Report of the **Protecting** Victoria's Vulnerable **Children** Inquiry
Volume 2

January 2012

The Honourable Philip Cummins (Chair)
Emeritus Professor Dorothy Scott OAM
Mr Bill Scales AO

State Government Victoria

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- The Inquiry was given broad Terms of Reference, making it critical to consult widely throughout Victoria to elicit a diversity of views for improving Victoria's system for protecting vulnerable children.
- The Inquiry's consultation processes were designed to maximise the opportunities for individuals and organisations to provide input. Over the course of some 10 months, 225 written submissions were received, 18 Public Sittings across Victoria were convened along with some 126 meetings, site visits and direct consultations, five focus groups and an online survey.
- The Inquiry recognised that consultation with vulnerable children and young people needed to be most carefully conducted. To ensure consultation was carried out in an appropriate manner, the Inquiry took specific actions to hear from children and young people and direct consultations were also conducted with parents and carers. Focus groups and an online survey were used to consult with children and young people who were in care or who had left care.
- A Reference Group for the Inquiry was established to provide advice on key issues, policy options and stakeholder engagement. The Reference Group met three times and greatly assisted the Inquiry to develop an understanding of the service system and the options for improvement.
- Another critical input was the specific consultations held with the child protection workforce, Aboriginal communities and workers representing culturally and linguistically diverse community organisations.
- The views and experiences of those living in rural and regional areas was an important consideration, and the Inquiry also took particular care to hear from those communities.

1.1 Introduction

On 31 January 2011 the Victorian Government announced the Protecting Victoria's Vulnerable Children Inquiry. The Inquiry Panel comprised the Honourable Philip Cummins, Emeritus Professor Dorothy Scott OAM and Mr Bill Scales AO. Biographical details on the Inquiry Panel are provided in Appendix 1.

The Inquiry was established to investigate systemic problems in Victoria's child protection and related services system, and recommend changes to improve the protection and care of Victorian children who are at risk of, or who have experienced, abuse or neglect.

The Inquiry considered the system as a whole, as well as its parts. Individual cases or individual organisations were not investigated. Past events were considered only to inform future changes. The Inquiry's deliberations focused on solutions.

The principles of fairness, independence and openness were essential to the procedures adopted by the Inquiry. The Inquiry sought to be fair to all people and organisations. Substantial assistance from government and government departments was received but the Inquiry remained independent of these bodies. An open process was applied as far as possible through publishing written submissions, Reference Group meeting summaries and transcripts from the Inquiry's extensive Public Sittings schedule. All of these consultations formed a significant input to this Report and they have been made publicly available, through the Inquiry's website, in line with the principles of openness and transparency.

The Inquiry sought to be inclusive and informal and did not adopt adversarial methods. Ethical issues were specifically considered to inform consultation with children and young people.

The Inquiry actively sought input across the whole of Victoria through 18 Public Sittings covering 16 different locations. As illustrated in the map in Figure 1.1, Public Sittings took place respectively in Geelong, Ballarat, Bendigo, Morwell, Mildura, Melbourne, Shepparton, Broadmeadows, Werribee, Dandenong, Warrnambool, Horsham, Bairnsdale, Wodonga, Echuca and Swan Hill.

The Inquiry was encouraged by the volume and quality of submissions made to it, both through Public Sittings and in written form. As a consequence of the volume of the material received, the Inquiry sought and was granted an extension of the reporting date originally set by the government, from 4 November 2011 to 27 January 2012, just on a year from its establishment.

The Inquiry is grateful to all of those who provided input on Victoria's system for protecting vulnerable children. The Inquiry appreciates the courage and efforts to which individuals and organisations have gone in presenting information at Public Sittings, sharing their experiences for the benefit of informing the Inquiry and the broader public, even though at times, this may have been difficult and distressing for them.

1.2 Inquiry processes

In establishing the processes for the Inquiry, the Inquiry was guided by the requirements of its Terms of Reference. The Inquiry sought input from many different sources through a wide range of methods: written submissions, verbal submissions through Public Sittings across Victoria, meetings, site visits, direct consultations, focus groups and an online survey. The Inquiry Panel met 48 times to consider the conduct of the Inquiry, inputs received and to write and develop this Report and its recommendations.

The Inquiry did not have the investigative powers of a Royal Commission or the Victorian Ombudsman. Material to assist the Inquiry's examination and consideration of the issues raised by the Terms of Reference was provided by the willing cooperation of government departments, officials and agencies as well as by community service organisations (CSOs).

This chapter outlines the consultation and other processes adopted by the Inquiry. A more detailed examination of the issues raised by submissions, including input from Public Sittings, Reference Group meetings and received through the Inquiry's consultation with children and young people, is outlined in Chapter 5.

1.2.1 Consulting with children and young people

An essential part of the Inquiry's consultation process was listening to children and young people about their experiences with out-of-home care and related services. The Inquiry is very grateful to the approximately 70 young people who were involved in various consultation activities, either in direct consultations and meetings or through an online survey. Their participation has helped the Inquiry develop its views on the requirements of a system focused on children's needs.

The Inquiry was conscious that consultation with children and young people needed to be conducted with care and sensitivity to avoid the risk of further traumatising individuals who had experienced abuse or neglect. Consulting with children and young people raised ethical, privacy and emotional issues. Accordingly, and on the advice of a group of experts

in dealing with children and young people, the Inquiry engaged CREATE Foundation Victoria (CREATE) to assist with the consultations. CREATE is the peak body representing the voices of all children and young people in out-of-home care and so is relevantly qualified to provide advice on appropriate mechanisms for engaging with children and young people.

CREATE developed an ethical framework, endorsed by the Inquiry, that considered any risks or likelihood of harm that children or young people could experience in the course of the consultation process. Using this framework, CREATE arranged consultations with children and young people through focus groups and an online survey.

Focus groups with children and young people

CREATE convened a series of focus groups following a process of informed consent by the children and young people participating. A consent form was signed by a young person if they were over the age of 18, or by a parent, guardian or carer if they were aged under 18 years. Children and young people could also ask questions or withdraw their participation at any point during the process.

Four focus groups were held in metropolitan and regional locations: Shepparton, Dandenong, North Melbourne and East Brunswick. In total, 29 children and young people aged between 8 and 24 years participated in the focus groups, including an Aboriginal client in care.

Online survey for children and young people

CREATE customised its 'Be.Heard' tool, a child-friendly online survey to gather the views of as many children and young people as possible about their experiences in out-of-home care for the Inquiry. The online survey was made available on the CREATE website from 8 July to 12 August 2011 and 27 children and young people responded.

CREATE promoted these consultation processes throughout its network of out-of-home care providers and the Inquiry also promoted these opportunities. The survey was also promoted broadly through various CSOs. However, as noted by CREATE, given the low numbers of respondents, the survey results could not be considered representative of the views of children in the care system. The Inquiry was conscious of this limitation in considering the issues before it.

The CREATE report summarising the results of the consultations is publicly available on the Inquiry's website. The Inquiry's experience indicates the challenges of hearing the voice of vulnerable children and young people.

The Inquiry drew upon additional sources to ascertain the views of children and young people, such as reports released by the Victorian Child Safety Commissioner. The Inquiry visited or met with a number of groups that provided access to children and young people in settings that were familiar and informal. Members of the Inquiry Panel met with: a youth advisory council of a large CSO; young mothers involved in a peer-based mentoring service; young people being assisted by a regional CSO; and also attended a theatrical performance by a group of young people in care or care leavers. The Inquiry met with young people in secure welfare facilities and a young person met with the Inquiry Panel in private at one of the Public Sittings. While these verbal submissions were not transcribed or published (to protect the young people concerned), they formed part of the input considered by the Inquiry in its deliberations. Consultations with children and young people have informed the Inquiry's considerations particularly regarding:

- The out-of-home care system and the circumstances of young people leaving care (Chapters 10 and 11);
- Children's Court processes (Chapter 15);
- Workforce matters, particularly relating to out-of-home care (Chapter 16);
- The capacity of the community sector (Chapter 17); and
- The regulation and oversight of the system for protecting children and young people (Chapter 21).

1.2.2 Written submissions

Submissions were a central input to the Inquiry's consideration of issues raised by the Terms of Reference. The Inquiry encouraged and welcomed written submissions from organisations and individuals addressing one, multiple or all the Terms of Reference. A *Guide to making submissions* was publicly released that outlined the Terms of Reference, posed questions for submitters to consider and set out some instructions to assist with preparing written submissions. The guide also provided information on legal issues for submitters to consider.

The formal deadline for written submissions was first announced as 15 April 2011. This date was extended to 29 April 2011 following feedback at the first Public Sitting, and the Inquiry continued to accept submissions after this date and up until 9 December 2011. The Inquiry received 225 written submissions from a wide range of individuals and organisations including academics, advocacy groups, CSOs, government bodies, courts, unions, carers and Aboriginal organisations.

Consistent with its commitment to openness, the Inquiry published written submissions on its website from 1 July 2011. In some cases, publication was not appropriate if details in a submission could potentially identify those under a court order under the *Children, Youth and Families Act 2005*. Information such as private phone numbers and home addresses was redacted to protect the privacy of individuals. The Inquiry also received submissions requesting confidentiality. Appendix 2 provides a full list of the submissions published and sets out the Inquiry's approach to publication in more detail, including where publication of a submission was not appropriate due to the need for confidentiality.

More than 80 supplementary submissions were also provided to the Inquiry at Public Sittings or shortly thereafter by individuals and organisations making verbal submissions. The majority of these were not published on the website as many were hard copies of the verbal statements that had been recorded on the Public Sittings transcript. Some supplementary submissions were secondary materials provided in response to questions by the Inquiry at Public Sittings. Four supplementary submissions received by the Inquiry have been relied on within this Report. These are listed in Appendix 2 and have been published on the Inquiry's website.

1.2.3 Public Sittings

From February to July 2011, the Inquiry held 18 Public Sittings across Victoria in order to hear from a broad range of individuals or organisations. The Terms of Reference required that the Inquiry consider differences among Victorian children in families across Melbourne and regional locations, and Figure 1.1 shows how the Inquiry's 18 Public Sittings covered a mix of regional and rural communities as well as metropolitan Melbourne. The metropolitan locations were Melbourne, Broadmeadows, Werribee and Dandenong.

Figure 1.1 Location of the Inquiry's Public Sittings

Public Sittings provided an opportunity for organisations and local community members to provide verbal submissions to the Inquiry. Those who had made written submissions were able to address the Inquiry and to raise new points in relation to their submissions. The *Guidelines for making verbal submissions* was developed to explain the process on the day and to remind people about legal considerations when making their verbal presentations to the Inquiry.

The first Public Sitting took place in Melbourne on 28 February 2011. The Chair explained the Inquiry's processes, outlined each of the Terms of Reference and announced that written submissions were sought. Public Sittings were promoted through advertisements in the local media and daily newspapers relevant to each location. The Inquiry also encouraged organisations such as the Department of Human Services (DHS) and CSOs to distribute information about the Public Sittings to their clients, contacts and networks.

Around 80 organisations and 50 individuals appeared at the Public Sittings. Some verbal submissions involved multiple speakers, with more than 200 people coming forward to address the Inquiry.

Organisations represented included advocacy groups, CSOs, hospitals and health providers, local councils, and academics. Individuals included foster and kinship carers, parents and relatives of victims of abuse or neglect, Forgotten Australians and professionals including doctors, psychologists and former child protection workers. A wide range of people made verbal submissions at the Public Sittings including representatives of CSOs; family and children's services; legal and domestic violence organisations; alcohol and drug and mental health services; and Aboriginal organisations and culturally and linguistically diverse organisations. The Inquiry also heard from many individuals directly affected by child abuse and neglect and who were involved in the child protection system, kinship, foster and permanent carers and parents. Transcripts from all of the Public Sittings are published on the Inquiry's website.

The Inquiry covered more than 3,800 kilometres over the course of the Public Sittings and in doing so heard from local people and communities about what they believed should be improved in Victoria's approach for protecting vulnerable children. Some Public Sittings were conducted by the Chair only or the Chair and one other member of the Inquiry Panel.

In pursuit of its commitment to openness, the Inquiry recorded and transcribed all of the Public Sittings, resulting in close to 1,000 pages of transcript which are published on the Inquiry's website. In addition, the Inquiry heard 12 verbal submissions in private, at the request of the individuals, and these were not recorded or published. These included verbal submissions from a young person, parents and carers. A complete list of those who provided verbal submissions publicly to the Inquiry is in Appendix 2.

1.2.4 Site visits and meetings

The Inquiry conducted 104 site visits and meetings with stakeholders. Site visits were made to DHS and CSO facilities in metropolitan and regional areas. At the site visits, the Inquiry was able to observe the facilities and sometimes services being delivered and also meet with staff, particularly frontline workers where possible. These visits gave the Inquiry a first-hand look at the work of DHS and CSOs in providing services for vulnerable children and young people and insight into the experiences of staff.

The Inquiry consulted with relevant heads of Victorian government departments and other officials of the Departments of Education and Early Childhood Development, Human Services, Justice and Health, and the Children's Services Coordination Board. The Inquiry also met with the (then) Chief Commissioner and senior officers of Victoria Police. The Inquiry visited the Children's Court five times, covering the Melbourne and Geelong courts. The Inquiry also met with the Office of the Child Safety Commissioner, the Victorian Ombudsman, the State Coroner, the Chair of the Victorian Child Death Review Committee, the Youth Parole Board and the Victorian Children's Council. Information requests were made to Victorian government departments to provide assistance and data to inform the Inquiry's analysis.

In addition, the Inquiry met with the Domestic Violence Resource Centre Victoria and The Royal Children's Hospital, and visited the Queen Elizabeth Centre, Multidisciplinary Centres in Frankston and Mildura, and the Darebin Family Violence Response Unit.

The Terms of Reference directed the Inquiry to consider interstate and international experience. The Inquiry met with government agencies and other authorities in Western Australia and Queensland. One member of the Inquiry Panel attended the Australasian Institute of Judicial Administration Conference in Brisbane. To gather insights from overseas, the Inquiry met with Canadian and British experts visiting Melbourne. The Inquiry also held a teleconference with Professor Eileen Munro, who completed a review of the child protection system in the United Kingdom in 2011.

A full list of the Inquiry's meetings and site visits is set out in Appendix 2.

1.2.5 Engagement with Aboriginal communities and organisations

Aboriginal children and young people are significantly over-represented in the statutory child protection system. Consultations occurred with Aboriginal communities and visits were made to Aboriginal service providers to inform the Inquiry.

The Inquiry convened five consultations with Aboriginal communities in four regional locations: Mildura, Shepparton, Warrnambool and Bairnsdale. Metropolitan consultation sessions were held in Thornbury at the Aborigines Advancement League and at Dandenong. Approximately 50 participants attended the consultation sessions. In some instances, the groups were small which allowed for more in-depth discussions about personal experiences.

Visits were made to Aboriginal organisations in metropolitan Melbourne to the Victorian Aboriginal Child Care Agency, Yappera Multifunctional Aboriginal Children's Centre, Victorian Aboriginal Health Service, and in the regions to Rumbulara Centre in Shepparton, Njernda Aboriginal Family Services in Echuca and the Swan Hill Aboriginal Family Service.

Aboriginal Affairs Victoria (AAV) assisted the Inquiry in planning and organising the consultation sessions. Assistance was also provided by the Department of Justice in Mildura. Local brokers, who are AAV staff based in the local community, helped promote the consultations to the Local Indigenous Networks and other contacts. The Local Indigenous Networks are made up of Aboriginal people who regularly meet and work together to address community issues.

AAV established contacts to help raise awareness among the local community about the Inquiry, and tapped into existing relationships to recruit participants.

The Inquiry's consultations and visits with Aboriginal communities and organisations have informed the Inquiry's consideration of opportunities to improve the system's capacity to meet the needs of Aboriginal children and young people, discussed extensively in Chapter 12.

1.2.6 Consulting with culturally and linguistically diverse community workers

The Inquiry sought the advice of the Ethnic Communities' Council of Victoria about how best to consult with culturally and linguistically diverse communities. The Council recommended that the Inquiry meet with workers from organisations serving these communities. The Inquiry held a consultation session with the help of the Victorian Cooperative on Children's Services for Ethnic Groups (which was also represented in the Inquiry Reference Group discussed below in section 1.3) and the Council which was attended by 10 participants.

In addition, several individuals from culturally and linguistically diverse communities contributed to the Inquiry through written and verbal submissions. Many of the participants were referred to the Inquiry by Care with Me, a foster care support service that aims to improve outcomes for children from culturally and linguistically diverse backgrounds in out-of-home care. The organisation also made written and verbal submissions.

Chapter 13 discusses meeting the needs of children and young people from culturally and linguistically diverse backgrounds and draws on the input received through this consultation.

1.3 The Inquiry Reference Group

The Inquiry established a Reference Group to provide advice on key issues, issues analysis, policy options and stakeholder engagement.

The 20 members of the Reference Group were drawn from the wider service system and from the client groups, that is, from: peak bodies; family services; child protection and out-of-home care services; Aboriginal organisations; maternal and child health; local government; schools; doctors; mental health and drug and alcohol services; carers; domestic violence services; multicultural groups; academics; police; court administration and legal services. While the members came from these organisations, they were participating as individuals rather than as representatives of their organisations. Full details of the Reference Group's membership along with meeting dates are set out in Appendix 2.

The Reference Group met three times to discuss views and issues arising from the Terms of Reference. The discussions with the Reference Group provided an important input to the Inquiry's deliberations and summary notes of the Reference Group meetings are published on the Inquiry's website.

1.4 Consulting with the workforce

An important aspect of the Inquiry consultations arising from the Terms of Reference was hearing from frontline workers from CSOs and DHS who work daily with vulnerable children and young people. The Inquiry was similarly concerned to meet with foster and kinship carers through visits to organisations and through verbal and written submissions.

When visiting organisations, particularly those involved with Child FIRST and family support services, the Inquiry spoke informally with those who had the most direct contact with children and families.

The Inquiry conducted seven formal consultation sessions specifically for staff from DHS and CSOs. These were held in the Southern, Gippsland and Barwon-South Western regions, and in Melbourne. A consultation session was held in Melbourne with managers from the Department of Human Services. The consultation sessions were different from the visits and meetings with organisations in that attendees addressed specific questions posed by the Inquiry.

A number of meetings were held with the Secretary of DHS and senior child protection staff. The Inquiry visited 13 offices of DHS and consultations were held with more than 100 child protection staff and managers who freely provided feedback and views to inform the Inquiry's analysis. The Inquiry held three consultation sessions with staff from CSOs in Melbourne and in the Gippsland and Southern regions, which involved approximately 50 participants.

The Inquiry also met with and received a submission from the Community and Public Sector Union, which represents child protection workers. The Australian Services Union, which represents workers in CSOs, appeared at a Public Sitting and provided a written submission.

The Inquiry's consultations with the workforce have informed its consideration of:

- Early intervention to support vulnerable children in families (Chapter 8);
- Statutory child protection services (Chapter 9);
- Children's Court processes (Chapter 15);
- The requirements for a workforce that provides quality services (Chapter 16); and
- The provision of clinical psychological services to the Children's Court (Chapter 18).

1.5 Previous reports and reviews

The Inquiry has drawn on previous reports and investigations on similar or related subject matters in Victoria and elsewhere. Among these were the:

- Reports by Mr Justice Fogarty and Ms Delys Sargeant (Fogarty & Sargeant 1989; Fogarty 1993) on *Protective Services for Children in Victoria*;
- Victorian Auditor-General's 2005 report, *Our children are our future: Improving outcomes for children and young people in Out-of-Home Care*;
- Victorian Law Reform Commission's 2010 report on *Protection applications in the Children's Court*;
- Victorian Ombudsman's reports *Own motion investigation into ICT-enabled projects* released in November 2011 and *Investigation regarding the Department of Human Services Child Protection Program (Loddon Mallee Region)* released in October 2011; *Own motion investigation into child protection – out-of-home care* released in 2010; and the 2009 *Own motion investigation into the Department of Human Services Child Protection Program*.

The Inquiry also looked at national, interstate and overseas sources, including the:

- *Report of the Special Commission of Inquiry into Child Protection Services in New South Wales* by the Hon. James Wood AO QC (Special Commission of Inquiry into Child Protection Services in NSW 2008); and
- *Review of child protection* in England concluded by Professor Eileen Munro in 2011.

1.6 Structure and approach adopted for the Report

The broad scope of the Inquiry and complex and interconnected nature of the issues have dictated the form of this Report, which is divided into three volumes. The first volume of the Report, the overview volume, contains the executive summary, a list of all recommendations and findings and the Inquiry's implementation plan. The second volume is the substantive body of the Report and contains parts one to eight listed in Figure 1.2. The third volume contains all of the appendices to the Report.

In line with the principles of openness and inclusiveness, the Inquiry has sought to write the Report in language that is as accessible as possible. This has meant avoiding the use of technical jargon where possible. In some sections, the language is more formal, reflecting the need for precision when considering detailed legal points.

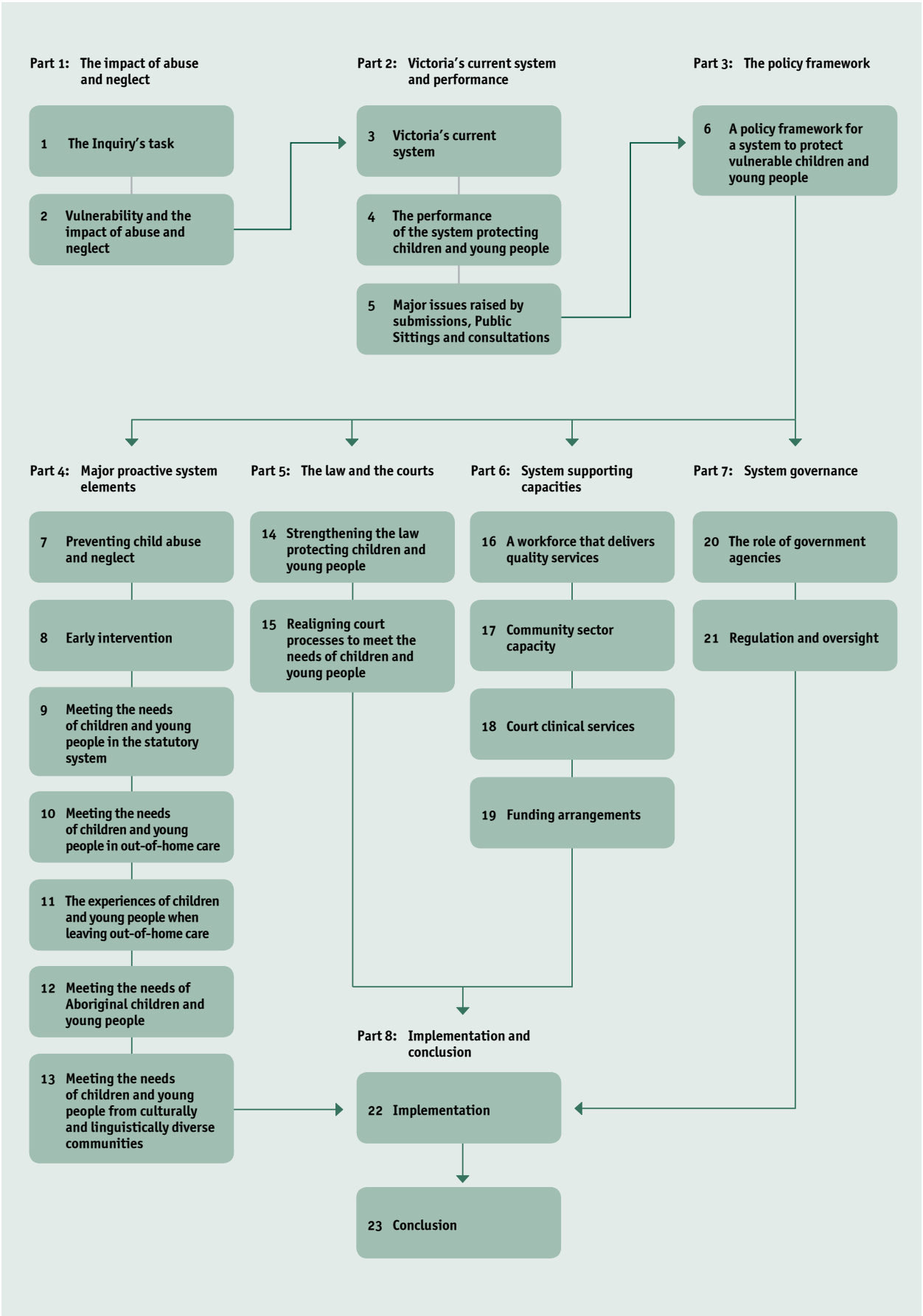
There are three types of conclusions formed by the Inquiry in this Report:

- Recommendations: the most formal of the Inquiry's conclusions. These are areas where the Inquiry has specified the action that should be taken by government to address an issue;
- Findings: significant conclusions resulting from the Inquiry's analysis; and
- Matters for attention: cover areas the Inquiry was unable to consider or that may not reside within the Inquiry's scope or Terms of Reference, however, are significant and require further attention by government.

The Inquiry has made 90 recommendations, 20 findings and identified 14 matters for attention. Ten areas of major system reform have been proposed to address four system goals.

Figure 1.2 sets out the structure of Volume 2 of the Report.

Figure 1.2 Report structure: Volume 2



Summary of Volume 2

- Part 1 examines the Inquiry's task, the nature of vulnerability and the problem of child abuse and neglect.
- Part 2 describes the current approach in Victoria and broadly assesses the performance of Victoria's system for protecting vulnerable children from abuse and neglect. It highlights major issues raised by submissions, Public Sittings and recent Reports including, by the Victorian Ombudsman.
- Part 3 examines the policy framework applying to the protection of children. It considers:
  - the rationale for government's involvement in protecting children;
  - overarching principles to support the Inquiry's analysis of the major issues;
  - themes arising from the Inquiry's consultation process;
  - the most suitable frameworks for understanding the complex interactions between different organisations and participants in the system for protecting children; and
  - how a system for protecting vulnerable children should be focused on a child's needs. These principles, themes and frameworks in turn shape the recommendations for the policies that government should consider.
- Part 4 examines the major elements of the systems to protect children and young people. In particular, it examines the issues relating to:
  - preventing abuse and neglect;
  - intervening early with vulnerable families and children;
  - the needs of children in the statutory system;
  - meeting the needs of children in out-of-home care;
  - leaving out-of-home care;
  - meeting the needs of Aboriginal children; and
  - meeting the needs of children from culturally and linguistically diverse communities.
- Part 5 examines the law and the courts including strengthening the law to protect children and realigning court processes to address the needs of children and young people.
- Part 6 examines factors which have an important impact on the capacity of the system, that is, workforce issues, community sector capacity, clinical services, and funding arrangements.
- Part 7 examines broader system governance and examines the role of government agencies and system governance and regulation.
- Part 8 examines the Inquiry's reform proposals and provides advice as to which recommendations should be implemented in the immediate, medium and long term. Concluding comments are also made.

Part 1: The impact of abuse and neglect

Chapter 2:
Vulnerability and the impact of abuse and neglect

Chapter 2: Vulnerability and the impact of abuse and neglect

Key points

- Child vulnerability is difficult to measure and describe as it often results from a combination of factors affecting a child, their family and their environment.
- Vulnerability is not static as children and their families can be more or less vulnerable at different times and as different life events occur. However, there are specific factors that can accumulate to make a child more vulnerable, and these factors may change as a child develops.
- The Inquiry provides context for understanding vulnerability and examines the factors that increase the risk of child abuse or neglect occurring. The factors are placed in three categories:
  - parent/family or caregiver factors: history of family violence; alcohol and other substance misuse; mental health problems; intellectual disability; parental history of abuse and neglect; and situational stress;
  - child factors: the age and gender of the child; and health and disability factors; and
  - economic, community and societal factors: social inclusion and exclusion; and social norms and values.
- There is a strong correlation between vulnerability and the risk factors for child abuse and neglect and, in turn, a correlation with other socioeconomic factors. These interconnected factors need to be considered and addressed together.
- Approximately 65 per cent of families using Victorian government-funded early parenting assessment and skills development services have four or more risk factors, including mental illness, family violence, substance use, being teenage mothers, financial stress, and parental disability.
- The Inquiry finds that at the current rate of reporting to statutory child protection services, almost one in four children born in 2011 will be the subject of at least one report before they turn 18.
- The Inquiry finds that vulnerability and the risk factors associated with child abuse and neglect are concentrated in certain areas of Victoria and there is a correlation with social and economic disadvantage. This suggests the most effective focus of government activity is to tackle vulnerability of children and their families through locally based initiatives and services.
- Submissions to the Inquiry have shown the devastating personal costs of abuse and neglect. Estimates prepared for the Inquiry show that the total lifetime financial costs of child abuse and neglect for all abused and neglected children that occurred in Victoria for the first time in 2009-10 is between $1.6 and $1.9 billion.

2.1 Introduction

The Inquiry was established to investigate, at a system level, Victoria's overall approach to, and performance in, protecting Victoria's vulnerable children, and to provide recommendations to reduce the incidence and negative impact of child abuse and neglect in Victoria.

In order to do this, the Inquiry has examined the problem of child abuse and neglect and the factors that make children and young people vulnerable to abuse and neglect. This chapter starts by exploring what vulnerability means and how it relates to a child's needs and outcomes in life. The chapter then introduces the broad concepts of child safety, wellbeing and development to understand how vulnerability impacts on the life of a child or young person.

The range of factors that have been found to be associated with child abuse and neglect are then outlined. A brief overview of the available information and research on the prevalence of these risk factors in Victoria is also provided. The relationship between these risk factors and other socioeconomic indicators is considered.

As an indicator of the scale of concern in the Victorian community for children's wellbeing and safety, the Inquiry has examined the current level of reports of suspected child abuse and neglect and the projected growth in these reports. The expected significant growth in reports concerning children's wellbeing and safety provides an imperative for government and the community to act to address the causes of child abuse and neglect before they occur. In order to respond effectively government must better understand the drivers of these reports and how to respond to those concerns to address a child's needs.

This chapter presents evidence of the clustered nature of vulnerability and other socioeconomic factors in Victoria.

Addressing child abuse and neglect is critically important because when child abuse and neglect does occur there are shattering impacts on the child or young person. These individual impacts accumulate and build to create significant social and economic costs. Modelling has been commissioned by the Inquiry to quantify the cost of child abuse and neglect to the Victorian community. The significance of these costs provides a compelling reason for government to act swiftly to address the vulnerability of children and their families as a means to reduce the incidence and negative impact of child abuse and neglect.

2.2 Vulnerability

All societies have a fundamental commitment to protecting their children. In most societies there is also an expectation that children will grow up safe, healthy and happy in stable and caring environments. Vulnerability, however, may prevent this occurring for some children.

Children and young people have a range of needs that change during various stages of their development. When these needs are not met, children and young people are at risk of poor outcomes. A range of risk factors can lead to a child not having their needs met and being more vulnerable than other children.

Vulnerability is difficult to measure and describe because it often results from a combination of factors affecting a child, their family and their environment. Vulnerability is not static as children and their families can be more or less vulnerable at different times and as different life events occur. However, there are specific factors that can accumulate and make a child more vulnerable, and these factors may change as a child develops. Vulnerability prevents children from achieving positive outcomes across a range of domains and this disruption to an ordinary developmental pathway is even more pronounced when vulnerable children suffer abuse and neglect.

The Inquiry considers a child or young person to be vulnerable when they are exposed to a range of known risk factors that increase the likelihood they will experience poor outcomes in relation to their wellbeing and safety. For the purposes of the Inquiry the following definition has been adopted:

Inquiry definition of vulnerable children

Children and young people who because of their particular circumstances are at risk of abuse and neglect.

To understand how vulnerability impacts on the life of a child or young person, it is first important to understand a child's needs, including child safety, wellbeing and development.

2.2.1 Child safety, wellbeing and development

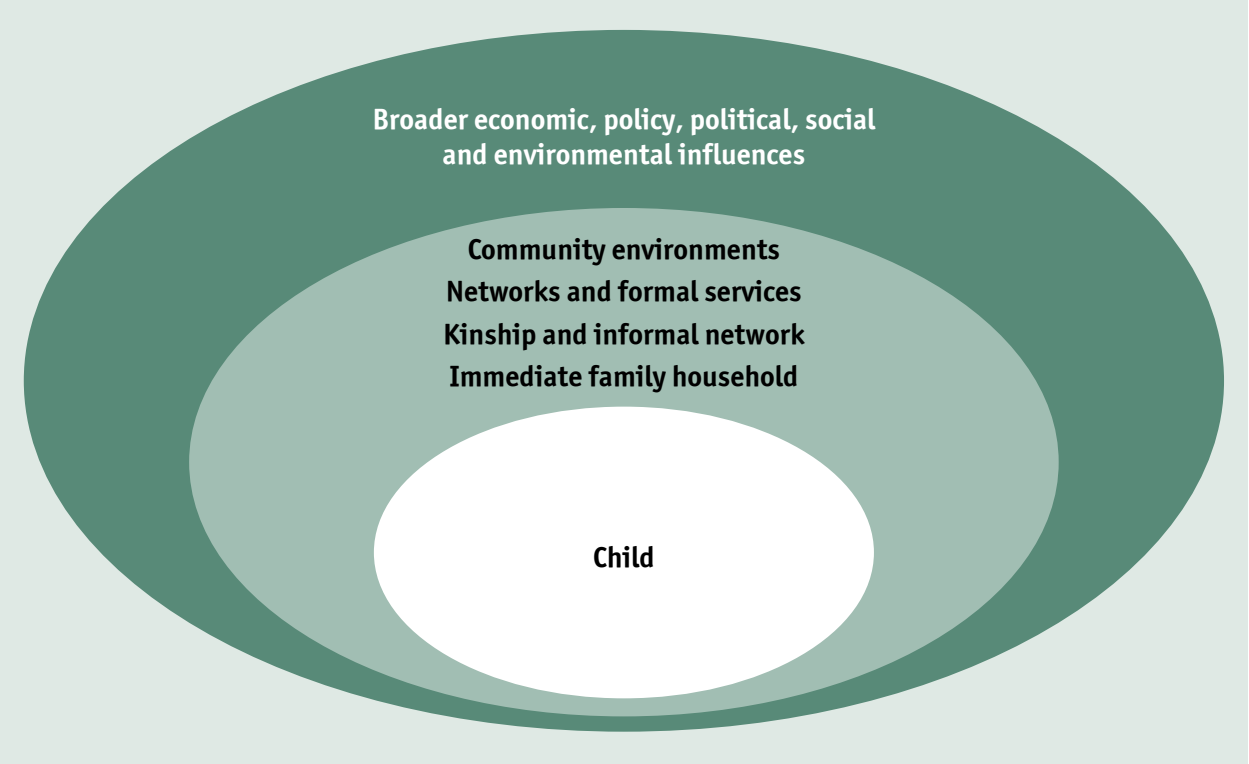
The United Nations *Convention on the Rights of the Child* – to which Australia is a signatory – outlines a universal set of standards by which all children should be treated in order for them to achieve their full potential for health and development. The convention spells out the basic human rights that children everywhere should have including: the right to survival; the right to develop to the fullest; and the right to protection from harmful influences, abuse and exploitation.

The convention recognises that a child's needs cannot be realised unless the responsible adults take the necessary action to make them a reality. This places responsibility on our society, through parents and caregivers, communities, organisations and governments, to acknowledge these needs and develop strategies for meeting them. A child's needs are considered further in Chapter 6 which sets out the Inquiry's policy framework.

2.2.2 A framework for understanding child development

For governments to put these goals of child safety and wellbeing into practice requires an understanding of how a child and young person develops. Child development expert, Urie Bronfenbrenner (1979) developed a seminal conceptual framework for understanding the ecology of child development and wellbeing that has become an important tool. As shown in Figure 2.1, the ecological model seeks to understand the relationships between a child's wellbeing and development, and their broader environment. It demonstrates that children develop through interactions with family, friends, and between their family and broader social and community environments. Importantly, the model places the child at the centre, with family, community, and society surrounding the child.

Figure 2.1 The ecological model of child development

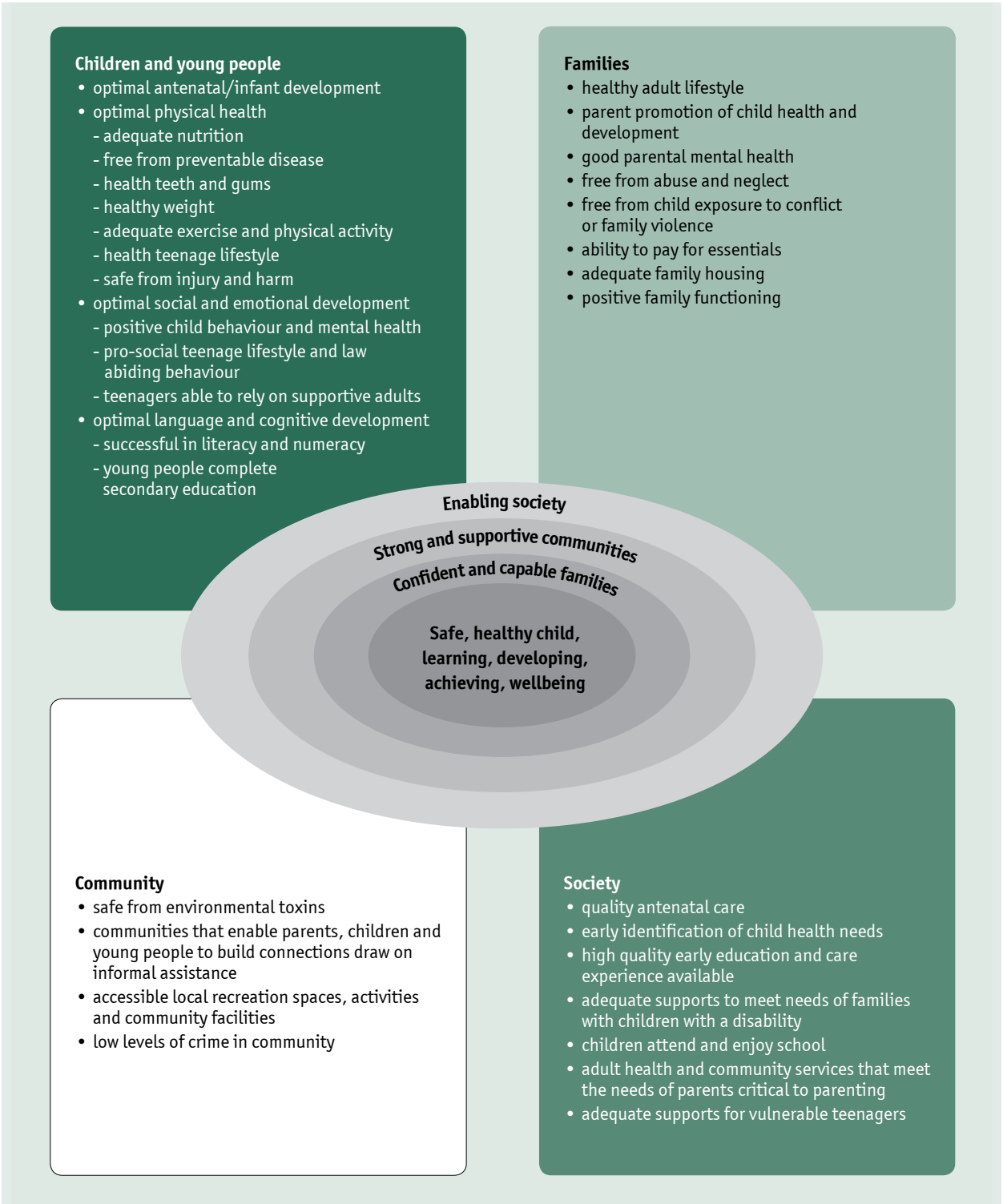


Adapted from Bronfenbrenner 1979

The benefit of this conceptual model of child development is that it shows the complexity of the various influences on a child's development, as well as helping to understand the child's perspective.

Recent work both in Victoria and at the national level has sought to expand on the understanding and commitment to child wellbeing by developing a set of indicators and measures of child wellbeing and reporting on these measures. In Victoria the Department of Education and Early Childhood Development (DEECD) has, since 2006, published a series of reports called *The state of Victoria's children*. Underpinning these reports is the Victorian Child and Adolescent Outcomes Framework set out in Figure 2.2.

Figure 2.2 The Victorian Child and Adolescent Outcomes Framework, 2006



Source: DEECD 2011a

This framework has been designed to reflect the ecology of childhood and depict the multiple spheres of influences and determinants of child safety, health, development, learning and wellbeing.

At the national level, the Australian Institute of Health and Welfare (AIHW) has reported on a set of headline indicators developed to monitor the health, development and wellbeing of Australian children and young people. The headline indicators for children are grouped into: health; early learning and care; and family and community. For young people the groupings include health status and wellbeing, factors influencing health, family and community, and socioeconomic factors (AIHW 2011e).

These frameworks perform the important task of integrating the broader ecological framework of child development with the characteristics of positive child health, development and wellbeing outcomes. Importantly, the frameworks assist, as is evident in Figure 2.2, in identifying the factors that impact or are linked to a child and young person's needs and outcomes and, where they are not present, give rise to greater levels of vulnerability, including child abuse and neglect.

2.2.3 Legislation in Victoria

For the majority of Victorian children, their safety, nurturing and development occurs within a family structure; however, governments also have a responsibility for the welfare of children. In Victoria, section 5 of Victoria's *Child Wellbeing and Safety Act 2005* sets out a number of principles relevant to the issue of child wellbeing including: societal aspirations for all children; key indicators associated with wellbeing; responsibilities; and the role of government. The principles enunciated in Victorian legislation reflect, in part, the ecological model of child development and wellbeing. These include:

- Society as a whole shares responsibility for promoting the wellbeing and safety of children;
- All children should be given the opportunity to reach full potential and participate in society irrespective of their family circumstances and background;
- Those who develop and provide services to children, as well as parents, should give the highest priority to the promotion and protection of a child's safety, health, development, education and wellbeing; and
- Parents are the primary nurturers of a child, and government intervention into family life should be limited to that necessary to secure the child's safety and wellbeing; however, it is the responsibility of government to ensure the needs of the child are met when the child's family is unable to provide adequate care and protection.

The following section provides evidence that there are certain risk factors that influence the likelihood of a child being vulnerable to child abuse and neglect.

2.3 Factors that cause a child to be vulnerable

A risk factor is usually defined as a variable that increases the probability of future negative outcomes (Durlak 1998, p. 512). There are multiple risk factors that contribute to negative outcomes for children and it is usually the accumulation of factors rather than a single risk factor that affects outcomes. However, risk factors are not predictive, as many children and young people exposed to multiple risk factors do not suffer poor outcomes due to the presence of protective factors, such as good parent-child relationships and attachment and social support networks (Durlak 1998, p. 516).

Durlak lists eight poor outcomes for children, including: physical abuse; behavioural problems; school failure; poor physical health; physical injury; pregnancy; drug use; and AIDS. Durlak found that several of these outcomes, including child physical abuse, had common risk factors. He also established that these risk factors occurred across the five risk domains of the community, school, peer group, family and the individual (Durlak 1998, p. 514). This has important implications for government interventions, as programs that successfully intervene in risk factors common across these domains are likely to prevent multiple problems simultaneously.

There is a wide body of international research on the risk factors that are associated with child abuse and neglect and that increase a child's vulnerability. However, as the researchers have emphasised, while many of these risk factors are evident in the overall population and often present in cases of alleged and substantiated child abuse and neglect, their presence does not automatically lead to or predict incidents of child abuse and neglect. The main risk factors related to child abuse and neglect are commonly categorised into three main domains:

- Parent/family or caregiver factors;
- Child factors; and
- Economic, community and societal factors.

It is also recognised that child abuse and neglect can arise from the interaction of different factors across these domains. These domains have been used to structure an examination of the most common or prevalent risk and protective factors that are associated with child abuse and neglect.

2.3.1 Risk factors arising from a parent, family or caregiver

The risk factors arising from parent, family and/or caregiver relationships include:

- History of family violence;
- Alcohol and other substance misuse;
- Mental health problems
- Intellectual disability;
- Parental history of abuse and neglect; and
- Situational stress.

History of family violence

Undoubtedly, witnessing family violence in itself amounts to child abuse. This is a fairly recent view in the academic literature (Goddard & Bedi 2007). The impact of family violence on children is increasingly being recognised as an issue requiring greater government effort, with the Commonwealth Government recently enacting family law amendments to broaden the definition of child abuse, by including a child being exposed to family violence as psychological harm, to offer more protection *(Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011)*. In addition, family violence can have the effect of making a child fearful and compliant, with the effect of inhibiting disclosure and preventing reporting. A history of family violence may indicate a risk of further violence.

Family violence has different effects on children at different ages. For example, family violence during pregnancy may cause the miscarriage of a developing foetus, or bring on premature birth or disability. For a young child experiencing family violence, this can impact on their physical and psychological development and may lead to behavioural problems.

Family violence also has a significant and detrimental effect on parenting capacity. Not only can it cause physical injury and ill health, it can lead to mental health problems, substance misuse, homelessness and housing instability for those who are fleeing violence (Bromfield et al. 2010, p. 5).

Alcohol and other substance misuse

The effects of substance misuse on parenting are well documented. The substances that are of concern in relation to parenting include alcohol, cocaine, opiates, amphetamines, marijuana and overuse of prescription medicines (Bromfield et al. 2010, pp. 23).

Substances work by affecting the brain, thereby impairing senses, perception, physical ability and judgment. As outlined by Dawe et al. (2008, p. 3), there is a high risk of neglect for children whose parents misuse substances. For example, children may not have basic needs met such as regular meals, a clean and safe environment and an emotionally nurturing home. Dawe et al. (2008, p. 3) also notes that children can be at risk of physical and emotional abuse if a parent is experiencing intoxication or withdrawal.

Mental health

The symptoms of mental health problems can impact upon a parent's perception, cognition and ability to communicate. Mental illness can manifest in a parent being withdrawn, inconsistent, less active with children and emotionally distant or unavailable (Hegarty 2005, in Bromfield et al. 2010, p. 10). For a child this can result in psychological stress and insecure attachment (Seifer & Dickstein 1993, in Bromfield et al. 2010, p. 11).

There are also risks of physical and psychological abuse if the symptoms of the illness manifest in the parent becoming violent, reactive or punitive. Importantly, it has been identified that children of parents with mental health problems are at risk of developing mental health problems of their own (Cowling 2004, in Bromfield et al. 2010, p. 11).

Parent/caregiver intellectual disability

Intellectual disability can negatively impact on parenting ability and contribute to other problems that affect the ability to parent effectively. A study showed that in Victorian child protection cases first investigated in 1996-97, cases in which a parent had an intellectual disability were almost twice as likely to be substantiated and more than three times more likely to be re-substantiated over the six-year period from 1996-97 to 2001-02 than child protection cases where parents did not have an intellectual disability (The Allen Consulting Group 2003, p. 10).

Parental history of being neglected or abused

A parent's history affects their ability to tend to the needs of their child. Parents who have lacked effective parental role models are at significant disadvantage when it comes to parenting their own children (Goldman & Salus 2003, p. 28). Lamont (2011, p. 5) points to evidence emerging from the United States National Longitudinal Study of Adolescent Health that parents who reported having been neglected in their childhood were 2.6 times as likely to report their own neglectful parenting behaviour than those who did not.

In a study by Pears and Capaldi, parents who had experienced physical abuse in childhood were significantly more likely to engage in abusive behaviours towards their own children or children in their care (Lamont 2010, p. 4).

Situational stress

A family's financial circumstances are known to have a major influence on a child's life chances and outcomes. Research based on the *Growing up in Australia* longitudinal study suggests that children aged four to five years from poor families are less likely to be 'school-ready' in terms of their cognitive and social-emotional development than children from non-financially disadvantaged families (Hayes et al. 2011, p. 17). Further, these developmental differences remained when the children were followed up two years later. This confirms that the early years, prior to school entry, are particularly important for a child's development. Moreover, financially disadvantaged families may be unable to access support services at times of family stress.

In addition, maternal age is also known to be a risk factor in child vulnerability. A young mother and her child are likely to be more vulnerable because of the frequently associated social stresses of single parenthood at a young age.

2.3.2 Risk factors arising from the child

The risk factors arising from a child's particular characteristics include:

- The age and gender of the child; and
- Health and disability factors.

The age and gender of the child

While the relationship between the age of a child and risk of abuse and neglect is not clear cut, it is an important factor to consider. For example, infants and very young children need constant care, and their early development is critical to their later life chances. As Shonkoff and Phillips (2000, p. 5) demonstrated, early childhood development – including linguistic and cognitive gains, as well as emotional, social, regulatory, and moral capacities – can be seriously compromised by the child's environment.

There is an inverse relationship between the age of the child and the risk of experiencing neglect, which does not exist for physical, emotional or sexual abuse. That is, infants are much more vulnerable to neglect than older children because of their almost complete dependence on others for survival, their physical immaturity, under-developed verbal communication, and their social invisibility (Jordan & Sketchley 2009).

Teenagers, on the other hand, are at much greater risk of experiencing sexual abuse (Goldman & Salus 2003, p. 32).

In relation to gender, there is evidence to suggest that girls are far more likely to be a victim of child sexual abuse than boys, with boys somewhat more likely to be physically abused than girls (Irenyi et al. 2006, p. 5).

The prevention of sexual abuse needs to be tackled differently from neglect and other types of abuse such as emotional and physical abuse. Evidence overwhelmingly indicates that the majority of child sexual abuse is perpetrated by males. In contrast to other types of abuse, research suggests that a greater number of child sexual abuse offences are perpetrated by adults who are not the primary caregiver (Lamont 2011, p. 3). Nonetheless, a large majority of the perpetrators were known to the victim. Findings from the Australian Bureau of Statistics (ABS) *Personal Safety Survey 2005* (ABS 2006c) indicated that for participants who had experienced sexual abuse before the age of 15, 13.5 per cent identified that the abuse came from their father/stepfather, 30.2 per cent was perpetrated by another male relative, 16.9 per cent by family friend, 15.6 per cent by an acquaintance/ neighbour and 15.3 per cent by another known person (Lamont 2011, p. 3).

Health and disability and development factors

Premature or medically fragile infants and those with genetic or other congenital abnormalities can suffer from: low birth weight; feeding, settling and sleeping difficulties; prolonged and frequent crying; and developmental delay, and they may have complex medical needs. All these factors have an impact on the relationship between infants and their parents. The vulnerability of a sick infant or an infant with a disability can result in heightened stress for parents and, if they do not have the support or emotional, social and financial resources required to manage this stress, the infant's risk of neglect or abuse is also heightened (Jordan & Sketchley 2009).

There is a significant breadth of evidence (Goldman & Salus 2003; Irenyi et al. 2006) that suggests children with physical or intellectual disabilities, or behavioural difficulties, are more likely than other children to come into contact with the statutory child protection service. Childhood disability can increase the risk of child abuse and neglect, and also be the result of child maltreatment.

2.3.3 Risk factors arising from economic, community and societal factors

The risk factors arising from a child's community and society include:

- Social exclusion and lack of social inclusion; and
- Differing social norms and values.

Social inclusion and exclusion

Although the concepts of social inclusion and social exclusion are clearly related it is important to note that they are not opposites. The term social exclusion is used to demonstrate the lived experience of social disadvantage, which goes beyond financial difficulties and includes barriers to participation and connectedness (Saunders et al. 2008). On the other hand, social inclusion is often conceptualised in terms of 'opportunities'. The Australian Government has highlighted five key domains of opportunity that assist people to be socially included. They include the opportunity to: secure a job; access services; connect with family, friends, work, personal interests and local community; deal with personal crisis; and have his or her voice heard (Australian Social Inclusion Board 2008).

To this end, social inclusion may be understood as the pursuit of creating more opportunities to participate and connect, whereas social exclusion is more focused on understanding the nature of disadvantage. Social exclusion may contribute to child abuse and neglect because parents have less material and emotional support, lack positive parenting role models, and feel less pressure to conform to social norms relating to parenting.

Communities influence the outcomes of vulnerable children and young people through social support, access to local services and amenities and the opportunity to participate in the broader community. Young people in disadvantaged areas report having less access to community facilities or opportunities to engage with their community (DEECD in press, p. 16). In areas of socioeconomic disadvantage children fare less well than other children against many measures. They are more likely to:

- Be an unhealthy weight;
- Have emotional and behavioural problems;
- Be developmentally vulnerable at school;
- Experience bullying; and
- Be involved in anti-social or criminal behaviour (DEECD in press, p. 17).

Social norms and values

The social norms of a particular community have a direct bearing on the treatment of children. Societal attitudes towards parenting and children continue to evolve as new generations of parents and children emerge. For example, the use of physical discipline is now less accepted than was once the case. The wave of evidence that has emerged over the past decade regarding the importance of parent-child attachment for a child's cognitive and emotional development has had the effect of increasing the public's awareness of the importance of good parenting. In parallel, there has been an emphasis by contemporary society on the importance of human capital, and more specifically encouraging and enabling citizens to be productive and valuable contributors to both society and the economy. These two strands of thought have led to a much greater focus on the need to protect children.

Interaction of factors

The presence of the above factors that cause vulnerability may be concurrent. For example, family violence is commonly associated with alcohol misuse; situational stress is a key contributor to any measure of social exclusion, and parental mental health problems may be linked to intergenerational abuse. There is a multidimensional and multilayered relationship between the risk factors described, and their impact on the outcomes of children and young people. In addition, vulnerability is not static. A child or young person may experience periods of vulnerability at different stages of their life, depending on changing family circumstances and their developmental needs.

Aboriginal children and young people

It is important to note that all of the above factors also apply to Aboriginal children and young people. However, many Aboriginal children and young people in Victoria face challenges many in the non-Aboriginal population are less likely to experience. For example, a high proportion have certain health problems, high rates of victimisation and are physically harmed and threatened; many report experiencing discrimination on a daily basis. These experiences are risk factors for Aboriginal children's health and wellbeing. Many Aboriginal children, young people and families experience cumulative risk factors and this is a challenge to the current service system, which is intended to support these children and families. These factors are discussed in detail in Chapter 12.

2.4 Evidence of risk factors in Victoria

Victoria is the second most populous state in Australia. There are an estimated 1.2 million children and young people aged 17 years and under in Victoria, compared with a national figure of almost 5.1 million (ABS 2011, tables 52 & 59). This represents 21.9 per cent of the total Victorian population and 24.1 per cent of all children aged 17 years and under in Australia.

Associated with the Victorian Child and Adolescent Outcomes Framework presented at Figure 2.2, DEECD has produced a number of *The state of Victoria's children* reports which contain data on the agreed indicators of the overall health of Victoria's children. The latest report for all Victorian children and young people relating to 2010, concluded that:

- The overwhelming majority of Victorian children are safe, well, secure and are able to pursue their potential and that Victorian children fare well in comparison with the rest of Australian children on measures such as health, socioeconomic status and financial hardship; and
- 90 per cent of children live in families with healthy family functioning, characterised by family members discussing feelings, making joint decisions and supporting, trusting and accepting each other (DEECD in press, p. 15).

Despite these generally positive statistics, *The state of Victoria's children* reports and other data analysed in this section point to the presence of factors that can be associated with or lead to children and young people becoming vulnerable.

The Inquiry notes that some of the data presented in this section, such as the figures on families given above, is collected from qualitative surveys. The Inquiry notes that this data only represents the information that people were willing to provide, and should be considered an estimate due to the methodological limitations of self-reporting. As such, the prevalence of risk factors in the Victorian community (discussed below) is probably an under-representation of the true scale of these factors.

2.4.1 Evidence of risk factors arising from a parent, family or caregiver

History of family violence

It is difficult to gain an accurate measure of the true prevalence of family violence in the community, as incidents have to be reported to police or another authority in order to be counted. Despite this the official statistics are still alarming:There were 35,720 recorded family violence incidents in Victoria during 2009-10 (some of these incidents may have involved the same families): and

- In 40 per cent of these cases children aged under 16 witnessed the violence. The number of children listed as aggrieved family members (victims) in family violence intervention orders has increased dramatically over the past five years (DEECD in press, p. 1,516).

In approximately 65 per cent of Victorian family violence incidents recorded by police between 1999-2000 and 2005-06, at least one child was recorded as present during the incident (DEECD 2009c, p. 127). In the most recent ABS *Personal Safety Survey* (conducted in 2005), 57 per cent of women who experienced violence by a current partner reported having children in their care at some time during the relationship, and 34 per cent said that these children had witnessed violence (ABS 2006c). These figures demonstrate the significance of the relationship between family violence and the need to protect children.

Pregnant women have been identified as a group at greater risk of experiencing family violence (Phillips & Park 2006). In a study of 400 pregnant women from a diverse range of backgrounds attending The Royal Women's Hospital antenatal clinic in Melbourne, it was found that 20 per cent of women reported experiencing violence during their pregnancy and that they did not disclose this to their health care professionals (Walsh 2008).

Alcohol and other substance misuse

Alcohol

Parental/caregiver alcohol misuse or abuse is a proven risk factor that may cause a child or young person to become vulnerable. *The state of Victoria's children 2010* report states that:

- One in 10 Victorian parents with dependent children consume alcohol at levels that are risky (DEECD in press, p. 232).

Alcohol misuse also contributes to the likelihood of family violence and is a risk factor for child abuse and neglect. A survey presented in a paper by the Alcohol Education and Rehabilitation (AER) Foundation (Laslett et al. 2010) shows evidence of the harm of alcohol in the family. The results show that 16 per cent of Australians have been affected by the drinking of someone they live with. Five per cent of the sample reported that children they live with or have parental responsibility for have been affected by another's drinking (p. xviii). Parent or caregiver drinking may affect children along a spectrum of severity, from inability to take a child to a morning sports match due to a hangover, to the other end of the spectrum where a parent may not be able to adequately feed or clothe a child because of their drinking (Laslett et al. 2010, p. 95).

Research by Dawe et al. (2008), presented in the AER paper, estimated that:

- 13.2 per cent or 451,621 children aged 12 years or under are at risk of exposure to binge drinking by at least one adult in Australian households (Laslett et al. 2010, p. 98).

However, the paper points out that this is the upper limit of children who may experience negative effects because it cannot be assumed that all heavy drinkers may cause harm to their children.

In a study of parents in treatment for their alcohol and drug dependencies, parents reported that during times of alcohol or drug use they were more irritable, intolerant or impatient towards their children, and that they were less responsive to their children's needs and let go of routines, including getting their children to school (Laslett et al. 2010, pp. 98-99).

Drugs

National surveys on drug use and drug trends generally do not collect information on parental status, therefore an accurate estimate of the number of children living in households with substance misuse is difficult to obtain. Despite this, a study reviewed various data sets to provide some indication of the prevalence of drug use among parents. The results found that just over 2.3 per cent of children aged 12 years and under were living in a household containing at least one daily cannabis user and 0.8 per cent were living with an adult who used methamphetamine (Dawe et al. 2008, p. 5). It is thought that this data under-represents the problem because data collected from household surveys may not expose the full extent of drug use in the community.

This data shows that the number of parents across Australia using drugs is quite small compared with those parents using alcohol at risky levels. However, the prevalence of drug use in child protection cases in Victoria shows why drug use is such a crucial risk factor in vulnerability. The Department of Human Services (DHS) has not collected data on the existence of substance misuse in child protection cases for some time, an issue which is discussed further in Chapter 4. However, despite the age of the data, it is notable that in the year 2000-01, 33 per cent of parents involved in substantiated cases of child abuse and neglect experienced problems with substance abuse (as distinct from alcohol abuse) (Dawe et al. 2008, p. 5).

Mental health

Poor parental mental health is a risk factor for a range of negative child and adolescent outcomes. The most recent estimates based on ABS data suggest that between 21.7 per cent and 23.5 per cent of children in Victoria (approximately 250,000 children) are living in households where a parent has a mental illness (DEECD 2009c, p. 123).

Poor mental health of parents co-existing with other risk factors, such as low family income and low levels of parent education, often leads to poor outcomes for children and young people (DEECD in press, p. 39).

Postnatal depression occurs in the months following childbirth and may impact on an infant's emotional and social development. Postnatal depression can also impact on any older children as the depression may impair the mother's ability to be involved in her children's lives. In Victoria the prevalence of postnatal depression among women surveyed in the three to nine months after birth has been measured as approximately 15 per cent, as reported by those women surveyed (DEECD 2009c, p. 123).

Parent/caregiver intellectual disability

There is no accepted definition of what constitutes an intellectual disability; however, in Australia (and most Western countries) a person with an IQ of less than 70 or 80 is deemed to have an intellectual disability (Lamont & Bromfield 2009, p. 2).

The data on parents living with an intellectual disability is not up to date. However, available data shows that parents with an intellectual disability represent a modest proportion of all parents, estimated to be in the range of 1 to 2 per cent. However, parents with an intellectual disability are substantially over-represented in child protection cases. In Victorian child protection cases first investigated in 1996-97 cases in which a parent had an intellectual disability were almost twice as likely to be substantiated, and more than three times more likely to be re-substantiated than cases where parents did not have an intellectual disability (The Allen Consulting Group 2003).

In 2007-08, parental intellectual disability was a characteristic in 12.5 per cent of cases reviewed by the Victorian Child Death Review Committee (VCDRC) (2008). This over-representation is a characteristic in other jurisdictions and internationally (Lamont & Bromfield 2009, p. 2).

It is generally acknowledged throughout the literature the number of parents in the community with an intellectual disability are increasing. Reasons for this include better opportunities for community living for people with an intellectual disability, the banning of involuntary sterilisation and anti-discrimination laws (Lamont & Bromfield 2009, p. 2).

Parental history of being neglected or abused

The research indicates that abuse and neglect of children and young people is under-reported in the community, so it is difficult to provide data on the true prevalence of victims among people who are now parents. Data from the ABS Personal Safety Survey conducted in 2005 (ABS 2006c) draws on self-reports of child physical and sexual abuse by adults based on recollections from their childhood. As this information is based on self-reports, it is considered a better estimate than looking at child protection reports for evidence of victimisation across the population. The survey found that:

- The proportion of women and men who experienced physical abuse before the age of 15 was 10 per cent and 9.4 per cent respectively; and
- Women were much more likely to have been sexually abused than men. Before the age of 15, 12 per cent of women had been sexually abused compared to 4.5 per cent of men (ABS 2006c).

Given this survey did not collect data on abuse that occurred past the age of 15, it is likely the numbers are actually much higher. In addition, this survey did not ask questions about childhood neglect experienced by survey respondents. What this data indicates is that there are significant percentages of adults in the Australian population who were subjected to either physical or sexual abuse as children. Where these adults become parents, evidence suggests that they are more likely to abuse or neglect their own children (Lamont 2010, p. 4). This does not mean that most will do so, however.

Situational stress

Access to higher income has been associated with better outcomes for children and young people; conversely, children and young people in families with limited incomes can face challenges in having their needs met. The most recent ABS Household Income and Income Distribution survey data estimated that the average level of gross household income in Victoria was $66,872 per year (ABS 2009b). Based on this data, *The state of Victoria's children 2010* report separates the data on households where income is under $60,000 and over $60,000. The report shows that the majority of children aged 12 years or under (60.2 per cent) live in families with access to sufficient economic resources (over $60,000 in annual income). Of concern, however, is the 6.1 per cent of children living in families with access to under $20,000 per year (DEECD in press, p. 33).

The state of Victoria's children 2010 report shows the proportion of parents who have high or very high levels of psychological distress by sex, annual household income, education level and employment status. The Report shows that the stand out categories where psychological distress is most prevalent are households where family income is under $20,000 (32.7 per cent of parents) and in those households where parents are unemployed (29.8 per cent of parents) (DEECD in press, p. 39).

The previous section of this chapter discussed the situational stress that can arise from being a young mother. Motherhood in teenage years is associated with an increased risk of poor social, economic and health outcomes. ABS data shows there were 1652 births to teenagers aged 15 to 19 years in Victoria in 2007. The fertility rate for teenagers aged 15 to 19 years in Victoria has fallen gradually over the past 10 years from 12.8 per 1,000 females in 1996 to 9.7 in 2006. In addition, the fertility rate for 15 to 19 year olds in Victoria is consistently lower than for the whole of Australia (DEECD 2009c, p. 56).

Interaction of parent/caregiver risk factors

The interaction and accumulation of risk factors is very important when understanding vulnerability and the risk of child abuse and neglect. The 2011 VCDRC annual report found that, of the 28 child deaths reviewed in the year April 2010 to March 2011, parental substance use presented as the most prevalent risk factor in the cases reviewed, followed by parental mental illness and family violence. The VCDRC also found a significant co-existence and interaction of the multiple parental risk factors of mental illness, family violence, substance use and intellectual disability among the families (VCDRC 2011, p. xii).

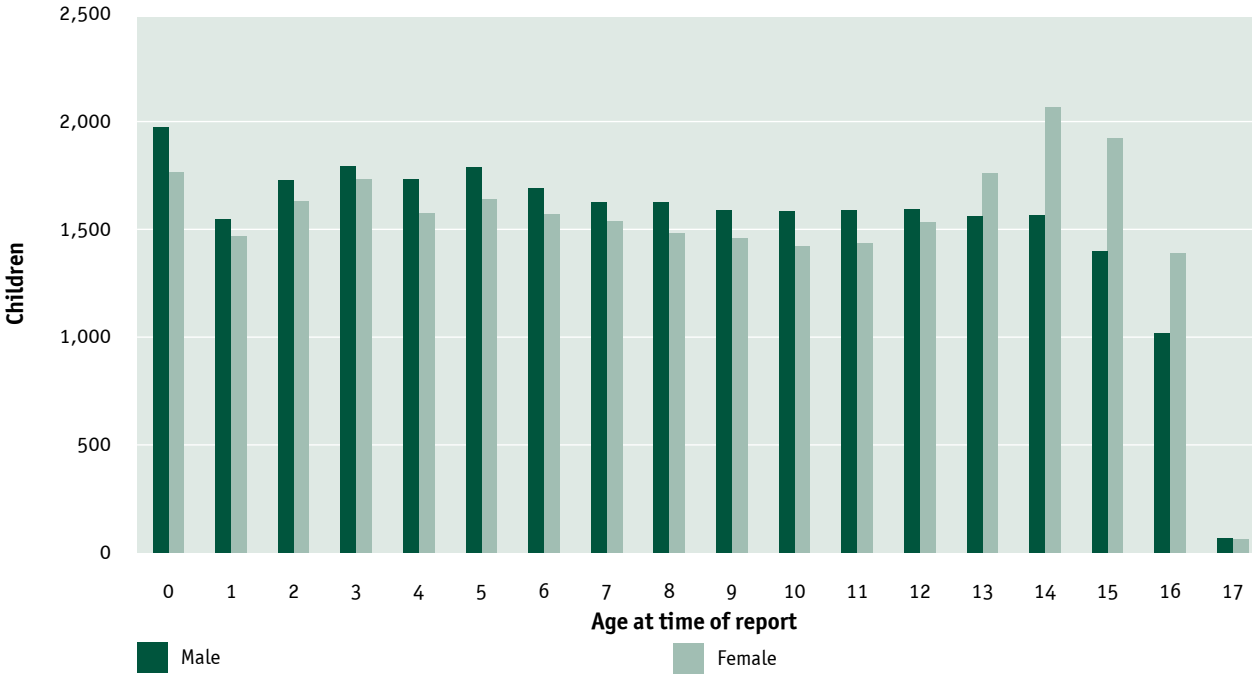
2.4.2 Evidence of risk factors arising from the child

The age and gender of the child

The Inquiry analysed the number of children in Victorian child protection reports during 2009-10 from the perspectives of age, gender and type of alleged abuse, to provide some further approximate information on the likely variations in the incidence and nature of vulnerability as reflected in alleged child abuse and neglect.

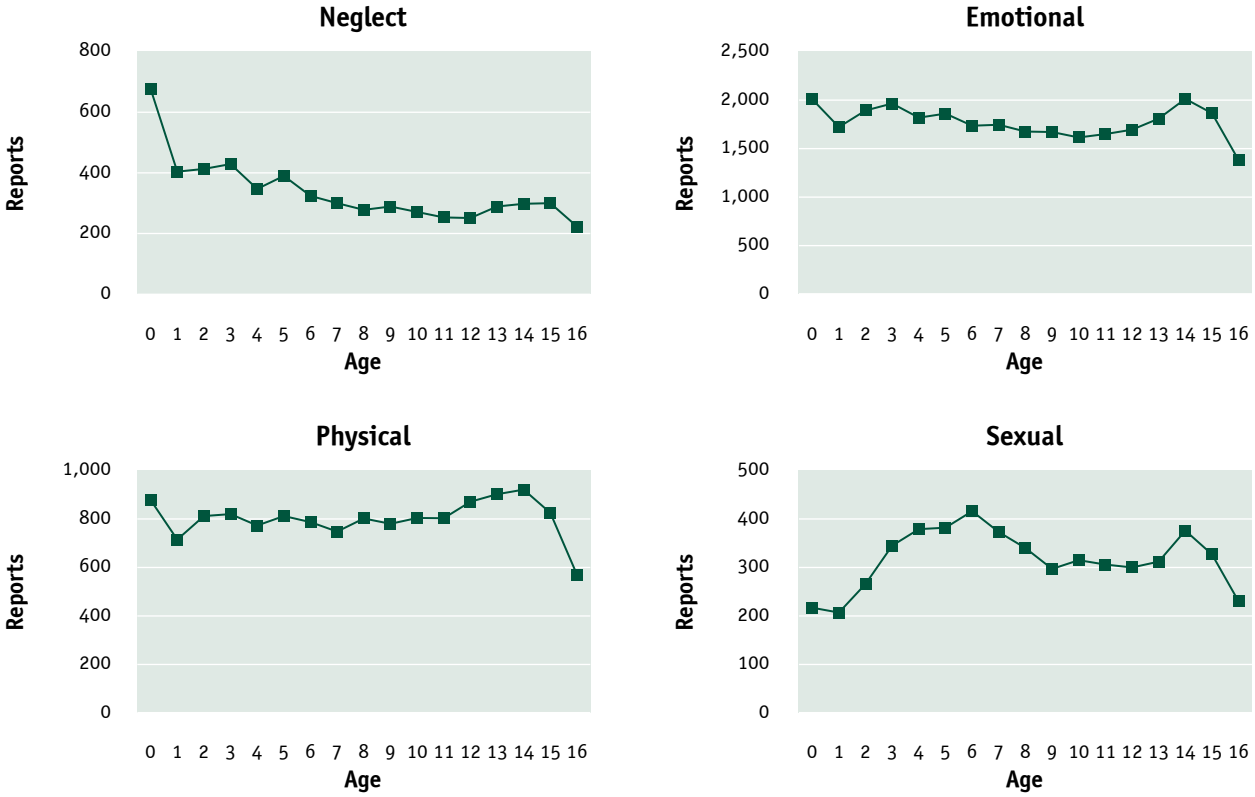
Figure 2.3 shows the age and gender of the 41,459 children who were the subject of a child protection report in 2009-10. It shows a higher number of reports for both male and female children aged under one year. Second, while the number of males and females who were the subject of a report in 2009-10 was relatively even, a slightly higher number of reports were received for male children aged 0 to 12 and then a higher number of reports for female children aged 13 to 16.

Figure 2.3 Children who were the subject of a child protection report, Victoria, 2010-11



Source: Information provided by DHS

Figure 2.4 Children who were the subject of a child protection report, by age and alleged type of harm, Victoria, 2010-11



Source: Information provided by DHS
Note: Figure shows age at time of child's first child protection report in 2010-11

Figure 2.4, shows the number of children who were the subject of a report in 2010-11, by age and by alleged type of harm. It shows that:

- Several of the alleged types of harm show a higher number of reports for infants, including physical harm, psychological harm, health or development reasons and concern for wellbeing; and
- Reports relating to sexual harm are lower for children aged under three than those aged over three.

Health and disability and development factors

The previous section discussed why health and disability problems among children and young people are a risk factor to abuse and neglect including, among other things, a lack of parent-child attachment and additional stresses on the parents.

It is difficult to provide an accurate estimate of the number of Victorian children who live with a disability due to the lack of an agreed definition of what constitutes a disability. However, data from a 2003 ABS survey on disability estimates that 7 per cent of Victorian children are living with a disability (DEECD in press, p. 32).

Children with a disability are known to be at higher risk of abuse; however, no population-based Australian studies have been conducted on these children. Two American surveys discussed in *The state of Victoria's children 2008* report indicate that children with a disability are between 1.7 and 3.4 times more likely to be maltreated than other children (DEECD 2009c, p. 85).

2.4.3 Evidence of risk factors arising from economic, community and societal factors

Social inclusion and exclusion

Community participation

Research indicates that participation by children or young people in the community has a positive effect on the individuals and the community as a whole (DEECD in press, p. 240). Common methods of participation by young people in Victoria include organised sports and arts and cultural activities. The participation rate in organised sport and/or dancing by Victorian children aged 5 to 14 years has increased from 63 per cent in 2000 to 72 per cent in 2009 (DEECD in press, p. 240). However, the report found that:

- Most Australian children who did not participate in organised sport in 2009 were from single-parent families where their parent was not employed (63 per cent of these children were not participating); or
- Were from two-parent families where both parents were unemployed (27 per cent of these children not participating) (DEECD in press, p. 241).

Perception of Safety

There is also evidence to suggest that people's perception of safety within their neighbourhood is important to their sense of belonging and involvement in their local community. Around one-fifth of Victoria's young people report living in neighbourhoods where there is crime (including drugs, other crimes or fights). The largest percentages of these neighbourhoods were in the most socioeconomically disadvantaged areas (DEECD in press, p. 242).

Local facilities

The quality, quantity and diversity of facilities in the local neighbourhood are also important to outcomes for children, young people and their families. This includes access to recreation, transport, employment and educational and health facilities. Under half of Victoria's young people (48.3 per cent) perceive their neighbourhoods to have good recreational facilities. About two-thirds of Victorian children (68.6 per cent) and young people (73.4 per cent) live in neighbourhoods with close and affordable public transport. However, young people living in regional Victoria and those living in socioeconomically disadvantaged areas are more likely to report having difficulty accessing public transport in their neighbourhoods (DEECD in press, p. 242).

Social exclusion

Families referred to the statutory child protection service are commonly living within a broad context of isolation and socioeconomic disadvantage. The Social Exclusion Unit in the UK describes social exclusion as manifesting through multidimensional and interlinked problems – primarily poverty, but can also include unemployment, poor housing or homelessness, crime, substance addiction, teenage pregnancy, victimisation, poor education or job skills, poor health, lack of social capital and family dysfunction (Social Exclusion Unit, in Bromfield et al. 2010, p. 13). A 2007 study found that:

- The characteristics of the socially excluded mirror many of the common risk factors for child abuse and neglect; and
- The majority of families involved with the statutory child protection service are socially excluded (Bromfield et al. 2010, p. 13).

Families accessing family support services often experience multiple risk factors and are socially excluded. Since the introduction of Child FIRST in Victoria in 2005, there has been a steady increase in the number of cases and children involved in the program, reaching a total of 29,000 cases and 63,000 children in 2009-10. Estimates from 2009 indicate that approximately 65 per cent of families using Victorian Government-funded early parenting assessment and skills development services have four or more risk factors, including mental illness, family violence, substance use, being teenage mothers, financial stress, and parental disability (DEECD in press, p. 244).

Social norms and values

The social norms of a particular community have a bearing on the treatment of children. While on the whole the Victorian community has become less accepting of, for instance, family violence, there are some communities and subcultures where this behaviour is accepted as the norm. This is a significant risk factor to vulnerability in children and young people.

Negative attitudes towards women are more prevalent among children who witness or are subjected to violence (Morgan & Chadwick 2009, p. 6). There is a greater risk of violence against women in communities where the following attitudes or norms exist:

- Traditional macho constructions of masculinity;
- Notions that men are primary wage earners and the head of the household whereas a woman's place is in the home;
- Standards that facilitate peer pressure to confirm to these notions of masculinity; and
- Standards encouraging excessive consumption of alcohol (Morgan & Chadwick 2009, p. 6).

Just as negative attitudes towards women and witnessing of family violence may create a social norm for a particular individual or a community, so to do social norms have an impact on alcohol consumption. Parental alcohol use has been found to increase the likelihood that adolescents would also consume alcohol (Hayes et al. 2004, p. 49). The Australian Temperament Project asked parents to report their tolerance of their adolescents' alcohol use, and compared these to adolescents' reports of alcohol consumption. This data showed that adolescents who drank alcohol were significantly more likely to have parents who allowed them to drink at home. The great majority (93.5 per cent) of the adolescents who reported drinking alcohol at very high levels were allowed to drink at home (Hayes et al. 2004, p. 42).

Prevailing cultural norms regarding adolescent alcohol use also appear to exert a powerful influence. Young Australians perceive there to be considerable acceptance among parents and the broader community of youth alcohol use, and there appears to be powerful normative pressure towards youth alcohol use (Hayes et al. 2004, p. 54).

The social norms created around alcohol consumption are important when looking at vulnerability. Alcohol is both a risk factor on its own and a factor in other substance abuse and family violence. In socially marginalised communities where the prevalence of risk factors is intergenerational, the social norms created around such things as alcohol consumption and family violence can create a cycle of vulnerability.

Locational disadvantage and vulnerability

There are locational aspects to many of the factors of vulnerability presented above, with the prevalence of these factors influenced by the socioeconomic circumstances or remoteness of the communities that children live in. Communities further influence the outcomes of vulnerable children and young people through social support, access to local services and amenities, and the opportunity to participate in the broader community. Young people in disadvantaged areas report having less access to community facilities or opportunities to engage with their community (DEECD in press, p. 16).

As discussed in section 2.2 there are multiple risk factors that contribute to negative outcomes for children. Research sponsored by Jesuit Social Services, and undertaken by Professor Tony Vinson, titled Dropping off the edge (Jesuit Social Services submission) focused extensively on the issue of locational social disadvantage. The research uses 25 manifestations of social disadvantage in order to build a picture of the geographic distribution of disadvantage. In line with the findings of Durlak (1998), Vinson found that the indicators of disadvantage inter-correlated with each other – if an area has a 'high' score on one factor (limited formal education, for example) it tends to have high scores on several other factors such as low income and long-term unemployment.

The pattern and distribution of risk factors associated with child abuse and neglect was described in the Jesuit Social Services' submission:

Child maltreatment distribution tends to be linked with a particular group of indicators that more than others help to define the outstandingly disadvantaged areas throughout Australia. These important indicators were:

- A local population's limited education and limited computer access;
- Low individual and family income;
- Limited work credentials;
- Poor health and disabilities; and
- Engagement in crime.

Where these attributes were presented in a concentrated form, then there, too, confirmed child maltreatment was prevalent. (Jesuit Social Services submission, p. 4).

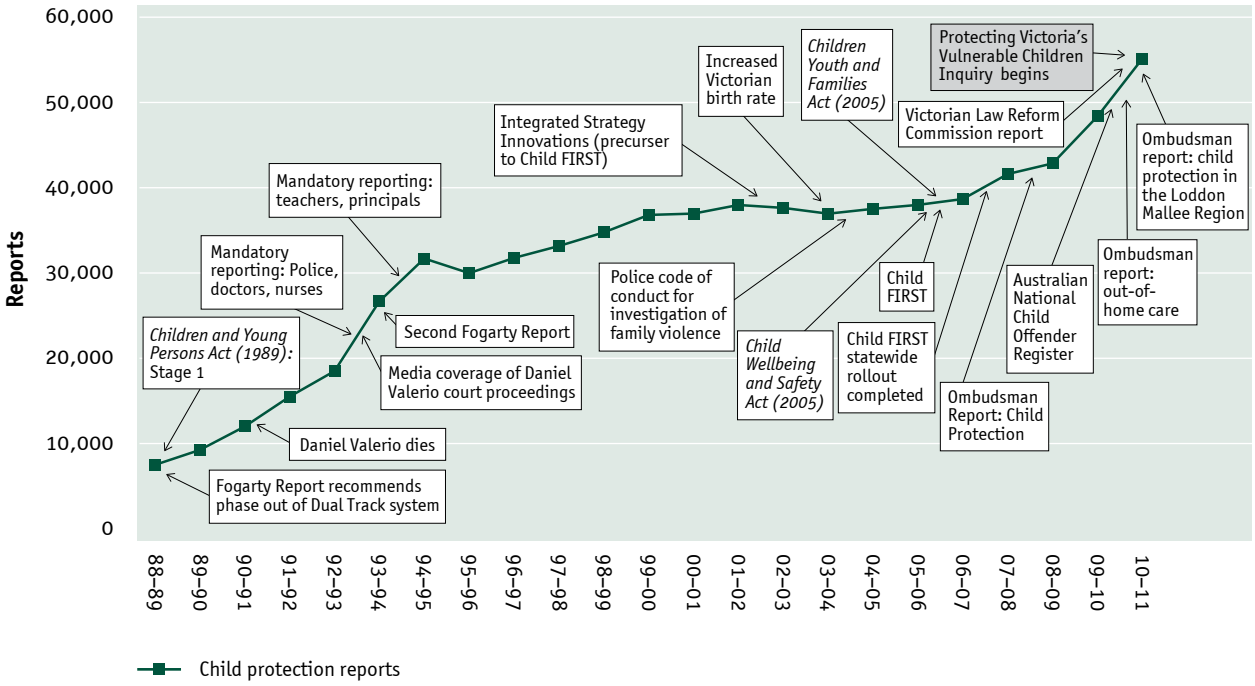
Professor Vinson collected data on 726 postcode areas of Victoria. Each of the 'top 40' (worst) rank positions were analysed, 1,000 positions in total (25 indicators of social disadvantage x 40 top (worst) ranked localities) and representing the 5 per cent most disadvantaged places on each indicator.

The results of this research provides evidence of the high degree of concentration of the Victoria's social disadvantage within a limited number of localities:

- 1.5 per cent (11) of postcode areas accounted for 13.7 per cent of the top 40 positions, a ninefold over-representation;
- 6.2 per cent (45) of postcode areas accounted for 30.3 per cent of the top 40 positions, an almost fivefold over-representation; and
- 10 per cent (72) of postcode areas accounted for 41.6 per cent of the top 40 positions, a fourfold over-representation (Jesuit Social Services submission, p. 31).

Identification of areas where risk factors for child abuse and neglect are concentrated enables government action to be focused more effectively. It provides compelling evidence that area-based services and strategies are necessary for the government to reduce the incidence and impact of child abuse and neglect. This is a theme in the Inquiry's deliberations and recommendations.

Figure 2.5 Child protection reports and significant events, Victoria, 1989 to 2010



Source: Information provided by DHS

2.5 Child protection reports

In Victoria, reports of suspected child abuse or neglect are made to DHS which then assesses the reports and intervenes accordingly. Chapter 3 discusses in detail the legal framework for reporting child abuse and neglect in Victoria, while Chapter 9 discusses DHS' response to these reports.

In Victoria, like other states and territories, there are a large number of reports to child protection of suspected child abuse or neglect. Most of those reports are not substantiated and not all substantiated reports lead to intervention. The number of reports in Victoria has been increasing substantially in recent years.

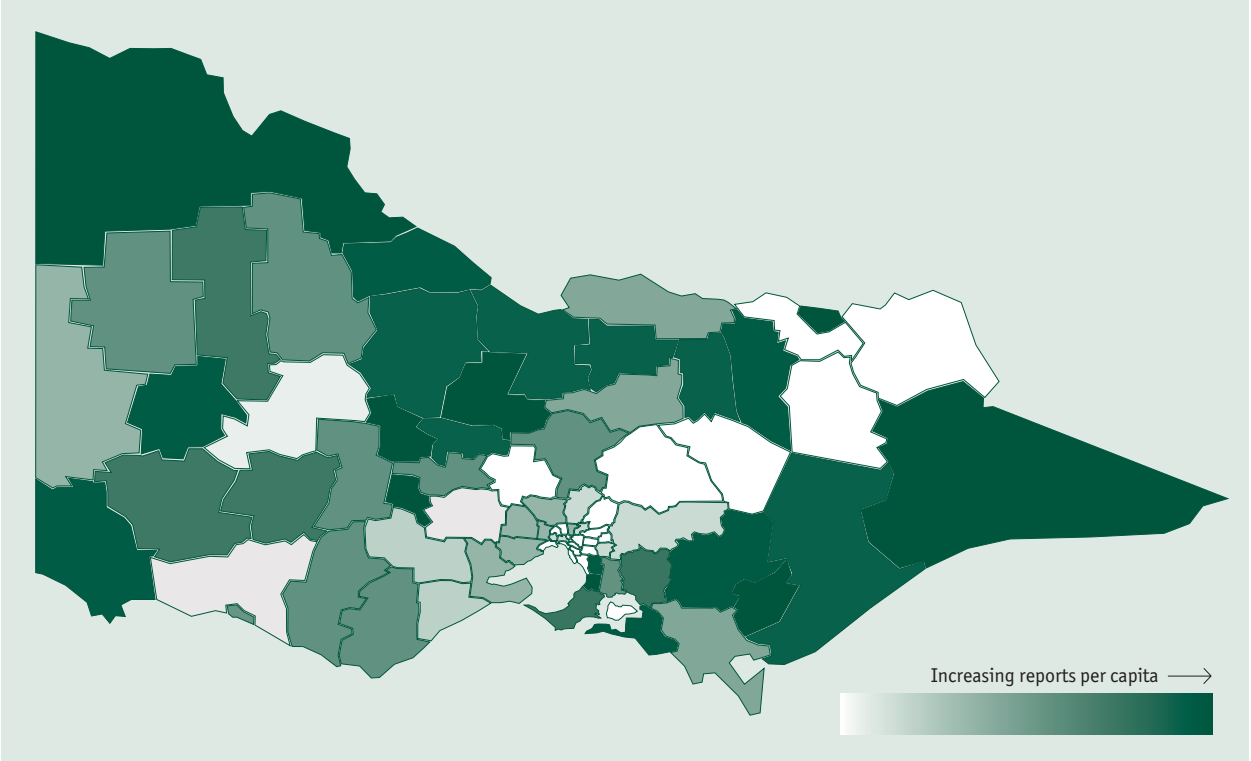
It is not possible to deduce from these reports the real rate of child abuse or neglect because it is generally assumed that fewer cases are reported than are occurring. Increased child protection reports can reflect: mandatory reporting requirements; an increased awareness of signs of abuse; a greater willingness to report; or wider definitions of abuse or neglect.

In the process of the Inquiry, DHS provided the Inquiry with de-identified unit data for all child protection reports in 2009-10. This data shows that, in 2009-10, 48,105 reports of suspected child abuse or neglect were made to DHS, involving around 37,500 children. Figures released more recently show the number of reports for 2010-11 increased to 55,000. The number of child protection reports in Victoria has grown substantially over the past two decades, over which time there have been significant changes to mandatory reporting requirements and the Victoria's system for protecting children more generally.

Figure 2.5 maps the growth of child protection reports against key developments and events that have impacted on the statutory child protection service.

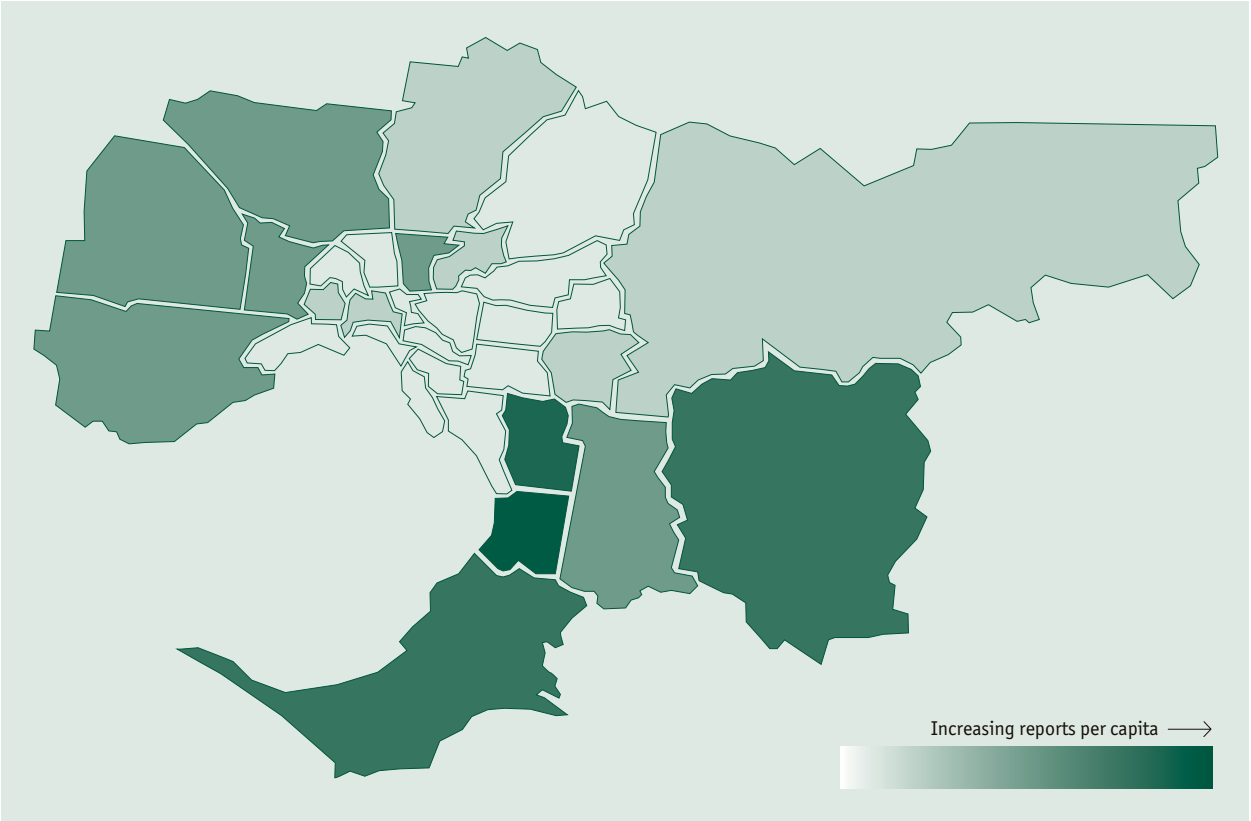
Despite these legislative and other changes that have affected the number of reports to statutory child protection, the Inquiry is concerned at the growing number of reports, given this is a reflection of significant community concern for vulnerable children and young people. Of particular note is the geographic concentration of child protection reports.

Figure 2.6 Child protection reports per capita, by local government area, Victoria, 2010–11



Source: Analysis of data provided by DHS

Figure 2.7 Child protection reports per capita, by local government area, Metropolitan Melbourne, 2010–11



Source: Analysis of data provided by DHS

2.5.1 Regional variation in child protection reports

The geographic distribution of the 2009-10 child protection reports for Victoria and metropolitan Melbourne are shown in Figures 2.6 and 2.7. Overall the rate of child protection reports is higher in regional Victoria than it is for metropolitan Melbourne but with significant variations. In regional Victoria the rate of reports is generally higher in the east and north-west of the state and some local government areas (LGAs) in central Victoria, but lower in the south-west (see Figure 2.6).

While the rate of child protection reports for metropolitan Melbourne is generally lower than regional Victoria, there are still significant variations in reports across the metropolitan area. Generally LGAs in the inner to middle east and south-east of Melbourne have lower rates of child protection reports than LGAs in the west or outer areas (see Figure 2.7).

The Inquiry analysed the number of child protection reports per capita by LGA, with another key measure of children's welfare, the Australian Early Development Index (AEDI), and also with the ABS Socioeconomic Indexes for Areas (SEIFA). The Inquiry found a strong correlation between reports per-capita and both of these measures. In areas where there are more child protection reports there are a greater proportion of children presenting as vulnerable in one or more of the AEDI domains. Similarly, child protection reports per-capita are higher in areas of high socioeconomic disadvantage, as measured by the SEIFA.

Finding 1

There are significant regional variations in the number reports of suspected child abuse and neglect per capita across the state to child protection.

There is a strong correlation between higher rates of child protection reports and children who are vulnerable in one or more Australian Early Development Index domains and in areas of high socioeconomic disadvantage.

2.5.2 Projected growth in child protection reports

In 2003 DHS estimated that 19.3 per cent of children born in 2003 would be the subject of a child protection report at some time before reaching the age of 18 – equivalent to about one in five children (Hyndman 2004, p. 3). The estimate was based on the number of children who were first the subject of a child protection report in 2002-03.

In 2002-03 there were 37,635 child protection reports, compared with 48,105 in 2009-10, a 28 per cent increase. More than half of the children subject to a child protection report in 2009-10 had previously been the subject of a report. Using the methodology adopted in 2003, the 2009-10 child protection data on the age of children and young people who were the subject of a report for the first time and relevant Victorian population data by age, estimates that were prepared for the Inquiry found that the likelihood of a child born in 2011 being the subject of at least one child protection report at some point before they turn 18 is 23.6 per cent – equivalent to almost one in four.

The Inquiry considered the implications of this estimate and the implications for Victoria. If nothing changes in the current arrangements to reduce vulnerability, then the fate of a significant number of children will be determined by the effectiveness of the response to a report to the statutory child protection service. The demand pressures placed on statutory child protection services will be unsustainable, making it difficult to identify and respond to children at high risk of serious abuse or neglect. The Inquiry considers throughout this Report that alternative approaches will be more appropriate and effective. Better early intervention strategies can assist to address this vulnerability before it manifests in the levels of abuse and neglect implicit in these estimates.

Finding 2

At the current rate of reporting of suspected child abuse and neglect, almost one in four children born in 2011 will be the subject of at least one child protection report before they turn 18.

Estimates were also prepared for the Inquiry of the likelihood of children being the subject of a child protection report before they turn 18, by local government area (LGA). These estimates show substantial variations in the likelihood of a child being the subject of a child protection report depending on the area that they live in. While the overall estimate for the state shows that 23.6 per cent of children will be the subject of a child protection report by the time they reach 18 years of age, there are some LGAs projected having rates of report of less than 10 per cent, while several have projected rates higher than 50 per cent. This is further evidence that area-based solutions by government, including significant increases in effort in certain locations, will be required to address the needs of vulnerable children and young people.

A substantiation of a report to DHS is a finding of abuse or neglect or a significant risk of abuse or neglect. Abuse or neglect has a significant impact on the child or young person, as well as a significant cost to the individual, society and the economy.

2.6 The impact and costs of child abuse and neglect

Australian-based research has provided evidence that early childhood abuse and neglect can lead to social disadvantage and exclusion which persists in adult life (Frederick & Goddard 2007). These experiences in childhood can be considered to begin a negative chain of events, which can lead to decreased opportunity to participate successfully in many areas of life – including education and employment – as well as increasing prevalence of physical and mental health problems and poverty (Seth-Purdie 2000, in Frederick & Goddard 2007, p. 332).

2.6.1 The impact of abuse and neglect

Chapter 8 discusses the effect of negative childhood experiences on brain development. Research compiled by Shonkoff and Phillips (2000) in their co-edited book titled *From neurons to neighbourhoods* indicates that human development is the result of an interaction of nature (biological factors) and nurture (experience factors). While a bad childhood does not necessarily lead to poor brain development, it is a significant risk. The Inquiry notes that effective early interventions can reduce risks and improve the developmental outcomes of young children.

As outlined in many of the submissions to the Inquiry and at Public Sittings, child abuse and neglect can result in major, devastating and long-lasting impacts on individuals. By only focusing on possible long-term effects it is impossible to fully capture and represent the immediate pain and suffering experienced by the children and young people who are abused and neglected. The available research indicates child abuse and neglect are associated with many adverse outcomes for the people concerned and for society more broadly. Factors associated with abuse and neglect in childhood include: poor health; poor social functioning and participation in society; poor educational attainment and labour market outcomes; homelessness; delinquency and crime; adult victimisation and early death. These outcomes have social and economic costs. The US Center for Disease Control published findings of a study that showed a direct link between child abuse and neglect and alcoholism and alcohol abuse; depression, and attempts of suicide (Middlebrooks & Audage 2008, pp. 5-6).

2.6.2 Lifetime costs of Victorian abuse and neglect

In 2008 Access Economics prepared a report for the Australian Childhood Foundation and Child Abuse Prevention Research at Monash University on the social and economic costs of child abuse in Australia. To assist the Inquiry's assessment of the lifetime consequences of the current levels of child abuse and neglect in Victoria, Deloitte Access Economics was engaged to prepare an estimate for Victoria using the methodology developed for the initial study and, where available, Victorian specific data. The box gives more detail on the methodology employed.

The costs listed in Table 2.1 show the 'incidence' costs, which are the total lifetime costs for first-time child abuse and neglect that occurred in Victoria in 2009-10 (in 2009-10 dollars). The incidence costs represent the impact of child abuse and neglect on individuals. For each cost the 'lower bound' and 'best estimate' are provided (both are conservative). Table 2.1 shows that the total lifetime financial costs of child abuse and neglect that occurred in Victoria for the first time in 2009-10 is between $1.6 and $1.9 billion. Note that there is no difference between the lower bound and best estimate for some of the incidence costs. This is because those costs are fixed. (See box for details on the categories of lifetime costs).

Methodology used to assess lifetime costs of child abuse and neglect

In line with the initial national level study, Deloitte Access Economics prepared the estimates of the cost of abuse and neglect in Victoria on two bases using the method in Taylor et al. (2008):

- The first of these is the 'incidence' method – the incidence of child abuse represents the number of children abused for the first time in 2009-10. The incidence costs measure the total associated social and economic costs of abuse over each abused person's lifetime (in 2009-10 dollars); and
- The second is the 'prevalence' method – the prevalence of child abuse is an annual measure, representing the number of children abused in 2009-10 – whether for the first time or not. The prevalence costs measure the associated costs of abuse or neglect which occurred in 2009-10.

Deloitte Access Economics prepared these estimates based on two assumptions as to the level of child abuse and neglect:

- The lower assumption – termed the 'lower bound' estimate – is based on recorded substantiated cases of child abuse and neglect in Victoria in 2009-10; and
- The second assumption – termed the best estimate – was developed using the results of an ABS Personal Safety Survey (2006c) to address the issue of under-reporting of child abuse and neglect. The best estimate of incidence was calculated by factoring up the lower bound incidence estimates for the difference between the substantiation rate and the ABS survey estimate of one year of prevalence. This estimate is also conservative because respondents were only asked about physical and sexual assault (not emotional, psychological abuse, neglect or witnessing violence), and the sample excluded people who died as a result of their abuse, and also excluded people living in institutions such as prisons or psychiatric hospitals (Deloitte Access Economics 2011, p. 27). Moreover, the ABS collected data from adults whose childhood experiences are not necessarily a sound indicator of the current prevalence of child abuse and neglect.

Table 2.1 Estimated incidence costs of child abuse and neglect, Victoria, 2009-10

Incidence	Units	Lower bound	Best estimate
	Number of children	5,390	32,850
Health system	($'000)	29,781	187,660
Additional education	($'000)	6,372	38,693
Productivity losses – lower employment	($'000)	11,015	67,150
Productivity losses – premature death*	($'000)	37,084	37,084
Child protection, out-of-home care, intensive family support and Child Safety Commissioner	($'000)	1,032,141	1,032,141
Public housing	($'000)	25,300	25,300
Supported Accommodation Assistance Program	($'000)	11,978	11,978
Crime, courts and victim support	($'000)	74,443	74,443
Second-generation crime	($'000)	260	1,585
Deadweight losses**	($'000)	351,245	411,392
Total financial costs	**($'000)**	**1,579,619**	**1,887,428**

Source: Deloitte Access Economics 2011, p. 11.

* The costs associated with premature death are the same for the lower bound and the best estimate. This is not because the cost of premature death associated with child abuse and neglect is fixed, it is because only one methodology was used to calculate the number of deaths that may be associated with child abuse and neglect.

** Deadweight losses are costs associated with additional welfare payments and government expenditure associated with child abuse. While welfare payments are not in themselves economic costs (they are transfer payments), they are associated with efficiency losses (or to use economic terminology – deadweight losses). Deadweight losses reflect the resources required to administer the taxation and welfare systems, the associated costs of compliance activities and the behavioural distortions resulting from incentives associated with taxation and welfare.

Lifetime costs of child abuse and neglect

(For each cost estimate, the 'lower bound' and 'best estimate' are provided to inform the broad range of impacts).

Health system costs

The lifetime health system costs of abuse and neglect that occurred for the first time in 2009-10 were between $29.8 million and $187.7 million. The Australian Government incurs the greatest share of the health system costs of child abuse and neglect, followed by the Victorian Government (Deloitte Access Economics 2011, p. 39).

Additional education costs

The lifetime costs of additional programs required to assist children who were abused or neglected for the first time in 2009-10 were between $6.4 million and $38.7 million. The Victorian Government incurs the greatest share of these costs (Deloitte Access Economics 2011, p. 40).

Productivity losses

Lifetime productivity losses due to child abuse and neglect that occurred for the first time in 2009-10 were in the following areas:

- Lower employment – children in out-of-home care are less likely than other children of their age to be employed and if they are employed, they are likely to receive lower weekly earnings on average. These costs over the lifetime for those whose abuse or neglect occurred for the first time in 2009-10 are between $11 million and $67 million.
- Premature death – around $37 million in productivity losses occurred because of premature death associated with child abuse and neglect that occurred for the first time in 2009-10 (Deloitte Access Economics 2011, p. 40).

Child protection and care, housing and Supported Accommodation Assistance Program

The estimated cost to the Victorian Government of child protection and out-of-home care incurred because of child abuse and neglect that occurred for the first time in 2009-10 is just over $1 billion. This cost is based on an average time in out-of-home care of 3.5 years.

Children leaving out-of-home care are substantially more likely to use public housing than the average population. Assuming these children remain in public housing for seven years, the cost to the Victorian Government is $25.3 million.

Supported Accommodation and Assistance Program funding where the main reason for seeking assistance was family violence, sexual abuse and physical/emotional abuse, and where there were support periods provided to children aged 0-17 years, cost around $12 million (Deloitte Access Economics 2011, p. 42).

Courts and crime

The lifetime costs to the justice system of abuse and neglect that occurred for the first time in 2009-10 were $74.4 million. These costs are borne by the Victorian Government. This excludes the association between child abuse and criminal activity later in life (Deloitte Access Economics 2011, p. 41).

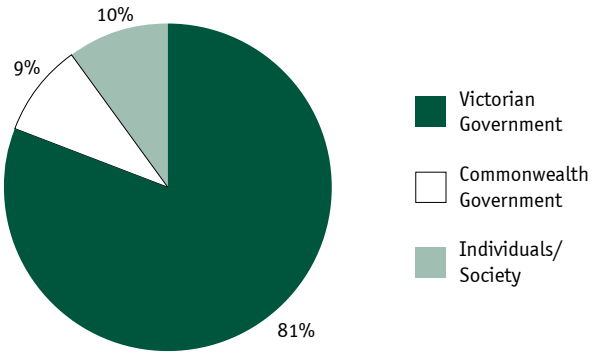
Second-generation crime refers to criminal activity later in life by adults who were abused as children. The lifetime cost of second-generation crime related to abuse that occurred for the first time in 2009-10 is between $260,000 and $1.6 million (Deloitte Access Economics 2011, p. 41).

Deadweight losses

Efficiency losses associated with taxes and transfer payments arising because of abuse or neglect that occurred for the first time in 2009-10 are between $351.2 million and $411.4 million (Deloitte Access Economics 2011, p. 42).

Figure 2.8 shows the distribution of the financial costs of abuse and neglect between the Commonwealth, the Victorian Government and individuals and society. Figure 2.8 illustrates that the Victorian Government bears the overwhelming majority of the financial costs.

Figure 2.8 Distribution of the financial costs of abuse and neglect, Victoria, 2009–10



Source: Deloitte Access Economics 2011, p. 12

2.6.3 Cost of abuse and neglect per person

To give an indication of the per person cost of abuse and neglect, Table 2.2 shows the total lifetime incidence cost of abuse and neglect that occurred for the first time in 2009-10, per person. It should be noted that in this case the lower bound figure is more than the figure for the best estimate. This is because there are considerably more children affected under the best estimate, therefore, the costs (which are not considerably different to the same degree due to some of the costs being fixed), when divided by the number of children, gives a smaller figure per person.

Table 2.2 Estimated lifetime financial (incidence) costs of child abuse and neglect, per person, Victoria, 2009-10

Incidence	Units	Lower bound	Best estimate
	Number of children	5,390	32,850
Total financial costs (same seven categories as Table 2.1)	($'000)	1,579,619	1,887,428
Lifetime financial costs per person	($'000)	293	57

Source: Deloitte Access Economics 2011, p. 11

Table 2.2 shows that based on a conservative estimate of the abuse and neglect that occurred for the first time in 2009-10, the financial cost of that abuse and neglect is somewhere in the order of $293,000 per person over the course of their life. Even at a figure of $57,000 this is a significant cost per person.

2.6.4 Burden of disease

The Deloitte Access Economics report also makes an estimate of the non-financial cost or loss of wellbeing resulting from child abuse and neglect – the 'burden of disease'. These costs are measured in 'disability adjusted life years' (DALYs) which represent the years of life lost through premature death and healthy life lost due to abuse or neglect. Table 2.3 shows the DALYs (lost) by age based on the same incidence.

Table 2.3 Estimated burden of disease impacts for incidence of child abuse and neglect, Victoria, 2009–10

Age	Lower bound	Best estimate
0–4	130	160
5–14	70	80
15–24	330	1,780
25–34	230	1,630
35–44	260	1,870
45–54	200	1,400
55–64	70	520
65–74	20	110
75–84	10	60
85+	10	30
Total	**1,315**	**7,640**

NB: Numbers have been rounded and may not add to the totals

Source: Deloitte Access Economics 2011, p. 43

As a point of comparison with the previous financial costs – noting these monetary values cannot be added to the financial costs – the lower bound value of the burden of disease is $210 million and the best estimate is $1.2 billion (Deloitte Access Economics 2011, p. 43). This demonstrates that aside from the personal costs, these years of life lost due to abuse and neglect results in a massive cost to society.

2.7 Conclusion

A number of important findings and implications emerge from the available information and research on vulnerability and risk factors, and the incidence and cost of child abuse and neglect. In particular, in considering the appropriate policy and service responses to the issue of child abuse and neglect, it is important to note:

- Vulnerability is unpredictable and is not static – a child, young person or family may be vulnerable at different stages of their life depending on changing family circumstances and a child's developmental needs;
- Vulnerability appears to be concentrated in particular geographic locations where there is also socioeconomic disadvantage;
- Factors that are associated with and increase the likelihood of child abuse and neglect are many and varied, reflect a broader set of health, social and economic issues and interact with each other;There is not a one to one relationship between vulnerability and the incidence of abuse and neglect – as evidenced by risk factors – and the incidence of child abuse and neglect. For example, being poor is a risk factor to vulnerability but it does not necessarily increase the risk of abuse and neglect;
- Factors that impact on vulnerability may stem from factors relating to a parent, family or caregiver, the child or young person or from the community; and
- Factors that increase the risk of vulnerability impact with a greater or lesser extent depending on children's age, socioeconomic status and geographical location.

The estimates shown in this chapter of one in four children born in 2011 being the subject of at least one child protection report before age 18 is significant. This illustrates the scale of community concern about vulnerable children. These estimates are a very strong argument for enhanced preventative effort and early intervention.

More generally, the absence of direct cause and effect, differential impacts across socioeconomic groups and locations and significant lifetime costs needs to be understood and reflected in the overall approach to protecting Victoria's vulnerable children.

Child abuse and neglect is a very visible manifestation of vulnerability. As indicated by the Deloitte Access Economics estimates, the economic and social costs of child abuse and neglect are significant, particularly to the Victorian Government. The objective of protecting Victoria's vulnerable children from abuse and neglect needs to be considered both in terms of the performance of the system that responds to allegations of child abuse and the broader systems that intervene to support vulnerable children and families. This will ensure children and young people have the opportunity to grow and develop safe from harm.

Part 2: Victoria's current system and performance

Chapter 3:
Victoria's current system

Chapter 3: Victoria's current system

Key points

- The approaches adopted by governments to child protection issues reflect a wide range of historical, social, cultural and environmental factors.
- Victoria's approach, which is in line with other Australian states and major countries such as the United Kingdom, Canada and the United States, is based on balancing two key principles:
  - the rights and responsibilities of parents to care for their children and their right to privacy; and
  - if abuse or neglect is suspected, the rights of children to protection and the responsibility of government to intervene in the 'private' setting of the family.
- This approach varies from many European countries where there is a greater emphasis on the view that children are best cared for within their family and therefore centre on family unity and working with vulnerable families in caring for children;
- Significant changes have occurred in Victoria's approach to child protection since European settlement including:
  - the view as to what constitutes child abuse and neglect has widened significantly;
  - the role of the State has changed from non-intervention in the family to one of a high level of responsibility for protecting children seen to be at risk of abuse and neglect;
  - significant changes in the pivotal and significant role played by community service organisations; and
  - a growing emphasis on linking family support services to the statutory child protection service.
- The legislation for Victoria's statutory child protection system forms part of a broader framework of laws for Victorian children and young people covering child-focused, family-focused and community-focused laws.

3.1 Introduction

Victoria's system for protecting children is a product of historical trends and changes in this area of social policy as various governments have responded to the issues at hand since the settlement of Victoria. Society's and government's understanding of what constitutes child abuse and neglect has changed over time and so in turn has governments' responses through policy and legislation. Child protection in Victoria has evolved since the 19th century, often in line with other jurisdictions; however, from the outset, community service organisations (CSOs) have played a major role.

The laws governing Victoria's child protection system forms part of a broader set of Victorian and Commonwealth laws that affect the safety and wellbeing of children and young people. These laws aim to provide a system for allowing children to live in circumstances that are as safe, stable, and as responsive to their needs as possible.

This overview chapter is therefore in two main parts. The first part (sections 3.2 to 3.4) provides the following:

- An overview of Victoria's current approach to statutory child protection in Victoria;
- A brief history of the major legislative and policy developments, focused on the period from the 1980s onwards; and
- Information on the scale and dimensions of the current system – activities and service interventions; range of organisations; and activity and resource levels.

The second part of the chapter (sections 3.5 to 3.7) provides an overview of the relevant Victorian and Commonwealth laws relating to child safety and wellbeing including their specific purposes and how they relate to each other.

3.2 Victoria's current approach to child protection

Each society has its own unique set of historical, social, cultural, environment and governance factors that influence the approach adopted to child protection issues. However, the broad approaches adopted by societies and governments to protect children from, and respond to, suspected abuse and neglect are generally described in terms of:

- What constitutes child abuse and neglect;
- The overall orientation of society and government's response to the issue;
- The specific activities undertaken and services provided; and
- The role of the legal system.

While there is broad agreement that the high level goal of all child protection systems is to protect children, the overall orientations adopted by societies and governments have tended to fall into two major groups: the child protection orientation and the family services orientation (The Allen Consulting Group 2003, p. vii).

The child protection orientation – the approach adopted in Australia, the United States (US), United Kingdom (UK) and Canada – emphasises the individual rights of parents and children. Governments recognise the rights and responsibilities of parents to care for their children and the right to privacy. If abuse or neglect is suspected, the government also recognises the rights of children to protection and the responsibility of government to intervene in the 'private' setting of the family. The primary focus is the child's best interests, which may require the early intervention of government through protective and statutory-based interventions. The potential for coercive intervention and removal of a child from his or her family by the government of the child is therefore present at an early stage of investigations and working with families.

The family services orientation approach is adopted in a number of European countries such as Sweden, Germany and the Netherlands. It adopts the overall view that children are best cared for within their family and places the emphasis on family unity and working with vulnerable families in caring for children. Features of this orientation are the emphasis on broad-based government and community support for all families in caring for children and greater use of interventions that are voluntary rather than statutory.

The different orientations above reflect a variety of historical and cultural factors, along with the nature of the legal system. In practice, the approaches of government inevitably cut across these broad characterisations, with many jurisdictions that adopt the child protection orientation, including Victoria, broadening the range of services provided over time, particularly through formalised links to focus family services on supporting vulnerable families.

Historically, in Victoria and elsewhere in Australia, the protection and response to vulnerable children has generally been equated with the statutory child protection system as outlined in the prevailing legislative framework, currently the *Children, Youth and Families Act 2005* and the *Child Wellbeing and Safety Act 2005*. An outline of this legislation is provided in section 3.6.1.

Under the current legislative framework, the Victorian statutory child protection system covers the following activities and services:

- Receiving and responding to reports of concerns about children and young people including investigation and assessment where appropriate;
- Providing support services (directly or through referral), where harm or a risk of significant harm is identified, to strengthen the capacity of families to care safely for children;
- Initiating intervention where necessary, including applying for a protection order through the Children's Court and placing children or young people in out-of-home care to secure their safety;
- Ensuring the ongoing safety of children and young people by working with families to resolve protective concerns;
- Working with families to reunite children who were removed for safety reasons with their parents as expeditiously as possible;
- Securing permanent out-of-home care where it is determined that a child is unable to be returned to the care of his or her parents, and working with young people to identify alternative supported living arrangements where family reunification is not possible; and
- The registration and monitoring of community organisations providing protection care and accommodation, and those employed or engaged as out-of-home carers.

A distinctive characteristic of the Victorian system for caring for children when the State becomes their guardian is the significant involvement of CSOs in providing care and services for these children. Even though CSOs have been a central element of the system for protecting children in Victoria for more than 100 years, Victoria has never developed a comprehensive and well-articulated set of policies and practices for the involvement, development and independent regulation of these organisations as part of their substantial and significant role in the child protection system. The roles and regulation of CSOs are considered in Chapter 17 and Chapter 21.

3.3 The historical development of Victoria's statutory child protection system

Concerns about child welfare and safety have been a feature of Victoria since early settlement. This section focuses on the major developments since the 1980s. An overview of Victoria's history of children protection from settlement is set out in the following box.

Several key points emerge from an historical perspective on child protection in Victoria:

- The role of the State has changed from non-intervention in the family to one of a high level of responsibility for protecting children seen to be at risk of abuse and neglect;
- What constitutes child abuse and neglect has widened significantly;
- The economic and social conditions of the day affect the reasons why children enter state care;
- CSOs have played a significant and distinctive but changing role over time; and
- Statutory intervention can cause harm to children as well as protect children from harm.

The early 1980s witnessed the beginnings of major reviews and significant structural changes to Victoria's approach to child protection issues. At that time the powers to receive, investigate and take action in relation to child abuse reports were exercised by the Children's Protection Society and the Victoria Police. The Victorian Government's service involvement had generally been confined to providing services where the Children's Court had made court orders; this was done through the predecessor of the Department of Human Services (DHS).

Victoria's child protection system from European settlement to the 1990s

The history of Victoria's child protection system is relevant to understanding current policies and services. In addition, the historical background for Aboriginal children is significantly different from that of non-Aboriginal children, and Chapter 12 outlines some of the key features relating to Aboriginal children and families and their involvement in Victoria's child protection system. The following historical overview is based on several sources (Bialestock 1966; Birrell & Birrell 1966; Jaggs 1986; Scott & Swain 2002; Tierney 1963).

From the early days of European settlement in Victoria in the 19th century, children left destitute by parental death or desertion were a concern to the community. Similar to the early development of schools and hospitals in the 19th century, in Victoria child welfare was seen as the responsibility of churches and philanthropic organisations, not government.

During the economic depression of the 1890s community concern extended to children subject to abuse and neglect by parents in impoverished urban areas. This gave rise to the Victorian Society for the Prevention of Cruelty to Children (now the Children's Protection Society), which was modelled on the US and UK equivalent organisations, and which was granted limited statutory powers to investigate suspected cases of child abuse and neglect. Most of their cases involved child neglect rather than physical abuse, and by today's standards, physical abuse had to be severe before parents were prosecuted. This was because parents (and teachers) were seen to have a right to chastise children by beating them.

