisdiction to make consent orders only.

In Summary:

- specialised court which deals with Family Court matters (eg international child abduction matters, dissolution or annulment of marriages)
- appeals heard by the Family Court (Full Court)

3. High Court of Australia

The High Court is the highest court in the Australian judicial system. It was established in 1901 by Section 71 of the Constitution. The functions of the High Court are to interpret and apply the law of Australia; to decide cases of special federal significance including challenges to the constitutional validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts.

The seat of the High Court is in Canberra, where it is located in its own building within the Parliamentary Triangle. In addition, there are offices of the High Court Registry in Sydney and Melbourne, staffed by officers of the High Court. In Brisbane and Perth registry functions are performed on behalf of the High Court by officers of the Federal Court of Australia, and in Adelaide, Hobart and Darwin they are performed by officers of the Supreme Court of the respective State or Territory.

In Summary:

- presided over by 5 x Judges who hear appeal matter
- sits once a year in Brisbane
- oversees the State and Federal Court Systems

Judicial Review v Administrative Review

Judicial Review looks at whether the decision was made contrary to legislation, rules of natural justice, made on no evidence or otherwise made outside of power. See section 20(2) of the *Judicial Review Act 1991*. It basically looks at whether a decision was made contrary to law.

Administrative review is a merits review process which looks at all the information afresh and any new information to determine if the decision made was the correct one.

In Queensland judicial review is undertaken by the Supreme Court pursuant to the *Judicial Review Act 1991* and other Tribunals in relation to specific legislation (for example CST deals with Child Safety (Schedule 2) and Childrens Commission (blue card refusals etc).

The Queensland *Judicial Review Act 1991* (JR Act) gives the public the right to:

'request the reasons for the decisions which adversely affect them; or seek a review of a decision in the Supreme Court'.

As well as administrative decisions of Government departments and local authorities, the JR Act also applies to administrative decisions of semi-government agencies and statutory authorities.

'Administrative decisions' which are made under an enactment are reviewable. An enactment includes part of an Act or a statutory instrument such as regulations, rules, by-laws, ordinances, guidelines or standards.

'Decisions' include a failure to make a decision and actions and conduct leading up to the making of the decision. A decision can be an order, award or determination, certificate, direction, approval, consent or permission, licence, condition or restriction, declaration, requirement, demand or a refusal to hand over an article.

Some of the grounds for review are that:

- The decision-maker breached the rules of natural justice;
- The decision-maker did not observe the correct legal procedures;
- The decision-maker did not have the authority to make the decision;
- The decision was not authorised by the legislation it was purported to be made under;
- The decision involved an improper use of power;
- The decision involved an error of law;
- The decision is or may be tainted by fraud;
- There was no evidence or other material supporting the decision; or
- The decision was in some other way unlawful

Children Services Tribunal

The Tribunal was specifically established to look into some government decisions about the services to children and young people in the care of the Department of Child Safety. It protects and promotes the rights, interests and welfare of children and young people by making sure their views and wishes are considered and by involving them in making decisions. The Tribunal's decisions are focussed on getting the best outcome for children and young people.

One of the Tribunal's main jobs is to look at decisions made by the Department of Child Safety about children and young people who have been taken into care under the *Child Protection Act 1999*. These decisions are about:

- who they should live with;
- not telling their parents where they are living; or
- the amount and type of contact between them and their parents.

The Tribunal also looks at decisions made about:

- people who want to adopt a child;
- licensing a child care centre;
- people who are not allowed to work with children because of their history.

If a child or a young person has been taken into care and they or their family feel the decision made by the Department of Child Safety was wrong or unfair, the family can ask the Children Services Tribunal to look at the decision. The types of decisions that can be reviewed are listed above.

The Tribunal is usually made up of three people who have experience in many areas such as children's issues, law and medicine. The Tribunal is not like a court. People do not have to have a lawyer to go to the Tribunal. Hearings at the Tribunal are closed. That means that only people involved in the case and Tribunal staff are allowed to be at the hearing. Everyone usually sits at a big table to discuss the problem.

The Tribunal can:

- say YES to a decision (the decision stays the same);
- say NO to a decision (as if the decision had never been made);
- CHANGE some things about a decision; or
- make a NEW decision.

Glossary of court terms

The following table provides definitions of child protection court terminology as they relate to the Child Protection Act 1999 (Note: Provided as a guide only).

Term	Details
Adjournment	A court order by which proceedings are postponed, interrupted, or continued at a different time or place before the same court.
Affidavit	A written statement made by a person who has sworn or affirmed before a person authorised to administer the oath that the contents of the statement are true. This may be then used to support a position in a court proceedings. The person who signs the affidavit is called the deponent. Under the Act this is to be in Form 25 format.
Affirmation	A solemn declaration that the evidence given is truthful. A person can make an affirmation instead of taking an oath where the person has no religious belief or where it is not reasonably practical to administer an appropriate oath as required by the person's particular faith.
Aggrieved person	For a reviewable decision under the Act, this means a person stated in Schedule 2 who is affected by the decision. It is a person who has the avenue to have the decision reviewed by the Children Services Tribunal.
Appeal	An application to a higher court to reconsider or rehear the decision of the lower court on the ground that there has been an error in the decision of the lower court. Available on a question of law only or for mistakes of facts of law
Appellate court	<p>Under the Act:</p> <p>For a decision on an application for a Court Assessment Order or Child Protection Order, or for an order transferring a Child Protection Order or child protection proceeding to a participating state:</p> <ol style="list-style-type: none"> 1. If the decision was made by the Childrens Court constituted by a judge - the Court of Appeal 2. If the decision was made by the Childrens Court

Term	Meaning
	<p>constituted in another way - the Childrens Court constituted by a judge.</p> <p>For a decision on an application for a Temporary Assessment Order - the Childrens Court constituted by a judge.</p>
Assessment Order	Involves either a Temporary Assessment Order or Court Assessment Order
Authorised officer	Means a person holding office as an authorised officer under an appointment under the Child Protection Act.
Balance of probabilities	The standard of proof in a civil matter, including child protection matters. This is the degree to which the court must be satisfied that the applicant has made out his/her case. A fact is proved to be true on the balance of probabilities if its existence is more probable than not.
Burden of proof	The duty of one party to make out the case against the other party and to prove to the court that the case has been established. It is for the applicant to prove the facts, which are in dispute. These are often called facts in issue. In child protection matters, the burden of proving a child is in need of a child protection order falls upon the applicant.
Child Protection Order	<p>a. Means a Child Protection Order under chapter 2, part 4 of the Child Protection Act, including:</p> <ul style="list-style-type: none"> • an order extending, varying or revoking a child protection order • an interim order under section 67 in relation to a proceeding for a child protection order. <p>b. For chapter 7, includes an order mentioned in section 201.</p>
Child	An individual under 18 years (as defined in section 8 of the Act).
Child in need of protection	<p>A child who (as defined in Section 10 of the Act):</p> <p>a. has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm</p> <p>b. does not have a parent able and willing to protect the child from the harm.</p>
Child protection proceeding	<p>a. A proceeding under the Child Protection Act for the making, extension, amendment or revocation of a child protection order, or</p>

Term	Details
	<p>b. A proceeding under a child welfare law of a participating state for:</p> <ul style="list-style-type: none"> the making, extension, amendment or revocation of a child protection order or interim order if, under that law, the making of a particular finding is a prerequisite to the making of a child protection order - the making of that finding.
Childrens Court	The court that may hear and decide a child protection proceeding at first instance.
Court ordered conference	This is ordered by the court on adjournment of proceedings under section 68 (1)(e) and is a meeting held between the parties that is convened by a chairperson (refer to sections 69-72 of the Act). It is an attempt to decide the matters in dispute or to try to resolve the matters.
Court Assessment Order	<p>An order under chapter 2, part 3 of the Act, and includes:</p> <ul style="list-style-type: none"> a. an order extending, varying or revoking a court assessment order b. an interim order under section 67 in relation to a proceeding for a court assessment order.
Criminal history	The person's criminal history within the meaning of the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> and includes a conviction of the person and a charge made against the person for an offence.
Cross examination	Questions addressed to a witness by a party other than the party who called the witness to give evidence. Cross examination takes place after the witness has given his or her evidence in chief. Leading questions are permitted during cross examination.
Custody	As defined in Section 12 of the Act, custody means the right to have the child's daily care and the responsibility to make decisions about the child's daily care.
Custody order	Of a child under a child protection order, means custody of the child for not more than two years.

Deponent	The person who gives sworn evidence in an affidavit.
Directions hearing	Held with respect to Section 8 of the <i>Childrens Court Act 1992</i> . This is a hearing or mention conducted prior to the substantive hearing to determine procedural matters or interlocutory (interim) issues. This could also be known as a 'directions mention'.
Directive Order	A Child Protection Order directing a parent to do or refrain from doing something directly related to the child's protection, or an order directing the parents not to have contact with the child or to have contact only when a stated person or category of person is present.
Domestic violence history	The history of domestic violence orders made against the person under the <i>Domestic Violence (Family Protection) Act 1989</i> .
Evidence in Chief	The questioning of a witness by the counsel of the party who called that witness. Evidence in chief is given orally. Leading questions on a relevant matter should not be put to a witness being examined in chief without the court's leave.
Ex parte	An application by one side when the other is not, or does not need to be present.
Expert witness	A witness who is an expert in a particular field. This person has skills or qualifications, which allow them to express an opinion in court. The opinions of ordinary witness's are deemed irrelevant. The court decides whether or not a person is an expert.
Family meeting	A meeting held under section 96 of the Act, or a meeting with the family as defined within the department's case management framework.
Guardianship	Legal responsibility for all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children. This includes responsibility for decisions about the child's long-term care. This is defined in Section 13 of the Act.

Term	Details
Hearing	A proceeding conducted by a court or tribunal with a view to resolving the issues of fact or law, in which oral evidence may be taken and documentary evidence tendered. A hearing may be by way of oral or written submission.
Hearsay	Evidence of fact not actually perceived by a witness with one of their own senses, but stated by another person not called as a witness, with the object of asserting the truth of the contents of the statement.
Interim Order	An order made under section 67 of the Act, on an adjournment of a proceedings for a court assessment order or child protection order. These orders identify the status of the child or make a direction to the parent about contact with the child during the period of the adjournment.
Jurat	A short statement at the conclusion of an affidavit, setting out the name of the deponent, the signature of the deponent, where and when the affidavit was sworn, the name of the person before whom it was sworn, and the signature and title or description of the person before whom it was sworn.
Justice of the Peace	Appointed in an honorary capacity with authority to issue warrants for search and arrest, admit prisoners to bail and witness certain documents. In limited situations, they may sit in a court depending on the level at which they are appointed.
Leave of the court	Authority obtained from a court to take particular action which would not be permissible otherwise.
Litigation	The conduct of legal proceedings by parties before a court.
Long-term guardianship	Under a Child Protection Order, means guardianship until the child turns 18 years.
Magistrate	A judicial officer with summary jurisdiction (power to hear and determine a case alone, without a jury) in minor criminal and civil matters.

Medical examination	A physical, psychiatric, psychological or dental examination, assessment or procedure, and includes forensic examination and an examination or assessment carried out by a nursing or other health professional.
Mention	A preliminary procedure before a court where the matter is 'mentioned' before the judge or magistrate to determine pre-hearing issues. If a matter in court is set for mention, the case will not usually be heard that day.
Non-participating state	A state other than a participating state (as it relates to interstate provisions).
Oath	A solemn promise to tell the truth calling upon God as one's witness.
Parent	This is defined differently in different parts of the Child Protection Act. See sections 11, 23, 37, 52, 205, 242.
Participating state	A state declared to be a participating state under section 204 of the Act (as it relates to interstate provisions).
Party	To a proceeding on an application for an order for a child, means the child the applicant or a respondent to the application, and includes the chief executive if the application is for a court assessment order made by a police officer.
Recognised Entity	For an Aboriginal or Torres Strait Islander child, means an entity that, under an agreement between the state and the entity, is the appropriate entity to be consulted about the child's protection.
Remand	This relates to the status of the person who is the subject of the application. Between court appearances, the person is remanded by the court to appear at a future court date. A person who is remanded may be released on bail, held in custody, or for a child protection proceedings, an interim order may be made.
Respondent	A party called upon to answer an application, a petition or an

Term	Details
	appeal.
Reviewable decision	Is a decision stated under Schedule 2 of the Act. This is heard by the Children Services Tribunal.
Separate legal representative	A legal representative appointed by the court on adjournment of a child protection proceedings who acts in the child's best interests and presents the child's views and wishes to the court.
Short-term guardianship	Of a child under a Child Protection Order, means guardianship of the child for not more than two years.
Standing down a matter	Seeking the leave of the court to have the matter placed 'on hold' for a short period of time (definitely not overnight) with a view to obtaining further information to provide to the court.
Stay of proceedings	An order made by a court preventing an action proceeding further either before or after a determination by a court in respect of that action. The suspension of the proceedings may be temporary or permanent.
Subpoena	This is a document issued by a court ordering a person to attend court and produce information or testify in a case.
Supervision Order (also known as Protective Supervision Order)	A Child Protection Order requiring the chief executive to supervise the child's protection in relation to the stated matters. To give effect to this order, the chief executive can issue administrative directives to the parents directing them to do or refrain from doing something specifically related to the supervision matters stated on the order (refer to Section 78 of the Act).
Temporary Assessment Order	Means an order under chapter 2, part 2 of the Act, and includes an order extending a Temporary Assessment Order.
Tribunal	The Children Services Tribunal established under the <i>Children Services Tribunal Act 2000</i> .

Last updated 3 August 2007

COURT ETIQUETTE

The Department has a role in court to provide information which will assist a court in the decision making process in dealing with departmental clients.

In child protection matters a departmental officer duly authorised may apply to a Children's Court for an assessment order and/or a child protection order pursuant to the *Child Protection Act 1999*.

In court, correct dress, behaviour and language protocol are important in establishing and maintaining credibility with the presiding magistrate or judge and other parties.

Correct Dress

A conservative approach should be adopted in the choice of dress. This will require a reasonably formal standard of dress. Casual dressing is not acceptable. For example, both men and women may wear trousers or pants, however jeans are not permissible.

Correct Behaviour

Stand when the magistrate or judge enters the court.

Stand when addressing the bench unless the presiding judge or magistrate invites you to remain seated. Bow to the bench when entering and leaving the court. If you need to leave the court during the proceedings, stand and bow to the bench. Leave the courtroom without turning your back on the court.

If you need to communicate with the parents, solicitors or the departmental officer with case responsibility, during the proceedings, do so discreetly.

Stand when the court is closed.

Correct Language and Protocol

A magistrate (Children's Court/ Magistrate Court) should be addressed as "**Your Honour**".

A judge (Children's Court of Queensland) should be addressed as "**Your Honour**".

If in doubt "**Sir**" and "**Ma'am**" may also be acceptable.

OVERVIEW OF THE CHILD PROTECTION ACT 1999

The legislation which underpins the Department of Child Safety's daily work is the *Child Protection Act 1999* (hereinafter referred to as 'the Act').

The Act was introduced in 1999 and has subsequently undergone a number of amendments. The current version of the Act is 'reprint 4D' which came into force on 11 June 2008. There are currently proposed amendments which are due for inclusion early 2009 (see summary document).

The Purpose of the Act

The purpose of the Act is set out at s4 which states:

- *the purpose of this Act is to provide for the protection of children.*

The Principles of the Act

The principles of the Act are outlined at s5 which states:

- *this Act is to be administered under the principle that the welfare and best interests of a child are paramount;*
- *every child has a right to protection from harm;*
- *families have the primary responsibility for the upbringing, protection and development of their children;*
- *the preferred way of ensuring a child's wellbeing is through the support of the child's family;*
- *powers conferred under this Act should be exercised in a way that is open, fair and respects the rights of people affected by their exercise, and, in particular, in a way that ensures—*
 - *(i) actions taken, while in the best interests of the child, maintain family relationships and are supportive of individual rights and ethnic, religious and cultural identity or values; and*
 - *(ii) the views of the child and the child's family are considered; and*
 - *(iii) the child and the child's parents have the opportunity to take part in making decisions affecting their lives;*
- *if a child does not have a parent able and willing to protect the child, the State has a responsibility to protect the child, but in protecting the child the State must not take action that is unwarranted in the circumstances;*
- *if a child is removed from the child's family—*
 - *(i) the aim of authorised officers' working with the child and the child's family is to safely return the child to the family if possible; and*
 - *(ii) the child's need to maintain family and social contacts, and ethnic and cultural identity, must be taken into account; and*

- (iii) in deciding in whose care the child should be placed, the chief executive must give proper consideration to placing the child, as a first option, with kin;
- a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;
- if a child is able to form and express views about his or her care, the views must be given consideration, taking into account the child's age or ability to understand; and
- if a child does not have a parent able and willing to give the child ongoing protection, the child has a right to long-term alternative care.

Some basic concepts of the Act:-

Section 8 Who is a *child*

- A **child** is an individual under 18 years.

Section 9 What is *harm*

- (1) **Harm**, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.
- (2) It is immaterial how the harm is caused.
- (3) Harm can be caused by—
 - (a) physical, psychological or emotional abuse or neglect; or
 - (b) sexual abuse or exploitation.

Section 10 Who is a *child in need of protection*

- A **child in need of protection** is a child who -
 - (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
 - (b) does not have a parent able and willing to protect the child from the harm.

What is Natural Justice and/or Procedural Fairness?

The rules or principles of natural justice, also known as procedural fairness, have been developed to ensure that decision-making is fair and reasonable.

Natural justice is a legal requirement that applies to government decision-making. Put simply, natural justice involves decision-makers informing people of the case against them or their interests, giving them a right to be heard (the 'hearing' rule), not having a personal interest in the outcome (the rule against 'bias'), and acting only on the basis of logically probative evidence (the 'no evidence' rule). A denial of natural justice is a ground of review. An example of a denial of natural justice is late service of Court material.

Due Process of Law

Due process is the principle that the government must respect all of a person's legal rights, instead of just some or most of those legal rights, when the government deprives a person of life, liberty, or property.

Due process is the idea that laws and legal proceedings must be fair.

Rights of Parents:

Parents are afforded numerous rights under the Act.

Sections 11, 23, 37, 51F, 52, 67(3) outline the definition of a parent which relates to specific divisions of the Act.

The following sections of the Act place obligations on the CE that must be complied with in relation to parents and their rights:-

Section 15 - Child's parents to be told about allegation of harm and outcome of investigation

- (1) An authorised officer or police officer who is investigating an allegation of harm, or risk of harm, to a child, or assessing the child's need of protection because of the allegation must give details of the alleged harm or risk of harm to at least 1 of the child's parents.
- (2) Also, as soon as practicable after completing the investigation, the officer must—
 - (a) tell at least 1 of the child's parents about the outcome of the investigation; and
 - (b) if asked by the parent—give the information in writing to the parent.
- (3) However, if the officer reasonably believes—
 - (a) someone may be charged with a criminal offence for the harm to the child and the officer's compliance with subsection (1) or (2) may jeopardise an investigation into the offence; or
 - (b) compliance with the subsection may expose the child to harm;

the officer need only comply with the subsection to the extent the officer considers is reasonable and appropriate in the particular circumstances.

Section 20 - Officer's obligations on taking child into custody

- (1) If an authorised officer or police officer takes a child into the chief executive's custody, the officer must, as soon as practicable—
 - (a) take reasonable steps to tell at least 1 of the child's parents—
 - (i) that the child has been taken into custody and the reasons for the action; and

- (ii) when the chief executive's custody ends under section 18(7); and
 - (b) tell the child about his or her being taken into the chief executive's custody;⁷ and
 - (c) tell the chief executive the child has been taken into the chief executive's custody and where the child has been taken.
- (2) Subsection (1) does not require the officer to tell the child's parents in whose care the child has been placed.
 - (3) The officer's obligation under subsection (1)(a)(i) to give reasons for taking the child into custody is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes—
 - (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the subparagraph may jeopardise an investigation into the offence; or
 - (b) compliance with the subparagraph may expose the child to harm.

Section 32 - Explanation of temporary assessment orders

- Immediately after a temporary assessment order is made for a child, the applicant for the order must—
 - (a) give a copy of the order, or facsimile order or order form under section 30(6), to at least 1 of the child's parents; and
 - (b) explain the terms and effect of the order; and
 - (c) inform the parent—
 - (i) about the right of appeal; and
 - (ii) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately;¹⁰ and
 - (iii) how to appeal; and
 - (d) tell the child about the order

Section 41 - Notice of application (CAO's)

- (1) As soon as practicable after the application is filed, the applicant must—
 - (a) personally serve a copy of it on each of the child's parents; and
 - (b) tell the child about the application.¹³
- (2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.
- (3) Also, if the applicant is a police officer, the applicant must immediately give a copy of the application to the chief executive.
- (4) A copy of the application served under this section must state—
 - (a) when and where the application is to be heard; and

- (b) for a copy served on a parent—that the application may be heard and decided even though the parent does not appear in court.

Section 48 - Chief executive's obligations after making of court assessment order

- As soon as practicable after a court assessment order for a child is made, the chief executive must give to the parties to the application for the order—
 - (a) a copy of the order; and
 - (b) a written notice—
 - (i) explaining the terms and effect of the order; and
 - (ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
 - (iii) stating how to appeal.

Section 51L - Who should be involved (in case planning)

- (1) The convenor must give the following persons a reasonable opportunity to attend and participate in the meeting—
 - (a) the child, unless it would be inappropriate because of the child's age or ability to understand;
 - (b) the child's parents;

Section 51T/Y - Distributing and implementing the case plan

- After a case plan has been recorded in the approved form and endorsed, the chief executive must—
 - (a) give a copy of the plan to the child, unless that would be inappropriate having regard to the child's age and ability to understand; and
 - (b) explain the plan to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand; and
 - (c) give a copy of the plan to—
 - (i) the child's parents; and
 - (ii) anyone else affected by the plan or who the chief executive considers should receive a copy; and
 - (d) support the implementation of the plan.

Section 51T/Y - Distributing and implementing the revised case plan

- (1) This section applies after the chief executive has prepared the revised case plan.
- (2) The chief executive must—
 - (a) give a copy of the plan to the child, unless that would be inappropriate having regard to the child's age and ability to understand; and
 - (b) explain any changes in the plan to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand; and

- (c) give a copy to the child's parents and anyone else affected by the plan or who the chief executive considers should receive a copy; and
- (d) support the implementation of the plan.

Section 56 - Notice of application

- (1) As soon as practicable after the application is filed, the applicant must—
 - personally serve a copy of it on each of the child's parents; and
 - (b) tell the child about the application.
- (2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.
- (3) The copy of the application served under this section must state—
 - when and where the application is to be heard; and
 - (b) the application may be heard and decided even though the parent does not appear in court.

Section 63 - Chief executive's obligations after making of child protection order

- As soon as practicable after a child protection order for a child is made, the chief executive must give to the parties to the application for the order—
 - (a) a copy of the order; and
 - (b) a written notice—
 - explaining the terms and effect of the order; and
 - (ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
 - (iii) stating how to appeal.

Section 78 - Chief executive's powers

- (1) For giving effect to the child protection order, the chief executive may, by written notice given to a parent of the child, direct the parent to do or refrain from doing something specifically relating to the supervision matters stated in the order.
- (2) The notice must state the following—
 - (a) the reasons for the decision;
 - (b) that the parent may apply to the tribunal to have the decision reviewed only on the ground mentioned in subsection (3);
 - (c) the application must be made within 28 days after the person receives the notice;
 - (d) how to apply to have the decision reviewed.
- (3) The parent may apply to have the decision to give the direction reviewed only on the ground that the direction does not specifically relate to the supervision matters.

- (4) Despite the *Children Services Tribunal Act 2000*, section 70 the tribunal can not grant a stay of the decision.

**Section 86 - Chief executive to notify parents of placing child in care—
child protection order**

- (1) This section applies if the child is in the chief executive's custody or guardianship under a child protection order.
- (2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the child, give written notice of the decision to the child and the child's parents stating the following—
 - the person in whose care the child is placed and where the child is living;
 - the reasons for the decision;
 - that the child and the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;
 - how to apply to have the decision reviewed.
- (3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.
- (4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive may decide not to comply with the subsection.
- (5) If the chief executive makes a decision under subsection (4), the chief executive must give written notice of the decision to the child and the child's parents stating the following—
 - (a) that the chief executive has decided not to tell the child's parents the person in whose care the child is placed and where the child is living;
 - (b) the reasons for the decision;
 - (c) that the child and the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;
 - (d) how to apply to have the decision reviewed.
- (6) Subsection (2) does not apply if the chief executive is satisfied it is not reasonably practicable for the chief executive to give the notice because the child is placed in the person's care for less than 7 days.

Section 87 - Chief executive to provide contact between child and child's parents

- (1) The chief executive must provide opportunity for contact between the child and the child's parents and appropriate members of the child's family as often as is appropriate in the circumstances.
- (2) However, the chief executive may refuse to allow, or restrict or impose conditions on, contact between the child and the child's parents or members of the child's family, if the chief

executive is satisfied it is in the child's best interests to do so or it is not reasonably practicable in the circumstances for the parents or family member to have the contact.

- (3) If the chief executive refuses to allow, or restricts or imposes conditions on contact between the child and a person, the chief executive must give written notice of the decision to each person affected by the decision.
- (4) The notice must—
 - be given as soon as practicable after the decision is made; and
 - (b) state the reasons for the decision; and
 - (c) state that the person may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
 - (d) state how to apply to have the decision reviewed.

Model Litigant Principles:

Refer to the Model Litigant Principles article by Conrad Lohe (dated 28 June 2007).

Principles apply to the Department of Child Safety as a state body.

Principles are broken down into two main headings:

Fairness:-

Acting consistently;
Dealing promptly;
Endeavouring to avoid litigation;
Keeping litigation costs to a minimum where it cannot be avoided;
Paying legitimate claims without litigation;
Not seeking to take advantage of an impecunious opponent;
Not contesting matters which it accepts is correct; and
Not instituting and perusing appeals unless there is a belief for reasonable prospects of success.

Firmness:-

Appropriately testing claims;
Contesting all spurious or vexatious claims;
Claiming legal professional privilege where appropriate;
Claiming public interest immunity to protect confidential information;
Seeking security for costs;
Relying on available statutes of limitation; and
Acting properly to protect state's interest.



Conrad Lohe
Crown Solicitor
Presentation Paper
Legal Managers'
Breakfast Briefing
June 2007

The Model Litigant Principles

Prepared by Crown Solicitor, Conrad Lohe
for presentation on 28 June 2007.

My topic today concerns what are called the Model Litigant Principles, and I am going to talk about a number of aspects:

- the role of the State as a litigant;
- the background to the development of the principles;
- the content of the principles;
- what they mean in practice; and
- how they can help you.

I should start by saying that the Model Litigant Principles do not mean that you must roll over and pay up when someone sues your Department or agency. On the contrary, you are entitled to defend yourself by all legitimate means, and to do so vigorously if that is justified.

What is the position of the State of Queensland as litigant?

The *Crown Proceedings Act 1980 (Qld)* and the Commonwealth's *Judiciary Act 1903* place the Crown in essentially the same position as a private litigant in litigation for or against the State. This poses the question, that if the rights of the Crown are equated with those of a private litigant, why then is the Crown commonly urged to behave in a different fashion from private litigants, for example, by waiving defences that may be available to it?

The answer is that the community, and the courts, expect the Crown to meet higher standards of conduct than they might expect of a private litigant. Merely complying with court rules and solicitors and barristers professional rules, although important in itself, is not necessarily accepted as sufficient. The courts expect the highest standards of probity and fairness from the State in its handling of litigation.

On the other hand, the community also expects the State to deal properly with taxpayers' money and, in particular, not to spend it without due cause and due process. The State is sometimes seen as having very deep pockets, and virtually unlimited funds. We all know that is certainly not the case in these days of budgetary constraints. That means that demands on the State for compensation for injury or damages should be scrutinised carefully to ensure that they are justified.

The balancing of these community and court expectations of fairness and firmness forms the basis of the model litigant principles.

Where do the special obligations on the Crown come from?

Although the development of a set of specific principles to guide Governments and their lawyers in the conduct of civil litigation is relatively new, the idea that the State or the Crown must behave as a model litigant in court proceedings is not at all new.

It may be, as was suggested in an English case, that the underlying concept originates in the constitutional theory that the Crown is the fount of justice, and from the fact that the courts were the royal courts of justice and that the judges were His or Her Majesty's judges. We still see a remnant of that history in the Royal Coat of Arms which in Queensland can be seen on the wall of the court above the judge.

It follows, I think, that if the Crown, or in more modern terms, the State, is the fountain and origin of justice, the Crown must conduct itself in its courts to exemplify the principles of that justice. The power of the State is to be used for the public good and in the public interest, and not as a means of oppression, even in litigation.

Those principles have for many years been recognised in the criminal courts, where those representing the Crown as prosecutors have very clearly defined duties of fairness and propriety which they are obliged to obey in the conduct of prosecutions.

They have also been recognised in the civil courts, although until fairly recently perhaps not with the same precision as in the criminal courts.



In 1912, Sir Samuel Griffith, the Chief Justice of the High Court, who had in his long career been Attorney-General of Queensland, Premier of Queensland and Chief Justice of the Supreme Court of Queensland, observed in the course of his judgment in *Melbourne Steamship Co Ltd v Moorehead*¹ in relation to a technical response pleaded by the Attorney-General of the Commonwealth in the action before the Court:

The point is a purely technical point of pleading and I cannot refrain from expressing my surprise that it should be taken on behalf of the Crown. It used to be regarded as axiomatic that the Crown never takes technical points, even in civil proceedings, and a fortiori not in criminal proceedings.

I am sometimes inclined to think that in some parts – not all – of the Commonwealth, the old fashioned, traditional and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects, which I learned a very long time ago to regard as elementary, is either not known or thought out of date. I should be glad to think that I am mistaken.

Australia has not been alone in the acceptance of the concepts of fairness on the part of the Crown or the state in litigation.

In an English case in 1949, *Sebel Products Limited v Commissioners of Customs and Excise*², the court was concerned with an action relating to the plaintiff's liability to pay purchase tax which had set down for trial. Several days before the trial, the plaintiff Sebel paid the Commissioners of Customs and Excise the amount of tax which would have been due if their claim had failed. Sebel succeeded in their action, and were found not liable to pay the tax. However, the Commissioners refused to return the tax paid before the trial because it had been paid under a mistake of law.

Sebel, not surprisingly, claimed that the payment was under an agreement with Customs and Excise that, if their claim was successful, the amount of tax paid would be refunded. The court found in Sebel's favour that there had been such an agreement, but the Judge, in commenting on the mistake of law defence said:

By the Crown Proceedings Act, 1947, the defendants are placed in the same position as the ordinary subjects of the Crown and I see no reason why they should not in appropriate cases refuse to refund money paid to them voluntarily under a mistake of law . . . At the same time I cannot help feeling that the defence is one which ought to be used with great discretion, and that for two reasons. First, because the defendants being an emanation of the Crown, which is the source and fountain of justice, are in my opinion bound to maintain the highest standards of probity and fair dealing, comparable to those which the Courts, which derive their authority from the same source and fountain, impose on the officers under their control. Secondly, because the taxpayer, who is too often tempted to evade his liability and to keep in his pocket money which he ought to have paid to the Revenue will find too ready an excuse in the plea that the Revenue Authorities will, if they can, keep in their coffers, if they can get it there, money which the taxpayer was under no obligation to pay them, and they had no right to demand.

Although such an excuse would have no validity in either a court of law or in the forum of the taxpayer's own conscience, I think that, in the public interest, grounds for proffering it should, so far as possible, be avoided.

In another case, *Kenny v South Australia*³, the State of South Australia was represented by the Crown Solicitor's Office. The defence was not filed or delivered within the time prescribed by the rules of court.

Apparently, there had been a pattern on the part of the State of South Australia and the Crown Solicitor's Office in other actions of non-compliance with the rules and the Master had given previous warnings to them about the persistent failure to comply with the time limits under the rules and that he was no longer prepared to extend leniency. The Master's patience ran out, and he made an order against the State. When the matter came before the Supreme Court, the Chief Justice said:

The Court and the Attorney-General, to whom the Crown Solicitor is responsible, have a joint responsibility for fostering the expeditious conduct and disposal of litigation. It is extremely important that the Crown Solicitor's Office set an example to the private legal profession as to conscientious compliance with the procedures designed to minimise cost and delay and to make the maximum use of the resources committed to the Court . . .

I must point out that pressure of work and lack of staff is not accepted from the private profession as an excuse for non-compliance with the Rules and it cannot be accepted from the Crown Solicitor's Office. The Court could not 2

tolerate a situation in which litigants were delayed because the opposite party was the State in a way which would not be tolerated if the opposite party were a private litigant.

These various comments by the courts, and no doubt many other similar ones, acknowledge that the courts have for many years recognised that the Crown, or the State, has a special responsibility to the court and the community where litigation is concerned.

Where do we find these principles?

The earliest formulation of the principles was apparently developed by the Commonwealth, where the current statement of the model litigant principles is to be found as part of the Attorney-General's Legal Service Directions. I have attached a copy of the principles to this paper.

I am aware of one other recent formulation of the model litigant principles which appeared in the recent request for tender for the provision of legal services to the Victorian Government. Although that formulation was not identical to the Commonwealth's principles, it was based on them.

In Queensland, before 2006, there was no comprehensive formulation of the general principles about how the State should conduct itself in civil litigation, although the courts in this State have on a number of occasions made criticisms and given guidance about how the Crown should behave in criminal prosecutions.

In 2006, when Cabinet issued directions about the conduct of significant litigation, it also adopted a statement of the model litigant principles to govern the conduct of all litigation in which the State and its agencies is involved, not just significant litigation.

The introductory paragraphs of the principles adopted by Cabinet make it clear that there is a balance to be struck:

The power of the State is to be used for the public good and in the public interest, and not as a means of oppression, even in litigation. However, the community also expects the State to properly use taxpayers' money, and in particular, not to spend it without due cause and due process. This means that demands on the State for compensation for injury or damages should be carefully scrutinized to ensure that they are justified.

These two basic concepts are expanded under the headings 'fairness' and 'firmness'.

What are the principles?

As to fairness, the Cabinet Directive says:

The State and all agencies of the State must conduct themselves as model litigants in the conduct of all litigation, including significant litigation, by adhering to the following principles of fairness:

- acting consistently in the handling of claims and litigation;
- dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
- endeavouring to avoid litigation, wherever possible;
- where it is not possible to avoid litigation, keeping the costs of litigation to a minimum;
- paying legitimate claims without litigation, including making partial settlements of claims, or interim payments, where liability has been established and it is clear that the State's liability is at least as much as the amount to be paid;
- not seeking to take advantage of an impecunious opponent;
- not contesting matters which it accepts as correct, in particular by:
 - not requiring a party to prove a matter which the state knows to be true;
 - not relying on purely technical defences where the State will suffer no prejudice by not doing so; and
 - not contesting liability if the State knows that the dispute is really about quantum; and
- not instituting and pursuing appeals unless the State believes that it has reasonable prospects for success, or the appeal is otherwise justified in the public interest.

The State must behave as a model litigant in the conduct of all litigation, including significant litigation, by adhering to the following principles of firmness:

- appropriately testing all claims;
- contesting all spurious or vexatious claims;
- claiming legal professional privilege where appropriate;
- claiming public interest immunity to protect confidential information such as Cabinet papers in appropriate cases;
- seeking security for costs where appropriate and pursuing costs when it is successful in litigation, which will assist in reducing the potential for vexatious proceedings to be instituted against it;
- relying on available statutes of limitation, which have been enacted to protect a defendant from unfair prejudice; and
- acting properly to protect the state's interests.



What does this mean in practice?

One can identify a number of practical effects of these principles.

- We do not play favourites: we deal even-handedly with all litigants.
- We do not use delaying tactics, for example to force a plaintiff to run up unnecessary costs, or to try to force a plaintiff to abandon his or her action because they have run out of money.
- We do not commence legal proceedings, including prosecutions, for ulterior or improper motives.
- We do not defend indefensible claims, or try to avoid legitimate liabilities, and do not attempt to avoid disclosure of unfavourable or inconvenient information when it should be disclosed.
- We do not take technical points merely for the sake of taking those points where they do not affect the merits of the case, particularly for the purpose of 'stringing out' the litigation.
- We do not seek to delay implementing the result of litigation by instituting appeals which have little or no merit. However, the State may be justified in seeking to have the law clarified, if necessary by an appeal, but in such a case may have to be prepared to carry the burden of the costs of the appeal even if it is successful in some respects.
- We do not avoid our obligations to obey court-imposed time limitations and deadlines, and ensure that disclosure of documents is thorough and prompt.

On the other hand,

- We are entitled to examine any claim against the State thoroughly, and we do not back down if we believe a claim to be spurious or vexatious. We will seek security for costs where appropriate.
- We will act fairly but firmly in the defence of actions against the State, and will require a plaintiff to prove his or her case by proper evidence.
- We are entitled to defend a case even if there is no absolute certainty of winning, provided that there are reasonable prospects of a successful defence. In doing so, we recognise that litigation is not an exact science, and the result of a case can often not be predicted with certainty.
- We will defend the State's legal professional privilege, and will raise a claim of public interest immunity whenever a legitimate claim can be made.
- The State is entitled to rely on the *Limitation of Actions Act* where the time limitation for actions has passed, although it has the right to waive compliance in a particular case if that is thought appropriate.
- We will seek to prevent the courts from being used for improper claims, including claims which are vexatious, for example if they are commenced for some improper and ulterior motive, and will seek to have vexatious litigants declared vexatious in appropriate cases.
- We will generally seek to recover the legitimate legal costs incurred by the State if it is successful in an action, although there is a discretion in the chief executive to waive the recovery of costs if a particular case warrants such a waiver.

To whom do the principles apply?

The general statements by the courts about how the Crown should behave in litigation apply to the State in all its manifestations, and to agencies and employees of the State. Because they apply to the State, they must necessarily apply to anyone who represents the State before the courts, whether that be the Crown Solicitor or other legal representatives.

What are the consequences of failure to follow these principles?

In a particular case, a court will often be willing to penalise the State if the court perceives that the State has acted other than with complete propriety. It can do that by ordering costs against it, even to the extent of ordering costs on what is now called an indemnity basis.

However, even apart from these specific penalties, behaviour of a lesser standard than that expected of the State will have longer-lasting and more insidious effects. It has certainly been my experience that judges rely upon the integrity and fairness of the lawyers who represent the State, and often look to them for assistance and guidance. That does not mean of course, that the State is only more likely to get a favourable decision from a judge.

It would be of great concern to me, and I am sure to all of us, if the courts come to distrust the State and its lawyers, and I have no doubt that it would be of great concern to the judges themselves. The guidance of the model litigant principles will help to ensure that that confidence is maintained.

How should you apply these principles?

I expect that it will rarely be necessary for any of you to have to consider the application of these principles. They are consistent with the way in which litigation for the State has always been conducted. However, there may be occasions when your department will be asked to refrain from taking a particular course in litigation involving your department, for example, by not relying on the statute of limitations, and the formulation of the general principles will assist you in deciding how to proceed.

In cases of doubt you are of course entitled to seek advice from me or my office, and from the Solicitor-General. If I or my staff have an issue about the conduct of a particular action, we will discuss the issue with you or your officers.

Conclusion

I have tried to show that the Model Litigant Principles are not chains which restrict your ability to act in the best interests of the State or your agency.

Rather, they give guidance which allows you to be confident that the litigation within the area of your responsibility will be conducted fairly but with due regard for the interests of the State.



Attachment

The Commonwealth's obligation to act as a model litigant

The obligation

- 1 Consistently with the Attorney General's responsibility for the maintenance of proper standards in litigation, the Commonwealth and its agencies are to behave as model litigants in the conduct of litigation.

Nature of the obligation

- 2 The obligation to act as a model litigant requires that the Commonwealth and its agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or an agency by:
 - (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
 - (b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid
 - (c) acting consistently in the handling of claims and litigation
 - (d) endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate
 - (e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
 - (i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true, and
 - (ii) not contesting liability if the Commonwealth or the agency knows that the dispute is really about quantum
 - (f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
 - (g) not relying on technical defences unless the Commonwealth's or the agency's interests would be prejudiced by the failure to comply with a particular requirement
 - (h) not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, and
 - (i) apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.

Note 1 – The obligation applies to litigation (including before courts, tribunals, inquiries, and in arbitration and other alternative dispute resolution processes) involving Commonwealth Departments and agencies, as well as Ministers and officers where the Commonwealth provides a full indemnity in respect of an action for damages brought against them personally. Ensuring compliance with the obligation is primarily the responsibility of the agency which has responsibility for the litigation. In addition, lawyers engaged in such litigation, whether Australian Government Solicitor, inhouse or private, will need to act in accordance with the obligation and to assist their client agency to do so.

Note 2 – In essence, being a model litigant requires that the Commonwealth and its agencies, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the Commonwealth and its agencies will act as a model litigant has been recognised by the Courts. See, for example, *Melbourne Steamship Limited v Moorhead* (1912) 15 CLR 133 at 342; *Kenny v State of South Australia* (1987) 46 SASR 268 at 273; *Yong Jun Qin v The Minister for Immigration and Ethnic Affairs* (1997) 75 FCR 155.

Note 3 – The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.

Note 4 – The obligation does not prevent the Commonwealth and its agencies from acting firmly and properly to protect their interests. It does not therefore preclude all legitimate steps being taken to pursue claims by the Commonwealth and its agencies and testing or defending claims against them. It does not preclude pursuing litigation in order to clarify a significant point of law even if the other party wishes to settle the dispute. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interests of the Commonwealth or an agency pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable. In certain circumstances, it will be appropriate for the Commonwealth to pay

costs (for example, for a test case in the public interest.)

Note 5 – The obligation does not prevent the Commonwealth from enforcing costs orders or seeking to recover its costs.

Merits review proceedings

3 The obligation to act as a model litigant extends to agencies involved in merits review proceedings.

4 An agency should use its best endeavours to assist the tribunal to make its decision.

Note – The term 'litigation' is defined in paragraph 15 of these Directions in terms that encompass merits review before tribunals. There are particular obligations in relation to assisting a tribunal engaged in merits review to arrive at a decision. Agencies should pay close attention to the legislation under which a tribunal is established, and any practice directions issued by the tribunal. In the case of the Administrative Appeals Tribunal see in particular subsection 33(1AA) of the *Administrative Appeals Tribunal Act 1975* and the explanatory memorandum to the Administrative Appeals Tribunal Amendment Bill 2005.

Alternative dispute resolution

5 When participating in alternative dispute resolution, the Commonwealth and its agencies are to:

- (a) participate fully and effectively, and
- (b) wherever practicable, ensure that their representatives have authority to settle the matter, or at least clear instructions on the possible terms of settlement that would be acceptable to the Commonwealth, so as to facilitate appropriate and timely resolution of a dispute.

Note – Agencies are encouraged to develop dispute management plans addressing the place of litigation and alternative strategies in addressing disputes.

6 An agency which agrees to participate in an alternative dispute resolution process is to tell the other party to the process whether or not a representative attending the process will have the authority to settle the matter to finality.

Note – When participating in alternative dispute resolution processes, regard is still to be had to the requirements for settling major claims under paragraph 4.4 and Appendix C. In practical terms, this may mean that a representative attending an alternative dispute resolution process may not be given authority to settle a matter to finality.

Notes

¹ (1912) 15 CLR 333, at 342

² (1949) 1 Ch 409 at 413

³ (1987) 46 SASR 268 at 273



They are playing a game. They are playing at not playing a game. If I show them I see they are, I shall break the rules and they will punish me. I must play their game, of not seeing I see the game.

R D Laing, *Knots*

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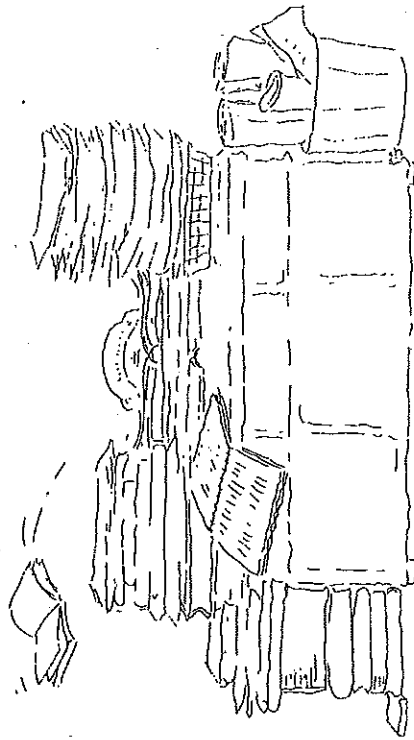
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Due process of law



The Fifth Amendment to the Constitution of the United States of America provides that 'no person shall be ... deprived of life, liberty or property without due process of law'.

Article 10 of the Universal Declaration of Human Rights provides that 'everyone is entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'.

The requirement of fair trial is one of the basic elements in 'the rule of law'. In the United States the requirement has superior status under the Constitution, so that any statute which allows for a person's rights to be affected other than by due process of law will be invalid.

In Australia, however, as in Britain, due process of law is not guaranteed by the Constitution. For the most part, parliaments may, if they choose, make laws providing for people to be thrown into dungeons without due process. The only limiting factor in Australia is s 71 of the Commonwealth Constitution, which provides that if any such power to affect people under Commonwealth law can be classified as judicial, it may be vested only in the High Court or other federal court constituted in accordance with s 72, or in State courts. If the

DUE PROCESS OF LAW

power can be classified in some other way, for example, as administrative, then it may validly be given to some other tribunal or a minister or public servant. (There is quite a lot of technical law on the question whether a power is to be classified as judicial.) Under State law, there is no limitation of this sort, even for judicial powers. However, the High Court held in *Kable v DPP (NSW)* (1996) that, because a State Supreme Court may exercise judicial power of the Commonwealth, it is in breach of the Commonwealth Constitution for the State Parliament to vest in the court powers which are incompatible with the exercise of judicial power.

The legal notion of due process of law takes the procedures of the courts as a model. These procedures, developed over the centuries, are the main subject of this chapter.

When legislation gives powers to a public official or body other than a court, it often requires that person or body to follow procedures similar to those of the courts. Even if it does not, the courts can themselves sometimes review the decisions and proceedings on the basis of some element of procedural unfairness, as mentioned in chapter 12.

The principle of due process of law, therefore, is part of our legal system in that it governs courts; it is (sometimes) embodied in legislation; and it is (sometimes) accepted by courts in reviewing the proceedings of lower courts, tribunals and officials, even where parliament has not expressly required a fair hearing.

The requirements of due process are most fully developed in the procedures of the courts, and although the law often requires other bodies (for example, trade unions or local government) to conduct fair hearings into certain matters, the procedures are much less elaborate and formal than those of the courts. The notion of due process and a fair trial in the Australian legal system is, therefore, best understood through an examination of the procedures of the courts.

We do not propose to analyse court procedures in detail. They are complex, and vary from one type of court, or one jurisdiction, to another. Instead we will discuss the basic principles which underlie court procedures in our system. It is worth noting that procedures are strictest in criminal proceedings, when the liberty of the accused may be at stake.

The fundamental rule of 'due process' and 'natural justice' is that no person shall be judged unheard. There must be a hearing, and the hearing must be fair. How do Australian courts achieve these objectives?

Notice

If there is to be a hearing, the person who may be affected must, obviously, have sufficient notice of the fact. If it is to be a fair hearing, he or she must also know in advance the case to be answered.

In *civil* proceedings at common law this is achieved by an exchange of documents between the parties.

Suppose you are punched by your neighbour, Fred. You prepare a document setting out your side of the story: how it happened, the injuries you suffered, and the amount of damages you claim. You have this document 'issued' by a court officer (who stamps it) and then 'served' on the defendant (it is given to Fred). Fred then prepares a document setting out his side of the story, and goes through the same process of issuing and serving it on you. He may, perhaps, deny that he punched you; or he may admit the punch but say it was in self-defence. You can then respond to that by denying that you had attacked him. So it goes, until the documents make it clear what is really in dispute: it may be whether Fred punched you at all, or it may be whether you had attacked him first. When this stage arrives, it is said that 'issue is joined', and the case can then be put on the list for hearing. The point of the whole exercise — a kind of paper war — is to avoid misunderstanding and waste of time, as well as to help each side prepare for the trial. For example, if Fred admits punching you, there is no need to bother calling evidence to prove it: the only evidence necessary is that relating to the question of self-defence. In most cases, the documents are drafted by lawyers. They can be very long and complicated, for example, in complex commercial cases in the higher courts, but in the lower courts they are usually less elaborate. In many civil jurisdictions, too, the evidence is in the form of affidavits (sworn written statements filed in court and served on the other party).

In *criminal* proceedings the procedures are different. Fred may be arrested by police and charged with the alleged offence. For less serious offences, he may be summonsed instead. He is entitled to full particulars of the charge against him, and the court may order that he be given such particulars.

If Fred is charged with an indictable offence (that is, one of the more serious offences that needs to be tried by judge and jury) then a preliminary hearing (or 'committal proceeding') must be held before a magistrate as soon as possible. In the meantime, he may be released on bail, unless the court feels that he may abscond, commit another offence, or try to get at witnesses, or unless the offence is particularly serious, for example, murder.

At the preliminary hearing the Crown produces its evidence in order to establish that it has a plausible (*prima facie*) case against Fred. If the evidence seems insufficient to warrant putting him to trial, the magistrate may discharge him; otherwise he will be committed for

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trial. Fred may himself give evidence and call witnesses at the preliminary hearing, but in most cases he will not do so. As a result of the preliminary hearing, Fred has learnt not only the charge he has to answer but also the evidence the Crown will be relying on. The Crown, on the other hand, usually has little knowledge of what defence the accused will raise, or what sort of evidence he will be calling. This is why Fred chose not to give evidence at this stage.

So, in civil cases each side is entitled to full notice of the opponent's case and, where affidavits are filed, much of the evidence to be used. In criminal cases, however, while the accused is entitled to prior notice of the prosecution's case (and, where there is a committal proceeding, also its evidence) the prosecution has no similar right to notice of the accused's defence. (There is an exception where the accused proposes to rely on an 'alibi', that is, where he claims to have been somewhere else when the offence occurred.) This apparent bias is partly because the prosecution has many advantages, and partly because of the traditional view that it is essential to prevent innocent people being convicted, even at the expense of some guilty people going free.

Publicity

It is an important principle that judicial proceedings should normally be conducted in open court, so that members of the public, including press representatives, may attend if they wish to do so. As mentioned earlier, the Universal Declaration of Human Rights requires 'a fair and public hearing'. It is felt that because there is a vital public interest in the administration of justice, it should be treated as a public matter, even though a particular case involves only the affairs of private individuals.

There are exceptions. Minor aspects of cases may be settled in private chambers or closed court. A judge may close a court to the public if they are disrupting the proceedings, or if a witness is unable to give evidence in open court, or if evidence to be given is of a secret nature, for example, where it relates to security matters or secret industrial processes. Children's Courts are closed to the public.

In some cases, although the public's access to the courts is not affected, restrictions are imposed on what may be published in the press or elsewhere. Thus evidence in family law cases may not be published.

Apart from these exceptional cases, if court proceedings are not conducted openly they may be held to be invalid.

Standards of proof

As a general rule, any person seeking some kind of court order must provide the court with a good reason for making the order. This obvious principle is reflected in the law. The plaintiff in civil proceedings and

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the prosecution in criminal proceedings must succeed in proving their case to the court, showing either that they are entitled to some remedy or that the defendant has committed some offence. In legal terms, the plaintiff and the prosecution bear the 'onus of proof'. But another question is: how strongly must the case be proved? How sure does the court have to be before it makes an order? The answer to this question is different in civil and criminal cases.

In civil cases, a plaintiff simply has to persuade the court — judge or jury — that the facts he or she alleges are true on a *balance of probabilities*. If after hearing both sides, the judge or jury feels that the plaintiff's story is more likely than not to be true, then the plaintiff will be entitled to a verdict.

In criminal cases, the standard of proof is much stricter. It is a fundamental principle of the common law system, expressed also in Article 11 of the Universal Declaration of Human Rights, that a person is presumed to be innocent until proved guilty. The prosecution has to do much more than to tip the 'scales of justice' its way; it must prove the accused's guilt *beyond reasonable doubt*. No matter how strong the prosecution's evidence may be, if the magistrate or the jury has any reasonable doubt that he or she is guilty, the accused is entitled to be acquitted.

Evidence

The decision of a case where facts are in dispute can only be based on evidence as to those facts. No evidence is admissible in court proceedings unless it is *relevant* to the issue in question. If you were being tried on a charge of offensive behaviour arising out of a street demonstration, it would be irrelevant for the prosecution to produce evidence that you had been charged with evading bus fares three years earlier. That evidence would be 'inadmissible': the court would not normally allow it to be given.

The rules of evidence are complex. They are designed to keep out evidence which is irrelevant, and evidence which might be relevant but would unfairly prejudice a party. The rules are particularly strict in criminal cases, although they apply to civil cases as well. We will not go into details, but simply give a few examples:

(a) Frieda is on trial for fraud. She made a full confession at the police station, but pleads not guilty and says she only made the confession because she was frightened of being assaulted by the police. The courts will only admit her confession as evidence if it was made voluntarily, and not if any threat or promise had been made to get it. Furthermore, the judges may not admit such a statement as evidence if Frieda had not first been warned by the police that she was under no obligation to say anything, and that anything she did say might be used as evidence.

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The police sometimes complain that these strict requirements hamstring investigation of crime, that innocent persons have nothing to fear in speaking up, and that the rules protect only the guilty by warning them to say nothing. They would like to see the rules modified in some way, without jeopardising the rights of the innocent, but others see them as essential in the interests of civil liberty.

(b) Evidence is usually not admissible in criminal proceedings to show that the accused has had previous convictions or is of bad character. The sole issue is whether he or she is guilty of the specific offence. (There are some exceptions; for example, if a defendant claims to be of good character.)

However, evidence of character and previous convictions is admissible after a person has been found guilty, in order to assist the magistrate or judge to impose the appropriate sentence.

(c) Hearsay evidence is usually inadmissible. Janet is on trial for murder. An issue is whether a blood-stained knife was in Janet's hand. Andrew, an eye-witness, can say: 'I saw the blood-stained knife in Janet's hand.' However, Martin cannot say: 'Andrew told me he saw the blood-stained knife in Janet's hand.' Martin's statement is inadmissible because it is considered less reliable than first-hand evidence, and because Janet (the accused) should have the opportunity to cross-examine Andrew in court. (Once again, there are important exceptions to the rule).

These and other rules of evidence are an important safeguard for fair trial.

Each party has a right to give evidence, usually in the form of oral evidence by witnesses in court. The other party also has a right to cross-examine those witnesses, by asking questions in order to discover other facts, or in order to diminish the weight of the evidence already given. If anything new comes out of cross-examination, the first party may re-examine.

Generally, no evidence or information may be presented to the court in the absence or 'behind the back' of the other side. The common law technique of examining witnesses by question and answer is designed to give the other side time to object in order to keep out inadmissible evidence.

Impartiality

So far we have seen that our court procedures aim to ensure that both parties can present their cases to the court as fully and as fairly as possible. This, however, will not ensure a fair trial if the court itself is biased.

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We have already considered, in chapter 8, the means by which the general independence of judges is achieved. They have independence and security of tenure, immunity from legal liability for things said or done in judicial proceedings, and so should fear no pressures from government or anyone else.

A problem of impartiality may arise, though, in a particular case. For example, you may be suing a company and the judge may be a shareholder in that company. You may be suing your next door neighbour for allowing his incinerator to get out of control so that it burnt down your garage, and the judge may turn out to be the neighbour's cousin. You may be a Ruritania migrant, and the judge may have said, in an earlier case, that he had always found Ruritanian migrants to be untruthful.

In each of these and similar cases, if the judge did not stand down willingly, you could object to that judge hearing the case. It is a fundamental principle that people may not be judges in their own cause, and this will disqualify a judge from hearing a case in which he or she has some financial or personal interest, or in which other circumstances exist so as to raise a reasonable suspicion of bias. It is not necessary to show that the judge is in fact biased — a reasonable suspicion is enough. To quote the famous words of a former English Lord Chief Justice: 'Justice should not only be done but should manifestly and undoubtedly be seen to be done.'

Indictable criminal cases, and some civil cases too, are tried not by a judge alone but by a judge and jury. The jury in such a case decides the facts. The possibility of bias among the jurors is sought to be met by provisions for 'challenge'. Both parties have a right to challenge members of the jury panel, if they think that they are biased against them for one reason or another. They may dismiss a certain number of jurors without giving a reason; beyond that point they must give a reason for challenge. The details vary from one type of case to another, and from one State or Territory to another. Generally, the opportunity to challenge jurors is greater in criminal than in civil cases.

Trial by jury

The use of jury trial is itself a special and characteristic feature of the common law system. It is used for all indictable criminal offences, except where there is an option to have the offence tried without a jury, and the option is taken. It is also used for the trial of some civil actions at common law.

When jury trial is available, the effect is that the determination of facts and the weighing up of evidence is entrusted to a group of one's fellow citizens rather than to a judge. The system has a long history and has considerable emotional overtones in our society, at least in criminal cases.

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No special qualifications are needed for jury service. Usually, entry on the electoral roll is sufficient. Different classes of persons may be exempt from service, for example, doctors, teachers, members of parliament, lawyers, and others. Individuals may apply for exemption for personal reasons, for example, illness, or insufficient command of the English language. The actual jury for a case is selected, by ballot and after challenges, from a larger number summoned to the court.

In criminal cases a jury of 12 is used. It hears the evidence, listens to addresses of counsel for both sides, and to the judge's summing up. The judge directs them, in accordance with the law, as to what verdict they should return on various possible conclusions they may reach about the facts. For example, in a murder case the judge might tell them that if they find that A did kill B and did so with deliberate intent, then they will return a verdict of guilty; if they find that A killed B but did so in self-defence or under provocation, they shall return a verdict of not guilty of murder but guilty of manslaughter; if they have any reasonable doubt whether A killed B at all, they should return a verdict of not guilty.

The jury then retires and, when it reaches a decision, delivers its verdict to the court. Traditionally criminal verdicts have to be unanimous and, if the jury fails to agree on a verdict, they are discharged and a new trial must be held. But in England and some Australian States provision has now been made to receive verdicts of a large majority of the jurors in some circumstances after a specified time.

If the jury finds the accused not guilty, he or she is acquitted, and can never again be tried for the same offence. If the jury returns a verdict of guilty, the judge then imposes sentence.

The task of the criminal jury, then, is to decide facts in the light of the law as put to them by the judge.

The size of civil juries varies from one State to another, and there are possible variations within States. Civil jury verdicts do not have to be unanimous, and the decision of a specified majority may be accepted after a certain time. Jury trial is not available in all civil cases, even in common law matters. In recent years, both in Australia and elsewhere, jury trials in civil cases have been giving way to trial by judges sitting alone. Juries make for longer and slower trials, and their use in civil cases does not have quite the same degree of community support as their use in criminal cases.

Most civil cases tried by jury are actions for damages, whether the cause of action is negligence or defamation or something else. As in criminal cases, the civil jury listens to the evidence and returns a verdict in the light of the law as put to them by the judge, but normally they must then go on to assess the amount of damages (if any) which

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the defendant should pay. In criminal cases, the judge decides on sentence; in civil cases, the jury decides on damages.

Appeal

The procedures mentioned do not, of course, guarantee that the decision of a court will be correct, on the facts or on the law. In particular, the law itself may not be clear. A further safeguard is to make provision whereby decisions may be reviewed by a higher court on several possible grounds, and by various procedures. The Australian legal system does, in fact, provide fairly amply for appeal to a higher court and ultimately to the High Court of Australia, if it grants special leave, although these cases are rare.

Legal representation and the adversary procedure

The courtroom procedure sketched above is often referred to as the 'adversary system'. This is a fair description. The law courts are places where the parties fight out their cases according to the rules of the game — the rules of evidence and procedure — and they fight for a favourable judgment. The court adopts a basically passive role, reaching a decision on the evidence and arguments which the parties put before it. (There are, however, other possible procedures for resolving disputes and reviewing problems. A royal commission, for example, may call its own witnesses and make its own investigations; its procedure is quite different from that of a court and could be described as 'inquisitorial'.)

In the adversary procedure of the courts, much turns on how the parties present their cases. The law provides that any party to court proceedings is not only entitled to be heard, but also to be represented by a lawyer (if he or she can afford one). In *Dietrich v The Queen* (1992) the High Court held that a criminal trial for a serious offence may be unfair if the defendant cannot afford legal representation and is unable to get legal aid for the purpose; in that event, the courts have power to adjourn proceedings, or, if the defendant has already been convicted, an appeal court may quash the conviction.

Parties themselves can, of course, argue their own case, even in the highest courts, but lawyers regard this as very unwise, shake their heads, and invariably make the stock criticism that 'anyone who acts as his own lawyer has a fool for a client'. This professional attitude is very good for business, of course, but it is probably unfair to write it off as self-serving. Legal proceedings are usually very technical, and there would be few cases which lay persons could successfully argue on their own. On the other hand, the moves towards 'do it yourself kits for undefended divorces and land transfers may indicate a growing scepticism of the lawyers' claims, and a questioning of the need for their services in some areas. Criticism along these lines goes hand in hand with calls for simplification of procedures to make the business

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more intelligible to non-lawyers, and lawyers' assurances that this cannot be done are not likely to continue to go unchallenged.

For all this, it remains true that legal proceedings in courts — and many legal matters outside courts, for example, drafting wills — do usually require lawyers, and laypeople would be likely to get into serious trouble on their own. Any significant court hearing, whether civil or criminal, will involve rules of procedure and evidence which a lay person will not usually understand, and unrepresented persons in criminal or civil cases run a real risk of being prejudiced by their lack of knowledge about how the system works. (The problem presented by the inability of many people to pay for legal services is considered in the following chapter.)

The adversary procedure not only means that lawyers are usually necessary, but also places them in a position of some responsibility. The court inevitably relies on the lawyers to put their arguments fairly, and the law places certain restraints on lawyers in their efforts to advance their clients' interests. For example, lawyers must not knowingly mislead the court by making allegations which they know are false, or by deliberately failing to tell the court about a relevant precedent, even if it is unfavourable to their case. Courts place quite a deal of trust in lawyers: in an emergency, a court might make an order on the basis of allegations made by a barrister even without evidence, then adjourn the case while the evidence is collected. The working out of lawyers' responsibilities to their clients and to the courts is not simple.

The rules of procedure and evidence which make up our 'due process of law' are among the most difficult and complex parts of the law. While they represent a very notable effort to minimise human error and ensure just trials, they do so at the price of substantial legal costs and delay. They also tend to make the courts mysterious and intimidating for many people. In some areas, it seems, the price is too high. For example, many commercial people try to resolve their disputes out of court if possible, often through arbitration, where lawyers need not be involved at all. In some places community justice centres may be available to resolve disputes between neighbours (for example) by mediation. There have been moves to set up special courts and tribunals where small claims can be resolved quickly and sensibly without the complexities and expense which seem inevitably to accompany lawyers and courts. Some of these are discussed in chapter 11.

CHILD PROTECTION ACT 1999

The *Child Protection Act 1999* is the primary legislation providing for the protection of children in Queensland. This act is available for download.

The following outline indicates the key parts of the legislation:

Chapter 1 explains:

- the purpose of the legislation
- the key principles under which the Act is administered
- provisions about Indigenous children
- relationship to the *Child Protection (International Measures) Act 2003* and
- functions of the chief executive (Director-General)
- key terms used in the legislation
- the effect of custody and guardianship

Chapter 2 covers the protection of children, including:

- responding to allegations of children at risk of harm
- temporary assessment orders (TAOs)
- court assessment orders (CAOs)
- case planning
- Intervention with the agreement of parents
- child protection orders
- adjournments of proceedings and court ordered conferences
- obligations and rights under orders and care agreements
- general matters including reports about criminal history, medical examinations or treatment, social assessments and custody or guardianship of a child pending a decision or application for an order.

Chapter 3 covers court proceedings, including:

- jurisdiction of the Childrens Court
- Childrens Court procedures
- appeals regarding Childrens Court decisions

Chapter 4 covers the regulation of care, including:

- standards of care
- licensing of care services and approval of carers
- application of the *Commission for Children and Young People and Child Guardian Act 2000*

Chapter 5 covers administration matters including:

- authorised officers under the Act
- general matters including delegation of powers under the Act, approved forms and payment of carers.

Chapter 5A covers service delivery coordination and information exchange, including:

- coordination of service delivery
- the Suspected Child Abuse and Neglect (SCAN) system
- information exchange
- release of health and other relevant information to a coroner
- protection from liability and interaction with other laws

Chapter 6 covers enforcement and legal proceedings including:

- establishment of offences under the Act
- prosecution of certain interstate offences
- warrant for apprehension of a child
- general powers of authorised officers and police officers
- evidence and legal proceedings
- obligations of confidentiality
- general provisions including compliance with provisions about providing explanations and documents, exercise of power by other officers and protection from civil liability.

Chapter 7 covers interstate transfers of child protection orders and proceedings including:

- transfer of orders or proceedings from Queensland to another state
- transfer of orders or proceedings from another state to Queensland

Chapter 7A covers child deaths, including the requirement for a review.

Chapter 8 covers miscellaneous provisions including:

- recognised entities
- reviewable decisions
- annual reporting about child protection matters
- acting in support of the Commissioner for Children and Young People
- consultation about investigations and prosecutions
- power to make regulations

Chapter 9 covers the impact of this Act on other legislation and existing orders at the time the legislation was enacted.

There are three schedules to the Act:

- charter of rights for a child in care
- reviewable decisions and aggrieved persons
- a dictionary that sets out the meaning of terms used in the Act.

CONFIDENTIALITY PROVISIONS IN THE CHILD PROTECTION ACT 1999

Section	Section title	Summary
186	Confidentiality of notifiers of harm	Notifier information is strictly confidential. Disclosure can only occur: <ul style="list-style-type: none"> - in the course of performing functions under this Act to someone else performing functions under this Act eg to a police officer involved in a joint investigation. - to the Ombudsman when an investigation is being conducted. - when giving evidence in legal proceedings – only with the leave of the court.
187	Confidentiality of information obtained by persons involved in the administration of Act	This is the main confidentiality provision. It prohibits departmental staff, police officers and others performing duties under the Act from disclosing personal information about children and families. This provision also applies to foster carers and Recognised Entity staff. Disclosure of this information can only occur for purposes related to carrying out duties under the Act and for purposes directly related to the welfare of any child.
188	Confidentiality of information given by persons involved in administration of Act to other persons	If information is disclosed under s187, this provision requires that the person who receives the information must not disclose it to anyone else. Disclosure can only occur for purposes directly related to a child's welfare or as otherwise required by law.
189	Prohibition of publication of information leading to identity of children	This section prohibits the media or anyone else from publishing information which identifies a child as a child subject to an investigation, a child under an order, or a child who has allegedly been or is at risk of being harmed by a family member.
190-193	Confidentiality in relation to proceedings	These provisions cover confidentiality in relation to subpoena of departmental records, disclosure of information to courts or tribunals and reporting of court proceedings.
194	Release of information by health service employees	This provision clarifies that health employees can disclose information relevant to the protection or welfare of a child to departmental and police officers, even though it is subject to confidentiality under the <i>Health Services Act</i> .

Childrens Court Forms

Form 1	Application for a temporary assessment order
Form 2	Application to extend/vary a temporary assessment order
Form 3	Temporary assessment order
Form 4	Temporary assessment order – extension/variation
Form 5	Application for a court assessment order
Form 6	Application to extend / vary / revoke a court assessment order
Form 7	Court assessment order
Form 8	Court assessment order – extension / variation / revocation
Form 9	Adjournment of proceeding for a court assessment order
Form 10	Application for a child protection order
Form 11	Application to extend and/ vary /revoke a child protection order
Form 12	Application to revoke a child protection order and make another child protection order
Form 13	Child protection order
Form 14	Child protection order – extension / variation / revocation
Form 15	Child protection order made in place of revoked order
Form 16	Adjournment of proceeding for a child protection order
Form 17	Recognised Aboriginal or Torres Strait Islander agency
Form 18	Report of a family meeting
Form 19	Notice of court ordered conference
Form 20	Report of court ordered conference
Form 21	Notice to parties (following court ordered conference)

Form 22	Affidavit of service
Form 23	Request for subpoena
Form 24	Subpoena
Form 25	Affidavit
Form 26	Certificate of exhibit
Form 27	Application for warrant for apprehension of a child
Form 28	Warrant for apprehension of a child

Temporary Assessment Orders

Part 2 Sections 23 – 36 of the *Child Protection Act 1999*

Purpose:

The purpose of a temporary assessment order is to facilitate assessment of a child's possible need for protection if the child is regarded at immediate risk of harm.

Assessment orders are used during the phase of departmental intervention when we are seeking to answer the question "is this child a child in need of protection?"

Assessment orders authorise initial assessment actions when consent has not been obtained because:

- Parents have refused to consent; or
- Parents are not able to consent.

They also authorise the safe placement of a child during the assessment if interim protection is required.

For the purposes of an assessment order, the definition of a "parent" includes the child's mother or father or a person who by law has parental responsibility for the child (section 23 of the Act).

Features of Temporary Assessment Orders (TAOs)

Duration

- Maximum of 3 days initially. The timeframe is to be calculated to start from the day after the order is originally made. Therefore, an order made on a Monday for a period of 3 days will expire at midnight on the Thursday.

Provisions of a Temporary Assessment Order

Provisions that can be sought under TAOs are contained in s28 of the Act. They allow for the following to occur:

- Authorising an authorised officer or police officer to have contact with the child;
- Take the child into the chief executive's custody and keep the child in the chief executive's custody while the investigation is carried out;
- Authorising a medical examination or treatment;
- Directing that the parents not have contact or only supervised contact with the child;
- Authorising an authorised officer or police officer to enter and search a place where a child is reasonably believed to be; and

- Authorising an authorised officer or police officer to remain in this place for as long as the officer reasonably considers necessary.

Application Process

Section 25 of Act sets out the requirements for making an application for a TAO:

The application must be sworn and state the following:

- Grounds on which the application is sought (why are we seeking an order – see 'Grounds for Applications for Temporary Assessment Orders');
- The nature of the order sought (what provisions are we seeking and why? For example, if we are seeking temporary custody to the chief executive WHY we think this is necessary);
- If the application seeks custody of the child, the proposed arrangements for the child's care.

Making of a TAO

Section 27 of the Act sets out what the Magistrate must be satisfied of to make a TAO. This includes:

- That an investigation is necessary to assess whether the child is in need of protection;
- That the investigation cannot be properly carried out unless the order is made; and
- That reasonable steps must have been taken to obtain the consent of at least one of the child's parents, to take the action requested in the order.

Extension or Variation

Section 34 of the Act sets out the provisions for a TAO to be extended.

Conditions include:

- That the original order must not have expired;
- That the order can only be extended once; and
- That the order can only be extended until the end of the next business day after it would have otherwise ended if the Magistrate is satisfied that the officer intends to apply for a Court Assessment Order or Child Protection Order for the child within the extended term.

NB: If an application to extend a TAO occurs on a Friday then it is extended until the next business day meaning it will finish on the Monday at 5pm.

TAOs can be varied – this is outlined in s33 of the Act.

TAOs cannot be revoked.

Provisions for indigenous children

Consultation should occur with the recognised agency prior to the application being made. If this is not possible then consultation should be made as soon as possible after the order is made.

Other Provisions

Section 18

TAOs are used in all cases when a child is taken into custody under s18 of the Act.

This is even if it is immediately decided that:

- A longer period of assessment is required and therefore a Court Assessment Order will be needed; and/or
- A Child Protection Order will be required.

This is to ensure immediate judicial oversight of the continued custody of the child after action is taken under s18.

Effect of a TAO on existing Child Protection Orders

If a TAO is made for a child for whom a Child Protection Order is already in force, the TAO prevails to the extent of any inconsistency between the orders. This is outlined in s36 of the Act.

Grounds for Applications for TAOs:

Applications for TAOs (and for extensions and variations of these orders) must include the grounds of the application.

'Grounds' mean a summary of the main reasons for why we think an order is necessary. These reasons should be supported by key facts NOT assumptions or opinion.

Remember that a Magistrate is only able to make an order if they are satisfied that an investigation is necessary AND it cannot be done unless an order is made.

Therefore the grounds of the application should address key issues that would convince a Magistrate that court intervention is necessary.

The following questions provide prompts to guide the type of information which should be provided in the grounds of each application. These questions may be useful with assisting Child Safety Officers in writing their applications.

Questions to assist in the Application for TAO:

- Why is the assessment necessary in relation to this child now?
- Why is a TAO needed to carry out the assessment?
- What assessments are proposed to be carried out over the term of the order?

- Why are each of the particular authorities/directives that you are seeking needed?
- Why is the timeframe sought required – for example, why is a TAO of a shorter duration not appropriate?
- What steps have been taken to obtain the consent of the parents for the actions which you are seeking the order to authorise, or why is it not practicable (or appropriate) to obtain consent?
- If applicable, indicate that the child was taken into protective custody under s18.

Application to extend a TAO

- Why is an extension of the order necessary (remember this is only for one more business day)?
- What assessments have already been completed?
- If applying for an extension beyond the maximum duration of 3 days – do you intend to apply for a Court Assessment Order or a Child Protection Order?

Application to vary TAO

- Why does the existing order need to be varied?

Application to extend and vary the TAO

- Why is an extension of the order necessary?
- What assessments have already been completed?
- If applying for extension beyond the maximum duration of 3 days – do you intend to apply for a CAO or a CPO?
- Why does the existing order need to be varied?

How Child Safety Officers apply for a Temporary Assessment Order

1. Complete Form 1 "Application for TAO" which is located on ICMS

- If an application relates to an indigenous child – consult with the recognised Aboriginal or Torres Strait Islander agency.

2. Application must be sworn before a JP or Commissioner of Declarations

- If this is not possible prior to contacting the magistrate, application must be sworn ASAP afterwards.
- 2 copies of the application form are needed – magistrate's copy & file copy. Copying does not however need to occur immediately if applying via phone/fax.

3. Arrange to meet/speak to magistrate

Business hours –
Contact local court.

OR

After hours (outside Brisbane metro area) –
1. Contact a/hrs number for local magistrate.

2. If local magistrate unavailable, contact Brisbane on-call magistrate.

OR

After hours (Brisbane metro area) –
1. Contact on-call magistrate on
3247 5089.

4. Make application to magistrate by -

Meeting in person – hand application form to magistrate

OR

Combination of fax and phone – fax application form to magistrate and discuss via phone

OR

Phone – advise the magistrate of the details on the application form

5. Obtain copy of order by –

Magistrate handing copy to applicant

OR

Magistrate faxing copy to applicant

OR

Magistrate providing order details to applicant over phone and applicant recording on TAO form on ICMS or hard copy. Order form must be signed by applicant.

At least 2 copies of the order are needed – parents' copy & file copy.

6. Provide copy of order to parents -

- Provide a copy of the order and explain the order and appeal rights to the parents.
- Tell the child/young person about the order if it is considered appropriate in the circumstances having regard to the child's age or ability to understand the matter (S32 & S195).

7. If application and order were made over fax/phone, send sworn application form, and TAO form if used, to the court the magistrate is attached to. Send to Brisbane Children's Court for applications made to Brisbane a/hrs magistrates.

- Retain copies of these forms for the file.
- Court will forward copy of the order to Department if order was made over fax/phone.

8. Record order details on ICMS

Case Scenario One: The Smith Family

Current Information:

On the 12th January, 2009 at approximately 10am, the "Intake Officer" based at the Stones Corner Child Safety Service Centre received a call in relation to two children.

The notifier advised that Ms Karen Smith (the mother) has been admitted to the mental health unit at the Princess Alexander Hospital due to:

- A belief that she and the children are being followed by the devil;
- Clawing and scratching of the skin on her face, forearms and thighs resulting in bruising and bleeding;
- Cutting her upper thighs and lower arms with a sharp object;

The mother has requested a voluntary placement for her two children to enable her to remain in hospital for treatment, as she has no family, or supports in Queensland that could care for her children, as she had only recently arrived in Queensland, having previously lived in South Australia and New South Wales.

The details of the family are as follows:

Mother: Karen Smith
Date of Birth - 13th June 1970
Address: no fixed place of abode.

Father: details unknown

Children: John Smith
Date of Birth - 25th September, 2000
Address: No fixed place of abode

Wendy Smith
Date of Birth - 9th November, 2003
Address: No fixed place of abode

Departmental staff attends the hospital and the mother signs a consent form agreeing to the children being placed in the voluntary care of the Department. A temporary placement is located and the children are placed with a foster carer.

At approximately 3pm, of the same day, notifier two (2) contacts the Department and advises that the mother's mental state has deteriorated since her admission to hospital.

The mother has indicated to notifier two that she is no longer consenting to her children being in the care of the department as she believes that the foster carers are "possessed by the devil and are extremely dangerous". She is reported to be presenting in an extremely anxious state and is very concerned about the safety of her children.

Notifier two advises that an Involuntary Mental Health Order has been invoked. The notifier is of the opinion that the mother does not currently have the capacity to care for or make decisions in the best interest of her children, at this time. The notifier also advised that at this stage, the mother is likely to be hospitalised for a minimum of three days.

Form 1

Children's Court Act 1992
Child Protection Act 1999
(Section 25)

APPLICATION FOR A TEMPORARY ASSESSMENT ORDER

CHILD: JOHN SMITH

Date of Birth: 25th September, 2000
Sex: Male

Aboriginal: unknown
Torres Strait Islander: unknown

APPLICANT DETAILS:

Name: Amanda Hall

an authorised officer under the *Child Protection Act 1999*.

Address: 30-40 Quay Street, Brisbane.

APPLICATION DETAILS:

This is an application for a temporary assessment order.

The grounds on which this application is made are:

At approximately 10am on the 12th January, 2009 the Intake Officer at the Stones Corner Child Safety Service Centre received a notification in relation to two children, John and Wendy Smith. The notifier advised that the children's mother had been admitted to the Mental Health Unit of the Princess Alexander Hospital due to:

- A belief that she and the children are being followed by the devil;
- Clawing and scratching of the skin on her face, forearms and thighs resulting in bruising and bleeding;
- Cutting her upper thighs and upper arms with a sharp object;

I attended the hospital where the mother initially requested a voluntary placement for her two children to enable her to remain in hospital for treatment. She advised that she had recently arrived in Queensland and had no family or supports that could care for her children. Arrangements were made for the children to be placed in voluntary care with a foster carer.

At approximately 3pm on the 12th January, 2009 notifier two (2) contacted the department and spoke with myself. They advised that the mother's condition had deteriorated since her admission to hospital. The mother had withdrawn her consent for the children to be in the Department's care on the basis that she believes that the foster carers are "possessed by the devil and are extremely dangerous".

Signature of Applicant

Justice of the Peace/
Commissioner for Declarations

Notifier two advised me that due to the mother's current condition an Involuntary Mental Health Order has been invoked. The notifier is of the opinion that, at this time, the mother does not have the capacity to care for or make decisions in the best interest of her children. The notifier advised that the mother is likely to be hospitalised for at least three days.

The purpose of this order is to assess the following:

- The mother's capacity to care for her two children, given the current concerns regarding her mental health;
- Alternative placement options if the children are unable to be cared for by their mother.

Custody is considered necessary to secure the child's protection during the duration of the order given the mother's current mental health state.

This application seeks an order –

- Authorising an authorised officer or police officer to take the child, John Smith and keep the child in the chief executive's custody while the order is in force.
- Directing Karen Smith not to have contact, direct or indirect, with the child other than when a departmental officer is present.

Proposed arrangements for the child's care are as follows:

- The child is currently placed with a foster carer and will remain in this placement. Contact between the child and the mother will be facilitated by the department.

The order is sought for a period of 3 days.

This application is made by means of fax, pursuant to section 30 of the *Child Protection Act 1999*.

PARENTS NAMES:

Mother's name: Karen Smith
Address: Unknown

Father's name: Unknown
Address: Unknown

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner for Declarations
Place: Brisbane
Date: 12th January, 2009

Form 3
Childrens Court Act 1992
Child Protection Act 1999
(Sections 27, 28, 29)

TEMPORARY ASSESSMENT ORDER

CHILD: JOHN SMITH
Date of Birth: 25th September 2000
Sex: Male

An application for a temporary assessment order was made by Amanda Hall an authorised officer, to me, Mr Bruce Wayne Magistrate, on 12 January 2009 in relation to the above-named child.

Having considered the grounds of the application, I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation can not be properly carried out unless the order is made.

I MAKE a temporary assessment order in relation to the child –

- authorising an authorised officer or police officer to have contact with the child;
- to take and keep the child in the chief executive's custody while the order is in force;
- authorising a medical examination or treatment of the child;
- directing Karen Smith not to have contact, direct or indirect, with the child other than when an authorised officer is present.

This temporary assessment order will continue in force until Thursday, 15th January 2009, Midnight.

Magistrate

Place: Brisbane
Date order made: 12 January 2009
Time order made: 5.45pm

This order was made by means of telephone pursuant to section 30 of the *Child Protection Act 1999*.

I hereby certify that this document is a true representation of the order made by the above-named Magistrate.

Signed:

Name: Amanda Hall
Authorised officer

Form 1
Childrens Court Act 1992
Child Protection Act 1999
(Section 25)

APPLICATION FOR A TEMPORARY ASSESSMENT ORDER

CHILD: (name)

Date of Birth:

- ☐ Aboriginal but not Torres Strait
Islander origin
- ☐ Both Aboriginal and Torres Strait
Islander origin
- ☐ Not stated/inadequately described

Sex: *Female/Male

- ☐ Torres Strait Islander but not
Aboriginal origin
- ☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

Name:

- *an authorised officer under the *Child Protection Act 1999*.
- * a police officer.

Address:

APPLICATION DETAILS:

This is an application for a temporary assessment order.

The grounds on which this application is made are:

This application seeks an order –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

- * authorising an authorised officer or police officer to take the child into and / keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact, direct or indirect, with the child.
- * directing (name of parent) not to have contact, direct or indirect, with the child other than when #(person's details) is present.

* Proposed arrangements for the child's care are as follows:

The order is sought for a period of (specify time):

* This application is made by means of *fax/telephone/radio/other, pursuant to section 30 of the *Child Protection Act 1999*

PARENT(S) / GUARDIAN(S) NAME(S):

Mother's name:

Address:

Father's name:

Address:

Other Name : (please specify relationship)

Address:

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place:

Date:

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 2
Childrens Court Act 1992
Child Protection Act 1999
(Sections 34 and 34A)

**APPLICATION TO EXTEND AND/OR VARY A TEMPORARY ASSESSMENT
ORDER**

CHILD: (name)

Date of Birth:

- ☐ Aboriginal but not Torres Strait
Islander origin
☐ Both Aboriginal and Torres Strait
Islander origin
☐ Not stated/inadequately described

Sex: *Female/Male

- ☐ Torres Strait Islander but not
Aboriginal origin
☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

Name:

- *an authorised officer under the *Child Protection Act 1999*.
- * a police officer.

Address:

APPLICATION DETAILS:

This is an application for an order to *extend and/or vary the temporary assessment order made by (magistrate's name), Magistrate on (date) in relation to the above-named child.

The grounds on which this application is made are:

* I intend to apply for a court assessment order for the purpose of further assessing whether the child is a child in need of protection.

* I intend to apply for a child protection order in relation to the child.

*Proposed arrangements for the child's care are as follows:

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

*The extension is sought * for a period of (specify time) / until to end of (day and date of next business day).

*In seeking to vary the order, this application seeks an order –

- * authorising an authorised person or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * authorising an authorised officer or police officer to *take the child into and / keep the child in the chief executive's custody while the order is in force.
- * granting temporary custody of the child to the chief executive.
- * directing (name of parent) not to have contact, direct or indirect with the child.
- * directing (name of parent) not to have contact, direct or indirect with the child other than when (person's details) is present.

* This application is made by means of *fax/telephone/radio/other, pursuant to section 30 of the *Child Protection Act 1999*

PARENT(S) / GUARDIAN(S) NAME(S):

Mother's name:

Address:

Father's name:

Address:

Other Name: (please specify relationship)

Address:

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place:

Date:

*delete whichever is not applicable

Form 3

Childrens Court Act 1992

Child Protection Act 1999

(Sections 27, 28, 29)

TEMPORARY ASSESSMENT ORDER

CHILD: «Merge Record #»(name)

Date of Birth: «Merge Record #»

Sex: Female/Male

An application for a temporary assessment order was made by «Merge Record #»(applicant's name) *an authorised officer / a police officer, to me, «Merge Record #»(name of Magistrate) Magistrate, on «Merge Record #»(date) in relation to the above-named child.