While child sexual abuse was a serious criminal offence, and was not unknown, few such cases came to light. Generally, because of contemporary notions of the family and the State, there was a marked reluctance on the part of governments in the 19th century to 'interfere' in the private domain of the family, or to assume financial responsibility for children whose parents were unable to care for them.

The early 20th century witnessed significant advances in the broad field of what was called child welfare, and there was a steady growth in the role of government. Notable achievements included the development of maternal and child health services, day nurseries, kindergartens, and the creation of the Children's Court.

The passing of the Children's Welfare Act 1924 led to the establishment of the Victorian Child Welfare Department, which was responsible for children found to be 'in need of care and protection' by the Magistrates' or Children's courts. It was the role of the Victorian Society for the Prevention of Cruelty to Children, and to a greater degree, the police, to investigate suspected child abuse and neglect and bring cases to court. Compared with today, the number of investigations was very low until the 1970s.

However, in the post-war period the number of children in out-of-home care was relatively high compared with today, given the smaller population of the time. For example, by the 1960s, at any point in time there was an estimated 5,000 children in Victorian children's homes, 3,000 of whom were state wards and 2,000 of whom were privately placed by their families. The reasons for private placements included parental alcohol abuse, illness and family breakdown. The modern income security system with supporting benefits for single parent families did not exist at that time. If parents failed to make payments for their child, the child often became a ward of the state. The majority of children in care were in institutions run by CSOs that received a small subsidy for each child from the government. Siblings were very often separated due to age and gender segregation.

There was significantly less use of foster care in Victoria than in other states. Research in the 1950s and 1960s by John Bowlby and others on the effects of institutional care on young children led some CSOs to move away from institutional care and develop family group homes and foster care programs. The *Social Welfare Act 1960* allowed for: the creation of rudimentary services to prevent children entering care; the professionalisation of the child welfare workforce; and the beginning of deinstitutionalisation, with children's homes being progressively closed over the next two decades.

It was many years later that state wards from the post-war period spoke collectively about their experiences of abuse and emotional deprivation while in care. In 2009 the then Prime Minister, Kevin Rudd, made an apology to the Forgotten Australians on behalf of the nation, as he had done previously to Aboriginal people who belonged to the Stolen Generations.

In the early 1960s US medical specialists using X-rays identified previously undetected fractures in young children that had been inflicted by their parents, and the term "battered baby syndrome" was coined. Research in the mid-1960s at the Royal Children's Hospital in Melbourne by the police surgeon Dr John Birrell and his paediatrician brother, Dr Robert Birrell, identified a similar group of severely physically abused young children in Australia. At the same time Dr Dora Bialestock, the

medical officer who examined children admitted to state care in Victoria, published her research on the pervasive developmental delay in infants brought into care. Public and professional awareness of child physical abuse increased markedly in the 1970s.

The 1970s was also the period in which there was growing concern being expressed by Aboriginal communities about the number of Aboriginal children in state care, and especially about those Aboriginal children in non-Aboriginal foster and adoptive families who had lost connection with their own families. This period saw the development of Aboriginal community controlled organisations such as the Victorian Aboriginal Child Care Association, which helped bring about a change in attitudes and policies towards Aboriginal children in the child welfare system.

It was not until the 1980s, after the feminist movement took up the issue of rape law reform, that child sexual abuse first came to be generally recognised as a serious social problem. Specialist counselling and advocacy services funded by the state government were created to respond to the needs of sexually abused children.

By the 1990s there was growing awareness of the serious psychological effects of children witnessing family violence, and this came to be seen as a major and common form of emotional or psychological abuse. By the early 21st century the problem of child neglect began to receive renewed attention, assisted by medical research on early brain development that demonstrated the serious and permanent effects that deprivation and cumulative harmful events can have on a young child.

3.3.1 The Carney Committee

From 1982 to 1984 a committee chaired by Dr Terry Carney (the Carney Committee) conducted a comprehensive review of the Victorian child welfare system. The report contained 343 recommendations. The principal recommendation of the Carney Committee was that all responsibility for coercive intervention should lie exclusively with the State, given the consequences of such intervention for the child's future and that the Children's Protection Society should no longer be authorised to undertake investigations into child protection matters. It further recommended that responsibility for investigation and intervention be vested in the then Community Welfare Services Department and the police under a 'dual track system'. In 1985 the Children's Protection Society ceased its statutory activities.

The Carney Committee also made a range of other high level and significant recommendations including:

- The state government should increase its financial commitment to child, family and community services;
- More services were required to support and strengthen families;
- More attention was required to school attendance and attainment issues for children in care;
- Services should be geared towards family reunification wherever possible;
- The protection of children should be a 24/7 operation;
- There should be voluntary (non-mandatory) reporting of child abuse and neglect, no central register of abuse but rather community service providers to lead information sharing where necessary; and
- Case planning, including conferences for out-of-home care, should be established.

In relation to the Children's Court, the Committee recommended that the courts be restructured by separating them into two divisions: the Family Division and Criminal Division in recognition of the differing philosophies that inform criminal and protection matters. The *Children's Court (Amendment) Act 1986* was passed to give effect to this recommendation.

In 1986, two years after the Carney Committee concluded, the government commissioned a Victorian Law Reform Commission (VLRC) *Report on Sexual Offences Against Children* as part of a general review of the law relating to sexual offences. In November 1988 the final report comprising 42 recommendations was finalised. The key recommendations in the report regarding the child protection system were:

- There should be a broad independent review of the child protection system;
- The review should provide advice on a system of child protection that will enable government and non-government agencies to work more effectively both individually and collectively;
- The review should advise on joint investigation and case management procedures between the police and community services; and
- The review should give advice in relation to the proposed central register of child abuse.

3.3.2 The Fogarty reports

Prior to receiving the final VLRC report in August 1988, the government requested Mr Justice Fogarty, as part of his appointment as the inaugural chair of the Victorian Family and Children's Services Council, to inquire into the operation of Victoria's child protection system and to advise on measures to improve its effectiveness and efficiency; this was undertaken with Ms Delys Sargeant, the Deputy Chair of the Council. An interim report in February 1989 was damning of the state of statutory child protection services in Victoria and recommended that statutory child protection should be constituted as 'a narrowly based emergency intervention service' for children at risk of harm and should not be confused with long-term welfare programs.

Other key recommendations in the Fogarty interim report were to:

- Provide specialist magistrates for the Children's Court;
- Establish a single track system conducted by the Department of Community Services and substantially changing the police role;
- Establish an after-hours service conducted by the department;
- Increase the budget for child protection services; and
- Establish a child at risk register (Fogarty & Sargeant 1989).

In 1989 the Victorian Parliament passed the *Children and Young Persons Act 1989*. The intent of this legislative framework has been summarised as:

> … designed to correct welfare practices of the 1960s and 1970s that saw children too readily removed from their parents' care and negligible emphasis placed on family preservation. The Act, hence, established conditions for the exercise of statutory authority in family life and directed that reunification be given a primary consideration for child protection (The Allen Consulting Group 2003, p. 26).

Adopting recommendations from the Carney Committee, the new Act:

- Included principles to guide decision making in the court;
- Revised the grounds for protection applications, to focus on past harm or risk of future harm to the child;
- Included the Aboriginal Child Placement Principle;
- Generally provided for children in Family Division proceedings who are mature enough to provide instructions to be directly represented;
- Created a new and flexible range of dispositional powers, ranging from minimum intervention (voluntary undertakings) to maximum intervention in the child's life (permanent care orders, where guardianship and custody are vested in the State);
- Granted powers to protective interveners to take a child immediately into safe custody for 24 hours prior to getting a court order; and
- Established the Children's Court as a specialist court, headed by a senior magistrate, albeit still connected to the Magistrates' Court.

In 1990 Victoria was the only state other than Western Australia not to have provisions for mandatory reporting of suspected child abuse. However, this changed following the murder of Daniel Valerio in September 1990. Daniel was two years and four months old when his stepfather beat him to death. In the period prior to his death, several professionals had come in contact with Daniel but failed to intervene, and there was confusion between police and the Department of Community Services as to which agency was investigating. In November 1993, following the July 1993 report of Mr Justice Fogarty referred to below, by the *Children and Young Persons (Further Amendment) Act 1993*, the Victorian Government introduced mandatory reporting of suspected serious physical or sexual abuse of children for medical practitioners, nurses and police, and later, in July 1994, for teachers and school principals. In the year following the introduction of mandatory reporting, reports of suspected child abuse and neglect increased by 38 per cent.

In July 1993 Mr Justice Fogarty completed a final report on Victoria's child protection system and the subsequent introduction of mandatory reporting. The report expressed the view that under the new Act, the Children's Court and protection workers were placing too much emphasis on the child remaining with the family and not enough on the right of the child to be protected. The report also recommended, in line with earlier recommendations by the Carney Committee, that the Children's Court be separated from the Magistrates' Court and headed by a judge of County Court status, and that appropriately qualified people be appointed directly to the court to reflect the court's specialisation and improve its reputation (Fogarty 1993).

The *Children and Young Persons (Miscellaneous Amendments) Act 1994* clarified that in making orders under the Act, the court's paramount consideration should be the 'need to protect children from harm, to protect their rights and to promote their welfare'. The recommended structure for the Children's Court was implemented with the passing of the *Children and Young Persons (Appointment of President) Act 2000*.

Given the problems and confusions of the dual track system, under which the police shared responsibility for child protection with child protection services, the system was discontinued in 1994.

3.3.3 The Child Protection Outcomes Project

The next round of major reforms to the child protection system and legislative framework stemmed from a major review initiated in 2002 by DHS. The review, known as the *Child Protection Outcomes Project*, undertook a fundamental assessment of the appropriateness of the legislative, policy and program frameworks that determine the direction and boundaries of current policy and program responses. The review was conducted in three stages: policy and evidence review; community consultation; and reform proposals. As in a number of other jurisdictions, the review represented a response to increasing demand for child protection services, which was placing pressure on the system and government funding, as well as concerns that the changing characteristics and circumstances of vulnerable children and families may require changes to the child protection system. In this context, increasing consideration was being given to formally and actively locating statutory child protection services within a broader child welfare framework.

The first stage (policy and evidence review) strongly endorsed the overriding importance of an effective emergency and statutory response to episodic cases of grave maltreatment such as severe physical and sexual abuse. However the review also pointed out that the changes in the client population since the 1989 legislation were increasingly shifting the problems to be addressed to ones of a chronic and relapsing nature. Child neglect and emotional abuse constituted two-thirds of all cases.

In summary, the review concluded:

- The statutory basis of child protection drives the process and treatment of families which was constraining the responses available and the flexibility to meet the differing needs of families, children and young people;
- The system was based on discrete episodes: notify, investigate, intervene or close. However, the high level of re-notifications and resubstantiations suggested that child abuse and neglect is not a point-in-time event and addressing the underlying issues requires sustained support; and
- Despite the concerns of those notifying, families who are at lower risk often fall outside the mandate of the legislation, with the potential risk that these issues become more chronic over time (The Allen Consulting Group 2003, p. 73).

Based on this broader view of the protection and welfare of vulnerable children, the DHS review proposed four key elements for a future approach:

- A community partnership for the protection and welfare of children supported by new infrastructure, processes and governance arrangements;
- A new model for intake, assessment and referral;
- A range of service responses that are appropriate for a wide variety of child protection concerns, problems and circumstances presented by families; and
- A focus on reducing out-of-home care where possible, but also greater permanency and stability for children in care who are not able to return to their families.

The second stage (community consultation) established that there was broad agreement on the reform directions and the critical message that 'the most effective response to support vulnerable families and protect children from harm involves an integrated, unified broad-based system, of services which aims to protect child wellbeing and protect children' (Freiberg et al. 2004, p. 1). The review's panel also recommended that intermediate or quasi-legal responses to children be expanded to enable child protection practitioners to work together with families away from the legal system and for extended periods of time (Freiberg et al. 2004, p. 38).

The third stage (policy reform) culminated with the passage of the *Children, Youth and Families Act 2005*. Significant provisions in the Act, which consolidated and up-dated the *Children and Young Persons Act 1989* and the *Community Services Act 1970*, were:

- The 'best interests principle' requiring that 'the best interests of the child must always be paramount' for all persons working under the Act and that consideration must always be given to the need to protect children from harm, to protect their rights and promote their development;
- A new focus on addressing cumulative harm, meaning that a number of small incidents of neglect, for example, constitute significant harm;

- Capacity for new alternative dispute resolution approaches;
- Creation of the category of pre-birth reports;
- Greater emphasis on stability in a child's development;
- Strengthening the participation of Aboriginal families and communities in decision making processes;
- Creation of two new types of orders – temporary assessment orders designed to strengthen DHS' investigatory powers and therapeutic treatment orders for young people aged 10 to 14 years who exhibit sexually abusive behaviours; and
- New processes for the registration and regulation of CSOs.

Statutory role for community service organisations

Importantly, the Act also formalised the broadening of the statutory child protection system to include a legislative authorised family support approach. This formal recognition of the role of family services provided the legislative basis for the introduction of the Child FIRST and Integrated Family Services initiative established within 24 sub-regions throughout the state over a three year period 2006-2007 to 2008-2009.

Under this new framework, professionals including mandated reporters and members of the public can report concerns about children directly to statutory child protection services or by referral to Child FIRST, the intake service for community-based family services. After receiving a referral from a person with concerns about the wellbeing or safety of a child, Child FIRST must report the matter to statutory child protection services if they consider the child in need of protection.

Strengthened provisions for Aboriginal children

The strengthened provisions for Aboriginal children and the Aboriginal community represented a further important step in the recognition of the history of colonisation and its impacts on Aboriginal children and families today. Chapter 12 provides an historical overview of the major policy and legislative frameworks impacting on Victoria's Aboriginal community and Aboriginal children.

A focus on early childhood development

This new legislative framework coincided with the broader debate and evidence on the critical role of a child's early years to the subsequent wellbeing and development of children and young people and the responsibilities and benefits for government and society of a broadly focused and active child development focus. This broader approach was reflected in the *Child Wellbeing and Safety Act 2005* that was designed to provide 'a legislative framework' of overarching principles to guide the delivery of child, youth and family services within Victoria, which will apply to universal, secondary and tertiary child, youth and family services (Parliament of Victoria, Legislative Assembly 2005a, p. 1,365).

This Act established the Victorian Children's Council to provide the Premier and Minister for Children with independent and expert advice about policies and services, and the Children's Services Co-ordination Board to support co-ordination of child-related government action taken at the local and regional levels. At this time the Minister for Children was also responsible for child protection. The Act also detailed the legislative functions and powers of the Child Safety Commissioner. These functions include advising the Minister responsible for child protection about child safety issues, advocating on behalf of children in out-of-home care and undertaking inquiries and reporting on the deaths of children known to child protection services.

In summary, the current legislative framework and broad institutional arrangements in Victoria represent the outcome of a sustained period of major focus on child protection issues that commenced in the early 1980s. These debates have spanned:

- The changing nature of community views about what constitutes child abuse and maltreatment and expectations of government action;
- The appropriate legal framework, principles and processes;
- The importance of specific provisions for Aboriginal children;
- The responsibilities and roles of government and community organisations;
- The balance between statutory/forensic interventions and intensive child and family support; and
- Statutory child protection as distinct from the broader child health and wellbeing services.

3.3.4 Recent developments

Following the establishment of the current legislative framework, and the strengthened and linked family services platform, a range of initiatives and practice improvements have been introduced focusing on out-of-home care capacity and quality, case management and support arrangements for kinship care, additional child protection staff and piloting of placement prevention programs.

More recently, services for young people in out-of-home care and leaving care have been enhanced, along with early intervention programs to help vulnerable parents cope with the challenges of child rearing. Given the concern of the current government for the independence of the Child Safety Commissioner, a commitment to establishing an independent commissioner for children and young people who would report directly to Parliament has been made.

Child protection workforce and practice issues are receiving significant attention both in Victoria and elsewhere. In Victoria, the Minister for Community Services has outlined a range of child practice operating practices and workforce reform proposals (DHS 2011m).

3.3.5 Developments elsewhere in Australia

Debates about the scope and nature of child protection services are evident across all or most jurisdictions in Australia and many other countries.

At the national level in Australia, the Council of Australian Governments (COAG) initiated and agreed in 2009 on *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*. The framework outlined the importance of a broad approach extending beyond statutory child protection services to vulnerable children and their families. The framework identified a set of actions and strategies to achieve the high-level outcome that 'Australia's children and young people are safe and well' including six supporting outcomes:

- Children live in safe and supportive families and communities;
- Children and families access adequate support to promote safety and intervene early;
- Risk factors for child abuse and neglect are addressed;
- Children who have been abused or neglected receive the support and care they need for their safety and wellbeing;
- Indigenous children are supported and safe in their families and communities; and
- Child sexual abuse and exploitation is prevented and survivors receive adequate support.

The framework notes, that it 'does not change the responsibilities of Governments. States and Territories retain responsibility for statutory child protection, as the Australian Government retains responsibility for providing income support payments' (COAG 2009e, p. 9).

However, as noted elsewhere in this Report, this division blurs a number of important issues at the federal and state government interface, including the role of education, health and the income security system in overall family wellbeing, the efficient provision of a range of family and parenting services and the income support and tax arrangements surrounding the foster care system. It is noted that sharing of information between statutory child protection services and Commonwealth institutions such as Centrelink and Medicare has been a recent development.

3.4 The dimensions of Victoria's system

The statutory child protection system has historically been defined in terms of the range of child protection investigations, out-of-home care and related services outlined in section 3.2. The reporting by DHS and at the national level by the Australian Institute of Health and Welfare (AIHW) and the COAG auspiced annual *Review of Government Service Provision* on the protection and care of children and young people adopts this traditional framework, although in recent years this has been generally extended to include intensive family services developed and linked to statutory child protection processes.

Based on the AIHW framework the following snapshot summarises key dimensions of Victoria's statutory child protection activity using 2010-11 data.

There were 55,718 child protection reports involving 41,459 individual children or a rate of 33.5 children in reports per 1,000 Victorian children aged 0 to 17 years:

- 13,941 children were the subject of completed investigations, an investigation rate of 9.8 per 1,000 Victorian children;
- Of these, there were 7,643 cases where child abuse or neglect was substantiated involving 7,327 children or a substantiation rate of 5.9 children per 1,000 Victorian children aged 0 to 17 years;
- 3,691 new protection orders were issued and the number of children on protection orders at end-June 2010 totalled 6,735, a rate of 5.4 per 1,000 Victorian children aged 0 to 17 years;

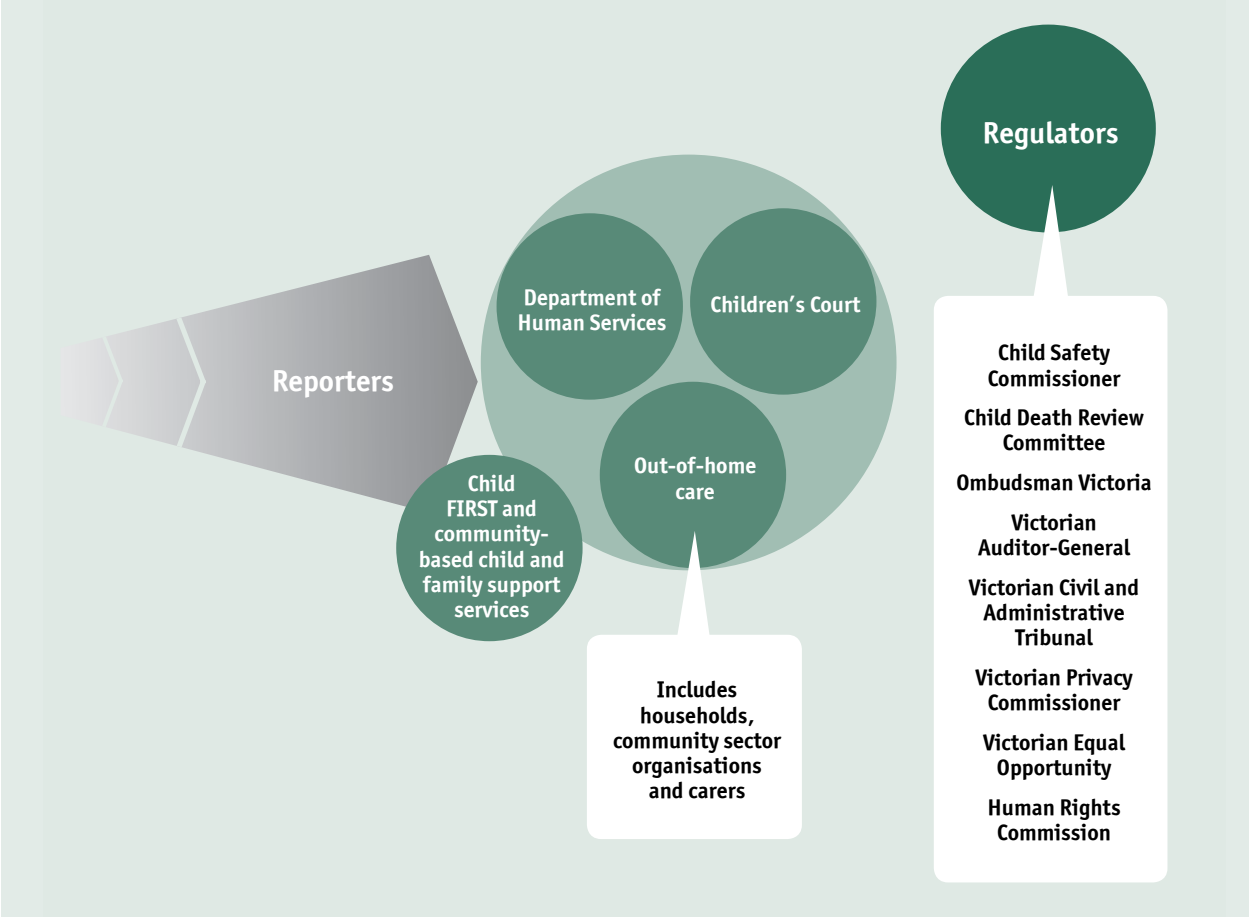
- 8,473 children had at least one out-of-home care placement during the year or a rate of 6.9 per 1,000 Victorian children and at June 30 2011, the number of children in out-of-home care totalled 5,678 or a rate of 4.6 per 1,000 Victorian children aged 0 to 17 years; and
- Intensive family support services were commenced during the year involving 4,976 Victorian children aged 0 to 17 years (information provided by DHS, initially for inclusion in the 2011 *Report on Government Services*).

The above aggregate data masks significant differences for Victorian Aboriginal children, as the following data illustrates:

- 2,716 Aboriginal children were the subject of child protection reports, a rate of 178.1 per 1,000 Victorian Aboriginal children aged 0 to 17 years;
- 1,170 Aboriginal children were the subject of finalised investigations, an investigation rate of 76.7 per 1,000 Victorian Aboriginal children;
- 768 Aboriginal children were the subject of a substantiated case of child abuse or neglect, a substantiation rate of 50.4 per 1,000 Victorian children aged 0 to 17 years;
- 1,060 Aboriginal children were on care and protection orders at 30 June 2010, a rate of 69.2 per 1,000 Victorian children aged 0 to 17 years; and
- 1,251 Aboriginal children had at least one out-of-care placement during the year or rate of 82.0 per 1,000 Victorian Aboriginal children and at end-June 2011, and at-end-June 2011 there were 877 Victorian Aboriginal children in out-of-home care, a rate of 57.3 per 1000 Victorian Aboriginal children aged 0 to 17 years. This later rate is more than 12 times the rate for Victoria's non-Aboriginal population (Source: Information provided by DHS initially for inclusion in the 2012 *Report on Government Services)*.

Figure 3.1 depicts the main elements of the current statutory child protection system and the responsibilities and roles of the government sector, non-government sector and individuals in the delivery and oversight of these activities.

Figure 3.1 Victoria's statutory child protection system



Source: Inquiry analysis

In summary in 2010-2011:

- A range of Victorian individuals, family members and classes of professionals including mandated professionals such as police and teachers, lodged 55,718 reports of suspected harm, abuse and neglect with DHS. More than half (54 per cent) of reports came from mandated reporting groups; the remainder came from individuals such as family members and neighbours;
- Nearly 1,200 child protection practitioners located in the regional office network of DHS investigate, initiate interventions and undertake case management, oversight and referral activities;
- More than 40 CSOs funded by DHS provide and support out-of-home placements including residential care employing 1,200 staff;
- Around 5,000 Victorian households provide kinship care and foster care. In 2010, 1,574 households provided foster care and 2,275 households provided kinship care;
- More than 90 CSOs provide the intake and integrated family services in the 24 catchment areas of the Child FIRST initiative and 13 Aboriginal agencies that form part of this and other service responses; and
- DHS received budget allocations in 2011-2012 of $171 million for statutory child protection services, $362.3 million for specialist support and placement services and $147.8 million for family and community services (which includes Child FIRST, early intervention programs for vulnerable families and at-risk children and also the more broadly focused family violence and sexual assault support services).

In addition, overall expenditure on the Children's Court (including both the Family Division and Criminal Division) exceeds $8 million.

The above depiction and snapshot data is based on the conventional perspective that child protection aligns with the statutory child protection system. However, as outlined in Section 3.2, increasingly child protection is being viewed and placed within the vulnerable children and families and broader child health, wellbeing and development domains. More specifically, the Inquiry's Terms of Reference require consideration be given to prevention and early identification of, and intervention targeted at, children and families at risk including the role of adult, universal and primary services.

The adoption of these perspectives stems from: evidence that a multiplicity of parent/family, child, environmental and community factors are contributing or are associated with child abuse and neglect; the recurring nature of vulnerable children's interactions with the statutory child protection system; and evidence pointing to the limited impact of tertiary-level interventions for children who have been subjected to chronic or periodic child abuse and neglect.

This broader approach has led to a greater emphasis on prevention and early intervention and viewing the protection and care of vulnerable children through the lens of:

- Comprehensive primary or universal services offered to all families and children that provide support and education before problems arise;
- Secondary or selective interventions targeted at families in need to provide additional support or help to alleviate identified problems and prevent escalation; and
- The tertiary or statutory child protection service where abuse and neglect has occurred to help keep children safe and well (Holzer 2007).

Figure 3.2 depicts this broader view of the protection and care of Victoria's children.

Figure 3.2 The broader child welfare and development system

Source: Inquiry analysis

3.5 The preventative character of law

Laws enacted by parliaments generally operate prospectively only and are of general application. Decisions of the courts generally operate retrospectively, in that they decide legal rights and liabilities about conduct or events that have occurred. These decisions have a flow-on effect by the doctrine of precedent, by which decisions of higher courts bind lower courts and which requires that like cases are decided alike. As well as binding the person to whom the statute or court decision directly applies, the law has an educative role in society by articulating and reinforcing acceptable standards of conduct. Finally, the law has a preventative character in that by stating what acceptable conduct is and by providing sanctions for its breach the law seeks to prevent unacceptable conduct from occurring. Statutes do this by stating the sanction for future conduct; courts do this by imposing sanction for past conduct.

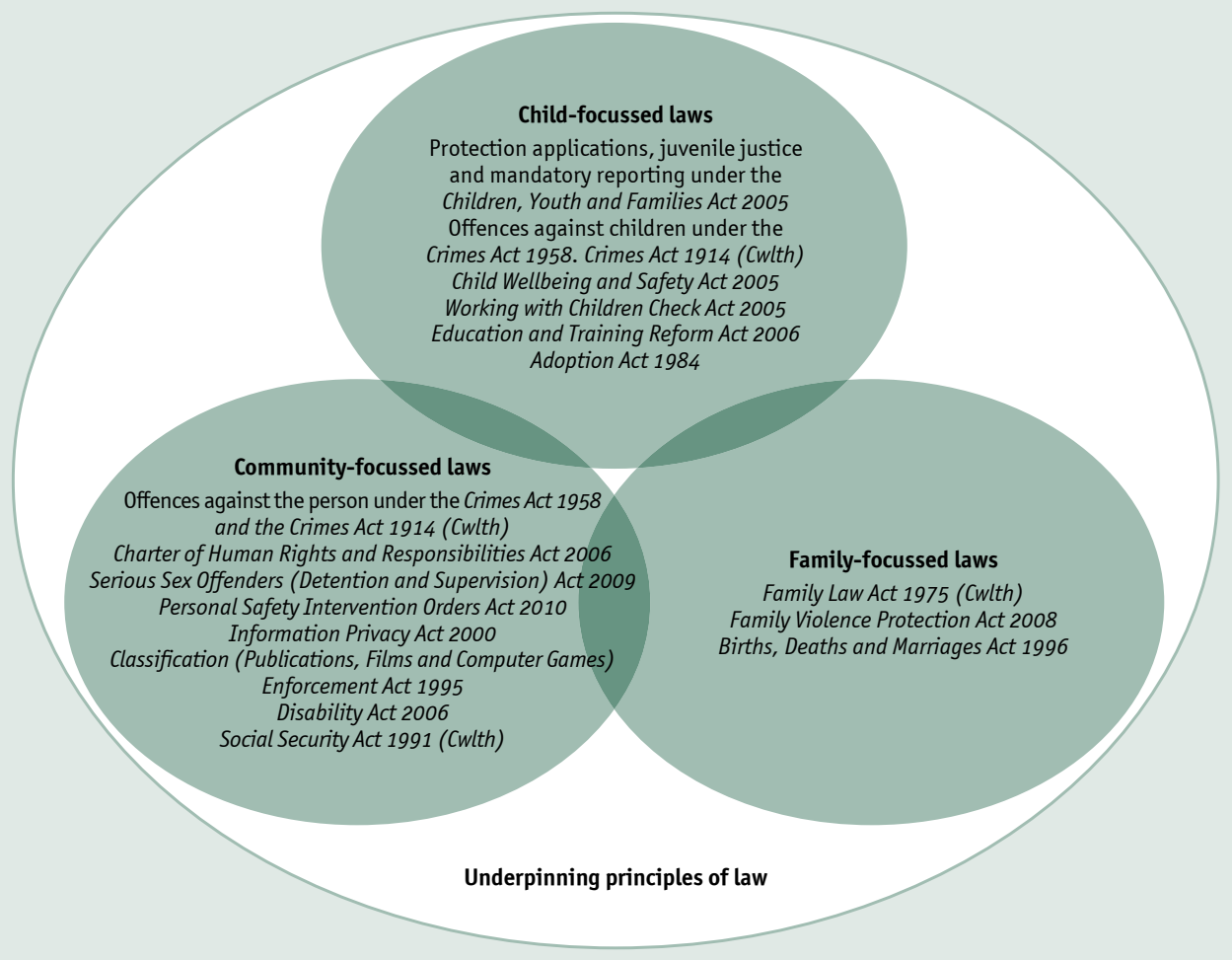
3.6 Legislation and the protection of children and young people in Victoria

The child protection legislative framework in Victoria forms part of a broader set of legislation. These laws relating to the protection of children and young people define and regulate a number of relationships between children, their families, and the community.

Figure 3.3 groups the various Victorian and Commonwealth laws relating to children into three overlapping categories: child-focused laws, family-focused laws, and community-focused laws. Each of the three categories contains a mixture of criminal laws and protective laws.

At any point in the life of a child or young person there is a range of state and Commonwealth laws that operate to guide and promote and protect the child's interests. These laws can be brought into play where the child's relationships with others, or their family circumstances, breakdown or undergo stress, or where anti-social behaviour is displayed. The law and its legal institutions should be aiming to provide support and direction to children and their families rather than adding further layers of complexity.

Figure 3.3 Victorian and Commonwealth laws relating to the protection of children



Source: Inquiry analysis

Part of the role of government, and of those responsible for applying and enforcing the law, is to ensure these laws interact as seamlessly as possible.

In Victoria, the laws relating to children and young people are a combination of Victorian and Commonwealth laws. This is because the Australian legal system divides the responsibility for making laws between the Commonwealth and state parliaments. For example while the Commonwealth has responsibility to make laws regarding marriage and parenting, it does not have responsibility to make laws regarding child protection. The Australian Constitution allows for some overlap between Commonwealth and state legislative powers, but if there is an inconsistency between the laws, the Commonwealth law will prevail to the extent of that inconsistency. This means that, when making laws, the state and Commonwealth governments and parliaments should consider whether the laws are best suited for enactment and enforcement at a federal or state level.

A list of the various Commonwealth and Victorian statutes that either directly relate to, or in some way concern, Victorian children and young people appears at Appendix 6.

In addition, Australia is a signatory to the United Nations Convention on the Rights of the Child (CRC). The CRC sets out a range of rights and principles that children are entitled to expect to be protected by participating governments. These rights and principles are, to varying degrees, reflected in a number of laws, such as the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Charter Act), the *Children Youth and Families Act 2005* (CYF Act) and the *Child Wellbeing and Safety Act 2005* (CWS Act).

The Charter Act articulates the human rights and responsibilities applicable to Victorians. Subject to certain limits, section 38(1) of the Charter Act requires public authorities (which, under section 4 of that Act, may include private entities such as community service providers working within the CYF Act) to act in accordance with the rights and obligations in the Charter Act. The Charter Act also influences the development, enactment and interpretation of legislation, and applies to all aspects of Victoria's statutory child protection system such as:

- The separation of children and families;
- Child protection legal proceedings;
- The cultural rights of children and young people in all aspects of family services, out-of-home care and statutory child protection including secure welfare;
- The safety and wellbeing of children and young people; and
- Non-discrimination and access to services, including universal and specialist services (Victorian Equal Opportunity and Human Rights Commission submission, pp. 8-10).

3.6.1 Child-focused laws

The history of statutory child protection legislation is set out earlier in this chapter. As mentioned, the two principal Acts governing the current approach are the CYF Act and the CWS Act. The CYF Act contains the framework and details of the child protection system. The CWS Act expresses the broad principles for the way the State acts in relation to children. All the Acts referred to below are Victorian Acts, unless otherwise stated.

Children, Youth and Families Act 2005

The CYF Act underpins the Victorian system of statutory child protection. The Act affects children, young people, families, caregivers, child protection workers, community service providers, magistrates, police, lawyers, and anyone else who is involved in protecting and caring for children and young people.

Who administers the Act?

Two ministers are responsible for administering the CYF Act: the Minister for Community Services and the Attorney-General. The CYF Act outlines the sorts of decisions the State can make in relation to the child, who can make them and how they should make them. It also establishes institutions like the Children's Court, the Youth Parole Board and the Youth Residential Board. It sets out the principles that the State, whether that is the DHS, the Children's Court, Victoria Police, or any of the other State institutions, must consider when making decisions about children and young people.

The CYF Act authorises the Secretary of DHS and members of the police force to intervene in the life of a child or young person (s. 181). In practice, interventions are carried out by a delegate of the Secretary, usually a child protection practitioner.

A key provision of the Act

One key provision of the CYF Act is section 162, which outlines the reasons a child will be considered to be in need of protection. These reasons are known as grounds. Grounds include circumstances in which the child has suffered, or is likely to suffer significant harm as a result of certain forms of injury, and their parents have not protected them from that harm. The forms of injury are physical injury, sexual abuse or emotional or psychological harm such that the child's emotional or intellectual development is or is likely to be damaged. These kinds of harm may be caused by a single event, or can build up over time from a series of events.

Under the Act, a child protection practitioner may investigate concerns about the wellbeing of a child or young person, and become actively involved in the child or young person's life. Chapter 9 sets out the five phases of possible DHS intervention in the life of a child, and describes the main activities that take place in each phase. A protection application may only be made in respect of a child or young person who has not reached the age of 17 (section 3 of the CYF Act). Existing orders will still be valid until the child reaches 18 years of age. This is considered further in Chapter 14.

Protective intervention as a court process

Depending on the circumstances, protective intervention may require the authority of an order of the Children's Court. DHS may make a number of applications to the court. The most frequent application is a 'protection application'. A protection application marks the start of a formal court case between the parties – that is, DHS and the parents of the child who DHS believes is in need of protection. In Victoria, children themselves are not parties to the protection application, but their best interests and, when they are mature enough, their views, are presented to the court by lawyers.

Parties are required to present evidence to support their case to the court, and the court decides which case is the most convincing. This is what is known as the 'adversarial process', and will be further discussed in Chapters 15.

Protection applications are made on a temporary ('interim') or long-term ('final order') basis. There are two ways of bringing a protection application to court:

- Application by notice - DHS holds protective concerns that stop short of a belief that the child is at risk of serious harm in their home environment. DHS makes an application, a court date is set, and the family attends court (in many cases with the child) on the date to answer to any of the concerns. The child remains in their current living arrangements; and
- Application by safe custody - DHS believes that there is an immediate risk of harm to the child such that it is necessary to immediately remove the child or young person from their home.

The protection application is heard as a civil matter. Among other things, this means that facts are proved on the 'balance of probabilities' rather than 'beyond reasonable doubt', other types of civil processes, such as Alternative or Appropriate Dispute Resolution (ADR) may be used by the parties, and penalties are not imposed on people.

Figure 3.4 illustrates the types of applications available, how they may be made, and the orders that may result. Orders are separated into 'primary' and 'secondary' applications. A primary application is the first application DHS brings in relation to a child. Because the court processes in relation to a protection application take time, and because a child's needs and circumstances may well change over the duration of the order, a number of other, secondary applications and orders are likely to be made during the course of a primary application. While Figure 3.4 is useful in mapping the legal process, vulnerable children within the protection system do not, of course, experience court processes in this tidy, segmented way.

The VLRC's 2010 report titled *Protection Applications in the Children's Court* provides a comprehensive description and analysis of the processes relating to applications to the Children's Court. Orders available under the current system, and proposals for reform, are further discussed in Chapter 15.

Mandatory reporting

Sections 182-189 of the CYF Act provide for a system of mandatory reporting that aims to protect vulnerable children by bringing to light incidents of physical and sexual abuse of children. This is achieved through reports by professionals who have greater levels of contact with children and young people, which would not otherwise have been discovered.

Mandatory reporting was introduced in Victoria in 1993. In its current form, mandatory reporting requires teachers, members of the police, medical practitioners, nurses and midwives to report any reasonable belief that a child is in need of protection because the child has suffered or is likely to suffer significant harm as a result of physical injury or sexual abuse. The CYF Act (and the *Children and Young Persons Act* preceding it) stipulated that certain other professions would become mandated reporters from a date that would be fixed by order published in the Government Gazette. In the 18 years that this scheme has been in force none of the other professions have been gazetted as mandated reporters. This aspect of the CYF Act is considered in more detail in Chapter 14.

Child Wellbeing and Safety Act 2005

The CWS Act sets out principles to guide the provision of government, government-funded and community services to children and their families. These principles are aspirational and do not create legal rights. Principles set out in the Act include:

- Society as a whole shares responsibility for promoting the safety and wellbeing of children;
- Parents are the primary nurturers of the child and government intervention should be limited to that necessary to secure the child's safety and wellbeing;
- Government must meet the needs of the child when the child's family is unable to provide adequate care and protection;
- Every child should be able to enrol in a kindergarten program at an early childhood education and care centre; and
- Service providers should protect the rights of children and families and to the greatest extent possible encourage their participation in any decision making that affects their lives.

The Secretary of DHS is also obliged to act cooperatively with other agencies, and to provide a quality service (section 3(a)-(b) of the CWS Act).

The CWS Act also creates three advisory, oversight and review bodies: the Office of the Child Safety Commissioner, the Victorian Children's Council, and the Children's Services Co-ordination Board.

The Child Safety Commissioner undertakes a number of functions to promote the objectives of the CWS Act, such as promoting child-safe and child-friendly practices in the community, monitoring the administration of the *Working with Children Act 2005* (WWC Act), providing oversight advice to the responsible minister on out-of-home care, and conducting child death inquiries and reporting on those inquiries to the minister.

The Victorian Children's Council provides advice on child related policies and services to both the Premier and the responsible minister. The Children's Services Co-ordination Board reports to the Minister for Children on their reviews into the outcomes of government actions in relation to children, particularly vulnerable children (section 15 CWS Act). The Inquiry examines these bodies in Chapters 20 and 21 of this Report.

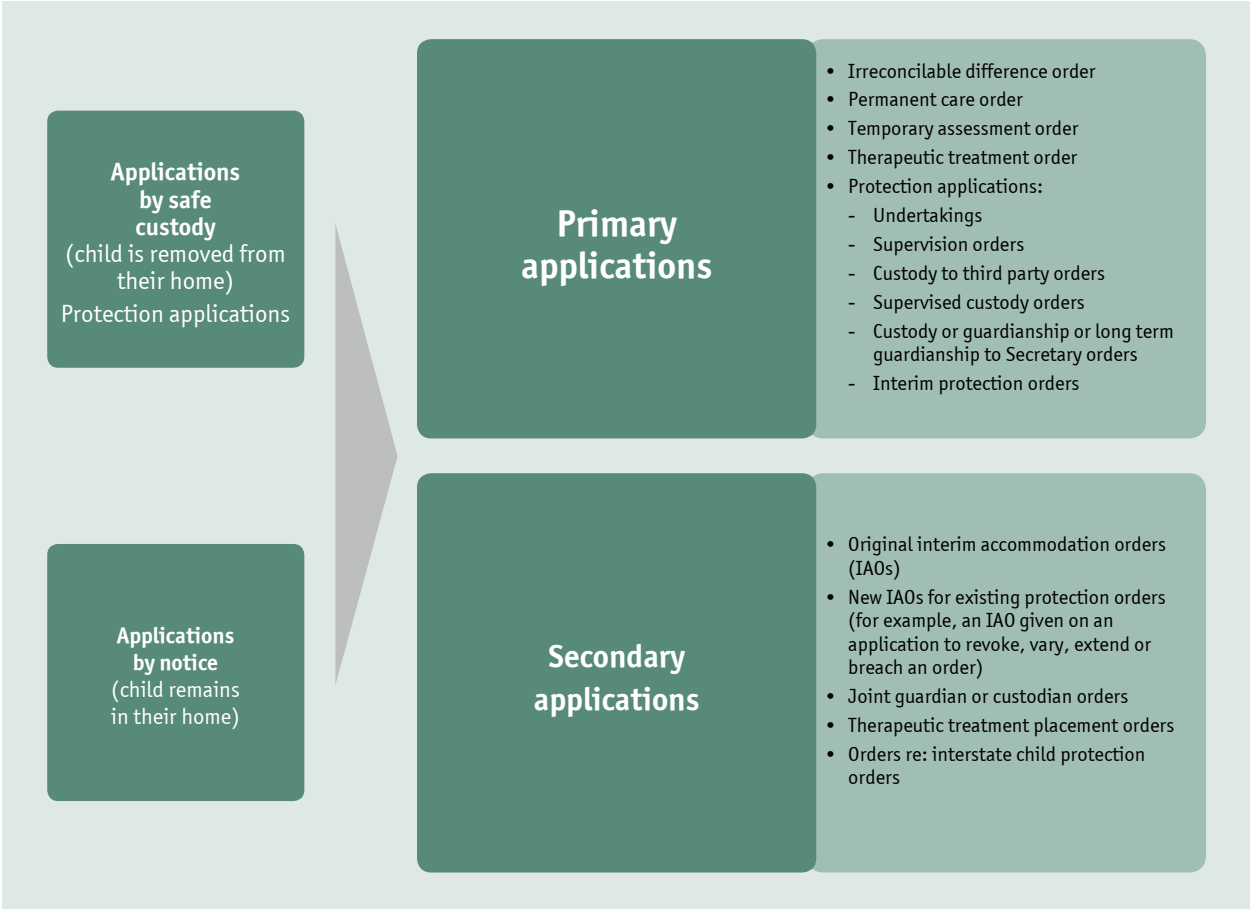
Working with Children Act 2005

The WWC Act regulates how the government determines who is suitable to work with or care for children and young people. People who work with children on a regular basis must apply for a Working with Children Check and employers, volunteer organisations and employment agencies must not engage anyone in child-related work without a current 'positive assessment notice' or Working with Children Check Card.

Section 9 of the Act defines child-related work to include volunteer work and practical training and lists various services, bodies and activities including clubs, associations or movements, and religious organisations.

The Victorian Department of Justice is responsible for conducting assessments and issuing a Working with Children Check Card. Section 39A of the WWC Act prohibits registered sex offenders from applying for an assessment. The Act creates various offences if a person works with children without a Working with Children Check Card. The application of this Act in the context of religious and volunteer organisations involving children is discussed further in Chapter 14.

Figure 3.4 Children's Court applications made under the *Children, Youth and Families Act 2005*



Source: Inquiry analysis

3.6.2 Family-focused laws

Family Violence Protection Act 2008

The *Family Violence Protection Act 2008* (FVP Act) aims to maximise the safety of children and adults who have experienced family violence. The Act provides for both family violence safety orders (orders), which are made by application in the Magistrates' or Children's Court, or family violence safety notices (notices), which are issued by the police. The Act also allows the police to exercise special holding and directions powers when they intend to apply for an order or issue a notice.

Both orders and notices provide that a family member must stop being physically, sexually or emotionally violent, and contain special conditions relating to such things as living arrangements. It is a criminal offence to breach an order or a notice (sections 123 and 37 of the FVP Act).

The Act has a wide definition of 'family member' and 'family violence' (for example a child experiences family violence if they witness family violence, which includes physical or emotional abuse of another family member, or injury to family pets). It contains a number of child-focused considerations for decision making.

Orders and notices have a relationship with orders under the CYF Act, and the *Family Law Act 1975* (Cwlth). For example, a member of the police should not apply for a notice if she or he suspects that a Family Law Act order or child protection order is in force that may be inconsistent with the proposed terms of the family violence safety notice (section 24(c) of the FVP Act). This Act is considered further in Chapter 14.

Family Law Act 1975

Children are particularly vulnerable at the time of the breakdown of a marriage or partnership. The Commonwealth Family Law Act, which establishes the system of family law in relation to married and de facto relationships, recognises this by:

- Providing for a system of dispute resolution in the Family Court of Australia, or the Federal Magistrates' Court where agreement as to a child's living arrangements cannot be reached by the child's parents; and
- Imposing the 'best interests of the child' as the most important consideration when making decisions (either in court, or when making parenting plans) about a child's living arrangements.

At times, matters heard in respect of the Family Law Act may involve child protection issues. The Family Law Act provides that child protection orders under the CYF Act prevail over any orders made under the Family Law Act so long as the child protection order is in force.

The Australian Law Reform Commission (ALRC) and the New South Wales Law Reform Commission (NSWLRC) recently completed a joint report into how family violence legislation across Australia intersects with family law. The commissions' report also considered the interaction of these laws with child protection laws. The Commissions' comments and recommendations are considered further in Chapter 14.

The Commonwealth Parliament recently passed the *Family Law Legislation (Family Violence and Other Measures) Act 2011* to implement the joint commissions' recommendations, including prioritising the safety of children in parenting matters, and is considering the Commonwealth Commissioner for Children and Young People Bill 2010.

Adoption Act 1984

Where a parent has voluntarily decided that they are unable to care for their child (and in some limited cases where a court has decided that it is appropriate to dispense with parental consent), a child may be adopted by an appropriate person under the Adoption Act. Section 9 provides that the 'welfare and best interests' of the child is paramount in the administration of the Adoption Act.

Adoption reconfigures a number of legal relationships in a child's life: not only does it sever the legal relationship between a child and their birth parents, but it creates a new legal parental relationship, and new legal relationships between the child and the whole of the adoptive family.

Under the Adoption Act, appropriate adoptive parents are heterosexual couples who are either married, or have been in a de facto relationship for at least two years. Under the Act, a child and their birth parents can access limited information about each other from DHS (Part VI). The Act incorporates the principle of 'open adoption' (Part III, Division 3), whereby a child may continue to have contact with their natural parents, if all parties consent and the court so orders.

3.6.3 Community-focused laws

Disability Act 2006

The Disability Act sets out the framework for meeting the rights and needs of Victorians with a disability. The Act contains a number of principles that guide the way the State interacts with persons with a disability, including the planning, funding and provision of services, programs and initiatives.

The Disability Act applies to people of all ages but makes some references specifically to children. For example:

- Section 5(3)(l) of the Act requires disability service providers to have special regard for the needs of children with a disability and their families and caregivers; and
- Section 52(2) (d) requires the Secretary DHS (or her or his delegate) to where possible, strengthen and build capacity within families to support children with a disability when making a disability plan.

Chapter 9 examines the system response to children with a disability in Victoria.

Other relevant acts

The other key instruments completing the legal framework in Victoria for protecting children and young people from a community perspective are the *Personal Safety Intervention Orders Act 2010*, the WWC Act, *Sex Offenders Registration Act 2004*, and the *Serious Sex Offenders (Detention and Supervision) Act 2009*.

Personal Safety Intervention Orders Act 2010

The *Personal Safety Intervention Orders Act 2010* (Stalking Act) allows a court to make a 'personal safety intervention order' which aims to protect a person from someone who has threatened their safety. Orders have a list of conditions that tell the respondent what they cannot do, including stopping them from contacting or threatening the protected person, coming near the protected person or their home, and from damaging their property.

Sex Offenders Registration Act 2004

The *Sex Offenders Registration Act 2004* (SOR Act) allows courts to order that those convicted of certain sex offences (including sex offences against children) must be registered on the Sex Offenders Register for a period of time after their release from custody. Registration occurs by way of a court order made at the time of the sentencing.

The purpose of the legislation is to reduce the likelihood of the registered people reoffending and, in the event that they do reoffend, assist the police in the investigation and prosecution of offences. As such, under section 68 of the Act, after the completion of their sentence registered offenders must report annually to Victoria Police and keep the police informed of any changes to their whereabouts. Also, registered offenders are prohibited from working in 'child-related employment'.

A court must order the registration of adults who commit sexual offences against children, but has the discretion to make an order in the case of a young person (section 1 and sections 6 - 7 of the SOR Act). Offenders are added to the register for a period of time (eight years, 15 years, or life) depending on the age of the registered person, the type of offence, and the number of relevant offences that the offender has committed. Registered offenders who were children at the time of the offence must report for four years, or seven and a half years.

Victoria Police are required to report to DHS whenever a registered sex offender reports unsupervised contact with a child so that DHS can consider whether there is a risk to the child. In February 2011 the Victorian Ombudsman released a report into allegations that Victoria Police had, due to an administrative error, failed to inform DHS of more than 300 registered sex offenders who were living with, or had unsupervised contact with children.

The Ombudsman made a number of recommendations, including that:

- Victoria Police and DHS develop a governance model, protocol and a review mechanism for operating the Sex Offenders Register that promotes greater collaboration with agencies;
- Consider the expansion of multidisciplinary sexual assault investigation centres (discussed further in this Report in Chapter 14);
- Training for case managers be undertaken as a priority; and
- The VLRC review the 'legislative arrangements in place for the registration of sex offenders and the management of information provided under its reporting obligations' (Victorian Ombudsman 2011b, pp. 37-38).

The SOR Act and its implementation were reviewed in 2011 by the VLRC. According to the VLRC, on 1 June 2011, there were 2,659 sex offenders living in the community (VLRC 2011). Given the Ombudsman's comments in early 2011 and the VLRC report, the Inquiry does not propose to comment on the operation of the SOR Act.

Serious Sex Offenders (Detention and Supervision) Act 2009

The *Serious Sex Offenders (Detention and Supervision) Act 2009* (SSO Act) establishes a scheme for the further detention and/or supervision of some categories of sex offenders who, although they have completed their sentences, are thought to pose an unacceptable risk of committing further sexual offences. A number of other states in Australia have similar legislation. The purpose of the legislation is to protect the community (and especially children) from the risk of harm posed by those offenders (section 1(1) of the SSO Act). The Act also allows for the making of suppression orders in relation to identifying victims or offenders who are the subject of proceedings under the SSO Act. This is discussed further in Chapter 14.

3.7 The Criminal law

The purpose of criminal law is to protect society, maintain social order, define minimum standards of conduct, and provide sanctions for conduct that falls below those standards (ALRC & NSWLRC 2010, pp. 933-934). The criminal law in Victoria is set out in many different Acts, although in the context of child abuse, the key statute is the *Crimes Act 1958*. The Crimes Act contains a number of provisions that relate to the protection of children, and the protection of society as a whole.

3.7.1 Defining a child for the purpose of criminal law

Generally, the community considers that a child or young person is someone up to the age of 18. For the general purposes of the law, a person is an adult once they reach the age of 18 (section 3 of the *Age of Majority Act 1977*). There are many other legal milestones marking 'adulthood', such as the eligibility to vote and drive (section 18 of the *Electoral Act 2002* (Vic); section 93(1) (a) of the *Commonwealth Electoral Act 1918*; section 19 of the *Road Safety Act 1986*). However, Victorian criminal law does not provide a single definition of a 'child' or a 'young person'. This is because the law recognises that there should be different levels of responsibility flowing between the child and society depending on the child's maturity, circumstances, whether the child is a victim or offender, and the particular offence.

For example, in Victoria, the criminal responsibility of children is organised along the following lines:

- A child under the age of 10 cannot commit an offence (section 344 of the CYF Act);
- A child between the age of 10 and 14 years is capable of committing an offence, but their responsibility for the offence will depend on whether the prosecution can show that the child understood that their alleged conduct was seriously wrong and could lead to punishment by a court (this is known as the *doli incapax* principle); and
- A person who is alleged to have committed a crime, and who was aged of 10-18 years (inclusive) at the time they were alleged to have committed the crime is considered to be a child (s. 3 of the CYF Act) for the purpose of criminal law.

Similarly, some offences provide higher penalties for offences committed against children of certain ages. For example the legal age of consent for sexual activity in Victoria is 16 years of age. If a child is under the age of 16, in most cases a child is unable to give consent to a sexual relationship and so the sexual penetration of a child under the age of 16 is an offence. Some exceptions set out in section 45(4) of the Crimes Act include:

- Where the alleged offender and the child are aged 10-16 and there is a two year or less age difference between them; and
- Where the child is over the age of 12 and the alleged offender proves to the court the alleged offender made a reasonable mistake as to the child's age being 16 years or older.

Penalties for the sexual penetration of a child under the age of 16 are higher where the child is under the age of 12, or where the offender is in a 'position of care, supervision or authority' over the child (section 45(2) of the Crimes Act). Section 48 of the Crimes Act also prohibits the sexual penetration of 16 and 17 year olds who may be under the power or care or authority of certain classes of people including teachers, foster parents, health professionals and ministers of religion with pastoral responsibility for the child.

3.7.2 Offences specifically relating to children

A range of Victorian and Commonwealth statutory laws apply to those areas in which our society views children to be vulnerable, particularly in relation to the protection of children from sexual abuse and exploitation. Some examples include:

- Indecent acts with or in the presence of a child under the age of 16, persistent sexual abuse of a child, and facilitating sexual offences against children (sections 47(1), 47A and 49A of the Crimes Act);
- Aggravated sexual servitude and aggravated deceptive recruiting for commercial sexual services (sections 60AC and 60AE of the Crimes Act) and various provisions of the *Sex Work Act 1994* relating to exploitation of children in sex work;

- Abduction of a child under the age of 16 and child stealing (sections 56 and 63 of the Crimes Act);
- Taking, or failing to take, action that resulted in harm (or could potentially cause harm) where a person has a duty of care over the child (section 493 of the CYF Act);
- Knowingly using an on-line service to publish or transmit material that portrays a minor engaged in sexual activity or depicted in an indecent sexual manner *(Classification (Publications, Films and Computer Games) (Enforcement) Act 1995)*, producing and possessing child pornography, and procuring a child for the purpose of child pornography (sections 68, 70 and 69 of the Crimes Act);
- Child homicide, infanticide and concealing the birth of a child (sections 5A, 6 and 67 of the Crimes Act);
- Female genital mutilation (section 32 of the Crimes Act); and
- A range of offences relating to the care of children under Chapter 6 of the CYF Act, such as failing to protect a child from harm, leaving a child unattended, and harbouring or concealing a child (sections 493-495 of the CYF Act). Further consideration will be given to this offence in Chapter 14.

The Commonwealth *Criminal Code Act 1995* also creates offences relating to the sexual abuse of children, including trafficking in children, commission of child sex offences outside Australia and offences for distribution of child pornography material outside Australia.

In addition, there are a range of offences that, although not specifically directed at protecting children, nonetheless perform that role. For example a person hitting a child may be prosecuted for assault under section 31 of the Crimes Act. This will be considered in relation to the prosecution of physical and sexual abuse of children in Chapter 14.

3.7.3 Offences committed by children and young people

The Inquiry's Terms of Reference did not include an examination of criminal acts by children or young people. This section is included for completeness in the overview of the legal framework relating to children and young people.

The Criminal Division of the Children's Court

Victoria has had a special criminal court capable of hearing charges against children and young people in one form or another since early last century (*Children's Court Act 1906*; the *Children's Court Act 1973*).

The Criminal Division of the Children's Court, currently established by sections 504 and 516 of the CYF Act, hears most offences committed by children in Victoria (section 516 of the CYF Act). As explained previously, for the purpose of criminal law, a child is a person aged 10 to 17 years at the time of committing the alleged offence. If a young person has turned 19 by the time their case is heard in the Children's Court, the case will be transferred to the Magistrates' Court.

The court may hear any offences committed by children except homicide, attempted murder, culpable driving causing death, and arson causing death. This means that some serious charges that would ordinarily be heard before a jury are not heard before a jury where the accused is a child or young person. A young accused may, however, elect to have their case heard by a judge and jury in the County or Supreme Courts. In certain exceptional circumstances a matter may be transferred from the Children's Court to an adult court (see, for example, section 516(5) of the CYF Act).

Sentencing principles relating to children and young people

Sentencing principles relating to children and young people recognise that the criminal justice system should treat young offenders differently from adults.

Generally, legislation that creates a criminal offence will also state a maximum penalty. Courts are not obliged to fix a penalty to the maximum. This is known as 'sentencing discretion'. In exercising that discretion, courts will consider sentencing principles, that reflect the purpose of criminal punishment that is, 'protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform' (*Veen v R (No 2)* (1988) 164 CLR 465 at 476). Section 362 of the CYF Act sets out sentencing principles for young people.

Under section 362 of the CYF Act, a court (generally the Children's Court) must consider, among other things, the desirability of allowing the child to live at home, the need to strengthen and preserve the relationship between the child and the child's family and the need to minimise the stigma to the child resulting from the court determination. These principles are well established, have their genesis in the 1984 Carney Committee report, and reflect an understanding that 'rehabilitation is usually said to be more important than general deterrence because punishment may in fact lead to further offending' and that imprisonment of a young person can have far reaching and damaging consequences for the child and for the community in the long term (*R v. RPJ* [2011] VSC 363).

When a person under the age of 18 is sentenced to a period of custody, they do not serve their sentence in a prison, but in youth justice centres, which are administered by the DHS rather than the Department of Justice. In some circumstances, young people aged 18 to 21 years may also be sentenced to serve their custodial sentence in a youth justice centre instead of an adult prison. This is known as the 'dual track' system. Generally, courts may set a non-parole or minimum period for sentences of two years or more (section 3(1) *Sentencing Act 1991*). However for children or young people detained in a youth justice centre the Youth Parole Board determines when a child is eligible for parole (section 458 CYF Act).

Consistent with the law's primarily rehabilitative approach to criminal offending by children, in some cases section 248 of the CYF Act allows the court to make a therapeutic treatment order in relation to a child over the age of 10 but under the age of 15, where the child has displayed sexually abusive behaviours and the order is necessary to ensure the child's access to and participation in therapy. This contemplates, but is not limited to, a situation where the child may be charged with a sexual offence. However, if the child successfully completes the program, the court must dismiss any criminal charges against the child (section 354(4) of the CYF Act). Statements made by the child in therapy are not admissible for the purpose of prosecution (section 251 of the CYF Act).

Criminal records, police records and children and young people

Victoria does not have laws that erase the criminal history of young people once they reach the age of 18 (often referred to as 'spent conviction schemes'). The continuing appearance of convictions on conviction and police records is largely governed by Victoria Police policy.

In Victoria a conviction for an offence committed by a young person under the age of 18 will not appear on a police record after five years have passed from the conviction. Where the young person is aged 18 or over at the time of their conviction, the usual '10 year rule' will apply (i.e. offences more than 10 years old from the court date are generally not disclosed on a police record). Exceptions to the 10 year rule include: where the sentence was for a period of more than 30 months; where there are other sentences within the 10 years; or where the conviction is for a serious offence of violence or a sex offence and the records check is for the purpose of employment with vulnerable people, including children (Victoria Police 2011).

3.8 Conclusion

This chapter has sought to provide an overview of Victoria's system for protecting vulnerable children and the broader legal framework covering the safety and wellbeing of Victorian children and young people.

In particular, the chapter has emphasised Victoria's child protection system is a product of historical trends and changes in this area of social policy as various governments have responded to the issues at hand since the settlement of Victoria. Society's and government's understanding of what constitutes child abuse and neglect has changed over time and so in turn has governments' responses through policy and legislation. Child protection in Victoria has evolved since the 19th century, often in line with other jurisdictions; however, from the outset in Victoria, CSOs have played a major role.

Child protection in Victoria has a broad scope covering government, the community services sector, the legal system and individual households. In 2010-2011, more than 55,000 reports of alleged children abuse were made to the child protection system, and the Victorian Government allocated more than $600 million for direct child protection activities.

The laws governing Victoria's child protection system form part of a much broader set of Victorian and Commonwealth laws that affect the safety and wellbeing of children and young people. These laws aim to provide a system for allowing children to live in circumstances that are as safe, stable and as responsive to their needs as possible.

While Victoria enjoys a relatively stable system of civil and criminal laws that apply to children and young people, the overall legal framework comprising Commonwealth and state laws has developed into complex fabric of interrelating laws and legal institutions. This complex fabric can be attributed to the need to weave protective and corrective aims into legislation and also address the sometimes conflicting priorities and needs of children, their families and the broader community.

Part 2: Victoria's current system and performance

Chapter 4:
The performance of the system protecting children and young people

Chapter 4: The performance of the system protecting children and young people

Key Points

- This chapter identifies the key measures for an objective assessment of the current system and observes that the comprehensive and robust data and research on the incidence of child abuse and neglect over time and reducing the impact of child abuse and neglect are not available.
- An overview is then provided of the partial performance information that is available on Victoria's current system and the observations and recommendations contained in recent reports by the Victorian Ombudsman and the Victorian Child Death Review Committee.
- In this regard the chapter particularly notes:
  - the continued growth in reports of alleged child abuse and neglect over the past decade and the number of children and young people in out-of-home care;
  - the major geographical variations in child protection reports;
  - the recurring nature of interactions with the statutory child protection services for many families and young children; and
  - the unacceptable and growing over-representation of Aboriginal children in the number of Victorian children who are the subject of reports, substantiations, child protection orders and out-of-home care placements.
- Based on the available information and recent reports, a number of key challenges are identified including:
  - the growth, clustered and recurring nature of demand pressures;
  - the need for a broader and more integrated service system for vulnerable families and children;
  - the need for improved and consistent practice quality;
  - the importance of contemporary and appropriate legal processes;
  - the requirement need for an enhanced out-of-home care system;
  - the need to address over-representation of Aboriginal children; and
  - addressing major data and research deficiencies on key dimensions and impacts of Victoria's services for vulnerable children and families.

4.1 Introduction

As outlined in Chapter 3, Victoria's current system represents the outcome of major and frequent policy, legislative and program reviews over the past 25 years.

These reviews have been driven by major cases of child maltreatment or growing concerns about the 'performance of the system' or aspects of the system, namely the capacity of statutory child protection services to identify and respond to children at immediate risk of significant harm. Issues of child maltreatment, particularly cases of extreme abuse of children at the hands of malevolent family members, have frequently and understandably led to major public concerns about the 'failure of the system'.

Assessments of the performance of public policy systems, such as statutory child protection services, require an agreed benchmark such as the stated or generally understood objectives of the system and robust quantitative and qualitative time series data on the outcomes or impact of the services or interventions on the child and young person and family. This overview chapter on performance briefly considers: the objectives of Victoria's statutory child protection system and the desirable categories of performance information; the trends and issues evident from the available performance information; observations from recent reports by the Ombudsman and the Victorian Child Death Review Committee (VCDRC); and the major key system and performance challenges facing statutory child protection services, both in Victoria and elsewhere.

Subsequent chapters, in particular Chapters 8-12, provide more detailed performance information and assessments on the core components or key aspects of the system. These chapters include relevant views and material presented in submissions to the Inquiry and at the Public Sittings and consultations. An overview of these views is presented in Chapter 5 .

4.2 Assessing Victoria's system for protecting vulnerable children: conceptual and data issues

The key objective for Victoria's system for protecting vulnerable children as outlined in the Inquiry's Terms of Reference and consistent with public expectations is reducing the incidence and negative impact of child neglect and abuse.

Consistent with these objectives, overarching assessments of the performance of statutory child protection services would ideally be based on trends in the level of child abuse and neglect and the lifetime outcomes for children and young people who have been the victims of substantiated child abuse and neglect. However, comprehensive and robust data over time to provide the basis for these overarching assessments of the statutory child protection system in reducing the incidence and impact of child abuse and neglect are not available for Victoria or indeed most other jurisdictions.

While there are a number of sources of data and information on the incidence of child abuse and neglect, including reports to statutory child protection services, health survey data, police and courts information, and the 2005 Personal Safety Survey by the Australian Bureau of Statistics (ABS), it is generally accepted that this data does not provide a comprehensive and contemporary indication of the prevalence of child abuse and neglect. Survey data, mostly of adults in later life, suggest only a minority of cases are reported to governments as part of statutory child protection approaches.

In the absence of comprehensive lifetime outcome data on the incidence of child abuse and neglect, assessments of the incidence of child abuse and neglect inevitably fall back on: proxies such as reports of suspected child abuse to child protection authorities and the outcomes of these reports in terms of substantiated cases of child abuse and neglect; the number of court orders; and the placement of a child or young person in out-of-home care. These data sets have inherent limitations in enabling an assessment of trends in the overall prevalence of child abuse and neglect.

Major data limitations also inhibit assessments of the impact of interventions designed to limit the impact of abuse and neglect. Limited and partial information is available on experiences of young people leaving care on the expiry of a guardianship or custody order at around 18 years of age. However, of children and young people who are the subject of substantiated abuse and neglect:

- The majority are not placed in out-of-home care, given the nature and assessment of the abuse and neglect and the family circumstances; and
- The majority who are placed in out-of-home care are there for relatively short periods and return to a family setting.

For these groups of children and young people, information on their experiences following involvement with the statutory child protection services is rarely able to be collected and any information available is generally anecdotal.

In the absence of these data sets, assessments of the performance of the system are generally limited to the immediate performance of aspects of the system, for example adverse events arising from non-detection of seriously at risk children and young people and the educational attainment and experiences of young people in out-of-home care. In addition, some proxy information on the impact of statutory child protection services can be deduced from the proportions of children and young people who experience multiple interactions with statutory child protection services over time.

Assessments of the statutory child protection system are also often influenced by the views adopted on the role of the statutory child protection services in assessing and addressing the individual family and child circumstances identified as present and contributing to the child being at risk. As outlined in Chapter 2 a range of factors are often present with families involved with statutory child protection services such as family violence, drug and alcohol abuse, mental illness, intellectual disability and inadequate housing. The presence and significance of these factors within individual families can also change over time and the responses to these factors require the involvement of other service systems.

Until the mid-2000s, the child protection information management system – then known as CASIS – gathered information on the significant issues of families involved with statutory child protection services such as family violence and parental drug and alcohol. This structured approach to the collection of family characteristics data was discontinued with the adoption of the current Client Relationship Information System (CRIS) system. As a consequence, validation or an informed assessment of the proposition made by a number of submitters to this Inquiry that the issues facing statutory child protection system are becoming more complex are not possible.

In summary, there are major data constraints in arriving at a comprehensive assessment of the performance of Victoria's system for protecting vulnerable children. Any assessments therefore inevitably need to assemble and piece together segments of data and research, supplemented by external reviews including those by the Victorian Ombudsman and Victorian Auditor-General.

4.3 Measures and views of the performance of Victoria's statutory child protection system

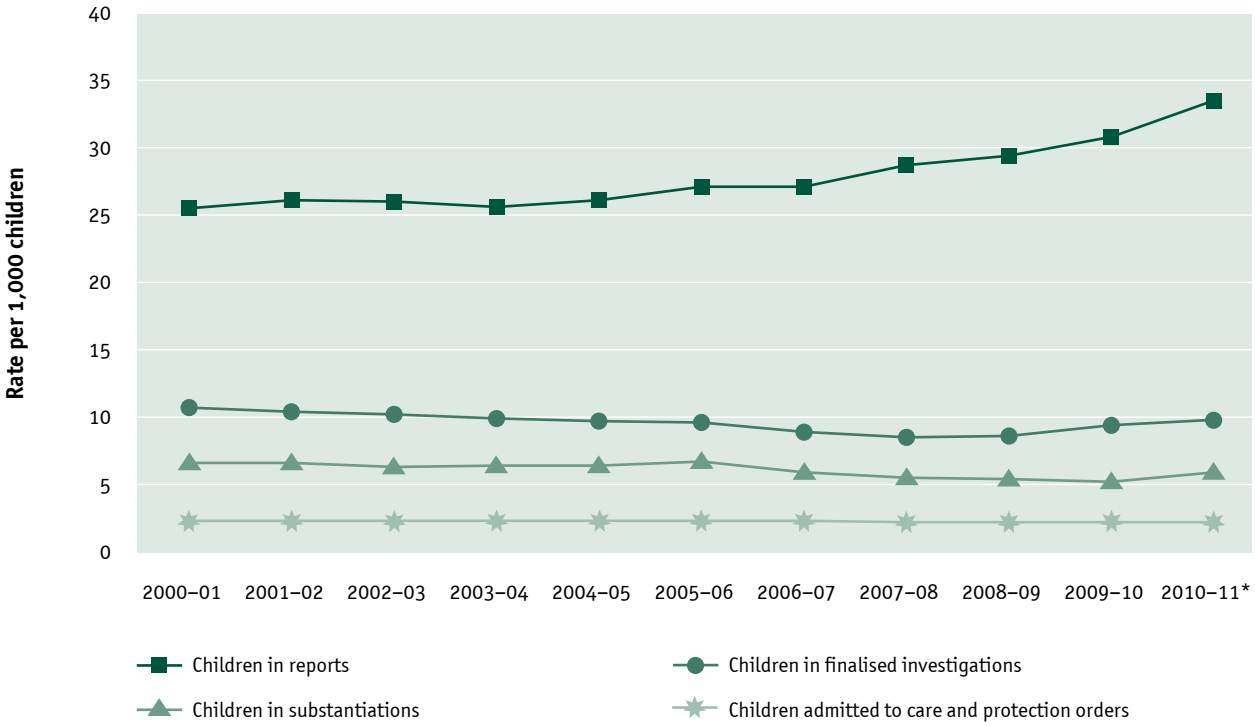
In line with the significant limitations identified in the preceding section, the headline performance information and assessments presented here are based on:

- Available information on the activity and performance levels of Victoria's statutory child protection services including out-of-home care; and
- Observations from recent reports by the Ombudsman and the VCDRC on the practices and processes of statutory child protection services.

The information presented includes key results from the statistical analyses undertaken as part of the Inquiry on child protection reports in 2009-10 and out-of-home care placements over the past 15 years to 2009-10.

Later chapters in the report present an in-depth analysis of the key performance issues, along with the wealth of information and insight gained from the Inquiry's consultation process through submissions, Public Sittings, meetings and visits. A summary of the views expressed to the Inquiry is presented in the following Chapter 5.

Figure 4.1 Child protection reports, investigations and substantiations and children admitted to care and protection orders, rate per 1,000 children, Victoria, 2000-01 to 2010-11



Source: Steering Committee for the Review of Government Service Provision (SCRGSP) 2011c, Table 15A.53
* Provided to the Inquiry by DHS

4.3.1 Statutory child protection service and out-of-home care

A range of statistical and performance information on the statutory system for protecting children is assembled by the Department of Human Services (DHS) and published in the Victorian budget papers and in annual reports and, at the national level, by the Australian Institute of Health and Welfare (AIHW) and as part of the annual Review of Government Services.

Figure 4.1 shows the rate of Victorian child protection reports, investigations, substantiations and court orders per 1,000 Victorian children since 2000-01. This illustrates:

- A growth in Victorian child protection reports over the past decade that has been attributed, in part, to enhanced public awareness as a result of the legislative changes, changing public perceptions of the nature of child abuse and neglect and the various inquiries into child protection practices and processes; and
- The growth in reports exceeds or has been in contrast to the trends in investigations, substantiations and level of court orders, which either generally declined over the period (investigations and substantiations) or grew at a slower rate (court orders).

Partial indicators of the performance of statutory child protection services in preventing abuse are the extent of interactions of children and young people with statutory child protection services prior to a substantiated child abuse and neglect and incidences of further resubstantiations. In summary this data indicates:

- For those children and young people who were the subject of an unsubstantiated report there has been a general decline over the decade in the proportion who were subsequently the subject of a substantiated case of child abuse and neglect in the subsequent three or 12 months; and
- The trends for children who were the subject of a substantiated report are less clear, with the proportion who were subsequently the subject of a further case of substantiated abuse within three months rising in recent years.

A number of factors may have an impact on these trends including changes in thresholds and child protection practices, the changing nature of child abuse and neglect and the availability of resources, in particular, child protection workers. Chapter 9 considers this data and associated issues in further detail.

Figures 4.2 to 4.4 present a range of information on the incidence and structure of out-of-home care placements within statutory child protection system covering:

- The rates per 1,000 of children and young people in out-of-home care at the end of June each year and children and experiencing at least one out-home-care placement during the financial year (Figure 4.2);
- Children in out-of-home care at the end of June each year by length of current continuous placement (Figure 4.3); and
- The total number of Victorian children and young people in out-of-home care by Aboriginal status (Figure 4.4).

The data in Figures 4.2 to 4.4 indicate: continued marked increase in the number of children in out-of-home care at June each year; an increase in the length of current continuous placement in care; and a marked increase in the proportion of Victorian children and young people in out-of-home care. Indeed, the increase in the number of Aboriginal children and young people in out-of-home care in recent years accounts for most of the overall increase.

Areas of particular concern for children and young people in out-of-home care are placement stability and the levels of education attendance and performance.

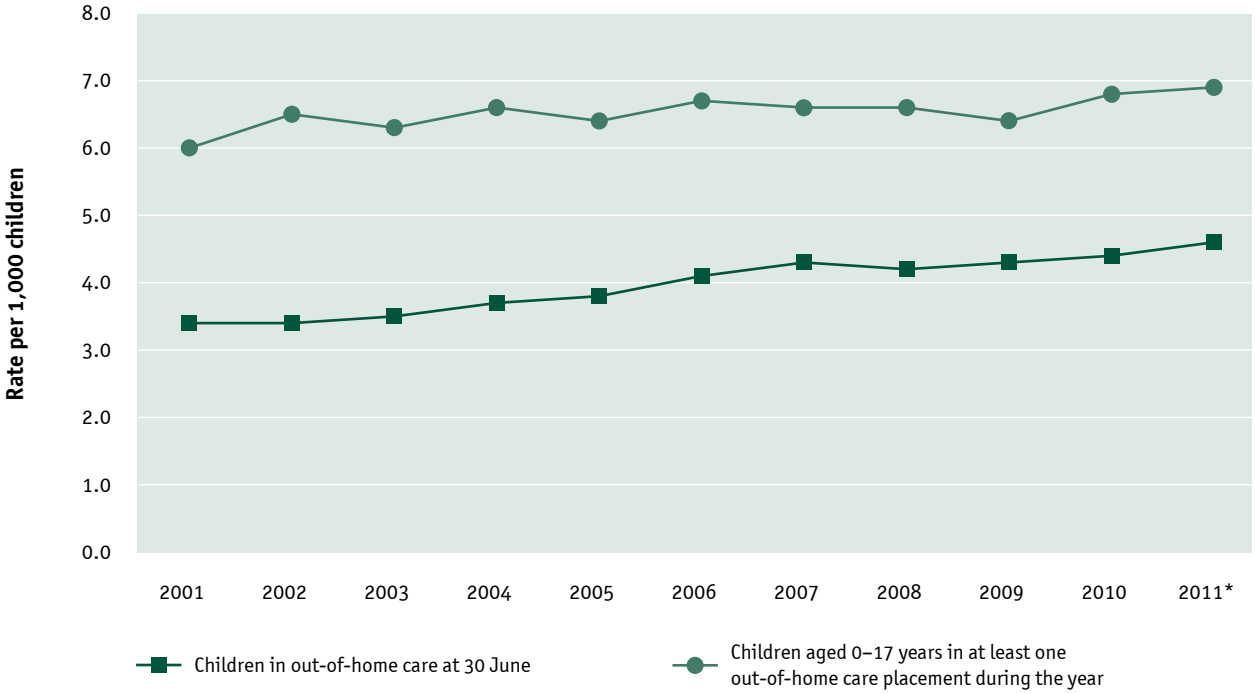
As outlined in Chapter 10:

- 12 per cent of children and young people in care at the end of June 2010 had three placements or more in the preceding 12 months (excluding placements at home) and the data suggests a long-term increase in the proportion of children and young people experiencing multiple placements prior to leaving care; and
- Regardless of year level, children and young people in out-of-home care are about twice as likely to perform below standard at reading compared with the overall population of children and young people.

To provide an indication of trends in the public resourcing of Victoria's statutory child protection system, Table 4.1 presents Victorian Budget information on DHS expenditure on statutory child protection services (including out-of-home care and specialist support) and the broader output of family and community services (includes Child FIRST and other services). Figure 4.5 presents this expenditure as a proportion of total budget output expenditure.

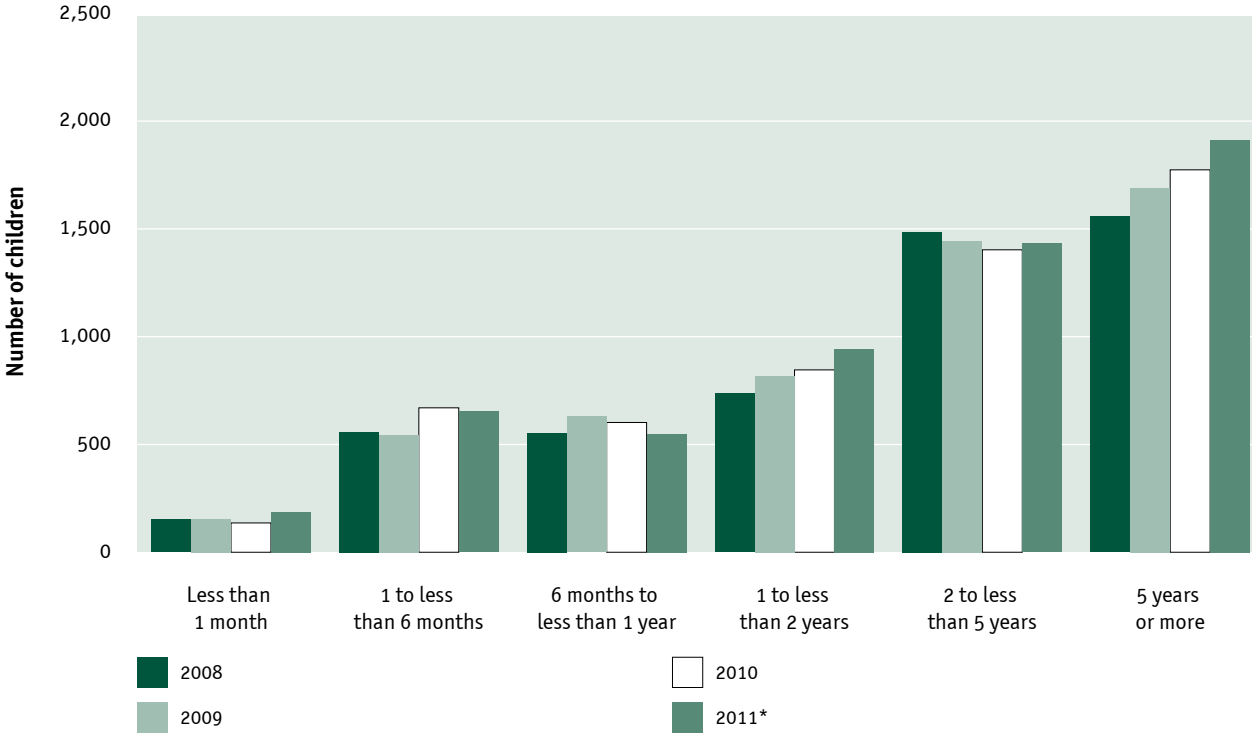
In nominal terms, expenditure on statutory child protection services, particularly out-of-home care and family and community services, has increased significantly over the decade. When expressed as a proportion of overall State Budget output expenditure, both statutory child protection expenditure and family and community services expenditure has increased as a proportion of overall state output expenditure.

Figure 4.2 Children in out-of-home care at 30 June, rate per 1,000 children aged 0-17 years, Victoria, 2001 to 2011



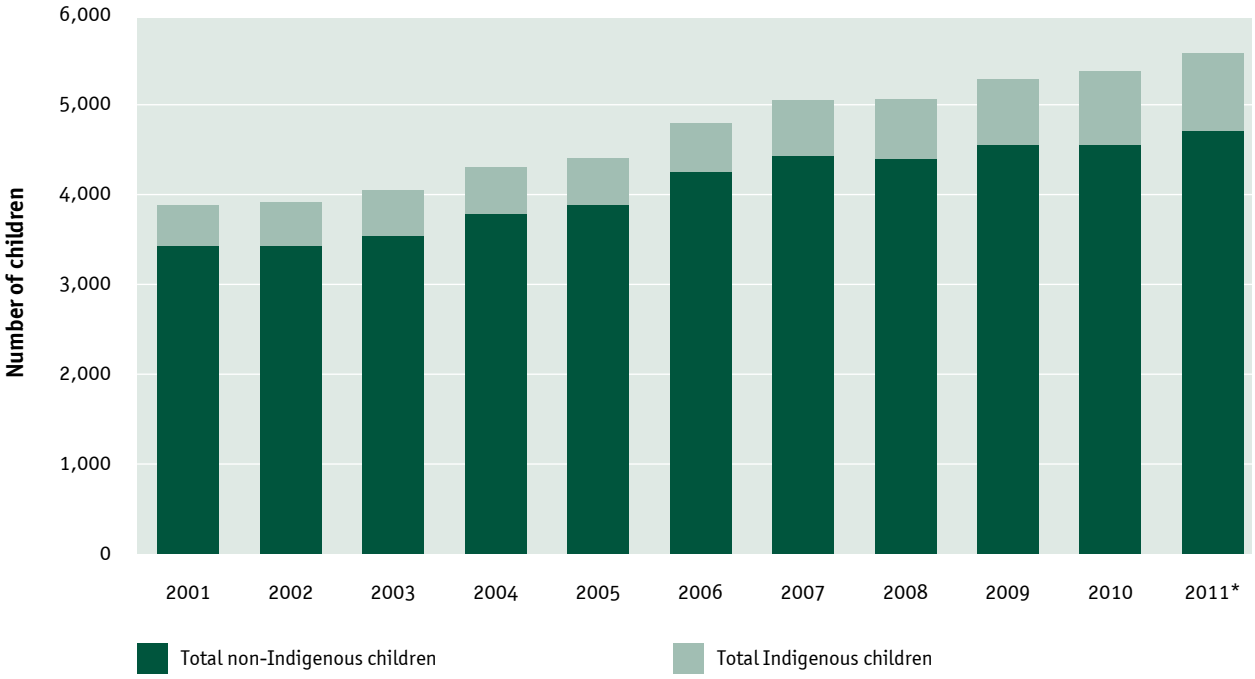
Source: SCRGSP 2011c, Table 15A.57
* Provided to the Inquiry by DHS

Figure 4.3 Children in out-of-home care at 30 June, by length of time in continuous care, Victoria, 2008 to 2011



Source: SCRGSP 2011c, Table 15A.60
* Provided to the Inquiry by DHS

Figure 4.4 Children in out-of-home care at 30 June, by Aboriginal status, Victoria, 2001 to 2011



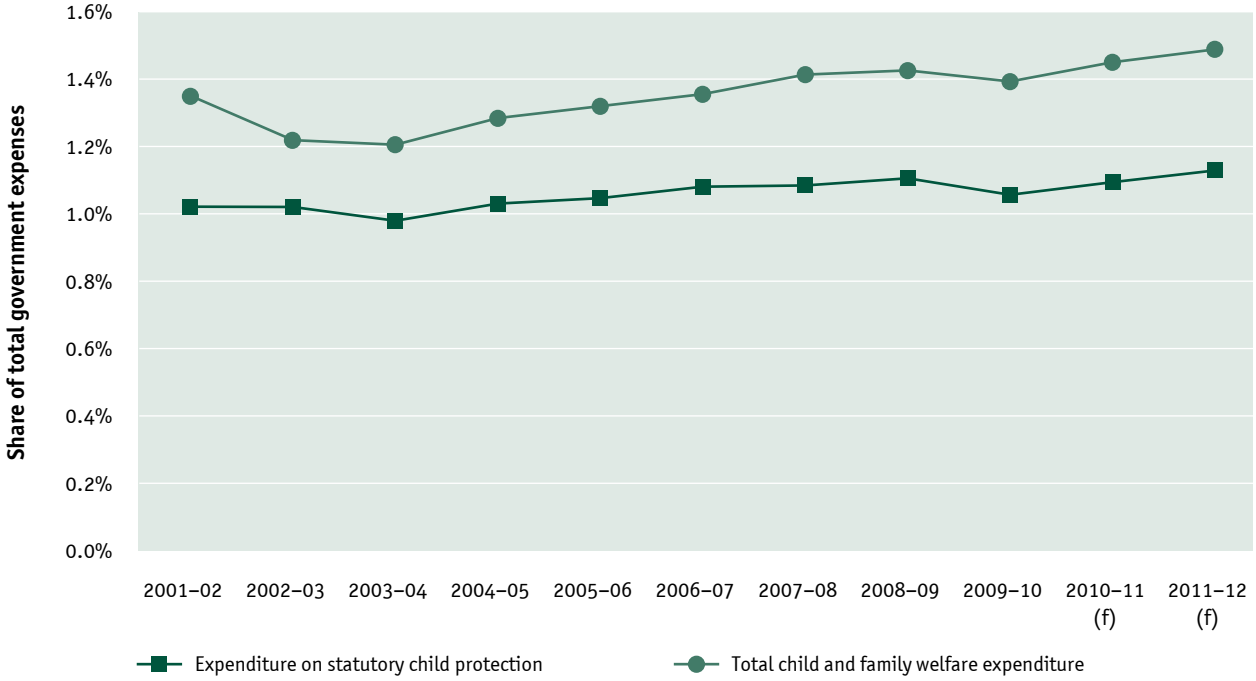
Source: SCRGSP 2011c, Table 15A.58
* Provided to the Inquiry by DHS

Table 4.1 Victorian Government funding for child protection and family services, 2002-03 to 2011-12

Output Cost ($m)	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11 expected outcome	2011–12 target	% change 2002 and 2011
Child Protection	$109.5	$111.0	$100.4	$108.4	$119.4	$128.5	$140.6	$151.1	$160.7	$170.8	47%
Child Protection specialist services	$23.4	$27.3	$41.3	$40.3	$51.5	$51.6					
Placement and Support	$127.9	$131.5	$157.4	$175.5	$190.8	$208.6	$290.8	$313.1	$330.9	$362.3	159%
Subtotal Cost – Statutory Child Protection Services	$260.8	$269.8	$299.1	$324.2	$361.7	$388.7	$431.4	$464.2	$491.6	$533.1	88%
Family and Community	$66.5	$67.3	$73.7	$84.6	$92.0	$118.0	$125.0	$147.8	$160.0	$169.8	141%
Total System Cost	**$327.3**	**$337.1**	**$372.8**	**$408.8**	**$453.7**	**$506.7**	**$556.4**	**$612.0**	**$651.6**	**$702.9**	**99%**

Source: Victorian Government, Victorian Budget (multiple editions 2002-12)
Note: Child Protection Specialist Services category discontinued in 2008-2009 and was largely absorbed within Placement and Support.

Figure 4.5 Victorian Government funding for child protection and family services, as a share of total government expenditure, 2001-02 to 2011-12



Source: Inquiry analysis of Victorian Government, Victorian Budget (multiple editions 2001-12) (f) forecast

4.3.2 An analysis of 2009–10 child protection reports

To supplement the broad statistical overview of the performance of Victoria's statutory child protection service, a detailed statistical analysis was conducted for the Inquiry of all 2009-10 reports to Victoria's statutory child protection system including the outcomes of these reports and prior interactions with statutory child protection services. The analysis was undertaken using a de-identified data base provided by DHS and the main findings of this analysis are summarised below.

Child protection reports 2009-10:

- There were around 37,500 children who were the subject of just over 48,000 reports to DHS in 2009-10, a rate of 32.7 per 1,000 Victorian children aged 0–17 years or over three per cent;
- By single year, the rate of reports was relatively similar across all ages at around 30 per 1,000 children, with the exception of infants where that rate was 43.4 per 1,000 or over four per cent and 16 year olds where the rate declined to 20 per 1,000;
- There was considerable variation in likelihood of reports across Victorian regions with the report rates for the Gippsland region and Loddon-Mallee region being 66 per 1,000 children and 61 per 1,000 children;
- The most common types of alleged child abuse and neglect were: psychological harm (46.5 per cent); physical harm (33.6 per cent); and sexual harm (11.0 per cent). Reports for sexual harm increased with age, particularly for females; and
- 21 per cent of children were the subject of multiple reports during 2009-10.

Child protection response 2009-10:

- One in five reports were investigated, with reports of alleged physical harm or sexual harm more likely to be investigated than reports of psychological harm;
- There were 5,516 substantiations of child abuse and neglect in 2009-10 which represented 11.5 per cent of all reports and 54.5 per cent of investigations;
- Investigated cases of alleged psychological harm were almost twice as likely to be substantiated as sexual harm; and
- Protective applications were made in relation to 3,331 children who were the subject of a substantiated report in 2009-10 and 1,385 children who were the subject of a report in 2009-10 experienced some form of out-of-home care (overwhelmingly home-based care).

Interactions with the child protection system 2009-10:

- Over their lives to date, there had been a total of 134,000 reports to DHS in relation to the 37,505 children who were the subject of a report in 2009-10 or the equivalent of 3.6 reports per child (including the reports in 2009-10);
- 70 per cent of children who were the subject of a report in 2009-10 had either been the subject of a report previously or were the subject of a further report in the subsequent period between July 2010 and May 2011;
- 2,000 children reported to DHS in 2009-10 have been the subject of more than 10 reports to date; and
- Of the approximately 37,500 children who were the subject of a report in 2009-10, 14,597 or just fewer than 40 per cent have been the subject of a substantiated case of child abuse or neglect arising from the 2009-10 report or earlier reports.

4.3.3 A historical analysis of out-of-home care placements

To supplement the annual data available on Victoria's out-of-home care component of the broader statutory child protection system and, based on a de-identified data base provided by DHS, detailed analysis was undertaken for the Inquiry of all out-of-home care placements since 1994-95.

This analysis indicated:

- Infants under 12 months of age represented just over 12 per cent of children admitted to care in 2009-10, nearly double that in 1994-95;
- The proportion of children and young people placed in care and identified as Aboriginal increased from six per cent to 16 per cent between 1994-95 and 2009-10; and
- The number of children and young people admitted to foster care placements decreased from 3,731 in 1999-2000 to 1,751 in 2009-10 - a decline of 53 per cent while the number placed in kinship care increased from less than 20 in 1994-95 to 1,211 in 2009-10 and the number placed in residential care declined from 668 in 1994-95 to 546 in 2009-10.

4.3.4 Comparisons with other states and territories

While the broad child protection processes are similar across Australian jurisdictions, there are important differences in child protection legislation, policies and practices. These differences impact on the direct comparability of child protection data for individual jurisdictions.

The data presented below provides aggregate data on a range of child protection activity measures along with per capita expenditure information. The information provided covers:

- Reports, investigations and substantiations and children on care and protection orders per 1,000 in the target population for each State and Territory for 2009-10 (Figure 4.6);
- Children in out-of-home care per 1,000 children aged 0 to 17 years for each State and Territory for 2009-10 (Figure 4.7); and
- Recurrent expenditure on child protection and out-of-home care services per all children aged 0 to 17 years for each State and Territory (Figure 4.8).

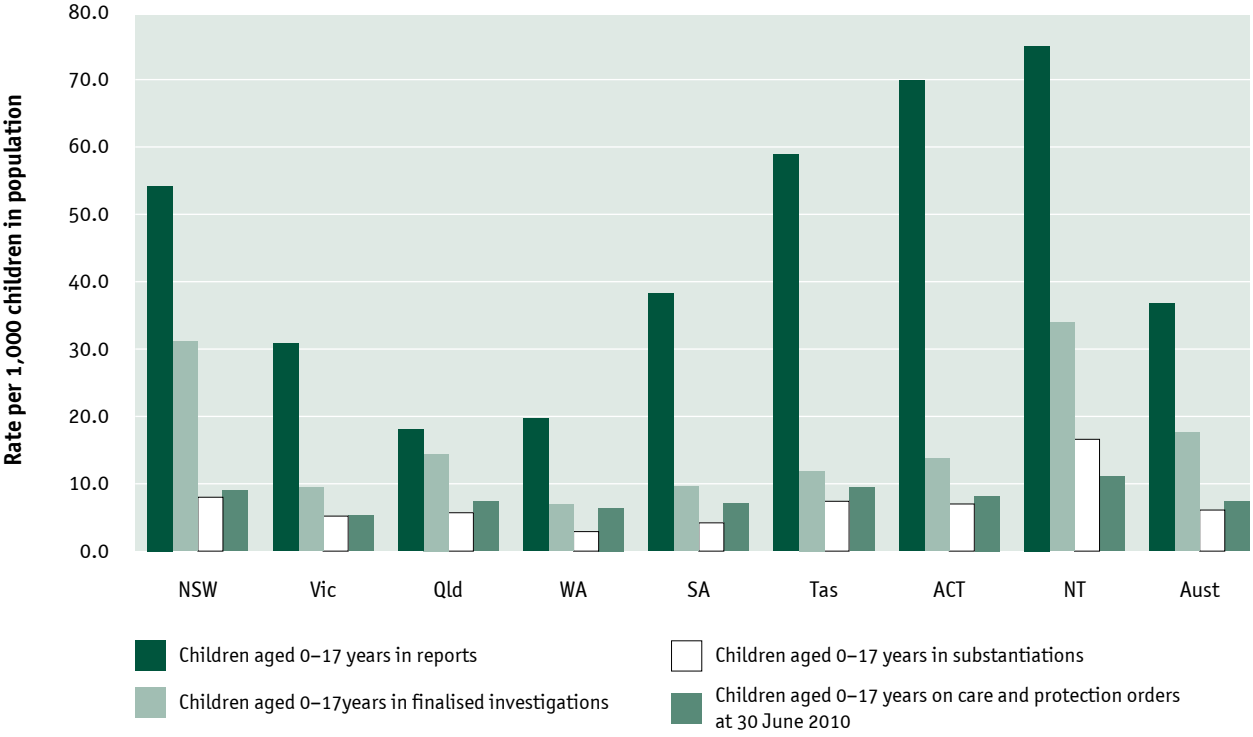
Given the issues impacting on data comparability, significant qualifications apply to any assessments about relative state and territory performance. In particular, states and territories adopt a variety of service responses to vulnerable children and their families and the extent to which these responses form part of statutory child protection services. In Victoria, the development of Child FIRST and Integrated Family Services and the historical importance of community service organisations (CSOs) are important influences in this regard. In broad terms, Victoria has lower levels of statutory child protection activity including out-of-home care placements compared with the other major states, and this is reflected in lower rates of expenditure per capita.

4.3.5 Recent reports by the Victorian Ombudsman

The Victorian Ombudsman has presented a number of major reports to Parliament on Victoria's statutory child protection system over the past two years.

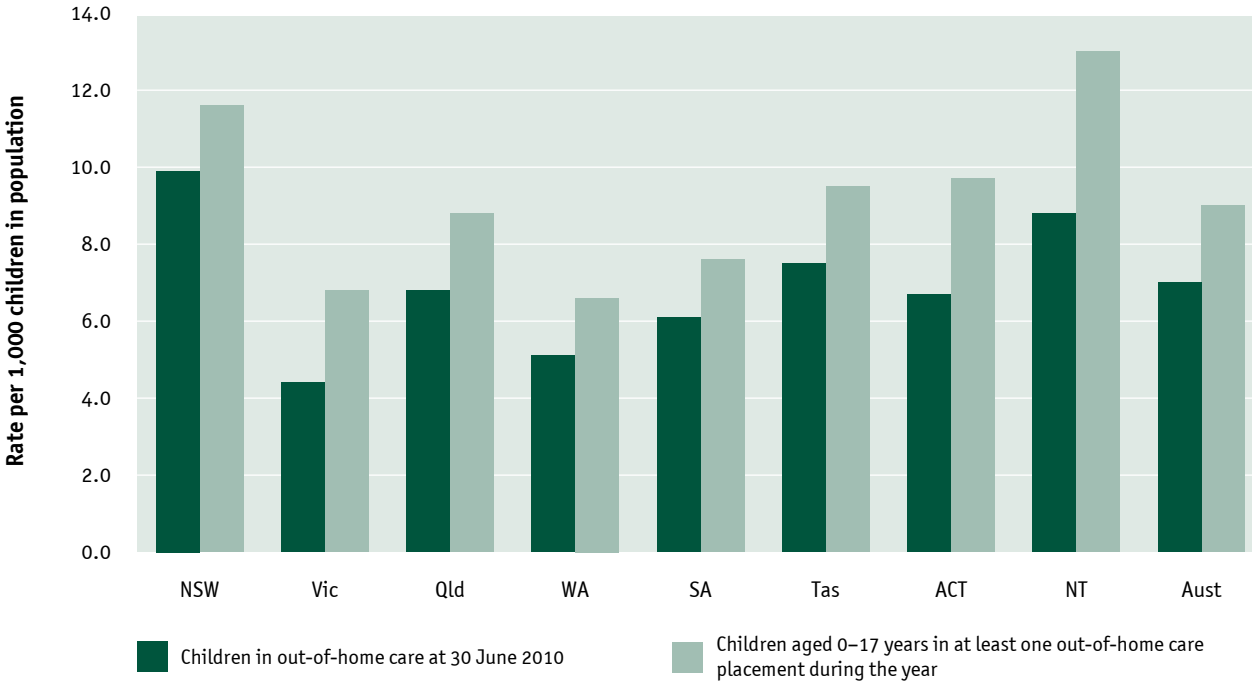
In November 2009 the Ombudsman presented to Parliament the report of his *Own Motion Investigation into the DHS Child Protection Program*. This was followed in May 2010 by a Report of a further *Own Motion Investigation into Child Protection – Out-of-home Care*. In October 2011 this report on the *Investigation regarding the Department of Human Services Child Protection Program (Loddon Mallee Region)* pursuant to the *Whistleblowers Protection Act 2001* was presented to Parliament.

Figure 4.6 Children in child protection reports, investigations and substantiations and children on care and protection orders for all states and territories: rate per 1,000 children, 2009-10



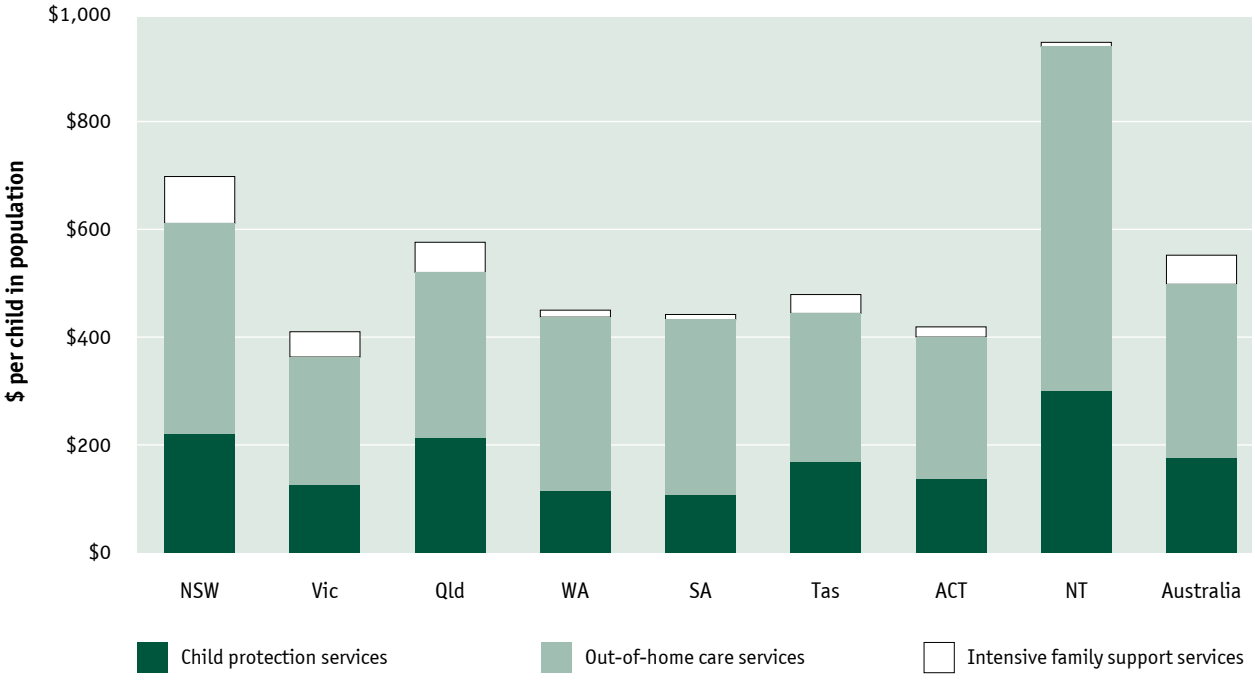
Source: SCRGSP 2011c, Table 15A.8

Figure 4.7 Children in out-of-home care, states and territories, 2009-10



Source: SCRGSP 2011c, Table 15A.16

Figure 4.8 Real recurrent expenditure on child protection and out-of-home care services, per child, states and territories, 2009-10



Source: SCRGSP 2011c, Table 15A.1

In February 2011 the Victorian Ombudsman also presented a report on his investigation into the failure of agencies to manage registered sex offenders.

These reports highlighted a number of deficiencies in statutory child protection processes and practices and also made a number of observations about broader reporting and oversight, funding and workforce issues. However, they do not represent an assessment of the overall system in reducing the incidence and impact of child abuse and neglect. Rather, particularly in relation to the child protection service, they largely focus on process and risk assessment issues, and an assessment of the adherence to appropriate processes as a basis for making judgments about the robustness and likelihood of the system protecting vulnerable children in all instances.

The Victorian Ombudsman's 2009 report *Own Motion Investigation into the Department of Human Services Child Protection Program* contained the following observations:

> It was clear that the vast majority of staff interviewed by my officers wanted to follow best practice principles and conduct a thorough, well thought out investigation, but they found this was impossible because of resource constraints. This resulted in a poor quality service being provided (p. 9);
>
> My investigation established that a large proportion of children subject to the department's intervention are not allocated a child protection worker (p. 9) and failure to allocate cases means that there are a substantial number of vulnerable children without a child protection worker to respond to their needs (p. 10);
>
> Evidence obtained during my investigation shows that the degree of tolerance to risk to children, referred to as the 'threshold', varies across the state according to the local departmental office's ability to respond (p. 10);
>
> Throughout my investigation, it has been apparent that the department's capacity to respond is so stretched that cumulative harm to children has not been given the priority and attention it should (p. 11)
>
> It was suggested that the current legal system perversely encourages disputation rather than cooperation in the protection of children and in my view the appropriateness of a legal system that generates such a degree of conflict ought to be reconsidered by government and an assessment made as to whether better outcomes for children and families could be achieved through an improved model (p. 12);
>
> I have also identified concerns regarding the degree of resources currently required to service a model built on a premise of disputation and litigation and approximately 50 per cent of child protection worker time is spent servicing Children's Court work and subsequent Protection Orders, even though only 7.3 per cent of the total number of reports made to the department result in legal intervention being initiated in the Children's Court (p. 12);
>
> In my opinion, compliance with statutory obligations and practice standards must be a priority for the department if the safety and wellbeing of vulnerable children and young people is to be assured (p. 14);
>
> I consider that the accountability framework that has developed around the child protection system lacks sufficient rigour and transparency or the proactive elements required to ensure the state's response to children meets community expectation and it is also my view that there should be a greater degree of public reporting by the department regarding the child protection system's performance in meeting its statutory obligations and delivering on critical policy initiatives (p. 15); and
>
> The issue of recruiting and retaining staff in the child protection workforce appears to be a long standing one which Victoria has in common with many other jurisdictions. Low retention rates have resulted in a staff group lacking in experience. Many reasons have been advanced for these low retention rates however the experience staff have in dealing with the legal system has figured prominently (p. 17).

These and other observations provided the basis for 42 separate recommendations all of which were accepted by DHS and by the Attorney-General in relation to the recommendation that a reference be provided to the Victorian Law Reform Commission (VLRC) to examine alternative models for child protection arrangements.

The Victorian Ombudsman's 2010 report *Own Motion Investigation into Child Protection – Out-of-home Care* contained the following observations:

> Evidence emerging from research into outcomes for children in care has eroded the assumption that simply removing children at risk of harm from their homes and placing them in care will improve their wellbeing. The objectives of the out-of-home care system in Victoria have broadened beyond meeting a child's basic accommodation, food, healthcare and schooling needs. This broader approach has been to the benefit of many children placed in out-of-home care (p. 9);
>
> Despite ongoing reforms to the out-of-home care system, some children do not experience out-of-home care placements as the safe and secure environment they should be. Rather they are subjected to further abuse and neglect (p. 9);
>
> In reviewing the circumstances of a number of children I have concluded that further harm may have been avoided if adequate screening and assessment of their carers had occurred (p. 11);

My investigation identified substantial differences in both practices and attitudes relating to the screening of foster carers and kinship carers. These differences have become more problematic as the department has increased its reliance on kinship placements (p. 11);

I consider there is a lack of transparency and independent oversight in relation to the quality of care and safety being provided in the out-of-home care system (p. 12);

The department is struggling to meet the demand for out-of-home care services (p. 13);

The evidence I have obtained indicates that many residential staff lack basic qualifications and that some do not have adequate skills in relation to critical matters such as the use of physical restraint. Failing to appropriately recruit and train carers is likely, in my view, to perpetuate the current issues with staff turnover and create further instability for the children in residential care units (p. 14);

Overall, Victoria allocates significant resources to the provision of out-of-home care when compared to other states and territories. However, I am concerned that arrangements for funding of the out-of-home care system appear to be reactive and therefore contribute to an inefficient reliance in contingency arrangements (p. 16);

As a result of the trauma and instability they have experienced, many of these children will require intensive support in order to grow into stable, healthy adults with positive prospects for the future (p. 16);

Educational outcomes for children in care are substantially lower than those for the broader student population. The department shares this responsibility with the Department of Education and Early Childhood Development and ... witnesses have suggested that a more broad based approach will be needed if the departments are going to make a substantial difference to educational outcomes for these children (p. 17);

Effective case management is integral to improving quality of care and outcomes for individual children in out-of-home care. It is clear that the case management practices utilised by the department do not always function effectively to identify and meet the professional care needs of children (p. 19);

Research has shown that young people leaving care are at risk of experiencing poor outcomes and negative experiences in their adult lives, including unemployment, homelessness and contact with the criminal justice system. Evidence obtained during my investigation indicated that there are children in Victoria leaving care at 18 years of age with insufficient preparation and little or no ongoing support (p. 19);

When the challenge of caring for damaged children is considered, it is likely that the financial impost of inadequate carer payments is contributing to the difficulty in recruiting foster carers. Overall, the system of financial reimbursement lacks transparency and is difficult for carers to navigate. Not only is this a source of frustration to carers, but those spoken to during my investigation stated it is hindering their ability to acquire the goods and services children in their care need (pp. 19-20); and

Approaches adopted by other jurisdictions which include community visitor schemes, independent advocates and regular surveying of children in out-of-home care placements would provide a level of scrutiny not presently evident in the Victorian out-of-home care system (p. 21).

The report made 21 recommendations designed to improve processes, increase scrutiny and introduce better planning in the out-of-home care system. The Department accepted all the recommendations with the exception of the recommendation to transfer the registration of CSOs from DHS to an independent office.

The Victorian Ombudsman's 2011 report on the *Investigation regarding the Department of Human Services Child Protection Program (Loddon Mallee Region)* contained the following observations:

I believe a practice has developed where the drive to meet numerical targets has overshadowed the interest of children despite evidence that they may be at risk (p. 7) ..... and I referred the circumstances of 59 children identified during my investigation to the department as I considered the safety of these children could not be assured (p. 6);

Despite receiving more reports in 2010-11 than the previous year, the region conducted less than three quarters of the number of investigations (p. 6);

I have also identified evidence of misrepresentation of data regarding the number of children allocated to child protection workers (p. 7); and

One element of the region's strategy to reduce the number of children without an allocated child protection worker was to investigate fewer reports (p. 9).

The report contained six recommendations covering assessment processes for child protection reports, collection of data on unmet demand and introducing amendments to the *Child Wellbeing and Safety Act 2005* to broaden the circumstances in which a child death review is conducted. All recommendations were accepted by the Department.

4.3.6 *Inquiries into the deaths of children known to child protection*

Since 1996 the VCDRC's annual reports on the deaths of children known to Child Protection have been tabled in Parliament. The VCDRC is a multidisciplinary ministerial advisory committee that provides a second tier review of the deaths of children who are current or recent clients of the state's statutory child protection service. The inquiry and review process examines case practice for each child death case and then in aggregate, identifies common themes and emerging trends in practice and service delivery. Chapter 21 describes this process in more detail.

The VCDRC's *Annual Report of Inquiries into the Deaths of Children Known to Child Protection 2011* presented an analysis of child deaths from 1996 to 2000. Figure 4.9 and Table 4.2 taken from the report show:

- The annual number of deaths of children known to statutory child protection services over the period 1996-2010. The table also includes the estimated impact of the legislative change in 2007 that required child death inquiries to be conducted in respect of children who had been child protection clients in the previous 12 months compared with the then timeline of child protection clients in the previous three months (Figure 4.9); and
- The number and distribution by category of death for children known to statutory child protection services over the period 1996-2010 (Table 4.2).

Significant variations occur in the number of deaths of children and young people known to statutory child protection services each year and therefore too much should not be read into the statistics, which do not necessarily reflect underlying trends.

However, a number of general observations can be made. On an age basis the greatest number of deaths is of infants aged between birth and six months and children aged between 0-3 years which comprise 61 per cent of all deaths within the known child protection population over time.

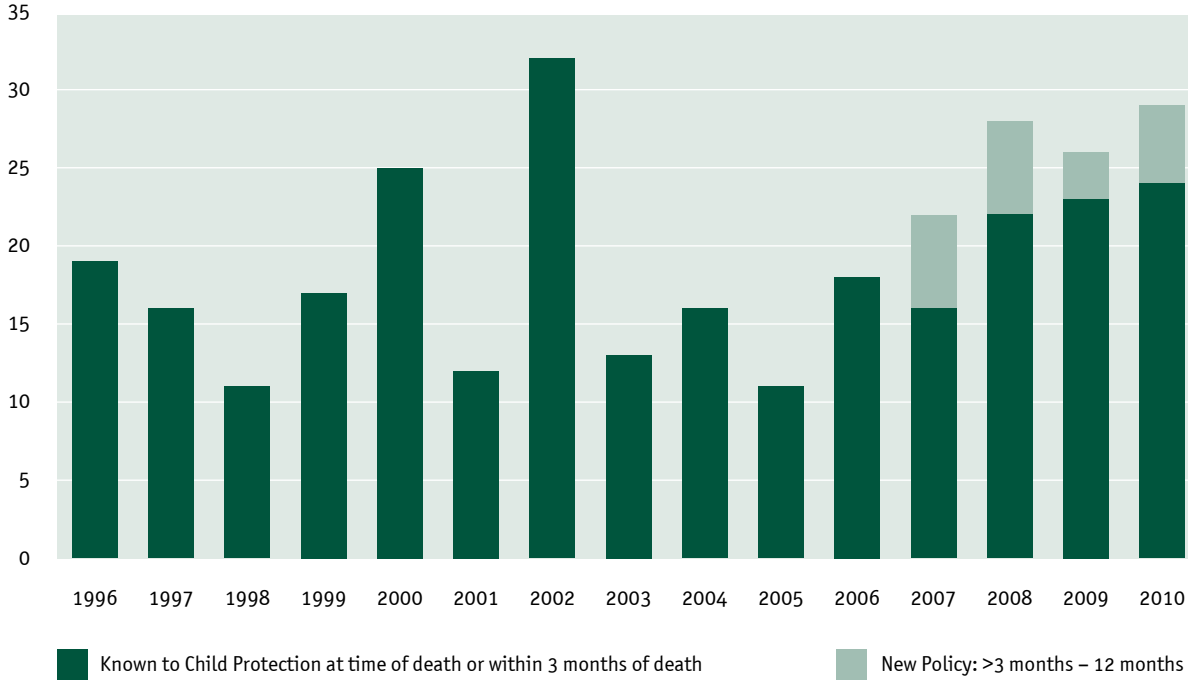
The main categories of death were: acquired/congenital illness, accounting for 33 per cent of all deaths; due to accident (19 per cent); attributable to sudden infant death syndrome (SIDS) (15 per cent); non-accidental trauma (8 per cent); substance abuse, suicide/self-harm/risk-taking behaviour of young people (14 per cent); and cause of death deemed unascertained/pending determination (11 per cent).

At the time of death 37 per cent were the subject of a statutory child protection services intake or investigation, 13 per cent were the subject of protective intervention, 18 per cent were the subject to protection orders, and statutory child protection services had ceased case involvement with 32 per cent.

The reports of the VCDRC underline the wide range of factors and complexities associated with child protection cases and the tragic deaths of children and young people. In particular, the reports note:

- That children and young people who are the subject of child protection reports and investigations often have complex needs and come from families that are facing a complex range of issues; and
- That greater emphasis needs to be placed on a comprehensive and collaborative approach focused on vulnerable families and children getting timely access to the full range of support they need.

Figure 4.9 Deaths of children known to child protection, Victoria 1996 to 2010



Source: VCDRC 2011, p. 19

Table 4.2 Deaths of children known to child protection by cause of death, Victoria, 1996 to 2010

Category of death	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	Total	%
Non-accidental trauma	3	3	–	3	2	–	2	1	2	–	–	1	1	4	2	24	8
Drug/substance related	3	2	2	1	4	–	1	1	2	–	–	–	2	1	3	22	8
Suicide/ self-harm	1	1	–	1	1	1	–	1	–	2	–	1	5	2	2	18	6
SIDS	6	2	1	2	–	2	8	1	2	1	3	3	5	3	4	43	15
Acquired/ Congenital illness	4	5	3	5	11	5	8	5	4	4	10	8	10	10	5	97	33
Accident	1	3	3	4	4	4	8	3	3	1	4	5	4	2	8	57	19
Unascertained	1	–	1	1	1	–	1	–	1	2	1	4	–	2	–	15	5
Pending determination	–	–	1	–	2	–	4	1	2	1	–	–	1	2	5	19	6
Total	**19**	**16**	**11**	**17**	**25**	**12**	**32**	**13**	**16**	**11**	**18**	**22**	**28**	**26**	**29**	**295**	**100**

Source: VCDRC 2011, p. 20

4.4 Conclusion

Statutory child protection services in Australia and overseas have been the subject of periodic major reviews. Since 2000 every jurisdiction in Australia has embarked on at least one substantial review of the way in which statutory child protection services are delivered. More detailed policy and program directions have also been continually reviewed and modified.