Having considered the grounds of the application, I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation can not be properly carried out unless the order is made.

I MAKE a temporary assessment order in relation to the child –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * authorising an authorised officer or police officer to *take the child into and / * keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact, direct or indirect, with the child.
- * directing (name of parent) not to have contact, direct or indirect, with the child other than when #(person's details) is present.

This temporary assessment order will continue in force until «Merge Record #»*the end of (specify day and date) / (time, day, date).

(name of magistrate)

Magistrate

Place: «Merge Record #»

Date order made:

Time order made:

This order was made by means of *telephone/ radio/(other) pursuant to section 30 of the *Child Protection Act 1999*.

I hereby certify that this document is a true representation of the order made by the above-named Magistrate.

Signed:

Name:

***Authorised officer / Police officer**

*delete whichever is not applicable

#persons details refers to either name of person, or general category of person or position

Form 3 – version 2, November 2003

Form 4
Childrens Court Act 1992
Child Protection Act 1999
(Sections 34, 35)

TEMPORARY ASSESSMENT ORDER
EXTENSION AND/OR VARIATION OF ORDER

CHILD: «Next Record»(name)
Date of Birth: «Next Record»
Sex: «Next Record»*Female/Male

An application to *extend and/or vary the temporary assessment order in relation to the above-named child made by «Next Record»(name of Magistrate) Magistrate at «Next Record»(place) on «Next Record»(date) was made by «Next Record»(applicant's name) *an authorised officer / a police officer, to me, «Next Record»(name of Magistrate) Magistrate, on «Next Record»(date).

Having considered the grounds of the application I am satisfied that the temporary assessment order made on «Next Record»(date) has not ended and that

- * the *extension and/or variation of the order is necessary to assess whether the child is a child in need of protection and the assessment can not be properly carried out unless the order is made.
- * the applicant intends to apply for a *court assessment order / child protection order in relation to the above-named child.

*I ORDER that the temporary assessment order in relation to the child be extended until «Next Record»*the end of (specify day and date) / (time, day, date).

*I ORDER a variation of the temporary assessment order in relation to the child –

- * authorising an authorised person or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * authorising an authorised officer or police officer to *take the child into and / keep the child in the chief executive's custody while the order is in force.
- * granting temporary custody of the child to the chief executive.
- * directing (name of parent) not to have contact, direct or indirect with the child.
- * directing (name of parent) not to have contact, direct or indirect with the child other than when #(person's details) is present.

«Next Record»(name of magistrate)

Magistrate

Place: «Next Record»

Date order made:

Time order made:

This order was made by means of *telephone/ /radio/(other) pursuant to section 30 of the *Child Protection Act 1999*.
I hereby certify that this document is a true representation of the order made by the above-named Magistrate.

Signed:

Name:

*Authorised officer/Police officer

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 4 – version 2, November 2003

Court Assessment Orders

Part 3 Sections 37 – 51 of the *Child Protection Act 1999*

Purpose:

The purpose of a Court Assessment Order (CAO) is to facilitate the assessment of a child's possible need for protection.

Assessment orders are used during the phase of the departmental intervention when we are seeking to answer the question "is this child a child in need of protection?"

The main difference between TAOs and CAOs is the length of the order.

Because a CAO can be granted for a longer period of time (up to 4 weeks), the process of the application is different so as to allow parents, and children/young people, where applicable, to have their say about the making of the order.

Use of CAOs:

CAOs should be applied for when –

- The assessment action required is likely to take more than a few days to complete; and
- The child/young person is not at immediate risk of significant harm at home or elsewhere (i.e – it is possible to withdraw from the premises to make arrangements and consult with others).

CAOs should also be applied for –

- Before a TAO has expired if further assessment action is required (so as to ensure that the child's interim protection is covered by s99 of the Act).

CAOs can also be considered where a young person of 12 years or over refuses to agree to initial assessment action.

It is important not to confuse the purpose of a CAO with the purpose of a Child Protection Order. The assessment that is to be completed is only the initial assessment – that which allows a decision about whether a child is in need of protection to be made. This is the same decision for all initial assessments. For example: whether the concerns are substantiated and if so whether ongoing intervention is required and at what level.

The decision about:

- Whether a child is in need of protection; and if so
 - Whether the protection of an order is needed at this time;
- can normally be made within 4 weeks, so extensions of CAOs should rarely be necessary for assessment purposes.

Decisions about the type of intervention (ie what type of Child Protection Order) and the length of intervention needed can, if necessary, can be made after the application for a child protection order.

It is not appropriate to make a Court Assessment Order application or extension for the simple purpose of ensuring time to gather evidence to support an application for a Child Protection Order once a decision has already been made. Instead, apply for the Child Protection Order and seek an adjournment of the proceedings to assemble the evidence.

Features of a CAO:

Duration

Maximum of 4 weeks initially.

That is, 28 days – therefore, if order is made on a Monday it expires 4 weeks later on the Monday night at midnight.

Provisions of a CAO

Provisions that can be sought under CAOs are contained in s45 of the Act. The provisions for CAOs are as follows:

- Authorising an authorised officer or police officer to have contact with the child;
- Take the child into the chief executive's custody and keep the child in the chief executive's custody while the investigation is carried out;
- Authorising a medical examination or treatment;
- Making provisions about the child's contact with the child's family during the chief executive's custody of the child;
- Directing that the parents not have contact or only supervised contact with the child;
- Authorising an authorised officer or police officer to enter and search a place where a child is reasonably believed to be; and
- Authorising an authorised officer or police officer to remain in this place for as long as the officer reasonably considers necessary.

Application Process

Section 39 of Act sets out the requirements for making an application for a CAO.

The application must:

- be sworn;
- state the grounds on which the application is made;
- state the nature of the order sought;
- comply with applicable rules of the court; and
- be filed in the court.

Note: an affidavit is not necessary as the application is sworn and contains full details of why the order is required. However, in some situations affidavits may be required to be prepared to support the application. These affidavits may come from persons' other than the applicant. For example: a doctor.

Making of a CAO

In order to make a CAO the Magistrate must be satisfied as per s38 of the Act that the:

- Consent of a parent is not able to be gained or is not practicable; and
- More than 3 days is needed to complete the assessments.

Section 44 of the Act sets out what the Magistrate must be satisfied of to make a CAO. These include:

- An investigation is necessary to assess whether the child is in need of protection; and
- The investigation cannot be properly carried out unless the order is made.

Extension or Variation

Section 49 of the Act sets out the conditions upon which a CAO is to be extended.

These include:-

- An authorised officer may apply to the Childrens Court for an order to extend the term of a CAO.
- In doing so, the original CAO must not have expired.
- An extension must be considered to be in the child's best interests.
- An extension cannot be granted more than once and cannot be made for a period any longer than 4 weeks.

CAOs can be varied or revoked – this is outlined in s50 of the Act.

NB: A Court Assessment Order can only be extended once. The application for an extension MUST be heard prior to the initial Court Assessment Order expiring.

Provisions for indigenous children

If the child is indigenous a Form 17 – Aboriginal or Torres Strait Islander Recognised Agency should be filed with the application for a CAO.

This has the dual purpose of:

- Advising the parents of an indigenous child/young person that a representative of a recognised agency is involved and may be present in Court.
- Advising the Court which recognised agency will provide advice to the Court required under s6(3) of the Act.

Consultation should occur with the recognised agency prior to the application being made. If this is not possible then consultation should be made as soon as possible after the order is made.

Other Provisions

The application for a CAO must be "personally" served on the parents by the applicant. If it is not practical to serve a copy on the parents personally, a copy of the application may be served on the parent by leaving it at or sending it by post to the parents last known residential address. This is outlined in s41 of the Act.

Once a CAO has been served a Form 22 – Affidavit of Service must be completed and lodged with the Court.

The Chief Executive's obligations after the making of a CAO are as follows:

- Providing a copy of the order to the parents / parties;
- Providing the parents/parties with a written notice explaining the terms and effect of the order.
- Providing the parents/parties with written notice stating that a party may appeal against the decision with 28 days and how the appeal is made.

Effect of CAO on existing Child Protection Orders

If a CAO is made for a child for whom a child protection order is already in force, the CAO prevails to the extent of any inconsistency between the orders. This is outlined in s49 of the Act.

Grounds for Applications for CAO's

Applications for CAOs (and for extensions / variations / revocations / etc of these orders) must include the grounds of the application.

The grounds should include a summary of the main reasons for the order. These reasons should be supported by key facts.

The grounds should address the key issues that the Magistrate needs to be satisfied of to make the order.

Specify why an assessment is required and include the reasons why the specific provisions sought are needed. Most assessment occurs without orders so you will need to explain why, in this case, an order is required and why the provisions you are seeking are required (e.g: why the child needs to be in custody while the assessment is carried out).

The following questions provide prompts to guide the type of information which Child Safety Officers should include in the grounds of each application.

Questions to assist in the Application for CAO:

- Why is the assessment necessary in relation to this child now?

- Why is a CAO needed to carry out the assessment?
- What assessments are proposed to be carried out over the term of the order?
- Why are each of the particular authorities/directives that you are seeking needed?
- Why is the timeframe sought required – for example, why is a CAO of a shorter duration not appropriate?
- What steps have been taken to obtain the consent of the parents for the actions which you are seeking the order to authorise, or why is it not practicable (or appropriate) to obtain consent?

Application to extend a CAO

- Why is an extension of the order necessary?
- What assessments have already been completed and what further ones need to be?
- How is the extension in the child's best interest?

Application to vary CAO

- Why does the existing order need to be varied?

Application to extend and vary the CAO

- Why is an extension of the order necessary?
- How is the extension in the child's best interest?
- What assessments have already been completed and what further ones need to be?
- Why does the existing order need to be varied?

Application to revoke an CAO

- Why the order is no longer needed?

How to apply for a Court Assessment Order

1.	Complete Form 5 "Application for CAO" on ICMS.
2.	If the application relates to an indigenous child – complete Form 17 "Aboriginal and Torres Strait Islander Recognised Agency".
3.	Contact court to arrange filing of the application and to establish a court date for the application. Record court date and time on "Notice to Parents" section of Form 5. Advise parents of court details and confirm a time to serve copy of application.
4.	Arrange for application to be sworn before a JP or Commissioner of Declarations. At least 3 copies of the application are needed – court's copy, parents' copy and file copy.
5.	File the application in the court by taking copies of Form 5 (and Form 17 if relevant) to court registrar to be stamped and signed. File at least 1 full business day before the proposed court date.
6.	Personally serve each of the parents with a copy of Form 5 (and Form 17 if relevant). Explain the application and provide brochure on CAOs. Tell the child/young person about the application and if appropriate provide a copy. If unable to personally serve the application, a copy may be posted by certified mail or left at the last known residential address. If the parents are represented by a solicitor, the application may be served upon the solicitor.
7.	Complete the Form 22 "Affidavit of Service" and file in the court. This can be done just prior to the court date. 2 copies are needed – court's copy and file copy.
8.	Attend court to apply for order. The applicant MUST be in court whilst the Court Coordinator is making submissions in relation to the CAO application.
9.	Obtain the order from the court as soon as practicable. Provide a copy to the parents with a letter explaining the order and the appeal rights. An automated letter is available on ICMS for this purpose. Tell the child/young person about the order and, if appropriate, provide a copy of the order and written information explaining the order.
10.	Record details of the court matter on ICMS.

Case Scenario: The Jones Family

Initial Information:

On the 9th January, 2009 a notification was recorded at the Caboolture Child Safety Service Centre. A child, Peter Jones (Date of Birth – 16/12/06) presented at the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of such a nature that the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father and partner reported to hospital staff that they were in the living room watching the television when they heard a crash from the kitchen. When they went to investigate what the noise was they found the child lying on the ground amongst a number of cereal boxes and other food items. The child appeared to be having a seizure. The father and his partner stated that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food from the pantry. The father advised that he called an ambulance immediately given that the child was "fitting".

The father and his partner are being cooperative and have indicated that they are willing to work with the Department. They appear to be generally concerned for the child's welfare and have given consent for the child to undergo all relevant medical assessments and receive all necessary treatment.

Initial medical observations by Doctors at the Mater Hospital suggest that the injuries may be non-accidental and appear to have been consistent with the child receiving a severe blow to the head.

The details of the family are as follows:

Father: Barry Jones
Date of Birth: 26/12/71
Address: 24 Lynfield Drive, Caboolture

Mother: Mary Bell
Date of Birth: 14/03/71
Address: unknown

Father's Current Partner: Denise Sutton
Date of Birth: 18/04/1970
Address: 24 Lynfield Drive, Caboolture

Subject child: Peter Jones
Date of Birth: 16/12/2006
Address: 24 Lynfield Drive, Caboolture

Denise Sutton's child: Gary Sutton
Date of Birth: 23/11/2000
Address: 24 Lynfield Drive, Caboolture

Initial Assessment:

In the week following the admission of Peter Jones to hospital the following assessments were undertaken:

- Checks of the departmental Child Protection System were undertaken and revealed that the Department had previously received two notifications in relation to the child, Gary Sutton. For one of the notifications the child's mother, Denise Sutton, was the alleged perpetrator whilst for the other, the mother's partner, Barry Jones was the alleged perpetrator. There was also one previous intake in relation to the child, Peter Jones. A summary of the details of the child protection history for the Jones/ Sutton family is attached.
- On the 11th January, 2009 medical staff from the Mater Hospital advised the Department that the child's injuries on admission included:
 - A subdural haemorrhage (bleeding between the skull and the brain).
 - Retinal haemorrhaging in both eyes
 - Bruising to the left side of the face, this was estimated to be approximately two days old.
 - Bruising to the left knee, this was also estimated to be approximately two days old.

Medical staff advised that on the basis of the CT scan and professional opinion it was likely that the child had suffered a severe blow to the head approximately 24 to 48 hours prior to his presentation to the Redcliffe Hospital. The retinal haemorrhaging was thought to be consistent with the child being severely shaken. The injuries are considered by the medical profession to be non-accidental.

Medical staff was unable to indicate what the long-term implications may be for the child but were suggesting that it was likely that the child may suffer some motor dysfunction and long term learning difficulties. They also indicated that if medical assistance had not been sought it is likely that the child would have died.

- Separate interviews were conducted with Barry Jones and Denise Sutton on the 11th and 12th of January, 2009, respectively. These interviews were conducted in conjunction with the police. The father and his partner maintained that the child appeared to have fallen whilst attempting to climb up on his high chair. The explanation offered by the father and his partner are not considered to be consistent with the presenting injuries.

When questioned in relation to the timing of the injuries Barry Jones and Denise Sutton maintained that an ambulance was called immediately following the incident. This also appears to be inconsistent with medical staff advising that the injuries appear to have occurred approximately 24 to 48 hours prior to the child's admission to the Redcliffe Hospital.

During the interview on the 12th January, 2009 Barry Jones became verbally abusive to departmental staff and the police. Given his behaviour the interview was terminated. Prior to leaving the interview Barry Jones indicated that he was not willing to participate in any further interviews regarding the matter with either the Department or the police.

- On the 12th January, 2009 staff from the Caboolture Child Safety Centre participated in Mater SCAN. Based on the inconsistencies between the

presenting injuries and the explanations offered by Barry Jones and Denise Sutton the SCAN team were of the opinion that the child was "at risk". Given that the father was no longer willing to cooperate with the Department's inquiries SCAN recommended that the Department apply for a court assessment order to gain custody of the child, whilst further assessments were undertaken. The SCAN team also recommended that further investigations be undertaken to ensure the safety of the child, Gary Sutton. During the SCAN discussions medical staff indicated that Peter would be likely to remain in intensive care unit for another 3-4 days before being moved to a general ward for further follow-up treatment.

- In relation to the child's mother, Mary Bell, the father advised that she had experienced difficulties when giving birth to Peter. These complications resulted in the mother being left intellectually impaired and requiring 24-hour care. Barry Jones advised that he had not had contact with Mary Bell since the birth of their son. He advised that Mary Bell's parents, Gordon and Sandra Bell, had come to Brisbane and assumed responsibility for their daughter after she became disabled.

Barry Jones stated that he had never had a good relationship with Mary's parents and this deteriorated further following Peter's birth. He indicated that he believed that they blamed him for Mary's condition. Barry informed the Department that at the time of Peter's birth, Gordon and Sandra Bell were residing in New South Wales, but he was not able to provide a current address for them given that he had not had contact with them for the past two years.

- Barry Jones further advised that Mary was of Aboriginal decent.

Child Protection History for the Jones/Sutton Family obtained from Departmental Records

Date	Child	Type of Harm	Child Protection Concerns Recorded	Action Taken	Outcome
15/03/04	Gary Sutton (4yrs)	Neglect	<ul style="list-style-type: none"> • Notifier reported observing the child crossing the road and playing in the street for 'hours' unsupervised. • Child seen wandering the streets in his underwear on one occasion and in his pajamas on a second occasion. • Notifier stated that they believed the mother was home during these reported occasions due to the family car being in the drive way and the front door being open. 	Information recorded as a notification – investigation undertaken.	<p>Outcome recorded as "Substantiated at Risk"</p> <ul style="list-style-type: none"> • Mother appeared to minimise child protection concerns. • Mother confirmed at times child plays in in the front yard but denied that he had been wandering on the street and would not participate in further discussions in relation to the alleged incidents. • No further action recorded.
11/11/07	Peter Jones (1 year)	Neglect	<ul style="list-style-type: none"> • Notifier expressed concerns about the father's ability to care for his son. However, was not able to provide information in relation to any specific concerns. 	Due to limited information provided recorded as an "intake".	No further action taken
03/03/08	Gary Sutton (8 years)	Physical	<ul style="list-style-type: none"> • Mother's partner, Barry Jones, is alleged to have physically assaulted the child, Gary Sutton, with a leather strap. • Child is alleged to have been hit on the leg and hands. 	Information recorded as a notification.	No assessment possible due to client reasons – clients moved prior to the initial assessment being undertaken.

Form 5
Children's Court Act 1992
Child Protection Act 1999
(Section 38)

APPLICATION FOR A COURT ASSESSMENT ORDER

CHILD: PETER JONES

Date of Birth 16th December, 2006
Sex: Male

Aboriginal: Yes
Torres Strait Islander: No

APPLICANT DETAILS:

Name: Amanda Hall, an authorised officer under the *Child Protection Act, 1999*
Address: 30-40 Quay Street, Brisbane

APPLICATION DETAILS:

This is an application for a court assessment order.

The grounds on which this application is made are:

- Current Child Protection Concerns:

The Caboolture Child Safety Service Centre received a notification on the 9th January, 2009 in relation to Peter Jones. The child was presented to the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of a serious nature and the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father, Barry Jones and his partner, Denise Sutton advised me that at the time the injuries occurred they were in the living room of their home. They heard a crash from the kitchen and when they went to investigate the noise they found the child lying on the ground amongst a number of grocery items. The child appeared to be having a seizure. The father and his partner explained that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food. The father advised that he called an ambulance immediately given that the child was "fitting".

On the 11th January, 2009 Dr. Lewis from the Mater Children's Hospital advised me that the child's injuries on admission included:

- A subdural haemorrhage (bleeding between the skull and brain).
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, this was estimated to be approximately two days old.

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

- Bruising to left side of the body, this was estimated to be approximately two days old.

He also informed me that the injuries to the child are considered to be non-accidental. This preliminary finding is based on a CT scan and professional opinion that the child suffered a severe blow to the head, 24 to 48 hours prior to his presentation at the Redcliffe Hospital. Dr. Lewis also indicated to me that the retinal haemorrhaging is consistent with the child being severely shaken.

At this time, Dr. Lewis is unable to clarify what the long-term implications for the child will be but have suggested that it is likely that he may suffer some motor dysfunction and long term learning difficulties. He also indicated that if medical assistance had not been sought for the child it is likely that he would have died.

- Interviews undertaken with the Father, Barry Jones and his partner, Denise Sutton:

I conducted Interviews, separately, with Barry Jones and Denise Sutton on the 11th January, 2009 and the 12th January, 2009. These interviews were conducted in conjunction with the police. During these interviews Barry Jones and Denise Sutton maintained that the child appears to have fallen whilst attempting to climb up on his high chair. The explanation offered by Barry Jones and Denise Sutton is not considered to be consistent with the medical facts.

When questioned in relation to the timing of the injuries Barry Jones and Denise Sutton maintained that an ambulance was called immediately following the incident. Dr. Lewis however has indicated that it is likely that the injuries occurred 24 to 48 hours prior to the child's admission to the Redcliffe Hospital.

During the interview on the 12th January, 2009, Barry Jones became increasingly agitated and indicated that he was no longer willing to participate in any further interviews regarding the matter with either the Department or the Police.

- Suspected Child Abuse and Neglect Team Recommendations:

On the 12th January, 2009 I participated in discussions with the Mater Children's Hospital Suspected Child Abuse and Neglect Team. Based on the inconsistencies between the presenting injuries and the explanations offered by Barry Jones and Denise Sutton the Mater Children's Hospital Suspected Child Abuse and Neglect Team were of the opinion that the child is at risk of further harm. Given that Barry Jones is no longer willing to cooperate with the Department's inquiries it was recommended that an application for a court assessment order be made, whilst further assessments are undertaken.

- Details of the mother, Mary Bell:

Barry Jones advised me that Peter's mother is Mary Bell and she is of Aboriginal descent. He further advised that Mary Bell experienced difficulties when giving birth to Peter and these complications left her intellectually impaired and requiring 24-hour care. He further

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for Declarations

stated that at the time of Peter's birth, Mary's parents, Gordon and Sandra Bell, came to Brisbane from New South Wales and assumed responsibility for their daughter. Barry Jones advised that he has not had any contact with Mary Bell or her parents over the past two years. Ms Bells current whereabouts is unknown.

- Previous Departmental Child Protection History:

Checks of the Department's Child Protection System have revealed two previous notifications in relation to Denise Sutton's son, Gary Sutton and one previous intake in relation to the child, Peter Jones. Details of these are as follows:

- On the 15th March, 2004 a notification was received in relation to Gary Sutton (D.O.B – 22/11/2000). The allegations related to neglect and involved the child crossing roads and playing in the street for hours without supervision. Denise Sutton was interviewed in relation to these allegations and the outcome of the assessment was recorded as "substantiated at risk".
- On the 11th November, 2007 information was received by the Department regarding Barry Jones' ability to care for his son. The information was of a general nature and on the basis that the notifier was unable to provide any information relating to specific child protection concerns the matter was recorded as an intake.
- On the 3rd March, 2008 a further notification was received in relation to Gary Sutton. Barry Jones was alleged to have physically assaulted Gary with a leather strap. This notification was unable to be assessed as the family moved prior to the initial assessment being completed.

The purpose of this order is to undertake the following:

- Obtain further medical information in relation to the possible cause of the injuries and future care needs.
- Attempt to locate the children's mother, Mary Bell.
- Continue to assess the father's capacity to care and protect the child given the nature of the injuries sustained by the child whilst in the care of the father.
- Continue to explore further the father's explanation for the child's injuries given the inconsistencies between the father's version of events and medical facts.
- Consult further with the Mater Children's Hospital Suspected Child Abuse and Neglect Team.
- Obtain the parents criminal history
- Consult further with the recognised entity in relation to the current child protection concerns and possible placements options for the child.

Custody is considered necessary to secure the child's protection during the duration of the order given the serious nature of the injuries to the child and the father's reluctance to continue working with the Department. It is requested that the order be for a period of four weeks to allow the Department to conduct further assessments in relation to the child's protective needs.

This application seeks an order –

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- * authorising a medical examination or treatment of the child, Peter Jones.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to keep the child in the chief executive's custody while the order is in force.
- * Directing Barry Jones not to have contact (direct or indirect) with the child other than when an departmentally approved person is present.

Proposed arrangements for the child's care are as follows:

The child is currently in intensive care unit of the Mater Children's Hospital. Dr. Lewis has advised that the child is likely to remain in this unit for the next three to four days. If appropriate the child will then be moved to a general ward for further follow-up.

Contact between the child and the father will be facilitated by the Department.

The order is sought for a period of 4 weeks.

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place: Brisbane

Date: 15th January, 2009

RESPONDENT(S) NAME(S)

Mother's name: Mary Bell

Address: Unknown

Father's name: Barry Jones

Address: 24 Lynfield Drive, Caboolture

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the Childrens Court at

Place: Brisbane

Date: 16th January, 2009

Time: 2.00pm

NOTE: IF YOU DO NOT ATTEND, THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.

Registrar:

Date:

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

Form 17
Childrens Court Act 1992
Child Protection Act 1999
(Section 6)

ABORIGINAL AND TORRES STRAIT ISLANDER RECOGNISED AGENCY

CHILD: PETER JONES

Date of Birth: 16 December 2006

X Aboriginal but not Torres Strait
Islander origin

☐ Both Aboriginal and Torres Strait
Islander origin

☐ Not stated/inadequately described

Sex: Male

☐ Torres Strait Islander but not
Aboriginal origin

☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

Name: Amanda Hall

an authorised officer under the *Child Protection Act 1999*.

Address: 30-40 Quay Street

APPLICATION DETAILS:

This information relates to an application for a court assessment order made in the Childrens Court at Brisbane on 15th January, 2009 in relation to the above-named child.

RECOGNISED AGENCY:

The recognised Aboriginal or Torres Strait Islander agency for the child under section 6(3) of the *Child Protection Act 1999* is:

Karbul Indigenous Placement Agency

The representative of the recognised Aboriginal or Torres Strait Islander agency for the child is: to be advised.

Form 22
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT OF SERVICE

CHILD: PETER JONES

Date of Birth: 16/12/06

Sex: Male

In the matter of application for a court assessment order made by Amanda Hall, an authorised officer, in the Childrens Court at Brisbane on the 16th January, 2009 in relation to the above-named child –

I: Amanda Hall
of: 30-40 Quay Street, Brisbane
occupation: Social Worker
do swear that:

1. On 15th January, 2009 I served Barry Jones with a sealed copy of the following document in the above-mentioned proceedings:

Form 5 – Application for a Court Assessment Order, sworn by Amanda Hall, on the 15th January, 2009.

Form 17 – Aboriginal and Torres Strait Islander Recognised Agency.

2. The document was served by -
giving it to Barry Jones personally
3. I established as follows that the person to whom the document was delivered was the person on whom service of the document/s was to be effected as Barry Jones identified himself as the father of the above mentioned child. I have met Barry Jones on a number of occasions previously and known him as the father of Peter Jones.

Deponent:

SWORN before:

Justice of the Peace / Commissioner
for Declarations / Lawyer

Place: Brisbane
Date: 15th January, 2009

Form 7
Childrens Court Act 1992
Child Protection Act 1999
(Sections 44, 45, 47)

COURT ASSESSMENT ORDER

CHILD: PETER JONES
Date of Birth: 16 December 2006
Sex: Male

An application for a Court Assessment Order was made by Amanda Hall, an authorised officer, in the Childrens Court at Brisbane on 15 January 2009 in relation to the above-named child.

Having considered the grounds of the application I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation cannot be properly carried out unless the order is made.

I MAKE a court assessment order in relation to the child –

- * authorising a medical examination or treatment of the child, Peter Jones.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to keep the child in the chief executive's custody while the order is in force.
- * directing Barry Jones not to have contact Peter Jones with the child other than when a departmental officer is present.

This court assessment order will continue in force until 15th February 2009.

Magistrate
Place: Brisbane
Date: 15th January 2009

Form 5
Childrens Court Act 1992
Child Protection Act 1999
(Section 38)

APPLICATION FOR A COURT ASSESSMENT ORDER

CHILD:

Date of Birth
Sex

Aboriginal *yes / no/unknown
Torres Strait Islander *yes/no/unknown

APPLICANT DETAILS:

Name:
Address:

APPLICATION DETAILS:

This is an application for a court assessment order.

The grounds on which this application is made are:

This application seeks an order –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to *keep/take and keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact (direct or indirect) with the child.
- * directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- * making the following provisions as to the child contact with his/her family during the period of time he/she is in the chief executive's custody: (specify details)

The order is sought for a period of (specify time).

Signature of Applicant:

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place:

Date:

RESPONDENT(S) NAME(S)

Mother's name:

Address:

Father's name:

Address:

Other Name (specify relationship

Address:

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the
Childrens Court at

Place:

Date:

Time:

**NOTE: IF YOU DO NOT ATTEND , THE COURT MAY PROCEED TO MAKE
AN ORDER IN YOUR ABSENCE.**

Registrar:

Date:

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 22
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT OF SERVICE

CHILD: (name)
Date of Birth:
Sex *Female/Male

In the matter of application/s *for / in relation to a *court assessment order / child protection order made by (name of applicant), an *authorised officer / police officer, in the Childrens Court at (place) on (date) in relation to the above-named child –

I:
of:
occupation:
do *swear/affirm that:

1. On (date), I served (name) with a sealed copy of *the following documents / *each of the following documents in the above-mentioned proceedings:
2. The document/*s *was/were served by -
 *giving *it / them to (name) personally
 *posting/leaving the document/*s in one envelope addressed to (name) at (address)
3. I established as follows that the person to whom the document/*s *was/were delivered was the person on whom service of the document/s was to be effected
 (state means by which the deponent identified the person served):

Deponent:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations / Lawyer

Place:
Date:

*delete whichever is not applicable
Form 22 – Version 1, March 2000

FILE NO:

Childrens Court Act 1992
Child Protection Act 1999
(Sections 44, 45, 47)

COURT ASSESSMENT ORDER

CHILD:

Date of Birth:

Sex:

An application for a court assessment order was made by _____, an authorised officer, in the Childrens Court at _____ on DATE in relation to the above-named child.

Having considered the grounds of the application I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation cannot be properly carried out unless the order is made.

I MAKE a court assessment order in relation to the child –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him / her.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to *keep / take and keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact (direct or indirect) with the child.
- * directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- * making the following provisions as to the child's contact with his/her family during the period of time he/she is in the chief executive's custody.

This court assessment order will continue in force until _____.

Magistrate

Place:

Date:

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position
Form 7 – Version 2, November 2003

Form 6
Childrens Court Act 1992
Child Protection Act 1999
(Sections 49, 50)

**APPLICATION TO EXTEND / VARY / REVOKE
A COURT ASSESSMENT ORDER**

CHILD: (name)

Date of Birth:

- ☐ Aboriginal but not Torres Strait
Islander origin
- ☐ Both Aboriginal and Torres Strait
Islander origin
- ☐ Not stated/inadequately described.

Sex: *Female/Male

- ☐ Torres Strait Islander but not
Aboriginal origin
- ☐ Neither Aboriginal nor Torres Strait
Islander origin

APPLICANT DETAILS:

Name:

an authorised officer under the *Child Protection Act 1999*.

Address:

APPLICATION DETAILS:

This is an application for an order to *extend *and/ vary / revoke the court assessment order made in the Childrens Court at (place) on (date) in relation to the above-named child.

The grounds on which this application is made are:

*In seeking to vary the order, this application seeks an order –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to *keep/take and keep the child in the chief executive's custody while the order is in force.

Signature of Applicant

Justice of the Peace / Commissioner
for Declarations

- * directing (name of parent) not to have contact (direct or indirect) with the child.
- * directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- * making the following provisions as to the child contact with his/her family during the period of time he/she is in the chief executive's custody (specify details)

*An extension of the order is sought for a period of (specify time).

Signature of Applicant:

SWORN / AFFIRMED before:

Justice of the Peace / Commissioner
for Declarations

Place:

Date:

RESPONDENTS' NAME/S

Mother's name:

Address:

Father's name:

Address:

Other name (specify relationship):

Address:

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the Childrens Court at

Place:

Date:

Time:

NOTE: IF YOU DO NOT ATTEND, THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.

Registrar:

Date:

*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

FILE NO.:

Form 9
Childrens Court Act 1992
Child Protection Act 1999
(Sections 66, 67)

ADJOURNMENT OF PROCEEDING FOR A COURT ASSESSMENT ORDER

CHILD:

Date of Birth:

Sex:

Male:

An application for a court assessment order was made by NAME, an authorised officer, in the Childrens Court at PLACE on DATE in relation to the above-named child.

I ORDER that the proceeding is adjourned to DATE and TIME for further mention of the application.

I ALSO ORDER an interim order in relation to the child –

- * granting temporary custody of the child to the chief executive.
- * directing NAME and NAME not to have contact, direct or indirect, with the child other than when a departmentally approved person is present.

The interim order has effect for the period of the adjournment.

Magistrate

Place:

Date:

Form 8*Childrens Court Act 1992**Child Protection Act 1999*

(Sections 49, 50)

COURT ASSESSMENT ORDER
EXTENSION / VARIATION / REVOCATION OF ORDER**CHILD:**

Date of Birth:

Sex

An application to *extend *and/ vary / revoke the court assessment order made in the Childrens Court at (place) on (date) in relation to the above-named child was made by (name), an authorised officer, on (date).

*Having considered the grounds of the application I am satisfied it is in the child's best interests to *extend *and vary the court assessment order.

*I ORDER that the court assessment order in relation to the child be extended until (date).

*I ORDER a variation of the court assessment order in relation to the child –

- * authorising an authorised officer or police officer to have contact with the child.
- * authorising a medical examination or treatment of the child.
- * authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- * granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to *take/take and keep the child in the chief executive's custody while the order is in force.
- * directing (name of parent) not to have contact (direct or indirect) with the child.
- * directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- * making the following provisions as to the child's contact with his/her family during the period of time he/she is in the chief executive's custody.

*Having considered the grounds of the application I am satisfied it is in the child's best interests to revoke the court assessment order.

*I ORDER that the court assessment order be revoked.

Magistrate

Place:

Date:

Form 17
Childrens Court Act 1992
Child Protection Act 1999
(Section 6)

ABORIGINAL AND TORRES STRAIT ISLANDER RECOGNISED AGENCY

CHILD: (name)

Date of Birth:

Sex *Female/Male

Aboriginal *yes / no

Torres Strait Islander *yes / no

APPLICANT DETAILS:

Name:

an authorised officer under the *Child Protection Act 1999*.

Address:

APPLICATION DETAILS:

This information relates to an application for a *court assessment order / child protection order made in the Childrens Court at (place) on (date) in relation to the above-named child.

RECOGNISED AGENCY:

The recognised Aboriginal or Torres Strait Islander agency for the child under section 6(3) of the *Child Protection Act 1999* is: (agency name)

The representative of the recognised Aboriginal or Torres Strait Islander agency for the child is: * to be advised / (name)

*delete whichever is not applicable
Form 17 – Version 1, March 2000

CHILD PROTECTION ORDERS

Part 4 Sections 52-65 of the *Child Protection Act 1999*

When to apply for a CPO

An application for a CPO can only be made when the protection and care needs of the child are unlikely to be met by a less intrusive intervention, such as, intervention with parental agreement or care agreement.

If the question of whether a child is in need of protection is still to be determined, then an application for a CPO is premature, and either an assessment order should be sought, or the assessment is to proceed with parental agreement.

Whilst the decision is being made about the type of ongoing intervention or the type of order required, the child's safety needs must be met, and a placement with the parent/s agreement (under a care agreement), an assessment order or an interim child protection order may be required.

Deciding which CPO is appropriate

When deciding which is the most appropriate CPO for a child, the applicant is to:

- ensure that, having regard to the principals of the *Child Protection Act 1999*:
 - the child and the child's family have an opportunity to participate in the decision; and
 - the proposed order to be sought does not exceed the level of intervention needed to secure the child's safety;
- ensure the recognised entity is given the opportunity to participate in the decision-making about the most appropriate order for an Aboriginal or Torres Strait Islander child;
- determine the most appropriate order based on an assessment of the individual circumstances relating to each case, including:
 - what the child needs to be safe (where applicable, this consideration will be informed by the most recent safety assessment);
 - the strengths and needs of the child and family (this decision will be informed by the most recent child and parental strengths and needs assessments); and

- what level of intervention is needed to meet the child's protection and care needs (consider the child's need for stability and long-term care arrangements, as appropriate).

Deciding which order is appropriate to recommend

The types of CPOs reflect the processes of case management. A range of short-term orders are available for use during the period when work is focussed on resolving the child's protective needs whilst either at home with the parent/s or plans to reunify to the parent/s. Long-term guardianship orders are designed for use when it has been resolved that the child's protective needs are to be met through the child remaining in long-term out of home care.

In deciding which order is appropriate to recommend, consider the following broad issues:

- Does the child need to be removed from the home (or continue to be removed) under an order?
- Could the work towards meeting the child's needs be done (or now done) with the child at home?
- What length of time, at this stage, is needed to work towards meeting the child's protective needs?
- What is the purpose of the order? Is work still continuing to resolve the child's protective needs or has it been decided that an on-going order will be used as a means of resolving the protective issues.

More specifically the following issues related to the child's family circumstances:

- Does the child need protection from (or to be removed from the care of) both parents?
- If the risk of harm relates to one parent only, is the other parent able to protect with supports?
- Are their relatives able to assume a protective role?
- Is contact with one or both parents to be restricted for safety reasons?
- Is there conflict or harmony between the prospective relative carers and the parents?
- Are both parents involved and contactable?
- Are the parents able and willing to be involved in planning?
- If one parent is not contactable / involved, is that parent likely to oppose planning decisions?

These general considerations should be taken into account alongside the specific information outlined in the Child Safety Practice Manual.

Court Coordinator role

Court Coordinators (CC) will be involved in taking applications for CPOs through Court. The role of the CC will be to:

- provide quality assurance;
- provide advice;
- proofing applications and affidavits;
- have a role in co-ordinating the referral of contested applications to the Court Services Unit (CSU);
- have a role in conjunction with CSU and Crown Law in overseeing the preparation of material for a hearing.

**Guidelines for
Decision-making
Regarding types of
Child Protection Orders**

Child Protection Orders – Summary

Child Protection Orders (CPO)	
Purpose	<p>CPOs are used during the ongoing intervention phase of child protection.</p> <ul style="list-style-type: none"> ▪ CPOs are therefore made to authorise ongoing intervention to achieve the child's protection, when parental consent for the intervention cannot be obtained and ▪ To secure ongoing custody or guardianship where this is required to achieve the child's protection.
Duration	<p>Non-custodial short term orders – Any duration to a maximum of one (1) year</p> <p>Short term custody or guardianship orders – Any duration to a maximum of two (2) years</p> <p>Long term guardianship orders – To eighteen (18) years of age</p>
Types of CPO's	<p>Non-custodial short term orders</p> <ul style="list-style-type: none"> ▪ Directive orders re contact by parents ▪ Directive orders re actions by parents ▪ Supervision orders <p>Custody or guardianship orders</p> <ul style="list-style-type: none"> ▪ custody orders – to CE ▪ custody orders – to relative ▪ Short term guardianship orders – to CE <p>Long term guardianship orders</p> <ul style="list-style-type: none"> ▪ Long term guardianship orders – to CE ▪ Long term guardianship orders – to relative ▪ Long term guardianship orders – to other suitable person
Application process	<p>Application can only be made by authorised officers of the Department of Child Safety.</p> <p>Application is made to a Court.</p>
Obtaining an order	<p>To make a CPO, the magistrate needs to be satisfied that:</p> <ul style="list-style-type: none"> ▪ The child is a child in need of protection and the order is appropriate and desirable for the child's protection. ▪ A family group meeting has been held or attempts to hold a family meeting have been made. ▪ If the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made ▪ The child's wishes or views, if able to be ascertained, have been made known to the court and ▪ The protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms. <p>Also before making a CPO regarding custody/guardianship of a child to a person other than the CE, the Court must have regard to any report given, or recommendation made, to the court by the CE about the person, including a report about the person's criminal history, domestic violence history and traffic history.</p>
Extension, variation & revocation	<ul style="list-style-type: none"> ▪ A CPO can be extended. ▪ A CPO can be varied. ▪ A CPO can be revoked. ▪ A CPO can be revoked and a new order made in its place

Directive order - S61 (a)

Directing a parent to do or refrain from doing something related to the child's protection

This order is appropriate when ...

- The child can remain at home, so long as the parents take certain action (or cease certain activity)
- The parents will not take the action (or cease) on a voluntary basis
- The action is able to be clearly defined and what is required of them is easily understood by the parents
- A specific order is able to be made by the court and no court-ordered supervision of the directive is required
- Failure on the parents' part to keep to the order will not have immediate safety consequences for the child
- The parents are likely to adhere to the recommended order.

Guidelines for use:

- The order must be specific, not general (eg "take the child to the hospital clinic for treatment every Thursday", rather than "provide adequate medical care"). If the order needs to be general, a protective supervision order would be more appropriate.

Sections of the Act which outline obligations and rights in relation to this order:

Section 73

Directive order – S61 (b) (i) and (ii)

Directing a parent not to have contact with a child or to have only supervised contact

This order is appropriate when ...

- The child could remain at home with a protective parent if the offending parent was prevented, or restricted, from contact
- The child could be placed in a voluntary placement, eg with relatives, if the offending parent was prevented, or restricted, from contact (if there is a protective parent to consent to the placement)
- There is a Family Court contact order which needs to be overridden for child protection reasons (allowing the protective parent to apply for variation of the Family Court order)
- There is a need to prevent a parent from harassing the child in a significantly harmful way (eg telephone threats). In this case, the order may be made in conjunction with any other child protection order
- The child could be safe if the contact with the offending parent was supervised, and there is a person willing to provide the supervision

Guidelines for use:

- Directive orders can not be used to effectively deny *both* parents contact – when that is required, a custody order is more appropriate, as someone still has to exercise custody/guardianship over the child
- Similarly, directive orders about contact are not appropriate when the child is living with their only parent – the order should not be used in a way which would leave the child "at home alone"
- Supervision by someone could range from contact visits to someone moving into the home temporarily to ensure the child was not left alone with the offending parent. The supervising person must be aware of the proposed order and voluntarily agree to their role – they are not ordered
- It is not appropriate to use the order in a way which would effectively deny someone entry to their own home, except on a very temporary basis
- A directive order concerning contact may be made conjointly with another type of child protection order, eg a directive order relating to contact and a protective supervision order

Directive order – S61 (b) (i) and (ii)

Directing a parent not to have contact with a child or to have only supervised contact

Sections of the Act which outline obligations and rights in relation to this order:

Section 73

Protective supervision order – S61 (c)

Requiring the chief executive to supervise the child's protection in relation to particular matters

This order is appropriate when ...

- The child could remain safely at home with supervision and direction by the DChS being enough to prevent harm to the child
- It is possible to specify the areas relating to the child's care which are to be supervised by the DChS
- Failure on the parents' part to keep to any directives by the DChS will not have immediate safety consequences for the child
- The intervention needed (with the child at home) will not be accepted by the parents on a voluntary basis

Guidelines for use:

- This order can be used when general conditions in relation to the care and welfare of the child need to be supervised.

Sections of the Act which outline obligations and rights in relation to this order:

Sections 73, 77 and 78

Custody order – S61 (d) (ii)

Granting custody of the child to the chief executive

This order is appropriate when ...

- The child cannot be safely left at home using a lesser order
- It is appropriate for the parents to retain guardianship, ie at least one parent is available and involved in planning
- It is not necessary to impose a 'no contact' condition on a parent
- It is not possible or appropriate to make the short-term custody order in favour of a relative

Guidelines for use:

- If it is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, then a guardianship to the chief executive order should be sought (if the order is short-term). Guardianship cannot be removed from just one parent and not the other.
- If it is necessary to restrict a parent from all contact with the child, then a guardianship order should be sought. It is not appropriate for a parent retaining guardianship to be prevented from all contact with the child

Sections of the Act which outline obligations and rights in relation to this order:

Sections 73, 74 and 75

Custody order- S61 (d) (i)

Granting short term custody of the child to a family member

This order is appropriate when ...

- The child cannot be safely left at home using a lesser order
- There is an appropriate relative able and willing to assume short-term custody for the purpose of protecting the child
- It is not necessary to impose a 'no contact' condition on a parent
- There is no significant conflict between the parents and the relatives
- The relatives will facilitate appropriate contact between the child and parents
- The relatives are able and willing to work with the DChS in planning for the child
- It is appropriate for the parents to retain guardianship, ie at least one parent is available and involved in planning
- The relatives understand and are willing/able to meet their obligations under the Act
- The relatives are assessed as suitable

Guidelines for use:

- If it is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, then a guardianship to the chief executive order should be sought (if the order is short-term). Guardianship cannot be removed from just one parent and not the other.
- If there is uncertainty about one of the above factors (eg the relatives ability to ensure positive contact between the child and parents), it may be appropriate to seek a custody to the chief executive order, but still place the child with the relatives
- If it is necessary to restrict a parent from all contact with the child, then a guardianship order should be sought. It is not appropriate for a parent retaining guardianship to be prevented from all contact with the child

Sections of the Act which outline obligations and rights in relation to this order:

Sections 73, 79 and 80

Short term guardianship order –S61 (e)

Granting short term guardianship of the child to the chief executive

This order is appropriate when ...

- The child cannot be safely left at home using a lesser order
- There is no available parent to exercise guardianship and be involved in planning; or the parents' availability is erratic
- It is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, or because of the parent's current incapacity to exercise guardianship
- It is assessed that the parent will fail to exercise appropriate guardianship on a significant issue (eg a needed medical procedure) and therefore it is in the child's interests for guardianship to be vested in the chief executive
- Planning/work with the family to resolve the child's protective needs is still occurring/has not been completed.

Guidelines for use:

- Given the principle that the order used should not exceed the level of intervention needed, this order may not be used frequently. It will be preferable for parents to retain guardianship where possible

Sections of the Act which outline obligations and rights in relation to this order:

Sections 73, 74 and 75

Long term guardianship – S61 (f) (iii)

Granting long term guardianship of the child to the chief executive

This order is appropriate when ...

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of a relative
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of another person (eg a foster carer)
- There are significant ongoing safety concerns which are best managed with the child in the chief executive's guardianship
- It has not yet been possible to establish a suitable long-term placement for the child
- There is significant conflict between the parents and any relative who could otherwise assume guardianship
- The child is in the care of a carer from whom it is not appropriate to move the child, but the carer is unable to meet the criteria for assuming long-term guardianship

Guidelines for use:

- This order can only be made if the other long-term guardianship options have been considered and there are reasons why they are not appropriate in the particular case
- If, with ongoing assessment, it becomes apparent that circumstances have changed and a long-term guardianship order could now be made in favour of a relative or other person, a new order should be obtained to achieve that
- When a child is to 'grow up in care' and does not yet have a stable placement, this order may be made pending the location of a suitable person to assume long-term guardianship of the child after an appropriate settling period

Sections of the Act which outline obligations and rights in relation to this order:

Sections 74 and 75

Long term guardianship order – S61 (f) (i)

Granting long term guardianship of the child to a family member

This order is appropriate when ...

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term.
- There is an appropriate relative able and willing to assume long-term guardianship of the child
- It is not appropriate for a Family Court order to be sought because there are ongoing protection concerns (eg the risk of the parent seeking return of the child)
- There is no significant conflict between the parents and the relatives such that this would make the order insecure
- The relatives will facilitate appropriate contact between the child and parents
- The relatives will deal appropriately with identity issues for the child and meet the child's cultural needs
- The relatives are assessed as suitable and likely to remain so in the long-term
- The relatives understand and are willing/able to meet their obligations the Act
- If the child is old enough to decide – the child agrees with the relatives assuming guardianship

Guidelines for use:

- Long-term orders (to 18 years) can only be made as guardianship orders. The rationale for this is that the person with whom the child is living permanently needs to be able to exercise guardianship if the child is to grow up in their care.
- It may be not so much inappropriate as not *possible* for a Family Court order to be sought (for financial reasons). While strictly speaking this is not a reason to seek/retain a long-term child protection order, it will sometimes be unavoidable
- If it is appropriate to limit the child's contact with a parent or significant family member, this must be a condition of the order – the relatives with guardianship can not impose such a restriction themselves
- If family contact is likely to be the subject of ongoing dispute, it will be more appropriate to make a long-term guardianship order to the chief executive.

Sections of the Act which outline obligations and rights in relation to this order:

Long term guardianship order – S61 (f) (ii)

Granting long term guardianship of the child to another suitable person

This order is appropriate when ...

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term
- The child is already living in the care of an appropriate person (eg foster carer) who is willing to assume long-term guardianship of the child
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of a relative
- There is no significant conflict between the parents and the child's carer such that this would make the order insecure
- The child's carer has an accepting and relaxed attitude towards the child's parents and will facilitate appropriate contact between the child and parents and between the child and other members of the child's family
- The child's carer will deal in a positive way with helping the child understand their identity and is able and willing to meet the child's cultural needs
- The carer is assessed as suitable and likely to remain so in the long-term
- If the child is old enough to decide – the child agrees with the carer assuming guardianship

Guidelines for use:

- If it is appropriate to limit the child's contact with a parent or significant family member, this must be a condition of the order – the carer with guardianship can not impose such a restriction themselves
- If family contact is likely to be the subject of ongoing dispute, it will be more appropriate to make a long-term guardianship order to the chief executive
- If the carer does not have an accepting and positive attitude towards the child's natural family (even where contact is restricted for safety reasons) it will be more appropriate to make a long-term guardianship order to the chief executive.

Sections of the Act which outline obligations and rights in relation to this order:

Section 80

The Jones Family: Assessments and case developments whilst subject to the Court Assessment Order.

On the 16th January, 2009 a court assessment order was made in relation to the child, Peter Jones. This order was for a period of four weeks.

On the 17th January, 2009 a family meeting was held with Barry Jones and Denise Sutton. During this meeting the details of the court assessment order were explained and arrangements were made for Mr Jones and Ms Sutton to have supervised visits with Peter, twice per week, for the duration of the court assessment order. Amanda Hall sought permission from Denise Sutton to interview Gary Sutton. She refused stating that it would be too upsetting and confusing for Gary to be interviewed by departmental staff.

On the 17th January, 2009 the recognised entity, the Karbul Indigenous Placement Agency, was advised that Peter was subject to a court assessment order granting custody to the Chief Executive for a period of four weeks.

In an attempt to locate Peter's mother contact was made, on the 18th January, 2009, with the Royal Brisbane Hospital, which was where Peter was born. The Department was provided with an address in New South Wales. A letter was sent to this address by registered mail but this was returned by Australia Post. The explanation provided by Australia Post as to why the letter could not be delivered was that Mary Bell was no longer residing at this address.

Attempts to locate Mary Bell through Centrelink were commenced. To date there has been no response.

On the 19th January, 2009 further attempts were made by police officers Jack Campbell, Susan Wall and CSO, Amanda Hall to interview both Barry Jones and Denise Sutton. Both refused to be interviewed.

On the 2nd February, 2009 the Queensland Police Service advised that neither Barry Jones nor Denise Sutton have any previous criminal history.

On the 6th February, 2009 staff from the Karbul Indigenous Placement Agency were invited to attend a Family Group Meeting (FGM) in relation to Peter to be held on the 10th February, 2009. A representative from the Karbul Indigenous Placement Agency stated that they would attend the Family Group Meeting and requested that a copy of the CAO application, the CAO and an agenda for the meeting being forwarded to them prior to the FGM.

On 7th February, 2009 Dr Anthony Lewis advised the Department of Peter's current situation and possible rehabilitation requirements. The following information was provided:

- It is difficult to say with any certainty the long-term prognosis for Peter.
- It is highly likely that Peter will have some motor dysfunction on the left side of his body.
- Peter may have difficulty walking.
- Peter may have some long term learning problems.
- Whilst Peter's rehabilitation needs are likely to be on-going throughout his childhood, they will be intensive over the next twelve to twenty-four months.
- A more definitive prognosis could be given after one to two months of rehabilitation.
- Peter will require a high level of support from his caregivers in order to assist him

Form 10

Childrens Court Act 1992
Child Protection Act 1999
(Section 52)

APPLICATION FOR A CHILD PROTECTION ORDER

CHILD: PETER JONES

Date of Birth: 16th December 2006
Sex: Male

Aboriginal: Yes
Torres Strait Islander: No

APPLICANT DETAILS:

Name: Amanda Hall, an authorised officer under the *Child Protection Act 1999*
Address: 30 - 40 Quay Street, Brisbane

APPLICATION DETAILS:

This is an application for a child protection order.

The grounds on which this application is made are:

Peter Jones is currently subject to a court assessment order. This order will expire on the 15th February, 2009. The child came to the attention of the Department on the 9th January, 2009 when the child was presented to the Emergency Department of Redcliffe Hospital with head injuries and significant bruising to his body. Given the serious nature of the injuries the child was transferred to the Mater Children's Hospital.

The child's injuries on admission included:

- A subdural haemorrhage (bleeding between the skull and brain).
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, which was estimated to be approximately two days old.
- Bruising to left side of the body, which was estimated to be approximately two days old.

These injuries are considered to be non-accidental by medical professionals. The child's father, Barry Jones, has been charged with Grievous Bodily Harm in relation to the child's injuries.

The child is considered to be at risk if returned to his father's care due to the following:

- The child has suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
- Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Barry Jones and his partner remain unresolved.
- Inconsistencies exist between the timing of the child's injuries with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented to the Redcliffe Hospital. Barry Jones and his partner maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital.

- The child is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers over the next twelve to twenty-four months. The Department has concerns regarding Barry Jones' ability to provide this level of care.

Mr Jones has reported that the child's mother, Ms Mary Bell, suffered complications whilst giving birth to Peter and as a result she was left with an intellectual disability and requires twenty-four hour care. The mother's current whereabouts are unknown. Attempts have been made to locate the child's mother but to date these have been unsuccessful.

This application seeks an order:

Granting custody of Peter Jones to the Chief Executive.

The order is sought for a period of two years

Signature of Applicant:

Date: 19th January, 2009

RESPONDENTS' NAME/S

Mother's name: Mary Bell
Address: Unknown

Father's Name: Barry Jones
Address: 24 Lynfield Drive, Caboolture

TO THE ABOVE-NAMED RESPONDENT(S): This application will be heard in the Childrens Court at

Place: Brisbane Children's Court at 30-40 Quay Street, Brisbane
Date: 22/01/09
Time: 2pm

NOTE: IF YOU DO NOT ATTEND THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.

Registrar:
Date:

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child: Peter Jones – (DOB: 16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Amanda Hall, Child Safety Officer of 30-40 Quay Street in the State of Queensland, make oath and say as follows:-

1. I am an officer of the Department of Communities (Child Safety) (hereinafter referred to as "the Department"). I am appointed as an authorised officer under the *Child Protection Act 1999*. I hold a Bachelor of Social Work Degree from the University of Queensland, which was conferred in 1997.

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

2. I am the applicant seeking a child protection order granting custody of the subject child, Peter Jones, to the Chief Executive for a period of two years. This affidavit is sworn in support of my application.

Family Details

3. Barry Jones (hereinafter referred to as "Mr Jones") is the father of the subject child. I first met Mr Jones on the 11th January, 2009 at the Mater Children's Hospital whilst undertaking an initial assessment in relation to his son, Peter Jones. Since this time I have met with Mr Jones on a number of occasions.
4. During my discussions with Mr Jones on the 11th January, 2009 he identified the mother of Peter to be Ms Mary Bell (hereinafter referred to as "Ms Bell"). In relation to Ms Bell, Mr Jones advised of the following:
- a) Ms Bell suffered medical complications whilst giving birth to Peter. This left Ms Bell intellectually impaired and requiring twenty-four hour care.
 - b) Ms Bell's mother and father, Sandra and Gordon Bell, travelled to Brisbane and assumed responsibility for their daughter after she became disabled.
 - c) Mr Jones had not had contact with Ms Bell since the birth of their son.
 - d) Mr Jones is not presently aware of Ms Bell's address.
 - e) Ms Bell is of Aboriginal descent.
5. I have attempted to locate Ms Bell. On the 18th January, 2009 I contacted the Royal Brisbane Hospital, which was the hospital where Peter was born. They provided me with an address in New South Wales. I attempted to contact Ms Bell,

by posting a letter to this address by registered mail. This letter was returned to me by Australia Post. The explanation provided as to why the letter could not be delivered was that Ms Bell was no longer residing at the address provided. I am currently attempting to locate Ms Bell through Centrelink.

6. Denise Sutton (hereinafter referred to as "Ms Sutton") is Barry Jones' current partner. She is presently residing at the same address as Mr Jones. I first met Ms Sutton at the Mater Children's Hospital on the 11th January, 2009, whilst undertaking an initial assessment in relation to Mr Jones' son, Peter Jones. I have met with Ms Sutton on numerous occasions since this time.
7. Ms Sutton has one son, Gary Sutton (hereinafter referred to as "Gary") (DOB: 23/11/2000) from a previous relationship. Gary resides with Ms Sutton and Mr Jones.
8. I have met Gary Sutton on the 11th January, 2009 whilst undertaking the initial assessment with Ms Sutton. I have subsequently asked Ms Sutton if I could interview Gary at his school in relation to the incident involving Peter. Ms Sutton refused this request stating that it would be too upsetting and confusing for Gary to be interviewed by departmental staff. Therefore I have not been able to have further contact with Gary Sutton at this time.
9. Peter Jones (hereinafter referred to as "Peter") is the subject child.

Current Departmental Involvement

10. Peter is currently the subject of a court assessment order, granting custody to the Chief Executive for a period of four weeks. This court assessment order was made

in Brisbane Children's Court on 15th January, 2009. This order is due to expire on the 15th February, 2009. Exhibit "A" to this application is a true copy of the Form 7 – court assessment order.

History of Departmental Contact

11. I have prepared a report outlining previous child protection history in relation to Mr Jones and Ms Sutton. This report was prepared from departmental files and records. Exhibit "B" to this affidavit is a true copy of this report.
12. As outlined in Exhibit "B", departmental files indicate that a notification was received on the 3rd March, 2008 by the Logan Child Safety Service Centre in relation to the child, Gary Sutton. The notifier alleged that the child had been physically assaulted by Mr Jones, with a leather strap. It was alleged that the child was hit on his legs and hands. The outcome of the initial assessment was "no assessment was possible due to client reasons – the clients had moved prior to the initial assessment being undertaken".
13. On the 11th January, 2009 I spoke with Mr Jones and Ms Sutton regarding the above concerns. Ms Sutton stated that she could not remember the alleged assault on Gary as it was so long ago; however she stated that "both of them tell me when something happens like that. There are no secrets between us. I have never seen any marks or bruising on Gary. I have never had any concerns about how Barry disciplines Gary. Sometimes he needs a firm hand."
14. Mr Jones admitted that he has smacked Gary with a leather strap once. He indicated that he did not hit him with "any real force" and that he had taken this

action as Gary was "playing up" and not following his instructions.

15. Mr Jones stated that on this occasion, Gary had locked himself in the family car and was playing with matches. He refused to open the car despite numerous requests by him so he ended up calling the RACQ to unlock the car. Once the car was unlocked he removed the matches from Gary and smacked him with the belt he was wearing for being so disobedient and putting himself at risk and damaging the car. Gary had burnt holes in the car seats. He said that at the time Denise was at work.

Current Child Protection Concerns

16. On the 9th January, 2009 a child protection notification was recorded at the Caboolture Child Safety Service Centre. Peter was presented at the Redcliffe Hospital Emergency Department, by ambulance, with head injuries and significant bruising to his body. The injuries were of a serious nature, resulting in Peter being immediately transferred to the intensive care unit of the Mater Children's Hospital.
17. The notifier advised the Department of the following:
- a) Mr Jones advised that he and Ms Sutton were in the living room when they heard a crash from the kitchen. Mr Jones went to the kitchen and found Peter lying on the ground amongst some cereal boxes and other food items. He appeared to be "fitting". Mr Jones presumed that Peter had fallen while trying to climb up on his high chair to get some food.
 - b) Mr Jones advised that given Peter appeared to be "fitting" he had immediately called an ambulance.

c) When Peter was presented at the Redcliffe Hospital, Mr Jones and Ms Sutton appeared to be very distressed. They also appeared to be generally concerned for Peter's welfare.

18. On the 11th January, 2009 I spoke with Doctor Anthony Lewis, a consulting paediatrician, from the Mater Children's Hospital. He advised that Peter's injuries on admission included:

- a) A subdural haemorrhage (bleeding between the skull and the brain);
- b) Retinal haemorrhaging in both eyes;
- c) Bruising to left side of the face, which was estimated to be approximately two days old;
- d) Bruising to the left side of the body, which was estimated to be approximately two days old.

19. Dr Lewis described Peter's injuries as being non-accidental. This was on the basis that the explanations offered by Mr Jones as to how the injuries occurred were not consistent with his assessment of the presenting injuries, which were of a serious nature. Dr Lewis stated that the retinal haemorrhaging in both eyes was consistent with a child who has been shaken. Dr Lewis further indicated that it was likely that Peter had suffered a severe blow to the head. Dr Lewis also stated that the timing of the injuries offered by Mr Jones varies from his professional opinion, which suggests that the injuries occurred approximately twenty-four to forty-eight hours prior to child's admission to the Redcliffe Hospital.

20. Mr Jones was interviewed on the 11th and 12th of January, 2009. Jack Campbell

and Susan Wall, Police Officers attached to the Brisbane Child Abuse Unit, conducted these interviews. I was also present when these interviews were conducted. Mr Jones maintained that he and Ms Sutton were in the living room when the child was injured. He stated that he did not actually see how the injuries were caused but the only possible explanation is that the child fell whilst climbing up his on his high chair. Mr Jones further stated that he "called an ambulance, immediately, once he saw Peter lying on the ground having what appeared to be a fit".

- () 21. During the interview on the 12th January, 2009 it was put to Mr Jones that the explanation he had provided was not consistent with the presenting injuries. The issue of timing between when the injuries occurred and when the child was presented to the Redcliffe Hospital was also raised.
22. In response to this Mr Jones started banging the table and began yelling "you are all out to get me.... I can't fucking believe this..... I'm not saying anything else; you guys will just twist my words.... You don't know what happened and you're trying to pin it on me.....you've got no fucking proof....my kid's lying there nearly dead and you're trying to screw me for this.....this is so fucking typical of the cops and welfare". Mr Jones terminated the interview by walking out.
- () 23. Prior to the conclusion of the interview Mr Jones once again indicated that he was not willing to discuss the events of the 9th January, 2009 again with either the Police or the Department.
24. Ms Sutton was also interviewed on the 11th and 12th January, 2009. These

interviews were also conducted in the presence of Police Officers, Jack Campbell and Susan Wall. I was also present during these interviews. During both interviews Ms Sutton maintained that she was in the living room with Mr Jones, when she heard a large bang come from the kitchen. She stated that whilst she did not witness the incident, Peter's injuries must have occurred whilst he was attempting to climb up on his high chair. Ms Sutton advised that when she and Mr Jones found Peter lying on the floor Mr Jones had immediately called an ambulance.

() 25. On the 12th January, 2009, Sharon Upton, Team Leader for Child and Family Team at the Caboolture Child Safety Service Centre, and myself participated in the Suspected Child Abuse and Neglect (SCAN) forum at the Mater Hospital (hereinafter referred to as "Mater SCAN"). Based on the inconsistencies between the presenting injuries and the explanations offered by Mr Jones and Ms Sutton the Mater SCAN team were of the opinion that the child was "at risk". Given that Mr Jones was no longer willing to cooperate with the Department and the Police's inquiries it was recommended that the Department apply for a court assessment order to gain custody of the child, whilst further assessments were undertaken.

() 26. On the 19th January, 2009 further attempts were made by Jack Campbell, Susan Wall, and myself to interview Mr Jones and Ms Sutton in relation to the alleged incident on the 9th January, 2009. Mr Jones and Ms Sutton refused to discuss the matter further.

27. Criminal history checks were undertaken in relation to both Mr Jones and Ms

Sutton. On the 2nd February, 2009 the Queensland Police Service advised me that neither Mr Jones nor Ms Sutton have any previous criminal history.

28. On the 7th February, 2009 I met with Dr Lewis to discuss Peter's current situation and rehabilitation requirements. Dr Lewis advised me of the following:

- a) It is difficult to say with any certainty the long-term prognosis for Peter.
- b) It is highly likely that Peter will have some motor dysfunction on the left side of his body.
- c) Peter may have difficulty walking.
- d) Peter may have some long term learning problems.
- e) Whilst Peter's rehabilitation needs are likely to be on-going throughout his childhood, they will be intensive over the next twelve to twenty-four months.
- f) A more definitive prognosis could be given after one to two months of rehabilitation.
- g) Peter will require a high level of support from his caregivers in order to assist him in the rehabilitation process.
- h) Dependent upon his rate of recovery, Peter is likely to remain in hospital until mid-April, 2009.

29. On the 9th February, 2009, Jack Campbell advised me by telephone that he had arrested and charged Mr Jones with one count of Grievous Bodily Harm, as a result of the injuries that Peter had sustained. He further advised that Mr Jones had been granted watchhouse bail, and there were no conditions that would prohibit Mr Jones from having contact with Peter. I was further advised by Officer

Campbell that this matter has been listed for mention in the Caboolture Magistrates Court on the 22nd February, 2009.

30. The outcome of the initial investigation in relation to the notification received at the Caboolture Child Safety Service Centre on the 9th January, 2009 was substantiated for physical and emotional harm in relation to Peter and substantiated at risk of physical and emotional harm in relation to Gary.
31. On the 10th February, 2009, Mater SCAN recommended that the Department make application for a child protection order, granting custody of Peter to the Chief Executive for a period of two years. This recommendation was based on the following:
- a) Peter suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
 - b) Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Mr. Jones and Ms Sutton, remain unresolved.
 - c) Inconsistencies exist between the timing of the child's injuries with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented to the Redcliffe Hospital. Mr Jones and Ms Sutton maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital.
 - d) Peter is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers to assist in his rehabilitation. This support will be intensive over the next twelve to

twenty-four months.

32. On the 10th February, 2009, Mater SCAN further recommended that the Department make application for a child protection order, granting custody of Gary to the Chief Executive for a period of one year. This recommendation was made on the basis that given the serious nature and the extent of Peter's injuries, Gary was also considered to be at risk.

Consultation with Recognised Aboriginal Agency

33. On the 17th January, 2009 I meet with Gloria Cobbo from the Karbul Indigenous Placement Agency, the recognised Aboriginal and Torres Strait Islander Agency. I advised her that Peter was subject to a court assessment order granting custody to the Chief Executive for a period of four weeks.
34. On the 6th February, 2009 I contacted Gloria Cobbo and invited the Karbul Indigenous Placement Agency to participate in a Family Meeting that was to be held on the 10th February, 2009, in relation to the Peter. Gloria Cobbo advised that she would be present.
35. On the 10th of February, 2009 I consulted with Gloria Cobbo from the Karbul Indigenous Placement Agency, regarding the Department's intention to make application for a child protection order, in relation to Peter, granting custody to the Chief Executive for a period of two years. I further advised Gloria that following his discharge from hospital it was the Department's intention to place Peter with Mr and Mrs Bond, indigenous carers. Gloria advised that the Karbul Indigenous Placement Agency were supportive of the Department's decision and the intended

placement. Gloria did state that it would be important for the Department to continue to attempt to locate Peter's mother, Ms Bell, as contact with his maternal family would be vital in terms of Peter's cultural and spiritual identity.

Family Group Meetings

36. A Family Group Meeting was held on the 17th January, 2009 at the Caboolture Child Safety Service Centre. In attendance were Mr Jones, Ms Sutton, Sharon Upton, Team Leader for Child and Family Team at the Caboolture Child Safety Service Centre and myself. The details of the court assessment order were explained to Mr Jones and Ms Sutton. Arrangements were made for Mr Jones and Ms Sutton to visit Peter twice per week for the duration of the court assessment order.
37. A further family Group Meeting was held on the 10th February, 2009. During this meeting it was explained to Mr Jones and Ms Sutton that in relation to Peter the Department would be applying for a child protection order granting custody to the Chief Executive for a period of two years. The current child protection concerns were discussed. It was explained to Mr Jones and Ms Sutton that given the inconsistencies between the extent of the injuries and explanation for how these injuries occurred the Department was of the opinion that Peter would be at risk if he was returned home at this time. It was further explained that the Department was seeking a two year order on the basis that Peter's rehabilitation needs are likely to be intensive over the next twelve to twenty-four months and that the Department currently held concerns in relation to Mr Jones and Ms Sutton's ability to meet

Peter's current rehabilitation needs.

38. Mr Jones and Ms Sutton were also advised that following his release from hospital it was the Department's intention to place Peter with indigenous carers, Mr and Mrs Bond. Mr Jones and Ms Sutton initially questioned the need for the carers to be indigenous. The details of the "Child Placement Principle" applied by the Department was then discussed with Mr Jones and Ms Sutton and it was explained to them that given Peter is Aboriginal the Department is required in the first instance to attempt to place Peter with indigenous carers. It was also explained to Mr Jones and Ms Sutton that Mr and Mrs Bond were experienced carers who had previously cared for children with physical disabilities and learning needs.
39. During this meeting Mr Jones and Ms Sutton were also advised that in relation to Gary, the Department would like the opportunity to further assess his care and protection needs and given they were not willing to consent to this process, the department is making an application for a Court Assessment Order in relation to Gary.
40. Mr Jones and Ms Sutton advised my Team Leader, Sharon Upton and myself that they would be contesting these applications.
41. I provided numbers to assist Mr Jones in accessing legal advice, to which he indicated that he would follow-up.

Contact

42. For the duration of the court assessment order Mr Jones and Ms Sutton have visited Peter Jones twice weekly at the Mater Children's Hospital. Pam Cassidy, a

Child Safety Support Officer, with the Caboolture Child Safety Service Centre has supervised these visits. Pam Cassidy has informed me that Mr Jones and Ms Sutton have acted appropriately during each of the visits and appear to be concerned for Peter's welfare.

Wishes of the Child

43. Peter is two and a half years of age. Given Peter's age, I have not discussed the details of this application with him.

Caseplan

44. The current departmental case plan is as follows:

- a) Following his discharge from hospital Peter will be placed with indigenous carers that will be able to support and assist him with his rehabilitation needs;
- b) In consultation with the Mater Children's Hospital and the carers the Department will ensure that Peter attends all required medical and rehabilitation appointments;
- c) In consultation with the Mater Children's Hospital and the carers the Department will ensure that Mr Jones and Ms Sutton have an opportunity to attend all medical and rehabilitation appointments with Peter;
- d) Mr Jones and Ms Sutton will be advised on an on-going basis of Peter's medical and rehabilitation progress through involvement in regular case discussions between hospital staff, the Department and the carers;
- e) Mr Jones and Ms Sutton, with the assistance of hospital staff, will be provided with education opportunities to assist in Peter's rehabilitation;

Peter's injuries.

47. Once released from hospital Peter will be highly vulnerable and will need to be in an environment where he is safe. Peter will also need to be nurtured and encouraged to develop and rehabilitate from his injuries at his own pace. This will involve constant supervision of his learning and rehabilitation needs. It is assessed that Peter would be at too higher risk of further harm should he be returned to the care of Mr Jones and Ms Sutton at this time
48. I have formed the opinion that Peter Jones is a child in need of protection and that such protection is not likely to be ensured by any other less intrusive order the Court may make. I now make application, for a child protection order granting custody of the child Peter Jones to the Chief Executive for a period of two years.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by on Amanda Hall on the 19th January, 2009 at Brisbane in the presence of:

(signed by deponent)

Deponent

(signed by Justice of the Peace)

Justice of the Peace/Commissioner for
declarations

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

*Sworn / Affirmed by *(full name of deponent)* on *(date)* at *(place)* in the presence of:

(signed by deponent)

() Deponent

(signed by Justice of the Peace)

Justice of the Peace/Commissioner for
declarations

Date

The Registrar
Brisbane Childrens Court
30 – 40 Quay Street
Brisbane Qld

Dear Sir/Madam

I am writing to advise of a change of applicant in the **NAME** matter listed for **mention/hearing** on **date** at 2.30pm.

NAME, Child Safety Officer, is currently listed as the applicant for this matter.
NAME, Child Safety Officer of the **NAME** Child Safety Service Centre has had carriage of this matter since **date**.

I respectfully ask that the court adjust their records to now reflect that **NAME** is the applicant for Child Protection Orders in relation to **CHILDREN'S NAMES**.

If you wish to discuss my request please do not hesitate to contact me on **NUMBER**.

Regards

NAME
Team Leader or Manager
NAME Child Safety Service Centre

Example of Court Submission

Date:

Appearances:

Good afternoon Your Honour, my name is SURNAME, initials AB . I appear on behalf of the CE for the Department of Child Safety. If Your Honour would like to take the matter of _____ [name of the matter]. The applicant _____ [applicant's name] appears to my left.

For a new application:

The application/s is for a child protection order granting protective supervision or custody or short-term/ long-term guardianship of [name/s of child/ren] to the Chief Executive [or family member, or other suitable person, namely _____] for a period of _____.

OR

For an extension:

The application/s is to extend the current child protection order/s granting custody/guardianship of [name/s of child/ren] to the Chief Executive for a further period of _____. The child protection order/s expires on _____. [OR the child protection order/s expired on _____ and the application/s is subsequently for the making of a new child protection order].

OR

For an application where section 99 is being relied upon:

The application is for a child protection order granting _____. Your Honour, _____ [name/s of child/ren] was subject to an order granting temporary custody to the Chief Executive under the provision of a TAO/CAO/previous CPO. This order expired on _____ however the application for the child protection order was filed on _____ prior to the TAO/CAO/previous CPO expiring and custody has extended under the provision of section 99.

OR

For a change in order during proceedings:

The application is for a child protection order granting _____ which was filed on _____ by _____. During the process of further assessment, the most appropriate order for the child is now considered to be a _____ [eg long term guardianship order in favour of the CE]. An affidavit filed by _____ dated _____ outlines in paragraph _____ the reasons for the change of order.

Present in the court today is:

Applicant:

Mother:

Rep:

Father:

Rep:

Sep rep:

Other: Eg – grandparents, etc

The child protection concerns are outlined in the application and supporting affidavit of _____ at paragraph __, however, briefly they include:

-
-
-

Other information to refer to if necessary:

- Family Group Meeting held: ____ [date] and located in paragraph __ of ____'s affidavit dated ____
- Case Plan developed: ____ [date] and located as exhibit __ of ____'s affidavit dated ____
- Contact Arrangements:
- Placement:

and/or

If there are any errors which require noting by the court – If your Honour permits, I would like to have noted on the court records some minor amendments to the affidavit of ____ dated ____ pursuant to section 11 of the Children's Court Rules.

Parent's Views:

Your Honour I have had an opportunity to speak with the parent/s prior to court and understand that they are consenting/contesting and or wish to/not wish to seek legal advice

OR

I have not had an opportunity to speak with the parent/s as they have not attended court. The parent/s were served with the court material/updated affidavit/application and affidavit on ____ [if they have not been served, state clearly why].

Affidavits of service have been completed which have been filed/I would like to hand up to the court.

Your Honour, today we are seeking:

- An adjournment to ____ [date] with orders pursuant to section 67 or 68 of the CP Act for the purpose of ____ [eg holding a FGM, filing additional material with the court, awaiting assessments on the relative carers, to allow the parents to seek legal advice, to serve the parents etc.....];
- Proceedings be transferred to ____ court;
- Final order made;
- COC;
- Sep Rep;
- Withdrawal of the application.

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child/ren: Peter Jones – (DOB: 16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Patricia Jones, in the State of Queensland, make oath and say as follows:-

1. I am the paternal grandmother of Peter Jones, and mother of Barry Jones.
2. I love my grandson and am very worried about his care and health.
3. My son Barry has asked me to care for Peter and I am interested in offering some care to Peter.
4. I am a little worried of how I would be able to care all day, every day for Peter and meet his health needs given I am not a young woman and financially rely on the pension.

Sheet 1

Deponent

Affidavit

Filed on behalf of the Respondent

A Justice of the Peace/Commissioner for declarations

Amanda Hall
30-40 Quay Street, Brisbane

5. I understand that Peter will require a lot of medical appointments and probably ongoing therapy and would struggle to transport him to these appointments without some financial and practical assistance.
6. I want what is best for Peter and would like to see him regularly if he is placed in foster care.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Patricia Jones on 19 February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall
30-40 Quay Street, Brisbane

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child/ren: Peter Jones – (DOB: 16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Kate Bond, in the State of Queensland, make oath and say as follows:-

1. I am a registered foster carer for the Department of Child Safety.
2. My husband, Gary and I have been foster carers for 12 years and have previously cared for children with physical disabilities and learning needs.
3. We currently care for Peter Jones and have done so since his release from Hospital.
4. We have had a number of conversations and meetings with officers from the department and medical professionals about Peter's current condition and possible future needs.

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall
30-40 Quay Street, Brisbane

5. My understanding is that Peter sustained serious head injuries resulting in physical and developmental impairment. Dr Lewis has told us that it is likely Peter may have trouble walking, have learning difficulties and other physical delays, however a lot of his prognosis is unknown at this stage.
6. In order to provide the best opportunity for recovery, I understand that Peter will require ongoing medical and therapeutic appointments.
7. My husband and I appreciate the importance of these appointments and will continue to meet these needs while he is in our care.
8. We are happy to continue to provide care for Peter for as long as is necessary and will do our best to meet his needs and protect him from harm.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Kate Bond on 19 February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall
30-40 Quay Street, Brisbane

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child/ren: Peter Jones – (DOB:16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Anthony Mark Lewis, Paediatric Intensivist, of the Mater Children's Hospital, Annerley Road, South Brisbane, in the State of Queensland, make oath and say as follows:-

Qualifications

1. I hold a Bachelor of Medicine degree with First Class Honours from the University of New South Wales. I graduated with this degree in 1980.
2. I have held a Fellowship from the Royal College of Physicians, United Kingdom since 1984. I was registered as a Consultant Paediatrician in Queensland in

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall
30-40 Quay Street, Brisbane

1987. I have held a fellowship from the Australian College of Rehabilitation Medicine since 2000.

3. I am currently employed as a Paediatric Intensivist at the Mater Children's Hospital, South Brisbane.
4. This affidavit is sworn in support of the application by Amanda Hall for a child protection order granting custody of Peter Jones to the Chief Executive of the Department of Child Safety for a period of two years.

Report

5. On the 11th January, 2009 I prepared a medical report in relation to Peter Jones (born 16 December, 2006). Exhibit A to this affidavit is a true copy of the medical report.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Anthony Mark Lewis on the 19th January, 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall
30-40 Quay Street, Brisbane

RE: Peter JONES
Date of Birth: 16th December 2002
MCH Ur No 93456003

To Whom It May Concern:

I, Dr Anthony Mark Lewis, am a qualified medical practitioner registered in the state of Queensland, and employed full time as a medical officer at the Mater Children's Hospital.

I attended the above patient at the Mater Children's Hospital, on the 9th of January to the 15th of January 2009. The following injuries were documented by clinical examination and further investigation as required.

- 1) Severe cerebral oedema, particularly of the right cerebral hemisphere with some subdural collection of blood.
- 2) Bruising to Left facial cheek with 2 distinct marks of about 1 x 2 cms in size.
- 3) Bruising to Left leg with near circumferential nature at the level of the upper thigh.

Peter was retrieved from the Redcliffe Hospital Emergency Department on the morning of the 9th of January, 2009. He was intubated and ventilated at this time. He had presented with significant Right sided focal seizures. He had been investigated with a CT scan which demonstrated significant underlying cerebral oedema. He was retrieved by a specialised paediatric retrieval team. Upon arrival to the Mater Childrens Hospital he was reviewed by the Neurosurgeon Dr Robert Thompson. A decision was made to insert an intracranial pressure monitor to assist in the management of Peter's cerebral oedema.

Peter remained in the Intensive Care Unit for 7 days. Over the first 4 days he was managed with inotropic support of his blood pressure, therapeutic cooling, sedation and ventilation as well as anti-convulsant medication. On day 5 he was rewarmed and his pressure monitoring ceased. On day 6 he was extubated without problem. On day 7 Peter was transferred to the ward for further care. At the time of discharge from the Intensive Care Unit Peter was not moving the Left side of his body very well at all. He was not able to feed himself and he was still very drowsy. During his admission Peter had a repeat CT scan. This demonstrated that the severe cerebral oedema that was present on the original CT scan had reduced but not resolved completely. There was evidence of a collection of blood on this CT scan that could not be seen on his previous scan.

In view of the acute nature of Peter's injuries it is difficult to say with certainty the long term prognosis in his case. It is very likely that he will have some motor dysfunction on the Left side of his body. He may have difficulty in walking. He may have some long term learning problems and he may have some difficulty with fine motor problems with his Left hand in the long term. His prognosis will become more apparent after 1-2 months of rehabilitation. If he had not received medical attention when he did Peter would have died.

In view of his CT scan results and his clinical course in the Intensive Care Unit, it is most likely that Peter suffered a severe blow or blows to his head at some time in the 24-48 hours before his presentation to the Redcliffe Hospital. It could be that the severe swelling on the right cerebrum could have been caused by a severe blow or blows up to approximately 72 hours before presentation but this would be less likely.

Dr Anthony LEWIS FRACP
Paediatric Intensivist
Mater Children's Hospital

11 January, 2009

Form 25
Childrens Court Act 1992
Child Protection Act 1999

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Child/ren: Peter Jones – (DOB: 16/12/06)

Applicant: Amanda Hall

AND

[First] Respondent: Barry Jones

AND

[Second] Respondent: Mary Bell

I, Barry Jones, in the State of Queensland, make oath and say as follows:-

1. I am the father of Peter Jones.
2. I have not abused my son and deny any of the allegations saying that I was responsible for Peter's injuries. I have told officers of the department and will say again, that I wasn't even in the room at the time Peter got hurt.
3. I am going to fight this all the way.
4. The department officers took Peter unjustly and I just want them to return my child.

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall
30-40 Quay Street, Brisbane

5. I have told the workers many times that my mother can look after Peter but they just won't listen. If they won't return him home to me, then they should place him with my mother today.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Barry Jones on the 4th February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall
30-40 Quay Street, Brisbane

COURT ORDERED CONFERENCES

Childrens Court

Section 59 (1)(c) Child Protection Act 1999

What is a court ordered conference?

A Court Ordered Conference is ordered by the court on adjournment of proceedings under section 68(1)(e) *Child Protection Act 1999 (CPA1999)* and is a meeting held between the parties that is convened by a chairperson (refer to sections 69-72 of the CPA1999). It is an attempt to decide the matters in dispute or to try to resolve the matters.

Section 59(1)(c) CPA 1999 specifies that The Childrens Court may make a child protection order only if it is satisfied – if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made.

Objectives of a court ordered conference?

To:

- express the views of parties
- improve parties understanding of the core issues
- clarify positions
- determine areas of agreement and / or disagreement
- facilitate identification of options which may protect the child and be agreeable
- reach agreement to avoid a hearing
- minimise the inherent conflict

Who may attend the conference?

- section 70 CPA1999 specifies who can attend the conference
- the parties - the Department and the parents
- legal representatives
- Child Separate Representatives
- a representative of a Recognised Entity (if appropriate)
- others (support people etc)

Confidentiality

- section 71 CPA 1999 – *Communications inadmissible in evidence without consent*
- Anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties.

When do you contact the conference coordinators?

- when an application seems likely to be contested
- contact the coordinators for a conference date
- advise whether a separate representative is going to be requested.

Other information to be provided to the coordinators

- other matters that may impact the conference such as
 - security issues
 - domestic violence issues
 - whether either parent is incarcerated
 - whether participation is required by teleconference
 - whether an interpreter is required

After the Court orders the conference

- recontact the coordinator to confirm the date and time
- the conference coordinator will book a room at the Court or other suitable location
- the Court will send form 19 notices to all parties

Child Separate Representatives

- Section 110(1) CPA1999 allows Separate legal representation of the child
- acts in the child's best interests regardless of any instructions from the child
- as far as possible presents the child's views and wishes to the Court
- Dept to provide access to the file
- to be invited to family meetings

How to prepare for a conference?

- plan who will be the primary talker
- ensure a family meeting has been held and all parties are aware of the details
- have knowledge of the case
- have a copy of and ensure all parties are aware of the caseplan
- decide what, if anything is negotiable – have discussions prior to the conference about this
- what is the least intrusive intervention

The conference stages

- introduction
- explanation of the process
 - confidentiality
 - objectives
- parties statements
- discussion of issues
- identify options – reality test options
- Caucus

Result of conference

- when agreement is reached
- when there is no agreement
- is a further conference necessary?
- the coordinators report

CONTACTS

Paul Malone
Child Protection Conference Coordinator
(m) 0402 457 351
(t) 07 3836 0674
(e) paul.malone@justice.qld.gov.au

Rob Turra
Child Protection Conference Coordinator
(m) 0428 714 344
(t) 07 3836 0674
(e) Robert.turra@justice.qld.gov.au

FAMILY GROUP MEETINGS & CASE PLANNING

What is a family group meeting?

A family group meeting is held by the department to develop a case plan when we believe that a child or young person is in need of protection.

It provides an opportunity for families to be involved in decisions about their child, and builds on the strengths and resources within the child or young person's family group, cultural community and wider community.

The family group meeting is organised by a convenor who prepares and facilitates the meeting. The convenor may be a departmental officer or a person independent of the department, but will not be the child safety officer involved with the child, young person or their family.

The family group meeting brings together the child or young person (where appropriate), the family, those who best know the child and their family, and other relevant persons and agencies, such as a Recognised Entity for an Aboriginal or Torres Strait Islander child or young person.

What is a Case Plan?

The case plan is a written document that identifies the goal of the ongoing intervention and the outcomes and actions required to achieve the goal. Case planning is a process of planning strategies to address a child's protection and care needs and promote a child's well-being. It is a cyclical and participative process. The family group meeting to develop the case plan will be held within 30 days of the decision being made that a child is in need of protection.

Case plans must be goal directed and clearly identify matters, such as outcomes, key actions and how the progress of the plan will be measured.

A parent for the purpose of case planning refers to 'the child's mother, father or someone else' (other than the chief executive) having or exercising parental responsibility for the child. For Aboriginal or Torres Strait Islanders the definition would include family members who may have been given cultural responsibility to care for the child (*Child Protection Act 1999*, section 11).

A recognised entity must be given the opportunity to participate in the decision-making process for an Aboriginal or Torres Strait Islander child.

Case planning requirements

Case planning is a process for managing ongoing intervention for a child in need of protection, in accordance with the *Child Protection Act 1999*, section 51A-Y, and the principles of case planning (*Child Protection Act 1999*, section 51D). It involves a cycle of assessment, planning, implementation, and review.

A case plan must be developed and regularly reviewed for any child considered in need of protection (*Child Protection Act 1999*, section 51H(1)). The case plan is a written document that outlines the reasons why the child is considered in need of protection and outlines strategies for addressing a child's protection and care needs during ongoing intervention. It is recorded in an approved form under the *Child Protection Act 1999*.

The requirement to develop a case plan applies, whether or not a parent is being criminally prosecuted for a matter relating to a child protection concern.

Family Group Meeting to develop a case plan

A family group meeting to develop a case plan may be initiated by the department (*Child Protection Act 1999*, section 51H(1)) or directed by the Children's Court (*Child Protection Act 1999*, section 68(1)(d)(i)). The family group meeting must be held **within 30 days of the decision that a child is in need of protection**, or within the timeframe set by the court on an adjournment.

The purposes of family group meetings are:

- to provide family-based responses to children's protection and care needs; and
- to ensure an inclusive process for planning and making decisions relating to children's well-being and protection and care needs.

A family group meeting may also be convened to:

- review the existing case plan and prepare a new case plan; and
- consider, make recommendations about, or deal with other matters relating to the child's well-being and protection and care needs.

People who must be given the opportunity to attend a family group meeting

All people who are significant to the child must be given a reasonable opportunity to participate in, and attend the family group meeting which is convened to develop a high quality and holistic case plan for the child. The case plan should reflect and combine the knowledge, strengths, resources and supports of the child's family and support network, with the professional expertise and resources of the department and other service providers.

The following people must be given the opportunity to participate in the family group meeting (*Child Protection Act 1999*, section 51L):

- the child, unless it would be inappropriate because of the child's age or ability to understand;
- the child's parents as defined in the *Child Protection Act 1999*, section 51F;
- members of the child's family group who the convenor considers likely to make a useful contribution to the plan's development at the meeting. A child's family group is defined broadly in the *Child Protection Act 1999*, section 51E;
- other people with whom the child has a significant relationship, for example, the approved carer for the child;
- any legal representative for the child;
- a member of the recognised Aboriginal and Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child;
- anyone else who the convenor considers likely to make a useful contribution to the development of the case plan at the meeting, for example:
 - a service provider who has an established working relationship with the child and family, including government child protection partners; and
 - a cultural representative or elder, who could assist in developing the case plan by providing information and advice;
 - if the convenor is a private convenor, the chief executive (or delegate); and
 - any support person nominated by the child or parent, for example: a youth worker;
 - an Aboriginal or Torres Strait Islander elder; or
 - a legal representative.

If a SCAN CI Team has been convened as a SCAN System strategy, members of that team should also be invited to attend the meeting.

The CSO who has case responsibility for the child must attend the family group meeting. If the case is to be transferred to another CSO, the CSO who will have ongoing case responsibility will also attend the family group meeting. In the rare circumstance that the CSO is not able to attend, both CSOs will ensure that the case plan developed is discussed with the family when the new CSO is introduced to the family.

These participants **must be sufficiently prepared and informed** for the meeting (*Child Protection Act 1999*, section 51D and 51M) so that they can fully participate in the development of the plan.

Participants are to be invited to the family group meeting, using either the 'FGM invitation letter' or 'FGM invitation and essential information letter'.

Case plan requirements for the Children's Court

Case plan requirement for a final child protection order

An application to the Children's Court for a child protection order can be made at any stage, with or without the consent of the child's parents, however, the court cannot grant a final child protection order for a child unless it is satisfied that there is an endorsed case plan that responds to the child's assessed needs.

Where possible, the CSO should not apply for a child protection order until a family group meeting has been convened to develop the case plan, however, the child's welfare and best interests must be of paramount importance at all times.

Where agreement is reached at the family group meeting that a child protection order will be sought, an application is then able to be made with the consent of the parent/s. In this case, the court must still be satisfied that the provisions in the *Child Protection Act 1999*, section 59, are fulfilled, before granting the child protection order.

Applying for a child protection order where there is no case plan

If an application for a child protection order must be made before a family group meeting, the CSO will lodge the application and the court may then adjourn the proceeding under the *Child Protection Act 1999*, section 67, and:

- make an interim order granting temporary custody of the child to the chief executive or a suitable person who is a member of the child's family; or
- make directions about a parent's contact with the child; and
- order that a family group meeting be convened to develop the case plan and that the plan be filed in court (*Child Protection Act 1999*, section 68(1)(d)(i)).

Note: the court cannot make an interim order for a protective supervision order.

Material to be provided with the case plan to the court

In cases where an application for a child protection order is made, an affidavit must be filed with the case plan and other evidence in support of the application attached, addressing the following:

- the process used to develop or review the case plan; and
- the child's assessed protection and care needs.

If the case plan has been reviewed, a copy of the most recent review report and the current case plan, must be filed with the court (*Child Protection Act 1999*, section 51X).

If the case plan and supporting material have been filed in court and the case plan is subsequently reviewed, all review reports and revised case plans prepared under the *Child Protection Act 1999*, section 51X, should be filed with the court, until such time as the court makes a final determination about the application for an order.

Case planning for sibling groups

Where there is a sibling group, one family group meeting will be held for all children, but a separate case plan will be developed for each child. Where children have different parents, however, separate family group meetings may be required.

Preparing the case plan if not developed at a family group meeting

If the case plan is not developed at a family group meeting because a meeting was unable to be convened, or people were unable to reach agreement about the matters to be addressed in the case plan, the CSO and the team leader will be responsible for preparing the case plan for the child, taking reasonable steps to obtain the views of the following people, if they were not obtained previously:

- the child, unless it would be inappropriate because of his or her age or ability to understand;
- the child's parents;
- other members of the child's family group who are considered likely to make a useful contribution;
- other significant people for the child (for example, a foster carer);
- any legal representative for the child;
- a recognised entity for an Aboriginal or Torres Strait Islander child;
- a relevant service provider; and
- anyone else considered likely to make a useful contribution to the plan.

Record why the case plan was developed without a family group meeting

Where the case plan has been developed by the convenor or team leader and an application for a child protection order is made, an authorised officer is required to provide the court with evidence about why the case plan was developed in this way.

Where a family group meeting was not convened, the CSO is required to satisfy the court that it was not possible to convene a meeting within the terms of the *Child Protection Act 1999*, section 51S(2).

The threshold of 'not possible to convene a family group meeting' is high, and will require a court to be satisfied that all steps were taken by the department to convene a meeting in compliance with the *Child Protection Act 1999*, chapter 2, part 3A. A lack of time and resources will not be sufficient criteria to meet this threshold.

Contested Child Protection Matters

INTRODUCTION:

Upon the Court Services Unit receiving instructions from the CSSC that a child protection matter has been set down for a hearing, the following process occur:

1. The Court Coordinator to fill out the **"Request for additional information re contested child protection applications"** form and email it to Melissa.clarke@childsafety.qld.gov.au

Please ensure that you provide **TWO** copies of all court material filed in the proceeding to date (including adjournment notices) to Court Services.

2. The matter will then be allocated to a Court Services Adviser
3. The Court Services Adviser will prepare a **"Review of Court Material"** document.
4. The Court Services Adviser will also prepare a **"Brief to Crown Law"**.
5. The Court Services Adviser will make arrangements to conduct an **"Advice in Conference"** between the CSSC and Crown Law.
6. The Court Services Adviser will provide ongoing consultation and support to the CSSC throughout the duration of the contested matter
7. During the review of court material and the advice in conference a number of witnesses will be identified. **Subpoenas** for those witnesses will need to be prepared. The witnesses themselves will need to be contacted, served with the subpoena document and provided with information and support to prepare them for **giving evidence**.

REVIEW OF COURT MATERIAL

This document is prepared by the Court Services Adviser upon the allocation of a contested child protection file. The purpose of this document is to outline the following:

- The name of the matter
- The Court Services Adviser with carriage of the matter
- The child protection order sought
- A brief summary of the child protection concerns
- Evidence provided to Court Services to date
- Suggestions for additional evidence to be obtained to support the application
- List of potential witnesses
- Feedback in relation to the current filed material
- Other relevant information and advise

Upon completion, this document is then electronically sent to the relevant persons including the Court Coordinator, Team Leader and the Child Safety Officer.

BRIEF TO CROWN LAW

Briefs for Crown Law are prepared by Court Services when advised that a contested child protection application has not resolved at the Court Ordered Conference, or when Crown Law advice or representation is required.

In relation to contested child protection applications the brief is basically a letter to the Crown Solicitor requesting that they legally represent the department in relation to the matter.

Briefs canvas the following information:

- Brief details in relation to the application – For example, details of the child protection order sought; the date, time and place of the hearing
- Nature of the instructions
- Court history
- Current Status of the child
- Family constellation
- Summary of the child protection concerns
- Case Plan
- Respondent details, including solicitor acting for the respondents
- Evidence obtained and attached
- Suggestions for further evidence to be obtained
- Potential witnesses
- Departmental contacts

Briefs are prepared from the information provided in the "Request for additional information re contested child protection applications" form and from the court material that has been sent to Court Services.

A copy of the "Review of Court Material" will normally be attached to the brief for Crown Law.

A hard copy of the brief for Crown Law is provided to the relevant CSSC and a copy is retained on the Court Services file.

ADVICE IN CONFERENCE (AIC)

An "Advice in Conference" (AIC) is a discussion that involves Crown Law, Court Services and the Child Safety Services Centre. The following persons' would participate in an "AIC":

- Crown Law Officer – Crown Law
- Court Services Adviser – Court Services
- Child Safety Officer
- Team Leader
- Court Co-ordinator

Purpose of an Advice in Conference

- Review available evidence
- Provide legal advice
- Planning and strategising the application
- Exploring alternative options
- Determining negotiation stance

Framework for an "Advice in Conference"

- The Court Services Adviser chairs the AIC.
- The AIC will commence with an introduction of all participants
- Checks are made to ensure that all parties have the same material
- In some cases, Crown Law will have prepared a memo that will form part of the discussions.
- The Child Safety Service Centre is required to summarise the child protection issues, which form the basis of the application.
- The Child Safety Service Centre is required to provide a case update.
- The Child Safety Service Centre is required to provide confirmation of the child protection order being sought
- A review of the evidence to date and suggestions for further evidence required is undertaken
- A list of witnesses that would be required for the hearing is generated. This would include those to be subpoenaed and any file documents that need to be subpoenaed from external agencies.

In general "Advice in Conferences" is conducted by teleconference. However, for some of the Brisbane Child Safety Service Centres, participants may chose to attend Court Services, in person.

Following the "Advice in Conference" the Court Services Adviser will complete and circulate the minutes to all parties.

In a complex matter, it may be necessary to have multiple AIC's.

In some case the Court Services Adviser may request a case discussion (without Crown Law being involved) if there are policy or procedural issues that need to be discussed prior to Crown Law involvement.

SUBPOENAS

The provisions in relation to subpoenas are outlined in Rule 27 – "Subpoenas" of the *Children's Court Rules, 1997*.

Rule 27 states: "On application by a party to a proceeding, the registrar may issue a subpoena requiring the attendance of person before the court to give evidence in the proceeding or produce stated documents or things".

A witness will require a subpoena to attend court if they refuse to attend. Some witnesses may request a subpoena in order for them to be released from their place of work.

Files of another Department or agency may also be required. If so, a subpoena is to be prepared in the name of the Director-General, Manager or Superintendent of that organisation. That particular person will not appear, but may delegate a representative to attend with the files.

The procedure for preparing and serving a subpoena involves:

- Completing a copy of the Form 23 – Request for a Subpoena
- A separate Form 23 needs to be completed for each witnesses

- Complete the Form 24 – Subpoena and make three copies of this document
- Keep copies of the Form 23 and the Form 24 for departmental records
- Take the original and the remaining copies to the Justice of the Peace at the court where the application is to be heard.

The Registrar will make a decision regarding the issue of the subpoena. If the subpoena is issued, two copies of the Form 24 are returned to the departmental officer for one for personal service on the witness and one for the departmental file.

Once the subpoena has been served on the witness the departmental officer that served the witness needs to complete a Form 22 – Affidavit of Service.

Note:

The applicant applying for the subpoena does not necessary need to be the applicant for the child protection order.

The person that serves the subpoena does not need to be the applicant for the subpoena or the applicant for the child protection order. However, the person who serves the subpoena needs to complete the Form 22 – Affidavit of Service.

PREPARING WITNESSES

Many professionals feel uncertain about their ability to give convincing testimony in court. This uncertainty often stems from a lack of knowledge and experience in either court procedures and/or on devices used by counsel during cross-examination.

This following information attempts to identify some of the more common procedural aspects and techniques used by counsel, to help the witness feel more confident and prepared when giving evidence.

Legislative bases for a witness to provide evidence:

All persons' that provide affidavit material for child protection court proceedings or statements for the Children Services Tribunal have the potential to be called as a witness for the hearing. This information should be provided to the potential witness at the time when they are preparing their material so that if the person is required to provide evidence to a children's court or the Children Services Tribunal, at some later stage, it will not come as a shock to the witness.

Proceedings in the Children's Court

Section 16 – Examination of person making an affidavit - *Children's Court Rules, 1997* states:

(1) If an affidavit is to be relied on at a hearing, the court may order the person making it to be examined and cross-examined before the court and may order the person to attend the court for the purpose.

Proceedings in the Children Services Tribunal

Division 9 – witnesses generally of the *Children Services Tribunal Act, 2000* outlines the provisions in relation to witnesses.

Section 97 – Attendance of Witnesses

- (1) the presiding member may notify a person, other than a child to attend at a proceeding before the tribunal –
 - (a) as a witness; or
 - (b) to produce the thing stated in the notice.
- (2) The notice must be in the approved form and state the time at and the place where the person must attend.
- (3) The presiding member may act under subsection (1) on the member own initiative or on application by a party.

Section 102 – Tribunal may examine and cross-examine witnesses

- (1) The tribunal may examine and cross-examine an adult witness appearing before it.
- (2) The tribunal may also examine and cross-examine a child who elects to give evidence under section 95 or 96.

Preparation for Cross-Examination

1. Understanding the nature of the adversarial system:

A court of law is an arena in which parties compete, presenting their various perspective to be examined by an impartial arbiter (judge or jury), who then makes findings of fact and ultimately decides what the remedy should be.

It is assumed that a process in which parties can, by question and answer, develop their own case and challenge that of their adversaries maximises the presentation of the facts.

Cross-examination is seen as an accountability measure for the witness.

Solicitors/Barristers may distort the professional's findings to support their client or theory of the case as well as directly challenge the professional's techniques, assumptions, competence, assessment process, qualifications, validity of the data used, basis (organisational, confirmatory), use of suggestibility or coaching, professional's history and predisposition.

Often professional's are treated by Solicitors/Barristers in a manner that they are not use to within a professional arena. Both the tone of voice and the way questions are asked may be quite offensive.

Strategy:

It is important to anticipate that you are likely to be challenged in a range of areas and have a considered response prepared.

Maintain an up-to-date resume or curriculum vitae that includes all continuing education. Have relevant statistics in mind or recent publications that you have referred to as a means to support your assessment and opinions.

Be cautious not to provide one-sided testimony. Consider the weakness of your assessment and be prepared to respond. (eg: I did not have an opportunity to speak with the father therefore the results are inconclusive, none-the-less the child continues to present with anxiety in a range of environments ...)

2. Putting your point of view across:

Testifying to represent your view accurately is a difficult process.

Strategies:

Be prepared! Be very familiar with reports, notes ect. Have facts easily accessible or memorised as shuffling through records to ascertain case facts may interrupt the pace of the testimony and make the witness appear unprepared, indecisive or lacking in knowledge.

NB: However, this can be used as a strategy for the witness to control the pace of the cross-examination. If you need time to think, settle yourself down. You must seek leave from the Judge/Magistrate to refer to your notes.

Have the main points that you would like to get across in cross-examination in the forefront of your mind (even on notes that you bring in with you – eg: covering page to your report. Don't get flustered if the Barrister asks to see these notes, this is a common request and all material that is taken into court must be shared if asked.)

Remember, it is the judge whose opinion you want to influence, not the Solicitors /Barristers. Look to the judge to educate him/her about the topic you are addressing. Discuss concepts that are necessary for the judge to understand and then develop explanations of them in lay language, using concrete illustrations.

Finally, professionals should remember that although their role in the litigation is important, they are not responsible for the outcome of the case. They are responsible only for their testimony. The judge is the decision-maker.

3. The Courtroom as a Stage:

Witnesses must appreciate the importance of their performance in court.

Testimony is an opportunity to infuse the written word with the professional's competence, conviction, and integrity. Preparation, dress and demeanour are very important.

Strategy:

Don't be put off by theatrical performances by Solicitors/Barristers.

Be prepared to be speak with the solicitor that has subpoenaed you to discuss what kind of questions they are likely to ask you and what you may expect from the other side. Also ask them about the Judge/Magistrate's style of decision making. Every bit of information helps.

4. Organise an opportunity for debriefing and reflective learning's after each cross-examination experience.

Remember that cross-examination will be one of the most stressful parts of your job. As such the stress that may be induced by the experience needs to be taken seriously with opportunity to debrief and de-stress with colleagues and clinical supervisors. Every experience is a wealth of knowledge that you can draw from for you next cross-examination.

QUICK TIPS - Being a witness in the children's court

Upon entering the court always acknowledge the bench by bowing when entering and leaving the court room. Stand while the Magistrate or Judge is entering or leaving the court room. When crossing the court room never walk between the bench and the bar-table. Walk behind the bar-table.

A Magistrate and a Judge is to be addressed as "Your Honour".

Once you have entered the witness box you will be asked to take an oath or affirmation.

- **The Oath** - Take the bible in the right hand and look directly at the Magistrate or Judge and repeat the words of the oath, slowly and clearly. An affirmation may be taken by a non-Christian in lieu of an oath.
- **Witness box chair** - Never sit down until you are given permission from the bench to do so.

Once you have given an oath/affirmation there are three stages of questioning:

1. Evidence in chief – providing information to the Magistrate
2. Cross examination – to destroy, diminish, limit or explain away information
3. Re-examination – to re-establish credibility and clarify important points

DO

- (a) know your case and facts – be sure
- (b) think before you answer
- (c) answer the questions – only as much as you have to
- (d) maintain objectivity and balance – positives and negatives
- (e) be friendly and obliging and assist the court
- (f) concede points and make concessions
- (g) do state your ignorance if you don't know something – It's ok to say I don't know!
- (h) do qualify your answers first
- (i) do use simple language – no jargon
- (j) do dress sensibly – create a credible impression
- (k) do control your hands, voice, eyes and facial expression
- (l) do project your voice
- (m) do correct any misunderstanding or mistakes
- (n) do ask them to repeat the question if it is too long

DO NOT

- (a) get angry
- (b) ask questions back

- (c) be arrogant or defensive
- (d) be officious or have a closed mind
- (e) volunteer information
- (f) answer hastily or guess but answer when you're sure what the question is
- (g) try to outsmart the lawyer
- (h) be evasive

Please see examples of:

- Request for addition information re contested child protection application forms
- Review of Court Material
- Brief to Crown Law
- AIC
- Request for Subpoena – Form 23
- Subpoena – Form 24

GIVING EVIDENCE IN COURT

CROSS-EXAMINATION BY THE LAWYER REPRESENTING THE FAMILY

The Magistrate will not allow the cross-examination to become insulting or abusive. The opposing counsel is there to attempt to test your evidence by showing up any weaknesses or illogical or inconsistent statements. If you get into an argument or become angry at the counsel then you may limit the credibility of your evidence. To prevent this from occurring you should:

- Drill yourself to always pause before answering a question. Take this time to check your emotional state and think through your reply.
- Do something to remind yourself to do this (eg. hold your hands a particular way).

The following table outlines a number of common tactics used by counsel during cross-examination, and provides suggested responses on the part of the witness.

Counsel's tactics	Example	Purpose	Witness' response
Reversing the words of the witness	Witness: "We met on Wednesday & spoke by phone on Friday". Counsel: "You say you spoke by phone on the Wednesday and met on Friday"	To confuse the witness & demonstrate a lack of confidence in the witness.	Listen closely whenever counsel repeats back something you have said. If counsel makes an error then correct it.
Repetitive questions	The same question asked several times but slightly rephrased.	To obtain inconsistent or conflicting answers from the witness.	Listen carefully and answer "I have just answered that question".
Rapid questioning	Asking several questions one after the other with no time for the witness to answer.	To confuse the witness & force an inconsistent answer.	Pause & take time to answer. Ask to have any or all of the questions repeated. Ask counsel which question s/he wishes you to answer first.
Condescending manner or questions	Benevolent in his/her approach or questions to the point of ridicule.	To give the impression the witness is inept, lacks confidence in their opinion, or may not be reliable.	Respond with a firm, concise answer.
Friendly manner & questioning	Being very courteous, polite – questions, appear to be taking the witness into his/her confidence.	To lull the witness into a false sense of security where the witness may give answers favourable to his/her (counsel's) client.	Remember that the counsel's role is to discredit or diminish the effect of your testimony. Think through your reply even to questions that are apparently easy to answer.
Badgering	Counsel staring you right in the face and shouting "That is so, isn't it!"	To make the witness angry so that s/he loses his/her sense of calm & logic.	Make a conscious effort to remain calm. Speak deliberately and concisely, focusing on the facts.
Demanding a "yes" or "no" answer	Counsel: "In your opinion is this a safe medical procedure, yes or no?"	To prevent pertinent and mitigating details to be considered by the court.	Say that you believe a "yes" or "no" answer would mislead the court & request permission from the magistrate to answer the question in full.

Suggestive or leading questions.	Counsel: "In your opinion this would be considered normal behaviour?"	To suggest an answer to the question to confuse or lead the witness.	Concentrate on the facts. Answer the question from the facts. Disregard suggestions by counsel. Stick to the facts.
Mispronouncing witness name or incorrect position or title.	Counsel addresses the witness using a junior title.	To provoke or unnerve the witness. Minimise the credibility of the witness' evidence.	Wait for an appropriate opportunity & correct the mistake before answering any further questions.
Staring at the witness	After the witness has answered a question counsel stares as though was more to be said.	To create a long pause to provoke the witness to say more than is necessary.	Wait for the next question. Only provide information required to adequately answer the question.



Queensland Government
Department of Child Safety

Court Services: Request for additional information re contested Child Protection Applications

Subject child/ren:

Name/s:

DOB:

Child Safety Service Centre contact information:

Applicant:

Child Safety Officer (if different to the Applicant):

Team Leader:

Senior Practitioner:

Court Co-ordinator:

Direct Number:

Direct Number:

Direct Number:

Direct Number:

Court details:

Initial mention date:

Other mention dates:

Court ordered conference date:

Hearing date/s (*include all days allocated and start time*):

Filing dates:

Review mention (*if applicable*):

Existing order/s:

CPO sought:

Existing CPO (if relevant):

Any current Family Court order/s:

Yes

No

Residency in favour of:

Current status of child/ren:

Temporary custody to Chief Executive: Yes No

Temporary custody held pursuant to section _____ of the CPA99.

Placement:

Length of time the child/ren has been in this placement:

Family constellation:

Mother:

Father:

Siblings:

Non Party Status:

Indigenous:

Yes

No

Other cultural background:

Grounds of the application (*brief*):

Current concerns:

Current risk assessment:

Departmental case plan (including when filed with the Court):

Court material filed in proceedings to date and issued by the Court:

On behalf of the department:

➤

On behalf of the respondents:

➤

On behalf of the Separate Representative:

➤

Court documents issued (including Form 16s, 19s, etc):

➤

PLEASE ENSURE THAT 2 X COPIES OF ALL COURT MATERIAL FILED IN PROCEEDINGS TO DATE AND ISSUED BY THE COURT ARE INCLUDED WITH THIS FORM.

Parent's position and legal representative/s:

Contesting/consenting:

Name and contact details of legal rep/s:

Separate Representative's details (if appointed):

Name and contact details:

Is this family currently involved in any of the following forums?

Children Services Tribunal

Yes

No

Family Court/Federal Magistrates Court

Yes

No

Childrens Court of QLD

Yes

No

If yes, please provide details:

Are there any interstate components? (ie: family members in other state?)

Yes

No

If yes, please provide details:

Has this family previously been subject to contested child protection proceedings?

Yes

No

If yes, please provide details (including the year):

Your timely assistance in providing this information to Court Services will assist in securing Crown Law representation if required. Thank you.

REVIEW OF COURT MATERIAL

Matter:

Applicant:

Caseworker:

Team Leader:

Court Coordinator:

Court Services:

Date:

Order Sought:

Material provided to date:

On behalf of the department:

- ✓ Form 10 – Application for a Child Protection Order, made by _____, dated _____.
- ✓ Form 25 – Affidavit of _____, dated _____, including Exhibit 'A' - _____.

Child protection concerns:

The department has assessed that the subject child/ren would be at risk of harm should he/she/they be placed back into the care of the respondent parents due to the following:

- Physical Harm/Excessive Discipline;
- Domestic Violence;
- Failure to Engage;
- Ability to Parent;
- Minimisation of Harm;
- Drug/Alcohol Abuse;
- Age/Vulnerability.

Suggestions for further material to be obtained:

- Further material required to support the department's case, ensuring the rules of direct and relevant evidence are adhered to.
- Affidavit of _____;

For future reference:

- Include here what the CSSC should do next time to ensure model litigant/best practice procedures are adhered to.
- Affidavits are written in the "first person". Ensure that you use the statement "I...".

Potential witnesses if matter proceeds to hearing:

- 1) Departmental officers;
- 2) Anyone else who provides written material on our behalf.

Refer [REDACTED]
Telephone No: 3235 9859
Email: [REDACTED]@chidsafety.qld.gov.au

B/c: Manager
**CABOOLTURE
CHILD SAFETY SERVICE
CENTRE**

21 April 2009

For your information

The Crown Solicitor
State Law Building
50 Ann Street
BRISBANE QLD 4000

[REDACTED]
Court Services Adviser

Attention: Civil Advocacy and Family Law Group - [REDACTED]

Dear Sir / Madame,

Re: Application for a child protection order granting custody of Peter Jones (born 16/12/06), to the Chief Executive, Department of Communities (Child Safety Services), Queensland, pursuant to the *Child Protection Act 1999*, to be heard at the Brisbane Children's Court on 10th August 2009 at 10.00am.

On the 19th January, 2009 at the Brisbane Children's Court, [REDACTED] Child Safety Officer of the Caboolture Child Safety Service Centre, made an application for a child protection order granting custody of the abovenamed child to the Chief Executive, Department of Communities (Child Safety Services) for a period of two years. The application has been adjourned for hearing to the 10th August 2009.

Nature of instructions

It would be appreciated if one of your officers would represent the Chief Executive, Department of Communities (Child Safety Services) at the hearing on the 10th August 2009 at 10a.m. It would also be appreciated if one of your officers would participate in an Advice in Conference at your earliest convenience.

Court Services
GPO Box 806
Brisbane Queensland 4001
Telephone 3235 9859
Facsimile 3235 9851
Website
www.chidsafety.qld.gov.au
ABN 42 458 314 937

Court history

Initial mention: 22nd January, 2009
Adjourned to: 23rd February, 2009
3rd March, 2009
29th April, 2009 (COC and mention)
10th August, 2009 (Hearing)

Current status of child

The child is subject to an interim order granting temporary custody of the child to the Chief Executive, Department of Communities (Child Safety Services), Queensland, until the date fixed for hearing or further orders. The child is currently placed with departmental carers, [REDACTED]

Family constellation

Mother: Mary Bell (whereabouts unknown)
Father: Barry Jones
Subject child: Peter Jones
Father's Current Partner: Denise Sutton
Denise Sutton's Son: Gary Sutton

Summary of child protection issues

Peter Jones was presented to the Emergency Department of the Redcliffe Hospital on the 9th January, 2009 with head injuries and significant bruising to his body. The injuries were of such a serious nature that he was immediately transferred to the Mater Children's Hospital.

Medical professionals have assessed the injuries to be non-accidental.

Barry Jones has been charged with Grievous Bodily Harm in relation to the child's injuries.

The child is considered to be at risk if returned to the fathers' care due to the following:

- The child has suffered life-threatening injuries, to the extent that if medical assistance had not be sought it is likely that the child would have died;
- Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Barry Jones and his partner remain unresolved;
- Inconsistencies exist between the timing of the child's injuries, with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented at the Redcliffe Hospital. Barry

Jones and his partner maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital;

- The child is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers over the next twelve to twenty-four months. The Department has concerns regarding Barry Jones' ability to provide this level of care.

The child's mother allegedly suffered complications when giving birth to Peter. As a result she was left with an intellectual disability and requires twenty-four hour care. The mother's current whereabouts are unknown. Attempts have been made to locate the child's mother but to date these have been unsuccessful.

Respondents

Barry Jones is contesting this application. His legal representative is [REDACTED] of the Brisbane Legal Aid Office, telephone [REDACTED]

Mary Bell's current whereabouts are unknown and the Department has been unable to serve her with any material in relation to the Child Protection Application for Peter Jones.

Evidence obtained and attached

- Form 10 Application for a Child Protection Order
(Dated the 19th January, 2009)
- Form 16 Adjournment of proceeding for a Child Protection Order
- Form 19 Notice of Court Ordered Conference
- Form 20 Report of Court Ordered Conference
- Form 25 Affidavit by [REDACTED]
(Dated the 19th January 2009)
- Form 25 Affidavit by [REDACTED] Mater Children's Hospital
(Dated the 19th January 2009)
Exhibit 'A' – Medical report
- Form 25 Affidavit of [REDACTED]
(Dated 19th February 2009)

Material from the Respondents:

- Form 25 Affidavit of Barry Jones
(Dated 4th February 2009)

- Form 25 Affidavit of Patricia Jones
(Dated 19th February 2009)

Suggestions for evidence to be obtained.

Please refer to the "Review of court material" document.

Potential witnesses

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

Departmental contacts

The departmental contacts in relation to this matter are [REDACTED] Child Safety Officer [REDACTED], Team Leader, [REDACTED] Court Co-ordinator, Caboolture Child Safety Service Centre, phone [REDACTED] and [REDACTED] Court Services, telephone [REDACTED]

It would be appreciated if one of your officers would represent the department in this matter and as further evidence may be required; your advice is sought as to what evidence may strengthen the case.

Yours faithfully,

[REDACTED]
Manager
Court Services
Department of Communities (Child Safety Services)
Encs

Form 23
Childrens Court Act 1992
Child Protection Act 1999

REQUEST FOR SUBPOENA

CHILD: (name)

(Please note – multiple children can be listed on the one subpoena. ie – multiple sibling groups).

Date of Birth:

Sex *Female/Male

APPLICANT: (This is the person who is applying for the subpoena – this does not necessarily have to be the applicant for the court assessment order/ child protection order. For example it could be another authorised officer ie Team Leader)

Address:

TO the Registrar of the Childrens Court at (place) –

In the matter of application/s *for / in relation to a *court assessment order / child protection order or orders made by (name of applicant) **(this is the applicant for the court assessment /child protection order)** an *authorised officer / police officer, in the Childrens Court at (place) on (date) **(this is the initial mention date)** in relation to the above-named child –

Please seal a subpoena on behalf of: **(This is the applicant applying for the subpoena)**

direct to:

of:

returnable before the Childrens Court at:

Place:

Date: **(this relates to the date of the hearing or the mention date if the court has ordered an earlier return date – particularly in relation to files).**

Time: **(this is the time the hearing is to start)**

***Applicant / Respondent (This is the applicant applying for the subpoena)**

Place:

Date:

*delete whichever is not applicable
Form 23 – Version 1, March 2000

Form 24
Childrens Court Act 1992
Child Protection Act 1999

SUBPOENA

CHILD: (name)
Date of Birth:
Sex *Female/Male

TO:
of:

In the matter of application/s *for / in relation to *a court assessment order / a child protection order or orders made by (name of applicant), an *authorised officer / police officer, in the Childrens Court at (place) on (date) in relation to the above-named child –

YOU ARE REQUIRED TO APPEAR *AND / OR PRODUCE DOCUMENTS
(specify documents to be produced)

before the Childrens Court at:
Place:
Date:
Time:

to provide *evidence in the above matter / produce documents.

Registrar
Date:

NOTE: IN DEFAULT OF YOUR ATTENDANCE THE COURT MAY ISSUE A WARRANT TO COMPEL YOUR ATTENDANCE

Form 24 – Version 1, March 2000

I am listing this matter for a interim hearing to determine the issue of interim custody.

Your Honour, can you indicate whether the interim hearing will be run on the papers or if witness's will be required

I will determine the matter on written material provided by all parties.

Hearing run on papers = No Crown Law Representation

I am listing this matter for a interim hearing to determine the issue of interim custody.

Your Honour, can you indicate whether the interim hearing will be run on the papers or if witness's will be required

Witness's who provide affidavit material will be required to be available to give evidence.

Witness's Required = Crown Law Representation

Checklist for Preparation for INTERIM Contested CP Hearing

ON THE PAPERS

Task	Who is responsible?			Approximate timeframe	Date completed
	CC	CS	CL		
Seek clarification from Magistrate whether the matter will be heard on the papers or if witness's will be required to give evidence	X			At the time the matter is listed for an interim hearing.	
CC to advise Court Services that an interim hearing has been listed and that the Magistrate has indicated the hearing will be <u>run on the papers</u> .	X			As soon as possible after matter is listed for interim hearing	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list	X	X			
CC and CSA to arrange Case Discussion	X	X			
Case Discussion record to be sent to CSSC		X			
Ensure tasks undertaken / affidavits obtained as per Case Discussion	X			Ongoing process (CS to support CSSC in this)	
Service of all material on all parties	X			At least 5 working days prior to hearing (or as directed by Court)	

CC = Court Coordinator
CS = Court Services
AIC = Advice In Conference

CL = Crown Law
CSSC = Child Safety Service Centre

Checklist for Preparation for INTERIM Contested CP Hearing

WITNESSES REQUIRED

Task	Who is responsible?			Approximate timeframe	Date completed
	CC	CS	CL		
Seek clarification from Magistrate whether the matter will be heard on the papers or if witness's will be required to give evidence – consider other directions that may be required.	X			At the time the matter is listed for an interim hearing	
CC to advise Court Services that an Interim Hearing has been listed and that witness's will be required	X			As soon as possible after matter is listed for interim hearing	
CC to send completed Contested CP summary, with two copies of all material filed, to CS	X			As soon as possible after matter is listed for interim hearing	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list		X			
Brief to Crown Law (includes all material filed in this proceedings)		X			
Inform CSSC of which CL officer has been allocated and arrange time for AIC		X		When CL have advised CS	
Participation in AIC by all relevant officers	X	X	X		
Preparation of memo detailing outcome of AIC in relation to legal advice / case specific matters		X			
Ensure tasks undertaken / affidavits obtained as per AIC and Review document	X			Ongoing process (CS to support CSSC in this)	
Subpoena all witnesses, documents, etc (if witnesses are being called)	X			As soon as possible	
Service of all material on all parties. Affidavits of Service to be required.	X			At least 5 working days prior to hearing (or as directed by Court)	
Letter to other parties completed re which witnesses required for Cross-examination (CS has a draft of this letter)	X			When material served on parties	

Witness list completed including contact numbers, place of employment, qualifications and order of witnesses organised to be provided to CS	X			As soon as possible	
Complete list of all material with sworn and filed dates to be provided to CS	X			After all material obtained	
Ensure copies of all material filed is provided to Court Services	X			As soon as possible after material is filed	
Ensure copies of all material filed is provided to Crown Law		X		As soon as possible after material is provided to CS	
Discussion with parties about which Witnesses are required for Cross Examination	X	X	X	(responsibility is dependent on situation) At least 2 days prior to hearing (if possible)	
Organisation of witness order			X	After availability known and evidence obtained	
Organisation of who will instruct CL at hearing and who will organise witnesses	X	X	X	Prior to hearing	

CC = Court Coordinator
CS = Court Services
AIC = Advice In Conference

CL = Crown Law
CSSC = Child Safety Service Centre

Checklist for Preparation for Contested CP matter

SC= Child Safety Service Centre
CS = Court Services
COC = Court Ordered Conference
AIC = Advice In Conference

CL = Crown Law

Task	Who is responsible?			Approximate timeframe	Date completed
	SC	CS	CL		
Contact CS to have a Case Discussion (if required)	X			At any point prior to or during the court process	
Contact CP Team Leader, CS to inform that a COC has been ordered	X			Straight after COC order made by court	
CS to send Contested CP summary to SC for completion		X		After CS informed of COC	
All Material filed in current proceedings to be sent to Court Services (including Affidavits of Service, Adjournment Orders, etc) along with completed Contested CP summary	X			Immediately after COC order made by court and prior to COC	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list		X		Approx 2 weeks after material sent to CS and prior to COC where possible	
Inform CS of the outcome of COC and provide information about next mention / further COC / hearing dates / etc.	X			As soon as possible after completion of COC	
Brief to Crown Law (includes all material filed in this proceedings)		X		After no resolution at COC or if hearing close in timeframe (eg less than 4 weeks)	
Inform SC of which CL officer has been allocated and arrange time for AIC		X		When CL have advised CS	
Organisation of AIC with CL and SC		X		When hearing definitely going ahead	
Preparation of memo for AIC in relation to legal advice / case specific matters			X	Prior to AIC	
First Advice in Conference with CL		X		As early as possible at least 4 weeks prior to hearing	

Task	Who is responsible?			Approximate timeframe	Date completed
	AO	CS	CL		
Minutes from AIC to be taken and sent to all participants		X		As soon as possible after AIC	
Ensure tasks undertaken / affidavits obtained as per AIC and Review document	X			Ongoing process (CS to support SC in this)	
Subpoena all witnesses, documents, etc	X			As soon as possible	
Service of all material on all parties	X			At least 5 working days prior to hearing (or as directed by Court)	
Letter to other parties completed re which witnesses required for Cross-examination (CS has a draft of this letter)	X			When material served on parties	
Witness list completed including contact numbers, place of employment, qualifications and availability of witnesses to be provided to CS	X			As soon as possible	
Complete list of all material with sworn and filed dates to be provided to CS	X			After all material obtained	
Ensure copies of all material filed is provided to Court Services	X			As soon as possible	
Ensure copies of all material filed is provided to Crown Law		X		As soon as possible	
Organisation and chairing of another Advice In Conference to finalise arrangements		X		Approx. 3 days prior to hearing and after all material filed	
Discussion with parties about which Witnesses are required for Cross Examination	X		X	(responsibility is dependent on situation) At least 2 days prior to hearing (if possible)	
Organisation of witness order			X	After availability known and evidence obtained	
Discussion of Witness expenses with relevant witnesses and approval memo to Manager, Court Services		X		Prior to hearing	
Arrangements made in relation to who will organise witnesses for the hearing	X			Prior to hearing	

FACTSHEET: Court Etiquette – Childrens Court

This factsheet provides basic information on what to expect and how to behave when you go to court.

How can you prepare to give evidence?

When you are approached to give evidence in Court, it is a common reaction to feel nervous or anxious.

The best way to overcome these feelings is to **BE PREPARED**.

In preparing to give evidence (i.e. testifying), remember you are speaking to the contents in the affidavit material you have deposed to (i.e. signed) as true and correct. As such, the first step in being prepared is to *ensure that you have read through your filed material prior to the hearing and have re-familiarised yourself with its contents.*

Should you have any concerns or issues, you should contact your Court Coordinator prior to the hearing to arrange a time to meet and discuss your concerns.

Childrens Court

Childrens Court matters are conducted in a 'closed court', that is, a court not open to the general public to sit in and observe. 'Closed court' also means that there is a ban preventing anyone from publishing or disclosing information about what occurs or is said during the proceedings.

How to dress for Court

Court proceedings are formal occasions. While it is not strictly necessary to wear a suit, you should adopt a formal standard of dress. Thongs and singlets must not be worn.

As a general rule, you should wear to court what you would wear to a formal job interview.

Standard court dress usually consists of:

- For Women: Collared Shirt / Skirt or Pants / Jacket / closed in Shoes;
- For Men: Business Shirt / Jacket / Pants / Tie / closed in Shoes.

Remember, the court is a formal place and it shows proper respect to look your best.

You should always remove your sunglasses and hat before entering the court and never bring food or drinks (including a water bottle) into court.

On the day of the hearing

It is impossible to draw up a precise schedule for the day so be prepared to wait before you are called to give evidence.

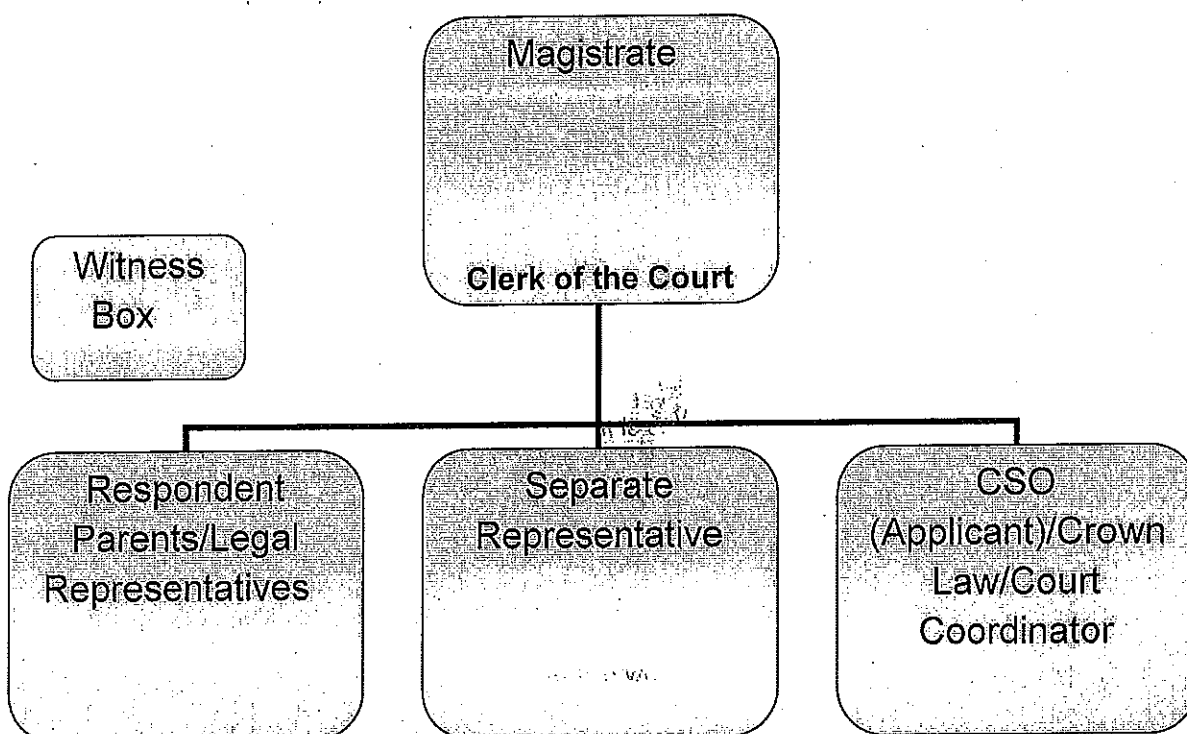
Before the start of the proceedings, make contact with the relevant Court Coordinator to advise them that you are present and take instructions from them. You will normally be asked to wait outside of the courtroom to be called. This is normal procedure, intended simply to prevent you from being influenced by the testimony (i.e. evidence) of any preceding witnesses. After giving testimony, you may remain in the courtroom if you wish unless the Magistrate directs otherwise.

Court Layout

In the Childrens Court the table where the parties sit is called the bar table.

If you are the Applicant (i.e. the person commencing the legal action) you should sit on the right-hand side. The Respondents (i.e. the person defending the legal action) should sit on the left-hand side.

The witness box is normally situated on the left-hand side of the room in between the Magistrate and the bar table (however, there may be occasions where it is on the right-hand side).



Court Etiquette

Respect for the bench:-

1. Always acknowledge the bench by bowing when entering and leaving the courtroom.
2. Stand while the Magistrate is entering or leaving the courtroom.
3. When crossing the courtroom never walk between the bench and the bar table. Walk behind the bar table.
4. A Magistrate is to be addressed as "Your Honour".

Speaking to the Magistrate

The Magistrate will sit at a table at the front of the courtroom and wears a black robe without a wig.

You address a Magistrate as 'Your Honour' and you should speak to them in a courteous manner. They may ask you questions at any point during the hearing - you should respond to these questions accurately, and as briefly as possible.

You should not attempt to contact the Magistrate directly at any stage before or after the hearing. Any discussions you wish to have with them must occur in the courtroom.

Giving Evidence - Witness Box

If you do not understand or speak the language of the proceedings, or have a hearing impairment, you are entitled to the assistance of an interpreter. If this is the case, please advise the relevant Court Coordinator at the earliest available opportunity.

In the witness box, you must promise to tell the truth, either by swearing on the Bible or making a solemn affirmation.

Oath on the Bible

'Do you swear that the evidence which you shall give to the court shall be the truth, the whole truth and nothing but the truth, so help you God?'

The witness will respond: 'So help me God.'

Affirmation

'Do you solemnly, sincerely and truly affirm and declare that the evidence you shall give to the court shall be the truth, the whole truth and nothing but the truth?'

The witness will respond: 'I do.'

The clerk of the court will then advise that you are to be seated. Do not sit down before you are given permission to do so.

Following this, the Crown Law officer / counsel representing the department will seek what is known as 'evidence in chief' from you. The purpose of which is simply to provide information or extend on any information already provided in your deposed affidavit material. Often times, the Crown law officer / counsel will start by asking you to state your full name / address / credentials. If you have safety concerns due to the release of this information please ensure that you advise the relevant Court Coordinator so that submissions can be made to keep this information confidential. It should be noted however, that the withholding of information cannot be guaranteed as this is a decision of the Court upon application.

Always be thoroughly prepared and know your evidence in order to present it without reference to your notes. Never take files to court unless they have been subpoenaed as any files, documents, notes etc that you have in your possession when you are in court may become the property of the court and you can be required to hand it over in its entirety.

If asked specific detail by counsel that you do not remember exactly (such as a date) answer to the best of your ability and state that you have answered so. Never guess, if proved wrong you could discredit all your evidence.

Should you find it necessary to have a copy of your affidavit/s with you and you need to refer to it at any time, you should request permission from the court before referring to them to refresh your memory.

Do not worry if you feel nervous, this is common and perfectly normal. Take your time, listen to the questions carefully, and make sure you understand them before answering. When in doubt, ask to have the question repeated or rephrased. Speak clearly and distinctly, everyone in court is entitled to hear what you say. You may notice microphones in the witness box, these are not there to amplify your voice but to record the proceedings so you need to be articulate.

Give simple answers to the questions without adding unnecessary details. Be affirmative and balanced. If you don't know the answer, say so. Because the court is interested only in the facts, refrain from giving opinions or interpretations unless you are asked to do so. When asked to express an opinion or when volunteering an opinion to the court you should be aware of two things:

1. Know the limits of your own area of expertise. If you comment on matters outside your area of expertise you leave yourself open to challenge not only on the matter in question, but by implication, upon areas within professional competency.
2. Ensure statements of opinion are based on fact. Expert witnesses are accorded the privilege of their opinions. This is a recognition of specialised expertise in a particular area. At times the situation may be uncertain so, it is advisable to do two things:
 - a) express your opinion as based on certain events/facts/observations, for example, "I assessed that the Mother was ... as I observed her to be ..."; and
 - b) have further details ready for cross examination should you be required to provide these to back up your opinion.

As well as presenting more credible evidence to the court this is a useful exercise to test whether your own assessments are based on logic.

If someone objects to a question that has been asked, do not start to answer until the Magistrate determines whether the question is relevant to the proceedings and asks you to answer the question.

Should you realise that you have given an incorrect answer, tell the Magistrate immediately so that you can correct your error.

Cross examination

The respondents and/or their legal representatives have an opportunity to ask you questions in order to clarify your testimony or check its accuracy, this is known as 'cross examination'. The person undertaking the cross examination may employ tactics to unnerve you to create weaknesses in your testimony, these may include rapid fire questions, being overly condescending, asking leading and suggestive questions, reversing your words, staring, etc. Try to ensure that you maintain your calm and answer questions as best you can. Do not be arrogant or defensive.

Can you refuse to testify or to answer questions? You cannot refuse to testify or answer questions. If you do refuse, you may be held in contempt of court and fined, sentenced to prison, or both. The only exception to this is the provision of notifier details. The *Child Protection Act 1999* provides confidentiality to notifiers of harm or risk of harm. This means that the identity of a notifier cannot be revealed, despite requests to do so, unless leave of the Court is first granted. It should be noted that there are strict criteria that must be met before a Court can grant leave for this to occur. If you have any concerns in relation to this, attention can be drawn to section 186 of the *Child Protection Act 1999*.

Do not try to avoid answering a question. Counsel will keep at you until you do or the Bench will intervene.

Maintain a courteous attitude towards all parties at all times. Cross examination is merely a legal and ethical obligation and should not be taken personally. The Bench will not allow the cross examination to become insulting or abusive.

Do not discuss your testimony with other witnesses.

Be friendly and obliging and assist the court.

How much time will you have to spend in court?

As mentioned earlier, it is practically impossible to predict how long proceedings will take. You must remain at court until you have testified or until the Magistrate authorises you to leave.

You may be authorised to leave without testifying. This may happen if an agreement has been reached or there is an agreement on facts about which you were going to testify. It is also possible the case may be adjourned and if so, the Magistrate will tell you when you must come back to court or inform you that you will be receiving a new subpoena.

Protocols and Courtroom Rules

The court operates under strict rules and everyone behaves very formally.

Everyone that appears in court should:

- a) Dress neatly (observing that they do not wear hats or sunglasses within the court);
- b) Turn off their mobile phone;
- c) Not eat, drink or chew gum (water will be provided should you wish);
- d) Sit quietly and keep noise to a minimum; and
- e) Not make an audio or visual recording of proceedings (unless permitted by the Magistrate).

To acknowledge the Magistrate, everyone should:

- Stand whenever the clerk of the court calls 'all rise' – normally heard when the Magistrate enters or leaves the courtroom;
- Bow their head upon entering or exiting the courtroom to acknowledge the Magistrate; and
Address the Magistrate as 'Your Honour'.

A handout for Witnesses

- ❖ If you are the current CSO, then consider yourself as having 'ownership' of the case. While many decisions may have been made before you were allocated the case, it is not acceptable to just say 'I wasn't the worker at the time, so I don't know'. You should have read the file, be familiar with the case and have your own thoughts and knowledge of the case.
- ❖ Don't quote anyone as having said something unless you are 100% positive you are quoting them accurately
 - in cross examination you may be questioned about your recording of the quote – did you take notes at the time, or after, or indeed at all?
 - even a slight inconsistency in your quoting may cast doubt about the truthfulness and accuracy of the rest of your evidence.
 - If you wish to capture what was said, you can do this by phrases such as 'words to the effect of'....
 - In cross examination the solicitor may quote you. Have they quoted you accurately? Beware of very slight variations. Even asking that they repeat it may cause them to re-phrase what they asked.
- ❖ Accounts can change over time.
 - When preparing an affidavit, don't accept someone else's account or summary of the events
 - Go back to the ORIGINAL SOURCE, be it the Notification or Initial Assessment, to ensure that you are recording the information accurately.
- ❖ Summaries can distort information
 - This can be especially true regarding Summaries of Child Protection Histories. Be specific about what was substantiated and what wasn't. This may necessitate the reading of the assessment text, not just looking at the outcome. If the assessing officer has commented on positives aspects of the parents care, then it is reasonable to note this information in your affidavit. Departmental officers are often criticised for not presenting a balanced view of the parents.
- ❖ Note taking
 - Sometimes witnesses are asked about their note taking. Did you take your notes during the interview? Did you take them on returning to the office? Did you record them weeks later? How long before your notes were entered onto ICMS?
 - This is relevant as it relates to your memory and recollection of events.
 - Files may be subpoenaed and your handwritten notes read by others.
- ❖ Terminology
 - Terms and phrases such as 'unacceptable risk' may be commonplace to us, but they are not to solicitors, parents or others.
 - You may be asked on the stand, "what exactly do you mean by 'unacceptable risk'?" You should be able to 'un-pack' the terminology succinctly and accurately.
- ❖ Chronology
 - Know the chronology of your matter. What happened first, what did that result in?
 - In cross examination, the solicitor may put something to you with the chronology deliberately out of order. If you know the case well, you will be able to pick this up and correct them.
- ❖ Expert Evidence
 - CSO's are generally considered NOT to have expertise in the area of child protection or child development.

- Do not offer your opinion on matters. If you are asked for an opinion, state that you are not an expert in that area, but that you have consulted with xxx, who does have expertise. You may then be asked for if you are aware of their opinion. Members of the medical profession and registered, practising psychologists are considered experts.
- ❖ Know your audience
 - This is of particular relevance in the Children Services Tribunal where the Members come from a range of professional backgrounds, including legal, welfare, social work, and child care.
 - Appreciate the audience and their experiences.
- ❖ Tactics
 - Do not concern yourself with the tactics of the applicant's or respondent's case. In answering questions from either side you should be candid and honest in your responses. You should not concern yourself about whether or not the answer to a question is going to favour one side or the other. If you concern yourself with such matters in answering question then the Court will soon suspect that you are biased at least to some extent in favour of one side and they will be less inclined to accept you as a truthful witness.
- ❖ More useful tips.
 - Tell the Court Coordinator or Crown Lawyer before you give evidence if your statement is in any way incorrect or incomplete.
 - Read your statement and be fully aware of its contents before you give evidence.
 - Tell the truth.
 - Do not answer a question if you do not understand it. State you do not understand it and ask for it to be repeated or re-phrased.
 - Do your best to remember but do not speculate about matters that you cannot remember.
 - Do not concern yourself with the tactics behind a question.
 - Only answer the question that is asked of you.
 - Outside the courtroom, do not discuss the facts on the case with other people, particularly other witnesses, until the case is over.
 - Outside the courtroom, avoid contact with persons you think may be respondents, respondents solicitors or friends or relatives of the respondents.

Acknowledgement to Shelley Davies for the provision of some material on this topic.

[date]

[address]

Dear

RE: Child Protection Matter of [child/ren's name & DOB]

I note that the matter of [name] has been listed for Hearing on [date] in the [court name] Childrens Court.

You have been identified as someone with relevant information that may assist the Childrens Court with determining the matter. As such please find attached a **subpoena** directing you to attend and give evidence in these proceedings on the above mentioned date/s.

Should there be any issues with your attendance at these proceedings please contact me immediately to discuss.

Please be aware that as a witness, you are entitled to claim witness expenses for your time and these expenses are paid in accordance with the Legal Aid Scale of Fees.

[select appropriate paragraph from the list below]

This means that as a **non-professional witness** you are entitled to claim a flat rate of **\$60** for giving evidence at the proceedings. Should you not be required to give evidence, you are entitled to claim reasonable travel expenses if it meets the criteria below and *may* be entitled to claim other expenses subject to negotiation.

Travel Expenses are paid at a rate of **\$0.60/km** for travel which involves a **round trip of more than 35km**.

Travel Time is paid at a rate of **\$60/hour** for travel which involves a **round trip of more than 35km**.

This means that as a **Social Worker**, you are entitled to claim a rate of **\$90/hour for time spent giving evidence** as a witness in the proceedings. You may also be entitled to claim expenses for waiting time and travel if it meets the criteria as set out below.

Waiting Time is paid at a rate of **\$60/hour** if time spent waiting is in **excess of 2 hours**. This does not include time spent waiting for proceedings to begin or lunch break and is not claimable if attending to other business.

Travel Expenses are paid at a rate of **\$0.60/km** for travel which involves a **round trip of more than 35km**.

Travel Time is paid at a rate of **\$60/hour** for travel which involves a **round trip of more than 35km**.

If you are required to spend any time in preparation for the hearing, you *may* be entitled to claim other expenses subject to negotiation prior.

This means that as a **Psychiatrist**, you are entitled to claim a rate of **\$188/hour** or part thereof, **for time spent giving evidence** as a witness in the proceedings. You may also be entitled to claim expenses for waiting time and travel if it meets the criteria as set out below. Please note that fees payable are limited to \$1,222 for a full day's attendance.

Waiting Time is paid at a rate of **\$60/hour** if time spent waiting is in **excess of 2 hours**. This does not include time spent waiting for proceedings to begin or lunch break and is not claimable if attending to other business.

Travel Expenses are paid at a rate of **\$0.60/km** for travel which involves a **round trip of more than 35km**.

Travel Time is paid at a rate of **\$60/hour** for travel which involves a **round trip of more than 35km**.

If you are required to spend any time in preparation for the hearing, you *may* be entitled to claim other expenses subject to negotiation prior.

As a **Psychologist**, you are entitled to claim a rate of **\$90/hour** for **time spent giving evidence** as a witness in the proceedings. You may also be entitled to claim expenses for waiting time and travel if it meets the criteria as set out below.

Waiting Time is paid at a rate of **\$60/hour** if time spent waiting is in **excess of 2 hours**. This does not include time spent waiting for proceedings to begin or lunch break and is not claimable if attending to other business.

Travel Expenses are paid at a rate of **\$0.60/km** for travel which involves a **round trip of more than 35km**.

Travel Time is paid at a rate of **\$60/hour** for travel which involves a **round trip of more than 35km**.

If you are required to spend any time in preparation for the hearing, you *may* be entitled to claim other expenses subject to negotiation prior.

As an **Occupational Therapist**, you are entitled to claim a rate of **\$65/hour** for time spent giving evidence as a witness in the proceedings. You may also be entitled to claim expenses for waiting time and travel if it meets the criteria as set out below.

Waiting Time is paid at a rate of **\$60/hour** if time spent waiting is in **excess of 2 hours**. This does not include time spent waiting for proceedings to begin or lunch break and is not claimable if attending to other business.

Travel Expenses are paid at a rate of **\$0.60/km** for travel which involves a **round trip of more than 35km**.

Travel Time is paid at a rate of **\$60/hour** for travel which involves a **round trip of more than 35km**.

If you are required to spend any time in preparation for the hearing, you *may* be entitled to claim other expenses subject to negotiation prior.

As a **Physiotherapist**, you are entitled to claim a rate of **\$65/hour** for time spent giving evidence as a witness in the proceedings. You may also be entitled to claim expenses for waiting time and travel if it meets the criteria as set out below.

Waiting Time is paid at a rate of **\$60/hour** if time spent waiting is in **excess of 2 hours**. This does not include time spent waiting for proceedings to begin or lunch break and is not claimable if attending to other business.

Travel Expenses are paid at a rate of **\$0.60/km** for travel which involves a **round trip of more than 35km**.

Travel Time is paid at a rate of **\$60/hour** for travel which involves a **round trip of more than 35km**.

If you are required to spend any time in preparation for the hearing, you *may* be entitled to claim other expenses subject to negotiation prior.

As a general **Medical Practitioner**, for attendance at Court, time is to be calculated from leaving rooms, or hospital and including time specifically set aside for giving evidence, rate charged at **\$162/hour** or part thereof; **\$90/half hour thereafter**.

You may also be entitled to claim expenses for **travel expenses** if the **roundtrip is more than 35 kilometres** and this is paid at a rate of **\$0.60/km**.

In the event the matter does not proceed on the date listed and you are advised of this on the day, you are entitled to claim a rate of **\$117/hour** for time set aside. For cancellation up to 48 hours prior to the appointed day, the fee shall be on the pro-rata basis to lost practice time.

If you are required to spend any time in preparation for the hearing, you may be entitled to claim other expenses subject to negotiation prior.

As a **Medical Specialist**, for attendance at Court, time is to be calculated from leaving rooms, or hospital and including time specifically set aside for giving evidence, rate charged at **\$188/hour** or part thereof, **\$105/half hour thereafter**.

You may also be entitled to claim expenses for **travel expenses** if the **roundtrip is more than 35 kilometres** and this is paid at a rate of **\$0.60/km**.

In the event the matter does not proceed on the date listed and you are advised of this on the day, you are entitled to claim a rate of **\$136/hour** for time set aside. For cancellation up to 48 hours prior to the appointed day, the fee shall be on the pro-rata basis to lost practice time.

Fees payable for giving evidence at a distance are **\$611** for a half day attendance or **\$1222** per day plus reasonable expenses.

If you are required to spend any time in preparation for the hearing, you may be entitled to claim other expenses subject to negotiation prior.

I note that the rates quoted exclude GST.

In order to claim any relevant expenses, you will need to do the following:-

[select appropriate paragraph from the list below]

Complete a **FIN 10** form and a **Statement by Supplier** form which will be provided to you by the department and return these along with a copy of your subpoena to:-

The Manager
Court Services Unit
Department of Communities
GPO Box 806
Brisbane QLD 4001

Complete an **invoice** detailing the name of the matter and your costs claimed in accordance with the above rates and return this along with a copy of the your subpoena to:-

The Manager
Court Services Unit
Department of Communities
GPO Box 806
Brisbane QLD 4001

In preparing for this matter, please ensure that you are familiar with the contents of any sworn/affirmed material by yourself prior to giving evidence.

Please note that I am available on [phone number] should you have any queries or wish to discuss this matter further.

Regards,

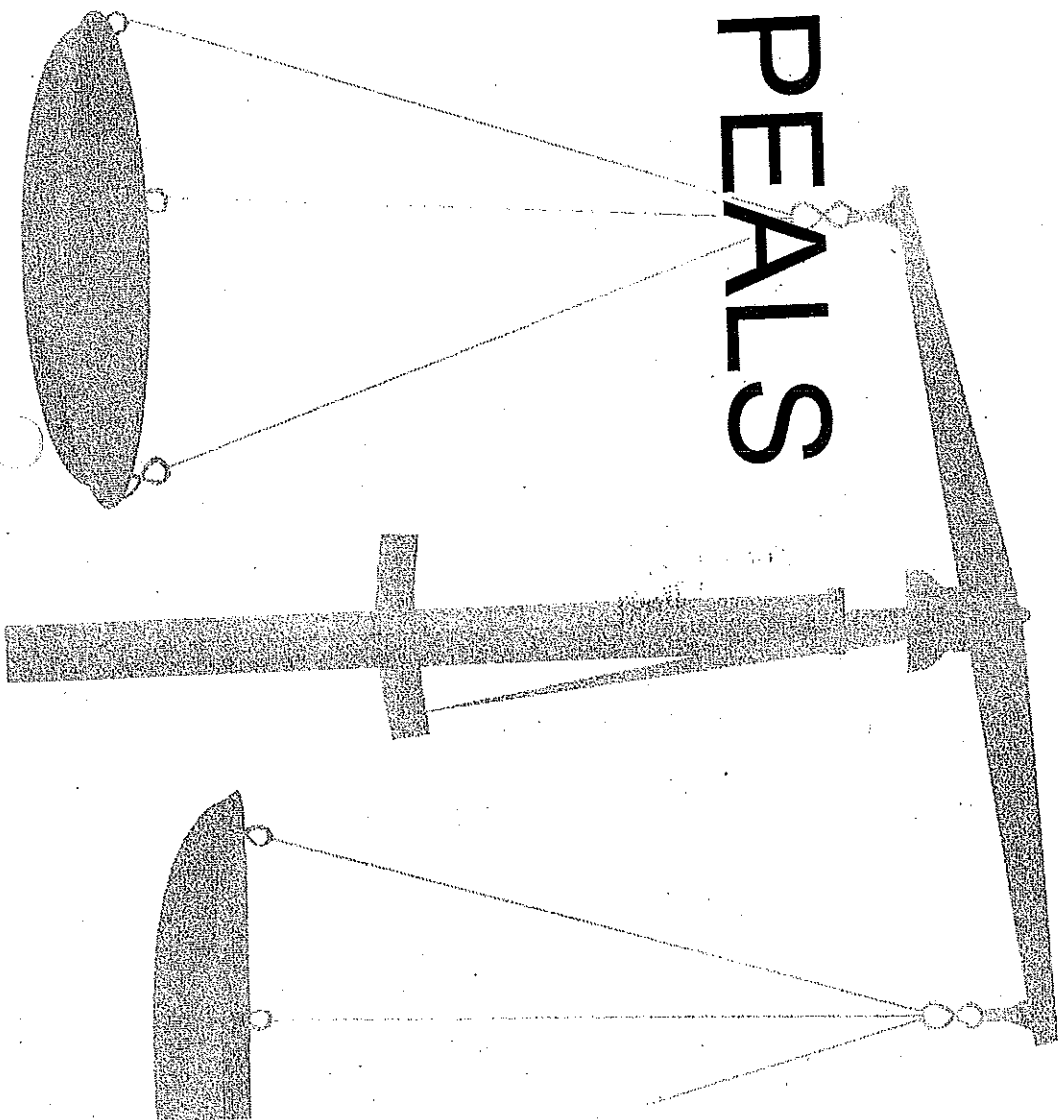
.....
[name]

Court Coordinator.

[name] Child Safety Service Centre

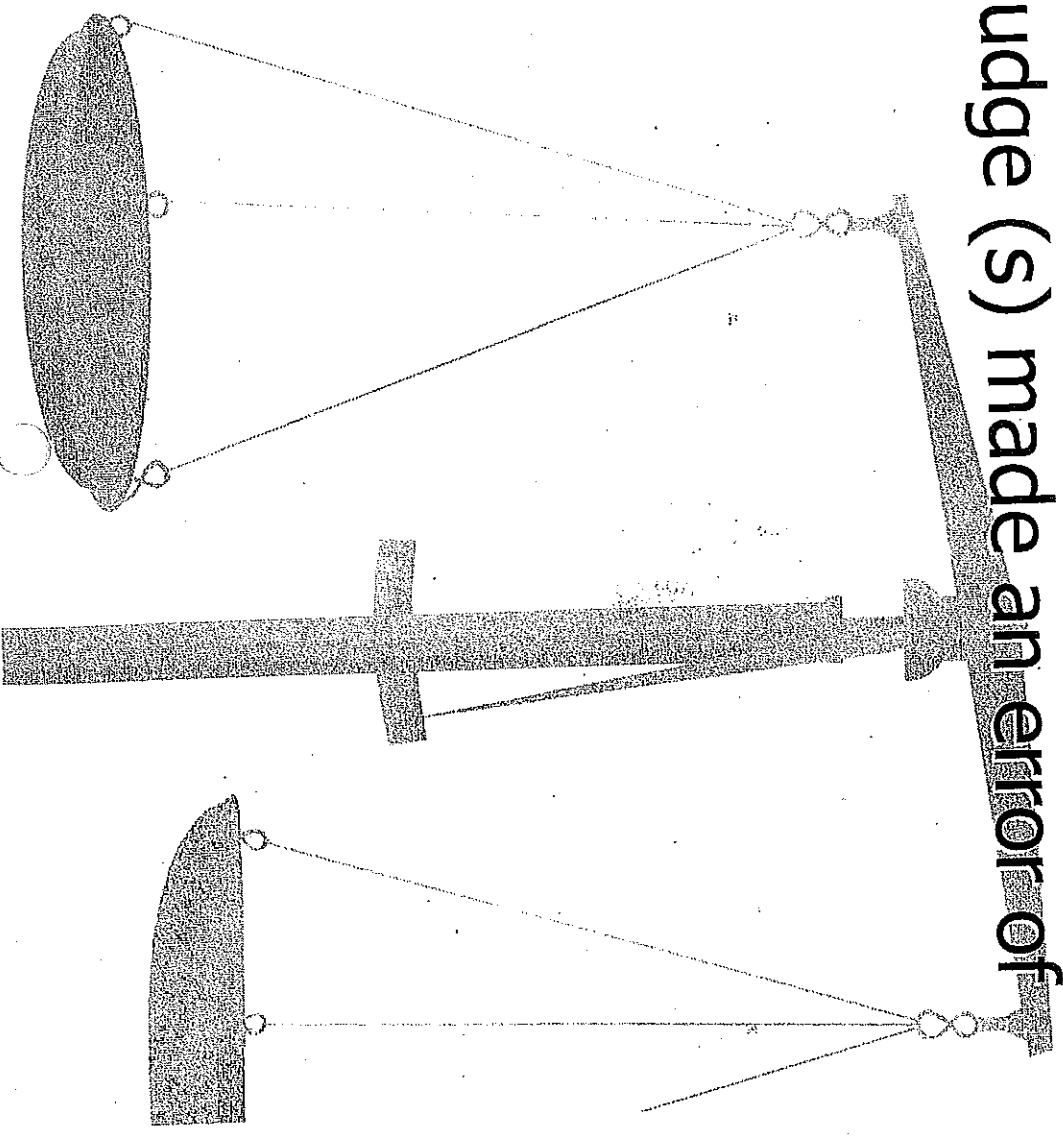
Department of Communities

APPEALS



What are the grounds for an appeal?

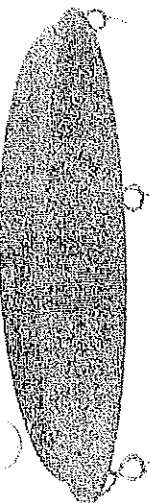
- The Magistrate/Judge (s) made an error of fact or law.



What are the grounds for an appeal?

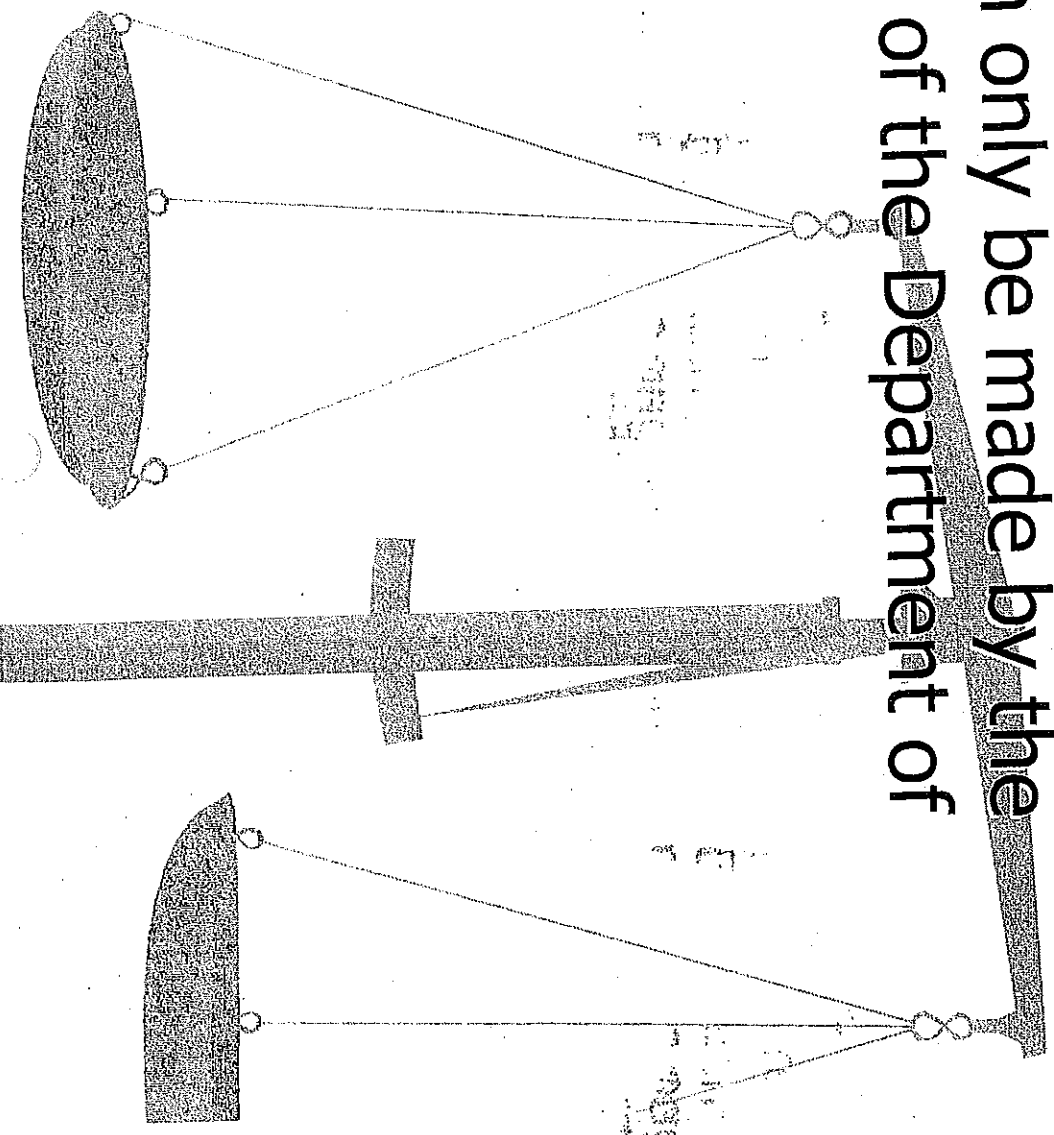
Note:

- The appeal court can only consider the same material that was before the lower court at the time the decision was made. Section 120(1) of the *Child Protection Act 1999*.
- If a party seeks to introduce new material, leave is required from the appeal court to do so.
- If the Department does seek to rely on further material not filed at the time of the original decision, it may be more appropriate to file further updated material in the court that made that decision and seek that the matter be listed for further mention (this will be possible only where the decision is an interim decision).
- However, section 120(3) of the *Child Protection Act 1999* provides that the appellate court may order that the appeal be heard afresh in whole, or part.
- An appeal in respect of a TAO is not restricted to the material before the Magistrate, section 120(1) *Child Protection Act 1999*.



Who makes the decision to appeal on behalf of DCHS?

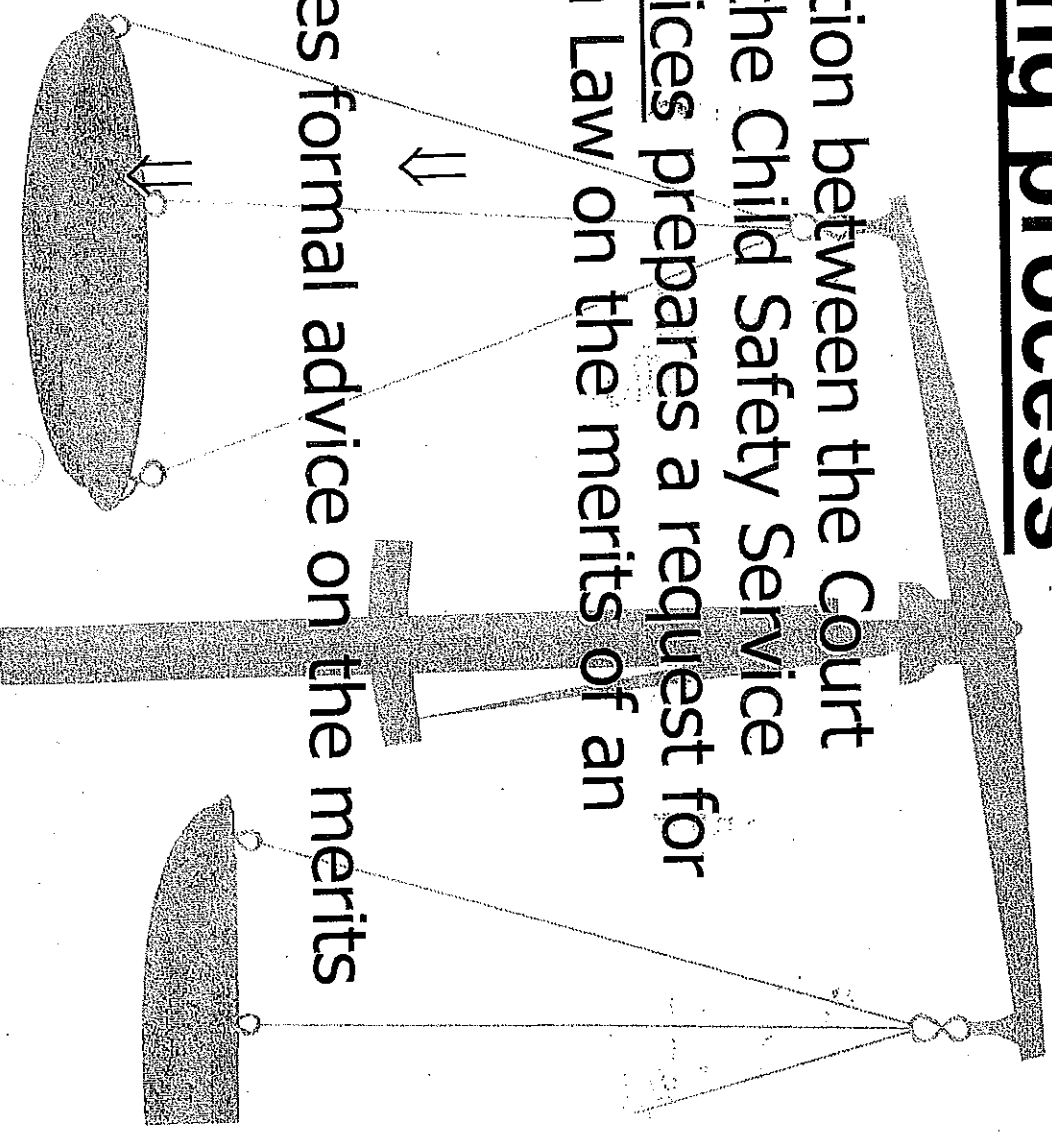
- This decision can only be made by the Director General of the Department of Child Safety.



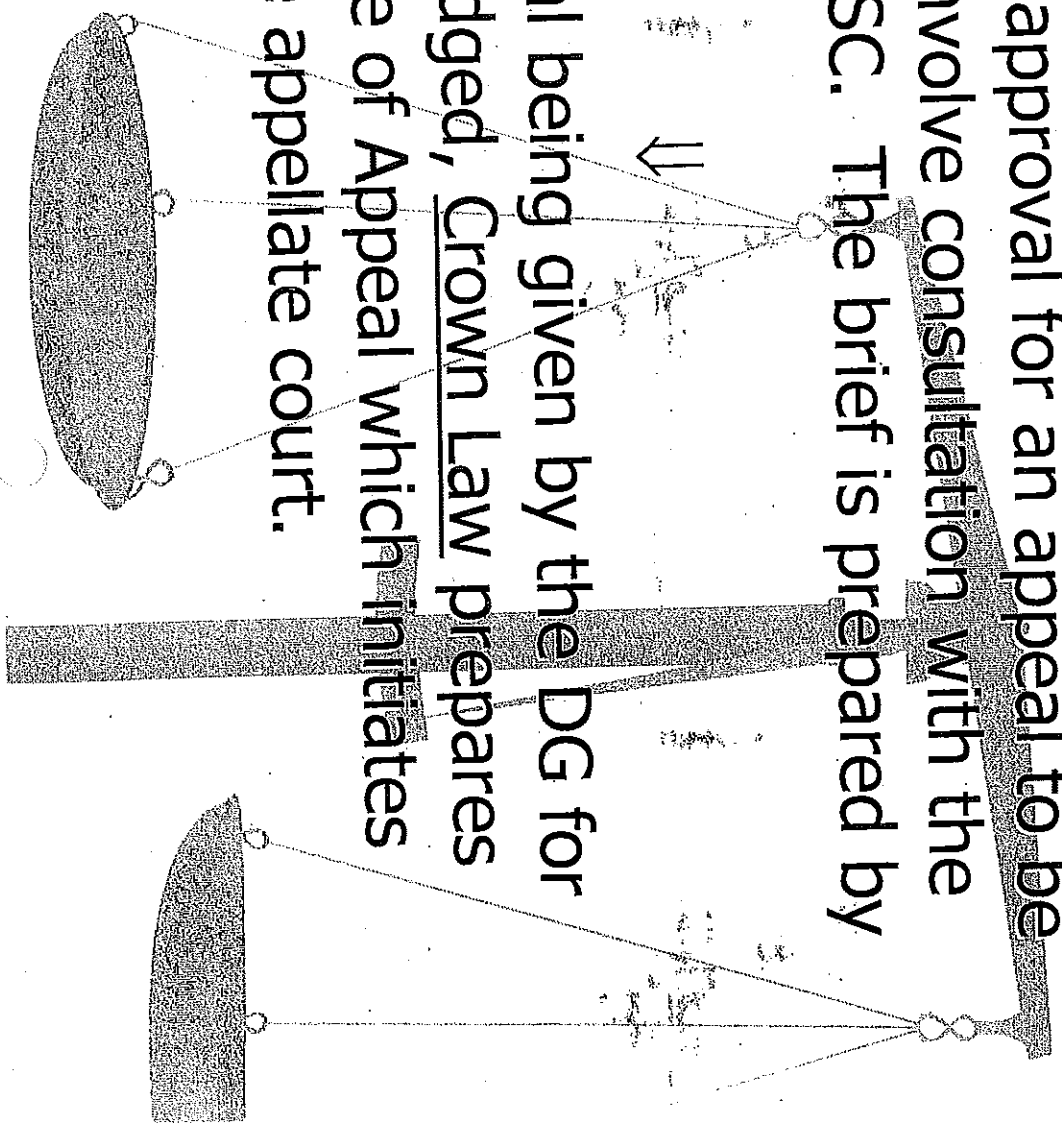
Role of Court Services and Crown Law in the decision making process

- Following consultation between the Court Services Unit and the Child Safety Service Centre, Court Services prepares a request for advice from Crown Law on the merits of an appeal.

- Crown Law provides formal advice on the merits of an appeal.



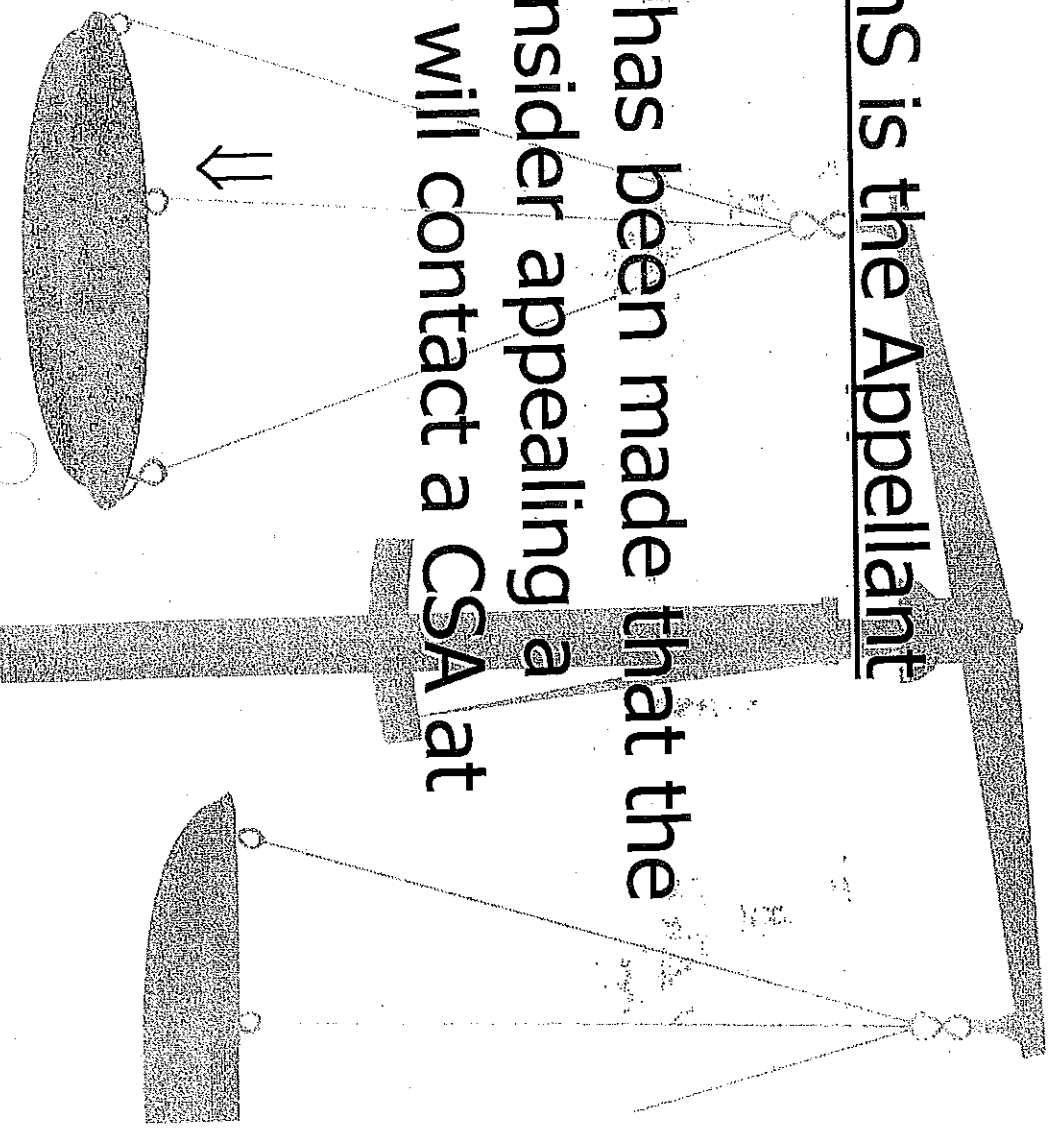
- Subject to a favourable advice, the Manager of Court Services makes the decision as to whether to brief the DG for approval for an appeal to be lodged. This will involve consultation with the Manager of the CSSC. The brief is prepared by Court Services.
- Subject to approval being given by the DG for an appeal to be lodged, Crown Law prepares and files the Notice of Appeal which initiates proceedings in the appellate court.