A range of common factors has been the catalyst for, and underpins many, of these reviews. These factors also continue to be evident in this broad overview of the performance of Victoria's protection and care system and the successive reviews by the Victorian Ombudsman. In addition, this overview points to a range of more specific challenges and issues for the Victorian system.

Responding to the growth and variations in the number of child protection reports has been and continues to be a significant challenge for all Australian child protection systems. While Victoria's growth in child protection reports has generally been lower than other states and territories, the number of children who were the subject of child protection reports has increased by 49.3 per cent over the period 2000-01 to 2010-11 and the report rate per 1,000 children aged 0 to 17 years increased from 25.5 to 33.5 per cent, or an increase of 31.4 per cent over and above the growth of the Victorian population aged 0 to 17 years.

Associated with this overall increasing trend has been the marked volatility in the level of reports. In 2009-10, the number of children that were the subject of reports increased by 12.5 per cent compared with an increase of 3.9 per cent in the previous year. The increase in 2009-10 coincided with the two major reports by the Victorian Ombudsman and the associated increase in media focus. In 2010-11, a further 9.8 per cent increase in the number of children who were the subject of child protection reports was recorded.

In addition to these variations over time, there are significant variations in the spatial pattern of reports, reflecting a range of socioeconomic, demographic and location specific factors. There is also increasing evidence that interactions with statutory child protection services are recurring events for many vulnerable children and their families. Seventy per cent of the children who were the subject of a report in 2009-10 had either been the subject of a report previously or in the subsequent 10 months and report rates in the Gippsland and Loddon Mallee regions were approximately two times higher than the State average. Aboriginal children have a report rate five times that of non-Aboriginal Victorian children.

The continued growth and marked geographical and demographic variations in child protection reports raises major challenges for statutory child protection services to maintain appropriate case practice and quality standards. The Victorian Ombudsman's 2009 report on the statutory child protection program and 2011 report on the statutory child protection program (Loddon Mallee region) made a number of observations, both directly and indirectly, on the issue of demand and the responses of the statutory child protection service.

More generally, the significant incidence of recurring reports and multiple substantiations underline that statutory child protection services of itself frequently cannot redress the multiple and chronic issues that are associated with child abuse and neglect. This requires consideration of a broader framework and the quantum and design of effective prevention and targeted interventions for vulnerable children and families, particularly in disadvantaged areas. Families with multiple complex problems – parental substance, family violence, mental illness and intergenerational social and economic exclusion – and chronic involvement with statutory child protection services pose a major challenge in this regard.

Chapter 6 considers the broad system objectives and design issues. Chapters 7-9 address the major policy, identification and design issues in developing effective, efficient and integrated responses to the issue of vulnerable families and children, as well as the potential and reality of child abuse and neglect for a proportion of these vulnerable and other families and children.

In Victoria particularly, the impact of the legal framework and the role and approach of the Children's Court on the level of disputation, statutory child protection services resource utilisation and broader workforce issues have been the subject of comment by the Victorian Ombudsman and others. More recently, the detailed June 2010 report by the VLRC, *Protection Applications in the Children's Court*, reviewed Victoria's child protection legislative and administrative arrangements in relation to Children's Court processes and identified a range of options for procedural, administrative and legislative changes that may minimise duplication and maintain a focus on the best interests of children.

While the nature of, and increase in, child protection reports raises demand and policy response issues for the statutory child protection service intake services, the performance data and evidence also points to significant issues with the range and quality of out-of-home care service provision of statutory child protection services. These issues cover the increasing length of stays in out-of-home care; achieving stability in out-of-care placements; recruiting and retaining foster and kinship carers and providing appropriate training and support (including adequate financial support); an updated range of intensive remedial supports and placement options tailored to the individual and specialised needs of children and young people who have been subject to significant abuse and neglect; adequate overall funding; and greater child-centred practice including ensuring the voices of children in care are heard.

Equally concerning is the evidence that many out-of-home care placements are not achieving stability let alone improvements in the wellbeing and development of many children and young people. This is especially the case for many young people in out-of-home residential care, where educational attainment levels and other data point to major deficiencies in redressing the impact of child abuse and neglect. These deficiencies are particularly evident in the experiences of the 400 Victorian young people who formally leave care each year as a result of the expiry of their guardianship and custody order at the age of 18 years.

Chapters 10 and 11 analyse and consider these critical and long standing challenges for Victoria's out-of-home care system.

The unacceptable and growing over-representation of Aboriginal children in the number of Victorian children who are the subject of reports, substantiations, child protection orders and out-of-home care placements represents a major challenge for Victoria's child protection framework and broader economic, social and community policies. The deeper into the statutory child protection system, the greater the over- representation of Aboriginal children and young people. While Aboriginal children represented 6.6 per cent of Victorian children who were the subject of child protection reports in 2010-2011 and 10.5 per cent of Victorian children who were the subject of substantiated child abuse and neglect, they represented 15.4 per cent of children in an out-of-home care placement at the end of June 2011. The impacts of the history of dispossession of the Victorian Aboriginal community are clearly wider, but no more evident, than in these statistics. These impacts and issues for Victoria's future approach are considered in Chapter 12.

In summary, the key challenges for Victoria emerging from the available performance information are:

- The growth, clustered and recurring nature of demand pressures;
- The need for a broader and more integrated service system for vulnerable families and children;
- The need for improved and consistent practice quality;
- The importance of contemporary and appropriate legal processes;
- The requirement for an enhanced out-of-home care system;
- The need to address the over-representation of Aboriginal children; and
- The need to address the absence of comprehensive data and research on the key features of and the impact of Victoria's system for vulnerable children and families.

Also important is the range of factors impacting on the capacities and skills of the organisations and individuals involved in providing the services that underlie much of this performance data. These capacities cover the overall funding levels and arrangements, the skills of workers providing frontline services and the capabilities of funded organisations, both government and non-government, to plan, provide and oversee service provision.

Detailed considerations of these supporting capacities are covered in the later chapters of this Report – Chapter 16, Chapter 17 and Chapter 20. Particular attention is given to the focus, skills and support for frontline workers involved in providing services for Victoria's vulnerable children and families that are a major determinant of client outcomes and overall performance, and to the capacity and arrangements for non-government organisations that provide critical intensive support services and out-of-home care placements.

The Inquiry considers that a more integrated and collaborative framework for the protection and care of Victoria's vulnerable children and sustained investment in a service continuum is required. These issues are examined in Chapter 20 and Chapter 21.

A major issue that confronted the Inquiry in addressing the Terms of Reference was the absence of data and research on key dimensions of Victoria's response to vulnerable children and their families, in particular the ongoing data on major demographic characteristics and presenting issues of vulnerable children and families and the impact of statutory child protection services and other interventions. Given the individual, social and economic costs of child abuse and neglect outlined in Chapter 2 and the continued marked increases in child protection reports and direct government expenditure, the Inquiry considers that these major and fundamental constraints need to be addressed. In this regard, the Inquiry welcomes the 2011-12 Budget announcement to fund a longitudinal research study that tracks a cohort of young people in out-of-home care over a period of four years to assess the impact of out-of-home care and the adequacy of support young people receive post care.

In reaching this conclusion, the Inquiry acknowledges that there are complex ethical and methodological issues and significant costs in the development and implementation of major changes to information systems and investing in robust follow-up studies. The benefits only accrue after a period of time and complexity and costs of regular follow-up studies are likely to be accentuated given the statutory nature of child protection services and the demographic characteristics of families and vulnerability. In addition, the conduct of these studies requires specialised resources dedicated to data quality and integrity. In the longer term, the Inquiry would envisage this data would provide the essential ingredient for a significant program of external and collaborative research into key policy and service issues.

As outlined in recommendation 1 the Inquiry considers a number of the proposed areas should be subject to detailed cost-benefit and feasibility studies including the overall governance arrangements and links to the proposed Commission for Children and Young People.

Recommendation 1

The Government should consider, as a matter of priority, investing resources in:

- The information management systems spanning vulnerable families and children including the statutory child protection system to incorporate information on the major demographic characteristics (including culturally and linguistically diverse and Aboriginal status) and the presenting issues of vulnerable families and children;
- The regular publication of information on the characteristics of families, children and young people who have multiple interactions with the statutory child protection system to facilitate research and transparency about the performance of the system; and
- Conducting cost-benefit and feasibility assessments, including the possible governance arrangements of:
  - instituting cohort or longitudinal surveys of families and children following their involvement with statutory child protection services and, over time, related services for vulnerable children and families; and
  - the approach developed in Western Australia of linking de-identified health data to de-identified data from the departments of Child Protection, Education, Disability Services and Corrective Services and Housing and Community, as a means of identifying for policy and program development purposes, the factors linked with child protection reports and the nature and dimensions of the subsequent experiences and issues.

Part 2: Victoria's current system and performance

Chapter 5:

Major issues raised in submissions, Public Sittings and consultations

Chapter 5: Major issues raised in submissions, Public Sittings and consultations

Key points

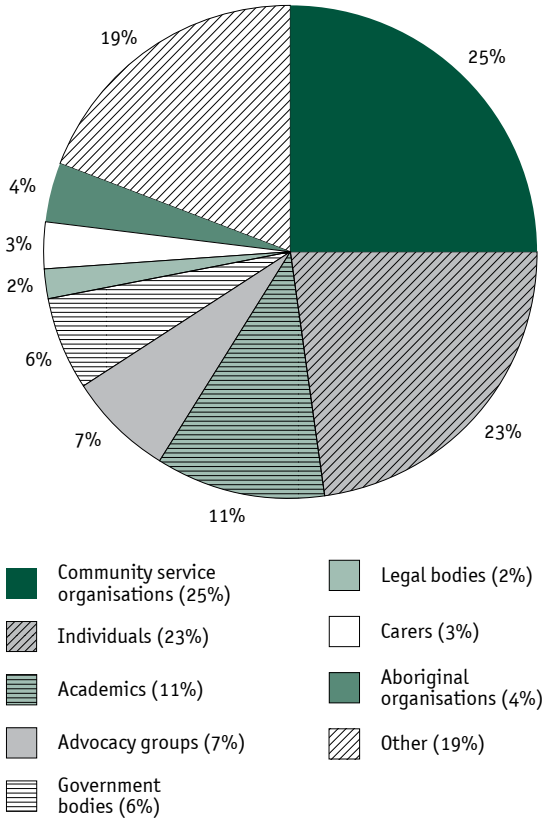
- The Inquiry received submissions from a wide range of individuals and organisations involved in different aspects of Victoria's system for protecting children.
- Hearing from children and young people who have experienced Victoria's system for protecting children was important to the Inquiry. The Inquiry also heard from the child protection workforce, people living in regional communities and people from Aboriginal communities and culturally and linguistically diverse backgrounds.
- The major issues raised in submissions, Public Sittings and consultations covered the following themes:
  - prevention and early intervention;
  - the role the Department of Human Services plays in the system for protecting children;
  - multidisciplinary approaches to serving the needs of vulnerable children and families;
  - out-of-home care and leaving care;
  - poor educational outcomes for children in the system, particularly those in residential care;
  - Aboriginal-informed programs and delivery of services;
  - culturally and linguistically diverse community issues;
  - child sexual abuse;
  - the adversarial nature of the Children's Court of Victoria;
  - an industry-wide, professional children protection workforce with greater workforce development;
  - the community sector's role in case management;
  - the adequacy of funding levels;
  - problems arising from current regulatory and governance arrangements;
  - service capacity and demand;
  - the use of research, data and systems in child protection practice; and
  - regional and remote challenges to service delivery.
- Detailed analysis of specific issues, along with discussion of the major reforms proposed by different submissions are located in subsequent chapters covering the different components of Victoria's system for protecting children.

5.1 Introduction

The Inquiry's consultation process generated a large volume of submissions from a diverse range of individuals and organisations on a broad set of important issues. This variety and depth reflects the breadth of the Terms of Reference and the importance of the subject matter.

The Inquiry received 225 written submissions. Submissions came from academics (25), advocacy groups (16), community service organisations (CSOs) delivering child, family and out-of-home care organisations (46), government bodies (12), legal bodies (5), courts (4), unions (3) and individuals (52). There were nine submissions from Aboriginal organisations, seven from carers, seven from religious organisations, five from sexual assault services, six from health and treatment providers and one from a member of the Victorian Parliament. 39 submissions were from regional Victoria, nine were from interstate and the majority (155) were received from metropolitan Melbourne. The geographical origin of 22 submissions was unknown.

Figure 5.1: Submissions received by the Inquiry, by main groups



Some stakeholders worked together to produce co-authored submissions to the Inquiry, for example the joint CSO submission of Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army, the Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare (Joint CSO submission). Some of these organisations also provided separate submissions in addition to their joint submission. Some of the academic submissions reflected joint effort, with The University of Melbourne contributing to 13 submissions authored by different academics and practitioners, with nine overseen by Professor Cathy Humphreys.

The issues raised in written and verbal submissions covered many aspects of Victoria's system for protecting vulnerable children. The top five matters raised, with at least a hundred submissions commenting on each were, in order:

- Statutory children protection services;
- Out-of-home care (including respite, foster, kinship, permanent and residential care);
- Targeted or secondary child and family services;
- Early intervention; and
- Child protection workforce issues.

5.2 Feedback from consultations

The Inquiry has read all submissions and benefited from learning the views of a wide range of individuals and organisations involved with different aspects of Victoria's system for protecting children. The views of children and young people were sought through particular methods outlined in section 1.2.1 in Chapter 1.

This chapter provides a high-level overview of the range of submissions received from the community, comments from Public Sittings and views provided during consultations by summarising the broad issues that were raised. Identifying high-level issues has assisted the Inquiry to prioritise areas of concern to the community and to determine how widely these views are held and to gauge whether there is agreement for a particular direction for policy or service delivery. Submissions often addressed contentious areas of the policy and service delivery framework but also, importantly, successful areas of current practice.

Generally submissions tended to comment on the areas in Victoria's system for protecting children that are not functioning well. Some CSOs seemed to find it difficult to draw upon their particular organisation's evidence base as a source of information to advise the Inquiry's understanding of the nature of their client population, and client outcomes in relation to vulnerability and child abuse or neglect.

Although some submissions from CSOs addressed solutions in detail, the Inquiry found there was not a great deal of evidence and argument supporting the proposed changes to be implemented that could be tested. It would have greatly assisted the Inquiry if submissions from CSOs had provided research and evidence with reliable data, for example, indicating their size, the number of children and young people provided with services, along with patterns or trends such as case complexity and client age and length of time services were provided to clients. As noted elsewhere in this Report, there is an absence of data to guide evidenced-based policy and service delivery, and CSOs would appear to hold important data sets. The reasons why a number of CSOs did not provide this information is unclear.

It has not been possible to summarise the detail of each and every submission made to the Inquiry. In recognition of these constraints and to facilitate public awareness, all the written submissions to the Inquiry have been published and are available at the Inquiry's website, alongside the transcripts from the Public Sittings. Appendix 2 sets out the Inquiry's approach to publishing submissions, including where full publication of a submission was not appropriate due to the need for confidentiality.

The following sections synthesise the extensive material received through submissions and consultations to draw out some common themes. These themes have been ordered, as far as possible, to align with the chapter structure of this Report.

Detailed comments and specific reform ideas about particular components of the system are discussed and examined in the chapters to which they relate. For example submissions that propose specific changes to out-of-home care are discussed in further detail in Chapters 10 and 11.

Submissions that are referenced in this chapter are illustrative examples only and are not exhaustive of the numbers of people and organisations that may have also made that point. For some matters, many submissions may have made comment on that issue and it was not practical to list all of these in full.

5.3 Feedback received from children and young people

The Inquiry considered that hearing from children and young people about their experiences with out-of-home care and related services was very important. As outlined in Chapter 1, such consultation had to be conducted carefully, bearing in mind the need to use appropriate mechanisms that respected the children and young people concerned.

Some of the feedback from children and young people concerned issues such as their need to be listened to and to be involved in their case planning. Many felt that, as young people, they were not consulted when decisions were made about their care and they did not have a say in what was happening to them. They also raised the importance of a good case worker who made time to get to know them and connect with them. The Inquiry heard about the negative impact caused to them by a good case worker moving on, after a trusting relationship had been formed.

Most young people in residential care who spoke with the Inquiry expressed with considerable anguish their concern about conditions in some residential units. Most spoke of how deeply unsettling it was to have new residents and staff continually come and go. Some spoke of their fears for their personal safety, having witnessed and in some instances experienced, intimidation, physical assault and unwelcome sexual behaviour from other residents. Some young people described serious bullying at a time when they were psychologically fragile and preoccupied with suicidal thoughts. Others spoke of how hard it was to maintain a commitment to their education and to study in the evening when there was strong peer pressure not to attend school. The mental health and substance abuse problems of many young people in residential units was mentioned as posing enormous difficulty, as was the frequent attendance of police at the units as a result of property damage and assaults within the residential units. Some young people had numerous convictions for offences committed in their unit. While some young people remarked on positive relationships with a few residential care staff, negative attitudes were expressed towards those staff who withdrew from interaction with them, by 'retreating to the office'.

The Berry Street written submission echoed these experiences, noting a case study where three young people in residential care were moved around residential care units in different country towns with very little notice or connections to the places to which they were moved (p. 47).

The Inquiry also heard from adults in respect of their past experiences as children in care and heard from Forgotten Australians at the Public Sittings.

5.4 Themes raised in submissions, Public Sittings and consultations

The key themes raised in submissions were:

- Prevention and early intervention, including
  - the importance of the maternal and child health nursing service;
  - the endorsement of Child FIRST as an early intervention initiative, but identification of a lack of clarity of function in relation to Child FIRST and the statutory child protection system;
  - issues in relation to demand and resourcing of Child FIRST; and
  - the significant role of family violence in causing vulnerability in children;
- The role the Department of Human Services (DHS) plays in the system for protecting children, including
  - the lack of comprehensive assessment of needs, for example for health or education, when a child enters the system;
  - difficulties experienced by those dealing with DHS; and
  - the complexity of cases, the difficulty of meeting the requirements of children with multiple needs and the effect of cumulative harm on children;
- Multidisciplinary approaches to serving the complex needs of vulnerable children and families;
- Out-of-home care and leaving care;
- Poor educational outcomes for children in the system, particularly those in residential care;
- Aboriginal-informed programs and delivery of services;
- Culturally and linguistically diverse community issues;
- Child sexual abuse;
- The adversarial nature of the Children's Court of Victoria;
- An industry-wide, professional child protection workforce with greater workforce development;
- The community sector's role in case management;
- The adequacy of funding levels;
- Problems arising from current regulatory and governance arrangements;
- Service capacity and demand issues, including:
  - that family services are increasingly dealing with only the most severe or acute cases; and
  - the effects of significant caseloads for child protection workers;
- The use of research, data and systems in child protection practice, including
  - poor data systems; and
  - collecting, maintaining and archiving a child's history;
- Regional and remote challenges to service delivery.

It is important to note that these were not the only matters raised in submissions. Further more detailed points are discussed in relevant chapters.

5.4.1 Prevention and early intervention

> The prevention of child abuse is critical and possible if parents, the community and early childhood professionals can identify the signs of risks to ensure intervention before the abuse and identify signs of abuse to increase early intervention which would lessen the long term effects on the child (Child Wise submission, p. 3).

Many submissions argued that Victoria has a comparatively strong universal platform for children's services. Victorian maternal and child health services and early childhood programs such as playgroups and kindergartens all offer an excellent starting point for identifying those in need of more focused care (submissions from Australian Nursing Federation (ANF) (Victorian Branch), p. 6; Playgroup Victoria, p. 2; Victorian Council of Social Services (VCOSS), pp. 22, 26).

Submissions argued that these services had untapped potential to intervene earlier, but that opportunities to intervene early were considered to be limited in the existing service system due to skills and capacity constraints (ANF (Victorian Branch), pp. 6-9; CatholicCare, p. 9; Playgroup Victoria, pp. 2-3; Victorian Association of Maternal and Child Health Nurses, pp. 3, 5-7).

Submissions also commented on the significant role that family violence plays in harming children (Aboriginal Family Violence Prevention and Legal Service Victoria (AFVPLSV), pp. 1, 6; Domestic Violence Victoria, pp. 2-3; Humphreys (a), p. 4; VCOSS, pp. 32-33;).

The Joint CSO submission commented that:

> In Victoria, family violence is associated with half the child protection cases and occurs disproportionately in our Indigenous communities (p. 46).

The Child FIRST Alliance approach to service provision was generally regarded as a positive addition to the policy and service system for protecting vulnerable children; however, submissions raised a number of issues with Child FIRST's scope, capacity, funding and governance:

> We believe that Child FIRST has been largely successful in diverting families from child protection and providing a mechanism for child protection in supporting families … Child FIRST is not perfect however. It is experiencing difficulties in managing demand, and is often unable to implement obvious solutions (Joint CSO submission, p. 31).

One dilemma observed by submissions was the increase in cases being referred for family support services that would have in the past been considered statutory child protection matters (FamilyCare, p. 9).

Others argued that a conflict existed between the role of Child FIRST in case managing family support services and also acting as an intake point for reports of concern about children or young people (submissions from CatholicCare, p. 12; The Royal Children's Hospital (RCH), p. 6).

Submissions argued that a range of structural and resourcing reforms would be required if Child FIRST were to be expanded and developed into a local integrated response system for vulnerable families covering universal child and specialist adult services (Centre for Excellence in Child and Family Welfare, pp. 38-39; Joint CSO, pp. 31-35; North East Metro Child and Family Services Alliance, pp. 2-4, 12-13; St Luke's Anglicare, p. 11).

5.4.2 The role the Department of Human Services plays in the system for protecting children

> Berry Street acknowledges that the Department, and in particular its Child Protection staff, are working on complex issues and under great pressure. We know from experience that the people working in DHS do so because of their commitment to achieve better outcomes for children and young people. Regardless of this, bad decisions are bad decisions and poor practice is poor practice (Berry Street submission, p. 14).

A range of submissions commented that the statutory child protection system was stretched beyond capacity, reflected in the heavy demands placed on child protection workers and the inability to carry out adequate case assessments (Berry Street, p. 30; Community and Public Sector Union (CPSU), pp. 52-65; RCH, p. 5).

Submissions noted that the consistency of responses from different regions in Victoria in terms of risk assessment varied enormously depending on which region and office is involved (RCH, p. 2; Take Two Partnership, pp. 2-3). This message was reinforced in numerous consultations conducted by the Inquiry.

Some submissions argued that the DHS statutory child protection services are closed and inward-looking (Domestic Violence Victoria, p. 5). Submissions argued that not enough collaboration occurs with service systems that are closely related to protecting vulnerable children, such as family violence, disability services or mental health (Disability Services Commissioner Victoria, pp. 3-5; Domestic Violence Victoria, pp. 3-4; The Royal Australian and New Zealand College of Psychiatrists - Victorian Branch Faculty of Child and Adolescent Psychiatry and The Royal Australian and New Zealand College of Psychiatrists (Victorian Branch), p. 3; Victorian Forensic Paediatric Medical Service (VFPMS), pp. 8-9).

Similarly, submissions argued that DHS services are not structurally established to manage high levels of case complexity in an integrative and comprehensive fashion (The Royal Australian and New Zealand College of Psychiatrists - Victorian Branch Faculty of Child and Adolescent Psychiatry and The Royal Australian and New Zealand College of Psychiatrists (Victorian Branch), p. 5).

There is a perception that communication and information provision by DHS can be disrespectful, inconsistent or one-way (submissions from Gippsland Centre Against Sexual Assault (CASA), p. 6; Victorian Aboriginal Health Service Co-operative, pp. 3, 7-8).

> Whilst there are case examples of things working well, all too often, due to inadequate support within the system, and also a lack of resources external to the system, workers are feeling defensive in their dealings with one another, communication is very poor or sporadic or does not occur at all, and informed systemic discussions are not occurring regarding the case management of a child or young person (Gippsland CASA submission, p. 6).

Odyssey House Victoria's submission reported that focus groups had found parents with a substance abuse problem reporting mutual distrust with statutory child protection and difficulties working with the service, but nevertheless wanted more, not less, home visits to facilitate improved assessment not based on hearsay, out-dated or irrelevant information. One parent was quoted: '[w]ith Child Protection you are presumed guilty and have to prove you are innocent but honesty can get you into trouble' (Odyssey House Victoria submission, p. 4).

The high turnover of child protection staff and the resultant impact on case worker continuity for vulnerable children was commented on in submissions (CPSU, pp. 51, 66, 69, 82; Disability Services Commissioner Victoria, p. 4).

Submissions argued that the Children's Court of Victoria (Children's Court) and DHS have not properly incorporated the concept of cumulative harm into its processes and practices, which may in part be due to a perception that evidence of such harm will not be accepted by the Children's Court (CatholicCare, pp. 18-19; Grandparent Group, pp. 8-9; Humphreys & Campbell (b), p. 6; Take Two Partnership, p. 4).

> Anecdotal evidence provided to the OCSC [Office of the Child Safety Commissioner] suggests that there is a reluctance among some child protection practitioners to pursue cumulative harm in child protection cases because they will not be accepted by courts. Further research should be undertaken to determine if such a reluctance does exist and if it does how it can best be addressed (OCSC submission, p. 7).

The Victorian Child Death Review Committee (VCDRC) submission (p. 23) argued that assessment and response to cumulative harm has not to date been fully realised.

The Children's Court argued that a sound approach to cumulative harm is undermined by DHS' focus on event or crisis-based interventions rather than early intervention to support a child's family (Children's Court submission no. 2, pp. 5, 22-26).

The Child Protection Society noted that there was little guidance from legislative, judicial and policy sources as to what constitutes sufficient evidence for sustaining allegations of emotional abuse and cumulative harm and that the child protection system 'remains event and crisis focused'. The impact on practice means that children suffering the corrosive effects of constant low-level insults to their dignity, health and wellbeing are overlooked (Children's Protection Society submission, p. 34).

5.4.3 Multidisciplinary approaches to serving the needs of vulnerable children and families

Many submissions discussed the need for a multidisciplinary approach where a case worker is responsible for working with the family, commencing with an assessment of risk and need and ensuring the right suite of therapeutic services and supports are in place (CatholicCare, p. 17; Joint CSO, p. 40; RCH Gatehouse visit, 23 May 2011; St Luke's Anglicare, p. 16).

Submissions argued that vulnerable families need comprehensive, integrated responses capable of addressing a span of issues, including protective concerns for vulnerable children and young people, mental health, welfare, education, alcohol, drug and other needs (Take Two Partnership, p. 1).

The Jesuit Social Services' submission argued for the adoption of a 'whole of life' approach. This involves understanding and appreciating the totality of each individual '[r]ather than thinking about support from the perspective of separate silos (e.g. mental health, disability, drug and alcohol misuse, employment, housing, health, criminal justice)' (Jesuit Social Services, p. 3).

5.4.4 Out-of-home care and leaving care

Jesuit Social Services is of the strong view that out-of-home care for children and young people is not working adequately and is, indeed, at crisis point. Children being removed from their families have a right to be in safe, stable and secure placements with consistent carer relationships (Jesuit Social Services submission, p. 18).

The ability to assess a vulnerable child's needs comprehensively was raised in many of the submissions addressing out-of-home care (Joint CSO, pp. 60-61; MacKillop Family Services, p. 21; Two Partnership, p. 7; VCDRC, pp. 23-24; Webster, pp. 6, 12-13, 15). Submissions also mentioned the need to have better case plans developed to address a child's needs.

Many submissions argued for broader availability of a deeper range of therapeutic and support services and placement types (OCSC, p. 9; RCH, p. 8; Take Two Partnership, p. 8). CSOs commented that there are not enough placements available to appropriately match children and young people to placements and provide a quality, tailored response to meet a child's needs (Berry Street, pp. 38, 41-42; MacKillop Family Services, p. 8; The Salvation Army, pp. 8-12, 17).

Significant concerns were raised about the accountability and quality of residential care facilities:

> Some residential units are environments conducive to the development of criminal behaviour. A tolerance of drug-taking, truancy, pro-criminal and antisocial behaviour seems to foster delinquency. The oversight and management of residential units requires urgent review (VFPMS submission, p. 15).

Submissions argued that residential care placements are used as a last resort for placing children and young people in out-of-home care (Brophy Family and Youth Services, Ballarat Public Sitting; The Salvation Army, p. 17).

The roles and responsibilities of DHS and CSOs were mentioned in submissions including the future governance, service system and funding arrangements for out-of-home care (Joint CSO submission, p. 59).

Other submissions argued that children repeatedly moving from home to care and back again are suffering damage to their development and stronger criteria need to be applied for greater stability (Berry Street, p. 30; Centre for Excellence in Child and Family Welfare, p. 33; Disability Services Commissioner Victoria, p. 4; Take Two Partnership, p. 5).

Many submissions commented on the need to consider the role of carers, carer reimbursements and access to benefits (Grandparents Group, pp. 2-3, 11; Grandparents Victoria and Kinship Carers Victoria, pp. 7-8; OCSC, p. 10; The Salvation Army, p. 18-19; VFPMS, p. 14).

Submissions emphasised the important role of kinship care holding many advantages over other forms of alternative care (Humphreys & Kiraly (a), p. 2; Ms Smith, p. 6). Another submission argued:

> This method [kith or kin placements] of intervention is most stable for a young person, holds less social stigma for a child, is most manageable from a professional perspective and most conducive to achieving outcomes for the child (Good Beginnings Australia, p. 2).

The Grandparent Group submission, however, argued that grandparent carers face extreme and exceptionally difficult circumstances as carers and acknowledgment of their key role and commitment is presently inadequate (p. 2).

Submissions also commented on the strength of Victoria's foster care system with dedicated carers who look after children in difficult circumstances and who are 'extremely overworked and under-valued' (Ms Edyvane, p. 1). Ms Edyvane argued that counselling and support services are extremely limited for both carers and children in care and that there is a significant turnover of good people (Ms Edyvane, p. 1). The UnitingCare Gippsland submission (p. 23) argued that volunteer foster carers need to be recognised as professionals in the field and paid accordingly.

The Centre for Excellence in Child and Family Welfare argued that respite care can play a key role in strengthening families, improving child and family wellbeing and preventing abuse, neglect and family breakdown. Their Issues Paper Two argued however, that availability of respite care for kinship carers and long-term foster carers is becoming a major problem, and that 'rates of placement breakdown and carer retention will continue to suffer accordingly' (Centre for Excellence in Child and Family Welfare 2011a, no. 2, p. 15).

Some considered that many children would benefit from a permanent care order but these are not being sought because carers who become permanent carers will be left without adequate financial support. Some reasons for why a carer would not seeking a permanent care order included where this would mean the child would lose access to therapeutic or other support services (Take Two Partnership submission, p. 5). Another reason noted was that high levels of access conditions stipulated by the Children's Court made prospective carers reluctant to take on the role of carers (Ms Smith submission, pp. 1-5).

Leaving care

One measure of success is the broader achievements of those who have exited the system – leaving care. Submissions commented that too many young people leave the child protection system with multiple and complex problems (Jesuit Social Services, p. 18; MacKillop Family Services, p. 13).

The Salvation Army submission (p. 21) argued that it is not reasonable to expect a child or young person who has experienced significant trauma and has lived in out-of-home care to transition to live independently by the age of 18 years. Submissions argued that young people in care should be fully supported until the age of 21, with more targeted supports continuing to the age of 25 in key areas such as housing, health, education, workplace and other specialist services (Berry Street, p. 45; MacKillop Family Services, p. 13; The Salvation Army, pp. 21-22; VCOSS, p. 46).

DHS and CSO front line workers have noted that it is a struggle to determine where a child or young person will live after they leave care and often they will return to the home from where they had been removed. Young people reported similar concerns.

5.4.5 Poor educational outcomes for children in the system, particularly those in residential care

> Educational outcomes for children in care are substantially lower than those of the broader student population (VCOSS submission, p. 35).

Submissions raised concerns that children who experience out-of-home care have poorer educational outcomes (Berry Street, pp. 39-40; OCSC, p. 10). VCOSS and others argued that Victoria needs a more diverse and flexible education system that can support vulnerable young people to remain engaged, or re-engage, in their learning (submissions from MacKillop Family Services, pp. 27-28; VCOSS, pp. 35-37).

VCOSS pointed to the Berry Street and MacKillop Family Services independent schools designed for young people in out-of-home care who have had difficulty engaging in mainstream education (VCOSS submission, pp. 35-37).

Brophy Family and Youth Services argued that young people from disadvantaged backgrounds with abuse or neglect struggle in the education system, especially when transitioning from primary to high school. If a young person is ill-equipped to cope academically and socially at school, they can be further isolated from their community (Ms Allen, Brophy Family and Youth Services, Ballarat Public Sitting).

Grandparents Victoria and Kinship Carers Victoria argued that ensuring access to education was crucial for children in out-of-home care (Grandparents Victoria and Kinship Carers Victoria submission, p. 7). The Grandparent Group submission (p. 10) observed that a vulnerable child's educational needs can be of 'low visibility' to teachers and principals. Initiatives suggested included educational aides in the classroom and child care to build social and cognitive skills and school readiness for those from especially difficult backgrounds.

5.4.6 Programs and services for Aboriginal children

> For Aboriginal children, the State has not been a good enough parent. We need better outcomes for Aboriginal children ... services for Aboriginal children and families should be delivered by Aboriginal organisations; decisions about Aboriginal children should be made by Aboriginal organisations (Victorian Aboriginal Child Care Agency (VACCA) submission, pp. 1-2).

Many submissions commented that a key issue arising from the over-representation of Aboriginal children in Victoria's system for protecting children is the need to promote and respect the general principles of Aboriginal self-determination when it comes to meeting the needs of Aboriginal children and young people in the system.

VACCA argued that when services cannot be delivered by Aboriginal organisations then services need to be culturally competent and best-practice-based (VACCA submission, pp. 1-2). Submissions argued that cultural competence needs to be valued as a skill and knowledge base so that it can be reflected in policy, funding and service delivery (VCOSS, p. 16). Many submissions agreed there is a need for cultural competence standards and greater cultural awareness training (AFVPLSV, p. 8; VACCA, pp. 5-6; Victorian Aboriginal Health Service Co-operative, p. 4; Take Two Partnership, p. 3; Victorian Aboriginal Legal Service Co-operative, p. 5).

> ... it requires considering how the system as a whole can be more inclusive of Indigenous and CALD cultures and values. This proactive approach goes to ensuring the most effective and rights enabling service system by making the service fit the person, rather than the person fit the service (Victorian Equal Opportunity and Human Rights Commission (VEOHRC) submission, p. 15).

Enabling Aboriginal governance and a sustainable Aboriginal workforce were suggested areas for reform (submissions from Joint CSO, pp. 39-40; Take Two Partnership, p. 4; VACCA, pp. 4-7).

5.4.7 Culturally and linguistically diverse community issues

> CALD communities encounter many of the same experiences as those of the Aboriginal and Torres Strait Islander communities in terms of wanting to retain and practice certain aspects of their specific cultural identify and some generalist services not being fully understanding or sensitive to their cultural needs (Ms Katar, Dandenong Public Sitting).

A major issue commented on by submissions representing culturally and linguistically diverse backgrounds was the lack of record-keeping and therefore available data on the cultural and religious background of children in the out-of-home care system (Care with Me, pp. 2, 6; Ms Marantelli, Centre for Multicultural Youth, Melbourne Public Sitting).

Submissions also reported that there is no policy or practice framework to facilitate the observation of cultural rights for culturally and linguistically diverse children and families within the system for protecting children (VEOHRC, p. 16). As Ms Katar noted: '[i]n the case of child protection, there is no clear protocol regarding the placement of culturally and linguistically diverse children in the same sense that there is regarding Aboriginal or Torres Strait Islander communities' (Ms Katar, Dandenong Public Sitting).

Inadequate access to cultural awareness training was highlighted as a cause of culturally insensitive practices (submissions from Care with Me, p. 6; VEOHRC, p. 16).

5.4.8 Child sexual abuse

> But why is there never a word spoken about the problem of child sexual abuse? (Ms L, Bendigo Public Sitting).

The Inquiry heard from parents of victims of sexual abuse that preventative information and guidance about sexual abuse is not readily available in the Victorian community. Submissions argued that greater education for children, parents, youth groups and other groups and professionals working with children is needed to build community capacity and knowledge of sexual abuse and the practices of paedophiles (Gippsland CASA, p. 1; Ms L, Bendigo Public Sitting; Ms Wilson, Warrnambool Public Sitting).

DHS and the broader system's ability to respond to sexual abuse was called into question, with submissions pointing to low levels of substantiation and prosecution (Powell & Snow, p. 3). The RCH submission (p. 14) argued that the legal system has taken away the sexually abused child's voice.

The Australian Childhood Foundation submission argued that a child-rights paradigm should be adopted that more clearly treats physical and sexual abuse and chronic neglect as a crime and, in doing so, holds parents who commit these crimes accountable for their behaviour with prosecution and effective sentencing integrated into the child protection response (Australian Childhood Foundation, pp. 3-4; Goddard et al. Child Abuse Prevention Research Australia, pp. 7, 10).

The importance of a multidisciplinary approach was raised by submissions on sexual abuse. Several submissions argued that multidisciplinary centres should be rolled out further across Victoria and emphasised that co-location of child protection workers, counsellors and advocates and Victoria Police investigation teams had been found to be effective at: coordinating effort, increasing disclosure of abuse, successful convictions of offenders and better linking children and families to therapeutic supports to promote recovery from trauma (Barwon CASA, p. 2; CASA Forum, p. 9; Gippsland CASA, p. 1; RCH, p.12; Ms Wilson, Warrnambool Public Sitting).

5.4.9 The adversarial nature of the Children's Court of Victoria

> Creating a coherent response to protecting vulnerable children requires the professions of welfare and the law to better understand the other as a foundation for building mutual respect regarding the role that each plays (Mr Fanning submission, p. 3).

A large number of submissions raised concerns with the way the Children's Court currently operates. The Children's Court contributed two detailed submissions to the Inquiry, containing trends data on applications and reports and a number of reform proposals.

The Children's Court submission outlined the increase in workload that has been experienced by the court, with growth of child protection applications to the court at the rate of 9 per cent per year since 2002-03. The Children's Court submission also noted that not only are the numbers of applications increasing, the numbers requiring an urgent court ruling on placement are also increasing (Children's Court no. 1, p. 16).

Concerns raised by submissions included a perception that adversarial court processes prevent effective collaboration occurring between court staff, a child's parents and DHS child protection practitioners to address a child's needs (Berry Street, p. 48; CASA Forum, p. 11; CatholicCare, p. 19; Humphreys & Campbell (b), p. 2-3; Inquiry workforce consultations).

Many submissions commented that court officers and child protection workers do not speak a common language and this is a barrier to achieving good outcomes for children (Mr Fanning, p. 4). Joint training for members of the legal profession and child protection workers was suggested to support a more collaborative model (Victoria Legal Aid (VLA) submission no. 1, pp. 5-6, 26).

There were criticisms of the current mechanisms for determining how a child's views are represented in court, including whether a child is considered capable of giving instructions (submissions from CASA Forum, p. 12; CatholicCare, pp. 20-21; OCSC, attachment c, pp. 1, 8-9). Submissions advocated for new ways to represent a child and young person's voice in court (CREATE Foundation, p. 19; Foster Care Association of Victoria, p. 15; VEOHRC, pp. 6-7; Youth Affairs Council of Victoria, p. 18).

Some submissions argued that the Court appears to favour parents over children or other permanent carers (CatholicCare, p. 15; Northern CASA, p. 3).

Other submissions said that kinship carers voices are not being adequately heard in the Court (Grandparents Victoria and Kinship Carers Victoria, p. 7; Loddon Campaspe Community Legal Centre, Bendigo Public Sitting; VLA no. 1, p. 17).

Child protection workers reported feeling that their professional experience and judgment is not respected by court processes and that there are lost opportunities to draw on their expertise to inform decision making about a child.

Child protection workers and others involved commented on the inefficient use of time and resources arising from court processes, with lengthy delays experienced waiting for matters to be dealt with and time spent preparing detailed statements. These processes are made even more frustrating when those involved feel their opinions and evidence are not valued and ultimately are not used by the Court.

Submissions conveyed a perception that the Court places an undue reliance on reports from the Children's Court Clinic, without giving equal weight to external expert assessments (Berry Street, p. 117; VFPMS, p. 19). Overall, submissions argued that current adversarial processes promote a lack of mutual trust and respect between welfare professionals, legal practitioners and court officers when they come together to make decisions about a vulnerable child.

A number of medical practitioners have advised the Inquiry that they will no longer attend the Court to provide evidence and advice because of inefficient, time-consuming and inconsistent court processes.

There was acknowledgement by some submissions that a need remains for judicial oversight of decisions that affect parents and children's rights and interests (submissions from AFVPLSV, p. 9; Mr Fanning, p. 4; VFPMS, p. 19; VLA no. 1, p. 4). However there was also strong criticism of the operation and adversarial nature of the Children's Court, with some submissions recommending replacing the role of the Court with a panel or specialist tribunal approach for decision making (CatholicCare, pp. 2, 4; Joint SCO, pp. 52-54; OCSC, p. 11; Victorian Aboriginal Child Care Agency (VACCA), p. 7).

Almost all submissions, including the Children's Court, sought a greater focus on alternative dispute resolution processes by agreement (submissions from Children's Court no.1, p. 10; Law Institute of Victoria, p. 3; VFPMS, p. 19; Youth Affairs Council of Victoria, p. 23; Youthlaw, p. 2).

The Children's Court argued a number of system reforms were required to improve the operation of the Victoria's system for protecting children including:

- Strong investment in prevention and early intervention;
- Enhanced family care conferences;
- New ways of commencing protection applications; and
- Investment in court resources and infrastructure to strengthen the court's capacity to conduct new model conferences throughout Victoria and a less adversarial trial model (Children's Court submission no. 2, p. 46).

5.4.10 An industry-wide, professional child protection workforce with greater workforce development

> The structure of the child protection service means that the least experienced and trained staff do the most difficult front line work (RCH submission, p. 3).

The Inquiry's workforce consultations revealed a number of important issues and insights. These assisted the Inquiry's knowledge of not only workforce issues but also covered insight into how the overall system could be improved to better protect vulnerable children. Chapter 16 deals with the views of frontline workers in more detail.

Child protection workers and a number of submissions argued that there is a need for an industry-wide approach for joint training and skills development (Grandparents Victoria and Kinship Carers Victoria, p. 7; VLA submission no. 1, p. 1).

A number of submissions argued for measures to improve the professionalisation of the child protection workforce, with some arguing that this process should be qualification-led (Humphreys & Campbell (a), pp. 2-3; Ms Johns, p. 1; Take Two Partnership, p. 4).

The St Luke's Anglicare submission argued that workforce development was a key issue facing the non-government sector and this requires serious resourcing and planning:

> We need a practitioner stream that staff can advance through, incentives and encouragement for staff to remain as practitioners and ensure staff are well remunerated for this professional decision (p. 26).

One of the CPSU's key reform proposals was to improve the pay and conditions of the DHS workforce through a new classification structure and improved entitlements, and setting maximum caseload levels (CPSU submission, pp. 12-19).

5.4.11 The community sector's role in case management

Several community sector submissions argued there should be increased outsourcing of case management functions currently performed by DHS (Berry Street, pp. 32, 49-52; Children's Protection Society, pp. 32-33; Joint CSO, p. 51).

> Berry Street is proposing that the Department of Human Services be released from the provision of direct services including case management, a role better performed by community sector agencies, and supported to focus on core statutory responsibilities (Berry Street submission, p. 13).

CSOs advocated for a public-private partnership approach, whereby CSOs share equally with government responsibility for securing opportunities for vulnerable children and youth to grow up in a safe and stable environment where they can achieve the levels of health, wellbeing and education appropriate for their age and be proud of their culture (Anglicare Victoria, MacKillop Family Services, VACCA, Berry Street, The Salvation Army and Mr Wyles, Melbourne Public Sitting).

The Centre for Excellence in Child and Family Welfare argued that case management functions should be placed within an independent 'Office of Children and Young Persons Guardian' (Centre for Excellence in Child and Family Welfare submission, p. 27).

The CASA Forum submission (p. 9) cautioned against the transfer of statutory functions however, arguing that '[n]on statutory agencies should not deal with the legal responsibilities of mandated notifying' because they are not subject to the same scrutiny.

5.4.12 The adequacy of funding levels

> The current crisis at the tertiary end of the system will continue unless the funding model is refined (VCOSS submission, p. 42).

Funding and resourcing issues in some form were raised by nearly every submission. Many submissions from those organisations currently responsible for delivering services to vulnerable children argued that current resources are inadequate to meet the demands and needs in the community (Centre for Excellence in Child and Family Welfare, p. 32; Take Two Partnership, p. 7; VCOSS, pp. 16, 40).

Submissions argued that the Geelong-based multidisciplinary centre has not been funded sufficiently to allow the full co-location of the Barwon CASA, the Victoria Police Sexual Offences and Child Abuse Investigation Team and three child protection workers, resulting in a confused service response (Barwon CASA, p. 2; CASA Forum, p. 8).

As discussed in section 5.4.4, many submissions argued for greater use of therapeutic care approaches, however, funding for these models covers only a fraction of care placements. Submissions argued that funding for therapeutic care needs to be increased because all children in out-of-home care have experienced trauma and the objective of the system should be more than just housing individuals, rather, it should be treating and rehabilitating them (Berry Street, pp. 38, 46; MacKillop Family Services, p. 8).

5.4.13 Problems arising from current regulatory and governance arrangements

> We need to build a strong governance framework that establishes a strong and more effective interface between the child protection and community services sectors, and works more effectively with those sectors, such as health and education, whose services we have identified as being essential for the achievement of better outcomes for vulnerable children and young people (Joint CSO submission, p. 76).

Submissions have argued that there is a gap in oversight of child protection practitioners within DHS and there should be an independent body with requisite regulatory powers that is focused on the child protection statutory services (Berry Street, pp. 45-46; Centre for Excellence in Child and Family Welfare, pp. 24-25; Joint CSO, pp. 80-81; OCSC, pp. 9, 12-15; VFPMS, p. 20).

In particular, the Aboriginal Family Violence Prevention and Legal Service Victoria (AFVPLSV) argued that there is inadequate oversight of the situation of Aboriginal and Torres Strait Islander children in Victoria's system for protecting children, or independent systemic advocacy (AFVPLSV submission, p. 9).

Other submissions argued that a significant conflict of interest exists in DHS' role as funder and purchaser of community sector services while at the same time being the regulator of these services (Berry Street, p. 32; Centre for Excellence in Child and Family Welfare, p. 24; VCOSS, p. 51).

The CASA Forum submission (p. 9) commented that non-government agencies need to be overseen by government. Other submissions argued that governance-related activities had not been reflected in the provision of Child FIRST funding and had to date been supported at the expense of participating community organisations (Centre for Excellence in Child and Family Welfare, p. 39; North East Metro Child and Family Services Alliance, p. 18).

The RCH argued that Child FIRST represented 'semi legal responsibility without adequate funding and resourcing', going on to note that agencies funded by government need to be highly accountable to government not only for the funding but just as importantly for the services they are providing to vulnerable families (RCH submission, p. 13).

Submissions expressed concerns about where responsibility for managing different cases rests. The RCH and other submissions noted that, in some regions, Child FIRST is dealing with cases that should be managed by DHS statutory child protection services (RCH submission, p. 6). The VFPMS argued that there is no criteria that determines which cases are better managed by statutory child protection and which cases are better managed by Child FIRST (VFPMS submission, p. 10).

Other submissions noted that a lack of public performance measures for service delivery about statutory child protection services impedes public trust and confidence in the system for protecting children (Australian Childhood Foundation, p. 2).

5.4.14 Service capacity and demand

> Demand and capacity challenges pose a real constraint to Child FIRST and Integrated Family Services maximising the potential they offer to provide allocated casework or information and referral services to vulnerable families (North East Metro Child and Family Services Alliance submission, p. 3).

Demand pressures apply throughout the system for protecting children and submissions particularly noted the pressure points occurring at the Child FIRST intake, the front end of statutory child protection services, and finally the intake point into out-of-home care (submissions from Berry Street, pp. 41-42; Joint CSO, p. 41; OCSC, p. 7; The Salvation Army, p. 17).

Many submissions argued that the system is currently filled to capacity, with no flexibility to deal with contingencies or to cope with increased demand forecast (MacKillop Family Services, p. 8; VCOSS, p. 40). The Inquiry heard that some child and family services have been forced to close admissions for periods of time to manage demand.

One example of demand issues was provided by the South Western CASA Sexually Abusive Behaviour Treatment Service, which noted in its submission that as of March 2011, six clients had been allocated to their service, 11 clients were on a waiting list and four referrals were pending. The service is funded to deliver services to five clients (South Western CASA submission, p. 2).

It was argued that the thresholds applied at the pressure points throughout the system have the effect of operating as mechanisms to manage capacity. Capacity constraints have had the effect of raising the threshold of risk of harm required for intervention (submissions from Australian Childhood Foundation, pp. 1, 3; North East Metro Child and Family Services Alliance, p. 16; OCSC, p. 5).

Many submissions said that resource pressures at all levels throughout the system have meant there is less capacity for secondary services to focus on earlier intervention for those who have not yet come into contact with Child FIRST or statutory child protection (CatholicCare, p. 9; North East Metro Child and Family Services Alliance, pp. 16-17).

Submissions commented on the effects of significant caseloads for child protection workers; protective workers were said to be unable to do their work properly if caseloads are too high and too much is spent on preparing for and attending court and supervising access (Gippsland CASA, p. 6; CASA Forum, pp. 4, 8; RCH, p. 5; VLA no. 1, p. 6).

The pressures of demand for other basic needs were also noted in submissions, for example housing, health care, education and adequate income (Jesuit Social Services, p. 9; CatholicCare, p. 21; The Salvation Army, p. 7).

5.4.15 The use of research, data and systems in child protection practice

> All agencies need to participate in statewide, collaborative and critical evaluation and research in order to understand the nature of the services they provide and to have the capacity to improve those services (CASA Forum submission, p. 10).

Many submissions commented on the need for greater research evidence that is focused on practical outcomes, that is, assessing which programs and services make a difference to the outcomes of a child or family (CASA Forum, p. 10; Jesuit Social Services, p. 24; RCH, p. 15).

The Children's Court submission argued that collaborative and systematic information exchange would be helpful, for example, data to support forecasting, modelling and strategic planning for child protection workloads (Children's Court submission no. 1, p. 12).

The Take Two Partnership submission (p. 2) argued for the integrated funding of research and training to achieve several benefits including:

- Building a local evidence base upon which to embed clinical work;
- Attracting staff with post graduate qualifications in practice positions who may otherwise have focused on private practice;
- Providing infrastructure for attracting other research grants;

- Providing training throughout a number of sectors (statutory child protection, out of-home care, family services, mental health, education, youth justice, etc.) that is directly informed by current research; and
- Practice, training and research actively involve Aboriginal staff in planning and delivery, thereby increasing its cultural validity and utility.

The Jesuit Social Services submission (p. 24) argued that there is very little research about young people leaving care, how many pursue study, how many enter employment how many become parents and what the prevalence of negative life experiences is.

The need to collect, maintain and archive a child or young person's history was raised (MacKillop Family Services submission, pp. 16-17). The Humphreys et al. submission (b) argued that records are resources that young people draw upon to build their own sense of self, particularly when they cannot obtain this from family or friends.

Creating records or 'storybooks' of a young person's childhood in care so as to facilitate later access was suggested as one way of providing greater continuity and a sense of connection (Humphreys et al. submission (b), p. 11; Northern CASA submission, p. 5).

Child protection workers and submissions commented on the powerful influence of Information, Communication and Technology (ICT) systems on work practices, driving behaviours that are more concerned with compliance with rules and procedures rather than on improving the outcomes of the child (CPSU submission, pp. 81-82).

Submissions argued that the current systems are time-consuming and require simplification (Humphreys & Campbell (a), p. 2). The Berry Street submission argued that the Client Relationship Information System (CRIS)/Client Relationship Information System for Service Providers (CRISSP) lacks basic reporting functions and there is no return on effort to input data to support monitoring, evaluation and quality improvement (Berry Street, p. 33).

Child protection workers suggested to the Inquiry that greater training in the CRIS and other ICT systems across the board was required to improve capability and efficiency.

5.4.16 Regional and remote challenges to service delivery

> The difficulties in providing adequate coverage of services in rural areas continue to be a feature of the service system … (Take Two Partnership submission, p. 8)

Submissions observed a range of challenges arising from rural service delivery supporting vulnerable children and young people (Ms O'Reilly, Upper Murray FamilyCare, Wodonga Public Sitting; Ms Nagle, Glastonbury Child and Family Services, Geelong Public Sitting; Mr Tennant & Ms Armstrong-Wright, FamilyCare, Shepparton Public Sitting; VCOSS, pp. 28-29). These included problems in recruitment and underestimation of the additional demands placed on rural staff due to reduced access to infrastructure, greater distances for travelling and fewer services with which to refer or collaborate (submissions from Gippsland CASA, p. 2; Take Two Partnership, p. 8).

The Gippsland CASA argued that rural and regional areas require greater attention and additional resources for engaging specific groups with multiple barriers to accessing services to 'outreach and build trust and relationships' (Gippsland CASA submission, p. 2).

The Jesuit Social Services submission noted the presence of a high spatial or geographic concentration of child maltreatment. The Jesuit Social Services submission argued that targeted geographic or place-based interventions in line with these findings about the concentration of disadvantage would be cost-effective (pp. 9, 17).

Regional DHS child protection practitioners advised the Inquiry of some of the difficulties involved with covering large regional or rural areas where specialist and other services are scarce. This can have an impact on attempts to keep a child connected with their community when assessments or treatments are required that are not readily available in particular areas.

Child protection practitioners in a rural or regional setting must manage the demands of driving long distances to carry out their work, for example, when attending Court, carrying out home visits or to access training. The after-hours on-call system was described as particularly burdensome and potentially dangerous by staff in those rural areas where there is no dedicated after-hours service.

The Inquiry heard that opportunities for out-of-home care placements, in particular the availability of carers, is a significant issue in regional locations. Further, the impact of the unavailability of placements close to a child's home is magnified when considering rural and regional distances (Dr Emerson, Shepparton Public Sitting). A child might be shifted 300 kilometres away from their networks and friends because of a lack of placements.

The Children's Court submission noted that work was underway to build court capacity for sittings in venues outside the central business district of Melbourne. The submission argued however, that funding assistance was required to better support country courts and to expand new model conferencing throughout the state (Children's Court submission no. 2, pp. 13-14, 18).

5.5 Reference Group input

As noted above, the Inquiry's Reference Group provided advice on key issues, policy options and service delivery considerations. The Reference Group consisted of members of peak bodies, experts, representatives of the service system and client groups. The full list of members and meetings held is at Appendix 2.

While Reference Group members were drawn from organisations, they participated as individuals rather than as representatives of their respective organisations. The points raised by the members at the meetings reflect the views of the individual participants and not of the entire Reference Group.

The priority issues discussed at the meetings included the importance of, and strategies for, improving early intervention and creating a system around the needs and rights of the child. Members discussed the need to improve services for children in care and for those leaving care. Enhancing the capacity of Child FIRST and systemic improvements to the structure and funding of services were also considered, as well as enhancing inter-service collaboration, training and retention of skilled staff, oversight and transparency.

The Reference Group discussed the need for greater local flexibility for funding models that could better respond to demand pressures. Changes to funding could enable more flexibility to meet local needs and discretionary funds to allow services to bridge the secondary-tertiary spectrum.

The Reference Group also discussed the need to promote and respect the general principles of Aboriginal self-determination when it comes to meeting the needs of Aboriginal children and young people in the statutory child protection system. The need for cultural competency was also raised and the importance of improving service responses for Aboriginal children and young people, and similarly, improving support for culturally and linguistically diverse communities.

Regarding the Children's Court and related processes, Reference Group members discussed how it was important to train lawyers and other professionals in the Court system about the needs of children and of sharing knowledge and information about the child's case. The Reference Group discussed the need for dispute resolution to begin earlier with methods of resolution being more case-sensitive and involving people with the right set of skills. Members also discussed the benefits of lawyer-assisted mediation earlier in the process and that judicial intervention should be seen as a last resort.

The Reference Group discussed how Victoria's approach to kinship care provides a strong platform for caring for vulnerable children but the involvement of grandparents should not be taken for granted. Foster care payments were discussed and considered to be out of alignment with actual costs.

5.6 Conclusion

Participation in the Inquiry's consultation processes through attendance at Public Sittings and submissions received from across Victoria demonstrates significant interest in and a broad range of views about how best to improve Victoria's system for protecting vulnerable children.

The Inquiry has used these inputs to inform its understanding of issues arising from the prevalence of child abuse and neglect in Victoria and the most appropriate policy and service responses that should be provided by government including the role of the significant community sector in this field.

It is clear from submissions that there is a strong desire for change to the current policy and service delivery setting. Stakeholders believe that Victoria can do better to protect its vulnerable children and young people and the Inquiry heard a range of proposals for change to achieve this goal. More detailed points from submissions, including proposed changes or solutions are examined in the following chapters tackling the specific components of Victoria's system for protecting children.

Part 3: The policy framework

Chapter 6:

A policy framework for a system to protect vulnerable children and young people

Chapter 6: A policy framework for a system to protect vulnerable children and young people

Key points

- Victoria's system for protecting vulnerable children operates in a complex policy and service delivery environment. In order to address this complexity in a coherent manner the Inquiry has adopted an overarching approach for structuring analysis and recommendations.
- The Inquiry's approach articulates and develops recommendations around a system for protecting vulnerable children that is focused on a child's needs.
- A systems approach examines all the factors that impact on the incidence of child abuse and neglect and issues arising from these. It then considers the context of how the service response of Victoria's policies and programs come together, interact with one another and function as a whole to protect vulnerable children and young people. Other approaches have also informed the Inquiry's analysis, including child rights and public health perspectives.
- A focus on a child's needs includes the broad range of support, care and guidance that all children must have in order to develop and thrive. The Inquiry considers that a child's needs go further than ensuring a child's safety from harm. Overall health, physical and emotional development and life skills are also important, so that a child can ultimately function as an independent adult.
- A child's immediate and long-term needs cover safety, health, development, education and the need to be heard. Many of the rights of a child can be seen in the Inquiry's definition of a child's needs, including protection from abuse and harm, provision of care and support, and, depending on the level of a child's maturity, participation in discussions that affect them.
- The Inquiry's eight policy principles provide a contemporary re-statement of the roles and responsibilities of children, families, government and the community. These principles have informed the Inquiry's recommendations for building a more effective system for protecting children.
- Three recommendations are made: introduction of a Vulnerable Children and Families Strategy; an accompanying performance indicator framework, reported on regularly to the public; and the use of area-based policy and program design and delivery for addressing vulnerability and protecting children and young people.

6.1 Introduction

One of the major problems in Victoria is our continuously 'siloed service systems' which fail to address the complex needs of vulnerable children and families (Take Two Partnership submission, p. 1).

Inquiry definition of the system for protecting vulnerable children and young people

Victoria's system for protecting children and young people consists of all the functions, organisations and interrelationships that together act to prevent and respond to child abuse and neglect.

An overarching policy and service delivery framework is needed for protecting vulnerable children. Around the world, children are generally granted a special status in recognition of their vulnerability and need for protection. In scanning international practice, however, the United Nations Children's Fund (UNICEF) observed that nations differ in the structures and policies through which protecting children is implemented in practice. Divergences in child protection frameworks are a result of differences in geography, politics, social history, religion, wealth and social structures (Wulczyn et al. 2010, p. 5).

Victoria's system for protecting vulnerable children operates in a complex policy and service delivery environment. Three levels of Australian government: Commonwealth, state and local government, carry out activities relevant to protecting children. The Commonwealth Government plays a key role for example, in providing income security and family law services. Local government's role includes providing and co-funding maternal and child health services and some kindergarten services on a local or area basis. However, it is the state government that delivers the majority of programs and services responsible for protecting vulnerable children in Victoria. Child and family services cut across several Victorian Government portfolios including health, education, justice, human services, planning, community development and local government. There is significant community sector participation in the system, delivering services supporting vulnerable families and children. Reflecting this complexity, the Inquiry's Terms of Reference are expansive and include a broad range of issues relating to the protection of vulnerable children.

In order to address this complexity in a coherent manner, the Inquiry has adopted an overarching approach to guide analysis and recommendations. The Inquiry's approach is to articulate and develop recommendations centred around a system for protecting vulnerable children that is focused on a child's needs.

The first aspect of the Inquiry's approach conceptualises the policy and service delivery environment for protecting vulnerable children as a holistic system. The second aspect of the Inquiry's approach is to focus the system goal to meet the needs of vulnerable children and young people.

6.1.1 A systems approach to protecting vulnerable children and young people

A systems approach aligns with the Inquiry's Terms of Reference, which requires a 'focus on policy and the service system that supports government policy'. The Inquiry has examined how all the components of Victoria's policies and programs come together, interact with one another and function as a whole, and has framed recommendations accordingly. The holistic impact of the Inquiry's recommendations is considered in the Inquiry's concluding remarks.

The Inquiry has defined the system goal of focusing on a child's needs as a basis for evaluating the effectiveness of current and future arrangements. Ultimately, this goal should guide the efficient and effective allocation of government resources, implementation of policies, service delivery and ultimately clinical practice. Further detail of the Inquiry's systems approach is discussed in section 6.4.

In adopting this approach, the Inquiry has considered several perspectives and analytical approaches that contribute to the current body of knowledge about protecting vulnerable children. These approaches examine different aspects of child and family public policy and service delivery, providing a foundation for analysis. The Inquiry has also been informed by current Australian national and state policy settings relating to children and families, as well as the Inquiry's submissions, consultations and Public Sittings.

Some approaches draw on academic or scientific disciplines including psychology and population health. These examine specific dimensions of child abuse or neglect, such as parent-child attachment, family violence, victims theory and the role of therapy.

Public policy addresses children and families through a number of means including through programs and policies, for example, family violence laws or through funding family and maternal and child health services. Public policy can also be reactive, examining child protection issues through independent reviews triggered by high-profile one-off incidents of neglect and abuse.

UNICEF argues that single-issue approaches are likely to result in a fragmented child protection response with serious limitations. UNICEF contends, and the Inquiry agrees, that ad hoc, issues-based approaches result in ineffective and unsustainable programming that does not necessarily capture all children in need of protection or the full range of actors involved in protecting children's rights (Wulczyn et al. 2010, pp. preface, 1, 6).

The Inquiry's adoption of an overarching systems approach has not meant that one theory or perspective has been chosen to the exclusion of all others. Theories and analytical tools can be used together, provided they are not fundamentally inconsistent. The Inquiry has also drawn on child rights and public health perspectives to inform its analysis and recommendations (refer to sections 6.2.1 and 6.5 respectively).

6.1.2 A system for protecting children that is focused on a child's needs

The second aspect of the Inquiry's approach is to analyse the system for protecting vulnerable children and young people from the perspective of a child's needs. The Inquiry has adopted the term 'a child's needs' throughout this Report to refer to the range of needs of children and young people.

Adopting a focus on a child's needs recognises that children grow and develop within the context of their family unit, surrounded by their own community and culture, and that a child's wellbeing depends on the care, protection and respect given to them by their parents or guardians and the wider community. A system focus assesses the collective impact of individual elements affecting a child's environment and examines whether the system as a whole is effective at meeting the needs of a child when their parents or caregivers are unable to.

One risk arising from complex systems is that the needs of children and young people can be lost due to the pressure to comply with rules, processes, timelines and other practice requirements. A system focused on the needs of the child will demonstrate a clear alignment between processes and rules and overarching policy objectives. Considering the needs of the child or young person concerned is a robust way of testing whether processes are achieving their policy objectives in practice.

There have also been significant advances over time in knowledge about child development and the impact of cumulative harm over time on the child, considerations that may be overlooked by a system lacking a specific focus on the child's overall interests and welfare (Winkworth 2006, p. 5).

While Victoria's system for protecting children is ostensibly focused on a child's needs, the Inquiry's analysis of the current service system indicates that this has not yet been achieved.

The following sections: provide further detail on how the Inquiry has conceptualised the needs of the child; discuss how a child's rights-based approach has informed this process; discuss the role of the family, government and the community in meeting and addressing a child's needs; describe a systems approach to the delivery of services to vulnerable children and families; and the application of a public health perspective.

6.2 Defining a child's needs

> … our duty to protect the welfare of children extends well beyond their mere protection from hurt and harm (Children's Protection Society submission, p. 9).

A child's needs comprise the broad range of support, care and guidance that all children must have in order to develop and thrive. In ordinary circumstances, these opportunities are provided by a child's immediate and extended family. However, for vulnerable children this may be unreliable.

A child's needs go further than ensuring a child's safety from harm. A child's essential needs encompass overall health, physical and emotional development and life skills. In relation to a child's progression into young adulthood, a child must be supported to achieve independent living.

A child will have immediate needs, for example, nourishment, but also long-term needs that affect, for example, a child's sense of identity and belonging, or a child's ability to form relationships or to support themselves.

There are inherent tensions within different types of needs. Permanently removing a child to protect them from significant immediate harm may cause long-term, adverse effects arising from a sense of disconnection from their family and cultural background. Another source of significant harm is exposing a vulnerable child or young person to multiple care placements. Not all of the needs of a child therefore are equal at any one point in time and these tensions are unique for every vulnerable child. Social workers or case managers must frequently consider how to balance competing needs when they make decisions affecting a child.

A system focused on a child's needs will, in some circumstances, prioritise these needs over the needs or rights of other individuals, such as a child's parents.

Drawing on Victorian and Commonwealth current policy settings, as well as the *Convention on the Rights of the Child*, the Inquiry has defined a child's immediate and long-term needs through the following domains:

- **Safety needs:** a child should be safe from harm or an unacceptable risk of harm (including an understanding of the impact of cumulative patterns of harm), plus a child needs protection from harmful influences, abuse and exploitation;
- **Health needs:** meeting a child's need for adequate nutrition and access to health services;
- **Development needs:** a child's development needs encompass behavioural, social and emotional development, the formation of a cultural and spiritual identity and a child's feeling of belonging, connectedness or engagement with family, friends and the community;
- **Education needs:** a child needs to learn as they grow, including literacy and numeracy milestones and participating in education programs ranging from early childhood through to formal schooling or skills training; and
- **The need to be heard** in relation to decisions that affect them, such as their care and to participate more broadly in society, as is appropriate to a child's age and stage of development.

(Adapted from: AIHW 2009; Council of Australian Governments (COAG) 2009a; Department of Education and Early Childhood Development 2009c, 2010; *Children Youth and Families Act 2005*; *Child Wellbeing and Safety Act 2005*; United Nations General Assembly 1989).

Supporting a child's needs requires the provision of material assistance, for example safe and secure accommodation, food, clothing and learning tools. The nature of a child's needs also varies as they grow and mature, encountering transition points and milestones from early childhood to primary and secondary schooling, young adulthood and independence.

The Inquiry received a number of submissions that called for the use of a child-centred framework that places the child's needs at the core of decision making including the Child Abuse Prevention Research Australia and the Children's Protection Society submissions.

The Children's Protection Society's (CPS) submission to the Inquiry supported a broad approach to a child's needs. CPS argued that integration of all the various aspects of a child's life (health, education, safety, civic participation and economic security) must occur if Victoria is to protect children more effectively (CPS submission, p. 9).

The CPS's submission also noted that the 'conditions necessary for optimising child safety are ultimately the same conditions necessary for optimising their healthy development':

> Accordingly, the safety of children is maximised when children are able to mature within an environment conducive to their achieving the exigencies of human development (viz., physical health, emotional and cognitive maturity, resilience and the realisation of their central capabilities) (CPS submission, p. 12).

6.2.1 The rights of children inform an understanding of a child's needs

> Fundamentally, every child has a right to safety and wellbeing (DHS 2008a, p. 3).

The value held for the place of the child and the family in society has led to international recognition of the rights of children and young people. The Australian Government is a signatory to the United Nations *Convention on the Rights of the Child*, a document that addresses the role of government, families and children in society. There are a range of rights to be respected by signatories to the convention including the right to survival, to develop to the fullest, to protection from harmful influences, abuse and exploitation, and to participate fully in family, cultural and social life.

In Victoria, section 17 of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter Act) acknowledges the importance of the family as the fundamental group unit of society, entitled to protection by society and the State.

Reflecting the *Convention on the Rights of the Child*, section 17 of the Charter Act enshrines the family as the fundamental 'group unit' of society, entitled to protection by society and the state. This section also specifies that every child has the right to protection in their best interests (without discrimination).

Protecting a child's rights is one of three paramount considerations specified in the *Children Youth and Families Act 2005* (CYF Act) which need to be considered when a person is determining whether a decision or action is in the best interests of a child. The other two considerations are: the need to protect the child from harm and to promote a child's development (taking into account the age and stage of the child's development) (section 10(2) CYF Act)).

As noted in the Department of Human Services' (DHS) *Best interests case practice model: summary guide*, the CYF Act does not define which rights must be taken into account (DHS 2008a, p. 3). The Australian Government has not enacted specific legislation enshrining child rights into domestic law, although it has consulted on a possible national charter of human rights.

A number of submissions have argued for the adoption of an overarching rights approach, including those from the Federation of Community Legal Centres, the Victorian Equal Opportunity and Human Rights Commission and the Australian Childhood Foundation.

The Inquiry has used a child rights perspective to inform an understanding of the foundation and context of Victoria's system for protecting children, that is, the social, political and cultural environment in which the system operates. Many of the rights in the *Convention on the Rights of the Child* can be seen in the Inquiry's definition of a child's needs, including a child's right to:

- Protection from abuse and harm of all kinds;
- Provision of care and support, including for physical and psychological recovery following abuse or neglect; and
- Participation in discussion of matters affecting them through expressing their views and being given the opportunity to be heard where this is possible.

A holistic conception of a child's needs has formed the basis of the Inquiry's overarching approach to conceptualising the system for protecting vulnerable children. However, meeting a child's needs is a joint responsibility shared by families, government and the community. These roles are discussed in more detail in the following section.

6.3 The role of families, government and the community in meeting a child's needs

Philosophers have long commented on the nature of the social compact struck between citizens and their governments, giving the State authority to govern. The social compact refers to the concept that citizens have struck a deal with their governments, relinquishing individual power (to an extent), in return for the State assuming the authority and responsibilities of providing the benefits of a coordinated, organised and just society, when citizens, either individually or collectively, are unable to do so.

The role of government in relation to child protection attracts particular scrutiny from the public because, for cases of significant concern and risk, protecting vulnerable children involves government asserting authority and using statutory powers to remove children from their families and place them in alternative care. To do this, government intrudes into the most intimate, private and sensitive family arrangements. Such actions rest on the underlying premise that those children's safety and wellbeing will be better if they are in the care of the State. These actions are seen as a judgment that a parent or family has harmed (or is likely to harm) the child in a significant way.

The use of government power in this way attracts debate because the Australian community places a very high value on children and young people's safety and wellbeing. The Australian community also places a high value on the role of the family where a child belongs, and where it is considered they will best grow and mature into adulthood (COAG 2009a).

The Victorian Government has emphasised the importance of children and families most recently through its *Families Statement* stating that families are the cornerstone of our communities (Victorian Government 2011a, p. 3). Legislative decision-making principles applying to government departments providing services to children and families, stipulate that parents are the primary nurturers of a child and that the parent and child is the fundamental 'group unit' of society in Victoria (sections 5(1)(d) *Child Wellbeing and Safety Act 2005* (CWS Act) and 10(3)(a) CYF Act). These principles also state that society as a whole shares responsibility for promoting the wellbeing and safety of children (section 5(1)(a) CWS Act).

The Inquiry's principles for roles and responsibilities

In considering the Terms of Reference and all of the components of Victoria's system for protecting children, the Inquiry examined the roles and responsibilities of families, government and the community and this has resulted in a set of foundation principles upon which the Inquiry has made its recommendations for building a more effective system for protecting children.

The eight principles outlined in the following sections are drawn from a wide range of sources including Victorian and Commonwealth policy settings, the *Convention on the Rights of the Child*, submissions, consultations and Public Sittings and other material sourced throughout this Report. They cover the roles and responsibilities of government and non-government organisations, as well as addressing the role of children and young people in providing input about their care and the communities in which they are raised.

6.3.1 The views and perspective of children

We should have input about what we want to happen (young person in out-of-home care, CREATE Foundation 2011, p. 11).

Inquiry principle 1

Children are valued, individual members of society, with rights and responsibilities relative to their age and stage of development. Children's views and perspectives must play a meaningful role in guiding and informing policies and decisions about their care.

Properly valuing and supporting vulnerable children means that government, the community and community service organisations (CSOs) have a responsibility to seek their views and use such feedback to inform policy and operational decision-making, particularly in relation to care arrangements.

As a child grows, their capacity for forming views and being able to express those views evolves. A child must be given an opportunity to express their views freely, in a way that is appropriate to their age and stage of development.

Principles in section 5(3) of the CWS Act attempt to incorporate the voice of the child into the service delivery framework by stipulating that service providers should:

- Protect the rights of children and families and, to the greatest extent possible, encourage their participation in any decision-making that affects their lives; and
- Acknowledge and be respectful of a child's identity (including cultural) and be responsive to the particular needs of the child.

The views of a child are particularly relevant to statutory child protection care arrangements and related court proceedings. A variety of mechanisms are used across Australian jurisdictions to determine whether a child is capable of being directly represented in court.

Adopting a child-focused approach has meant that the Inquiry has taken particular steps to seek the views of children through consultation. The Inquiry heard directly from around 70 children and young people as outlined in Chapter 1. Their views and experiences have helped inform in particular the Inquiry's consideration of issues associated with out-of-home care and leaving care.

6.3.2 The role of parents and families in the system for protecting children

... the family, as the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community (United Nations General Assembly 1989, preamble).

Inquiry principle 2

Well-functioning families provide the best environment for a child's safety, wellbeing and development. Government has a role to support Victorian families as the core unit of society.

As recognised generally throughout society and in specific legislation, parents and families hold the primary role in the care and nurture of their children. Chapters 2, 7 and 8 on vulnerability, prevention and early intervention discuss the significant impact that the immediate family setting has on a child's wellbeing.

Acknowledging that the family has the most influence on a child's wellbeing directly informs the scope of government's role in responding to a child's needs. Placing a high priority on a child remaining with their family has implications for the design and objectives of protective policies and services.

The importance of the family is recognised through the best interests principles detailed in section 10 of the CYF Act which requires people making decisions about children to seek to ensure interventions into the parent-child relationship are limited to those necessary to secure the safety and wellbeing of the child (section 10(3)(a)).

The best interests principles note that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child (section 10(3)(g)). Government has therefore stipulated, through the CYF Act decision-making principles, that a certain threshold of risk must be present before government intervention is permitted. The CWS Act also provides that government intervention into family life should be limited to that necessary to secure the child's safety and wellbeing.

The best interests principles and the operational policies applied by government and CSO workers place importance on the desirability of a child remaining with their immediate or extended family. Valuing the family setting in this way also means that the system for protecting children is geared towards planning family reunification wherever possible. It has particular importance for maintaining cultural or religious ties to a child's family background and identity.

Placing a priority on a child remaining within their family environment means that support services designed to enable vulnerable families to care and support their children as far as possible assume a heightened significance. The provision of universal and targeted family services and their role in preventing and addressing the signs of child abuse and neglect are examined further in Chapters 7 and 8.

6.3.3 The role of government in the system for protecting children

> … it is the responsibility of Government to meet the needs of the child when the child's family is unable to provide adequate care and protection (section 5(1)(d) CWS Act).

Inquiry principle 3

When a family is unable to provide adequate care and protection, government has a role to assist vulnerable children and their families and safeguard children's wellbeing and development by meeting and addressing the needs of the child.

As Victorian society has changed over time, placing greater importance on children's wellbeing and the need to support vulnerable families, the role of the Victorian Government in relation to child protection has grown accordingly. The Victorian *Families Statement* notes that government has a role to help people achieve their aspirations.

> … family life is central to many of the most important things we have in common. It is about the necessities of a roof over our heads and food on the table, but it is also about working in a secure job that uses our skills, educating our children, feeling safe on our streets, knowing our neighbours and having a quality of life that allows us to spend time with our loved ones (Victorian Government 2011a, p. 3).

As with many areas of social policy and human services, government is responsible for providing the legislative and policy framework, the institutional and organisational structures, fiscal and other supports and services to enable families and society (Government of Canada 2004, p. 16).

These frameworks reflect the values and philosophical outlook about the ways in which governments can or should intervene in the lives of individuals.

An effective policy and service delivery framework is evidence-based and informed by experience. A sustainable framework is one that allows government policies and programs to evolve or adapt over time, in response to emerging challenges.

Social regulation

The current framework for government intervention into a family's life has seen an increasing range of social regulation activities. While family support services are provided on a voluntary basis and delivered in local community areas, statutory child protection services have been referred to as protective or social regulation (Department of Treasury and Finance 2011, pp. 2-3; The Allen Consulting Group 2003, pp. vii, 25). These government services may seek to use explicit incentives or 'soft' sanctions before statutory powers are deployed using court processes to attempt to change behaviour. This has been described as responsive regulation.

Government has increasingly taken on a role of asserting social or normative expectations of individual and family behaviours. This can be seen through policy frameworks that rely on principles such as 'mutual obligation' in income support, or through public campaigns to encourage better parenting or other desirable behaviours, such as not smoking during pregnancy or in a vehicle in the presence of a child.

The question of how government can best instigate and achieve desired behavioural or cultural change to support vulnerable children using specific social policies and programs is further considered in Chapter 7, which examines preventative strategies addressing child abuse and neglect.

Addressing vulnerability

Chapter 2 has established that a child's vulnerability is caused by multiple factors relating to health, development and wellbeing. To be effective, government's policy and service delivery framework must reflect these multiple causes.

Chapter 20 shows that responsibility for addressing different aspects of a child's vulnerability and a child's needs belongs to several Victorian Government departments and agencies that provide services to children and young people, including the departments of Health, Education and Early Childhood Development, and Justice, as well as Human Services, Planning and Community Development and services delivered through local government.

The Inquiry considers that Victoria's system for protecting vulnerable children requires a unified policy and service delivery framework that sets out defined policy objectives and indicators for evaluating progress. A unified framework can better manage the heavy interdependencies between the health, social and economic drivers of vulnerability and ultimately of child abuse and neglect. It will also link the myriad plans, programs and services identified throughout this Report into a cohesive approach aimed at protecting vulnerable children.

The Child Safety Commissioner's submission argues another benefit of an overarching framework is to assist professionals and service systems to work collaboratively and strategically together to support vulnerable children and families (Office of the Child Safety Commissioner submission, pp. 2-3).

Recommendation 2

The Government should develop and adopt a whole-of-government Vulnerable Children and Families Strategy. The objective of the strategy will be to establish a comprehensive government and community approach for improving Victoria's performance in responding to Victoria's vulnerable children and families at risk. The key elements are:

- A definition of vulnerable children and young people;
- Identified whole-of-government objectives, including specific roles and responsibilities for departments, both individually and collectively, in addressing vulnerability in children and young people;
- A performance framework, or list of the accountabilities, performance measures or indicators to be used by government to measure the efficiency and effectiveness of the strategy; and
- Accountability structures that set out appropriate oversight for monitoring the implementation of the strategy by departments and agencies, including reporting on such implementation to government and the public.

Subsequent recommendations in this Report will provide further guidance on the objectives to be contained in a Vulnerable Children and Families Strategy. For example, Chapter 7 provides that one priority will be encouraging greater participation by families with vulnerable children in universal services. Chapter 8 recommends that relevant services should prioritise service delivery to vulnerable children and families. Chapters 20 and 21 discuss the role of government agencies and oversight structures in more detail.

The Inquiry expects that the performance measures contained in the Strategy would be refined and improved over time as data availability improves. A number of recommendations aimed at improving data collection are contained in this Report and these can be found in Chapters 4, 12 and 13.

Inquiry principle 4

When a child has been taken into the care of the State, the role of government extends beyond supporting a family to care for its children. By taking a child into the care of the State, government has stepped into the place of the parent and must address all of a child's needs.

The role of government takes on a different character in circumstances where families are unable to care for their children and it is apparent that harm, abuse or neglect is occurring. In these circumstances, society expects government to intervene, to protect the child and possibly remove them from harm.

Society expects that a child removed from their family is not further harmed or placed at increased risk by being placed in alternative care that does not meet their needs.

The Inquiry has drawn a distinction in its analysis between the way a family environment is able to provide care and support to meet all of a child's needs, as opposed to the State's ability to meet a child's needs. As is discussed below in relation to Inquiry principle 5, the Inquiry has noted that there are degrees to which government can adopt the role of parent or guardian of a child. Government is unable to meet a child's needs that directly arise from the intimate attachment formed between a child and their parent or caregiver.

The Inquiry considers that, in relation to children taken into State care, and drawing on the Inquiry's principles, government has a responsibility to meet the following immediate and long-term needs of a child.

Safety needs

- Protect the child from physical and psychological harm; and
- Provide safe and secure accommodation through a supportive and stable placement in alternative care where a child cannot return home.

Health needs

- Meet the child's physical health needs;
- Address the child's psychological health and wellbeing (noting that for some children this will require addressing a child's long-term needs through therapeutic care or counselling); and
- Provide food, clothing and other material support.

Development needs

- Design and fund policies or programs that cater for the ongoing development and growth needs of the child in transitioning through childhood, adolescent and early adulthood milestones; and
- Design and fund policies or programs that assist the child or young adult with the often difficult transition from care.

Education needs

- Seek to ensure the provision of appropriate, quality education and engaging the child in learning; and
- Design and fund policies or programs that help the child transition from school to tertiary education, training or work.

The need to be heard

- Design and implement mechanisms to incorporate the child's views into decisions, particularly about their care, so that their voice is heard by service providers, administrators and policy makers.

Inquiry principle 5

In relation to a child's needs that cannot be directly met by the State, the role of government is to provide the structures and processes for enabling those needs to be met by others in stable alternative care arrangements, preferably in a child's extended family or through a foster care family.

When government stands in the place of the parent, by removing a child from their family and placing them in alternative care arrangements, it cannot directly meet all of a child's needs such as the need for meaningful attachment and to be loved. Government, as a guardian, can meet many immediate and long-term needs of a child, but it cannot directly nurture a child or provide the sense of identity, belonging and emotional support that comes from living in a supportive family environment.

In relation to a child's needs that cannot be directly met by the State, the role of government is to provide the structures and processes for enabling those needs, such as cultural or spiritual needs, to be met by others. These structures rely on engaging the broader community to build links and connections with the child. For example, when determining alternative care options for a vulnerable child removed from their family, government can prioritise placing a child with extended family members or other kinship carers through voluntary arrangements.

If an appropriate kinship placement is unavailable, children can be placed with foster carers. Although there is some remuneration of costs, relatives and foster carers can be described as critically important volunteers who work to provide alternative caring environments for vulnerable children as a contribution to their families and communities. Part of government's role is to assess whether they are appropriate alternative carers for vulnerable children. In some circumstances, government's role may be to take legal action enabling a child in care to be placed in a permanent alternative care environment to prevent multiple placements and for a child to develop a sense of identity and belonging in a family setting.

The Inquiry's recommendations on how to improve the structures and processes for enabling a child's needs to be met where government has arranged for these services to be provided by CSOs is discussed in Chapters 9 and 10 of this Report. These chapters cover the performance of external CSO agencies in addressing the needs of a child.

Inquiry principle 6

Government has a responsibility to report to the public on how it is performing in relation to its role to protect and address the needs of vulnerable children. In particular, government must report on how it is performing with regard to the outcomes of children taken into State care.

Properly addressing a child's needs requires government to collect and monitor information that reports on how a system is faring in achieving these objectives.

Data derived from monitoring system performance should inform changes and improvements made to the policy and service framework for protecting vulnerable children. Monitoring and data collection can also function as an open and transparent oversight mechanism that holds the State to account, particularly in relation to vulnerable children and young people in its care.

A range of different performance indicators are currently used by the Victorian Government to collect information on the various domains of a child's needs listed above.

Several chapters discuss the need to improve the collection and monitoring of performance indicator information. These include Chapter 9 for statutory child protection services, Chapters 10 and 11 on out-of-home care and leaving care and Chapter 13 which discusses issues particular to protecting vulnerable children in culturally and linguistically diverse communities.

Chapters 20 and 21 address the role of government agencies and system governance and regulation, and details recommendations for improving the accountability and transparency of the system for protecting children.

Recommendation 3

Performance against the objectives set out in a Vulnerable Children and Families Strategy, including information on the performance of government departments and statutory child protection services should be published regularly through *The state of Victoria's children* report.

6.3.4 The role of the community

Inquiry principle 7

Victoria's system for protecting children relies on an effective and collaborative partnership between the community and government. Community-led, locally-specific service solutions play an important role linking vulnerable children and families to their communities and support change in families to reduce the risk of child abuse or neglect.

The inability of the State to meet all of a child's development needs has meant that the role and contribution of the community is critical for supporting a system focused on a child's needs. The role of the community also reflects the fact that children reside in communities, and as stated in the CWS Act, 'society as a whole shares responsibility for promoting the wellbeing and safety of children' (section 5(1)).

Families exist within networks of neighbourhoods, schools, workplaces, sporting institutions and other associations. Social 'infrastructure' exists right across the Victorian community including clubs, religious organisations, voluntary organisations and associations that promote citizen engagement and participation. Civic participation is intrinsically valuable because it provides an environment for individuals to connect with each other, acquire life skills and it encourages participation in government and democratic processes. For children and young people, these may include sporting clubs and other pursuits.

The role of the community has become increasingly important as the scale of society's most entrenched problems has become apparent. The inability of governments to address widespread problems such as homelessness, poverty and other types of entrenched disadvantage have led to '…a growing sense that the most intractable problems in society cannot be solved by either individuals or governments acting alone' (O'Leary 2008, p. 9).

Each community is different

Chapter 2 has established how child abuse and neglect is linked to risk factors that reflect a child's, parent, family or caregiver's circumstances and also a range of environmental or community factors.

Some risk factors arise from locational aspects of vulnerability. Chapter 2 notes the research by Professor Tony Vinson arguing that it is the most deprived localities where rates of child maltreatment were elevated (Jesuit Social Services submission, p. 4). Chapter 2 also considers other evidence demonstrating the differential aspects of vulnerability factors including socioeconomic circumstances and the area-based nature of vulnerability indicators.

The Centre for Excellence in Child and Family Welfare submission argued for an area focus to government's response to vulnerability:

> Transparency and debate about how regional and local priorities are set and which of the available indicators, including aggregate information from databases about service usage, is critical if lasting whole of population impacts are to be achieved (Centre for Excellence in Child and Family Welfare submission, p. 15).

The feedback noted in Chapter 5 (at section 5.4.16) on submissions discussed the experiences of vulnerable children and young people in rural and regional communities as against those raised in urban and metropolitan communities. For a child living in a rural or regional community, the impact of separation from their family is magnified when the only available alternative care arrangements are located a long distance from their original family and friendship networks and school connections.

There is also a range of workforce challenges posed by geographically remote and dispersed client groups. An area-based approach should be used for developing and designing strategies and approaches for future improvements and changes to the system for protecting vulnerable children.

Recommendation 4

Area-based policy and program design and delivery should be used to address vulnerability and protect Victoria's vulnerable children and young people. In particular, an area-based approach should be adopted for assessing outcomes specified in a Vulnerable Children and Families Strategy and for reporting on progress against performance indicators.

Community groups and social movements are also crucial for linking community support to vulnerable families and instigating or supporting cultural and behavioural change. O'Callaghan argues that CSOs such as the Wesley Mission or St Vincent De Paul Society provide civic leadership in showing that 'we can only have a good society if our most vulnerable and marginalised citizens are part of it with us' (O'Callaghan 2007, p. 3).

An important outcome to an active community sector working in collaboration with government, however, is the assignment of accountability across the system for protecting children. The growth in the role of the community sector has meant that private-sector and community institutions now deliver services to and on behalf of the government outside the traditional structures of governance (Shergold, in O'Flynn & Wanna 2008, p. 15).

Government's growing reliance on community sector services occurs at a time of increasing funding and fiscal challenges, for example, the growth in the costs of social services caused by an ageing population and the increasing complexity of health care. These challenges place government under pressure to demonstrate value for money and efficiency from public spending.

Throughout the report the Inquiry has examined the extensive role of CSOs in the system for protecting children. Recommendations seeking to support and improve the ongoing capacity of the community sector are contained in Chapter 17.

Recommendations concerning the interface between government and CSOs are also discussed in Chapter 21 on governance and regulation.

Inquiry principle 8

When civil society is funded to carry out services on behalf of government, these services must be provided within an appropriate accountability, regulatory and transparency framework.

CSOs carry out a significant proportion of services for supporting vulnerable families and protecting children through family services and, most significantly, with all out-of-home care services. Regardless of the extent of community sector involvement however, it can always be expected that the community will ultimately hold government to account for the outcomes of vulnerable and disadvantaged children, particularly those who have been removed from their families and where there have been serious failures in care. In addition, the public service funder, or 'purchaser', continues to remain accountable to Parliament and the community as manager for the ethical and effective conduct of the CSO providing the services.

Accountability, regulatory and transparency structures must therefore take account of the CSO service system that has developed outside traditional governance structures and public sector settings.

The Inquiry has made a number of recommendations to improve the overall governance, regulation and transparency of the system for protecting children. Chapter 17 discusses the capacity of the community sector and Chapter 21 discusses governance and regulation in more detail.

6.4 Using systems analysis in the context of child protection

A system goal

Identifying the common purpose or goal of a system is critical because a system's purpose will determine the structures, functions and capacities required to meet that purpose. A system's purpose also drives the outcomes used to assess how well a system is performing (Wulczyn et al. 2010, p. 10).

The Inquiry's definition of the system goal as a focus on a child's needs has informed its recommendations on the way policy and service systems should be designed to protect vulnerable children and their families.

The elements of the system

As they grow and mature, a child is surrounded by a number of people and different settings, as was illustrated earlier through the ecological model of child development (see Figure 2.1, Chapter 2). Together, these people and settings influence a child's wellbeing through their involvement in a child's development and how they interact with one another.

People interacting with vulnerable children and families belong to related systems that direct and influence the way they behave towards a child and the support or services they provide. Some individuals provide counselling or family services, others may exercise statutory powers to investigate allegations, or determine where a child will reside; others still are responsible for a child's health or learning. These individuals may work for CSOs, DHS, the justice, health or education systems.

Figure 6.1 provides a simplified overview of the components and related systems that work together to form the overall system for protecting children. The dotted lines indicate the permeable nature of the boundaries between the sub-systems – individual children and young people or their families access a variety of services and may interact with different parts of the system simultaneously. Similarly, CSOs provide a range of child, adult and family support services based in the community and some of these organisations also deliver out-of-home care services.

While CSOs are part of a discrete system, people working for a CSO sometimes operate both within the bounds of the CSO environment and also interact with DHS to deliver out-of-home services or family support services as part of a Child FIRST alliance. This is because out-of-home care services are only provided once government has intervened and sought orders through the Children's Court to remove a child from their home.

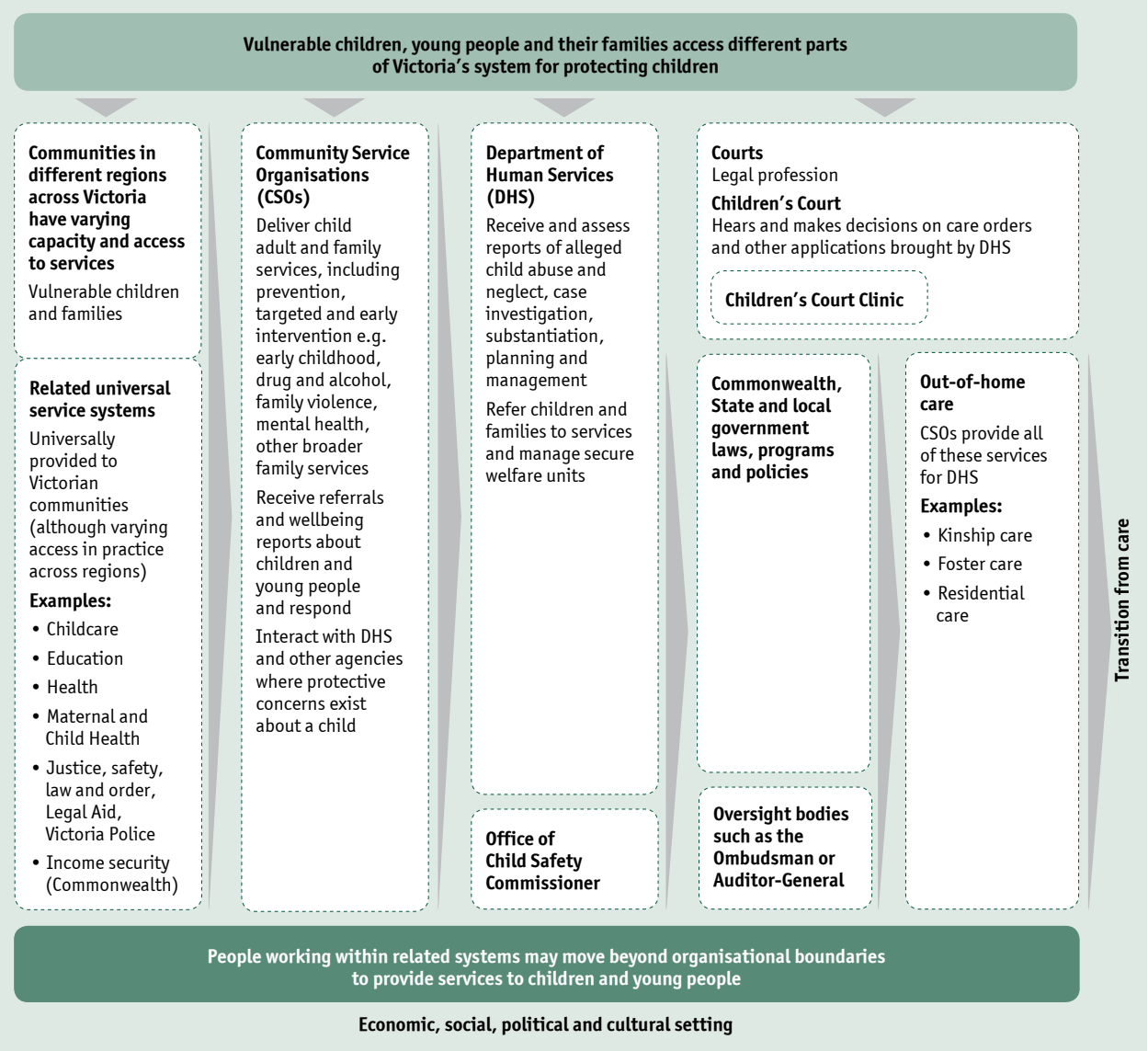
Workers from related child and family welfare systems will move beyond their own boundaries to come together to form a care team in relation to individual children where people have reported that they hold concerns about that child's wellbeing or safety. These concerns are notified to CSOs or DHS and are termed wellbeing concerns or protective concerns.

As a result, there is no single 'system' at present whereby the range of relevant service providers are united under a coherent policy framework with a clear common goal.

The Inquiry's Terms of Reference and its overarching systems approach place emphasis on considering the ways in which different people and related systems interact with one another and how they affect the protection of vulnerable children and support a child's needs. It also requires an understanding of the surrounding context and environment, which may directly influence the system's performance, including: The economic, social, political and cultural context including what might be described as society's normative framework or values;

- The functions and capacities of people and sub-systems; and
- Governance and accountability.

Figure 6.1 An overview of the functions, organisations and interrelationships that constitute Victoria's system for protecting children



Source: Inquiry analysis

6.4.1 Reactions, interactions and feedback loops in the system

A systems approach necessitates consideration of the anticipated reactions and interactions that may occur as a consequence of changes throughout the system for protecting children.

Reactions, characterised by Munro as ripple effects, may unintentionally reinforce each other throughout the system (Munro 2010, p. 49). For example, if out-of-home care placements are over capacity, this will change the context for a child protection worker's decision-making about whether to take a child into care.

If only a contingency or emergency placement is available (for example, temporary accommodation in a motel with an attendant carer), this influences the decision-maker. With the unavailability of regular funded placements in mind, the child protection practitioner may apply a higher threshold than is appropriate to the assessment of the harm or abuse before a child will be taken into care. This decision attempts to accommodate both the risks to the child and the practical realities of placement availability and the quality of those placements. It will also have an impact on reporting the number of children or young people requiring alternative care.

'Feedback loops' in a system are an important mechanism for providing information and oversight over whether the system is behaving as it should be and whether reactions are having a negative or positive effect on outcomes. To work effectively, feedback loops should report on whether a system is performing against the overarching system goal, that is, whether the system is focused on a child's needs.

An example of a feedback loop is monitoring CSO compliance with registration conditions and performance standards set by DHS. Chapter 21 on governance and regulation examines whether these feedback loops are operating effectively.

Another example of a feedback loop includes the Victorian Children and Adolescent Monitoring System (VICAMS), a cross-government initiative that aims to monitor wellbeing outcomes of 0-18 year olds in Victoria. The Children's Services Coordination Board (CSCB) publicly reports on VICAMS data through the periodical, *The state of Victoria's children report*. This process reflects the legislative functions of the CSCB, which include reviewing annually and reporting to the Ministers for Community Services and Children and Early Childhood Development on the outcomes of government actions in relation to children, particularly the most vulnerable children in the community (section 15(a) of the CWS Act).

The aim of these reports, four of which have been published to date, is to describe the current status of Victoria's children and identify any patterns of improvement or deterioration in their wellbeing. The report is intended to be used by government to shape policy and programs about children.

A systems perspective seeks to understand the amount of 'double loop learning' that can occur across the system for protecting children. Double loop learning, a term used by Munro, 'leaves space for professional judgment and the questioning of set targets' by posing the question 'Have we specified the right thing to do?' rather than being restricted to 'Are we doing what is specified?' (Munro 2010, pp. 14, 50-51). Accordingly, a well-functioning system will be concerned with the outcomes that particular risk management procedures are achieving for vulnerable children in addition to being concerned with the appropriate accountability and internal quality mechanisms in place. Chapter 9 considers the impact of rules and procedures on practice in more detail.

The Inquiry's recommendations should enable the system for protecting children to continuously learn and improve in the future, with better monitoring of performance. A sustainable system for protecting children should be equipped to learn of emerging difficulties and be able to respond creatively and effectively to tackle them. Chapter 21 considers monitoring and oversight mechanisms in further detail.

6.4.2 The system for protecting children relies on people

Child protection work is about people working with vulnerable children, their parents and families to confront and manage difficult and private circumstances.

In the out-of-home care setting, a carer's role involves working with a child or young person to provide support and guidance with the goal of approximating a family environment. A child's distress or problematic behaviour may be a result of a complex array of factors that can only be understood and assessed with human judgment. The dynamics of understanding and dealing with the family concerned add to the complexity that service providers must manage.

The Inquiry has considered the social elements of the system as opposed to focusing on just the 'analytical problem'. Human behaviour is a necessary factor in the Inquiry's recommendations, that is, how individuals work together and form relationships with children, their family members and others working to support a vulnerable child or young person (Munro 2010, p. 16).

When assessing the likely impact of the proposed recommendations, the Inquiry has considered how any proposed changes will affect the people who work in the system and their practices on the ground. Such analysis recognises that institutions and institutional changes play a significant role in determining individual and social behaviour in practice. Chapter 9 discusses work practices and processes in the context of statutory child protection services and Chapter 16 examines workforce issues relevant to providing quality services to vulnerable children.

6.5 A public health perspective on protecting vulnerable children

A public health perspective is another approach that informs analysis of the system for protecting children. In the public health model of disease prevention, interventions are described as either universal, secondary or tertiary interventions to reflect the target population group receiving the intervention (Holzer 2007, p. 1). These different levels of intervention are illustrated in relation to protecting children in Figure 6.2.

It is argued that a 'well-balanced system has primary interventions as the largest component of the service system, with secondary and tertiary services progressively smaller components' (Holzer 2007, p. 5).

Examples of universal supports to all families include Australia's health or education services. Universal public health interventions may also include the use of campaigns to raise awareness and drive behavioural change in populations (for example, QUIT smoking or AIDS awareness).

In child protection, this might include 'don't shake the baby' campaigns or mass media strategies aimed at changing attitudes to family violence.

To identify secondary or targeted interventions, a public health perspective focuses on the factors that increase and decrease the prevalence of a condition. These are termed risk or preventative factors. In child protection, risk factors are those that increase the likelihood that child abuse or neglect will occur, for example where the child is exposed to parental substance misuse. Protective factors are those that decrease prevalence of child abuse and neglect and instead promote the resilience of a child, for example strong parent-child attachment and social support. Secondary services are focused on those families needing additional assistance.

Tertiary public health intervention focuses on reducing the impact of a condition once it is established and reducing the risk of its recurrence. Applying this to child protection requires identifying and responding to situations where a child is at risk of significant harm or has already suffered abuse or neglect. Statutory child protection services are central to this, as are psychological and support services and the intervention of the criminal justice system.

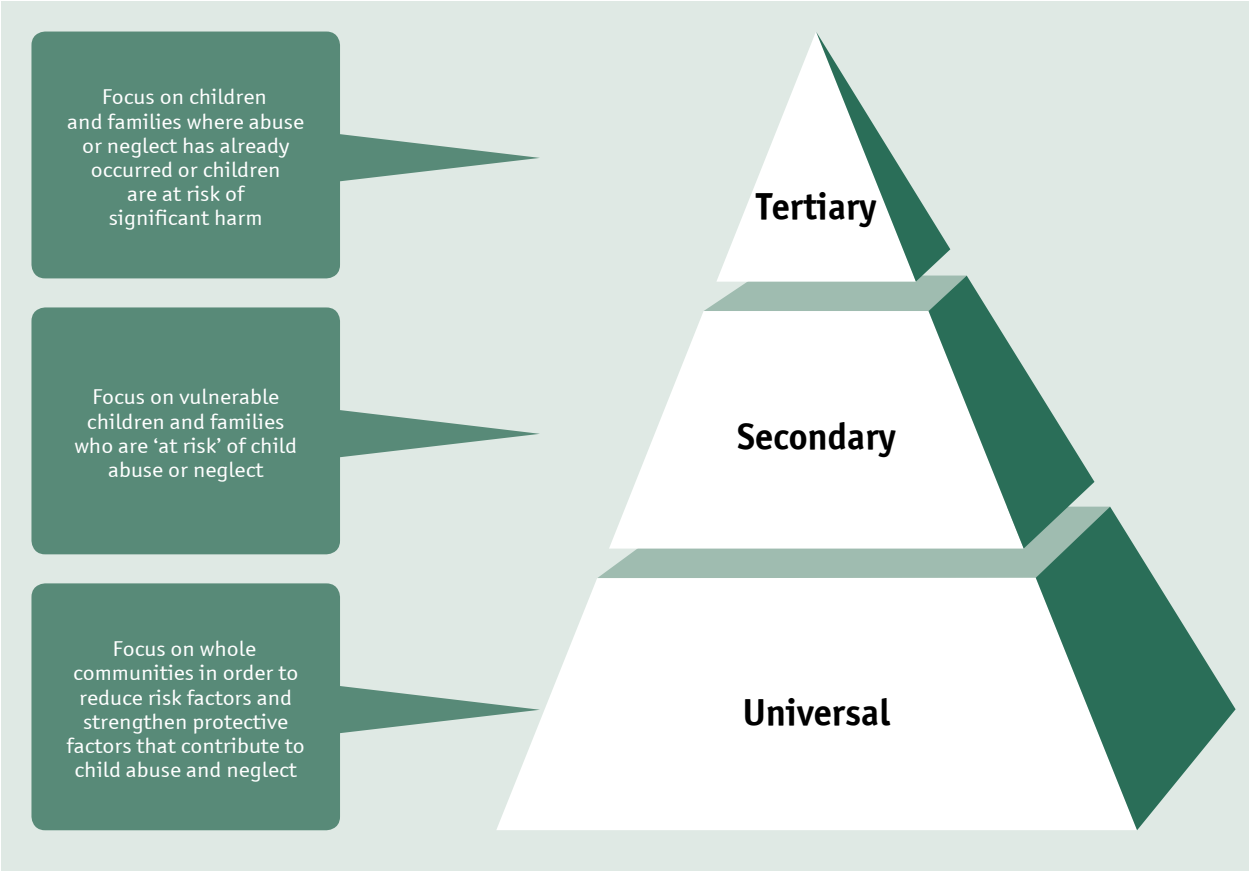
Population analysis is a common source of input for public health thinking, as this informs a view of the magnitude and causative factors of a problem. Public health approaches depend on a good understanding of causal and contributory factors, as well as evidence-based interventions to reduce risk and increase protective factors. In the field of child protection, the knowledge base is still undeveloped.

The *National Framework for Protecting Australia's Children 2009-2020* (COAG 2009e) notes that leading researchers and practitioners have suggested applying a public health perspective to child abuse and neglect will deliver better outcomes for children, young people and their families.

There may be benefit in seeking more of a whole-of-population response to child protection to avoid a sole focus on a forensic, investigative-driven child protection orientation. It is important to note however, the limitations of a public health perspective in addressing the full complexities of interdependencies, functions, people, structures, institutions and system capacities in the way that a systems approach can.

The Inquiry has used public health and systems approaches and there is more discussion of the value of a public health perspective in Chapters 7 and 8.

Figure 6.2 Protecting children: a public health perspective



Adapted from Holzer 2007, pp. 2-3.

6.6 Conclusion

Victoria's system for protecting vulnerable children and young people consists of all the functions, organisations and interrelationships that together act to prevent and respond to child abuse and neglect.

There are many areas of overlap and interdependency within Victoria's system for protecting vulnerable children and young people. A significant improvement to the current policy and service delivery framework is suggested by the Inquiry, with the recommendation to establish a whole-of-government Vulnerable Children and Families Strategy and an accompanying performance evaluation framework to be reported against publicly.

The Inquiry's recommendation that government should develop and adopt a whole-of-government approach to a Vulnerable Children and Families Strategy is a foundation for many subsequent recommendations in this Report as it unites the many discrete objectives found in the services and programs designed to support vulnerable children and families, and ultimately aims to reduce the incidence of child abuse and neglect.

The Inquiry recommended that a consistent area-based approach to policy and program design be adopted for addressing vulnerability and, consequently, reducing the incidence of child abuse and neglect.

Part 4: Major protective system elements

Chapter 7:
Preventing child abuse and neglect

Chapter 7: Preventing child abuse and neglect

Key points

- Victoria has a strong infrastructure of universal services for infants, children and young people, including through maternal and child health, kindergarten and schools.
- While there are high participation rates for maternal and child health and kindergarten the most vulnerable children and families are often excluded from these services.
- There is a lack of definitive research and evidence linking universal services to the reduction of abuse and neglect, however, the Inquiry makes the assumption that increasing participation in universal services such as maternal and child health, kindergarten and schools, will have an overall impact on reducing abuse and neglect.
- Within the non-stigmatising nature of universal services there are further opportunities for preventative activities for vulnerable children and families.
- Antenatal services are well placed to identify and reduce the risks of child abuse and neglect.
- Parental alcohol abuse is a significant risk factor for child abuse and neglect.
- Further efforts to prevent child abuse and neglect need to include the:
  - targeting of future government investment in the early years to communities that have the highest concentration of vulnerable children and families;
  - provision of early support to vulnerable pregnant women and infants;
  - implementation of strategies to encourage greater participation by the families of vulnerable children in universal services;
  - examination of current funding and infrastructure arrangements for services such as kindergartens, maternal and child health services and community playgroups that operate in locations where there are high numbers of vulnerable children and families;
  - development of a consistent statewide approach for antenatal psychosocial assessment;
  - development of a universal parenting information and support program that can be delivered by maternal and child health services and schools in communities with high concentrations of vulnerable children and families, at key ages and stages across the 0 to 17 age bracket; and
  - development of a wide-ranging education and information campaign targeted to parents and caregivers for all school-aged children to prevent child sexual abuse.

7.1 Introduction

This Inquiry has been asked to develop recommendations to reduce the incidence and negative impact of child abuse in Victoria, with specific reference to the factors that increase the risk of abuse and neglect occurring, and effective prevention strategies. There are a number of definitions of prevention. The Inquiry has adopted the following definition.

Inquiry definition of prevention

Activities that enhance child wellbeing and reduce the likelihood of child abuse and neglect.

Drawing on public health concepts, it is common when talking about prevention to distinguish between primary, secondary and tertiary prevention activities. Head and Redmond (2011, p. 7) differentiate between prevention activities by suggesting that:

- Primary prevention reduces the likelihood or the development of a problem, and is generally linked to universally available services;
- Secondary prevention interrupts, prevents or minimises the progress of a problem at an early stage, and is thus targeted towards groups with greater risks or vulnerabilities through early intervention programs; and
- Tertiary prevention services focus on treating and halting progression of damage already done.

This distinction between service 'tiers' is also recognised in the public health approach, which has been discussed previously in Chapter 6.

Recognising their common use, the Inquiry has chosen to adopt the distinctions between primary, secondary and tertiary prevention strategies as articulated above, while recognising that it has some limitations. For example, schools can be seen as sites of primary prevention, as well as secondary and tertiary prevention in relation to child abuse and neglect. As such, this chapter will consider primary prevention activities, while Chapter 8 is primarily concerned with secondary prevention, and Chapters 9 and 10 will consider tertiary prevention.

This Inquiry definition of prevention recognises that the application of a preventative approach includes activities that enhance child wellbeing outcomes, as well as the absence of negative outcomes such as child abuse and neglect.

It is clear from the consultations held by the Inquiry that prevention of abuse and neglect remains a priority for the community. A submission to the Inquiry from Child Wise argued that:

> … the biggest threat to children's futures is abuse. It destroys lives and communities … Child abuse affects everyone and therefore, it is everyone's responsibility to take action to prevent abuse from ruining the lives of children (Child Wise submission, p. 2).

The complexities associated with the effective implementation of prevention activities are also widely acknowledged, and captured well by another submission to the Inquiry:

> Ambulances do not prevent injury and death on the roads. Rather, the road toll has been effectively reduced by a mix of strategies including better road design, public awareness campaigns and better driver training. We need a change in paradigm from reacting to abuse and neglect, to preventing abuse and neglect (Parenting Research Centre submission, p. 5).

This chapter considers both the current efforts in relation to the prevention of child abuse and neglect (section 7.2), including population-based approaches and the role of the universal services system, and future opportunities to expand those efforts (section 7.3) through services provided early in a child's life, services for school-aged children and adolescents, support services for parents, and the importance of the community environment.

The preventive impact of the law was considered by the Inquiry in Chapter 3.

7.2 Current prevention efforts

Efforts to prevent child abuse and neglect include strategies aimed at the whole community through mechanisms such as social marketing campaigns (for example, pool safety awareness campaigns and summer warnings about children left in cars in hot weather), as well as using universal services to reduce the risk factors associated with child abuse and neglect. This section will consider population-based approaches and the role of universal services.

7.2.1 Population-based approaches

A population-based approach seeks to affect the behaviours and attitudes of the population through the use of interventions such as information social marketing campaigns and interventions that address the causes of problems, in this case, the risk and protective factors outlined in Chapter 2 (VicHealth 2008, p.17).

Social marketing campaigns

Improving parenting skills is one way to prevent child abuse and neglect and the Inquiry has considered how good parenting can be enhanced at a population level. Unfortunately, as noted in the Parenting Research Centre submission, there is currently little or no evidence as to the effectiveness of public awareness campaigns related to parenting (Parenting Research Centre submission, p. 7).

Saunders and Goddard (2002, p. 1) note that, while the media can play a significant role in forming and influencing people's attitudes and behaviour, the effectiveness of mass media in the prevention of child abuse and neglect is debatable. On the one hand, the mass media has an opportunity to reach large numbers of people, but on the other hand media driven campaigns can be expensive and their impact is difficult to measure.

A broader sweep of recent social marketing campaigns might suggest that campaigns can be effective in influencing public knowledge and attitudes about issues such as work safety, drug and alcohol use, drink-driving, speeding and cigarette smoking, but it is also suggested that behavioural change can lapse when campaigns end (Saunders & Goddard 2002, p. 2). Saunders and Goddard conclude that, to be effective, mass media campaigns will need to be part of a broader prevention program that includes the provision of supports and services for all children and families.

This finding is reiterated by an Australian Institute of Family Studies literature review of social marketing campaigns directed to preventing child abuse and neglect. The review concludes that there is relatively little evidence regarding the effectiveness of social marketing campaigns in preventing or reducing child maltreatment but also notes that the empirical evaluation of social marketing campaigns is challenging. The review therefore suggests that any future social marketing campaigns that aim to address child maltreatment in Australia involve comprehensive evaluation and pairing mass media with a community-level strategy (Horsfall et al. 2010, pp. 23-24).

There is currently insufficient evidence to support social marketing campaigns focused generally on child abuse and neglect. However, in relation to deaths and injuries related to supervisory neglect there is evidence of success of social marketing campaigns that are focused on specific behaviours (such as safety of children near water, in driveways and ingesting medications). Such opportunities could be taken up by the proposed Commission for Children and Young People recommended in Chapter 21.

Matter for attention 1

The Inquiry draws attention to the opportunity in broader government-sponsored community awareness campaigns to include child-focused dimensions, for example, family violence campaigns. These campaigns could include the impact of family violence on the children and young people in the family.

Interventions targeting the cause of problems

A population-based approach also focuses on interventions that address the cause of problems. As noted in Chapter 2 there are a number of factors that are known to have a direct link to child abuse and neglect. Several of these factors lend themselves to a population-based focus, in particular family violence, alcohol and other substance misuse and mental health problems, as argued in a number of submissions to the Inquiry:

> Efforts to reduce child abuse need to acknowledge and reflect the pervasiveness of family violence in our community. Violence within families underpins many social ills, injustices and harms that occur in Australian communities; it can be considered a 'rock in the pond' issue that ripples out and is prevalent in all human service systems (Domestic Violence Victoria submission, p. 2).

> ... we know from the research that [the issues affecting families and adolescents coming into care] are mental health, drug and alcohol and family violence. They are the three key presenting factors to family services, as they are for out-of-home care and child protection, so those three issues are very significant, but added to that is intergenerational stuff and very profound problems of attachment (Ms Butler, Ballarat Public Sitting).

There are a number of plans across the Commonwealth and state governments that address family violence, mental health and drugs and alcohol at a population level. These policies promote the use of primary prevention strategies, such as social marketing campaigns and school-based programs. These actions are consistent with the Inquiry's objective of seeking to reduce key risk factors.

Family violence

The *National Plan to Reduce Violence against Women and their Children 2010-2022* has been endorsed by the Council of Australian Governments (COAG) and sets out a framework for action over the next 12 years to reduce the levels of violence against women and children.

As highlighted in Chapter 2, a child witnessing family violence is child abuse and therefore this strategy to reduce family violence is considered a preventative measure for child abuse and neglect. It has a significant focus on primary prevention, with suggestions for strategies such as social marketing and school-based programs (COAG 2009d, p. 14).

Mental health

In relation to the risk factors associated with child abuse and neglect, parental mental health is a key issue. Supporting parents with a mental illness is both an important prevention and intervention strategy. The specific programs that seek to identify and respond to specific parental mental health issues are considered in more detail in Chapter 8.