Role of the Court Coordinator in an appeal

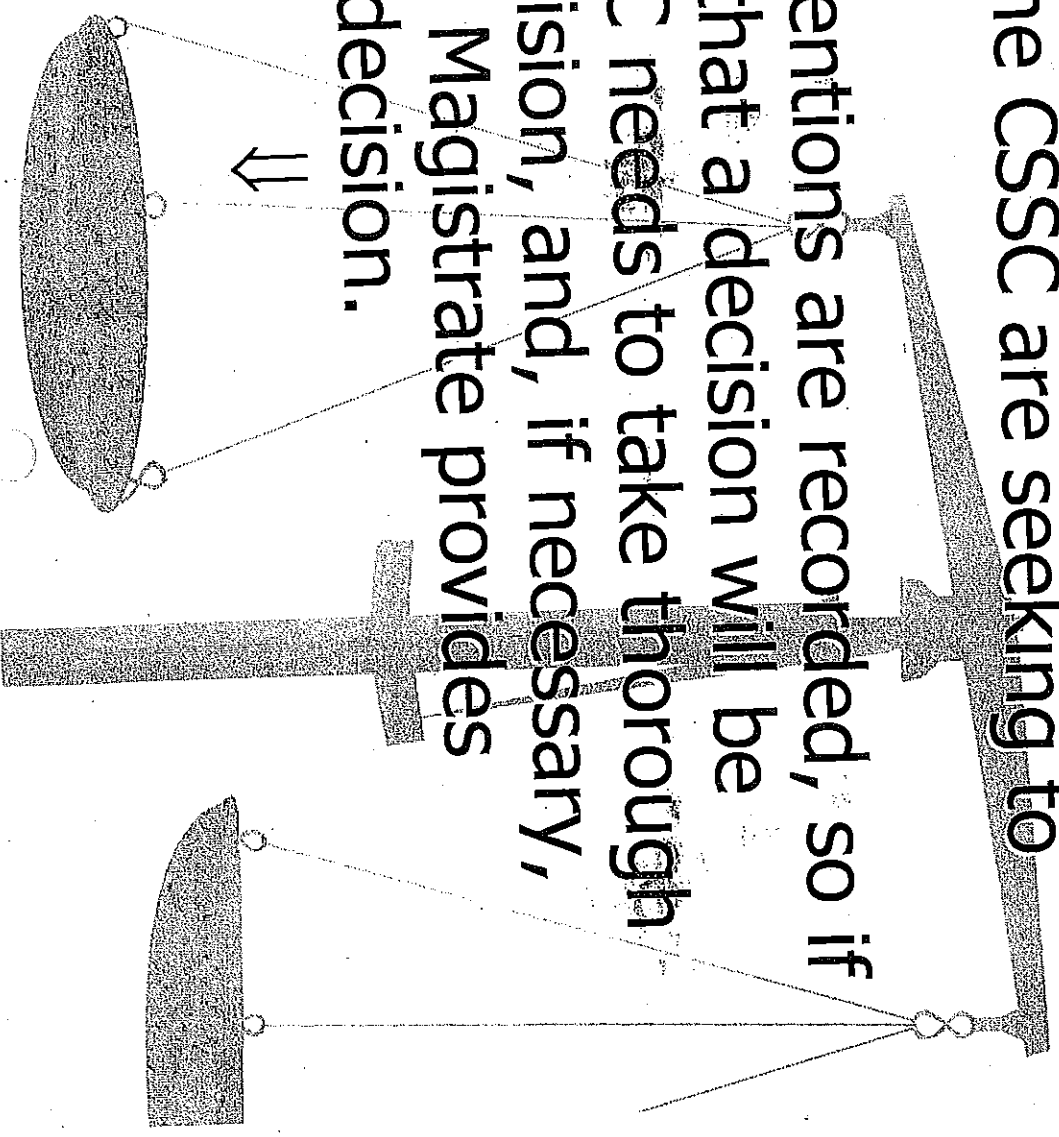
When Dchs is the Appellant

- Once a decision has been made that the CSSC wish to consider appealing a decision, the CC will contact a CSA at Court Services.

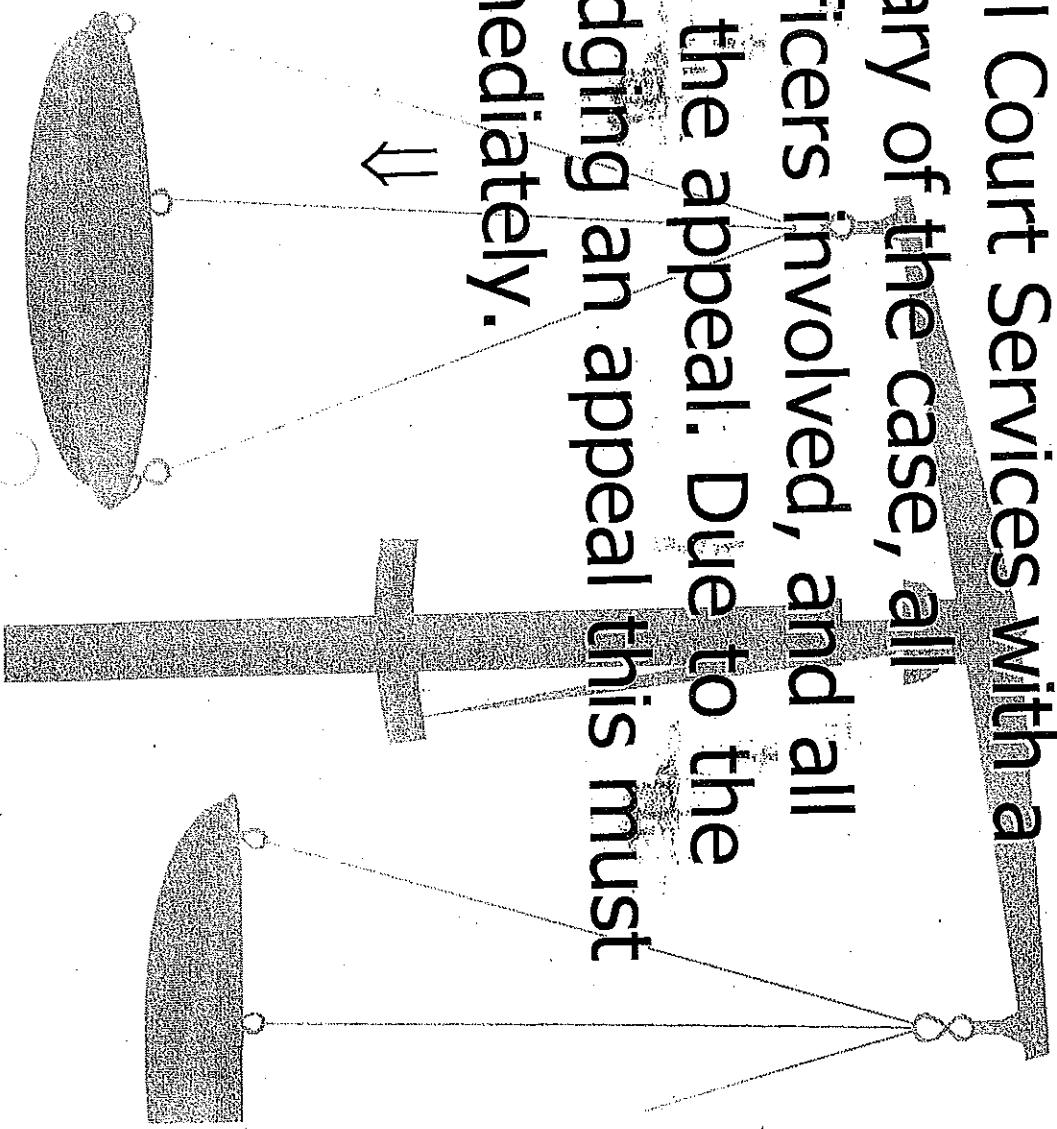


- If possible, the CC will obtain a transcript of the decision the CSSC are seeking to appeal.

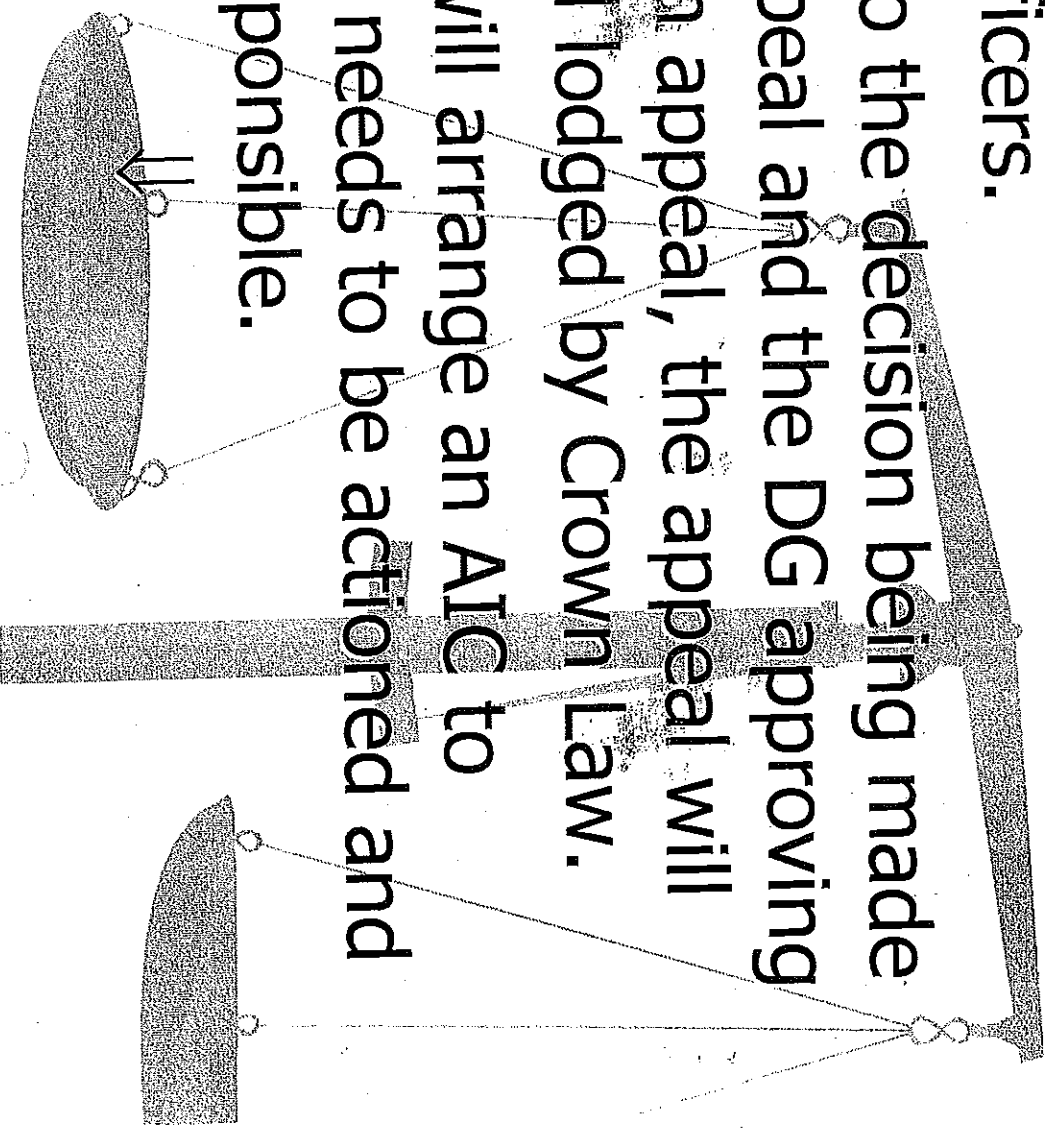
- NOTE: Not all mentions are recorded, so if it is anticipated that a decision will be appealed, the CC needs to take thorough notes of the decision, and, if necessary, request that the Magistrate provides reasons for the decision.



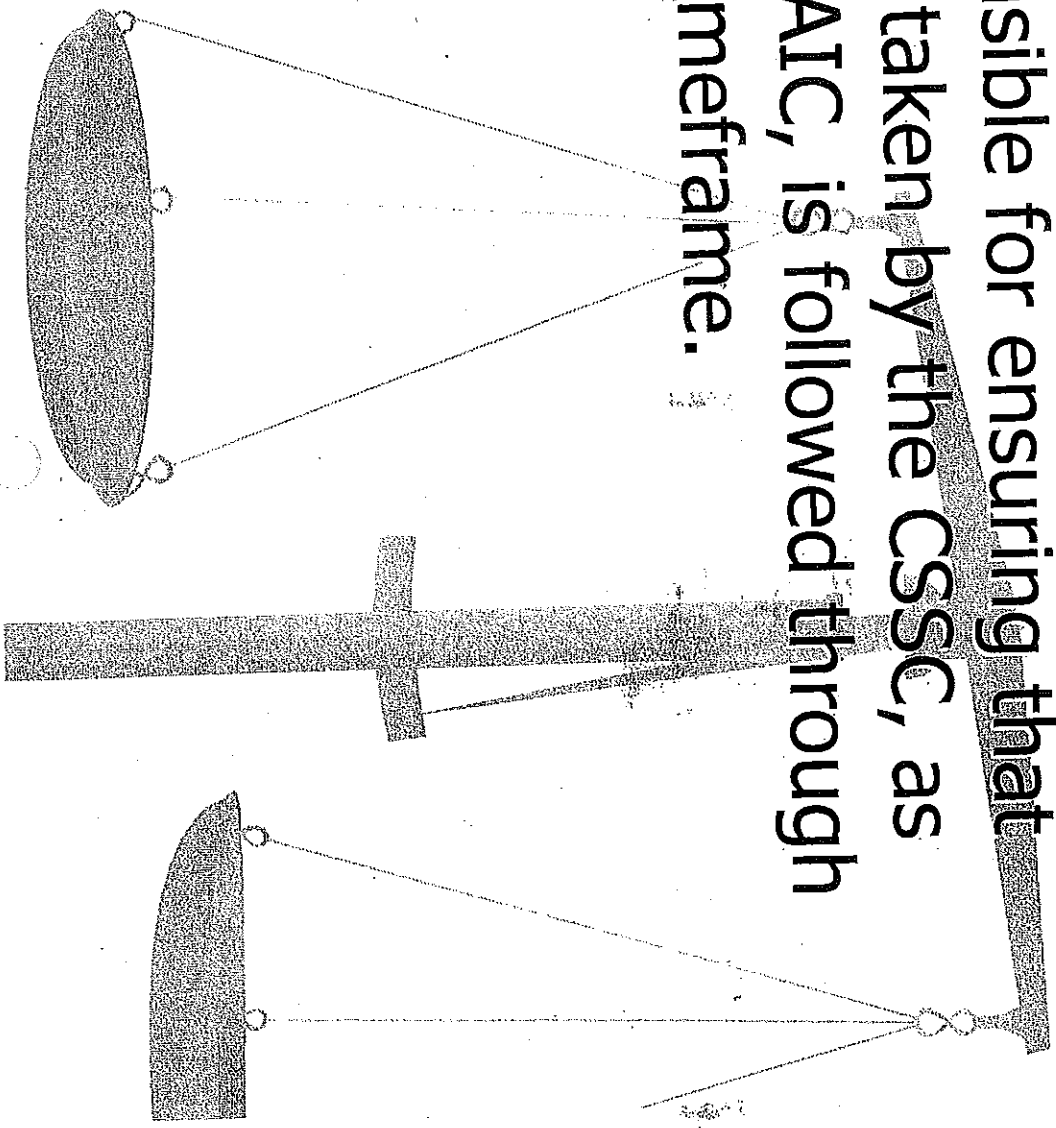
- The CC will email Court Services with a thorough summary of the case, all departmental officers involved, and all facts relevant to the appeal. Due to the time limits on lodging an appeal this must be actioned immediately.



- The CC will liaise with a CSA to arrange a case discussion to include all relevant departmental officers.
- NOTE: Subject to the decision being made to pursue an appeal and the DG approving the lodging of an appeal, the appeal will be prepared and lodged by Crown Law.
- Court Services will arrange an AIC to determine what needs to be actioned and who is to be responsible.

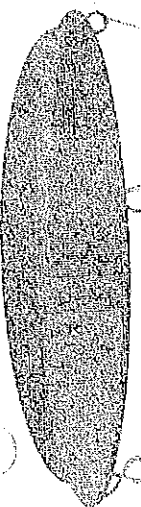


- The CC is responsible for ensuring that any action to be taken by the CSSC, as identified in the AIC, is followed through in the relevant timeframe.

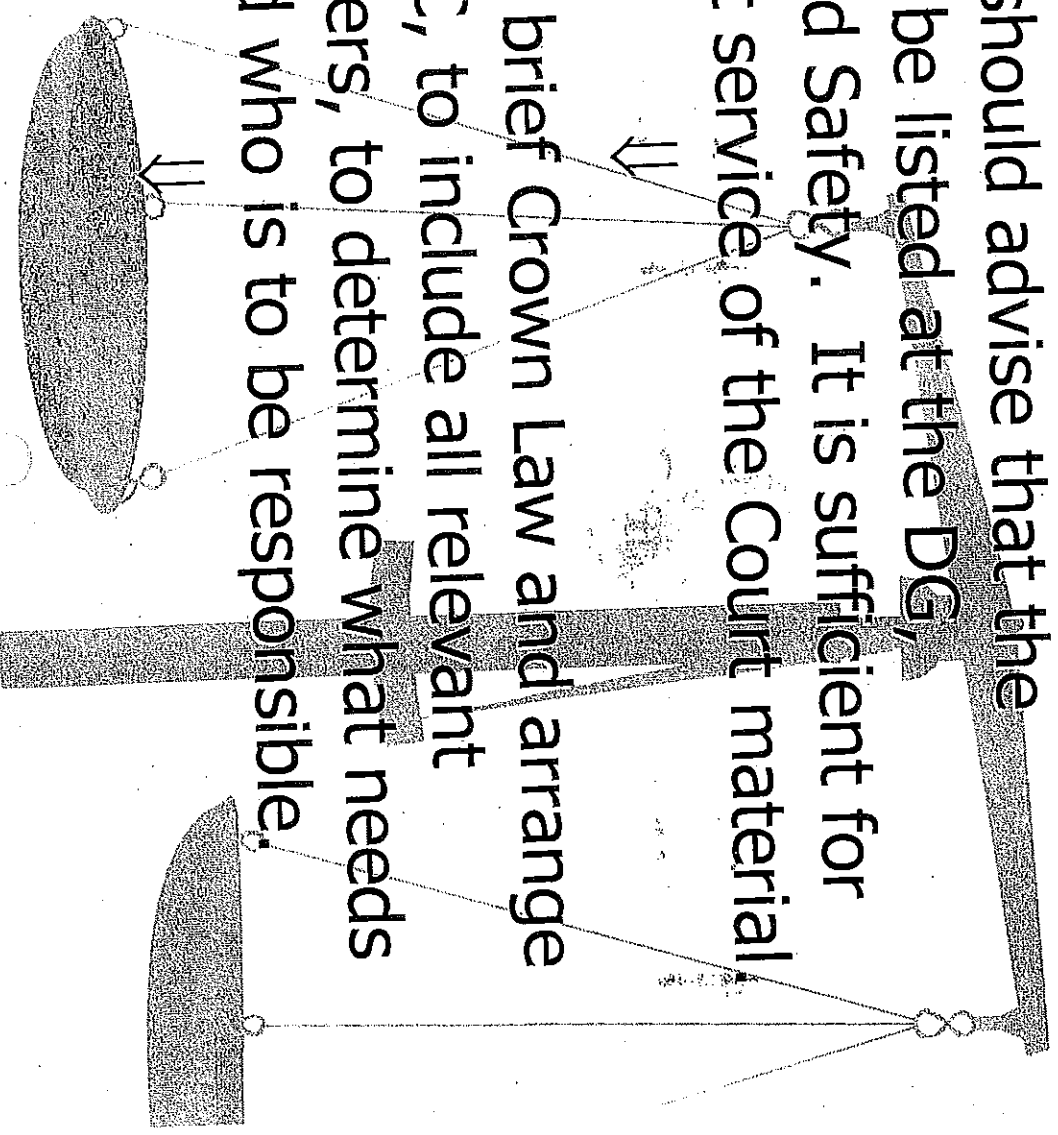


Appeal Process when the Department of Child Safety is the Respondent

- If Crown Law were involved in the proceedings that resulted in the decision which is the subject of the appeal, the appellant should serve Crown Law directly. Crown Law will then contact Court Services and they will, in turn, contact the CC.
- Where the CSSC are served directly (for example, where the decision the subject of the appeal was a decision made at a mention in the Children's Court attended by the applicant and CC or the appellant is not aware of Crown Law's contact details), the CC must advise Court Services immediately and provide a copy of the Notice of Appeal and any other documentation which has been served.

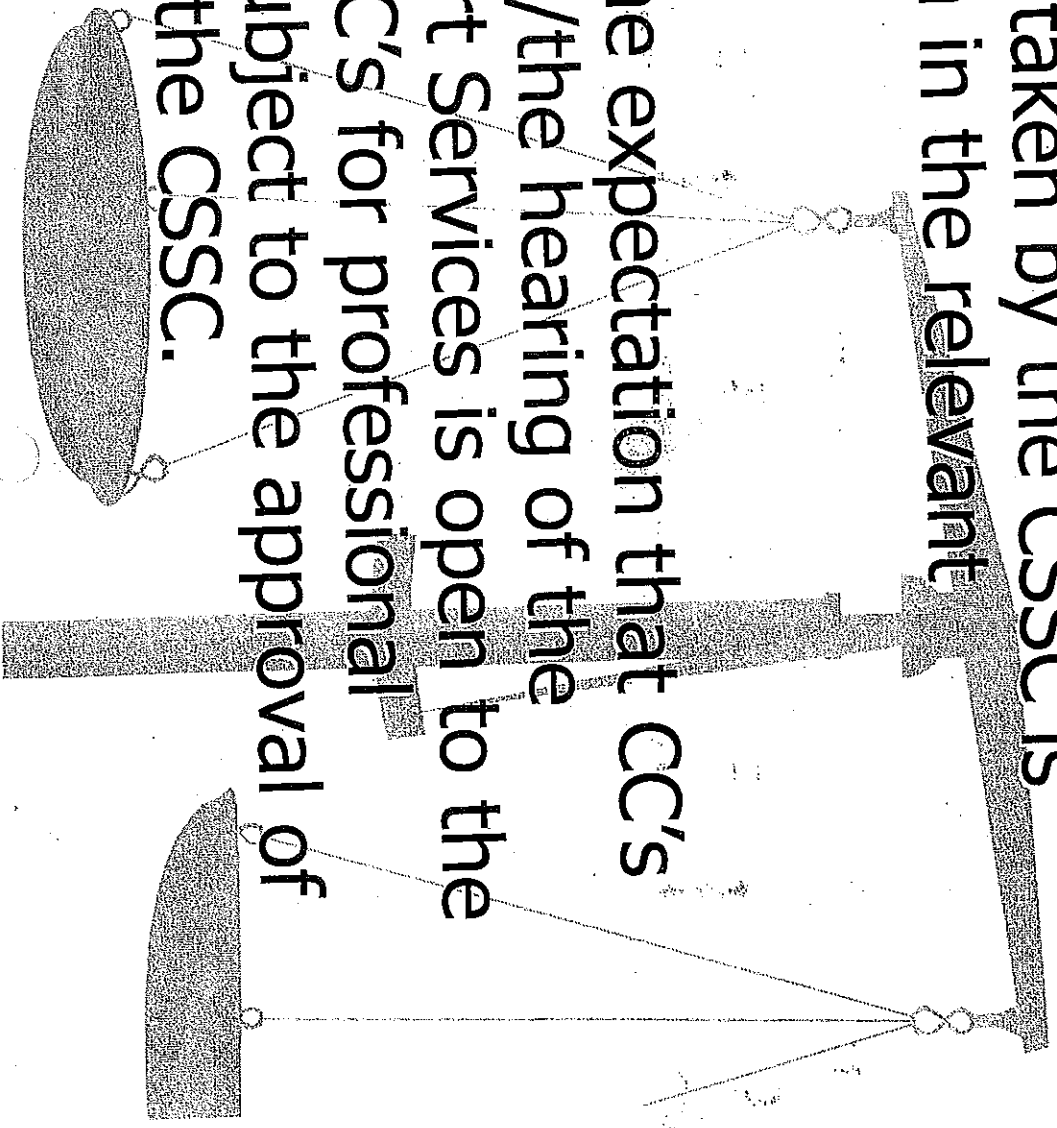


- If an appellant approaches the CC to seek advice as to where the Notice of Appeal should be served, the CC should advise that the respondent should be listed at the DG, Department of Child Safety. It is sufficient for the CSSC to accept service of the Court material.
- Court Services will brief Crown Law and arrange an AIC with the CC, to include all relevant departmental officers, to determine what needs to be actioned and who is to be responsible.



- The CC is responsible for ensuring that any action to be taken by the CSSC is followed through in the relevant timeframe.

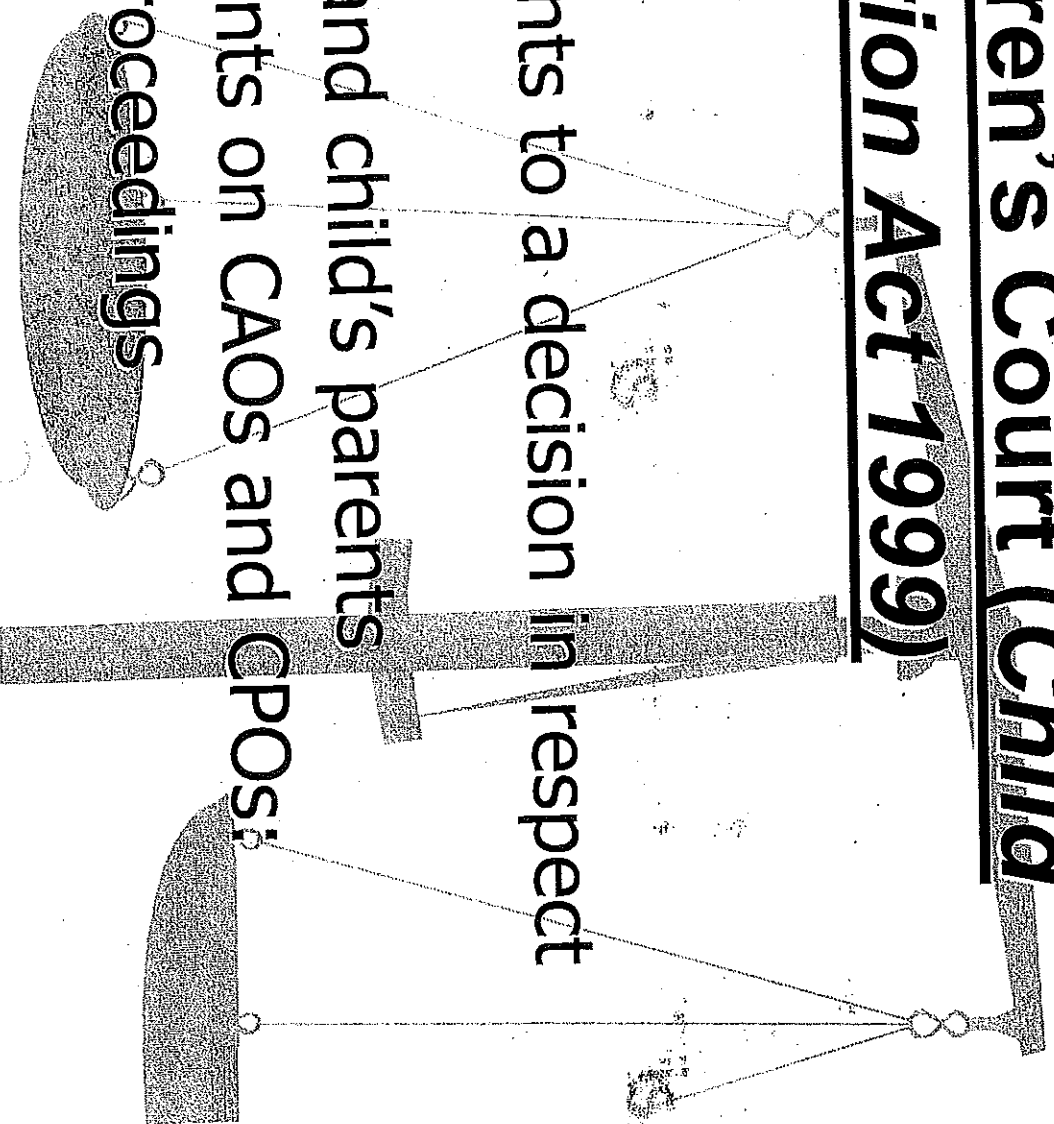
- Note: It is not the expectation that CC's attend mentions/the hearing of the appeal, but Court Services is open to the attendance of CC's for professional development, subject to the approval of the Manager of the CSSC.



Overview of the Legislation relating to appeals of decisions in the Children's Court (*Child* *Protection Act 1999*)

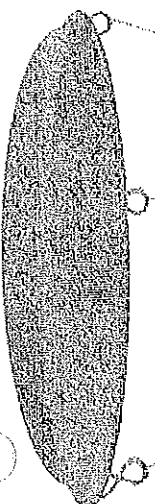
Section 117 -

- Potential appellants to a decision in respect of a TAO:
- Applicant, child and child's parents
- Potential appellants on CAOs and CPOs;
- A party to the proceedings



- Note: Under the *Child Protection Act 1999*, the appointment of a separate representative does not make the separate representative a party to the proceeding. Accordingly, there is uncertainty about the rights and responsibilities of separate representatives and what a separate representative is able to do during an appeal.

- It is anticipated that amendments will be made to the *Child Protection Act 1999* in the next set of legislative amendments in order to clarify the role of the separate representative.

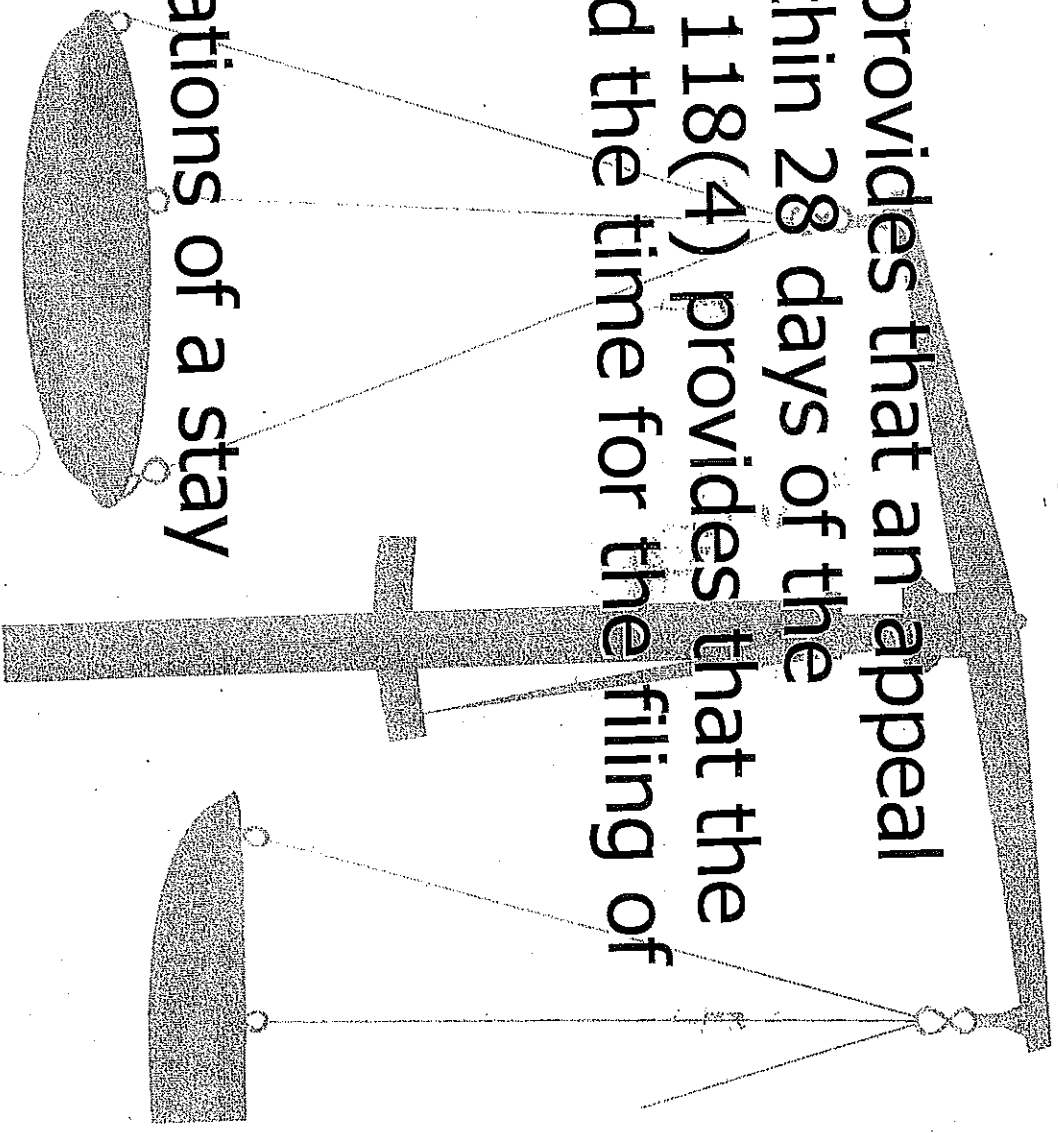


Section 118 –

- Details the procedure for filing of an appeal
- Section 118 (3) provides that an appeal must be filed within 28 days of the decision Section 118(4) provides that the court may extend the time for the filing of the appeal

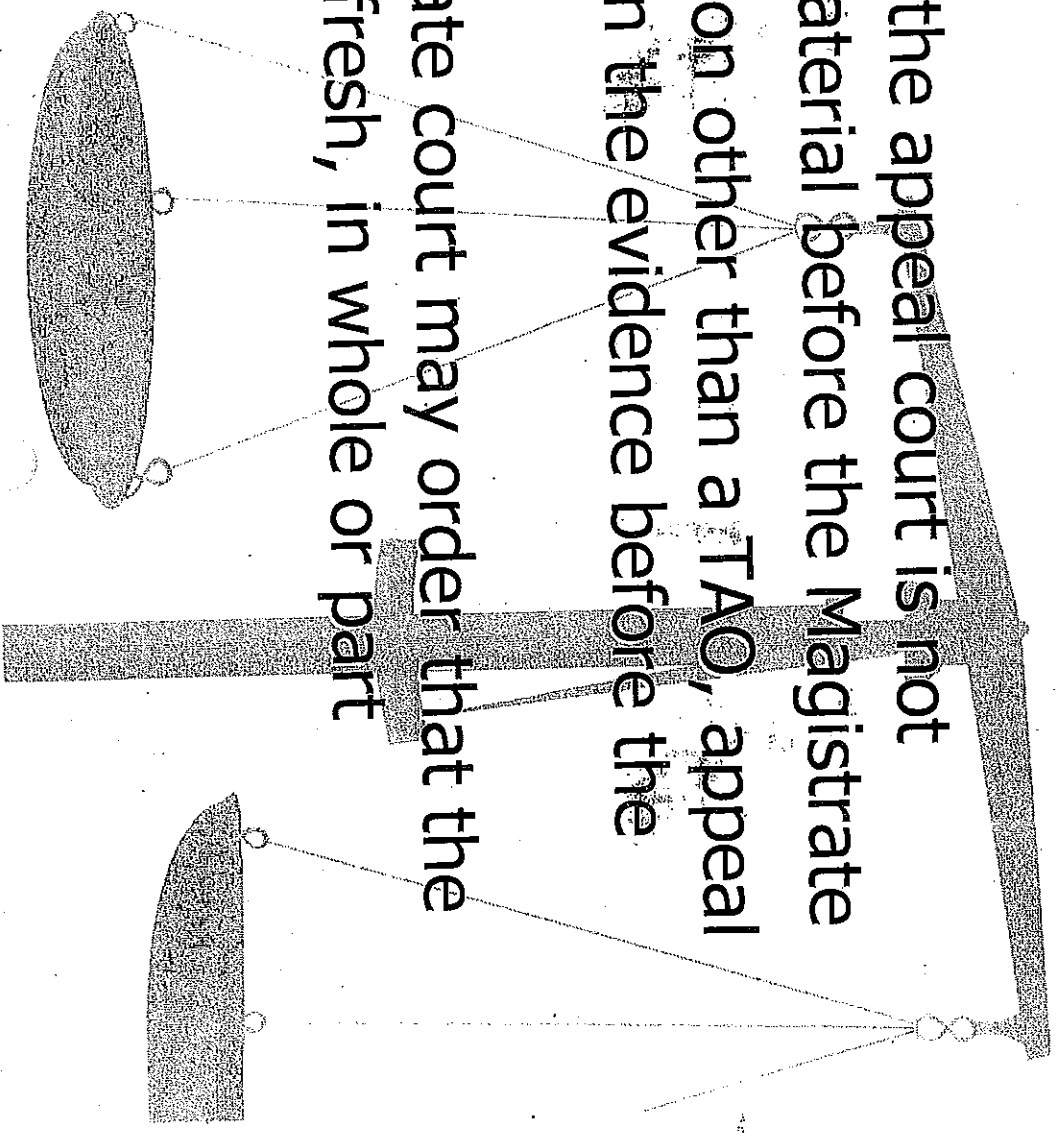
Section 119 –

- Details the limitations of a stay



Section 120 –

- 120(1) For a TAO, the appeal court is not restricted to the material before the Magistrate
- 120(2) For a decision other than a TAO, appeal must be decided on the evidence before the Children's Court
- 120(3) The appellate court may order that the appeal be heard afresh, in whole or part



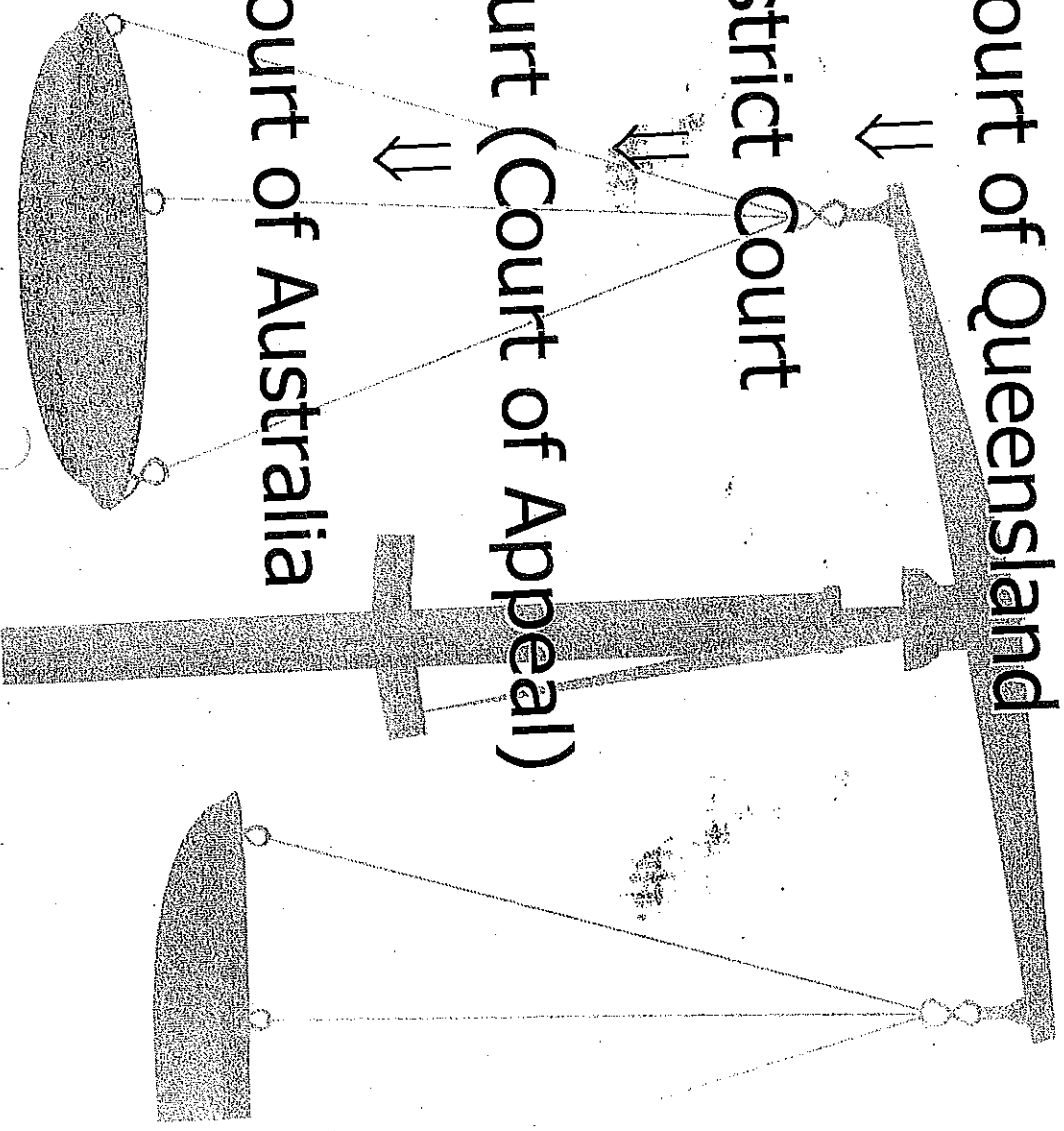
Hierarchy of Courts

Children's Court of Queensland

District Court

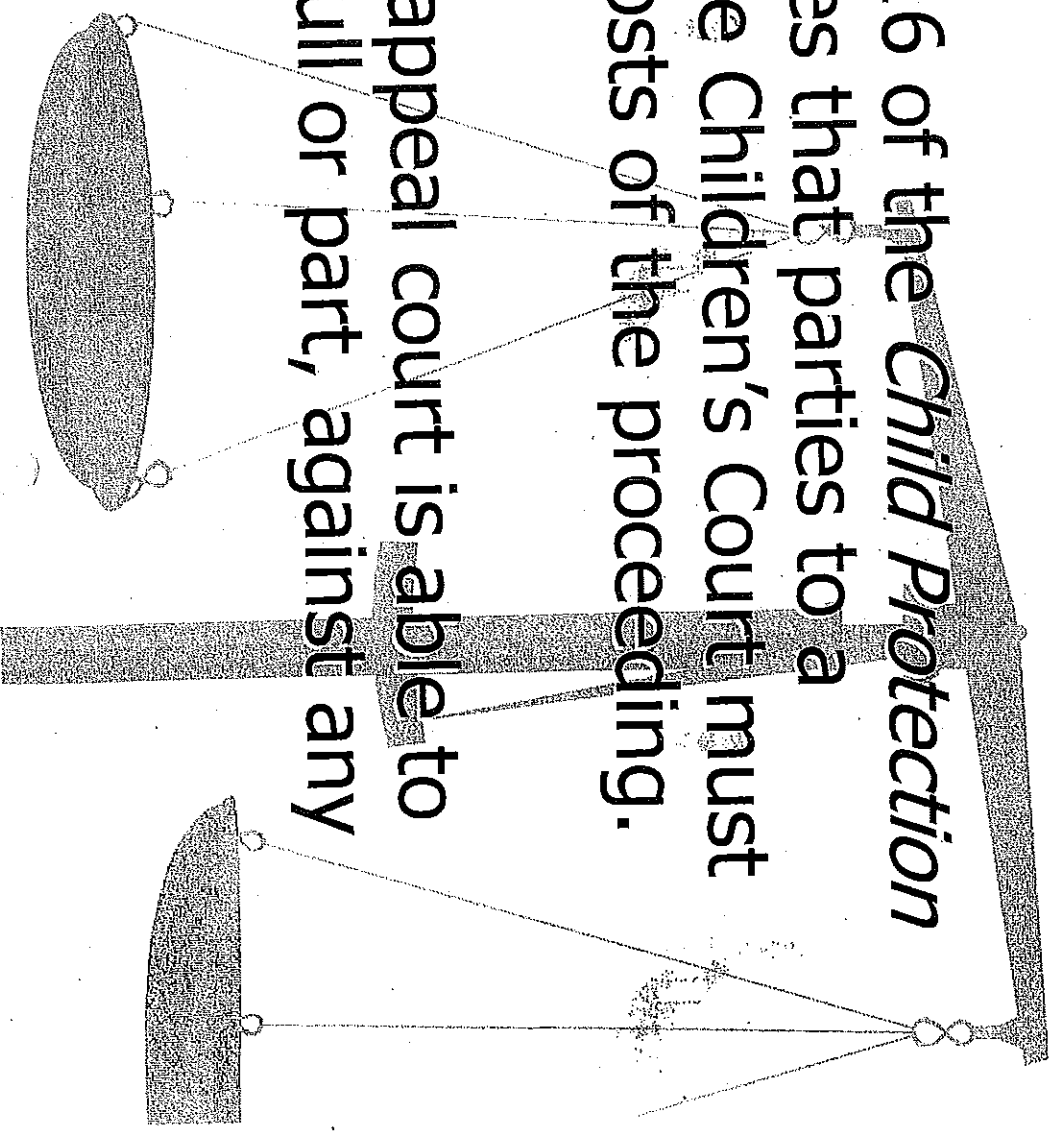
Supreme Court (Court of Appeal)

High Court of Australia

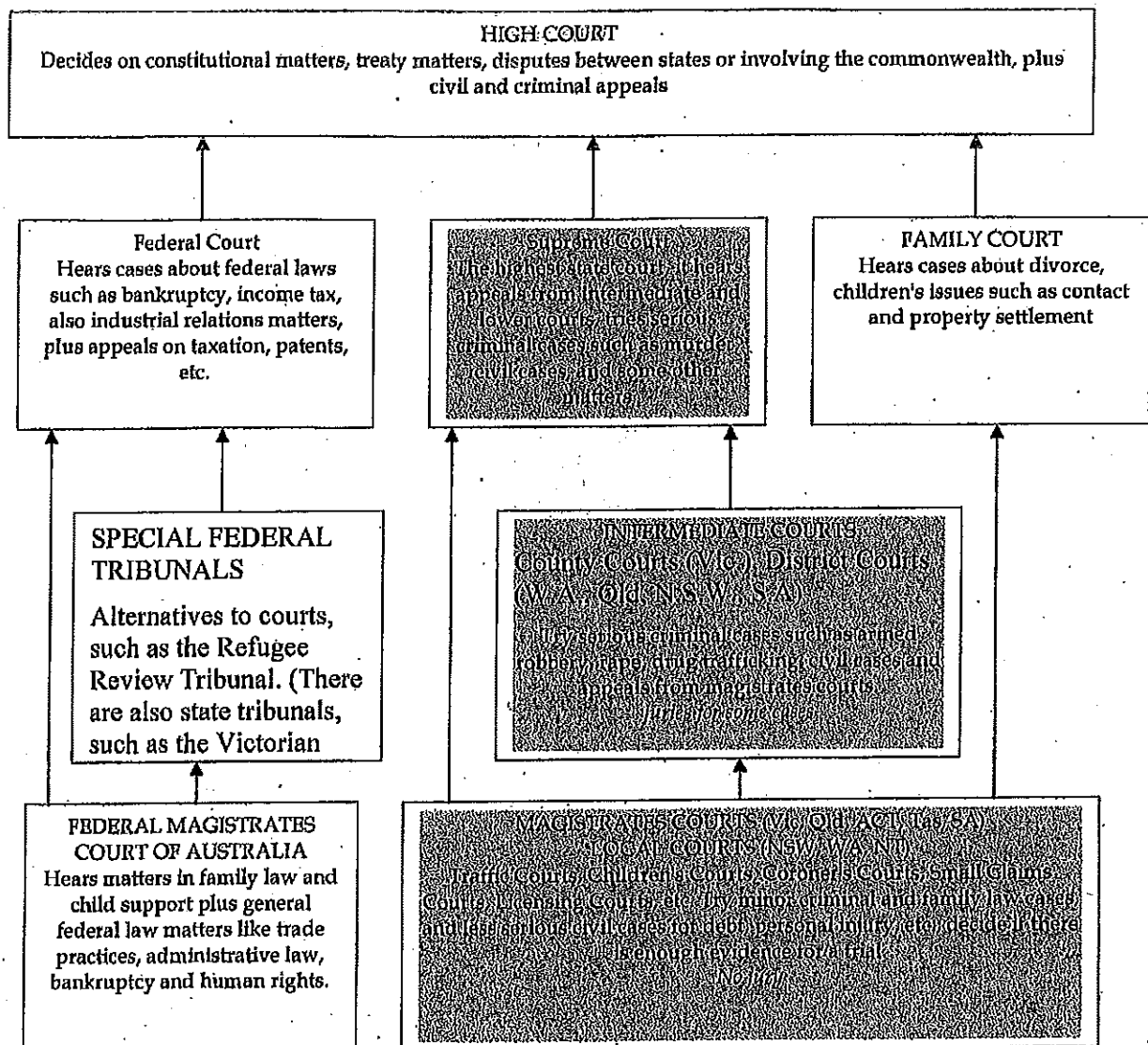


A word on costs

- Note: Section 116 of the *Child Protection Act 1999* provides that parties to a proceeding in the Children's Court must pay their own costs of the proceeding.
- In appeals, the appeal court is able to order costs, in full or part, against any party.



Australian Courts



Federal courts



State and Territory courts (minor federal matters may also be heard in these courts)

→ Appeals from one court to another: a person dissatisfied with a court finding can often appeal to a higher court in both civil and criminal cases

Note: there are no Intermediate courts in Tasmania, ACT or NT.

Definitions commonly used in Family Court/Federal Magistrates Court	
Best Interests of the Child	The child's best interests are considered by the court when making a particular parenting order. The child's best interests are determined by taking into account the primary and additional considerations (ss 60CA and 60CC(1) FLA)
Consent Order	An agreement between the parties to a proceeding. A consent order can cover a wide range of issues including; property issues, spousal maintenance issues and parenting matters. When it is approved by the court it becomes a court order
Equal Shared Parental Responsibility (ESPR)	ESPR means both parents can make major long-term decisions about the child, including medical, religious and cultural matters, their education, name and changes to their living arrangements (s 4(1) FLA). Day-to-day decisions regarding what the child eats or wears is not included. The court presumes that both parents have ESPR (s 61DA(1) FLA; note: this presumption does not apply if there has been child abuse or violence s 61DA(2) FLA). If ESPR is presumed, the court must consider whether it is practical and in the child's best interests for the child to spend equal time or substantial and significant time with each parent (s 65DAA FLA).
'Equal Time'	The child spends equal time with the parents, whether that be on a week about or month about basis etc (s 65DAA(1)).
Ex parte Hearing	A hearing where one party is not present and has not been given notice of the application before the court. This hearing is often reserved for urgent cases.
Family Consultant	A psychologist and/or social worker who specialises in child and family issues that may occur after separation and divorce. There are often required to provide the court with family reports.
Family Court of Australia (FCA)	If a matter is predicted to last more than 3 days (i.e. it is complex) it will be listed for hearing in the FCA
Family Dispute Resolution (FDR)	FDR is a process where those affected by separation are helped by a family dispute resolution practitioner to resolve their disputes (s 10F FLA). A court must not hear any application under Part VII of the FLA (children's matters) unless the parties have attended FDR (s 60I(7) FLA; note: FDR is not compulsory in cases where there are reasonable grounds to believe there has been abuse s 60I(9)(b) FLA). Three hours of free FDR will be provided to all new or reopened cases
Family Report	A written assessment of a family by a family consultant to assist the court in making a decision about a case. It may include information regarding the background of the dispute, the current relationship between the parents, and between the parents and the children and, the children's views.
Federal Magistrates Court of Australia (FMC) –	If a matter is predicted to last less than 3 days (i.e. it is not complex) it will be listed for hearing in the FMC.

FLA	Family Law Act 1975 (Cth)
Independent Children's Lawyer (ICL)	a lawyer appointed by the court to represent the child's interests in a case (similar function to a Separate Representative in the Children's Courts). They can obtain relevant information from teachers, doctors and counsellors, talk with the child and arrange for family or psychological reports (s 68L FLA).
'Lives With' Parental Responsibility	Where the child is to live (previously known as 'custody' or 'residence'). a parent's responsibility to make decisions about the care, welfare and development of the child (s 61B FLA). It involves making decisions about the child's education, religion, medical treatment, name and living arrangements.
Parenting Plan	A written agreement between the parties setting out parenting arrangements for children. It is neither approved by, nor filed with the court (s 63C FLA).
Parenting Order	A court order which sets out the particular responsibilities of parents and carers, after taking into account the best interests of the child. They include who the child lives with, who they spend time and communicate with, and any other issues relevant to the child's care such as schooling, religious affiliation and medical treatment (s 64B FLA).
Sole Parental Responsibility	if the presumption of ESPR is not applied (s 61DA(1) and (2) FLA), one parent is granted sole parental responsibility of the child to make decisions regarding long-term issues, including education, religion, health, name and changes to a child's living arrangements (s 4(1) FLA)
Spends Time With'	Who the child is to spend time with (previously known as 'access' or 'contact').
'Substantial and Significant Time'	To be 'substantial and significant time' the child must spend time with both parents that include days that do and days that do not fall on weekends and holidays, which allows both parents to be involved with the child's daily routine and significant events (s 65DAA(2) and (3) FLA)

Federal Magistrates Court
SCENARIO

Relevant Persons

Children:	Star Jasmine Patta Norman (Female)	(DOB: 17/01/01)
	Moon Ray Patta Norman (Male)	(DOB: 9/11/04)
Father:	Storm Norman	
Mother:	Peita Patta	

Background Information

The children were previously subject to Child Protection Orders granting custody to the Chief Executive for a period of 12 months. In May 2009, an application to extend the existing orders was mentioned in the Brisbane Children's Court and the matter was adjourned for further mentions on 3 September 2009 and 6 November 2009. The children are currently subject to Interim Child Protection Orders granting custody to the Chief Executive.

Prior to their removal from the parent's care, the subject children lived with her mother Mrs Peita Patta.

The Department first had contact with Ms Patta and Mr Storm in 2000. The parents commenced living together in 1998 and separated in 2006. Since this time, the Department has recorded 6 child protection notifications in relation to the subject children and 1 child concern report. The theme of the child protection concerns has been the ongoing neglect of the subject children by Ms Patta. Departmental records indicated that Star and Moon were initially exposed to domestic violence between their parents and placed at risk of physical harm.

The children were most recently removed from their mother's care in March 2008 initially subject to Temporary Assessment Orders and then Court Assessment Orders. Ultimately they became subject to Child Protection Orders because of concerns related to the risk of physical harm of the children by the mother Ms Patta. The concerns at the time the notification was received in March 2008 were that the Mother had entered into a domestically violent relationship and that she had started using drugs. The concerns stated that the Mother's drug use, together with her existing mental health condition had placed the children at risk of physical and emotional harm as the Mother was unable to care for them appropriately.

An assessment of the concerns was conducted and it was determined that the children had suffered harm while living with the Mother, as evidenced by bruising to Moon Ray and a burn on Star, which is alleged that she received while trying to cook dinner for herself and her brother. Both children made disclosures of witnessing domestic violence between their Mother and her new partner, as well as often needing to find food for themselves and having witnessed their Mother's drug use.

At the time of the children's removal from the mother's care, they were placed with departmentally approved foster carers. On 9 January 2009 the children were placed with their father Mr Norman and the placement is considered very stable.

Mr Norman has engaged with the department and has acknowledged the harm to the children by him and Ms Patta in the past and the children to live in a safe environment, free of drug use and domestic violence. The mother Mrs Patta continues to deny any harm to the children and risk of harm to the children.

During a significant part of the previous Child Protection Order, Mrs Patta failed to engage with the department and was sporadic in her contact with the children.

On 10 April 2009 a Family Group Meeting is conducted with both parents and it is determined that applications to extend the existing Child Protection Orders will be sought for a further period of one year and that the goal of case planning will be reunification of the children into the father's care subject to him achieving various outcomes identified in the case plan.

The children are now having 1 hour supervised contact with the mother Ms Patta each Saturday, supervised by her Mother.

On 25 August 2009, the Director General of the Department of Child Safety is served at the Court Services Unit as third respondent to an application by the father Mr Norman to the Federal Magistrates Court of Australia for orders that the subject children live with him and spend time with their mother Ms Patta each week.

It remains the Department's assessment that:

- the subject children remain children in need of protection at this time as they do not have a parent who is willing and able to protect them from harm. The Father has demonstrated his ability and willingness, however as the children were primarily in the residence of the mother, and the Mother has indicated that she would remove them from the Father should the department withdraw, it has been assessed that the Father is unable to meet the children's protective needs;
- an application to extend the existing Child Protection Orders granting custody to the Chief Executive is appropriate to achieve the children's protection at this time, as it has been assessed that –
 - there is a risk of physical harm to the children if the children were removed from their Father by the Mother, due to her ongoing drug use and mental health concerns;
 - there is a risk of emotional harm to the children if the children were not able to spend time with their mother and/or were at this time removed from the care of their Father as they have developed a positive attachment too him.

PROTOCOL

BETWEEN

THE FAMILY COURT OF AUSTRALIA

AND

THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

AND

**THE DEPARTMENT OF CHILD SAFETY
QUEENSLAND**

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1 INTRODUCTION

This protocol has been established to facilitate co-operation and sharing of information and to clarify procedures between the Department of Child Safety in Queensland ("the Department") and the Family Court of Australia ("the Family Court"), and the Federal Magistrates Court of Australia ("the Federal Magistrates Court") referred to as "the Court(s)". It is intended to be used by other courts of summary jurisdiction, when they are exercising jurisdiction under the *Family Law Act 1975 (Cth)* ("the *Family Law Act*") as amended, in order to ensure that the protective needs of children are met.

The *Family Law Act* uses the term "child" but it does not define the term by reference to age. The relevant age is 18 years. The *Family Law Act* deals with parental responsibility with respect to children under 18 years, provides that parenting orders cannot be made, or stop being in force, once a child turns 18 years, marries or enters into a de facto relationship.

Matters concerning the interaction between the Department and the Family Court and the Federal Magistrates Court are primarily governed by the applicable laws contained in both the *Family Law Act* and the *Child Protection Act (Qld) 1999*. This protocol is not intended to override these provisions but to assist in their practical implementation.

Whilst every effort shall be made to comply with the terms of this protocol, the complexity and often urgency of these matters is acknowledged. Similarly, in some cases the volume of information required to be considered may require longer time frames or different approaches.

1.1 Objectives of the protocol

The protocol between the Department, the Family Court and the Federal Magistrates Court is established:

To assist both the Department and the Courts to fulfil their primary roles and responsibilities in order to ensure that a child's welfare and best interests including their protective needs are recognised and met;

To promote cooperation, consistency and guidance in dealings between the Courts and the Department; and

To facilitate contact and the exchange of relevant information between the agencies.

2 THE DEPARTMENT OF CHILD SAFETY

The Department has statutory responsibility pursuant to the provisions of the *Child Protection Act 1999* in relation to protective services for all children in Queensland under the age of 18. Protective services are established to ensure that children and young people who are in need of protection have their protective needs met.

A child is a child in need of protection if they have suffered harm, are suffering harm or are at an unacceptable risk of suffering harm and do not have a parent who is willing and able to protect them from the harm.

In cases where a person may have committed a criminal offence against a child, officers of the Department will, in accordance with the Act, immediately give details of the alleged harm to the police commissioner.

The *Child Protection Act 1999* must be administered under the principle that the welfare and best interests of a child are paramount. Subject to this principle, this Act is also to be administered under the following principles:

every child has a right to protection from harm;

families have the primary responsibility for the upbringing, protection and development of their children;

the preferred way of ensuring a child's wellbeing is through support of the child's family;

any action taken by the Department, while in the best interests of the child, should maintain family relationships and be supportive of individual rights and ethnic, religious and cultural identity or values;

if a child does not have a parent who is able and willing to protect the child the State has a responsibility to protect the child, but in doing so, the State must not take action that is unwarranted in the circumstances;

if a child is able to form and express views about his or her care, the views must be given consideration, taking into account the child's age or ability to understand.

The Department is the mandated agency to accept information that a child may be a child in need of protection in Queensland. The Department may then record this information as a notification.

After receiving information, if the Department reasonably suspects that the child is a child in need of protection the Department must investigate the allegation and assess the child's need for protection or take other action they consider appropriate.

If the Department is satisfied that a child is a child in need of protection and there is an ongoing need for intervention, the notification may be recorded as substantiated and the Department may take steps to ensure that the child's protective needs are met. Depending on the assessed risk to the child, this may include working with the agreement of the child's family to assist them to

meet the child's protective needs or filing an application for a child protection order in the Children's Court.

Applications for, and for the extension of, child protection orders can only be made by the Department. With some limitations, applications to vary, revoke, or revoke a child protection order and make another in its place can be made by the Department, a child's parent or the child.

If a child protection order, other than a long-term guardianship order is made for the child, the chief executive of the Department must take steps that are reasonable and practicable to help the child's family to meet the child's protective needs.

If a child protection order has been made for a child that grants custody or guardianship of the child to the chief executive of the Department, the chief executive must provide reasonable opportunity for the child to have contact with their parents and other appropriate members of their family as often as is appropriate in the circumstances.

3 FAMILY LAW COURTS

3.1 Powers and jurisdiction.

The Family Court and the Federal Magistrates Court have jurisdiction under the *Family Law Act 1975* to make parenting orders for children in Australia under the age of 18 years.

The objective of the jurisdiction of the Courts is to ensure that children receive adequate and proper parenting to help them to achieve their full potential, and to ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare, and development of their children.

The Courts operate under the guiding principles set out in s 60B(2), that except where it is or would be contrary to a child's best interests:

- children have the right to know and be cared for by both of their parents;

- children have a right to spend time on a regular basis with and communicate on a regular basis with, both of their parents and other people significant to their care, welfare and development;

- parents jointly share duties and responsibilities concerning the care, welfare and development of their children;

- parents should agree about the future parenting of their children; and

- children have a right to enjoy their culture.

The Courts in exercising the jurisdiction in making a parenting order must regard the child's best interests as the paramount consideration.

The primary considerations in how a Court determines what is in a child's best interests under s 60CC(2) are:

- the benefit to the child of having a meaningful relationship with both of the child's parents; and

- the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

The Court must also consider the matters set out in s 60CC(3) by way of additional considerations.

Applications to the Court in respect of a child may be made in the following ways:

- by one or other of the child's parents;

- by or on behalf of the child;

- by a person having an appropriate interest in the welfare of the child; or

by an Independent Children's Lawyer appointed by the Family Court or Federal Magistrates Court.

3.2 Limitations to the jurisdiction of the Courts

The Courts' jurisdiction is limited by s 69ZK of the *Family Law Act 1975*. This provision provides that a court exercising jurisdiction must not make an order in relation to a child who is under the care (however described) of a person under a child welfare law, unless the order is expressed to come into effect when the child ceases to be under that care, or with the written consent of the chief executive.

Further, where it appears to the Family Court or Federal Magistrates Court that another court proposes to make an order by which a child is placed in the care of a person under a child welfare law, the Court may adjourn any proceedings before it in relation to that child.

4 THE EXCHANGE OF INFORMATION

Information may only be exchanged between the Family Court or the Federal Magistrates Court and the Department where law permits the disclosure of the information. This protocol itself does not authorise the disclosure of information, but rather seeks to establish agreed procedures to ensure the exchange of information in appropriate cases where that exchange is otherwise lawful.

When considering the exchange of information the following matters should be taken into consideration:

- the welfare and best interests of the child are the paramount consideration;

- any statutory requirements of privacy and security of personal information;

- the welfare and protection of children at risk is generally best secured by a free flow of information between those concerned with the child and the family;

- courts are in a better position to make appropriate orders if they are fully aware of proceedings in other jurisdictions;

- the Department is in a better position to conduct investigations and assessments and, if necessary, provide appropriate support to a family if they are fully aware of proceedings in other jurisdictions;

information exchange should be limited to only that which:

- is relevant to the respective roles of the Family Court or Federal Magistrates Court and the Department;

- is relevant to the specific purpose for which it is disclosed; and

- the best interests of the child or children involved in a particular matter.

Generally, the exchange of information between the Family Court or the Federal Magistrates Court and the Department will occur as follows:

Information to the Department:

- when information is forwarded from the relevant Court to the Department following a party making an allegation of abuse;

- when a member of the Family Court or Federal Magistrates Court personnel reasonably suspects a child has been or is at risk of being abused;

- following the Court making an order under s 91B requesting the Department to intervene in the proceedings;

if the Department requests to search, inspect and make copies of documents from the Court file under Rule 24.13 of the *Family Law Rules 2004* or Rule 2.08 of the *Federal Magistrates Court Rules 2001*;

where the Department makes an application in relation to proceedings that are or have been before the Family Court or Federal Magistrates Court for the publication of documents or information to them;

where the Department is or has become a party to proceedings before the Family Court or Federal Magistrates Court, through the process of disclosure between parties and the provision of admissible evidence by the Department as part of their case.

Information to the Courts:

where a subpoena has been issued to the Department, either at the request of a party to the proceedings or the Court itself, for the production of documents or to attend proceedings;

where a request is made pursuant to s 91B for the Department to intervene;

where an order is made pursuant to s 69ZW for evidence relating to child abuse or family violence;

and in respect of the Family Court, where a Magellan Report is provided.

5 THE DISCLOSURE OF INFORMATION TO THE DEPARTMENT OF CHILD SAFETY

5.1 Laws governing the disclosure of information by the Courts

Section 121 of the *Family Law Act 1975* prohibits the publication of Family Court proceedings. Information cannot be published which identifies:

- a party to the proceedings;
- a person who is related to or associated with a party to the proceedings;
or
- a witness in the proceedings.

Section 121(9) lists a number of circumstances to which this provision does not apply. These include:

- communication to persons concerned in any court for use in connection with those proceedings; and
- the publishing of a notice or report in pursuance of the direction of a court.

Rule 24.13 of the *Family Law Rules 2004* and Rule 2.08 of the *Federal Magistrates Court Rules 2001* provide that the following persons may search the Court record relating to a case, inspect documents or copy a document forming part of the record:

- the Attorney General;
- a party;
- a lawyer for a party;
- an Independent Children's Lawyer in a case; or
- with the permission of the relevant Court, a person with a proper interest in the case or in information obtainable from the Court record in a case.

During the conduct of proceedings, the Family Court or Federal Magistrates Court may provide information about alleged child abuse or family violence, under a different section of the *Family Law Act 1975*, according to the source of the information.

Section 60K of the *Family Law Act 1975* requires the Court to take prompt action in relation to allegations of child abuse or family violence. The section applies if an application is made to a court for a Part VII parenting order in relation to a child and a document is filed on or after the commencement of this section, in relation to proceedings for the order, and the document alleges, as a consideration that is relevant to whether the court should grant or refuse the application, that:

there has been abuse of the child by one of the parties to the proceedings; or

there would be a risk of abuse of the child if there were to be a delay in applying for the order; or

there has been family violence by one of the parties to the proceedings; or

there is a risk of family violence by one of the parties to the proceedings.

5.2 Allegations of harm by a party to the proceedings

Under s 67Z, where a party to proceedings before the Court alleges that a child to whom the proceedings relate has been abused or is at risk of being abused:

that person must file a notice in a prescribed form in the Court; and

the Registry Manager or their nominee must, as soon as practicable, notify the Department.

The person making the allegation must file a Form 4 Notice of Child Abuse or Family Violence. When the Form 4 is filed, the next return date for the court proceedings will be written on the cover sheet of the Form 4 by the Family Law Courts Registry.

The Family Law Courts Registry Manager will then forward the Form 4 and cover sheet to the Manager, Data Management Services of the Department.

5.3 Court personnel in the course of carrying out their duties

Under s 67ZA(2), where a specified staff member of the Family Court or Federal Magistrates Court personnel in the course of carrying out his or her duties has reasonable grounds for suspecting that a child has been abused or is at risk of being abused, that member must, as soon as practicable:

notify the Department of his or her suspicions; and

the basis for the suspicion.

Under s 67ZA(3), a specified staff member of the Family Court or Federal Magistrates Court personnel may notify the Department of his or her suspicion and the basis for the suspicion, where in the course of carrying out his or her duties he or she has reasonable grounds for suspecting that a child has been:

ill treated or is at risk of being ill treated; or

exposed or subjected or is at risk of being exposed or subjected to behaviour which psychologically harms the child.

This information may be provided by the specified staff member of the Family Court or Federal Magistrates Court personnel to a departmental officer at the

Child Safety Service Centre closest to where the child resides and this should be confirmed in writing as soon as practicable.

5.4 Procedure for the provision of information from the Court to the Department under sections 67Z and 67ZA

Wherever possible the Court will set a next return date for the proceedings in relation to which information has been provided to the Department, which allows the Department at least 42 days subsequent to receipt of the information to respond to the provision of the information.

In order to assist the Department to forward the information to the correct location and to assist with deciding how to respond to the information, the following documents will be sent by the Registry Manager, Family Law Courts to the Manager, Data Management Services of the Department:

- a copy of either the Form 4 or the information provided by the court personnel;

- a letter stating:

- the full name, including any alias known to the Court, and date of birth of the child;

- the name of the child's parents;

- the current residential address of the child and the child's parents;

- the details of any orders that have been made by the Court, including the next return date for the matter before the Court.

Copies of these documents will be kept on behalf of the Registry Manager, Family Law Courts in a central register.



FCoA Notification
under section 67ZA.d

The Manager, Data Management Services for the Department will forward the documents received from the Court to the Manager of the Child Safety Service Centre closest to where the child resides.

The Department will deal with the information received from the Court under the provisions of the *Child Protection Act 1999*. The Department will determine its response in accordance with departmental policy and thresholds. The Department may record the information as a notification and if it reasonably suspects that the child is a child in need of protection the Department may:

- investigate the allegations and assess the child's need for protection; or

- take other action the Department considers appropriate.

In the course of its investigations and assessments the Department may generally obtain further information from:

the Family Court or Federal Magistrates Court (whichever Court made the relevant orders);

the child;

the child's parents;

a member of the child's family; or

other relevant persons.

The Department may obtain any further information from the Courts in accordance with Rule 24.13 of the *Family Law Rules 2004* or Rule 2.08 of the *Federal Magistrates Court Rules 2001*, by seeking permission to search, inspect and take copies of documents on the Court file.

The information provided to the Department may not meet the threshold of a notification, however, the information provided by the Court may:

form part of the information that leads to a future investigation or assessment of the matter; or

already be known to the department, and the subject of a current or previous investigation and assessment.

In order to assist the Court to consider whether an order under s91B is necessary, and subject to the provisions of the *Child Protection Act 1999*, within 42 days of receiving the information from the Court the Manager, Child Safety Service Centre may notify the Court in writing:

whether there has been any previous departmental involvement with the family;

whether the Department has information in relation to the child that might assist the Court in their deliberations;

whether there are any current child protection orders for the child and, if so, the type of order and when it expires;

whether or not a decision has been made to investigate the matter at this stage;

whether or not the Department has assessed the child to be a child in need of protection and whether or not ongoing intervention is required to assist the family to meet the child's protective needs; and

if so, what intervention is proposed at this stage.



CSSC response letter

5.5 Magellan

The Magellan Project is a case management system for cases involving allegations of sexual abuse or serious physical abuse of children, which require particular judicial management and determination within prescribed time standards.

The trigger for a Magellan declaration is the filing of a Form 4 which is promptly referred for consideration by the Magellan Registrar in chambers and, where appropriate, an order is then made. Such order would include a s 91B order requesting the intervention of the Department and may include a s 68L order for the appointment of an Independent Children's Lawyer.

A new Magellan case must be listed as soon as practicable for a first return date before a Magellan Judge, who will consider what further procedural or interim orders should be made in order to deal with the issues raised by the allegation as expeditiously as possible.

All Magellan matters are referred to the Department's Court Services Unit in the first instance. Court Services will then undertake to liaise with the relevant Child Safety Service Centre regarding an appropriate response.

Where the Department has decided to intervene and become a party to the proceedings, a departmental officer will ordinarily attend and be legally represented and ready to make submissions in relation to the future course of the application.

Where the Department has provided information, and has decided to attend court, but does not propose intervening and becoming a party to the proceedings, the Magellan Judge will permit the designated officer of the Department to address the Family Court as a friend of the Court.

If at any stage during the course of the Magellan case proceedings, an officer of the Department brings an application under the *Child Protection Act 1999*, the Department will notify the Independent Children's Lawyer and the Magellan Registrar that such an application has been brought and provide details of the application within 7 days of the application being filed.

If the Magellan Registrar is notified that the Department has brought an application under the *Child Protection Act 1999*, the Magellan Registrar will notify the Magellan Judge who, may set the matter down for a procedural hearing as soon as practicable to discuss the effect of that application upon the application pending before the Family Court.

The Department will act in accordance with the applicable State child welfare laws in determining whether to bring an application under those laws. However in doing so, the Department acknowledges that it will give full faith and credit to the processes before the Family Court as a process designed to bring about an outcome consistent with the best interests of the children.



Magellan Notification

5.6 The disclosure of information to the Department upon the request of the Department

In cases where the Department becomes aware of past or current proceedings in the Family Court or the Federal Magistrates Court in relation to a child, to assist the Department to carry out its functions under the *Child Protection Act 1999*, it may request pursuant to Rule 24.13 of the *Family Law Rules 2004* or Rule 2.08 of the *Federal Magistrates Court Rules 2001* to search, inspect and make copies of documents from the relevant Court file in the matter by writing to the Duty Registrar. The letter should show why it is in the public interest for the Department to search, inspect and copy documents from the record and should outline:

that the Department is seeking the permission of the Court under Rule 24.13 of the *Family Law Rules 2004* or Rule 2.08 of the *Federal Magistrates Court Rules 2001* to search, inspect and copy a document forming part of the record;

the reason the information is required, including why it is in the public interest for the Department to be granted this leave;

what the Department wishes to use the information for, including specific leave for this purpose; and as far as possible:

the Court file number for the matter;

the documents, including orders, the Department wishes to search, inspect or copy;

the full name of at least one of the parties in the matter and their date of birth; and

the name of the child and their date of birth.

Where the Judicial Officer or Registrar considering the request forms the view that further information is required from the Department in relation to the request, the Judicial Officer (through their associate) or Registrar will contact the Department representative requesting the leave to seek that further information.

5.7 Information from the Independent Children's Lawyer

If an Independent Children's Lawyer has been appointed for the child in the case, and an order has also been made under s 91B of the *Family Law Act 1975*, and a subpoena has been issued for the production of documents to the Family Court or Federal Magistrates Court, subject to the provisions of the *Child Protection Act 1999*, the Department may conduct further discussions with the Independent Children's Lawyer. The Independent Children's Lawyer may also be invited to attend departmental Family Group Meetings, case discussions, SCAN AM Team meetings or other discussions about the child and their family.

5.8 Confidentiality of information received by the Department

In relation to any information obtained from the Court, the Department acknowledges the provisions of s 121 of the *Family Law Act 1975* which restricts the publication of any information which may form part of the Court record to the public or a section of the public.

6 THE DISCLOSURE OF INFORMATION TO THE COURT

6.1 Laws governing the disclosure of information by the Department

The law in relation to the disclosure of information by the Department of Child Safety is found in the *Child Protection Act 1999*.

The identity of a person who notifies the Department or the police that they suspect that a child has been, is being, or is likely to be harmed cannot be disclosed other than under the provisions of s 186 of the *Child Protection Act 1999*. For example, unless the disclosure is made by way of evidence in a legal proceedings where the court or tribunal has granted leave for the disclosure. In this circumstance, leave must not be granted unless the court or tribunal is satisfied that:

the evidence is of critical importance in the proceedings; and

there is a compelling reason in the public interest for the disclosure; or

the notifier agrees to the evidence being given in the proceeding.

Section 187 of the *Child Protection Act 1999* prohibits the use or disclosure of information, or giving access to a document, about another person's affairs, acquired whilst performing functions under that Act. The section does allow some restricted use or disclosure of the information or document including for a purpose directly related to the child's protection or welfare or is otherwise permitted by law.

Section 188 of the *Child Protection Act 1999* prohibits the receiver of information or a document from further using or disclosing information in, or giving of access to the document unless the use, disclosure or giving of access is directly related to the child's protection or welfare or is otherwise permitted by law. To give practical expression to this provision the Department will generally request that copying of documents be limited to the Independent Children's Lawyer.

Other than with the written approval of the chief executive of the Department of Child Safety, under s 189 of the *Child Protection Act 1999*, a person must not publish information that identifies or is likely to identify a child as a child:

who is or has been the subject of an investigation by the Department;

in the Department's custody or guardianship or for whom a child protection order is in force;

who has been harmed by a parent or step parent or another member of the child's family; or

who is at risk of being harmed by a parent, step parent or member of their family.

This provision may be relevant to the consideration by the Court of a publication order under s 121 of the *Family Law Act 1975*.

If a party to a proceedings in a court or tribunal requires the Department to produce records in relation to a child or a child's care, or requires another government entity to produce a document they have received performing functions under or in relation to the *Child Protection Act 1999*, s 190 of that Act sets out a number of requirements that must be satisfied.

Under s 191 of the *Child Protection Act 1999*, the Department may refuse to disclose information to a court or tribunal in a proceeding if:

- its disclosure may endanger a person's safety or psychological health;

- it may identify the source of the information;

- it is a record of therapeutic counselling with a child or a member of a child's family;

- it is personal information and the Department believes it is not materially relevant to the proceeding.

However, the court or tribunal may order the disclosure of the information if it is satisfied that it is materially relevant to the proceedings and its disclosure is in the public interest.

6.2 Section 69ZW orders

The Court may make an order under s 69ZW of the *Family Law Act* requiring the prescribed agency to provide the court with the documents or information specified in the order. The function of this provision is limited to documents or information in the possession or control of the agency and is not intended to duplicate other processes that require the creation of a document.

Under s 69ZW(2), the documents or information specified in the order must be about one or more of the following:

- any notifications of suspected abuse of a child or of suspected family violence affecting the child to whom the proceedings relate;

- any assessments of investigations into a notification of that kind or the findings or outcomes of those investigations;

- any reports commissioned in the course of investigating a notification.

Section 69ZW(6) provides that the court must not disclose the identity of a notifier unless the notifier consents to the disclosure, or the failure to disclose the information would prejudice the proper administration of justice. The Department must be notified about the intended disclosure and given an opportunity to respond.

6.3 Documents produced pursuant to a s 69ZW Court order

When the child related proceedings with which the court is concerned when it made an order under s 69ZW have been concluded:

Those documents which were not admitted into evidence will be destroyed after the conclusion of those proceedings unless the child welfare agency requested the return of those documents at the time the documents were produced in answer to the court order;

Those documents which were admitted into evidence shall be retained until the expiry of any applicable appeal period, or where an appeal is instituted, until the appeal is finalised and the expiry of any further appeal or application for special leave to appeal period has elapsed. After that time, the documents will be destroyed unless at the time documents were produced the child welfare agency requested their return at the conclusion of the proceedings.

The inclusion of the above provision in this protocol shall be taken as permission and sufficient authority for the Courts, their employees or agents to destroy the documents produced in answer to the s 69ZW court order in cases where no request was made for the return of the documents as set out in the above paragraph.

6.4 When a subpoena is issued to the Department

A party to proceedings before the Court, or an Independent Children's Lawyer in a particular case, may request the Court to issue a subpoena to the Department requesting the production of particular documents or the attendance of a representative at the Court.

Under s 190(2) of the *Child Protection Act 1999*, if a subpoena is issued to the Department requesting the production of a document, the request must describe the document to be produced:

by reference to the person or persons to whom it relates;

by general reference to the circumstances to which it relates; and

by stating the period to which the requirement relates.

The circumstances to which the document relates must be relevant to proceedings before the Court.

If the document is provided by the Department, under s 190(4) of the *Child Protection Act 1999* a person must not directly or indirectly disclose or make use of the information obtained other than for a purpose connected with the proceeding.

If the Department provides documents or information to the Court, following the issuing of a subpoena, the department will remove any reference to a notifier's identity including any information likely to lead to the identification of a notifier prior to its provision.

The release of a document or information to the Court following the issuing of a subpoena to the Department will also be subject to the provisions of the *Child Protection Act 1999* including those discussed above.

If a party to the Court proceedings or their legal representative wishes to inspect or take copies of material provided by the Department, specific leave must be requested. Under s 190(5) of the *Child Protection Act 1999* and despite any Act to the contrary, if a document in the Department's records under this Act in relation to a child or a child's carer is produced in a proceeding before a court, the document must not be made available for inspection to any person other than a party to the proceeding or a lawyer representing a party to the proceeding.

The Registry Manager of the Family Law Courts will ensure that all file inspections of subpoenaed Department material are carried out under supervision and that photocopying of case file material does not occur unless ordered by the Court.

6.5 When the Department becomes a party to Family Law proceedings

The Department may become a party to proceedings before the Court when:

- the child is a child in the care of the Department;

- the Department is entitled to intervene under s 92A of the *Family Law Act 1975*;

- an order has been made under s 91B requesting the Department to intervene.

If the Department becomes a party to proceedings before the Family Court or Federal Magistrates Court, subject to the provisions of the *Child Protection Act 1999*, the Department will comply with the Rules of the relevant Court.

6.6 When the Department may elect to appear to assist the Court

Where the Department has provided information and has decided to attend court, but does not propose intervening and becoming a party to the proceedings, the Judicial Officer may permit the designated officer of the Department to address the Court.

6.7 Confidentiality of information received by the Court

In relation to any information obtained from the Department, the Family Court and Federal Magistrates Court acknowledge the provisions of the *Child Protection Act 1999* which restrict the disclosure and use of these documents and information.

When documents are provided to the Family Court or Federal Magistrates Court by the Department under subpoena the Courts acknowledge the provisions of s 190 of the *Child Protection Act 1999*.

When documents and information are provided to either the Family Court or Federal Magistrates Court by the Department they are then subject to the provisions of s 121 of the *Family Law Act 1975*.

7 THE INVOLVEMENT OF THE DEPARTMENT IN FAMILY LAW PROCEEDINGS

7.1 Where the proceedings relate to a child who is under the Department's care

If proceedings are initiated in the Family Court or Federal Magistrates Court in relation to a child who is the subject of a State child welfare order, the chief executive of the Department should be named as a party to the proceedings and served with a copy of the documents filed. The chief executive will be named as a Respondent to the proceedings.

These documents should be served on the Department via the Manager, Court Services Unit.

Depending on the circumstances of the case, the Department may at any stage throughout the proceedings request leave to withdraw from the proceedings.