Mental health promotion includes any action taken to maximise mental health and wellbeing among populations and individuals by addressing potentially modifiable determinants of mental health. This includes:

- Influencing the social and economic factors that determine mental health, such as income, social status, education, employment, working conditions, access to appropriate health services and the physical environment; and
- Strengthening the understanding and the skills of individuals in ways that support their efforts to achieve and maintain mental health.

Mental health promotion aims to minimise the risk factors and increase the protective factors that influence mental health and wellbeing (Department of Health 2011a).

The *Because mental health matters: Victorian Mental Health Reform Strategy 2009-2019* identified promoting mental health and wellbeing as a distinct priority reform. Reform area 1 of the strategy identifies the goals for promoting mental health and wellbeing and preventing mental health problems by addressing risk and protective factors. The four goals are to:

1. Lead an organised and collaborative effort to promote positive mental health in targeted community settings;
2. Promote a socially inclusive society to strengthen recognised protective factors for mental wellbeing;
3. Renew Victoria's suicide prevention focus through a wide range of government programs; and
4. Reduce the risk factors for mental health problems associated with substance misuse (Department of Health 2009).

Alcohol

The Australian National Council on Drugs (ANCD) was established in 1998 as the principal advisory body to the Australian Government on drug and alcohol policy. It plays a critical role in ensuring the views of the many sectors involved in addressing drug and alcohol problems, as well as the community, are heard. An important component of the ANCD's work is to also ensure that policies, strategies and directions in the drug and alcohol field are consistent with the *National Drug Strategy 2010-2015*.

The *National Drug Strategy 2010-2015* includes an action to implement and support well-planned social marketing campaigns that address the risks of alcohol and promote healthy lifestyles and safer drinking cultures, including targeted approaches and local complementary initiatives for different population groups (Ministerial Council on Drug Strategy 2011, p. 10). Such targeted social marketing campaigns are promising for the preventative influence on a key risk factor for child abuse and neglect.

However, when a parent is intoxicated, their ability to provide adequate care and protection of young children is compromised (Dawe et al. 2008, p. 1). Accordingly, it is disappointing that the *National Drug Strategy 2010-2015* does not specifically identify the impact of alcohol use on parental capacity in its stated priorities.

Finding 3

Parental alcohol misuse is a significant risk factor for child abuse and neglect. The Inquiry considers that further investigation of the potential preventative benefits of public education and mechanisms such as minimum pricing of alcohol and volumetric taxing has merit.

The Victorian Government is in the process of developing a whole-of-government Alcohol and Drug Strategy. This could be an effective vehicle to address the negative impact of alcohol on parental capacity.

Recommendation 5

In preparing the whole-of-government Victorian Alcohol and Drug Strategy, the Department of Health should consider the impact of alcohol and drug abuse on the safety and wellbeing of children in families where parents misuse substances.

7.2.2 The universal service system

Universal services that have a role to play in reducing risk factors and strengthening protective factors for abuse and neglect include maternal and child health (MCH), child care, kindergarten, schools and primary health care.

The Inquiry notes that there is a lack of definitive research and evidence linking universal services to the reduction of abuse and neglect. While it is acknowledged that MCH nurses have a role to play in enhancing breastfeeding rates and securing parent-child attachment, and schools have a role to play in delivering safety awareness education to children, these organisations have goals and priorities that are much more expansive than the prevention of child abuse and neglect.

In the absence of evidence linking universal services to reducing child abuse and neglect, the Inquiry makes the assumption that increasing participation in universal services such as MCH, kindergarten and schools, will have an overall impact on reducing abuse and neglect. This is because of the increased access to and support provided by frontline health and education professionals, and the potential of services such as MCH, kindergartens and schools to bring families together and reduce social isolation. Moreover, universal services increase the 'visibility' of vulnerable children and families to the broader community, which in turn have an opportunity to respond to the needs of these children and families.

Efforts to prevent child abuse and neglect are most likely to be effective when a coordinated range of mutually reinforcing strategies is employed. The Inquiry suggests that further progress to prevent child abuse and neglect needs to be focused on communities with a high concentration of vulnerable children and families, and through the universal service platform, including MCH, early childhood education and care and broader educational settings.

Recommendation 6

The Department of Education and Early Childhood Development should implement strategies designed to encourage greater participation by the families of vulnerable children in universal services.

7.3 Opportunities to expand prevention efforts

Victoria has a good infrastructure of services with the potential to help prevent child abuse and neglect (see Appendix 7). From the MCH service, to early learning environments (including child care and kindergarten), to primary and secondary school, there are substantial opportunities available for child wellbeing to be enhanced and child abuse and neglect to be prevented.

7.3.1 Early years services

Victorian maternal and child health

Victoria has invested heavily, over many decades, in an effective and universally accessible MCH service. It is widely considered a cornerstone of the preventative effort that is required to support all Victorian children and families. MCH services provide a wide range of activities for all children aged 0 to 4 and their families, including intervention and referral, promotion and education, and support for families.

> Maternal and child health nurses ... provide care to families around the core risk factors of child abuse such as social isolation, such as lack of parenting skills, maternal and ill health, postnatal depression, sleep deprivation, breastfeeding difficulties, post-traumatic birth, all of these are the known risk factors that may contribute to child abuse and neglect ... (Ms Clark, Broadmeadows Public Sitting).

The MCH service is built around 10 key visits with an MCH nurse. According to the *Competency Standards for the Maternal and Child Health Nurse in Victoria* (Victorian Association of Maternal & Child Health Nurses 2010) MCH nurses are required to assess and monitor the health, growth and development of children from birth to school age through:

- Collecting a comprehensive medical, obstetric and family history;
- Identifying protective and risk factors in the child's environment;
- Identifying a child at risk of or experiencing neglect and abuse and acting on professional observation and judgment; and
- Responding to a child at risk of or experiencing abuse, and making reports in accordance with the *Children Youth and Families Act 2005*.

MCH nurses also undertake physical and developmental assessment of the child, promote breastfeeding, appropriate nutrition, and maternal physical and emotional health and wellbeing.

MCH nurses also play a key role in facilitating community linkages and support, including through establishing new parent groups, to reduce social isolation and improve social connectedness. They promote effective and safe parenting styles and assist parents to understand the needs of their infant or child in relation to their child's stage of development. They also promote the importance of the family in the health and development of the child.

The most recent independent evaluation of MCH (KPMG 2006) found numerous successes associated with this service including client satisfaction (in excess of 95 per cent), progressive introduction of system innovations and planning processes that integrate MCH within municipal and other local service systems. The evaluation concluded that MCH is achieving its objectives for most Victorian parents and children (KPMG 2006, p. 2). However, as noted recently by the Victorian Auditor-General's Office (2011b), participation in MCH, particularly after the age of 12 months, is an issue, with declining proportions of families not participating in the service, as shown in Table 7.1.

Table 7.1 Participation in maternal and child health checks, Victoria, 2005-06 to 2009-10

Visit	2005–06 participation levels, per cent	2009–10 participation levels, per cent
Home consultation	96.0	99.8
2 weeks	93.1	96.9
4 weeks	91.3	95.4
8 weeks	91.7	94.7
4 months	89.4	91.5
8 months	82.4	82.7
12 months	78.3	80.3
18 months	68.0	71.6
2 years	64.7	69.1
3.5 years	58.0	63.1

Source: DEECD 2007a, DEECD 2011c

The Victorian Auditor-General noted that by 18 months, almost 30 per cent of all children and families no longer participate in the service. The report concludes that the Department of Education and Early Childhood Development (DEECD) needs to better understand the reasons for the drop off in the universal service after the eight-week check. (A summary of the Auditor-General's findings in relation to early childhood development services are shown in the box).

Early childhood education and care

The Commonwealth Government is a partner with the Victorian Government in providing comprehensive and quality early childhood education and care, having a critical role in early childhood support through care and family payments. The reforms that have been pursued through COAG in recent years are critical to the progressive development of these services, in particular through:

- Development of a national early childhood development strategy called *Investing in the Early Years;*
- The *Closing the Gap: National Partnership Agreement for Indigenous Early Childhood Development* to 'close the gap' in Indigenous early childhood development outcomes and improve participation;
- The *National Partnership Agreement on Early Childhood Education* to provide universal access by 2013 to a high-quality kindergarten program for 15 hours a week, 40 weeks a year in the year before school; and
- The *National Early Years Learning Framework* for all educators who work with children from birth to five years.

A number of long-term studies have demonstrated that high quality early childhood education and care can help to prevent or mitigate the problems that emerge for children being raised in disadvantaged families (Centre for Community Child Health 2007). The long-term savings for society are also widely argued, including by United Nations Children's Fund (UNICEF), which states there is no convincing reason in contemporary society for spending less on early childhood education and care than on the educational needs of older children (Adamson 2009, p. 31).

The engagement of vulnerable children in universal early childhood services is widely acknowledged as one of the biggest challenges facing policy makers and service providers (McDonald 2010, p. 1). This challenge is not limited to the Victorian or Australian context, as UNICEF notes that the lack of statistics regarding early childhood education for disadvantaged and vulnerable children makes it more difficult to craft effective policy responses (Adamson 2009, p. 23).

The 2006 Organisation for Economic Co-operation and Development (OECD) *Starting Strong* review of early childhood services found: '…that direct public funding of services brings more effective governmental steering of early childhood services, advantages of scale, better national quality, more effective training for educators and a higher degree of equity in access' (Adamson 2009, p. 20).

The report states that, in 2003, Australia was spending just 0.4 per cent of gross domestic product on early childhood services, well below the OECD average of 0.7 per cent. The countries at the top of the expenditure table (Iceland at 1.8 per cent, Denmark at 1.7 per cent, Finland at 1.3 per cent, Sweden at 1.3 per cent and France at 1.2 per cent) spend approximately double the OECD average. These same OECD countries meet eight or more of the OECD early childhood benchmarks (Adamson 2009, p. 27).

What this OECD data doesn't show well is that Australia is unique in that a large proportion of spending on early childhood education and care occurs in the private sector, meaning that access to most early childhood educational settings is restricted by cost. The Commonwealth Government contributes towards the cost of child care through two funding mechanisms: the Child Care Benefit and the Child Care Rebate.

The Child Care Benefit is available for families that access a family tax benefit and place their child in approved care for up to 24 hours per week. The Child Care Rebate is available only to families that pass a test designed to encourage workforce participation. The subsidy approach to child care means that, for many families, cost remains a barrier to accessing child care.

Appendix 7 provides the number and the proportion of Victoria's children who are attending child care, principally long day care and family day care. The Inquiry sought to also include material regarding the levels of Victorian children's non-participation in early childhood education and care, particularly for children aged one to three years. Unfortunately this is not information that is collected by DEECD.

In Victoria attempts to overcome this exclusion are being trialled through the new pilot program Access to Early Learning. The primary focus of the Access to Early Learning initiative is the engagement of vulnerable children in three year old early childhood education and care programs. This program is discussed in more detail in Chapter 8.

Although acknowledging that Victoria's current 95 per cent kindergarten participation rate meets the nationally agreed target for universal access, the Victorian Auditor-General argues for further improvements to meet the needs of the most vulnerable (refer to box). The UNICEF report card on early childhood services suggests that governments need to plan, deliver and monitor early childhood services in a way that is able to guarantee the inclusion of the most disadvantaged and vulnerable (Adamson 2009). This may mean greater government subsidisation, flexible budgets, regional or location-based solutions, more training and skills development in the places of greatest need.

Early years services

This analysis of MCH and early childhood education and care not only shows the value of these early years services to children, but they also show the lack of universal service offerings to children and their families between the ages of one and three. MCH services include only three visits with a MCH nurse after the age of one, 18 months, two years and 3.5 years.

Most reports to child protection occur within the first year of a child's life. As shown in Figure 2.3 in Chapter 2, the number of reports to child protection that originate when a child is aged 1 to 3 are around 3,000 per age group, per year. This is a significant number and begs the question: Can more be done to prevent this high number of children being referred to the tertiary end of the service spectrum?

As an existing and strong service platform, MCH has enormous potential to promote health, development and wellbeing for the 0 to 3 age group; however, it is noted by the Inquiry that participation levels among this age group in the last three visits are less than 70 per cent. The reasons why approximately 30 per cent of families are not participating are multifaceted and complex, relating to issues such as location of centres, appointment times, costs of travel and parental work commitments. In this context, it may not be appropriate for the traditional service method to continue for the later MCH visits. Strategies such as linking later MCH checks to immunisation clinics, playgroups, child care, family day-out activities, local libraries and shopping centres could be explored as ways of 'reaching out' to families.

That these services are not currently accessed by all Victorian children who are eligible for the service is a problem in need of priority attention.

Playgroups

The Inquiry has heard evidence of Victoria's long history of formal and informal playgroups. Playgroup Victoria is a statewide organisation established in 1974 to achieve outcomes for all Victorian children, parents, families and communities through the platform of a playgroup.

> Playgroups are a cost effective, flexible and responsive model that can be replicated without the need for extensive infrastructure in the heart of any community, including Indigenous and CALD communities. Playgroups play a vital role in responding to the needs of children and families at risk of child abuse and neglect and build more connected and resilient communities (Playgroup Victoria submission, p. 3).

Victorian Auditor-General's report into early childhood development services: access and quality

Summary of relevant findings and recommendations

Key findings

- Access to universal MCH and kindergarten services and services for vulnerable children has improved over the five years to 2010.
- Despite the increase in MCH participation rates, attendance at the 10 health and developmental checks progressively declines after the first check.
- This pattern of progressive decline in the take-up of health and developmental checks has not improved and remains consistent with 2005-06.
- These checks play an important role in the early detection and treatment of health and developmental problems. Checks must be timely as any delay in detection increases the likelihood that children remain vulnerable and at risk, resulting in a greater cost to the community and government.
- While the current 95 per cent kindergarten participation rate meets the nationally agreed target for universal access, DEECD has not established who the non-participants are and, most importantly, whether they include the children and families most in need of the service.
- Local governments collect information and data on children and families that could better inform DEECD's understanding of demand (DEECD does not use it).
- While DEECD has information on the number of vulnerable children and families that use the targeted services, variable service referral processes, inconsistent data collection methods, unreliable data on population projections, and the department's narrow definition of vulnerability means that DEECD is not in a position to know whether the information it has accurately reflects real demand.
- The narrow definition of vulnerability used by DEECD means that it is not in a position to know whether the information it has accurately reflects real demand.
- Consequently, DEECD does not know whether it is reaching all vulnerable children and families, and it does not know the reasons why or extent to which children and families experience problems accessing early childhood services.
- DEECD does not sufficiently understand or effectively manage demand for early childhood services. It needs to better identify which children and families do not use its services, and why, and then act to remove barriers to participation.
- As local governments also have statutory responsibility to plan and provide services for the local community, which include MCH and kindergarten services, there is a risk that ambiguity of roles can result in a lack of clear accountability for performance. DEECD has not actively managed this risk and needs to take a stronger leadership role in this regard.

Recommendations

- That DEECD develop a better understanding of service demand, particularly for the vulnerable and disadvantaged by:
- Reviewing its definition of vulnerability to guard against children and families 'slipping through the net';
- Working in partnership with service providers to identify and act to remove barriers to access and participation, especially for the vulnerable and disadvantaged; and
- Working in partnership with service providers to identify and act to mitigate the reasons for the fall in attendance at MCH checks after the first visit (VAGO 2011b, pp. viii-xi).

It is noted that the form of playgroups can vary, from a community-based format, to supported/facilitated formats and intensive formats. The latter two formats will be discussed in more detail in Chapter 8, given their focus on targeting vulnerable children and families. Community playgroups are considered universal in their reach, as they are available to anyone who wishes to access them. They tend to be organised and led by parents at a local neighbourhood level. Playgroup Victoria has estimated that it supports more than 17,000 families that attend these playgroups across the state.

Playgroups are for babies, toddlers and preschoolers, and their parents or carers. They offer a cost-effective and universal platform for child and family support, and provide parents and carers with the chance to meet other people going through similar experiences, which can ease the isolation that can come with caring for young children. Families can be introduced to community, health and support services while they are at playgroup.

An international evaluation of playgroups found they can be the first service that a family engages (however, in Victoria, the existence of MCH services means that it is not the case). For many parents, participation in their local community playgroup represents a first step towards further training and education, and the beginning of their community involvement. Playgroups provide ready access to a listening ear, advice and support, as well as information on accessing other supports and agencies (French 2005, p. 61).

The Telethon Institute for Child Health conducted research on the association between playgroup participation, learning competence and social-emotional wellbeing for children aged 4 to 5 years in Australia, and found that boys and girls from disadvantaged families scored 3 to 4 per cent higher on learning competence at age 4 to 5 if they attended a playgroup at age 0 to 1 and 2 to 3 years, when compared with children from disadvantaged families who did not attend a playgroup (Hancock et al. in press, p. 2). Demographic characteristics analysed in the research also showed that disadvantaged families were the families least likely to access playgroups.

The *Take a Break* child care program lapsed at the end of the 2010-11 financial year, following a review that suggested it was inefficient and poorly targeted. With a state government investment of more than $800,000 per annum, the Inquiry considers that action be taken fill the void for families left without access to affordable support. The Inquiry recommends that DEECD invest funding into community playgroups in communities where there are high numbers of vulnerable children and families.

Recommendation 7

The Government, through the Department of Education and Early Childhood Development, should:

- Examine the capacity of local governments in low socioeconomic status areas to provide appropriate Maternal and Child Health and Enhanced Maternal and Child Health services, consistent with the concentration of vulnerable children and families, particularly as the current funding formula for Maternal and Child Health is based on a 50 per cent contribution by local government; and
- Increase investment and appropriate infrastructure in universal services including maternal and child health, kindergarten and community playgroups, to communities that have the highest concentration of vulnerable children and families to increase the participation of vulnerable children in these services.

The increased investment in maternal and child health and enhanced maternal and child health should focus on:

- Enhanced support to families whose unborn babies are assessed as vulnerable to abuse or neglect, especially as a result of pre-birth reports; and
- A more intensive program of outreach to families of vulnerable children who do not attend maternal and child health checks, particularly in the first 12 months of life.

Recommendation 8

The Department of Health should develop and lead a consistent statewide approach for antenatal psychosocial assessment so that problems such as family violence, parental mental illness and substance misuse in pregnancy can be more effectively addressed.

7.3.2 School age children and adolescents

Schools have an important role to play in promoting general child wellbeing and reaching out to families in the local community. The universal and compulsory nature of school attendance, places a school in a unique position relative to a family. For many children, teachers are a significant figure in their lives, with enormous potential to impact on their wellbeing and life outcomes. For vulnerable children in particular, schools have a unique opportunity to identify signs of vulnerability early, as well as implement strategies to impact positively on these factors.

DEECD recognises that 'protecting children from significant harm caused by abuse and/or neglect is a shared responsibility involving parents, child care providers, schools, communities, government organisations, police and community agencies' (DEECD 2011b).

DEECD's approach to the protection of all children and young people involves operational practice, educational and student services, and partnerships with families and communities. As shown in Appendix 7 the main program dedicated to assessing the wellbeing of primary school children is through the Primary School Nursing Program. This program offers a free health care and referral service to all Victorian children attending government, independent and Catholic primary schools, and English Language Centres. The universal health assessment relies on concerns expressed by parents or teachers to provide a more focused health consultation. Nurses will refer children and families for whom they have concern to other relevant health or social services, including general practitioners, Child FIRST agencies and statutory child protection.

In addition to its role in overseeing the capability of the broader teaching and early childhood education workforce, DEECD has a range of further programs designed to facilitate partnerships with families and communities. For example, four extended school hubs are being piloted in Victoria under the Smarter Schools National Partnerships. The goal of the hubs is to strengthen partnerships between schools, community and business to support students to achieve their education potential by:

- Reducing barriers to learning; and
- Connecting and coordinating external activities delivered before, during and after school hours to provide complementary learning for students and families.

DEECD also has a range of further programs designed to keep vulnerable children/youth engaged in the school environment. For example, as part of the East Gippsland Youth Mentoring Project young people at risk of leaving school early are matched with a volunteer mentor for one hour per week for one term to one year. The mentoring program has been operating for six years and has a proven track record of success at keeping young people engaged with school. In 2010, 53 of the 54 young people who had a mentor stayed at school.

Government secondary colleges employ student welfare coordinators who are responsible for helping students with issues stretching from truancy to parent-adolescent conflicts to depression. This reflects that needs of children between primary and secondary school settings are distinctly different, and the challenges of adolescence necessarily need to be taken into account when determining what an appropriate service response would look like. Many of the programs in secondary schools are designed to address risk factors for child wellbeing and are aimed at those identified as vulnerable. They are described in Chapter 8 which examines early intervention.

The opportunities for schools to impact upon the prevention of child abuse and neglect are multifaceted. From the delivery of personal safety and sex education programs, to building strong family school relationships and operating as centres for the broader community, they have enormous value. As described in brief above, DEECD has a number of programs that operate at a local level to increase the connections between schools and vulnerable children, their families and the community. The challenge is to harness the knowledge and evidence gained through their local level programs and, wherever possible, apply it to other similar schools and environments.

Additionally, the Commonwealth funded 'headspace' and National Mental Health Foundation suicide prevention initiatives operate in schools, creating a vehicle for reaching secondary school students with mental health and related problems. Chapter 8 considers school-based programs in further detail.

7.3.3 Support and information for parents, carers and families

Valuing parenting

As noted in Chapter 6, the preamble to the United Nations *Convention on the Rights of the Child* establishes the family as 'the fundamental group of society and the natural environment for the growth and development of all its members and particularly children'. The Inquiry received several submissions suggesting that there should be a much greater focus on primary prevention activities by enhancing the quality and nature of parenting support provided through universal services, especially in early education and care:

> The family is the key site of intervention for child protection. Vulnerable children are a product of vulnerable families, and multiple interventions may be required which support the whole of family as well as individual members (Drummond Street Services submission, p. 3).
>
> Support the development and expansion of practical parenting information, with a view to increasing accessibility of information to higher risk groups and integrating research informed information with service delivery. Build the capacity of universal education and care services to provide evidence based parenting interventions (Parenting Research Centre submission, p. 8).

Improving parental capacity to manage the behaviour of their children can reduce the risk of child physical abuse. A review of parent education programs undertaken by the National Child Protection Clearinghouse (Holzer et al. 2006) found there is a range of education programs operating internationally that have improved parenting competence, and that effectively address risk factors for child abuse and neglect, and in some instances, where direct measurements were made (for example, through child protection service data), resulted in fewer incidents of child abuse and neglect.

Parents face new challenges as children develop, from feeding and settling problems in infants, to children starting school, travelling to school by themselves, bullying, social networking, entering adolescence, to forming adult relationships. These challenges can be overwhelming, and for some parents to navigate through all of these alone, without dedicated information and support, may be difficult.

The Triple P – Positive Parenting Program was developed by Matthew Sanders and colleagues at the Parenting and Family Support Centre in the School of Psychology at The University of Queensland. It is a multi-level, evidence-based parenting and family support strategy designed to prevent behavioural, emotional and developmental problems in children and provide support for parents and families. It aims to help to develop a safe, nurturing environment and promote positive, caring relationships with children, and to develop effective, non-violent strategies for promoting children's development and dealing with common childhood behaviour problems and developmental issues. The emphasis is on positive parenting principles, promoting children's development and managing specific child behaviour concerns rather than on developing a broad range of child management skills (Sanders & Turner 2005).

In Victoria there are new parent groups available for parents and carers of infants through MCH services. The purpose of the groups is to:

- Enhance parental and emotional wellbeing;
- Enhance parent-child interaction;
- Provide opportunities for first-time parents to establish informal networks and social supports; and
- Increase parental confidence and independence in child rearing.

There is also a range of low-intensity information, education and parenting support services provided through universal platforms and managed by DEECD. These include:

- Services provided to parents and professionals by regional parenting services (nine services, one in each DEECD region) and the Council of Single Mothers and their Children;
- Parenting supports provided to parents of children with disabilities and the professionals who work with them through the Strengthening Parents Support Program (services located in each of the nine DEECD regions);
- Signposts – a tailored parenting program for parents of children with disabilities and/or learning difficulties; and
- Parentline – a telephone service for parents and carers of children aged 0 to 18 years and professionals that operates seven days a week/365 days per year between the hours of 8.00 am and midnight.

The Australian Government funded Raising Children Network website also offers a resource to support families in the day-to-day raising of children from birth to their teens, via the information and resources on the website. It is also a resource for relevant practitioners. The website arose from the Parenting Information Project in 2004, which found that parents wanted a single source of reliable and easily accessible information on parenting that was government-sponsored and therefore credible and trustworthy. The website was launched in 2006 and has received more than 17 million visits to date. Since its launch, the website has been expanded to include information for parents of teenagers (aged up to 15 years), information for parents of children with disabilities, and other interactive products and online forums. The website has the following objectives:

- Providing assistance in caring for children;
- Providing information on being a parent;
- Assisting professionals;
- Facilitating parents in the use of professional services;
- Facilitating community connectedness; and
- Facilitating community and professional partnerships (Department of Families, Housing, Community Services and Indigenous Affairs 2011).

Providing additional support to families is a key step in securing the future safety and wellbeing of Victoria's children. Targeted support is needed for families in need, such as families with a parent with mental illness. This is discussed further in Chapter 8.

Notwithstanding the importance of these services, the Inquiry's analysis suggests there is an opportunity and need to increase the universally available/accessible parenting supports available in Victoria. Such supports should be built on existing evidence (such as Triple P) of what works, and provide support to parents appropriate to their child's life stage. These supports should leverage off the capacity and expertise already contained within universal service platforms including MCH, kindergarten, primary and secondary schools, major employers and training providers.

Recommendation 9

The Department of Education and Early Childhood Development, in partnership with the Department of Human Services, should develop a universal, evidence-based parenting information and support program to be delivered in communities with high concentrations of vulnerable children and families, at key ages and stages across the 0 to 17 age bracket.

Preventing child sexual abuse

The risk of child sexual abuse is a critical issue requiring reconceptualisation and further action. The Inquiry received several submissions calling for an increased focus on the prevention of child sexual abuse, as demonstrated by this verbal submission to the Inquiry:

> I had no knowledge, skills or resources to help me protect children against a paedophile. Nobody had ever given me any clue about the indicators of a paedophile. Nobody had ever told me that it would most likely be a close friend that would be my children's abuser. Nobody taught me how to talk to my young children about their bodies and sex in a way that was appropriate for their young age or how to talk to them about appropriate adult behaviour (Ms L, Bendigo Public Sitting).

Research conducted by Smallbone and Wortley (2001) provides five key findings about child sexual abuse. These are:

1. Child sexual abuse overwhelmingly involves perpetrators who are related to or known to the victim;
2. It is more common for offenders to employ strategies to gain the compliance of children, such as giving gifts and lavishing attention, rather than physical coercion;
3. Serial child sexual offending is relatively uncommon;
4. Perpetrators of child sexual abuse are three times more likely to abuse female than male children; and
5. Child sexual abuse offenders do not necessarily form a distinct offender category, with many having previous non-sexual offences (Smallbone & Wortley 2001, p. 5).

These findings are particularly helpful in challenging child sexual abuse myths, such as the prevalence of 'stranger danger', and for effective focusing of future prevention strategies.

Research into the primary prevention of child sexual abuse suggests there are two distinct points of focus: first to prevent children from being sexually abused for the first time; and second to prevent potential offenders from committing a first child sexual abuse (Smallbone et al. 2008, p. 48). The research authors consider approaches directed to the offender, the victim, the situation and the community.

Offender-focused approaches

Current approaches to preventing potential offenders from first sexually abusing a child rely heavily on formal deterrence strategies. These strategies rely on the assumption that public dissemination of successful prosecution outcomes for known offenders will dissuade would-be offenders from first committing such an offence themselves. Smallbone et al. conclude that while the ongoing existence of relevant laws and penalties are important for the preclusion of increasing child sexual abuse, it is doubtful that continuing to increase formal penalties for sexual offences will contribute anything further to primary prevention (Smallbone et al. 2008, p. 198).

An alternative strategy is described as 'developmental prevention' to forestall some of the developmental deficits that may lead a person to become a sexual abuser – such as early attachment failures in childhood, poor school adjustment, and the non-involvement in early parenting as an adult (Finkelhor 2009, p. 184). The contention in practical terms is that increasing investment in universal developmental crime prevention programs would yield positive benefits for preventing sexual abuse and, at a broader level, whole-of-government policy can contribute by striving to create the economic and social conditions necessary for families and communities to provide optimal care and support for children (Smallbone et al. 2008, p. 200).

Victim-focused approaches

This approach has focused on education, with the central goal of imparting skills to help children identify dangerous situations and prevent abuse, as well as to teach them how to refuse approaches, how to break off interactions and how to summon help (Finkelhor 2009, p. 179). Smallbone et al. (2008) found little convincing evidence for the effectiveness of these programs for preventing sexual abuse. They suggest that if these programs are to remain part of a broader prevention strategy, revisions are needed to better align their aims and content with knowledge concerning child sexual abuse offender modus operandi. They suggest a shift from the traditional 'resistance training model', where children are taught to 'resist' potential child sexual abuse offenders, to a 'resilience training' model, where attempts are made to reduce general psychological and emotional vulnerabilities, such as low self-esteem and excessive neediness (Smallbone et al. 2008, p. 201).

Situation-focused approaches

Parents and carers employ many commonsense precautions to reduce children's exposure to a range of hazards, including the risk of sexual abuse. Similarly, institutional child care may take precautions against sexual abuse. However, it is likely that these precautions may be based on misconceptions (for example, that the greatest risk is from strangers; that offenders are likely to look 'sleazy'; or that criminal history checks on prospective employees will make child-related organisations safe) (Smallbone et al. 2008, p. 202).

Smallbone et al. suggests that situational prevention in home settings may be supported by universal education strategies designed to better inform the public about specific risk and protective factors. However, he contends that it is at an institutional level that situational techniques are most conducive, recommending the requirement of systematic assessment of risks and the development of risk management plans within child-related organisations (Smallbone et al. 2008, p. 202).

Community-focused approaches

Universal awareness and education strategies are the mainstay of current community-focused approaches to primary prevention (Smallbone et al. 2008, p. 202). An alternative approach is universal community capacity building, such as universal parenthood education, neighbourhood family support services and home visiting programs (Smallbone et al. 2008, p. 204).

Awareness raising campaigns such as White Balloon Day, founded during Child Protection Week in 1997, have succeeded in giving the problem of child sexual abuse a public profile, and the support that is offered through its umbrella organisation Bravehearts is an important service for those requiring help. Bravehearts is an advocacy and support organisation comprising survivors, parents, friends, partners, professionals and non-abusive members of the community who share in the belief that child sexual assault must stop (Bravehearts 2010).

Similarly, the Love Bites program, developed by the National Association for Prevention of Child Abuse and Neglect (NAPCAN) in 2008 and run in schools to educate young people about respectful relationships and reducing the incidence of relationship violence in the community, plays an important role in both preventing and addressing child sexual abuse.

The *National Framework for Protecting Australia's Children 2009-2020* states that the prevention of child sexual abuse requires a different response to that of neglect, emotional and physical abuse. It states that:

- The vast majority of child sexual abuse perpetrators are family members or someone well known to the child or young person;
- Risk factors for child sexual abuse are exposure to family violence, other types of abuse and neglect, pornography, highly sexualised environments and inadequate supervision;
- Raising awareness and knowledge with children and in the broader community about risks can foster protective behaviours and may help to increase detection of abuse;
- The importance of educating young people about healthy relationships is increasingly being recognised;
- Raising awareness about the role of the internet as a mechanism for the sexual abuse or exploitation of children and young people is important; and
- Organisations, businesses and institutions can also play an important role in protecting children through the development of policies and procedures to create child-safe organisations (COAG 2009e).

In Victoria schools do not deliver educational warnings about sexual abuse in schools as part of the formal curriculum. The sexuality education curriculum (compulsory from Year 3) includes a focus on protective behaviours and personal safety. In secondary schools, there is a focus on supporting respectful relationships and teachers cover topics such as: respect and relationships; gender identity; sexual intimacy; understanding sexual harassment; consent and the law; and developing respectful practices. Child Wise is also contracted by DEECD to provide the Wise Child Personal Safety Training Program to all school staff across primary, secondary and special school settings, with the aim that they are able to deliver a whole-of-school approach to personal safety. Child Wise is an international child protection charity committed to the prevention and reduction of sexual abuse and exploitation of children (Child Wise 2011).

The Inquiry believes more can be done to prevent child sexual abuse, particularly through the provision of information and education to parents and caregivers of children. Research undertaken by Babatsikos found that, while many parents wanted to talk to their children about the prevention of child sexual abuse, many felt they did not have the skills or language to do so. This study suggested that prevention programs, best delivered through educational environments, could focus on providing parents with language and experience that would increase their confidence and skills in discussing such sensitive issues with their children (Babatsikos 2010, p. 124). The range of existing expertise and resources already available through organisations like Child Wise and Bravehearts would enable this action to be implemented without delay.

Recommendation 10

The Department of Education and Early Childhood Development should develop a wide-ranging education and information campaign for parents and caregivers of all school-aged children on the prevention of child sexual abuse.

7.3.4 The importance of the community environment

The ecological model of child development described in Chapter 2 includes reference to the community environment of a child, including their relationship to networks and formal services. A person's connection with their broader family, work, interests and local community has been identified by the Australian Government as one of five key domains of opportunity that assist people to be socially included (Australian Social Inclusion Board 2008). Promoting connectedness with the broader community environment is important because children and families that are socially excluded have less support, lack positive role models, and feel less pressure to conform to social norms relating to parenting, are at greater risk of abuse and neglect.

The state government, together with local governments, has a major role in promoting community connectedness and social inclusion, principally through their planning and transport responsibilities. These responsibilities include the need to plan local communities well for public transport, access to services, shared spaces and precincts that can acts as a community hub. Infrastructure such as parks, public libraries, galleries, museums and sporting facilities allow families to access low-cost or free activities, social infrastructure (MCH centres, playgroups etc), schools and education, as well as get involved with their community.

For vulnerable or isolated families, this can assist in providing emotional support or positive role models that they may be lacking.

> Programs such as Neighbourhood Renewal give promise to what can be done to support vulnerable families in vulnerable communities. These programs enable families to be connected to, and supported by, their local community through community building activities and local employment initiatives (St Luke's Anglicare submission, p. 8-9).

The communities that make up Victoria differ in many ways. From metropolitan to regional, from high-density living to farmlands, from communities with large numbers of recently arrived immigrants, to the communities of our first Australians. The needs of each community will be different, and the supports that they offer each other will also differ. When considering ways that communities can support vulnerable children and families, these local differences need to be taken into account.

The Department of Planning and Community Development (DPCD) supports a range of programs and initiatives that respond to disadvantage and the needs of vulnerable children and families in communities. Approximately $150 million will be distributed over four years (2011-2015) through programs such as community support grants, advancing country towns and the regional growth fund to strengthen communities.

Matter for attention 2

The Inquiry draws attention to the community building activities of the Department of Planning and Community Development and considers they represent a significant opportunity to directly link with and support efforts to reduce the incidence and impact of child abuse and neglect on an area basis.

7.4 Conclusion

Victoria has a strong infrastructure of universal services for infants, children and young people, including through MCH services, playgroups, kindergarten and schools. There are a number of opportunities to strengthen Victoria's prevention approach, in particular, by identifying and providing early support to vulnerable children and families, focusing on communities that have the highest concentration of vulnerable children and families, increasing parenting education programs and providing increased education and information about how to prevent child abuse and neglect.

Part 4: Major protective system elements

Chapter 8:
Early intervention

Chapter 8: Early intervention

Key points

- Evidence from overseas shows that early intervention programs – when well designed and resourced – can be an effective method of improving outcomes for vulnerable children and young people, including reducing the risk of child abuse and neglect. Studies have also shown early intervention can be a more cost-effective investment in the long term than later interventions.
- Victoria has a substantial range of early intervention programs with the potential to support vulnerable children, young people and their families. These include early childhood programs, school supports, health services, community-based family services and specialist adult services. However, these programs do not combine to form a comprehensive, coherent and coordinated system of early interventions that address the diverse needs of vulnerable children and their families.
- Supporting vulnerable children and young people should be part of the core business of services in each of these sectors. While there are a number of promising practices, they are varied, not coordinated and not consistently adopted. The Inquiry recommends additional investment to support services to identify and respond to risk factors for child abuse and neglect.
- Existing data systems and practices within services do not allow Victoria to identify all vulnerable children and young people who could benefit from early intervention services.
- Child FIRST and the local Alliances of family services provide a basis for developing an accessible entry point to an integrated network of services to meet the full range of needs of vulnerable children and their families. However, the capacity of Alliances to deliver services that meet local needs is being undermined in several catchments because of a lack of suitable providers and because Alliances are not undertaking effective service planning.
- The Inquiry recommends that consistent governance arrangements be established across catchments to strengthen Alliances' accountability for their performance. Accountability arrangements should be strengthened further by ensuring the Department of Human Services' funding agreements with Alliance lead agencies clearly specify the community service organisation's role and responsibilities, and include appropriate accountability and performance measures.
- There is an opportunity to expand upon the existing Alliances of family services and statutory child protection services to develop broader, more coherent Child and Family Service Networks encompassing specialist adult services, health services and targeted programs linked to universal services. This would support the provision of an integrated package of services that meets the full range of needs of vulnerable children and their families.
- The Inquiry recommends that the legislation governing relevant services should establish the accountabilities and responsibilities of services to act in the best interests of children and young people, and to prioritise service delivery to vulnerable children, young people and their families.
- Specialist adult services and health services should be supported to develop child-and family-sensitive practices that address the needs of vulnerable children and their families.

8.1 Introduction

This chapter is concerned with the role of early intervention in protecting vulnerable children and young people from the risk of abuse and neglect. The Inquiry has been asked to develop recommendations to enhance early identification of, and intervention targeted at, children and families at risk including the role of adult, universal and primary services, and ways to strengthen the capability of those organisations involved.

This chapter begins by considering what early intervention is and the evidence of its effectiveness. A snapshot of the range of early intervention services in Victoria is then provided across early years programs, school programs, community-based family services, general health services and specialist adult services. An analysis of the performance of the current service arrangements follows. The chapter concludes with recommendations to strengthen early intervention for vulnerable children in Victoria.

8.1.1 What is early intervention?

Many participants discussed prevention and early intervention in the consultation phase of the Inquiry, with the terms often being used interchangeably. For the purposes of this Report, the Inquiry has adopted the following definition:

Inquiry definition of early intervention

Interventions directed to individuals, families or communities displaying the early signs, symptoms or predispositions that may lead to child abuse or neglect.

This means that early intervention occurs when heightened vulnerability for a child or young person has been identified. Effective early intervention requires both the identification of vulnerable children and young people, and a service response that meets the needs of the child or young person and their family.

Early intervention services are targeted interventions based on the identification of broad risk factors. As described in Chapter 7, from a public health perspective, secondary prevention or early intervention services can be considered to lie between:

- Primary prevention services, often universal in nature, that target whole communities in order to reduce risk factors and strengthen protective factors that contribute to abuse and neglect; and
- Tertiary services that focus on children and families where there is a significant risk of harm, or where abuse has already occurred.

In Australia and other developed countries, government support for vulnerable children has historically focused on tertiary interventions after abuse or neglect has occurred. In recent years, however, governments have been increasingly seeking to intervene early to support vulnerable children and families.

This is most clearly demonstrated in Australia by the Council of Australian Governments' (COAG) *National Framework for Protecting Children 2009-2020*. Through the framework, the Commonwealth, state and territory governments committed to early intervention as one of six 'supporting outcomes' or goals for protecting children:

> All children and families receive appropriate support and services to create the conditions for safety and care. When required, early intervention and specialist services are available to meet additional needs of vulnerable families, to ensure children's safety and wellbeing (COAG 2009e, p. 17).

The framework noted that state and territory governments were already 'implementing reforms to their statutory child protection systems – all focused on early intervention' (COAG 2009e, p. 9).

Early intervention does not necessarily involve intervention early in the life of a child. Rather, early intervention services are those that are delivered early in the life of an identified problem or early in the causal pathway. While many of the programs and research focus on young children, the concept of early intervention is also applicable and relevant to older children and young people.

8.1.2 Effectiveness of early intervention

Governments' increasing focus on and investment in early intervention, especially in early childhood, has been prompted by research showing that early interventions are more cost-effective in the long term than later interventions aimed at treating the impact of problems such as abuse and neglect (Stronger Families Learning Exchange 2002). It is argued that it is more cost-effective to tackle problems earlier because it is easier to succeed; if they are tackled later they are likely to escalate and intensify. As a result, intervening later is usually more costly and often cannot achieve the results that early interventions are able to deliver (Allen 2011, p. xiv). Chapter 2 has shown that the estimated lifetime cost of child abuse and neglect that occurred for the first time in 2009-10 is between $1.6 and $1.9 billion.

Advances in neuroscience and the behavioural and social sciences have improved our understanding of how healthy development happens in children, how it can be derailed and what societies can do to keep it on track (Shonkoff 2010, p. 1). The architecture of a child's brain begins to develop before birth and continues into early adulthood. There are critical and sensitive periods in brain development during which certain skills or traits are more readily developed (Cunha & Heckman 2007, p. 4). Over time, the developing brain's architecture stabilises, making it harder to modify. This means that interventions in later life are less likely to be effective (Mustard 2005, p. 7).

The environment and experiences that are encountered by a child are critical to healthy brain development, particularly in the early years. Children who grow up in stimulating, nurturing and non-violent environments are more likely to thrive in all aspects of their lives. In contrast, a child who is exposed to recurrent abuse or neglect early in life can experience persistent elevations of stress hormones and altered levels of key brain chemicals that disrupt the architecture and chemistry of their developing brain (Centre on the Developing Child 2007, p. 9). This has consequences for a child's future learning, social and emotional development, and physical and mental health, as well as having significant costs to society (COAG 2009a, p. 8). As shown in Chapter 2, the peak age for child abuse in is in the first year of life, during precisely the period when the child's brain is most vulnerable.

Most of the evidence regarding the effectiveness of early intervention services comes from overseas programs focusing on vulnerable children in the early years. This means there is relatively little evidence about what works in an Australian context. Table 1 in Appendix 8 summarises some key early intervention programs that have been extensively evaluated.

A number of countries have implemented various forms of nurse home visiting (NHV) programs. In 1977 the United States (US) Nurse-Family Partnership pioneered an intensive, long-term, high-quality model of home visits by public health nurses to support low-income first-time pregnant women and mothers to foster emotional attunement and non-violent parenting. In efficacy trials the model has been found to reduce child abuse and neglect, criminal behaviour and welfare dependency for up to 15 years after the birth of the child (Olds et al. 1997). The cumulative benefits of the program after 15 years are estimated to be up to five times greater than its cost (Karoly et al. 2005, p. 109).

Reviews of other NHV programs internationally have also found that they can produce benefits for children and parents, such as improved parental attitudes and capacity and better quality parent-child interactions, but the size of these benefits is significantly more modest under standard service conditions. Other main conclusions from these reviews include:

- Implementing NHV programs is difficult. There are low participation rates for families invited to enrol and significant proportions of families leave the programs before completion;
- Results from NHV programs and the retention of participants may be improved if the programs were more flexible in delivering scheduled activities according to parental needs;
- The results of long-term studies of NHV programs vary depending on the program sites, the evaluation methodologies employed, and the demographic characteristics of participating families; and
- Fostering close linkages between NHV and other programs may have a multiplier effect, improving individual effectiveness of linked programs (Sawyer et al. 2010, p. 45).

Programs such as the Perry Pre-School Program and the Abecedarian Project in the US have shown that high-quality early childhood education and family support programs for vulnerable children and their parents also deliver long-term benefits to the child, family and society. Longitudinal studies have demonstrated that these programs have resulted in sustained improvements in behaviour, reduced criminal and antisocial activity, better educational and employment outcomes, reduced intergenerational abuse, and a lower long-term burden on the health system.

The average economic benefits of early education programs for three and four year olds from low-income families has been found to be almost two and a half times the initial investment. These benefits take the form of improved educational attainment, reduced crime and fewer instances of child abuse and neglect (Aos et al. 2004, p. 6). Within this overall figure, there is substantial variation. Some early education programs have been found to yield much higher benefit-to-cost ratios, while the benefits of others are exceeded by their costs.

In Australia, the New South Wales Brighter Futures program has been found to significantly reduce harm reports and the likelihood of children going into out-of-home care. The program provides targeted support to pregnant women and families with children aged eight years or younger who face problems such as family violence, parental drug or alcohol misuse or mental health issues (further details are provided in Table 1 in Appendix 8). Support is provided for up to two years and varies according to the family's need. Services may include home visiting, parenting programs and quality children's services. An evaluation found that the program produced savings for the Department of Community Services in terms of avoided costs in responding to harm reports and providing out-of-home care. Families that remained on the program for longer periods of time had better outcomes – but the majority of families stayed on the program for a shorter time (Hilferty et al. 2010, p. 3).

Overall, the evidence establishes that early intervention programs, when well designed and resourced, can have a positive impact on the lives of vulnerable children and families, in a range of areas including educational outcomes, lower welfare dependency, decreased criminal behaviour and improved parenting skills. The US Nurse-Family Partnership program and the New South Wales Brighter Futures program indicate that early intervention programs targeted at vulnerable families can also reduce the incidence of child abuse and neglect. The long-term economic and social benefits of the most effective programs far exceed their costs.

The evidence on the effectiveness of early intervention is strongest for programs for vulnerable families with young children, in particular for home visiting programs and early childhood education programs. This is consistent with the research on the significance of the early years in the development of a child's brain. There is less evidence of the effectiveness of early interventions to support vulnerable older children and young people. However, there is support among researchers, academics and service providers for early intervention focusing on vulnerable children beyond their early years. A key requirement for successful programs is the engagement of families over extended periods.

Caution needs to be exercised when considering whether the results of overseas programs can be successfully replicated in Victoria. The costs and benefits for any given program are specific to the environment in which they are implemented. The demographics of the target population, labour market conditions and local infrastructure are just three examples of important contextual factors that can significantly change the costs and benefits of programs (Allen 2011, p. 33).

Further, the available evidence base is not deep enough to conclusively demonstrate what amount of investment and what mix of programs is necessary to produce improved outcomes. However, programs such as Brighter Futures in New South Wales indicate that programs with longer duration produce greater benefits, if families can continue to be engaged.

Two recent initiatives will help to build a local evidence base about the effectiveness of early intervention programs in Australia. The Australian Intensive Nurse Home Visiting randomised control trial, to be conducted by the Australian Research Alliance for Children and Youth with the Centre for Child and Community Health, will examine the value of a best practice intensive NHV approach as a means to alleviate the impacts of poverty on children's learning abilities. The Effective Early Educational Experiences (E4Kids) study, conducted by The University of Melbourne and Queensland University of Technology, is a five-year longitudinal study of more than 2,800 children living in Victoria and Queensland, which will examine the contributions made by different early childhood education programs to children's learning and development over time.

8.2 Early intervention in Victoria

A number of early intervention programs focusing on vulnerable children and young people have been introduced in Victoria in recent years. Early intervention programs are delivered across the range of sectors that deliver services to vulnerable children and young people. In most cases, these programs have been developed and implemented independently by government departments and agencies as they have sought to pursue their particular policy goals. For example, The Royal Women's Hospital Women's Alcohol and Drug Service (described in Table 4 of Appendix 8) is specifically aimed at pregnant women who use drugs and alcohol. This service operates in a health context by referral and is not integrated into a broader response.

Many Victorian programs have been informed by the evidence from overseas that early interventions can have a positive impact on the lives of vulnerable children and families, and produce long-term benefits for society. The lack of evidence about what early interventions are effective in Australia presents challenges to governments as they seek to support vulnerable children and families. As discussed above, the success of a program for a certain target population in the US, for example, may not be replicated when it is applied in a different economic and social context in Victoria. The intensity and duration of the intervention must also be defined. This has led to agencies implementing a number of initiatives that are small in scale.

Some programs have been introduced as pilot programs or trials in local areas to gather further evidence about their effectiveness in Victoria. Examples of these programs include Tummies to Toddlers, Family Life's Community Bubs and the Children's Protection Society model of child care (all described in Table 3 of Appendix 8).

Universal services, including early childhood services, schools and the public health system, play a key role in identifying children and young people at risk. Services for vulnerable adults, such as drug and alcohol services, mental health services and disability services, are also well placed to identify vulnerable children and families and to respond to their needs. It is important that these services act in a coordinated way to provide holistic support for the full range of needs of vulnerable children and their families.

The *National Framework for Protecting Australia's Children 2009-2020* included a commitment to convene an expert taskforce to develop a common national, cross-sector approach to identifying and responding early to the needs of vulnerable children and families. The taskforce submitted its report to the Commonwealth in 2010, recommending that further work be undertaken to confirm the efficacy and effectiveness of the common approach.

This section describes the role of universal services and specialist adult services in identifying vulnerable children and families, and summarises the early intervention programs that seek to respond to their needs. Specifically, the section examines:

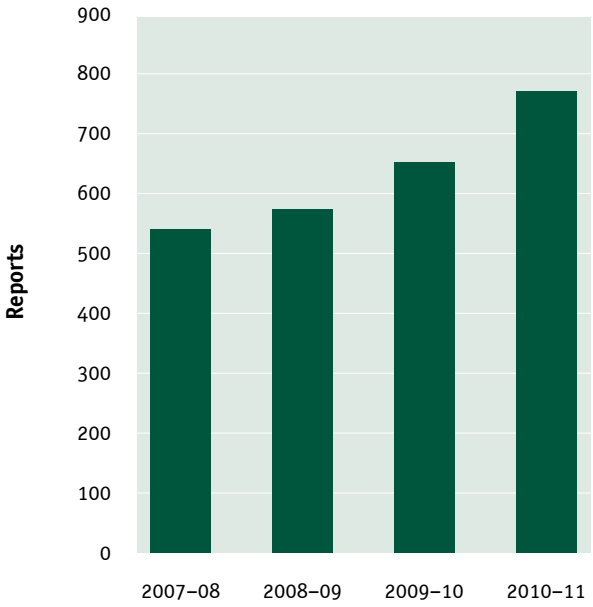
- Pre-birth responses;
- Early childhood services;
- School-based services and programs;
- Youth services;
- Community-based family services including Child FIRST;
- Health services; and
- Specialist adult services.

Section 8.3 then analyses the performance of these services and programs.

Table 8.1 presents a snapshot of Victoria's early intervention programs for vulnerable children and young people and their families. It highlights that responsibility for vulnerable children and young people is shared by the Commonwealth, state and local governments, as well as a range of non-government organisations that deliver services. Within the Victorian Government, responsibility for setting policy, funding and delivering services is shared by the Department of Human Services (DHS), the Department of Education and Early Childhood Development (DEECD) and the Department of Health (DOH).

Table 8.1 also illustrates the range of responses available to address a range of risk factors related to vulnerability as discussed in Chapter 2. The table highlights that the majority of services are focused on limited risk factors, despite the growing acknowledgement that vulnerable children and families are facing increasingly complex and multiple issues. Note that Table 8.1 is representative of the key early intervention programs in Victoria; however, the Inquiry has not attempted to provide an exhaustive list of all Victorian early intervention services for vulnerable children and families.

Figure 8.1 Pre-birth child protection reports, Victoria, 2007–08 to 2010–11



Source: Information provided by DHS

8.2.1 Pre-birth responses

The *Children, Youth and Families Act 2005* (CYF Act) introduced the capacity for a person to make a report to DHS when they have a significant concern before the birth of a child for the wellbeing of a child after the child's birth. These actions are referred to as 'pre-birth reports' and the subsequent service system response are 'pre-birth responses'. The intention of the government when introducing pre-birth reports and pre-birth responses was to provide assistance and support to a pregnant woman to reduce the likelihood that her child, when born, would need to be placed in out-of-home care or be the subject of any protective intervention by the Secretary of DHS. The explanatory memorandum to the Children, Youth and Families Bill 2005 indicated that the principle is one of supportive intervention rather than interference with the rights of any pregnant women.

The number of pre-birth reports received by DHS has increased steadily since the introduction of the legislation (see Figure 8.1). Child and Family Information Referral and Support Teams (Child FIRST) and community-based family service providers have reported that the capacity to refer or report concerns before birth adds significantly to earlier intervention capacity.

This includes the capacity to undertake pre-birth planning meetings, liaise with other services and the extended family to ensure an appropriate support network is in place, make clearer planned decisions and set clear shared expectations with parents about how protective concerns and significant concerns for wellbeing can be overcome to avoid statutory involvement after birth (KPMG 2011b, pp. 106-107).

The Inquiry was unable to uncover any information regarding the outcomes of pre-birth reports. It is not known what support has actually been provided to pregnant women as a result of pre-birth reports, how families have responded to pre-birth reports or how effective pre-birth reports have been in preventing infants coming into out-of-home care. The Inquiry considers this to be an area that requires urgent evaluation – see Recommendation 15 in section 8.4.

8.2.2 Early childhood services

DEECD is responsible for the planning and delivery of early childhood development services in Victoria. These services include universal maternal and child health (MCH) and kindergarten services for all children and enhanced MCH, supported playgroups and Early Start Kindergarten for vulnerable and disadvantaged children and families. In 2010-11 the DEECD budget for early childhood development services was $405 million (Victorian Auditor-General's Office (VAGO) 2011b, p. ii). Services are provided by local government, community service organisations (CSOs) and private businesses. DHS and DOH are also responsible for other antenatal early intervention programs.

Table 2 in Appendix 8 provides a summary of targeted early childhood services in Victoria. The performance of early childhood services in providing an early intervention response to vulnerable children and young people is examined in section 8.3.1, with the Inquiry concluding that opportunities exist to effectively expand these services to provide better outcomes for vulnerable children and their families.

Table 8.1 Early intervention programs in Victoria, by risk factors addressed

Program	Delivered by	Funded by	Risk factors addressed									
			Child		Parent, family or caregiver						Community	
			Age and gender of the child	Health and disability factors	History of family violence	Situational stress	Alcohol and other substance misuse	Mental health problems	Parental history of abuse	Intellectual disability	Social inclusion and exclusion	Social norms and values
Early childhood services												
Enhanced maternal and child health	Local government	DEECD	✓	✓					✓			✓
Early parenting centres	CSOs	DHS	✓						✓			✓
Early childhood intervention services	DEECD and CSOs	DEECD	✓	✓							✓	
Healthy Mothers, Healthy Babies	Community health agencies	DOH	✓								✓	
Supported playgroups	Local government, CSOs	DEECD							✓		✓	✓
Early Start Kindergarten / Access to early learning	Non-profit and for-profit centres	DEECD	✓	✓							✓	
School supports												
Student support services program	DEECD	DEECD		✓								
Primary welfare officer initiative	DEECD	DEECD		✓								
Student welfare coordinators	DEECD	DEECD		✓								
School focused youth service	DEECD	DEECD		✓							✓	
Youth services												
Finding Solutions	CSOs	DHS	✓	✓								✓
Youth support services	CSOs and a community health agency	City of Melbourne	✓	✓								✓
Reconnect	CSOs	Australian Government	✓	✓								
headspace	CSOs	Australian Government	✓	✓								
Community-based family services												
CHILD FIRST / Community-based family services	CSOs	DHS	✓	✓	✓		✓	✓	✓			✓

Program	Delivered by	Funded by	Risk factors addressed									
			Child		Parent, family or caregiver						Community	
			Age and gender of the child	Health and disability factors	History of family violence	Situational stress	Alcohol and other substance misuse	Mental health problems	Parental history of abuse	Intellectual disability	Social inclusion and exclusion	Social norms and values
Health services												
Child health teams (Community health)	Non-profit agencies	DHS		✔								
Peer Support for Young People	Royal Children's Hospital	DOH	✔								✔	
Family violence programs	Royal Children's Hospital	DOH			✔							
Gatehouse Centre	Royal Children's Hospital	DOH		✔								
Psychiatric mother and baby units	Austin Health, Southern Health, and Mercy Health.	DOH						✔				
Specialist adult services												
Family Drug Help		DOH		✔			✔				✔	
Youth-focused drug and alcohol services	CSOs	DOH	✔	✔								
Kids in Focus (and associated programs)	Odyssey House Victoria	DOH					✔					✔
Specialist child and adolescent mental health services	CSOs	DOH	✔	✔								
Families where a Parent has a Mental Illness (FaPMI)	CSOs	DOH						✔				
Disability services												
Respite	CSOs	DHS		✔						✔		
Flexible support packages	CSOs	DHS		✔						✔		
Individual support packages	CSOs	DHS		✔						✔		

Source: Inquiry analysis (Note: CSOs refers to community service organisations)

Universal services

As described in Chapter 7, Victoria has a strong infrastructure of universal services for infants and children, including the universal MCH service and kindergarten. These provide an accessible and non-stigmatising service for identifying vulnerable children and families who would benefit from early intervention.

The universal MCH service provides 10 'key ages and stages' consultations from birth to 3.5 years, including an initial home visit for all children and their families. MCH nurses assess and monitor the health, growth and development of children, and provide information and advice on breastfeeding, appropriate nutrition, child behaviour, parenting and maternal physical and emotional health and wellbeing. MCH services also run new-parent groups to help parents through the early stages of parenting and to strengthen social supports between parents in a neighbourhood. The vast majority of MCH services are delivered by local government, with DEECD and local government each funding 50 per cent of the cost.

In 2009-10, 99.8 per cent of Victorian newborns received an initial MCH consultation, usually a home visit. This means that Victoria has an exceptional platform for monitoring all children from birth and identifying vulnerable children and families. However, participation in the service is voluntary, and there is a progressive decline in participation as children grow older. The potential of MCH to help address the needs of children and families who would benefit from referral to an early intervention service is not being fully realised. By 18 months, 28 per cent of children do not attend an MCH service for a consultation. By the last consultation at 3.5 years, only 63 per cent of families are still using the service (VAGO 2011b, p. 10).

The decline in participation in MCH heightens the risk that vulnerable children between the ages of 12 months and four years may not be identified until the opportunity for early intervention has passed. As discussed in Chapter 7, the only universal services available to families during these three years are the three MCH visits when the child is aged 18 months, two years and 3.5 years. Children may attend playgroups, long day care or other early childhood education and care services during these years, but participation in these services is far from universal.

Kindergarten is a voluntary and universally available early childhood education program for children in the year before they start school, mostly for children aged four years. The majority of kindergarten programs are run by CSOs in stand-alone centres, with the remainder provided by local councils and private sector operators. DEECD subsidises the cost of four year old kindergarten programs, with remaining costs met by local fundraising and fees paid by families. Families with a concession card, or who have triplets or quadruplets starting at the same time are eligible for a larger fee subsidy that allows the child to attend a standard 10.75 hour per week program for free.

In 2010, 95 per cent of Victorian four year olds participated in a kindergarten program. This strong participation rate makes kindergarten another excellent potential platform for identifying vulnerable children, and for referring them or their families to appropriate services. However, in 2010-11, there were only 62 referrals from kindergartens or preschools to Child FIRST. This represents about 0.1 per cent of children attending four year old kindergarten, and 0.3 per cent of all referrals to Child FIRST. In addition, there were 582 reports made to statutory child protection by child care services and preschool teachers, representing just 1 per cent of all statutory child protection reports.

DEECD is not currently taking full advantage of the strong participation rates in MCH and kindergarten to identify and respond to vulnerable children and families. In 2007 the Auditor-General recommended that the government:

> Establish a common statewide database system for early childhood services across the state, including improved monitoring of vulnerable clients to assist in the development of targeted programs in local areas of need (VAGO 2007, p. 5).

This system is yet to be implemented, which means DEECD lacks the capability to systematically identify vulnerable children or track service delivery to individual children. In his 2011 report on early childhood services, the Auditor-General found that DEECD does not sufficiently understand or effectively manage demand for early childhood services:

> The department's inability to reliably identify all vulnerable children and families means it does not know the extent to which children are missing out on the benefits of attending targeted services specifically developed and funded to meet their needs (VAGO 2011b, p. vii).

In its submission to the Inquiry, the Municipal Association of Victoria reinforced that there is an opportunity to enhance early intervention in Victoria by resourcing MCH and kindergarten to identify and respond to children and families at risk (Municipal Association of Victoria submission, pp. 4-5).

The Inquiry supports the recommendations made by the Auditor-General in the 2011 report that DEECD develop a better understanding of service demand, particularly for the vulnerable and disadvantaged, by:

- Reviewing its definition of vulnerability to guard against children and families 'slipping through the net';
- Working in partnership with service providers to identify and act to remove barriers to access and participation, especially for the vulnerable and disadvantaged;
- Working in partnership with service providers to identify and act to mitigate the reasons for the fall in attendance at MCH checks after the first visit (VAGO 2011b, p. 36).

The Inquiry notes that DEECD accepted these recommendations and has commenced their implementation. In addition, in Chapter 7 the Inquiry recommends that DEECD provide funding and access to appropriate infrastructure such as kindergartens, MCH services and community playgroups to operate in locations where there are high numbers of vulnerable children and families.

Enhanced maternal and child health

Enhanced MCH is a targeted program delivered by MCH services to families assessed as at risk of poor outcomes, in particular where there is more than one risk factor. Priority is given to families with children aged under 12 months. The service aims to improve the health and wellbeing of children by providing more focused and intensive support than is available through the universal MCH service. A tailored service is provided to each family, which can include parenting advice, home visits, referring the family to specialist services and respite services.

Enhanced MCH services are fully funded by DEECD and delivered by local government. The service is not funded to provide any pre-birth response. In 2009-10, Enhanced MCH services were used by 12,700 families – about 16 per cent of families with a child aged under 12 months. The Auditor-General found that the actual need for Enhanced MCH is likely to exceed the number of available places (VAGO 2011b, p. 12).

The Inquiry examined the utilisation of enhanced MCH services across DHS regions, finding that while a greater number of services are provided in metropolitan regions, the average utilisation rate per family with a child aged under 12 months is higher in non-metropolitan regions. As discussed in Chapter 9, non-metropolitan areas typically have higher rates of statutory child protection reports than metropolitan regions. The Inquiry examined the same data at the local government area (LGA) level, but could not find a strong correlation between the utilisation of enhanced MCH services and statutory child protection reports or vulnerability as measured by the Australian Early Development Index. This indicates DEECD and local governments should endeavour to more closely align the geographical distribution of utilisation of enhanced MCH with the distribution of vulnerability.

Other antenatal and postnatal services

The Healthy Mothers, Healthy Babies program supports disadvantaged or vulnerable pregnant women to access services and improve their health behaviours through the antenatal and perinatal stages (HDG Consulting Group 2011). The program targets women who experience barriers to accessing antenatal care services or who require additional support in pregnancy. The program worker supports the woman throughout her pregnancy, based on what the woman considers her most important priorities. This can include providing health education, promoting healthy behaviours, addressing psychosocial needs, ensuring attendance at antenatal and other relevant services and to generally empower and support the woman. Following birth the worker ensures the mother is linked to MCH and other relevant service providers. DOH funds six community health agencies to deliver the program in eight LGAs in metropolitan Melbourne.

Early parenting centres aim to increase the knowledge, skills and confidence of parents with children from birth to three years who are experiencing acute early parenting difficulties. Services provided include day-stay programs (on or off campus), a residential program, in-home programs and group education or seminars. There are three early parenting centres funded by DHS to deliver services across the state. However, the three centres are all based in metropolitan Melbourne which may limit the availability of service to families living in regional and rural areas.

In recent years the early parenting centres have moved to provide services to more vulnerable infants and their families. This is a welcome shift of focus that will help support those infants and families who will benefit most from an early intervention service. However, due to the limited program budget, more intensive programs, such as residential programs, are now largely confined to statutory child protection clients.

The government has committed $16 million over four years to establish the Cradle to Kinder program, which will provide pregnant women and vulnerable mothers and their families with intensive antenatal and postnatal assistance and case management. The program commences in pregnancy and continues until the child reaches four years of age. The target group is pregnant women aged under 25 years where a report to statutory child protection has been made regarding their unborn child or where there are a number of indicators of vulnerability. The Inquiry understands that services will be provided at a local catchment level, with Child FIRST being the point of entry to the program. DHS advised the Inquiry that it anticipates that Cradle to Kinder programs will be established in 10 to 14 Child FIRST catchments, with between two and four Aboriginal-specific programs being developed.

Supported playgroups

DEECD's Supported Playgroups and Parent Groups Initiative seeks to engage vulnerable and disadvantaged families with children aged up to four years who may, for a range of reasons, under-utilise or have difficulties accessing universal early childhood services and supports, including community playgroups. The initiative aims to build parents' capacity to support their child's health, development, learning and wellbeing and to increase families' participation and linkages with other early years services. The initiative targets four population groups: Indigenous families; culturally and linguistically diverse families; families affected by disability; and disadvantaged families with complex needs.

Supported playgroups are provided in the 29 municipalities that host Best Start partnerships (see Table 2 in Appendix 8). They are a low cost initiative, with no cost to participating families. Funding is used to support group activities, including employing a qualified worker to facilitate the group. Playgroup Victoria's submission to the Inquiry noted that supported playgroups are a particularly flexible service model, given they can be replicated in any community, including Aboriginal and culturally and linguistically diverse communities, without the need of extensive infrastructure (Playgroup Victoria submission, p. 3).

Targeted preschool programs

Since 2008, Early Start Kindergarten has provided free kindergarten programs for three year old children known to statutory child protection (including those referred directly from statutory child protection to Child FIRST) and three year old Aboriginal and Torres Strait Islander children. The objective is to provide vulnerable three year olds with access to a quality early childhood education and care program that helps with their language and development, social interactions and self-confidence. The program is fully funded by DEECD.

The take up of Early Start Kindergarten by vulnerable children and families has been disappointingly low, particularly among children known to statutory child protection. In 2010, only 463 three year olds accessed the program across Victoria, which represents about 12 per cent of the eligible population. This included 258 Indigenous children and 205 children known to statutory child protection. A DEECD evaluation of the program identified a range of factors for the low take-up including that there were too few kindergartens that could accommodate eligible children; and that the referral and placement arrangements did not work as envisaged (VAGO 2011b, pp. 13-15).

DEECD is exploring new ways to support vulnerable children to access kindergarten. The Access to Early Learning initiative is a new service model that aims to support vulnerable three year old children to participate in early childhood education and care, addressing the barriers to participation in Early Start Kindergarten. Three pilots of the Access to Early Learning model commenced in July 2011. Table 3 in Appendix 8 provides further details about this and other locally based early intervention programs.

The Inquiry understands that DEECD is conducting an evaluation of effective early childhood service provision to vulnerable children, including the Access to Early Learning program. This evaluation will provide valuable information to assist the design of effective early intervention programs in this area.

8.2.3 School-based services and programs

As a universal and compulsory service, schools are uniquely placed to identify vulnerable children and young people, to provide additional support to children in need, and to refer children and their families to other specialist services where appropriate.

Table 2 in Appendix 8 summarises those school-based programs that help identify vulnerable children and provide early intervention supports. The Primary School Nursing Program and the *School Entrant Health Questionnaire* are the main programs that identify vulnerable children, while early intervention supports include the Student Support Services program, the Primary Welfare Office Initiative, student welfare coordinators and the School-Focused Youth Service.

The contribution of school supports to providing an early intervention response to vulnerable children and young people is examined in section 8.3.1. The Inquiry concludes that there is a range of school-based initiatives that support vulnerable students and their families, but there is limited evidence regarding their effectiveness.

Identifying vulnerable children

The Primary School Nursing Program is a free service offered by DEECD to all children attending primary schools in Victoria. Primary school nurses visit schools throughout the year to provide children with the opportunity to have a health assessment, provide information and advice about healthy behaviours and link children and families to community-based health and wellbeing services. The program is designed to identify children with potential health-related learning difficulties and to respond to parent/carer concerns and observations about their child's health and wellbeing.

With the parent's or carer's permission, assessment results may be shared with relevant staff at the school, such as the teacher, principal or student support officers, to provide children with appropriate ongoing support in the school environment.

A *School Entrant Health Questionnaire* is completed by parents or carers during a child's first year of school. The questionnaire records information about the parent or carer's concerns and observations about their child's health and wellbeing. The questionnaire is an important source of information about a child's vulnerability. It records information regarding child and family demographics, the child's general health, dental health, speech and language, service use, behaviour and emotional wellbeing, risk of developmental and behavioural problems and family stress.

In 2010, questionnaires were returned for 57,000 children, representing 87 per cent of children enrolled in Prep.

Primary school nurses review the questionnaires prior to undertaking the child's health assessment. If the nurse has concerns about a child's health after assessing the questionnaire or the child, the nurse will provide the child's parent or carer with information based on the child's needs and may also suggest referring the child to another health professional or agency.

Student Support Services

The Student Support Services program aims to support children and young people in Victorian government schools who are vulnerable, have additional needs or are at risk of disengagement. The program also aims to strengthen the capacity of schools to engage all students in education and improve learning and wellbeing outcomes. Student support services officers are employed by DEECD and include psychologists, guidance officers, speech pathologists, social workers and visiting teachers and other allied health professionals.

The impact of the Student Support Services program has not been evaluated. DEECD conducted an 'extensive' public consultation process regarding the program in 2008 to inform a set of strategies to enhance the program. Strategies included officers working on a school network or sub-regional basis, rather than being allocated to specific schools, in order to provide greater support for students with the greatest need and ensure more effective distribution of services across schools, networks and regions (DEECD 2009b, p. 8).

School satisfaction with student support services has declined markedly in recent years. In 2006-07, 87.9 per cent of schools were satisfied with these services (Victorian Government 2008b, p. 75). By 2010-11, DEECD expected this to have declined to 73.2 per cent. DEECD reported that the lower satisfaction rate is the result of the program undergoing major reform, suggesting that satisfaction with the program may have been affected by principals' perceptions of a reduced role in determining service priorities and allocating resources under the new service model. Service delivery arrangements were being reviewed in 2011, and DEECD predicted satisfaction levels would continue to be down until the revised model was implemented by the end of 2012 (Victorian Government 2011c, p. 181).

Primary Welfare Officer Initiative

The Primary Welfare Officer Initiative aims to enhance the capacity of schools to support students who are at risk of disengagement from school and who are not achieving their educational potential. Primary welfare officers assist schools to promote the resilience of children and their engagement in school. Since 2006, DEECD has employed the equivalent of 256 full-time primary welfare officer positions in 450 Victorian schools identified as having high needs (DEECD 2011a). The government has recently expanded this initiative to provide an additional 150 primary welfare officers over the next three years. In total, 569 schools will receive primary welfare officer funding in 2012. These will be followed by approximately 87 schools in 2013 and 148 schools in 2014.

Evaluations of the Primary Welfare Officer Initiative commissioned by DEECD prior to 2007 concluded that the initiative has increased the capacity of schools to support at-risk students and their families, including by improving links with families and external agencies. The initiative was also found to had a positive impact on individual students, including by raising self-esteem and reducing incidences of aggressive behaviour (DEECD 2007b, p. 3).

Student welfare coordinators

DEECD provides funds to all government secondary schools to employ student welfare coordinators. The coordinators are responsible for helping students handle issues such as truancy, bullying, drug use and depression. Coordinators work with other welfare professionals and agencies to address student needs. DEECD advised the Inquiry that in most cases student welfare coordinators are likely to be part-time roles, or the funding will be used by schools to provide teacher release to undertake student welfare duties. The total budget for this program is $12 million per annum, or an average of $37,500 per school (roughly equivalent to 0.5 effective full-time staff per school). Small schools may receive funding equivalent to around 0.2 EFT (effective full-time). This initiative has not been evaluated in recent years. The Inquiry was unable to uncover any evidence on the degree to which coordinators assist students who are at risk of, or who have experienced, abuse and neglect.

School Focused Youth Service

The School Focused Youth Service is a statewide service that aims to develop a more coordinated and integrated response for young people aged 10 to 18 years, who are at risk of developing behaviours that make them vulnerable to self-harm, disengagement from school, family or community, or who are displaying behaviours that require support and intervention.

The service is an initiative of DEECD, in partnership with the Catholic Education Office and the Association of Independent Schools of Victoria. It adopts a partnership approach to strengthen the capacity of local services, communities and schools to collaborate, develop and better coordinate stronger prevention and early intervention strategies as part of a service continuum for vulnerable children and young people. According to information provided to the Inquiry by DEECD, 45,147 children and young people received a service in 2010-11.

An evaluation of the School Focused Youth Service in 2007 found that the service had positive impacts on young people, including positive changes in behaviours, improved attendance and engagement with school, better peer relationships and communication skills, and more positive attitudes to self, peers, teachers and school. The program was also found to improve knowledge about issues and services in the community and school, and to contribute to the development of partnerships, planning and programs between education and community sectors at the local community level. The evaluation identified a need for further development of quantitative data to highlight program outcomes (DEECD 2007c, p. 5).

8.2.4 Youth services

Young people undergo significant changes as they go through adolescence and increasingly take on adult roles and responsibilities. While many young people manage this transition effectively, others require support. In Victoria a range of early intervention programs and initiatives are in place to support and assist young people who experience difficulties. Such services have the potential to identify and respond to young people subject to abuse or neglect.

Youthcentral is a Victorian Government website for young people aged 12 to 25 years that offers information and advice on a range of issues and access to services.

Finding Solutions is a statewide early intervention program funded by DHS and operated by CSOs, targeting young people of secondary school age and their families who are at immediate risk of being placed in out-of-home care. The program provides mediation and support to young people and their families to assist them in identifying, addressing and resolving issues, behaviours and/or needs that place the relationship 'at risk' of breakdown. The program aims to divert the family and young person from involvement in the statutory child protection and placement system (DHS 2011a).

The Youth Support Service is a statewide service that aims to help young people at risk of entering the youth justice system. The service is funded by DHS and delivered by CSOs. Young people are referred to the Youth Support Service by Victoria Police, youth justice court advisors and agencies providing services to young people. Young people must have had recent contact with Victoria Police but not be a client of Youth Justice or statutory child protection. Participation is voluntary. The service works with the young person to assess their needs and assist them to develop positive life goals and access other support and services as required (DHS 2011a).

Reconnect is a Commonwealth funded community-based early intervention service operated by CSOs that assists young people aged 12 to 18 years who are homeless, or at risk of homelessness, and their families. It assists young people to stabilise their living situation and improve their level of engagement with family, work, education, training and their local community. The Newly Arrived Youth Support Services is incorporated into Reconnect to support young people aged 12 to 21 years who have arrived in Australia in the previous five years, focusing on people entering Australia on humanitarian visas and family visas, and who are homeless or at risk of homelessness.

The National Youth Mental Health Foundation, headspace, operated by Orygen Youth Services helps young people aged 12 to 25 years who are experiencing mental health difficulties and seeking assistance. Headspace provides assistance with: general health; mental health and counselling; education, employment and other services; and alcohol and other drug services. Section 8.2.7 describes a range of other mental health services and drug and alcohol initiatives that are available to vulnerable youth.

These examples, and the youth-focused mental health programs outlined in Table 5 of Appendix 8, highlight that Victoria has a wide range of programs that offer early intervention to vulnerable youth. However, similar to the other service areas discussed in this chapter, these programs have not been recently evaluated, are not necessarily well connected with the broader service system supporting vulnerable children and are not well coordinated with each other and require specialist access arrangements. This lack of coordination and integration leads to less than optimal service delivery for vulnerable youth and their families.

A whole-of-government Youth Partnerships initiative will trial new approaches to bring existing youth service providers together to identify and respond more effectively to disengaged youth. DEECD is responsible for the implementation of this initiative. The initiative aims to better support at-risk young people by improving the coordination and efficiency of services at the local level. The initiative is based in seven locally governed demonstration sites, established across the following LGAs:

- Greater Geelong, Queenscliffe and Surf Coast;
- Yarra Ranges, Maroondah and Knox;
- Frankston and Mornington Peninsula;
- Swan Hill, Gannawarra, Buloke and Mildura;
- Ballarat, Hepburn, Pyrenees, Moorabool, Golden Plains;
- Greater Bendigo, Central Goldfields, Mount Alexander, Campaspe, Macedon Ranges and Loddon; and
- Wyndham and Hobsons Bay.

The Inquiry considers this to be an encouraging initiative to address what is presently an uncoordinated and inefficient service sector. It is to be hoped that any positive changes achieved in the trial sites achieve can be replicated and implemented statewide.

Adolescents are vulnerable to the risk of abuse and neglect. The Inquiry considers that mental health services have a role to play in the identification of and response to young people who have experienced, or are at risk of, child abuse and neglect.

8.2.5 Community-based family services

DHS funds the delivery of a range of community-based family services ('family services') to promote the safety, stability and development of vulnerable children, young people and their families, and to build capacity and resilience for children, families and communities (DHS 2011a).

Family services are focused on vulnerable young people and families that:

- Are likely to experience greater challenges because the child or young person's development has been affected by the experience of risk factors and/or cumulative harm; or
- Are at risk of concerns escalating and becoming involved with statutory child protection if problems are not addressed.

The intention is to provide services earlier to protect children and young people and improve family functioning.

Family services include interventions to enhance parenting capacity and skills, parent-child relationships, child development and social connectedness. The interventions provided to a family are determined by an assessment of need. A child and family action plan is developed to determine the goals of intervention for the child and family and details the interventions to be undertaken to address the needs identified (DHS 2011a). Interventions may include counselling, mediation, group work, assertive outreach, parenting skill development, in-home support and referrals to other appropriate services.

DHS engages CSOs to deliver family services on its behalf. As of June 2011, 96 CSOs were funded by DHS to deliver family services, 13 of which are Aboriginal community controlled organisations (ACCOs). Chapter 3 describes the role of CSOs in Victoria's approach to protecting vulnerable children. The process by which DHS registers and monitors CSOs is described in Chapter 21, while the capability of CSOs is examined in Chapter 17.

Child FIRST

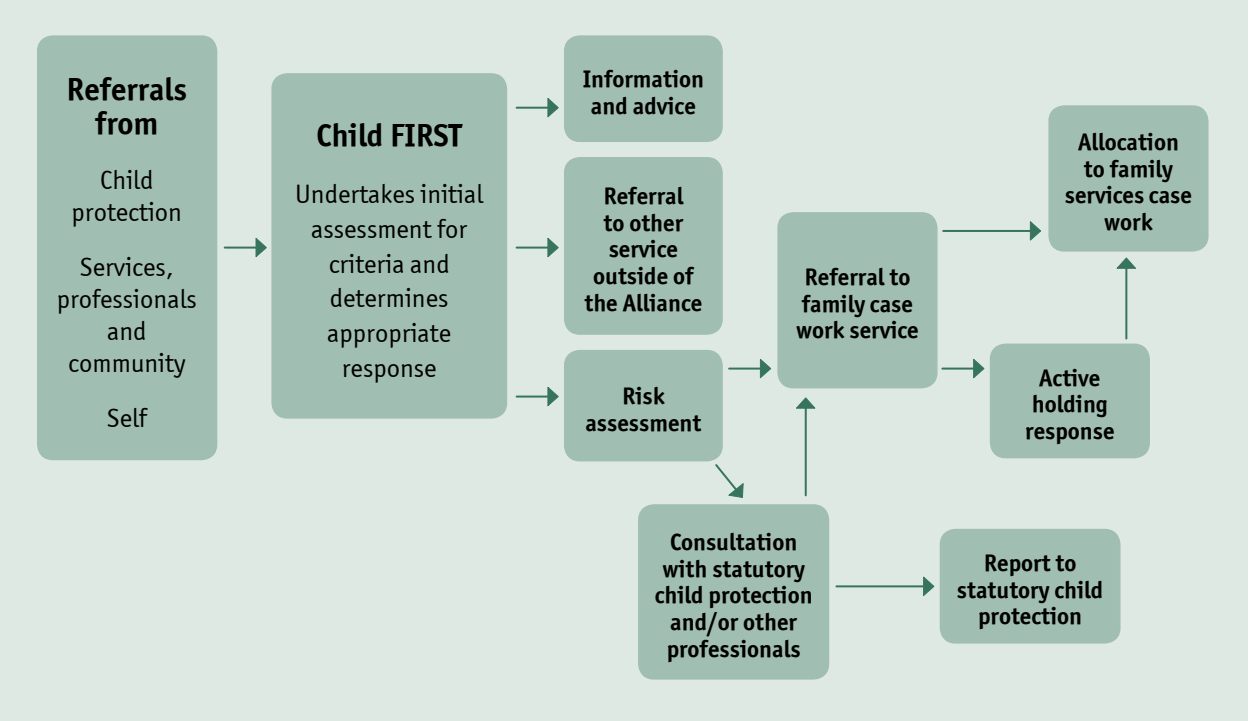
Child FIRST has been established in 24 catchments across Victoria to provide a visible point of entry to local family service providers and other support services for vulnerable families. The first nine Child FIRST sites were established in 2006-07, with all 24 established by 2008-09.

Under section 22 of the CYF Act, the objectives of Child FIRST and family services are to:

- Provide a point of entry into an integrated local service network that is readily accessible by families, that allows for early intervention in support of families and that provides child and family services;
- Receive reports about vulnerable children and families where there are significant concerns about their wellbeing;
- Undertake assessments of needs and risks in relation to children and families to assist in the provision of services to them and in determining if a child is in need of protection;
- Make referrals to other relevant agencies if this is necessary to assist vulnerable children and families;
- Promote and facilitate integrated local service networks working collaboratively to coordinate services and supports to children and families; and
- Provide ongoing services to support vulnerable children and families.

Given these objectives, a key role of Child FIRST is to assess the needs of a family, determine the priority of a service response and allocate families to the organisation within the catchment that is best placed to provide the response, allowing case work to commence at the earliest possible time (KPMG 2009, p. 27). A CSO providing family services will then provide a range of service interventions with a whole-of-family focus, depending on the available services of the particular agency and the needs of the client. The pathway for families engaging with Child FIRST is reflected in Figure 8.2.

Figure 8.2 Child FIRST intake, referral and allocation process



Source: Information provided by DHS
Note that this is a generic model of Child FIRST. Individual Alliance Child FIRST. Models may have variations on this flowchart

Each of the 24 Child FIRST catchments have developed local Alliances, which are a conglomerate of the local family service providers and statutory child protection services. Each Alliance typically includes three or four local family service providers. ACCOs operate in 18 of the 24 catchments. The six catchments that do not have an ACCO providing family services are all rurally based. The Alliances are responsible for operational management, catchment planning and providing service coordination at the sub-regional level. A specific 'lead' CSO in each Alliance provides the Child FIRST intake and referral functions for the Alliance (KPMG 2009, p. 21). These cooperative arrangements are referred to as integrated family services in the sector. The Inquiry refers to these services as community-based child and family services, consistent with the legislation, as the services cannot yet be said to be 'integrated'.

A core function of local Alliances is to develop a catchment plan to guide future service delivery. Informed by data on the needs of vulnerable children and families in the local area, the catchment plan is intended to:

- Lead to strengthened referral processes and pathways;
- Promote earlier intervention and prevention;
- Improve the focus on enabling culturally competent services for Aboriginal people;
- Focus on quality improvement; and
- Improve training and workforce planning.

Context for family services and Child FIRST

Child FIRST and community-based child and family services had their genesis in the 'every child every chance' reforms, which were introduced in the mid-2000s by the Victorian Government in response to a range of factors including:

- A rapid growth in reports to statutory child protection services;
- The impact on the rise in reports to statutory child protection services caused by the introduction of mandatory reporting in Victoria in 1993;
- Recognition that the existing service system did not provide a graduated continuum of responses to vulnerable children and families;
- Families presenting with increasingly complex and multiple problems; and
- Growing evidence regarding the long-term impact of trauma on children.

As a result of these factors, DHS began piloting Family Support Innovation Projects in 2003. These projects had the aim of:

- Reducing demand for statutory child protection by obtaining assistance earlier from community-based services for a significant proportion of families reported to statutory child protection; and
- Minimising progression of families into statutory child protection services, leading to the reduction in growth in demand for high-cost, out-of-home care services.

Additional projects commenced in subsequent years within targeted LGAs. By 2006 Family Support Innovations Projects had been established in 44 LGAs (Thomas et al. 2007, p. 13).

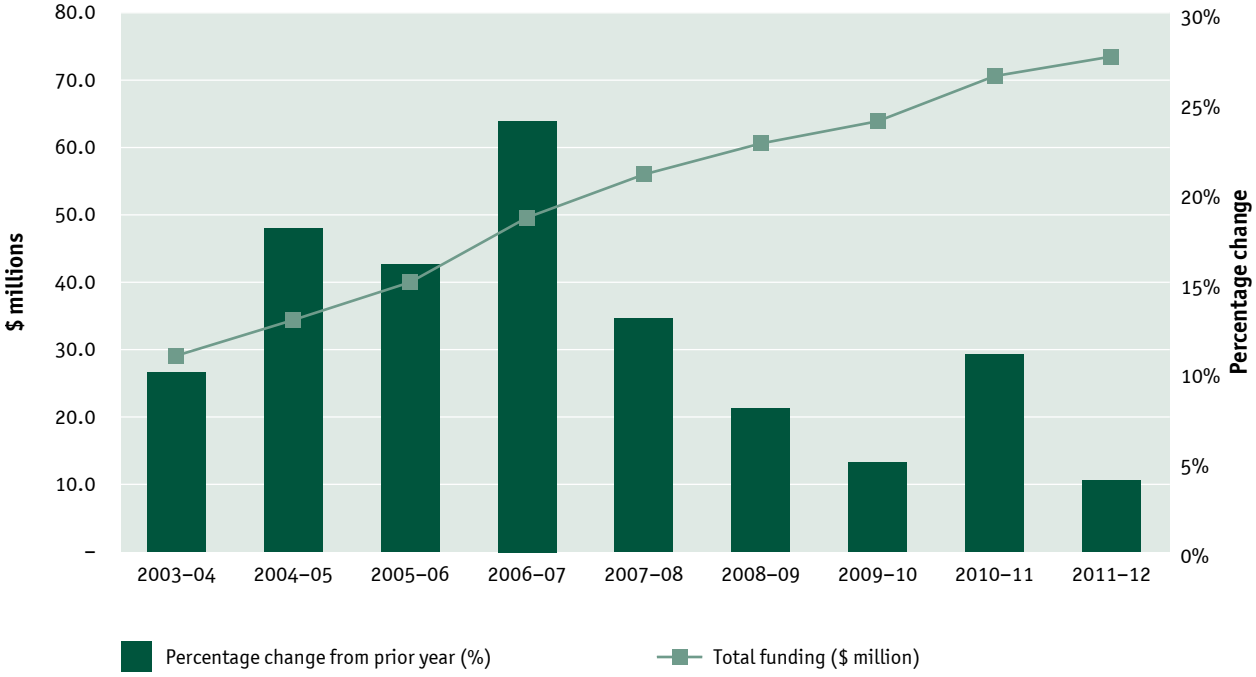
The final evaluation of Family Support Innovation Projects concluded that Victoria's prevention policies and programs, including the Family Support Innovation Projects, were successful in constraining growth in reports and enabling access to early intervention services for families and children (Thomas et al. 2007, p. 7). As a result of this success, DHS proceeded to implement Child FIRST.

The original intention of Child FIRST was to support the further development of a more systematic approach to early intervention within family services, with the legislation emphasising that family support should be targeted at the most vulnerable children and families. The intent was for community-based intake, assessment and referral services to provide a central point within a local community for professionals and other community members to raise significant concerns about the wellbeing of a child or young person. Professionals and members of the public were to have somewhere to go for help, if they had concerns that a family was under stress and would benefit from support. This intervention was to be before problems escalated to the point that the children are placed at risk of significant harm (Parliament of Victoria, Legislative Assembly 2005b, p. 1,371).

With the introduction of Family Support Innovation Projects and then Child FIRST, the Victorian Government substantially increased its investment in family services throughout the 2000s, with notably the most significant proportional increase occurring in 2004-05 and 2006-07. This increase is reflected in Figure 8.3. In 2010 11, 26,461 cases of family services were provided at a cost of $73.5 million. The number of cases does not equate to the number of families supported because some families may have had multiple episodes of service.

The performance of family services and CHILD First in providing early intervention support for vulnerable children and families is considered in section 8.3.2. Many participants in the Inquiry were of the view that Child FIRST and the establishment of local Alliances of family services has supported improved coordination of family services and better collaboration with statutory child protection. However, because of the lack of comparative information the Inquiry is not able to establish whether this was in fact the case. It is also not yet clear whether Child FIRST has provided a more accessible entry point to family services for vulnerable children, young people and their families. The Inquiry heard that the service system is now prioritising highly vulnerable children and families more than previously, although there are significant demand issues and a lack of evidence regarding the impact of services on client outcomes. There is a need for consistent governance arrangements across catchments to strengthen accountability and better links with other services for vulnerable children and families.

Figure 8.3 DHS funding of Family Services, 2002-03 to 2011-12



Source: Information provided by DHS

8.2.6 Health services

Health service providers come into contact with a large number of children and young people and their families. Accordingly they are well placed to identify vulnerable children and to intervene early to prevent harm and support the wellbeing of both child and family.

DOH is responsible for the planning, policy development, funding and regulation of health service providers and activities that promote and protect Victorians' health. This includes health care services provided through the public hospital system and community health services. The Commonwealth Government has policy and funding responsibility for general practitioners (GPs) and primary health care.

The *Victorian Public Health and Wellbeing Plan 2011-2015* identifies Victoria's public health priorities to 2015. The plan aims to improve the health and wellbeing of all Victorians by engaging communities in prevention, and by strengthening systems for health protection, health promotion and preventative health care across all sectors and all levels of government (DOH 2011b, p. 1). It identifies the need for individuals and health professionals to recognise symptoms and provide access to treatment early in the progression of a disease to improve health outcomes – but does not identify the opportunity to also identify vulnerable children and young people at risk of child abuse or neglect, or other poor outcomes.

The health system has traditionally focused on identifying and treating medical risk. In recent years there has been a move to identify psycho-social risk, as these contribute to medical risks. Reflecting this shift, DOH has established the Vulnerable Children's Program to support health services in the early identification and response to children and young people at risk of child abuse and neglect. It focuses on education and improving communication and collaboration between health, statutory child protection and family services. The level of investment in the program is very low. With less than one full-time equivalent staff member attached to the program and no additional funding available to health services to adopt recommendations or guidelines to improve early intervention services for vulnerable children, the program is inadequately resourced to change behaviour at the service level. The impact of the program has not been evaluated.

The DOH framework for monitoring the performance of health services does not include specific reference to support for vulnerable children, young people and their families, nor does it refer to the role of child- and family-sensitive practice by specialist adult services.

The performance of health services in providing an early intervention response to vulnerable children and young people is examined in section 8.3.1. The Inquiry concludes that Victoria's extensive health system could be better utilised to identify and respond to vulnerable children and their families. In particular, community health services and GPs could be more effectively used.

Public hospitals

Public hospitals are an integral part of improving the health and wellbeing of children and young people. More than 201,000 children and young people (aged up to 24 years) were admitted for public inpatient care across Victoria public hospitals. Further, emergency departments of major public hospitals had an additional, non-admitted, 512,000 presentations of children and young people aged up to 24 years (Australian Institute of Health and Welfare (AIHW) 2011b, pp. 116, 180).

The DOH Vulnerable Children's Program has produced and distributed a best practice framework for public hospitals and acute health care professionals that provides information and guidance on issues relating to children and young people at risk of child abuse and neglect. This framework forms the basis of regular annual reporting by health services on their progress to achieve improved outcomes for vulnerable children.

Hospitals are often the first point of contact for children and young people at suspected risk of harm from child abuse and neglect. This places a special responsibility on hospital staff to identify this risk and reduce it by offering crisis support, ongoing care and referral to specialist intervention services, and by working with other agencies to provide the best combination of services for a particular child and family. Hospital staff made 2,019 reports to statutory child protection and 982 referrals to Child FIRST in 2010-11. This represented 3.6 per cent of all reports to statutory child protection and 5.2 per cent of all referrals to Child FIRST.

The Royal Children's Hospital (RCH) has a special role in responding to the needs of vulnerable children and young people. RCH operates the Centre for Adolescent Health, which includes the Adolescent Forensic Health Service for clients of youth justice and the Young People's Health Service for homeless young people, in addition to clinical services providing general medical services (RCH, Centre for Adolescent Health submission, pp. 3-4).

Other RCH services that provide early intervention support for vulnerable children, young people and their families include:

- A peer support program for young people with significant chronic illness;
- A range of programs for children and their families involved in family violence;
- The Centre for Community Health, which researches the many conditions and common problems faced by children, such as obesity, language and literacy delay, and behavioural concerns;The Family Services Department, which provides family-focused support services including information and support group details for many childhood diseases and chronic illnesses and advice on safety promotion and injury prevention.
- The Social Work Department, which provides social work services via referral to all inpatient wards, medical and surgical units of the hospital, and continues to work with some patients and families after leaving the hospital; and
- The Gatehouse Centre, which offers, among other things, short and longer term counselling for victims of child abuse and their families, assessment and treatment for children and young people with sexually abusive behaviours and problem sexual behaviours, outreach services, and a group work program (RCH 2011; RCH Integrated Mental Health Program, Addressing Family Violence Programs submission, p. 2).

Hospitals also see adult patients whose health status or lifestyle (such as physical or mental health problems or disabilities, and substance misuse) may place their children at risk of harm. In such situations, health care staff have a responsibility to intervene early to ensure the child's safety, as well as to care for and support the parent and family. For example, if a person is being discharged from a specialist treatment facility, it is important to know if they are responsible for the care of children.

There is no evidence to indicate how well health professionals are meeting their responsibilities to identify and respond to vulnerable children and young people. The Inquiry has received anecdotal material from DOH suggesting that the identification and response to risk is highly varied.

One example of good practice in public hospitals is the psychiatric mother and baby units established at the Austin Hospital, Mercy Hospital for Women and Monash Medical Centre. These specialist units provide for the admission of mothers with a mental illness with their babies up to 12 months of age. The mother receives psychiatric assessment as well as treatment, and support to look after her baby and strengthen her relationship with her baby (Post and Antenatal Depression Association 2010). There are similar units in a number of private hospitals.

According to The University of Melbourne and Austin Health, Victoria has more mother and baby units per capita than anywhere else in the world. There is an absence, however, of community programs that act as a stepping stone for those being discharged from units (The University of Melbourne and Austin Health supplementary submission). The government has committed to establishing three new units in rural and regional Victoria. The first of these, to be located at Bendigo Hospital, was funded in the 2011-12 Budget.

Matter for attention 3

The Inquiry draws attention to the fact that an evaluation of the new mother and baby units and the transition of discharged mothers back into the community is needed to inform further investment in this field.

Community health services

Community health services are a network of agencies delivering care from 351 sites spanning every LGA across the state. Services are funded by DOH, the Commonwealth Government and philanthropic sources to deliver an integrated suite of primary health and human services including drug and alcohol, dental, disability, family violence services, home and community care, medical, mental health, and post-acute care. While some of these programs focus on particular client cohorts, services have an overarching strategic intent to prioritise services to more vulnerable population groups, and this is a requirement of their funding agreements with DOH.

Community health services can play a significant role in identifying children, young people and their families who would benefit from early intervention support, and in providing some of those support services. Services aim to promote children's positive development, intervene early to address child health and developmental problems and support parents' active participation in their child's early learning and development (Sabol et al. 2004). In 2009-10, 88 per cent of registered community health clients in Victoria stated they were concession card holders. About 4,900 clients identified as being refugees, and 2,400 clients identified as being from an Aboriginal or Torres Strait Islander background. However, community health services do not collect data on other risk factors presented by clients.

Initiatives and resources within community health that support vulnerable families include:

- 12 child health teams, which provide services to Victorian children from birth to 12 years of age experiencing mild to moderate developmental difficulties and behavioural issues;
- Flexible models of care that allow individual community health services to develop programs that respond to the needs of local vulnerable communities, such as young mothers programs, single dads groups and support for young families;
- A community health counselling policy framework and service standards that include a focus on young people and their families as well as people with mental health issues at risk of other complex issues; and
- A suite of priority tools to enable those most in need to access services and receive help.

At present there is a lack of data about how community health services are performing in supporting vulnerable children and young people and their families. The role of community health services with vulnerable families is not prescribed or monitored. There is no comprehensive data about how many vulnerable families receive support from services.

Matter for attention 4

The Inquiry draws the government's attention to the fact that the development of assessment tools, planning for services and resource allocations in relation to services for vulnerable children, young people and their families, is occurring independently of other government initiatives to support vulnerable families. The early intervention potential of community health services to reduce the vulnerability of children and young people needs further consideration.

General practitioners

GPs are the first point of contact for medical care and referral in Victoria. In 2009-10 there were 1,691 general practices in Victoria and 6,007 general practitioners (GPs) (Carne et al. 2011, p. 11). This broad coverage means that GPs are well placed to identify vulnerable children, young people and families who would benefit from early intervention programs. However, there is no available data to illustrate the support provided by GPs to vulnerable children and families.

Research has been undertaken to study factors that influence the willingness and readiness of GPs to undertake health assessments for children entering out-of-home care. This study found significant barriers for GPs undertaking these assessments. These barriers include: practice system challenges; lack of awareness of the particular health needs of the group of children; lack of relationships with statutory child protection services; difficulties with 'red tape' burdens when interacting with a government body; potential medico-legal risks; and competing workload pressures (Webster & Temple-Smith 2010, p. 299).

Similar challenges may apply to expanding the role of GPs in identifying and supporting children, young people and their families who would benefit from targeted early intervention. Further, GPs are independent, autonomous small business professionals, so their priorities may not easily align with government policy directions and priorities. While these are not necessarily insurmountable barriers to greater use of GPs in this area, they are significant. The Victorian Forensic Paediatric Medical Service's submission (p. 8) to the Inquiry calls for more education of GPs and other health professionals regarding the early identification of the 'at-risk' target group and better involvement of extended families and neighbourhood supports.

8.2.7 Specialist adult services

Victoria offers a broad range of specialist services to support vulnerable adults. Traditionally, the role of professionals working in specialist adult services has been to focus on the needs of the adult client. A range of adult clients may be impacted by child abuse and neglect, including having been victims of abuse and neglect themselves

Professionals also see adults whose children may be at risk because of the parent's health or social problems. As discussed in Chapter 2, parent, family or caregiver characteristics can influence whether a child is at risk of abuse and neglect. In particular, evidence has confirmed that the presence of poverty, family violence, substance misuse, mental health issues, intergenerational abuse and parent or caregiver disability heighten the risk of abuse and neglect.

This section provides some examples of specialist adult services in Victoria that adopt child and family-sensitive practice or otherwise seek to accommodate the needs of children, focusing on services that are particularly relevant to supporting vulnerable children, young people and their families who are at risk of child abuse and neglect, including alcohol and drugs services, mental health services, disability services and housing. Other relevant services not examined by the Inquiry include problem gambling, financial counselling and correctional services.

The performance of specialist adult services in responding to the needs of vulnerable children and young people is examined in section 8.3.3. The Inquiry concludes that services are not consistently identifying vulnerable children or delivering services that respond to their needs. While promising programs exist, they are varied, not coordinated and are without a simple, visible point of entry.

Alcohol and drug services

Alcohol and drug services aim to prevent and reduce the harm to individuals, families and communities associated with alcohol and other drug misuse. Programs include prevention initiatives aimed at the general community, as well as early interventions, treatment and support for people experiencing substance misuse and their carers and family members. More than 27,000 Victorians enter government-funded alcohol and drug treatment programs each year (VAGO 2011d, p. 1). DOH is responsible for Victoria's alcohol and drug program and funds CSOs, community health services and health services to deliver the programs. Table 4 in Appendix 8 provides a brief description of alcohol and drug resources and treatment services available in Victoria.

Alcohol and drug services can contribute to reducing child abuse and neglect by reducing harm to individuals and families associated with alcohol and drug misuse by both parents and young people. In 2009-10, about one-third of clients of alcohol treatment programs had dependent children (VAGO 2011d, p. 5). The prevalence of alcohol and drug use among parents is described in Chapter 2.

Family Drug Help is a service for people concerned about a friend or relative using alcohol or other drugs. Family Drug Help aims to provide ongoing help to families to reduce the isolation and stigma often associated with a family members misuse and provide non-judgmental, empathic support, as well as accurate information on alcohol and drugs and treatment options.

In addition, a range of services are available specifically to reduce alcohol and drug misuse among young people, including youth outreach and support, residential and home-based withdrawal services, youth residential rehabilitation and youth supported accommodation. The Parent Support Program supports parents and families of drug users and assists them to respond effectively to adolescents and other family members with a drug problem.

While there are supports in place for the adult relatives of a young person with a alcohol and drug problem, to date there has been little recognition of the needs of children whose parents have a problem. One of the few examples is the alcohol and drug residential rehabilitation program provided for parents and their children by Odyssey House. The agency provides a range of services including: home-based support to parents and children with the most intractable problems through the Kids in Focus program; supported accommodation, which caters for parents and children; the Family Eclipse program, a family inclusive intervention for young people aged 16 to 24 years with mental health and drug issues and their families; and the Stonnington Youth Precinct that brings together a number of services including local government to offer wraparound, coordinated services to young people experiencing alcohol and other drug issues.

The Young Parents Program supports young parents or pregnant women aged 12 to 25 years with substance use issues, whose children are likely to become subject to statutory child protection reports. Through intensive case work and support, the program aims to protect the children in the family and enhance participants' parenting capacity by providing family support and drug treatment simultaneously (YSAS submission, p. 6).

Mental health services

Mental health services can help to reduce the risk of child abuse and neglect. A correlation exists between parents who experience mental illness and child abuse and neglect. Estimates of all children in families with parental mental illness are 23.3 per cent (when not constrained by level of mental illness) and 1.3 per cent where the illness is severe (Maybery et al. 2009, p. 24). Services that work to identify and treat children, young people and parents for mental illness can have an impact in reducing the risk of abuse and neglect. Further, services that work with the whole family have the additional benefit of addressing the range of compounding issues that mental illness can impose upon a family.

DOH is responsible for Victoria's specialist public mental health system. Specialist services for children and adolescents, adults and aged persons are delivered by area-based mental health services. Information provided to the Inquiry by DOH indicated that the redesign of specialist mental health care for children and young people and improving outcomes for vulnerable families where a parent has a mental illness are current priorities. Table 5 in Appendix 8 provides a brief description of early intervention mental health services available in Victoria.

Specialist child and adolescent mental health services are provided for children and young people up to the age of 18 years. Early intervention mental health services for children and young people include:

- Integrated therapeutic and educational day programs for young people with behavioural difficulties, emotional problems such as severe depression or anxiety, emerging personality difficulties or a severe mental illness such as early psychosis;
- The Child and Adolescent Area Mental Health Services (CAMHS) and Schools: Early Access program, which aims to reduce the prevalence of conduct disorder in children by delivering sustainable evidence-based interventions in the early years of school and within the school setting. The target population for the initiative is young children displaying challenging or difficult behaviours and/or have conduct disorder in Prep to Grade 3 in mainstream primary schools; and
- The Child and Youth Mental Health Service for children and young people aged under 25 years is being piloted by Alfred Health. The redesigned service model includes a new Youth Early Intervention Team that provides or facilitates a range of services for young people where they are needed through outreach and collaboration with other agencies.

The Families where a Parent has a Mental Illness (FaPMI) strategy is an example of an early intervention initiative to enhance capacity in mental health specialist services, family services and other services to better provide for vulnerable families. The strategy focuses on vulnerable families who are being supported by community-based child and family services and who may have co-occurring drug and alcohol issues as well as parental mental illness. FaPMI coordinators work with mental health services, families and other service providers with the aim of reducing the impact of parental mental illness on all family members through timely, coordinated, preventative and supportive action. Limited brokerage funding is available to support families to engage with other services.

DOH has advised that the budget for the FaPMI initiative in 2010-11 is $1.3 million. Currently only half of adult mental health services are funding a FaPMI coordinator position. Where FaPMI coordinators exist, services are better linked. Adult mental health clients are more readily identified as parents and family needs are assessed and addressed by clear referral processes.

The FaPMI initiative has not been formally evaluated. However, a progress review by La Trobe University and the Bouverie Centre for DOH suggests that FaPMI coordinators provide an identifiable and accessible point of contact for services outside mental health, consequently promoting collaboration and reducing silos in service delivery systems (Bouverie Centre, La Trobe University 2011, p. 20).

Matter for attention 5

The Families where a Parent has a Mental Illness strategy is a promising initiative that should be extended to operate in all adult mental services. This warrants further consideration by the Department of Health.

Disability services

As discussed in Chapter 2, children with a disability and parents with an intellectual disability are more likely to come into contact with statutory child protection services. This means that, like alcohol and drug services and mental health services, disability services have the potential to identify and provide early interventions to reduce the risk of child abuse and neglect.

DHS funds CSOs to deliver direct support and care to people with an acquired brain injury or an intellectual, physical, sensory or neurological disability in Victoria. DHS also directly provides some care and support services to people with a range of disabilities.

These services include: case management to assist people achieve their goals, become more independent and active in community life; respite services to provide short-term and time-limited breaks on a regular, occasional or emergency basis; flexible support packages to assist children and adults with a disability to maintain family networks, access community activities, enhance independence and reduce the need for more intensive services; individual support packages allocated to a child or adult with a disability to purchase supports to meet their ongoing disability needs; and the Aids and Equipment Program, which assists people with permanent or long-term disabilities to enhance independence in their own home, facilitate their participation in the community and support families and carers.

There are further localised programs in some DHS regions focused on parents with a disability and families with a child with a disability.

A challenge for the successful use of disability services to provide early intervention support for vulnerable children can be the reluctance of parents with a disability to engage with these services. The Victorian Disability Services Commissioner noted that parents with a disability can be fearful of seeking assistance, and understate their need for support (Disability Services Commissioner Victoria submission, p. 4).

Housing

DHS provides public and social housing and support for low-income Victorians, focusing on those most in need. Each year DHS provides housing services to approximately 63,000 public tenant households across Victoria. In June 2011 there were about 17,600 families with children living in public housing (unpublished DHS data). About 16,400 families with children were waiting for public housing in June 2010 (2011 data not yet available).

The provision of public housing can be an early intervention strategy for children and young people at risk of abuse and neglect. A constant theme reiterated through the consultation and submission phase of the Inquiry was the importance of housing in addressing the needs of vulnerable families and the prevalent shortage of available public housing:

> By any measure … the service infrastructure problem in most urgent need of redress for vulnerable children and young people is the lack of affordable housing. The inability of successive governments to provide for this most basic need has been particularly damaging for the children affected (Good Shepherd Youth and Family Service submission, p. 14).

This was also a theme that was specifically highlighted for Aboriginal communities:

> There are many families I have seen over the years that are on waiting lists for accommodation. Some request medical certificates justifying to be of a high priority. In my opinion they are all of high priority - safe accommodation is a basic human right. Most families and individuals need to access emergency accommodation at a time of financial and personal crisis. This is a very real time of risk and we should be doing all possible to support them at this time (Victorian Aboriginal Health Service Co-operative submission, p. 6).

The Supported Accommodation Assistance Program is a joint Commonwealth, state and territory government initiative that provides funding for services to help people who are homeless or at risk of homelessness, including women and children experiencing family violence.

Services include crisis accommodation, transitional support, homeless persons support centres and telephone information and referral services. Transitional Housing Management is a related program that offers housing information and referral, crisis and transitional housing and the provision of financial assistance to households in crisis.

Children and young people represented 45 per cent of people in the Supported Accommodation Assistance Program in Victoria in 2009-10. A total of 29,200 children and young people were supported. This included 3,500 direct clients (9 per cent of all clients) and 25,700 children accompanying clients. Overall, 2.3 per cent of Victorian children and young people aged 0 to 17 years were provided accommodation and support by the program (AIHW 2011d, pp. 12-13).

DHS provides a number of homelessness support and assistance programs directed towards vulnerable children and young people. These are summarised in Table 6 of Appendix 8. A number of these programs are funded by the *National Partnership Agreement on Homelessness*, under which the Commonwealth and Victorian governments have contributed $209.7 million to Victoria over the five years to 2012-13 (Ministerial Council for Federal Financial Relations 2009, p. 11). DHS has advised the Inquiry that it is difficult to collect the data needed to measure progress against the homelessness outcomes identified in the National Partnership.

There is some progress being made by housing services to collaborate with other sector programs, such as family violence and young people leaving care. However, housing availability remains a key issue for vulnerable children and their families.

8.3 Performance of current arrangements

In submissions to and consultations with the Inquiry, stakeholders provided near unanimous support for the use of early intervention to support vulnerable children, young people and families. Stakeholders consistently put to the Inquiry that a greater role for early intervention and prevention is needed to improve the current system response to child abuse and neglect. For example, the joint submission by Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army, Victorian Aboriginal Child Care Agency (VACCA) and the Centre for Excellence in Child and Family Welfare (Joint CSO submission) (p. 42) contended that greater expansion and embedment of early intervention will result in the best gains for vulnerable children and their families, and the whole community, by reducing the need for the government to continue to grow investment in statutory child protection services.

Victoria has a substantial range of early intervention programs that are directed at identifying children, young people and their families who are at risk, and then providing support to these families to reduce the incidence of child abuse and neglect.

While there are many individual programs across sectors, the Inquiry considers that they do not come together to form a comprehensive, coherent and coordinated system of early interventions that addresses the needs of vulnerable children and their families. Within the Victorian Government, DHS, DEECD and DOH each deliver or fund a set of early intervention programs to target groups, consistent with their particular policy goals. There is an absence of holistic service planning and provision that meets the diverse needs of the particular child or young person. Chapter 6 recommends that this be addressed through the development of a Vulnerable Children and Families Strategy.

A more coordinated approach to providing early intervention support for vulnerable children will require better collection and coordination of data about vulnerable children. The information management systems supporting programs and services for vulnerable children are separate and disparate. Data quality is variable and in some cases systems have not kept up with modern business processes or government requirements.

The shortcomings of existing data systems and practices mean agencies may not identify all vulnerable children and young people who could benefit from early intervention services. This means that government is failing to provide all vulnerable children, young people and their families with the support they need to decrease the risk of abuse and neglect. Agencies are often not held accountable for the support they provide, with performance measures tending to focus on outputs rather than child outcomes.

Related to these data issues, Victoria's early intervention efforts are hampered by a lack of evidence on what interventions work. Agencies have largely relied on the evidence of the effectiveness of overseas programs when designing interventions for vulnerable Victorians. As discussed in section 8.1.2, there is a range of factors that could inhibit the successful replication of a program in another economic and social context.

Given the lack of local evidence, it is concerning that many of Victoria's early intervention programs have not been rigorously evaluated. Where local evaluations do exist, the results are generally promising, but the findings are far less conclusive than the extensive, longitudinal evaluations of the international models utilising randomised control groups.

A rigorous evaluation should be an essential feature of any future early intervention initiatives funded by governments.

8.3.1 Performance of targeted programs linked to universal services

This section considers the performance of early childhood services, school supports and health services in identifying and responding to the needs of vulnerable children and their families.

Early childhood services

An effective system of early childhood supports for vulnerable children is critical given the importance of the early years to a child's development, and the fact that most reports of abuse and neglect occur in the early years.

Due to its inability to record data on individual children, DEECD does not know how many vulnerable children are missing out on this important service and, potentially, from not being identified as vulnerable until the opportunity for early intervention has passed. As discussed in section 8.2.2, the Inquiry supports the recommendations made in the recent Auditor-General's report on this issue, and recommends DEECD implement them by the end of 2012. The shared funding of MCH between local and state government raises a further potential concern regarding access in lower income municipalities that have less revenue-raising capacity but a relatively larger population of vulnerable families.

To further develop the use of MCH for early intervention, there may be a need to increase the capacity of the enhanced MCH service and strengthen the referral relationship from MCH nurses to other programs focused on supporting vulnerable children. MCH nurses accounted for 4.4 per cent of all referrals to Child FIRST and family services in 2010-11 (unpublished DHS data). It is unclear whether all vulnerable children and their families are being provided with a tailored response to whatever service is most suitable, including referral to Child FIRST or statutory child protection, by all MCH nurses. In order to properly identify all families who would benefit from early intervention supports, there may be a need to develop the ability of MCH nurses to identify and respond to all relevant risk factors. The Inquiry considers that this warrants attention by government.

Families with one or more of a broad range of risk factors are currently eligible to receive an enhanced MCH service. Eligible families include: those with drug and alcohol, mental health or family violence issues; families known to statutory child protection; homeless families; unsupported parents under 24 years of age; low income, socially isolated, single-parent families; families with significant parent/baby bonding and attachment issues; parents with an intellectual disability; children with a physical or intellectual disability; and infants at increased medical risk due to prematurity, low birth-weight, drug dependency and failure to thrive (DHS 2003a, p. 6). When DEECD reviews its definition of vulnerability, as recommended by the Auditor-General, it will be important that the eligibility criteria for enhanced MCH remain sufficiently broad to include all children and families at risk of poor outcomes. The need for the enhanced MCH provision to be aligned with the concentration of vulnerable children and families is addressed by Recommendation 7 in Chapter 7.

Victoria's existing antenatal and early childhood programs provides a solid base for further investment in early intervention to support the needs of vulnerable children. There is insufficient evidence, however, of the effectiveness of these programs in improving child outcomes. In some cases departments have not put in place the data systems to support the regular monitoring and evaluation of their performance.

The Inquiry considers early parenting centres to be a particularly valuable initiative that should be expanded to reach a broader range of vulnerable families. In particular it would be beneficial if the more intensive residential programs were expanded so they are available to families with multiple risk factors but not yet known to statutory child protection. This would require an improvement in the access of families living in outer Melbourne suburbs, regional and rural areas.

The range of targeted services is potentially difficult for vulnerable families to access and navigate. Programs have been implemented independently over time to address specific objectives rather than as a comprehensive and coherent suite of initiatives to meet the needs of children and their families. Programs are not integrated across sectors, and there is some duplication in their objectives. A number of programs are being delivered on a pilot basis, which means there is not a consistent coverage of services across the state.

Recommendation 11

The Department of Education and Early Childhood Development should implement the recommendations from the Auditor-General's report on early childhood services by the end of 2012.

Recommendation 12

The Government should fund the expansion of early parenting centres to provide services to a greater range of vulnerable families and to improve access to families living in outer Melbourne, regional and rural areas.

School supports

The Primary School Nursing Program and the *School Entrant Health Questionnaire* are important universal programs that can help to identify vulnerable children in the first year of school. Information provided by DEECD to the Inquiry indicates that more could be done to use *School Entrant Health Questionnaire* data to develop school-based programs that meet the needs of vulnerable children. At present there is a range of school supports that support vulnerable students and their families, but there is limited evidence regarding their effectiveness. The Inquiry recommends that DEECD undertake a comprehensive evaluation of these programs.

There are no further universal assessments of a child's health and wellbeing as children grow older. The Inquiry considers that there would be merit in a population health and wellbeing questionnaire of students as they make the transition from childhood to adolescence. In the first instance a pilot questionnaire could be undertaken in disadvantaged government schools. Data could be used to identify vulnerable young people in need of additional support, and to inform the development of school-based programs that meet the needs of vulnerable students.

Recommendation 13

The Department of Education and Early Childhood Development should improve its capacity to respond to the needs of vulnerable children and young people by:

- Undertaking a comprehensive evaluation of whether existing school-based programs are meeting the needs of vulnerable children and young people; and
- Introducing a population health and wellbeing questionnaire of students as they make the transition from childhood to adolescence, and publishing the outcomes in *The state of Victoria's children* report.

Health services

Victoria has an extensive public health system that could be better utilised to identify and respond to vulnerable children, young people and their families. In particular, community health services and GPs have a potentially important role to play. The presence of community health services and GPs in every LGA presents an opportunity for a place-based approach to early intervention. However, as in other sectors, there is insufficient data collected and reported regarding vulnerable children and young people involved with health services.

The recent *Victorian Public Health and Wellbeing Plan 2011-2015* states that:

> Currently, many prevention programs and organisations (government and non-government) delivering prevention interventions and services operate in isolation from one another, resulting in duplication of effort, and an inefficient use of available staffing and funding resources (DOH 2011b, p. 32).