7.2 Entitlement to intervene

Under s 92A of the *Family Law Act 1975*, if, in Family Court or Federal Magistrates Court proceedings it has been alleged that the child has been abused or is at risk of being abused, each of the following is entitled to intervene in the proceedings:

- a guardian of the child;

- a parent of the child with whom the child lives;

- a person who spends time with or communicates with the child;

- a person who has parental responsibility or shares parental responsibility for a child;

- the Department of Child Safety;

- a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

The Department may become aware that it has been alleged, during Court proceedings, that the child has been abused or is at risk of being abused, by the Family Court or Federal Magistrates Court having provided information to the Department as outlined in relation to sections 67Z and 67ZA of the *Family Law Act 1975*. The Department may then decide to exercise their entitlement to intervene in the proceedings.

If the Department wishes to exercise their entitlement to intervene in the proceedings under s 92A, an officer of the Crown (on behalf of the chief executive) will notify the Registry Manager, Family Law Courts in writing, as far as possible, of:

the name and date of birth of the child;

the name of the child's parents and the other parties to the Court proceedings;

the Court file number;

the next return date;

the intention of the Department to intervene in the proceedings.

7.3 Orders requesting the Department to intervene

In any proceedings under the *Family Law Act 1975* that affect, or may affect, the welfare of a child, the Court may request the intervention of the Department. This would be a request to the chief executive of the Department made by an order under s 91B of the *Family Law Act 1975*. If such an order is made, the Department may intervene, and if so, it is considered to be a party to the proceedings and is therefore bound by the Rules of the relevant Court.

This provision enables the Court to:

bring a particular case to the prompt attention of the Department;

request the Department's consideration and assistance of the matters before the Court; and

request the Department to actively take part in the proceedings as a party to them.

The Court will consider making an order under s 91B in circumstances where:

allegations of harm or risk of harm have been made by one of the parties in the proceedings; or

a specified staff member of the Family Court or Federal Magistrates Court personnel provides information to the Department under s 67ZA; or

there is some evidence of the prior involvement of the Department with the child and the child's family; or

an Independent Children's Lawyer has been appointed for the child.

Where the Court requests the chief executive of the Department to intervene under s 91B, the relevant Court will, as soon as practicable after making the order:

send a sealed copy of the order to the parties;

notify the Department in writing to the Manager, Court Services Unit.

The notification from the Court will, as far as possible:

state the child's name (including any known alias) and date of birth;

state the parent's names;

state the current residential addresses of the child and the child's parents;

indicate that an order under s 91B has been made in the proceedings;

briefly outline the basis for the making of an order under s 91B;

to enable the Department to respond to the request to intervene appropriately, invite the chief executive of the Department to search and take copies of the relevant documents on the Court file, including affidavit material;

indicate whether an order appointing an Independent Children's Lawyer has been made.

The Department may exercise the Court's invitation to search and take copies of the relevant documents on the Court file and their request to intervene in the proceedings at any stage during the proceedings. The Manager, Court Services Unit or an officer of the Crown on behalf of the chief executive will contact the Registry Manager, Family Law Courts if this is the case.

Upon receiving a copy of the letter from the Court outlining the making of an order in accordance with s 91B, the Manager, Court Services Unit will:

forward a copy of the pro-forma letter to the Manager of the relevant Child Safety Service Centre;

if necessary, discuss the making of the order with the Manager of the Child Safety Service Centre;

if necessary, may contact the Registry Manager, Family Law Courts to arrange to search and take copies of the relevant documents on the Court file; and

forward a letter to the Independent Children's Lawyer advising them of the relevant Child Safety Service Centre.

Within 42 days of receiving the letter from the Court outlining the making of an order under s 91B, the Manager, Court Services Unit will notify the relevant Court in writing:

whether or not the Department intends to intervene in the proceedings at that stage; and

in order to assist the Court to assess whether a subpoena should be issued to the Department:

whether there has been any previous Departmental involvement with the child and the child's family;

whether there are any current child protection orders for the child and if so, the type of order and when it ceases;

any other relevant information that the Department may be able to provide at this stage.



CSSC response s 91B
letter

7.4 Issues for the Department when deciding whether to intervene

If the Department decides to intervene in the proceedings they are taken to be a party to the proceedings in the Court with all the rights, duties and liabilities of a party.

Costs and other responsibilities may be incurred by those who intervene and become a party to Family Court or Federal Magistrates Court proceedings. Officers of the Department must consult with the Manager, Court Services Unit whenever consideration is given to this option.



Key indicators for
intervention.doc



Intervention_diagram.ppt

7.5 Issues for the Family Court or Federal Magistrates Court when the Department decides to intervene in proceedings

If the Department advises the Court that it intends to intervene in the Court proceedings or file an application for a child protection order in the Children's Court, the Registry Manager of the Family Law Courts will, for the purposes of setting a date for a procedural hearing, forward the Department's response to:

if applicable, the Associate of the Judge Manager; or

the Case Manager and where appropriate, in conjunction with a Registrar; or

the Associate to the presiding Federal Magistrate.

A Judicial Officer or Registrar may in the Family Court order all parties and invite the Department to attend a case management conference. In the case of the Federal Magistrates Court, order all parties to attend a Directions Hearing to further determine the conduct of the proceedings before the Court.

8 THE RELATIONSHIP BETWEEN THE INDEPENDENT CHILDREN'S LAWYER AND THE DEPARTMENT OF CHILD SAFETY

8.1 Notification to the Department of who the Independent Children's Lawyer is

Where an order for an Independent Children's Lawyer is made in proceedings in either the Family Court or Federal Magistrates Court, Legal Aid Queensland is then responsible for the approval of legal aid funding and the appointment of a legal representative to perform this role. Upon the allocation of the matter by Legal Aid Queensland to a solicitor to act as the Independent Children's Lawyer, the Independent Children's Lawyer will then file and serve a Notice of Address for Service with the relevant Court.

Where the Court is aware that the Department has had some involvement with the child and their family, an order under s 91B will usually be made at the same time as an order appointing an Independent Children's Lawyer.

If an order under s 91B has also been made the Independent Children's Lawyer may forward a copy of the Notice of Address for Service they have filed in the Court to the Manager, Court Services Unit of the Department in order to inform the Department of their appointment.

The Manager, Court Services Unit of the Department will then forward this information to the Manager of the Child Safety Service Centre closest to where the child resides.

8.2 Information exchange between the Department and the Independent Children's Lawyer

If an Independent Children's Lawyer has been appointed in proceedings before the Court, and an order **has not** been made under s 91B of the *Family Law Act 1975*, and the Independent Children's Lawyer becomes aware of any Departmental involvement with the child and the child's family, the Independent Children's Lawyer may then make application to the Court for an order under s 91B.

In order to assist the Independent Children's Lawyer to determine whether such an application is necessary, the Independent Children's Lawyer may request information from the Department. Such a request may be made in writing and should then be accompanied by a copy of the Notice of Address for Service that has been filed in the relevant Court by the Independent Children's Lawyer. Subject to the provisions of the *Child Protection Act 1999*, the Manager of the Child Safety Service Centre may advise the Independent Children's Lawyer whether the Department has had any involvement with the child and their family.

If an order under s 91B has been made, the Independent Children's Lawyer will check the Court file to determine if an order under s 69ZW of the *Family Law Act* has been made or if a subpoena has already issued to the Department. If

the Department has already responded to a request for information in accordance with the provisions of any other part to this protocol and/or in response to a subpoena already issued or an order under s 69ZW of the *Family Law Act*, then the Independent Children's Lawyer will inspect the Court file to determine if any further requests for information are necessary and will monitor this until they are discharged from the proceedings.

Where information has already been provided by the Department prior to the appointment of the Independent Children's Lawyer, steps will be taken by the Court to enable the Independent Children's Lawyer to inspect and take copies of all documents or information provided by the Department. The Independent Children's Lawyer will take steps to avoid multiple requests for information or documentation from the Department.

In recognition of the special role of the Independent Children's Lawyer, prior to complying with the subpoena and in addition to it, subject to the provisions of the *Child Protection Act 1999*, the Department will photocopy the relevant parts of the file and forward these to the Independent Children's Lawyer. The Court Services Unit of the Department will facilitate this process. This may include documents relating to:

- information provided to the Department about the child and the child's family;

- the details and outcomes of the Department's assessments of this information;

- past and current case plans for the child; and

- any other relevant information.

Alternatively, in some matters, the Department may prepare a report for the Independent Children's Lawyer to be annexed to an Affidavit by the author of the report. The Department may decide this is appropriate in circumstances including:

- when the Department has had significant involvement with the family and considers the preparation of a report in the child's best interests; or

- when the Department considers the most appropriate way to present the information to the relevant Court is by way of a written report, for example, where there are a number of departmental files for the child but a small amount of relevant information.

Officers of the Department should consult with the Court Services Unit regarding the appropriateness of preparing a report, and seek assistance and guidance in the preparation of such a document.

Other parties to the proceedings before the Court must request leave to search, inspect and take copies of documents from the subpoenaed material from the Department's file.

Following the subpoena process, further discussions may be held between the Department and the Independent Children's Lawyer. It is acknowledged that although in different contexts, both the Department and the Independent

Children's Lawyer must act in the best interests of the child in order to meet the child's protective needs. The flow of information, within the provisions of the relevant legislation, between the Department and the Independent Children's Lawyer will assist this common goal to be met.

The Department will take reasonable steps to inform the Independent Children's Lawyer of all SCAN AM Team meetings held in relation to the child and may invite the Independent Children's Lawyer to attend. The Independent Children's Lawyer may also be invited to attend a Family Group Meeting or case discussion about the child and the child's family.

8.3 Confidentiality of information received by the Independent Children's Lawyer

If the Independent Children's Lawyer receives information from the Department in relation to the child, the Independent Children's Lawyer must not directly or indirectly disclose or make use of the information other than for a purpose connected with the proceedings before the Court. This may include providing this information to a person who the Independent Children's Lawyer has requested to prepare a report for the Court about the child and the child's family or a Family Consultant preparing such a report as ordered by the Court.

8.4 The appointment of legal representatives to perform the roles of an Independent Children's Lawyer in the Family Court or Federal Magistrates Court and a Separate Representative in the Children's Court

In some circumstances there may be simultaneous or subsequent proceedings in relation to a child in both the Family Court or Federal Magistrates Court and the Children's Court (in relation to the child's protection). In those circumstances there may be an Independent Children's Lawyer appointed for the child in the Family Court or Federal Magistrates Court and a Separate Representative appointed for the child in the proceedings before the Children's Court.

In these circumstances, if either the Department or the Court considers it appropriate for the same legal representative to be appointed to perform both roles, this information will be forwarded to Legal Aid Queensland. It is the responsibility of Legal Aid Queensland, at their discretion and subject to funding considerations, to appoint legal representatives to perform the roles of an Independent Children's Lawyer and a Separate Representative. This information may assist Legal Aid Queensland to appoint the most appropriate legal representative to perform either of these roles.

Where appropriate the Independent Child Lawyer may also be invited by the Department to attend the Children's Court as a *Friend of the Court* at their discretion. This may occur in situations where the Independent Child Lawyer has a long history of involvement with the family and where the Children's Court may be considering the appointment of a Separate Representative. It is acknowledged that the attendance of the Independent Children's Lawyer in these circumstances may be subject to funding considerations by Legal Aid Queensland.

Where appropriate the Department may also request that the Independent Children's Lawyer seek leave from the relevant Court to release a copy of their assessment report to the Department. This may assist the Department with informing its own decision making in relation to a family. Similarly it may assist in the provision of evidence as part of any subsequent Childrens Court proceedings, if appropriate.

Where appropriate, the Independent Children's Lawyer may request the Department to seek leave from the Childrens Court to release a copy of the Department's assessment reports, or supporting application and affidavit material, to the Independent Children's Lawyer, who may seek to rely upon that material in the Family Law proceedings. This may assist the relevant Court in forming its own decision.

Signed on:

Date

Director-General
Department of Child Safety
Queensland

Chief Justice Diana Bryant
Family Court of Australia

Chief Federal Magistrate John Pascoe
Federal Magistrates Court of Australia

MAGELLAN / 91B Orders

Magellan Case Management Model

Historically, the Magellan Case Management Model came about as a result of research undertaken by Monash University (VIC) in family law matters involving allegations of child abuse and neglect. The research indicated that cases involving allegations of child abuse and family violence had become part of the core business of the Family Court, with a significant proportion of Family Court resources being expended on these intractable and complex cases.

The Magellan Case Management Model introduced a differentiated case management approach in the Family Court for children's matters where allegations of sexual abuse or serious physical abuse of child/ren arise in relation to child/ren who are the subject of family proceedings. It aims to expedite these matters to trial within six months. Normally this can take 18 months to two years to resolve.

Principles underlying the program include:

- an inter-organisational approach;
- a child centred focus;
- a priority on early intervention;
- the use of a Judge-led, tightly managed and time limited approach;
- the use of court-ordered expert investigations and assessments from the State child protection service and court counsellors;
- the use of a court-ordered legal representative for every child funded by legal aid; and
- the use of a multidisciplinary team.

In December 2008, the Director-General gave a commitment to the Department participating fully in the Magellan Case Management Model. The response will include, amongst other things, compiling Magellan reports for the Family Court, and liaising with key stakeholders such as Legal Aid Queensland, Independent Child Lawyers (ICLs), judicial officers, registry staff and Family Consultants from the Family Court of Australia. Court Services will coordinate the response to the Family Court. The content of the Magellan report is intended to include historical/current information in respect of the Department's involvement with a family, as well as any risk assessment and case plans (where applicable).

Project Magellan – procedures & processes

Court Services will undertake to inform (via email) the relevant CSSC once a matter is designated Magellan and there is a request for a Magellan report. The correspondence will in the first instance be forwarded to the Team Leader (IA), Court Coordinator, and (where relevant) the CSO. The contact details for these relevant officers is obtained from either/or ICMS or INFONET. If the receiving officer is not the appropriate contact it would be appreciated if they could advise Court Services, or alternatively forward the email onto the appropriate officer.

In addition to the advice of a matter being designated Magellan a copy of the relevant Family Court order will be attached. This information will need to be recorded on ICMS by the CSSC. Court Services will then engage the relevant CSSC regarding the preparation of the Magellan report. Of significance to the preparation of the Magellan report is whether the department is currently involved with the family and its

assessment of risk in respect of the parent/s. Upon completion of the report by Court Services, and endorsement by the CSSC, a copy of the report will be forwarded to the Family Court, ICL and CSSC. It should be noted that a copy of the Magellan report will also be provided by the court to the parties to the family law proceedings.

In addition to preparing the report the CSSC and Court Services may be required to liaise with the ICL. Court Services will advise the CSSC of who the appointed ICL is when they have been informed. Again, of significance is whether the department is currently involved with assessing or working with the family. It is appropriate that CSSC and ICL staff liaise with each other in respect of any involvement the department may have had with the family. (For confidentiality reasons it will be necessary for the ICL to confirm their appointment – this can be demonstrated by the providing a *Notice of Address for Service* form – this is a prescribed family law court form).

S91B ORDERS MADE UNDER THE FAMILY LAW ACT 1975

Generally speaking the department may only seek to 'intervene' in these matters where the child is the subject of a protective order under the *Child Protection Act 1999* and has a vested interest in the outcome of the family law proceedings. Like Magellan matters it is yet another vehicle by which the department can inform the family law courts of its involvement with a family. This is often done by liaising with the ICL and providing them with the relevant information. That said however there may be circumstances in which it is appropriate for the department to intervene on its own initiative to provide the relevant information.

The department's response to these matters is coordinated centrally at Court Services. Court Services response to these matters has only changed more recently to the extent that a significant part of its communication is now undertaken electronically (and through case discussions) with CSSC staff and ICLs. Historically the process has been more through written correspondence to CSSC staff and ICLs. This update is provided to CSSC staff so that they are aware of such matters when they come through via email. Again, Court Services will liaise with the CSSC regarding an appropriate response.

Role of Court Services:

The Court Services Unit manages the interface between the Department of Child Safety and the Family Court of Australia.

This involves various scenarios which can result from the initiative of the Family Court, the Independent Children's Lawyers (formerly Children's Representative), a parent and/or from a Child Safety Service Centre.

These include:

- The facilitation of requests for information/action from the Family Court to the relevant CSSC
- Providing information to the Family Court when the department is taking action under the *Child Protection Act 1999*
- Processing 91B requests made by the Family Court for the department to intervene in a matter
- Briefing and instructing Crown Law to represent the Director General in the Family Court on matters where the department is served as a party or there is a decision that the department applies to be a party to these proceedings
- Preparing and delivering files subpoenaed for the Family Court
- Providing advice and training to a CSSC as to possible action in the Family Court jurisdiction that may negate the need for continued departmental involvement.

Court Services staff has delegations to appear in the Family Court and represent the interest of the Director General.

- No Action in the Family Court should be taken without prior consultation with the Court Services Unit
- Advice must be sought from the Court Services Unit about the best way to proceed in each individual case
- Please refer to Chapter 15 of the Child Safety Practice Manual – "Working with the Family Court of Australia"

Role of Court Coordinators:

The Court Coordinator is responsible for alerting Court Services **as soon as possible** of any Family Court matters that may arise in their Child Safety Service Centre by forwarding the "**Request for information re family law/child protection interface matters**" form to the Unit.

Upon Court Services receiving the "Request for information" form, a Court Services Adviser will contact the Court Coordinator and discuss any further action required by the Child Safety Service Centre.

FAMILY COURT SUBPOENA'S

What is a subpoena?

A subpoena is a legal document issued by a court at the request of a party to a case. A subpoena compels a person to produce documents or give evidence at a hearing or trial.

There are 3 types of subpoena:

- a subpoena for production
- a subpoena to give evidence, and
- a subpoena for production and to give evidence.

When served with a subpoena, you must comply with it unless you were not served correctly under the court rules or were not provided with proper conduct money to attend court – see Rule 15.24 of the *Family Law Rules 2004*.

If you incur a substantial loss or expense greater than the set conduct money or witness fee, a court may order that the issuing party reimburse you for these expenses.

Any claims for costs in attending court or producing a document under the subpoena must be met by the party issuing the subpoena and not the court.

If you do not comply with a subpoena, a court may:

- issue a warrant for your arrest; and
- order you to pay any costs caused by your non-compliance.

A court may also find you guilty of contempt of court.

If you want to object to a subpoena, or have it set aside in whole or in part, you must still attend court on the date specified on the subpoena, at which time your objection will be heard.

How long does a subpoena remain in force?

A subpoena remains in force until the first of the following events occurs:

- you comply with the subpoena
- the issuing party or a court release you from the obligation to comply with the subpoena, or
- the hearing or trial is concluded.

The Law

In the Family Court, the law covering subpoenas is set out under Part 15.3.1 of the *Family Law Rules 2004*.

Some additional Family Law Court resources

- ▣ Protocol between the Family Court of Australia, Federal Magistrates Court and the Department of Child Safety
- ▣ *Family Law Act 1975*
- ▣ *Family Law Rules 2004*
- ▣ *Federal Magistrates Court Rules 2001*
- ▣ *Child Protection Act 1999*
- ▣ Child Safety Practice Manual, chapter 15
- ▣ www.familycourt.gov.au
- ▣ www.fmc.gov.au
- ▣ www.familyrelationships.gov.au
- ▣ Family Law National Inquiry Line, tel 1300 352 000
- ▣ Family Relationships Centres, tel 1800 050 321
- ▣ A new Family Law System. *Putting the focus on kids.* (information kit provided during conference)



**Request for information re family law/child protection
interface matters**

Subject child/ren

Name/s:

DOB:

Child Safety Service Centre

Child Safety Officer:

Team Leader:

Senior Practitioner:

Court Co-ordinator:

Status of existing orders/proceedings

Childrens Court (current order, application):

Any current family law order/s: Yes

No

Existing parenting orders: *lives with?*

has contact with?

(attach a copy if available)

Current status of child/ren

Temporary custody to Chief Executive: Yes

No

Placement:

Family constellation

Mother:

Father:

Siblings:

Indigenous:

Yes

No

Other cultural background:

Court details

Next date in Childrens Court (if relevant):

Next date in family law court:

Orders sought in family law application (if known)

Department's position re family law application

Parent's legal representative/s

Contesting/consenting:

Name and contact details of legal rep/s:

Independent child lawyer (ICL) (if appointed):

Your timely assistance in providing this information to Court Services will assist in determining what response the department may take in respect of this matter in the family law jurisdiction. Thank you.



Queensland
Government

[date]

Department of
Child Safety

[Insert name of Notifying Associate/Registrar/Registry Manager]

[Address – Line 1]

[Address – Line 2]

Dear [insert name]

RE: Notification under section 67Z of the Family Law Act 1975

[insert parties names and reference no.]

I refer to the Form 4 (*Notice of Child Abuse or Family Violence*) filed in relation to the above Family Court proceedings, received by the Data Management Services of the Department of Child Safety on [date].

I wish to advise that this notice was forwarded to the [name] Child Safety Service Centre for a response as the child/ren's current address covers this catchment area.

Consideration of the above notice has now been undertaken by this office and based on the information provided, it has been determined that: [tick appropriate box]

- ☐ No investigation will be undertaken
- ☐ An investigation will be undertaken
- ☐ An investigation has been completed.

Please also note that the department: [tick appropriate box]

- ☐ has no history of involvement with this family
- ☐ has a child protection history with this family
- ☐ is currently involved with this family
- ☐ has existing child protection orders in respect of the subject child/ren.

It is hoped that this information is of assistance to the court.

Yours sincerely

[name]

Manager

Child Safety Service Centre

Department of Child Safety



[date]

Department of
Child Safety

[Insert Name of Notifying Associate]

[Address – Line 1]

[Address – Line 2]

Dear [insert name]

RE: [Insert Parties Names and Reference No.]

On [insert date] the Court Services Unit of the Department of Child Safety received a copy of correspondence from you attaching the Order of [insert judicial officers name] requesting the intervention of the Director-General in the above matter, pursuant to section 91B of the *Family Law Act 1975*.

A review of the departmental file material has [delete (A) or (B) – whichever is NOT applicable]:

(A) not been completed at this stage, and further time is required to assess the information held by this department prior to determining our level of intervention in this matter.

(B) now been completed, and as a result of this review the department will be [tick appropriate box/es]:

- ☐ forwarding all notifications and assessments to the Independent Child Lawyer [insert either their name or 'upon notification of their details from Legal Aid Queensland'] prior to the matter returning before the Court on [insert next date]. The department will also be providing further advice to the Independent Child's Lawyer at their request.
- ☐ taking no further action given that all notifications and assessments have been forwarded to the Court [insert either] pursuant to section 69ZW of the *Family Law Act* or as result of a subpoena by [insert name] on [insert date].
- ☐ have an officer of the department in attendance before the Court on the next return date in the capacity of 'friend of the court' to provide information as to the department's current intervention with this family.
- ☐ briefing Crown Law to seek leave to make certain submissions before the Court in this matter.
- ☐ briefing Crown Law to represent the Director-General and seek leave to become an intervenor in this matter.

- ☐ revealed no records of this family and we have therefore requested a copy of the Family Court file to assess the level of child protection concerns held therein. This request is made in accordance with Rule 24.13 of the *Family Law Rules 2004*.

Please note that the level of departmental response has been determined due to material held on file, and in recognition that the department: *[tick appropriate box]*

- ☐ is not currently involved with this family.
- ☐ is currently involved with this family.
- ☐ ('s) involvement with this family is being reassessed and will be significantly influenced by the making of an Order under the *Family Law Act*, which is assessed as meeting the child's current protective needs.

Yours sincerely

Bernadette Smith
Manager
Court Services Unit
Department of Child Safety



17 April 2009

Department of
Child Safety

«address»

Dear Sir/Madam

Magellan case: Matter of «file name/no»

The above matter has been identified for Magellan Case Management.

On «date» the Honourable Justice «name» made an order including requests that your agency:

- intervene under s 91B of the *Family Law Act 1975* and investigate this matter;
- file a report by «date»;
- produce its file to the Family Court pursuant to a subpoena returnable by 4.00pm on «date».

A copy of this order is attached. Please note that this matter has been adjourned to «time» on «date» before «Judge».

Section 91B Notification

The following child/ren is/are the subject of this referral and live with the «parent_name» at «address».

Child's name

Date of Birth

In accordance with the protocols between your agency and the Family Court of Australia, copies of all affidavit material relevant to the current application are included for your information, together with the information sheet prepared by the Court indicating issues to be considered.

State/Territory Child Welfare Authority Report

The Court requests that your response to the s 91B order be incorporated in your report. The report should address the nature of the allegations, the investigation the agency has conducted, the parties interviewed, conclusions reached, and any recommendations or other information that may assist the Court.

For your convenience, you may submit your report to the registry by facsimile on «fax_no» for the attention of the Magellan Registrar.

Subpoena for Production of File(s)

This is an administrative subpoena for the purpose of inspection of your file by lawyers and Court Family Consultants prior to the next Court hearing. It is **not necessary** for you to attend personally at the Family Court with the file. The file may be delivered by courier or certified mail.

Please make arrangements for the subpoenaed agency file and the report to be delivered by the due date to:

«name_and_address»

Any queries in relation to Magellan case management may be addressed to Registrar «name» on «telephone_number».

If you require further assistance please contact «Client_Services_Officer_name» at «telephone_number».

Yours faithfully

«name»



FAMILY COURT OF AUSTRALIA

«FCA_LD03»
«FCA_LD04»
Telephone «FCA_LD05»
Facsimile «FCA_LD06»

«FCA_LD01»
«FCA_LD02»

NOTIFICATION UNDER SECTION 67ZA
FAMILY LAW ACT 1975

TO: «FCA_LQ259»

OFFICE: «FCA_LQ266»

TEL: «FCA_LQ260»

FAX: «FCA_LQ267»

I, <insert relevant Court Officer's name> <insert role> of the Family Court of Australia, <insert registry address> hereby notify you to be the prescribed child welfare authority pursuant to s67ZA of the Family Law Act in relation to the children referred to below.

This notification is made pursuant to:

«FCA_LQ262»
«FCA_LQ263»
«FCA_LQ264»

Confirmation of prior oral notification? ☐ Yes ☐ No

Date of prior oral notification:

Office notified:

Officer to whom notification made:

Name/s of child/ren subject to notification:

«FCA_LD216»

Name/s of siblings of child/ren subject to notification:

<Insert Name and D.O.B. of each child separated by a comma>

Name and address of mother:

«FCA_LD95»
«FCA_LD97»

Name and address of father:

«FCA_LD98»
«FCA_LD100»

Name of person with whom child/ren currently live/s:

«FCA_LQ268»

Address if not mother or father

«FCA_LQ269»

Circumstances giving rise to this notification:

Other information

Name of Court hearing matter:

Name and number of proceedings: «FCA_LD53» «FCA_LD07»

Date of next court appearance:

Has a report been ordered under s62G(2) of the Family Law Act? ☐ Yes ☐ No

Has an Expert Report been prepared or is there one pending? ☐ Yes ☐ No

Other organisations involved with the family:

Are there concerns about protective workers' safety in visiting the family? ☐ Yes ☐ No

Best time to find the parents at home:

Does the family know this notification is being made? ☐ Yes ☐ No

If no specify family members who do not know:

Language used in family (if not English):

Lawyers:

1. For Mother: «FCA_LD101»
2. For Father: «FCA_LD102»
3. For Child/ren:
4. Other (specify)

Please acknowledge receipt of this notification and advise the notifier as soon as possible of what action, if any, the Department proposes to take. Please direct the response to the Registry Manager.

Signature of Notifier:

Date:



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FAMILY LAW ACT 1975 - SECT 69ZK

Child welfare laws not affected

(1) A court having jurisdiction under this Act must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law unless:

(a) the order is expressed to come into effect when the child ceases to be under that care; or

(b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer of the relevant State or Territory has been obtained.

(2) Nothing in this Act, and no decree under this Act, affects:

(a) the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law; or

(b) any such order made or action taken; or

(c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.



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FAMILY LAW ACT 1975 - SECT 69ZW

Evidence relating to child abuse or family violence

(1) The court may make an order in child-related proceedings requiring a prescribed State or Territory agency to provide the court with the documents or information specified in the order.

(2) The documents or information specified in the order must be documents recording, or information about, one or more of these:

(a) any notifications to the agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;

(b) any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;

(c) any reports commissioned by the agency in the course of investigating a notification.

(3) Nothing in the order is to be taken to require the agency to provide the court with:

(a) documents or information not in the possession or control of the agency; or

(b) documents or information that include the identity of the person who made a notification.

(4) A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent an agency complying with the order.

(5) The court must admit into evidence any documents or information, provided in response to the order, on which the court intends to rely.

(6) Despite subsection (5), the court must not disclose the identity of the person who made a notification, or information that could identify that person, unless:

(a) the person consents to the disclosure; or

(b) the court is satisfied that the identity or information is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.

(7) Before making a disclosure for the reasons in paragraph (6)(b), the court must ensure that the agency that provided the identity or information:

(a) is notified about the intended disclosure; and

(b) is given an opportunity to respond.



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FAMILY LAW ACT 1975 - SECT 91B

Intervention by child welfare officer

(1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of an officer of a State, of a Territory or of the Commonwealth, being the officer who is responsible for the administration of the laws of the State or Territory in which the proceedings are being heard that relate to child welfare.

(2) Where the court has, under subsection (1), requested an officer to intervene in proceedings:

(a) the officer may intervene in those proceedings; and

(b) where the officer so intervenes, the officer shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

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FAMILY LAW RULES 2004 - RULE 6.02

Necessary parties

(1) A person whose rights may be directly affected by an issue in a case, and whose participation as a party is necessary for the court to determine all issues in dispute in the case, must be included as a party to the case.

Example

If a party seeks an order of a kind mentioned in section 90AE or 90AF of the Act, a third party who will be bound by the order must be joined as a respondent to the case.

(2) If an application is made for a parenting order, the following must be parties to the case:

- (a) the parents of the child;
- (b) any other person in whose favour a parenting order is currently in force in relation to the child;
- (c) any other person with whom the child lives and who is responsible for the care, welfare and development of the child;
- (d) if a State child order is currently in place in relation to the child — the prescribed child welfare authority.

(3) If a person mentioned in subrule (2) is not an applicant in a case involving the child, that person must be joined as a respondent to the application.

Note The court may dispense with compliance with a rule (see rule 1.12).

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QUEENSLAND CIVIL & ADMINISTRATIVE TRIBUNAL (QCAT)

The announcement of QCAT

On 12 March 2008, the Premier, the Hon Anna Bligh MP, announced the establishment of a Queensland Civil and Administrative Tribunal (QCAT); and the establishment of an independent panel to report to Government about the implementation of a new Civil and Administrative Tribunal for Queensland.

QCAT amalgamates CST

QCAT will take over the functions of a number of different tribunals as well as some review functions of the courts and other administrative bodies - including the *Children Services Tribunal*.

Decisions made by the Department of Child Safety under the *Child Protection Act 1999 (CPA)* and *Adoption of Children Act 1964 (ACA)* are reviewable by the *Children Services Tribunal*. For example:

- removing a child from the care of the child's carer;
- refusing an application for, or to renew, a certificate of approval as an approved foster carer or an approved kinship carer; and
- removal of a person's name from an expression of interest register for adoptions.

QCAT Legislation

In order to establish QCAT, two pieces of legislation are being prepared:

- The Queensland Civil and Administrative Tribunal Bill 2009 (the QCAT Bill), which will establish QCAT and provide for its generic functions, powers and procedures; and
- The Queensland Civil and Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2009, which will amend over 160 pieces of legislation to transfer jurisdiction from existing tribunal and courts to QCAT, including the *CPA* and the *ACA*.

Jurisdictional scope of QCAT

- Because of the wide variety of matters that QCAT will deal with, the tribunal will be organised into three divisions:
 - Human Rights;
 - Civil; and
 - Administrative and Disciplinary Matters

Specialist provisions retained

QCAT legislation is to provide for the general users of the tribunal and includes provisions regarding children who may more generally come into contact with the tribunal.

However there are specialist provisions of the *Children Services Tribunal Act 2000* which need to be retained and for which do not fit with the more general approach of the QCAT legislation.

The specialist provisions will be placed in a new part (Tribunal Proceedings) of the CPA and ACA.

Registrar to give notice of review application

- The registrar must give notice of a review application to the decision maker.
- Within 7 days after receiving the notice, the decision maker must give the registrar notice of the names and addresses of all persons, apart from the applicant who are entitled to apply for a review of the reviewable decision concerned and of whom the decision maker is aware.
- Registrar must immediately on receipt of decision maker's notice, give an information notice to each person named in the decision maker's notice.

Review applications by Commissioner (CPA 1999) only

If the applicant for a review application is the Commissioner for Children and Young People and Child Guardian the review application must be made within 28 days after the commissioner gives notice under the *Commission for Children and Young People and Child Guardian Act 2000* section 140B(4), to the chief executive about the reviewable decision.

Government entity may nominate decision maker

The department may give the registrar a notice nominating an officer or employee of the department, or the holder for the time being of an office in the department, as the decision maker for a review.

Constitution of tribunal

- President may choose a member to constitute the tribunal only if the president considers the member is committed to the principles; has extensive professional knowledge and experience of children; and has demonstrated a knowledge of and has experience in 1 or more fields of the fields listed, for example child protection, social work, administrative review.
- A member is ineligible to be a constituting member if the member has been refused a certificate of approval, or a renewal of a certificate of approval, as an approved carer or has had a certificate of approval as an approved carer cancelled.
- Panel must be constituted by 3 members with at least 1 legally qualified member with at least 5 years experience. However for preliminary conference may be constituted by 2 members, one of whom is a legally qualified member.
- If a child to which a proceeding relates is Aboriginal or Torres Strait Islander, the tribunal hearing the proceeding must include, if practicable, a member who is Aboriginal or Torres Strait Islander.

Hearing must usually be held in private

A hearing of a proceeding before the tribunal must be held in private. However, the following are entitled to be present at the proceeding-

- each party to the proceeding
- if, under the QCAT Act, a party is entitled to be represented by someone else at the proceeding, the party's representative;
- a separate representative representing a child in the proceeding;
- a witness while giving evidence;
- a support person for a party or a witness;
- a person allowed to be present by the tribunal.

When a proceeding may be held in public

Despite the provision that "Proceedings relating to this Act must usually be held in private" the tribunal may allow a proceeding before the tribunal to be held in public if information identifying, or likely to lead to the identification of, a particular child will not be given in the proceeding.

Adjournments CPA 1999 only

- In considering whether to adjourn a proceeding involving a child, the tribunal must take into account any impact that adjourning the proceeding will have on the child.
- When it adjourns a proceeding, the tribunal must:
 - Give reasons for the adjournment; and
 - State any matters it requires a party to the proceeding to address during the adjournment; and
 - Give directions and make orders it considers necessary or desirable.

When matter before Court

- If a review application is before the tribunal and some or all of the matters to which the reviewable decision relates are also before a court then on the president's own initiative or on application by a party to the review the president must suspend the tribunal's review if the president considers:
 - The court's decision about the matters would effectively decide the same issues to be decided by the tribunal; and
 - The matters will be dealt with quickly by the court.
- If the president suspends the tribunal's review and the **court decides the matters** and the decision effectively decides the issues before the tribunal then president must dismiss the review application.
- If the president has suspended the tribunal's review and the matters have not been decided by the court the president may cancel the suspension and the tribunal may continue to deal with the review application.

Requirements about ensuring proper understanding of tribunal proceedings

In addition to the QCAT legislation provisions that ensure the tribunal take all reasonable steps to ensure proper understanding and regard, the tribunal must take all reasonable steps to ensure each child taking part in a proceeding who is not a party to the proceedings understands the tribunal's procedures.

The QCAT legislation provisions include general steps that must be taken by the tribunal to ensure proper understanding and regard and include to ensure proceedings are conducted in a way that recognises and is responsive to the needs of a party or witness in a proceeding who is a child.

Review of applications of behalf of children CPA 1999 only

- A person may file a review application on behalf of a child only with the president's permission.
- The president may give permission only if the president considers:
 - the person is not, on the person's own behalf, entitled to apply for the decision to be reviewed by the tribunal; and
 - it is in the child's best interests that the application be made; and
 - it would be inappropriate for, or unreasonable to require, the child to make the application himself or herself.
- A review application filed on behalf of a child with the president's permission can only be withdrawn with the president or tribunal's permission. Such permission can only be given if the president or tribunal considers that, having regard to the child's views or wishes, if any, it is in the child's best interests that the application be withdrawn.

Representation of children by lawyers

- The QCAT legislation provides that parties are to represent themselves unless the interests of justice require otherwise.
- The QCAT legislation identifies those situations in which a party may be represented including when the party is a child or person with impaired capacity; or when an enabling Act or the rules states the person may be represented.
- The ACA and CPA (enabling Acts) provide that the child may be represented before the tribunal by a lawyer.

Separate representation of children

- The QCAT legislation provides that parties are to represent themselves unless the interests of justice require otherwise.
- The QCAT legislation identifies those situations in which a party may be represented including when the party is a child or person with impaired capacity; or when an enabling Act or the rules states the person may be represented.
- The ACA and CPA (enabling Acts) provide that the child may be represented before the tribunal by a lawyer.
- A separate representative must not in any proceeding be called to give evidence, and if called must not give evidence, about a communication between the representative and the child for whom the representative was appointed.

Children must not be compelled to give evidence

A child must not be compelled to give evidence in a proceeding.

Before a child gives evidence in a proceeding, the tribunal must satisfy itself that the child is willing to give the evidence.

Childs right to express views to the tribunal

- If a reviewable decision is about a child and the decision is being reviewed by the tribunal then whether or not the child is a party to the review or appears as a witness before the tribunal, the child has the right to express his or her views to the tribunal about matters relevant to the review.

Children providing evidence and expressing views

When a child is giving evidence or expressing the child's views to the tribunal the only persons who may be present are:

- the constituting members;
- the lawyer, if any, representing the child;
- the separate representative, if any, for the child;
- the child's support person if the child has a support person and agrees to that person's presence.

Despite this the child may elect to give evidence or express the child's views in the presence of the parties and their representatives if the child is 12 years or more; and is represented by a lawyer or a separate representative.

Questioning of children

- A child giving evidence or expressing the child's views in a proceeding must not be cross-examined.
- Also, only the following persons may ask questions of a child giving evidence or expressing the child's views in a proceeding:
 - the constituting members;
 - the lawyer, if any, representing the child;
 - the separate representative, if any, for the child.

Provisions applying if party to review is a child who is a parent of the child about whom the reviewable decision was made

- If a party to a review is a child who is a parent of the child about whom the reviewable decision was made; and in a proceeding for the review the parent elects to give evidence then the provisions regarding "Children giving evidence or expressing views to the tribunal" and "Questioning of children" do not apply to the parent.
- Before the parent gives evidence, the tribunal must tell the parent that:
 - he or she may be cross examined by the tribunal or a party to the proceeding; and
 - he or she may, at any time while the cross-examination is continuing, refuse to be further cross-examined; and
 - if he or she refuses to be further cross-examined then this may effect the weight given by the tribunal to his or her evidence.

President or tribunal may authorise a medical examination of a child (CPA only)

- For a review, the president or the tribunal may, by order, authorise a medical examination of a child and require a report of the examination of a child and require a report of the examination to be filed with the registrar.
- The order must state the particular issues the report must address.
- The president or tribunal must not make the order unless the president or tribunal is satisfied:
 - The medical information, if any, available to the tribunal about the child is insufficient to allow the tribunal to decide the review; and
 - The child's interests will be best served by making the order.
- In deciding whether the child's interests will be best served by the making the order, the president or tribunal must consider the child's views and wishes, if any, and the effect the medical examination may have on the child having regard to the number and frequency of any previous medical examinations the child has undergone.

Carrying out medical examinations

If the president or tribunal authorises a child's medical examination a doctor may medically examine the child even though the child's parents or guardian has not consented to the examination, subject to the rights the child has in relation to the examination.

In deciding any liability in relation to the carrying out of the examination, the doctor is taken to have the consent of the child's parents or guardian to the examination.

Parties to a review

The parties to a review are:

- the applicant for the review; and
- the decision maker; and
- a person who elects to become a party under the provision "Certain persons may elect to become parties".

Certain person may elect to become parties

- Persons who are given an information notice detailing a review application may elect to become a party to the review to which the notice relates by filing a notice of election with the registrar.
- The notice of election must be filed with the registrar within 7 days after the person receives the information notice.
- The tribunal may shorten the period for filing the notice of election only if satisfied that not to do so will result in a child's interests being adversely affected or another party to the review suffering hardship.

Joining of a person as a party to proceedings

The tribunal may join a person as a party to a review if it is satisfied the person is genuinely concerned in the subject matter of the review.

However, if the review concerns a child, the tribunal must not join a person as a party unless it is satisfied that to do so would be in the child's best interests.

The tribunal may join a person as a party to the review on its own initiative or on application by the person.

The tribunal may join a person as a party to the review at any time before the review application is finally decided by the tribunal.

Confidentiality Order

- On its own initiative or on application by a party to the review the tribunal may, by order (a **confidentiality order**), prohibit or restrict the disclosure to a party to a review of all or some of the evidence given before the tribunal, or of the whole or part of the contents of a document given to, or received in evidence by, the tribunal for the review. The tribunal must be satisfied that if it were not to issue the confidentiality order:
 - a child is likely to be harmed; or
 - the safety of another person is likely to be endangered; or
 - there would be undue interference with the privacy of a child or another person.

- In deciding whether to make a confidentiality order or giving effect to a confidentiality order the tribunal may exclude a party, and any representative of the party, from part of the review or deal with a document in a way that ensures it is not disclosed to a party.
- A confidentiality order does not act to prohibit or limit the disclosure of material to a separate representative in a review.

Certain information not to be published

- A person must not publish information given in evidence or otherwise in a proceeding before the tribunal unless the tribunal consents to the publication. To consent to the publication the tribunal must be satisfied the publication is in the public interest and does not conflict with the best interests of the child.
- A person must not publish information that is likely to identify a person who:
 - Appears as a witness before the tribunal in a proceeding; or
 - Is a party to the proceeding; or
 - Is mentioned, or otherwise involved, in the proceeding.

Confidentiality of Information

- A person who is, or was, a member, an expert, an independent inquirer or a member of the tribunal's staff and obtained information in the course of performing the person's functions under the Act must not disclose that information if the information is about another person's affairs. Maximum penalty 100 penalty units or 2 years imprisonment.
- However if the information is disclosed in the performance of the functions under the Act or the QCAT Act; or relates to an adult and the information is disclosed with the written consent of the adult and the information is unlikely to identify a child or the disclosure is otherwise authorised or permitted under an Act or required by law then the penalty does not apply.

Requests to the Chief Executive

- The president may ask the chief executive to notify the president, within a reasonable state time:
 - of the steps taken to give effect to the tribunal's decision; or
 - of the steps taken to give effect to the tribunal's recommendations and, if no steps have been taken, the reasons for this.

What happens if a decision is not given effect?

- If the president after considering the response of the chief executive given under "Requests to chief executive" is of the opinion that:
 - the tribunal's decision has not been given effect; or
 - no steps have been taken to give effect to the tribunal's recommendations or the steps taken are inadequate or inappropriate.
- The president may report on the matter to the Minister responsible for the department.
- The president must attach the following to the report:
 - if the report is about the tribunal's decision then must attach copies of the decision and response;
 - if the report is about the tribunal's recommendations then must attach copies of the recommendations and response.

Representation

- Generally people who file an application with QCAT will have to appear in person before the tribunal.
- Leave is to be sought should the person wish to have a lawyer, advocate or friend represent them at the tribunal.
- Where there are complex issues of fact and law then it is likely the tribunal will allow the person to be represented.
- Specific provisions relating to the representation of children will be included in the CPA and ACA.

Costs

- As a general rule each party to a QCAT matter will have to pay their own costs.
- QCAT will however be able to require a person to pay another party's costs.
- However the tribunal must not award costs against a child.
- Although a representative of a child may have costs awarded against them if the representative acted in a way which caused unnecessary costs to another party to the proceeding.

Rights of Appeal

- QCAT will have its own internal appeal jurisdiction (the Appeal Tribunal).
- However in certain situations a person will need to ask the QCAT President for permission to start the appeal.
 - E.g. if the appeal is based on a question of fact; question of mixed law and fact; decision that is not a final decision (stay); decision to award costs.
- A final decision of an appeal heard by the QCAT Appeal Tribunal can be appealed with leave of the Court of Appeal only on a question of law.

Vulnerable persons

- QCAT Bill includes provisions to help ensure the tribunal is responsive to all people that might appear before it. Such provisions include:
 - proceedings are to be responsive to parties with particular needs including children;
 - provisions for 'special witness' which allow the tribunal to protect children who may suffer disadvantage or trauma in the process of giving evidence, by ordering that the evidence is to be given in a particular way; and
 - that hearings can be closed to protect the privacy of parties in certain circumstances.

Commencement of the Legislation

- QCAT is to commence 1 December 2009.
- Some earlier provisions of QCAT legislation may commence earlier to allow key positions to be filled for the tribunal and for the rules to be prepared before the tribunal commences.

Want more information

- refer to the website www.tribunalsreview.qld.gov.au for further information. The website includes a summary sheet that sets out how the new legislation will affect the current operation of the Children Services Tribunal.

QCAT:
Queensland
Civil and
Administrative
Tribunal

Queensland Civil and
Administration Tribunal (QCAT)

- On 12 March 2008, the Premier, the Hon Anna Bligh MP, announced the establishment of a Queensland Civil and Administrative Tribunal (QCAT); and
- the establishment of an independent panel to report to Government about the implementation of a new Civil and Administrative Tribunal for Queensland.

QCAT was born

- On the 1 December 2009, the Queensland Civil and Administrative Tribunal (QCAT) became operational
- Most significant justice reform in Queensland in 50 years

QCAT amalgamates *Children Services Tribunal*

- QCAT has taken over the functions of a number of different tribunals as well as some review functions of the courts and other administrative bodies. Including the *Children Services Tribunal*.

Super Tribunal

- A list of the Former Tribunals can be found in Schedule 1 of the Queensland Civil and Administrative Tribunals Act 2009.
- Benefits include:
 - ad hoc proliferation of tribunals
 - Single gateway
 - Greater standardisation
 - Development of internal body of precedents

QCAT Legislation

- In order to establish QCAT, several pieces of legislation needed to be developed and amended:
 - The Queensland Civil and Administrative Tribunal Act 2009 (the QCAT Act), establishes QCAT and provides for its generic functions, powers and procedures; and

Continued...

- ▶ The Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009, amends over 160 pieces of legislation to transfer jurisdiction from existing tribunal and courts to QCAT, including the *CPA* and the *ACA*, and
- ▶ The QCAT Rules and the QCAT Regulation

Specialist provisions retained

- QCAT legislation is to provide for the general users of the tribunal and includes provisions regarding children who may more generally come into contact with the tribunal.
- However there are specialist provisions of the *Children Services Tribunal Act 2000* which need to be retained and for which do not fit with the more general approach of the QCAT legislation.
- The specialist provisions are located now in the *CPA* and *ACA*.

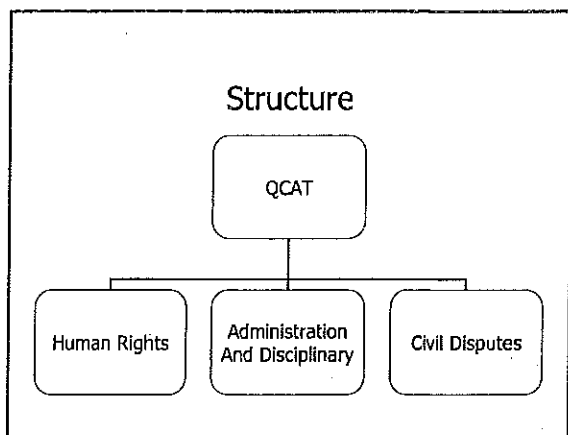
Jurisdictional scope of QCAT

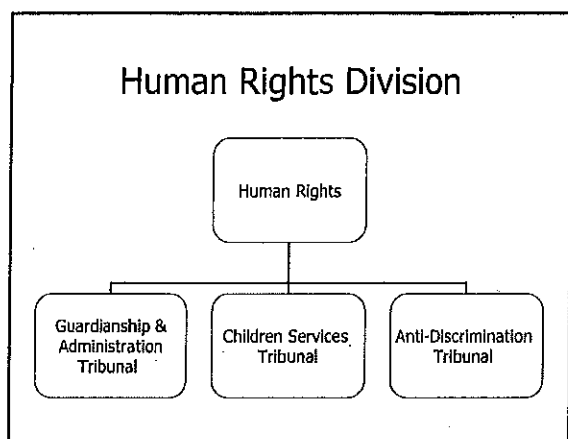
- Because of the wide variety of matters that QCAT deals with, the tribunal is organised into three divisions.

1. Human Rights;

2. Civil; and

3. Administrative and Disciplinary Matters.





Structure of QCAT

- ❖A President sits over QCAT, the President must be a Supreme Court Judge. The current President appointed is Justice Alan Wilson
- ❖A Deputy President sits under the President – this is Justice Fleur Kingham

Continued....

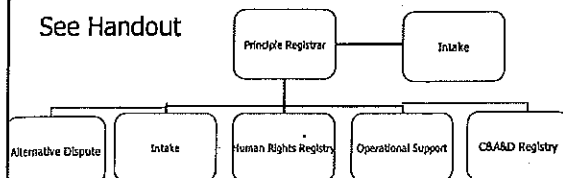
- ❖ Directly under the Deputy President QCAT has four Senior Members who have full time positions within QCAT
- ❖ Under the four Senior Members the following sit:
- ❖ 9 Ordinary Members – full time
- ❖ 5 Adjudicators (lawyers)
- ❖ Sessional Members
- ❖ Included in the above membership are five indigenous members.

Current permanent members

- **Senior members** Susan Booth, Clare Endicott, Kerrie O'Callaghan, Richard Oliver
- **Members** James Allen, Professor Adrian Ashman (part time), Elizabeth Benson-Stott (part time), Bridget Cullen Mandikos, Julie Ford, Susan Gardiner, Patricia Hanly, Michelle Howard, Ron Joachim, Peta Stilgoe

Structure of QCAT Registry

See Handout



So what has really changed?

- QCAT reviews the same decisions that were previously reviewable.
- However there is much more legislation now and interplay is learning curve for department

continued

- Intake team vs Case manager role
- The department is advised of a matter by being served a Notice or Review, however this is a new document with less details in some areas
- Stay orders can be made by Registrar
- The department is required to provide a Statement of Reasons, however we now have 28 days to complete

continued

- Increasing number of forms which dictate how we communicate/respond about an application
- No longer have preliminary conferences but Compulsory Conference, which has different expectations
- Directions Hearings
- Emphasis on mediating outcomes where possible

Continued....

- Role of Court Services and CSSC – issue of agent/legal representation
- Management of witnesses/costs
- Hearing Support Officers vs Case manager role
- Final decisions provided orally
- Appeal processes

Daily Learnings

To restate, introduction of QCAT is one of the biggest justice reform in some 50 years within QLD.

In short there are daily learnings for us about what is different now and to this end Court Services are collating this to inform and develop training packages for departmental staff involved in QCAT.

QCAT Blog

Sense of change

A lot remains the same, and if there is some uncertainty we are tending to rely on past processes/practices where appropriate.

Currently there is a sense that the QCAT registry is also developing knowledge/procedures around these matters, and that they are going through a 'settling in' period whereby new systems are being bedded down

Conclusion

QCAT has seen new processes introduced around the process of merit review of reviewable decision of the department
HOWEVER, the practice of how we make our decisions, undertake casework and case management remains the same.

Good Practice = Good Decisions

And Good Practice is...
Good practice remains linked to information gathering, detailed recording and ensuring proper communication, which all sit within a sound child protection framework consistent with departmental policy and the legislation.

Program Area - Queensland Civil and Administrative Tribunal Review		
Stage in Process	Court Services Adviser	Court Co-ordinator
Receipt of Information Notice to Decision Maker of Application for Review	<p>The CSA will assess the Notice to determine:</p> <ul style="list-style-type: none"> whether the application was made within the 28 day review period the jurisdiction of the Tribunal to review the matter in accordance with Schedule 2 and/or CSSC to determine this matter whether the applicant is an aggrieved person entitled to seek review of the decision in accordance with schedule 2 of the CPA 1999 <p>If jurisdictional issues are identified:</p> <ul style="list-style-type: none"> CSA will prepare submissions in writing and the relevant QCAT Form in accordance with QCAT Rules 2009 and submit same to the Tribunal for determination 	<p>The CC will</p> <ul style="list-style-type: none"> collate factual information as requested by CSA in support of jurisdictional submissions
Optional – Directions Hearing by Senior Member of Tribunal	<p>The CSA will:</p> <ul style="list-style-type: none"> make submissions on behalf of the department (as respondent) and/or respond to questions raised by the Tribunal in relation to policy and legislative matters make submissions supporting specific orders sought by the department (as respondent) 	<p>The CC will</p> <ul style="list-style-type: none"> collate any additional factual information as requested by CSA in support of jurisdictional submissions

Central Liaison Point for QCAT Re: Distribution of Information Notice to the CSSC	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ identify the relevant CSSC and staff and issue the "Information Notice to Decision Maker" via facsimile ▪ the CSA will prepare advice email correspondence to CSSC staff identifying: <ul style="list-style-type: none"> ✓ (as required under section 99E (2) of the CPA 1999 other aggrieved persons entitled to seek review for the purpose of filing Notice of Election details ✓ the filing date for the Statement of Reasons ✓ suggestions re: critical matters to be addressed ✓ identifying related reviewable decisions for action by CSSC in accordance with information notice provisions in <i>Child Protection Act 1999</i> 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ ensure the Notice is received and filing dates are identified to the Manager/Team Leader ▪ facilitate a case discussion re: allocation of preparation tasks as raised by CSA, within identified filing deadlines ▪ provide feedback to CSA as required
Preparation of Statement of Reasons	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ provide 2nd level quality assurance of the Statement of Reasons having particular 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ track preparation of the Statement of Reasons and

	<p>regard to the accuracy of CPA1999, QCAT Act 2009 and departmental policy references within</p> <ul style="list-style-type: none"> review and analyse evidence referred to in the Statement of Reasons in order to identify other information to be gathered and the overall strengths and weaknesses of the decision on review. If necessary prepare correspondence to the CSSC Manager in relation to any identified concerns review the Statement of Reasons to identify potential legal submissions to be made at the Compulsory Conference under Tribunal Legislation eg: Notice to Produce, Notice to Attend, Confidentiality Order, Order for Separate Representation etc File the Statement of Reasons with the QCAT Registry 	<p>associated tasks in accordance with filing deadlines</p> <ul style="list-style-type: none"> provide 1st level quality assurance having particular regard to case content matters
<p>Preparation for Stay Hearing and/or Compulsory Conference (section 74 of QCAT Act 2009 – CC content is <i>without prejudice</i>)</p>	<p>The CSA will facilitate a preparation telelink with CSSC Manager/Team Leader to:</p> <ul style="list-style-type: none"> explain the process of a Stay Hearing and/or Compulsory Conference provide clear guidelines about the Tribunal's expectation of their conduct and presentation during the Stay Hearing/Compulsory 	<p>The CC will:</p> <ul style="list-style-type: none"> Participate in preparation telelink track and assist Manager/Team Leader in preparation of oral submissions as suggested by the CSA during telelink

	<p>Conference</p> <ul style="list-style-type: none"> ▪ distinguish the roles of the CSSC representative and the CSA when appearing before the Tribunal ▪ make suggestions to CSSC as to the content of oral submissions to be made to the Tribunal in support of their case ▪ identify and explain to the CSSC staff, the nature and purpose of any legal submission to be made by the CSA ▪ discuss a preliminary witness list and arising from that list identify if submissions will be required at the Compulsory Conference for <ul style="list-style-type: none"> ○ Notice to Attend for Evidence ○ Applications for leave for evidence via telephone ▪ dependent upon own experience, provide information to the CSSC staff about the Tribunal Panel, their field of expertise and past impressions of them as Tribunal members ▪ provide an opportunity to the CSSC staff to address any questions they may have 	
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Stay Hearing/Compulsory Conference	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ make submissions on behalf of the department (as respondent) and/or respond to questions raised by the Tribunal in relation to policy and legislative matters ▪ make submissions in relation to specific orders sought by the department (as respondent) ▪ assist the CSSC representatives in the delivery of their oral submissions ▪ following the Compulsory Conference identify and note Tribunal actions/decisions that may have broader implications for referral to Court Services Unit Manager/Team Leader and discussion at stakeholder forums 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ attend only with leave of the Tribunal and with the consent of the applicant for learning purposes
Post Stay Hearing/Compulsory Conference	<p>The CSA will provide a summary email of Stay/Compulsory Conference proceedings including:</p> <ul style="list-style-type: none"> ▪ identifying and explaining the practical and/or legal implications of any Interim Orders made ▪ identifying filing deadlines 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ ensure tasks identified are allocated and commenced having regard to filing deadlines

	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ distribute to CSSC any written Interim Orders of the Tribunal to the CSSC 	
Hearing Preparation	<p>The CSA will convene a preparation telelink with all relevant CSSC staff making suggestions about:</p> <ul style="list-style-type: none"> ▪ witness statements required for hearing and relevant content ▪ identifying urgent tasks in relation to the gathering of additional evidence ▪ identifying other administrative matters to be addressed in preparation for Hearing. ▪ identifying filing deadlines ▪ following telelink, CSA will prepare and issue via email, minutes of telelink to relevant CSSC staff ▪ if advised of necessity by CC, liaise with non-departmental and professional witnesses and negotiate in writing witness expenses in accordance with the Legal Aid Queensland Schedule of Fees ▪ provide 2nd level quality assurance of material to be filed by the department 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ liaise with non-departmental and professional witnesses about preparing a witness statement and attending as a witness on behalf of the department. This should include providing a template witness statement and information about they type of content sought in their statement ▪ notify the CSA if any external witnesses are seeking witness expenses ▪ track preparation tasks in accordance with filing deadlines and advise CSA of emergent issues requiring their response or advice. For example, a witness requiring leave for telephone evidence

<p>Hearing Preparation (Continued)</p>	<ul style="list-style-type: none"> ▪ make any further legal submissions in writing as required. For example an application under section 97 of QCAT Act 2009 for notices to produce documents or to attend as a witness ▪ file the material relied upon by the department (as respondent) with the QCAT Registry in accordance with filing directions issued by the Tribunal <p><i>(Section 28 & 35 of QCAT Rules 2009 require on original copies to be filed with Registry)</i></p>	<ul style="list-style-type: none"> ▪ 1st level quality assurance of material to be filed by department
<p>Hearing Preparation Post filing of departmental evidence</p>	<p>Post filing the CSA will:</p> <ul style="list-style-type: none"> ▪ meet with Manager/Team Leader and assist them to prepare opening submissions ▪ meet with Manager/Team Leader and assist them to prepare a framework of questions for departmental witnesses ▪ review material filed on behalf of the applicant in order to identify a framework of questions on cross examination of applicant witnesses and in order to identify additional matters to be clarified by departmental witnesses during oral evidence 	<p>Post filing: the CC will:</p> <ul style="list-style-type: none"> ▪ assist Manager/Team Leader to action CSA advices about submissions and/or witness questions and inquiries ▪ distribute proposed questions to departmental witnesses and provide information tips about giving evidence in a Tribunal ▪ prepare a timetable about the availability and contact details of departmental witnesses

<p>Full Hearing by Tribunal</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ assist the Manager to integrate matters raised by the applicant into the department's opening submissions ▪ assist the Manager to put questions to witnesses ▪ identify as evidence progresses any necessity for additional legal submissions and make those submissions on behalf of the department (as respondent) ▪ respond to questions raised by the Tribunal in relation to policy and legislative matters ▪ make submissions in relation to specific orders sought by the department (as respondent) ▪ assist the Manager to amend questions for witnesses in response to other evidence or having regard to impressions of the matters the Tribunal seeks to inquire into 	<ul style="list-style-type: none"> ▪ provide pre-hearing support to proposed departmental witnesses
	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ attend only with leave of the Tribunal and with the consent of the applicant for learning purposes ▪ depending on competing CSSC demands, CC may attend to organise witnesses and to seek information required as evidence progresses and to debrief witnesses post evidence 	

<p>Oral Reasons delivered by Tribunal</p>	<ul style="list-style-type: none"> ▪ keep a log of key evidence to assist the Manager to prepare closing submissions ▪ assist the Manager to present oral closing submissions if required provide ▪ make notation of Tribunal actions/decisions that may have broader implications for referral to Court Services Unit Manager/Team Leader ▪ track timing of evidence by non-departmental witnesses and professional witnesses for the purpose of calculation of witness expenses <p>The CSA will</p> <ul style="list-style-type: none"> ▪ make a detailed record of the tribunal's order/s and reasons for decisions 	
<p>Post Hearing</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ identify and explain the practical and/or legal implications of the Tribunal's decision ▪ identify key comments by the Tribunal within its oral reasons for decision ▪ issue correspondence in writing to non-departmental and professional witness in relation to witness entitlements 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ ensure that the decision of the Tribunal is made known to all relevant people and the information is provided that the Tribunal's decision must be given effect to ▪ Track CSSC follow up of matters raised by CSA

	<ul style="list-style-type: none"> ▪ track administrative follow up of invoices received ▪ bring to the attention of the Court Services Unit Manager any particular criticisms of departmental actions/practice raised and respond as directed by the Court Services Manager ▪ identify to the Court Services Unit Manager if the Tribunal has or intends to exercise a power on review (section 38 (3)) to make written recommendations to the Chief Executive 	
<p>Appeal of Tribunal Decision to QCAT</p> <p>Appeal Tribunal constituted by judicial members of the Tribunal) (department as respondent)</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ distribute the Notice and Grounds of Appeal to CSSC ▪ prepare a brief of Instruction to Crown Law ▪ liaise with the Tribunal Registry in relation to provision of Hearing transcript ▪ provide advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ collate any additional information requested by the CSA

<p>Appeal of Tribunal decision (department as appellant)</p>	<ul style="list-style-type: none"> ▪ if necessary or a dispute arises, facilitate a case discussion with Court Services Unit Manager, CSSC Manager and relevant staff in relation to Crown Law advice about prospects of success on defence of an appeal ▪ attend Hearing and Instruct Crown Law Officer <p>Upon determination of the Appeal the CSA will:</p> <ul style="list-style-type: none"> ▪ provide a copy of the District Court judgement to the CSSC ▪ provide further advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders 	<p>Upon determination of the Appeal the CC will:</p> <ul style="list-style-type: none"> ▪ ensure the judgement is complied with
	<p>The CSA will:</p> <ul style="list-style-type: none"> ▪ facilitate discussion between the Court Services Unit Manager and CSSC Manager & relevant staff re: merits of appeal ▪ prepare requests in writing to the Tribunal in relation to provision of Hearing Transcript ▪ prepare a brief of instruction to Crown Law in relation to opinion about prospects of success on appeal 	<p>The CC will:</p> <ul style="list-style-type: none"> ▪ will participate in Advice in Conference and collate information as required by CSA

	<ul style="list-style-type: none"> ▪ assist in preparation of a brief to the Director General for authority to file appeal ▪ arrange and participate in an Advice in Conference with Crown Law ▪ attend Hearing and Instruct Crown Law Officer <p>Upon determination of the Appeal the CSA will:</p> <ul style="list-style-type: none"> ▪ provide a copy of the District Court judgement to the CSSC ▪ provide further advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders 	<p>Upon determination of the Appeal the CC will:</p> <ul style="list-style-type: none"> ▪ ensure the District Court judgement is complied with
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As an auxiliary function, Court Services Advisers provide a departmental intake service to the Tribunal Registry staff and maintain an intake register of Tribunal inquiries. All Tribunal applications and related outcome are tracked in order to provide statistical analysis and observation of practice trends

Information Notice to Decision-maker about Application for Review under section 99E (1) of the *Child Protection Act 1999*

Applicant:	Mary J Brown
Respondent:	Department of Communities (Child Safety Services)
Case number:	CML 142-10

TO: Department of Communities (Child Safety Services)

OF: Court Services Unit
Department of Communities (Child Safety Services)
GPO Box 806
Brisbane QLD 4000

TAKE NOTICE that an application has been filed by Mary Brown for a review of a reviewable decision. A copy of that application is attached.

You must give to me at the address and by the date below, notice of the names and addresses of all persons, apart from the applicant:

- (a) who are entitled to apply for a review of the reviewable decision concerned; and
- (b) of whom you are aware.

ADDRESS

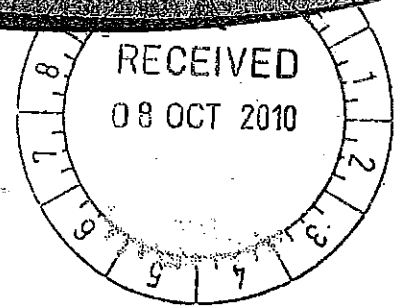
Principal Registrar
Queensland Civil and Administrative Tribunal
Gpo box 1639
Brisbane Qld 4001

Within seven working days of receipt of this Information Notice.

Dean Williamson
Delegate for Principal Registrar
Queensland Civil and Administrative Tribunal

Date: 8 October 2010

Form Number 17 (version 1)
Queensland Civil and Administrative Tribunal Act 2009 (section 33)



Application to review a decision – childrens matters

Refer to attached instructions at the front of this application prior to filling out this form.

See instructions for a list of the decisions which may be reviewed. Please consult the list before submitting this form.

This form is to be used for reviews of decisions made under the:

- Child Protection Act 1999
- Adoption of Children Act 1964

For office use only

Case number:

Date:

Registry:

Sent to:

PART A – APPLICANT'S DETAILS			
Name			
Ms. <small>Title</small>	Mary <small>Given name/s</small>	Brown <small>Surname/Family name</small>	
Date of birth			
07 <small>Day</small>	07 <small>Month</small>	1968 <small>Year</small>	
Address			
131 Violet Parade Evergreen Queensland		Postcode	4999
Telephone			
(07) 3366 3366 <small>Home</small>	() <small>Business</small>	0403026979 <small>Mobile</small>	
Fax			
(07) 3366 3377			
Email			
maryb@hotmail.com.			

Representative's details (if applicable)

- ☐ Tick if you want this to be your address for notices
- ☐ Tick if you want your representative to represent you in proceedings before the tribunal (see Part A of the instructions – you may be required to seek the tribunal's permission for this to happen by making an application under the Application for leave to be represented form. The tribunal may not give you leave to be represented.)

Name

<input type="text"/>	<input type="text"/>	<input type="text"/>
Title	Given name/s	Surname/Family name

Company

<input type="text"/>	ABN <input type="text"/>
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Address

<input type="text"/>	Postcode <input type="text"/>
----------------------	-------------------------------

Telephone

() <input type="text"/>	() <input type="text"/>	<input type="text"/>
Home	Business	Mobile

Fax

() <input type="text"/>

Email

<input type="text"/>

PART B FULL NAME AND DATE OF BIRTH OF CHILD/REN CONCERNED BY THE DECISION

Given name/s	Surname/Family name	Date of birth
1. Jane	Smith	13/01/1994
2. John	Smith	08/05/1999
3. Jess	Smith	04/08/1996
4.		DD/MM/YYYY
5.		DD/MM/YYYY
6.		DD/MM/YYYY

Tick the box that best describes your relationship with the subject child

- | | | | |
|---------------------------------|--------------------------------------|--|---|
| <input type="checkbox"/> mother | <input type="checkbox"/> grandparent | <input type="checkbox"/> sister | <input type="checkbox"/> kinship carer |
| <input type="checkbox"/> father | <input type="checkbox"/> brother | <input checked="" type="checkbox"/> foster carer | <input type="checkbox"/> other (please specify) |

Is this an application brought on behalf of a child? If an application is brought on behalf of a child, the President's permission is required before this application is filed. (Child Protection Act 1999, section 99P)

☐ Yes ☒ No

PART D DECISION TO BE REVIEWED

Who made the decision?

Jasmine Green, Manager of the Evergreen Child Safety Service Centre, Department of Communities

Details of decision to be reviewed:

Jasmine Green made a decision to remove Jane, John and Jess Smith children from my care.

When was the decision made?

The children were physically taken from my home on 1 September 2010.

When did you receive the decision?

Jasmine Green issued me with written notice of the decision to remove the (3) children from my care on 2 September 2010. (letter attached)

PART E DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

Name, position and area office of decision-maker

Jasmine Green, Manager of the Evergreen Child Safety Service, Department of Communities.

State briefly why you think the decision is wrong or not properly made

The children Jane, John and Jess Stone have been in my care since April 2004 and we are attached to each other. Jess can be a difficult child and she requires a firm hand to contain her behaviours. It is not fair to the other children that they are removed from my care simply because of an isolated incident of behaviour on my part, which involved only one of the children. My history as a carer should be considered, not just this one event. I am aware that since the children were removed from my care, they have been placed with other foster carers who live about 30 minutes from my home. As a result the children have been required to attend a different schools. This would be a difficult adjustment for them all.

Briefly describe any other facts you think are important

The children's parents have never liked me. I believe the department was motivated to make this decision, not for the children's sake but to appease the parents. The parent's views about me and/or the placement should not be the most relevant consideration because these children are subject to long term orders and only have contact with the parents (4) hours each fortnight in any case. Sarah Stiles my support worker at Pathways, Shared Family Care visits my house regularly and she can attest to how much the children love me. My de facto partner, Darren Clementine stays almost every night at my home and he can also attest to Jess' difficult behaviours and of how any reasonable person would see a firm hand is required with her.

Briefly describe what you want to happen

I want all (3) children returned to my care and I want the Tribunal to make the department stop providing contact between the children and their parents because I think it is this fortnightly contact which makes Jess behave so badly.

PART B STAY OF A DECISION

Do you want the decision stayed?

☒ Yes ☐ No

I want a stay of the decision because:

set out reasons in numbered paragraphs

As I said above, the children are attached to me so they would be fretting without me. The stay should also be granted so that they can immediately return to their former schools of long standing. This removal decision has turned their lives and mine upside down and the department needs to think about me and the children and not the parents for a change.

PART C OTHER INFORMATION

Aboriginal or Torres Strait Islander please tick appropriate box(es)

☐ the applicant

☐ the child

☐ or another party interested in these proceedings

☐ identifies with Aboriginal heritage

☒ or Torres Strait heritage

- SIGNATURE AND DECLARATION**
- ☒ I have completed all questions on the application form according to the instructions
 - ☒ I have included a copy of the decision for which I am seeking review (if I have a copy)
 - ☒ I am ready to proceed with this application

Interpreter

Is an interpreter required?

☐ Yes ☒ No

If YES, please specify language

Warning

Section 216 of the *Queensland Civil and Administrative Tribunal Act 2009* makes it an offence for a person to knowingly give the registry documents containing false or misleading information.
Maximum penalty for such an offence – \$10,000.

SIGN AND DATE HERE

The information in this application is true to the best of my knowledge.

Mary J Brauer

Applicant/s sign here

08/10/2010

Date

If more than one applicant is named all must sign the application.

2 September 2010

Ms Mary Brown
131 Violet Parade
Evergreen QLD 4999

Dear Mary,

As you are aware the following children have been placed in your care on the following child protection orders:

Jane Smith born 13 January 1994	Long-term guardianship to the Chief Executive;
John Smith born 8 May 1999	Long-term guardianship to the Chief Executive;
Jess Smith born 4 August 1996	Long-term guardianship to the Chief Executive

When a child is subject to a Child Protection Order, under section 89 of the *Child Protection Act 1999*, the chief executive may decide to remove the child from the care of the child's carer if the chief executive is satisfied it is in the child's best interest.

It is under this authority that I have made the decision that the above named children be removed from your care.

My reasons for this decision are that:

- There have been two (2) previous matters of concern child protection notifications recorded and substantiated against you regarding your care of the children;
- On 1 September 2006 a further matter of concern child protection notification was recorded in relation to your care of the children on the basis of allegations that you struck the child, Jess Smith, about the face;
- Following joint interviews by the department and Queensland Police the decision was made to remove the children from your care after disclosures were made by Jess that you hit her about the face. Furthermore, you made admissions to the same.

If you disagree with this removal decision, you are entitled to request a departmental review of the decision. This can occur in the following ways:

- You can contact me to discuss your concerns. If necessary, I can arrange a meeting with relevant staff to talk with you about the decision.
- You can request an internal review of this decision through the department's complaints system – this is likely to involve a review of the decision by a senior departmental officer. If you wish, I can assist you to access the department's complaints system.

You are entitled to request a review of this decision by the Queensland Civil and Administrative Tribunal (QCAT). If you wish to have the decision reviewed, you must apply to QCAT within 28 days of receiving this letter. You are also entitled to make a request to QCAT that they issue a temporary order (a stay) to stop my decision from having effect. For further information on making an application for review, contact the QCAT Registry directly at:

Queensland Civil and Administrative Tribunal
Level 9, 259 Queen Street
Brisbane QLD 4000
Telephone: 1300 753 228 (1300 QLD CAT) - tollfree

If you have any queries regarding this information please contact me on (07) 3366 9999

Yours Sincerely

Jasmine Green
Manager
Evergreen Child Safety Service Centre

**CC Induction Program
QCAT Session
Case Scenario**

Relevant Persons

Jane Smith	subject child	born 13 January 1994
John Smith	subject child	born 8 May 1999
Jess Smith	subject child	born 4 August 1996
Mary Brown	foster carer for subject children	

Background Information

The subject children have been placed in the care of approved foster carer, Mary Brown since April 2004. They are subject to Child Protection Orders granting long term guardianship to the Chief Executive.

The subject children's parents live in close proximity to the children at an address known to the Department of Communities.

During the course of the subject children's placement with Mary Brown two (2) previous matters of concern child protection notifications have been recorded and substantiated in relation to Ms Brown's care of the children. On 1 September 2010 a third (3) matter of concern child protection notification was recorded in relation to her care of the subject children, the primary allegation being that Ms Brown struck the child, Jess Smith about the face.

Following interviews by officers of the department and Queensland Police, a decision was made to remove all three children from Ms Brown's care on the basis that the child Jess made clear disclosures of being hit about the face and Ms Brown made admissions to police about the same. This decision was made on 2 September 2006 and an information notice regarding the decision was personally delivered to Ms Brown on the same day.

A subsequent decision was made in December 2010 to cancel Ms Brown's authority as a foster carer. Ms Brown's certificate of approval as a foster carer (her authority) was due to expire on 10 October 2010.

Questions

1. Who can seek a review of the decision to remove the subject children from Ms Brown's care?
2. The decision letter issued to Ms Brown by Jasmine Green dated 2 September 2010 advises her that she has 28 days from receipt of the letter to make application to *Queensland Civil and Administrative Tribunal* for review of the decision. Where in law is that 28 day period stipulated?
3. Who can seek a review of the decision to cancel Ms Brown's authority as a foster carer?
4. Is Jasmine Green delegated to make these decisions?
5. Does the *Queensland Civil and Administrative Tribunal Act 2000* or the *Child Protection Act 1999*, contain any provision for another person (not described in Schedule Two (2) of the *Child Protection Act 1999* to be joined as a party to an application for review and who for example might this on your reading of the case scenario or application materials filed by the applicant?
6. How might expiry of her certificate of approval as a foster carer (her authority) impact on any review of the decision to remove the subject children from her care?
7. Would Ms Brown's rights of review have been altered in any way if she had been charged with a criminal offence and her positive prescribed notice ("Blue Card") suspended or cancelled?
8. Is there any information within Ms Brown's application for review filed with the Tribunal Registry which creates difficulty for her to hold an approval as a single foster carer and why?
9. Is there any other piece of information identified on Ms Brown's application that might prevent Ms Brown's application from being accepted by the Tribunal for review and if so why?

10. Consider this alternative. While reviewing the Statement of Reasons prepared for a review of the removal decision you note that the matter of concern child protection notification was NOT investigated jointly with Queensland Police, but records that the allegations of hitting were founded as set out in the background information section. What requirement in the *Child Protection Act 1999*, have officers acting for the Chief Executive overlooked that you should identify to the delegated officer?

A Statement of Reasons – Queensland Civil & Administrative Tribunal

Purpose:

The purpose of the Statement of Reasons is to assist the Tribunal. The Statement of Reasons must be submitted within 28 days of receipt of a Notice of Review.

The Tribunal may vary the length of time for the filing of a Statement of Reasons if an application to stay the decision is made and the matter is listed for an urgent Stay Hearing and Compulsory Conference. Therefore delegated officers are encouraged to see preparation of this document as a priority.

The Statement of Reasons must:

- Set out the findings on material questions of fact
- Refer to the evidence and/or material on which those findings were based
- Provide reasons for the decision

The Statement of Reasons is the first written material the Tribunal receives from the Department of Communities (as respondent). After reading the Statement of Reasons, the Tribunal should have a clear understanding of:

- What decision was made and by whom
- The legal authority and if applicable policies authorising the decision maker to make the decision
- The sequence of events and assessments that lead up to the decision, including, if applicable, prior decisions that may have been in effect
- The decision making process, including consultation with other persons or organisations and the child's views where applicable

NB: If the subject child/ren to a review identify as aboriginal or Torres Strait Islander the Statement of Reasons must document consultation with and views expressed by the Recognised Entity in relation to the reviewable decision

- Any other reviews of the decision which may have occurred internal or external of the department
- The reasons for the decision
- How the reasons and decision were communicated to the applicant and other relevant parties

Section 21 (2) of the *Queensland Civil & Administrative Tribunal Act 2009* also requires the decision maker to provide documents to the Tribunal in the decision maker's possession or control that were relied upon in making the decision or otherwise provide relevant contextual information for the Tribunal. For example:

- Legislation & departmental policy documents
- Copies of letters or information notices issued to the applicant/s
- Minutes of meetings and any plans arising from those meetings for example, Case Plans, Actions Plans etc
- Reports including Social Assessment Reports, Forensic Risk Assessments, Medical Reports, Psychiatric and Psychological Assessments
- Chronologies

For those reviewable decisions relating to a specific child or children, the Statement of Reasons should always include a copy of the child/ren's current Case Plan

Some brief general information is also useful to include such as:

- Family constellation and/or relevant persons
- Summary of child protection history
- Any specific needs of the child/ren for example medical, educational, behavioural, therapeutic activities
- Child/ren's placement history (particularly if it is a review application in relation to in whose care the child/ren is placed)
- Information about the child/ren's current legal status and/or any current legal proceedings in relation to the child/ren
- If applicable whether a Separate Legal Representative is appointed for the child/ren in any legal proceeding and if so who that person is
- Any orders or legal proceedings in relation to other relevant people to the review for example, Bail Condition or a Domestic Violence Protection Order that may operate in relation to an applicant parent
- If applicable, information about the status any criminal proceedings relevant to the review matter
- Any previous review applications and outcome

If it is a review matter relating to a carer issue include information such as:

- History of approval and/or renewal including attachment of their current certificate of approval to verify that it remains current
- General overview of the history of placements of children in their care
- Information about training completed by the carer
- Assessment and Review reports completed in relation to the carer
- Any matter of concern and assessment outcome history
- Action Plans arising from assessment outcomes, compliance with plans and recorded outcomes

Style:

- Language:** Keep it simple and precise because the audience is both the Tribunal and the applicant.
- Font Type:** Select a font type and size that is easy to read
- Headings:** Are useful to guide content
- Numbering:** Each paragraph and each page should be clearly numbered. Paragraphs should be numbered 1, 2, 3 etc not via sections, for example 5.1, 5.2 then 6.1, 6.2
- Sign & Date:** The delegated must ensure they sign and date the Statement of Reasons

STATEMENT OF REASONS

Queensland Civil & Administrative Tribunal Review Number CML: 142 - 10 Brown and the Department of Communities (Child Safety Services)

Decision for Review

Ms Mary Brown is seeking a review of the decision, "removing child from carer's care" pursuant to section 89 of the *Child Protection Act 1999*.

On 2 September 2006, I Jasmine Green, Manager of the Evergreen Child Safety Service Centre, as the Chief Executive's delegated officer, made the decision to remove the subject children Jane Smith born 13 January 1994, John Smith born 8 May 1999 and Jess Smith born 4 August 1996 from the care of Ms Brown and to place them in an alternative out of home care placement.

On 2 September 2006, a letter was sent to Ms Brown advising her of the decision to remove the Smith siblings from her care and her right to seek review of this decision by the Queensland Civil and Administrative Tribunal. A copy of this correspondence is annexed hereto and marked **Exhibit "A"**.

On 29 September 2006, a letter was sent to Ms Brown advising her of the outcome of the matter of concern, child protection notification recorded in relation to the subject children dated 1 September 2006. A copy of this correspondence is annexed hereto and marked **Exhibit "B"**.

Jane, John and Jess Smith are currently placed with approved foster carers Jessica and Joseph Graves.

Relevant Legislation and Policy

In making these decisions, consideration was given to sections 5, 6, 89, 90 and 91 of *Child Protection Act 1999* and Schedule 1 *Child Protection Act 1999*. A true and correct copy of these legislative provisions is annexed hereto and marked **Exhibit "C"**.

Further, consideration was given to the policies and procedures as outlined in Chapter 9 of the department's Child Safety Practice Manual, relating to Matters of Concern.

Family Details/Relevant persons

Legal Status of Children

On 5 December 2004 in the Children's Court at Evergreen, Child Protection Orders were made granting long term guardianship of Jane, John and Jess Smith to the Chief Executive. True copies of the Child Protection Orders in relation to each of the subject children are annexed hereto and collectively marked **Exhibit "D"**.

Ms Brown's Foster Carer Approval History

On 3 September 2000 Ms Mary Brown lodged an application for approval in the approved form for a certificate of approval as a foster carer.

A carer assessment was undertaken by Ms Bruce Wayne of "Kids First". A report of this assessment dated 25 November 2000 was provided.

Re-approval applications and assessments were completed for Ms Brown in December 2001, December 2003 and October 2005.

Copies of the original assessment report and subsequent re-approval assessment reports are annexed hereto and collectively marked **Exhibit "E"**.

Some key themes or issues identified in approval assessments for Ms Brown include:

.....

Ms Brown's most recent Certificate of Approval expired on 10 October 2006. A copy of her Certificate of Approval as a foster carer is annexed hereto and marked **Exhibit "F"**.

History of Placements with Ms Brown

Since her original approval in December 2000 eleven (11) children who have been in the custody or guardianship of the Chief Executive have been placed with Ms Brown.

Key observations or issues identified in Ms Brown's placement history are:

.....

Child Protection Notifications & Investigation and Assessment Interviews & Outcomes

In total four (3) matter of concern child protection notifications have been recorded in relation to Ms Brown's care of children. These are as follows:

CPN 3 January 2005

.....
The following findings were made in relation to this notification.

.....
Those findings were based on the following evidence:

CPN 4 June 2006

.....
The following findings were made in relation to this notification.

.....
Those findings were based on the following evidence:

CPN 1 September 2006

.....
The following findings were made in relation to this notification.

.....
Those findings were based on the following evidence:

Action and/or Support Plans Implemented with Ms Brown

In response to earlier investigation and assessment outcomes recorded in relation to Ms Brown the following Action and/or Support Plans were developed and implemented:

CPN 3 January 2005 Action/Support Plans & Outcomes

CPN 4 June 2006 Actions/Support Plans & Outcomes

Training History of Ms Brown

Ms Brown completed foster carer training between 15 September and 15 November 2000. A list of the training modules completed by Ms Brown is annexed hereto and marked **Exhibit "G"**.

Since her original approval Ms Brown has completed further training in the following.....

Contact between Ms Brown and Smith children since removal

Since removal from her care the Smith children have been having contact with Ms Brown on a weekly basis for a one (1) hour supervised period. The rationale for the decision to provide contact was:

.....

Key observations arising from this contact include:

.....

Identified needs of the Smith children

(eg. medical/therapeutic/educational/behavioural)

Jess Smith

.....

John Smith

.....

Jane Smith

.....

Annexed hereto and marked **Exhibit "H"** are reports confirming the medical/therapeutic/educational/behavioural needs of Jess, John and Jane Smith

Views of the Smith children

On 2 September 2006 Child Safety Officer Tracey Barrett met with each of the Smith children separately to discuss consideration that they be removed from Ms Brown's care. The key comments reported to have been made by the children included:

Jess Smith

.....

John Smith

.....

Jane Smith

.....

On 2 September 2006 Child Safety Officer Tracey Barrett met with each of the Smith children separately and provided each child with a letter advising them that a decision had been made to remove them from the care of Ms Brown and place them into the care of approved foster carers Jessica and John Graves.

The letter provided advice to each child that if they were not satisfied with either the decision to remove them from Ms Brown's care and/or the decision regarding in whose care and where they were now to be placed they could seek a review of this decision by the Queensland Civil and Administrative Tribunal. Ms Barrett provided each of the children with information about how they could access the Tribunal.