There is a need to clarify and monitor the responsibilities of health professionals regarding support for vulnerable children. A focus on vulnerable families and child- and family-sensitive practice should be added to DOH's framework for monitoring the performance of health services.

DOH's Vulnerable Children's Program is a welcome initiative that could support health services to identify and respond to children at risk of child abuse and neglect. However, there needs to be a substantial increase in investment in the program if its goals are to be realised. The program requires sufficient resources to drive change in practice in health services to ensure a stronger focus on identifying the full range of risk factors to children and young people. The Inquiry's recommendations regarding this issue are in section 8.4.

The development of specific early intervention programs within community health services is promising; however the objectives of these programs remain vague. There is a lack of data to assess whether the programs are effective in the targeting and engagement of vulnerable children, young people and families at risk of child abuse and neglect.

Recommendation 14

The Department of Health should amend the framework for monitoring the performance of health services to hold services accountable for support they provide to vulnerable children and families, consistent with their responsibilities under the recommended whole-of-government Vulnerable Children and Families Strategy.

8.3.2 Performance of community-based family services and Child FIRST

Child FIRST and family services were the subject of much comment throughout the Inquiry's consultations. Child FIRST's performance, and perceived success, is largely seen in the context of the family service system prior to its introduction, which was regarded as uncoordinated, difficult to access for families and dramatically under-resourced (Mr Bonnice, St Luke's Anglicare, Bendigo Public Sitting).

DHS engaged KPMG to evaluate the 2007 child and family service system reforms, including the implementation of Child FIRST and family services. The final report of the evaluation of Child FIRST and family services was published by DHS in February 2011.

The Inquiry has reservations about some of the findings reached by KPMG. However, it is not the purpose of the Inquiry to undertake an alternative program evaluation, nor to present a critique of the KPMG evaluation. Instead, this section presents the Inquiry's observations and findings on the performance of Child FIRST and family services, based on the evidence presented in the KPMG report, more recent data made available to the Inquiry, and the views of stakeholders as presented to the Inquiry in submissions and consultations.

In summary, the Inquiry has found that:

- While Child FIRST is broadly considered by agencies to have provided a more accessible entry point to family services compared with previous arrangements, the evidence regarding this is not yet conclusive;
- Many participants in the Inquiry were of the view that Child FIRST and the establishment of local Alliances of family services has supported better integration of family services at the local level than previously, but the Inquiry found that not all Alliances have undertaken effective catchment planning;
- Many participants to the Inquiry were of the view that local Alliances have also contributed to better collaboration and coordination between family services and statutory child protection than previously. However, the Inquiry found that there is a need for better links between family services and specialist adult services, health services, early childhood services and schools;
- Many participants to the Inquiry were of the view that Child FIRST and family services are prioritising highly vulnerable clients to receive services more than previously, but the Inquiry found that there are significant challenges to meet demand for services from families who are at lower risk. In some catchments, there are insufficient family services to meet the needs of vulnerable families;
- There is a lack of evidence on the impact of Child FIRST and family services on outcomes for individual vulnerable children and their families. There is also insufficient evidence to demonstrate that the introduction of Child FIRST has been an effective early intervention by preventing clients from becoming known to statutory child protection; and
- The governance arrangements for Child FIRST Alliances do not provide sufficient accountability for the extent to which the needs of vulnerable children and families in a given Child FIRST catchment are being met. There are also concerns about the sustainability of some Alliances.

Governance arrangements

Section 8.2.5 describes how family services in each of the 24 Child FIRST catchments are governed by local Alliances. Alliances are responsible for operational management, catchment planning and service coordination but have no role in monitoring quality of service provision or achieving client outcomes. Each agency remains autonomous in relation to its accountability for the delivery of services. The Inquiry considers these arrangements to be unsatisfactory because there is an absence of responsibility and accountability at the catchment level for meeting the full range of vulnerable children's and families' needs.

There is a risk that the reliance on local governance arrangements could reduce statewide consistency and public accountability if DHS does not provide Alliances with sufficient guidance and support.

KPMG found there is no consistent approach across Alliances to determining eligibility for family services. The use of different intake and initial assessment tools may reduce the consistency of determining the eligibility and priority level of vulnerable children and families. This would impede the capacity of DHS to ensure vulnerable families have equitable access to family services across the state (KPMG 2011b, p. xii).

The responsibilities of the 'lead' CSO in each Alliance for intake, initial assessment and facilitating an appropriate service response were documented in DHS' request for submissions from CSOs to deliver family services including Child FIRST. These responsibilities are not, however, clearly articulated in the statewide 'shell agreement' for statutory child protection and family services, nor are they specified in DHS' service agreements with lead CSOs. Neither document includes appropriate performance measures for lead CSOs. This is a significant gap in the governance arrangements for Child FIRST and family services, which restricts the ability of DHS to hold lead CSOs to account for meeting their responsibilities.

Of further concern is KPMG's finding that a minority of Alliances are showing early warning signs that they may not be sustainable, such as declining commitment by CSO senior managers to Alliance governance structures. Similarly, capacity constraints are limiting the involvement of some ACCOs in Alliances. KPMG contends that it is likely that more Alliances will face these challenges unless DHS puts in place greater supports for Alliance sustainability (KPMG 2011b, p. xi).

DHS has advised that it is considering a range of options to address these challenges including partnership checks, increased clarity regarding the role of DHS within Alliances, resourcing Alliance project officers and improving ACCO involvement in Alliances.

An accessible entry point

A primary objective of the Child FIRST reforms was to provide a readily accessible point of entry into an integrated network of family services. Prior to the introduction of the 'every child every chance' reforms in the mid-2000s, entry into the family services sector occurred at individual CSO level. As families and professionals did not always know the type of service offered by a particular agency, statutory child protection intake had become the major pathway by which families could gain access to family services and supports (KPMG 2011a, p. 33).

Several CSO providers of family services reported to the Inquiry that the introduction of Child FIRST has increased the visibility of family services:

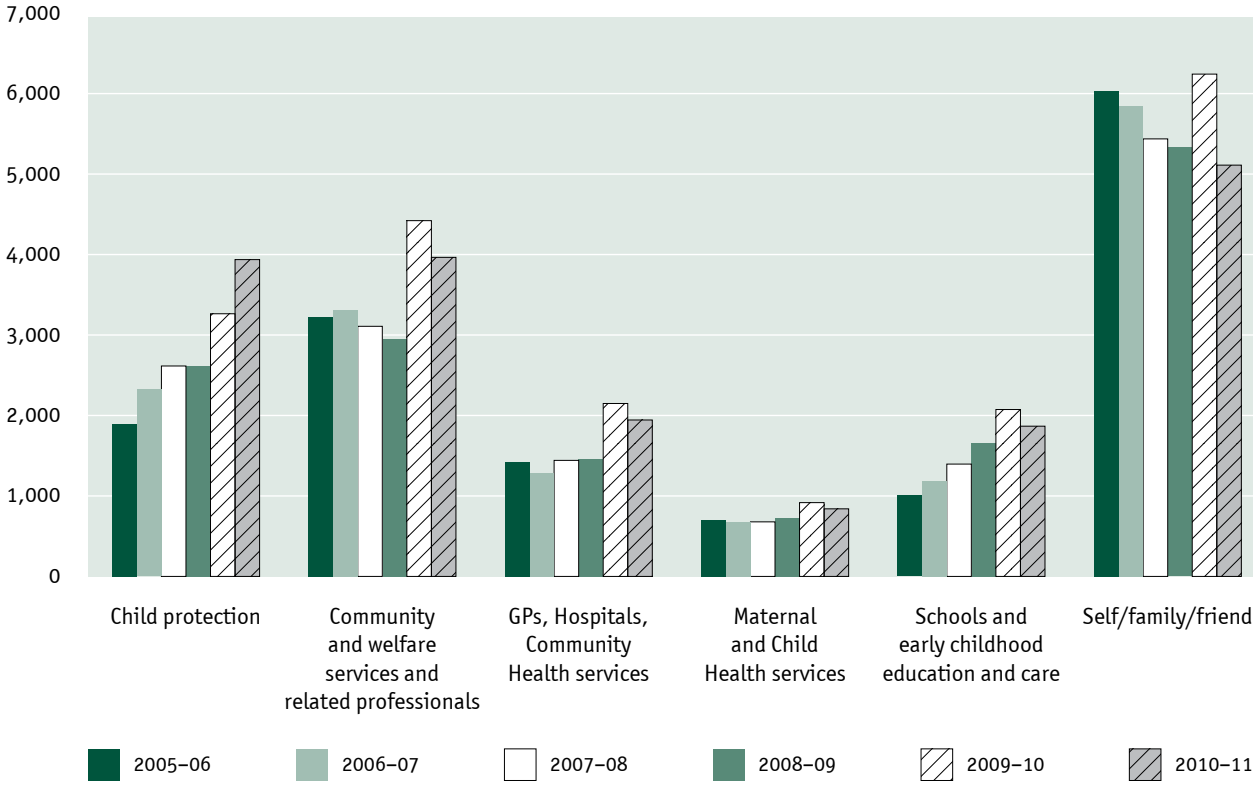
> As a visible point of entry the Child FIRST model has improved pathways to support vulnerable children, young people and families (MacKillop Family Services submission, p. 29).

> The changes that have been implemented have greatly improved access for families through the Child FIRST model. Whilst Child FIRST is a challenging model to deliver and maintain it has been one of the most significant and positive service developments to have occurred in recent times (St Luke's Anglicare submission, p. 11).

> The North East Child FIRST intake system has opened an important alternative access point to services for very vulnerable families and strengthened community capacity to protect children outside of the tertiary child protection system (North East Metro Child and Family Services Alliance submission, p. 8).

This view is supported to some extent by preliminary trends in referrals to family services and Child FIRST. Figure 8.4 shows that since the introduction of Child FIRST in 2006-07, there has been a steady increase in referrals by child protection practitioners. There was also a consistent growth in referrals from schools and early childhood services to 2009-10. The trend for community and welfare services and related professionals and health services is more ambiguous, with increases in referrals of different proportions. There has also been a decline in self-referrals. This may suggest that family services have increasingly focused on high needs clients. The decline in referrals from all sources except child protection from 2009-10 to 2010-11, however, is of some concern. Given this mixed evidence, the Inquiry is unable to draw a firm conclusion regarding whether Child FIRST has created a more accessible entry point to family services.

Figure 8.4 Referrals to family services and Child FIRST, Victoria, 2005–06 to 2010–11



Source: Information provided by DHS

Service planning and coordination

Many participants to the Inquiry were of the view that Child FIRST has also supported coordination of different family services at the local level. The Joint CSO submission argued that a great strength of Child FIRST is its design and location – it is local, supports integrated responses and is multidisciplinary in its focus (p. 32).

Reinforcing the view of stakeholders, the KPMG evaluation found that the local Alliances have created: shared responsibility for service delivery to vulnerable children and families within local catchments; a mechanism to support consistent intake, prioritisation and allocation based on need and risk; an opportunity to consistently improve the service provision; capacity for joint planning; and a shared approach to demand management across family services (KPMG 2011b, p. 27).

KPMG also found, however, that not all Alliances had undertaken catchment planning, despite this being a core responsibility of Alliances. KPMG reported that some Alliances had not undertaken planning because they did not have sufficient resources, or they had been focused on 'more pressing' issues, such as maintaining relationships between CSOs to ensure the sustainability of the Alliance.

Where Alliances had completed catchment plans, there was considerable variation in the extent to which they included rigorous data analysis and identified the needs of local vulnerable children and families.

Collaboration with other services

In his 2009 investigation, the Victorian Ombudsman noted that the development of the Child FIRST system was a valuable step in encouraging a collaborative approach to protecting children while minimising the need for legal intervention (Victorian Ombudsman 2009, p. 65). Stakeholder submissions and Inquiry consultations have consistently identified the co-location of community-based child protection workers at Child FIRST sites as having had a positive influence on collaboration between family services and statutory child protection (submissions from Anglicare Victoria, p. 18; Bendigo Community Health Services, p. 10; Community and Public Sector Union, p. 11; MacKillop Family Services, p. 30).

In contrast, there remains a lack of coordination between family services and other services that focus on vulnerable children and young people. In some cases, this reflects a lack of basic awareness:

> Last year the Office and Child Safety Commissioner engaged with staff working in adult drug and alcohol services at a series of forums and was surprised to hear that not many of those workers had heard of Child FIRST, let alone made a referral to them (Office of the Child Safety Commissioner submission, p. 6).

This suggests that the Children's Services Coordination Board (discussed in Chapter 20) has not been effective in coordinating government actions relating to children at local and regional levels.

The integration of family services with local adult and universal services is arguably a more ambitious objective than the initial aims of the Child FIRST program, however, addressing this issue may be a logical next step:

> In hindsight, it would have been advantageous to formally include mental health and alcohol and drug services into the Child FIRST platform during the formulation of the CYF Act 2005. As it stands, responsibility for joint governance arrangements and local service integration including mechanisms for interagency consultation and support currently rests with funded family services. It would appear that responsibility to support family resilience and mitigate vulnerability and risk for children in a broad sense remains aspirational rather than actual. The need to build a platform where adult services are active and willing participants is the next step for a maturing Child FIRST system (Anglicare Victoria submission, p. 14).

Engagement with Aboriginal community controlled organisations

The Inquiry heard from some participants that the introduction of Child FIRST has assisted the integration of local ACCOs into the family services sector. KPMG found that partnerships between mainstream family services and ACCOs have generally improved at both the governance and service delivery levels.

From a governance perspective, ACCOs are now formally engaged as Alliance partners, and there is a stronger emphasis on mutual support. ACCOs gain through improving their understanding of mainstream programs that can be accessed by their clients, and having access to shared training and organisational support. For mainstream organisations, ACCO involvement enables improved cultural understanding, a more culturally competent approach, and the capacity to develop new service-delivery structures to better support Aboriginal children and their families. However, in some Alliances ACCO engagement continues to be limited by factors such as constraints on the capacity of the ACCO, or a limited focus on Aboriginal issues within the Alliance (KPMG 2011b, p. 42).

In some catchments this has impacted on service accessibility for Aboriginal children and families.

In terms of service delivery, mainstream agencies have sought to enhance the skills and cultural competence of their workforce, thereby offering greater choice in service providers to Aboriginal children and families (KPMG 2011b, p. xvii). In some catchments, the CSOs that form the Child FIRST Alliances funded an Aboriginal liaison position. These have played a significant role in providing culturally responsible services in some areas (VACCA submission, p. 41).

These gains have not, however, been realised in all areas of Victoria. KPMG found that within some Alliances, ACCO engagement is limited by ACCO capacity constraints, a limited focus on Aboriginal issues within the Alliance, or a lack of local ACCOs, which is reducing the extent of local knowledge available to Alliances (KPMG 2011b, p. 29). To build on the gains achieved elsewhere, there is a need for some mainstream agencies to focus on their relationships with ACCOs and for examples of good practice to be shared.

Meeting client demand

There is evidence that demand for family services is exceeding the available supply. KPMG found that there are increasing demand pressures within some catchment areas that Child FIRST is unable to effectively meet (KPMG 2011a, p. 88). Several Alliance lead agencies – particularly those in growth corridors – have moved to restrict intake in peak periods, while others have introduced waiting lists, potentially undermining the intention of responding at the early stage of a problem (Office of the Child Safety Commissioner submission). Several stakeholders from within the service system told the Inquiry that the government's investment in Child FIRST has not been sufficient to fully deliver on its objectives. The Inquiry accepts that greater government investment is required to respond to client demand, and considers it unacceptable that lead agencies in some areas have not been able to accept referrals of families in need.

The Inquiry also heard that the legislative requirement to focus on the highly vulnerable has meant that Child FIRST and family services can only deal with urgent matters, and matters involving cumulative harm are not able to be prioritised (Berry Street submission, pp. 15, 26). Consequently, the intended emphasis on cumulative harm that was introduced with the 2005 legislation has not been realised. VACCA stated that its family service is rarely able to support families with relatively 'straightforward challenges' (VACCA submission, p. 36).

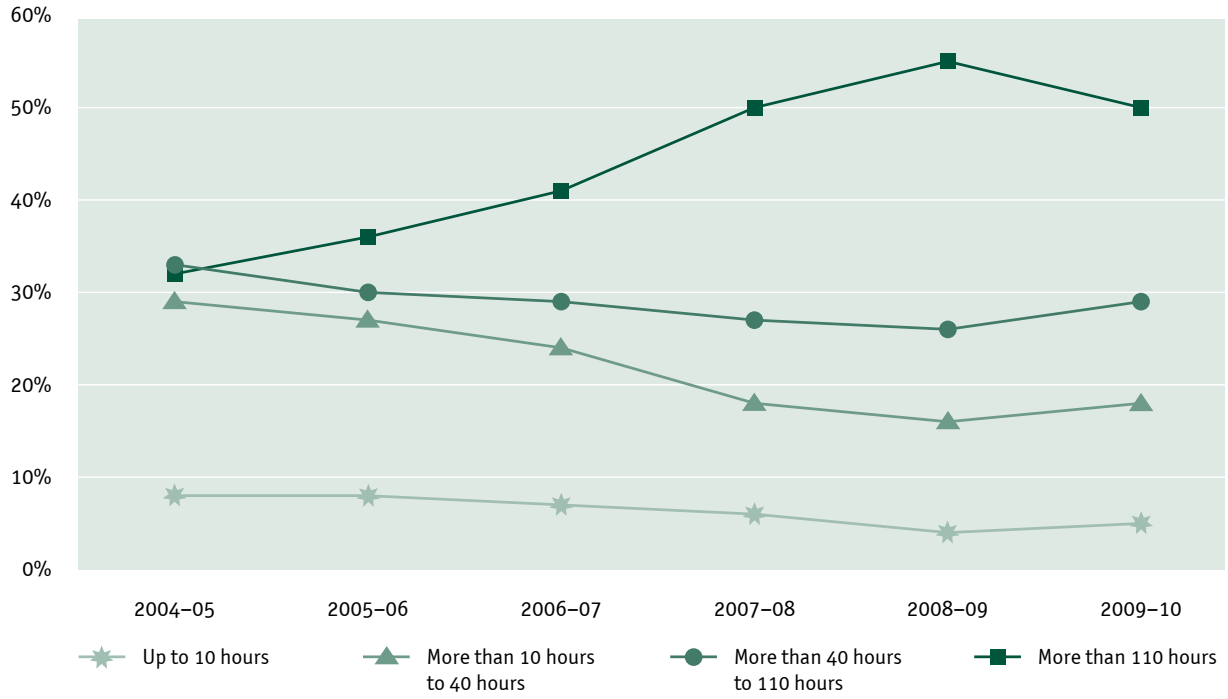
Information provided by DHS and many stakeholders suggests that demand pressures are being contributed to by an increasing number of families presenting to Child FIRST with complex and multiple issues. These issues can include a range of vulnerabilities and problems including: family violence; disability; debt and financial insecurity; parental stress; lack of social support and social isolation; mental health issues; and drug and alcohol problems (Anglicare Victoria submission, p. 12). In 2010, 92 per cent of all referrals to the North East Metro Child FIRST Alliance included one or more complex issues or significant wellbeing concerns (North East Metro Child and Family Services Alliance submission, p. 8).

The existence of increasingly complex cases for Child FIRST and family services is consistent with the data in Figure 8.5, which suggests that family services are working with fewer cases for longer periods of time. Recognising the increasing complexity of cases leads to consideration of whether the skills of the family services workforce are adequate to meet the needs of the presenting vulnerable children, young people and their families.

There is consistent criticism from CSOs that families that are at lower risk but that would benefit from supports are no longer meeting the threshold for access to family services because of the necessity to address the needs of the most vulnerable. This contention was supported by DOH, which suggested that health professionals are not making referrals to Child FIRST because families that had previously been referred had not met the threshold to receive services. It is also consistent with the KPMG finding that as family services increasingly manage more complex cases, their capacity to provide their former preventative intervention services is being reduced (KPMG 2011a, p. 4).

These criticisms need to be considered in the context that it was the intention of government when introducing reforms in the mid-2000s to ensure the needs of the highly vulnerable were prioritised. The combined effect of increased demand for family services, increased complexity of client needs, and the priority given to high-needs clients is that there appears to be a lack of capacity among family services agencies to work with a broader range of children and families.

Figure 8.5 Family services resources expended, by hours expended per case, Victoria, 2004-05 to 2009–10



Source: KPMG 2011b, p. 59

Role clarity

Related to the demand pressure facing family services, submissions and the Inquiry's consultations have highlighted that there is some confusion, misunderstanding or a 'gatekeeping' response regarding the boundaries between Child FIRST, family services and statutory child protection. A number of CSOs expressed the view to the Inquiry that statutory child protection was referring matters to Child FIRST that, in their view, required a statutory response. This issue is addressed further in Chapter 9.

As noted by the Victorian Ombudsman, it is inevitable that Child FIRST will have contact with children who should be referred to statutory child protection through protective intervention reports. In many ways Child FIRST is well placed to identify children at risk and ensure they are brought to the attention of DHS in a timely manner (Victorian Ombudsman 2009, p. 30).

There is a common contention that a high threshold for child protection services has resulted in higher risk cases being referred to Child FIRST from statutory child protection. Yet, there is little evidence available to the Inquiry to indicate the degree to which matters being referred by statutory child protection to Child FIRST are cases involving unacceptably high risk. It does seem that at times family services and statutory child protection may disagree as to the appropriate service response to some clients. The Inquiry considers that there is scope for the decision making regarding these clients to be more collaborative.

Early intervention

One of the key goals of Child FIRST and family services was to intervene earlier to assist vulnerable children and families, thereby avoiding the need for a statutory child protection response. Some stakeholders suggest that this goal has been achieved (Joint CSO submission, p. 31). The KPMG evaluation also supported this view, on the basis that statutory child protection reports, investigations and protective orders grew at a slower rate in Victoria compared with other jurisdictions between 2005-06 and 2008-09 (KPMG 2011a, pp. 127-128).

However, the Inquiry considers there is insufficient evidence to demonstrate that the introduction of Child FIRST has prevented some clients from being subject to a statutory child protection response. In particular, there is no evidence of a causal link between Child FIRST and any decrease in reports to statutory child protection. There are a number of other reforms and external factors that could have contributed to the change in the fall in reports. The Inquiry also notes that there was a substantial increase in reports to statutory child protection in Victoria in 2009-10 and 2010-11.

Client outcomes

There is a lack of evidence on the impact of Child FIRST and family services on outcomes for individual vulnerable children and their families. Further, there is little comment on this in submissions.

The Inquiry has been advised that work is underway within DHS to address this evidence gap. The Child and Family Services Outcomes Survey is a collaborative project to enable outcomes for a representative statewide sample of children receiving statutory child protection services, out-of-home care and family services to be measured and tracked over time. The first stage of the project surveys parents and carers about their children and focuses on their children's safety, stability and development including health, education, relationships and connections with family, community and culture. It will also include a range of questions about service experiences. It is intended that the survey will be conducted every two years. The second stage of the project, which will involve surveying children and young people, is due to commence in 2012.

While the initial findings from this work should be interpreted with caution, the preliminary report on the first survey includes a number of encouraging findings regarding family services, with parents and carers reporting they generally felt more confident in their parenting, were better able to relate to their children and manage their behaviour, as well as relate to others and manage their finances. About 75 per cent of parents believed that the child's health and wellbeing had improved since the provision of family services, and 90.4 per cent felt these improvements were as a result of the family service involvement. It is not possible to identify clearly whether family services had helped to prevent child abuse and neglect (Lonne et al. 2011).

The submission received from the North East Metro Child and Family Service Alliance (p. 9) provides some data regarding outcomes for children who have been engaged in Child FIRST and family services. The Alliance examined the outcomes for 382 families allocated to receive family services from Alliance agencies between July 2009 and June 2010, with follow-up occurring six months after allocation. The audit found that this Alliance of family services was generally effective at engaging complex, vulnerable families in services, with 67 per cent engaged, 13 per cent not engaged, and 20 per cent indeterminate.

It was further noted that the lowest engagement rate was with families referred from statutory child protection, with 58 per cent of referrals closed at Child FIRST. The study found that most referrals were closed because the families did not engage with services or ceased contact with services. This may suggest that Child FIRST is not as effective as an early intervention program if it is being provided to families that are not voluntarily engaged in working on problems within the family, and require an alternative tertiary response. While its conclusions cannot be generalised, this study demonstrates the benefits of analysing service data, and provides an example of how an audit or evaluation could be built into programs.

8.3.3 Performance of specialist adult and youth services

Victoria has a wide range of specialist adult and youth services including mental health services, drug and alcohol services, housing services and disability services. Many programs offered by specialist adult services to parents and caregivers are relevant to the risk factors for child abuse and neglect. Specialist adult services are therefore a critical platform for identifying vulnerable children and young people. In many instances, an adult service is also best placed to provide an early intervention service response to meet the needs of vulnerable children.

Family-sensitive practice

Family-sensitive policy and practice involves being aware of the impact of abuse upon families, addressing the needs of families and seeing the family – rather than an individual adult or child – as the unit of intervention (Battams et al. 2010).

Service providers owe a different duty of care to children. In order to respond effectively to the needs of children and young people, specialist adult services need to develop family-sensitive practices that incorporate risk assessment of child abuse and neglect, and the practical application of the service's responsibility to children.

The Inquiry received a number of submissions addressing family-sensitive practice. The Child Safety Commissioner suggested that developing a family focus in adult support services would enable better support to be provided to vulnerable children and families (Office of the Child Safety Commissioner submission, p. 6). The Family Alcohol and Drug Network noted that growing evidence indicates interventions that include family members are likely to achieve greater success than individually focused drug treatment programs (Family Alcohol and Drug Network submission, p. 2).

The College of Psychiatrists highlighted the potential benefit of strengthening priority access to mental health services for adults who are parents to vulnerable children. The college noted that under a narrow, adult-focused approach, some parents with a mental illness may not be able to access treatment due to the less severe nature of their illness. Under a broader, family-sensitive approach, some of those parents may receive treatment due to the impact of their illness on their parental functioning and as a consequence on the risk to the children (The Royal Australian and New Zealand College of Psychiatrists - Victorian Branch Faculty of Child and Adolescent Psychiatry and The Royal Australian and New Zealand College of Psychiatrists - Victorian Branch submission, p. 2).

The notion of supporting the needs of vulnerable children by prioritising the access to specialist adult services by parents and carers was canvassed in the recent New Zealand Green Paper for vulnerable children. The Green Paper suggested such a policy could apply to services where there are limited resources and adults may be on waiting lists, such as housing and alcohol and drug rehabilitation services. Some services use assessment tools that are too narrow to take the needs of vulnerable dependent children into account when determining their parents' or carers' priority for services (New Zealand Government 2011, p. 21).

In the United Kingdom a recent interim evaluation has considered the early stages of implementation of the *Think child, think parent, think family* guide being piloted by some service providers across adult mental health and children services to improve their response to parents with mental health problems and their families (Social Care Institute for Excellence 2011). While some preliminary promising practice is emerging, the evaluation highlights the significant challenges to this approach, particularly with competing pressures for service providers, the need for senior managers' commitment, information sharing challenges and the need for additional funding and resources to implement.

It is unclear to the Inquiry how extensive the adoption of family-sensitive practice and policy is in Victoria's specialist adult services. It is apparent, however, that services are not consistently identifying vulnerable children or delivering services that respond to their needs. While promising programs exist, they are varied, not coordinated, and without a simple, visible point of entry.

This gap is in part due to some confusion about who is responsible for the needs of vulnerable children and young people. Victoria lacks a clear expectation that specialist adult services must be responsive to the needs of their clients as parents and to the needs of their clients' children, even though their primary responsibility is to recognise the adult's personal needs and circumstances (Humphreys & Campbell (c) submission, p. 5).

Without an understanding of the extent of family-sensitive practice it is difficult, if not impossible, to determine how effective such a policy and practice would be in improving the role of specialist adult services in supporting early intervention to vulnerable children, young people and their families. An audit of all Victorian specialist adult services would assist in determining this matter.

The Inquiry is mindful that a broad adoption of family-sensitive practice by Victorian specialist adult services will have significant resource implications beyond increased service capacity. As noted by the Victorian Alcohol and Drug Association (VAADA), organisations will need to be redesigned to cater for a greater mix of clients, including children, which will require significant modifications to infrastructure. It will also necessitate the introduction of new training programs on models of service delivery and screening tools (VAADA submission, p. 7).

Service integration

Section 8.3.2 described the need for better links between family services and specialist adult services. The Inquiry also heard through submissions and consultations that an effective response to the multiple and complex problems for parents of vulnerable children and young people also required the integration of different specialist adult services. Odyssey House commented that the association between substance-dependence and family violence is of serious concern, not only between parents or adult partners, but also from parents to children and from adolescents and young adults towards parents. However, family violence is rarely identified or addressed within alcohol and drug services. The overlap in characteristics of families involved with child abuse and neglect, alcohol and other drug use, family violence and mental health suggests an urgent need to align the disparate services that address these parental factors with family services and the system for protecting vulnerable children more broadly. A shared framework, or universal screening tool, should be considered for all services working with vulnerable children and families (Odyssey House Victoria submission, p. 15).

Similarly, while a range of youth programs are available, they are not necessarily well connected with the broader service system supporting vulnerable young people, are not well coordinated with each other and may be difficult to access.

8.4 Conclusion

There is a great opportunity for the Victorian Government to provide earlier, more effective targeted supports for Victoria's vulnerable children and young people. The overseas evidence shows that early intervention programs, when well designed and resourced, can be an effective approach to improving a range of outcomes for vulnerable children and young people, including reducing the risk of child abuse and neglect. The long-term economic and social benefits of the most effective overseas programs far exceed their costs.

Victoria already has a substantial range of early intervention programs targeting vulnerable children and young people, but they do not come together to form a comprehensive, coherent and coordinated system of early interventions that addresses the needs of vulnerable children and their families. While service integration is improving, in the main, DHS, DEECD and DOH deliver or fund a set of early intervention programs to specific groups, consistent with their particular policy goals. There is an absence of holistic service planning and provision that meets the diverse needs of the particular child or young person and their family. This is an example of where the Children's Services Coordination Board, discussed in Chapter 20, has failed to drive coordination of government actions relating to children at local and regional levels.

In Chapter 6, the Inquiry recommends the development of a whole-of-government Vulnerable Children and Families Strategy to synchronise government efforts. The strategy would identify whole-of-government policy objectives, specific roles and responsibilities for individual departments, and a set of performance measures and indicators to monitor progress. As set out in Chapter 21, the Inquiry recommends that a new Commission for Children and Young People be established to oversee departments' performance in meeting their responsibilities under the framework.

An effective system of early intervention must both identify vulnerable children and families and deliver services that meet their needs. This requires all relevant services across sectors to put the consideration of the best interests of children at the heart of their practice. Universal services and specialist adult services have an essential role to play in the early identification of children and young people who are at risk and providing support based on a holistic assessment of the family's needs. Targeted services need to be coordinated at the local level to support an integrated, multidisciplinary response to individual families.

In Chapter 14 the Inquiry considers the role that amendments to legislation may provide to clarify the responsibilities of adult service providers to the children of their clients.

Enhancing early identification

The Inquiry recognises the potential benefit of utilising the CYF Act provisions regarding pre-birth reports to identify vulnerable children early and to avoid a tertiary response for these children. The Inquiry is also concerned, however, that there could be unintended consequences from subjecting a pregnant woman to the stress of a child protection pre-birth report, particularly if it is not followed by a comprehensive service response. The Inquiry therefore considers this to be an area that requires urgent evaluation.

Existing data systems and practices within services do not allow Victoria to identify all vulnerable children and young people who could benefit from early intervention services. There is a need for investment in modern client information systems that collect data about Victoria's children and their service utilisation. Improved data collection will support government agencies and services to better understand children's needs, improve the targeting of programs for vulnerable children, help maintain contact with hard-to-reach families, improve pathways between universal and targeted services, and support better program evaluation. As discussed in Chapter 20, it is important that appropriate protocols are established for the sharing of information without breaching clients' privacy.

Identifying vulnerable children and young people should be part of the core business of all universal early childhood services, schools, health services and specialist adult services. This chapter has identified promising practices in each of these sectors, but they are varied, not coordinated and not consistently adopted. The Inquiry recommends additional investment in these services supporting them to identify and respond to risk factors for child abuse and neglect and, where appropriate, to refer vulnerable families to other support services. Specialist adult services and health services should be supported to develop family-sensitive practices that address the needs of the whole family. A substantial increase in investment in DOH's Vulnerable Children's Program is required.

Through these steps, Victoria can make best use of its available resources to properly identify the families that would benefit from the support of early intervention.

Recommendation 15

The Government should enhance its capacity to identify and respond to vulnerable children and young people by:

- Evaluating the outcomes of pre-birth reports to statutory child protection and pre-birth responses to support pregnant women;
- Providing funding to support universal early childhood services, schools, health services (including General Practitioners) and specialist adult services to identify and respond to the full range of risk factors for child abuse and neglect. This should include increased investment in the Department of Health's Vulnerable Children's Program; and
- Providing funding to support specialist adult services to develop family-sensitive practices, commencing with an audit of practices by specialist adult services that identify and respond to the needs of any children of parents being treated, prioritising drug and alcohol services.

An integrated, comprehensive service response

The Inquiry has recommended that an area-based approach should be taken to address vulnerability and protect Victoria's vulnerable children and young people (see Recommendation 3 in Chapter 6).

Child FIRST and the local Alliances of family services provide a basis for developing an accessible entry point within a local catchment to a coordinated network of targeted services to meet the needs of vulnerable children and their families. However, the capacity of Alliances to deliver services that meet local needs is being undermined in several catchments because Alliances are not meeting their core responsibility to undertake service planning.

The Inquiry considers that the first step to reform family services should be to establish consistent governance arrangements across catchments to strengthen Alliances' accountability for their performance (Stage 1 of Figure 86). Area Reference Committees should be established in each catchment to oversee the monitoring, planning and coordination of services and management of operational issues. The Committees would comprise a representative of each CSO in the local Alliance, and be co-chaired by the DHS area manager and the chief executive officer or area manager of the lead CSO, ensuring that both DHS and the lead CSO are accountable for the Alliance meeting its responsibilities. The Inquiry anticipates that DHS will need to support some Alliances to develop the capacity to use data to inform service planning.

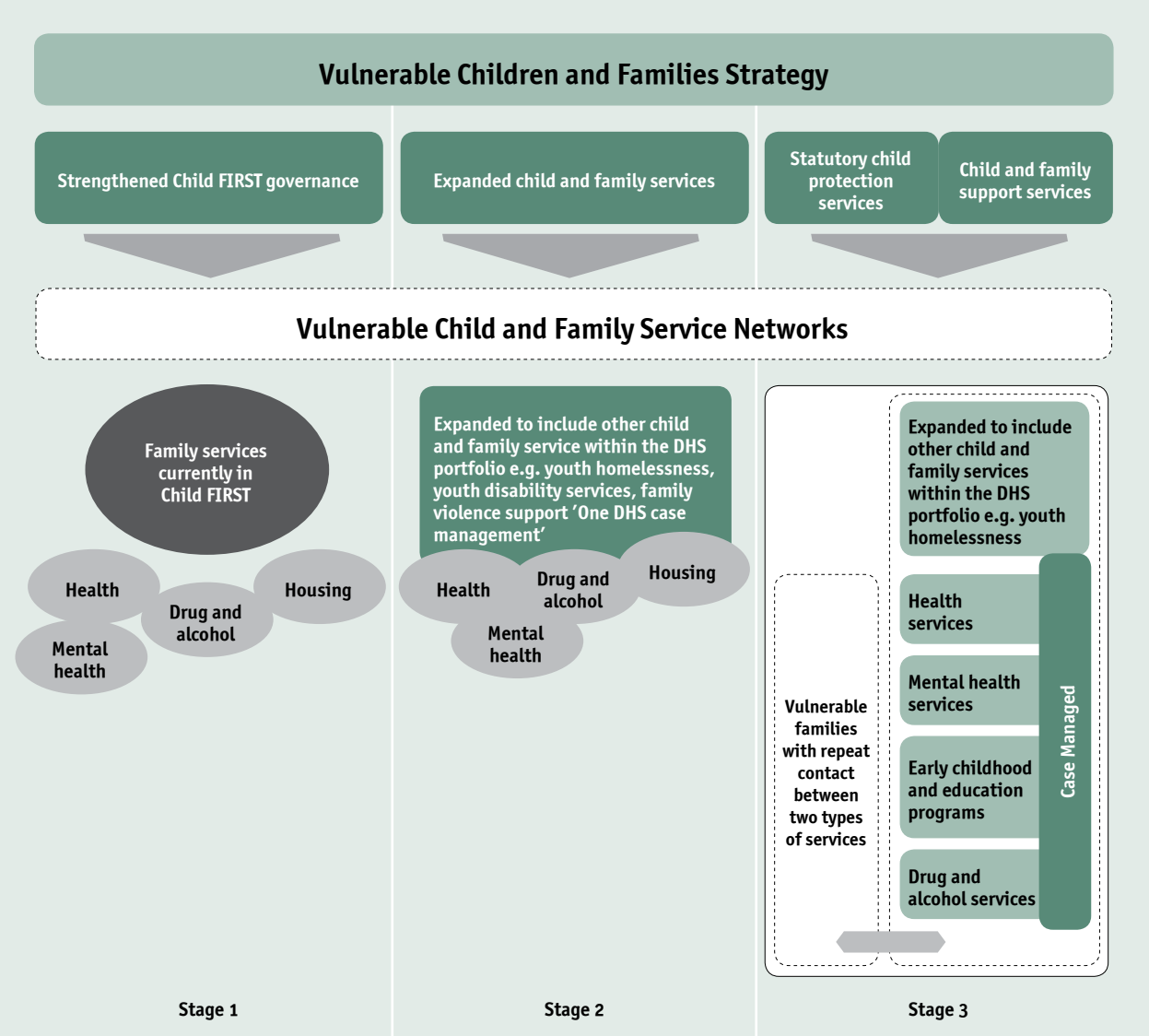
Accountability arrangements for Child FIRST should be strengthened further by ensuring that DHS' funding agreements with Alliance lead agencies clearly specify the CSO's role, accountability and responsibilities, and include appropriate performance measures. This would allow DHS to hold lead CSOs to account should they fail to meet their responsibilities.

The Inquiry considers there is an opportunity to expand upon the existing Alliances of family services and statutory child protection services to develop broader, more coherent Vulnerable Child and Family Service Networks encompassing specialist adult services, health services and targeted programs linked to universal services. This would support the provision of an integrated package of services that meet the full range of needs of vulnerable children and their families. The networks should be expanded in stages, with the priority to be to include other services within the DHS portfolio plus specialist adult services that address key risk factors of child vulnerability, such as drug and alcohol services and mental health services (Stage 2 of Figure 8.6).

This reform is aligned with the recommendation in Chapter 9 for the introduction over time of a consolidated intake model where Child FIRST and statutory child protection intake and referral processes are first co-located and then, potentially, combined (Stage 3 of Figure 8.6).

The consolidated intake and referral services would refer vulnerable children and families to the Vulnerable Child and Family Service Networks. Families would only need to enter the service system once, and the intake and referral service would be responsible for ensuring families receive an integrated, comprehensive service response. Families would no longer have to navigate a complex and uncoordinated service system themselves.

Figure 8.6 Expanded Vulnerable Child and Family Service Networks



Source Inquiry analysis

Consistent with the broadening of the Vulnerable Child and Family Service Networks, the Inquiry recommends that the legislative requirement to act in the best interests of children (which currently applies to family services under the CYF Act be broadened to apply to all network services. As further recognition of our responsibility to vulnerable children and young people, legislation could also require services – particularly specialist adult services – to prioritise service delivery to vulnerable children, young people and their families. These provisions should be placed in the relevant legislation governing the services.

Recommendation 16

As part of a strategy to improve services for vulnerable children and families in need, the Department of Human Services should strengthen area-based planning and coordination of family services and accountability arrangements under Child FIRST by:

- Establishing Area Reference Committees to oversee the monitoring, planning and coordination of services and management of operational issues within each catchment. The Committees would be co-chaired by the Department of Human Services area manager and the chief executive officer or area manager of the lead community service organisation, and comprise a representative of each community service organisation in the local Alliance; and
- Ensuring the funding arrangements for Alliance lead agencies clearly specify the agencies' responsibilities for receiving referrals, undertaking an initial assessment of clients' needs, and facilitating an appropriate service response, with appropriate performance indicators.

Recommendation 17

The Government should expand upon the existing local Alliances of family services and statutory child protection services to develop broader Vulnerable Child and Family Service Networks – catchment-based networks of services for vulnerable children and families, including statutory child protection, family services, specialist adult services, health services and enhanced universal services.

Recommendation 18

The Government should ensure the legislation governing relevant services establishes the responsibilities of services to act in the best interests of children and young people, and to prioritise service delivery to vulnerable children, young people and their families. In addition, health services and specialist adult services should be required to adopt family-sensitive practice guidelines.

Part 4: Major protective system elements

Chapter 9:

Meeting the needs of children and young people in the statutory system

Chapter 9: Meeting the needs of children and young people in the statutory system

Key points

- The Inquiry has investigated the quality, structure, role and functioning of statutory child protection services provided by the Department of Human Services (DHS).
- Submissions to the Inquiry raised a number of issues about statutory child protection services. DHS receives a large number of reports made by people about risks to the wellbeing or safety of children or young people. During 2010-11, there were 55,000 reports received and this rate is expected to grow further in future.
- The increase in the number of child protection reports is not a direct representation of the increase in prevalence of child abuse or neglect because reports today cover a much broader range of child and family welfare and safety issues than they did previously (for example, a child witnessing family violence). The expanded scope of reports reflects society's broadened understanding of vulnerability and what places a child at risk of harm.
- Evidence on outcomes for children receiving statutory child protection services indicates they will continue to have repeated contact with the Department of Human Services over the course of their lives, with multiple occurrences of harm or neglect. It is hard to see how such intervention is the most effective government response to ensure a vulnerable child's wellbeing and eventual transition to independent adult life.
- Statutory child protection services are likely to be most effective when they are balanced with other service responses designed to reduce vulnerability in the Victorian community.
- Statutory child protection services are resource constrained. The Department of Human Services needs to improve data collection on case complexity and other capacity constraints to inform future capacity analysis.
- Changes to the intake model are recommended to drive more effective decision making processes, reduce risk and to improve coordination of services to vulnerable children and their families. An area-based approach to co-located intake should be used (initially as a pilot) to bring the assessment of appropriate responses to wellbeing and protective intervention reports into more collaborative and coordinated arrangements.
- Once a child has been brought into the statutory system, DHS can improve the effectiveness of its services to improve outcomes for vulnerable children and families. The introduction of differentiated pathways will better recognise the vulnerability characteristics of children and their families requiring statutory intervention and allow service responses to be tailored accordingly.
- The Inquiry finds that it presently takes too long for a child in out-of-home care to achieve placement stability and this exposes too many children to additional trauma. Where appropriate, barriers to adoption and permanent care must be identified and removed.
- Recommendations to improve and simplify case planning and improve collaboration across service agencies are also made. Guidance and instructions for child protection practitioners should be simplified and DHS should continue to strengthen the information technology systems required to support practice.

9.1 Introduction

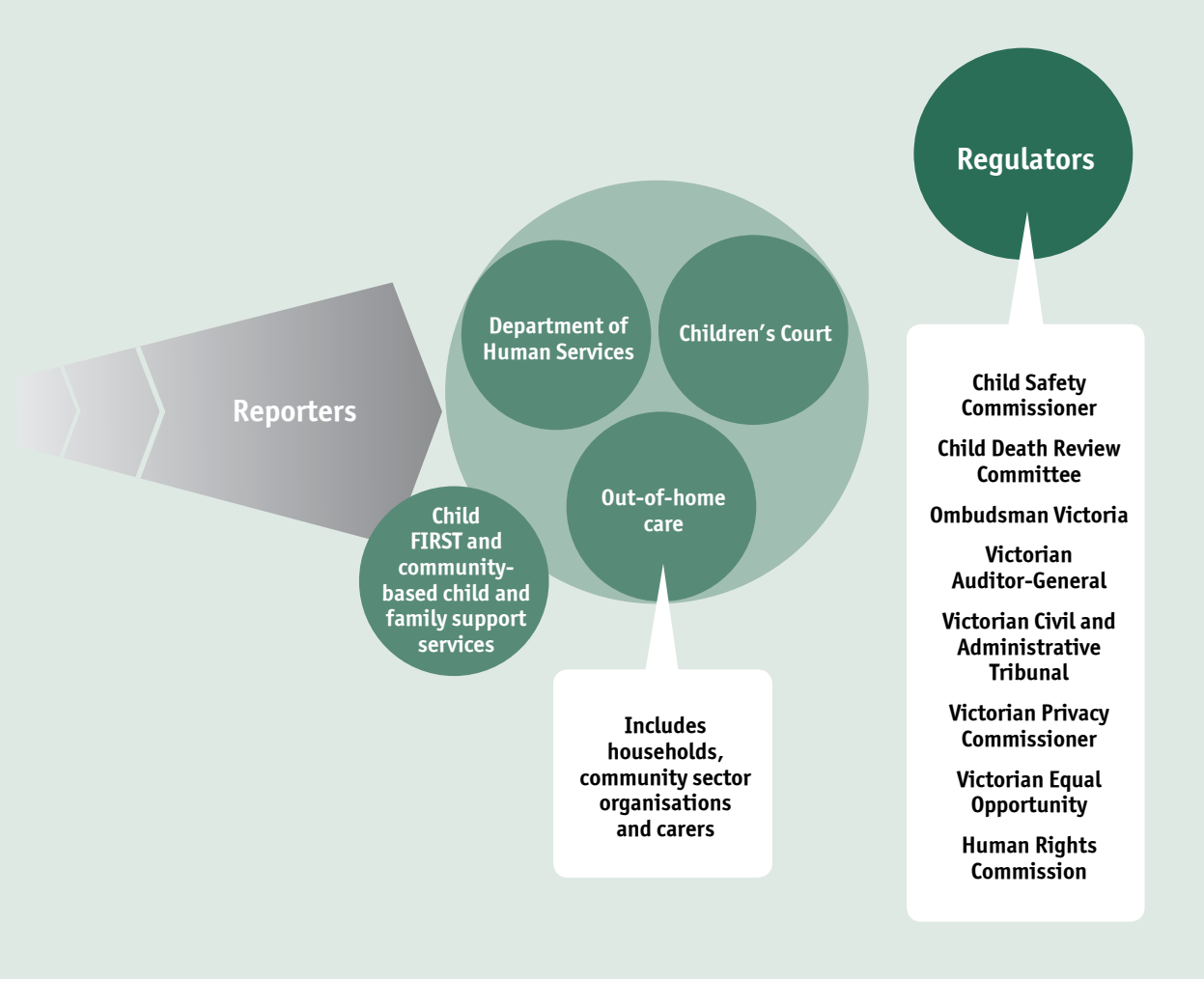
The Inquiry's Terms of Reference includes the quality, structure, role and functioning of statutory child protection services. Specifically, the Inquiry was asked to examine reporting, assessment and investigation procedures as well as responses to child abuse and neglect.

Statutory child protection services are provided by the Department of Human Services (DHS) and they involve:

- Investigating matters where a person has raised concerns about a child's safety or wellbeing (known as a 'report');
- Referring children and families to voluntary support services to assist a family to provide for the ongoing safety and wellbeing of their children;
- Using statutory powers and seeking orders from the Children's Court to take action if a child's safety within their family is at risk, including placing a child in alternative care arrangements or supervising a child in their home;
- Supervising children on orders granted by the Children's Court; and
- Providing and funding out-of-home care accommodation services, specialist support services, and adoption and permanent care to children and adolescents in need (DHS 2011a).

Figure 9.1 illustrates the context in which these activities take place within Victoria's system for protecting children.

Figure 9.1 Victoria's child protection system: principal parties and scope



Source: Inquiry analysis

This chapter examines Victoria's statutory child protection services and proposes six recommendations. The chapter is organised as follows:

- First, a brief description is given of the legislative and services framework and the five main phases of statutory services. These phases are: intake, investigation, protective intervention and assessment, protection order and case closure.
- Second, the chapter describes trends and other metrics to provide a sense of the scale, dimensions and patterns of statutory child protection services provided by DHS.
- Third, the chapter addresses the current performance of statutory child protection services by presenting available data on benchmarks and standards, recent Victorian Ombudsman reports and child death reviews.
- Fourth, using the material and input received through submissions to the Inquiry, three major issues are canvassed; these are:
  - the question of whether statutory child protection services are sufficiently resourced to intervene when required to protect vulnerable children and young people;
  - the efficiency and effectiveness of child protection practice; and
  - the need to improve stability in placements for vulnerable children and young people to avoid causing them further harm and trauma.
- Finally, recommendations are made that address these key issues.

As part of statutory services, DHS applies for a variety of legal orders through the Children's Court to authorise some types of interventions for protecting children and young people. The role and operation of the Children's Court in granting different types of legal orders is examined in detail in Chapter 15, along with proposed recommendations to simplify these processes.

9.2 Current legislative and service framework

In relation to statutory child protection services, the Secretary of DHS holds overarching responsibilities under the *Children Youth and Families Act 2005* (CYF Act) (section 16), these are:

- Promoting the prevention of child abuse and neglect;
- Assisting children who have suffered abuse and neglect and providing services to their families to prevent further abuse and neglect from occurring;
- Working with community services to promote common policies on risk and need assessment for vulnerable children and families;
- Implementing appropriate requirements for checks ensuring that those working with children are suitable and comply with appropriate ethical and professional standards;
- Working with other government agencies and community services to ensure children in out-of-home care receive appropriate educational, health and social opportunities;
- Conducting research on child development, abuse and neglect and evaluating the effectiveness of community-based and protective interventions in protecting children from harm, protecting their rights and promoting their development;
- Leading the ongoing development of an integrated child and family service system; and
- Giving effect to protocols existing with Aboriginal agencies.

The Secretary also holds a number of responsibilities relating to the provision of out-of-home care services, including:

- Publishing and promoting a charter for children in out-of-home care; and
- Providing and arranging for services supporting transition from out-of-home care to independent living.

DHS delivers child protection statutory services through a case management approach for each child or young person. The delivery of statutory child protection services is structured into five phases: intake, investigation, protective intervention and assessment protection order and case closure. An overview of these phases is provided in Figure 9.2 (see Appendix 9 for a detailed description).

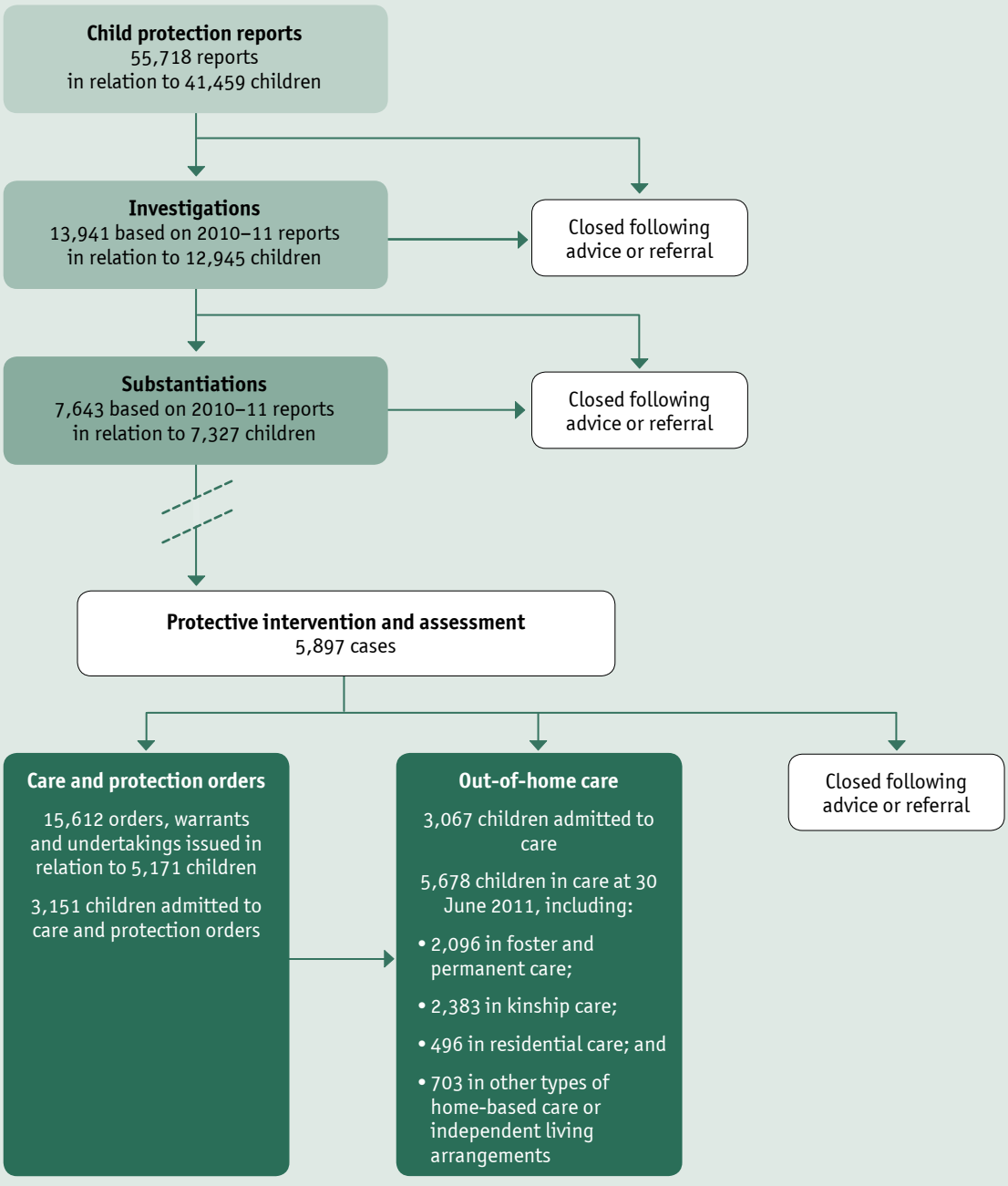
The activities that take place in each phase are described from section 9.2.1 onwards.

DHS employs about 1,200 child protection practitioners and service delivery is structured through eight regional areas across Victoria (information provided by DHS).

Child protection practitioners are supported in their work by their supervisors, managers and materials such as the *Child Protection Practice Manual* (DHS 2011k). The practice manual covers a wide range of operational issues including confidentiality, supervision, procedures to be adopted for children in specific circumstances, critical incidents and complaints management to name a few.

Specific workforce issues including capability and a sector-wide approach to professional development are canvassed in detail in Chapter 16. Chapter 21 will examine the governance arrangements and oversight mechanisms for statutory child protection services.

Figure 9.2 Overview of activity in Victoria's statutory child protection system, 2010-11



Source: Information provided by DHS

Note: Figure shows child protection reports for 2010-11 and investigations and substantiations relating to those reports. For protective intervention and assessment, care and protection orders and out-of-home care, the figures shown detail the level of activity for 2010-11 (unless otherwise stated), including activity relating to child protection reports received prior to 2010-11. The term 'substantive orders' is synonymous with the Australian Institute of Health and Welfare's (AIHW) 'care and protection orders' so these are not indicated separately.

9.2.1 Phase 1: intake

The intake phase is where a family becomes involved with statutory child protection because concerns are raised about the health and wellbeing of their children.

A summary of the objectives of intake services are to:

- Identify and prioritise Victorian children and young people who require statutory investigation because they are at high risk of harm; and
- Provide links to family support services, so that vulnerable families are assisted when circumstances do not require statutory intervention.

Reports of concern

DHS becomes aware of concerns about a child's welfare when a report is made to them by an individual. Reports are made either to DHS directly, or to Child FIRST (see Figure 9.3). When reports are made to Child FIRST, if the concerns are determined by Child FIRST and the community-based child protection practitioner to be of a serious nature, they are referred to DHS. The area within DHS that receives and makes decisions about reports is called child protection intake. In the past, reports were known as notifications.

Reports and related queries come from many different sources, including community members, relatives of children or young people, professionals who interact with them (for example, nurses or teachers), Centrelink officers, Family Court officers, and interstate and overseas statutory child protection authorities. Some individuals are required by law to make reports by virtue of their professional occupation and this mechanism is examined further in Chapter 14. Reports convey a wide range of concerns about a child or young person's wellbeing and the CYF Act specifies that there are two categories: wellbeing reports and protective intervention reports.

Two different categories of reports

A wellbeing report: where a person has significant concerns for the wellbeing of a child. These reports are directed to Child FIRST.

A protective intervention report: where a person believes, on reasonable grounds, that a child is in need of protection. These reports are directed to DHS statutory child protection intake.

The two types of reports described above reflect different levels of perceived risk surrounding a child or young person's safety. A protective intervention report involves the highest severity of risk. In line with the principle of protecting the family as a core unit of society, Victorian statutory child protection services must only intervene where there is an unacceptable risk of harm or neglect because a family is unable to provide adequate care and protection for their child.

Once a report is received, DHS child protection practitioners assess the individual circumstances and risks and make a decision about what course of action should be taken. Once it has been determined that a report is a protective intervention report, the matter moves to phase 2 and an investigation is conducted. If the report does not meet this threshold, a referral to child and family support services may be made instead of an investigation, for example, a child's family may be referred to a family violence, housing or mental health service provider. In order to do this, DHS either refers a reporter to the Child FIRST intake or directly to the relevant service provider.

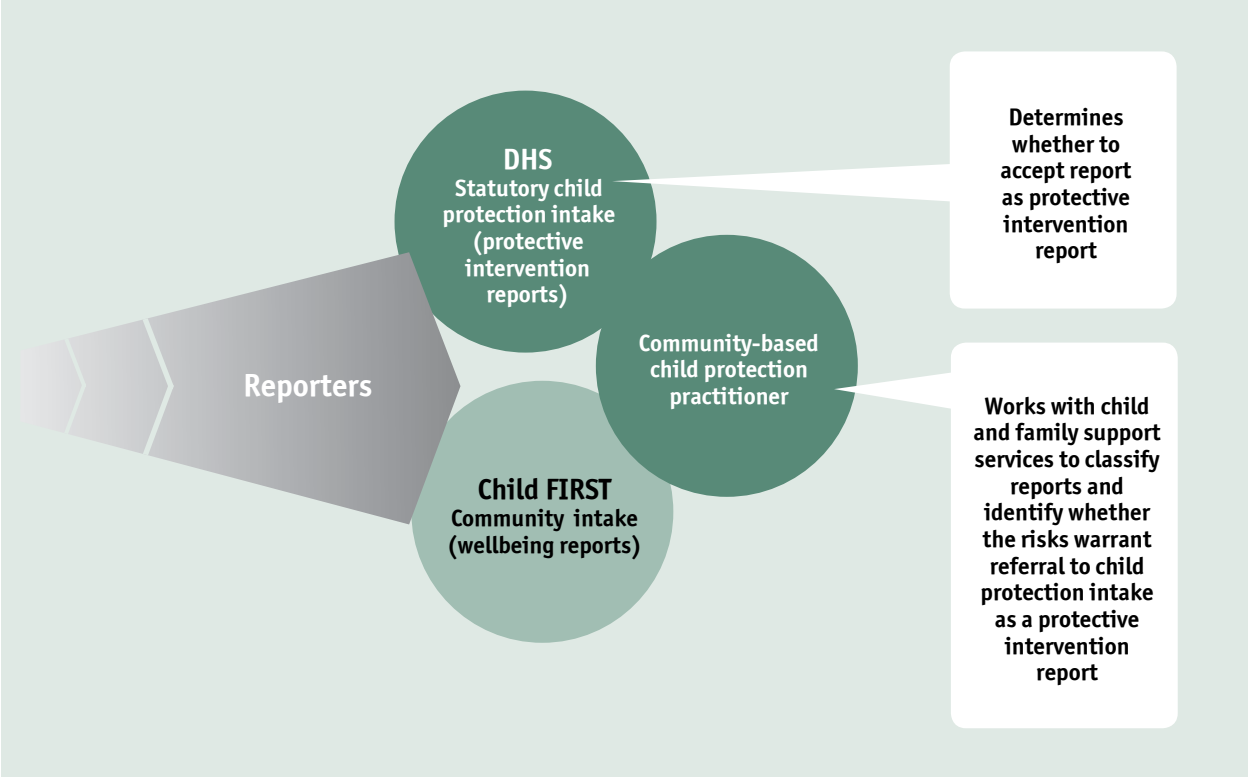
Another option for a child protection practitioner is to determine that no further action should be taken in relation to a report. If this is the case, then the matter will be closed. Cases may be closed at any point throughout the phases of statutory child protection services, if it is determined by DHS that statutory intervention is no longer required.

There are often grey areas concerning reports; sometimes it is not clear whether a report about the circumstances of a child has met the threshold required to trigger a statutory investigation. Some reports allege serious abuse or harm and require urgent action by statutory child protection practitioners. For example, a hospital emergency department professional may report that a child's fractures are non-accidental and there is a serious likelihood that they were caused by the child's caregiver. Other reports are less clear-cut, covering issues such as a child's appearance and behaviour at school.

Grounds of harm

The grounds of harm in the CYF Act authorise statutory child protection intervention in a specific list of areas, including where a child's parents are dead or incapacitated, where a child is abandoned by their parents, or where a child is, or is likely to, suffer significant harm as a result of their parents' actions (or inability to protect them from another's actions). In 2005 the areas of harm were broadened to include when harm is caused by not only single acts, omissions or circumstances causing significant harm but also accumulated through a series of acts, omissions or circumstances (s. 162(2), CYF Act).

Figure 9.3 Child protection and wellbeing reports: Victoria's approach



Source: Inquiry analysis

9.2.2 Phase 2: investigation

A summary of the objectives of the investigation phase are to:

- Examine the circumstances of a protective intervention report and determine whether the claims of abuse or neglect are substantiated;
- Make a decision as to whether continuing statutory intervention is required to protect a vulnerable child or young person;
- Make decisions and arrangements in a way that incorporates the child's views (so long as they are of an appropriate age and stage to participate) and collaborate with relevant members of the child and family's network; and
- Work effectively with other professionals involved in providing care and services to the child and their family to enable a holistic and accurate assessment of harm or the risk of harm to a child.

To investigate a report, a team of two child protection practitioners directly contact the child or young person, their parents, professionals and significant others who are aware of the child and family in order to collect information about the situation. Generally, families are visited at home although sometimes children will be interviewed separately at different locations such as school.

The CYF Act requires this investigation to occur in a way that is in the best interests of the child (s. 205). Child protection intake is required to report to Victoria Police all allegations and situations of sexual abuse, physical abuse or serious neglect (DHS 2011k, advice no. 1184; protocol agreement with Victoria Police, see Chapter 14).

Generally, investigations rely on the voluntary participation of the family in allowing practitioners to visit their homes and meet with relevant caregivers. Investigations, however, produce information that may be used in future court proceedings, so child protection practitioners must warn the child and the child's parents that any information they give may be used for the purpose of bringing an application before the Children's Court (s. 205, CYF Act). If the family refuses to participate in an investigation, child protection practitioners must seek court authorisation to require information to be collected. After gathering and assessing available evidence, child protection practitioners must determine whether significant harm has occurred to a child, and whether their safety, stability and development is at further risk. One of the outcomes of an investigation is that DHS might seek orders to remove the child from the family and place them into alternative care. When a child protection practitioner finds that a child has suffered or is at risk of suffering significant harm, a protective intervention report is found to be substantiated.

Once substantiation decisions are made, the child protection practitioner then determines what type of further interventions are required to ensure the safety, stability and development of the child. The case may then proceed to the protective intervention phase or, alternatively, the family may be referred to family support services. In other cases, the child protection practitioner may provide advice to the family or take no further action. Advice provided to the family may cover matters such as the availability of family mediation for adolescents, Family Court custody or access matters, or even financial counselling services. No further action may be taken in cases where the report is substantiated, but the child is no longer deemed to be at risk of harm because the family circumstances may have changed. The case would then be closed.
As noted above, case closure can occur at any point across the phases if no grounds for continuing statutory intervention are present.

9.2.3 Phase 3: protective intervention and assessment

A summary of the objectives of the protective intervention phase are to:

- Ensure a child's immediate safety from harm or from an unacceptable risk of harm;
- Address the impact of the harm suffered to date by the child and work with the child's family to ensure that change occurs and the child's future needs are addressed;
- Make decisions and arrangements in a way that incorporates the child's views (so long as they are of an appropriate age and stage to participate) and collaborate with relevant members of the child and family's network;
- Plan and take actions to prevent the need for alternative care arrangements so the child can safely remain in their family home;
- Work effectively with other professionals involved in providing care and services to the child and their family to enable a holistic and accurate assessment of a child's needs and ensure their safety and wellbeing.

During the protective intervention and assessment phase, child protection practitioners must decide whether they require a court order to assist their work with a vulnerable family.

The activities in this phase involve DHS working with the family to address risks and other issues affecting a child's safety and wellbeing. Child protection statutory services must carry out these activities in concert with a range of other service providers.

Family group conferences and other types of meetings may be held where the child protection practitioner can discuss issues and next steps with a child's family. The child protection practitioner is continually assessing their view of the level of risk to a child and what type of assistance and support is required to enable a family to care for their child. Case planning supports a child protection practitioner's assessment work.

Case planning is also intended to address a child's stability needs. Stability includes a child's relationships with their primary carer, their friends, extended family and connections to kindergarten, school and other social or recreational activities.

Case plans produced during the protective intervention phase are to outline:

- Evidence of harm to the child and the risk of harm to the child's safety, stability and development (these concerns should be shared with the parents);
- Ongoing review and assessment processes for determining whether court involvement is required;
- Any additional assessments of the child or parents that are required to inform decision making;
- Immediate goals, actions and timelines to determine safety or parental capability to protect the child from harm and promote stability and healthy development; and
- How the family will be supported by statutory child protection services to implement the plan (DHS 2011k, advice no. 1282, p. 15).

As a result of assessment, a child's parents may be encouraged to participate in relevant support services and undergo monitoring, bearing in mind the consequences if they do not participate could be that DHS applies for court orders that require assessment, treatment, temporary care or other types of statutory interventions. Such activities help child protection practitioners assess a parent's willingness to change and improve the care of their children. For example, this might involve regular voluntary drug testing or parenting classes.

9.2.4 Phase 4: protection order

If a child protection practitioner determines that they are unable to work effectively with a vulnerable child or young person's family on a voluntary basis to ensure the child's safety, they will make a protection application to the Children's Court. Child protection practitioners will seek one of a variety of orders to obtain lawful authority to mandatorily intervene in the child's family, for example, to further supervise or monitor a family, or potentially, to make alternative arrangements for the child's care.

The objectives of the protection order phase are much the same as for the protective intervention and assessment phase (see section 9.2.3). The key element of the protection order phase is that it provides a child protection practitioner with specific lawful authority arising from a protection order. The type of order obtained will determine the nature and duration of the mandatory intervention into a vulnerable child's life.

Additional case management activities carried out by child protection practitioners during the protection order phase could include:

- Monitoring compliance with court orders and conditions, for example, receiving results of drug screening of parents or seeking warrants when children are missing or abducted;
- Making decisions on placement options when it has been determined a child should be placed in out-of-home care, reunification with parents or permanency planning; and
- Making decisions about closing the case, when child protection cease to be involved with a child or young person, for example, when a child is transitioned to independent living at 18 years of age.

Case plans after a protection order is made

Within six weeks of obtaining a court order, a formal case plan must be prepared by a child protection practitioner (s. 167, CYF Act). Case plans should document all significant decisions made by DHS about the present and future care and wellbeing of the child, including the placement of and access to the child (s. 166, CYF Act).

The practice manual provides that children should be invited to participate directly in planning meetings and assisted to understand the importance of their role in the process.

Several different types of plans are completed by child protection practitioners, including:

- Protection order case plans (also referred to as 'best interests' case plans) – these are overall plans for children made after a court order has been issued (s. 166-7, CYF Act);
- Cultural plans for Aboriginal children and Torres Strait Islander children (s. 176, CYF Act);
- Case and care management or placement plans – for children in out-of-home care covering a child's needs, planned outcomes, roles and responsibilities of carers and parents (DHS 2011k, advice no. 1284, 1282);
- Stability plans – prepared for children placed in out-of-home care (s. 170, CYF Act);
- Education support plans – prepared for children placed in out-of-home care (DHS 2011k, advice no. 1284); and
- Leaving care plans (DHS 2011k, advice no. 1418).

Protection order case plans cover a variety of matters including:

- Goals addressing the child's stability and development needs;
- Stability plans – covering proposed long-term carers for a child;
- Arrangements and strategies addressing the child's developmental, educational and health needs, including dealing with therapeutic treatment;
- Cultural support matters;
- Conditions stipulated in the protection order, for example, the amount of access between a parent and their child or, if the child remains at home, the amount of access for child protection practitioners to monitor and assess the child;
- Tasks and timelines for actions and next steps; and
- Contingency arrangements to apply if the plan is not working.

Protection order case plans will vary due to the variety and breadth of types of cases and individual circumstances of each vulnerable child and family. Protection order case planning is undertaken by unit managers, who are more senior, experienced child protection practitioners.

Although a child's stability needs informs case planning and out-of-home care decisions, once a child has been placed in out-of-home care, a formal stability plan is required. Formal stability plans must be prepared within certain timeframes that depend on the child's age, and the duration and length of time spent in out-of-home care (s. 170(3), CYF Act).

Reunification planning

Reunification planning is triggered when a child has been placed in alternative care. Reunification is the primary goal of statutory child protection intervention where it is in a child's best interests, as this aligns to society's fundamental expectation that the family be protected as a core unit of society. Further, the bond between a parent and child should be preserved as much as possible (s. 10(3)(a), CYF Act).

Reunification is intended to be a planned and timely process for safely returning a child to their home and facilitating their future safety and wellbeing in that home.

Once a decision is made about the alternative care arrangements required, DHS contracts with community service organisations (CSOs) to provide placement and care services for individual children. Out-of-home care is discussed in further detail in Chapter 10.

9.2.5 Phase 5: case closure

At each of the previous four phases, cases are closed when a decision is made that statutory intervention is not warranted.

Activities carried out when closing a statutory child protection case involve:

- Finalising steps taken to protect the vulnerable child, promote their healthy development and support the family (this could be through planning processes);
- Complete casework actions and tasks to discharge DHS' duty of care and other responsibilities to the child and the family and also to reliably inform possible future case management; and
- Ending DHS statutory child services involvement and intervention with a vulnerable child and their family.

9.3 The statistical dimensions of statutory child protection services

This section provides an overview of the scale, dimensions and trends of statutory child protection activities. Information presented is drawn from a range of published and unpublished sources, including:

- The Steering Committee for the Review of Government Service Provision (SCRGSP) *Report on Government Services 2011*, which contains time series and inter-jurisdictional data up to the 2009-10 financial year;
- A range of unpublished data provided to the Inquiry by DHS, including key statutory system metrics for the 2010-11 financial year; and
- The Inquiry's own analysis of de-identified unit records, provided by DHS, for all children who were the subject of a child protection report to DHS in 2009-10.

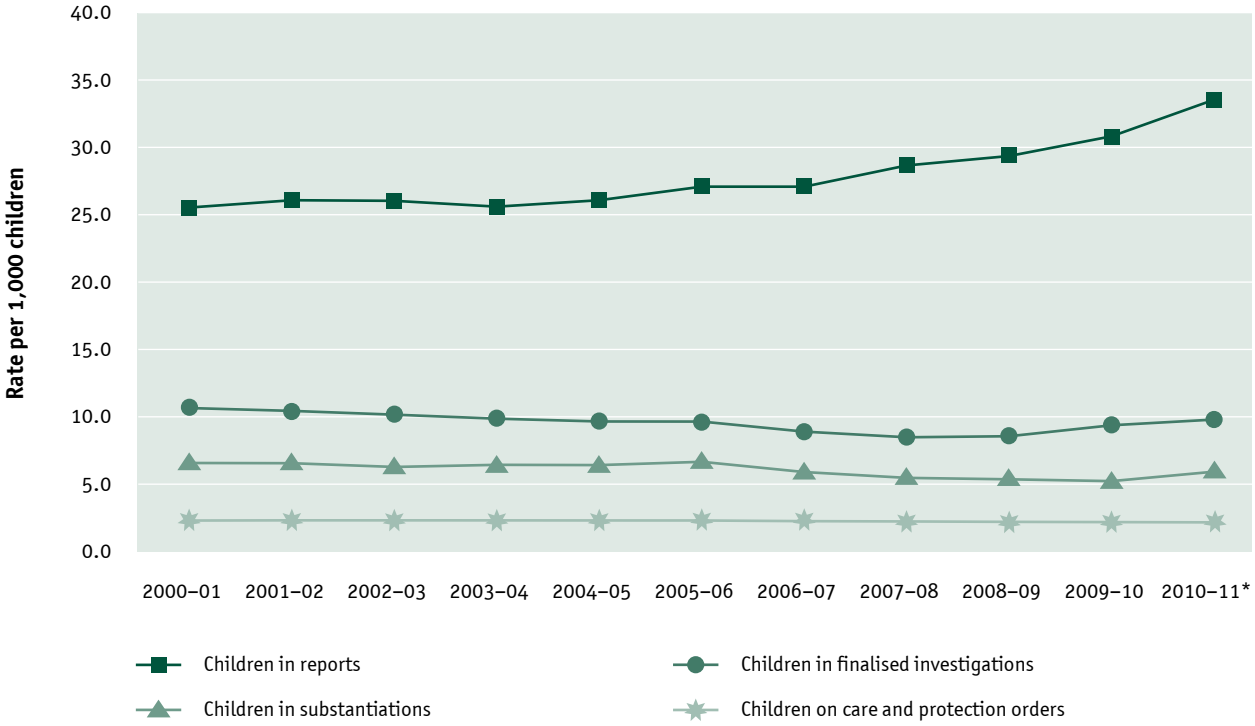
The Inquiry has sought to use the most up-to-date information available. However, as noted above, this includes a combination of 2009-10 and 2010-11 data.

As well as details about the statutory services provided, this section presents information on the typical characteristics of children interacting with the statutory child protection system, regional variations in child protection activity and overarching trends.

Context: trends over time

As was outlined in Chapter 2, reporting trends over time show an increasing rise in the numbers of protective intervention reports made about children and young people. Figure 9.4 provides a historical view of not only reporting trends but also investigations and substantiation trends over time for and children admitted to care and protection orders in Victoria.

Figure 9.4 Child protection reports, investigations and substantiations and children admitted to care and protection orders, rate per 1,000 children, Victoria, 2000–01 to 2010–11



Source: SCRGSP 2011c, Table 15A.53
* Provided to the Inquiry by DHS

Although reports have increased over time, substantiations have remained relatively constant and there has not been a corresponding growth in investigations.

During 2010-11 the DHS statutory child protection service received 55,718 child protection reports. These reports resulted in just under 14,000 investigations, or just under one investigation for every three reports. Of the reports that were investigated, just over half resulted in DHS substantiating that the child has been harmed.

In the majority of cases where substantiations of harm were found, the case proceeded to the protective intervention and assessment phase where a range of interventions may occur. In 2010-11, there were 3,151 children admitted to care and protection orders, including supervision, custody, guardianship or permanent care orders. During 2010-11, 3,067 children were admitted to out-of-home care.

9.3.1 Child protection reports

The Inquiry was provided with de-identified unit records for all children who were the subject of a child protection report to DHS in 2009-10. There were just over 48,000 received in 2009-10 compared with 55,718 in 2010-11. These records show that it is not uncommon for children to be the subject of multiple reports during a single year. The 48,000 reports received in 2009-10 relate to some 37,500 children. Figure 9.5 shows the age and sex of these children.

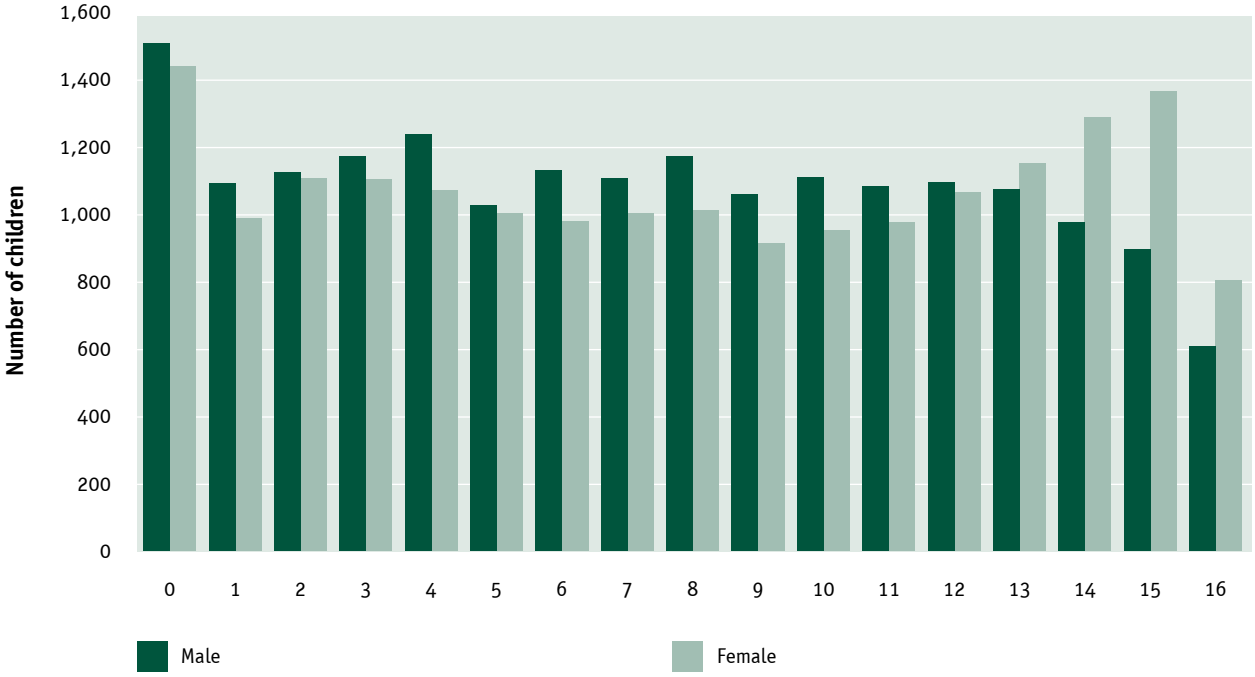
Characteristics of reports

There were more reports received about children aged under one than other ages in 2009-10 (see Figure 9.6). While boys aged under 13 were slightly more likely to be the subject of a report than girls of the same age, girls were more likely to be the subject of a report for ages 13 and over.

The largest number of reports were received by the three metropolitan DHS regions, with the majority of these reports received by the North and West Metropolitan and Southern Metropolitan regions (see Figure 9.7). Regional differences in reporting patterns were discussed as part of the incidence of vulnerability across Victoria in Chapter 2.

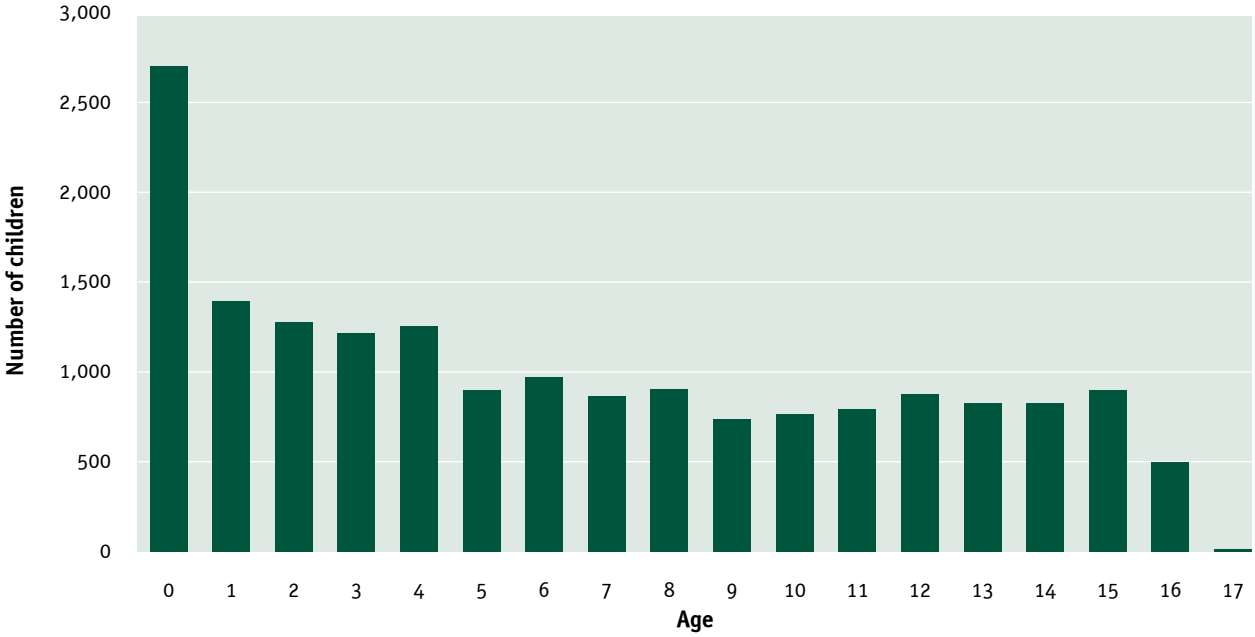
Even though the three metropolitan DHS regions received the highest number of reports in 2009-10, on a per capita basis, rural regions (with the exception of Barwon-South Western) received more reports, with Gippsland and Loddon Mallee regions receiving the highest number per capita (see Figure 9.8).

Figure 9.5 Children who were the subject of a child protection report, by age and gender, Victoria, 2009-10



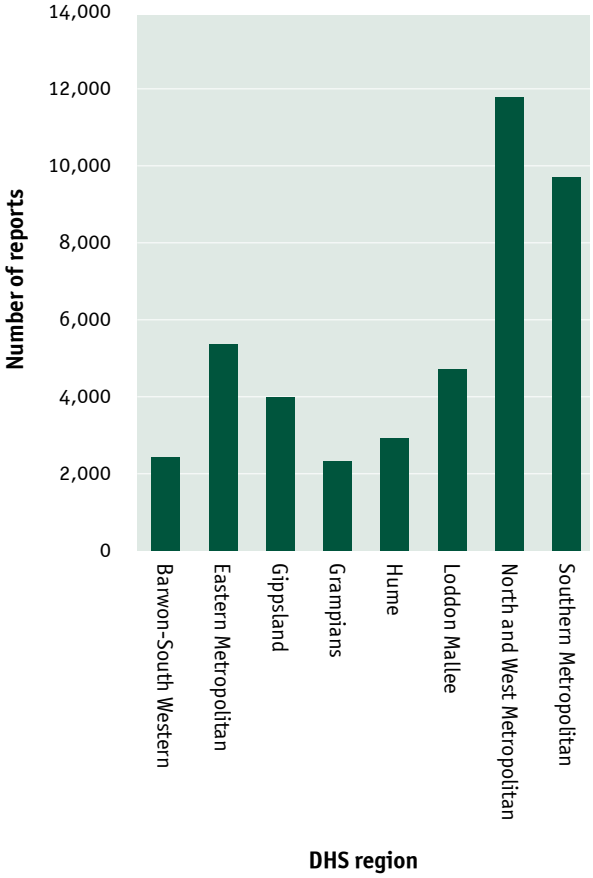
Source: Inquiry analysis of information provided by DHS

Figure 9.6 Children who were the subject of their first child protection report in 2009-10, by age, Victoria



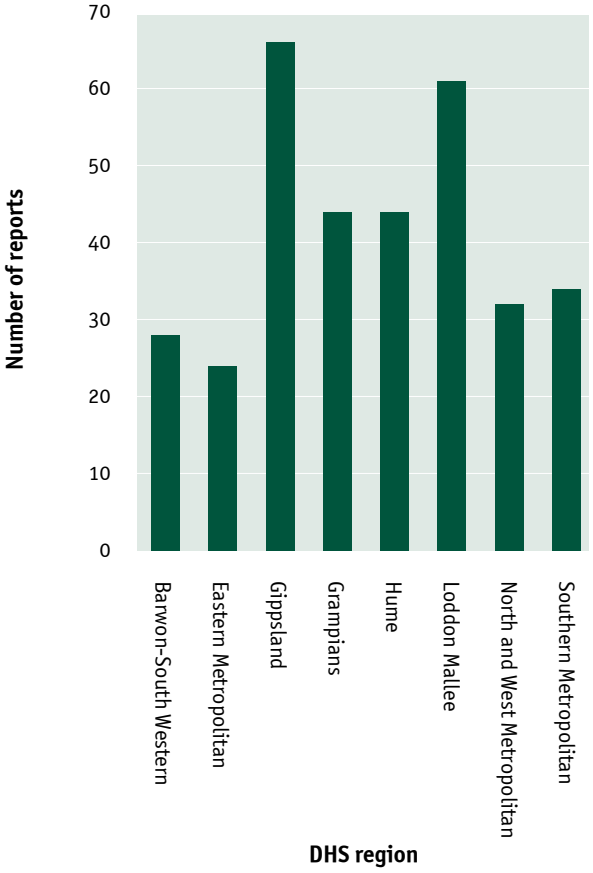
Source: Inquiry analysis of information provided by DHS

Figure 9.7 Child protection reports by DHS region, 2009-10



Source: Inquiry analysis of information provided by DHS

Figure 9.8 Child protection reports per 1,000 children, by DHS region, 2009-10



Source: Inquiry analysis of information provided by DHS and unpublished population data from DPCD

Note: Excludes reports where the region was not stated

Figure 9.9 shows that in 2010-11 the most common reasons for a child protection report were concerns over emotional harm (55 per cent) and physical harm (25 per cent), while reports for sexual harm or neglect accounted for 10 per cent each. The precise reasons for the rapid growth in reports for emotional harm are hard to determine in the absence of data about client complexity and characteristics. In other comparable jurisdictions there is a trend to increasing reports related to children being present in family violence incidents where the police are called to attend. It is possible this is part of the explanation in Victoria for the increasing reports of emotional harm. Similarly, the growth may relate to increased community and professional awareness of children's health and wellbeing and may reflect a widening concern of the community about the effects on children exposed to violence within the family.

In 2009-10, the largest number child protection reports were received from family members of the child, police and education providers (see Figure 9.10).

On average DHS received 130 child protection reports per day during the business week in 2009-10, however, these reports were not spread evenly. Fewer reports were received on weekends than weekdays and fewer reports were received in December and January, when many children were on school holidays. The highest number of reports were in February.

Reporting patterns about Aboriginal children

It is well established that Aboriginal children are over-represented in most areas of Victoria's statutory child protection system. In 2009-10 an estimated 9.4 per cent of children who were the subject of reports to DHS were Aboriginal (information provided to the Inquiry by DHS). However, Aboriginal children represent just 1.2 per cent of Victoria's child population (Department of Education and Early Childhood Development 2010, p. 34). Aboriginal children are therefore around seven to eight times more likely to be the subject of a report to DHS than non-Aboriginal children.

In 2009-10 the DHS regions with the highest number of Aboriginal children who were the subject of reports to DHS were: Loddon Mallee, North and West Metropolitan and Gippsland (see Figure 9.11).

The statutory response to a child protection report

As discussed earlier, all child protection reports go through an intake phase, where it is determined whether the report warrants an investigation by child protection practitioner or if it will be closed following advice. In addition, no further action may be required. Table 9.1 shows the outcomes of the intake phase for reports received in 2009-10.

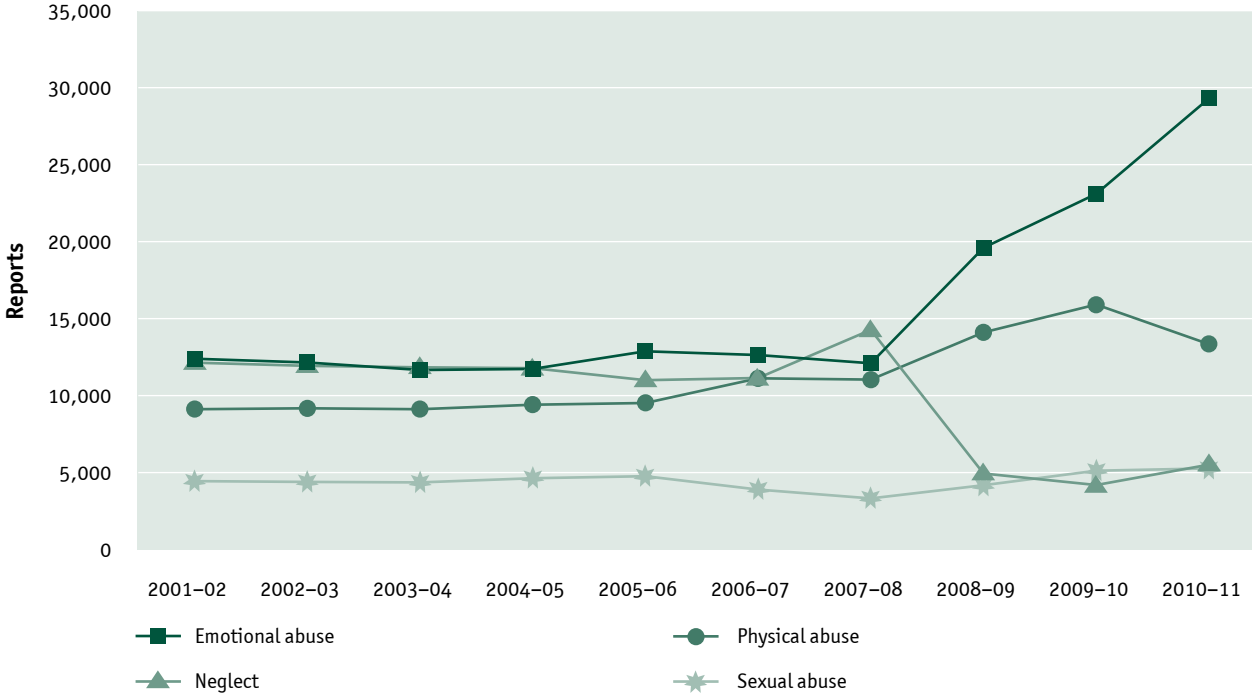
For 2009-10 overall, 29 per cent of reports to DHS were referred to an investigation, while two-thirds resulted in advice or information and were closed. Three per cent of reports resulted in no further action, due to either insufficient information or if the report has been determined to be inappropriate.

Table 9.1 Outcomes of the intake phase: child protection reports received in Victoria, 2009-10

Report outcome	2009–10	Comment
Investigation	29%	Reports proceeding to investigation phase
Advice/information	68%	This includes reports where advice was provided to the reporter and no further action was taken
No further action	3%	This includes 852 'inappropriate reports' as well as 738 reports where there was 'insufficient information' and no further action was possible
Total	**100%**	

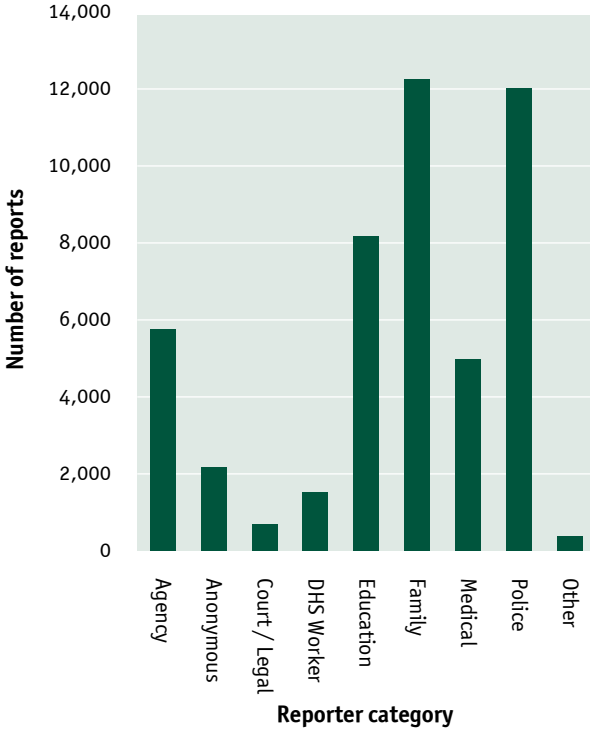
Source: Information provided by DHS

Figure 9.9 Child protection reports, by category of report, Victoria, 2001-02 to 2010-11



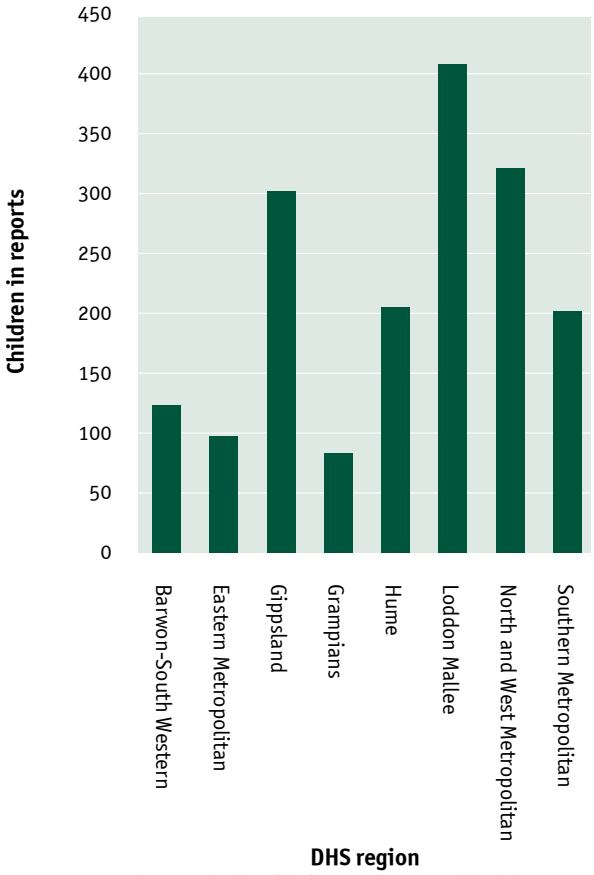
Source: Inquiry analysis of information provided by DHS

Figure 9.10 Child protection reports, by source of report, Victoria 2009-10



Source: Inquiry analysis of information provided by DHS
Note: Reports to DHS from Child FIRST are included under the 'Agency' category. There were 350 reports from Child FIRST in 2009-10.

Figure 9.11 Child protection reports of Aboriginal children, by DHS region, 2009-10



Source: Inquiry analysis of information provided by DHS

Referrals to and from Child FIRST

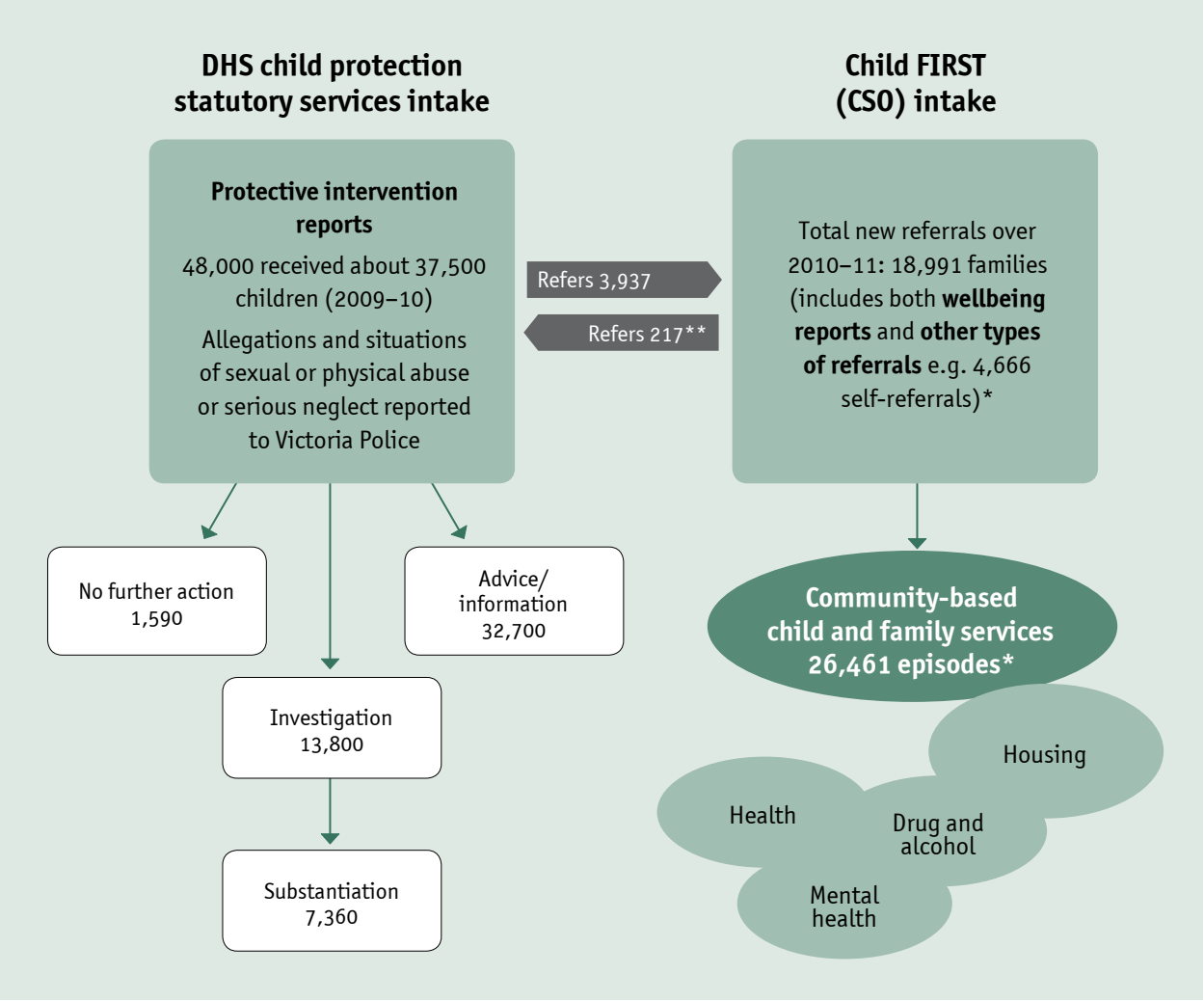
There is overlap between the families who access family support services funded by DHS and families whose children are the subject of reports to statutory child protection services. One way of measuring the extent of the common client group exists is to examine the referral rates between the Child FIRST intake and DHS.

Figure 9.12 presents the available data on referrals activity between statutory child protection services and Child FIRST.

During 2010-11, a total of 18,991 referrals were made to Child FIRST. Around 25 per cent of this figure, 4,666, were cases of self-referral (where a family voluntarily seeks assistance) while 21 per cent of this figure, 3,937, were referrals from statutory child protection (information provided by DHS). Child FIRST made 217 protective intervention reports during the same period (information provided by DHS).

In October 2011, the Victorian Ombudsman reported that in the Loddon Mallee region referrals of reports from DHS to Child FIRST (operated by St Luke's Anglicare) had risen over the preceding three years from 155 referrals in 2008-09 to 216 referrals in 2010-11 (Victorian Ombudsman 2011d, pp. 32-33).

Figure 9.12 Referral activity and Child FIRST and statutory child protection services, 2010-11 (some data from 2009-10)



Source:
*Information provided by DHS. The total number of family services cases provided in 2009-10 was 26,223, against the target of 23,150. The 2010-11 target is 24,910 (Victorian Government 2010b, p. 224).
**Note: The 2009-10 figure was 356.

9.3.2 The investigation phase

A total of 13,941 investigations were conducted in relation to the 55,718 child protection reports received by DHS in 2010-11. Based on the Inquiry's analysis of 2009-10 data, reports of alleged physical harm or sexual harm were more likely to be investigated than some other reports, for example, emotional harm. Similarly, if a child was the subject of multiple reports in 2009-10 their case was twice as likely to be investigated as the average.

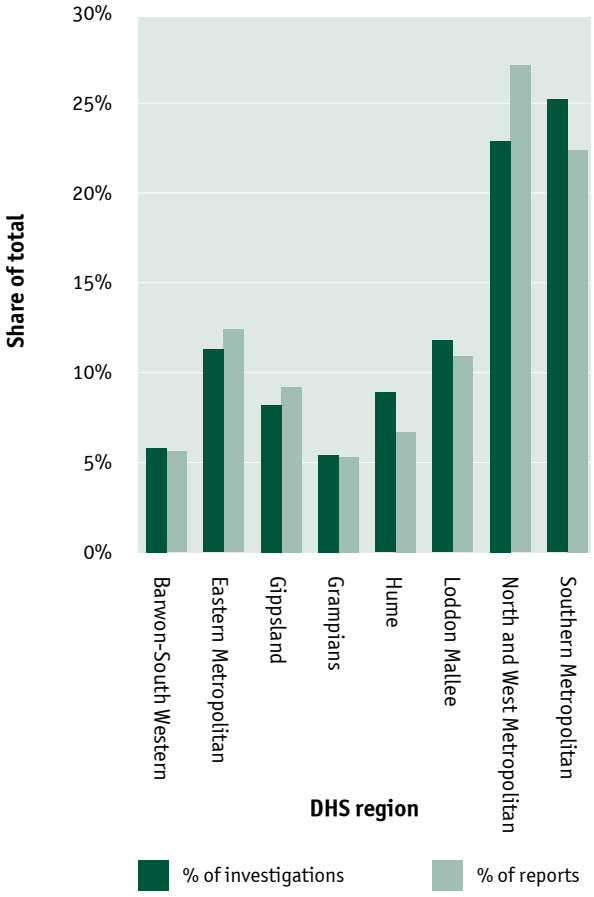
These trends are likely to reflect prioritisation decisions based on the risk of significant harm presenting to a child. Such decisions are required when resources are constrained and investigations cannot be conducted on every report.

There is some regional variation on the number of investigations carried out (see Figure 9.13). Although broadly similar, the Hume, Loddon Mallee and Southern Metropolitan regions have a higher share of investigations than reports, implying that a higher proportion of reports received in these regions in 2009-10 were investigated. The Southern Metropolitan region had a significantly lower share of investigations than reports.

Table 9.2 summarises the outcomes of investigations initiated in 2009-10. Overall:

- Just over half of investigations result in the report being substantiated;
- Of substantiated reports, around 70 per cent proceeded to protective intervention; and
- Less than 10 per cent of not-substantiated reports were referred to support services.

Figure 9.13 Child protection reports and investigations, by DHS region, 2009-10: percentage distribution



Source: Inquiry analysis of information provided by DHS

Table 9.2 Outcomes of investigations for child protection reports received in Victoria, 2009-10

Investigation outcomes	Substantiated	Not-substantiated	Total
Protective intervention	5,037	0	**5,037**
Referral to family services	22	423	**445**
Advice / no further action	2,266	5,963	**8,229**
Total	**7,325**	**6,386**	**13,711**

Source: Inquiry analysis of information provided by DHS
Note: Figures were only included where the investigation outcome was recorded, hence totals are somewhat lower than those reported elsewhere in this Report).

Substantiations

Figure 9.14 shows the number of substantiations based on 2009-10 reports per 1,000 children for each of the DHS regions, the region with the highest rate of substantiations per 1,000 children is Loddon Mallee (8.3), followed by Hume (6.8) and Gippsland (6.4). There is a significant difference in the substantiation rates between regions. For example a child in the Loddon Mallee region is three times as likely to be the subject of a substantiation than one in the Eastern Metropolitan region.

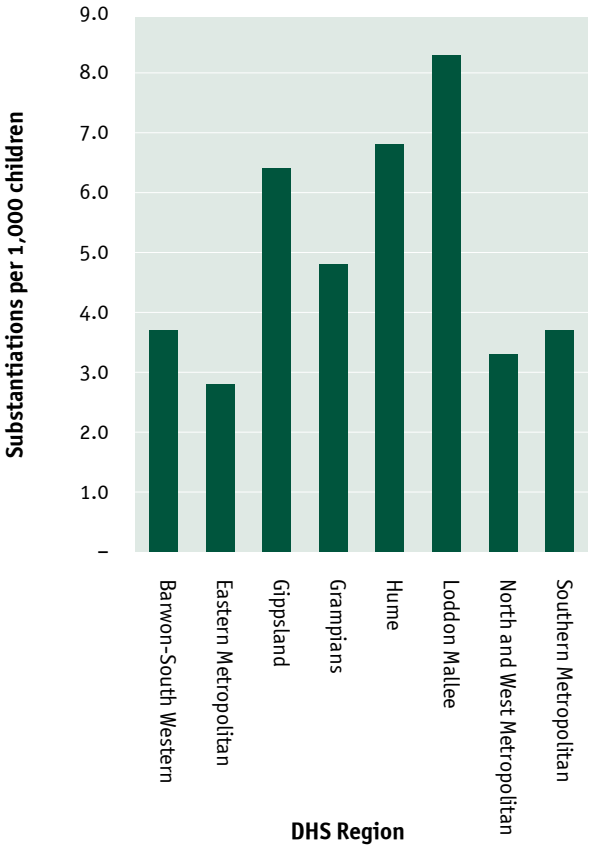
The rate of substantiations as a proportion of investigations was 52.7 per cent overall; however, this rate varies between DHS regions. Southern Metropolitan (44.2 per cent), Gippsland (48.0 per cent) and Hume (51.8 per cent) had a lower proportion of substantiations compared with investigations, while Barwon-South Western (58.3 per cent) and Eastern Metropolitan (58.2 per cent) had the highest rates of substantiations (see Figure 9.15).

As will be seen in the following section, which looks at the performance of statutory child protection services, substantiation rates are a key measure of effectiveness. Investigation and substantiation rates are also discussed further in this chapter in the context of demand and capacity constraints at section 9.5.1.

9.3.3 The protective intervention and assessment phase

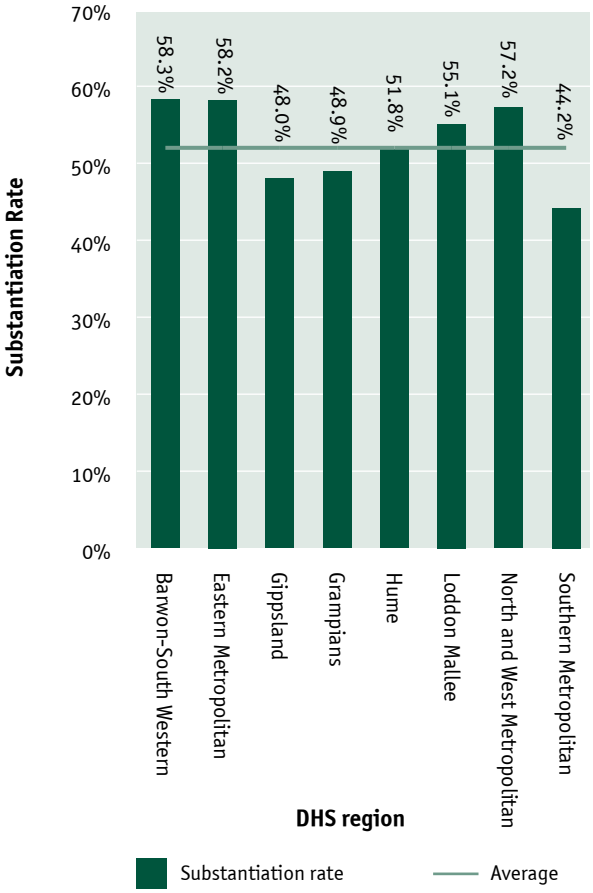
In 2010-11 there were 5,897 cases that proceeded to the protective intervention and assessment phase, equivalent to just over 10 per cent of the total number of reports received. As of June 2011 there were just under 2,000 cases in the protective intervention stage (information provided to the Inquiry by DHS).

Figure 9.14 Child protection substantiations per 1,000 children, arising from 2009-10 reports, by DHS region



Source: Inquiry analysis of information provided by DHS and Department of Planning and Community Development (DPCD) unpublished population data
Note: Excludes substantiations where the region was not stated

Figure 9.15 Child protection substantiation rates arising from 2009-10 reports, by DHS region



Source: Inquiry analysis of information provided by DHS
Note: Substantiation rate is calculated as the per cent of investigations that were substantiated.

9.3.4 The protective order phase

There are a variety of orders to obtain lawful authority to mandatorily intervene in the child's family, for example, to further supervise or monitor a family, or potentially, to make alternative arrangements for their care.

It is not uncommon for multiple orders to be made in relation to the one child. For example a court may issue a warrant for the removal of a child from their parents, followed by an interim accommodation order, followed by a protection order. In 2010-11, there were 15,612 orders, warrants and undertakings issued in relation to 5,171 children. The nature of these orders is discussed in detail in Chapter 15 dealing with court processes.

Children on care and protection orders

At June 2011, Victoria had around 6,700 children on care and protection orders compared with around 4,700 in 2001 (see Figure 9.16). The growth in the number of children receiving statutory child protection services has flow on effects to the volume of applications and orders sought in the Children's Court and to the provision of out-of-home care services. These issues are discussed further in Chapters 10 and 15 of this Report.

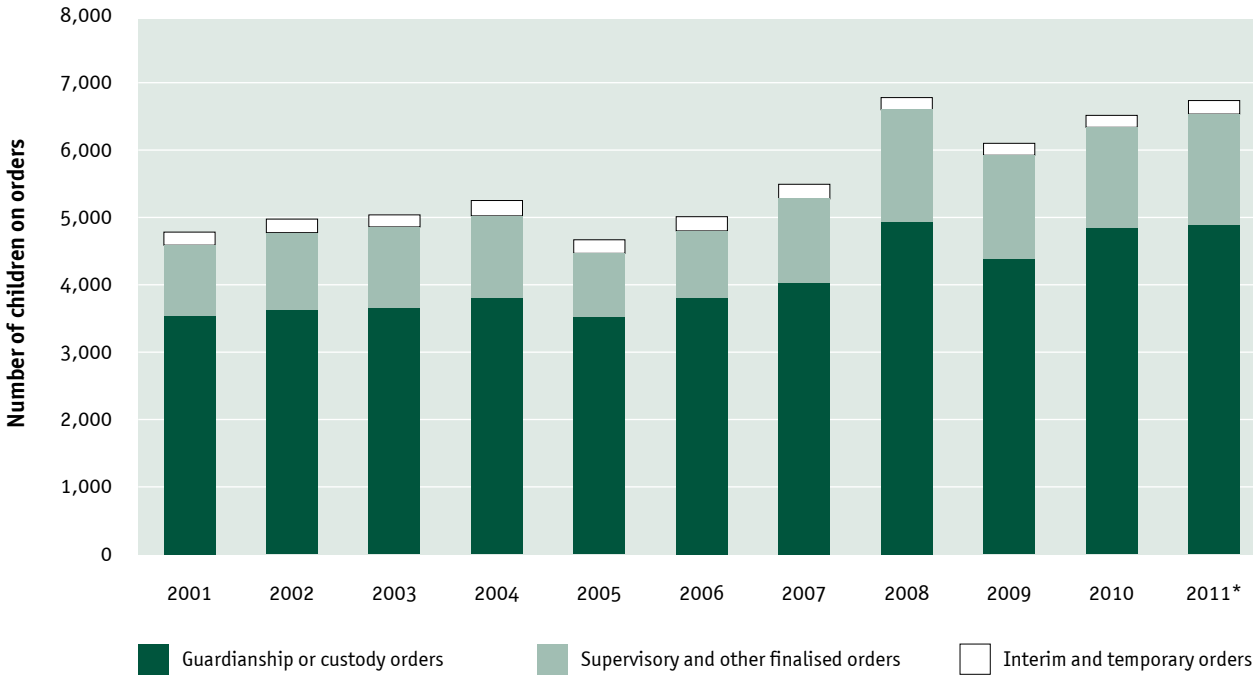
9.4 The performance of statutory child protection services

A range of internal and external performance measures are used for the statutory child protection system. These include broader whole-of-government wellbeing indicators measuring Victorian children's health, budget performance measures used by the Victorian Department of Treasury and Finance, internal monitoring carried out by DHS and national performance indicators developed by the Australian Institute of Health and Welfare (AIHW) and the Productivity Commission to inform the annual Report on Government Services (ROGS) publication.

The practice manual also contains a series of rules that stipulate standards to be applied for statutory child protection services. For example, these might include the number of days within which a particular activity or action (such as an investigation) must take place.

Aside from the indicators contained in the publications just listed, performance results of statutory child protection services against the internal standards applied by DHS are not generally publicly available.

Figure 9.16 Children on care and protection orders, Victoria, June 2001 to June 2010



Source: SCRGSP 2011c, Table 15A.52
* Provided to the Inquiry by DHS

National performance indicators

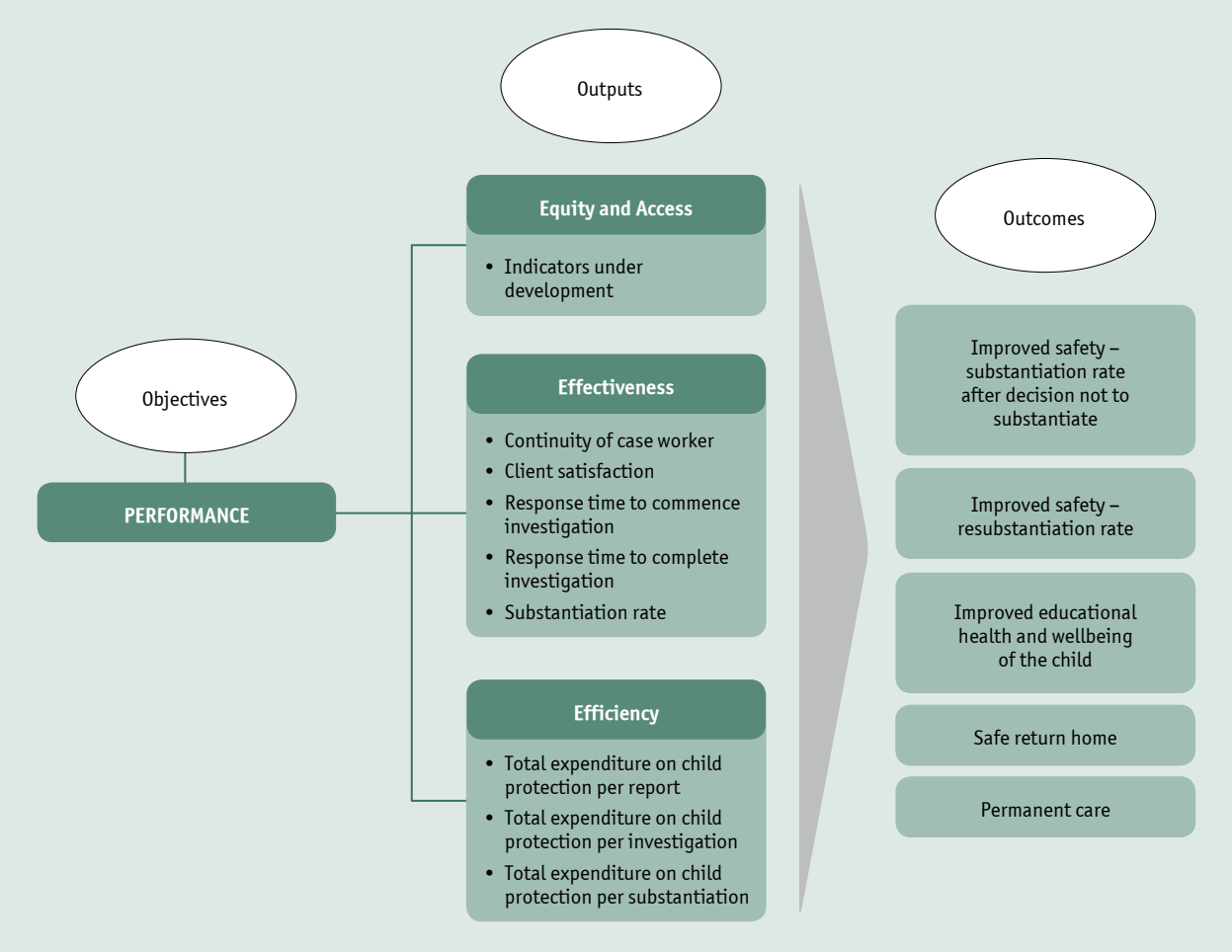
As set out in Figure 9.17, Australia's national performance indicator framework for child protection and out-of-home care outlines three major objectives for child protection and out-of-home care: effectiveness, efficiency, and equity and access (the latter a combined objective). Indicators have not yet been developed to measure equity and access.

As noted in Chapter 4, gaps in available performance data, particularly over time, prevents a clear picture emerging of the effectiveness and efficiency of statutory child protection services. There are a number of indicators for which data is not collected or where trend information is unavailable to show changes over time.

In relation to output measures, continuity of case worker and client satisfaction is not generally available. Of the outcome measures listed above, there is no clear and publicly available measure of the educational health and wellbeing outcomes of children or young people receiving statutory child protection services. The Inquiry has recommended the development of a holistic performance indicator framework in Chapter 6 to address these issues. Other ways to improve system transparency are covered in Chapter 21 on regulation and governance and Chapter 20 on the role of government agencies.

With the above limitations in mind, the next section reviews available performance information and presents some comparative analysis of Victoria's statutory services with other Australian jurisdictions.

Figure 9.17 National performance indicator framework for statutory child protection services



Source: Adapted from AIHW 2006, p. 10

9.4.1 Effectiveness measures

The 2011-12 Victorian State Budget projects an expected 59,700 reports to child protection in 2011-12, an increase of 7 per cent over the figure for 2010-11. This increase in reporting trends is analysed in more detail through the major issues discussion in this chapter at section 9.5.

Although Victoria has the second highest figure for the number of children who are the subject of a report in Australia, on a per-capita basis Victoria has the third lowest number of children who are the subject of a report (see Figure 9.18).

Differences in jurisdictional approaches to child protection can influence rates of reporting, for example, approaches to mandatory reporting or the availability of universal and secondary prevention services.

Client satisfaction

A partial picture of client satisfaction outcomes for statutory child protection service can be derived from a survey report prepared by the Social Research Centre at the Queensland University of Technology (QUT) for DHS. The survey sought views from the principal carers of clients receiving services from child protection, family services and placement (or out-of-home care) services. Care must be taken with use of the results as they are the early findings of an incomplete survey of principal carers and parents. QUT observes, however, that the interim data set is sizeable and allows for robust analysis of recent reforms (Lonne et al. 2011, pp. 1, 38).

The focus of questions posed by researchers to parents and carers was around the provision of information about services, their utility, decision-making processes and whether safety levels and parenting had improved (Lonne et al. 2011, p. 28).

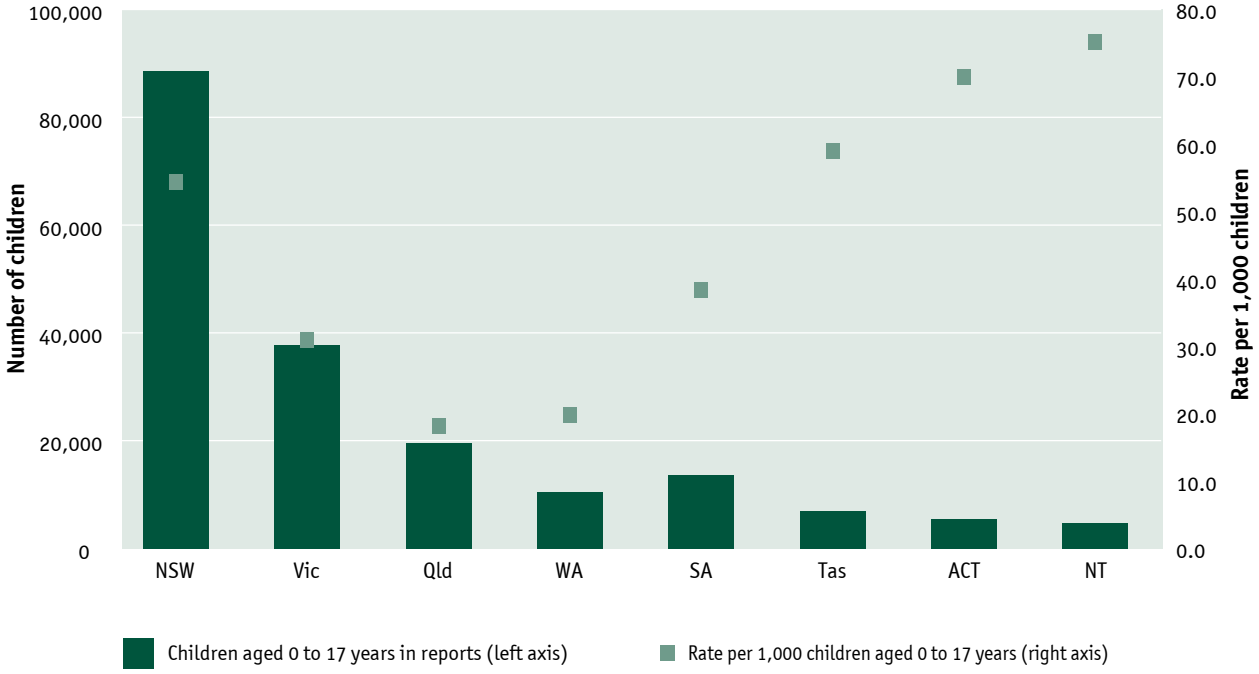
Overall, the survey report found that parent and carer attitudes towards statutory child protection services were mixed, compared with their views about family services. Roughly half believed that the statutory child protection assistance provided had not improved their parenting skills nor the child's health and wellbeing. The other half of respondents, however, thought that the child's wellbeing or health had improved since the provision of statutory child protection services. These latter respondents attributed the positive outcomes for families to the provision of statutory intervention services (Lonne et al. 2011, p. 36).

Response times

For those reports assessed as requiring an immediate response, DHS has internal targets for response times to visit 97 per cent of these cases within two days (DHS 2011j). In 2010-11, performance against this target was 94.1 per cent (DHS 2011b, p. 27).

If a report is not considered urgent, a DHS visit must occur within 14 days (DHS 2011k, advice no. 1172). DHS internally monitors performance against this 14 day requirement for visiting.

Figure 9.18 Children in child protection reports and rates per 1,000 children, states and territories, 2009-10



Source: SCRGSP 2011c, Table 15A.8

DHS advised the Inquiry that, while often cases have been visited within the required timeframe, this may not be recorded accurately or consistently for each sibling within a given family. The standard therefore is used as a management or supervisory mechanism and does not represent an accurate measure of the proportion of cases visited.

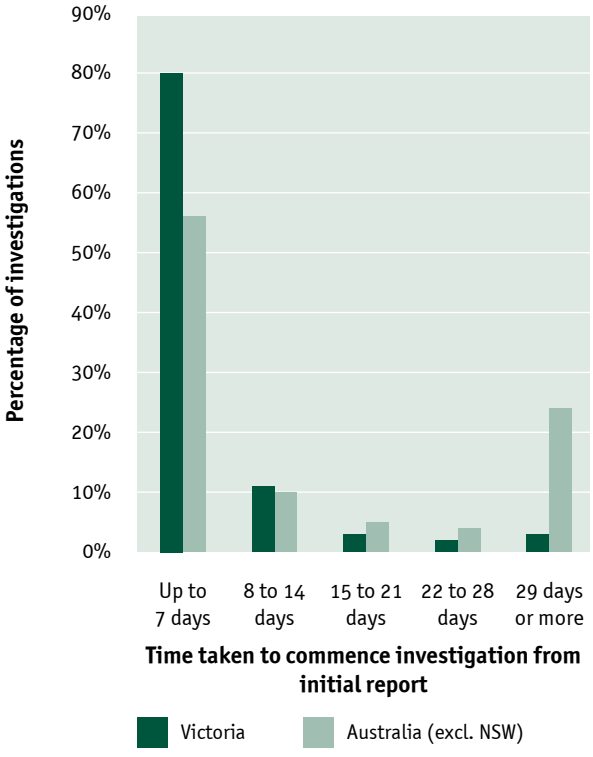
The DHS *Policy and Funding Plan 2010-12* sets a target for the percentage of investigations commencing within 14 days of a report to child protection. This target is 90 per cent.

Time taken to commence an investigation is reported in ROGS, which shows that, in 2009-10, 80 per cent of investigations in Victoria were commenced within seven days of receiving a child protection report and a further 10 per cent between eight and 14 days. It can be seen from Figure 9.19 that Victoria performs well by comparison with the whole of Australia on investigation commencement.

The time taken to complete an investigation is longer in Victoria than for other jurisdictions (see Figure 9.20).

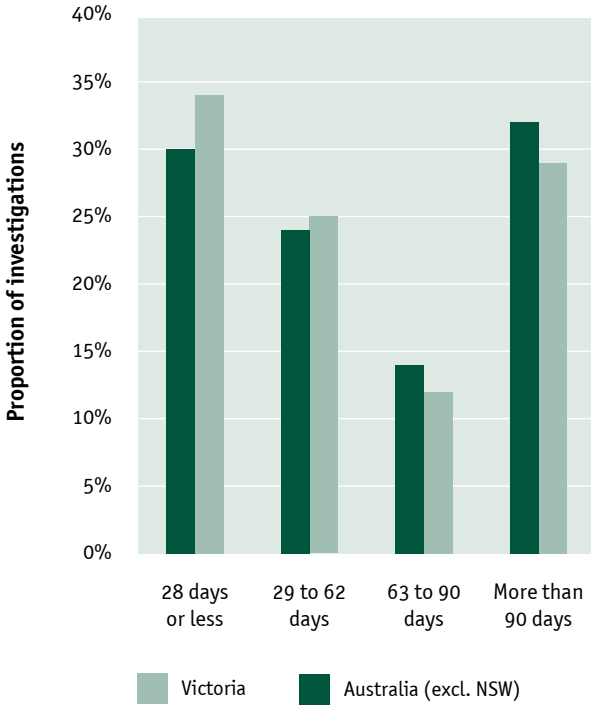
Figure 9.21 shows that the time taken to complete investigations has increased over the three years to 2009-10, with a smaller proportion of investigations completed in 28 days and a larger proportion exceeding 90 days.

Figure 9.19 Child protection reports and time to commence an investigation, Victoria and Australia, 2009-10



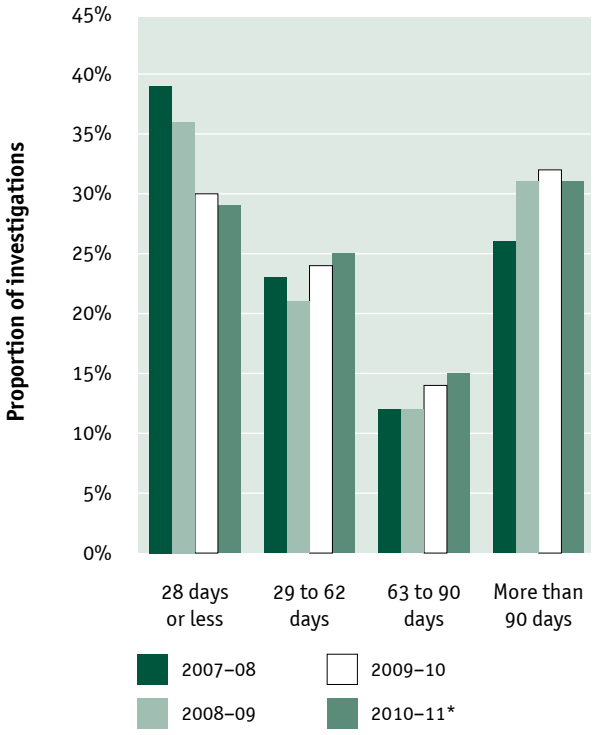
Source: SCRGSP 2011c, Table 15A.14

Figure 9.20 Child protection reports and time to complete an investigation, Victoria and Australia, 2009-10



Source: SCRGSP 2011c, Table 15A.15

Figure 9.21 Child protection reports and time to complete an investigation, Victoria, 2007-08 to 2009-10



Source: SCRGSP 2011c, Table 15A.15
* Provided to the Inquiry by DHS

Substantiation rates

As noted previously, the primary outcome of an investigation is to either substantiate or not substantiate the report of concern. Based on reports received in 2010-11, there were 13,941 investigations, of which 12,979 had been completed when data was provided to the Inquiry. This resulted in an estimated 7,643 substantiations, or a substantiation rate of 59 per cent.

Figure 9.22, which is taken from ROGS, shows substantiations as a proportion of completed investigations in 2009-10. It shows that Victoria had the second highest rate of substantiation of the states and territories, behind Tasmania (note that ROGS shows a slightly higher proportion of substantiations from investigations than DHS data).

Figure 9.22 Child protection substantiation rates, states and territories, 2009-10

Source: SCRGSP 2011c, Table 15A.14
Note: Substantiation rate is calculated as the per cent of investigations that were substantiated

Performance indicators for services provided to children in the protective intervention and order phase

There are some overlaps in relation to the protective intervention and assessment phase and the protective order phase and fewer published performance measures exist for the protective intervention and assessment phase. Figure 9.23, prepared by the Inquiry using information provided by DHS, shows the days between receiving a child protection report and the commencement of the protective intervention and assessment phase. While a large number of cases proceed from report to this phase within a week, 50 per cent take longer than 31 days and 20 per cent take greater than 90 days. Comparative data across Australia is unavailable for these measures.

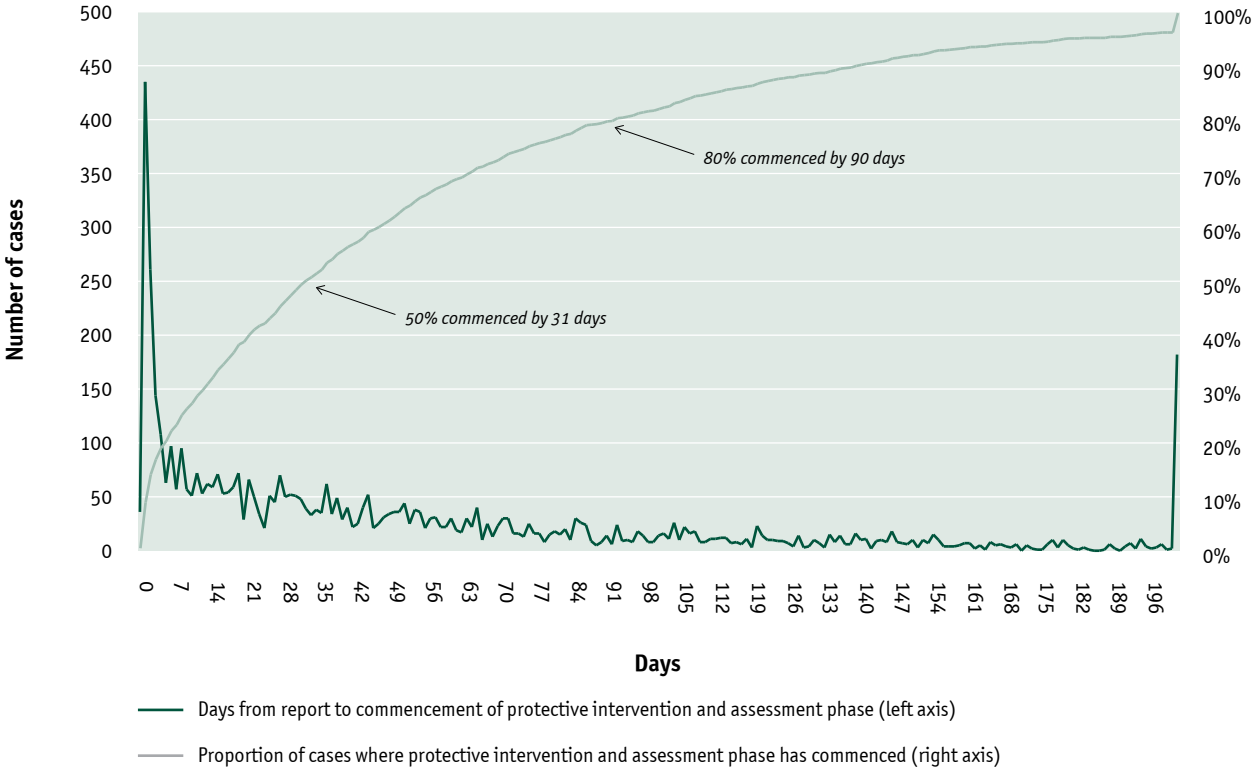
Figure 9.24 shows the time it takes from the date of the report to the conclusion of the protective intervention and assessment phase and the length of that phase. The protective intervention and assessment phase is concluded either with progression to the protective order phase or case closure. This is the case within 90 days for around a quarter of cases, while just under half of cases remain in the phase after 150 days after the date of the report. Comparative data across Australia is also unavailable for this analysis.

As noted previously, the number of children on care and protection orders has increased in Victoria over the past decade. Despite this Victoria still has the lowest rate of children on these orders per capita, as shown in Figure 9.25.

There are few other measures of system performance in terms of orders. ROGS has previously included measures of the educational outcomes for children on guardianship or custody orders, in terms of reading and numeracy. This information was published for school years three, five and seven, but has not been reported since 2006.

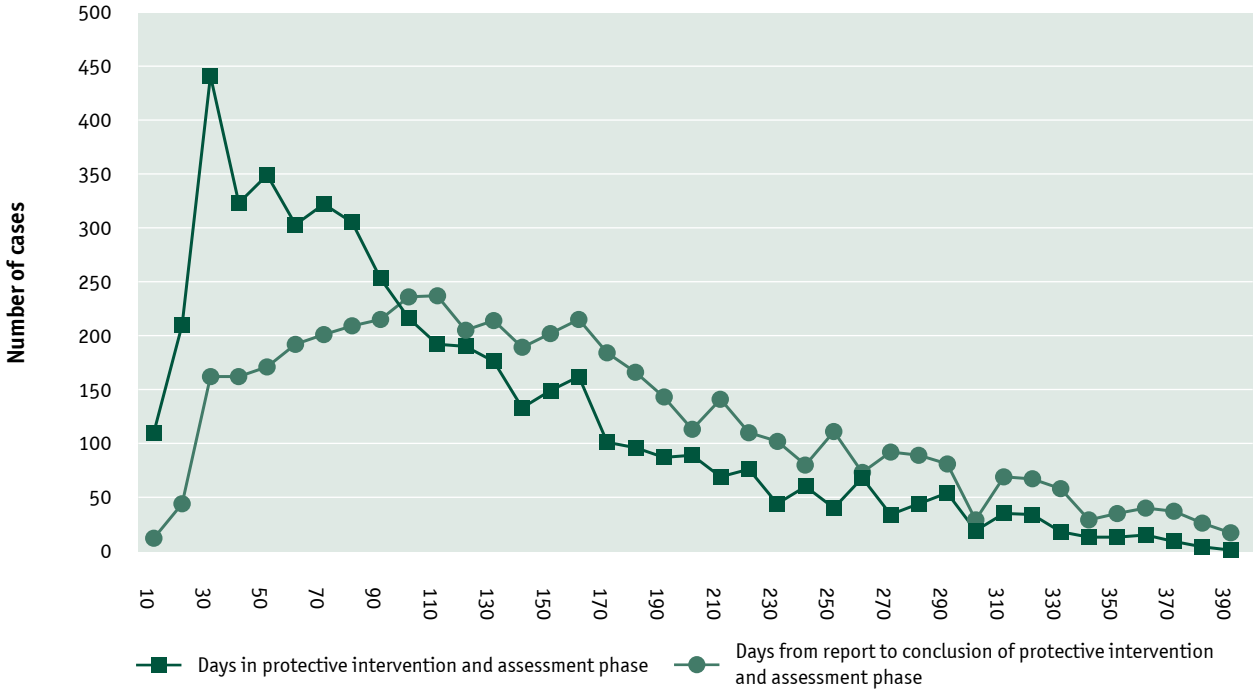
The remaining performance measures relating to this phase typically relate to children in out-of-home care. These are discussed in Chapters 10 and 11.

Figure 9.23 Child protection reports: days from receipt of report to commencement of protective intervention and assessment, Victoria, 2009-10



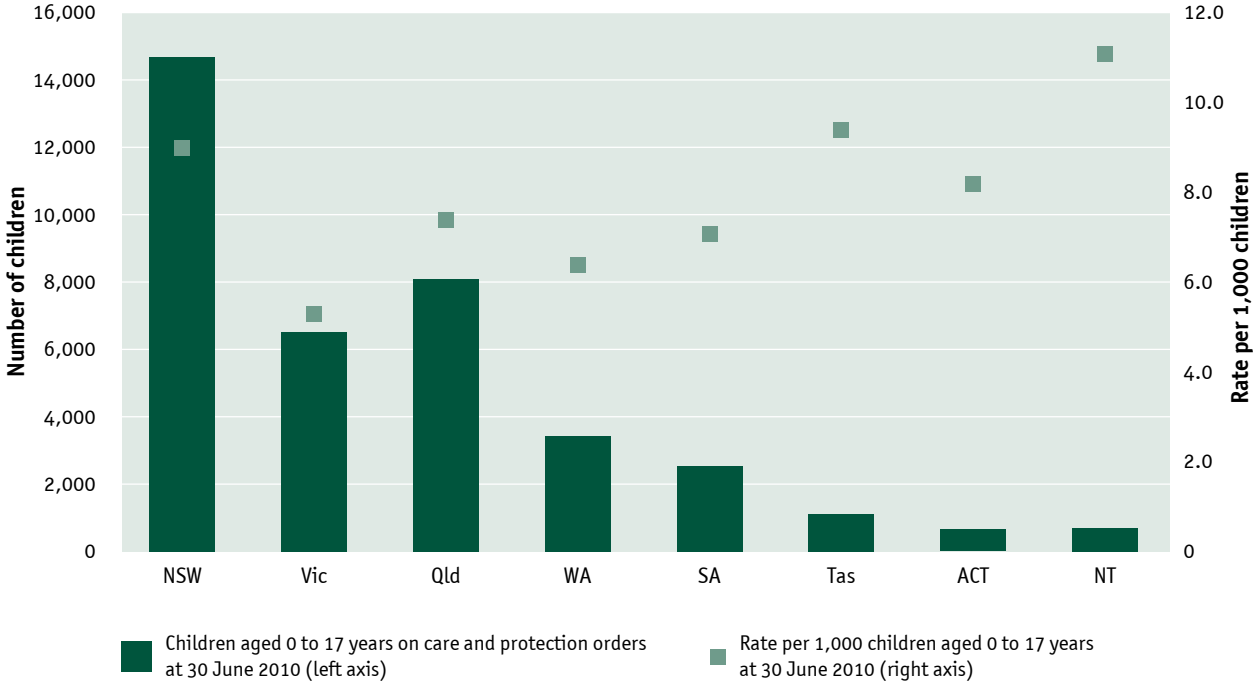
Source: Inquiry analysis of information provided by DHS

Figure 9.24 Child protection reports: days from receipt of report to conclusion of protective intervention and assessment phase and days in protective intervention and assessment phase, Victoria, 2009-10



Source: Inquiry analysis of information provided by DHS

Figure 9.25 Children on care and protection orders, number and rate per 1,000 children, states and territories, 2009-10



Source: SCRGSP 2011c, Table 15A.8

9.4.2 Outcomes measures

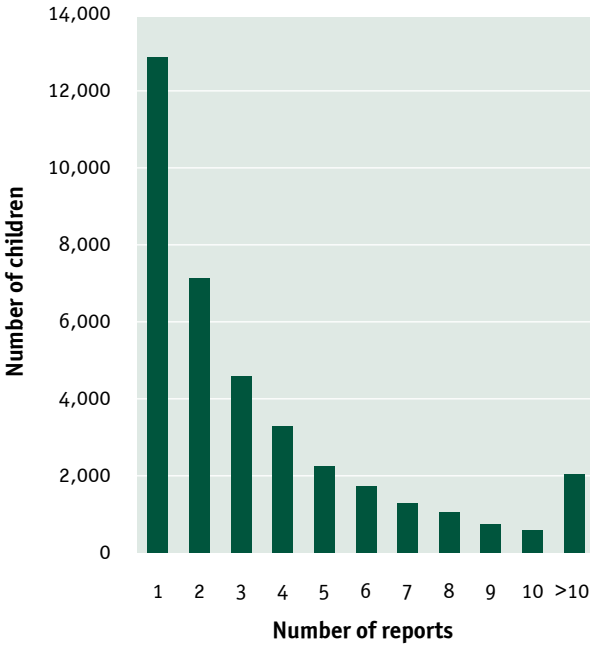
The national performance indicator framework measures outcomes through improved safety for children. The incidence of children coming back into contact with statutory child protection services is a proxy for improved safety as there are no direct measures of the incidence of child abuse and neglect.

Measuring a child's return to the statutory system can be addressed in two ways. The first is whether a child has presented multiple times to DHS over the course of their life, that is, covering from 0 to 18 years of age. The second method is more concerned with the proximity of the interactions of the child presenting to DHS, that is, measuring whether a child has been re-reported or re-substantiated within a three or 12 month period of the previous time they were in contact with statutory child protection services.

Re-reporting trends

There is evidence that a significant proportion of children are the subject of repeated reports to DHS over a sustained period of time. Figure 9.26 shows the reporting history of children at a point in time, for whom reports were made in 2009-10. Two thirds of these children have been the subject of multiple reports and a significant number of children have been the subject of a very large number of reports, with more than 2,000 children having been the subject of more than 10 reports to child protection intake over their lifetime.

Figure 9.26 Children in child protection reports in 2009-10, by number of reports to date, Victoria



Source: Inquiry analysis of information provided by DHS

Figure 9.27 shows the re-reporting rate over time for statutory child protection services. These reports cover a child's reporting history from 0 to 18 years of age.

Resubstantiation trends

Substantiation trends are considered in two contexts:

- The number of substantiations that occur after DHS has previously investigated a child or young person and made a decision not to substantiate; and
- The number of substantiations that occur after a substantiation of harm has previously been found for a child or young person.

Previous decisions not to substantiate

In relation to decisions not to substantiate, the subsequent substantiation rate within 12 months has decreased significantly over time and sits currently at around 10 per cent. This suggests that statutory child protection is more effectively identifying cases of abuse and neglect.

The Victorian Budget sets targets for DHS concerning where children were previously the subject of a decision not to substantiate. DHS has a target of 5 per cent for the number of those children who are then subsequently the subject of a substantiation within three months of their case being closed.

In 2010-11 DHS bettered this target, with 2.29 per cent of these cases re-substantiated within three months (DHS 2011b, p. 27).

Figure 9.27 illustrates, while the re-reporting rate has increased since 2004-05, the proportion of reports that are re-reports in 2011 (as against new reports) is largely the same as it was in 2004-05; around 64 per cent of total reports are re-reports.

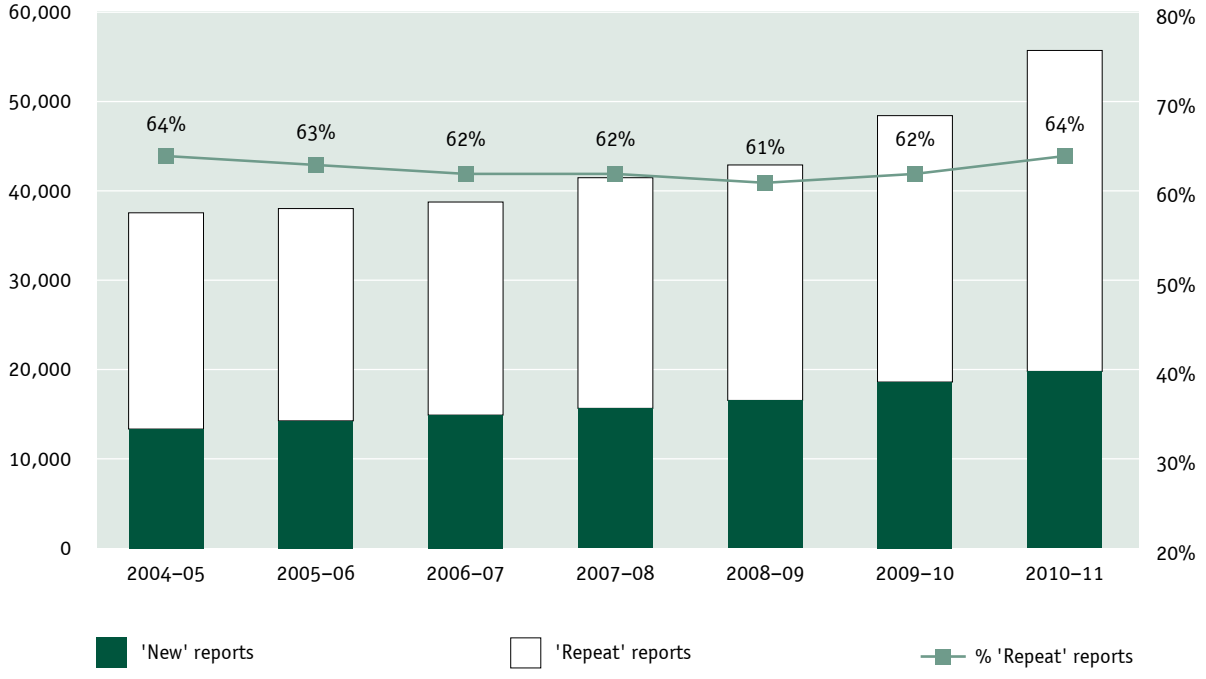
While rates of substantiations after a decision not to substantiate have generally been decreasing in Victoria over recent years, in 2008-09 Victoria had a greater number of substantiations within 12 months of a decision not to substantiate than Queensland and Western Australia, and a lower rate than in the remaining jurisdictions (see Figures 9.28 and 9.29).

Substantiations after a previous substantiation of harm has been found

A more complex picture emerges with resubstantiation patterns after substantiations have previously been found. As can be seen from Figure 9.30, once a child has been the subject of a previous substantiation, the resubstantiation rate rose in 2008-09.

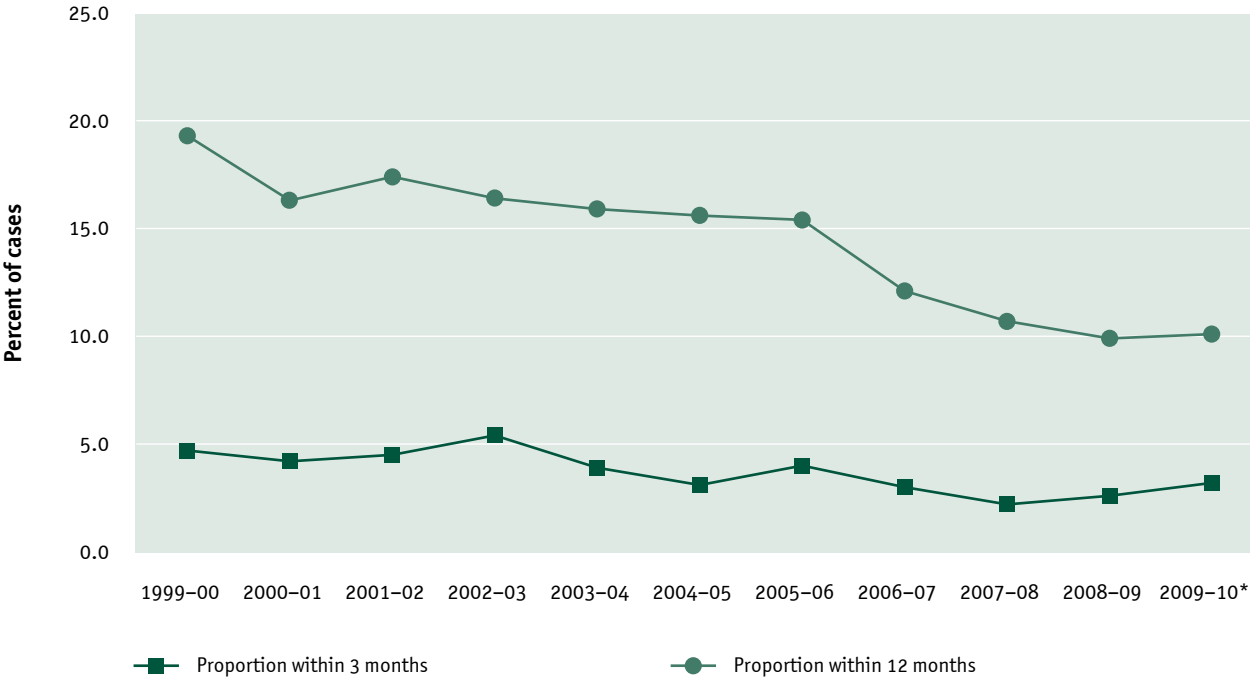
The Victorian Budget has a target of 15 per cent for protective cases being re-substantiated within 12 months of case closure. DHS bettered this target in 2010-11, with 10.3 per cent of cases re-substantiated (DHS 2011b, p. 27). Figure 9.31 illustrates how Victoria performs comparatively well in this measure by comparison with other jurisdictions.

Figure 9.27 Child protection reports: re-reporting rate, Victoria, 2004-05 to 2010-11



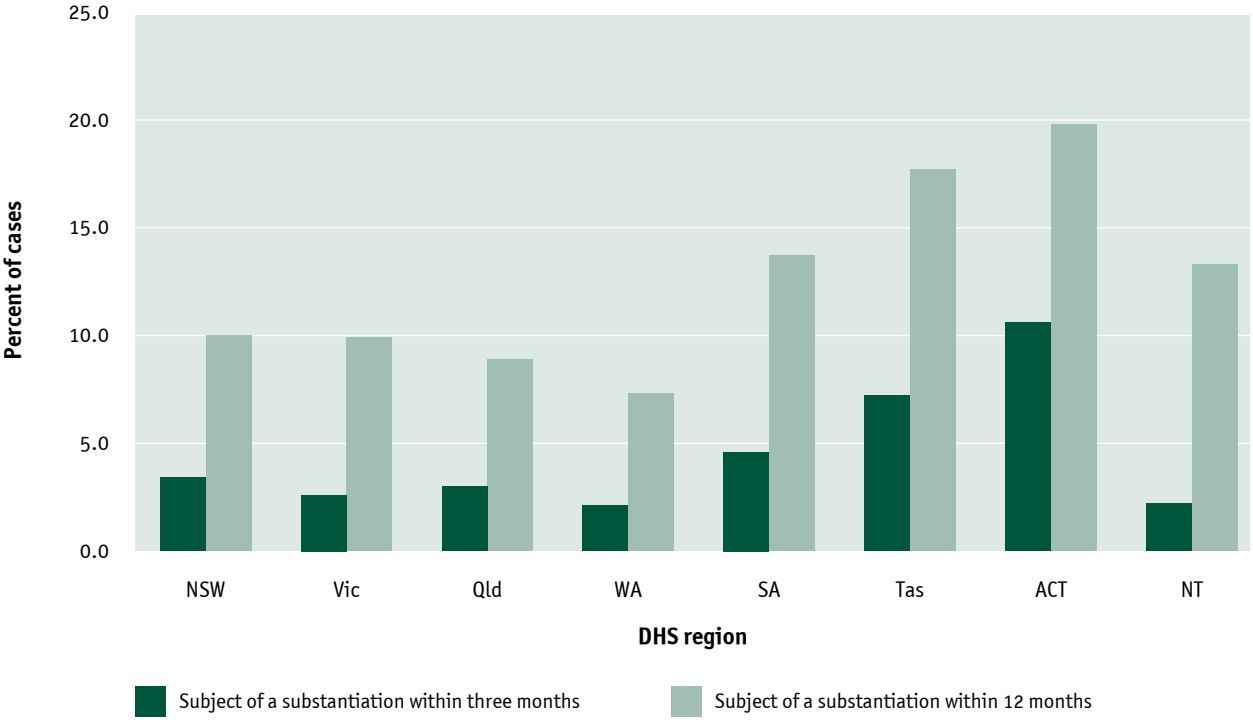
Source: Information provided by DHS

Figure 9.28 Child protection substantiation rates 3 months and 12 months after a decision not to substantiate, Victoria, 1999-00 to 2009-10



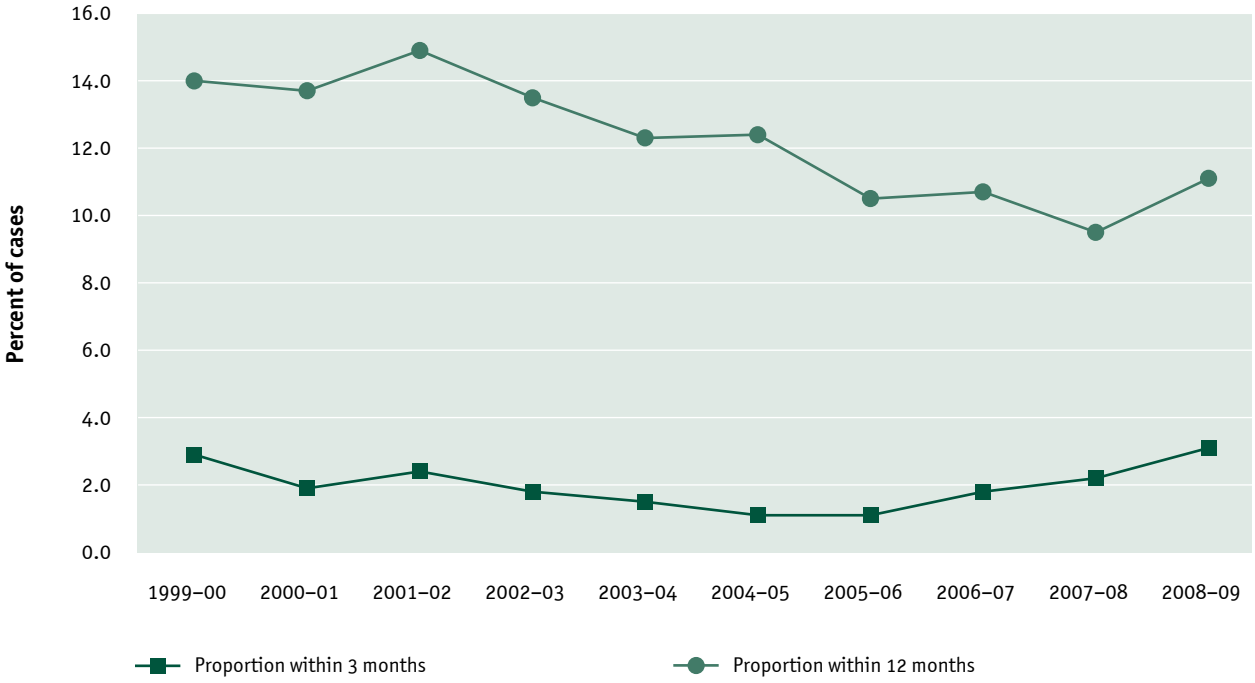
Source: SCRGSP 2011c, Table 15A.56
* Provided by DHS

Figure 9.29 Child protection substantiation rates after a decision not to substantiate, states and territories, 2008-09



Source: SCRGSP 2011c, Table 15A.9

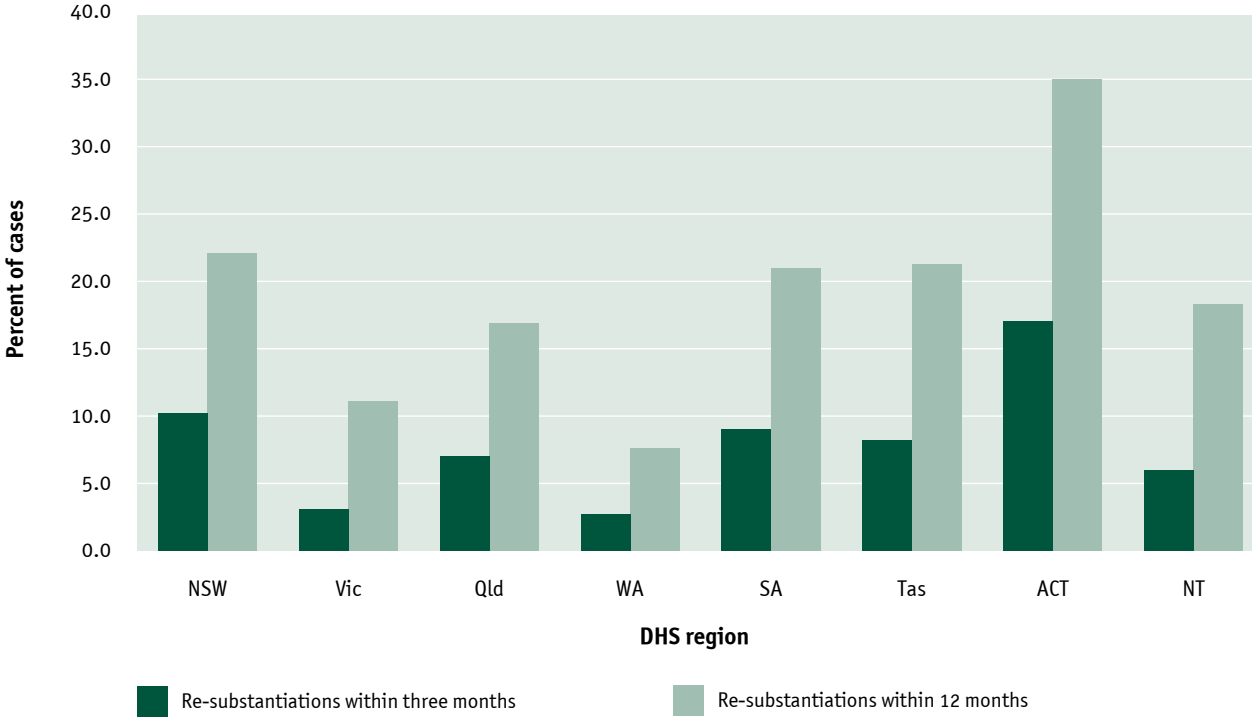
Figure 9.30 Child protection resubstantiation rates within 3 and 12 months of substantiation, Victoria, 1999-00 to 2008-09



Source: SCRGSP 2011c, Table 15A.55

Note: DHS have advised that a counting rule error has affected the resubstantiation rates presented in this chart. Accordingly, only published ROGS data has been presented. DHS is revising its resubstantiation calculations; however, these revisions will not be prepared in time for the ROGS 2012 publication.

Figure 9.31 Child protection resubstantiation rates within 3 and 12 months of substantiation, states and territories, 2008-09



Source: SCRGSP 2011c, Table 15A.9

Children who were the subject of multiple reports have similarly often been the subject of multiple substantiations. For the 37,500 children who were the subject of a child protection report in 2009-10, just under 6,000 have been the subject of more than one substantiation (see Figure 9.32).

Also concerning, is the Inquiry's analysis of the number of substantiations that a child is likely to have over their lifetime. The Inquiry examined the substantiation history of children for whom abuse had been substantiated in 2009-10. Table 9.3 shows previous statutory child protection interactions for children who were aged five, 10 and 15 at the time of their latest substantiation in 2009-10.

Table 9.3 shows, around half of these children for whom substantiated abuse was found in 2009-10 have been involved in multiple substantiations. Often there are many years between these incidents. Figures 9.33–9.35 show the proportion of these children for whom substantiated abuse was first found at an earlier age. Regardless of the age of the child in 2009-10, there was a significant proportion of children for whom substantiated abuse was first found when they were very young children, many years before abuse was again substantiated in 2009-10.

Other measures

The *DHS Annual Report 2010-2011* publishes information about two specific measures:

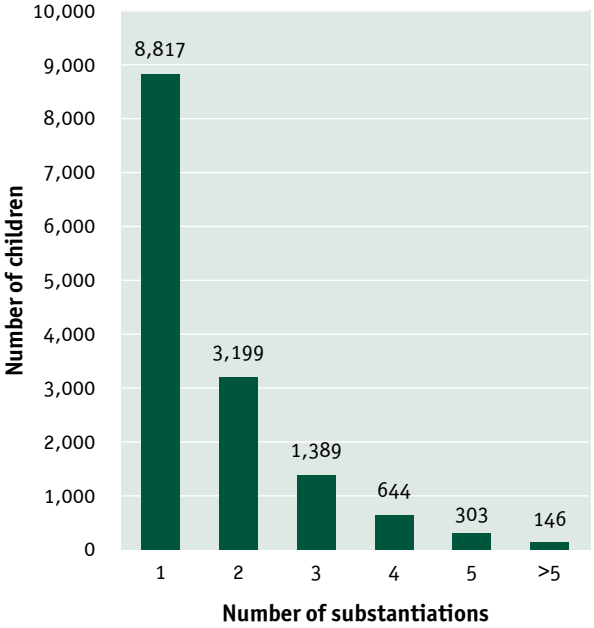
- Child protection practitioners receiving regular supervision (which was 81 per cent in 2010-11); and
- Unallocated cases (which was 7.8 per cent at June 2011) (DHS 2011b, p. 60).

Supervision rates are a quality control mechanism used by DHS to monitor child protection practice. Supervision is particularly important in the child protection setting due to the significant uncertainty that practitioners have to grapple with when they make decisions about the risk of harm to a child.

The unallocated cases measure (along with other indicators) was used by the Victorian Ombudsman to assess the effectiveness of statutory child protection services. The Ombudsman's reports are considered next.

These patterns of re-reporting and resubstantiation are examined in further detail in section 9.5 of this chapter in relation to capacity constraints affecting the provision of statutory services.

Figure 9.32 Children in child protection substantiations in 2009-10, by number of substantiations to date, Victoria



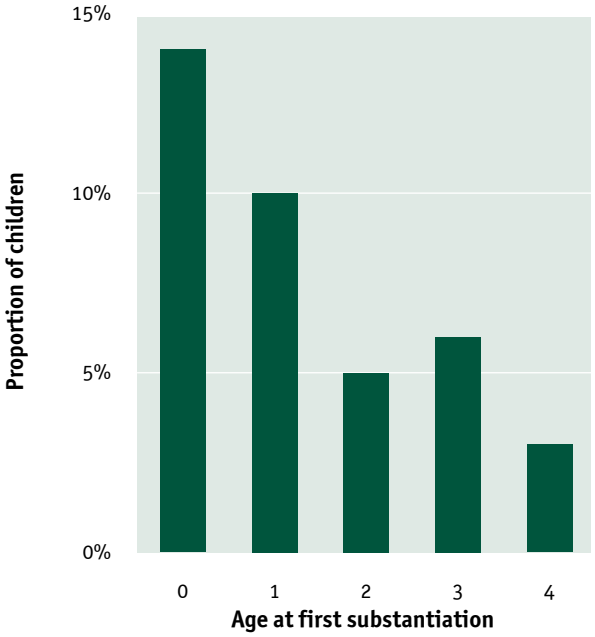
Source: Inquiry analysis of information provided by DHS

Table 9.3 Analysis of substantiated child abuse and neglect, by selected ages, Victoria, 2009-10

Age at time of substantiation in 2009–10	5	10	15
Number of children	316	301	348
% children with multiple substantiations	48%	48%	49%
% children with >3 substantiations	7%	15%	13%

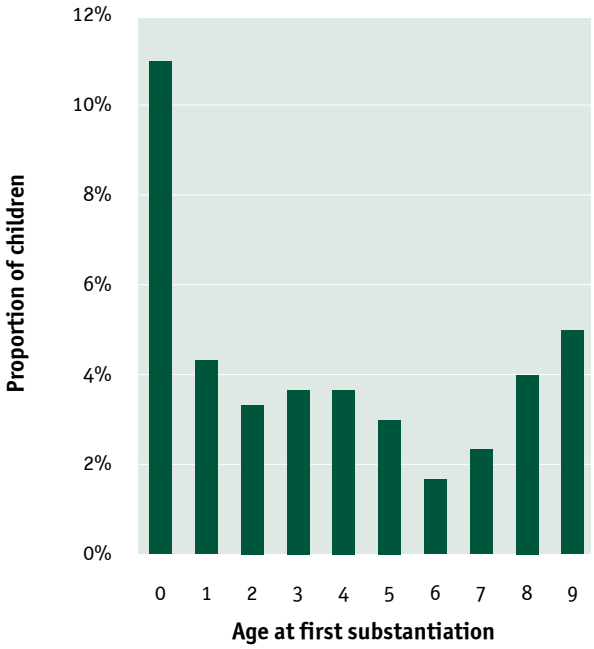
Source: Inquiry analysis of information provided by DHS

Figure 9.33 Five year old children with child protection substantiations in 2009–10 and prior substantiations, by age of first substantiation, Victoria



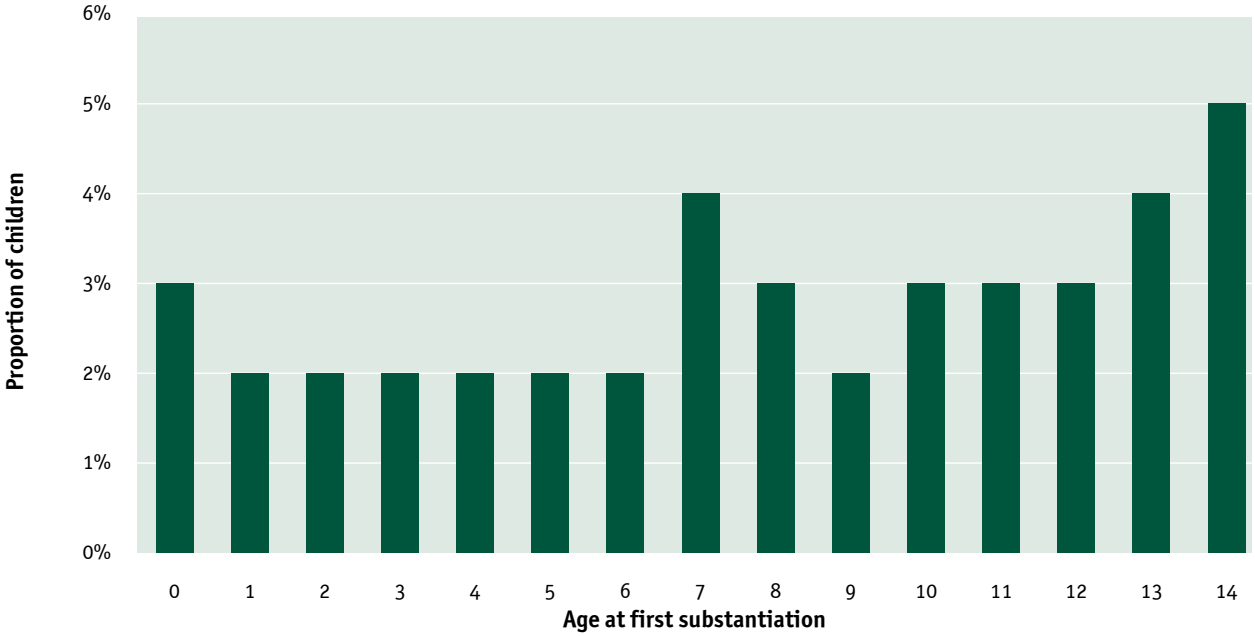
Source: Inquiry analysis of information provided by DHS

Figure 9.34 Ten year old children with child protection substantiations in 2009–10 and prior substantiations, by age of first substantiation, Victoria



Source: Inquiry analysis of information provided by DHS

Figure 9.35 Fifteen year old children with child protection substantiations in 2009–10 and prior substantiations, by age of first substantiation, Victoria



Source: Inquiry analysis of information provided by DHS

9.4.3 Reports by the Victorian Ombudsman

The Victorian Ombudsman's investigations into the system for protecting Victoria's vulnerable children are discussed in detail in Chapter 4. This section highlights the Ombudsman's key findings in relation to the performance of the child protection program.

In his 2009 report into the child protection program, the Ombudsman found that 'the system is struggling to meet its operational responsibilities' and that some regions in particular seemed to be operating under serious pressure (Victorian Ombudsman 2009, p. 9). The report highlighted a number of performance issues arising from the provision of statutory child protection services including:

- Resource constraints for DHS affecting the quality of services, for example, the timeliness of response to an allegation of abuse or neglect, or addressing cumulative harm caused to children and young people;
- The rate of unallocated cases where child protection practitioners are not allocated responsibility for addressing a vulnerable child or young person's needs, particularly in regions such as Gippsland;
- The threshold of harm for risk of abuse or neglect to children being applied variably across Victoria;
- Functionality problems surrounding the rollout of the CRIS information technology system; and
- Issues with the recruitment and retention of child protection practitioners resulting in vacancies and inexperienced staff (Victorian Ombudsman 2009, pp. 9-18).

The Ombudsman also commented on the size and complexity of DHS' responsibilities, querying the complex web of communication pathways created by lines of reporting from the level of a child protection practitioner to the Secretary (Victorian Ombudsman 2009, pp. 110-112).

In his 2011 report on statutory child protection services delivered in the Loddon Mallee region in Victoria, the Ombudsman made several findings about the efficacy of child protection intake, including:

- Failures to protect children at risk;
- The pursuit of numerical targets overshadowing the interests of children;
- A practice of providing the minimum possible response to child protection reports that can be justified; and
- Poor record-keeping.

The Ombudsman's findings suggest the number of investigations carried out by DHS should have increased in line with the increase in the number of reports received during 2010-11. The report reflects on the Ombudsman's previous report from 2009 and argues that independent scrutiny of the thresholds applied by DHS when deciding which reports to investigate should be present.

Other issues highlighted by the report include:

- Premature closing of cases with poorly documented risk assessment and reasons for the decision not to complete an investigation of a report;
- Inappropriate case allocation practices to staff on leave or whose normal duties should not have included being allocated cases (for example, specialist child protection practitioners, supervisors or managers); and
- The influence of using snapshot data at a point in time on case closure decisions and unallocated case trend data.

The Ombudsman expressed concern that higher thresholds for investigations may be applying more broadly in Victoria because the proportion of reports investigated was lower during 2010-11 than it was in 2009-10. The Ombudsman also noted that the number of repeat reports has increased across Victoria during the past two years. No further data as to the outcomes for those children re-investigated or re-substantiated was examined by the Ombudsman.

9.4.4 Victorian Child Death Review Committee

The role of the Victorian Child Death Review Committee (VCDRC) is described in Chapters 4 and Chapter 21. Chapter 4 also describes the extent to which child deaths in Victoria have involved children known to DHS statutory child protection services.

The VCDRC advised the Inquiry that practice and service delivery issues consistently identified in child death inquiry reports included:

- Problems with assessment, information gathering and analysis by child protection practitioners, including where information is not routinely being sought from important universal services; and
- The need for more effective communication and collaboration between child protection statutory services and other services including re-invigorating case conferencing as a basic working together mechanism (VCDRC submission, p. 23).

The VCDRC does not express an opinion about the factors leading to a child's death nor does it determine culpability. Responsibility for these matters rests with the State Coroner.

9.5 Statutory child protection services: major issues

Based on the Inquiry's analysis of the performance of the statutory child protection service and also drawing on the input received through submissions, there are three major issues that need to be addressed. These issues are:

- The question of whether statutory child protection services are sufficiently resourced to intervene when required to protect vulnerable children and young people, given:
  - the changing nature of child protection reports and increasing knowledge about the risk factors likely to give rise to child abuse and neglect;
  - the continuing rise in reports to statutory child protection services and expectations that these reports will be managed appropriately;
- The efficiency and effectiveness of child protection practice, encompassing a range of issues arising from re-reporting and resubstantiation trends but also recognising some children and families are clients of both statutory child protection services and family support services; and
- Once a child has been brought into the statutory child protection system, the need to improve stability in placements for vulnerable children and young people, to avoid causing further harm and trauma.

9.5.1 Statutory intervention capacity

While the Inquiry has recommended increasing the level of funding to meet the needs of Victoria's child protection system, it recognises that as with any other area of government service delivery, statutory child protection services will always be operating in an environment of resource constraints. Ideally, the amount of statutory child protection services provided would be directly tied to the prevalence of child abuse and neglect occurring in Victorian communities. However, in the real world in which Victoria's statutory child protection system operates, it is almost impossible to construct such an approach as there are no precise measures of the prevalence of child abuse and neglect. It is very difficult to determine likely future demand for statutory child protection services, particularly given the constantly changing views within society about what might constitute child abuse and neglect.

This dilemma is exacerbated because the increase in the number of child protection reports is not a direct representation of the increase in prevalence of child abuse or neglect. This is because reports today cover a much broader range of child and family welfare and safety issues then they did previously (for example, the concept of cumulative harm was not necessarily recognised or understood in the past but is increasingly being identified as a particular risk factor for some children and young people). The expanded scope of reports reflects society's broadened understanding of vulnerability and what places a child at risk of harm. Advances in scientific knowledge about the impact of child development on brain functioning combined with legislative changes widening the grounds for statutory intervention have inevitably affected the nature of child protection reporting, and therefore the level of resources that Victoria needs to dedicate to its statutory child protection and related services.

As a result of these changes, the scope of a report to Victoria's statutory child protection authorities has progressively widened from covering emergency, episodic issues to also encompassing a broad range of issues faced by chronically vulnerable families. Such increased awareness of vulnerability and child abuse and neglect in our society has led to an increased willingness by professions and individuals to express concern about risks to a vulnerable child or young person's wellbeing by making a report to statutory child protection. As a result, Victoria's child protection intake now receives a significant number of reports each year. In 2011 the number of reports to Victoria's statutory child protection intake was around 55,000 and growing.

Many submissions commented on the growth in child protection reports (for example The Salvation Army submission, p. 22 and the Anglicare Victoria submission, p. 10).

The significant number of reports received by child protection intake has an inevitable impact on the nature and delivery of statutory services. To cope with this unpredictable, changing and increasing demand, significant resources within statutory child protection must inevitably be directed towards creating a sophisticated set of screening processes at intake to enable the best possible assessment of risk and a prioritisation of the increasing number of cases which are being brought to the attention of statutory child protection services. The inevitable consequence of the constant and significant increase in the number of reports is that the structure, focus, and allocation of resources within Victoria's statutory child protection services are increasingly being driven by the need to cope with assessments of this increasing number of reports. This means there is an inevitable reduction in focus on other vital functions such as prevention and early intervention with vulnerable children and their families.

Decision making for statutory intervention

Statutory child protection services must consider and assess every report that raises concerns about children and young people. This is the role of the intake team. In doing so, DHS considers the appropriate service response for each report and determines whether or not it has reached the threshold of risk of significant harm for a particular child that requires a statutory response and investigation. As can be seen from the outcomes of reports illustrated above at Table 9.1, the majority of these reports, when investigated by DHS, are not deemed to meet the current statutory threshold for further action by DHS, which is defined as 'of immediate risk to the harm or safety for a child'.

The formal statutory threshold that must be reached before a child protection practitioner can decide that some form of statutory intervention response is required is that there must be a risk of 'significant harm' to the child or young person who is the subject of the report (s. 162, CYF Act). The CYF Act requires that government will only use statutory investigatory powers to monitor parental capacity when it is absolutely necessary to ensure a child or young person's wellbeing and safety. If a report does not concern a risk of significant harm, then DHS either takes no action if this is appropriate, or refers the family concerned to a relevant support service if this is more appropriate.

Victoria's statutory child protection services, like those elsewhere, must therefore address an inherent tension arising from the broadened community view of what places a child at risk of significant harm:

> They get criticised for not doing enough to protect some children, whilst at the same time being criticised for being too intrusive or not managing demand (Mansell et al. 2011, p. 2,076).

Comments made by submissions to the Inquiry illustrate this tension.

The CatholicCare submission argued that statutory child protection services are at times too focused on reducing the number of reports at the expense of undertaking sufficient investigations that could avert a later escalation. CatholicCare argued that the system should be broadened to encourage and promote help-seeking by parents to enable greater early intervention and prevention through non-statutory support (CatholicCare submission, pp. 9-10).

The Australian Childhood Foundation submission argued that the threshold of harm a child must suffer before statutory action is initiated is too high and that there was a decision-making culture that prioritises diverting reports away from statutory child protection when it is not appropriate to do so (pp. 1, 5).

Other submissions argued there is confusion over where reports should be directed and that there was a poor understanding of the differences between statutory and voluntary services, and which course was the most appropriate for different situations (FamilyCare, p. 12; Australian Childhood Foundation, p. 3).

The tension in the scope and direction of statutory child protection services is exacerbated by the very nature of the task of assessing risk in dynamic and fluid family situations. Even though a high-quality professional decision made by a highly qualified professional might determine that the probability of significant harm for a child in their birth family is low, low probability events, such as child deaths, do happen (Munro 2010, p. 21). Even with the most conservative decision making thresholds in place, child protection statutory services would not be able to prevent the death of every single vulnerable child or young person in society. Indeed, child deaths occur in families with no known history of child abuse or neglect.

A critical factor affecting DHS' decision-making practices about whether some form of intervention is required is the known occurrence of false-positive and false-negative results for protective risk assessment. 'False-positive' risk assessments occur when DHS, for a number of reasons, over-estimates the risk presenting for a particular child or young person and unnecessarily responds with statutory intervention when this is not required for a given family situation. A 'false-negative' assessment occurs when DHS under-estimates the risk presenting for a given report and fails to detect the risk of significant harm of abuse or neglect. As Munro has observed, changing decision-making practices with the objective of reducing false positive assessments will inevitably increase the rate of false negative assessments and vice versa, other things being equal (Munro 2010, p. 21). The two assessment errors are inextricably linked; if a low threshold has been set for intervention, then a high rate of false positives will occur. Conversely a high threshold for intervention will see a higher number of false negatives, or missed cases of significant risk (Munro 2010, p. 22).

Measures of effective statutory intervention

In addition to trying to design a statutory child protection system that has a sophisticated and effective method of determining the likely risk to a child of child abuse or neglect, it is important to determine if the statutory child protection system is effective in meeting its goals. In order to determine whether Victoria's statutory child protection service is meeting its goals and if it is constrained by insufficient capacity or resourcing, the performance of these services must be evaluated against a view, or value statement, as to what their objective is. As noted in Chapter 4 and captured by the Inquiry's Terms of Reference – the key objective of Victoria's system for protecting children is reducing the incidence and negative impact of child abuse and neglect.

The question of whether the right level of statutory child protection services are being provided to the Victorian community requires a judgment as to what is the most effective means of achieving this objective.

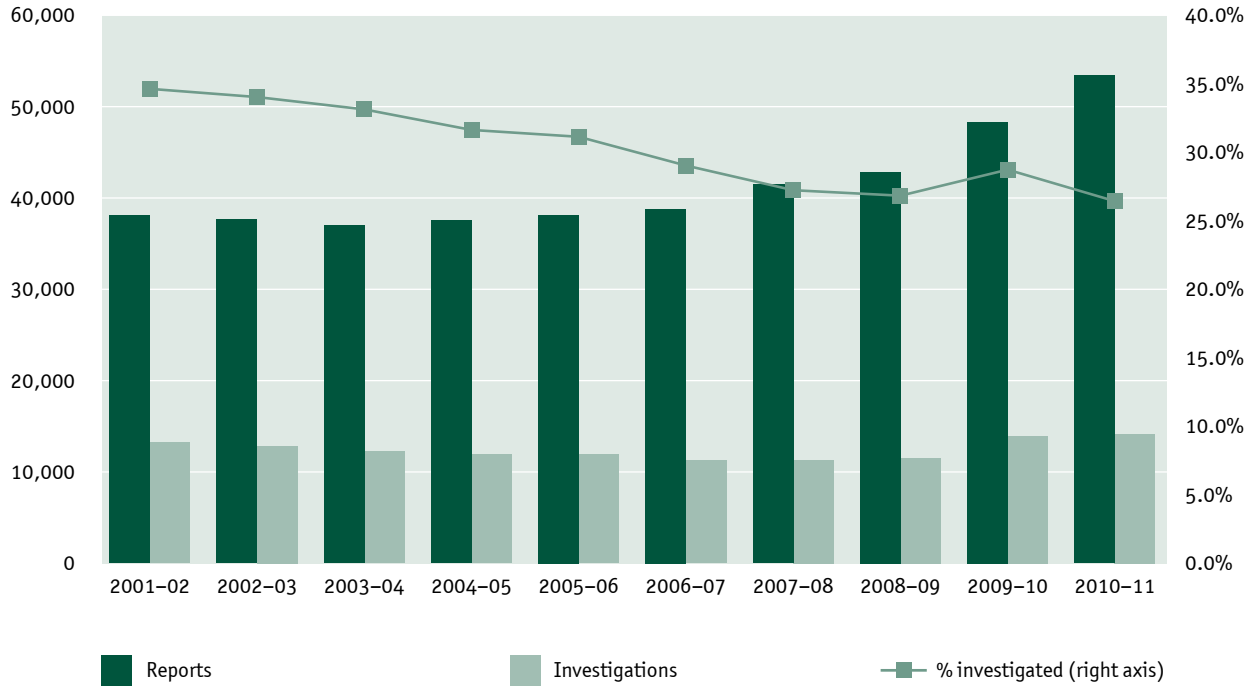
Assessing the performance of the statutory child protection system is a complex exercise. This is because of the inherent nature of statutory child protection services as an interconnected chain of activity flowing from intake through to investigation, protective intervention and assessment, protective orders and, ultimately, placement of children in out-of-home care. Resources and demand are distributed throughout this chain. Significantly, statutory child protection services on their own have only a limited ability to affect the fundamental underlying risk factors for child abuse and neglect.

However, even though it is difficult to assess the performance of statutory child protection systems, it is important that these assessments be done. The following data provides a partial picture of Victoria's statutory child protection systems, performance and capacity.

Proportion of investigations carried out on reports

As can be seen in Figure 9.36, while reports have risen, the proportion of investigation to reports has declined. The Ombudsman was particularly concerned about the proportion of investigations carried out in Loddon Mallee, arguing that the failure to increase the number of investigations in line with the number of reports received carried a significant risk that vulnerable children may be left in unsafe circumstances. The Ombudsman quoted the Secretary of DHS' advice in relation to implementation of his 2009 report: 'With a continued growth in reports, the investigation rate is likely to come under further pressure as the capacity of the child protection program to investigate reports is finite' (Victorian Ombudsman 2011d, pp. 24-25).

Figure 9.36 Child protection reports, investigations and investigation rate, Victoria, 2001-02 to 2010-11



Source: Inquiry analysis of information provided by DHS
Note: Investigation rate refers to the percentage of reports investigated

Staffing, case carrying loads and unallocated cases

The number of child protection practitioners has increased in recent years, although the proportion of case-carrying workers has declined slightly (see Figure 9.37). This could be possible due to the increase in staffing numbers mainly affecting CPW1s and specialist workers who do not normally carry cases.

Although there are now 20 per cent more reports per child protection practitioner than there were five years ago, the number of annual investigations per worker is relatively unchanged and average case loads have declined since 2009 (see Figure 9.38).

Since 2009, the variation in caseloads by region appears to be reducing. Also since 2009, the number of unallocated cases has more than halved and regional variance has dramatically decreased (see Figure 9.39).

Evidence of changes in the nature and effort involved for cases is apparent from the change in the number of open cases being dealt with by child protection practitioners. There were 41 per cent more open cases in 2010-11 than there were in 2005-06.

In addition, analysis of children who were the subject of a report in 2009-10 reveals that, in relation to time spent by cases in the different phases:

- While a large number of cases proceed from report to protective intervention and assessment within a week, 50 per cent take longer than 31 days and 20 per cent take more than 90 days; and
- Just under half of cases remained in the protective intervention and assessment phase after 150 days of the date of the report.

Complexity of cases receiving statutory child protection services

In summary, the data on statutory activity indicates that:

- While reports have increased over time, the rate of investigations conducted has not (Figure 9.36);
- Average caseloads have decreased for staff (Figure 9.38);
- Unallocated cases have decreased (Figure 9.39); and
- The total number of open cases has increased (Figure 9.40).

The Inquiry is concerned that statutory child protection services should be undertaking an appropriate rate of investigations based on the best interests of children and their safety. On the face of it, it could be assumed that an increase in reports would lead to an increased rate of investigations. However, the appropriateness of investigations undertaken is inextricably linked to an assessment of the circumstances of each child or young person. To arrive at a view about the appropriate level of investigations, the Inquiry has sought to understand why DHS decides to investigate some cases and not others. Two primary drivers for statutory child protection investigation decision making are case complexity and workload pressures.

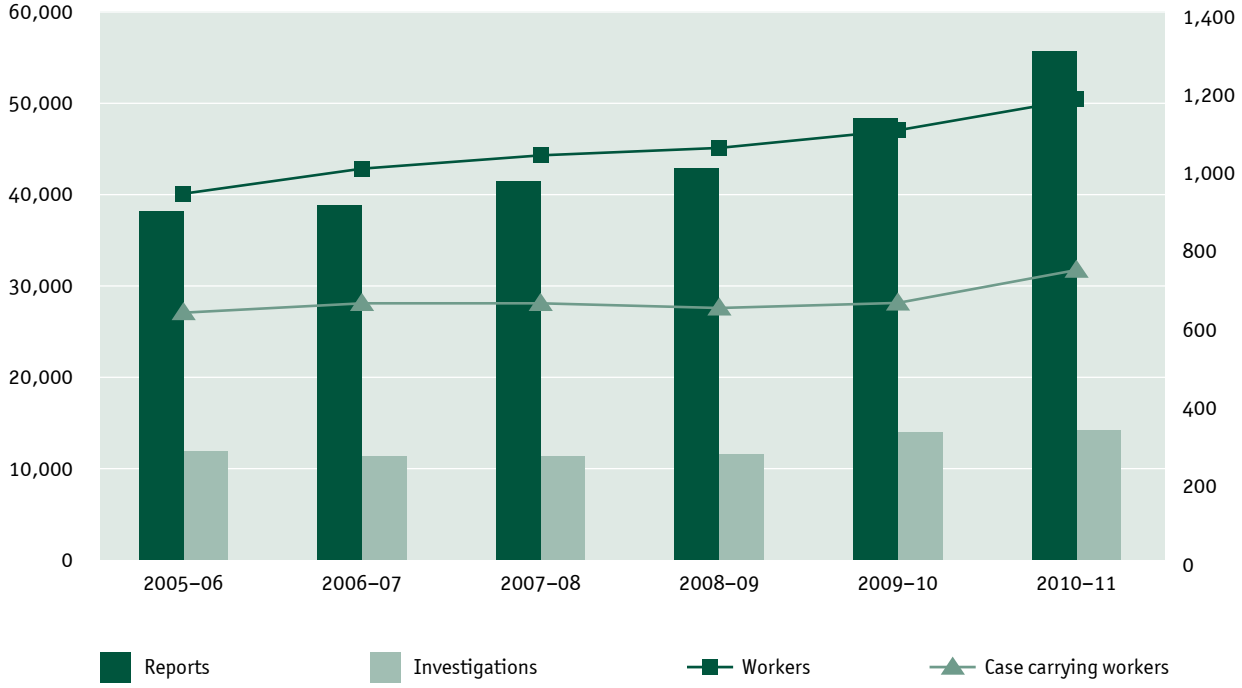
Significant data limitations have meant that the Inquiry is unable to arrive at a precise view about the complexity of statutory child protection cases. Although there is rich case material on the CRIS database, DHS was unable to extract client complexity material for the Inquiry.

In terms of the workload demand pressures on investigation staff and strategies used by DHS to manage these, the Inquiry has found these difficult to assess due to the interconnected nature of activity across the statutory intervention phases. No data was available for the Inquiry to assess the relative effectiveness of allocation of resourcing effort across the various statutory intervention phases. In future, this would require mapping of staff effort across the phases. Another critical input is also a greater understanding of demand pressures across the statutory child protection system. Demand pressures and implications for resourcing are considered in more detail in Chapter 19.

In addition to these significant data limitations, there are a number of additional factors to be taken into account that influence the capacity of statutory child protection services. These include, for example, the length of time required to complete court processes authorising intervention (see Chapter 15). Another major factor contributing to the complexity of caseloads is the social infrastructure present in the various communities where vulnerable children and young people reside. Similarly, levels of staffing experience and competence have an effect on capacity.

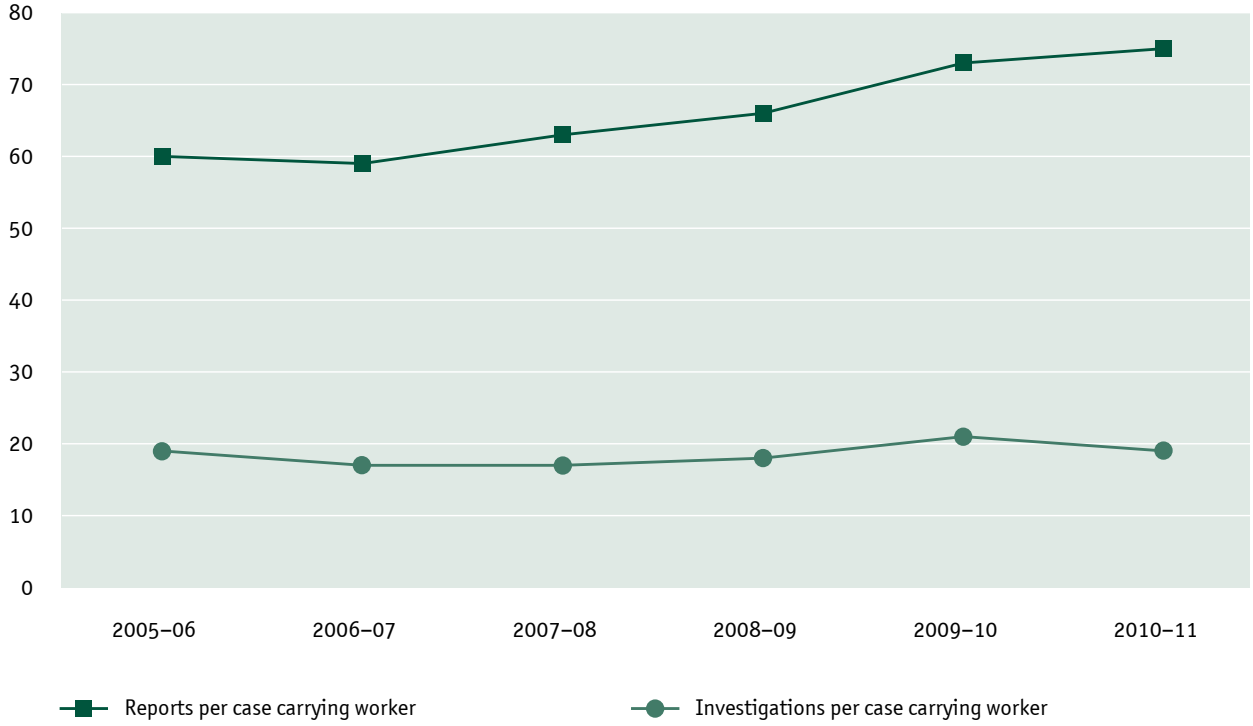
The Inquiry considers that these data gaps and capacity issues must be investigated urgently by DHS in order to inform future analysis and improvements of statutory child protection services.

Figure 9.37 Child protection reports, investigations and child protection workforce, Victoria, 2005-06 to 2010-11



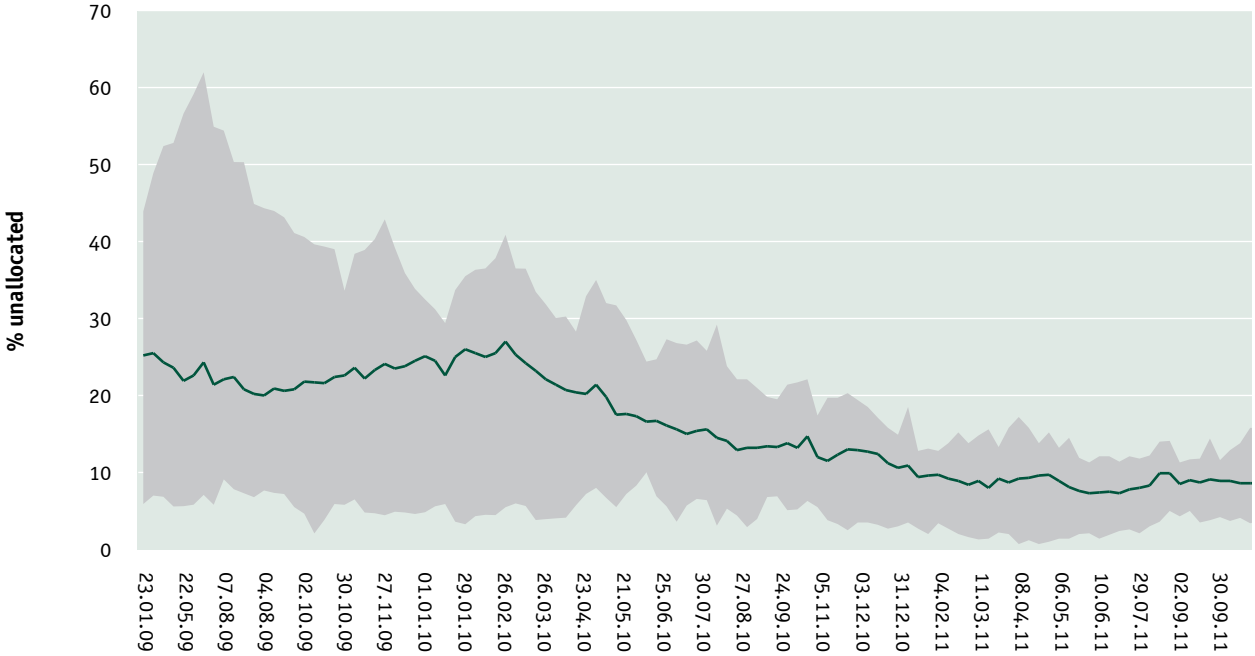
Source: Inquiry analysis of information provided by DHS

Figure 9.38 Child protection reports and investigations per case-carrying child protection worker, Victoria, 2005-06 to 2010-11



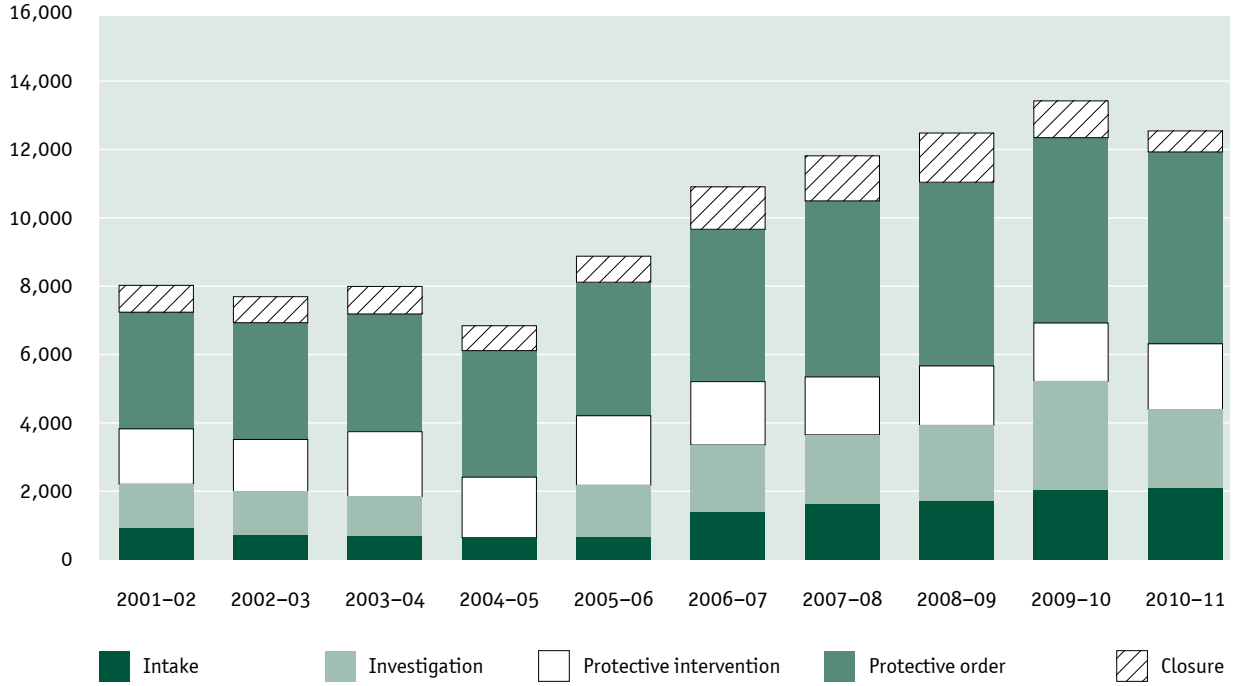
Source: Inquiry analysis of information provided by DHS

Figure 9.39 Child protection unallocated cases percentage, Victoria and regional variation, January 2009 to September 2011



Source: Inquiry analysis of information provided by DHS (no data available prior to 2009)
Note: Grey shaded area shows the difference between the DHS regions with the highest lowest unallocated cases percentage.

Figure 9.40 Child protection cases, by statutory child protection phase, Victoria, 2001-02 to 2010-11



Source: Inquiry analysis of information provided by DHS

The most effective service response for reducing the incidence of child abuse and neglect

The role of increased statutory intervention as a mechanism to reduce the incidence of child abuse and neglect must be considered in the context of government's overall service response to vulnerability. There may be a detrimental impact for families and children that arises from being unnecessarily brought into statutory intervention processes, that is, a false positive. Unnecessary government intervention runs the risk of damaging relationships within already vulnerable families (Mansell et al. 2011, p. 2,078; Higgins & Katz 2008, p. 44). As Mansell observes, concerns exist that highly coercive powers to separate families might be undertaken with little or no consultation, lead to worse outcomes and target over-represented, marginalised communities such as Indigenous populations (Mansell et al. 2011, p. 2,077).

Victoria's statutory child protection services must have the capability to respond effectively in a timely manner to soundly made reports of possible child abuse and neglect. However, a key question the Inquiry is concerned with, is whether an increase in investigations and substantiations, by itself, is the most effective means of achieving the government objective of protecting vulnerable children and reducing the incidence of child abuse and neglect.

The threshold point at which statutory child protection practitioners decide to intervene in a family is a judgment made by policy makers and practitioners about the scope of what constitutes child abuse and neglect, and, as Munro has observed, this is sometimes influenced by media coverage of mistakes made by statutory child protection systems and the public's response to those mistakes (Munro 2010, p. 23). However, as discussed above, if a society becomes 'risk averse' in relation to its child protection system, it is important to note the impact of increasing the number of false-negative risk assessments, or over-estimation of risk because of the serious consequences for a child if they are unnecessarily placed in the statutory child protection system because of a misdiagnosis.

The best measure of the performance of a statutory child protection service should be based on the outcomes for those children receiving statutory child protection services. These outcomes for children should inform any consideration of the question of capacity and the resources required to sustain the system. The primary available data for assessing the effectiveness and outcomes for children and young people from statutory intervention, as discussed above, comprises the re-presentation rates of vulnerable children who, despite an initial provision of statutory child protection services, continue to require additional statutory intervention at subsequent stages throughout their life.

The data presented, particularly in relation to resubstantiation trends indicates that outcomes are generally poor for those children provided with statutory child protection services because their chances of return to the statutory system are likely. In addition, outcomes for children and young people in out-of-home care are also poor and this is examined further in Chapters 10 and 11.

Such evidence demonstrates that Victoria's statutory child protection services are not effective at addressing the fundamental causes of child abuse and neglect. This is particularly persuasive when the major risk factors for child abuse and neglect are considered, such as alcohol and drug misuse, mental health and so on. These are areas of policy and practice that statutory child protection services are neither resourced nor tasked to provide.

The Inquiry considers that statutory child protection services are likely to be most effective when they are balanced with other services for children, young people and their families that are designed to reduce the vulnerability of Victoria's children and young people.

9.5.2 The efficiency and effectiveness of child protection practice

A number of submissions suggested to the Inquiry that the approaches currently adopted by statutory child protection services to assess and assist vulnerable children and young people could be significantly improved.

This section discusses issues that cover several areas of statutory child protection practice:

- Statutory child protection intake arrangements;
- Opportunities to use differentiated or customised approaches for providing statutory services;
- The concept of cumulative harm and how it has been applied in practice;
- The way statutory child protection services assess and plan for a child's needs including the task of collaborating or integrating service delivery with other agencies and departments;
- Improving case management practices;
- Managing risk and supporting practitioners;
- Workforce retention and professional development;
- Information communication technology (ICT) systems to support practice; and
- Trust and public confidence.

Statutory child protection intake arrangements

In order to improve the way DHS handles and refers reports about vulnerable children, a major system reform to the intake arrangements is required over time that more clearly specifies the respective roles and responsibilities of the available service responses to child abuse and neglect.

Many families and children do not currently receive any statutory child protection services because the level of risk, as determined by DHS, is not deemed to have reached the threshold required for statutory intervention. The Inquiry considers, however, that these reports are about vulnerable children and families with a wide range of needs. Statutory child protection intake arrangements need to connect these vulnerable families concerned in these reports more effectively to the agencies and CSOs equipped to meet the child and their family's needs. Statutory child protection intake does not function as an effective gateway to the wide range of family support and other services required to address vulnerability. Changes are required to intake arrangements that recognise and align the role of statutory services as part of a broadened service response across government that protects vulnerable children and their families. Intake arrangements can be better calibrated to ensure vulnerable children, where it is in their best interests, receive priority assistance from prevention and early intervention initiatives (in particular, alcohol and drug abuse, family violence, mental health and disability services).

The Inquiry's vision is for all the components of statutory intake and family support services to be working in unison to address the needs of vulnerable children before statutory child protection intervention is needed. The Inquiry's aim is for families to receive effective earlier intervention that proactively addresses risk factors such as drug or alcohol misuse. It is important to note, however, that improving the efficacy of referrals from statutory child protection to child and family support services can be expected to dramatically increase demand for voluntary community-based services for assistance and support for vulnerable families.

As discussed in Chapter 8 and also in Chapter 19 on funding, improving access to early intervention services will require a significant investment in the capacity of voluntary family, child and adult specialist support services. The progressive widening of the range of services available to children and their families anticipated through expansion of the proposed Vulnerable Child and Family Service Networks, will require increased, targeted investment to ensure access is available to those services.

Adopting a clearer policy position on the objectives of statutory child protection services requires a paradigm shift, not only in the way DHS sees its role, but also to the way that other departments, agencies and other family and adult specialist support services see their role as part of a whole-of-government response to vulnerable children and young people.

The Inquiry has expressed its vision for a more effective governance structure for delivering voluntary support services to vulnerable children and families through changes to the Child FIRST model in Chapter 8. Following these reforms, the introduction of a broadened service system, Vulnerable Child and Family Service Networks (Recommendation 17), could deliver an increased range of services to vulnerable families aimed at improving family functioning.

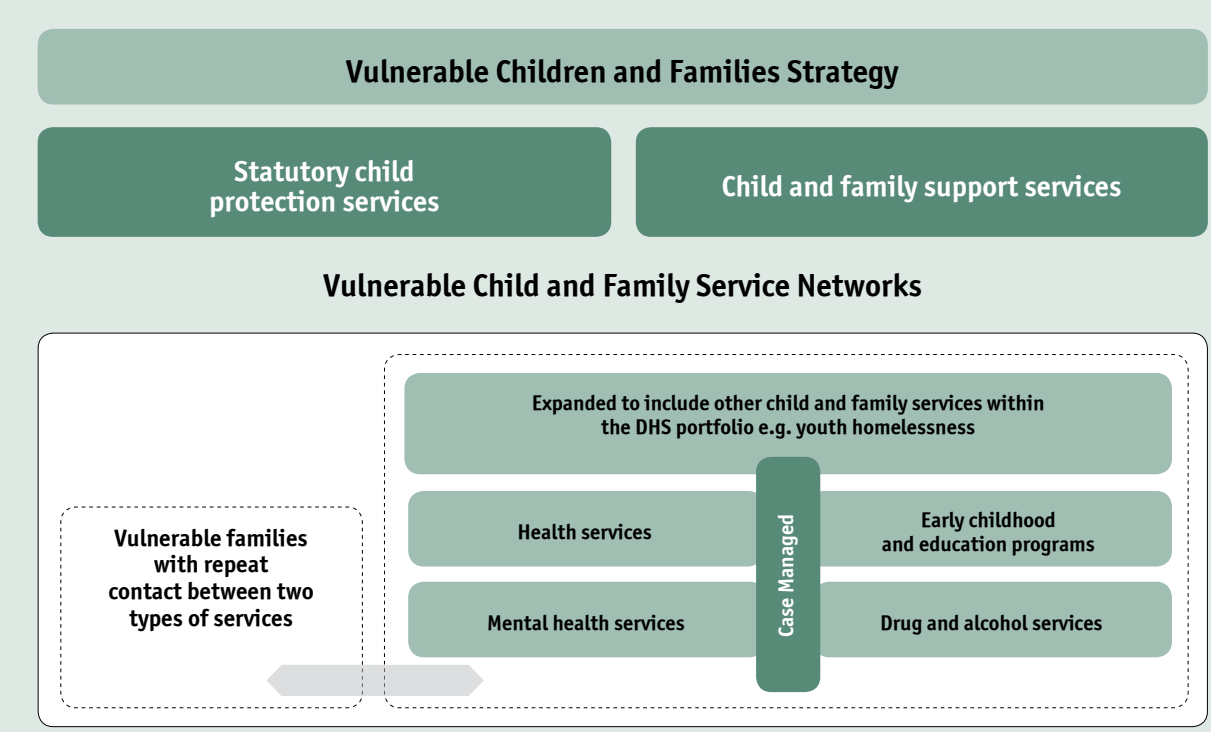
As can be seen from the nature of the proposed whole-of-government Vulnerable Children and Families Strategy (Recommendation 2), the Inquiry's vision for the future emphasises that statutory child protection services are part of and not separate from, the overall government and community response to child abuse and neglect (see Figure 9.41).

Over time and following the phased implementation of broader Vulnerable Child and Family Service Networks, it is envisaged that statutory child protection services could begin to be seen within the context of a broader service response, which would better recognise the interconnections between families experiencing chronic vulnerability and families that require statutory intervention. This also orients the range of possible service responses to one that is more capable of addressing a broader range of child and family need.

Accordingly it is important to consider changes to intake arrangements to support an evolved and broadened service response to child abuse and neglect.

The Inquiry received several submissions arguing for a strengthened and expanded partnership between government and the community sector in child protection intervention. In particular, the joint submission from Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army, the Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare (Joint CSO submission) proposed a new protection and care system where current statutory services would have an increased capacity to work with CSOs (Joint CSO submission, p. 9). This proposal argued for more collaborative arrangements recognising that government and the community sector share responsibility for achieving better outcomes for vulnerable children and young people across Victoria (Joint CSO submission, p. 10). Chapter 17 examines the appropriate relationship between governments and CSOs in more detail.

Figure 9.41 Vulnerable Children and Families Strategy and the role of statutory child protection services



Source: Inquiry analysis

Co-location of intake arrangements

The Joint CSO submission proposed co-locating child protection intake with the community services sector, arguing that this would improve the timeliness of decisions and responses and strengthen transfers of knowledge and skill between statutory child protection practitioners and CSOs. It also argued to improve the quality of decisions made as they would be made with more direct contact with those providing family support services to the vulnerable families involved. Anglicare Victoria's submission strongly supported the existing community-based child protection practitioners and argued that more should be based in high-demand Child FIRST sites across Victoria to facilitate collaboration and advice about engaging families with complex needs and ensuring timely statutory intervention where a child is at risk of significant harm (Anglicare Victoria submission, p. 18).

The Children's Protection Society submission also argued for greater community referral points to reduce service demand on statutory child protection services (Children's Protection Society submission, p. 32).

In addition to intake, the Joint CSO submission proposed co-locating child protection practitioners more broadly throughout local CSOs to provide secondary consultation services, carry out investigations and casework (for example co-locating DHS specialist infant protective practitioners with maternal and child health services). This proposal would co-locate statutory child protection services with family and child support services because both organisations share the same clients to some extent.

The Joint CSO submission argued that many benefits would flow from co-locating child protection practitioners, including more timely, coordinated and effective service responses, with a focus on resilience and capacity building for vulnerable families. Additionally, this was expected to divert families from statutory services and enable identification and management of risk at an earlier point. It was argued that this environment would contribute to a more stable workforce, as it would provide more satisfying work for both child protection practitioners and CSO workers (Joint CSO submission, pp. 35-36; Anglicare Victoria submission, p. 19).

Co-location of intake arrangements recognises that the group of vulnerable children who are the subject of reports to DHS are not a dramatically different group of children from those who are referred to child and family support services. Bringing intake decisions about these two types of services together provides a better holistic picture to government, of both the prevalence of vulnerability but also a means of assessing the effectiveness of the service responses provided or funded.

The Inquiry considers that co-locating intake processes so that DHS statutory child protection practitioners sit physically alongside CSO Child FIRST intake workers would drive greater collaboration and knowledge sharing about protective risk assessment. Such a change would evolve the current community-based child protection practitioner function to co-locating intake teams on an area basis. Separate lines of accountability would remain in place, with DHS statutory intake workers reporting to the Secretary of DHS, and Child FIRST intake officers working within the strengthened governance arrangements for Child FIRST recommended in Chapter 8.

The Inquiry considers that co-location of intake is a foundation reform that must be successfully implemented, through a pilot approach, and evaluated before any further changes to intake could be contemplated. Although the Inquiry sets out below a future vision for further reforms to intake arrangements, a number of serious risks and challenges are presented by these changes that must be considered carefully and addressed before any reforms could be trialled in the future.

A vision for consolidated intake

The Inquiry considers that a future vision for statutory child protection intake would involve a consolidated approach to intake, which would combine decision making about reports. A consolidated intake approach would have as its goal a well-respected, area-based single entry point for a broad range of services. A single entry point would be responsible for connecting members of the surrounding community to government or community services that respond to the prevalence of vulnerability and priority risk factors for child abuse and neglect. One of these possible service responses would include statutory intervention where it is required to ensure a child's safety, but another possible service response readily available is a range of support services designed to meet the needs of a vulnerable child and his or her family before statutory intervention is required.

The area-based entry point would involve experienced DHS and CSO staff working jointly, in a logical extension of co-located intake. As indicated in the Inquiry's vision for a Vulnerable Child and Family Services Network in Recommendation 17, this entry point would represent a broadened spectrum of service responses.

Matters that must be addressed before the Inquiry's vision could be realised

Continued demand pressures

As noted above, the Inquiry's recommendations require a significant increased investment in the funding to child and family support services in order for these services to be able to respond adequately to the anticipated increase in demand. The Inquiry's vision is to connect families involved in child protection reports that currently receive little effective service response from DHS (the 35,000 or so reports that receive advice, information or no action) to a more effective response that minimises the likelihood of subsequent intervention. A better picture of demand is expected to result from consolidated intake arrangements that will better equip government to forecast future funding requirements and assess the efficacy of the services it funds and provides.

The need for continued self-referral to support services

Moving to a consolidated area-based intake point aligns with the Inquiry's vision that statutory child protection services are part of and not separate to government's efforts to tackle the prevalence and impact of child abuse and neglect. As such a single entry point would eventually become a first port of call for families seeking help. Over time, a consolidated intake point would need to become known as a broad entry point to a wide range of child, family and specialist adult support services that are closely linked to statutory child protection.

Self-referrals to services must not be compromised by a consolidated entry point and, similarly, service providers should continue to be able to refer families directly to voluntary family services. Such referral behaviour should continue to occur, albeit with the benefits seen with the Child FIRST reforms that have enabled greater tracking of trends and outcomes data for vulnerable children and families.

Avoiding duplication and additional complexity

The Inquiry's vision is to simplify the burden of navigation for vulnerable children and their families requiring different types of services ranging from family support to specialist child and adult services. It should be easier for children and families to be connected to local services in their communities. A common assessment process by the broader range of services will become more important as the Vulnerable Child and Family Services Network evolves over time.

It is critical, however, that any future reforms do not carry the unanticipated consequences of establishing additional intake processes or gatekeepers. The second phase of statutory child protection, investigation, would need to remain in DHS and as it currently operates and not function as a secondary intake process. Similarly CSOs delivering child, family and specialist adult support services should not be carrying out secondary intake decision making except in the most exceptional of circumstances. Likewise, existing arrangements for referring suspected criminal acts to Victoria Police should not be affected by these reforms.

Matter for attention 6

The Inquiry draws attention to the need for any future reforms towards consolidated intake arrangements to avoid establishing secondary intake decision-making, including at both the second investigation phase of statutory child protection services or by community service organisations delivering child, family and specialist adult support services, except in the most exceptional of circumstances.

Separating intake from investigation

The need to overcome barriers or challenges caused by the physical separation of intake practitioners from statutory intervention practitioners must be actively planned for and managed. Communication protocols, face-to-face handover requirements and supporting ICT tools will need to be developed. Outcomes from the recommended piloting of co-location intake arrangements will provide valuable information and experience that should be used by DHS to manage the challenge of physical separation of intake from investigation.

Recommendation 19

Following adoption of the Child FIRST governance changes and using a piloted approach, intake functions carried out by the Department of Human Services and by Child FIRST should be physically co-located on an area basis throughout Victoria. Statutory child protection intake should remain a separate process to child and family support services intake, but there should be an increased focus, particularly with common clients, on improving collaboration between statutory child protection and family support services and greater joint decision making about risks presenting to vulnerable children and young people.

Following implementation and evaluation of co-located intake throughout Victoria, and provided the key challenges and risks have been addressed appropriately, the Department of Human Services should aim to move towards a consolidated intake model where Child FIRST and statutory child protection intake processes are combined.

Opportunities to use differentiated or customised services

For some vulnerable families, the level of risk presenting to a child may be dynamic, or episode driven. From time to time, a family may move between only requiring broader family support services or when particular incidents or events occur, statutory intervention may be required to address the risk of harm for a child or young person.

The increasing complexity of vulnerability indicates that different approaches are required to improve outcomes for different client groups, based on the types of problems present in those families.

Some piloting of more customised or differential responses to families' needs has been trialled by DHS and other jurisdictions, and initial evidence indicates that these approaches could improve outcomes for vulnerable children and young people. Other approaches were specifically endorsed in submissions to the Inquiry as areas where advances in knowledge about therapeutic approaches should be applied.

Differentiated pathways use specialist and therapeutic service streams that are customised to the particular problems experienced by vulnerable children and young people. Differentiated pathways provide an opportunity to improve the quality of assessments provided to children and young people through a clearer understanding of the objectives of services for particular client groups. Adopting more differentiated pathways offers greater opportunities for CSOs and DHS to work more closely together to support these vulnerable families.

The Inquiry considers that two pathways in particular merit immediate implementation of a differentiated service response by DHS; these cover first-time contacts and victims of alleged sexual abuse. The first-time contacts pathway refers to cases where a vulnerable child and his or her family is first brought into contact with statutory child protection services. DHS could adopt an intensive approach with these children and families, with the objective of diverting the family from any future statutory involvement. This would involve convening intensive family meetings, strengthening links to family services and persistent follow-up of referrals so that problems are addressed earlier.

DHS has trialled this approach in the Eastern Metropolitan region with some signs of success (KPMG 2011c, pp. 2-5, 10). A focus on families with young children (such as children under five years of age) would be appropriate to develop this pathway.

Adopting a differentiated pathway for suspected child sexual abuse cases would strengthen current responses provided by DHS and the broader system for protecting children. Submissions pointed to low levels of substantiations and prosecutions (Powell & Snow, p. 3) and argued that DHS needed to be more pro-active and prevention focused with respect to suspected child sexual assault cases (Children's Protection Society, p. 37).

The Inquiry considers that Multidisciplinary Centres (MDCs) are more sensitive to the needs of a child or young person allegedly subjected to sexual abuse because of the specialised training and co-location of support services, Victoria Police and DHS. Victoria Police and DHS have trialled this approach in Frankston and Mildura and submissions were supportive of these (CASA Forum, p. 9, Royal Children's Hospital, p. 12; Ms Wilson, Warrnambool Public Sitting). The Inquiry visited MDCs in Mildura and Frankston and was impressed by their operation, effectiveness and potential. Unmet demand for sexual assault support services and the prosecution of child sexual abuse is discussed in further detail in terms of the laws that protect children in Chapter 14 and MDCs are discussed further in Chapter 20.

The Inquiry has identified two additional pathways that require further collaboration and planning between DHS and CSOs before they can be implemented. These pathways would customise the service response for repeated contact families and families experiencing chronic and entrenched vulnerability. Ultimately adopting these pathways could lead to more contracting out of case management by DHS to CSOs.

Repeated contact families refers to those children and their families with high vulnerability who struggle to engage successfully with available support services. They are referred between and come into repeated contact with both statutory child protection services and child and family support services delivered by CSOs. Whether or not the family is involved with the statutory system is triggered by events or crises that move the level of risk from a wellbeing concern to a protective concern.

Adopting a repeated contact families pathway would lead to greater joint case management of these families between DHS and CSOs during the protective intervention and assessment phase. DHS would also increasingly consider contracting out pre-court case management responsibility to CSOs.

The Inquiry considers that different approaches need to be developed for cases where serious abuse or neglect have occurred with significant previous statutory child protection involvement including where older siblings in a family have been removed and placed in out-of-home care. DHS needs to adopt an approach that provides greater stability for vulnerable children who have experienced significant abuse and neglect, and for whom reunification with their birth family is unlikely to be successful. Barriers to permanent care should be addressed through this pathway.

Adopting a differentiated pathways approach for assessing and working with vulnerable families is critical for building a more sophisticated performance indicator framework that, over time, provides a better picture of how the statutory service system is performing against its objectives. Performance indicators to measure outcomes for the differentiated approach would include decreases in re-reporting and resubstantiation rates. In relation to sexual assault victims, the performance measures could include improved experiences for victims, greater prosecution rates when appropriate, greater stability for children with their protective parent and other improved outcomes. In relation to repeated contact families, an increase in the successful take-up of support service could measure the effectiveness of the statutory response.

Recommendation 20

The Department of Human Services should introduce differentiated pathways as part of the statutory child protection response, with some increased case management by community service organisations.

The two pathways that should be adopted immediately should involve first-time contact families and the use of multidisciplinary centres to respond to suspected child sexual abuse victims. Following collaboration between the Department of Human Services and key stakeholders, two additional pathways should be adopted to address the needs of families that have repeated contact with the Department of Human Services and families experiencing chronic and entrenched vulnerability.

Cumulative harm: a different type of abuse

Advances in child development knowledge have driven greater awareness of the significant harm that can be caused to a child through ongoing exposure, to lower levels of abuse and neglect over time (Bromfield & Miller 2007, p. 2; Higgins & Katz 2008, p. 44). The Take Two Partnership submission argued that the 2005 inclusion of cumulative harm as a grounds for intervention was widely considered an important and positive step (p. 4).

The notion of cumulative harm exposes the tensions that exist between the previous characterisation of statutory child protection services as designed to intervene only in emergency situations when there is a significant risk of harm to a child, and its present day, broadened responsibilities that involve longer term involvement with chronically vulnerable families that periodically experience crisis events.

The Children's Protection Society submission argued that difficulties pursuing cases of emotional abuse and cumulative harm as grounds of abuse might be because Victoria's system for protecting children remains event and crisis focused (pp. 32-33).

The primary targeting of statutory child protection services on children considered to be at the highest risk (with an emphasis on those children suffering physical and sexual abuse) was argued to reduce the capacity for effective early intervention as well as 'losing sight of the cases where children are still at risk of cumulative harm' (CatholicCare submission, p. 9).

Submissions argued that problems applying cumulative harm as grounds for protection arose from different interpretations and practical applications of the concept (Take Two Partnership, p. 4). FamilyCare argued that there are problems in regional courts' interpretation of cumulative harm (FamilyCare submission, p. 17). The Children's Court, however, argued that the difficulties arise instead from DHS' focus on crisis events, rather than a family's history (Children's Court submission no. 2, p. 26).

Identifying and responding to cumulative harm requires more long-term interactions with a vulnerable child or young person in contrast to a once-off intervention. It also involves multiple reports of a low-level concern or abuse. Anglicare Victoria argued that developing skills in co-working cases between family services and child protection practitioners would enable intervention that is based on an assessment of both current and past harm (Anglicare Victoria submission, p. 16).

An individual submitter, Ms Johns, suggested more public and professional education was required by DHS to promote a greater understanding of cumulative harm among practitioners of health and welfare disciplines (Ms Johns submission, p. 2).

Further comments are made about the need to clarify the operation of cumulative harm in practice in Chapter 14, in relation to strengthening the law.

Assessing and planning for a child or young person's needs

Submissions to the Inquiry raised concerns about the quality and efficacy of case assessments, planning and the capacity of statutory child protection services to collaborate and integrate the services required to support a vulnerable family to care for their child safely.

Berry Street argued that there is a need to review, simplify and integrate the overlapping case planning and client information management and monitoring systems.

> At present, the system is literally awash with well intended but overlapping requirements for the development and completion of plans for individual children and young people (Berry Street submission, p. 32).

St Luke's Anglicare argued that families find the child protection and wider service system complicated, bewildering and confusing, caused by the different services plans, assessments and referral tools developed for (not with) families by statutory services and the wider service system (St Luke's Anglicare submission, p. 15).

The FamilyCare submission stressed the difficulties inherent in undertaking child protection work and noted that sweeping criticisms of DHS and its staff coupled with sensationalistic media reporting was unfair and often inaccurate. With these caveats in mind, however, FamilyCare argued that obtaining vital input or feedback from child protection practitioners was too slow, intermittent or unreliable. Communication challenges with DHS were found to undermine opportunities for effective interaction and collaboration with other service providers in relation to planning and care (FamilyCare submission, p. 12).

The VCDRC submission argued that statutory child protection services and service partners need to put a higher value on reciprocal communication and constructive challenge of divergent assessments in order to build shared understandings as the basis of working together (p. 24).

DHS managers suggested case planning could be simplified and proposed the Looking After Children framework should be used as the building block for developing a single plan (Inquiry workforce consultations).

Collaboration across service systems

Many submissions referred to the need for a comprehensive and integrated service response that addresses not only the protective concerns for children or young people, but that also covers mental health, education, alcohol and drug use and other issues. The Take Two Partnership submission argued that a major problem with the adult and child service system is the continuously 'siloed service systems' that fail to address the complex needs of vulnerable children and families (p. 1).

The Child Safety Commissioner argued that 'it is clear that "silos" within and between departments and professional groups and services still exist'. The Child Safety Commissioner noted that case reviews had revealed many examples of inadequate collaboration and coordination between services and professionals, including a lack of clarity regarding roles and responsibilities, inadequate communication and no case conferencing or shared understanding about case directions (Office of the Child Safety Commissioner submission, p. 3).

In relation to family violence and disability services in particular, greater clarity is required as to which service system is responsible for coordinating and case managing a particular child or young person or their parents. Closer connections and collaboration between these services could lead to significant improvements in quality and effectiveness of the services.

The Joint CSO submission argued that structural barriers prevent greater collaboration between family violence services and statutory child protection services (pp. 46-47).

Professor Humphreys' submission highlighted problems caused by automatic referral to statutory child protection of children living with family violence. When the child or young person's circumstances do not meet the intake threshold no investigation or services are provided (Humphreys submission (a), pp. 4-6, 10). Professor Humphreys argued for alternative pathways for children living with family violence that better recognise the need to strengthen the relationship between a vulnerable child or young person and his or her mother (Humphreys submission (a)).

The Inquiry notes that as part of the progressive development of differentiated pathways within statutory child protection services, the development of appropriate responses to reports of family violence would be a logical extension of the Inquiry's recommendation. For example, police, in partnership with CSOs, play a more active role in responding to family violence.

The Office of the Public Advocate noted a significant increase in the number of families where disability was present (Office of Public Advocate submission, p. 3). The intersection between child protection statutory activities and disability services occurs both when a parent has a disability and/or where a child has a disability.

Submissions to the Inquiry raised concerns about service gaps in assessment and case planning for responses to the needs of children from homes where disability is present. Submissions argued that the protocol in place between statutory child protection and disability services was ineffective at supporting children with a disability (Association for Children with a Disability, p. 3; Disability Services Commissioner Victoria, p. 3). The Public Advocate argued that misunderstandings and, at times, active discrimination occurred against parents with a disability by child protection practitioners (Office of Public Advocate submission, p. 4).

The prevalence of disability is relevant to statutory child protection services in a number of ways. As was discussed in Chapter 2 on vulnerability, where a parent or child has a disability, this can mean that a child is more vulnerable to child abuse or neglect and may be more likely to come into contact with statutory child protection services. A child with a disability may experience greater difficulties with feeding, sleeping and settling and may have more complex needs. These factors impact on the relationship or attachment formed between an infant and their parent and can result in heightened stress, increasing the risk of neglect or abuse.

At the same time, abuse or neglect by a parent may cause a vulnerable child or young person to experience developmental disabilities, ultimately impacting on their transition to independent adulthood. A child with an intellectual disability may also be at a higher risk of child sexual abuse.

The Inquiry considers that the presence of intellectual disability in parents and the presence of disability among children in vulnerable families in Victoria is a significant factor affecting the prevalence of child abuse and neglect. Although the Inquiry heard from some individuals about these issues, it has not been able to fully examine them and make recommendations in the context of the overall effectiveness of Victoria's disability services.

Matter for attention 7

The Inquiry draws attention to the significance of disability as a risk factor among vulnerable families in Victoria affecting the prevalence of child abuse and neglect. This is a matter that should be further considered.

The Inquiry's recommendation for simplification of case planning and for stronger collaboration and diversion pathways dealing with intersecting agencies is set out in Recommendation 21.

Recommendation 21

The Department of Human Services should simplify case planning processes and improve collaboration and pathways between statutory child protection services and other services, particularly family violence and disability services.

The Department of Human Services should increase case conferencing with other disciplines and services related to child protection issues including housing, health, education, drug and alcohol services and particularly for family violence and disability services.

In relation to family violence, consideration should be given to the evidence base for establishing differentiated pathways that lead to improved outcomes along the lines of those pathways discussed in Recommendation 20.

The protocol between statutory child protection and disability services should be strengthened, with more explicit statements around the roles and responsibilities of the different service agencies.

Improving the effectiveness of case management functions

Currently, DHS contracts a range of case management functions to CSOs on a case by-case basis. A number of the major CSOs proposed to the Inquiry that case management responsibility for statutory child protection services should be transferred from DHS to the community sector (submissions from Berry Street, pp. 32, 49-52; Children's Protection Society, pp. 32-33; Anglicare Victoria, p. 19).

The Joint CSO submission proposed that statutory child protection services should be refocused solely on forensic or investigative activities, with case management being transferred to CSOs with appropriate oversight by DHS (p. 50).

Anglicare Victoria argued that the current culture of child protection and related demand issues often meant that cases 'drifted'. Anglicare Victoria argued that refocusing statutory child protection services to cases from receipt of a report up to statutory intervention in court would provide more capacity for DHS practitioners to work intensively and for a longer duration with families at the investigation phase. There would also be more opportunities to co-work complex cases involved with family support and other human services. CSOs would progressively receive statutory case management responsibilities after court orders were obtained (Anglicare Victoria submission, p. 19).

Berry Street argued that DHS should cease directly providing services including case management because it believed this was a role better performed by community sector agencies (Berry Street submission, p. 13).

On the whole, the Inquiry found that these proposals lacked robust evidence to illustrate how a wholesale shift of case management responsibility to the CSO sector would necessarily lead to improved outcomes for vulnerable children and young people.

As was seen with views about the appropriate role of child protection intake, there is not necessarily clear agreement within the community as to what protective intervention work is appropriate for statutory child protection services and what work CSOs might carry out. For example, the CASA Forum submission cautioned against the transfer of statutory functions, arguing that '[n]on statutory agencies should not deal with the legal responsibilities of mandated notifying' because they are not subject to the same scrutiny (p. 9).

A wholesale shift of case management is unlikely to be feasible in the short term due to a range of governance, workforce and funding constraints. The Inquiry's recommendations for differentiated pathways (Recommendation 20), however, will provide greater opportunities for statutory child protection services to, over time, move case management functions to CSOs where this has been shown to improve outcomes. Such case contracting would be carried out on the basis of a greater appreciation of the characteristics of the problems that have led to a child's abuse or neglect, along with clear objectives about the purpose of sharing responsibilities between DHS and the community sector.

A guiding principle for any case contracting changes should be the objective of reducing the number of unnecessary service providers and people in a child's life. Issues arise when multiple agencies and professionals are involved in child and family circumstances including an increased risk of losing focus on the child's needs and diffusion of responsibility. A family experiences disruption and distress to its daily life when it has to manage a host of well-intentioned but uncoordinated service providers.

Managing risk and supporting practitioners

The nature of child protection work involves the application of professional judgment in an environment dominated by risk and risk assessment concerns.

The child protection practitioner's role is to manage this environment and apply professional judgment about the risk that exists to a child's safety and wellbeing. Particularly at intake, when there might be intense time pressures and minimal information that is conflicting or uncertain, this is a difficult balancing act (Mansell et al. 2011, p. 2,078).

The use of standards and procedures to control risk

The working environment for a DHS child protection practitioner involves applying the practice manual - a complex combination of rules, procedures, guidance and advisory notes. DHS advised the Inquiry that the practice manual contains 296 standards within 92 separate pieces of advice. Administrative procedures are required to manage risk but these should enable the exercise of professional judgment, rather than hinder it.

A Humphreys and Campbell submission noted concerns that statutory child protection practice has seen an exponential increase in the number and complexity of practice instructions and standards, without a streamlining of existing expectations or a corresponding rise in the resources to meet the rising standards (Humphreys & Campbell submission (a), p. 2).

In the United Kingdom (UK), the Munro review found that previous well-intentioned practice reforms had skewed work priorities, leading to an over-standardised system that cannot respond adequately to the varied range of a child's needs (Munro 2011b, pp. 9, 14, 51, 61). Similarly, Mansell et al. argues that: '[j]udging the performance of child protection systems by a piecemeal focus on one kind of error and on single cases of errors is a poor source of performance information' (Mansell et al. 2011, p. 2,078).

Munro argued that high-risk sectors such as aviation and health care used alternative people and risk management systems that grappled with high levels of uncertainty and avoiding errors of judgment in practice (Munro 2010, p. 33; 2011b, pp. 86-87).

The Children's Protection Society submission argued that a patient safety systems approach to safety and managing error could move DHS away from a culture of individual blame to an analysis of the human, treatment and systemic factors that provide the multifactorial basis of most errors that occur within complex systems.

> The child protection system should aspire to be a high reliability system like medicine and air traffic control ... [where] there is an acceptance that mistakes will be made and so considerable effort is put into training and supporting staff to recognise and recover from such mistakes (Children's Protection Society submission, p. 39).

By reference to bushfire management and aircraft situations, Weick and Sutcliffe argued that organisations operating in high-risk circumstances need systems in place with particular characteristics to support the right people behaviours. These behaviours include continuous monitoring and adaptation to changing circumstances to minimise the likelihood of error and reduce the impact of errors when they do occur (Weick & Sutcliffe 2007, pp. 2, 160).

In these systems, reliability does not depend on strict adherence to processes, rather it relies on the ability to introduce appropriate variation to adapt to changing circumstances (Weick & Sutcliffe 2007, pp. ix-xi).

The Jesuit Social Services' submission argued that frontline practitioners need to be empowered to use their professional judgment to solve the problems they encounter (p. 20). The Joint CSO submission also argued for a fundamental redesign of statutory child protection roles to reduce unnecessary bureaucracy and place accountability and responsibility for decision making closer to the child, young person and their family (p. 50).