During her discussions with the children about the above decisions, the key comments reported to have been made by them included:

Jess Smith

.....

John Smith

.....

Jane Smith

Other Consultation

In making the decision to remove the children subject from the care of Ms Brown I have consulted the following people and/or agencies:

- Recognised Entity
- Ms Brown's Shared Family Care Coordinator
- Child Safety Officer – Tracey Barrett
- Team Leader – Glenda Goodwitch
- Department of Communities – Placement Support Unit Manager
- The children's parents

Summarise information provided on consultation

Presentation of the Smith children since removal

In placement setting

.....

In education setting

.....

In therapeutic setting
.....

Reasons for reviewable decision

Conclusion
.....

**Jasmine Green
Manager
Evergreen Child Safety Service Centre
Department of Child Safety**

9 October 2006

FACTSHEET: Court Etiquette – QCAT

This factsheet provides basic information on what to expect and how to behave when you go to court.

How can you prepare to give evidence?

When you are approached to give evidence in the Queensland Civil and Administrative Tribunal (QCAT), it is a common reaction to feel nervous or anxious.

The best way to overcome these feelings is to **BE PREPARED**.

In preparing to give evidence, remember you are speaking to the contents of your witness statement which you have either deposed to or have stated as true and correct. As such, the first step in being prepared is to *ensure that you have read through your filed material prior to the hearing and have re-familiarised yourself with its contents.*

Should you have any concerns or issues, you should contact your Court Coordinator prior to the hearing to arrange a time to meet and discuss your concerns.

QCAT Review of decisions under the Child Protection Act 1999

A QCAT review of a decision/s made under the *Child Protection Act 1999* are conducted in a 'closed tribunal', that is, the tribunal is not open to the general public to sit in and observe. 'Closed tribunal' also means that there is a ban preventing anyone from publishing or disclosing information about what occurs or is said during the proceedings to anyone except those who were parties to the matter before the tribunal.

How to dress for Court

Tribunal proceedings are formal occasions. While it is not strictly necessary to wear a suit, you should adopt a formal standard of dress. Thongs and singlets must not be worn.

As a general rule, you should wear to a tribunal what you would wear to a formal job interview.

Standard court dress usually consists of:

- For Women: Collared Shirt / Skirt or Pants / Jacket / closed in Shoes;
- For Men: Business Shirt / Jacket / Pants / Tie / closed in Shoes.

Remember, the tribunal is a formal place and it shows proper respect to look your best.

You should always remove your sunglasses and hat before entering the tribunal and never bring food or drinks (including a water bottle) into the tribunal.

On the day of the hearing

It is impossible to draw up a precise schedule for the day so be prepared to wait before you are called to give evidence.

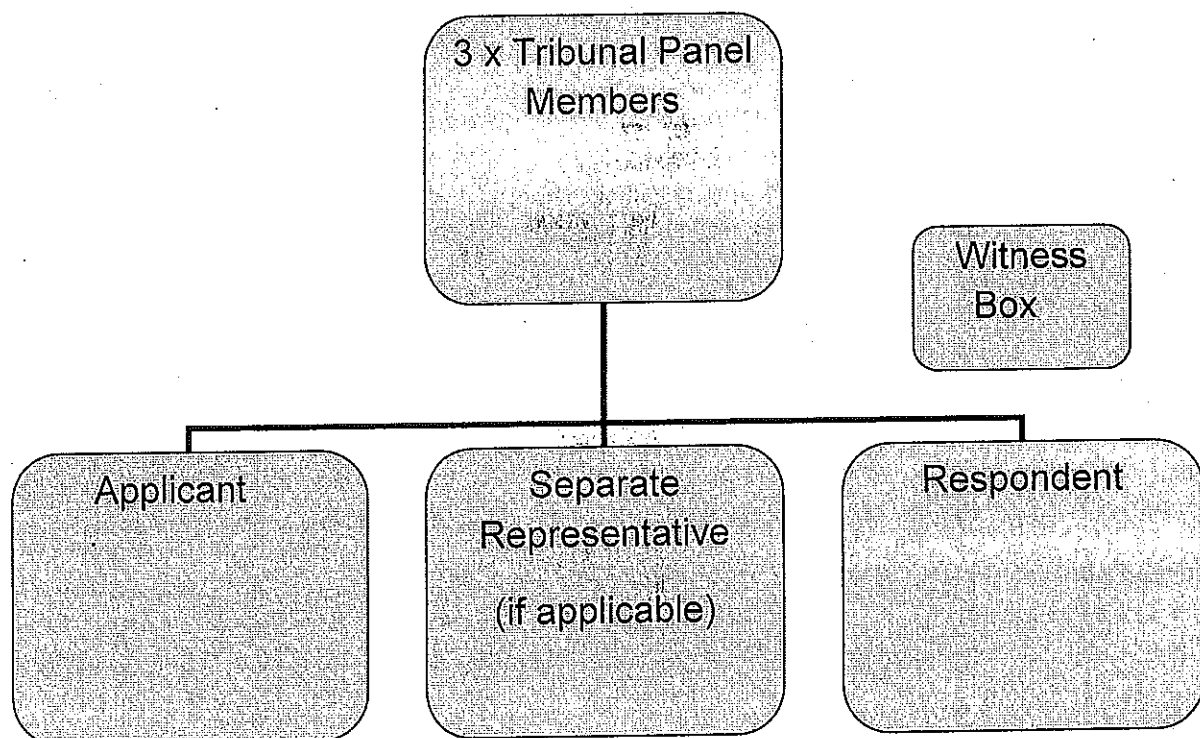
Before the start of the proceedings, make contact with the relevant Court Coordinator or CSSC staff member to advise them that you are present and take instructions from them. You will normally be asked to wait outside of the tribunal hearing room to be called. This is normal procedure, intended simply to prevent you from being influenced by the evidence of any preceding witnesses.

Court Layout

In the Tribunal the table where the parties sit is called the bar table.

The Applicant (i.e. the person commencing the legal action) sits on the right-hand side. The Respondents (i.e. the person defending the legal action, which for Tribunal matters is usually the department) should sit on the left-hand side.

The witness box is normally situated on the left-hand side of the room in between the Magistrate and the bar table (however, there may be occasions where it is on the right-hand side).



Tribunal Etiquette

Respect for the Tribunal:-

1. When crossing the Tribunal room it is preferable not to walk between the bench and the bar table. Walk behind the bar table.
2. The Tribunal will provide advice before you commence your evidence as to how you should address them
3. You should not attempt to contact a Tribunal member directly at any stage before or after the hearing. Any discussions you wish to have with them must occur in the courtroom.

Giving Evidence - Witness Box

If you do not understand or speak the language of the proceedings, or have a hearing impairment, you are entitled to the assistance of an interpreter. If this is the case, please advise the relevant Court Coordinator at the earliest available opportunity.

In the witness box, the Tribunal may place you under a legal oath or affirmation to tell the truth or may otherwise simply emphasise the importance of your honesty in evidence.

Oath on the Bible

'Do you swear that the evidence which you shall give to the court shall be the truth, the whole truth and nothing but the truth, so help you God?'

The witness will respond: 'So help me God.'

Affirmation

'Do you solemnly, sincerely and truly affirm and declare that the evidence you shall give to the court shall be the truth, the whole truth and nothing but the truth?'

The witness will respond: 'I do.'

Following this, if you are appearing as a witness for the department you will be asked questions by the department's representative, the applicant and then the Tribunal members. Whilst this is the usual order, it is not uncommon for Tribunal members to interject and seek further clarification

Always be thoroughly prepared and know your evidence as it is preferable to be able to answer questions without reference to your statement or other notes. However you should always bring a copy of your witness statement to refer to and any other notes you may hold that will assist you in evidence if you are struggling with recall.

If asked a specific that you do not remember exactly (such as a date) answer to the best of your ability and state that you have answered so. 'Never guess; if proved wrong you could discredit all your evidence.'

Should you find it necessary to refer to a copy of your witness statement or other notes during evidence, you should request permission from the Tribunal to do so before referring to them to refresh your memory.

Do not worry if you feel nervous, this is common and perfectly normal. Take your time, listen to the questions carefully, and make sure you understand them before answering. When in doubt, ask to have the question repeated or rephrased. Speak clearly and distinctly, everyone in court is entitled to hear what you say. You may notice microphones in the witness box; these are not there to amplify your voice but to record the proceedings so you need to be articulate.

Give simple answers to the questions without adding unnecessary details. Be affirmative and balanced. If you don't know the answer, say so. Because the court is interested only in the facts, refrain from giving opinions or interpretations unless you are asked to do so. When asked to express an opinion or when volunteering an opinion to the court you should be aware of two things:

1. Know the limits of your own area of expertise. If you comment on matters outside your area of expertise you leave yourself open to challenge not only on the matter in question, but by implication, upon areas within professional competency.
2. Ensure statements of opinion are based on fact. Expert witnesses are accorded the privilege of their opinions. This is recognition of specialised expertise in a particular area. At times the situation may be uncertain so, it is advisable to do two things:
 - a) express your opinion as based on certain events/facts/observations, for example, "I assessed that the Mother was ... as I observed her to be ..."; and
 - b) have further details ready for cross examination should you be required to provide these to back up your opinion.

As well as presenting more credible evidence to the court this is a useful exercise to test whether your own assessments are based on logic.

If someone objects to a question that has been asked, do not start to answer until the Tribunal determines whether the question is relevant to the proceedings and asks you to answer the question.

Should you realise that you have given an incorrect answer, tell the Tribunal immediately so that you can correct your error.

Cross examination

The applicant and/or their legal representatives have an opportunity to ask you questions in order to clarify your evidence or check its accuracy, this is known as 'cross examination'. The person undertaking the cross examination may employ tactics to unnerve you to create weaknesses in your evidence, these may include rapid fire questions, being overly condescending, asking leading and suggestive questions, reversing your words, staring, etc. Try to ensure that you maintain calm and answer questions as best you can. Do not be arrogant or defensive.

Can you refuse to testify or to answer questions? You cannot refuse to answer questions. If you do refuse, you may be held in contempt. The only exception to this is the provision of notifier details. The *Child Protection Act 1999* provides confidentiality to notifiers of harm or risk of harm. This means that the identity of a notifier cannot be revealed, despite requests to do so, unless leave of the Court is first granted. It should be noted that there are strict criteria that must be met before a Tribunal can grant leave for this to occur. If you have any concerns in relation to this, attention can be drawn to section 186 of the *Child Protection Act 1999*.

Do not try to avoid answering a question.

Maintain a courteous attitude towards all parties at all times. Cross examination is merely a legal and ethical obligation and should not be taken personally. The Tribunal will not allow the cross examination to become insulting or abusive.

Do not discuss your evidence with other witnesses.

Be friendly and obliging and assist the Tribunal

How much time will you have to spend in court?

As mentioned earlier, it is practically impossible to predict how long proceedings will take. You must remain at court until you have given evidence or until the Tribunal authorises you to leave.

You may be authorised to leave without giving evidence testifying. This may happen if an agreement has been reached or there is an agreement on facts about which you were going to give evidence. It is also possible the case may be adjourned and if so, the Tribunal will tell you when you must come back for evidence

Protocols

Everyone that appears in court should:

- a) Dress neatly (observing that they do not wear hats or sunglasses within the court);
- b) Turn off their mobile phone;
- c) Not eat, drink or chew gum (water will be provided should you wish);
- d) Sit quietly and keep noise to a minimum; and
- e) Not make an audio or visual recording of proceedings



**AUSTRALIAN GOVERNMENT SOLICITOR
GOVERNMENT LAW GROUP**

**The Hon. Justice Garry Downes AM
President of the Administrative Appeals Tribunal**

**Government Agencies as respondents in the
Administrative Appeals Tribunal**

3 February 2005

Introduction

1. The role of respondents in applications for review in the Administrative Appeals Tribunal has been the subject of many comments in decisions and papers but has not, so far as I am aware, been the subject of any comprehensive analysis. In its report *Managing Justice: A Review of the Federal Civil Justice System* (ALRC 89) the Australian Law Reform Commission did undertake a brief analysis of the "Duties of agency representatives" ([9.72]-[9.83], Rec 121) but this issue formed a very small part of a very substantial report to which it was only incidental. The proposal of the Government through its introduction into the Parliament of a provision in the *Administrative Appeals Tribunal Amendment Bill 2004* requiring decision-makers to use their "best endeavours to assist the Tribunal to make its decision" provides a suitable occasion for analysis of the issue.

Administrative Review contrasted with Litigation

Administrative Review

2. Any analysis of the exercise of Commonwealth power requires its constitutional basis to be addressed. Merits review under the *Administrative Appeals Tribunal Act 1975* (Cth) in which the Tribunal substitutes its own decision for the decision of the original decision-maker, is an exercise of the administrative power of the Commonwealth and not of the judicial power of the Commonwealth. The making of administrative decisions and the reviewing of them on the merits are functions regulated by Chapter II of the Constitution relating to the Executive Government and not Chapter III relating to the Judicature. Understanding this is fundamental to an understanding of administrative review.

3. Administrative decision-making, which is an important aspect of Executive Government, is not concerned with dispute resolution as such. There may be a dispute as to the decision which should be made but administrative decision-making must always focus on the making of the correct or preferable decision and not upon the resolution of the dispute relating to that decision. Administrative decisions usually have wider impact than their effect on those in dispute. Litigation concentrates on the resolution of disputes between parties. Administrative decision-making is much more closely allied to what the common law calls decisions "in rem", (which are rare) than it is to the usual role of courts of resolving disputes "in personam".

4. A decision as to who should be granted a licence will very often also be a decision as to who should be refused that licence. A decision to grant a visa to enter Australia to one person can be a decision to refuse the same visa to another. Migration decisions can broadly be seen as decisions as to the make up of the people of Australia as much as they can be seen to be decisions about individual claims. The conflict between claims for individual justice on the one hand and public policy based considerations on the other hand is an important aspect of administrative decision-making.

5. One indication that the function of dispute resolution is secondary to the making of the correct or preferable decision in merits review in the Tribunal is the requirement that a settlement reached between the parties can only be reflected in a new decision if the Tribunal makes a positive finding that the new decision is both within power and appropriate (s 42C).
6. It has many times been said that the Tribunal stands in the shoes of the original decision-maker in making its substituted decision (see, eg, *Costello v Secretary, Department of Transport* (1979) 2 ALD 934 at 943). The substituted decision becomes the decision of the decision-maker being reviewed for future purposes. It is the Commonwealth department or agency in which the original decision was made that deals with enforcement and variation or cancellation of the decision if future circumstances justify this.
7. The making and review of administrative decisions frequently involves the exercise of discretion. This is reflected by the phrase which is usually used to describe the decision-making function of the Administrative Appeals Tribunal, namely that the Tribunal must make the "correct or preferable decision": *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591 per Bowen CJ and Deane J. The conjunction is used to accommodate the difference between a matter susceptible of only one decision, in which the "correct" decision must be made and a decision which requires the exercise of a discretion or a selection between more than one available decision, in which case the word "preferable" is appropriate.

Litigation

8. The role of litigation is to resolve disputes. It is to determine existing rights and not to confer fresh benefits. There are times when litigation involves limited exercises of discretion such as refusing to grant relief which might otherwise have been justified but these issues of discretion are incidental to the dispute

resolution function and will not apply to the resolution of the principle issues in the litigation. Different judges assessing compensation for injury in the same fact circumstances might arrive at different assessments but they are not exercising a discretion. Their task in each case is to assess the proper amount of compensation for the injury.

9. Litigation is truly adversarial. I am not using the phrase in its popular sense in which it is usually contrasted with "inquisitorial" processes. In that sense it is used to describe a hearing process. All litigation is adversarial, even in civil code countries such as France. Litigation is adversarial because it must result from an assertion by one party which is rejected by another party which the first party then seeks to have adjudicated by a court. The assertion and rejection through a court process is the adversarial process. Since the subject matter for dispute is created by the parties they are equally free to resolve it without curial determination. Accordingly, parties to litigation can resolve their disputes by agreements for the payment of money or for the doing of work or in any other way they find acceptable and to do this without involving the court.

Judicial Review

10. The contrast between merits review of administrative decisions and litigation can be further illustrated by reference to judicial review of administrative decisions. Judicial review is litigation. It involves an assertion by a plaintiff against a government respondent which resists the claim that an administrative decision is unlawful. There is only one answer. Either the decision is unlawful or it is not. The court hearing the application has no power to consider the merits of the decision. Discretionary considerations can only arise in the limited way referred to above. For example, if a plaintiff has delayed in bringing proceedings so that third parties have acted on a decision to their detriment the court might decline to make a declaration as to invalidity. There cannot be a finding that the decision will be upheld because of the delay. If the decision is unlawful it cannot

be made lawful by a court engaged in judicial review (see, eg, *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597). Proceedings under the *Administrative Decisions (Judicial Review) Act 1977* are no different. Although jurisdiction under the Act is conferred by statute the jurisdiction is part of the judicial power of the Commonwealth and is conferred under Chapter III of the Constitution on courts. Nothing in the *Judicial Review Act* authorises a court to consider the merits of the decision it is considering. The question remains whether the decision subject to review is lawful or unlawful in accordance with the provisions of s 5 of the *Judicial Review Act*.

Practical considerations

11. Although all cases of merits review of administrative decisions can be contrasted with all litigation it does not follow that all merits review processes are alike. Applications for the review of licences such as radio and television licences are quite different from applications for the review of decisions relating to Commonwealth employees' compensation. Cases of the former kind have a high level of discretion in decision-making and can involve the need for expertise and reference to policy considerations. It is for this reason that the Tribunal has many members with expertise in areas outside the law such as accounting, aviation, defence, medicine and science. Cases of the latter kind are much closer to curial dispute resolution. Indeed, until comparatively recently most of the states conferred jurisdiction on workers' compensation courts to determine disputes relating to workers' compensation entitlements under State legislation. However, these cases involved true litigation in the sense that there was a dispute between the employer and the employee as to what entitlement the employee had to compensation and that dispute was determined by the court. The Commonwealth system adopts an administrative model so that the entitlement is not fully conferred by the legislation but arises from an administrative decision based on statutory provisions. When a Commonwealth employee's compensation matter is considered by the Tribunal on an application

for review of the original decision, the Tribunal is making a new administrative decision and is not simply resolving a dispute as to what are the applicant's rights under the statute.

Essential aspects of Administrative Review

12. In exercising its function the Tribunal is generally remaking the decision of a respondent or a decision of an intermediate review tribunal. It follows that the Tribunal is generally "standing in the shoes" of the original decision-maker. The Tribunal's new decision, once it has been substituted for the original decision, becomes the decision of the respondent. Enforcement of the decision is for the respondent. Variation and even cancellation, where possible, is for the respondent. The whole object of the process is to reach the correct or preferable decision.

13. It may be useful to look in a little more detail at the precise nature of merits review.

14. The process begins with a decision. It may relate to a right or entitlement. It may not. It may relate to the conferring of a licence or permit. The decision will be authorised by statute and have statutory force. A combination of the authorising legislation and s 25 of the Act will confer a right to seek review of the decision.

15. Once the right to review is invoked the fate of the decision is entirely in the hands of the Tribunal. The decision continues in force subject to the grant of a stay (s 41). However, it generally cannot be altered by the decision-maker and must ultimately be pronounced upon by the Tribunal (s 26). The parties cannot remake the decision. At most they can ask the Tribunal to remake it in accordance with their request (s 42C). Even if all parties wish the proceeding to

be discontinued the Tribunal has a discretion as to whether to accede to the request (s 42A).

16. This is quite unlike litigation where the parties always have ultimate control except in some special areas where governments have intruded and conferred special discretions on Courts. I think of testators' family maintenance or family provision legislation and infants settlements in personal injury litigation. These are the exceptions that prove the rule. Courts are not in these situations really exercising a judicial function.

Role of the respondent

17. These considerations compel a conclusion that the role of a respondent in the Tribunal is quite different to the role of a defendant in ordinary litigation, even when the defendant is a government department or agency. Once the Tribunal notionally becomes the decision-maker it follows that the decision-maker's and the respondent's interest is for the correct or preferable decision to be made. This is so even if that decision is different to the decision subject to review. Just as the staff of the departments or agencies will have turned their attention to assisting decision-makers in making the original decisions so too it is natural that they should adopt the same role so far as the Tribunal is concerned. The role of the support teams in the department or agency when the original decision was made was not a partisan role and it should not become a partisan role when the Tribunal is seeking to undertake precisely the same task as was undertaken by the original decision-maker.

18. Without the need to resort to the detail of the legislation or to government policy it is clear that the role of a respondent before the Tribunal is:

1. to assist the Tribunal to reach the correct or preferable decision; but

2. not simply to seek to uphold the existing decision, although that might be the approach which would be taken in litigation.

19. This role of the respondent has at least three aspects:

1. Reconsidering the original decision at the time of the Tribunal review for the purpose of determining whether it continues to represent the correct or preferable decision. This practice may involve informally referring the decision back to the decision-maker although that should not be allowed to delay review in the Tribunal;
2. Furnishing evidence and submissions to the Tribunal to ensure that the Tribunal is in the best position to make the correct or preferable decision. This may involve special assistance being given when an applicant is unrepresented but will continue to apply even though the applicant is represented; and
3. Responding to requests for assistance on particular issues from the Tribunal. In undertaking this task the respondent will simply be acting in the way that it would have acted if a similar request had been made by the original decision-maker.

20. In the early days of the Tribunal much of what I have said already had judicial approval. In *McDonald v Director-General of Security* (1983) 6 ALD 6 at 18, 19 Northrop J, forming part of a unanimous Full Federal Court, said:

"The Tribunal is not bound by the rules of evidence. It has before it all the material that was before the person who made the decision under the Act and which is the subject of the review before the AAT. Additional material may be placed before the AAT. As a matter of convenience, the Director normally appears to assist the Tribunal, but the Director-General is not to be treated in the same way as a party to proceedings before a Court. In Sordini v Wilcox (1982) 42 ALR 245, a review under the Administrative Decisions (Judicial Review) Act 1977, the administrative body whose decision was being reviewed appeared before the court. At 255 Northrop J said: "Counsel for the respondents stated that each of the first three-

named respondents, being the members of the Review Committee, would abide by the order of the court. Counsel for the respondents, very properly, made substantive submissions on behalf of the Commission. Where there are no adversary parties appearing before an administrative body, as in this case, it is important that the court receive assistance of counsel appearing for the administrative body making the decision which is being challenged under the Judicial Review Act."

It is equally important that in reviews by the AAT of decisions by administrative bodies such as the Director-General, or his delegate, in which there were no adversary parties, the AAT receive the assistance of persons acting on behalf of the administrative body. Likewise, in appeals of this court from the AAT on questions of law, it is important that the court receive the assistance of counsel appearing for the administrative body. This practice, however, which gives the outward appearance of an adversary system, should not be allowed to obscure the true position, and in particular to justify the introduction of concepts of onus of proof in to the determination of claims under the legislation where no onus of proof in the legal sense arises. This view, quite correctly, has been acted upon by the AAT in the past. The AAT has not departed from that practice in the present case.'

21. In a broadcasting or television licence hearing the respondent or authority might provide demographic evidence not available to the applicant which is not part of the respondent's case but is part of the applicant's case.
22. In an aviation matter the respondent authority might provide specialist evidence relating to matters not available to the applicant even though they assist the applicant.
23. In a security appeal, particularly where the applicant is not permitted to be present, the respondent should virtually adopt the role of counsel assisting and actively present evidence on all issues, particularly where this is requested by the Tribunal.
24. Where the Tribunal requests information on issues not considered to have arisen by the decision-maker but which the Tribunal considers to be relevant the respondent should present that material.

25. In a Veterans claim the respondent will present material both favourable and unfavourable to the applicant to which the applicant does not have access.
26. In a Comcare case where the respondent has material not favourable to the respondent but not available to the applicant the material will be presented.
27. In every case the object of the respondent should be to assist the Tribunal in coming to the correct or preferable decision and not to "win" or uphold a doubtful decision.

Other factors

28. This analysis has so far drawn only upon the nature of administrative review to draw its conclusions. However, the Model Litigant Policy of the Commonwealth is also relevant. The proposed amendments to the Act should also be addressed.

The Model Litigant Policy

29. Strictly, this policy does not apply to Tribunal review because it relates to litigation. The Policy itself, however, does purport to extend to "litigation ... before ... tribunals". This terminology demonstrates a misunderstanding of what Tribunal review is.
30. Not only is a reference to Tribunal litigation misleading, but equating merits review with litigation may cause parties and lawyers to think that the role of respondents in merits review is no different to their role in litigation. The whole of the burden of this paper so far has been to correct any such misapprehension. Respondents in merits review need to be more than model litigants; they need actively to assist the Tribunal.

31. Accepting the limited application of the Model Litigant Policy, these rules can still be of assistance in merits review. However, they must be understood as a minimum and as not covering the critical aspect of the role of a respondent in merits review, namely assisting the Tribunal.

32. It is to be noted that the Model Litigant Policy is directed to the attitude of the Commonwealth and its agencies to their opponents, not their attitude to the Court. This is the natural consequence of the distinctions I have drawn above. It is because of the adversarial nature of litigation. The Policy does not address the relationship of the Commonwealth with Courts or Tribunals. It is useful to look at the key obligations outlined in the Policy:

"2. The obligation requires that the Commonwealth and its agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or an agency by:

- (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation,*
- (b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid,*
- (c) acting consistently in the handling of claims and litigation,*
- (d) endeavouring to avoid litigation, wherever possible,*
- (e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:*
 - (i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true, and*
 - (ii) not contesting liability if the Commonwealth or the agency knows that the dispute is really about quantum,*
- (f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim,*
- (g) not relying on technical defences unless the Commonwealth's or the agency's interests would be prejudiced by the failure to comply with a particular requirement,*

(h) not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, and

(i) apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.

33. What emerges clearly is that this standard is dealing with litigation controlled by the parties not the making of an administrative decision.

34. The Model Litigant Policy, provides a useful context in which to consider the role of respondents in the Tribunal, and sets some minimum standards in one area. However it does not address the fundamental issue of the way in which the respondent should relate to the Tribunal itself.

The Administrative Appeals Tribunal Amendment Bill 2004

35. This bill is currently before the Commonwealth Parliament. It has been referred to the Senate Legal and Constitutional Committee for consideration. The Committee is due to report by 10 March 2005.

36. One provision in the Bill is particularly relevant to this topic:

"106 After subsection 33(1)

*Decision-maker must assist Tribunal
(1AA) In a proceeding before the Tribunal for a review of a decision, the person who made the decision must use his or her best endeavours to assist the Tribunal to make its decision in relation to the proceeding."*

37. This provision probably has its origins in Recommendation 21 *Managing Justice* report of the Australian Law Reform Commission report:

"Recommendation 121.

The federal Attorney-General should specify in the model litigant obligations, set down in legal services directions under the Judiciary Act 1903 (Cth), that agencies and agency representatives in the conduct of

federal review tribunal proceedings have duties to assist the tribunal to reach its decision."

38. The provision, if enacted, will serve the dual purpose of reminding parties, and particularly respondents, of the matters I have already discussed and imposing a positive statutory obligation to that end.

The Judicial Model

39. None of the above affects the essential independence of the Tribunal or the fact that the means by which the Tribunal is required to go about its task can be said to be based on the judicial model. The Tribunal is required to conduct a hearing (s 35). This can only be dispensed with when all parties agree and even then the Tribunal has a discretion (s 34B). The hearing must generally be in public (s 35). The Tribunal is bound by the rules of natural justice.

40. In the very earliest days of the Tribunal the first president, Brennan J, in *Becker and Minister for Immigration and Ethnic Affairs* (1977) 1 ALD 158 at 161, said this:

"The Legislature clearly intends that the Tribunal, though exercising administrative power, should be constituted upon the judicial model, separate from, and independent of, the Executive (see Pt II of the Act). Its function is to decide appeals, not to advise the Executive".

41. It has been recognised many times that the judicial aspects of the Tribunal's approach to decision-making enhances the quality of the approach. Sir Anthony Mason identified four such qualities (although he suggested there were five) (*Mason, "Administrative Review: The Experience of the First Twelve Years"* (1989) 18 Fed L Rev 122 at 130):

"Experience indicates that administrative decision-making falls short of the judicial model – on which the AAT is based – in five significant respects. First, it lacks the independence of the judicial process. The administrative decision-maker is, and is thought to be, more susceptible to political,

ministerial and bureaucratic influence than is a judge. Secondly, some administrative decisions are made out in the open; most are not. Thirdly, apart from statute, the administrator does not always observe the standards of natural justice or procedural fairness. That is not surprising; he is not trained to do so. Finally, he is inclined to subordinate the claims of justice of the individual to the more general demands of public policy and sometimes to adventitious political and bureaucratic pressures.

The five features of administrative decision-making which I have mentioned reveal why it is that administrative decision-making has never achieved the level of acceptance of the judicial process in the mind of the public."

42. The four qualities are:

1. Independence of the Tribunal;
2. Decision-making in public;
3. Natural justice applies; and
4. Individual justice will not be subordinated to public policy.

43. At a practical level one might add that the judicial model leads to a more thorough and detailed examination of the facts and a more rigorous consideration of the possible outcomes. ~~I have been involved in hearings which took days~~
 where the time that could be devoted by the original decision-maker must have been very much less.

44. These qualities enhance a merits review process which already exemplifies the best aspects of the original process of decision-making. The judicial model is important to decision-making in the Tribunal but it does not deny the proposition that merits review is an exercise of administrative power which ought to continue to possess attributes appropriate to that process.

The Uniqueness of the Australian System

45. The fact that the Tribunal proceeds in accordance with the "judicial model" is one of its great virtues. It was an essential aspect of its uniqueness at the time it was created. The burgeoning number of similar tribunals now seen in the states of Australia mean that it is no longer unique here. However, it remains unique in the rest of the world.

46. Review of administrative decision-making elsewhere in the world is either confined to judicial review or is limited to specific subjects. Review on the European continent is generally confined to judicial review even though carried out by a separate court structure. In the United Kingdom there is limited merits review but only before specialist tribunals. However, all that is about to change as the United Kingdom adopts a system of general tribunal review substantially influenced by the Australian system.

47. The unique aspect of the Australian system is to give to a court-like body some of the functions of the Executive. It is not part of the conventional Executive although it exercises executive power. It exercises some executive power which is denied to the conventional Executive. The part of the executive function which the legislature has seen fit to confer upon court-like Tribunals is generally that part where individuals are making claims against Government. It is when, for example, they are seeking to make a claim for a licence to operate a television station or for a social security payment or for compensation for injury in a motor accident while delivering the mail.

48. The importance of the court-like process should not mask the essential nature of the exercise in the Administrative Appeals Tribunal, namely administrative decision-making. It does not undermine any of the conclusions I have drawn about the process. It should not be allowed to confuse participants into thinking that the court analogy is more complete than it is.

Conclusion

49. The burden of this paper has been to demonstrate that respondents in the Administrative Appeals Tribunal have a positive obligation to assist the Tribunal in its process of forming its opinion of what is the correct or preferable decision in the matters before it.

50. This paper has necessarily been preoccupied with generalisations. Generalisations are always subject to qualifications. All of the observations I have made must be tempered with practical realities. The grant of a commercial licence must be dealt with differently to a compensation case where there are experienced counsel on both sides. Both must be dealt with differently to a social security case in which the applicant is unrepresented and may be mentally ill. One important way in which respondents can assist the Tribunal is by testing applicants' cases and subjecting them to critical examination. That is not, however, an area in which respondents' activities before the Tribunal have generally been lacking. The purpose of this paper has been to highlight and examine another aspect of the respondent's role. If respondents address the issues I have covered in this paper and frame their preparation and evidence to take account of them and, where necessary, to act on them, administrative decision-making will be the beneficiary.

SUBPOENAS

What is a subpoena?

A subpoena (or summons in a lower Court) is an order issued by the Court requesting the production of documents or individuals be brought before a Court to assist in the resolution of litigation.

There are 3 types of subpoena:

1. A subpoena to appear & give evidence:
 - when the department has been served with a subpoena to appear and give evidence, someone from the department must attend court on the date and time specified
 - a subpoena for individual officers to appear should be served on those officers personally.
2. A subpoena for production of documents and to appear and give evidence:
 - someone from the department must attend court on the date and time indicated, give evidence in the proceeding and produce the documents set out in the subpoena schedule
 - the subpoena should be service on that officer personally
 - the production of documents refers to **limited** file material to be taken by the officer to court. (eg Initial Assessment or affidavit the officer subpoenaed to give evidence has authored)
 - the officer is usually asked to speak to these documents
 - where the entire file is required a separate subpoena for production of these documents is requested.
3. A subpoena for production of documents:
 - if the department has been served with a subpoena to produce documents the department has a choice as to how the subpoena will be complied with.
 - the documents may be produced to the court registry before the return date (court date)
 - if this is done, the subpoena has been complied with and someone from the department will not have to appear in court on the date specified in the subpoena.
 - Alternatively, someone from the department may appear in court on the date specified if we objected to having to produce the material or having the parties inspect or copy the documents.

The Director-General is the lawful owner and controller of all departmental records including case records, emails, file notes and all other written and electronic material.

Subpoena's for documents should be served at Court Services and addressed to the Director-General. A departmental officer cannot be required to produce any of the departmental records as they are not the owner or controller of those records.

If an officer is service with a subpoena to produce documents addressed to that officer, then this should not be complied with and the person serving the subpoena should be advised to have the subpoena re-issued and addressed to the Director-General and directed to the Subpoena Team.

**** Cheques for conduct money /witness expenses made out to individual officers to attend court should be signed over to the department and then banked or forwarded to finance.**

What information is privileged?

- notifier and linking information
- sensitive or personal information
- information which may impact on deliberative process
- information which attracts legal privilege

Notifier information is strictly confidential, disclosure can only occur:

- in the course of performing functions under the *CPA 1999* to someone else performing functions under the Act eg police officer involved in a joint investigation.
- to the Ombudsman when as investigation is being conducted
- when giving evidence in legal proceedings – only with the leave of the court.

For most subpoenas sensitive or identifying information is deleted prior to production in court. Section 191(1)(b)&(d) of the *CPA 1999* allows for refusal of disclosure of certain information during proceedings.

Personal information not relevant to the proceedings (eg foster carer or other persons information) is also withheld.

All notifier identities should be withheld unless they are statutory officers with delegations under the *Child Protection Act 1999*. This is because only statutory officers have the power to act under the *CPA 1999* – it is their job and the public perception is that these officers report and assess child abuse and neglect.

Notifier information which is usually not privileged:

- when police are notifiers

- when a CSO is the notifier

Search warrants / Orders:

- Police / Coroners Search Warrants to produce documents are service upon the individual CSSC or YJC.
- Warrants / Orders require that all relevant information be provided to them. However, if the officer serving the warrant agrees or the Department has some notice, attempts should be made to privilege notifier identities.
- In the event of this being unable to occur, a letter should be attached to the files stating that the information ordered contains confidential and sensitive information and that the police should adhere to the confidentiality provisions of the *CPA 1999*.

SUBPOENA TABLE

State	served on	send to	cost	contact	notes
QLD	Director General Department of Child Safety	Department of Child Safety, Subpoena Team, Court Services 30-40 Quay St Brisbane 4000	\$60 Cheque payable to Director General, Dept of Child Safety	James Spreadborough Ph 07 32359697	Can be faxed initially to 07 3235 9851 and subsequently mailed.
NSW	Director General Department of Community Services 4-6 Cavill Ave Ashfield NSW 1300	The Proper Officer, Legal Services Dept of Community Services Locked Bag 4028 Ashfield NSW 1300	Cheque for \$55 made payable to Department of Community Services	02 9716 2310	7 days' notice required from when subpoena and fees received in NSW. Please ensure children's birthdates are clearly marked on request. Do not accept service by fax.
VIC	Attention The Proper officer (Subpoena officer) Department of Human Services	Dept of Human Services, Business Records Level 5, 50 Lonsdale Street Melbourne 3000	\$55	Subpoena officer 03 90961708	Mail form and include a covering letter Can be faxed initially to 03 9096 9120 and subsequently mailed
ACT	Chief Executive Department of Disability, Housing and Community Services	Manager, Integrated Court Services, GPO Box 817, Canberra ACT 2601	TBA	02 6207 8025 – speak to Manager, Integrated Court Services	Can be faxed initially to 02 3207 1501 and subsequently mailed

TAS	Manager, Child Protection Services	Manager, Child Protection Services Upper Woodhouse, St John's Park Newtown Tas 7008	No charge	03 6230 7650	Can be faxed initially to 03 6230 7653 and subsequently mailed
SA	Executive Director, Families SA Department for Families and Communities	Subpoena Officer, GPO Box 292 Adelaide 5001	No specific charge	David Tucker 08 8124 4110	Can be faxed initially to 08 8226 7098 and subsequently mailed
NT	Director, Family and Children's Services,	Director, Family and Children's Services, PO Box 40596, CASUARINA NT 0811 2 nd floor Casuarina Plaza, Casuarina	No charge	08 89992887	Can be faxed initially to 08 89992546 and subsequently mailed
WA	Director General Department for Child Protection nt	Legal Services Department for Community Protection, Ground Floor,# 2 Brook Street Perth WA 6004	No charge Courier charge approx \$25	Tonia Murphy Legal Services ph 08 92220 7300 Fax 08 9325 3830 Email: tonia.murphy@ dcp.wa.gov.au	Fax request directly to Tonia
NZ	NZ files can be subpoenaed only through application to each state's Supreme Court				

Enacting a Queensland warrant in another state or territory

Authority

- Child Protection Act 1999, section 171 and 172
- Service and Execution of Process Act 1992
- Interstate Child Protection Warrants Protocol (21 March 2002)

Why a warrant?

When a child subject to a child protection order in Queensland has been unlawfully removed or withheld from a person's custody or guardianship in Queensland, and is currently in another state or territory, the child may be recovered from the other state or territory using the Interstate Child Protection Warrants Protocol (Warrants Protocol).

When seeking to recover a child subject to a child protection order in Queensland from another state or territory:

- follow the procedures outlined in the Child Safety Practice Manual, in consultation with the ILO;
- apply for a warrant under the Child Protection Act 1999, section 171;
- refer to the Child Protection Act 1999, section 172, for an explanation of the matters the court must be satisfied with before a warrant can be issued; and
- ensure that a departmental staff member is available to travel interstate at the time of the child's apprehension.

Warrant process – Queensland enacting our warrant in another jurisdiction

- A warrant for the recovery of a child from another jurisdiction can only be made when the child has been unlawfully removed or withheld from a person's custody or guardianship under the Child Protection Act 1999, section 171(1). A warrant for recovery can not be obtained if the child has voluntarily moved interstate, for example, a 15 year old voluntarily moving interstate to live with her boyfriend.
- The child must be located interstate before the warrant recovery process can be initiated.
- If the child's whereabouts are not known, the child must be listed as a missing person with the QPS, who will then notify their interstate colleagues.
- Once the child has been located interstate, and a decision has been made by the CSSC that the child is to be returned to Queensland, it is best to try to negotiate with all parties to see if the child can be returned without the instigation of the warrant process.
- If this is not successful and a decision is made to return the child to Queensland using the warrant process, the CSO **should contact the Queensland ILO to discuss the process** and for guidance regarding the procedures to be followed. The ILO will not make decisions for the CSSC, but will guide and assist with the decision making and recovery process.
- If it is agreed that the child should be recovered via the warrant process, the CSO will complete a 'Form 27 - Application for Warrant for Apprehension of Child' and make an application to the Children's Court for a warrant to be issued for the apprehension of the child from another jurisdiction.

Additional notes

- Sometimes assistance is requested from the other jurisdiction's child protection department with attending court. This would normally only occur when the Queensland CSO travelling to the other jurisdiction is delayed.
- In this instance it is possible for the Magistrate to make an order giving temporary custody of the child to a child protection worker in the other jurisdiction, with the child to be handed to the Queensland CSO as soon as possible.

INTERSTATE

CHILD PROTECTION WARRANTS

PROTOCOL

21 MARCH 2002

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INTERSTATE CHILD PROTECTION WARRANTS PROTOCOL

Introduction

1. Purpose

The purpose of this Protocol is to:

- a) improve the provision of services to children and young persons who are the subject of an interstate child protection warrant of apprehension;
- b) provide guidance to Departmental and Police Officers and improve the co-ordination of Departmental and Police operations; and

Decisions made under this Protocol should promote the care, protection and best interests of children and young persons who are subject to Child Protection Warrants.

Whilst this Protocol is not legally binding on the Parties, all Parties undertake to comply with its terms.

2. Definitions

For the purposes of this protocol:

"Accompanying Child Protection Officer" means the Child Protection Officer who is referred to in clause 14(b)(iv) below;

"Child Protection Officer" means a person who has statutory authority or responsibility for undertaking child protection work within a Department;

"Child Protection Warrant" means a warrant, which is issued under a Child Welfare Law, for the apprehension of a child;

"Child Welfare Law" means State child protection legislation;

"Children's Court Magistrate" means a magistrate who, in that capacity, deals with cases relating specifically to children. If there are no such magistrates in a State, then for that State it means a magistrate who can make orders in that State pursuant to the Child Welfare Laws;

"Department" means a State Department which has responsibility for administering the Child Welfare Law of the State or which has officers who have such responsibility;

"Interstate Departmental Liaison Officer" means a person appointed pursuant to clause 11 below;

"Interstate Liaison Officer" means an Interstate Departmental Liaison Officer and/or an Interstate Police Liaison Officer;

"Interstate Police Liaison Officer" means a person appointed pursuant to clause 12 below;

"Justice of the Peace who is able to issue warrants" means a justice of the peace who has power to issue warrants under a law of the State in which the office is held;

"Victorian Bail Justice" means a person who is appointed under section 120 of the *Magistrates' Court Act 1989 (Vic)* as a bail justice;

"Person under a Restraint" is defined in section 3 of SEPA and includes a person on bail or most other non-custodial sentences;

"Police" means a State police force or service or the Australian Federal Police;

"SEPA" means the *Service and Execution of Process Act 1992 (Cth)*; and

"State" includes the Northern Territory and the Australian Capital Territory.

"Warrant" includes the original document and subsequent copies made and distributed to Interstate Police

The Role of Police and the Departments in Relation to Interstate Child Protection Warrants

3. *The Role of Police*

Police are responsible for finding a child who is referred to in a Child Protection Warrant, executing that warrant, taking the child into safe custody and seeking the orders referred to in this Protocol.

4. *The Role of the Departments*

The Departments are responsible for seeking Child Protection Warrants and providing care to the children who are apprehended pursuant to those warrants in accordance with the directions of a Magistrate or Justice of the Peace who is able to issue warrants (or a Victorian Bail Justice).

Line of SEPA

5. *SEPA's Applicability to Interstate Child Protection Warrants*

- a) SEPA is a Commonwealth Act which enables, amongst other things, for warrants from one State to be executed in another State. If a warrant is executed interstate, it must be executed in accordance with SEPA. SEPA addresses issues such as who can execute the warrant, taking the apprehended person before the Court and the orders that the Court can then make.
- b) SEPA enables valid child protection warrants to be executed interstate.
- c) Warrant is defined in section 3 of SEPA to include "a process issued by a court ... in accordance with a law of a State ... that authorises the apprehension of a person."

- d) A person who is named in a Child Protection Warrant issued in a State may be apprehended in another State, if that person is not in gaol: s.82(1) & (2).

6. *Who May Apprehend a Person Under SEPA*

The person may be apprehended by:

- a) a police officer in the State in which the person is found; or
- b) the Sheriff of that State or any of the Sheriff's officers; or
- c) a member of the Australian Federal Police: s.82(3).

7. *When Must the Person be Taken Before a Magistrate or Justice of the Peace Who Is Able To Issue Warrants (or Victorian Bail Justice)*

Section 83(1)(a) provides that:

"As soon as practicable after being apprehended, the person is to be taken before a magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "of the State in which the person was apprehended."

8. *Adjourning an Application*

Section 83(14)(a) has the following provision for adjournments:

"the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "may adjourn the proceeding and remand the person on bail, or in such custody as the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "specifies, for the adjournment."

9. *Final Orders*

Section 83(8) provides, amongst other things, that if:

- * a Child Protection Warrant is valid and produced to the court (the warrant can be either a copy or the original); and
 - * the magistrate or justice of the peace who is able to issue warrants [or Victorian bail justice] does not adjourn the hearing; and
 - * the magistrate or justice of the peace who is able to issue warrants [or Victorian bail justice] does not place the child on bail; and
 - * the person is not a Person Under Restraint or in a gaol:
- "the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "must order*

... (b) *that the person be taken, in such custody or otherwise as the magistrate or justice of the peace who is able to issue warrants* [or Victorian bail justice] *“specifies, to a specified place in the place of issue of the warrant.”*

10. *Ancillary Provisions*

Sub-sections 83(9),(11) & (12) also provide that:

- (9) *The order may be subject to other specified conditions.*
- (11) *The magistrate or justice of the peace who is able to issue warrants [or a Victorian bail justice] may suspend an order made under Section 83 paragraph (8)(b) for a specified period.*
- (12) *On suspending the order, the magistrate or justice of the peace [or Victorian bail justice] must order that the person be remanded ...*
 - (a) *in such custody as the magistrate or justice of the peace [or Victorian bail justice] specifies ... until the end of that period.*

Interstate Liaison Officers

11. *Interstate Departmental Liaison Officer*

Each Department must nominate a position which will be referred to in this Protocol as the **“Interstate Departmental Liaison Officer”**. This position must have either a 24 hour number or there must be an alternative number which is an after hours number.

12. *Interstate Police Liaison Officer*

Each Police Force and Service must nominate a position which will be referred to in this Protocol as the **“Interstate Police Liaison Officer”**. This position must have either a 24 hour number or there must be an alternative number which is an after hours number.

13. *Providing Information Regarding Officers*

- a) Each Police and Department must provide:
 - i) the contact details of each Interstate Liaison Officer to all of the other Police and Departments; and
 - ii) the details of the senior officer referred to in clause 24 (b) below;
- b) If any of the above details change, the Police or Department (as the case may be) must notify the other Police and Departments of the new details within 2 weeks of the change.

- c) The Interstate Liaison Officer is responsible for:
 - i) ensuring that this clause is complied with in relation to his or her Department or Police Force or Service; and
 - ii) promoting knowledge of, and compliance with, this Protocol.

Process

14. *The Initial Steps for the Child Protection Officer*

If a Child Protection Officer obtains a Child Protection Warrant which is to be executed interstate:

- a) the Child Protection Officer must arrange for the the original warrant to be forwarded to the Interstate Police Liaison Officer from his or her own State;
- b) the Child Protection Officer must inform the Interstate Departmental Liaison Officer from his or her own State and the Police Liaison Officer from his or her own State of:
 - i) the type of warrant and child protection order, if any, that applies to the child; and
 - ii) where the child may be located, who may be with the child; and
 - iii) any special circumstances regarding the child; and
 - iv) if available, the details of the Child Protection Officer who is likely to accompany the child from the place where the child is apprehended to the State where the Child Protection Warrant was issued ("Accompanying Child Protection Officer").
- c) If any of the above details change, the Child Protection Officer must inform the Interstate Departmental Liaison Officer from her/his State of the changes.
- d) The Child Protection Officer must ensure that the warrant contains the details of the person who applied for the warrant and, if possible, the details of the Interstate Departmental Liaison Officer from the officer's State.

15. *The Interstate Departmental Liaison Officer Informs Interstate Officers*

The Interstate Departmental Liaison Officer (from the State where the warrant was issued) will provide the information which he or she received pursuant to clause 14 above to:

- a) the Interstate Departmental Liaison Officer from the State where the child is believed to have gone; and

- b) the Interstate Police Liaison Officer from the State where the child is believed to have gone; and
- c) the Interstate Police Liaison Officer from the State where the warrant was issued.

16. *Interstate Police Liaison Officer Overseeing Control of the Warrant*

The Interstate Police Liaison Officer (from the State where the warrant was issued) oversees the control of the warrant and is responsible for copying the warrant and, where appropriate, arranging for the destruction of the warrant.

When the Interstate Police Liaison Officer provides a copy of the warrant to interstate police, the warrant should have a coversheet which :

- a) provides the details of the warrant; and
- b) provides contact details from the Department where the warrant was sought; and
- c) refers to this Protocol; and
- d) any other information that would assist in the execution of this warrant, such as where the child may be located, who may be with the child and any special circumstances regarding the child.

17. *Once Police Apprehend a Child*

Once Police have apprehended the child, the police must promptly notify the Interstate Departmental Liaison Officer from the State where the child was apprehended of:

- a) the place and time of the apprehension of the child; and
- b) the likely place and time when the child will be taken before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice).

The Interstate Departmental Liaison Officer from the State where the child was apprehended must then promptly provide this information to the Interstate Departmental Liaison Officer from the State where the warrant was issued and the Accompanying Child Protection Officer.

18. *Bringing the Child Before a Magistrate or Justice of the Peace who is able to issue warrants [or Victorian bail justice]*

As soon as practicable after the child is taken into safe care, the police must have the child brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice). If practicable, the police should seek to have the matter heard by a Children's Court Magistrate.

19. *Order if the Accompanying Child Protection Officer is Present*

If, at the time that the child is brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is present, the police should seek an order that the child is placed in the custody of the Accompanying Child Protection Officer.

20. *Interim Order if the Accompanying Child Protection Officer is Not Present*

If, at the time that the child is brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is not present, the police should seek an interim order which provides that:

- a) the child is placed in the custody of the Department Head or a Child Protection Officer from the Department in the State where the child was apprehended until the earlier of:
 - i) custody is transferred to the person referred to in paragraph "(b)" below; or
 - ii) a specified period (eg 5 working days);
- b) the Department Head or a Child Protection Officer (as the case may be) from the Department in the State where the warrant was issued shall have custody of the child when custody is transferred by the person referred to in paragraph "(a)".

21. *Varying the Process - General Principles*

The process outlined in this protocol is based on the actions which the parties believe are in the best interests of the child who is subject to an Interstate Child Protection Warrant. The process may be varied in the following situations:

- a) If the following people agree to a varied process:
 - i) a Child Protection Officer from the State where the warrant was issued;
 - ii) a Child Protection Officer from the State where the child is apprehended to the extent (if any) that the decision relates to the care of a person pursuant to an order referred to in clause 20 above; and
 - iii) a Police Officer to the extent (if any) that the decision would impose further obligations upon the relevant officer from the Police.
- b) If:
 - i) the child is in gaol;

- ii) the child is a Person Under Restraint; or
- iii) a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice) notes that he or she is unwilling to grant the orders which are sought by the police officer,

the orders sought should reflect what the officers, referred to in clause "21(a)" above, believe is appropriate and in the best interests of the child.

22. *Varying the Process - Illustrative examples:*

If the child is apprehended very close to the office of the Department which sought the warrant, the police force which apprehended the child may deal directly with that Department. For instance, the police may apprehend a child in Albury in accordance with a warrant issued in Wodonga. In this case, the police who apprehend the child may deal directly with the Departmental Liaison Officer in Wodonga (this is different to the process contained in clause 17 above);

After the execution of the warrant, the child could be placed on a plane in the State where the child was apprehended and the relevant officer in the State which issued the child protection warrant could collect the child at the airport. This approach would need to be consistent with the order of a magistrate or justice of the peace who is able to issue warrants (or a Victorian bail justice);

If, at the time that the child is brought before the magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is not present and the Magistrate is not prepared to grant the order outlined in clause 20 above, the police should seek an order adjourning the hearing and placing the child in the custody of the Department Head or a Child Protection Officer from the Department in the State where the child was apprehended. Upon the return of the matter, the child could be placed with the Department Head or a Child Protection Officer from the Department in the State which sought the order.

These examples are not exhaustive. They illustrate the capacity for some flexibility in ensuring the best interests of the child who is subject to an Interstate Child Protection Warrant.

Financial Arrangements

23. Costs

Each Department and Police Force or Service shall be responsible for the costs it incurs in relation to any proceeding under SEPA.

Dispute Resolution Process

24. Dispute Resolution

- a) Any dispute in relation to a party's compliance with this protocol should initially be dealt with by the relevant Interstate Liaison Officers.
- b) If the dispute cannot be settled by the respective Interstate Liaison Officers, then the matter shall be referred to people who are senior officers nominated by each Department and Police Force or Service as the appropriate officers to resolve such disputes.

Review & Withdrawal

25. Commencement of the Protocol

This protocol will commence operation on 1 June 2002.

26. Review of the Protocol

The parties will constantly monitor the Protocol and will commence a formal review of the Protocol 12 months after it comes into effect.

27. Amendments to the Protocol

The Protocol can be amended if all of the Interstate Liaison Officers agree to the change.

28. Withdrawal

A party to this protocol may withdraw from the protocol with 12 months notice. If a party withdraws from the protocol, the protocol continues to apply to all other parties.

Form 28
Childrens Court Act 1992
Child Protection Act 1999
(Section 172, 173)

WARRANT FOR APPREHENSION OF A CHILD

TO: All police officers
All authorised officers under the *Child Protection Act 1999*

Information has been supplied upon oath before me, and I am satisfied that –

- * a warrant is necessary to enable an authorised officer or police officer to take the child (name and date of birth) into the chief executive's custody;
- * the child (name and date of birth) has been unlawfully removed from a person's custody or guardianship under the *Child Protection Act 1999*;

YOU ARE required to apprehend the child and you are authorised, for that purpose to –

- a) enter any 1 or more places you reasonably believe the child to be;
- b) search the places to find the child;
- c) remain in the places for as long as you consider is reasonably necessary to find the child;
- d) take the child to a safe place.

For the purpose of executing this warrant the person executing the warrant may exercise powers under the warrant with the help, and using the force, that is reasonable in the circumstances.

This warrant ends on (day and date).

Magistrate

Place:

Date:

This warrant was made by means of *telephone/ /radio/other pursuant to section 173 of the *Child Protection Act 1999*.

I hereby certify that this document is a true representation of the warrant issued by the above-named Magistrate.

Signed:

Name:

*Authorised officer / police officer

Form 27
Childrens Court Act 1992
Child Protection Act 1999
(Section 171)

APPLICATION FOR WARRANT FOR APPREHENSION OF CHILD

THE INFORMATION OF:

(Name), *an authorised officer / a police officer,
of:

*sworn / affirmed this day before the undersigned Magistrate, who says –

- * Under an order made pursuant to the *Child Protection Act 1999*, the chief executive has been granted *custody / guardianship of the child (name and date of birth), and the chief executive has not been able to take the child into the chief executive's custody
- * Under an order made pursuant to the *Child Protection Act 1999*, *the chief executive / (name of relative or other person) has been granted *custody / guardianship of the child (name and date of birth), and the child has been unlawfully removed from the custody of *the chief executive / (name of relative or other person).

The grounds of this application are as follows:

I request that the Magistrate issue a warrant for apprehension of the child authorising an authorised officer or police officer to, for that purpose –

- a) enter any 1 or more places the officer reasonably believes the child is;
- b) search the places to find the child;
- c) remain in the places for as long as the officer considers is reasonably necessary to find the child;
- d) take the child to a safe place.

Signature of Applicant:

SWORN / AFFIRMED before me:

Magistrate

Place:

Date:

*delete whichever is not applicable
Form 27 – Version 2, November 2003

The Law of Evidence

**And how it relates to the
Children's Court.**

Evidence -

- Evidence is the cornerstone of a legal system - without it, nothing can be proved or disproved.



- For that reason, strict rules have developed to ensure that the legal process is fair to all

Relevant Evidence -

- The most fundamental rule is **relevance**
- Relevance is determined by what you have to prove to get the order you seek
- **Everything** you put in your affidavit needs to be relevant



Relevance and the Proof

Essentially you have to prove **4** things –

- (1) The existence of the CP concerns;
- (2) That steps have been taken to map out an appropriate case plan;



Relevance and Proof cont' -

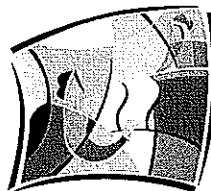
- (3) The order sought is the least intrusive which can be made in the circumstances (CP Act 1999 s.59(1)(e));
- (4) The Department has taken reasonable steps to keep the family together before seeking the order.



Rules of Evidence -

The Courts allow information to be conveyed to them in the following ways:

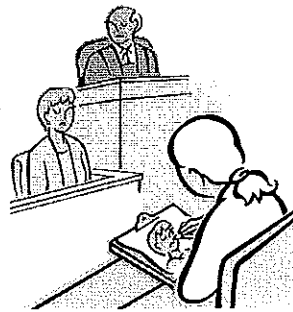
- **Orally** – by having witnesses tell the Court the information;
- In **documents** – (affidavits or reports) which contain information in written or pictorial form;
- Playing of **recordings** of information in audio or video format



Oral and Written Evidence

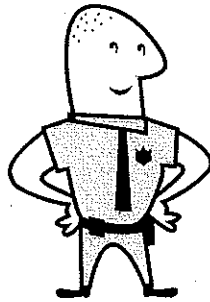
There are three ways of putting oral and written evidence before the Court:

- (1) Direct evidence
- (2) Admissions; and
- (3) Hearsay evidence.



Direct Evidence -

Direct evidence is when the person who saw/heard/smelt or felt the information **is the actual person** who provides the evidence to the court.



Admissions -

- An **Admission** is a statement of fact made by a parent, contrary to their interests, in relation to a factual issue that the applicant is attempting to prove **Eg.** A mother admitting to taking drugs while the child was in her care



Admissions and Social Assessments

- Social assessment reports often contain useful admission evidence from the parents



Hearsay evidence -

- Hearsay is evidence of something reported to the court indirectly

R vs Hennessey (1978) 68 CrAppR419

"Witnesses, whether for the prosecution or the defence, are required to testify what they saw, heard, smelt or felt and not what they know because of what they have been told."



Hearsay evidence -

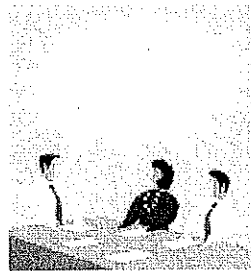
Eg. Bree told Megan about a conversation she had with Polly yesterday about a fight she saw between the parents outside the pub last Saturday night.



If all three were to give evidence, which of their evidence is hearsay evidence??

Hearsay evidence -

- **Megan** – hearsay (actually its double hearsay evidence)
- **Bree** – hearsay
- **Polly** – direct evidence





Hearsay evidence and the evidence of children



- S112 of the CP Act provides that children are **not** called to give evidence in child protection proceedings without leave of the Court. The evidence of a child can and should be placed before the Court. As it is not coming directly from the mouth or hand of the child, it is ***hearsay***.



Rules of Evidence - Summary

- It is best to get direct evidence;
- Admission evidence is useful;
- Disclosures of children are hearsay but can and do carry weight; and
- Use hearsay as a last resort.





Best Evidence Principal

Cant we have hearsay?? After all, the Court
can under s105 of the CP Act –

“Inform itself in any way that it sees fit”

However, Queensland has not *‘dispensed with
rules of evidence.’* Rather, the Children’s Court
has a discretion to relax the operation of the
rules of evidence as it sees fit in appropriate
cases.



Best Evidence Principles cont'

In Taylor vs L, Thomas J, emphasising the Court's need for caution when allowing hearsay material into evidence stated:

"...I agree that the liberty to tender hearsay could be abused. I cannot imagine that any judge would allow a grave allegation against a parent to be proved solely by hearsay, at any rate in a case in which direct evidence could be produced..."





Best Evidence Principle cont'

Remember that a party to the proceeding has the right to challenge every piece of evidence by asking questions such as:

- *Who said this? To whom? Who else was there?*
- *What was the context in which it happened?*
- *How can you make an assessment on any of the above if you were not there?*



Best Evidence Principle cont'

In Summary –

- Best evidence principle should be adopted in every case; and
- Hearsay evidence should be avoided wherever possible.





Always remember -



GOOD EVIDENCE

=



GOOD AFFIDAVIT MATERIAL TO
SUPPORT CP APPLICATIONS

=



GOOD OUTCOMES FOR CHILDREN



The Australian

Removal of kids 'abuse by officials'

- Caroline Overington
- From: The Australian
- January 21, 2009 12:00AM

TWO healthy children who had never been abused or neglected by their parents were forced into foster care last September after it was found the couple had smoked cannabis.

The two children -- a girl, aged two, and her baby brother -- were removed from their home by police officers after two case workers from the NSW Department of Community Services had reported their concerns over the parents' drug use.

But three months later, NSW Supreme Court judge George Palmer ordered that the children be returned to their parents, whom a psychologist had found to be "loving, sensitive and ... well able to provide for the safety, welfare and wellbeing of their infant children".

Justice Palmer described the actions of the DOCS workers as a "serious abuse" of their position, and questioned whether it was the policy of the department "that any parent who uses cannabis, no matter how infrequently, is for that reason alone unfit to care for a child".

If so, "that view should be made public, so there may be public debate about it", the judge said. "There was no evidence that their cannabis use in itself posed any direct risk of harm to the children."

The case began in April 2007, when the mother checked into hospital, believing she was in premature labour with her daughter. She checked herself out, apparently with a cannula still in her arm.

As required by law, the hospital reported this incident to DOCS. Two months later, the mother returned to hospital to give birth to a baby girl.

Nine months later, DOCS filed a "care plan" for the little girl, saying the parents would have to submit to urine testing if they wanted to keep custody of their child.

Justice Palmer said the requirement for the parents to remain "drug-free" or face losing their children, was "questionable". "I would describe the parents' use of cannabis as recreational rather than addictive or dependent," he said.

The parents agreed to provide urine samples to DOCS until June last year.

DOCS commenced legal proceedings in September.

The judge said there was "no evidence whatsoever that the department had any concerns at this time as to the wellbeing or safety of the children".

In court, DOCS said it wanted the parents to provide random urine samples, accept random home visits, take part in counselling, and put their baby in childcare at least two days a week.

Justice Palmer said these "heavy-handed" demands were intended "to be a goad and an insult" to parents who were "taking good care of their children".

The parents were angry, but agreed to the conditions. Last September, after the woman had given birth to the baby boy, the couple missed a meeting with DOCS officers, who promptly visited their home.

According to a DOCS report of the incident, the mother was "making a hot drink" when officers arrived.

"Her hair was messy and knotted. She appeared to have lost a lot of weight. Her clothes were hanging off her and her bones were protruding."

The DOCS officer said to the woman: "You look like you've lost a lot of weight."

The mother replied: "You look like you've put on weight."

Justice Palmer said "the parents were entitled to be angry" because they had been threatened with the loss of their children, for no apparent reason.

Yet DOCS officers returned to the house with police just hours after the mother had abused the DOCS worker, and took the children.

A report by Sydney psychologist Lizabeth Tong praises the parents.

It describes the mother as "a tall, attractive, willowy woman" who was "neatly dressed, well groomed and articulate".

The father was "candid, forthright and engaging ... he appeared appropriately protective of his partner", Dr Tong wrote.

Given the lack of evidence of any parental abuse, Justice Palmer said the act of removing the children from the family home constituted "a serious abuse by certain DOCS officers".

NSW Community Services Minister Linda Burney yesterday refused to directly say whether cannabis use would render a parent unfit to care for a child.

Ms Burney released a statement, saying: "If caseworkers believe the safety of a child is at risk because their parents' ability to care for them is severely affected by drug use or alcohol, then they will take action."

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UNDERSTANDING EVIDENCE:

The evidence necessary to include in an Affidavit in support of an Application for a Child Protection Order, will typically require the following to be established:

1. The child is a child in need of protection. See s.10 *Child Protection Act 1999* (hereinafter "CPA 1999") definition of "child in need of protection":-
 - a) Child has suffered harm, is suffering harm or is at an unacceptable risk of suffering harm; and
 - b) The child does not have a parent able and willing to protect them from harm ["Harm" is defined at s.9 CPA 1999]
2. That the Order being sought is the most appropriate and least intrusive Order to protect the child; and
3. That the Department taken reasonable steps to assist the family in addressing the protective concerns prior to seeking the Order (an assessment of the case plan and that it is appropriate for meeting the protection and care needs of the child).

Many of you will recognise that the above canvasses matters that are outlined in s.59 (1) (a) – (e) *Child Protection Act 1999*:-

- (a) the child is a child in need of protection and the order is appropriate and desirable for the child's protection; and
- (b) there is a case plan for the child-
 - (i) that has been developed or revised under Part 3A; and
 - (ii) That is appropriate for meeting the child's assessed protection and care needs; and
- (c) if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made; and
- (d) the child's wishes or views, if able to be ascertained, have been made known to the court; and
- (e) the protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms.

The reason that proving these elements is of utmost importance is that s.59(1) clearly states that the Childrens Court **may only** make a Child Protection Order **if it is satisfied** that these matters have been established.

Do not however forget that there are other elements of s.59 that also need to be established by the evidence, predominantly when the Application is for Long-Term Guardianship (and may be relevant for a custodial Child Protection Order if it is sought in favour of another suitable person).

1. Consider the elements of s.59 *Child Protection Act 1999* when preparing to draft an Affidavit;

2. Ensure that the evidence exists to establish these elements and importantly, that it supports the nature of the Child Protection Order that you are seeking;
3. In addition to s.59, also have regard to sections 5, 9, 10 *Child Protection Act* 1999 and remember sections 6 & 83 for indigenous children;
4. In determining what Order to make, the Court must have regard to the welfare and best interests of the child as paramount (s.104 *Child Protection Act* 1999).

Rules of Evidence

Evidence is the cornerstone of a legal system and without it, nothing can be proved or disproved. As a result, strict rules have developed to ensure that the legal process is fair to all.

These rules apply to written, oral and recorded evidence, which is allowed to be admissible in a court if it complies with these rules. Given that the focus of this lecture is on Affidavits, we will briefly look at the rules of evidence, as they apply to Affidavit writing.

Relevant Evidence

- The most fundamental rule is **relevance**.
- What is relevant or not is determined by what you have to prove to get the Order you seek.
- In the previous slide regarding necessary elements any evidence that goes to proving any of those points will be considered "relevant".
- There are no specific legal formulas to determine if something is relevant or not.
- Everything which you do put in an Affidavit should be relevant.

The three ways of putting written evidence before the Court are:

1. Direct Evidence

Direct evidence is when the person who saw/heard/smelt or felt the information **is the actual person** who provides the evidence to the Court.

E.g. An Affidavit from a neighbour who witnessed a fight between parents in front of the children. That neighbour will provide the information in their Affidavit in the first person – "I saw/heard...." In other words, that neighbour will give **direct** evidence regarding the fight.

2. Admissions

An **admission** is a statement of fact made by a parent, contrary to their interests, in relation to a factual issue that the Applicant is attempting to prove.

For Example – The Mother stated to the Applicant that she took drugs whilst the children were in her care.

3. Hearsay Evidence

Hearsay evidence is a *minefield*! Hearsay is evidence of something reported to the Court indirectly.

R v Hennessey (1978) 68 CrAppR419

"Witnesses, whether for the prosecution or the defence, are required to testify to what they saw, heard, smelt or felt and not what they know because of what they have been told"

Hearsay Evidence & the Evidence of Children

s.112 CPA 1999 provides that children are **not** called to give evidence in child protection proceedings without leave of the Court. Given that it is necessary to place the evidence of children before the Court, as it is not coming directly from the mouth of the child, or by way of written Affidavit of the child, the evidence of the child is **hearsay**.

Best Evidence Rule

This rule requires that the best evidence is to be used to prove a fact and that the best evidence is **Direct Evidence**.

But! Can't we use hearsay evidence anyway?— s.105 CPA 1999

The Court can "inform itself in any way that it sees fit"

Queensland has **not** dispensed with the rules of evidence. Rather, the Childrens Court has a *discretion* to relax the operation of the rules of evidence as it sees fit in appropriate cases (see *Dale v Scott ex parte*; *Dale* (1985) 1 QdR 406 @ 413, 414)

AND

In *Taylor v L*, Thomas J, emphasising the Court's need for caution when allowing hearsay material into evidence stated:

"...I agree that the liberty to tender hearsay could be abused. I cannot imagine any judge would allow a grave allegation against a parent be proved solely by hearsay, at any rate in a case in which direct evidence could be produced..."

Further –

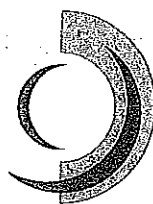
It is open for the Legal Representatives for Respondent parents to make objections to hearsay evidence given that the Rules of Evidence have not been dispensed with.

Remember that a party to the proceeding has the right to challenge every piece of evidence by asking questions such as:

- ✓ Who said this? To whom? Who else was there?
- ✓ What was the context in which this happened?
- ✓ What were your observations of this person at the time?
- ✓ How can you make an assessment on any of the above if you were not their in person?

REMEMBER:

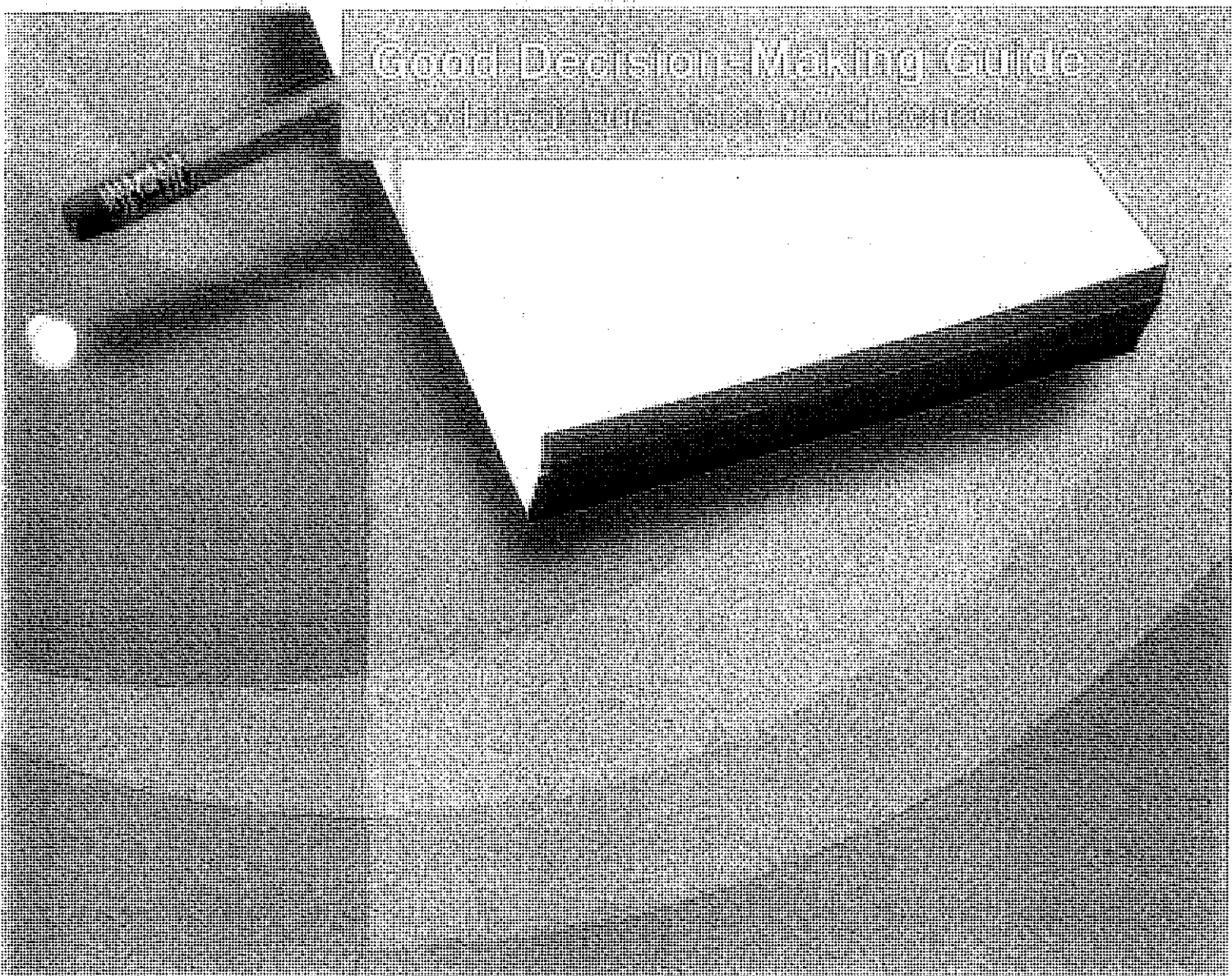
- Best to get direct evidence;
- Admission evidence is useful;
- Disclosures made by children are hearsay but can & do carry weight; and
- Use hearsay as a last resort.



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Good Decision-Making Guide

Good Decision-Making Guide





Introduction

Today's community expects that public agencies will operate consistently and fairly and that government at all levels will have systems in place to ensure this happens.

However, decision-making in the public sector can be multi-faceted and complex. Furthermore, even a decision on a seemingly simple matter can have a serious impact on people in the community. Therefore, it is important that public agencies have policies and procedures to support and inform fair, sound and consistent decision-making.

This guide has been developed to assist public sector decision-makers to make good administrative decisions.





Skills, attitude and trust

Skills, attitude and trust

The quality of an administrative decision will depend on the decision-maker's knowledge, experience and integrity. Decision-makers must be able to gather and analyse relevant information, observe any legal requirements and properly apply any relevant policy.

These skills can be improved through training and effective supervision providing constructive feedback. Feedback from people affected by a decision may also reflect on the quality of the decision and should not be ignored.



Having the right attitude can also have a direct impact on the decision-making process. An open, consultative approach is important, especially where the decision may adversely affect the interests of particular members of the community. Good interpersonal skills need to be employed during the process to achieve a positive outcome.

There are real benefits for an agency whose officers:

- take time to really understand the concerns of those affected, or potentially affected, by a decision
- respond promptly to communications from those people
- keep them informed of the status of the decision-making process
- advise them in a timely way of the decision and the reasons for the decision.

The agency's reputation as an open, accountable and fair organisation will be enhanced and the agency will be likely to receive fewer, well-founded complaints about its decisions.

Decision-makers must be able to gather and analyse relevant information, observe any legal requirements and properly apply any relevant policy.



Good decision-making guidelines

Stage 1: Preparing for the decision

Decision-makers need to prepare properly for a decision. This stage is critical, being the foundation of the decision-making process. If this stage is not handled well, it is unlikely the ultimate decision will be sound.

Identifying the key issues

The first step in any decision-making process or investigation is to correctly identify the key issues. For example, if you have to decide whether an applicant should be granted a licence of some kind, you will need to identify the relevant criteria the applicant must meet. Getting this right will avoid potential difficulties later on in the process.

During this stage, you will need to consider:

- any relevant legislative provisions
- any relevant policies, standards and practice of your agency
- what information is available that may be relevant to the applicant's compliance with the criteria
- what information needs to be gathered to determine whether the applicant complies with the criteria
- the possible decisions you may make, and, if necessary, your delegated authority to make the decision.

You should also consider whether you have an actual or potential conflict of interest and, if so, deal with the conflict in accordance with your agency's code of conduct or standard practice.

Always ensure you record your assessment of the key issues.

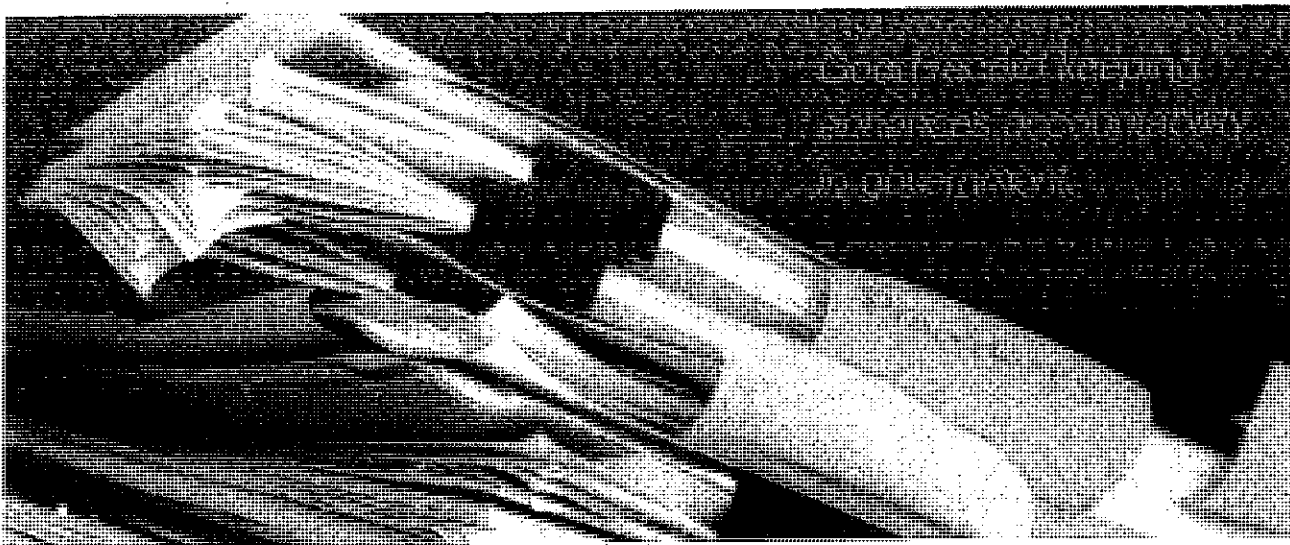
Accurate record keeping

Accurate record keeping is an important component of good administrative practice. This concept is supported by the obligation imposed on public agencies by s.7 of the *Public Records Act 2002* to make and keep full and accurate records of their activities. The obligation covers all:

- oral communications, including telephone calls
- written communications, including emails and faxes
- events and actions, including internal or external meetings,

that are relevant to the decision to be made.

Records should be made simultaneously or as soon as practicable following the communication, event or action to which they relate.



Good record keeping:

- improves decision-making by providing decision-makers with detailed information on which to base their decisions
- assists decision-makers to prepare a comprehensive statement of reasons if required
- enables an agency to establish how a particular decision was made, in the event that the decision is challenged or is the subject of external or internal review
- protects you and your agency from criticism by providing you with the means to explain why a certain decision was made
- enhances transparency in government by enabling agencies to respond meaningfully and efficiently to requests under the *Freedom of Information Act 1992*.

Therefore, good record keeping enhances accountability in government.

Clear legal authority must exist for an administrative decision that adversely affects a person's interests. Most decisions are made directly or indirectly under a power granted by legislation.

It is important that the legislation relevant to a decision is correctly interpreted and applied. Most legislation now contains objectives and/or guiding principles to assist with interpretation. There also may be cases decided by a court or tribunal that have clarified the interpretation and application of the relevant legislation.

If the meaning or application of the legislation is unclear, consider obtaining specific legal advice.

Legislation usually sets out who is authorised to make a decision. The general legal principle is that the authorised body or person must exercise powers and functions personally.

An exception to that principle is where a power can be exercised by a duly authorised delegate. The power of delegation may be contained in the legislation that confers the actual power to be exercised or in some other legislation.

The delegation must be in writing and signed by the person delegating the power¹.

If you are acting as a delegate, ensure you have an instrument of delegation signed by the person who holds the power being delegated or, as the case may be, signed on behalf of the body that holds the power. You should have ready access to the instrument whenever you are exercising the power.

Also ensure that the delegation given to you covers the specific decision-making power you are exercising and that it remains valid if the legislation conferring the power is amended.

¹Section 27A(3) of the *Acts Interpretation Act 1954*

The term *policy* refers to written guidelines prepared to assist decision-makers to make lawful, fair and consistent decisions. The term *practice* refers to unwritten guidelines based on the way particular types of decisions have been made previously.

A policy must be consistent with the law and be reasonable.
A practice must be consistent with the law and policy.

Policy should be interpreted so that its purpose or objective is achieved. Literal interpretations may lead to unintended results or wrong/unreasonable outcomes.

Well drafted policy should clarify the meaning and intended practical application of the relevant legislation. Policies should be reviewed and changed if they are not clear or are not doing the job they were created for.

Policy must not be inflexibly applied in decision-making. A decision-maker must have regard to, and evaluate the circumstances and merits of, the particular case. Therefore, a policy's application should not prevent proper consideration of a matter that may require a different outcome to the policy.

It is important that records of a decision should refer to any relevant policy and how it was applied to the particular facts and circumstances of the case.

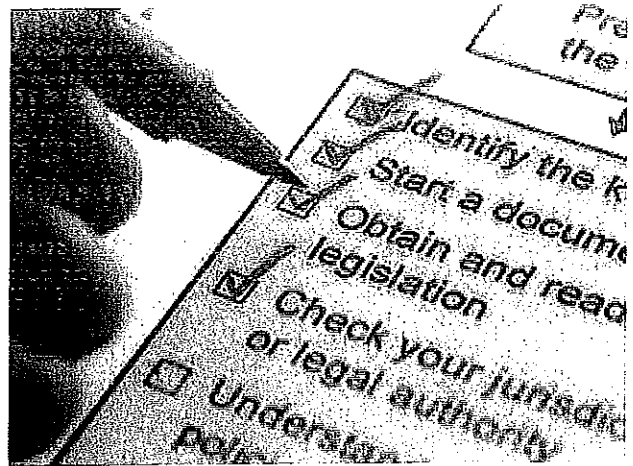
To enhance consistency in decision-making, decision-makers should be made aware of situations in which policies have not been followed because to do so would have led to an unfair or incorrect outcome.

Under the *Freedom of Information Act 1992*² public agencies are required to make copies of their policy documents available for inspection and purchase by members of the public. If not, the Act provides that the policy can't be relied upon to the disadvantage of any person unaware of its existence.



² Section 19(1)(b)

³ Section 38(4) of the *Acts Interpretation Act 1954*



The term *procedure* refers to the steps involved in achieving the specific legislative or policy purpose. There are three types of procedures:

- *Statutory procedures* are the procedures set out in legislation.
- *General (common) law procedures* are the procedures developed by the courts to ensure fairness in administrative decision-making. These procedures are known as the rules of natural justice or procedural fairness.
- *Administrative procedures* are the procedures developed by agencies for circumstances where legislation doesn't set out the particular procedure to be followed.

If the relevant legislation states that a decision or an action must be decided or completed within a particular time, then you must comply with that time limit. Also, your agency's written policy or procedure may specify a time within which to make your decision.

If the legislation doesn't specify a time within which you must take an action or make a decision, you must still take the action/make the decision as soon as possible³.

If an action or a decision is not referable to a power conferred by legislation and no policy or procedure specifies a time within which you must take the action or make the decision, you should take the action/make the decision within a reasonable time.

If this is not possible, consider advising those who will be affected by the decision of the delay. Otherwise it could give the impression that matters are being ignored or covered up.

Where the decision-making process is complex, consider setting milestones to be reached by particular dates and track the milestones through a record keeping system.



Stage 2: Developing the decision

In developing the decision, the decision-maker should follow lawful and fair procedures, gather information relevant to the decision and give procedural fairness to people whose interests may be adversely affected by the proposed decision.

Statutory procedures can be mandatory. If so, you must follow them in the decision-making process.

If no procedure is set out in the legislation, you have discretion as to the procedure to follow. However, the procedure followed must be reasonable in the particular circumstances.

Written agency (administrative) procedures can provide valuable guidance on the decision-making process in order to achieve consistency and fairness.

It is important that administrative procedures not be based solely on cost or convenience.

The gathering of relevant information is a crucial factor in good decision-making.

The gathering of relevant information is a crucial factor in good decision-making.

Legislation may give a decision-maker express powers to gather information for a specified purpose, such as for an investigation. Even if your legislation doesn't give an express power to gather information, you may seek information from relevant sources, including from persons who may be affected by the decision.

Relevant information can be obtained from a variety of sources, such as your agency's own records, and other documents, other staff of your agency, discussions/interviews with other people and on-site inspections.

The key is to assess what information is relevant and disregard the rest. Relevant information is information or material that rationally or reasonably relates to the issue in question.

Ensure that you have gathered all relevant evidence that is reasonably available as this will provide the basis for your findings of fact.

If the legislation requires that a decision can be made only if certain facts/preconditions exist, then ensure you have gathered and recorded the evidence that establishes the existence of those facts/preconditions.

It is important that all information relevant to the decision to be made is fully and accurately recorded and maintained.

In simple terms, natural justice or procedural fairness means that a person who might be adversely affected by an administrative decision (the affected person) must be given a 'fair hearing' before the decision is made.

However, there are generally considered to be three aspects of natural justice:

1

The notice requirement

The notice to the affected person must identify the critical issues and contain sufficient information for the person to be able to participate meaningfully in the decision-making process.

2

The fair hearing rule

A fair hearing means that the affected person is given a reasonable opportunity to 'speak or respond' and also that the decision-maker genuinely considers the affected person's submission in making the decision.