Recommendation 22

The Department of Human Services should simplify practice guidance and instructions for child protection practitioners.

The Department of Human Services should reduce practice complexity by consolidating and simplifying the number of standards, guidelines, rules and instructions that child protection practitioners must follow. This process should investigate and apply learnings from comparatively high-risk sectors such as health or aviation in the approach taken to risk management and adverse events.

DHS workforce retention and professional development

Many submissions commented on the workforce issues faced by DHS including staff recruitment, staff retention, professional development and staff morale (St Luke's Anglicare, p. 14; The Salvation Army, p. 22).

> Statutory child protection workers must feel as though they are under perpetual review, continually judged to be failing in their protective duties and constantly blamed for adverse child outcomes (Children's Protection Society submission, p. 38).

The Joint CSO submission argued that demand pressures, high rates of turnover, poor job design and unwieldy and cumbersome administrative layers hampered DHS' capacity to deliver an effective statutory response (p. 49).

Similarly, the Parenting Research Centre argued that 'simplistic and sensationalistic media reporting have helped create an undeserved sense of chaos and crisis in child welfare, obscuring the good work as well as the real challenges faced by the dedicated professionals who work in the sector in Victoria' (Parenting Research Centre submission, p. 4).

The Take Two Partnership submission argued that there is insufficient understanding in child protection and foster care services about how trauma and disrupted attachment affects young children and infants and brain development. The Take Two Partnership argued for greater workforce training and specific development initiatives about developmental and therapeutic needs for young children and infants (Take Two Partnership submission, p. 7).

The people management and workforce reforms proposed by DHS to provide more support for child protection practitioners in their risk assessment and decision making are discussed in more detail in Chapter 16.

Information and communication technology systems to support practice

In all consultations held with frontline child protection practitioners the Inquiry heard major concerns about the efficacy and the operation of the CRIS/CRISP information technology systems. Submissions argued that current systems are time consuming and require simplification (Humphreys & Campbell (a), p. 2). Berry Street argued that the CRIS/CRISP systems lack basic reporting functions and there is no return on effort to input data to support monitoring, evaluation and quality improvement (Berry Street submission, p. 33). In a report prepared in collaboration with the Victorian Auditor-General, the Victorian Ombudsman commented on a number of issues arising from CRIS including inadequate training, poor help-desk support and slow responses to functionality change requests. The Ombudsman observed:

> CRIS has been in place for three years, and yet it remains plagued by the concerns of Child Protection workers interviewed who state the system has caused stress, frustration and an increased desk-based workload (Victorian Ombudsman 2011d, pp. 89-90).

DHS advised the Inquiry that a range of issues had been identified in 2010 with the efficiency, effectiveness and safety of its client information system, CRIS/CRISP. In particular, the areas identified for improvement were the need for greater training, system support teams and establishing business processes that staff at all levels could understand and follow. A range of CRIS business improvement projects are currently underway to address these findings. In response to the Ombudsman's report, DHS noted that additional funding had been requested in August 2011 to address issues arising from CRIS.

The Inquiry supports continued implementation of the Victorian Ombudsman's recommendations regarding the CRIS and CRISP ICT systems including continuing:

- To strengthen supporting systems and efforts to improve the CRIS/CRISP systems;
- To increase and improve training and support available to staff so that the CRIS system is easier to use and more widely understood; and
- Projects to enhance the capability, efficiency and effectiveness of the CRIS/CRISP systems.

Trust and public confidence

Many submissions commented on the negative impact of what they describe as sensationalist media reporting and the unhelpful nature of current public debate surrounding statutory child protection services.

The Australian Childhood Foundation submission argued that there is insufficient publicly available data about decision-making patterns and benchmarks against which Victoria's system for protecting children could be evaluated. This lack of transparency was argued to impede continuous, transparent review and improvement (Australian Childhood Foundation submission, pp. 2, 6-7).

Greater clarity and publicly available information about the role and expectations for the performance of statutory child protection services is fundamental to the maintenance of public trust.

Informed commentary relies on the availability of clear indicators and standards against which the performance of statutory services can be evaluated or assessed. The major performance standards tool used by child protection practitioners is the practice manual. This document, while it contains supporting advice and guidance for practitioners, contains far too many detailed instructions and advice notes to be suitable for use as a public indicator framework. In addition, performance information against the standards set out in the practice manual is not publicly released.

As proposed in Chapter 6, publicly available and easier to understand performance reporting will support more informed public debate about the efficacy of statutory child protection services. The Inquiry's recommendation about public reporting contained in Chapter 6 and also referred to as part of the governance and accountability recommendations in Chapter 21 will support greater transparency and accountability about the performance of statutory child protection services.

9.5.3 A child's need for stability and permanency planning

It is well established that good outcomes for children and young people in the statutory system depend on safe reunification with their family or stable, long-term placements. Improved outcomes for children and young people in long-term placements are also linked to a child's age at his or her entry point into long-term care and the extent of any emotional or behavioural disturbance. The timeliness of decisions made in respect of children requiring long-term placements are therefore an important factor influencing a child's outcomes.

Adoption and permanent care

Whether adoption or permanent care best meets the needs of a child who cannot return to their biological parents' care or to a member of the extended family, will depend on their individual circumstances. It is a matter that requires very careful and timely consideration.

Adoption is one way of securing a permanent substitute family for a child in care for whom there is little prospect of being reunited with their biological parents and where there is no member of the extended family who is able to provide a suitable stable placement. There are two types of adoption orders; an open adoption where the biological parents give their consent to the child's adoption and where continuing contact may occur with the child; or an adoption order where dispensation of parental consent to adoption is granted by a court.

There are very few adoptions of children in State care in Victoria, and adoptions that are based on the dispensation of parental consent are extremely rare. Only two adoption orders dispensing with parental consent were made across Australia in 2009-10 (AIHW 2010, p. 26). It is unknown to what extent, if at all, DHS seeks the consent of biological parents to adoptions of children for whom there is little prospect of returning to their care. The Inquiry examined the current provisions relating to the requirements for a dispensation of parental consent to adoption under section 43 of the *Adoption Act 1984* and concluded that these are comprehensive and sound. It was not possible to determine why there are so few adoptions of children whose circumstances would make them eligible under these provisions.

The Inquiry considers that children should be afforded the full protection of the law in order to secure their bests interests. Consequently, DHS should, as a matter of priority, pursue timely action to secure the release of children for adoption if parental consent is unavailable and if the child's circumstances would make them eligible for parental dispensation of consent to adoption. This should be done in circumstances where suitable adoptive parents are available and where there is no suitable member of the extended family who can provide an alternative permanent placement for the child.

While additional resources may be required to pursue this course of action, and in some instances, to provide post-adoption support that a child with special needs may require, the savings are likely to be very considerable compared with the cost of the child remaining in care until the age of 18. The reason for the Inquiry advocating this course of action, however, is not financial but is advocated because the right to adoption should be available to eligible children for whom this is appropriate and who have no other prospect of a secure and stable family to whom they can belong.

There may also be wider benefits to the out-of-home care system by giving greater emphasis to adoption. Suitable individuals and families who would be willing to consider adoption but who are not willing to consider foster care or permanent care, could expand the pool of carers, thus reducing the pressure on foster and permanent care.

Another way in which placement stability may be secured for a child in care who is unable to return to their biological family is through a permanent care order under sections 319-327 of the CYF Act. Parents may consent to a permanent care order, but such consent is not essential. The order ceases when the child turns 18 and the Children's Court sets the frequency of contact a child will have with their biological family. A permanent care order may be revoked and, while this is unusual, the Inquiry has heard examples of the insecurity that the prospect of this revocation may engender in the child and the carers. Unlike adoption, the government continues to provide some financial support for children placed under a permanent care order.

When a child enters care at a later age and their identity is based on their biological family with whom continuing contact is important to the child, then a permanent care order is likely to be more appropriate. Where a child has spent little time in their biological family, enters care at a young age, does not have a significant attachment to their biological parents and there is no member of the extended family to provide suitable stable placement for the child, then adoption may be more appropriate.

A recent UK study suggests that the main factors influencing outcomes in care are age, pre-placement adversity and delay in placement (that is, exposure to adversity). Where adversity levels are similar, children in stable foster care and adopted children had similar needs and outcomes when they arrived at their placements at similar ages. Overall there were no significant differences in outcomes between children in stable foster care and children who were adopted (Beek et al. 2011, pp. 2-4). Local evidence on comparative outcomes between adoption and permanent care is scant, however, and it must be noted that children in the two groups tend to differ in age as well as background and abuse histories (Rushton 2003, p. 19).

A number of legislative changes were made alongside the Child FIRST reforms to promote the objective of greater placement stability and for permanent care decisions to be made earlier for children in out-of-home care. The provisions (s. 170, CYF Act) sought to align the developmental needs of a child in out-of-home care and the time available for a parent(s) to demonstrate sufficient change for their child to be returned to their care.

In Victoria there were 203 permanent care orders issued in 2009-10. The average age of children when they commence permanent care orders is around 6.5 years, and the average age of children on permanent care orders is 10.5 years. Nearly 90 per cent of these orders were made more than two years after the initial substantiation of harm. The average time taken between a child's first report and their ultimate permanent care order, at just over five years (Inquiry analysis of information provided by DHS), is too long. For children who have been abused and known to statutory child protection services at a young age, it takes too many years for a permanent care order to be granted when this is necessary to ensure their safety and wellbeing. During this time, many children are subjected to multiple placements, compounding psychological harm.

Finding 4

The Inquiry finds that the current average time taken for permanent care orders to be granted, when this is necessary to ensure a child's safety and wellbeing, is too long. On average, it is five years between a child's first report and a permanent care order.

The Inquiry has heard evidence that the process for securing a permanent care order is complicated and ineffective. It was argued that a failed reunification plan was required before a permanent care order would be granted. Failed reunification plans are traumatic, can delay the formation of healthy attachment with carers, and may lead to prolonged exposure to harm (submissions from Jordan, pp. 1-2; Take Two Partnership, p. 5; The Salvation Army pp. 12-13).

Berry Street's submission argued that Victoria today is doing worse that it was a decade ago in providing placement stability for children and young people (p. 30). The CatholicCare submission argued that permanent alternative care decisions were not made in a timely enough manner, causing significant detriment to the needs of the children involved (p. 14).

The Inquiry considers there are too many barriers to timely, stable, long-term permanent care for vulnerable children. The Inquiry heard barriers included the lack of support for permanent carers, a perception that DHS or court processes are reluctant to fully implement permanent placement planning and the practical consequences of practitioners needing to plan for both reunification and permanency simultaneously.

Put simply, the legislative reforms to the CYF Act have not achieved their desired objective of improving the likelihood that permanent care orders are made in a timely manner to improve outcomes for vulnerable children and young people. It should be noted that Chapter 10 makes recommendations addressing the lack of support measures that mean some carers are reluctant to apply for permanent care orders.

Recommendation 23

The Department of Human Services should identify and remove barriers to achieving the most appropriate and timely form of permanent placements for children unable to be reunited with their biological family or to be permanently placed with suitable members of the extended family by:

- Seeking parental consent to adoption, and where given, placing the child in a suitable adoptive family;
- Pursuing legal action to seek the dispensation of parental consent to adoption for children whose circumstances make them eligible under section 43 of the *Adoption Act 1984*;
- Resolving the inconsistency between practical requirements for child protection practitioners to simultaneously plan for reunification while contemplating permanent care arrangements; and
- Reviewing the situation of every child in care who is approaching the stability timeframes as outlined in the *Children, Youth and Families Act 2005*, to determine whether an application for a permanent care order should be made. Where it is deemed not appropriate to do so (for example, where a child's stable foster placement would be disrupted), the decision not to make application for a permanent care order should be endorsed at a senior level.

9.6 Conclusion

Among the broad range of service responses available to Victoria's vulnerable children and young people, statutory child protection services play an important role. By their very nature, these services are an interconnected chain of activity ranging from intake to investigation, protective intervention and assessment, through to protective orders and placement of children in out-of-home care.

Informed by concerns raised in submissions and available performance data, the Inquiry has examined a number of issues relating to the Victoria's statutory child protection services. These issues have included:

- The question of whether statutory child protection services are sufficiently resourced to intervene when required to protect vulnerable children and young people, given:
  - The changing nature of child protection reports and increasing knowledge about the risk factors likely to give rise to child abuse and neglect;
  - The continuing rise in reports to statutory child protection services and expectations that these reports will be managed appropriately;
- The efficiency and effectiveness of child protection practice, encompassing a range of issues arising from re-reporting and resubstantiation trends but also recognising some children and families are clients of both statutory child protection services and family support services; and
- Once a child has been brought into the statutory child protection system, the need to improve stability in placements for vulnerable children and young people, to avoid causing further harm and trauma.

Statutory child protection services have not been established to address the fundamental underlying causes of child abuse and neglect.

The Inquiry's recommendations in previous chapters are part of a package of reforms that seek to balance the role of statutory child protection services with universal, secondary and specialist adult services as part of a system that meets the needs of vulnerable children. The incidence and impact of child abuse and neglect in Victoria can only be reduced if all of the relevant areas across government accept responsibility for services delivered to vulnerable children and families. The introduction of a whole-of-government strategy and accompanying performance indicator framework in Chapter 6, better use of preventative and early intervention services from Chapters 7 and 8, and, critically, the governance and regulatory changes recommended in Chapters 20 and 21 will establish a framework for government agencies to work together better to address the needs of vulnerable children.

Part 4: Major protective system elements

Chapter 10:

Meeting the needs of children and young people in out-of-home care

Chapter 10: Meeting the needs of children and young people in out-of-home care

Key points

- Currently around 5,600 Victorian children and young people are placed in various forms of home-based and residential care.
- The major trends and structure of Victoria's out-of-home care include:
  - an annual growth over the past decade of 4 per cent in the number of children and young people in care driven by the increase in the time children and young people are spending in care;
  - Aboriginal children and young people now represent one in six Victorian child and young people being placed into care;
  - one in eight Victorian children and young people entering out-of-home care are infants;
  - a significant expansion in the proportion of kinship care placements offsetting a decline in foster care placements;
  - marked regional variations in the proportion of children and young people being placed in care; and
  - 30 per cent of children and young people placed in care in 2009-10 had been placed in care previously.
- There are major and unacceptable shortcomings in Victoria's out-of-home care system including placement instability and poor educational outcomes for children and young people in out-of-home care.
- The Government should, as a matter of priority, establish a comprehensive five year plan for Victoria's out-of-home care system. The core objectives of this plan should be to:
  - reduce over time the growth in the number of Victorian children and young people in out-of-home care to the overall growth in Victorian children and young people;
  - improve the quality and stability of out-of-home care placements; and
  - improve the education, health and wellbeing outcomes for children and young people placed in care, including by ensuring their therapeutic needs are met.
- Implementation of this plan will require a comprehensive and sustained long-term strategy and significant investment.

10.1 Introduction

Statutory child protection services in Victoria are provided to protect children and young people who are at risk of harm within their families, or whose families do not have the capacity to protect them. This chapter focuses on those children and young people for whom the risk of harm is assessed as too great to live at home with their parents and for whom the Department of Human Services (DHS) arranges a placement away from their families. These placements are commonly referred to as out-of-home care placements. Out-of-home care broadly consists of two types:

- Home-based care where placement is in the home of a carer who is reimbursed for expenses for the care of the child – foster care, relative/kinship care and permanent care are all forms of home-based care; and
- Residential care where the placement is in a residential building whose purpose is to provide placements for children and young people and where there are paid staff.

This chapter: outlines the current legislative framework relating to out-of-home care placements; identifies the broad objectives and key elements of the current out-of-home care system; provides an overview of the out-of-home care placements and recent rends; presents an assessment of overall performance and the key issues facing the out-of-home care system identified during the Inquiry process; and sets out a number of key conclusions and recommendations.

The chapter also draws on the report prepared by the CREATE Foundation on the views and opinions of children and young people about the out-of-home care system in Victoria. CREATE Foundation, which is generally recognised as the peak body for children and young people in out-of-home care in Victoria was contracted by the Inquiry to undertake an online and focus group consultation process with children and young people aged between eight and 25 years with a care experience. A summary of the CREATE Foundation report is at Appendix 3 and the full report is available from the Inquiry website.

On any single day in Victoria, approximately 5,600 children are living in out-of-home care placements, including children in permanent care. Around 90 per cent are generally in home-based care placements and the remainder generally in residential care. Over the 10 years to end June 2011, the number of children and young people living in out-of-home care placements increased from 3,882 to 5,678 – a growth of 46 per cent. At the end of June 2011, 4.6 Victorian children and young people per 1,000 aged 0-17 years were living in out-of-home care placements compared with 3.4 Victorian children and young people per 1,000 aged 0 to 17 years at the end of June 2001 (provided by DHS).

The background factors associated with out-of-home placements and other periods children and young people spend in out-of-home care vary considerably. Many children in out-of-home care are reunited with their families within a short period after the families receive support or address the issues impacting on the child's safety and wellbeing. Others may experience longer periods in care reflecting family circumstances, the issue of safety and the effects of trauma, abuse and neglect.

The majority of out-of-home care placements in Victoria are provided and managed by not-for-profit community service organisations (CSOs), many of which have long histories of providing care to vulnerable children across Victoria. DHS funds these placements and related services through funding and service agreements with the individual CSOs. As part of the overall policy responsibility, DHS has established a quality and regulatory framework for the care provided to children in the system and monitors CSO performance.

In summary, the Inquiry found there are major and unacceptable shortcomings in the quality of care and outcomes for children and young people placed, as a result of statutory intervention, in Victoria's out-of-home care system. Further, the Inquiry considers there a number of long-term factors impacting on the outcomes and sustainability of the current approach to providing accommodation and support services to children in out-of-home care. Major reform of the policy framework, service provision and funding arrangements for Victoria's out-of-home care system are therefore urgently required.

10.2 Out-of-home care policy and service framework

The overall purpose of out-of-home care is to provide children and young people, who are unable to live at home due to significant risk of harm or parental incapacity, with a stable and suitable place to live and other supports that ensures their safety and healthy development. The majority of children and young people placed in out-of-home care are subject to a legal order from the Children's Court.

10.2.1 Legislative framework

The *Children, Youth and Families Act 2005* (CYF Act) sets out the requirements under which the Secretary of DHS or delegate may place a child or young person in out-of-home care. Section 173 *Placement of children* applies to a child:

(a) Who is in the custody or guardianship of the Secretary under the Act; or

(b) For whom the Secretary is the guardian under the *Adoption Act 1984*; or

(c) In respect for whom the Secretary has authority under the *Adoption Act 1984* to exercise any rights of custody.

The length of out-of-home care placements varies according to the individual circumstances and the court order that is in place for that particular child. The specific orders covered by section 173 include: interim accommodation orders; custody to Secretary orders; guardianship to Secretary orders; long-term guardianship to Secretary orders; interim protection orders; permanent care orders; and therapeutic placement orders.

The Secretary of DHS has administrative responsibility for the nature of the out-of-home arrangements guided by section 174 *Secretary's duties in placing child*, which requires that the Secretary or delegate when placing a child referred to in section 173:

(a) Must have regard to the best interests of the child as the first and paramount consideration; and

(b) Must make provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would; and

(c) Must have regard to the fact that the child's lack of adequate accommodation is not by itself a sufficient reason for placing the child in a secure welfare services; and

(d) Must have regard to the treatment needs of the child.

In relation to Aboriginal children, sections 13 and 14 of the Act set out the matters the Secretary of DHS, in line with the Aboriginal Child Placement Principle, must have regard to, where it is in an Aboriginal child's best interest to be placed in out-of-home care. In particular, the Secretary of DHS:

- Is required to consult with the relevant Aboriginal agency when consideration is being given to placing an Aboriginal child in out-of-home care;
- Must ensure the involvement of relevant Aboriginal community members and Aboriginal family decision making processes when planning for an Aboriginal child to be placed in out-of-home care;
- Is to give priority, wherever possible, to placement with the Aboriginal extended family or relatives and, where this is not possible, other extended family and relatives; and
- If these placement options are not feasible or possible, have regard to further criteria including the child's Aboriginal community, Aboriginal family-based care and close proximity to the natural family, and maintenance of the child's cultural identity in making a placement in out-of-home-care.

In addition to out-of-home-care placements linked to statutory orders, parents of children who are the subject of a child protection report may place their child voluntarily in out-of-home care on a child care agreement. Part 3.5 of the CYF Act regulates these arrangements that are designed to alleviate immediate risks, where the parent acknowledges the risks and is willing to engage in a realistic and safe plan to address them.

Further to these out-of-home care placements that are covered by the Act, a small number of children are voluntarily placed in care due to parental illness or a family crisis, and where no other placement option is available. In these situations, a voluntary child care agreement is made between the parents or guardian and the CSO.

10.2.2 Objectives and key elements

DHS' *Child Protection Practice Manual* sets out a range of core goals, principles and processes for the placement of children and young people in out-of-home care.

The core goals for placement listed include:

- The care provided by out-of-home carers should be consistent with that provided by any caring parent in the community;
- Child-centred family-focused care – namely the primary focus is on the safety and development of the child, but in the context of the importance of their ongoing relationships with parents, family and their social relationships; and

- Placement stability – child protection services and out-of-home care services need to work hard to minimise the number of placement changes for children and to make placements as stable as possible.

A list of core principles is also identified to guide out-of-home care placements including in addition to the stability and family focus goals:

- Safety – children will reside in a safe environment, free from abuse or neglect;
- Potential – children will receive good quality care, that aims to meet their emotional, social, educational, physical, developmental, cognitive, cultural and spiritual needs and provides them with an opportunity to reach their full potential;
- Participation – children and their families will be provided with opportunities and assistance to participate in all decisions that affect them;
- Respect – children and their families will be treated respectfully and with dignity at all times and will not be spoken to or about in derogatory ways;
- Individuality – the individuality of each child will always be acknowledged. That is, the ethnic origin, cultural identity, religion and language of each child and family will be recognised and respected in the planning and provision of each placement;
- Cultural relevance – children in out-of-home care come from a range of cultures. Each child will reside in environments that are culturally relevant and that highlight the importance of their cultural heritage;
- Gender and sexuality – consideration will be given to the gender and sexuality of each child in planning and delivery of services;
- Disability – consideration will be given to any disability a child may have in the planning and delivery of services;
- Primary attachment – each child will be given the opportunity to maintain and form significant, consistent and enduring emotional connections with one or more primary individuals in their lives, and promote positive, caring and consistent relationships for a child with their family, peers, significant others, caregivers and schools; and
- Leaving care – equipping a young person for life after care is vital, so staff and carers will work with a young person to develop skills that are essential for transition to a new placement, independent living or successful return home (DHS 2011k, advice no. 1407).

Home-based care

Home-based care involves a child living with a full-time carer in the carer's home. DHS provides reimbursement for everyday living expenses of the child with direct fortnightly payments supplemented by discretionary payments for abnormal client expenses or special needs of the child. There are three main types of home-based care:

- Kinship care, where the caregiver is a family member or a person from the child's social network. DHS has historically directly managed kinship care placements but has recently transferred responsibility for a proportion of kinship care placements to selected CSOs;
- Foster care involving placements in a volunteer caregiver's home. CSOs are responsible for recruiting, training and supporting foster carers; and
- Permanent care arising from permanent care orders under the CYF Act whereby the Children's Court may grant permanent custody and guardianship of a child to a suitable person.

Residential care

Residential care involves the child residing in a facility where care is provided by paid staff working in shifts. A number of children usually reside in the facility and residential facilities may be classified according to the level of case complexity and the level of challenging behaviour the unit is equipped to accommodate. In addition to the general residential care models, DHS also funds:

- The Lead Tenant Program designed to provide semi-independent accommodation options for young people aged 13 to 17 years to assist with preparing them for transition to independent living; and
- A number of therapeutic residential care pilots designed to trial more intensive therapeutic responses to children's trauma and attachment disruption arising from prior abuse and neglect.

Brief history of out-of-home care

The pattern and service responsibility for out-of-home care placements has undergone significant changes since the 1970s as part of the broader reforms to the statutory child protection system outlined in Chapter 3. In the 1960s and prior, the out-of-home care system in Victoria was dominated by large institutions housing most children whose parents were unable to care for them. Only one-third were in foster care. A move towards community-based residential care, as part of the broader 'de-institutionalisation' philosophy, saw these larger institutions progressively closed throughout the 1970s and 1980s.

The *Children and Young Persons Act 1989* also provided for the separation of services for children who were detained for committing criminal offences from those children placed in out-of-home care because their families could not care from them.

Throughout the 1980s and 1990s, the overwhelmingly preferred models of care became home-based arrangements such as foster care or kinship care placements, with kinship care now the preferred placement model. Also in the 1990s, service responsibility for community-based residential units operated by the government was transferred to CSOs.

Out-of-home care today

More recently, the overwhelming evidence in Australia and elsewhere that simply removing children and young people from at-risk or untenable family circumstances and placing them in care does not of itself lead to an improvement in their wellbeing, has led to a broader focus on outcomes and the quality and nature of care provided.

In line with this evidence, DHS' objectives for the out-of-home care system, as outlined above, have broadened beyond meeting a child's basic accommodation, food, health care and schooling needs, to including the full range of a child's needs and outcomes in critical life areas such as emotional and behavioural development, family and social relationships, identity, social presentation and self-care skills.

As part of this broader focus, there has also been an important and growing emphasis on developing therapeutic approaches to out-of- home care placements that explicitly recognises that healing the traumatic impact of abuse and neglect and the disrupted attachment that ensues requires creating and sustaining sophisticated care environments. Basic tenets of the approach include 'the skilled therapeutically intentional use of daily interactions as a vehicle for delivering healing interventions' (Downey & Holmes 2010, p. 1).

The extent to which these objectives and key elements are meeting the desired goals is addressed later in Section 10.4.

10.2.3 Out-of-home care processes, funding arrangements and standards

Processes

As outlined in Chapter 9 there are two key statutory child protection processes involved in a decision by DHS to remove or seek the removal of a child from their parent's or family's care: risk assessment and case planning.

The risk assessment provides the basis for informed decisions about a child's needs, the family's ability to provide a safe and supportive environment and the decision to remove a child from the family home. The case plan, as outlined in Part 4.3 of the CYF Act, sets out the decisions, goals and strategies relating to the present and future care and wellbeing of the child, including the placement of and parental access to the child. The case plan includes any stability plan prepared for that child for long-term out-of-home care.

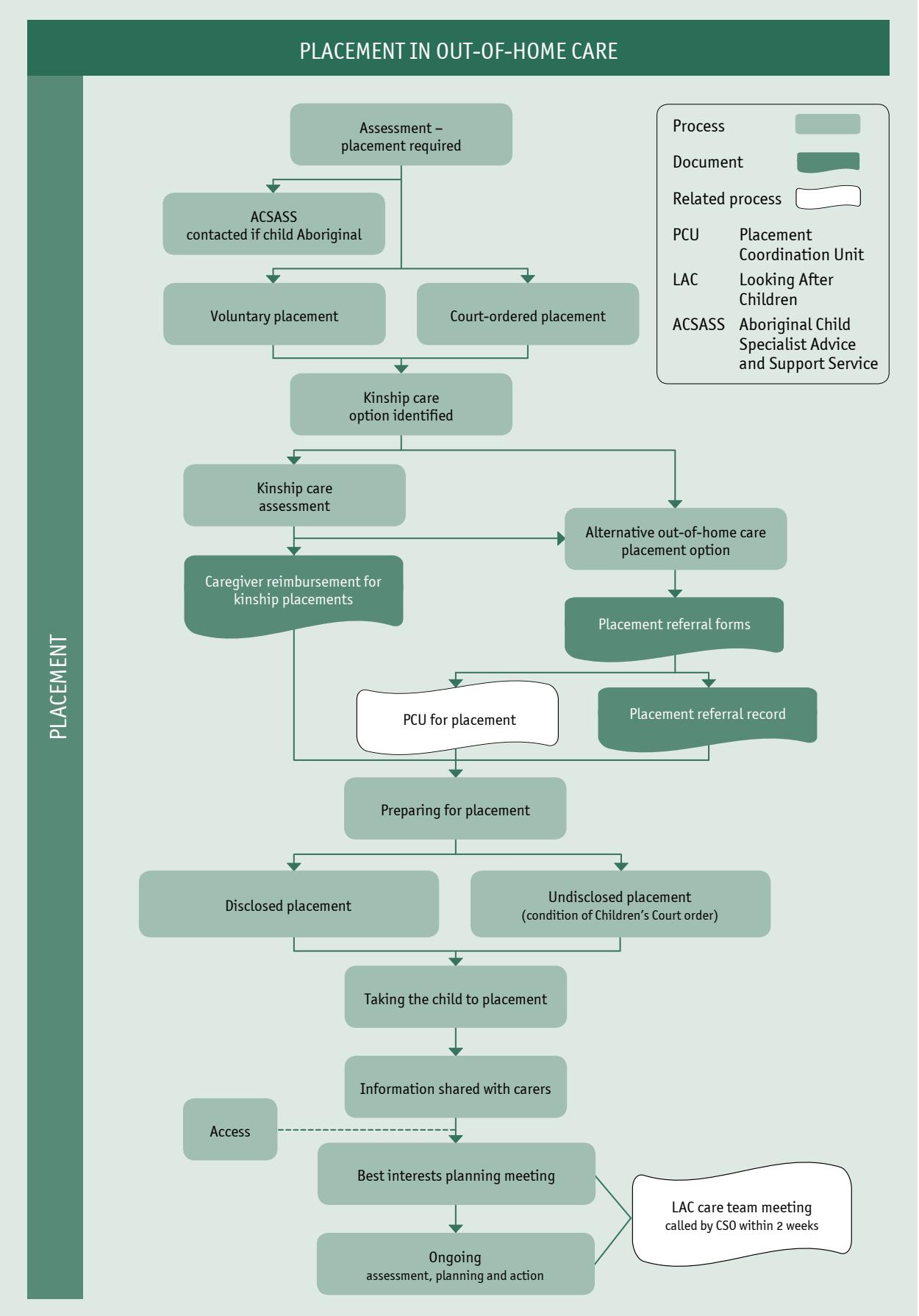
Figure 10.1 sets out the flowchart DHS has developed of the process for placements in out-of-home care including the key phases. The planning and coordination of placements is undertaken as part of the activities of the regional offices of DHS.

As outlined in the flowchart, the placement planning process emphasises the priority to be given to kinship care in the first instance and, in relation to Aboriginal children, the requirement for consultation with the Aboriginal Child Specialist Advice and Support Service.

The placement planning process and the initial placement decisions are the critical steps in achieving appropriate and stable out-of-home placements that support 'the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent' (s.174 (1) (3), CYF Act). To underpin these decisions and the ensuing out-of-home care placements, DHS has developed a range of practices, funding arrangements and standards.

Paramount are the assessment and planning of the child's best interests and promoting and monitoring the child and young person's development. In addition to the child's case plans, including stability plans required as part of the statutory child protection phase, DHS policies and practices include the following:

Figure 10.1 Victoria's out-of-home care placement processes



Source: DHS 2011k, advice no. 1397

- At the point of a child's placement, the establishment of a *care team* to facilitate collaboration and prompt 'all parties involved to consider things any good parent would naturally consider when caring for their own Child' (DHS 2011k, advice no. 1397). The composition varies depending on the specific issues and needs of the child and family but generally includes the child protection practitioner, the community service agency case worker, the carers (including the residential worker) and, as appropriate, the child's parents and other adult family members.
- Using the *Looking After Children framework* for supporting outcomes-focused collaborative care for children and young people placed in out-of-home care as result of child protection intervention. The *Looking After Children framework*, which was originally developed in the United Kingdom (UK) and adopted by DHS in 2002, sets the framework and practice tools for considering how each child's needs will be met while the child is in out-of-home care. The framework identifies seven life areas in considering the child's needs and outcomes – health; emotional and behavioural development; education; family and social relationships; identity; social presentation; and self-care skills – and includes a set of supporting practice tools: essential information record; care and placement plan; assessment and progress record; and review of the care and placement plan.
- For each Aboriginal child placed in out-of-home care, a cultural plan setting out how the Aboriginal child is to remain connected to his or her Aboriginal community and to his or her Aboriginal culture must be prepared.
- As part of the Partnering Agreement between DHS, the Department of Education and Early Childhood Development (DEECD), Catholic Education Commission of Victoria and Independent Schools Victoria on *The Out-of-Home Care Education Commitment*, the establishment of a school support group - including parent, guardian or caregiver, child (where appropriate) and relevant school, DHS and CSO representatives – and preparation of an individual education plan to address the particular education needs of the child or young person in care.
- Advice to care teams on the preparation and planning required for young people aged 16 to 18 years in out-of-home care to transition to independence and adulthood including the preparation of a transition plan. Chapter 11 considers in more detail the legislative framework and statutory child protection process related to young people leaving care.

Structure of out-of-home care and funding

Critical to the achievement of the goals and aspirations for children and young people placed in out-of-home care are the quality of the out-of-home placements and the provision of appropriate interventions and supports to not only the child or young person but the caregivers as well.

DHS has the lead responsibility for the policy and funding arrangements of out-of-home care placements. CSOs are funded and have the service provision responsibility for foster and residential care placements and, more recently, case management responsibility for a number of kinship care placements arranged by child protection workers following the establishment of the kinship care arrangements between the statutory child protection system and the family.

In response to the increase in the demand for out-of-home placements, the long-term decline in the availability of foster carers and the changing and challenging needs of many children and young people placed in out-of-home care, DHS has introduced a range of additional options and supports to the home-based and residential care framework. Figure 10.2, which depicts the current out-of-home care system, indicates the trend towards increasing specialisations and supports within the out-of-home care system.

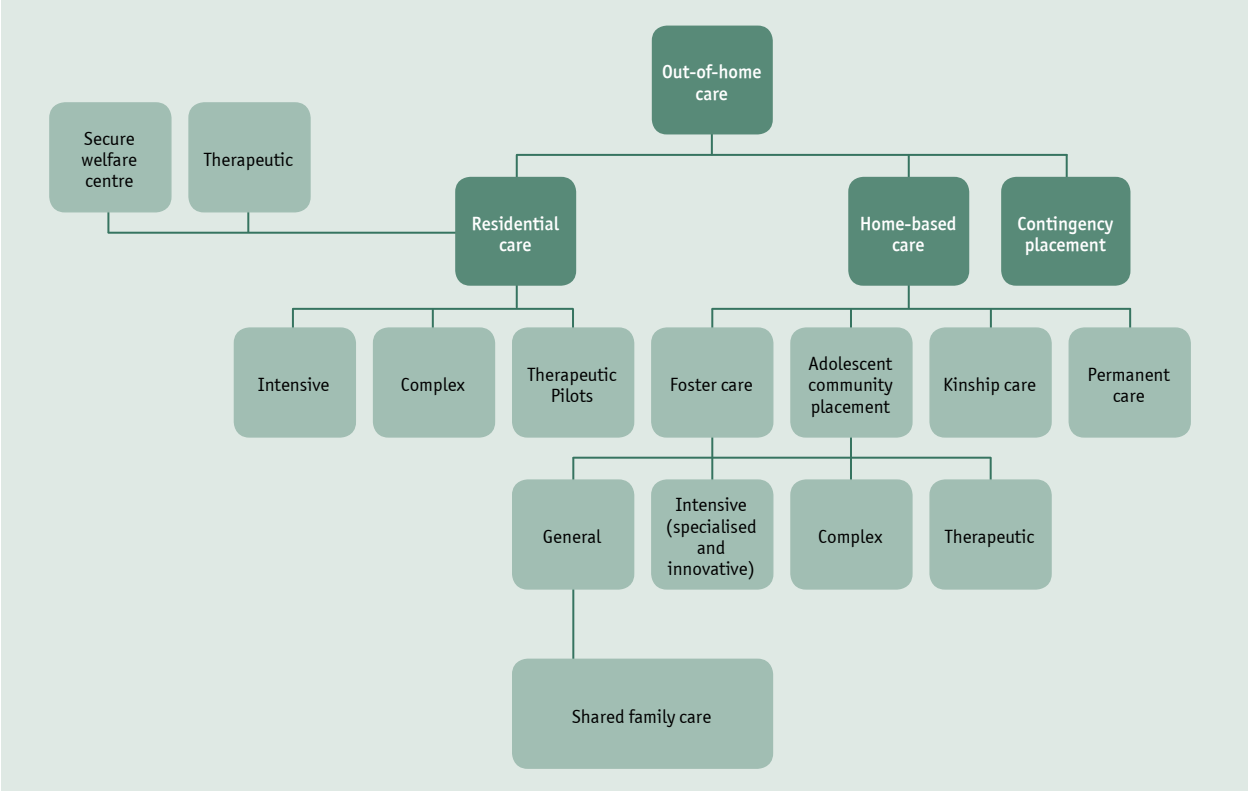
Within the home-based foster care component, the graduations span general, complex, intensive and therapeutic foster care depending on the assessed needs and specialised supports. For example, home-based complex care generally covers one-to-one care for children and young people with very high, complex needs where intensive placements have been inappropriate or unsuccessful because of the child's challenging behaviour or additional needs. Home-based intensive and complex carers are given additional training, reimbursement and support.

The therapeutic approaches in home-based care include therapeutic foster care, which provides additional supports to the child and carers and the dedicated involvement of both placement and therapeutic specialist providers, and access to the statewide developmental therapeutic program, known as Take Two. Take Two supports children and young people in the statutory child protection system.

The residential therapeutic approach involves models being trialled under the Therapeutic Residential Care Pilot Projects initiative commenced in 2007-08. Elements of the pilots include:

- Additional support for residential workers to provide informed care and guidance to assist in addressing the child and young person's everyday and exceptional needs and development delays that impede healthy functioning;

Figure 10.2 Victoria's out-of-home care system



Source: Adapted from information provided by DHS

- Focuses on hearing the child and young person's voice; and
- A strengthening of the child or young person's connections with their family, community and culture.

Reflecting demand pressures and specific placement requirements for children or young people with very complex needs, DHS in recent years has funded a range of one-off or contingency placements in various accommodation arrangements to meet short-term emergencies. These arrangements have included motels, serviced apartments, caravans/cabins and youth hostels. In the year to March 2011, DHS services advised that 124 contingency placements had been made compared with 153 placements in 2009-10. Sixty-eight of the placements had been in youth hostels and 34 in caravans/cabins.

An important element influencing the extent of entry into out-of-home care and the duration of care is the emphasis given to placement diversion and family reunification activities. DHS provided the Inquiry with data on the total number of reunifications with parents for children and young people in 2009-10 and 2010-11. In 2009-10 there were 1,179 reunifications relating to 1,087 individual children and, in 2010–11, 1,130 reunifications relating to 1,046 individual children.

DHS does not collect information on unsuccessful reunification attempts but advised that snapshot reviews indicated:

- Of the 1,087 children reunited with parents during 2009-10, 173 or nearly 16 per cent were recorded as having returned to out-of-home care on 30 June 2010; and
- Of the 1,046 children reunited with parents in 2010-11, 141 or 13.5 per cent were recorded as having returned to out-of-home care on 30 June 2011.

On placement diversion, as part of a range of out-of-home care initiatives announced in the 2009-10 State Budget, DHS has implemented four intensive in-home assistance pilots, known as Family Coaching pilots, aimed at children and young people and their families who are at risk of coming into care or have come into care for the first time. These pilots focus on infants aged under two years, older children aged 10-15 years and Aboriginal children. DHS has advised the preliminary data indicates these pilots are having a significant impact on assisting families provide a safe and supportive home for their children and thereby pre-empting placement in out-of-home care and achieving successful family reunifications.

In the 2011-12 State Budget, the government announced that $12.8 million over four years had been allocated to establish an effective model of health and educational assessment, and treatment and support for children entering residential care. The aims of the funding are to enable early identification of children's physical health and development and mental health needs, and provide support to enable sustainable school engagement and educational achievement.

An important but less well documented and understood component of the out-of-home care system in Victoria is the availability and usage of respite care. Respite care usually takes the form of foster care provided for a short period when the regular carer is unable to care for the child for a range of reasons. The respite care can be regular or on an emergency basis, and is designed to support parents as well as foster carers, kinship carers and permanent carers. In Victoria, respite care for foster carers forms part of the overall arrangements for foster carers involving CSOs. Anecdotal evidence suggests these respite arrangements form an important part of the foster care system.

However, as outlined in Section 10.2.1, placements of children in out-of-home care can also be made outside of a statutory order. In specific instances, the placement in out-of-home care can form an important part of the support to a family that is the subject of a statutory child protection intervention. DHS reported that 893 child care agreements were entered into 2010 of which 57 per cent were linked to statutory child protection intervention and the remaining 43 per cent direct arrangements between CSOs and families to accommodate emergency and other circumstances.

Funding

The overall funding for the out-of-home care system forms part of the annual budget allocations to DHS. In 2009-10, direct expenditure on residential care totalled around $90 million, with some $100 million spent on home-based care including caregiver reimbursements.

There are three principal elements to the current funding of out-of-home care arrangements:

- Funding to CSOs for the provision of home-based foster care and residential places. CSOs are funded for recruiting, assessing, training and supporting foster carers. They are also funded to provide case management and for the provision of the residential care services in community-based houses including the recruitment and training of the carers and staff. Funding provided to CSOs is based on annual unit placement prices which, in relation to home-based care, ranged for 2011-12 from $13,758 per child for general home-based care placements to $27,515 per year for complex home-based care placements. For residential care, the annual placement unit prices ranged from $152,642 to $218,484 per child or young person;
- Direct fortnightly reimbursements to approved foster, kinship and permanent carers to contribute to household expenses. The reimbursements to foster carers are based on the three levels of foster care provision (general, intensive and complex), according to the age of the client and on the complexity of the child's needs. Where a child is placed in kinship or permanent care through child protection involvement, carers are eligible for reimbursement per child at the foster care general rate. In addition, carers receive a range of additional subsidy payments such as the new placement loading, education assistance initiative, education and medical assistance. The 2011-12 annual foster caregiver rates, which exclude the new placement loading range and vary by age, range for children aged 8 to 10 years from $7,134 per child for general home-based care to $35,360 per child for complex and high risk home-based care; and
- Flexible client support funds allocated to DHS regions for one-off expenses and case specific supports and client expenses for children and young people generally placed in out-of-home care. Placement and client expenditure is decided on a case-by-case basis and total annual expenditure is around $40 million.

Standards and monitoring

Alongside the service framework and funding arrangements, DHS has developed, oversees and conducts a range of registration, accreditation and monitoring processes to underpin the quality of the out-of-home care placement system.

These arrangements include the CYF Act requirements that all CSOs providing out-of-home care, community-based child and family services and other prescribed services are to be registered. The standards that CSOs have to meet in order to maintain their registration status were developed and gazetted in April 2007 aim to:

- Ensure consistency in quality of out-of-home care;
- Set an organisational framework to help organisations to provide quality services for children, youth and families by enabling services to monitor and review performance on an ongoing basis;
- Help ensure organisations provide culturally competent services;
- Define the standards of care and support that children, youth and families can expect; and

- Where possible, use other accreditation processes as evidence of meeting the organisational component of the registration standards.

In order to show they meet the standards, agencies are required to complete two internal self-assessments and undertake one external review in every three year cycle.

On 22 June 2011 the Minister for Community Services released new DHS standards that will apply from July 2012 and will replace, among other standards, the *Registration Standards for Community Service Organisations*. These integrated standards are designed to ensure consistent quality of service across disability, homelessness and child, youth and family services and cover the areas of empowerment, access and engagement, wellbeing and participation.

Part 3.4 of the CYF Act sets out the broad legislative framework for approving foster carers and approving or engaging carers. In Victoria, CSOs providing foster care are responsible for the screening checks, assessment, approval and training process of people interested in becoming foster carers. The process from the perspective of potential foster carers involves:

- Participating in an information session;
- Lodging an official application form, including life history and screening check forms (police, Working with Children, medical and referee checks);
- Participating in the CSO's assessment and pre-service training (the assessment includes a home and environment check and interviews); and
- Gaining approval, which is granted for 12 months and reviewed every year.

The assessment of kinship carers is undertaken by DHS and varies from the foster care assessment in that the assessment of the carer is specific to their appropriateness as a carer for a particular child. The initial process involves:

- A preliminary screening prior to placement involving criminal record checks; checks on the suitability and fitness of the proposed carer; checks on whether any member of the household has been a client of statutory child protection;
- Discussions with the carer on safety and cooperation with DHS; and
- For a child under two years discussion on SIDS factors and safe sleeping arrangements.

Subsequently, further assessments are required within the first week of placement and within six weeks of the commencement of placement where the planned placement is likely to exceed three weeks.

As a check on the quality of care in out-of-home care placements, DHS commenced annual data collections in 2006-07 on allegations of abuse in care or quality of care for children and young people in out-of-home care. These data collections paralleled the development by the DHS in 2007 of draft *Guidelines for responding to quality of care concerns in out-of-home care*.

The guidelines, which were finalised in March 2011, specify that all allegations of possible physical or sexual abuse, neglect or other quality of care concerns must initially be screened by DHS in consultation with the responsible CSO to determine the exact nature of the concern and the most appropriate response. At the conclusion of a quality of concern investigation involving an allegation of abuse and neglect, DHS must determine whether the concern is substantiated or not substantiated. If the investigation identifies serious issues in relation to the carer's capacity to provide an appropriate standard of care, a formal care review may be initiated, even when the specific allegations have not been substantiated. To date, DHS has prepared four annual analyses of this quality of care data under four headings: allegations of abuse; completed investigations of possible abuse in care; quality of care reviews commenced; and completed quality of care reviews and outcomes.

Also relevant to the monitoring and improving of the quality of care are the activities of the Office of Child Safety Commissioner established in December 2004. The powers of the Child Safety Commissioner are outlined the *Child Wellbeing and Safety Act 2005* and in relation to children in out-of-home care are:

- Promoting the active participation of those children in the making of decisions that affect them;
- Advising the Minister for Community Services and Secretary on the performance of out-of-home care services; and
- At the request of the Minister for Community Services, investigating and reporting on the out-of-home care service.

As part of these activities, the Child Safety Commissioner has developed the *Charter for Children in Out-of-Home Care* with the CREATE Foundation and undertaken activities in conjunction with relevant out-of-home care organisations, including DHS, directed at improving the outcomes for children and young people who have contact with out-of-home care services. However, as outlined the Child Safety Commissioner's annual reports, these activities in relation to the out-of-home care sector are relatively 'light touch' supportive activities.

In his submission to the Inquiry, the Child Safety Commissioner put forward proposals to enhance his capacity to robustly and proactively monitor the out-of-home care system (Office of the Child Safety Commissioner submission, p. 15). The activities of the Office of the Child Safety Commission are discussed more generally in Chapter 21.

The issue of standards for out-of-home care has also formed part of the work arising from the Council of Australian Governments' (COAG) initiative and agreement in 2009 – *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*. This framework identified 12 priority projects including to develop and introduce ambitious national standards for out-of-home care. In 2011, the Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Groups released *An Outline of National Standards for Out-of-Home Care*. The standards cover: health; education; care planning; connection to family; culture and community; transition from care; training and support for carers; belonging and identity; and safety, stability and security, and set out some 22 performance measures along with a schedule of national measurement and reporting arrangements.

10.3 An overview of Victoria's out-of-home care population

This section sets out a range of summary data on Victoria's out-of-home care population including an analysis of out-of-home care data provided to the Inquiry by DHS for the period 1994-95 to 2009-10.

10.3.1 Key features and recent trends

The key characteristics of the current out-of-home care population and system are:

- The overwhelming importance of kinship care, permanent care and foster care in out-of-home care placement arrangements. Of the 5,678 children and young people aged 0 to 17 years in out-of-home care at the end of June 2011:
  - 2,383 or 42 per cent were in kinship care;
  - 1,361 or 24 per cent were in permanent care;
  - 735 or 12.9 per cent were in foster care;
  - 671 or 11.8 per cent in other home-based care arrangements;
  - 496 or 8.7 per cent were in residential care; and
  - 32 or 0.6 per cent in independent living and non-standard care options.
- The children and young people in out-of-home care are spread across the main age groups. At the end of June 2011:
  - 21.8 per cent were less than 4 years of age (including 3.1 per cent under 1 year);
  - 26.8 per cent were 5 to 9 years;
  - 30.4 per cent were 10 to 14 years; and
  - 21 per cent were 15 to 17 years.
- During the year significant numbers enter and exit from care across all age-groups. In the 12 months to the end of June 2011, 37.1 per cent of those entering care were less than 4 years of age compared with 28.9 per cent of those exiting care:
  - 21.7 per cent of those entering care were 5 to 9 years of age compared with 21.9 per cent exiting care;
  - 27.2 per cent entering care were 10 to 14 years of age and exiting care 21.9 per cent; and
  - for 15 to 17 year olds, 14.0 per cent and 27.3 per cent.
  - Significant proportions of children and young people who exited care during the year had care periods of less than 12 months. Of the 1,729 children who exited care in the 12 months to 30 June 2010 and who were in care for one month or longer:
  - 35.6 per cent had been in care from one month to six months; 16.4 per cent from six months to less than a year;
  - 18 per cent from 1 year to less than 2 years;
  - 16 per cent from 2 years to less than 5 years; and
  - 14 per cent 5 years or greater.
- In line with the major regional variations in the reports of alleged child abuse and neglect and substantiation rates of child abuse and neglect, there are significant regional differences in the key dimensions of the out-of-home care:
  - in 2009-10 in the Gippsland and Hume regions, about 10 children and young people aged 0 to 17 years per 1,000 children and young people in the region were admitted to out-of-home care, more than three times the proportions rate for the Eastern Metropolitan and Southern Metropolitan regions.
  - at the end of June 2010, the proportion of child and young people in out-of-home care per 1,000 ranged from 2.7 in the Eastern Metropolitan Region to 10.0 in Gippsland

– while the broad patterns of home-based and residential care were generally similar, at the end of June 2010 residential care placements ranged from 6 per cent of placements in the Grampians region to 12 per cent in the Hume region, and kinship care placements represented 28 per cent of placements in the Grampians region and 42 per cent of placements in the Gippsland region.

Figure 10.3 indicates: the number of children and young people (aged 0 to 17 years) in out-of-home care in Victoria at the end of June over the period 2001-2011; the number of children in out-of-home care who had at least one out-of-home care placement during the year including those in out-of-home care at the beginning of the year; and the number of children who exited care during the year.

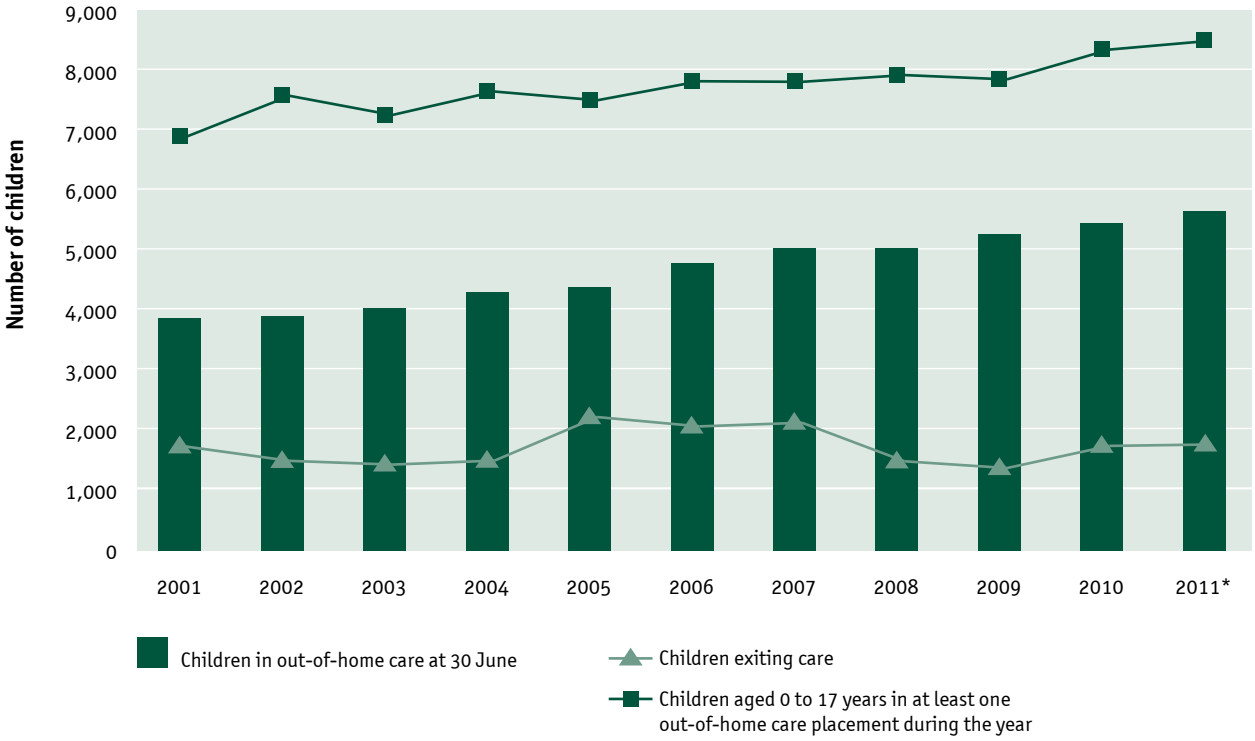
Over the 10 year period to June 2011, the number of children and young people in out-of-home care has increased by 46 per cent or an annual rate over 4 per cent. The rate per 1,000 children and young people aged 0 to 17 years in the population, which adjusts for population growth, increased from 3.4 to 4.6, an increase of nearly 35 per cent or over 3 per cent per annum. Over this period, the number of children in out-of-home care who had at least one placement during the year period increased by 23 per cent and, while the numbers who exited during the year fluctuated, there was little change in the annual number who exited over the period.

Consistent with these trends, the main driver of the increase in the number of children and young people in care in Victoria over the past decade has been the increase in the length of time spent in care. Figure 10.4 provides the percentage distribution of lengths of time in continuous care for children in out-of-home care at the end of June 2001 and 2011. Over this period the median duration of continuous time in care has increased from an estimated 16 months to over three years. As outlined in Section 10.3.2 the number of new entrants to out-of-home care in a given year has been declining over this period.

As outlined in Chapter 12, Aboriginal children and young people have markedly higher interactions with the statutory child protection system. In relation to out-of-home care, the headline observations are:

- Over the period of June 2001 to June 2011 the number of Aboriginal children and young people in out-of-home care increased by over 90 per cent with the rate per 1,000 Aboriginal children and young people increasing from 36.5 to 57.3, an increase of 57 per cent;
- Over the period the median duration of time in continuous out-of-home care increased from an estimated 15 months at the end of June 2001 to less than three years at the end of June 2011;

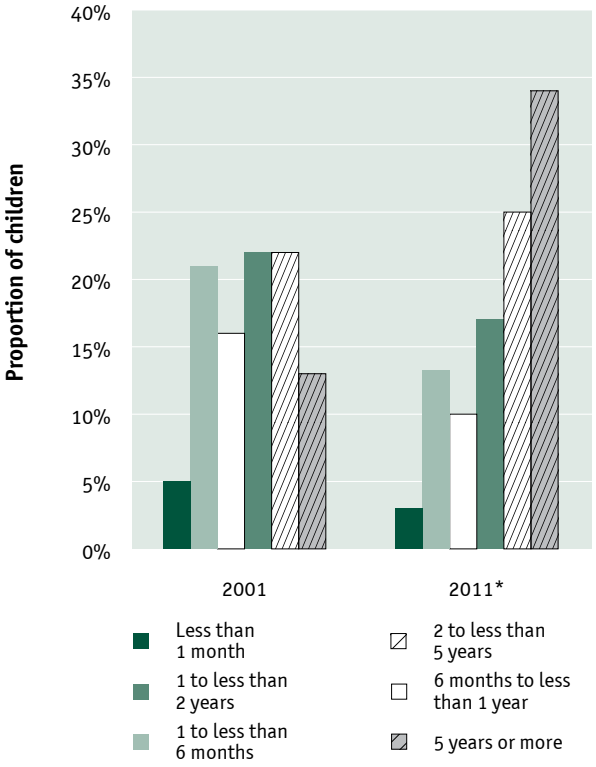
Figure 10.3 Children in out-of-home care, experiencing care and exiting care, Victoria, 2001-2011



Source: Steering Committee for the Review of Government Service Provision (SCRGSP) 2011c, Table 15A.57 and Table 15A.61,* provided to the Inquiry by DHS

- 93.2 per cent of Aboriginal children were in home-based care arrangements at the end of June 2011 with 51 per cent of Aboriginal children in kinship care;
- 64.4 per cent of Aboriginal children who entered care in the 12 months to the end of June 2011 were less than 10 years, a significantly higher proportion than for non-Aboriginal population; and
- Aboriginal children and young people who exited care in the 12 months to June 2011 had spent similar periods in care as non-Aboriginal children: 52.7 per cent had been in care for less than 12 months; 22.8 per cent one year to less than two years; and 24.5 per cent more than two years.

Figure 10.4 Children in out-of-home care at the end of June 2001 and 2011, by length of time in continuous care, Victoria: percentage distribution



Source: SCRGSP 2011c, Table 15A.60
* provided to the Inquiry by DHS

10.3.2 Victoria's out-of-home care system: a longer term perspective

DHS provided the Inquiry with a non-identifiable database of all out-of-home care placements since 1994-95. An analysis of this database provided further evidence of the significant changes over time in Victoria's out-of-home care population and the composition of out-of-home care placements.

Figure 10.5 sets out the age distribution of those entering out-of-home care in the four years 1994-95, 1999-00, 2004-05 and 2009-10. The major variation has been the sharp increase in the proportion of infants aged less than one year being placed in out-of-home care. In 1994-95, infants constituted around one in 14 of the children and young people placed in care; in 2009-10 this proportion had increased to more than one in eight being infants.

Figure 10.6 sets out the number of Aboriginal and non-Aboriginal children entering out-of-home care in the four years 1994-95, 1999-00, 2004-05 and 2009-10 and the proportion entering care who were Aboriginal. Over this period the proportion recorded as Aboriginal has increased from less than 6 per cent to over 16 per cent – or one in six Victorian children placed in out-of-home care.

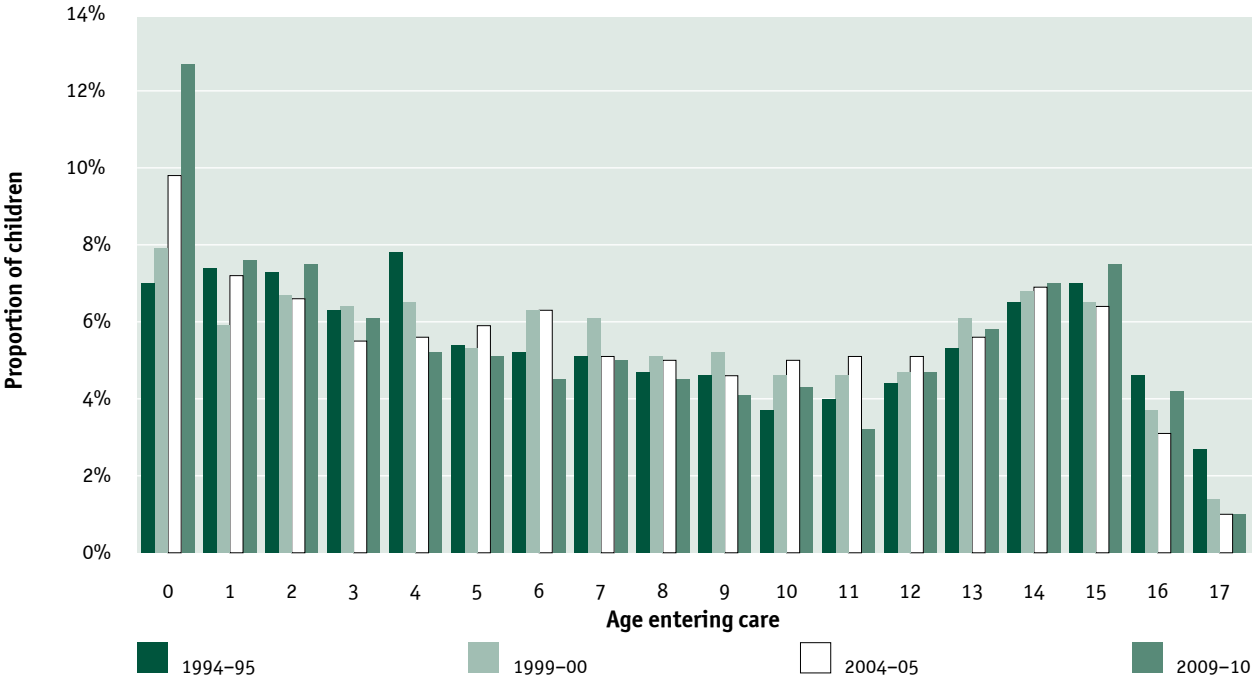
An analysis of children and young people entering non-respite care in 2009-10 indicated a significant proportion, over 30 per cent, had previously been admitted to care. The majority, around two-thirds, had one prior admission to care. For the remaining one-third, they were clustered around two and three prior admissions to care. The extent of re-admission to out-of-home care reflects the extent of resubstantiations for a number of Victoria's children and young people outlined in Chapter 9.

Over the past 15 years there has been significant change in the types of out-of-home care placements as illustrated in Figure 10.7. Most notably, the number of children and young people admitted to foster care placements, which have a shorter duration than kinship care and permanent care placements, has decreased from 3,731 in 1999-00 to 1,751 in 2009-10 – a decline of 53 per cent – while the number of children placed in kinship care has increased from less than 20 in 1994-95 to 1,211 in 2009-10. There was a decline in residential care placements from 668 in 1994-95 to 546 in 2009-10.

The increase in the duration of care outlined earlier has been evident across all age groups. Figure 10.8 indicates the proportion of children and young people exiting care in the selected four years whose length of time in care exceeded one year, by single year of age.

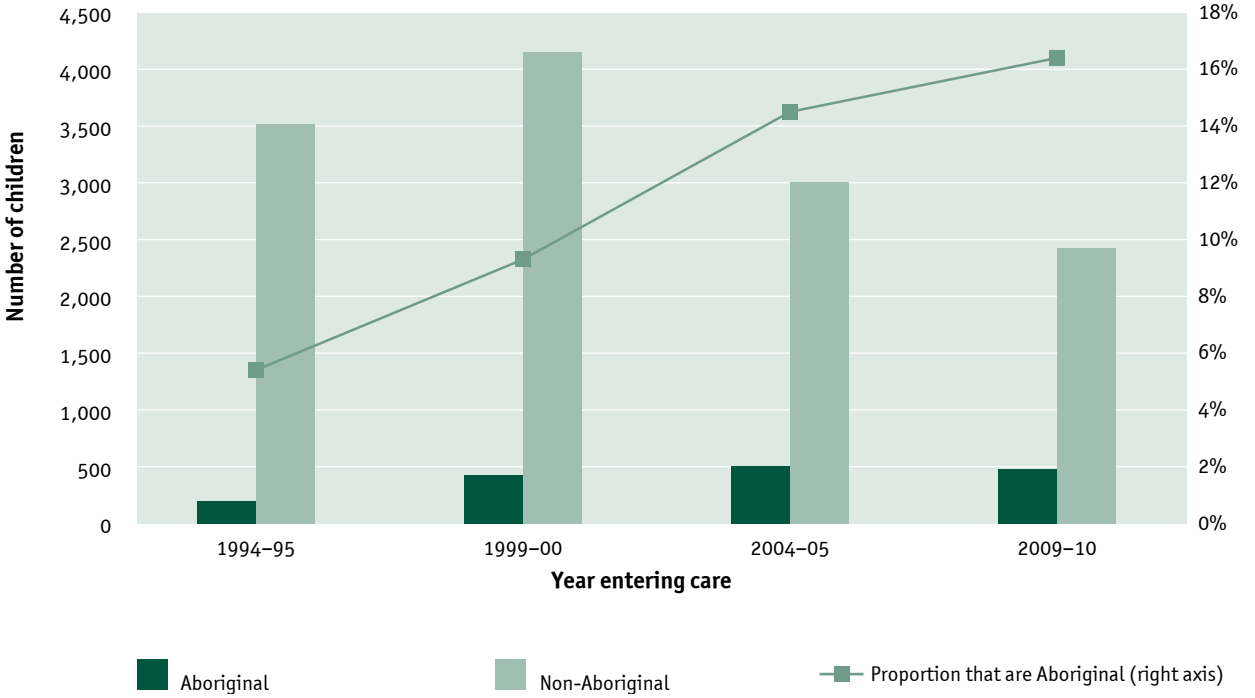
Figure 10.9 sets out the duration of out-of-home care for those who exited care in 2009-10 by their age at the time they entered care. The data relates to the last episode of placement in care (that is, previous placements in care are not included) and excludes respite placements. The average duration in care was nearly 18 months. Those who entered care at over 10 years of age tended to have lower durations of placement and those who entered care prior to age 10 years had longer durations.

Figure 10.5 Children admitted to out-of-home care, by age, Victoria, 1994-95 to 2009-10: Percentage distribution



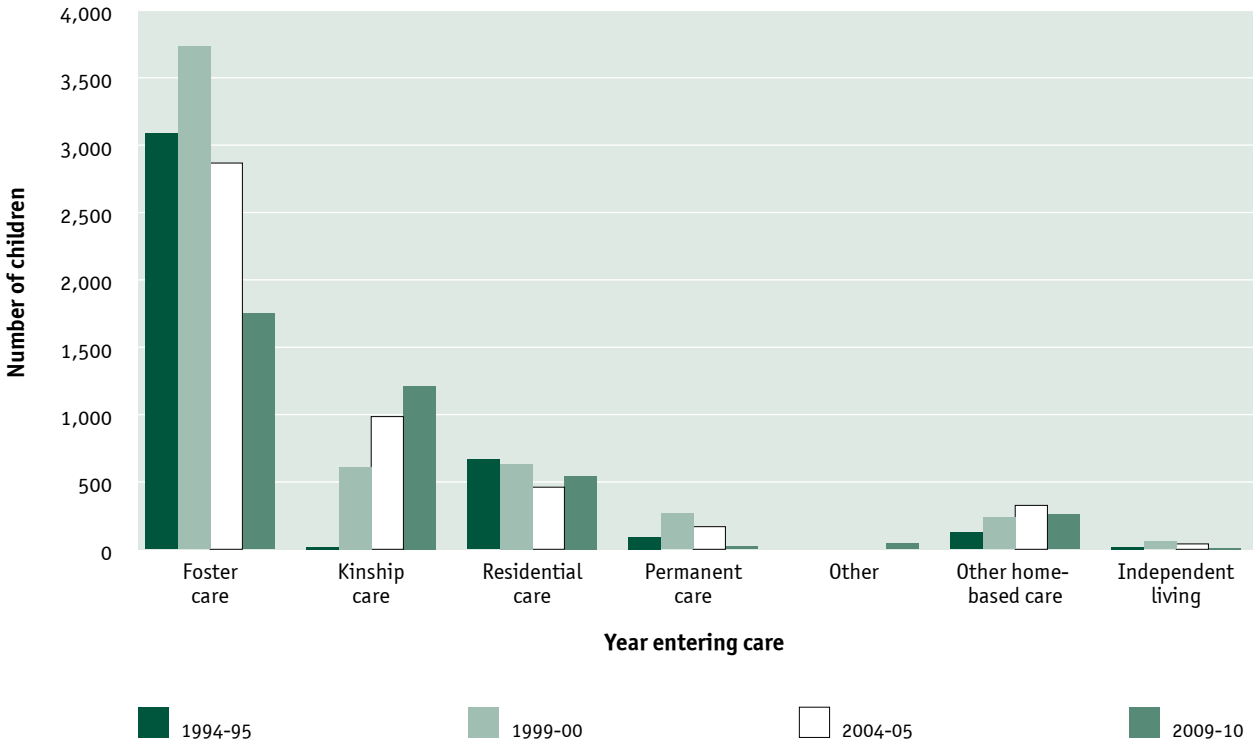
Source: Inquiry analysis of information provided to the Inquiry by DHS

Figure 10.6 Children entering out-of-home care, by Aboriginal status and proportion of Aboriginal children, Victoria, 1994-95 to 2009-10



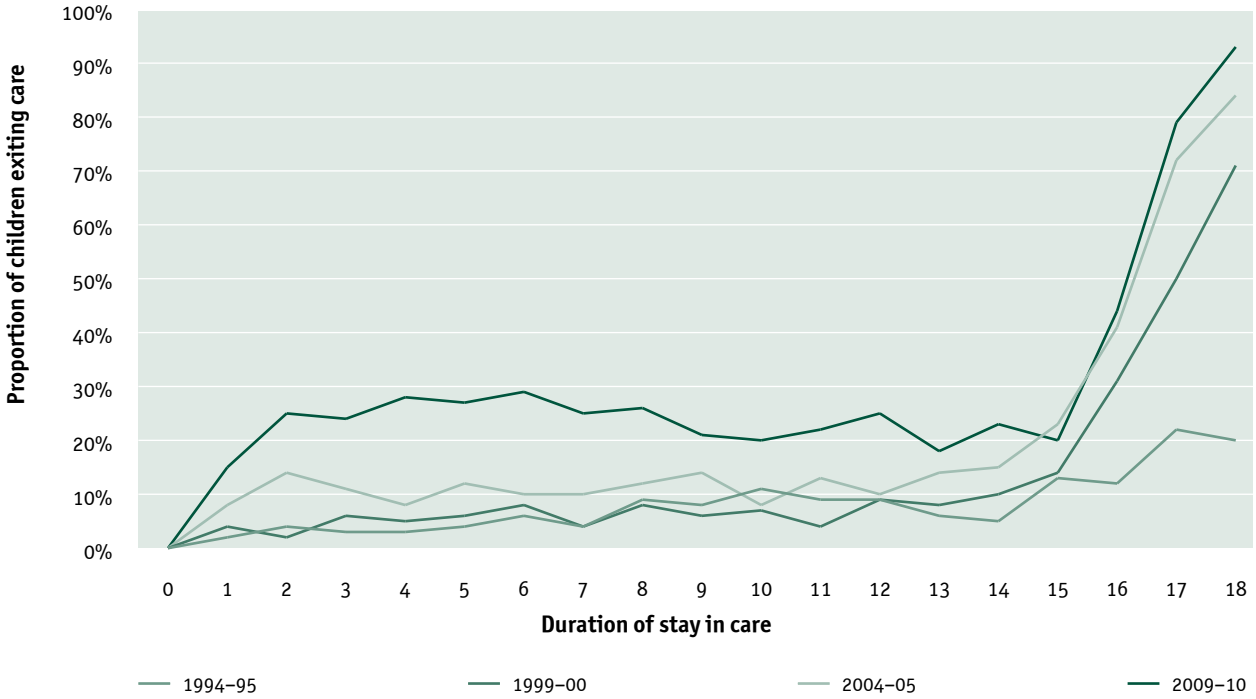
Source: Inquiry analysis of information provided to the Inquiry by DHS

Figure 10.7 Children admitted to out-of-home care, by type of care, Victoria, 1994-95 to 2009-10



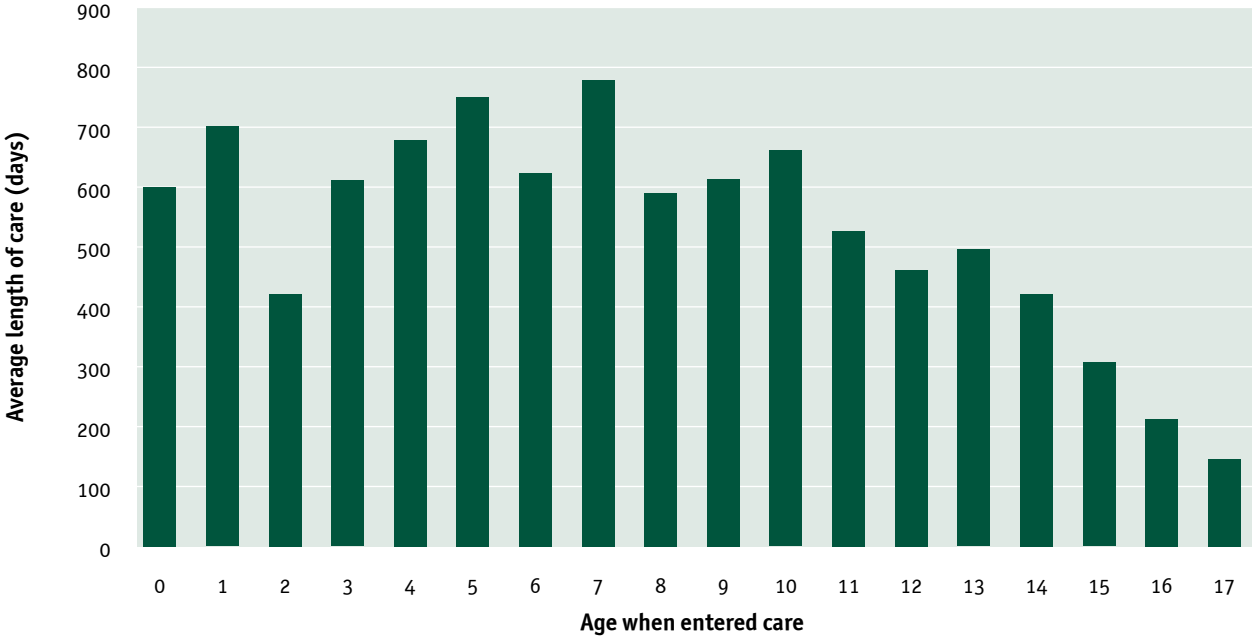
Source: Inquiry analysis of information provided to the Inquiry by DHS

Figure 10.8 Proportion of children exiting out-of-home care, with length of stay over one year, by age, Victoria, 1994-95 to 2009-10



Source: Inquiry analysis of information provided to the Inquiry by DHS

Figure 10.9 Children and young people exiting out-of-home care, by duration of care and age of entry into care, Victoria, 2009-10



Source: Inquiry analysis of information provided to the Inquiry by DHS

10.4 The performance of Victoria's out-of-home care system and key issues

As for many areas considered by the Inquiry, the absence of comprehensive data on the lifetime outcomes for children and young people placed in care prevents a definitive overall conclusion on the impact of out-of-home care placements for Victorian children and young people who are placed in out-of-home care. This is particularly so for young children who experience short periods of care.

However, for many children and young people currently in care, particularly those in residential care, the available information and evidence indicates the impacts of substantiated abuse and neglect and their prior family and socioeconomic circumstances are not being satisfactorily addressed by the out-of-home care system. The available and limited research on the 400 young people who leave care on the expiry of the guardianship or custody order, outlined in Chapter 11, also indicates a significant proportion experience homelessness, unemployment, financial difficulty, physical and mental health problems, drug and alcohol abuse, early parenthood and involvement in the criminal justice system.

In May 2010, the Victorian Ombudsman presented a report into out-of-home care to Parliament (Victoria Ombudsman 2010). A summary listing of the shortcomings in Victoria's out-of-home care system identified by the Ombudsman is presented in Chapter 4. The report also contained a number of recommendations designed to improve processes, increase scrutiny and introduce better planning into the out-of-home care system. This report has provided a backdrop to the analysis, conclusion and recommendations presented in this chapter.

This section presents a summary of the range of performance information available, the main areas highlighted in the submissions to the Inquiry and Public Sittings and identifies a range of key issues to be addressed.

10.4.1 Performance information

Published statistical information on the annual performance of Victoria's out-of-home care system is presented as part of the Government's annual Budget papers, the annual reports of DHS and, at a national level, in the COAG auspiced annual *Review of Government Services* and the regular families and children publications of the Australian Institute of Health and Welfare.

This data, along with specific data provided by DHS for the Inquiry, indicate that:

- In terms of the usage of out-of-home care, the proportion of Victorian children and young people in out-of-home care at the end of June 2010 – 4.4 children per 1,000 children aged 0 to 17 years – was significantly below the Australian average of 7.0 per 1,000 children aged 0 to 17 years and the lowest of any state or territory. The proportion of Indigenous children in care – 53.7 children per 1,000 children – was above the national average of 48.4 children per 1,000 children and above the rates of Queensland, Western Australia and South Australia.
- On relative expenditure, Victoria was recorded as expending, in 2009-10 dollars, an average of $53,434 per child in out-of-home care in 2009-10, the third highest of all states and territories after the Northern Territory and Western Australia. However, as with rates of children and young people on out-of-home care, a range of factors including the policy and service framework and the broader demographic and social context impact on the comparability of this information;
- On the issue of safety of out-of-home care placement, 0.9 per cent of children in out-of-home care in Victoria in 2010-11 were the subject of a substantiation of harm or risk and the person responsible was living in the household at the time;
- On stability of placements in Victoria's out-of-home care system:
  - 21.9 per cent of children on a care and protection order and who exited care after less than 12 months in 2009-10 had had three or more placements;
  - 50.6 per cent of children on a care and protection order and who exited care after more than 12 months in 2009-10 had three or more placements in line with the overall proportion for Australia; and
  - 12 per cent of children and young people in care at the end of June 2010 had three placements or more in the previous 12 months (excluding placements at home).
- On the issue of age appropriate, sibling sensitive and Aboriginal placements:
  - 97.7 per cent of children under 12 years were in home-based care at the end of June 2011 and of the 2,654 siblings in care as at the end of July 2011, 1,924 or 72.5 per cent were placed with at least one sibling; and
  - at the end June 2010, 42.5 per cent of Aboriginal children in Victoria had been placed with a non-Indigenous family or in non-Aboriginal residential setting.
- On the retention and utilisation of foster carers, 226 households commenced foster care in 2010-11 and 291 exited foster care, and at the end of June 2011, 39 per cent of foster care households were caring for two or more children. At the end of June 2010 the number of individual foster carers was 1,798.

An important measure of the performance of the out-of-home care system are the stability of placements for children and young people, particularly for those children who require long-term placements. Stable placements assist in creating an environment that is conducive to addressing the impacts of child abuse and neglect and the emotional, social, educational and other needs of children and young people placed in out-of-home care.

Stability of placements has been a major and long-term issue for Victoria's out-of-home care system. In 2003 DHS as part of a review of home-based care, reported on the results of five-year cohort of children and young people placed in home-based care for the first time in 1997-98. Over the five years, 75 per cent of the cohort had more than one placement and nearly a third had four or more placement changes. The average number of weeks spent in each home-based care placements was 61 weeks (DHS 2003b, p. ix).

Finding 5

The available data indicates the stability of placements has declined significantly over the past decade.

- In 2001-02, 78.2 per cent of children who exited care during the year and were on care and protection orders had experienced two or fewer placements. For those exiting care after two years the proportion who experienced two or less placements was 73.9 per cent;
- In 2005-06, 72.0 per cent of children who exited care during the year and were on care and protection orders had experienced two or fewer placements. For those exiting care after two years the proportion had fallen to 48.7 per cent; and
- In 2010-11, the proportions had fallen to 60 per cent and 44.1 per cent.

As noted, there has been a significant decline in the proportion of foster care placements. This reflects, in part, the priority placed on and rapid increase in kinship placements. However, it also reflects the long-term and continued decline in households interested and available for foster care. The DHS 2003 review of home-based care found that the number of foster carers was falling with a decline of over 40 per cent in the number of new foster carers in the previous five years (DHS 2003b, pp. x-xi).

Finding 6

There has been a sustained net decline in the number of foster carers in Victoria and over the past two years, the number of households exiting foster care totalled 806 compared with 517 households commencing foster care.

This performance information covers a range of service provision dimensions that form and should form part of an effective out-of-home care system. Less readily available, are data on whether the placements and supports are addressing the impacts of abuse and neglect on individual children and young people and their development needs in key areas such as education, health and social and emotional development.

Young people's thoughts on home-based and residential care

In this regard, the consultation conducted by the CREATE Foundation for the Inquiry, while very limited in terms of the number of children and young people involved and the representativeness of the sample, provided a source of information and views from the perspective of the children and young people who had or were experiencing out-of-home care. The experiences, as reported by the participants in the consultations, differed significantly between home-based care and residential care.

> For those young people who were or who had lived in a residential unit, their negative comments tended to revolve around this being more negative than any other out-of-home care placement (CREATE Foundation 2011, p. 10).

More importantly, the report found:

> Overall the children who participated in the online survey believed they had not had a better life since coming into care. Half of them believed they were actually worse off and one-fifth believed things were much the same as they were before coming into care (CREATE Foundation, p. 32).

The needs, behaviour and experiences of children and young people in care

In 2008 the Australian Institute of Family Studies assembled and analysed data from the assessment and action records for children and young people in out-of-home care in Victoria prepared as part of the *Looking After Children framework*. This study, which covered approximately one-third of children in out-of-home-care with placement support, found:

- 53 per cent of children and young people met only half their educational objectives;
- In terms of social presentation areas, little more than half (55 per cent) of children aged five years and over were able to appropriately adjust their behaviour in different social settings;
- On self-care skills, only 35.6 per cent of children and young people were assessed as being able to function independently at a level appropriate to their age and ability;
- On risky behaviour, 21 per cent of children aged 10 years and over had been cautioned or warned by the police, or charged with a criminal offence, within the previous six months;
- Only 52 per cent of children were receiving effective treatment for all persistent problems;
- Children in residential and related arrangements were nine times more likely than children in home-based care to have been cautioned or warned by the police or charged with criminal behaviour within the previous six months; and
- Children in home-based care were also approximately 12 times more likely to meet more than half of the family and social relationship objectives than children in residential care (Wise & Egger 2008, pp. 15-18).

Educational outcomes

For all young people, educational attainment levels at school are critical to successful transition to adulthood and positive lifestyles. DHS and DEECD have recently collaborated in assembling relevant data on the educational attendance and attainment of children and young people in out-of-home care compared with the all Victorian children and young people attending government schools.

The data for 2009 provided to the Inquiry indicated:

- In the early years of schooling (Prep to Year 6) the rate of absenteeism for children in out-of-home care is similar to the rate for all children attending government schools. Although the rate of absenteeism for all children increases in the later years of schooling, it increases much more for children in out-of-home care and overall children in out-of-home care have almost twice as many absences as the average;
- In relation to performance on the Victorian Essential Learning Standards, in reading, writing, listening and areas of mathematics, the incidence of students in out-of-home care performing below, or well below standards increases as the year level increases. For reading, writing and listening, the proportion of children in out-of-home care performing below, or well below standards increases from around five per cent in Prep, to between 40 per cent and 50 per cent in Year 10.

For mathematics, by Year 10 more than half of children in out-of-home care performed below, or well below standards in all of the areas tested;

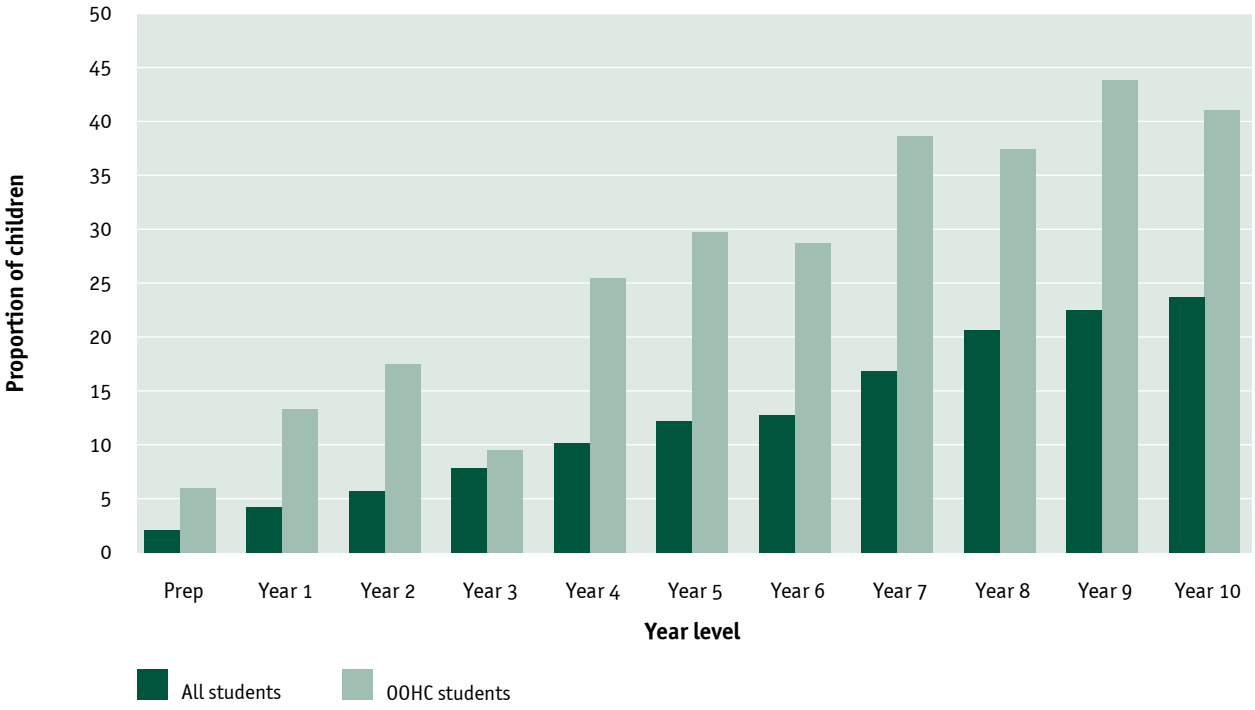
- There is a considerable gap between the performance of out-of-home care students and the general (government school) student population in all of the areas tested. Figure 10.10 shows the proportion of children performing below or well below reading standards for out-of-home care students and the general student population. Although the proportion of the general student population performing below standards increases with education level, the proportion of out-of-home care students performing below standards increases at a greater rate. By Year 10, 23.7 per cent of the general student population performs below expectations in reading, while 41.1 per cent of students in out-of-home care performed below standards. Generally, regardless of year level, children in out-of-home care are about twice as likely to perform below standards at reading. This gap in the educational performance of children in out-of-home care is also evident in the data on the writing, listening and mathematical standards.

Allegations of abuse in care

As outlined in Section 10.2.3, DHS has established a registration, accreditation and monitoring framework covering the out-of-home care system. Included in these arrangements are the annual analyses of allegations of abuse in care or quality of care for children and young people in out-of-home care and the conduct of quality of care reviews. The summary report prepared by DHS for 2009-10 outlined:

- There were allegations of possible abuse in care relating to 363 clients in out-of-home care and covering 279 reported incidents;
- Of the 363 allegations of possible abuse in care, 62 per cent related to physical assault and 15 per cent to sexual assault;
- Of the 363 allegations of possible abuse, 185 investigations were completed and the remainder were ongoing at the end of June 2010;
- Of the 185 completed investigations, 56 or 30.3 per cent were substantiated;
- 159 quality of care reviews were commenced in 2009-10, with the most significant issues of concern being inappropriate discipline (30.8 per cent), carer compliance with minimum standards (17.6 per cent) and inadequate supervision of the child (14.5 per cent); and
- Of the 159 quality of care reviews 86 were completed of which 63 or 75.3 per cent found there was evidence of quality of care concerns. Of those with quality of care concerns, 12 or 19 per cent resulted in the caregiver's approval being withdrawn (DHS 2011e).

Figure 10.10 Proportion of children and children in out-of-home care performing below or well below reading standards, Victoria, 2009



Source: Analysis of data provided to the Inquiry by DHS

Quality of out-of-home care providers

Information on the quality of out-of-home care was also gathered as part of the first external reviews by independent external reviewers of CSOs against the registration standards under the CYF Act. The registration standards apply to CSOs providing family services and out-of-home care services. The summary of these reviews reported:

- CSOs registered to provide family services only, tended to perform slightly better on governance type standards than those CSOs registered to provide out-of-home care services only; and
- The CSOs that provide out-of-home care services only and those that provide both out-of-home care and family services tended to perform slightly better on standards focusing on case management practice (DHS 2011n).

10.4.2 Inquiry submissions and Public Sittings

Victoria's out-of-home care system was a major focus of submissions and presentations to the Inquiry, particularly by CSOs. The issues raised covered the full spectrum from the overall service design and funding framework to the practical issues faced by foster and kinship carers in caring for and supporting some of the most vulnerable Victorian children and young people.

Need for major reform

Further to the observation by the Jesuit Social Services that '... out-of-home care for children and young people is not working adequately and, is indeed, at crisis point' set out in Chapter 5, the Joint submission of Anglicare Victoria, Berry Street, MacKillop, The Salvation Army, the Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare (Joint CSO submission) contained the following more detailed assessment:

> The current arrangements for out-of-home care in Victoria have an historical basis that has led to the services struggling to cope with contemporary issues and growing demand. The models of care have largely been in place for decades, and they are models that are ill-equipped to manage the issues that children and young people bring with them. We need to re-think the types of out-of-home care that are provided, how they are provided and how they are funded. In particular we know that out-of-home care cannot deal with all the issues alone, and that we have to find ways of providing therapeutic responses for vulnerable children and young people in out-of-home care (Joint CSO submission, p. 59).

In their submission The Victorian Council of Social Services (VCOSS) put forward the view:

> Systemic changes are required to improve out-of-home care, including better assessments, a better range of placement options (e.g. vocational as well as residential, professional foster care), more therapeutic resources, an improved funding model. More multidimensional and intensive supports, systemic linkages across service systems, and a system that continues to 'be a good parent' to young people after they leave care (VCOSS submission, p. 42).

Comprehensive assessments

The areas identified in the VCOSS submission were also the subject of focus and recommendations in many other submissions and presentations to the Inquiry. For example, on the issue of the need for comprehensive assessments of children and young people being placed in out-of-home care, the submission by the Take Two Partnership observed:

> Issue: The policy emphasis at a national and statewide level regarding physical, social and emotional health assessments for children has not been translated into action.
>
> Suggestion: There have been various pilots focussing on young children, first time into care and the current pilot being considered regarding children in residential care. The reality is that these children are of all ages and whether it is their first, second or forty-fifth placement – they need a brief health and wellbeing screening and response (Take Two Partnership submission, p. 7).

The Joint CSO submission recommended that comprehensive assessment approaches be established across Victoria to ensure appropriate holistic assessments are undertaken to fully inform decisions on the placements and specialised supports for children and young people (p. 61).

Flexible placement and support options

On the issue of the availability of suitable and flexible placement and support options, the two main matters raised in submissions were the pressures on maintaining the home-based care system and the constraints of the current care models and placement arrangements in addressing the individual needs of many children and young people placed in out-of-home care. The submission by St Luke's Anglicare outlined:

> From St Luke's experience the home-based care system is under increasing pressure and its ability to meet current demand and provide the level of care required is severely compromised. We are experiencing real challenges in recruiting carers and maintaining a sufficient carer pool that can meet demand for new placements and offer the level of respites required for carers providing long term care

> ... Carer feedback highlights these challenges and many carers are concerned about the difficulties they face in caring for children and young people with very challenging behaviours due to past experiences of trauma ... St Luke's would seriously question whether the current structure and resourcing of home care allows for a viable program in the long term (St Luke's Anglicare submission, p. 19).

Professional foster care

Given the pressures on the home-based care system, a number of submissions supported the consideration and introduction of a professional carer model to be run in conjunction with current home-based care. The Joint CSO submission went further with an all-embracing recommendation:

> That foster care is professionalised by paying foster carers an annual salary with all the usual conditions that apply for Australian workers, such as superannuation, annual leave and long service leave. Foster care arrangements would be additional to the salary paid, and would be paid for the number and length of foster care placements provided (Joint CSO submission, p. 64).

Care options

The constraints of placement availability and the range of care options were highlighted in a number of submissions. For example, MacKillop Family Services observed:

> Too often in placement decision making the best interests of children and young people are subordinate to the pragmatics of placement availability. There is a clear need to expand the suite of available care options for children not able to live with their parents (MacKillop Family Services submission, p. 8).

The limited range of care options was identified as a major issue in meeting the needs of children and young people with a disability and children and young people with sexually abusive behaviour. The current design of residential care was also identified by many submissions as facing major challenges. The St Luke's Anglicare submission observed:

> Serious challenges continue with the delivery of Residential Care programs. The needs and behaviours of the young people placed in residential care considerably stretch the capacity of the program to provide the required response to meet the needs of the young people. Whilst a residential care model is absolutely necessary within the suite of out-of-home care services, it is St Luke's view that the current design of the residential care model is severely limited and it struggles to meet the desired outcomes (St Luke's Anglicare submission, p. 19).

Therapeutic care

A major theme of many submissions was to embed therapeutic responses across all forms of out-of-home care building on the selective trialling of therapeutic care and supports across the home-based and residential care options. A therapeutic response is generally defined as one that responds to the complex issues of abuse and neglect, and seeks to address concerning issues and behaviours exhibited by the child or young person. MacKillop Family Services commented;

> The Victorian system is in danger of re-traumatising children and young people due to lack of responsiveness to their needs ...
>
> All children and young people removed from their family and placed in out-of-home care will have experienced trauma and will require a therapeutic care response (MacKillop Family Services submission, p. 8).

New funding arrangements

These criticisms of the current range of placement options and services were generally linked to observations about the current adequacy and structure of funding including allowance for the inevitable variations in the overall level and composition of out-of-home placement requirements. In particular, the resort to contingency placements was viewed as not only an indication of the need for additional placement and funding capacity but the growing need to develop more flexible and specialised arrangements. A system of client-based funding predicated on the assessed needs of children and young people was proposed by the Joint CSO submission which argues:

> Such client-based or person-centred approaches are already in place in Victoria in the ageing, disability and home care sectors, and the experiences of these sectors provides insight into the effectiveness of alternative and tailored responses. A person-centred approach allocates resources more strategically by allowing individually tailored responses to be developed, it also allows resources to be distributed transparently and more equitably, it encourages consideration of options and flexibility, and it can involve the service recipient in the decision making about how the service system supports them (Joint CSO submission, p. 60).

Improved coordination and information exchange

The range and respective interests of parties involved in the out-of-home care system – DHS, the Children's Court, CSOs, foster, kinship and permanent carers and the families of children and young people – was reflected in the focus in many submissions on the

need for better coordination and information and, more significantly, greater clarity in the roles and responsibilities of the various parties. The range of views expressed covered:

> … the decisions about where to place a child or young person … should be a joint responsibility between the community services sector and the statutory child protection system … this change would strengthen local decision making and integrate it more closely with those responsible for service delivery (Joint CSO submission, p. 61).
>
> In Berry Street's experience, the interests of children and young people are best served where the case management function is contracted to Community Service Organisations (CSOs). CSOs are best placed to engage with and maintain strong relationships with children and young people and working through care teams and other mechanisms advocate for their best interests (Berry Street submission, p. 30).
>
> Alongside the need to reform case management by contracting this function to CSOs there is a need to review, simplify and integrate the overlapping case planning and client information management systems monitoring systems. At present the system is literally awash with well-intended but overlapping requirements for the development and completion of plans for individual children and young people … Current planning and client information tools that require review and integration include, but are not limited to the following:
>
> - Best Interest Plans;
> - Stability Plans;
> - Education Support Plans;
> - Case Management Plans;
> - Care Management Plans;
> - Cultural Support Plans;
> - Leaving Care Plans;
> - CRIS/CRISP; and
> - Looking After Children (LAC) (Berry Street submission, p. 30).
>
> Strengthening the Care Team Model and LAC framework to ensure carers have necessary information on the children they care for, carers views are heard and respected in planning and important outcomes for children in care are achieved (Foster Care Association of Victoria submission, p. 1).

In addition to these broad systemic comments on the provision of out-of-home care in Victoria, three specific areas were highlighted in submissions as presenting barriers and inhibiting good outcomes from the out-of-home care system: the level of care reimbursements and access to additional financial support for significant expenses and addressing specific issues; supports for kinship carers and access to continued supports for permanent carers; and the disengagement from school of children and young people in out-of-home care.

Carer reimbursements

On carer reimbursements, The Salvation Army argued:

> The level of reimbursement to foster carers urgently needs to be reviewed. We are placing increasing demands on foster carers in terms of complexity of children and young people that they are required to care for and the associated requirements of their role; however this is not reflected in the level of reimbursement that foster carers receive (The Salvation Army submission, p. 18).

At the Melbourne Public Hearing, Ms C, a foster and permanent carer for a sibling group of four, commented on the level of foster care reimbursements in the following terms:

> It's very expensive to be a carer in Victoria. Our carer reimbursements are among the lowest in Australia, yet we are expected to do more and more with these…
>
> … Foster care is the only volunteering which is 24 hours a day, seven days a week and where you are also required to spend your own money in the role of volunteering. It's a bit like working for free and then paying the community some money each day to be able to keep doing it.

As outlined in Section 10.2.3 DHS provides additional financial support to carers for significant one-off expenses. The funding coverage and guidelines and the consistency of access across the out-of-home care system was the subject of comment by caregivers and their representatives. The supplementary submission by the Foster Care Association of Victoria commented on the need for 'consistency across all placements/ regions in terms of what extra reimbursements and entitlements are available for carers (Foster Care Association of Victoria supplementary submission, p. 7). The supplementary submission by Upper Murray Family Care provided practical examples of how the procedures and absence of transparency about the coverage of these additional funds can inhibit the timely provision of specialist health services (Upper Murray Family Care supplementary submission). These examples included approval for urgent speech therapy for a five year old boy and dental treatment for a 12 year old boy who had been in need of dental work for around three years.

Support for kinship carers

The rapid growth in kinship care in advance of detailed consideration of the specific support requirements of kinship carers was area highlighted in the submissions from Grandparents Victoria, and Kinship Carers Victoria and Humphreys and Kiraly.

> The rapid growth in kinship care has led to ad hoc development of support strategies. There are three strategies GPV/KCV commends as being both urgent and important:
>
> - Training for and about kinship care;
> - Helping kinship carers to help themselves; and
> - Education of children in out-of-home care (Grandparents Victoria and Kinship Carers Victoria submission, p. 11).
>
> Kinship care is a discrete and unique form of care that is qualitatively different from foster care. Kinship care support requires its own model, skill set and training … Support for kinship care placements, both 'temporary' and 'permanent' needs to be as great or greater than foster care, to ensure children and carers' safety and wellbeing (Humphreys & Kiraly submission (b), p. 2).

Ongoing support for permanent carers

Linked to the issue of support for kinship carers, was the observation in many submissions of the need for ongoing support to families once a child has been placed in permanent care.

> … the withdrawal of care management and financial support to families once a child has been placed in Permanent Care (whether originally foster carers or kinship carers), a legislative option that is intended to secure the long term care and connection with a family for children, has led to many breakdowns in the care arrangements. We strongly believe that families who commit to providing Permanent Care opportunities continue to deserve the support of the Care System and that the young people placed in Permanent Care have a right to continue to be supported by a wider support network (The Salvation Army submission, p. 21).

Improved educational engagement

A number of submissions put forward proposals to address the lack of engagement in the educational system and poor levels of educational attainment of many children in out-of-home care. St Luke's Anglicare and Berry Street respectively recommended:

> That DHS and DEECD in partnership with out-of-home care agencies develop a well-funded model of alternative learning settings for young people who cannot be maintained in mainstream education (St Luke's Anglicare submission, p. 23).
>
> That the State Government recognise, support and develop a range of alternative settings for the delivery of primary and secondary education for children and young people in OOHC for whom mainstream settings are not viable (Berry Street submission, p. 18).

Other submissions placed emphasis on providing additional supports and educational programs and strategies to maintain the links to the mainstream education system. Anglicare Victoria recommended:

> Increase provision of teacher training and resources in both initial and continuing teacher education to assist teachers to respond to trauma-related behaviour.
>
> Improve the scale and reach of targeted education supports and alternative education programs for children/young people across the age range whose learning is disrupted by the effects of trauma
>
> Implement a system to ensure that children/young people who drop out of school and cease to be enrolled can be identified and located, and strategies put in place to secure their re-engagement in education (Anglicare Victoria submission, p. 35).

Records

A small number of submissions raised the general issue of support for archiving and record-keeping in Victoria's out-of-home care system. Two main perspectives were identified. MacKillop Family Services drew attention to their Heritage and Information Service established to assist people who spent time in institutional care or were placed in foster care by any of these institutions access their records. The submission emphasised:

> Information collected and the records that are maintained for children and young people growing up in care must be securely stored and able to be accessed at a later date. This material is often an enduring source of identity for children and young people who grew up in care and agencies should be resourced to ensure that this material is collected, stored and released appropriately (MacKillop Family Services submission, p. 17).

The Humphreys, et al submission (b) reported on the project examining the role played by records and archives in the health, wellbeing and identity construction of young people in care and of adults who were in care as children. The project is funded by the Australian Research Council and a wide range of CSOs, together with organisations representing the interests of the care population. DHS is also a project partner.

The submission contains a number of recommendations focused on: the current state of record-keeping; the complexity and current fragmentation of a child's record; collaborative recording; identity documents; the records continuum; and access to records. The underlying tenet of the submission and recommendations is to balance the focus of practitioners on the current needs of children and young people in care with an increased awareness of their longer term identity needs.

Recommendation 24

The Department of Human Services and community service organisations should continue to support the Who Am I Project on out-of-home care record-keeping to enable children and young people to access all records of relevance and, as appropriate, be provided with a personal record when leaving care.

10.5 Conclusion

The structure and performance of Victoria's out-of-home care system has been the focus of three major DHS sponsored or led policy reviews and reports over the past decade: *Public Parenting: A Review of Home-Based Care in Victoria* (DHS 2003b); *Family and Placement Services Sector Development Plan* (DHS 2006b); and *Directions for Out-of-Home Care* (DHS 2009a). In addition, in May 2010 the Victorian Ombudsman produced the report of his *Own motion investigation into Child Protection – out-of-home care*.

The policy reviews and recommendations covered a range of varying issues but with significant commonality in the areas emphasised and the strategies recommended. *Public Parenting* identified the following directions for reform:

- Focus on prevention;
- More responsive service models;
- Comprehensive assessment;
- Quality assurance;
- A professional foster care service;
- More appropriate service delivery of kinship care;
- Development of a new flexible funding model; and
- Communication.

The *Family and Placement Services Sector Development Plan* prepared by representatives from CSOs, peak bodies, community health, local government and DHS outlined a detailed action plan focused on strengthening:

- Advisory structures and planning;
- The focus on outcomes;
- The voice of children, young people and families;
- Aboriginal service responsiveness;
- Foster care;
- Service model effectiveness and quality;
- Service sustainability;
- Workforce; and
- Profile.

The *Directions for Out-Of-Home Care* released in 2009 outlined seven reform directions:

- Support children to remain at home with their families;
- A better choice of care placement;
- Promote wellbeing;
- Prepare young people who are leaving care to make the transition to adult life;
- Improve the education of children in care; and
- Develop effective and culturally appropriate responses for the high numbers of Aboriginal children in care; and
- A child-focused system and processes.

These directions formed the basis for initiatives in the 2009-10 State Budget to expand the number and quality of out-of-home care placements, extend the therapeutic residential care pilot program and assist Aboriginal kinship carers to better meet the specific needs of Indigenous children.

The 2011-12 State Budget included a package of initiatives covering health and education assessments for young people entering residential care; enhanced placement capacity and care arrangements including responding to out-of-home care shortages; increased support for foster carers; and initiating a long-term study assessing the impact of out-of-home care on children.

Many of these themes identified in these three major reviews and reflected in the initiatives in recent budgets, were also the subject of comment and recommendations in the submissions. In addition, these reviews as with the submissions considered a wide range of out-of-home care issues in significant detail.

In the Inquiry's view, these reviews, submissions and the supporting material, provide important detail on which to develop a comprehensive future strategy for Victoria's out-of-home care system.

However, the Inquiry considers an important missing link in the reviews and responses to date, has been the absence of an explicit goal for the scale and key dimensions of Victoria's out-of-home care population. More specifically, the growth of four per cent annually in the out-of-home care population appears to have resulted in the annual budget initiatives addressing past capacity and quality concerns and not being premised on a goal and accompanying strategies for the future dimensions of the out-of-home care population. If Victoria's out-of-home population increases at the same rate over the next three decades as it has past decade then more than one per cent of Victorian children and young people will be in out-of-home care at any point in time and a considerably higher proportion will have experienced an out-of-home care placement.

Adopting this forward looking view is particularly important because when benchmarked against the:

- Objectives and responsibilities in the CYF Act that the Secretary of DHS 'must make provision for the physical, intellectual, emotional and spiritual development of the child in the same way a good parent would' (section 174); and
- The overall objective of the Inquiry's Terms of Reference to reduce 'the negative impact of child neglect and abuse in Victoria'. It is clear that there are major and unacceptable shortcomings for many children and young people placed in out-of-home care in Victoria, and addressing these deficiencies requires sustained long term strategies and funding.

The Inquiry considers these quality of care concerns and outcomes reflect and are being exacerbated by:

- The continued growth in the proportion of Victorian children in out-of-home care particularly Aboriginal children and significant regional variations in the placement of children and young people in out-of-home care;
- Resource and other constraints on planning and providing comprehensive and flexible models of care and support driven by the individual and significant needs of children and young people placed in out-of-home care and their families;
- The absence of a contemporary, integrated and viable framework for home-based care given the demographic changes impacting on foster care and the increasing reliance on kinship care;
- Major shortcomings in the safety, quality and outcomes from residential-based care; and
- Limitations in the current governance, responsibility and accountability frameworks and the structure and performance of CSOs.

Recommendation 25

The Government should, as a matter of priority, establish a comprehensive five year plan for Victoria's out-of-home care system based on the goal, over time, of the growth in the number of Victorian children and young people in care being in line with the overall growth in Victorian children and young people and the objective of improving the stability, quality and outcomes of out-of-home care placements.

The key elements of the plan should include:

- Significant expansion in placement prevention initiatives to divert children from out-of-home care. In particular, increased investment in placement diversion and re-unification initiatives, when the safety of the child has been professionally assessed, involving intensive and in-home family support and other services for key groups such as families of first-time infants and young children;
- More timely permanent care where reunification is not viable;
- All children and young people entering out-of-home care undergo comprehensive health, wellbeing and education assessments;
- All children in out-of-home care receive appropriate therapeutic care, education and other services;
- Progressive adoption of client-based funding to facilitate the development of individual and innovative responses to the needs of child and young people who have been the subject of abuse and neglect;
- The introduction over time of a professional carer model to provide an improved and sustained support for children and young people with a focus on lowering the use of residential care;
- Significant investment in the funding and support arrangements for:
  - home-based care including a common service and funding approach across foster care, kinship and permanent care and improved carer training, support and advocacy arrangements;
  - residential care including mandating training and skill requirements for residential and other salaried care workers (i.e. the proposed professional care model); and
- The adoption of an area-based approach to the planning, delivery and monitoring of out-of-home care services and outcomes involving the Department of Human Services, community service organisations and other relevant agencies.

Given the underlying trends and quality issues, implementation of this plan will require significant investment.

The available data indicates that a significant proportion of children and young people placed in out-of-home care for relatively short periods and the majority exited care within one to two years. A focus on placement prevention and keeping infants, children and young people with their families through intensive family support arrangements would reduce many of these placements, avoid the inevitable disruption to family relationships and enable a clearer focus on quality longer term placements. The initial evidence on the Family Coaching pilots referred to in Section 10.2 illustrates the potential of collaborative approaches, clear targeting and whole-of-family approach to placement prevention.

If the out-of-home care system is to effectively and flexibly respond to the individual needs of children and young people, then the adoption of comprehensive assessments and client-based funding arrangements are clearly required. In relation to assessments, steps have already been taken to introduce assessments for young people entering residential care. Client assessments are the first step in aligning services to needs, and moving towards client funding will facilitate services being aligned to needs.

The experiences in other sectors, for example, disability, indicates the introduction of client-based funding is a detailed but achievable task covering service specification and costing, service provider consultation and funding and monitoring arrangements.

The out-of-home care system has a complex array of service types, funding levels and funding arrangements. Funding levels differ significantly across the various types of home-based care. An essential prerequisite to the introduction of client-based funding is the specification of the desired service requirements for out-of-home care placements including provision of specialist health, counselling, education and developmental services. This consideration will enable areas such as therapeutic care and specialist counselling and specialist educational support to be transparently included as key elements of the generic placement and support arrangements. The scope and coverage of caregiver reimbursements would also need to be clarified as part of this consideration.

Accompanying the specification of service scope is the requirement for determination of the appropriate service price and funding levels. This determination will provide the opportunity to:

- Develop and adopt a common service and funding framework across all forms of home-based care;
- Move towards a component of professional care to enable flexible and specialist home-based arrangements for high-needs children and young people to be developed as an alternative to residential care placements; and
- Significantly up-grade the expectations and skill requirements of residential carers.

Recommendation 26

To provide for the clear and transparent development of a client-based funding, the Government should request the Essential Services Commission to advise on:

- The design of a client-based funding approach for out-of-home care in Victoria; and
- The unit funding of services for children and young people placed in care.

On the specific issue of the introduction of a professional care model, the Inquiry is aware that a number of impediments to the potential utilisation of professional carers by CSOs and to the recent agreement of federal, state and territory community and disability services ministers to consider professionalisation of foster care, as part of the second three-year action plan under the *National Framework for Protecting Victoria's Children*. However, it is important that Victoria begins the process of adapting to an out-of-home care system where foster carers become increasingly scarce and where the models of residential care for young people are increasingly complemented by intensive home-based arrangements.

The development of the professional care model, to be effective, will require the development of a new category of worker along with the detailed consideration and design of a whole suite of underpinning and related arrangements covering such issues as occupational health and safety and the possible consequences for the other models of home-based care. Over the past decade, the establishment of professional care has been periodically attempted and the Inquiry considers the introduction of professional foster care is long overdue.

Recommendation 27

The Victorian Government should, as a matter of priority, give further detailed consideration to the professional carer model and associated arrangements and request that the Commonwealth Government address and resolve, as a matter of priority, significant national barriers associated with establishing this new category of worker including industrial relations and taxation arrangements.

Victoria's out-of-home care system represents a significant activity for some 40 CSOs, more than 5,000 carers and large numbers of child protection workers who interact on a wide range of issues. Effective interaction and collaboration between all parties is essential to outcomes and experiences of children and young people in care. Chapter 9 has outlined the development of an area-based and integrated approach to vulnerable families and child protection service.

Given the major changes proposed for the future provision of out-of-home care, including the greater emphasis on placement prevention and intensive family support, it is recommended that adoption of this area framework be expanded to include out-of-home care services and supports. In particular, it is proposed that an area-based approach be adopted to the planning, delivery and monitoring of out-of-home care services and outcomes involving DHS, CSOs and other relevant agencies. Importantly, it facilitates a structure of out-of-home care more closely aligned to the area characteristics and needs rather than historical provision.

This area-based approach, when coupled with the overall out-of-home care objectives and targets and the proposed transition to client-based funding, will also facilitate consideration of the desired range of placement services and specialist supports and, in turn, the expectations and requirements of CSOs. Chapter 17 considers these implications in further detail.

Part 4: Major protective system elements

Chapter 11:

The experiences of children and young people when leaving out-of-home care

Chapter 11: The experiences of children and young people when leaving out-of-home care

Key points

- The Inquiry was asked to investigate the quality, structure and functioning of out-of-home care including transitions and improvements to support better outcomes for children and families.
- Around 400 young people leave out-of-home care annually following the expiry of their guardianship or custody order. The limited evidence and research available suggests a significant proportion experience major issues in the transition to independent living and have long term negative life outcomes.
- The *Children, Youth and Families Act 2005* included for the first time a legislative responsibility for the Secretary of the Department of Human Services for the provision of transition and post-care services to assist the transition of young people under the age of 21 years to independent living.
- In recent years the Department of Human Services has developed and implemented specific leaving care and post-care services and programs and further funding was allocated in the 2011-12 Budget, including provision for the new Leaving Care Employment and Education Access Program.
- However, contemporary and comprehensive research and information on the experiences of Victorian young people leaving care and their access to, and impact of, leaving care and post-care services are not available.
- The limited research available suggests three factors are critical to achieve better post out-of-home care outcomes: improving the quality of care; a more gradual and flexible transition from care including access to stable accommodation arrangements; and more specialised after-care supports.
- A number of submissions to the Inquiry referred to the need for the legislative provisions to reflect the broader community trend where the majority of young people remain with their parents until their early 20s.
- The Inquiry makes a number of recommendations including:
  - the urgent need to gather information on current post-care experiences and the access to and impact of current arrangements;
  - the Secretary of the Department of Human Services should have the capacity to extend out-of-home care placements on a voluntary and needs basis to young people beyond 18 years;
  - enhancing current leaving care arrangements including stable initial accommodation arrangements and the level, range and integration of leaving care and post-care assistance; and
  - consideration in the medium-term of extending post-care assistance on a needs basis to the age of 25 years.

11.1 Introduction

In Victoria during 2010-11, some 1,730 children and young people who were in care for one month or longer exited care. Around 70 per cent of these children and young people were aged under 15 years and the majority were reunited with their family. The remainder, or more than 550 young people, were aged 15 years and over and some of these young people return to the family home, while others exited care into independent living. Approximately 400 young people have their custody or guardianship order expire each year.

This chapter is focused on the group of young people whose custody and guardianship order has expired and who exit into independent living. This group is often referred to as the 'leaving care population'. This consideration responds to the Inquiry's Term of Reference relating to the role and functioning of the out-of-home care system including transitions from care.

The chapter outlines the relevant legislative and policy framework relating to leaving care; the range and nature of assistance available to those leaving care and post-care; the available statistics and research on the characteristics and experiences of young people leaving care; and the key issues identified as part of the Inquiry's submission and consultation process. The concluding section sets out a number of key recommendations.

11.2 Current legislative, policy and service framework

11.2.1 Legal framework

Statutory child protection provisions in the *Children, Youth and Families Act 2005* are restricted to children and young people under the age of 17 years or, if the young person is subject of a protection order, continue until the young person is 18 years. As a consequence, the out-of-home care system outlined in Chapter 10, including the provision of residential care placements and home-based caregiver re-imbursements, generally ceases to apply once a young person turns 18 years. From a legal perspective, leaving care has historically been defined as the cessation of legal responsibility by the State for young people living in out-of-home care.

A major finding of the 1989 report of the *National Inquiry into Homeless Children* (Burdekin report) by the Human Rights and Equal Opportunity Commission was that a large number of homeless young people came from a State care background. This was the beginning of a significant debate on the importance of youth transition and the issue of State responsibility for transition and post-care support. The *Children, Youth and Families Act 2005* included, for the first time, legislative responsibility for the provision of transition and post-care services for young people leaving out-of-home care. Section 16 (1) of the Act outlines, as part of the responsibilities of the Secretary of the Department of Human Services (DHS), a responsibility to assist the transition of young people to independent living as follows:

> ... (g) to provide or arrange for the provision of services to assist in supporting a person under the age of 21 years to gain the capacity to make the transition to independent living where the person –
>
> (i.) has been in the custody or under the guardianship of the Secretary; and
>
> (ii.) on leaving the custody or guardianship of the Secretary is of an age to, or intends to, live independently.

Section 16 goes on to state:

> ... (4) The kinds of services that may be provided to support a person to make the transition to independent living include –
>
> a) the provision of information about available resources and services;
>
> b) depending on the Secretary's assessment of need –
>
> (i.) financial assistance;
>
> (ii.) assistance in obtaining accommodation or setting up a residence;
>
> (iii.) assistance with education and training;
>
> (iv.) assistance with finding employment;
>
> (v.) assistance in obtaining legal advice;
>
> (vi.) assistance in gaining access to health and community services;
>
> c) counselling and support.

11.2.2 Policy and processes framework

The DHS *Child Protection Practice Manual*, and a number of recent policy papers, set out the broad principles and processes that have been developed for young people leaving care and making the transition to independent living.