3

The lack of bias rule

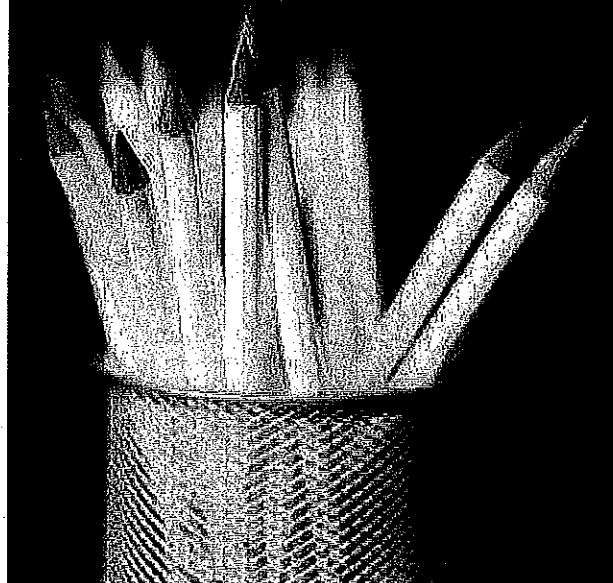
The person making the decision must act impartially in considering the matter. Bias is a lack of impartiality for any reason and may be in favour of or against the affected person. It may arise from the decision-maker having some financial or other personal interest in the outcome of the decision (conflict of interest), or giving the impression that they have prejudged the issue to be decided (prejudgement).

Bias can be actual or apprehended. Apprehended (or the appearance of) bias is judged by whether a fair-minded observer properly informed as to the facts or the nature of the proceedings or process might reasonably apprehend that the decision-maker might not bring an impartial or unprejudiced mind to the resolution of the issue.

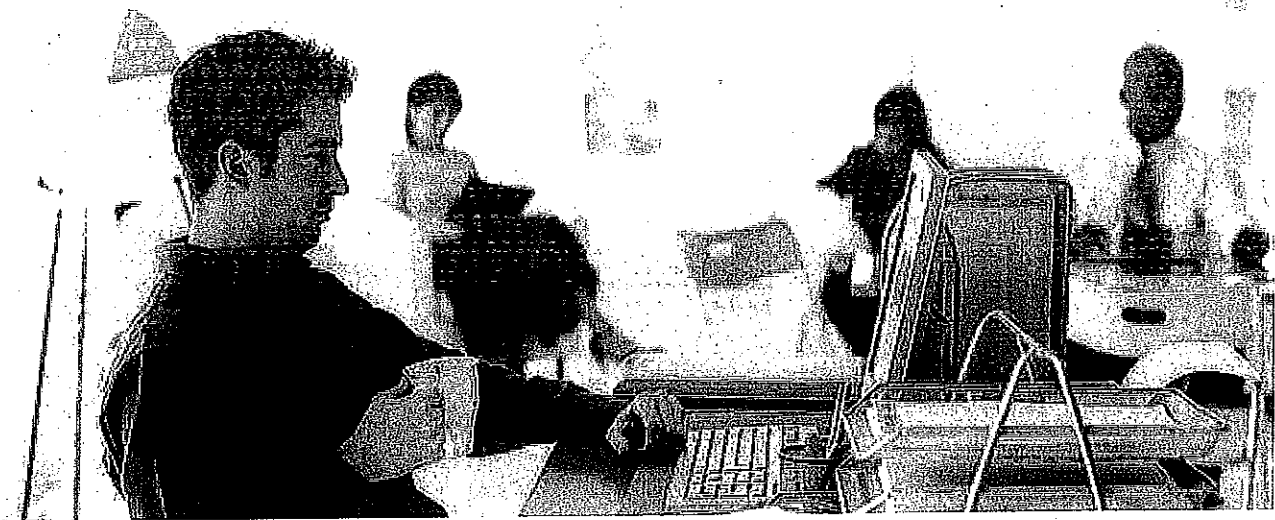
Natural justice is required when legislation expressly provides that a decision-maker must observe natural justice or when the common law supplements any statutory procedures. At common law, natural justice is required when a proposed decision may affect a person's rights, interests or legitimate (reasonable) expectations.

So in cases where your decision may adversely affect any person, give them a reasonable opportunity to comment on the critical issues, and information or material that may be unfavourable to them, before you make your decision. Also ensure you do not have a conflict of interest in the outcome and that you do not act in a way that suggests you are biased in favour of or against any person who will be affected by your decision.

Natural justice is required when legislation expressly provides that a decision-maker must observe natural justice or when the common law supplements any statutory procedures.



Stage 3: Making the decision



Stage 3: Making the decision

In making the decision, the decision-maker, after ascertaining the material or relevant facts, should correctly apply the relevant law to the facts and then reasonably exercise their discretion.

All findings of fact must be supported by relevant evidence. If legislation requires that particular facts must exist before you can make a decision, then make sure that you have obtained sufficient evidence to establish those facts.

After you have gathered the evidence, you must evaluate it to determine what is relevant to the findings of fact you have to make. All relevant evidence must be considered, not just the evidence which supports the finding you may want to make.

Whether the evidence you have gathered is sufficient to prove a fact must be assessed in accordance with a legal standard. Unless legislation requires otherwise, the civil standard (proof on the balance of probabilities) applies to administrative decisions. The strength of evidence necessary to establish a fact on the balance of probabilities may vary according to the seriousness of the issues involved, that is, the more serious the issue, the stronger the evidence required.

Ensure you record all findings of fact and your reasoning for them.

Before you can apply the law to the particular facts of the case before you, it's important that you have correctly interpreted the legislation.

The Acts Interpretation Act states that:

In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation¹.

Therefore, it is important that, as a decision-maker, you start by gaining an understanding of the purposes (or objects) of the legislation, the way in which the legislation seeks to achieve those purposes and how the provision you are applying fits into the overall scheme of the legislation. Legislation should be read as a whole.

The law to be applied in making your administrative decision may be contained in an Act of Parliament or in subordinate legislation (e.g. a regulation) or may stem from the general (common) law, or from a combination of sources.

Previous court and tribunal decisions can provide legal authority or guidance on the meaning and/or application of the law to factual situations. If you are unclear about whether or not a previous decision binds you or is relevant, consider obtaining legal advice.

However, be aware that unlike applicable decisions of courts and tribunals, legal advice is only an opinion and, therefore, is not binding.

¹Section 14A(1)

*Policies are not law,
but provide guidance
on how you should
exercise your
discretion.*



The nature and scope of a decision-maker's discretion depends on the particular provisions in the legislation and, in the case of a power being exercised under delegated authority, on the terms of the instrument of delegation.

If the legislation says that a power 'may' be exercised, it is up to the decision-maker whether or not to exercise the power, following proper consideration of all relevant issues and the particular circumstances of the case. However, the decision to exercise or not exercise the discretion must be lawful and reasonable in the circumstances.

In reaching your decision, you can consult with other officers and have regard to agency policy. However, you must act independently in exercising your discretion according to your own assessment of the particular case before you. That is, your decision must be made without any direction from another person.

Legislation may say that certain matters must be taken into account in making a decision. If so, then those matters must be considered.

However, where the legislation does not specify the matters to be taken into account, you should consider the underlying purpose of the decision-making power and any other matters relevant to achieving that purpose. Your agency's policies and previous decisions on similar cases may provide guidance. There may also be relevant court or tribunal decisions and legal advice available.

Ensure you take into account relevant matters and disregard irrelevant ones.

Where legislation specifies matters to be considered in making a decision, it may also indicate the weight to be given to those matters, but this is rare. In practice, the decision-maker will usually have to determine the weight to be given to competing factors. So be clear about which factors you put more weight on in reaching your decision and why.

You should also be able to clearly identify the critical issues in your decision (that is, the issues on which your decision turns). You can do this by considering what issues would need to change for you to make the opposite decision. It is important that sufficient evidence exists to establish each of these issues.

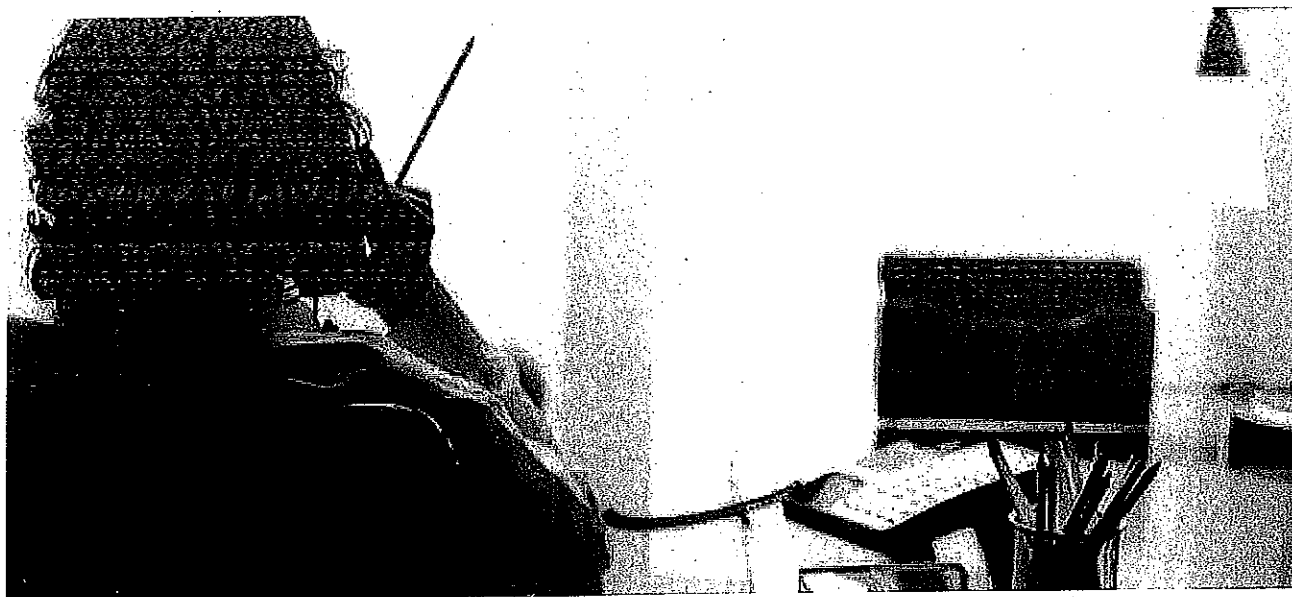
Ensure you record the matters you have taken into account, as well as your reasons for giving more weight to some matters than others. If the affected person has raised matters you consider irrelevant, make a record of these matters and why you consider them irrelevant.

Consistency is an important attribute of good decision-making. However, if you are intending to follow a previous decision, you must ensure that its circumstances are sufficiently similar to those of the decision you have to make.

Also, as mentioned earlier, policies are intended to provide guidance on how you should exercise your discretion but they must not be applied inflexibly. Therefore, you must always take into account the circumstances of the particular case and not follow the policy if this will lead to an unfair or otherwise incorrect decision.

Finally, only use powers for the purpose they are given. You cannot use a power for a different purpose, even if you believe that it is justified or necessary in the public interest.

Stage 4: Communicating the decision



Stage 4: Communicating the decision

It is important that people affected by a decision of a public sector agency understand the reasons for the decision.

Effective communication of decisions and reasons can assist in preventing complaints. Even a correct decision can lead to a complaint if it is badly communicated.

The purpose of giving reasons for a decision is to enable the person affected by the decision:

- to understand why the decision was made
- to decide whether to seek a review of, or to appeal against, the decision and to identify the grounds for the review or appeal.

To meaningfully and accurately communicate your decision, it is critical that:

- you have good records of the decision-making process
- you clearly understand the decision itself, the reasons for the decision and the consequences of the decision.

Legislation increasingly requires that reasons must be given in writing for particular decisions. Under the Acts Interpretation Act⁶, if an Act requires that written reasons be given for a decision, the document giving the reasons must also:

- set out the findings on material questions of fact
- refer to the evidence or other material on which those findings were based.

Even if the law authorising you to make the decision does not require you to give written reasons with your decision, the affected person may be able to request a statement of reasons under the *Judicial Review Act 1991*⁶. In this Act, the term 'reasons', in relation to an administrative decision, is defined as⁷:

- findings on material questions of fact
- a reference to the evidence or other material on which the findings are based, as well as the reasons for the decision.

Even where there is no legislative requirement on the decision-maker to give reasons, giving reasons is good administrative practice in that it promotes fairness, transparency and accountability in decision-making.

Giving reasons can be counterproductive if the reasons are not meaningful and accurate. Explain the issues you considered and why specific material was accepted or rejected. Take particular care to genuinely address the affected person's major arguments.

A person adversely affected by the decision should be notified of any statutory review or appeal process at the time they are notified of the decision, including:

- the time allowed to apply for the review/appeal
- how to apply for the review/appeal.

A person who expresses dissatisfaction with a decision should be provided with details of the agency's internal complaint management process.

⁶Section 27B

⁷Section 32

⁸Section 3



Conclusion

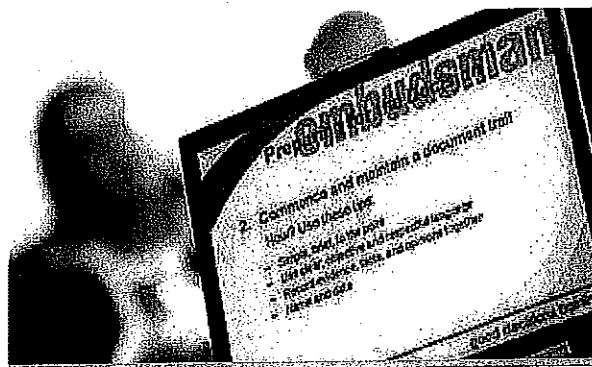
Many public sector officers have significant and wide powers to make decisions that affect the interests of members of the community. Although there have been substantial changes in public administration and administrative law in recent years, the basic principles of fairness, objectivity, thoroughness and compliance with the law remain.

Effective decision-making is a skill that comes more easily to some than others. Training can improve skills in this field.

You are more likely to make the correct decision if you:

- act fairly, reasonably and in good faith
- obtain, consider and act in accordance with all available relevant information
- are open and respectful in your dealings with those affected or potentially affected by your decision
- try to resolve concerns as informally and quickly as possible.

Having made the correct decision, don't fall at the final hurdle. Make sure you effectively communicate your decision and the reasons for your decision to those affected by it.



Training offered by the Queensland Ombudsman

The Queensland Ombudsman conducts Good Decisions Training, a program designed to help officers in the public sector make better decisions. The training is suitable for all public sector decision-makers, including supervisors and managers.

The Queensland Ombudsman also conducts Complaints Management Training, a program that helps officers who deal with complaints, including officers who internally review complaints, to fairly and efficiently manage and investigate complaints.

Visit www.ombudsman.qld.gov.au/training for further information or to make a booking.

References

We hope the information contained in this guide will assist your agency's approach to administrative decision-making.

Much of the information has been influenced by our experiences of working with agencies to help them improve processes and the following other sources:

- *Acts Interpretation Act 1954*
- *Anti Discrimination Act 1991*
- Electoral and Administrative Review Commission (1991) *Issues Paper No. 15 – Codes of Conduct for Public Officials*. Brisbane, Queensland
- *Freedom of Information Act 1992*
- *Judicial Review Act 1991*
- *Legislative Standards Act 1992*
- *Ombudsman Act 2001*
- Queensland Government (2001) *Information Privacy Principles*

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AFFIDAVITS

Purpose

The purpose of an affidavit is to provide sworn, factual information, to assist the magistrate in making a decision in relation to the application before the court. The *Childrens Court Rules 1997* dictate what an affidavit should look like, and the information that it should contain. A Form 25 is the prescribed form for Childrens Court matters. In most cases a departmental officer is the applicant, and the information provided in an affidavit is aimed at supporting the application.

It is the responsibility of the CSO, in consultation with a court coordinator, to provide an acceptable standard of evidentiary material and ensure the most relevant information is before the court to inform their decision.

When is an affidavit required

An affidavit is always required when an application for a child protection order is filed with the Childrens Court.

- Intervention with a child protection order
- Applying for a directive order
- Applying for a supervision order
- Applying for a short-term custody order
- Applying for a short-term guardianship order
- Applying for a long-term guardianship order
- Long-term guardianship to a suitable person

An affidavit may also be required after an initial application and supporting affidavit have been filed in the following circumstances:

- updating the court on any relevant assessments or change in circumstances, during an adjournment period, including but not limited to:
 - changes in applicant status (for example, when another CSO assumes case responsibility for a matter)
 - proposed dates and/or outcomes of family group meetings
 - attempts to locate and/or serve parents with court documents
 - a new case plan and/or updates (review) of an existing case plan
- in preparation for a child protection hearing, in response to affidavits filed by respondents, including but not limited to:
 - affidavits (written and filed separately to departmental affidavits) by witnesses, that the department intends to rely and/or call at the hearing
 - attaching relevant documents informing the other parties as to the evidence the department intends to rely at the hearing
- when an application is made to revoke a child protection order
- when an application is made to revoke a child protection order and make a new order

- in support of extending a CAO, for the purpose/s of outlining the reasons for the need to extend the order, including but not limited to:
 - the additional information and assessment that is required to make a decision as to whether the child is in need of protection
 - what attempts have been made by the department to ascertain the required information (for example, a scheduled professional assessment)
 - the likelihood of information becoming available during the course of the extension of the CAO
- responding to applications filed by parents (for example, an application by the parents/respondents to revoke a child protection order)
- where a party has initiated an appeal of a decision made by the court.

Writing an affidavit

An affidavit outlines the evidence of the case to the court. It is important to set the scene and to ensure the evidence is written in a clear manner, without departmental jargon, so that the child's parents, the court and all relevant legal representatives are able to understand the content.

The following information is provided to guide and assist departmental officers in the process of completing an affidavit:

Purpose of an affidavit

When drafting an affidavit, the CSO needs to keep in mind:

- that an affidavit tells the story of a matter to someone who knows nothing about it, and who has little time to get across the relevant and pertinent issues
- wherever possible, the affidavit must always be simple to read and easy to follow
- that the reader does not have the same level of knowledge of the case that you do, and therefore, the affidavit must 'set the scene'.

Establishing the grounds of the application

The CSO will outline in the affidavit the following evidence, taking into consideration the *Child Protection Act 1999*, section 9, 10, 59 and 61.

1. What are the child protection concerns? Wherever possible, this should be 'new' information and should not merely duplicate 'old' information. The court is interested only in what justifies the current application and not what was used to justify a previous application.
2. Why the child is in need of protection.
3. Why the order sought is the least intrusive (for example, the most appropriate, taking into account all the circumstances).
4. The case plan for the child.
5. The evidence you are relying on to support your decision-making.
6. Wherever possible, the child's views and wishes in regards to the child protection order sought.

Where the application is in relation to an Aboriginal or Torres Strait Islander child, the CSO will also include evidence, having considered the *Child Protection Act 1999*, section 6 and 83.

Do's when completing an affidavit

- Ask yourself, why do you want that information before the court?
- Why is it relevant?
- What does it tell the court?
- Is the information your best evidence, or do you need to seek further reports, affidavits or assessments?
- Consider seeking affidavits from persons who have direct knowledge about the matter. At the time of seeking these affidavits, advise the author of their likelihood to be subpoenaed, or required for cross examination by other parties should the application proceed.
- Inform the other parties (parent/s legal representatives and the separate representative) of the department's assessment, and what order you are seeking.

Do not's when completing an affidavit

- Do not simply include a paragraph by paragraph summary of events on the file since you have had responsibility for the matter.
- Do not only attach or include a case history (for example, a copy and paste case notes) of a family into an affidavit without ensuring relevance and whether it supports the application.
- Do not identify notifier details in the affidavit, in accordance with the confidentiality provisions of the *Child Protection Act 1999*, section 186.

Contents and structure of an affidavit

1. Basic chronology

A chronology is a good starting point for working on your affidavit. A basic timeline (which you should be able to establish from your file notes) will give you the skeleton outline of what you need to cover.

At this point, a CSO needs to:

- establish who, what, why and how
- outline relevant dates, names of parties and places.

The above details are what lawyers and the court will be interested in. If it is not there, you will be asked about it.

Note: If you do not have direct knowledge of this information, then the chronology should be exhibited to your affidavit, with a brief summary contained in the body of the affidavit, linking the relevance of the chronology to the application.

2. Headings

Use headings to assist in understanding, but carefully consider whether headings placed at random (for example, family group meetings) actually break the flow of the story and make it disjointed.

Other options could be to bold the words family group meeting where they appear in the text of the affidavit to make them easy to find or cross refer the reader to other paragraphs of the affidavit where you deal with family group meetings. Requiring the reader to move all over the document should be avoided.

3. Family trees (genograms)

Ask the question, with complex family units, do you need to exhibit a family tree? The answer is **yes** because:

- you are telling the other parties, and ultimately the decision-maker, 'who is who' in this family
- providing this detail from the outset helps, especially with issues like sibling or extended family member contact.

Note: Wherever possible, provide full names, dates of birth, ages and clearly define relationships between family members (for example, biological father, half brother or step sister).

Case plans

A CSO must:

- attach a current case plan for the child and summarise the key points to ensure you explain why you seek the current proposed order
- ensure that the affidavit clearly outlines the rationale for the case planning and the order sought
- ensure that the case plan goal, outcomes and actions match the child protection order sought and address the stated child protection concerns detail:
 - the particulars for how the case plan will be implemented
 - whether the services noted and/or sought are available.
 - whether the case-plan has been discussed with the parents
 - consideration of the viability and/or workability of the plan?

Note: The *Child Protection Act 1999*, section 59, requires that an order should not be made without a case plan. A case plan will evolve over time and may need to change and adapt to the family's progression. A thorough and detailed case plan may mean that a matter can settle and will get the support of the parent's legal representative and the separate representative, so that a hearing is unnecessary and the application can be dealt with in a timely manner. For further information, refer to the procedures on case planning.

Rational for current application being the 'least intrusive' order

A CSO must:

1. Be clear that 'least intrusive' does not mean that you should not be seeking a long-term order. Be realistic, and with thorough case planning, it will be easier to determine the appropriate order to seek.
2. Remember that the ultimate question is whether the order you seek addresses the child protection concerns, and clearly justify why that is so. The principles of the *Child Protection Act 1999*, section 5, need to be addressed, and ultimately ask, what is in this child's best interests?

Completing an affidavit

When completing an affidavit:

1. The applicant for a matter is responsible for the completion of an affidavit as supporting material for the application.
2. The CSO with case responsibility, is responsible for the completion of an affidavit for subsequent mention dates, to assist the court with updated evidence during the adjournment period (for example, a 'supplementary affidavit').
3. **The court co-ordinator is responsible for ensuring:**
 - the correct structure and format are used
 - the content provides the best evidence and is consistent with the nature of the order applied for.
4. The team leader is responsible for approving the content of the affidavit.

Filing of an affidavit

The applicant **must ensure** that the supporting affidavit is filed:

- with an application (without exception)
- **on or before the expiry** of an existing order
- for supplementary affidavits, a minimum of **three business days** before the next mention.

Note: The information contained in the application form for a child protection order is an unsworn document and is not considered evidence. Therefore, the applicant can **not** rely solely on it. Further, and **only** where necessary (for example, where something relevant and/or significant has occurred necessitating updating the court) for a subsequent mention date, the CSO will file an affidavit outlining any updated evidence during the adjournment period.

Service of an affidavit

All affidavits must be served on the respondents (*Child Protection Act 1999*, section 23, 37 and 52) and the separate representative. The *Childrens Court Rules 1997*, rule 22, requires a Form 22 Affidavit of Service to be filed in the court, as proof of service, as soon as possible following service of the documents.

Natural justice requires that affidavits must **(without exception)** be served on the respondents and, where applicable, the separate representative, **three business days** before the initial mention of the matter in the Childrens Court.

Legal Aid Queensland Tips for Affidavit Writing

Tip 1: It is not that tricky all an affidavit does is tell the story:

- Remember from the outset that an affidavit tells the story of a matter to someone who knows nothing about it and who has little time to get across the issues.
- Make it easy to read and easy to follow.
- Don't assume the reader has the same level of knowledge of the case that you do. You may know who Jack is in the story but they don't so make sure you set the scene.
- Precedents are useful but don't rely on the precedent to the detriment of the story telling.

Tip 2: Establish your case with reference to the evidence and the case plan:

- It should establish your case:
 - what are the child protection concerns?,
 - why is this is a child in need of protection?,
 - why is the order sought the most appropriate?,
 - what is the case plan?
 - what **evidence** are you relying on to support your decision making?
- It should address the issues set out in s 9,10,59 and 61 of the Child Protection Act 1999 and for indigenous families remember s 6 and 83. Always keep those sections in mind when you are drafting or critiquing an affidavit. Print a copy of the sections off and have them next to you when you are going through the affidavit.
- Simply doing a paragraph by paragraph summary of events on the file since you have had it is not enough. Simply attaching a care history of a family is not enough. Why do you want that information before the court? **Why is it relevant?** What does it tell you? Is it your **best evidence** or do you need to seek further reports or affidavits or assessments?
- Letting the other parties (parent's legal reps and the Sep Rep) know what your case is, what order you are seeking and a well reasoned, researched and detailed case plan could mean you can settle a matter and not end up in a fully contested trial. Ultimately too it could mean a better and more timely result for the **child** (and for their family) which should be the aim for all parties.

Tip 3: Start with a Basic Chronology

- A chronology is a good way to start working on your affidavit. This basic timeline (which you should be able to establish from your file notes) will give you the skeleton outline of what you need to cover and provides a good starting point.
- But remember this is the starting point and will evolve over time.
- Keep thinking whether you have established who, what, where, why and how. Dates, names, places, details are what lawyers are interested in. If it is not there you will be asked about it.

Tip 4: Your story should flow in chronological order

Use headings to assist in understanding but carefully consider whether arbitrarily placed headings (eg family meetings) actually break the flow of the story and make it disjointed.

Other options could be to bold the words **family case planning meeting** where they appear in the text of the affidavit to make them easy to find or cross refer the reader to other paras of the affidavit where you deal with family meetings. But remember you don't really want to send your reader all over the document!

Tip 5: Family Trees

- With complex family units do you need to exhibit a family tree?
- Remember you are telling the other parties and ultimately the decision maker "who is who" in this family. It makes life a lot easier for everyone.
- Working all this out from the outset helps especially with issues like sibling or extended family member contact.
- Full names if you have them, dates of birth if you have them, state the age and state the relationship eg biological father or half brother or step sister.

Tip 6: CASE PLAN/ CASE PLAN/ CASE PLAN

- What is the case plan? Why do you seek the order? Does your affidavit clearly set out the rationale for case planning and the order sought?
- Remember the amendment to section 59 says an order should not be made without a case plan. But don't be afraid of that be prepared for it so that it doesn't happen to you and the best way is to make sure your plan is reasoned, researched and detailed- will it work?

- Case Plans should be detailed with the particulars for how this is all going to occur. How is this going to occur? What does it all involve? Are the services you seek available? Have you discussed all this with the parents?
- A case plan will evolve over time it is a living document, a moveable feast. It can be hard to manage but if the work and preparation is there then adapting it will be easier over time. You may have to change the game plan.
- Again remember that a detailed and well organised and researched case plan may mean that a matter can settle and will get the support of the parent's legal rep and the sep rep so that a full blown trial is unnecessary.

Tip 7: Least Intrusive Order

- Least intrusive does not mean that you should not be seeking a long term order.
- Be realistic and with well reasoned and researched case planning it will be easier to determine the appropriate order to seek.
- A long term order might be the most appropriate rather than 12 month or 2 year orders when you come back to get another order every time putting the child through the trauma of another separate representative another report writer.
- The ultimate question is whether the order you seek addresses the child protection concerns then clearly justify why that is so.
- Remember to that the principles in s5 are what need to be addressed and ultimately ask ***what is in this child's best interests?***

AFFIDAVIT WRITING

Introduction



In your capacity as a statutory, departmental worker, no doubt you will be required at some stage in your career, to produce an affidavit for the Children's Court. Most likely, you will be the applicant of a Child Protection Order due to a child experiencing unacceptable harm, or at risk of significant harm by either or both parents.

You will find that prior planning and preparation for writing your affidavit will assist in the process. Prior to starting to draft your affidavit, ensure that you have clear, up-to-date records about the factual events that have occurred, that you have a clear assessment of the child protection concerns and the risks to the children, and that you also have a clear plan for future involvement with the family. This future planning should include specific information about how you will meet the department's legislative responsibility to work with families, and what casework should occur with the family to address the concerns.

The aim of this document is to assist you in the process of completing your affidavit.



Purpose

Essentially, the purpose of an affidavit is to provide sworn, factual information to the court, to assist the Magistrate in making his/her decision in relation to the application before the court. In most cases the department is the applicant, therefore the information provided in your affidavit is aimed at supporting your application.

Your affidavit is your 'evidence in chief', that is **relevant** information which is sworn/affirmed with respect to the application. Fundamentally, 'relevance' is determined by what you have to prove to obtain the order you seek.



Body

Microsoft Word (home/share directory/cp act resources/samples of court documents/sample affidavit) provides an example of an affidavit format for Childrens Court applications. This example includes suggested headings relevant to our statutory work and indicates the approved form (Form 25) as legislatively required under the *Children's Court Rules 1997*, section 8.

You should write your affidavit on the assumption that the application will be contested and you will be rigorously cross-examined on the information included. As such, you should always ensure that your information is grounded in facts, and that you check that your information is accurate and consistent throughout. You should also make sure that any opinions expressed are clearly marked as opinions and are within your expertise. Also, always include information about the basis on which you have formed the opinion.

Affidavits need to be clearly formatted, reader-friendly and include specific and relevant content.

Essentially, you have to prove three things:

- 1) The existence of the child protection concerns, for example, that the child has been subjected to harm, domestic violence, physical abuse etc;
- 2) That the order which you seek is the least intrusive order which can be made in the circumstances; and
- 3) That the department has taken reasonable steps to keep the family together before seeking the order in which you seek.



How do you do this?

Section 105(1) of the *Child Protection Act 1999* provides –

"In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in anyway it thinks appropriate."

You can prove this information, particularly in relation to the child being harmed or at risk of significant harm in the following ways:



Direct Evidence

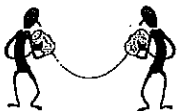
This is evidence of the facts in issue themselves, documentation given by a person of events, which they have personally observed or, of matters of which the person has personal knowledge. For example obtaining an affidavit from a neighbour who witnessed an incident of domestic violence. That neighbour will simply say what they saw and heard – therefore this is direct evidence.



Admissions

These are direct statements by the respondent parent, for example the mother may have admitted to you that an episode of domestic violence occurred. As far as relevant, you need to put the details of the conversation which you had with the mother in your affidavit, including the details of when, where and very briefly, under what circumstances the conversation took place.

If your recollection is accurate, or if you have kept notes of the conversation, preferably you would set out the relevant part of the conversation verbatim, using the direct speech used. Failing that, you would set out the gist of the conversation to the best of your recollection.



Hearsay Evidence

Hearsay evidence is evidence of something reported to the court indirectly. For example if someone tells you 'something' and in your evidence you report that 'something' to the court, as an item of evidence, that 'something' may be hearsay evidence – given it has not been provided directly to the court by the person with that information. Consequently, as an item of proof, Children's Courts are bound to give hearsay evidence less credence than that which they give to direct evidence.

Hearsay and the evidence of children

In practice children are not called to give evidence in child protection proceedings. The evidence of a child who is subject to a proceeding will be hearsay. A child's evidence should be put to the court, without embellishment, using the words which in making the disclosure, the child used itself. It should be reported to the court in an affidavit what the child said, using the child's own words and give details of the circumstances under which the disclosure was made, ie when and where and significantly, what if anything, prompted the child to make the disclosure (for example whether the disclosure was spontaneous).

- You should try not to rely on hearsay evidence if you can avoid it and only use it as a last resort.
- Use the personal pronoun – I did this or I contacted the Police and they told me (as opposed to the Police were contacted and it was reported..)
- Ensure to identify the source of the hearsay – I spoke with Mr Smith from...and he gave me the following information...



Witnesses

The applicant relies upon material (usually affidavits) filed in the court and served upon the respondent. Generally speaking the applicant will not call people to give oral evidence. However the respondent may nominate any person named in the applicants material and that person may be cross-examined by the respondent, as to the evidence which he/she has given.

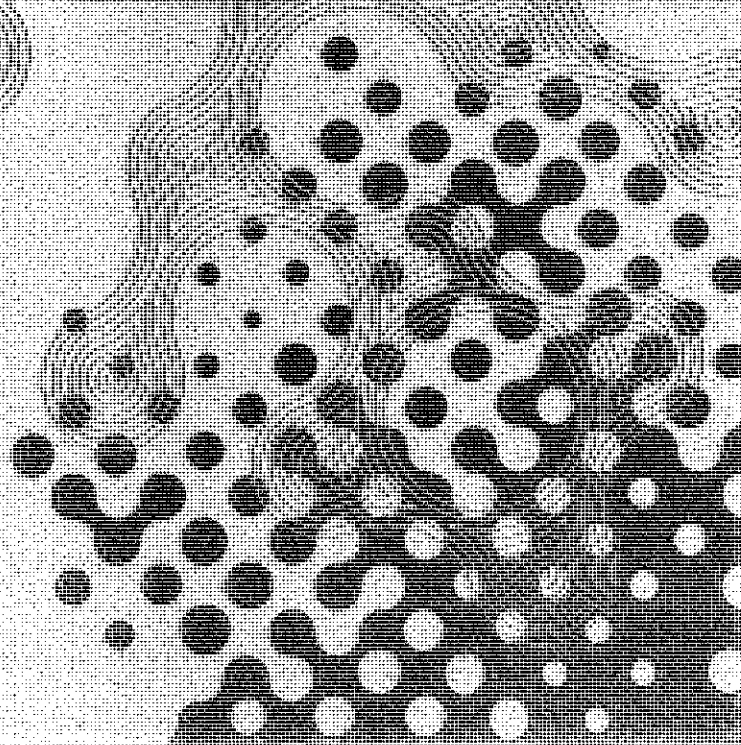


Points to remember

- ☐ Be accurate and factual
- ☐ Use plain English
- ☐ Be clear in expressing your case
- ☐ Consider headings, where relevant to separate issues and events
- ☐ Avoid lengthy sentences or making the document too wordy
- ☐ The material should be relevant to the issues
- ☐ Try to avoid the use of hearsay
- ☐ Avoid the use of jargon unless it is necessary to express the point. Where jargon is used an attempt should be made to explain its meaning in clear terms.

Remember, the more familiar you are with the requirements of the court, the better guided you are in completing your affidavits.

Adoption Act 2009



Department of Communities



Objectives of the *Adoption Act 2009*

The main objectives of the *Adoption Act 2009*:

- Well being and best interests of the adopted person throughout their lives
- Efficient and accountable practice in the delivery of adoption services
- Complies with Australia's obligations under the Hague convention



Guiding principles of the Adoption Act 2009

- Well being and best interests of an adopted child, both through childhood and the rest of his or her life, are paramount
- Key Principle 7 requires culturally sensitive practice regarding Aboriginal and Torres Strait Islander people. The principles regarding Aboriginal and Torres Strait Islander people are similar to those contained in the *Child Protection Act 1999*.
- Adoption is an appropriate long-term care option for a child if the child's parents choose adoption for the child's long-term care or the child does not have a parent who is willing and able to protect the child from harm and meet the child's need for long-term stable care
- Create a permanent parent-child relationship between the child and the adoptive parents



Guiding principles of the Adoption Act 2009

- A child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate having regard to a child's age and ability to understand
- A child's adoptive parents have primary responsibility for the child's upbringing, protection and development
- An adopted child should be cared for in a way that ensures a safe, stable and nurturing family and home life, promotes openness and honesty about the child's adoption, and promotes the development of the child's emotional, mental, physical and social wellbeing.
- The same protection, support and resources should be available to an adopted person regardless of whether the adoption was local, intercountry or step parent
- It may be in a child's best interest to maintain connections with members of the child's birth family



Open Adoption

- The *Adoption Act 2009* facilitates open adoption
- Open adoption does not describe a single practice or refer to only one part of the adoption process
- Although research on the impact of open adoption is still rather limited, the data largely supports the benefits over the drawbacks. It suggests that:
 - most adoptive parents are quite satisfied with the arrangement, have positive relationships with their child's birth parents and communicate more with their child about adoption
 - birth mothers benefit by having an increased sense of control, less unresolved grief issues, and fewer adjustment problems after the child's placement, and
 - children in open adoption have a better understanding of the meaning and implications of being adopted, display greater curiosity about being adopted and ask their parents more questions about adoption, as adolescents are more satisfied with the extent of information they have and degree of contact than those not involved in open adoption.

Psychological issues in adoption: Research and practice, D. Brodzinsky and J. Palacios (Eds), Praeger, USA, 2005 pages 147-148.



Expression of Interest (local and intercountry)

Criteria

- Person is an adult
- Person or the person's spouse is an Australian citizen
- The person is resident or domiciled in Queensland
- For a woman, the person is not pregnant
- A person can not be undergoing fertility treatment, and has not undergone treatment within the previous six (6) months (letter from fertility specialist)
- A person does not have custody of a child aged less than one year or who has been in their care for less than one year
- Couples can be married or de-facto, living together for a minimum of two years and are not the same gender

Other key features:

- Two year expiry for an expression of interest
- No fee to lodge an expression of interest
- Two other requirements that are in the regulations are 1) for intercountry, that they can meet the full costs of the adoption and 2) one of the couple can provide personal care for the child for at least one year after the placement.



Step Parent Applications

Changes to eligibility criteria

- The applicant, spouse and child have been living together for a continuous period of three years
- The applicant has been granted leave under the *Family Law Act 1975*
- The child is at least 5 years old and has not yet turned 17 (discretion after 17)



Assessment

Assessment process

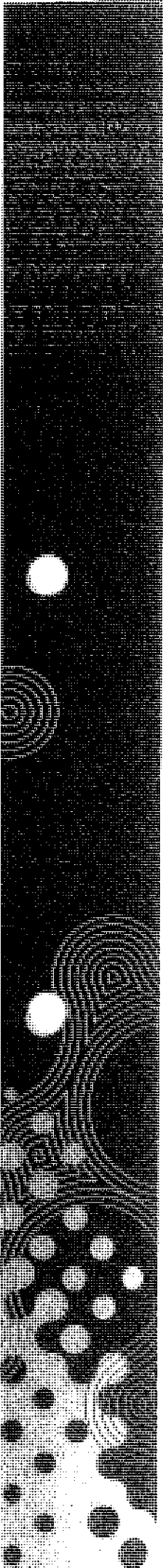
- Personal history checks (including adult household members)
 - Criminal history
 - Traffic history
 - Domestic violence history
 - Child protection history
- health information
- education sessions
- family profiles
- home study



COURT

Court processes under the *Adoption Act 2009*:

- **Dispensing with the need for the consent of a parent to an adoption**
(Local and step parent)
- **Interim adoption orders**
(Local and intercountry)
- **Discharge of Interim adoption orders or ending custody**
(Local and intercountry)
- **Final adoption orders**
(Local, intercountry and step parent)
- **Restricting access to identifying information**
(Local)
- **Discharge of final adoption order (Supreme Court)**
(Local, intercountry and step parent)

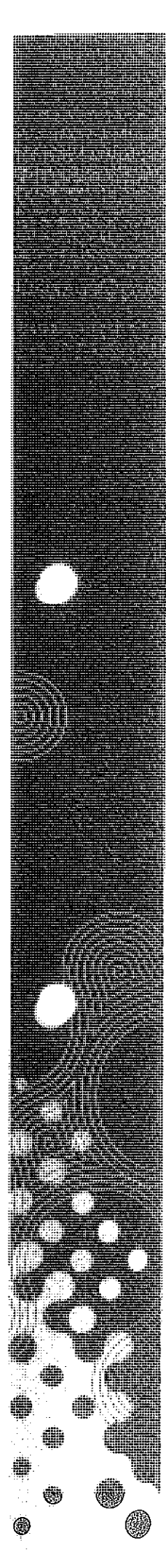


COURT ORDERS

Dispensing with the need for the consent of a parent to an adoption

(local and step parent)

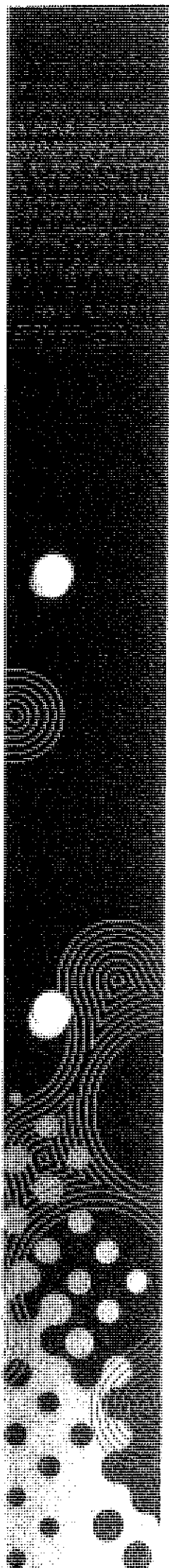
- Used when a parent can not be located, refuses to engage with the Department or does not have the capacity to consent to an adoption.



COURT ORDERS

Interim adoption orders (local)

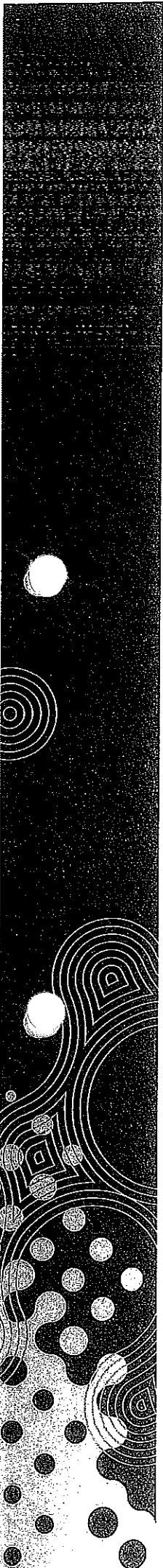
- Are for a minimum of 12 months.
- The prospective adoptive parents can only meet and take custody of the child once an interim order made.
- ASQ responsible to support and supervise the placement for 12 months before applying for a final order. Prospective adoptive parents have the ability to apply for a final order after 12 months and 30 days if ASQ has not applied for a final order.
- The supervision period provides evidence to the court how the placement is progressing and whether the making of a final adoption order is in the child wellbeing and best interests.
- A mandatory adoption plan must be commenced (on non-identifying basis) during interim order period
- Child known by prospective adoptive parent's surname during interim order
- Child is in the custody of the prospective adoptive parents, chief executive retains guardianship



COURT ORDERS

Discharge of Interim adoption orders (local)

- If concerns exist about a placement an application can be made to discharge the interim order

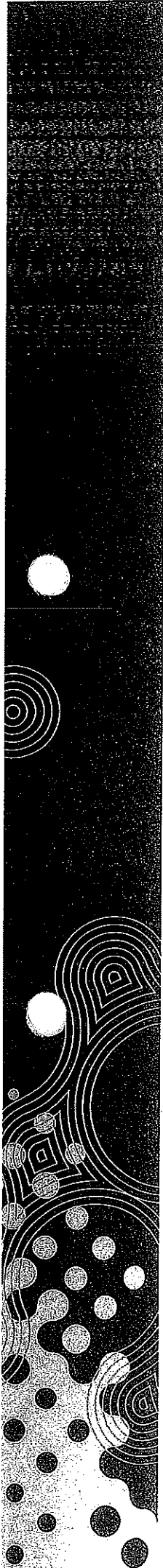


COURT ORDERS

Final adoption orders

(local, intercountry and step parent)

- Once order has been made the adoptive couple are the legal guardians of the child. The child's birth certificate will be amended to reflect the change in legal status.
- For intercountry adoption orders only final orders are made for those where the order is not made overseas.
- Prospective adoptive parents can apply directly to the court for a final order if the child has been in their care for a period of 12 months and 30 days if Adoption Services Queensland has not applied for a final order.
- For step parent adoptions, it is the responsibility of the step parent to lodge the application directly with the court.

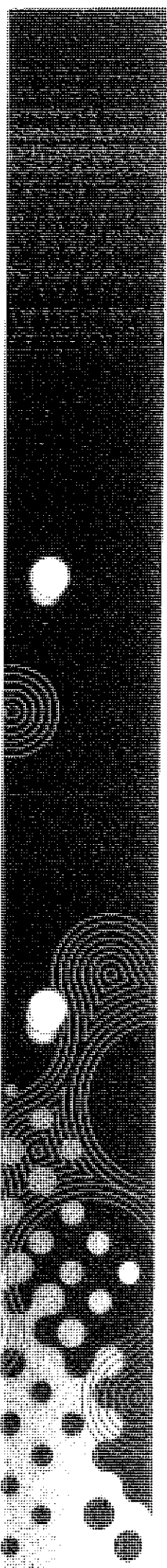


Who is the child's Custodian and Guardian throughout adoption

Local Adoption	Custody	Guardianship
Child born	Birth Parents	Birth Parents
Parents enter adoption care agreement	Chief executive	Birth Parents
Both parents consent obtained or order dispensing with the need to consent obtained	Chief executive	Chief executive
Interim adoption orders made	Prospective adoptive parents	Chief executive
Final adoption orders made	Adoptive parents	Adoptive parents

Who is the child's Custodian and Guardian through an adoption

Intercountry Adoption (orders made in Queensland)	Custody	Guardianship
Suitable placement proposal received	Overseas Central Authority	Overseas Central Authority
Prospective adoptive parents takes custody of child in overseas country	Prospective adoptive parents	Overseas Central Authority
Prospective adoptive parents and child arrive in Queensland (12 month supervision commences)	Prospective adoptive parents	Chief executive
Final adoption orders made	Adoptive parents	Adoptive parents



COURT ORDERS

Restricting access to identifying information (Local)

- A party can apply to restrict identifying information about them being released when there is an unacceptable risk of harm to themselves or someone else. ASQ can apply on behalf of a party.

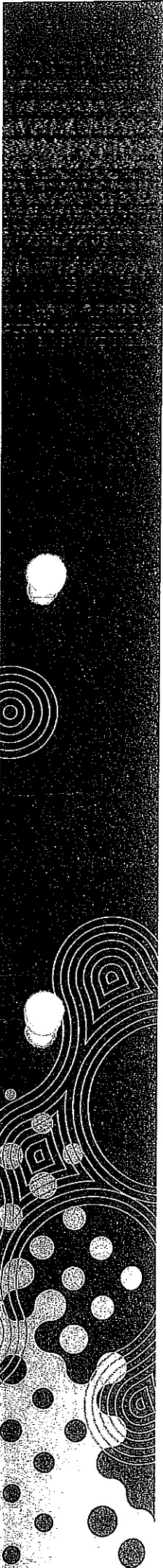


COURT ORDERS

Discharge of adoption order (Supreme Court)

(Local, intercountry and step parent)

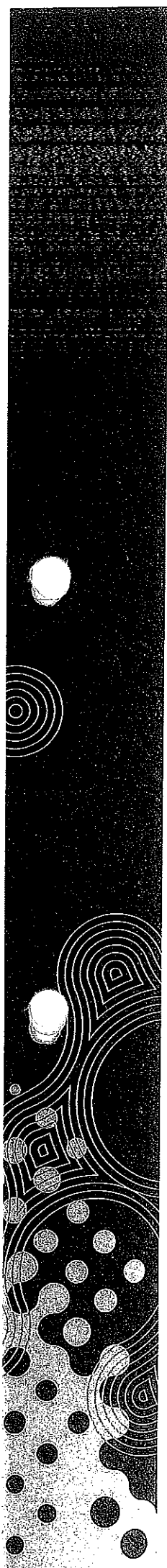
- An order can only be discharged on the following grounds:
 - the order was made because of a false or misleading document or representation;
 - because a person acted fraudulently or used undue influence on another person in another improper way;
 - a consent required for the adoption was not given freely and voluntarily by a person with capacity to give the consent;
 - there are other exceptional circumstances that warrant the discharge.



Procedural Provisions of the Act

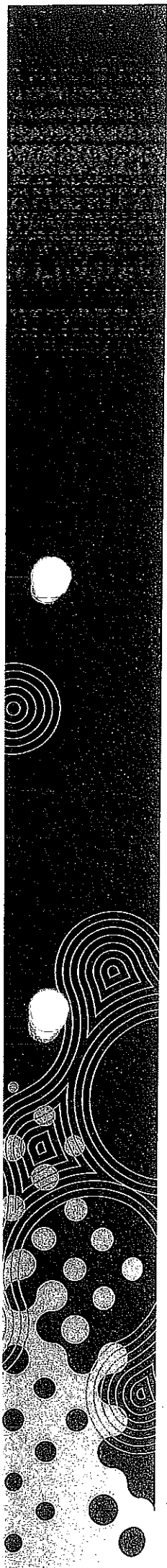
Part 10 of the Adoption Act 2009

- The act contains additional provisions to enable the court to make the best decision possible.
- The act allows for actions such as the appointment of separate representatives, to allow support for a child in a proceeding or hearing submissions from non parties.



Filing of material and court

- When completing and serving copies of applications, affidavits or orders there are very strict rules that must be adhered to, to protect various parties confidentiality and privacy.
- ANY application, affidavit or order that prospective adoptive parent receives **MUST NOT** contain the child's surname or any details of the parents.
- ASQ will submit 2 applications and 2 affidavits with one containing identifying information and the other non identifying information.
- The application and affidavit with identifying information will be printed on green paper to distinguish itself.
- It will be the responsibility of ASQ to enforce the correct printing of the forms and affidavits.
- On the day of court it is preferable that the names of the parties are not to be called over a loudspeaker to go into court. Rather a system that is agreed between the two agencies.



For further information

Further information or questions:

- **Online:**

Adoption Bill 2009 and Explanatory Notes
Fact Sheets
Consultation papers

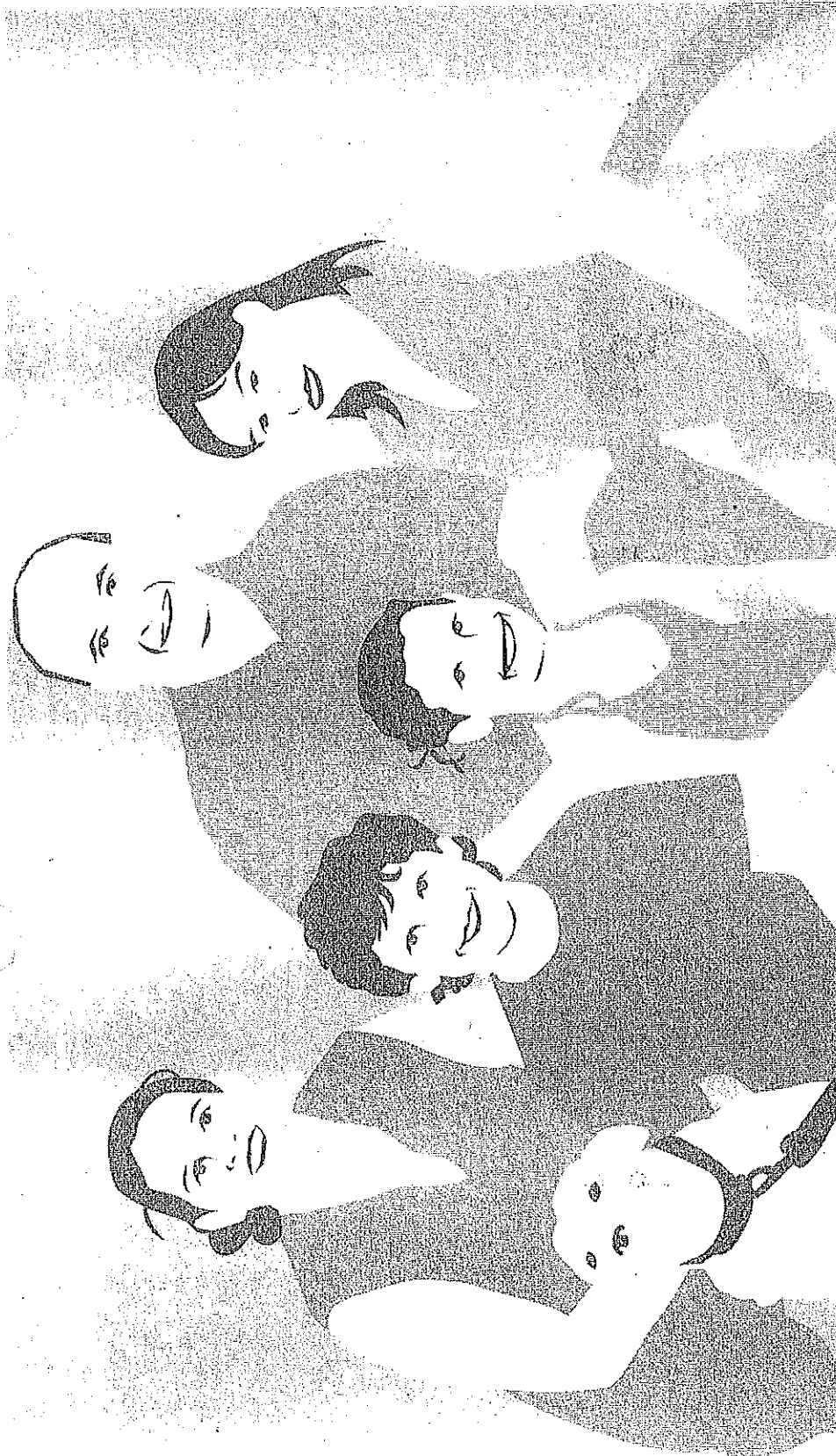
- **Other:**

Future of Adoption Laws in Queensland –
policy paper

- Contact Adoption Services Queensland on: 3224 7415

Child Safety
Commissioner

promoting
the safety
and wellbeing
of children



From isolation to connection

A guide to understanding and
working with traumatised children
and young people

Acknowledgments

This resource was commissioned by the Child Safety Commissioner and written by Laurel Downey, previously Manager of Practice Development and Training for Take Two, Berry Street Victoria. Laurel is currently consultant to the learning and development strategy for non-government child protection placement services for Far Northern and Northern Queensland and based at James Cook University, Cairns.
(laurel.downey@jcu.edu.au)

Sections or earlier versions of this work have previously appeared in *Calmer classrooms: a guide to working with*

traumatised children (Office of the Child Safety Commissioner, 2007); *Yarning Up on Trauma* (Berry Street, 2008); and *Therapeutic Residential Care Model: Far North Queensland* (Alternate Care & James Cook University, 2008).

The author wishes to acknowledge the contributions of colleagues, particularly Lisa McClung, Shaun Coade and Annette Jackson. Much of this material was first developed at Take Two, a Berry Street program which provides a therapeutic response to infants, children and young people in the child protection system.

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Author Laurel Downey, consultant to the learning and development strategy for non-government child protection placement services, Far Northern and Northern Queensland.

Foreword



Working with children and young people who have been affected by trauma can be difficult and at times challenging. It can also provide a window of opportunity that can help you to make invaluable changes in a child's life.

From isolation to connection: a guide to understanding and working with traumatised children and young people has been written to help professionals, carers and others understand the needs of children who have been affected by trauma through abuse and neglect.

This guide is part of a series of publications produced by the Office of the Child Safety Commissioner which helps people in contact with children to better understand the effects of trauma and to be better equipped to deal with situations that they encounter. The guide therefore includes a section on strategies for dealing with particular issues; and effective ways of working with young people, taking into account the impact of the negative experiences they have had in their lives.

The guide has been designed to enable you to easily navigate sections within the booklet that will be most useful to you in various situations.

I hope that this guide can be a useful tool for you in your connection with young people who have been affected by abuse and neglect.

Bernie Geary OAM
Child Safety Commissioner

How to use this resource

From *isolation to connection* is for people working with, caring for, or in contact with children and young people whose lives have been hurt by abuse, neglect or other trauma. It may also be used with young people themselves to help them understand their experiences and reactions.

As a resource it may help you to:

- understand traumatised children and young people better
- collect ideas about how to work with children and young people
- work with families, carers and professionals.

The book can be used in many ways—it is not necessary to start at the beginning and read straight through. Some readers

may go directly to the section *A framework for connection* (page 5) for ideas on how to help. Others may start by reading the young people's case studies (pages 24 to 33), which illustrate the *Theory and case studies: trauma, attachment and child development* section beginning on page 21. For information on the issues that have affected traumatised young people, see *The impact of abuse, neglect and other trauma* (page 35).

Some readers may find it helpful to use the *Glossary of terms* on page 3 for unfamiliar terms or for terms such as 'shame' which have a particular meaning in the context of trauma, abuse and neglect.

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Focusing on relationships and connection (rather than the more medical model of symptom resolution) plants us firmly in the social world and reduces the tendency to isolate, individualise and pathologise traumatised children and their families.

Introduction

In this booklet you will find a framework for helping traumatised children and young people to move from isolation (caused by experiences of trauma and disrupted relationships) to greater connection with family, friends and community. In the context of healing, greater connection is a result of improved physical, mental, emotional and spiritual wellbeing, and enhanced relationships skills.

While the main focus for this booklet is on adolescents, it is also relevant for those who work with or care for younger children: professionals who work in the wider child protection system (including residential care workers), Child Protection workers, clinicians, case managers, police, Youth Justice workers, magistrates and others. It may be particularly helpful for those working in therapeutic foster care and therapeutic residential care.

Causes of trauma

The resource will be useful for an understanding of children and young people whose lives have been compromised by trauma. Such trauma may have been caused by war, the experience of being a refugee or asylum seeker, other trauma, or by the (unfortunately) more common experience of growing up neglected or abused. Because the latter is the most common cause of childhood trauma in Australia, this booklet focuses on that experience.

Understanding—the challenge

Many young people do well in spite of adverse and traumatic experiences while growing up. However, far too many of those

who end up in our child protection and care, justice and mental health systems have survived by adapting to those adverse conditions. The ways they have done this may have helped them to survive—but these are ways that also lead to trouble.

It can be very difficult to understand why some young people behave in ways that undermine their own health and freedom, and compromise the health and freedom of others. It can be especially hard to understand why young people who have complex histories and complex difficulties seem not to learn from experience, and particularly do not seem to learn from punishment. One of the main aims of this work is to show how trauma and disrupted attachment can delay development and lead to so many difficulties.

Doing the best they can

Many children who have experienced trauma find it very hard to understand social rules. It is easy to label them as bad—so this work attempts to explain why it is better to see them as hurt and injured, and doing the best they can to survive. These young people are isolated by their experiences, their pain and difficulties—and by the strategies they have developed as ways to survive, as they struggle to connect with others and participate in society in ways that are mature and responsible.

It is not the intention of this booklet to excuse dangerous, criminal or hurtful behaviour, as it is vital that we assist all young people to take responsibility for their actions. However, for the group of young people under discussion, we cannot just ask them to do this. We need other ways of assisting, supporting and socialising them so that we can move them from isolation

(imposed by not having the skills to manage relationships, rules and boundaries) to the connection and empowerment brought by those skills.

If we want to help these children and young people move from their isolation, we need to begin with a deep understanding of them and we need to have compassion for their suffering. From our understanding we can reach out to connect with them: as we begin to see them in new ways, they can also begin to see themselves in a more positive light.

Glossary of terms

Affect Affect is different from emotion in that our affects are our primary or core emotions. Most affects exist on a continuum of intensity and comprise: interest—(to)—excitement; surprise—(to)—startle; anger—(to)—rage; fear—(to)—terror; distress—(to)—anguish; enjoyment—(to)—joy; shame—(to)—humiliation. There are two other affects, disgust and dismissal, related to evolutionary mechanisms for the detection of spoiled or poisonous food, and the communication of this to others through facial expression (developed pre-language). All of the affects and their facial expressions are found in all humans and our higher primate cousins. *Emotions* include a more complex and comprehensive list, such as guilt, regret, envy, sadness, and so on, and emotions may belong to the family of one or more affects, for example contempt is a combination of anger and disgust. (For more on affect theory see Nathanson, 1992.)

Affective arousal Affective arousal means the arousal of emotions and reactions based on one of the affects. For example, in 'distress—(to)—anguish' a person would experience emotions at the anguish end of the continuum; they would be extremely upset, crying or wailing.

Affect regulation The ability to manage and regulate our own feelings, emotions and reactions (e.g. calm ourselves down when stressed, or respond appropriately to events and experiences).

Attachment The state and quality of an individual's emotional ties to another: develops when one person derives security and comfort from another.

Attachment network For Indigenous children—or others who come from cultures where childcare is shared among mothers, aunts, sisters and grandmothers, and whose cultural experience may be that of having multiple caregivers—it is essentially these carers who provide their 'secure base'. Such a perspective of attachment is in contrast to Westernised models of attachment that promote dyadic attachment principles of 'a primary carer' as the secure base. Essentially this means a change in thinking from a dyadic perspective of attachment to an attachment network approach.

Attachment behaviour Any type of behaviour that causes a person to gain or retain proximity to a preferred individual and that results in an increased sense of safety and security. It is initiated by a perceived separation or a perceived threat of separation from the 'attachment figure'.

Attunement When two people are in 'emotional sync', communicating with each other (both verbally & nonverbally) and responding to each other in a sensitive manner.

Coherent narrative When children are helped to put memories, ideas and feelings into words and then use these to develop a story about their histories and themselves.

Dissociation Form of withdrawal, in which the child cuts off from contact with others and the world, becoming numb, unfeeling or unaware. It is a form of mental 'freezing' or 'absence' as an avoidance of overwhelming fear.

Empathy The ability to imagine and share what another is experiencing, while still maintaining an awareness of self and the difference between another's experience and one's own.

Hyperarousal When a child is in a constant state of stress—showing extreme reactions and over-responsiveness to stimuli.

Internal working model (IWM) Develops from repeated experiences of relationship with the primary caregiver. IWM influences how the child sees him or herself and how they will respond to future relationships. Abused and neglected children have often developed a negative internal working model. They see themselves as unlovable; expect new carers to reject them; see others and the world as unsafe; and feel that relationships cannot be relied upon to keep them safe.

Mentalise To understand and read others from facial expression, tone of voice or body language. The ability to think about our own mind and the minds of others. This leads to the ability to understand why things happen and why people behave as they do.

PACE Therapeutic parenting principles developed by Daniel Hughes (1997) to facilitate secure attachment. Dimensions are: *Playfulness*, *Acceptance*, *Curiosity*, and *Empathy*.

Reflection The ability to stop and think about our experiences, physical feelings, reactions, emotions and thoughts. Reflection helps us to respond to stress thoughtfully, rather than just react.

Resilience A key quality that helps children to rebound from adverse events or experiences. Nurture, protection and attunement gives children a secure base—this secure base is the foundation for resilience.

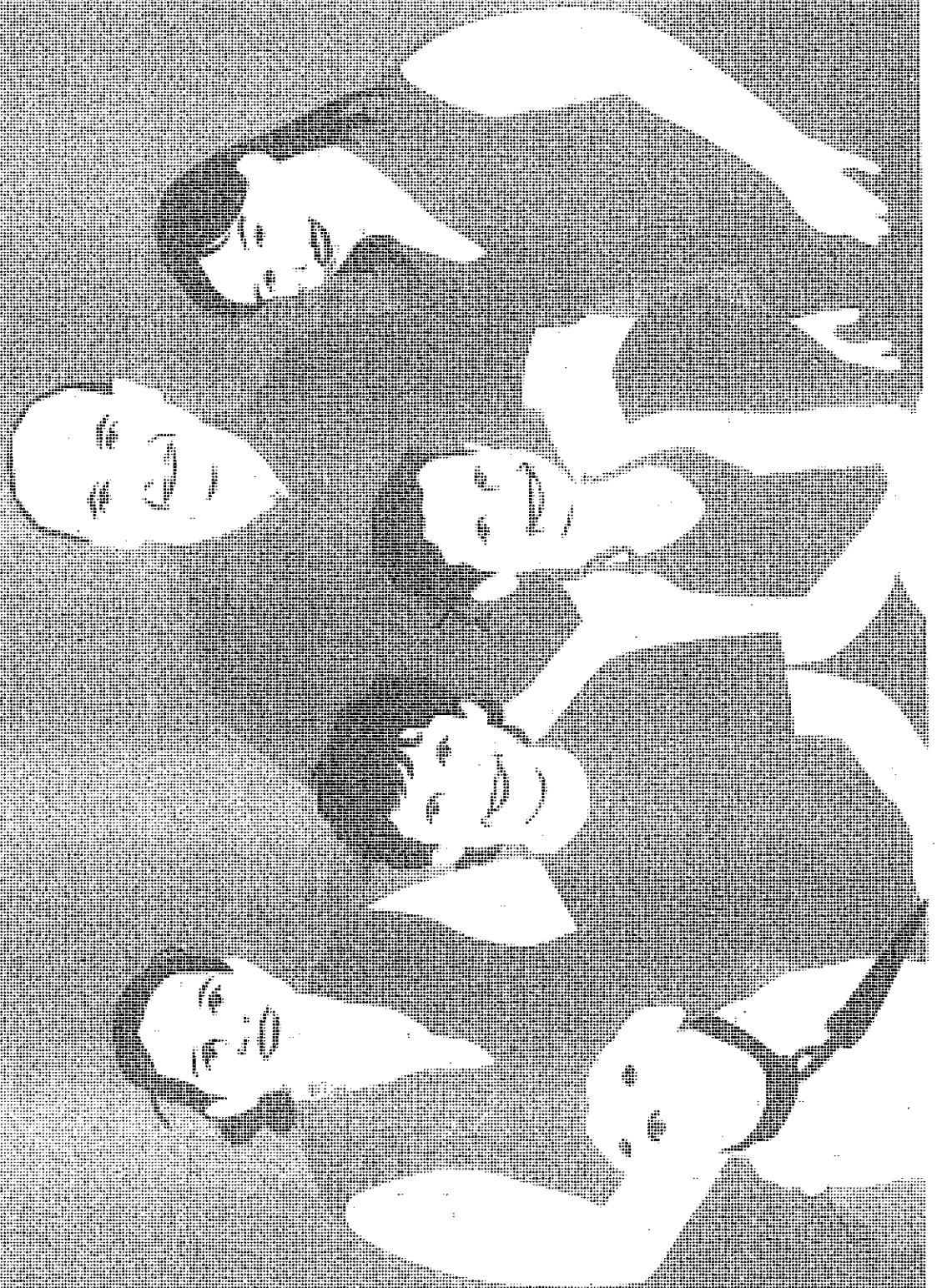
Shame An affect which induces a complex emotional state where a person experiences overwhelming negative feelings about the self. The family of emotions belonging to shame includes guilt, remorse and regret.

Healthy shame Healthy shame is felt when a person does something wrong, accepts that they have hurt another and experiences shame. This shame leads the person to repair the damage, apologise and make good. This cycle is a part of socialisation.

Trauma Occurs when a person's inner resources are overwhelmed by a perceived or actual external threat. The response may be one of fight, flight or freeze. With adequate internal and external resources, a one-off experience of trauma can heal quickly. Chronic, ongoing exposure to trauma in childhood leads to delayed and distorted child development.

Vicarious trauma Workers who listen to and support children and families who have been victims of trauma (abuse, neglect, family violence, etc.) are at risk of developing a type of secondary trauma or 'vicarious trauma' in which the worker becomes in a sense 'traumatised' from carrying the emotional pain, and the burden of witnessing their clients' stories.

A TEAMWORK CONNECTION



What is the best way to approach working with traumatised children and young people? The *Spiral of Healing*, below, is a framework to help in understanding, assessing, supporting and assisting young people who continue to suffer—and make others suffer—the long-term impact of trauma. It is also helpful for their families and communities. (Note that because of the limited scope of this booklet this is an introduction to the framework, and not a guide to clinical intervention.)

The challenges of working with traumatised children and young people

Not all young people whose lives have been harmed by trauma are having difficulties. Some are not part of child protection, mental health or justice systems: they may have struggled through on their own, against the odds, doing the best they can. They may have been fortunate enough to find stability and positive influences in their lives—with grandparents, carers, relatives, neighbours, teachers or therapists, who have offered them relationships within which to grow and flourish. There are other traumatised young people who don't come to anyone's attention, either because they slip below the radar, or because they have internalised their pain and don't cause any trouble. These young people need recognition, support and assistance as much as those who are obviously having difficulties.

The *Spiral of Healing* framework (see illustration, page 8) takes into account the impact of abuse, neglect and other trauma. As mentioned in the *Introduction*, it can be very difficult to both understand and deal with young people who struggle to respond to limits and boundaries, have poor affect regulation,

do not have much empathy for themselves or others, seem not to understand right and wrong, and have few skills in understanding and responding to the thoughts, feelings and actions of others. These young people find relationships difficult; they struggle to trust adults or authority figures; and have little desire to please the adult world.

There are many challenges when working with and caring for traumatised children and young people. The quality of the relationships we have with them is pivotal to helping them move from isolation to connection. Children need unconditional care: a sense that those involved in their lives will not give up on them, and still respect and value them even when they demonstrate the worst of their pain.

The extremity of their behaviour, the wildness of their rage, the force of the fury we see on the outside is only a dim echo of the fear, sadness, pain, loneliness and loss they feel on the inside.

Thirteen-year-old Rachel, who has a long history of neglect and sexual abuse, is a young person in extreme fear. Her rejecting behaviour towards her foster parents and her violence to their three children as a result of her anger resulted in her being removed from that placement and she has spent the last few months drifting between youth workers and the streets. She has been prostituted in the city and using drugs and alcohol to numb her pain. How can we help her?

The Spiral of Healing: what you can do

There are three phases (or streams) in this framework: *Safety*, *Telling the story* and *Connection and empowerment*, plus a

fourth stream, *Building relationships*, which surrounds and supports the whole spiral. They are based on the work of Judith Herman (1992), and informed by the Sanctuary model (Rivard et al., 2004), and the White Paper from the National Child Traumatic Stress Network (Cook et al., 2003). Herman first conceptualised the phases of recovery as: Safety, Remembrance and Mourning and Reconnection. The phases have been redeveloped in the Australian context, with a particular focus on the *Telling the story* stream, which reflects the contribution of Aboriginal and Torres Strait Islander storytelling traditions as a framework for regulation and healing. The Spiral of Healing streams also incorporate a spiritual dimension, by drawing on spirituality, hope, ritual, ceremony and other cultural practices as healing activities.

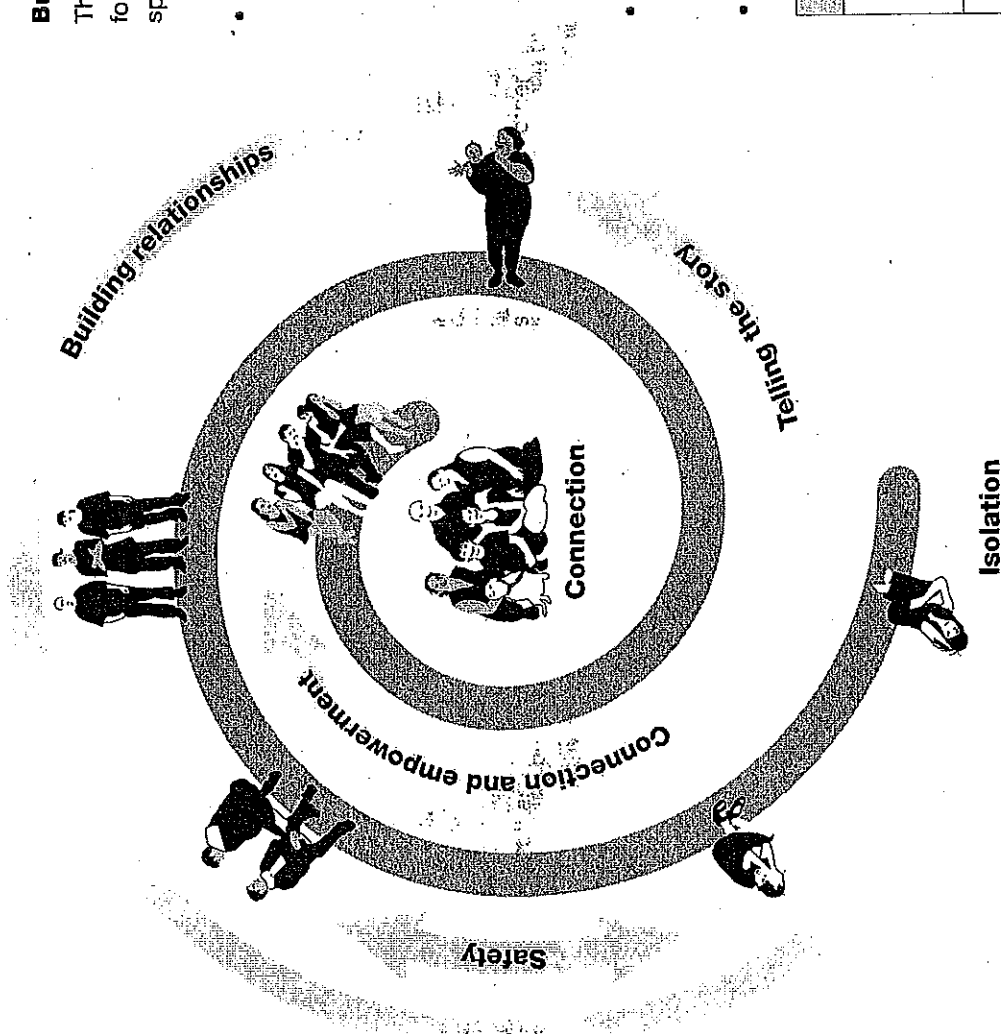
The phases that make up this framework can be seen as a spiral, which can move children and young people from the loneliness and isolation of trauma through a process of healing and recovery, into a stronger connection with family, friends and community. The framework begins with isolation—because that is often the most profound and disturbing aspect of the pain a traumatised child lives with—and ends with connection, because this is a true marker of recovery: if a young person has gained the internal strength and skills necessary to manage healthy, loving and satisfying relationships. Focusing on relationships and connection (rather than the more medical model of symptom resolution) plants us firmly in the social world and reduces the tendency to isolate, individualise and pathologise traumatised children and their families. The framework also recognises that recovery from childhood trauma will leave scars, and that there may be times of pain and struggle ahead; however, a person who can rely on others, enjoy the love and company of friends

and family and take an active and positive part in community life, will deal with those ups and downs with forbearance and humour.

In this framework, healing and recovery occur in a recursive way as the streams move backwards and forwards, and fold back upon themselves. Safety and trust are gained and lost again, insights achieved, stories told, and new skills developed. Gains are sometimes lost as new challenges undermine the young person's tentative trust in adults and the world, only to be made again as recovery continues. To an extent, the phases follow one after the other—particularly as safety must come before any other interventions. Unless a young person is fundamentally safe, and feels safe and can rely on others, it is not helpful (and may even be dangerous) to move towards therapeutic interventions. Safety has to be created in conjunction with the child protection and legal systems.

The spiral: building relationships, safety, telling the story, and connection and empowerment

Below you will find an overview of the three phases or streams, and the supporting structure of *Building relationships*. Although as mentioned above the phases overlap, each is presented separately, with relationship-based practices to begin the movement of the young person from isolation to connection. (More information about developing these practices is presented further on in this section.)



Building relationships

This stream of the spiral is fundamental to any recovery process for a child or young person and runs all the way through the spiral.

This stream of the spiral involves:

- helping children and young people to
 - develop safe relationships they can trust
 - build stronger relationships (by being there through tough times; accepting the young person; and being willing to help)
 - maintain existing healthy connections that are safe (for example with school, peers and community members)
 - engage in healthy relationships with a range of other people. For children, this might mean promoting friendships or joining a sports team
- teaching children and young people relationship and social skills, including how to recognise their own and others' emotions
- focusing on affect regulation.

What young people say

As young person feels safer, their difficulties with relationships may appear, as they let their guard down and the real work begins.

Young person may be very resistant to genuine connection, as it challenges their view of themselves and others.

Figure 1 Spiral of healing

Young person avoids intimacy, because they do not want to face the possibility of rejection.
Young person does not trust that adults will keep them safe.
Young person has problematic relationships with parents and other family members.
Young person has relationships that are marked by conflict, or are short-lived.

What you can do
Use PACE (see below, page 13) to maintain an attitude of empathy.
Build a relationship through structure, nurture and boundaries.
Understand the young person's trauma, and why they are behaving as they are, so you can work with their underlying issues as well as their behaviour.
Use clear boundaries and logical consequences.
Stay calm and well-regulated: lend them your regulation.
Understand your own traumas so that you can stay connected.
Co-regulate with the young person so that they feel supported and understood, and they can begin to rely on adults.
Don't take their behaviour personally.
Use discipline without shaming, and understand their shame when they have been disciplined.

Celebrate skills and achievements, no matter how small.
Engage with family members: the young person will often have relationships with family and these links need to be understood, worked with and strengthened.

Safety

The Safety stream of the spiral involves:

- ensuring that abuse, neglect or other trauma has stopped, so that the young person can be guaranteed fundamental safety
- ensuring that children and young people feel physically and emotionally safe
- keeping safe and calm ourselves, as workers, parents or carers
- making sure our organisations are safe places for workers
- creating safety within communities (that is, communities free from violence and harm)
- creating safety within the young person's environment (a safe place)
- creating safe families by addressing family and sexual violence, drug and alcohol abuse, mental illness
- maintaining connection to culture (which often brings a sense of safety)
- using massage (from a qualified masseur), rhythm, dance, music, as well as culturally appropriate ritual and ceremony to regulate physiological and emotional arousal.

Young person is feeling unsafe, (and is not able to rely on adults to ensure safety); may display fear masked by angry or dismissing behaviour.
Young person is acting unsafely: perhaps with aggression to others, self harm, running away or engaging in risky behaviours.
Young person has dysregulated affect, and is finding it difficult to manage intense emotions: they may appear 'wired' or hyperactive; or they may be flat, depressive or numb.
Young person is testing everyone to see if they are committed.
Young person is too highly aroused to learn from others or from their own mistakes, as they may be existing in survival mode and not able to take in new information.

Make sure any abuse or other trauma has stopped.
Begin to build a relationship, by being honest and reliable, and doing what you say you will do.
Understand trauma.
Help them feel safe through nurture, structure and support.
Use clear boundaries and logical consequences.
Stay calm and well-regulated—even as you set limits on aggression—to avoid power battles.

Understand your own traumas, so you can reflect on your own feelings and reactions.
Co-regulate with the young person: use your own calm to soothe and help them calm.
Don't take their behaviour personally.
Use discipline without shaming.
Use the PACE relationship practices (Playfulness, Acceptance, Curiosity and Empathy: see below, page 13).
Engage with family members—even when young people cannot live at home: their families are important to them.

Telling the story

The *Telling the story* stream of the spiral is necessary to allow a young person to make sense of their experiences of trauma and disruption. This leads to the development of a 'coherent narrative', where the whole of person's life makes sense to them. This narrative relieves much of the burden of shame associated with trauma, as children and young people often carry an underlying belief that what has happened was their fault (they were naughty and so were physically punished, they were flirtatious and so were sexually exploited, or they were not worthwhile and so were neglected).

Their coherent narrative can also help a young person reduce tensions and conflicts with family members, as the young person comes to terms with their own experiences of trauma, and understands why their parent was abusive or not protective.

Through this process the young person begins to develop an identity based on strength and positive capacities.

This phase includes:

- developing the young person's capacity to describe thoughts and feelings (through direct teaching and by example)
 - helping them to develop richer language, particularly the language for emotion and experience
 - reading aloud and telling stories, to develop the young person's familiarity with story and story structure
- The process would then continue, through:
- creating opportunities to explore grief and loss relating to separation from family, culture and community
 - exploring family or transgenerational trauma
 - remembering cultural and historical trauma
 - sharing stories within safe and trusting relationships
 - enabling trauma to be talked about, rather than hidden, or said in secret, or being a source of shame
 - sharing stories of responsibility, compassion and change
 - sharing stories of strength, resistance and recovery—to bring a sense of hope.

Young person is responding to a safe environment.

Relationships are building, and the young person begins to approach trusted adults for help and support.

Young person is better able to take in information and learn.

Young person is beginning to make sense of their own story.

Opening up may make them more vulnerable and may bring a return of unsafe behaviours.

What you can do

Expect both progress and regression.

Use PACE.

Help them talk.

Help them with their grief.

Help them tell the stories of their day, their interests, their activities, their hopes and desires.

Help them make sense of their experiences—it wasn't their fault.

Develop stories with them.

Read to them.

Challenge them to think.

Insist on respectful behaviour.

Help them develop empathy.

Celebrate skills and achievements, no matter how small.

Engage with family members, or seek assistance for them: they may need to tell their own stories.

Connection and empowerment

This stream of the spiral involves:

- children and young people reconnecting with family, the wider community and society in safe and healthy ways
- children and young people discovering and exploring their own special talents and skills
- individuals, families and communities developing a sense of hope for the future.

What you might see
- more settled behaviour, with the young person making good decisions about their life
- greater capacity for self-regulation
- more empathy for themselves and others
- more capacity for positive peer relationships
- safe connection with family members
- enjoyment of talents and skills
- connection to community and culture
- young person speaking up for themselves in positive ways.

What you might see
Help them make healthy choices.
Help them learn empathy.
Help them connect with their talents, interests and skills.

Help them connect with positive peers.
Help them connect with family, community and culture.
Help them make sense of their family.
Help them speak up and advocate for themselves.
Build hope.
Inspire them!

How can I connect with the young person? Playfulness, acceptance, curiosity and empathy

There are many ways to connect with children and young people who have experienced abuse, neglect and other traumas. These young people need positive relationships to help begin a process of recovery. The following are some suggestions for encouraging relationship-based interventions.

Underlying pain

The main purpose of relationship-based practice is to connect to the hurt underneath the raging and rejecting behaviour. Workers will manage their own feelings and reactions to the behaviour of young people with greater tolerance once they begin to see the pain that lies beneath it; and young people will begin to feel safe, understood and able to move forward when they begin to make sense of their experiences, through the empathy and compassion of others.

Playfulness, Acceptance, Curiosity and Empathy (PACE)

The PACE model was developed by Daniel Hughes (1997) and remains an excellent template for a relationship-based approach that can be used by foster carers, parents, residential care workers, teachers, youth workers and others. Many frameworks give excellent ideas for understanding and planning for traumatised young people. PACE gives a set of practical skills, and an attitude.

The use of PACE is not aimed at 'changing' the young person; rather it is used to help them feel connected. Through PACE the young person feels understood, and this in turn builds the trust that is necessary for the development of security.

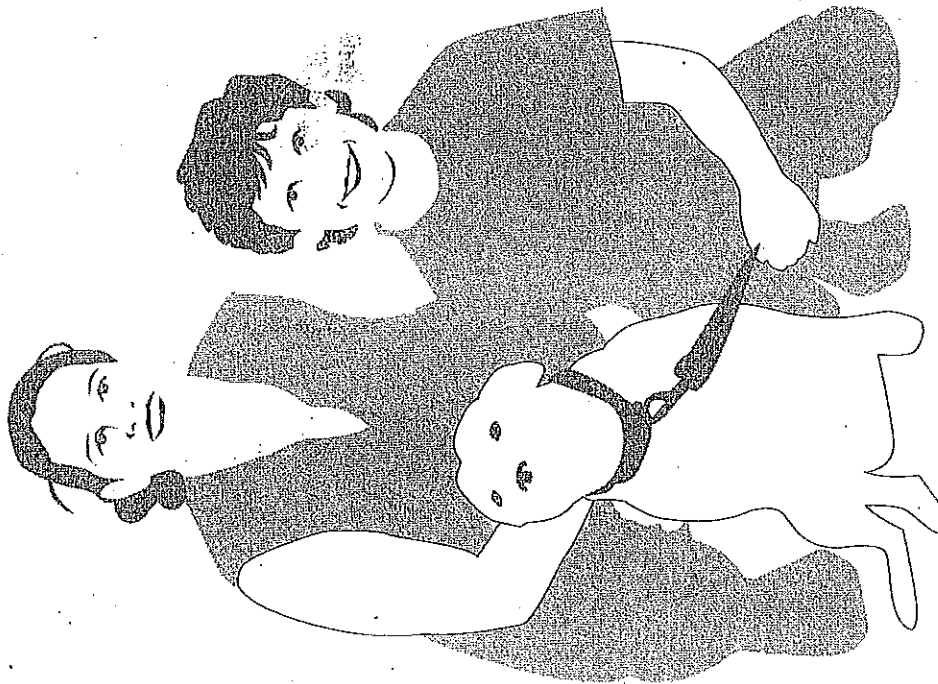
Playfulness

Children and young people need to feel that they are fun to be with: joy brings connection. Playfulness is about having fun with young people and assisting them to join in fun family or community times. Playfulness is also used to defuse tension—giving the young person a response they did not expect, to keep things lively. Life is often all too serious for a young person living with the complexities outlined in this booklet: anything we can do to brighten up their life can be helpful.

Of course, making light of painful feelings, or acting silly based on our own anxiety will bring shame to the young person, not joy. Adults need to be well-regulated in their playfulness, so as to remain joyful and not become overly silly, or participate in jokes at the expense of other staff or young people. Humour and warmth are to be encouraged, but not overreactions or 'revving up' of young people. Adults need to know when to stop

and how to regulate themselves, and help young people to regulate.

Even if you don't like doing chores, set it's out on your favourite music and we will do them together.



Acceptance

When a traumatised young person experiences the understanding and warmth a caring adult can offer them, this challenges the internal working model that has built up through years of neglect and abuse. This negative working model tells them they are unworthy of love and may be to blame for all that has happened.

Acceptance says to the young person, *I don't like what you are doing right now but I understand why you have to do it. I am here to help you do things differently, so you get on better with others and don't get into so much trouble.*

Acceptance avoids angry power battles, and at the same time behavioural limits can be set, and consequences enacted, without any shaming of the young person for their behavioural choice. (Shame may follow, allowing an opportunity for interactive repair.) This process allows an adult to stay calm, which helps the young person regulate themselves.

The use of acceptance often reduces defensiveness and opposition. Adults need to be well-regulated themselves to use acceptance, as they need to be objective about the young person's behaviours and choices, rather than becoming irritated or enraged—even when that behaviour seems personally offensive, aggressive or rejecting. The adult accepts the behaviour because they understand it as coming from the pain the young person is suffering, and because they have a fundamental acceptance of the young person and are able to separate the behaviour from that person.

It is so hard for you to manage your anger and you will never contribute to fixing the situation. You broke out right now

come and sit with me till you calm down and I will help you to manage your anger.

Curiosity

It can be useful to wonder with a young person about the meaning behind their behaviour and why they do the things they do. Curiosity sometimes means making best guesses about what is going on. The young person and the adult are figuring it out together. Curiosity allows a young person to feel heard and understood. Adults may use 'over-talking', talking to another staff member or parent, wondering aloud at what the young person might be thinking or feeling, why they might be reacting like this, and what might be going on underneath the behaviour. Adults need to be well-regulated to take a reflective, curious stance: not getting upset, frightened, angry or overwhelmed by the young person's behaviour, or by their distressed or distressing affect.

I wonder if you ran away because you were scared and worried about your mum coming today?

I think perhaps you acted like that to push me away because you thought I was going to leave you but like your last foster family did—does that seem possible?

Empathy

With empathy we 'feel with' another person; we feel compassion for their struggles or suffering. Empathy eventually allows the young person to acknowledge deeper feelings of fear, sadness, hurt and anger, without fearing judgment. Empathy can be used to soften a young person's defences.

"I'm so sorry that happened to you. It makes me feel like I should have done more to help you. I'm sorry you had to go through that."

"That must have been really hard. Good on you for getting through it and trying."

Empathy can also relieve shame, and is often more useful than praise, which can exacerbate shame. Adults need to be well-regulated to be able to convey empathy, which arises naturally from compassion. In this context empathy is a tool that is used to connect with a young person to convey a number of things, such as:

- "I care for you even when I am disciplining you."
- "I can see and understand the pain you are in, even if I can't talk about it myself."
- "I know you are in trouble and that affects your behaviour."

For more on this approach to caring for traumatised children and young people see Hughes (1997) and Becker-Weidman & Shell (2005).

Staying calm and regulated

Adults working with traumatised children and young people will inevitably struggle at times to remain calm, centred and well-regulated, and yet this is the key to working with these young people. In particular, carers and residential care workers will need lots of support and empathy for their own struggles to be able to be effective. Good supervision and time put aside to reflect on reactions and responses to young people will put an emphasis

on self-reflection, so that workers and carers can establish habits of asking themselves essential questions such as:

"Why did I react like that?"

"Why did that young person make me angry?"

"I spent all afternoon talking him, and then he told me that why did I feel so frustrated?"

"What are the triggers for me?"

"I lost it that time, what can I do differently next time?"

When caring for or working with young people, we need to know ourselves well, to know our own triggers and thresholds, and to know how and when to ask for help. No-one should be made to feel shame for asking for help and/or needing time to become calm and re-regulate. (See also page 16, Taking care of the care-takers.)

Provide tools, techniques and activities

Everyone working with young people needs a box of easy-to-use 'tools', techniques and activities to give to them. Put together your own toolbox by thinking through the things you do that really work, and looking around to see what others do.

Hints for emergency grounding and soothing

To start with, here are two useful suggestions to provide to the young person:

- "Make a list of the most portable soothing items and ideas and keep the things you need with you—for example a hanky with lavender, a stress ball to squeeze or a lucky charm."

(This can be done as an exercise with groups of young people, using creative techniques to create a bag of soothing remedies.)

- 'Write your five most effective or useful grounding ideas in abbreviated form (e.g. *Eye contact with a friend*) on an index card and keep this with you. Think of it as emotional first aid' (Again, this can be done one on one or with a group.)

Both exercises enhance young people's capacity to take care of themselves, and to develop self-awareness and self-soothing. They have been adapted from the Sanctuary model (Rivard et al., 2004).

Taking care of the care-takers

People working with traumatised children and young people can become worn out by the demands of such work, and can also suffer secondary traumatisation through this contact. Sometimes it is the painful stories of the experiences of the young person that can hurt the adult working with them. Sometimes it is the young person's behaviour that hurts. Working day after day with aggressive or withdrawn young people who do not respond to the usual care and consideration shown by a worker or carer can be very wearying. We can become less effective individually and collectively when this happens.

The three Rs: Reflection, Regulation, Relaxation

The following are three effective strategies to reduce stress and increase self-awareness.

Reflection

Take time to reflect on the young person you are working with or caring for, and your relationship with them.

- Reflect on their behaviour.
 - What were they doing, and why might they have been doing it?
 - Think about the information you now have about abuse and neglect to make sense of their behaviour.
- Try to understand the behaviour.
 - What is their behaviour telling me?
 - What hurt or need are they expressing because they cannot put what they really want into words?
 - Think about the specific history of this young person. How does their behaviour link to past experience?
- Try to understand yourself.
 - What are my thoughts and feelings about this young person?
 - How can I stay regulated when I am with them?
 - What were my responses to the young person's behaviour?
 - Where is our relationship at?
 - Is the young person able to connect with me and listen, to take strength from the containment and structure I am offering?
 - What assistance do I need to do this work?
 - Who can I talk to about how I feel?

Learn as much as you can about caring for and working with children with trauma and attachment difficulties. Read, surf the internet, talk to others, share your knowledge and experiences, learn from others. There is a list of useful resources and websites at the end of this booklet.

Regulation

It is important to acknowledge and regulate the feelings that arise in you as you are working with or caring for a young person with experiences of trauma and attachment disruption.

Caring for these children can often trigger our own unresolved issues from the past.

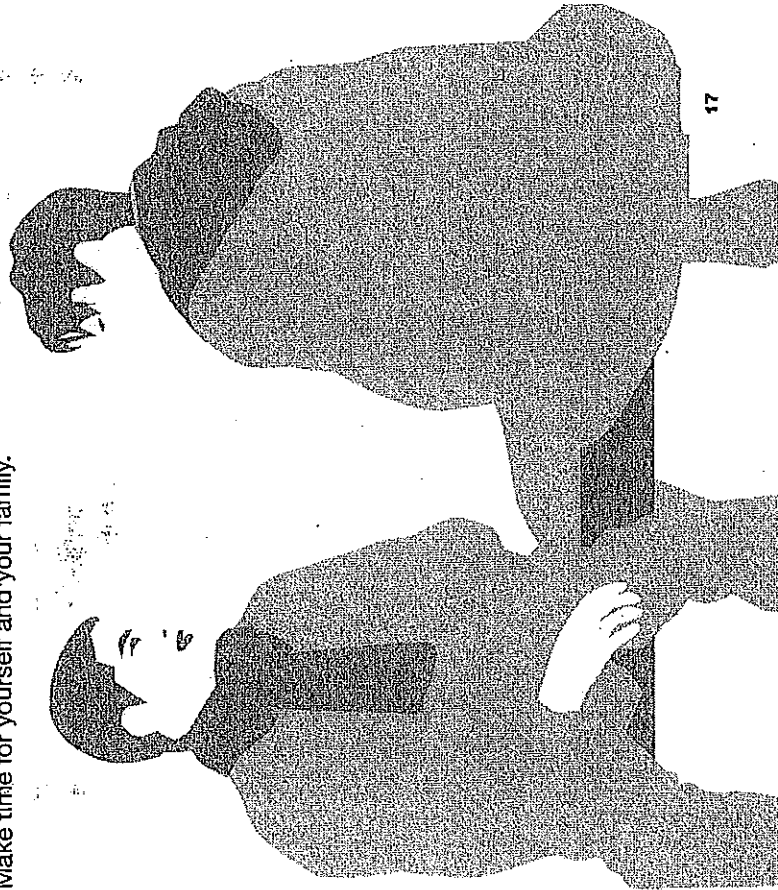
- Manage your own emotions and responses by:
 - predicting that the young person might make you angry or upset on purpose, in order to recreate familiar relationship patterns
 - knowing that strong emotions are contagious
 - knowing what your own trigger points are and what upsets you the most
 - taking time to calm yourself when you do get angry or hurt
 - calling for assistance, not trying to do it all alone
 - having clear plans and practices/strategies worked out in advance
 - debriefing after challenging incidents so that you are resolved about what happened and have left the emotions behind.

- Find out as much as you can about affect regulation. Working on regulating your own emotions and reactions will be of enormous benefit to the young people you work with or care for.

Relaxation

Develop the self-awareness to know when you need time out:

- Find the best ways to relax and unwind when the going gets tough.
- Try not to use alcohol and other drugs as a way of unwinding or relaxing.
- Make time for yourself and your family.



Collaborative working practices

The network of workers and carers surrounding traumatised children and young people must have forums to meet in, where there is a sharing of information and a sense of sharing the work. There should be processes for reflection and for managing together the inevitable anxieties that arise. We all need to be open enough to bring along our experiences and worries, so as to share the work of helping children and young people and families who are struggling.

Sometimes the strong emotions stirred up by working with children and families can cause disagreements in how to work with them, or how to advocate for them. These splits in working teams can be very destructive, and ultimately bad for children and young people.

The care team approach

A useful approach when working with complex families and systems is to work as part of a care team. This is essentially a coordinated group of people who meet on a regular basis to think, plan and together provide support for the young person and their family. The care team provides an opportunity for key people to come together on a regular basis to reflect, share their thinking and understanding and coordinate each person's role in supporting the young person and family. These meetings can also make sure that what is planned is actually carried out.

The main difference between a care team and other meetings or forums (such as case conferences, professionals' meetings or stakeholder meetings) is the development of the care team as a working group which promotes an attitude of collaboration

- Ensure that you make time for yourself and the things you are interested in (e.g. hobbies, time with friends).

A sense of humour and a realistic approach are valuable attributes:

- Humour can help us keep perspective and not take things personally.
- Be realistic and patient with yourself. Traumatised young people with disrupted attachments often require time to change.

Remember that the true heroes in this work are those who look after themselves, know themselves well and ask for help when they need it!

Support for front-line staff

Organisations need to provide safety, stability and support for staff working with traumatised children and young people, and all levels of management (not just direct care staff) should have a good understanding of the impact of abuse, neglect and other traumas in young people's lives.

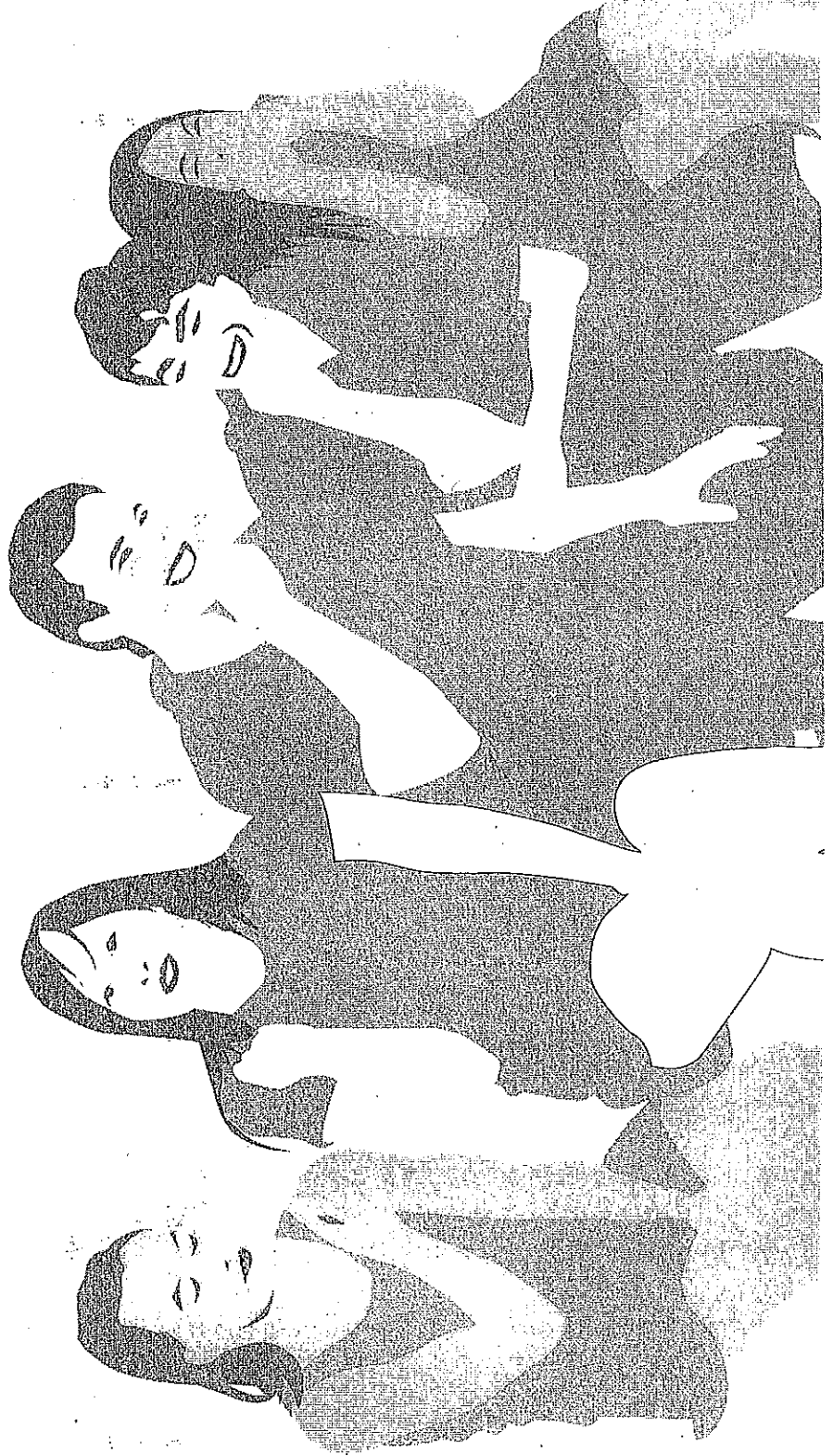
Organisations and services should:

- work from practice frameworks that are based on theory and research
- use well-documented and resourced structures for supervision.
- have enough staff to manage crises
- provide appropriate training to do the job
- provide access to debriefing
- encourage reflective practice.

and information-sharing. It is vital that those who are working closely with the young person meet in this way to share the work, so that recommendations and plans can be individualised and implemented by those who know the young person and family. Children and young people and, where appropriate, family members, should be invited to these meetings, and given an opportunity to contribute or at least to be informed of agendas, decisions and plans.

In a care team, the focus on the changing needs of the young person allows for a consistent approach. In practice this means that the young person experiences consistency in their interactions with everyone in the system.

Many decisions can be made by the team, as it has shared information about the young person—although of course some decisions have to be made by a statutory body, such as Child Protection or Youth Justice.



08

The care team approach:

- ensures adequate assessment of the young person has been conducted and all information shared
- allows for the group to think together about the young person, and to process some of the difficult emotions and anxieties aroused when working with them
- supports the young person's learning, development and growth, as well as their healing from trauma and disrupted attachment
- promotes proactive rather than reactive responses to the young person
- provides an opportunity to identify positive changes in the young person's life, no matter how small
- ensures effective coordination and information-sharing so that intervention strategies will be implemented.

08

Workers and carers have an important role in the care team, as they have contact with the young person on a day-to-day basis and are in a position to notice both difficulties and changes as they occur.

As mentioned, children and young people may also be involved in care team meetings and should be invited regularly even if they don't want to attend. This helps them to know when the team is meeting and what will be discussed, so that they can have input if they want to.

The next section *Theory and case studies: trauma, attachment and child development* will assist with developing an understanding of some of the theories that are used in the child abuse and neglect field, with case studies providing examples.

Theory and case studies: trauma, attachment and child development



The previous section outlined some of the behaviours shown by children and young people who have experienced trauma from abuse and neglect. We now go on to examine how trauma and attachment disruption affect a child's development. This section introduces the theory behind these processes, illustrated by case studies.

Keep in mind that each child will respond differently to their experience; and few children will display the most severe or complete range of difficulties resulting from trauma. Neglect and the various forms of abuse and other trauma will have different effects; and traumas at varying ages and developmental stages will have different impacts. Try to understand each child as they stand before you, in the light of what happened to them.

Complex layers of experience

Children who have been abused and neglected will often have had many different experiences of adversity. Their infancy may have been insecure with harsh or neglectful parenting. They may not have had an attuned, loving attachment relationship in which they were reflected in their parent's gaze as lovable and delightful. The neglect may have even been severe enough to limit brain growth, or result in learning and regulation difficulties.

Resulting from this experience, the child may have built an internal working model of unworthiness. They may not have learnt to adequately regulate their emotions and reactions, or to develop self-control. When it came time to learn about the limits and boundaries of appropriate behaviour they may have been overly shamed or under-socialised, leading to profound shame about themselves, but little shame about their actions. They may

also not have developed much capacity to 'read' others, and so they misunderstand social cues and social relationships. All this may have affected their capacity to empathise with others.

The impact of abuse and neglect

Unfortunately, it seems that often this kind of neglect is complicated by traumatic experiences of abuse, such as witnessing domestic violence, being subjected to physical and emotional abuse, being surrounded by community violence, or being exploited by sexual abuse. Figure 2 highlights the specific problems associated with neglect and abuse respectively, and the impact on the child.

Understanding the complex interplay of abuse, neglect and other trauma can assist us in seeing beyond the disturbed behaviours of such young people and empathising with the lonely, frightened and humiliated child within.

Attachment and early security

Resilience in children is built through the support of attachment figures or a network of attachment figures.

Attachment

Attachment is the system that all human infants use to keep protective carers close and caring (Bowlby, 1988). Attachment behaviours—essentially behaviours which promote closeness—can be readily identified by the infant's attempts to engage carers: crying, smiling, cooing, babbling, etc. Infants take a very active role in keeping the caregiver close, through these

attachment behaviours. They do this not only for protection, but also to prevent caregiver negligence or abandonment.

Through their experience of the attachment system infants develop internal working models of relationships, which guide their expectations of future interactions. The development of internal working models is influenced by infant temperament, attunement between carers and infant, the carer's sensitivity to the infant and the carer's own internal working models (Bowlby, 1988; Ainsworth, 1969).

An example of this is a young child who runs onto the road when his mother is not looking, being narrowly missed by a car. A well-regulated parent will grab the frightened, screaming child and comfort him, while managing her own fear and distress. Later on when both are calm she will talk to the child about always staying close when they are near a road, and the dangers of cars. A less well-regulated parent might grab the child, yelling and crying with her own fear and distress, smack him and shout 'Never go on the road!'. Both parents have been frightened, but one acts to comfort the child while the other acts on her own raw emotions. If we don't get attuned and loving early care ourselves, we tend to act on our emotions, not being able to think or put a child's needs first. The child in the first example will learn about the dangers of cars, and about staying close, while the child in the second example will learn that fear is overwhelming.

Attachment theory has tended to focus on the parent or person primarily responsible for providing care. *Attachment networks* are common in collectivist cultures with strong extended families, such as Aboriginal and Torres Strait Islander

Figure 2: The impact of abuse and neglect

impact of neglect

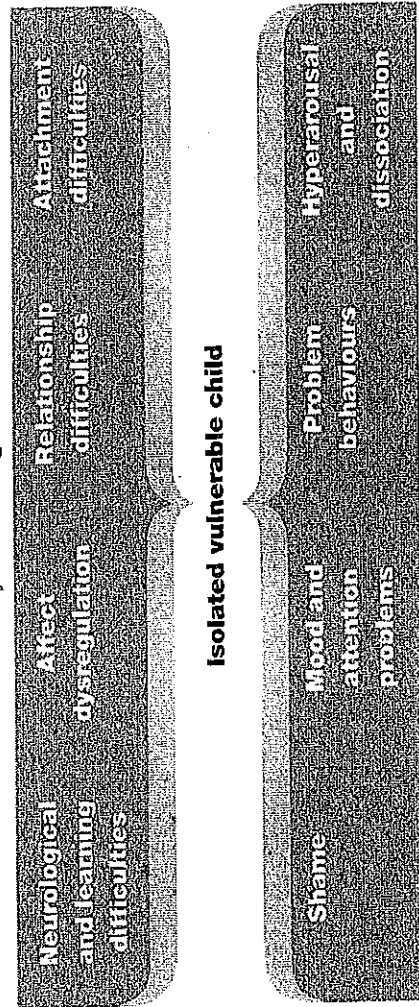


Figure 3: The internal working model

	Positive internal working model	Negative internal working model
View of self	I am lovable	I am unlovable
	I am worthy	I am unworthy
View of the world and relationships	Others are responsive	Others are unavailable
	Others are loving	Others are neglectful
	Others are interested in me	Others are rejecting
	Others are available to me	Others are unresponsive
	The world is relatively safe	The world is unsafe

Case study one: Robbie

Robbie was born premature and drug-addicted, as his 17-year-old mother had been using heroin during her pregnancy. He was tiny and had to stay in hospital for two months. When he went home to his mother, she stayed clean for a while but found him hard to manage and difficult to soothe. He cried and cried and she felt miserable and useless to him. Eventually she started using again and he was often left hungry and dirty. Robbie was removed from her care several times in his first three years, but was returned when she stopped using drugs. Finally Robbie was placed in care when he was four, and did not return.

At four he had many problems, which were exacerbated by frequent moves, as foster carers could not cope with his behaviours, or his placement had to change for other reasons. Carers often said they liked him at first and that he could be quite charming—but then he would push them away once the relationship started getting closer. He was described as finding it difficult to manage relationships, as he did not have many skills in managing his own emotions or reactions, or in dealing with conflicts or solving problems. Robbie also

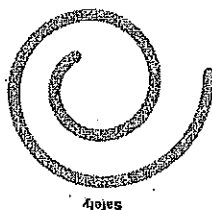
had learning problems and his language was poorly developed. He had frequent aggressive outbursts and other children at kindergarten were often afraid of him. He rocked himself to sleep at night and did not respond to affection from foster parents.

When he was nine his mother—who was no longer an addict—married and had two children, which made Robbie all the more angry and hurt. She would have liked to care for him but also found his behaviour too difficult and worried about the safety of her younger children.

When he was eleven Robbie was placed with carers from a therapeutic fostercare program, and a comprehensive care plan was built to support him. Interventions of massage, music, dance and rhythm were implemented, to help him to regulate himself, along with a therapeutic parenting plan (including PACE) to assist attachment between him and his new caregivers. This included training and intensive support for them and weekly therapy sessions involving both Robbie and his caregivers. Robbie had some home tutoring and he spent

the rest of the day with his caregivers. Work was also done with Robbie's mother and her partner, to use their contact in a more productive way. They were also trained in therapeutic parenting practices, even though Robbie will probably never live with them. They were introduced to Robbie's carers, who have offered some support when he visits his family, and the two families now spend some time together. This link has proved very beneficial as it mends part of Robbie's painfully separated world.

Now, at 13, Robbie has settled markedly. He has formed a tentative attachment relationship with his carers and allows them to comfort and discipline him. He can still be aggressive and needs some limits to excitement and stress, and he has ongoing problems with learning and with social and peer relationships. He is happiest at home with his male carer, helping him with carpentry and other projects. He attends school but is still not up to his grade level and will soon go to a supported secondary school. He can spend time in the classroom now and is keen to learn to cook.



and traditional African cultures. They describe situations where more than one person is responsible for connecting with and caring for children, and as such provide a different way of thinking about attachment.

Secure attachment develops resilience, so that a capacity to tolerate stress is built up. Resilience is developed in childhood through exposure to stress, with immediate access to comfort and nurture; in this way a child absorbs a sense of their own self-worth—because their caregiver had them in mind and came to help when there was threat and fear. Many traumatised children are less resilient because they have not had access to such comfort.



Attachment and stress

By soothing the infant when this is appropriate, the caregiver not only protects them from the effects of stressful situations, but also enables the child to develop the biological framework for dealing with future stress. In this process caregivers play a critical role. The caregivers help the child to know their own feelings by giving words to their experience (*oh, you look tired, what a beautiful smile, you look so happy, you're really upset now*); helping the child to regulate their physical body and to know physical boundaries by holding them, touching, playing with and comforting them. Without these early experiences children can grow up not recognising or understanding their emotional and physical states and consequently not able to make good decisions and judgments, not able to manage strong emotions, and lacking trust in the world (van der Kolk, McFarlane & Welsaeth, 1996).

Attachment and regulation of emotions and reactions (affect regulation)

One of the most important aspects of the attachment system is that it forms the framework within which we learn to regulate our physiological and emotional reactions. The presence of attuned caregivers—who are able to regulate their own reactions and levels of emotion or affect arousal—leads directly to the infant beginning to regulate their own arousal levels.

In fact with new knowledge from 'brain science', or neurobiology, some attachment theorists suggest that '... attachment theory stresses the primacy of affect and is fundamentally a regulation theory' (Schoore & Schoore, 2008, p.10).

Case study two: Jodie

Jodie was an easy, settled baby and had a good beginning in life. Unfortunately her father was killed in an accident when she was two, and her mother then married a man who turned out to be very violent. He frequently beat Jodie's mum and once took Jodie away with him and refused to give her back. The police eventually found him and he held Jodie hostage for two days before shooting himself in front of her. She was only five.

Both her mother and Jodie were deeply traumatised by these events and Jodie's mother developed post-traumatic stress disorder (PTSD) and became very depressed. Jodie had some treatment at the time, but because her mother was so affected it was hard for her to fully recover.

Jodie was placed in care at the age

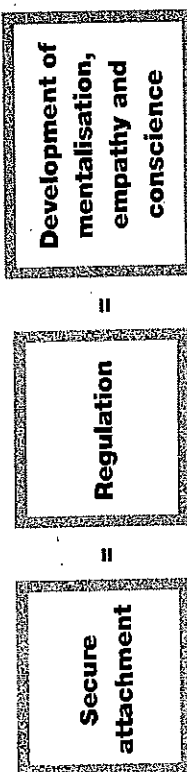
of nine when her mother became ill with cancer. She was a quiet, withdrawn child and started self-harming at twelve, causing a great deal of damage to her arms and leg by carving into them. Jodie spent several years moving between residential care and psychiatric hospitals, hardly attending school and missing out on many normal adolescent activities.

When she was 14 she was admitted to a therapeutic residential program set up specifically for young women, where she benefited from a sense of containment and safety, the warmth and support of staff and the group program. The clinician there made contact with Jodie's mother, who was dying. Jodie had been kept away from her mother by well-meaning workers who thought her illness would be too upsetting,

and that Jodie would upset her mother. However, Jodie managed well—with support—and she and her mother had several months of very positive contact before her mother died. During this time Jodie also had contact with her mother's extended family, and one of her cousins took an interest in her, and helped her through the grief that followed her mother's death.

Jodie seemed to grow in maturity through these experiences, while all the time drawing on the relationships in the residential unit. She still sometimes harms herself, but has become much better at letting others know when she is distressed. She hopes to go and live with her mother's cousin at some time in the future, although she doesn't feel ready yet.

Figure 4: Secure attachment



Neglected infants who do not have access to enough care, attunement, security and regulation may grow into childhood without the basic framework to regulate their emotions and reactions, read the emotions and reactions of others (mentalisation), feel empathy for others, feel shame when misbehaving (conscience) and manage shame about themselves. Even when well established, this basic framework can be undermined by the trauma of abuse or later neglect.

Attachment and adolescence

By adolescence a specific attachment organisation or style has become an intrinsic part of a person's makeup, rather than the multiple patterns with different caregivers seen in earlier childhood. This style or pattern can still change—influenced negatively by trauma, loss or extreme stress, or enhanced by the security of healing relationships. Usually the pattern established by adolescence will predict attachment patterns with future partners and children, unless greater security of attachment is gained through supportive adult relationships or therapy.

Attachment, socialisation and shame

Attachment relationships with caregivers also form the framework for socialisation: the means by which a cultural group creates the boundaries for acceptable and unacceptable behaviour. Combined with other aspects of early development and attachment such as security and trust, the socialisation process begins in infancy. It then leads to the development of conscience; of being able to manage and regulate affects and emotions; of the ability to empathise with others; and of the capacity to understand the thoughts, emotions and actions of others.

Healthy shame

One aspect of socialisation is healthy shame. If we are reasonably well socialised we feel shame when we do the wrong thing, particularly when we do something that hurts another, intentionally or unintentionally. This is healthy shame. Shame should motivate us to repair the hurt we have caused and to avoid similar actions in the future—because we know right from

wrong (conscience); we understand the impact of our action on the thoughts and feelings of others (mentalisation); and because we feel their pain (empathy).

Socialisation is vital to the survival of the individual within the group, and of the group itself.

The shame/socialisation cycle and the impact of abuse and neglect

As outlined above, infants who receive sufficient care, attunement, security and regulation have a framework for regulating their emotions. In their second year of life children begin to experience discipline: their caregiver will provide boundaries and limits to inappropriate behaviour. This creates a shame response, through the caregiver's anger or disapproval; and in a secure attachment relationship this shame is resolved through interactive repair (Schoore, 1996; Hughes, 1997). Interactive repair involves a well-regulated caregiver who notices the child's distress, overcomes their anger or fear at the child's behaviour and helps the child return to a calm emotional state, through either 'business as usual', distraction or providing comfort.

Neglect

Neglected infants are unlikely to have secure enough attachment relationships, as they have not received the necessary attention, caregiving, affection, regulation, play and soothing. Therefore the first part of the socialisation cycle is already compromised. In the second year of life, when there is a need for discipline and boundaries, caregivers are less likely to impose

Case study three: Rosa

Rosa, whose mother has a mild intellectual disability, suffered some neglect in infancy, as her mum struggled to look after her needs. Fortunately her grandmother was very involved, and this helped when she was a baby. However, her grandmother was elderly and became ill.

When Rosa was a toddler her mother found it very hard to discipline her and would scream at her whenever she did anything wrong, or looked like she might be in danger. Her mum found it really hard to stay calm when angry or frightened. When she screamed at Rosa she would never pick her up and comfort her afterwards, as she thought this would spoil her and she needed to learn to do what her mother told her.

As a child Rosa was a very timid girl who would freeze whenever she was in any kind

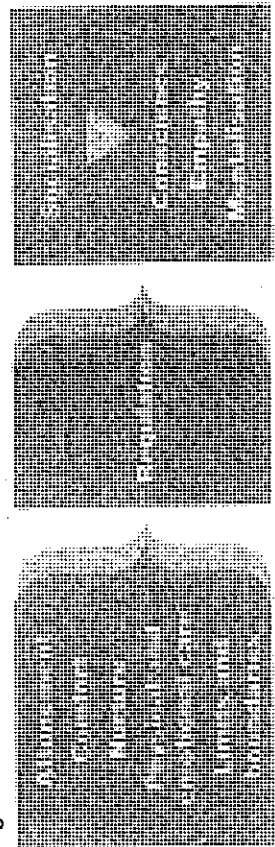
of trouble, and she rarely spoke. She found it difficult to look anyone in the eye and had no friends except a younger cousin. Rosa often stayed home from school as her mother liked the company and they would watch TV all day.

By Year 7, at 12, she was way behind her grade level and was thought to be intellectually disabled herself. Although in previous years there had been several notifications, Rosa's mother would always comply with Child Protection orders and with support would sort out whatever the problem was. Unfortunately when the support stopped things would return to the same state.

During Year 7 there was another notification, based on Rosa's absences from school, her poor academic achievement, her very poor hygiene and her mother's refusal to allow an educational assessment, and this time

more effort was made to help Rosa. The Child Protection case manager worked with Rosa's mother and linked them into a local Fostercare agency, where a 'grandmother' was found. This was an older woman with a large extended family and lots of energy. She spent a lot of time with Rosa, talking, helping her with grooming and hygiene, introducing her to music and art. Rosa's mother was jealous at first, but found that she was included in many activities and family celebrations. Rosa had an educational assessment which indicated that she was actually of average intelligence and the school put a plan in place to help her catch up with her peers. Rosa started to enjoy reading and listening to music, and found some friends who liked to do the same things. Still very quiet and shy, Rosa is making progress.

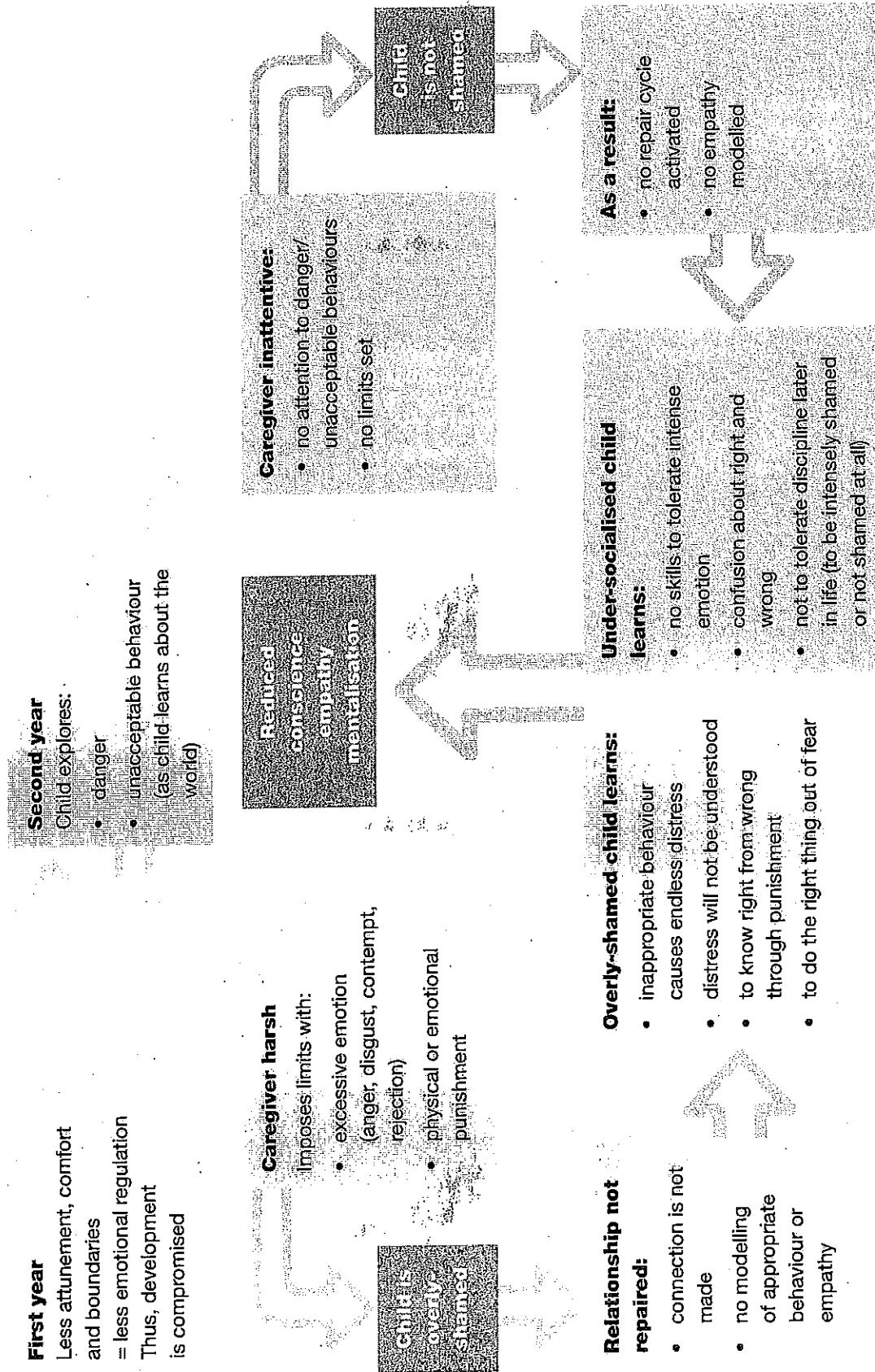
Figure 5: Socialisation in secure attachment



appropriate limits that elicit a shame response which falls within the normal range: there is either too much anger, disgust, contempt or rejection (the overly-shamed child) or not enough disapproval or anger (the under-socialised child).

When a child feels shame because their caregiver is angry or disapproving, the attuned caregiver will repair the relationship with warmth and nurturing, showing the child that it is their action that is the problem and they are still loved. With less

Figure 6: Socialisation in insecure attachment



Case study four: Jared

Jared, an Aboriginal boy from central Victoria, had an early life full of chaos. His family moved house a lot due to poverty and his parents often fought about money or other things. His dad was sometimes violent and his mum would get hurt. His dad would try to find work, but had little education or skills and could not hold a job for long. His father, an Aboriginal man, came from a family who had suffered a lot of disruption and trauma over many generations—both his mother and his grandmother had been removed from their families, with the resulting trauma and disruption to child-rearing skills.

Jared's mother was not Aboriginal, and had grown up in a large migrant family with a father who was alcoholic and often violent. Jared had a large extended family on both sides, and his aunts and uncles often took him and his sisters for months at a time while the parents tried to get things together. Although loving and well-meaning Jared's parents were often stressed, tired and too worried to pay much attention to what the children were

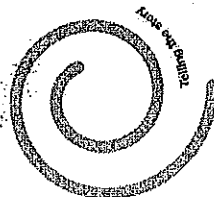
doing—and often did not pull them up when they were naughty. When Jared was three he ran out on the road when no-one was watching him and was hit by a car, which left him with a permanent limp.

Jared had trouble understanding when he was in trouble at school or in the neighborhood, and would become enraged when someone tried to discipline him, as it aroused deep shame which he did not have the resources to deal with. By early adolescence he had been in trouble with the police on many occasions and was facing charges for stealing cars.

When Jared was 15 there was a notification to Child Protection about his younger sisters, who had complained at school that there was no food in the house and the parents had gone away and left Jared in charge. Jared had hit them several times to try to get them to do their homework and to cook, and so Child Protection became involved. The children were put into the care of an aunt while things were sorted out, which included

provision of help for the family around finances, job training for Jared's dad, domestic violence counselling for both parents, and a move to better housing. The local Aboriginal agency was involved with the plan and some of the counselling, and also arranged a mentor for Jared who was able to connect him with cultural activities and other young Aboriginal people. This man slowly introduced Jared to aspects of his culture (including law) which helped Jared understand more about right and wrong, and helped him to manage his emotions and reactions in a more mature way.

Jared did not want to continue at school and found an apprenticeship. He has settled into being a likable and hard-working young man. Jared's father also became interested in his own history and culture, and joined in with the group of local men who were exploring aspects of culture they had been cut off from. Jared's father also began to see an Aboriginal grief and loss counsellor to try to resolve some of his longstanding problems.



regulated and attuned caregivers, the repair may be inadequate, as the caregiver who struggles to form a secure attachment relationship with the child may struggle to be patient and sensitive enough to regulate the child's shame and re-attune in a timely and warm manner (Schoore, 1996; Hughes, 1997).

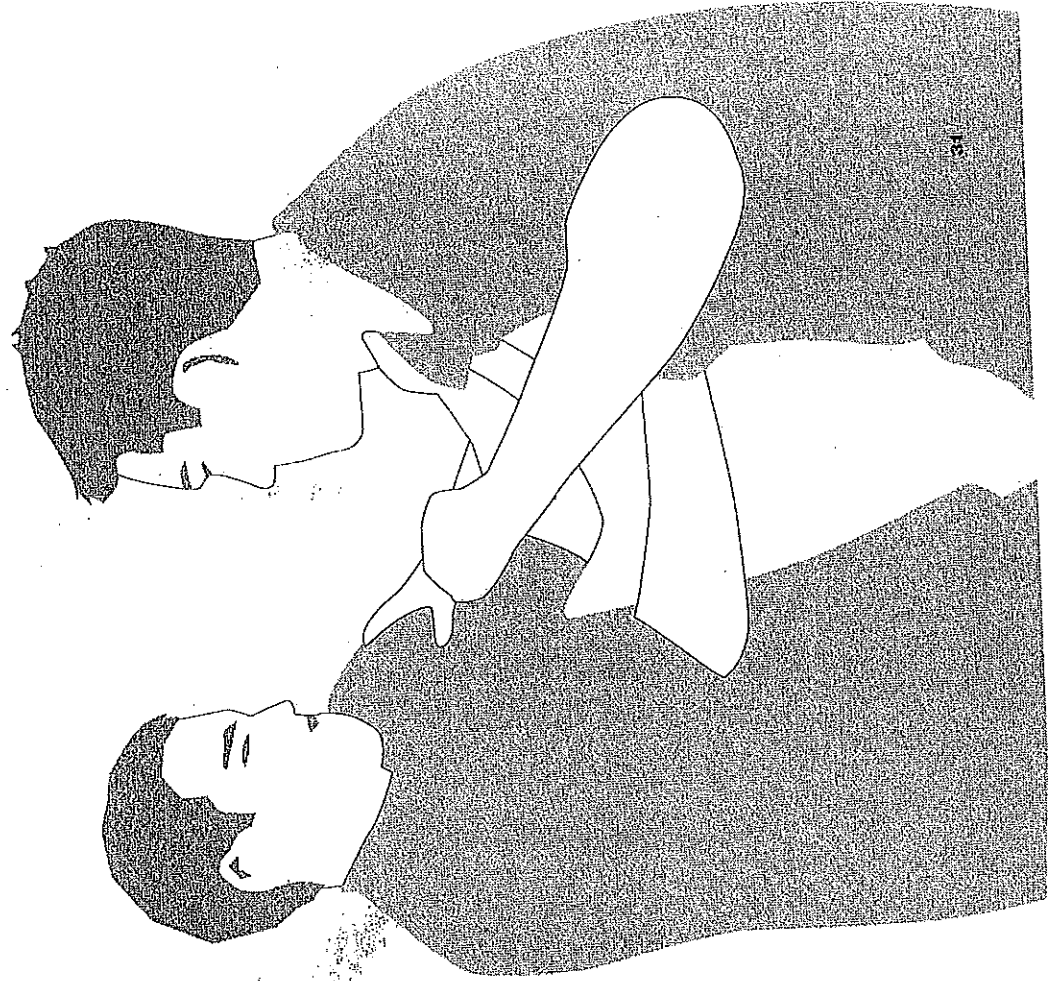
Abuse creates fear

Abuse, on the other hand, creates fear. The fear response creates many negative changes in the child's developing neurological, emotional, cognitive and relational systems. Trauma has a negative effect on a person's affect regulation. Adults or children who have been traumatised (by abuse or other events) often show a reduced capacity to modulate or regulate their emotional or affective arousal (Perry & Szalavitz, 2006; van der Kolk, 2005). Therefore the developing child who is traumatised may struggle to regulate all emotional experiences, including shame—even if early attachment and the shame/socialisation cycle has been adequate.

Abuse creates shame

At the same time as the fear response to trauma is impacting on the child, the abuse that is suffered also creates shame. Children who have been abused and neglected often have intense shame responses to feelings of failure or insult and to the experience of being disciplined. It is as if all the humiliation of the abuse is triggered any time they perceive themselves as failing or wrong, leaving them feeling intrinsically bad and worthless. Being overwhelmed by shame increases affect dysregulation and often leads to aggressive outbursts. Many traumatised children

try very hard to control their environments so as not to feel paralysing shame (Hughes, 1997). This shame is a shame about the self; it is rarely shame about actions and it is not the healthy shame that socialises the growing child.



Trauma theory

Integrated with an understanding of attachment, affect regulation and socialisation, we also need to understand the impact of trauma. In one definition of trauma it is said to involve something happening that is so terrible it overwhelms our ability to cope:

At the moment of trauma, the victim is (made) helpless by overwhelming force ... Traumatic events overwhelm the ordinary systems of care that give people a sense of control, connection, and meaning (Herman 1992, p.33).

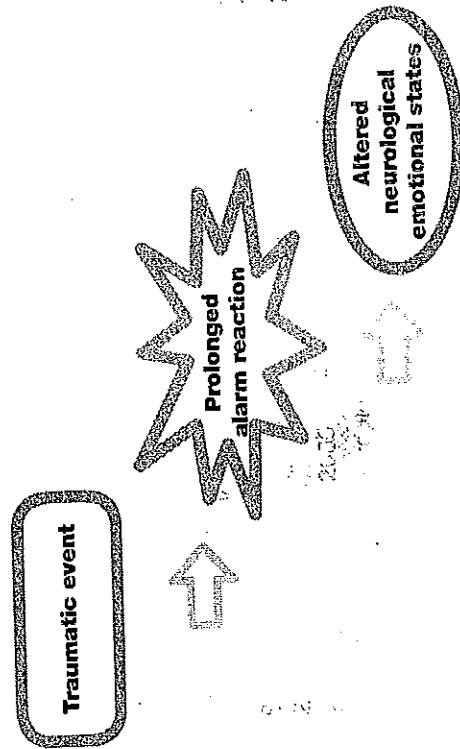
Trauma occurs when an event is so frightening it causes a prolonged alarm reaction (van der Kolk, McFarlane, and Welsaeth, 1996) where the body is primed and pumped with chemicals and enzymes such as adrenaline, and does not calm down for a long time. In any person, this creates an altered neurological state. The severity of this state depends on a number of factors, including previous experiences of trauma and the availability of support. Children are more vulnerable to trauma than adults (van der Kolk, McFarlane, and Welsaeth, 1996).

Flight, fight or freeze

When exposed to trauma the brain responds by releasing the stress hormones that make it possible to prepare to fight, run or freeze (the fight, flight or freeze response). When we are confronted with a dangerous or potentially dangerous situation, our brain goes on alert and makes the body ready to respond. It does this by increasing the adrenaline in our system so we can be faster and stronger. When the threat is no longer there, our brain releases other chemicals such as cortisol to reduce the adrenaline

in our bodies. This helps us to relax and to quiet down. We no longer need to fight or run so our body adjusts accordingly. This is a normal, healthy reaction in humans and animals.

Figure 7: Trauma affects the brain (adapted from Perry, 2006)



The brain's response to fear

These responses come from deep within the brain, in its most primitive parts. At the same time, stress hormones released during and after a frightening event reduce the functioning of the more complex, thinking parts of the brain that are required to make sense of what is happening. When a child is exposed to significant fear-inducing trauma while they are developing, their brain will store information about the traumatic event, so that it can alert the child to future danger; this is very protective and adaptive, but leaves the child with an altered baseline of

Case study five: Sharni

Sharni's mother became psychotic after giving birth, which led to a diagnosis of schizophrenia a few years later. Her mum was OK some of the time, and her medication kept her mostly stable, although she did have a few breakdowns when Sharni was small. During these times when her mum was in hospital Sharni went to stay with her aunt and uncle. These visits lasting a few months occurred every two or three years, and during these times her older cousin sexually abused her. This started when she was two and continued until she was nine. She did tell her mother, but unfortunately the information got caught

up in her mother's illness at the time and the authorities thought that the abuse had not happened, but was one of her mother's delusions.

Sharni told a teacher when she was eleven that it had really happened, and there was a better response. Eventually the cousin was charged, and she had to testify against him. Although she had been doing well at school and had many friends, after the court case she seemed to go downhill. She changed her friendship group and at 12 started having sex with an older boy. At 13 she ran away from home and was living on the streets

and prostituting herself. She was placed in residential care, but would frequently abscond. She became pregnant at 15 but was too unstable to keep her baby, who went into permanent care.

Sharni continues to run away and spends most of her time living on the streets, giving sex for food, alcohol and cigarettes. Sharni has not responded to any of the plans put in place for her yet, but there is a group of workers in a street kids program who keep an eye out for her, and let her know she can come to them for help and support when she needs to.

responding to stress, so that they are rarely in a calm or neutral state. They will be in a constant state of physiological arousal, which is often referred to as hyperarousal (Perry, 2006).

Dissociation

In some situations where fighting or running is not possible, our brain may help us to freeze. In these situations, our breathing may slow down and chemicals such as endorphins are released that help us to be very still or even to go numb and therefore feel less pain. This state often leads to dissociation. Hyperarousal and dissociation are both manifestations of affect dysregulation.

It is not uncommon for a younger child to adapt to abuse—particularly sexual abuse—through dissociation, because they are powerless to act. However, at adolescence this response can change, leading to acting out, aggression, running away and risk-taking or self-harming behaviours. The dissociation is often still there (with numbing of feelings and physical sensations, difficulty in reflective thinking, and avoidance of meaningful relationships), but with an overlay of destructive and self-destructive behaviours.

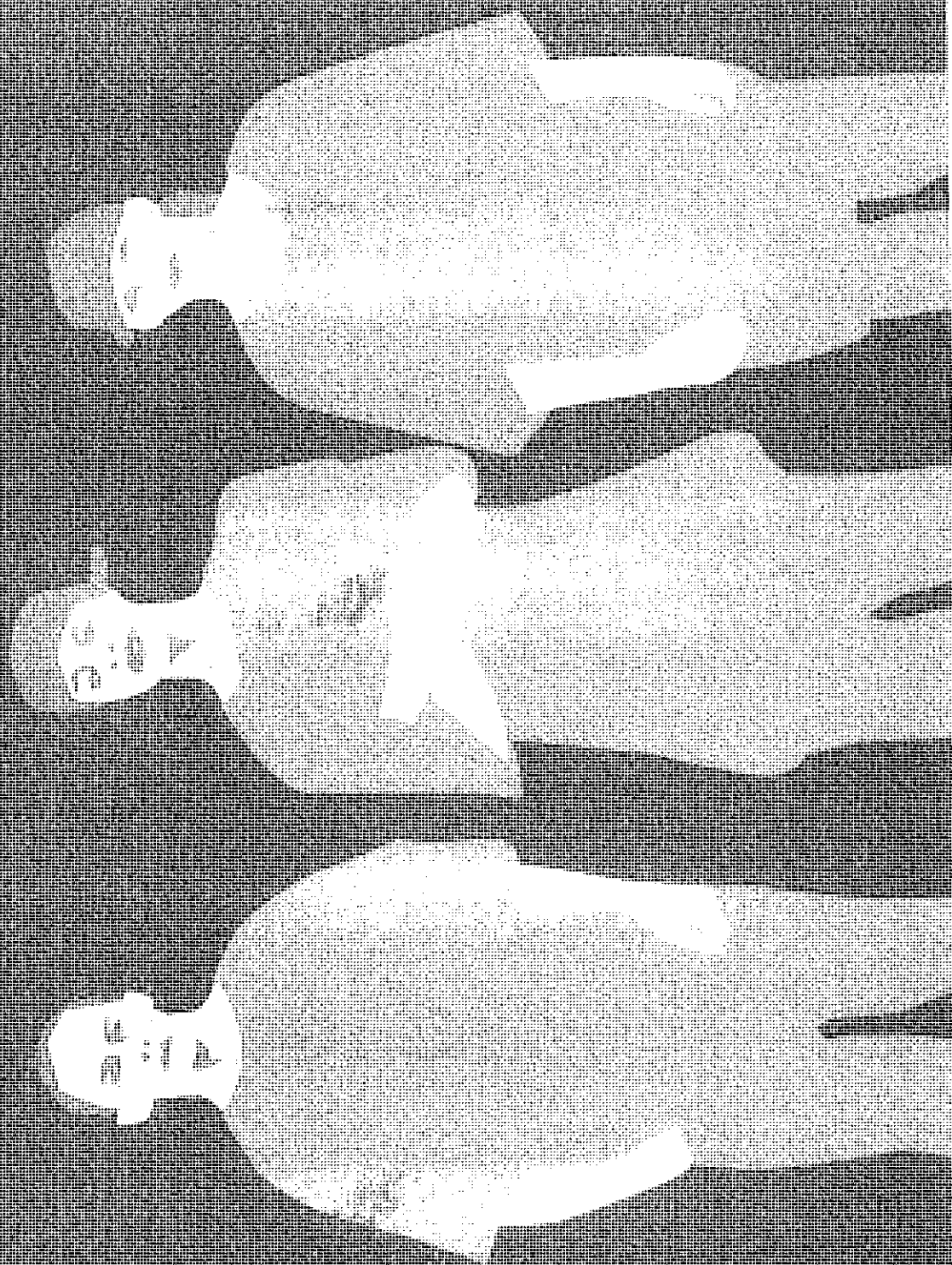
Neglect and deprivation

Neglect is best understood through the lenses of trauma, attachment theories and child development. Each time a young child is left cold, hungry, dirty or unattended this experience triggers a fear response, which turns to terror if it goes on for long. This fear or terror will have the same effect as abuse on the brain and body of the child. The terror is also compounded by the lack of stimulation usually seen in neglect, which slows brain growth and social development. It is further compounded by the lack of an attuned attachment relationship, where the child is not getting the opportunity to understand themselves and others within a loving relationship, or experience the healthy shame/socialisation cycle highlighted above.

Neglected children are therefore compromised in many ways. Perry (2005) describes other developmental and neurobiological consequences of neglect. He points out that the brain and body are based on a 'use it or lose it' principle for most of their functions. For example, if a child does not hear language and is not communicated with, then he or she will eventually lose the capacity to learn anything but rudimentary language.

The next section provides a detailed explanation of a range of specific difficulties seen in or experienced by traumatised children and young people, their families and communities.

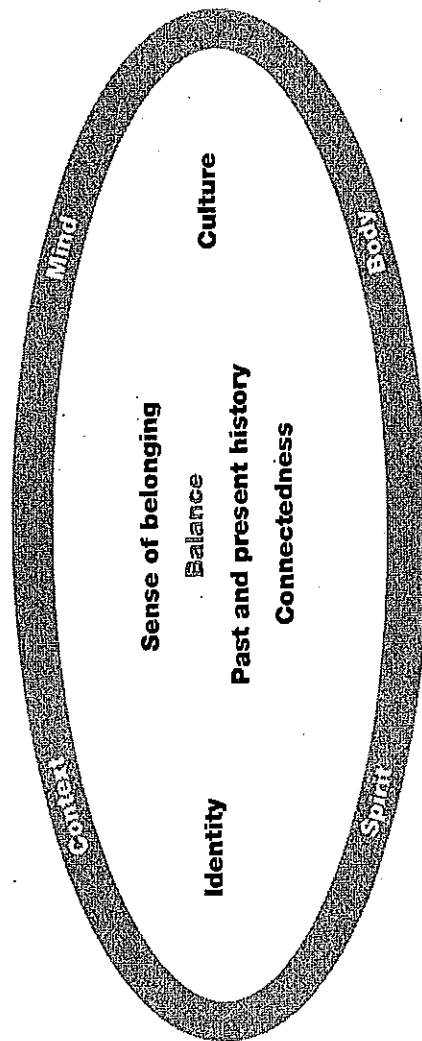
The impact of abuse, neglect and other trauma



The previous section outlined the theoretical basis for understanding child development, trauma and attachment disruption; below you will find a detailed account of difficulties in the lives of young people caused by abuse and neglect. For ease of understanding, these difficulties have been grouped according to four aspects of human life, as illustrated below in the Relational World View (Cross, 2002; Hill, 2006). The Relational World View is relational and holistic, in that it includes context, mind, body, spirit and relationships.

The four aspects or quadrants are seen as embedded within relationships, in the relational web that surrounds, supports and nourishes all people. The strength of the relational web determines much of our capacity to withstand stress and to support and nurture others.

Figure 8: The Relational World View



It is important to remember that abuse, neglect and other trauma have different impacts on different children—and that while we have to take seriously the negative impacts of trauma, we cannot underestimate the strength of human resilience. When working with traumatised children and young people it is also important to make a clear and comprehensive assessment of their situation that includes their strengths and their difficulties, that details their history of trauma and attachment disruption, and takes their current living situation into account.

All of the impacts listed here have to be seen as being on a continuum of severity, and it is very rare for one young person to display all of them.

This section is intended as a guide to understanding the many ways that abuse, neglect and other trauma can impact on child development.

Taking this relational view of human potential, we can see that the impact of experiences of trauma can be matched to mind, body, spirit, context and relationships.

Context

Many of the issues facing children, young people and families exist in their life contexts. Issues of poverty, poor housing, lack of access to education and work, as well as community violence and broader issues of intergenerational trauma have an impact on young lives. Context is also a source of strength, as supportive family and community contexts will provide safety, nurture and challenge for young people.

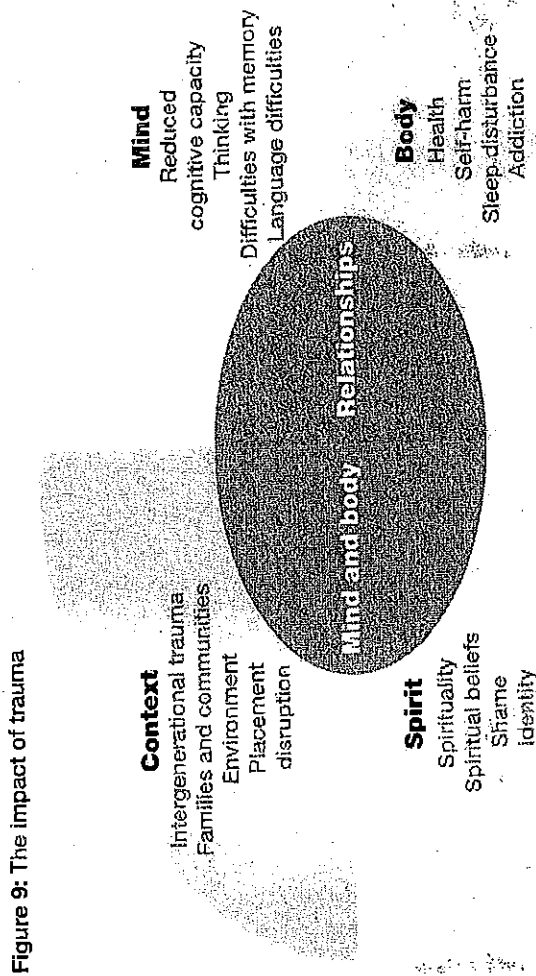


Figure 9: The impact of trauma

Intergenerational impact

Traumas reverberate down the generations. They show up as problems of substance abuse, mental illness, family violence, child abuse and neglect, often accompanied by poverty, isolation and physical illness. Problems are often found together, and often they make each other worse: for example, alcohol abuse increases the likelihood and severity of spouse abuse, and that abuse decreases a woman's capacity to care for her children and keep them safe. In other examples, victims of sexual abuse in one generation may abuse the children in the next generation. For Aboriginal and Torres Strait Islander families, members of the Stolen Generations can experience ongoing pain, dislocation, grief and the loss of traditional knowledge, language, connection to land and spirituality, as well as loss of knowledge about good parenting.

Families and communities

Trauma impacts on individuals, but also on whole families and communities. Trauma experienced by one person will usually have a ripple effect and other family members, extended family, friends, colleagues and even acquaintances can suffer from the impact of that trauma. Trauma happening to one child or family member can remind others of their own traumas and serve to intensify their suffering. (Of course, trauma to one individual can also pull families together, to support the hurt member.) Abuse and neglect of children and young people can have far-reaching impacts on family members and others: these range from shock, horror, grief and anger to blame.

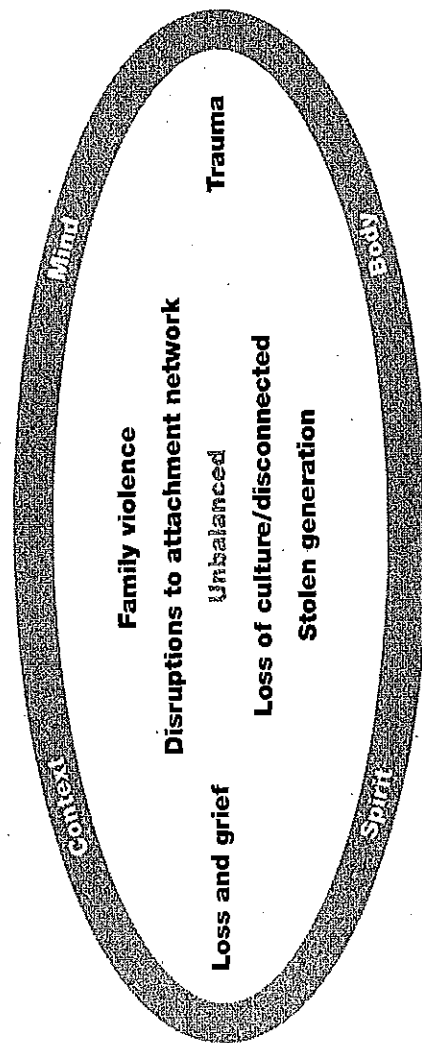
Environment

Children and young people who are living in environments of neglect or abuse are affected in the ways described in this booklet. However, there are other environmental forces which impact on children's development. Poverty, poor housing, lack of access to clean water or nutritious food have terrible impacts on children, as do social forces such as discrimination and racism.

Placement disruption

Children and young people who are removed from home—who are separated from their parents due to abuse and/or neglect—have to undergo a massive internal reorganisation. They have to adjust to a new living situation with new parents or carers, new siblings and often a new school. Aboriginal and Torres Strait Islander children who are moved from their communities can also lose connection to land, to extended family, to traditional cultural practices and a sense of belonging. This is a total dislocation—and coupled with the ongoing effects of the actual abuse or neglect is a 'double whammy'. Unfortunately, in our out-of-home care system many children and young people move frequently from placement to placement, sometimes because of problems caused by the child's own difficult behaviours.

Figure 10: Development under adversity: Weak relational web



Adapted from *Coadie, Downey & McClung (2008) Yarning up on Trauma

Mind

The human brain is organised in a hierarchical way, with all incoming sensory information first entering the lower, or more primitive parts of the brain (the brain stem), where no conscious thought exists. The brain uses the incoming information over time to build patterns and associations, to build inside the mind a picture of the world, in order to explain and to interact with the world outside.

If patterns and associations built up in childhood are primarily associated with threat, that person's brain will have built inside them a picture of a threatening world and they will respond to the world outside as if there was constant threat. This person will respond to neutral triggers as if they were threats, and the part of the brain doing the responding will be the lower part of the brain, not the higher 'thinking' part—the cortex (Perry, 2005). (Refer to *Trauma theory* in the previous section for more information about this response.)

Reduced cognitive capacity

Some children and young people with severe early neglect and/or severe traumatic experiences have cognitive delays. For optimum brain growth children need the security of early attuned relationships, free from extremes of stress and trauma. While it may be difficult to determine the cause of delays in many children and young people—as some have a parent with an intellectual disability—when extreme neglect is suffered in early infancy this has the potential to limit intellectual growth.

Some children are not necessarily delayed in terms of brain growth, but often appear to have cognitive and academic

delays due to hyperarousal or dissociation. Hyperarousal, the state of being 'hyped up' or 'wired', usually leads to attention problems—and these then lead to academic and cognitive difficulties, as the young person finds it hard to concentrate on learning. Dissociation—being 'spaced out'—can lead to gaps in learning, due to inattention and problems with concentration.

Thinking

One of the most difficult issues for those who interact with traumatised children and young people comes from the problems these young people have in thinking. Their minds often seem very disorganised: they forget things, leave their clothes where they fall, leave their toys and other mess for others to clean up after them; they don't seem to pay attention; and they can seem thoughtless and uncaring due to that thoughtlessness. However, it is by refusing to think about their caregiver's thoughts that some victims of childhood abuse and neglect cope: they then can avoid having to think about their caregiver's wish to harm them (Fonagy, 2000). They close down any thoughts that come into their minds about that harm because thinking takes them down corridors of pain. It is better if they close the door rather than go down those corridors. Eventually they have closed so many doors in their minds that they can hardly think about anything.

To cope with relationships we all need to be able to think about what other people might be thinking. We all 'read' people. We read their faces and gestures and we make quick, often accurate, assumptions about what they might be thinking. We do this all the time, checking out our assumptions with questions,

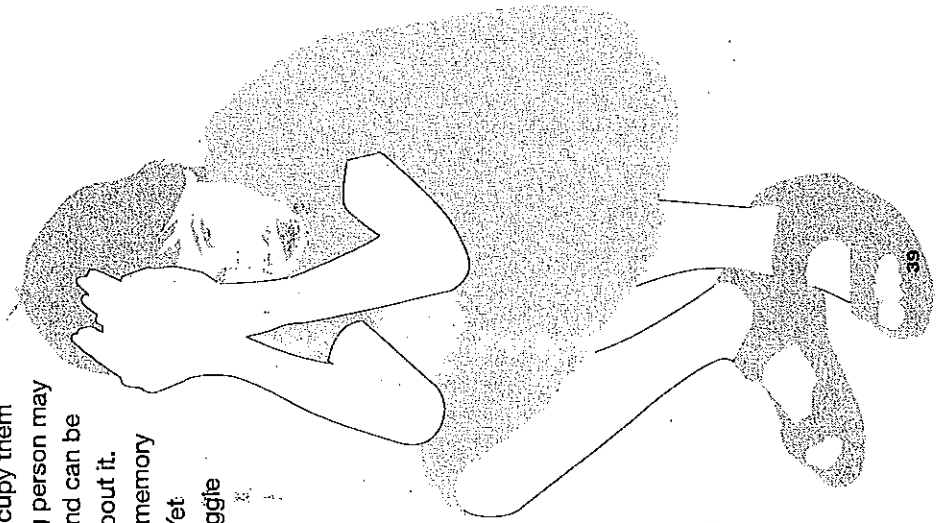
looks and gestures. Young people who have closed doors in their minds find it very difficult to read social cues and can easily misunderstand the thoughts and intentions of others.

Difficulties with memory

Some traumatised children and young people may be overwhelmed by memories of abuse, which preoccupy them and reduce their capacity to concentrate. A young person may experience frequent flashbacks of sexual abuse and can be very distressed by these, even if they rarely talk about it. Other young people have different problems with memory and find it hard to remember day-to-day events. Yet others may have a good general memory but struggle with working memory: they find it hard to hold on to information while they are thinking about that information. Learning in maths is often very poor because of this. At times problems with affect dysregulation also interfere with memory, as the young person cannot pay attention while in a hyperaroused or dissociative state and at those times is not able to take in information.

Language difficulties

Trauma and attachment disruption reduce the capacity to listen and retain information, to understand complex concepts and to express ideas and thoughts. This can hold back language development. Early relationships need to be rich in language—including the language



of emotions and relationship—for a young person to fully understand language and to express themselves adequately.

Several language areas in the brain are affected by trauma and by deprivation. Problems show up as difficulties in finding words for experience and translating emotions into words. Some young people have trouble with receptive language (understanding what others mean) and need information broken up into small, manageable pieces before they can complete a task. Others have trouble with expressive language (making themselves understood), and need help organising their thoughts into speech.

Mind and body

As outlined in the *Theory* section, children who are abused and neglected experience significant fear responses while they are still developing, leaving their brains with an altered baseline of responding to stress. Unable to regulate their affect, they experience physiological effects such as hyperarousal and dissociation.

Affect dysregulation

To be able to achieve self-control and to experience an emotional life of normal highs and lows, to be able to find joy in human interactions as well as in quiet reflection, we need to be able to regulate our affective¹ arousal. This is a task that begins at birth: in a secure attachment relationship our caregivers regulate our arousal for us through attuned care. Over time,

children develop internal regulation of their own affect, a process which continues through adolescence.

Affect regulation in adolescence

The massive reorganisation that occurs with the onset of puberty often means physical, cognitive and emotional upheaval for young people. In families where there is ongoing secure attachment the process of co-regulation continues, where caregivers help young people by staying calm (mostly is good enough!) and regulated themselves, while offering support, comfort, limits and boundaries—thus transferring their regulated state. For children and young people who do not have a secure, well-regulated caregiver with whom they have an attachment relationship, the turmoil of adolescence can be overwhelming, leaving a young person in a consistently dysregulated state. This process is very evident to anyone accustomed to working with young adolescents—who may have seemed settled and happy in late childhood, but to whom the arrival of puberty can mean 'going off the rails'.

Hyperarousal and dissociation

As mentioned, affect dysregulation usually appears as either hyperarousal or dissociation. Young people who are hyperaroused usually look 'wired', or 'revved up', whereas young people in a dissociative state appear 'spaced out' or 'not present'. They can also switch between these two states.

Hyperarousal often goes hand in hand with hypervigilance. Hypervigilant young people will often perceive neutral stimuli as threatening, and although physiologically prepared for danger,

1 see Glossary

they are in practice very poor at assessing real danger, and often put themselves in situations of risk. Attention and concentration are both severely reduced by hypervigilance, as the young person is constantly on the alert for danger.

Affect dysregulation may also lead to dissociation. Dissociative young people often do not know how they feel; they may seem distant, numb, vague and unreachable; and they may become oppositional in response to a demand for attention, contact, and closeness.

Sexualised behaviour

Traumatic sexualisation is a predictable outcome of some forms of childhood trauma, and can result from sexual abuse, exposure to adult sexual activity and pornography and family violence (absorbing attitudes of abuse to women and children). Traumatic sexualisation can lead to:

- sexual preoccupation, with frequent masturbation, sometimes in inappropriate settings
- sexual aggression, which may include rape
- inappropriate sexually aggressive play, where aggressive sexual thoughts and feelings are displayed in the child's play (with objects, toys or animals), but not necessarily aggressive acts to others
- promiscuous sexual activity, with flirtatious behaviour, inappropriate boundaries or active seeking out of sexual interactions. This can lead to the child or young person being sexually exploited by others; and in a worst case scenario it can lead to prostitution.

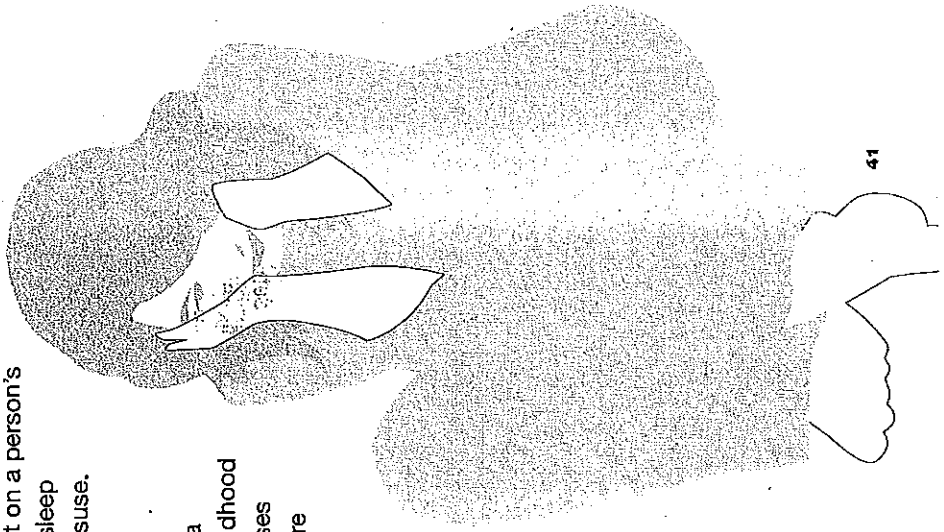
The severity of problem sexual behaviours is directly related to the severity of abuse: for example, the frequency, number of perpetrators, the use of force. Of course, not all sexually abused children exhibit sexualised behaviours, and some may have difficulties in other areas of development and behaviour.

Body

Abuse, neglect and other trauma impact on a person's health, and can also lead to self-harm, sleep disturbance, and substance use and misuse.

Health

Many studies have shown that there is a direct relationship between adverse childhood experiences and a range of adult diseases and ill health. These health difficulties are not related to any injuries suffered as a result of abuse or neglect. The health problems of those who have been abused and neglected in childhood include ischemic heart disease, cancer, chronic lung disease, skeletal fractures and liver disease (Bloom, 1999). Some of this ill health arises from poor lifestyle choices due to low self-esteem, while other problems may be related to a more complex interplay of mind and body.



During adolescence—when young people begin to have greater choice about their lives and activities—many who have had disrupted, abusive or neglectful childhoods will begin to make unhealthy lifestyle choices, such as the use of drugs and alcohol; poor sleep habits; poor hygiene and attention to health and dental care; poor sexual health; and poor nutrition. Many of these may be habits learnt in chaotic families or copied from parents or other family members. Care must be paid to the health and lifestyle choices of young people to assist them develop healthy habits of self-care.

Self-harm

Self-harm can be difficult to understand, but is very common in traumatised and highly-stressed young people. Self-harm usually appears during adolescence, although some younger children also hurt themselves deliberately. The causes can be different for different young people. Some self-harm because they become 'addicted' to the endorphin release that accompanies traumatic stress, and they will cause trauma to themselves to obtain that endorphin release. Others have developed a profound self-hatred and act that hatred out on their bodies. Some suffer from deep depression and their self-harm is closely associated with a wish to end their pain; when this despair is severe it can become suicidality. Still others self-harm to overcome the numb and alienated feelings that come from dissociation—in this case the self-inflicted pain is an attempt to feel something rather than feel nothing. Another group of young people who have been abused may internalise the aggression of the abuser, and they then become the victims of their own aggression (Cairns and Stanway, 2004).

Sleep disturbance

Sleep disturbance is common in traumatised children and young people. Some young people who have missed out on a secure early relationship will never have learnt to put themselves to sleep, never having been given the comfort and support to do so as infants. Some who have been subjected to abuse or surrounded by frightening, violent events will not want to sleep due to fear of what might happen in the night. Others who have been removed from home will be distressed due to this dislocation and will have trouble sleeping in unfamiliar surroundings. Yet others will have developed internal patterns of hyperarousal, anxiety and fear that interfere with their sleeping patterns. These young people may be woken in the night by nightmares, and will lie awake, fearful and anxious for hours. A smaller number may use sleep as a dissociative mechanism, oversleeping to avoid the world, or falling asleep as a response to a trauma trigger in the environment. Whatever the cause, young people who are not rested may struggle with relationships, with learning or just with getting through the day.

Substance use and misuse

For any person there are many pathways to a problematic use of substances or other harmful activities that may become addictive—and many who have problems with addictions did not have traumatic or neglected childhoods. Genetics, social forces, advertising, peer pressure and personality all contribute.

As adolescents are the group most likely to experiment with activities or substances that may be harmful or addictive, we need an accurate assessment of each young person to

determine the seriousness of such behaviour. One young person's experimentation with tobacco, alcohol or recreational drugs may be short-lived and relatively harmless, while another's may be more likely to result in serious harm or addiction problems and consequent mental and physical health issues.

Once we understand the impact of trauma it is not difficult to see how this might be involved in the development of problematic substance use. Firstly, affect dysregulation can easily lead to the use of excitement-generating activities and substances, as young people try to maintain some balance and equilibrium in their unbalanced emotional world. Calming down from a hyperaroused state, or revving up from a dissociative state may help a young person feel more in control of their emotions, or may bring a desired 'out of control' state. Young people who are experiencing painful thoughts, memories and emotions are easily led to the use of addictive activities and substances to numb themselves against that pain. Likewise, young people experiencing intense levels of shame are vulnerable to similar activities to distract them from this intolerable burden.

Spirit

Spirit can be thought of in many ways, and is seen differently in different cultural contexts. It can refer to spiritual or religious beliefs, or can be thought of as life energy, or spiritedness. Trauma can interfere with this sense of life energy or spiritedness.

The dispossession and genocide imposed upon Indigenous people in Australia—and the consequent intergenerational

trauma—can disrupt the capacity to connect with the spiritual world. This depletion of spirit reduces energy and vitality. Likewise the disruption and trauma caused by war and the refugee experience can diminish people's access to sustaining spiritual and cultural practices, particularly where those practices have been used as the basis for persecution, discrimination and dislocation.

Spirituality and spiritual beliefs

For children and young people entering the care and protection system it is difficult to remain connected to family traditions, cultural expressions and religious affiliations. It may also be that abuse, neglect and other trauma interfere with spiritual beliefs—in destroying hope and the belief that there is any protection offered by religious or spiritual ideals. These issues are rarely discussed with young people.

Shame

While shame itself is addressed elsewhere in this booklet (see page 31), it is important to recognise the debilitating effect of shame on the spirit. Intense shame about the self saps energy and contributes to overall ill health and lack of equilibrium.

Identity

Adolescence is a time of identity formation, when healthy young people are flexible in their approach to experimentation and making choices. Even more than adults, young people are prone to comparing themselves with others. For a young person who has suffered some trauma or disruption, who may not be doing

well at school or with friendships, who may not live at home, who has a parent in jail or with a mental illness or addiction—when looking around at peers who are seemingly doing better and living 'normal' lives, it is incredibly difficult to compare themselves favourably.

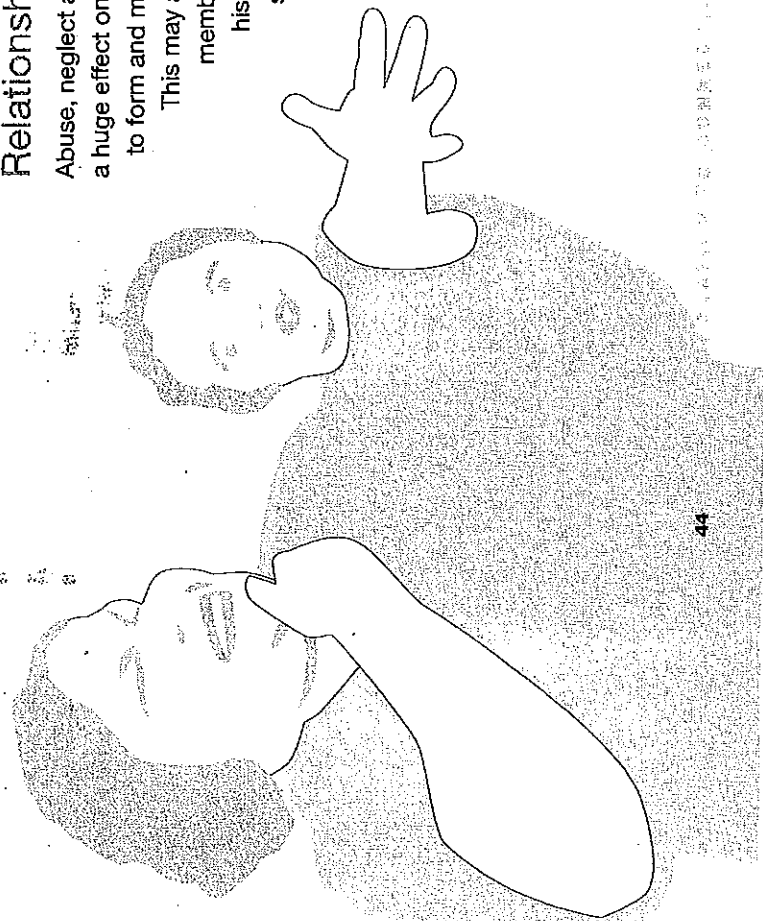
Such comparisons create further shame and the young person may become fixed in a shame-based identity.

This is made even more difficult for Indigenous young people in our care and protection systems, whose sense of a positive racial identity is compromised by racism and the common dislocation from family, community, culture, land and language.

Relationships

Abuse, neglect and other traumas have a huge effect on a young person's ability to form and maintain relationships.

This may also be true for family members, whose social, historical and environmental situation may not be favourable to the development and maintenance of healthy, caring relationships.



Misunderstanding others

The interruption to development caused by early neglect—as well as the impact of subsequent trauma—leads to an adolescence in which a young person may not have the resources that underpin relationship skills. They often have a reduced capacity to mentalise: that is, to understand and read others from facial expression, tone of voice or body language. Children and young people who are affected in this way tend to misinterpret the signals and intentions of others and may make the wrong assumptions about what others mean. At the same time, a young person who is 'wired for danger', who is constantly in a 'fight, flight or freeze' mode, will be searching their environment (including other people) for signs of threat. They will often misinterpret the neutral or even friendly intentions of others as dangerous to them, and respond with all of their survival mechanisms (such as aggression, rejection, cynicism).

Conflict, hostility and rejection

The above difficulties are exacerbated by feelings of intense shame about the self, which can manifest in an internal working model of unworthiness (I am not worthy of love) which is then played out in relationship dynamics of hostility, rejection, dependence and conflict. When these relationship dynamics are at play, a young person who has difficulty regulating their emotional arousal and reactivity will often experience their own emotions as overwhelming—but will also experience the emotions of others as overwhelming, as they have no buffer to protect them. They may then experience an escalation of their own emotional arousal in response to that of others. This kind

of intense emotional reaction is likely to increase the feelings of unworthiness and shame, as these young people may also know that others have much better relationship capacities than they do. Adolescents invariably compare themselves to others.

Reduced empathy

These complex difficulties may also include problems empathising with others, which is a capacity that seems to develop alongside affect regulation and mentalisation. Without a capacity to empathise it is difficult for young people to understand cause and effect in relationships, to acknowledge their own responsibility for their actions, or to take care of and respect others. The high levels of shame felt about the self can also make it difficult to feel necessary shame about actions that might hurt others, and so shame can interfere with empathy as well. Unfortunately these young people may also have reduced empathy for themselves, which is likely to increase their shame about self, making issues of shame and empathy a vicious cycle.

Controlling behaviours

When the young person was experiencing terrible and frightening abuse, they invariably had no control over what was happening to them. Later, as a response to that earlier lack of control they may try to control their environment and the adults within those environments. This often leads to debilitating power struggles. Some of these young people will try to control others in order to reduce their own feelings of being out of control; to try to keep others from connecting with them; and to minimise

feelings of shame. They may find connection with adults very threatening and will display aggressive and oppositional behaviours to push others away, trying to control them through making them angry or disgusted.

Poor peer relationships

Children who struggle with relationship skills (such as attunement, and the reading of another's body language and facial expression) find it difficult to engage in mutually satisfying play with other children, because they often don't understand the usual rules of relationships such as turn taking and sharing. They find friendship difficult, and other children often react negatively to their aggression, silliness or bossy, controlling behaviour. Lack of the natural progression of skill building that should happen during childhood, coupled with all the difficulties described above, may leave young people with few friends, or only friends with similar problems to their own. (Some of these friendships can be very positive—if young people can gain strength from understanding that others may have had the same issues as they do—however, some may have few friends, or only friends to get into trouble with.) Friendship is very important to children and young people and a young person who struggles to make and keep friends will often suffer very low self-esteem. Being able to maintain friendships is a sign of resilience.

Conclusion

Adolescence is a time of particular vulnerability, as young people have much greater mobility and access to the resources of the adult world than children.

Many children and young people who have been traumatised—particularly when that trauma has begun with neglect in early childhood—may continue to struggle throughout their lives. Too many young people are abandoned by the people and the systems that are supposed to care for them; and there are not always happy endings for these young people, who tend to have higher rates of mental illness and involvement in criminality than other young people. However, many will come through the complexities of their adolescence to become caring and productive members of our communities; and we must remain patient, maintain strong relationships with them and with each other, celebrate the successes they do have, and pick them up each time they fall.

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Residential Care

www.andruschildren.org/ACLI.htm
www.saccs.co.uk
www.villasantamaria.org
www.chaddock.org

Attachment

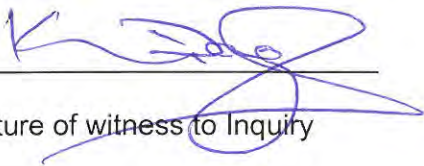
www.childdevelopmentmedia.com/child-attachment-research
www.danielhughes.org/index
www.attach.org

Trauma

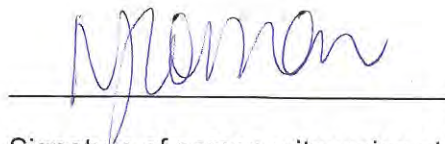
www.traumacenter.org/research/ascot.php
www.ncatsnet.org/ncats/nav.do?pid=hom_main
www.childtrauma.org
www.trauma-pages.com

Attachment Marking

The preceding 572 pages is the annexure mentioned and referred to as ATTACHMENT 4a
in the statement of Kenneth Dagley taken on 25/10/2012

A handwritten signature in blue ink, appearing to be 'K. Dagley', written over a horizontal line.

Signature of witness to Inquiry

A handwritten signature in blue ink, appearing to be 'M. Manan', written over a horizontal line.

Signature of person witnessing statement