The following presents a summary of the principles, standards and procedures set out in DHS' manual (DHS 2011k, advice no. 1418):

- To ensure young people leaving out-of-home care have optimal success preparation needs to be considered as part of a continuous process of personal development, not as an event that starts only as a young person nears the end of the time in care. It is important that young people leaving care have the necessary support and skills to maximise their opportunities and feel ready and prepared to leave care (p. 1);
- Each person who leaves an out-of-home care placement should do so in a planned and supported manner to enable a successful and sustainable transition. Young people should have:
  - ongoing opportunities to develop independent living skills;
  - involvement in decision making;
  - have a detailed post-placement support (or after care) plan; and
  - should leave care with relevant documentation, possessions and life records.
- Members of the young person's care team share responsibility for the preparation of young people for independent living (p. 2).
- Preparation for independence: preparation and planning for leaving care should ideally commence two years prior to a young person's transition from care. Young people need time and experience to learn the skills necessary for successful independent living. Young people learn through observation, role modelling, practice and support during times of success and failure (p. 2).
- Conversations should commence with the young person about what they see themselves doing as an adult. These conversations should occur incrementally to allow the young person to deal with these life decisions in a supported manner. Preparation for leaving care must be included as a component of best interests planning and include the following considerations:
  - reunification with family;
  - an appropriate alternative long-term care environment, links into disability services if required;
  - remaining in the current care environment with a change of goals and timeframes for the placement reflected in a revised placement agreement;
  - an independent or semi-supported living situation, if the young person has sufficient living skills to safely sustain such an arrangement;
  - a less intensive care environment in the case of young people placed in intensive support arrangements, particularly non-family based care; and
  - whether a review of the existing child protection order is required (pp. 2-3).
- Post-placement support. As part of the best interests planning process the care team should ensure the best interests plan clearly outlines who is responsible for the tasks that are required when a child or young person transitions from placement. These tasks include:
  - to ensure access to the necessary supports to maintain the young people safely at home, where the young person returns to their parents care, or in their transition to an independent living situation (including links to community support agencies);
  - to clarify any ongoing living, contact or respite arrangements between the young person and their carer;
  - to review the best interests plan for the young person, using the relevant assessments and decision making tools to determine whether ongoing intervention is required to meet the young person's protection and care needs; and
  - in relation to the carers discuss the outcomes of the placement, including;
    - identified strengths demonstrated in managing the placement; and
    - learning and support needs for future placements (p. 3).

11.2.3 Leaving care initiatives and services

Against this legislative and policy and procedures framework, DHS in recent years has developed and implemented a range of specific leaving care services and housing initiatives specifically focused on the leaving care population. The specific leaving care services developed and funded by DHS include:

- A leaving care mentoring program to provide young people transitioning from State care aged 15 to 18 years with the opportunity to interact with adults in community settings and promote personal relationships beyond out-of-home care;
- Post-care support, referral and information services to support young people who require assistance in transitioning to independence or subsequent to leaving State care; and
- Leaving care brokerage funding to provide a flexible support fund for care leavers, both those transitioning from State care and those young people up to 21 years who need support subsequent to their leaving State care.

These services are accessed through a network of more than 20 community service organisations (CSOs) funded by DHS to provide all or a selected range of these services. In addition, funding is provided for the Leaving Care Helpline.

The leaving care brokerage funding, which accounts for the major proportion of funding, provides financial help to assist with specific expenses such as accommodation, education, training and employment, access to health and community services and life skill education for young people up to 18 years who are transitioning from care, as well as young people who have transitioned from care but have subsequently presented with specific needs.

As part of the 2011-12 State Budget the Government announced funding of $16.9 million over four years to support young care leavers up to 21 years of age improve their educational and employment outcomes. The funding included provision for a new Leaving Care Employment and Education Access Program, additional brokerage and mentoring, a new statewide support system specifically for young Aboriginal people leaving care, and expanded post-care support and information services, particularly in rural regions.

The housing initiatives by DHS' Office of Housing and Community Building span alternative and semi-independent accommodation settings for young people prior to leaving care and the availability of property resources dedicated to young people leaving care. These alternative out-of-home care accommodation settings include the 'foyer' model of youth housing consisting of studio/bed-sits or one-bedroom flats where a range of young people including those leaving care can develop and trial independent living skills in a supported environment.

More broadly, the focus on alternative and stable accommodation arrangements is linked to the Council of Australian Governments (COAG) auspiced *National Framework for Protecting Australia's Children 2009-2020*, which outlined strategies to expand housing and homelessness services for families and children at risk and improve support for young people leaving care. Actions identified under the strategies include additional specialist support to children who are homeless including closer links between homelessness and child protection services and implementing a policy of 'no exits into homelessness' from statutory services.

The housing and homelessness actions in respect of young people in out-of-home care in the *National Framework for Protecting Australia's Children 2009-2010* are linked to the *National Partnership Agreement on Homelessness*. In Victoria, DHS' Office of Housing and Community Building has developed the Leaving Care Housing and Support Initiative for young people whose custody and guardianship orders are due to expire and where the young person has been assessed as at risk of homelessness. The initiative is focused on funding proactive and intensive support for young people, with an emphasis on early intervention housing support.

In addition, DHS has, since 2003, provided reimbursements to the home-based carers of young people who turn 18 and are enrolled in secondary education. In 2010, in recognition of the need to support young people in home-based care to complete their secondary education, DHS extended the policy to include the year beyond which young people turn 18, when they are attending school. Currently this policy applies to over 50 young people.

Finally, in terms of financial assistance available to those leaving care, the Commonwealth Government, through the Transition to Independent Living Allowance, provides up to $1,500 to assist eligible young people who are making the transition from informal and formal care to independent living. Eligibility is based on a range of factors including age and assessed as being at risk of or experiencing an unsuccessful exit from care.

11.3 Leaving care population: characteristics and experiences

There is only limited statistical and research information available on the characteristics and experiences of those children and young people leaving care in Victoria and elsewhere in Australia.

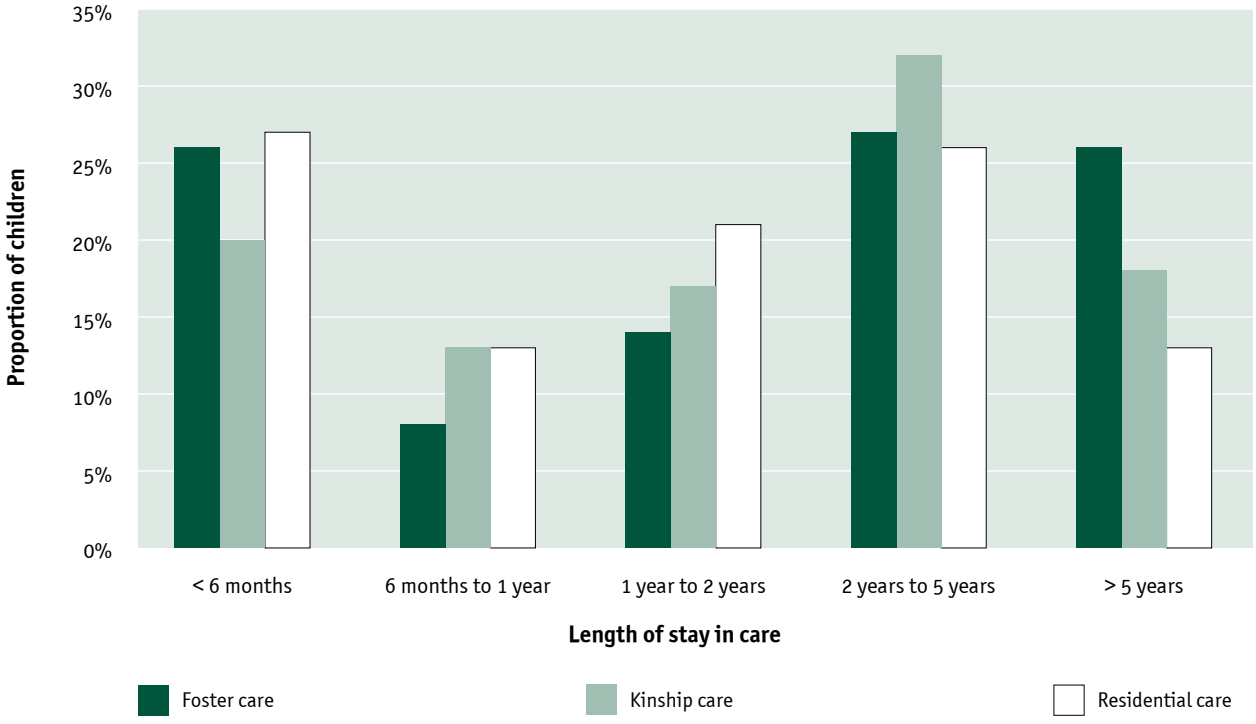
11.3.1 Characteristics

An analysis of the characteristics of the 590 children aged 15 years or over who exited care in 2009-10 after more than one month in non-respite care provides some approximate information. This analysis indicates:

- 46 per cent were male and 56 per cent female;
- 13 per cent of those leaving care were Aboriginal young people;
- Foster care, kinship and residential care each accounted for around 30 per cent of the exited placements;
- Females were more likely to be exiting from foster care and kinship care and males from residential care;
- Nearly 50 per cent had been in care for more than two years, which compares with just under 30 per cent for all children and young people who exited care in 2009-10;
- Children exiting residential care generally had shorter periods in care than those exiting from foster care and kinship care (see Figure 11.1);
- As depicted in Figure 11.2, 65 per cent of the 590 young people who exited care had their first interaction with the out-of-home care system after turning 12 with significant numbers at 14 and 15 years of age. For those whose first interaction was prior to 12 years, the numbers were evenly spread across the individual ages; and
- Children exiting residential care were more likely to have experienced multiple instances of care, with some 52 per cent having had two or more instances compared with 44 per cent for those exiting from foster care and 40 per cent for those leaving kinship care.

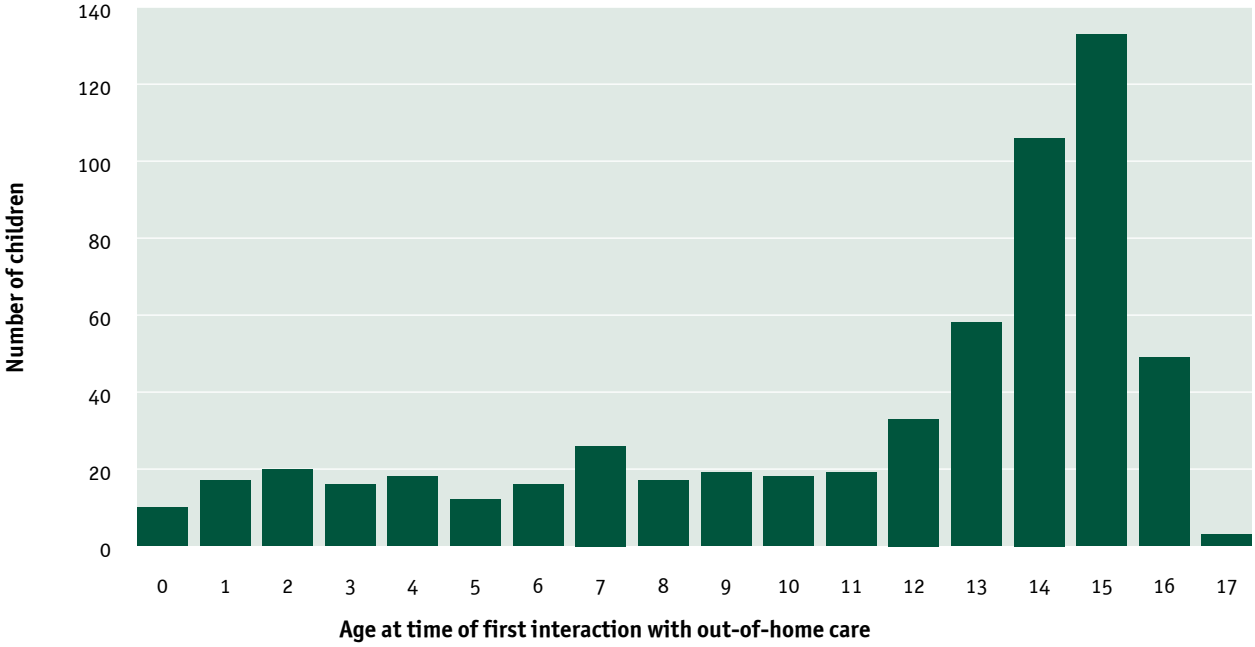
Further, in line with the results presented in Chapter 10 addressing the needs of children in out-of-home care on educational attendance and attainment levels, a significant proportion of those leaving care can be expected to have significantly below average educational attainment levels, with a minority in or having completed Year 12 or the equivalent.

Figure 11.1 Children aged 15 years and over who exited out-of-home care in 2009-10, by length of placement and type of care, Victoria



Source: Inquiry analysis of information provided by DHS

Figure 11.2 Children aged 15 years and over who exited out-of-home care in 2009-10, by age of first entry into care, Victoria



Source: Inquiry analysis of data provided by DHS

11.3.2 Research

Comprehensive and regular data on the experiences of those leaving care in Victoria are not available. Over the past 15 years there have been a small number of research studies conducted in Australia on the experiences of those leaving State care. However, the studies have tended to be small-scale studies of care leavers that are mostly descriptive with limited statistical analysis of the factors associated with successful and unsuccessful leaving care experiences and the effectiveness of specific programs.

In 2007 Osborn and Bromfield summarised the available Australian research on the outcomes for young people leaving care in the following terms:

- Young people leaving care are at great risk of experiencing negative life outcomes;
- Periods of homelessness and committing offences affect close to half of the young people leaving care;
- There are a range of factors that inhibit the transition of young people that need to be acknowledged and addressed prior to the young person transitioning from care to independence. These include: unresolved anger towards family members, workers or the system; unsuitable and unstable placements and multiple changes of carers and workers; lack of long-term goals (such as education, vocation and living arrangements); lack of sufficient income; contact with the juvenile justice system and imprisonment; lack of preparation for leaving care; and lack of later contact with the care system; and
- Young people need to develop more employment and independent living skills and more social and emotional skills before they can be expected (or are able) to live independently (Osborn & Bromfield 2007).

In terms of Victorian studies, in 2005 Raman et al. published the research results of a study undertaken by the Centre for Excellence in Child and Family Welfare in partnership with Monash University on the economic benefits of supporting young people leaving care. The study included a detailed survey of 60 young people aged 18 and 25 years who had been in foster care, kinship care or residential care in Victoria for at least two years as teenagers.

In summary, the study found:

- 60 per cent of participants first entered care at age 12 or more and were fairly evenly split between residential care and foster care, with a small number in kinship care;
- 47 per cent of survey participants were discharged from care before the age of 18 years and only just over 50 per cent had a case plan involving stable accommodation;
- Almost 50 per cent were unemployed, in jail or taking on parenting roles at the time of leaving care;
- 43 per cent indicated they did not receive any help from any family member in the first two years after leaving care;
- Only 5 per cent were in full-time work, with 53 per cent neither working or studying;

- 35 per cent had moved living situations more than five times in the past 12 months and 47 per cent were in some kind of temporary or transitional housing;
- 50 per cent had sought help from a mental health professional in the past six months;
- 35 per cent had accessed drug and alcohol services in the past 12 months; and
- 37 per cent had been charged with an offence in the past 12 months.

In terms of the factors that had a significant positive impact on the leaving care experience, the study found:

- Young people who had a stable housing plan at their exit from care were also three times more likely to be employed at the time of the survey; and
- Young people who received help from anyone of any kind at the leaving care stage, including help to find employment, financial assistance, emotional support or finding accommodation had significantly improved outcomes, for example, employment, sense of wellbeing and resilience and reduced involvement with police and crime.

The 2005 survey also serves to highlight a sub group of the leaving care population that require particular support, namely young parents, particularly expectant mothers. Chapters 7 and 8 discuss this group of vulnerable young people in further detail and the provision of appropriate support and assistance.

A 2006 Australian study by Morgan Disney & Associates and Access Economics focused on documenting the pathways typically experienced by young people leaving care. Based on an examination of the available data, including a random sample of young people who accessed the Transition to Independent Living Allowance and extensive interviews with practitioners in the adult service systems, the researchers developed a number of representative pathways in terms of frequency and depth of usage or interaction with the general heath, income support, employment support, housing support, mental health, drug and alcohol and justice systems. The researchers also simulated the lifetime and annual costs to government of this service usage.

The researchers postulated that around 45 per cent of young people who leave care in any one year are likely to be very low or low service users and make a significant contribution to the economy and the community. Conversely around 55 per cent were postulated to be in pathways that incur higher service costs across their life with these costs increasing over time. It was estimated that individuals in the high service use pathway cost governments, on average, approximately $2.2 million per person over the lifespan from 16 up to 60 years, with an overall estimated average cost per annum of $50,000 in 2006 dollars.

The emphasis on housing as a necessary pre-condition for successful transition identified in Raman et al. (2005) was the focus of a recent study undertaken for the Australia Housing and Urban Research Institute by academics from a number of the institute's research centres. The study included a survey of young people aged 18 to 25 years who had been in State out-of-home care in Victoria and Western Australia in inner city, suburban and regional locations. In keeping with the Raman et al. (2005) and Morgan Disney & Associates et al. (2006) research, the study identified two distinct pathways from care – those who experienced a smooth pathway from care and those who experienced a volatile transition. While the study found that housing was a critical element in responding to care leavers' needs, the presence of reliable, sustainable social relationships was found to be equally important.

> The study also explored the links between the care experience and transition from care. In particular, the study found:
>
> ... those who had a smooth transition from care:
>
> - Had few placements in care;
> - Generally felt safe and secure in care;
> - Felt involved in the planning process;
> - Left care at a later stage;
> - Felt they were better prepared for leaving care; and
> - Had a successful first placement, which facilitated a smoother transition from care (Johnson et al. 2010).
>
> In contrast, those whose transition from care was volatile were likely to have:
>
> - Had a high number of placements in care;
> - Experienced physical and/or sexual abuse prior to, or while they were in care;
> - Rarely had an exit plan;
> - Left care in crisis at a younger age; and
> - Been discharged into inappropriate accommodation, such as refuges or boarding houses.

11.3.3 Usage of leaving care services

DHS allocates nearly $4 million annually for leaving care services covering post-care support; information and referral; mentoring; and financial assistance.

There is currently limited information available on the usage of these services by the leaving care and post-care population. No formal evaluation of the impact of the leaving care services and programs introduced in recent years has been conducted. However, anecdotal information suggests the support, information and referral and financial assistance components are accessed more than mentoring services. DHS advised the Inquiry that an audit in September 2010 of 95 young people who were on custody or guardianship orders and aged 17 and 18 years found that 85 per cent of the client files reviewed had documented evidence of transition planning and 15 per cent lacked evidence.

11.4 Perspectives on Victoria's leaving care arrangements

The available research findings all indicate that many young people leaving care face significant barriers to accessing educational, employment and other transitional and developmental opportunities. The submissions and views presented to the Inquiry on the leaving care issue focused on the vulnerability of young people leaving care at 18 years and the requirement for a more graduated system with support and access to a comprehensive range of services and assistance.

Mendes identified the main reasons for vulnerability of many young people leaving as:

> First, many have experienced or are still recovering from considerable abuse or neglect prior to entering care. Secondly, many young people have experienced inadequacies in state care. That is, the state as corporate parent fails to provide the ongoing financial, social and emotional support and nurturing offered by most families of origin. Thirdly, many care leavers can call on little, if any, direct family support or other community networks to ease their involvement into independent living.
>
> In addition to these major disadvantages, many young people currently experience an abrupt end at 16-18 years of age to the formal support networks of state care. (Mendes submission, p. 1).

As outlined in Chapter 5, some submissions argued to the Inquiry that 18 years is not a realistic age for a child or young person to be living independently by today's standards. For example, The Salvation Army submitted:

> It is unreasonable to expect all young people who have experienced significant trauma and who have lived in out-of-home care to transition to independent living by the age of 18 years of age. Whilst these young people may have reached the chronological age of 18 years developmentally they may be significantly younger. These young people in particular need access to a secure base and support that is tailored to their needs. Once again, we ask children and young people, who have experienced instability and trauma in childhood, to cope with significantly less support than we expect and provide to our own children (The Salvation Army submission, p. 21).

Anglicare Victoria put this position more starkly:

> Anglicare Victoria believes the concept of 'leaving care' is an artificial construction. The physiological, emotional, economic and social realities require delivery of ongoing care and guidance from significant adults well past the age of 18 years. Yet, we have created systems and policies around this chronological age (Anglicare Victoria submission, p. 39).

The CREATE Foundation submission referred to the Australian Bureau of Statistics (ABS) *2006-2007 Family Characteristics and Transition Survey*, which showed that 82 per cent of 18 to 19 year olds were still living with their parents; 47.2 per cent of 20 to 24 year olds were still living with their parents; and the median age for first leaving home for 18 to 34 year olds was 20.9 years for males and 19.8 years for females (CREATE Foundation submission, p. 4).

The final report of the CREATE Foundation on the views and opinions of children and young people about the out-of-home care system commissioned by the Inquiry observed:

> Those young people who had begun leaving care planning or were at an age to begin thinking about their transition to adulthood, stated they all struggled with the leaving care process, particularly having to think about how they were going to get to independent adulthood at an age younger than young people in the general population. They suggested that the age for leaving care be raised to at least 21, with options for support until the age of 25. All the young people in the focus groups held a sense of unfairness that 'normal young people' didn't need to leave home until a much later age, and they were forced to consider their adult needs prior to 18 years of age (CREATE Foundation 2011, p. 14).

To address this vulnerability and to achieve better outcomes, Mendes identified three key areas: improving the quality of care; a more gradual and flexible transition from care; and more specialised after-care supports:

> The first necessary reform is improving the quality of care as positive in-care experiences involving a secure attachment with a supportive carer are essential in order to overcome damaging pre-care experiences of abuse and neglect. This involves providing stability and continuity, an opportunity if at all possible to maintain positive family links which contribute to a positive sense of identity, and assistance to overcome educational deficits and holistic preparation.
>
> The second component is the transition from care which includes both preparation for leaving care, and the actual moving out from the placement into transitional or half-way supportive arrangements from approximately 16 to 21 years. This transition needs to be less accelerated, and instead become a gradual and flexible process based on levels of maturity and skill development, rather than simply age ...
>
> The third component is ongoing support after care till approximately 25 years of age. This may involve a continuation of existing care and supports/or specialist leaving care services in areas such as accommodation, finance, education and employment, health and social networks (Mendes submission, pp. 2-3).

The transition from care and post-care support issues identified by Mendes were emphasised and elaborated in a number of other submissions. For example, St Luke's Anglicare's submission contained the following recommendations:

- That the current legislation is changed to ensure support to care leavers up to 25 years of age;
- That specific vocational and educational responses for care leavers be developed to ensure all care leavers have access to stable accommodation and housing;
- That targeted housing resources be allocated to ensure all care leavers have access to stable accommodation and housing; and
- That the current funding for care leaver support services be increased to ensure all care leavers up to the age of 25 have access to support (p. 23).

Berry Street went further and identified an explicit set of actions at state and Commonwealth government level including:

- That the Children, Youth and Families Act be amended to require the continuation of all forms of financial and other forms of support directed towards the care, protection and wellbeing of children and young people in out-of-home care (including permanent care) at least until the age of 21 years, and the continuation of financial and other forms of support to age 25 as required;
- That children and young people who are or have been the subject of a care and protection order and/or placed in out-of-home care be the highest priority for access to state government housing assistance and accommodation;
- That the state government initiate negotiations with the Commonwealth to establish a Commonwealth-State funding agreement for a range of measures to support care leavers to access post-compulsory education, labour market and employment assistance and housing including:
  - specialised employment assistance and labour market participation care management;
  - fee waivers under the Higher Education Contribution Scheme; and
  - youth allowance at the independent rate for care leavers living in CSO managed residential or lead tenant services.
- That the State Government introduce a fee waiver for all TAFE fees and charges for children and young people that are, or have been, in the care and protection system (Berry Street submission, p. 35).

While noting that the quality of leaving care support in Victoria has been significantly strengthened in recent years, the CREATE Foundation submission observed that the greatest weaknesses in the supports offered to young people leaving care relate to:

- The period of legislated support provision in Victoria for young people transitioning from care to independence is inadequate;
- A lack of compliance with the legislated requirement that all young people leaving care have a leaving plan or transition plan;
- The delivery approach to support services does not provide seamless provision; and
- The awareness and availability of support services and referrals is inconsistent and insufficient (p. 3).

Other significant issues relating to leaving care raised by submissions were the importance of engaging young people in developing relevant care plans and the potential role of mentors. The Salvation Army commented:

> Young people are often not invited to attend care team meetings therefore do not have any input into their future. Furthermore, even when they are invited, young people are not always supported to fully participate in their care team meetings which could be a contributing factor to attendance. Work needs to be done with young people to recognise the importance of participating in goal setting and having a voice in their future (The Salvation Army submission, p. 22).

Mentoring forms a part of DHS' funded post-care service provisions. However, the Victorian Youth Mentoring Alliance contended in their submission that young people are often not referred to youth mentoring until they are just about to leave the care system and recommended:

> That child protection workers consistently refer young people to youth mentoring programs when they are 16 years old to ensure they have the opportunity to effectively engage with a mentor prior to leaving care (Victorian Youth Mentoring Alliance submission, p. 3).

11.5 Conclusion

While recent and comprehensive data are not available, it is most likely that a significant proportion of young people who leave care in Victoria following the expiry of a guardianship or custody order encounter major issues in the transition to independent living and have long-term negative life outcomes. This is likely to be particularly so for young people in residential care.

A wide range of factors impact on the likelihood of successful transitions of young people leaving care, with many of them similar to the youth cohort generally, such as level of education and availability of personal supports. However, many of the factors are unique for young people in care, namely the expiry of the specific accommodation and specialist supports for young people in care and the automatic requirement to transition to independent living when this is not the norm for the majority of their age cohort.

The Inquiry acknowledges, as indeed did a number of the submissions, that there has been a significant albeit overdue improvement in the Victorian legislative and service provisions for young people leaving care in recent years. In the critical area of post-care employment and education, the Inquiry is also aware the objectives and delivery arrangements for the Victorian Government's Leaving Care Employment and Education Access Program announced in the 2011-12 State Budget are still being developed.

However in this area – as indeed is the case in a number of other areas – there is a significant absence of contemporary data and research on the experiences of those leaving care and their access to, and effectiveness of, the various services and programs that have been put in place to facilitate the transition. Given the government has assumed parental responsibility for these young people, it would seem incumbent that this role extends in to maintaining contact and supporting the young people through this important life 'transition' as a good parent would.

Recommendation 28

The Department of Human Services should collect regular information on the experiences of young people leaving care and their access to leaving care and post-care services and report the initial findings to the Minister in 2012 and thereafter on an annual basis to the proposed Commission for Children and Young People.

The quality of out-of-home care placements in terms of addressing the impact of abuse and neglect on a child or young person and the full range of their development needs, will be critical determinants of the success or otherwise of the transition. In particular, without a significant improvement in educational attendance and attainment for many children and young people in out-of-home care, the leaving care process will inevitably be problematic for many individuals.

However, the Inquiry also considers that there a number of key aspects of current leaving care and post-care arrangements that need to be revised and strengthened. In particular, there is considerable diversity in care leavers in terms of their pre-care and care experiences, their levels of education, social and general living skills and their capacities at the age of 18 years to successfully transition to independent and sustainable lifestyles.

Recommendation 29

The Department of Human Services should have the capacity, including funding capacity, to extend the current home-based care and residential care out-of-home placement and support arrangements, on a voluntary and needs basis, for individual young people beyond 18 years of age.

The Inquiry considers that this extension would be focused on young people whose levels of intellectual, emotional and coping skills are assessed as requiring further development and bolstering if a successful transition is to be achieved.

Recommendation 30

The Department of Human Services should:

- Ensure all leaving care plans identify stable initial accommodation options and that a 'no discharge to temporary and inappropriate accommodation policy' is adopted;
- Review the levels and range of leaving and post-care financial assistance provided to care leavers as part of the development and implementation of the proposed Leaving Care Employment and Education Access Program, including appropriate representations to the Commonwealth Government on their current employment and education assistance programs; and
- Assess the impact of the current leaving care services and programs, as a matter of priority, to determine whether the necessary access to, and integration of, post-care support across the full range of health, housing and other services is being achieved.

As noted, a number of submissions proposed that the Secretary of DHS' statutory responsibilities be amended to provide assistance to care leavers up to 25 years of age. The Inquiry recommends that this should be considered in the medium term following the assessment of the current range of leaving and post-care services and potentially the results of the long-term study assessing the impact of out-of-home care on children announced in the 2011-12 Budget.

Recommendation 31

The Government should consider, in the medium term, the availability of post-care support and periodic follow-up being extended, on a needs basis, until a young person reaches the age of 25 years.

Part 4: Major protective system elements

Chapter 12:

Meeting the needs of Aboriginal children and young people

Chapter 12: Meeting the needs of Aboriginal children and young people

Key points

- The history of Aboriginal communities in Victoria directly impacts on Aboriginal children and families today. Past actions by government and non-government agencies have impacted negatively on Aboriginal families and the result is a continuing experience of trauma in the Aboriginal community.
- The Inquiry has found that outcomes for vulnerable Aboriginal children and their families are generally poor and significant improvement is required in the performance of systems intended to support vulnerable Aboriginal children and families. There is a need to develop specific Aboriginal responses to identify different ways to improve the situation of vulnerable Aboriginal children in Victoria.
- Improving outcomes for Aboriginal children requires active, focused and intense effort across all areas of government activity and within Aboriginal communities. The Inquiry endorses the *Victorian Indigenous Affairs Framework* and associated structures as the primary mechanism to drive action across government on the broad range of risk factors associated with Aboriginal children being at greater risk of abuse and neglect. Building on the Inquiry's earlier recommendation for area-based policy and program design, the Inquiry recommends more detailed monitoring of the *Victorian Indigenous Affairs Framework* should be developed and reported on at the operational level.
- As many vulnerable Aboriginal children and families will continue to receive a range of services from mainstream providers, Aboriginal cultural competence should become a feature of the Department of Human Services' standards for registering community service organisations. Additionally, culturally competent approaches to family and statutory child protection services for Aboriginal children and young people should be expanded.
- The numbers of Aboriginal children involved with Victoria's statutory child protection services and out-of-home care systems continues to rise and is unacceptably high. As part of the recommended Commission for Children and Young People, the Inquiry recommends the creation of a dedicated Aboriginal Children's Commissioner or Deputy Commissioner, to bring an increased focus to improving outcomes for vulnerable Aboriginal children in Victoria across all service systems.
- The adoption of a comprehensive 10 year plan for delegating the care and control of Aboriginal children removed from their families to Aboriginal communities is also recommended. Such a plan will enhance self-determination and provide a practical means for strengthening cultural links for vulnerable Aboriginal children.

12.1 Introduction

As in other jurisdictions Aboriginal children are over-represented in all aspects of Victorian statutory child protection services and have been since data collection commenced in 1990. The ability of statutory child protection services to address entrenched Aboriginal disadvantage is limited. Changing this situation and improving outcomes for Aboriginal children requires active, focused and intense effort across all areas of government activity and within Aboriginal communities.

This chapter considers how vulnerable Aboriginal children and families are faring in Victoria. *The state of Victoria's children 2009: Aboriginal children and young people in Victoria* report (DEECD 2010) shows that, in general, Victorian Aboriginal and non-Aboriginal children, young people, parents/guardians and their families share many of the same strengths and face similar challenges.

The evidence in the report shows many Victorian Aboriginal children have a good start in life, with the majority of Aboriginal women having antenatal check-ups and breastfeeding their babies, many main carers engaging in informal learning activities such as regular reading to the child and a high proportion of immunisation. The vast majority of parents and guardians feel safe at home during the day and report being able to get support in a crisis and have someone to turn to for advice. Many Aboriginal children and young people in Victoria are growing up safe and well in their families.

However, many Aboriginal children and young people in Victoria face challenges those in the non-Aboriginal population do not and may never experience. For example, a high proportion have ear, hearing and dental problems, and many experience daily discrimination, including at school, because they are Aboriginal (DEECD 2010, p. 2). The Inquiry was concerned that significant numbers of Aboriginal adults in households with children were victims of threatened physical violence. All these experiences are risk factors for Aboriginal children's health and wellbeing. In particular, many Aboriginal children, young people and families experience cumulative risk factors and this is a challenge for the current service system intended to support these children and families.

In this chapter the Inquiry considers the challenge of meeting the needs of vulnerable Aboriginal children and families. The Inquiry considers why good intentions, legislative changes, numerous reviews and various policies and programs have not significantly changed the outcomes for Aboriginal children and families. The Inquiry considers that due to the multifaceted and complex disadvantage experienced by Aboriginal children and their families, progress to improve outcomes for Aboriginal children is, and is likely to remain, slow. Despite the slow progress the Inquiry considers that it is important to continue to invest in programs and reforms that will build a better future for Victorian Aboriginal children.

The Inquiry has received submissions from, and spoken with, Aboriginal people who have identified the need for a more holistic view of the needs and role of Aboriginal communities, a different approach to service provision and the development of clear accountable plans to create a positive future for Aboriginal children and families. The Inquiry concurs with Aboriginal people who have asserted that outcomes for vulnerable Aboriginal children and families will only improve once practical gains in Aboriginal self-determination about children and families are achieved.

This chapter canvasses the historical context that impacts on Victorian Aboriginal communities, the role of government agencies in the past, and the contemporary impact of the Stolen Generations. It proceeds to examine the prevalence of risk factors for child abuse and neglect and the complex policy landscape surrounding Aboriginal disadvantage. The progress of Victorian Aboriginal children across the range of systems designed to support them is then discussed. The chapter considers in detail a broad range of issues raised in submissions received from Aboriginal organisations and communities and others.

The Inquiry has used the term 'Aboriginal' instead of 'Indigenous' when referring to Victorian Aboriginal children and their families as this is the convention in Victoria. However, in relation to data that is extracted from, or linked to, Commonwealth sources or processes the protocol adopted is to use the Commonwealth term of Indigenous.

12.2 Historical context

The history of Aboriginal communities in Victoria directly impacts on Aboriginal children and families today. It is not the intention of this section to provide a comprehensive review of the history of Aboriginal people in Victoria. This section considers the impact that legislation and government and non-government agencies in Victoria have had on Aboriginal families, and the resulting trauma experienced by the Aboriginal community. This provides background to consideration of the over-representation of Aboriginal children and young people in statutory child protection services and highlights the systemic change required to protect vulnerable Aboriginal children from abuse and neglect.

12.2.1 Traditional communities

Aboriginal Victorians have lived on this land for more than 40,000 years and are one of the oldest living cultures in the world. The traditional culture of Aboriginal communities is complex and a sense of identity and spirituality is defined by the land, the law, economics, politics, education and extended kinship networks (Department of Education and Early Childhood Development (DEECD), 2010, p. 24). Traditionally, Aboriginal communities in Victoria lived in large social groups. These communities identified as language-culture groups, with 36 to 40 in existence across Victoria at the time of European settlement, though they were not necessarily distinct groups. Often inter-group marriage occurred to develop alliances or to maintain relationships. These groups were also sometimes involved in larger coalitions that shared a similar language and culture, as well as spiritual beliefs. For example, in central Victoria the Kulin nation was formed from five groups that occupied adjacent territories (Broome, in DEECD 2010).

12.2.2 Colonisation

The complex culture of Aboriginal people was devastated with the arrival of the first European settlers in 1835. For example, prior to colonisation there were approximately 40 different languages spoken in Victoria. Most of these languages have been lost and the survival of remaining few languages is threatened (Victorian Aboriginal Corporation for Languages 2011). Over time colonisation has driven the decline in the health and wellbeing of Aboriginal Victorians, including children and young people across generations (DEECD 2010, p. 24).

In Victoria, European settlement brought rapid change over a relatively short period of time (DEECD 2010, p. 25). For example, in 1836, the Kulin population, whose nation had surrounded Port Philip and Western Port bays, was estimated to be 30,000 to 70,000. The battles over land and various diseases reduced this population to such a degree that by 1863 only 250 Kulin remained. Other Victorian districts had been depopulated to a similar extent (Pascoe, in Perkins & Langton 2008, p. 119).

The systematic marginalisation of Aboriginal people by the government of Victoria began in the period from 1850 to 1901. This is documented through the individual stories of Aboriginal people in *Wurrbunj Narrap: Lament for Country* by Bruce Pascoe. Pascoe states that a 'sophisticated war' was waged in Victoria against Aboriginal people (Pascoe, in Perkins & Langton 2008, p. 119). This sophisticated war was, in Pascoe's opinion, the use of legislation to create powers for government agencies to directly intervene in and control the lives of Aboriginal people in Victoria.

In 1858 the Victorian Government established a Select Committee to inquire into the living conditions of Aboriginal people in Victoria. The subsequent report accepted that Aboriginal communities had witnessed 'their hunting grounds and means of living taken from them' as an outcome of the British occupation of Aboriginal land. The Select Committee concluded Aboriginal people were themselves responsible for this outcome:

> ... had they been a strong race, like the New Zealanders, they would have forced the new occupiers of their country to provide for them; but being weak and ignorant, even for savages, they have been treated with almost utter neglect (Select Committee of the Legislative Council 1859, p. iv).

The report recommended that reserves be established in remote areas of the colony, both to 'protect' Aboriginal people from further injustices and to ensure that Aboriginal people be contained in order to restrict their freedom and place greater controls over their lives (Select Committee of the Legislative Council 1859, pp. iii-vi).

Following the 1858 report the Board for the Protection of Aborigines was established in 1860 to administer government reserves and missions. The protectorate system brought Aboriginal people into centralised missions in return for rations (Pascoe, in Perkins & Langton 2008, p. 125). These reserves were run on a system of Christian education and enforced labour. The traditions of Aboriginal society, including ceremonial practices, were often banned.

At this time any Aboriginal person who continued to live on their own land was subject to the authority of government appointed local guardians, such as police, clergymen or European landholders (Museum Victoria 2011) .

From the beginning of colonisation there are documented accounts of Aboriginal leaders such as Billibellary, Simon Wonga, William Barak, Louisa Briggs and Jessie Donally, who sought to negotiate with the government for land, fair treatment and independence (Pascoe, in Perkins & Langton 2008, pp. 117-169).

There are also examples of well-meaning government employees such as William Thomas and John Green working with and on behalf of the Kulin (Pascoe, in Perkins & Langton 2008, p. 162). While these men had good intentions they held views that prevented them from understanding Aboriginal communities. For example, Thomas was considered a good Christian, but even he thought of the people as unenlightened savages (Pascoe, in Perkins & Langton 2008, p. 125) and Green looked on Kulin as childlike and doomed to disappearance (Pascoe, in Perkins & Langton 2008, p. 139).

12.2.3 Role of legislation and government agencies

Legislation and government agencies established to protect Aboriginal people became mechanisms that deliberately separated Aboriginal children from their families from colonisation until the late 1960s (Table 12.1).

At first in the reserves, such as Coranderrk at Healesville, east of Melbourne, separate living quarters were built for children, with an attached schoolroom. Then in 1875 the Board for the Protection of Aborigines proposed that all Aboriginal children be removed from what it termed 'wandering blacks' who had continued to live an autonomous life, outside the control of the reserves. In 1886 the board was given powers to separate Aboriginal children from their families and communities for the purpose of care, custody and education of the children of Aborigines.

In this same year the Board for the Protection of Aborigines amended the Aborigines Act 1886 which removed 'half-castes' from the reserves and intended to 'let the "old full bloods" die out'. The resulting destruction of Aboriginal families has resonated through the generations (Perkins & Langton 2008, p. xxvii).

This policy forcibly removed 'half caste' Aborigines from missions and reserves and forbade them access to mission stations and their families. 'Half-caste' children were removed from their parents on the missions when they were old enough to work and, under the authority of the Board, were sent out to service following a period of training, or for adoption with non-Aboriginal families (McCallum 2007, p. 9). The 1886 Act empowered the Board to transfer Aboriginal children to State care even when they were not orphaned.

The *Aborigines Act 1910* abandoned the distinction in law between 'full-blood' and 'half-caste' in terms of defining Aboriginality. This meant that people categorised as 'half-caste' and Aboriginal people living outside Victorian reserves were no longer ineligible for government assistance. The effect of the Aborigines Act was to extend the power of the board over Aboriginal people's lives. The Board was now empowered to make decisions, not only about the Aboriginal people living on its missions and reserves, but about 'half-caste' Aborigines as well.

The 1915 *Aborigines Act* provided that only people categorised as 'full-blood Aborigines' could live on Victorian mission stations. This legislation placed severe restrictions on contact between people on the mission and 'half-castes'. It also excluded Aboriginal people, deemed to be 'half-castes', from government assistance, leading to severe disadvantage and hardship.

In 1957 the new Aborigines Act replaced the Board for the Protection of Aborigines with the Aborigines Welfare Board. The new board had the function 'to promote the moral, intellectual and physical welfare of Aborigines (full-blood and half-caste) with a view to their assimilation in the general community' (Aborigines Act, 1957, section 6 (1)). From this time Aboriginal children were dealt with under the *Children's Welfare Act 1954*. Any removal of Aboriginal children from their family and community by the government from 1957 was enabled by this mainstream child welfare legislation.

A policy shift occurred in 1966 and it was accepted that Aboriginal children should stay with their families if possible (Victorian Aboriginal Child Care Agency (VACCA) 2006, p. 13). The Aborigines Welfare Board was abolished in 1968 when the Victorian Government established a Ministry of Aboriginal Affairs.

In the early 1970s there was a move by Aboriginal people to establish a national framework for protecting the rights of Aboriginal children, and to fund Aboriginal controlled child and family welfare agencies. VACCA was established in 1976 (Dyer 2003).

Table 12.1 Victorian legislation relating to Aboriginals, 1869–1970

Victorian legislation	Objectives	Government agency responsible
Aboriginal Protection Act 1869	• Established a system of reserves in remote areas and provided powers to separate Aboriginal children from their families and communities to 'educate' them.	In 1869 the Board for the Protection of Aborigines became responsible for the administration of the Aborigines Protection Act.
Aborigines Protection Act 1886	• Amended the Aborigines Act to provide powers to remove 'half castes' from the reserves.	Board for the Protection of Aborigines
Aborigines Act 1910	• Abandoned the distinction in the law between 'full-blood' and 'half-caste'. • Excluded people categorised as 'half-caste' and Aboriginal people living outside Victorian reserves from eligibility for government assistance. • Extended the power of the board to make decisions about all Aboriginal people, those on missions and reserves and 'half-caste' Aborigines living elsewhere.	Board for the Protection of Aborigines
Aborigines Act 1915	• Provided that only people categorised as 'full-blood Aborigines' could live on Victorian mission stations. • Placed severe restrictions on contact between people on the mission and 'half-castes'. • Excluded Aboriginal people, deemed to be 'half-castes', from government assistance.	Board for the Protection of Aborigines
Aborigines Act 1957	• Abolished the Board and established the Aborigines Welfare Board. • Established function of the board 'to promote the moral, intellectual and physical welfare of aborigines ('full blood and half-caste') with a view to their assimilation in the general community'. • The Aborigines Welfare Board did not have specific powers in relation to children.	Aborigines Welfare Board
Children's Welfare Act 1954	• From 1957 Aboriginal children came under the provisions of the Children's Welfare Act.	Children's Welfare Department
Aboriginal Affairs Act 1967	• The Aborigines Welfare Board was abolished in 1968 and the Ministry of Aboriginal Affairs established.	Ministry of Aboriginal Affairs
Social Welfare Act 1960	• There were no Aboriginal specific provisions.	Social Welfare Branch within the Chief Secretary's Department

Source: Inquiry analysis

12.2.4 The Stolen Generations

The generations of Aboriginal children removed from their family are known by many people as the 'Stolen Generations' (Read 1981). These children were fostered out to non-Aboriginal families or brought up in institutions. Many Aboriginal people have been affected directly and many more indirectly by past policies leading to the Stolen Generations. Between 1835 and 1970 it is estimated that across Australia tens of thousands of Aboriginal and Torres Strait Islanders were removed from families and raised in institutions or with non-Aboriginal families (VACCA 2008, p. 13).

> Removal of Aboriginal children from their families began soon after colonisation and concerns about the impact of the high rates of removal led to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Human Rights and Equal Opportunity Commission 1997) (DEECD 2010, p. 26).

The Inquiry report *Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Australian Human Rights Commission 1997) found that the policies and practices of removal had multiple and profoundly disabling effects on individuals, families and communities, including across generations. This report highlighted that children removed from families were:

- More likely to come to the attention of the police as they grew into adolescence;
- More likely to suffer low self-esteem, depression and mental illness;
- More vulnerable to physical, emotional and sexual abuse;
- Almost always taught to reject their Aboriginality and Aboriginal culture;
- Unable to retain links with their land;
- Unable to take a role in the cultural and spiritual life of their former communities; and
- Unlikely to be able to establish their right to native title (DEECD 2010, p. 26).

On 17 September 1997 in recognition of this history of the Stolen Generations, Premier Kennett issued an apology in the Legislative Assembly to the Aboriginal people for the past policies leading to the removal of Aboriginal children from their families and communities. The apology began with the following comments:

> That this house apologises to the Aboriginal people on behalf of all Victorians for the past policies under which Aboriginal children were removed from their families and expresses deep regret at the hurt and distress this has caused and reaffirms its support for reconciliation between all Australians (Parliament of Victoria, Legislative Assembly 1997, p. 107).

On 13 February 2008, Prime Minister Rudd also officially recognised the history of the Stolen Generations and issued an apology in the Australian Parliament. The apology included the following statement:

> We apologise for the laws and policies of successive parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians. We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country. For the pain, suffering and hurt of these stolen generations, their descendants and for their families left behind, we say sorry (Parliament of ACT, House of Representatives 2008, p. 167).

The history of Victorian Aboriginal people is directly relevant to any discussion about protecting vulnerable Aboriginal children and young people as most Victorian Aboriginal people alive today have directly experienced, or have had parents or extended family members who directly experienced, this policy (see section 12.3.1 for contemporary impact).

12.2.5 From 1970s to the present

From the 1970s onwards, the role of the Victorian Government in the lives of vulnerable Aboriginal children and families has continued to be prescribed and enacted through legislation related to the care and protection of children. Table 12.2 summarises this legislation and highlights sections related specifically to Aboriginal children and families.

Table 12.2 Victorian legislation relating to Aboriginal children and families, 1970-2005

Victorian legislation	Legislation related to Aboriginal children and families	Government agency responsible
Social Welfare Act 1970	Aboriginal children were subject to this Act, however, there were no specific provisions.	Department of Community Welfare Services
Community Welfare Services (Amendment) Act 1978	Aboriginal children were subject to this Act, however, there were no specific provisions.	Community Services Victoria
Children and Young Persons Act 1989	This Act introduced principles of case planning for Aboriginal children that required decision making involve relevant members of the Aboriginal community to which the child belongs.	Community Services Victoria and later the Department of Human Services
Children Youth and Families Act 2005	The Act includes provisions that specifically relate to Aboriginal children: • the Aboriginal Child Placement Principle (ACPP) promotes a hierarchy of placement options to ensure that Aboriginal children and young people are maintained within their own biological family, extended family, local Aboriginal community, wider Aboriginal community and maintain their connections to their Aboriginal culture (sections 13 and 14); • a provision for the delegation of the Secretary's functions to the Principal officer of an Aboriginal agency (section 18); and • a provision that the Secretary must prepare and monitor the implementation of a cultural plan for each Aboriginal child placed in out-of-home care under a guardianship to the Secretary order (section 176).	Department of Human Services

Source: Inquiry analysis

Over many years the legislation has gradually come to include provisions specifically related to Aboriginal children and families.

In 1989 the *Children and Young Persons Act 1989* introduced principles of case planning for Aboriginal children that required decision making to involve relevant members of the Aboriginal community to which the child belongs.

In 2002 the Victorian Government began the process of reviewing the state's statutory child protection service. The review was conducted in three stages comprising an initial report, community consultation and publication of a reform agenda. As part of this process specific consultations were held with Aboriginal communities and organisations.

The first review report was called *Protecting Children: The Child Protection Outcomes Project*. This report identified several potential areas for reform and commented that the reforms areas were likely to be relevant and appropriate for Aboriginal children. However, the report concluded:

> That the issues are so important and challenging that it is not possible to adequately address them in this report. They require further examination, led by consultation with Indigenous communities and organisations (The Allen Consulting Group 2003, p. 94).

The second stage of the review was a consultation process. The findings from this consultation process were published in the *Report of the panel to oversee the consultation on Protecting Children: The Child Protection Outcomes Project* (Frieberg et al. 2004). In relation to Aboriginal children and families the report commented:

> A key to the successful reform of children's and family services for Aboriginal communities will be ensuring they are developed in an holistic manner. It will not be sufficient to add an Indigenous element to, for example, the assessment and investigation procedure or to make modifications to the out-of-home care processes for Aboriginal children without considering whether the system as a whole is inclusive of Indigenous cultures and values. This will necessitate a greater recognition than is currently the case that the Indigenous communities should be able to exercise a significant measure of control over the provision of services delivered to their communities (Freiberg et al. 2004, p. 43).

In September 2004, the Department of Human Services (DHS) released the third stage of the review process, a report titled *Protecting children: Ten priorities for children's wellbeing and safety in Victoria: Technical options paper*. The report outlined the reforms proposed for Victoria's child protection service, the *Children and Young Persons Act 1989*, the *Community Services Act 1970*, and the Children's Court in 10 key areas.

In relation to Aboriginal children, the technical options paper concluded that Aboriginal services require a holistic approach that includes the community in problem solving and culturally relevant policies and programs.

It was recommended that culturally relevant policies and programs should be legislated to empower Aboriginal communities to take part in decision making and interventions impacting on children and families. The specific options proposed included:

- Incorporating the Aboriginal Child Placement Principle (ACPP) in legislation;
- Inserting a provision in legislation that requires the Minister to assist Aboriginal communities to provide effective prevention and intervention strategies;
- Legislating for the capacity to assign guardianship or custody of an Aboriginal child to a designated person in an Aboriginal organisation or agency; and
- Developing strategies to strengthen the participation of Aboriginal families in decision making processes.

In 2005 the new *Children Youth and Families Act 2005* included specific provisions related to Aboriginal placement principles, provision for transfer of guardianship and the need for cultural plans to maintain the connection of removed children to their community.

The care and protection of children has been reviewed extensively in Victoria since the 1970s (Table 12.3 summarises these reviews). No review, including this Inquiry, has included a specific term of reference about Aboriginal children and families despite the history of the removal of Aboriginal children from their families and the over-representation of Aboriginal children in the child welfare system. The table also highlights that few recommendations were made about Aboriginal children and families. Of the approximately 640 recommendations made by these reviews only six specifically referred to Aboriginal children and families.

The legislative changes and the various reviews of the child welfare system over more than 25 years has only infrequently addressed the needs of Aboriginal children and families who were over-represented in child welfare systems. One notable exception was the 1984 Carney Review. This review acknowledged the history of the removal of children, recommended that the Aboriginal placement principle be included in legislation, that Aboriginal self-determination be supported and that the capacity of Aboriginal organisations be enhanced. In 2005 the ACPP was incorporated into Victorian legislation.

Table 12.3 Victorian reviews of child welfare, 1976 to 2010: consideration of Aboriginal children and families

Date of report	Name of review	TOR specific to Aboriginal children and families	Aboriginal specific recommendations
1976	Norgard *Committee of Enquiry into Child Care Services*	Nil	One recommendation: • Aboriginal groups to be given a voice when decisions about children are made (20a).
1984	Carney committee *Report of the Child Welfare Practice and Legislation Review (The Carney Committee's Report)*	Nil	Three recommendations: • Changes to Children's Court process (132); • Aboriginal child placement principle (164); and • Involvement of Aboriginal community members in case planning(184).
1988	Law Reform Commission of Victoria *Report on Sexual Offences against Children*	Nil	Nil
1989	Mr Justice Fogarty and Ms Delys Sargeant *Protective Services for Children in Victoria: Interim Report*	Nil	Nil
1990	Victorian Family and Children's Services Council – Standing Committee on Child Protection *One year later: Review of the redevelopment of CSV's protective services for children in Victoria*	N/A	Nil
1993	Mr Justice Fogarty *Protective Services for Children in Victoria: Final report*	Nil	Nil
1996	Victorian Auditor-General *Protecting Victoria's Children: The Role of the Department of Human Services*	Nil	Nil
2001	Public Accounts and Estimates Committee *Report on the Review of the Auditor-General's Special Report No.43 – Protecting Victoria's Children: The role of the Department of Human Services*	Nil	Nil
2000	Jan Carter and reference group *Report of the Community Care Review*	Nil	Nil
2005	Victorian Auditor-General *Our children are our future: Improving outcomes for children and young people in Out-of-Home Care*	Nil	One recommendation: • Address gaps in out-of-home care in relation to Aboriginal children re: quality; resourcing, flexible service responses and reporting (13).
2009	Victorian Ombudsman *Own motion investigation into the Department of Human Services Child Protection Program*	N/A	Nil
2010	Child Protection Proceedings Taskforce *Report of the child protection proceedings taskforce*	Nil	Nil
2010	Victorian Ombudsman *Own motion investigation into child protection out-of-home care*	N/A	Nil
2010	Victorian Law Reform Commission *Protection Applications in the Children's Court*	Nil	One recommendation: • Expanded role for Child Safety Commissioner to advocate for Aboriginal children (Option 5.1 (d)).

Source: Inquiry analysis

12.3 Factors that impact on vulnerability in Aboriginal communities

As outlined in Chapter 2, there are no specific causes of child abuse and neglect, although research recognises that there are a number of risk factors. Children within families and environments in which these risk factors exist have a higher probability of experiencing child abuse and neglect. There is a range of risk factors arising from parent, family or caregiver characteristics including family violence, situational stress, alcohol and substance misuse, mental health problems, attitudes towards parenting, intergenerational abuse, and disability.

Further, there are risk factors that arise from a child's particular characteristics such as the age of the child, language and cognitive factors (including child disability). There are also risk factors associated with community and society such as social inclusion and exclusion and social norms and values.

There are multiple and complex historical, social, community, family and individual factors that underpin why many Aboriginal children are at greater risk of abuse and neglect. However, responding to the entrenched social and economic factors that contribute to the over-representation of Aboriginal children in statutory care and protection services is a critical challenge recognised by Australian state, territory and Commonwealth governments (Berlyn et al. 2011, p. 6).

12.3.1 The impact of family disruption and child removal

As demonstrated in *Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (HEROC 1997) the impact of Aboriginal child removal policies on contemporary Aboriginal communities is particularly profound.

Results from the 2008 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) found that 11.5 per cent of Victorian Aboriginal people who responded to the survey and were living in households with children had been removed from their natural family and 47.1 per cent had a relative who had been removed. This was much higher than the national rate of 7.0 per cent of Aboriginal people in the survey who had been removed from their family and 37.6 per cent who had a family member who had been removed (DEECD 2010, p. 26).

In Victoria, for those people who reported they had a relative removed from their natural family, the majority of 15 to 24 year olds had their (great)/grandparents removed (45.0 per cent), followed by aunties/uncles (30.8 per cent) and cousins, nephews/nieces (27.1 per cent).

When asked in the 2008 Victorian Adolescent Health and Wellbeing Survey, one in five Aboriginal young people aged 12 to 17 responded that they identified as belonging to the Stolen Generations (DEECD 2010, p. 28).

> There are no Aboriginal people whose lives have not been adversely affected by the past. In Victoria, there are no families who have not lost contact with members of their family or whose family relationships do not still bear the scars of the Stolen Generations or whose families were not decimated by the forced removal to different missions of family members and then the expulsion of lighter skinned members from the missions. These events happened to Aboriginal people who are alive today (VACCA 2006, p. 9).

12.3.2 Risk factors impacting on Aboriginal children and young people

Parent, family or caregiver risk factors

There is a range of heightened risk factors for abuse and neglect for Aboriginal children and young people arising from parent, family or caregiver characteristics. This heightened risk is evidenced by the prevalence and severity of key risk factors, as identified in the NATSISS. These include:

- Family stress (experienced by self, family or friends) is high in Victorian Aboriginal households, with nearly 80 per cent experiencing one or more life stressors. This was almost double that for non-Aboriginal households and higher than for Aboriginal households in Australia (DEECD 2010, p. 132);
- Approximately a quarter (24.1 per cent) of Aboriginal people aged 25 years and over in households with children were a victim of threatened physical violence; 87.5 per cent of those who experienced physical violence knew the perpetrator (DEECD 2010, p. 198);
- The Victorian Indigenous Family Violence Taskforce estimated that 'one in three Indigenous people are the victim, have a relative who is a victim or witness an act of violence on a daily basis in our communities across Victoria' (Victorian Indigenous Family Violence Taskforce 2003, p. 4);

- Mental illness, serious illness and alcohol and drug-related problems were the stressors that were more likely to be experienced by Victorian Aboriginals than by Aboriginal people across Australia (DEECD 2010, p. 132);
- Approximately a quarter (24.8 per cent) of Victorian Aboriginal parents/guardians had used illicit drugs in the previous 12 months. This figure is higher than Aboriginal parents/guardians nationally (19.1 per cent) (DEECD 2010, p. 142);
- Over one-third (36.6 per cent) of Aboriginal parents/guardians had experienced high or very high psychological distress in Victoria in the previous month when surveyed, with 22.5 per cent of these unable to work or carry out normal activities over the previous four weeks due to their feelings and 16.3 per cent having been to see a health professional about feelings (DEECD 2010, p. 150);
- Almost 16 per cent of Aboriginal couple families had both parents unemployed or not in the labour force, triple that of non-Aboriginal couple families (DEECD 2010, p. 96);
- Just over one in five Aboriginal households had run out of food in the week of the NATSISS survey and could not buy more (DEECD 2010, p. 90);
- In approximately 40 per cent of Aboriginal families, no parent had completed Year 12. This figure is more than double the rate for all families in Australia (DEECD 2010, p. 90);
- The proportion of Aboriginal parents/guardians who drink at high-risk levels is 4.3 per cent, the same as for non-Aboriginal parents/guardians. The majority of Victorian Aboriginal parents/guardians aged 15 years and over drink at low-risk levels (59.0 per cent) lower than amongst non-Aboriginal parents/guardians (68.7 per cent). Of Aboriginal parents/guardians, 14.6 per cent drink at medium-risk levels, which was significantly higher than for non-Aboriginal parents/guardians at 5.1 per cent (DEECD 2010, p. 145); and
- In Victoria the teenage pregnancy rate for Aboriginal women is 4.5 times higher than for non-Aboriginal women (DEECD 2010, p. 232).

Risk factors associated with Aboriginal children

The risk factors that arise from the child's particular characteristics are as follows:

- In Victoria children born to Aboriginal mothers are around twice as likely to be born with either very low or low birth-weight, compared with children born to non-Aboriginal mothers. The likelihood of having a low birth-weight baby is 12.5 per cent for Aboriginal women – almost double the rate of non-Aboriginal women (6.5 per cent) (DEECD 2010, p. 164);
- There are high proportions of ear and hearing and dental health problems among Aboriginal children (dental health is the second leading cause of hospitalisation in Aboriginal children) (DEECD 2010, p. 170); and
- Aboriginal children and young people are almost twice as likely as non-Aboriginal children and young people to have a need for assistance with core activities (2.9 per cent compared with 1.6 per cent) which can be used as a proxy measure for profound disability (DEECD 2010, p. 170).

Risk factors associated with community

The risk factors in Aboriginal communities associated with social inclusion, exclusion, social norms and values include:

- High rates of victimisation and being physically harmed or threatened – this includes experiencing discrimination in daily life, including at school;
- 23.6 per cent of Aboriginal parents/guardians do not have a friend outside the household they can confide in – more than double the proportion of non-Aboriginal parents/guardians (DEECD 2010, p. 55); and
- One in five Aboriginal young people aged 15 to 24 years had experienced physical violence in the 12 months prior to the survey, with only one in three reporting their most recent experience to police (DEECD 2010, p. 196).

The risk factors for abuse and neglect are therefore heightened in the Victorian Aboriginal community for each grouping (parental characteristics, child characteristics and community factors).

12.4 Victorian and Commonwealth policy and services initiatives

Even the best support programs cannot overpower poverty in shaping a child's developmental outcomes (VACCA submission, p. 10).

12.4.1 Closing the Gap

Closing the Gap is a commitment made by all Australian Governments in 2007 to improve the lives of Indigenous Australians and provide a better future for Indigenous children. It is a nationally integrated strategy that has been developed through the Council of Australian Governments (COAG). In partnership with the Commonwealth Government and, through COAG, the Victorian Government is working with Indigenous communities to close the gap between Indigenous and non-Indigenous Victorians.

The six COAG *Closing the Gap* goals incorporated in the *National Indigenous Reform Agreement* are to:

- Close the life expectancy gap within a generation;
- Halve the gap in mortality rates for Indigenous children under five within a decade;
- Ensure all Indigenous four year olds in remote communities have access to early childhood education within five years;
- Halve the gap for Indigenous students in reading, writing and numeracy within a decade;
- Halve the gap for Indigenous people aged 20 to 24 in Year 12 attainment or equivalent attainment rates by 2020; and
- Halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade.

COAG agreements

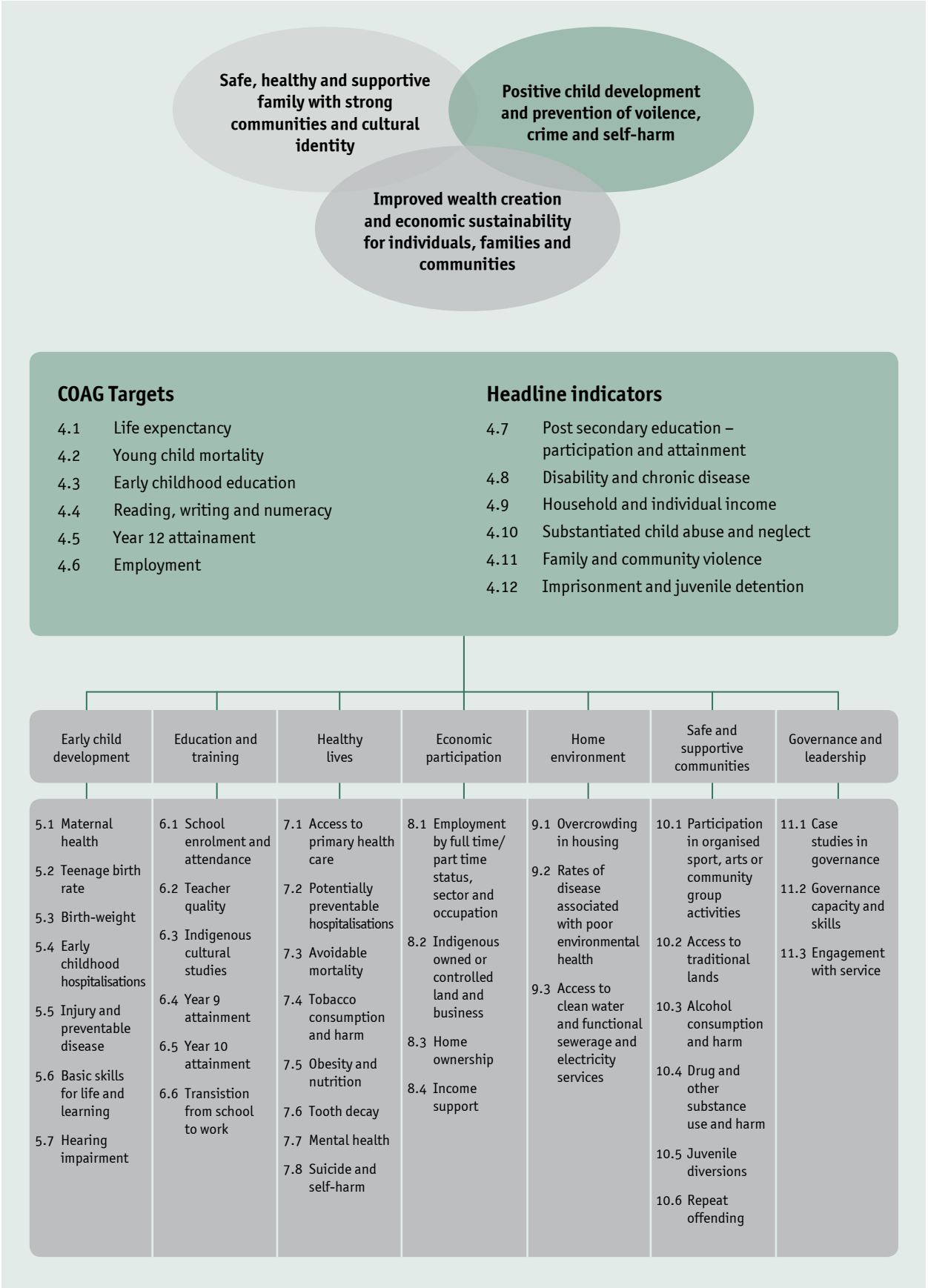
There are several Indigenous-specific COAG national agreements and partnerships signed by the Commonwealth and Victorian governments that are relevant to the achievement of the *Closing the Gap* goals. Implementation responsibility for national agreements and partnerships is with relevant departments and agencies:

- Closing the Gap in Indigenous Health Outcomes National Partnership;
- Indigenous Early Childhood Development National Partnership;
- Indigenous Economic Participation National Partnership;
- National Urban and Regional Service Delivery Strategy for Indigenous Australians; and
- Remote Indigenous Housing National Partnership.

Other major national agreements have been made in the areas of: education and youth transitions; affordable and social housing; workforce development; disability; health and preventative health; homelessness; and early childhood development. These agreements will also contribute to closing the gap between Indigenous and non-Indigenous Victorians

As part of the COAG commitment, governments agreed to a regular public report on progress in the *Overcoming Indigenous Disadvantage: Key Indicators* report. The report is in its fifth edition and provides a summary of current outcomes and examples of programs and policies that appear to be improving those outcomes (Steering Committee for the Review of Government Service Provision (SCRGSP) 2011b, p. 2). Figure 12.1 outlines how the COAG framework is attempting to address key areas of Aboriginal disadvantage by measuring progress and reporting against targets, headline indicators and key areas for improving outcomes.

Figure 12.1 COAG framework for overcoming Indigenous disadvantage



Source: SCRGSP 2011b, p. 11

12.4.2 Victorian Indigenous Affairs Framework

The *Victorian Indigenous Affairs Framework* (VIAF) provides a mechanism to focus on a long term, strategic and progressive effort to improve the health and quality of life of Indigenous Victorians. The framework has six strategic areas for action, principles to guide reform, and outlines partnership, coordination and the management structures that underpin it.

The six strategic areas for action align closely with the goals set by COAG. They are:

- Improve maternal and early childhood health and development;
- Improve education outcomes (formerly 'Improving literacy and numeracy and Improving Year 12 completion or equivalent qualification, develop pathways to employment');
- Improve economic development, settle native title claims and address land access issues;
- Improve health and wellbeing;
- Build Indigenous capacity; and
- Prevent family violence and improve justice outcomes.

These strategic areas for action tackle the most important social and economic determinants of Indigenous disadvantage in Victoria and are monitored and reported publicly through the *Victorian Government Indigenous Affairs Report* (Aboriginal Affairs Taskforce 2011). The report does not cover all action being taken across the Victorian Government in relation to Indigenous affairs, only the areas of strategic priority set out in the VIAF (Victorian Government 2010c). The 2009-10 report outlined the commitment of the new Victorian Government to closing the gap for Aboriginal Victorians. That report also indicated that the Premier has committed to reviewing the VIAF and that this will involve reconsideration of the established targets to improve outcomes for Aboriginal people and ensure they are appropriate.

The report outlines key areas of improvement achieved in Victoria such as:

- Increased three and four year old kindergarten participation;
- Improved attendance at Maternal and Child Health (MCH) clinics at key age milestones;
- Improved literacy and numeracy;
- Reduced rate of self-harm; and
- Increased rates of police response to Indigenous family violence incidents.

While it is encouraging that improvements are being made in these areas the Inquiry notes that this progress is incremental and is building very slowly from a base of significant existing differences between Aboriginal children and non-Aboriginal children in Victoria.

The report also identifies a number of areas where no improvement has been achieved in Victoria. These include:

- Indigenous perinatal mortality rate;
- Percentage of Indigenous babies with birth-weight below 2,500 grams;
- School attendance rates for Indigenous students;
- Successful transition of Indigenous young people aged 18 to 24 years to employment and/or further education; and
- Rates of chronic medical conditions among Indigenous people.

The report highlights three areas where Victoria is lagging behind national averages and improvement is needed. These are:

- Smoking rates;
- School retention rates; and
- Over-representation in the statutory child protection services.

12.4.3 Other plans

There are a number of plans seeking to improve outcomes for the Victorian Aboriginal community in areas of significant disadvantage. Table 12.4 provides a brief summary of the key plans as they relate to the prevention and reduction of abuse and neglect.

Table 12.4 Strategies to address Aboriginal disadvantage

Plan	Lead Agency	Key focus	Outcomes
Dardee Boorai: *Victorian charter of safety and wellbeing for Aboriginal children and young people (2008)*	DEECD	Defines eight outcome areas and reaffirms six key COAG targets to improve the safety, health, development, learning and wellbeing of Aboriginal children and young people. Describes the roles and responsibilities of families, communities, community controlled organisations and mainstream services. There is no reporting framework for the charter. The charter states the implementation will be outlined and monitored though the *Victorian Plan for Aboriginal Children and Young People*.	See *Victorian Plan for Aboriginal Children and Young People (2010–2020)* below.
Balert Booron: *the Victorian Plan for Aboriginal Children and Young People (2010–2020)*	DEECD	Outlines 44 specific areas of actions to improve the health, safety, development, learning and wellbeing of Aboriginal children and young people in Victoria over 10 years. Thirteen of these specific areas have measurable goals.	The VIAF notes five areas of improvement, five areas of no improvement and three areas lagging behind national averages (refer section 12.4.2).
Wannik: *Learning Together – Journey to our Future (the Wannik strategy)*	DEECD	Strategy to overcome poor educational outcomes for Koorie students. Its aim is to improve education outcomes for Koorie students by changing the culture and mindset of the government school system, implementing structural reforms and making better use of mainstream efforts and programs.	There are no set targets or milestones. Note the VIAF education outcome areas show no improvement in school attendance, school retention, and transition to employment and further education.
Aboriginal Justice Agreement (AJA) (Two agreements since 2000)	DOJ	The agreement aims to reduce over-representation of Indigenous people in the youth justice and criminal justice system. A partnership between government and Aboriginal organisations has been in place since June 2000 and includes a diverse range of initiatives to reduce initial contact with the system and improve outcomes for Indigenous people at all stages of the youth justice and criminal justice system.	The success of the AJA2 in achieving these objectives is being assessed as part of an independent evaluation. There are no published results.
Aboriginal Human Services Plan	DHS	Since 2000 DHS has worked in partnership with the Aboriginal community to develop a statewide *Aboriginal Services Plan*. The Plan aims to achieve improvement in the health and wellbeing of Aboriginal people in Victoria in line with that of the general population by understanding causal factors contributing to the disparity in health and wellbeing, maximising the use of primary and preventative services and minimising the need for secondary and tertiary services by Aboriginal people.	The 2008–2010 plan is currently being evaluated and a new plan is being developed for 2011–2013
Strong Culture, Strong Peoples, Strong Families: The Aboriginal family violence strategy 10 year plan (2008)	DPCD	The plan sets out objectives, strategies and actions and is based on a partnership approach between Aboriginal communities, the Regional Action Groups and the Victorian Government to reduce family violence. It provides investment in both improved, integrated responses and in prevention activities. The strategic plan and its implementation plans are reviewed by a partnership forum and periodic independent evaluation.	There are no set targets or milestones. There is no clear reporting framework.

Source: Inquiry analysis

12.4.4 Conclusions on the policy landscape

Improving outcomes for Aboriginal communities is clearly a whole-of-government task, with the responsibility crossing over many areas of state government activity in addition to a significant Commonwealth Government role. The COAG *Closing the Gap* strategy and the VIAF both outline a comprehensive approach to overcoming Aboriginal disadvantage.

In key areas, such as statutory child protection services, progress is slow or hard to achieve. It is considered that without a substantial change in the individual, caregiver and community risk factors the goal of reducing the over-representation of vulnerable Aboriginal children in statutory child protection services will not be achieved. If progress is made in key identified areas of Aboriginal disadvantage through the current Commonwealth and Victorian Government policies this is likely to reduce the risk factors for child abuse and neglect and therefore help to prevent child abuse in Aboriginal communities.

The Victorian issue-specific plans (Table 12.4) are intended to drive change in relation to key areas of Aboriginal disadvantage and fall within the overarching approach established through the Closing the Gap strategy and the VIAF. These five plans are at various stages of implementation, achievement and review. Two plans are currently being reviewed, two plans have no set targets or milestones and one plan sets out 44 goals but only measures 13. None of the plans presently have a clear outcomes measurement and reporting framework against which to assess progress. This creates a policy context where the strong focus on the achievement of the goals as outlined in the VIAF is not reflected at the more detailed level of engagement.

For example, the Victorian Auditor-General's Office (VAGO) has reviewed the Wannik strategy and concluded that:

> At the beginning of the fourth year DEECD cannot demonstrate whether the Wannik strategy is on track to improve education outcomes for Koorie students (VAGO 2011c, p. vii).

The Victorian Auditor-General has determined that although DEECD has been progressively implementing a range of priority actions, it is unclear whether progress is in line with DEECD's expectations because there are no set targets or milestones. The Victorian Auditor-General further comments that it is not evident that risks to the strategy's implementation are being adequately managed. Unless these issues are addressed, achieving the systemic reforms necessary to improve and sustain education outcomes for Koorie students is not likely (VAGO 2011c, p. vii). It is unsatisfactory that there are no targets or milestones for the Wannik strategy.

In addition the VIAF is based on a statewide monitoring of outcomes and reporting. However, reporting at a state level is not detailed enough to lead to a clear understanding of how the more specific issue based plans are progressing and does not reflect the impact of actions at a location or regional level. Reporting at a local level will provide valuable information about any barriers to implementation and what approaches work best. This knowledge could then be applied more broadly to enhance overall effectiveness.

In order to assist in efforts to prevent child abuse and neglect in Aboriginal communities and reduce the over-representation of Aboriginal children in statutory child protection services it is considered that the VIAF would benefit from the development of a more detailed and drilled down approach in its monitoring framework. It is recommended that the monitoring framework consider in more detail key areas of disadvantage related to vulnerable children (education or family violence, for example) and report local or place-based performance in specific localities with high prevalence rates of risk factors for child abuse and neglect (such as poor Australian Early Development Index (AEDI) scores and high child protection substantiation rates). This would allow for more effective targeting of effort and rigorous analysis of the barriers and obstacles by issue at the local service delivery level.

While the issue specific plans have some shortcomings, the plans related to justice and family violence have resulted from inclusive planning approaches with the Aboriginal community. This typically cascades upwards from community groups through to representation at larger forums and involves the regular demonstration of commitment of the most senior government representatives, Aboriginal leaders and community members through attendance at regular forums. These regular forum meetings (that may extended over more than one day) provide an opportunity to discuss issues in depth, develop relationships and openly report actions and outcomes. Future planning processes in relation to Aboriginal children and families should consider adopting a similar approach.

Finding 7

The Inquiry affirms the *Victorian Indigenous Affairs Framework* and associated structures as the primary mechanism to drive action across government on the broad range of risk factors associated with Aboriginal children being at greater risk of abuse and neglect.

Recommendation 32

More detailed monitoring should be developed for the *Victorian Indigenous Affairs Framework* that provides reports on outcomes at the operational level regarding key areas of disadvantage (such as education attainment or family violence) and in specific localities with high prevalence rates of risk factors for abuse and neglect.

12.5 Service systems

Aboriginal Victorians have access to the same publicly funded service systems as other Victorians. There is a broad range of systems that are applicable to the health and wellbeing of Aboriginal children and families such as health, economic participation, community safety and housing. These service systems are the focus of the COAG and VIAF improvement efforts and the associated monitoring and reporting regimes.

This section focuses on how Aboriginal children, young people and families are faring in the Victorian service systems of early years, education, family services and statutory child protection services. Each of these systems also provide a range of Aboriginal specific programs. A brief description of Aboriginal specific programs in the early years, education, family services and statutory child protection services are included in Appendix 10.

12.5.1 Aboriginal children and families in Victoria

The state of Victoria's children 2009: Aboriginal children and young people in Victoria (DEECD 2010) provides a comprehensive overview of how Aboriginal children and young people fare in the areas of safety, health, development, learning and wellbeing. This section highlights keys areas relevant to the Inquiry.

In 2006 the Australian Census showed there were around 33,500 Aboriginal people living in Melbourne and regional Victoria, an increase from 27,800 in 2001. It is estimated that the Aboriginal population in 2010 has further risen to approximately 36,700 people (Victorian Government 2010c, p. 9). The Aboriginal population in Victoria has a higher growth rate than the population as a whole (Victorian Government 2010c, p. 9).

The 2006 Census of Population and Housing identified that there were 576,700 families in Victoria, with 1.2 per cent of these being Aboriginal at that time. A very high proportion of Aboriginal families are one-parent families: 50.3 per cent compared with 20.6 per cent of all families with children (ABS 2006a). This figure reflects the national data (DEECD 2010, p. 39).

The majority of Aboriginal households in Victoria are one-family households (91.5 per cent), which is slightly higher than Aboriginal households nationally (86.5 per cent). The major difference observed between Victoria and Australia was the proportion of two or more family households, which was considerably lower in Victoria at 6.0 per cent compared with Australia at 10.4 per cent (DEECD 2010, p. 39).

In approximately two-thirds (64.1 per cent) of Aboriginal households in Victoria not all people within that household identified as Aboriginal in contrast to Australia as a whole, where only in 49.6 per cent of households not all people identified as Aboriginal (DEECD 2010, p. 39).

Although Victoria is the second most populated state or territory in Australia, only 0.7 per cent of the population are Aboriginal, the lowest in Australia. Victoria is home to an estimated 14,578 Aboriginal children aged 0 to 17 years, representing 1.2 per cent of all children residing in the state. This proportion is also the lowest in Australia, well below the national average (see Table 12.5).

Although the majority of Victoria's population is concentrated in metropolitan areas, a greater proportion of Victoria's Aboriginal children reside in rural Victoria, at 55.8 per cent compared with metropolitan Victoria at 44.0 per cent (see Table 12.6).

There are marked differences between the age structure of the Aboriginal population and the total population. Children make up almost half (43.5 per cent) of the 33,517 Aboriginal people counted in Victoria, almost double the proportion of children in the total population at 23.6 per cent (DEECD 2010, p. 35).

In summary the Victorian Aboriginal community:

- Is growing rapidly;
- Is widely dispersed across areas of the state with a significant proportion of the community living in regional and rural Victoria;
- Has a very high proportion of single-parent families; and
- Has a very high proportion of children who are over-represented in statutory child protection services.

Table 12.5 Aboriginal children aged 0 to 17 years, states and territories, 2006

State or territory	Children aged 0–17 years (a)		
	Aboriginal	All Children	% of children that are Aboriginal
New South Wales	68,196	1,607,803	4.2%
Victoria	14,578	1,183,258	1.2%
Queensland	65,484	1,004,795	6.5%
South Australia	12,121	350,158	3.5%
Western Australia	30,460	497,808	6.1%
Tasmania	8,087	116,831	6.9%
Northern Territory	26,381	60,854	43.4%
Australian Capital Territory	1,832	77,438	2.4%
Australia	**227,215**	**4,899,568**	**4.6%**

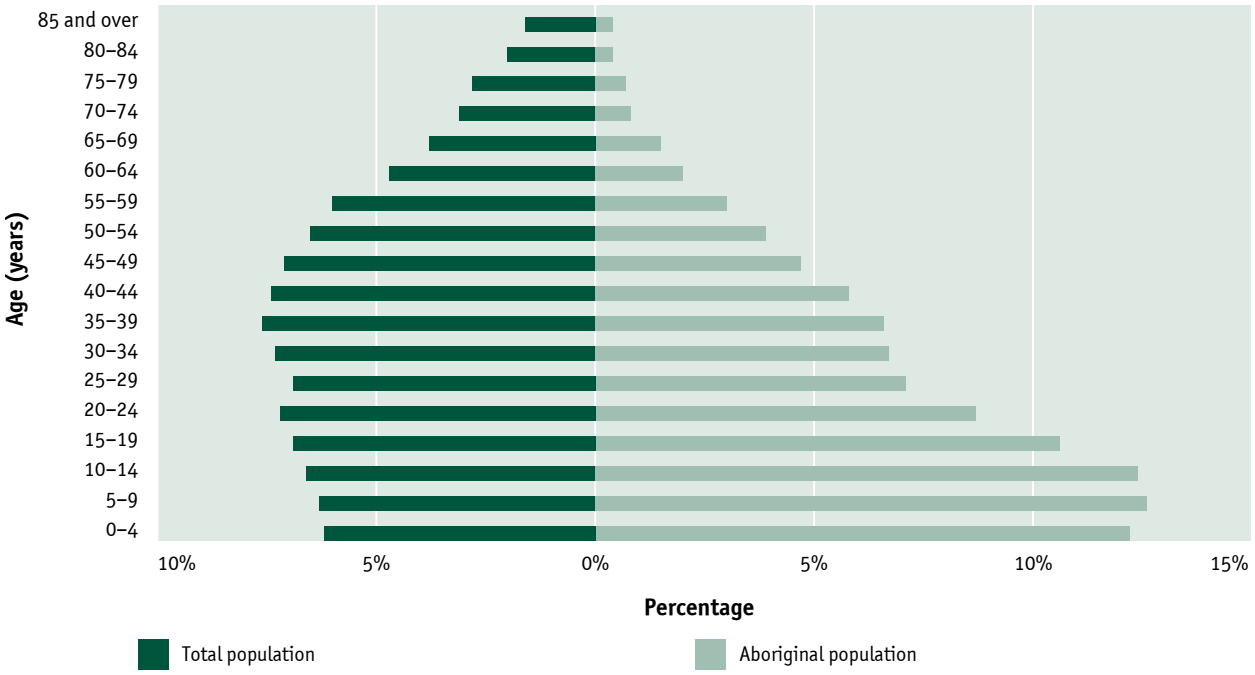
Source: DEECD 2010
Note: (a) Australian Bureau of Statistics (ABS) 2009a

Table 12.6 Aboriginal children, by age group and region, Victoria, 2006

Region	0 to 4 years	5 to 9 years	10 to 14 years	15 to 17 years	Total 0 to 17 years	% of population aged 0 to 17 years
Eastern Metropolitan	249	319	299	190	1,057	8.0%
Northern Metropolitan	530	500	498	305	1,833	13.9%
Southern Metropolitan	490	553	468	267	1,778	13.5%
Western Metropolitan	324	307	315	201	1,147	8.7%
Metropolitan	**1,593**	**1,679**	**1,580**	**963**	**5,815**	**44.0%**
Barwon-South West	356	371	352	188	1,267	9.6%
Gippsland	377	416	434	217	1,444	10.9%
Grampians	189	220	228	120	757	5.7%
Hume	468	503	503	244	1,718	13.0%
Loddon Mallee	607	612	624	351	2,194	16.6%
Rural	**1,997**	**2,122**	**2,141**	**1,120**	**7,380**	**55.8%**
Victoria (a)	**3,598**	**3,811**	**3,721**	**2,086**	**13,216**	**100.0%**

Source: DEECD 2010
Note: (a) Due to small numbers, 'No usual address' and 'Unincorporated Victoria' categories could not be reported in the table but do contribute to total records (n = 98).

Figure 12.2 Aboriginal population and non-Aboriginal population by age group, Victoria, 2006: percentage distribution



Source: DEECD 2009c, p. 35

12.5.2 System performance data

This section considers the service systems relating to the early years of a child's life, education, family services and statutory child protection services and looks at how Aboriginal children and young people are faring within those systems.

Early years

There is little trend data for the participation of Victorian Aboriginal children in different forms of early years programs. There is also a lack of nationally comparable data regarding participation in early childhood education programs as noted in the Auditor-General's report on the *Administration of the National Partnership on Early Childhood Education* (Australian National Audit Office 2011).

The participation rates of Victorian Aboriginal infants receiving a MCH home consultation visit has increased from 88.2 per cent in 2006-07 to 91.3 per cent in 2007-08 (although it remains lower than for the total population at 98 per cent in 2006-07 and 98.9 per cent 2007-08). The proportion of Victorian Aboriginal children who participate in the 3.5 year old visit remains 20 percentage points behind the whole population (40.3 per cent compared with 60.1 per cent) (DEECD 2010, p. 132).

NATSISS shows that more than half (60.2 per cent) of Aboriginal children aged 0 to 12 years in Victoria had been in some form of child care in the previous week, much higher than all children in this age group (48.9 per cent). Of those who used child care, Aboriginal children were more likely to have been in informal care (with relatives or friends for example) and less likely to have been in formal care only (DEECD 2009c, p. 217).

In 2009-10 in Victoria 0.2 per cent of children attending child care and preschool services were Aboriginal. Aboriginal children between three and five years of age represented 1.2 per cent of all children in this age group in the community (SCRGSP 2011a, table 3A.4).

Around half of 0 to 12 year olds who attended formal care in the week prior to the survey used a long day care centre. The main difference between Aboriginal children and the total population of child care users was in the use of family day care. Aboriginal children were much more likely to be placed in family day care (approximately 20.0 per cent in both Victoria and nationally) compared with all children (7.6 per cent in Victoria, 8.9 per cent nationally) (DEECD 2009c, p. 219).

The Inquiry sought to further understand the attendance at child care by younger vulnerable Aboriginal children, however, this is the extent of data provided by ABS from the NATSISS survey on this subject. DEECD informed the Inquiry that further information had not been sought or additional analysis of NATSISS undertaken in relation to the use of child care.

Aboriginal children in Victoria are assisted by Koori Engagement Support Officers from the Koori Early Childhood Education Program, aimed at increasing participation for Aboriginal children in kindergarten. During the five year period between 2004 and 2009, the number of four year old kindergarten enrolments fluctuated. In 2009, 579 four year olds were enrolled in kindergarten (DEECD 2009c, p. 220).

Table 12.7 outlines the enrolment of three year old Aboriginal children in Early Start Kindergarten. Nearly one third of three year old Aboriginal children were enrolled in 2010.

Table 12.7 Three year old Aboriginal children enrolled in Early Start kindergarten, Victoria, 2008 to 2011

Year	Population projection	Enrolments	Participation rate
2008	838	109	13.0
2009	857	237	27.7
2010	847	249	29.3
2011	876	NYA	NYA

Source: Information provided by DEECD.
Based on ABS 2009a.
Three year old enrolment figures reflect the number of participants in the Aboriginal Early Start program.

Education

In Victoria, Aboriginal students generally have lower rates of literacy and numeracy, school attendance and school retention than their non-Aboriginal peers (VAGO 2011c, p. vii).

Using the AEDI to measure developmental vulnerability, Aboriginal children in Victoria are more than twice as likely as non-Aboriginal children to be vulnerable on one or more health and wellbeing domains at school entry, and nearly three times as likely to be vulnerable on two or more domains (DEECD 2009c, p. 217).

The proportion of Aboriginal children reading with 90 per cent to 100 per cent accuracy at the designated text levels for Prep, Year 1 and Year 2 remains consistently lower than non-Aboriginal children (DEECD 2009c, p. 224) (see Table 12.8).

Table 12.8 reveals that in Prep Aboriginal students are approximately 30 percentage points lower in recommended reading levels than all students. However, by Year 2 this difference has declined by half to 15 percentage points. This average performance difference then appears to remain throughout a child's educational experience. For example, in relation to literacy and numeracy, Aboriginal children and young people in Victoria continue to fare less well than their non-Aboriginal counterparts with differences in Year 9 across reading, writing, spelling, grammar and numeracy at least of the order of 20 percentage points (DEECD 2009c, p. 217).

Aboriginal students are more likely than non-Aboriginal students to be early school leavers. The Year 10 to 12 retention rate for Aboriginal students in government schools has been below 55 per cent for a number of years, compared with approximately 75 per cent for non-Aboriginal students (VAGO 2011c, p. 2).

Table 12.8 Reading proficiency of Prep to Year 2 students enrolled in Victorian government schools, by Aboriginal status, 2000 to 2008

	Year	Text Level	2000 %	2001 %	2002 %	2003 %	2004 %	2005 %	2006 %	2007 %	2008 %	Average 2000–08
Aboriginal students	Prep	5	41.4	44.3	44.4	47.8	49.8	48.0	46.7	49.5	50.3	46.9
	Yr 1	15	48.1	54.2	57.8	57.1	63.7	64.5	61.5	62.6	61.3	59.0
	Yr 2	20	77.9	76.5	75.9	76.3	76.7	82.2	82.7	82.9	81.0	79.1
All students	Prep	5	70.6	74.1	75.9	77.9	79.0	79.7	80.3	80.4	81.3	77.7
	Yr 1	15	79.9	83.1	84.5	85.7	87.0	86.3	86.9	86.7	86.4	85.2
	Yr 2	20	92.9	93.5	94.6	94.5	94.8	94.8	94.9	94.8	94.5	94.4

Source: DEECD 2010, p. 224

Table 12.9 shows that 72.4 per cent of Victorian government schools have at least one Aboriginal student enrolled.

Table 12.9 Victorian government schools with Aboriginal enrolments, 2008 to 2011

Year	Schools with Aboriginal enrolments
2008	71.8%
2009	73.5%
2010	70.9%
2011	72.4%

Source: Information provided by DEECD

Table 12.10 outlines school retention rates for Aboriginal and non-Aboriginal children over a 10 year period. Just over 40 per cent of Aboriginal students aged 12 to 17 years aspire to attend university compared with approximately 70 per cent of non-Aboriginal students (DEECD 2009c, p. 217).

Lower attendance rates among Aboriginal children are consistent across Year 1 to Year 10 in Victorian government schools. Lower rates of attendance were particularly notable in secondary school, for both Aboriginal and non-Aboriginal students in 2007 and 2008 (DEECD 2009c, p. 227).

Aboriginal students report similar levels of connectedness to school and to their peers as their non-Aboriginal counterparts (DEECD 2009c, p. 217). Close to one-third (30.6 per cent) of young Aboriginal people reported that their school recognises Aboriginal culture in its curriculum and nearly 60 per cent felt proud to be an Aboriginal person at school (DEECD 2009c, p. 231). Approximately 50 per cent of Aboriginal children aged four to 14 years are taught Aboriginal culture at school (DEECD 2009c, p. 217).

Around one in five Aboriginal young people (21.2 per cent) aged 15 to 17 years are not attending an educational institution or participating in employment, compared with 8.8 per cent of Victorian 15 to 17 year olds who are not in either employment or education (DEECD 2010, pp. 243, 246).

Support at school

VACCA supports approximately 40 school aged children in foster care. The children are vulnerable, traumatised and need strong support at school. They all attend school. There have been two short suspensions from school this year [2011]. Both children returned to school immediately. The VACCA education support worker and the extended care team work closely with the school. The support worker can work one-on-one with the child at school if needed, focussing on educational or behavioural difficulties. Teachers feel supported and are included in care team meetings and consultations with therapeutic specialists. Schools are beginning to understand the importance of creating culturally safe environments and including culture into the curriculum. In 2009 all Aboriginal children in VACCA's foster care program achieved literacy and numeracy benchmarks as tested through the National Assessment Program, Literacy and Numeracy (extract from VACCA submission, p. 53).

Table 12.10 Year 10-12 apparent retention rates at all schools (full-time students), Victoria and Australia, 1999 to 2008

	1999 %	2000 %	2001 %	2002 %	2003 %	2004 %	2005 %	2006 %	2007 %	2008 %	Change 1999–2008
Victoria											
Aboriginal	46.1	37.9	44.0	40.9	44.4	44.7	55.4	47.4	56.7	50.9	+ 4.8% points
Non-Aboriginal	94	95	95	95	95	95	94	92	91	91	- 2.3% points
Australia											
Aboriginal	43.1	43.8	43.6	45.8	45.7	46.0	45.3	46.8	48.5	51.0	+ 7.9% points
Non-Aboriginal	75.0	75.2	76.2	77.8	77.7	78.1	77.5	77.1	76.6	76.5	+ 1.5% points

Source: DEECD 2010, p. 244

Family services

In the 2008-09 financial year, 23,789 families with children accessed family services. Of these, 1,492 (or 6.3 per cent) were Aboriginal families. Given the significant disadvantage in Aboriginal families this low participation rate is concerning because access to appropriate family support programs may prevent the need for engagement with statutory child protection services.

Statutory child protection services

Aboriginal and Torres Strait Islander children are over-represented in all areas of the child protection system in every state and territory in Australia (Australian Institute of Health and Welfare (AIHW) 2011c, p. vii).

The state of Victoria's children 2009: Aboriginal children and young people in Victoria reports that Aboriginal children were 10 times more likely to be the subject of a substantiation at a rate of 48.3 per 1,000 children compared with non-Aboriginal children at a rate of 4.8 per 1,000 children. Nationally, the substantiation rate for Aboriginal children was 37.7 per 1,000 children, 5.8 times the rate of all children (DEECD 2010, p. 206). The Inquiry notes that the VIAF has highlighted this as an area that is lagging behind national averages and improvement is needed. However, due to the lack of reliable prevalence data about child abuse and neglect, caution needs to be exercised when considering this data. It should not be concluded that Aboriginal children in Victoria are more likely to be abused and neglected than in other jurisdictions. It may indicate that the Victorian system is more responsive to child abuse and neglect in Aboriginal families than in some other jurisdictions.

The Inquiry's own data analysis shows that Aboriginal children are more likely to be the subject of a report of child abuse than non-Aboriginal children. Of the 2009-10 cohort 9.4 per cent of reports of child abuse concerned Aboriginal children. This compares with an estimated 1.2 per cent of children in Victoria who are Aboriginal.

The Inquiry's analysis also shows that there were 1,381 investigations relating to Aboriginal children from reports received in 2009-10. This is equivalent to 9.9 per cent of all investigations. Table 12.11 shows the number of investigations and substantiations based on reports received in 2009-10 by Aboriginal status. At 61.5 per cent, the rate of substantiations as a proportion of investigations is higher for Aboriginal children than for non-Aboriginal children (53.6 per cent).

Table 12.11 Finalised child protection investigations and substantiations arising from 2010-11 reports, by Aboriginal status

	Investigations	Substantiations	Substantiation rate
Aboriginal	1,361	829	63.0%
Non-Aboriginal	11,655	6,811	58.4%

Source: Information provided by DHS

Table 12.12 illustrates the Victorian trends in relation to Aboriginal children in statutory child protection from 2001 to 2010. These trends show a marked increase in relation to reports, a slight decrease in investigations and substantiations and an increase in care and protection orders. While the reasons for these changes are not clearly understood it is likely that the reporting rate is driven by the growing proportion and number of infants in the Aboriginal community. While the changes in investigation and substantiation rates are marked the proportion of substantiations resulting from investigations remains constant (68.5 per cent in 2000-01 and 66.8 per cent in 2009-10). This factor combined with a rise in care and protection orders may indicate that statutory child protection services are appropriately identifying vulnerable Aboriginal children at risk of significant harm.

Out-of-home care

There has been an increase in the rate of children in out-of-home care since 2002 for both Aboriginal and non-Aboriginal children and young people. This increase, combined with the decreasing rate of admissions into out-of-home care, indicates that children and young people are staying in out-of-home care arrangements for longer periods.

In Victoria at 30 June 2009, there were 5,283 children aged 0 to 17 years in out-of-home care, a rate of 4.3 per 1,000 children. Of these, 734 were Aboriginal children, a rate of 48.7 per 1,000. Aboriginal children and young people were 11.3 times more likely to be in out-of-home care on 30 June 2009 than non-Aboriginal children. Across Australia, Aboriginal children were 6.6 times more likely to be in out-of-home care than all children in 2009 (AIHW 2010a).

As outlined in Chapter 10 Victoria's Aboriginal children and young people have markedly higher interactions with the out-of-home care system. The key observations are:

- Over the period 2001-10 the number of Aboriginal children and young people in out-of-home care increased by nearly 80 per cent with the rate per 1,000 Aboriginal children and young people increasing from 36.5 per cent to 53.7 per cent, an increase of 47 per cent;
- Over the period the median duration of time in continuous out-of-home care increased from an estimated 16 months at the end of June 2001 to just over 2 years at the end of June 2011;
- 95 per cent of Aboriginal children were in home-based arrangements at the end of June 2010 with 51.8 per cent of Aboriginal children in kinship care; Nearly 70 per cent of Aboriginal children who entered care in the 12 months to the end of June 2010 were aged less than 10 years, a significantly higher proportion than for non-Aboriginal population; and
- Aboriginal children and young people who exited care in the 12 months to June 2011 had spent similar periods in care as non-Aboriginal children: 54.4 per cent had been in care for less than 12 months; 21.5 per cent one year to less than two years; and 24.1 per cent more than two years.

In Victoria the majority of both Aboriginal and non-Aboriginal children are placed in home-based care (96.5 per cent and 97.4 per cent respectively). There has been an increasing number of children placed with relatives and kin – higher for Aboriginal children at 52.9 per cent than non-Aboriginal children at 43.5 per cent (DEECD 2010, p. 213).

Caregivers of Aboriginal children were mostly aged over 50 (65 per cent), female and frequently single, and living in poverty with often crowded housing. Aboriginal carers were caring for larger numbers of children (average 2.4) than non-Aboriginal carers (average 1.8). Only half (53 per cent) of carers reported that they had adequate support to ensure that the children keep in contact with family and culture (Humphreys & Kiraly submission (a), pp. 2-3).

On 30 June 2009, 431 Aboriginal children in out-of-home care were living in arrangements that were in accordance with the ACPP. This accounts for 59.5 per cent of Aboriginal children in out-of-home care (DEECD 2010, p. 214).

Table 12.12 Children in child protection reports, investigations, substantiations and care and protection orders per 1,000 Victorian children, by Aboriginal status, 2000–01 and 2010–11

	2000–01		2010–11	
	Aboriginal	Non-Aboriginal	Aboriginal	Non-Aboriginal
Reports	117.6	24.5	178.1	31.1
Investigations	74.1	9.9	76.7	9.0
Substantiations	50.7	6.1	50.4	5.4
Care and protection orders	41.1	3.8	69.2	4.6

Source: SCRGSP 2011c, provided by DHS

This means there are still many Aboriginal children who cannot be placed with Aboriginal families or communities. One of the main reasons for this is the shortage of Aboriginal carers. The underlying factors involved in the ability to recruit Aboriginal carers include the impact of the past removal policies on parenting, social and financial barriers, the unwillingness of some people to be associated with the 'welfare' system and the disproportionately high number of Aboriginal and Torres Strait Islander children compared to adults (Berlyn et al. 2011, p. 5).

The Inquiry understands another factor is the criminal records check requirements for approval for placement in out-of-home care, which means that some Aboriginal adults are ineligible to become carers.

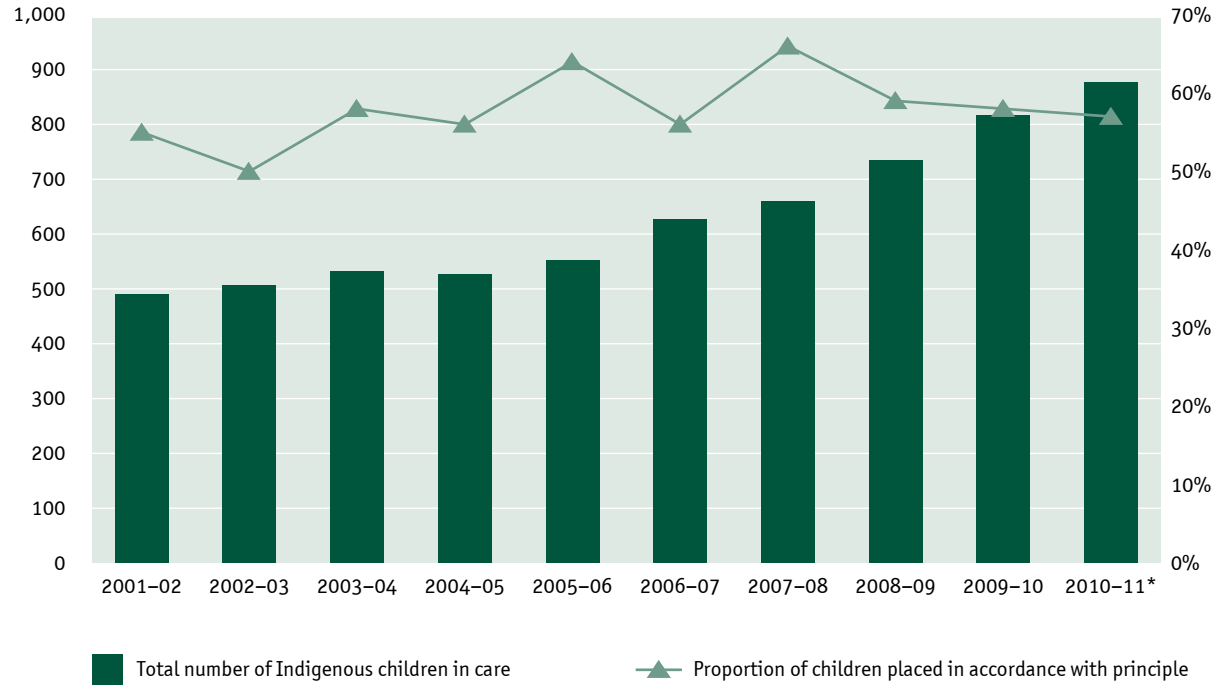
A key factor that results from the relatively young profile of the Victorian Aboriginal community is the proportion of children in relation to the proportion of adults who are potentially available to care for them. This is referred to as the youth dependency ratio. The youth dependency ratio is the percentage of the population under 15 years divided by the percentage of the population aged 15 to 64 years, which includes potential carers. In 2006 in Victoria the youth dependency ratio for the Aboriginal community was significantly higher (0.68) than for the non-Aboriginal population (0.28) (AIHW 2011a, pp. 1,104, 1,105).

As Figure 12.3 illustrates there has been little progress in Victoria in the improving the percentage of children placed in accordance with the ACPP over recent years. Further, Victoria rates fifth compared with other states and territories in complying with the ACPP (see Figure 12.4).

VACCA's Koori Cultural Placement and Support Program

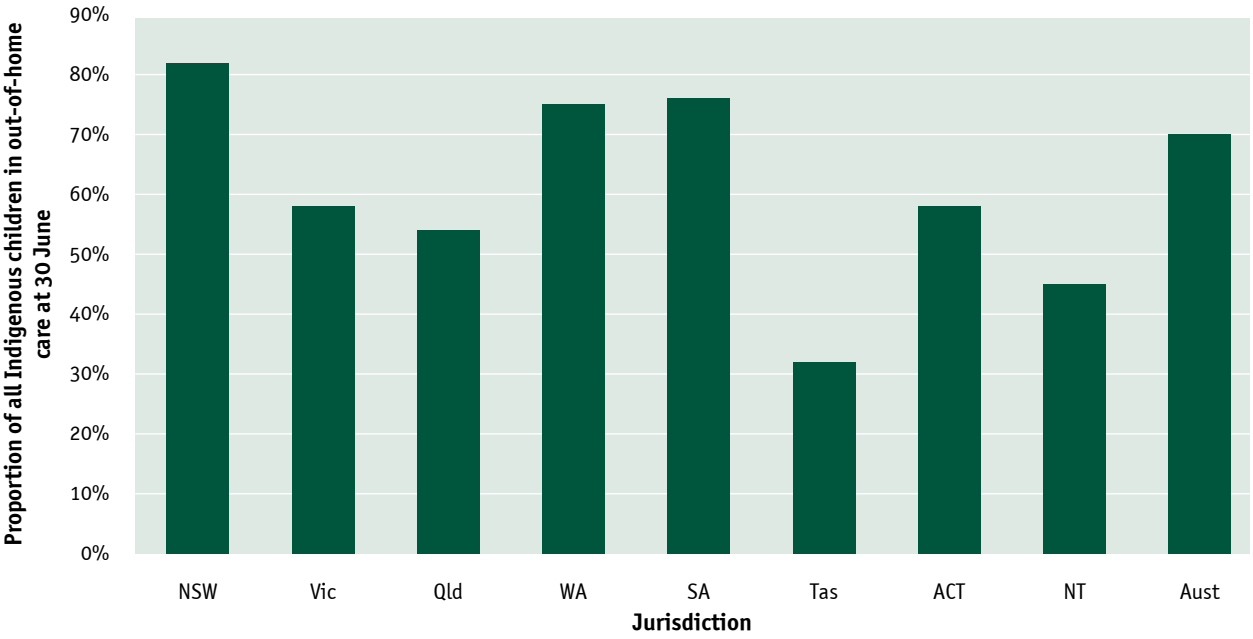
VACCA's Koori Cultural Placement and Support Program works to connect the child or young person placed in out-of-home care to their family and community, and encourage the child to know and take pride in their culture. The program can also work alongside carers assisting them to involve the child in cultural events and introducing them to members of the child's community. To date, the program operates for a small number of Aboriginal children in three regions of Victoria (VACCA submission, p. 54).

Figure 12.3 Aboriginal out-of-home care placements and compliance with the Aboriginal Child Placement Principle, Victoria, 2001–02 to 2010–11



Source: SCRGSP 2011c, Table 15A.62
* Provided by DHS

Figure 12.4 Aboriginal children placed in out-of home care in accordance with the Aboriginal Child Placement Principle, states and territories, 2009–10



Source: SCRGSP 2011c, Table 15A.22

Cultural competence

The impact of disadvantage on a child's development and the history of forcible removal of Aboriginal children has resulted in Aboriginal families being suspicious of health and welfare services. This means that services designed to assist Aboriginal people must pay close attention to how Aboriginal people use the services and provide those services in a culturally competent manner. Cultural competence is defined as the integration of a set of congruent behaviours, attitudes and policies in a system, agency or among professionals and allows that system, agency or those professionals to work effectively in cross-cultural situations (Isaac & Benjamin 1991).

The registration process for community service organisations (CSOs) (see Chapter 21) has a standard related to cultural competence in the provision of services for Aboriginal children, young people and families. The performance of CSOs against the standards are externally reviewed. The R*eport of the External Reviews of CSOs against the Registration Standards under the Children, Youth and Families Act 2005*, prepared by DHS (2007-10) records the results from this review process. The report identifies that only 48 per cent of CSOs were rated as having met the standard of respecting Aboriginal children and youth's cultural identity (DHS 2011n, p. 20). Most CSOs subsequently sought to improve their performance against this standard through the inclusion of actions focused on improving cultural awareness. Typically the actions related to:

- Cultural awareness training to be completed by staff and carers and board members;
- Memoranda of understanding to be developed with local Aboriginal community controlled organisations (ACCOs);
- Implementation of the Aboriginal Cultural Competence framework; and
- Ensuring all carers and staff have received training in cultural competency practice and related areas to support the needs of Aboriginal and culturally and linguistically diverse children, youth and families (DHS 2011n, p. 36).

As outlined in Chapter 21 DHS has recently established a Standards and Registration Unit to undertake the registration, monitoring and review of CSOs in integrated family services, out-of-home care, disability services and homelessness support. The unit will monitor the performance of all CSOs against the new DHS standards from July 2012. Particular attention should be paid in the development of the new DHS standards and in the next cycle of registration to the performance of agencies in relation to cultural competence.

Chapter 16 provides further detail relating to the need for cultural competence by the workforce across the broad system to protect vulnerable children.

Recommendation 33

Aboriginal cultural competence should be a feature of the Department of Human Services standards for community service organisations. Further, the performance of agencies in relation to cultural competence should be an area of specific focus in the next cycle of community service organisation registration.

12.6 Sector capacity

ACCOs in Victoria currently provide a range of services on behalf of the Victorian and Commonwealth governments. This section considers capacity and related issues that have arisen during the course of the Inquiry.

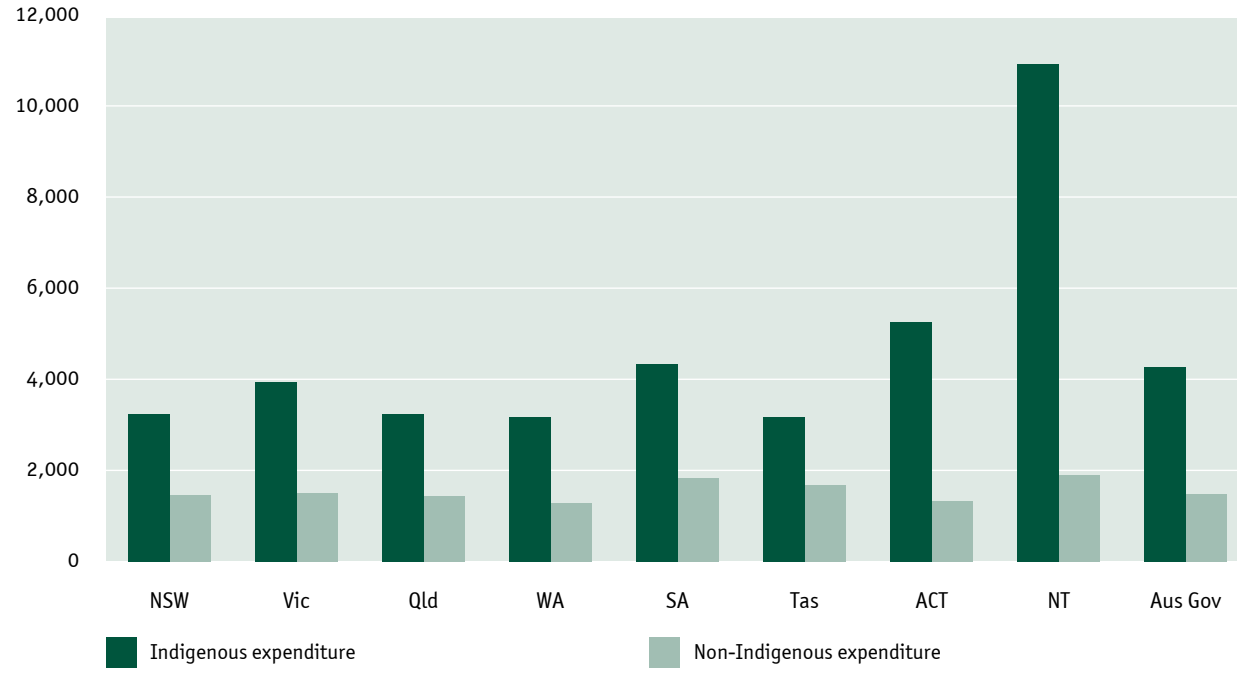
12.6.1 Commonwealth and state government expenditure

The *2010 Indigenous Expenditure Report Supplement* provides basic data on expenditure by government. It makes no assessment of the adequacy of that expenditure. However, the estimates in the report, when combined with other information (such as levels of Indigenous disadvantage) can contribute to a better understanding of the adequacy, effectiveness and efficiency of government expenditure on services to Indigenous Australians.

The report identifies that expenditure on services related to Indigenous Australians per capita can be expected to be greater than for non-Indigenous Australians, given their significant relative disadvantage, more intensive use of services, and greater cost of provision (because of factors such as higher representation of the Indigenous population in remote areas) (SCRGSP 2011a, p. iii). Figure 12.5 outlines the expenditure per head of population on safe and supportive communities in 2008-09.

Figure 12.5 includes indirect and direct costs associated with providing safe and supportive communities. In comparison with other Australian jurisdictions Victoria's expenditure per capita is greater than expenditure in New South Wales, Queensland, and Western Australia, which all have large Aboriginal populations.

Figure 12.5 Australian Government expenditure per head of population on safe and supportive communities, by Indigenous status, 2008-09



Source: SCRGSP 2011a

12.6.2 The Aboriginal community controlled sector in Victoria

The ACCO sector is large and diverse. Aboriginal Affairs Victoria (AAV), a unit of the Department of Planning and Community Development (DPCD), provides advice to the Victorian Government on Aboriginal policy and planning and also provides some key programs. DCPD has a central role in managing Victoria's growth and development and building stronger communities. Within this context AAV works in partnership with Aboriginal communities, government departments and agencies to promote knowledge, leadership and understanding about Victoria's Aboriginal people.

AAV also has a lead role in building skills, leadership and capacity within communities and organisations. AAV runs regular governance training workshops tailored for Aboriginal community organisations and designed to strengthen Aboriginal organisations through development of management and governance skills of board members and key staff. In addition AAV provides the Indigenous Community Infrastructure Program, which assists Victorian Aboriginal organisations to acquire, upgrade and develop facilities for community use.

Currently AAV is also working with other state government departments and the Aboriginal community to develop a whole-of-government leadership and capacity building strategy. The strategy will identify and promote innovative approaches to the development of a coordinated range of leadership and capacity building opportunities.

AAV also is instrumental in establishing the Aboriginal representative arrangements and structure in Victoria and works closely with the secretariat to the Ministerial Taskforce on Aboriginal Affairs on the VIAF .

The report *Positioning Aboriginal Services for the Future* identifies that there are approximately 170 ACCOs registered as operating in Victoria. The report provides an overview of the Aboriginal Community Controlled sector in Victoria and represents the views expressed by a broad range of stakeholders (Effective Change 2007).

The sector is very diverse. For example there are:

- Small, medium and large organisations with a focus on health and community services;
- Single service organisations such as the Koorie Heritage Trust and the Aboriginal Housing Board Victoria;
- Statewide organisations such as VACCA;
- Organisations funded for peak body functions such as the Victorian Aboriginal Community Controlled Health Organisation (VACCHO), Victorian Aboriginal Community Services Advancement League (VACSAL) and Victorian Aboriginal Education Association Incorporated;
- Organisations that have been set up to represent the interests of traditional owners;
- Organisations established to support gathering places; and
- A range of other organisations involved in activities such as education, sport, business, arts and crafts, child care and the promotion of Aboriginal culture.

Governance

As community controlled organisations, ACCOs draw their board membership directly from the community they serve. Board members of ACCOs have the challenging role of balancing cultural and community expectations with their legal and fiscal obligations.

As part of the consultations for the *Positioning Aboriginal Services for the Future* project, information was collected about the membership, skills and qualifications of ACCOs' board members. The information collected shows that ACCO board members currently include:

- Elders, community leaders and people employed in a range of jobs including public servants, university lecturers, staff members of other ACCOs, nurses and Aboriginal health workers;
- People with doctorates, degrees and professional qualifications as well as people with basic literacy and numeracy skills or who cannot read or write; and
- People who have attended governance training such as that provided by AAV, as well as a majority of board members who have not received any specific governance training.

Funding sources

In the Aboriginal community controlled sector the majority of organisations are solely dependent on Commonwealth and/or state government funding.

In 2010-11 the largest Victorian funding sources were DHS, which provides approximately $33.5 million annually to ACCOs for service delivery and the Department of Health which provides $24.3 million annually. In 2007 the Office for Aboriginal and Torres Strait Islander Health provided funding of $20 million to Victorian ACCOs. Thirty-three health and community service focused ACCOs receive funding from both the Commonwealth and Victorian governments for health and community services. Most of these ACCOs have to manage multiple sources of funding with a diverse range of reporting, accounting and grant acquittal requirements.

> The current system of resourcing Aboriginal organisations creates barriers to good service delivery and better outcomes for Aboriginal children and families. Multiple funding agreements and requirements for detailed submissions place pressure on Aboriginal organisations that do not have the infrastructure to manage these. Program resources usually have a narrow focus, while the needs of Aboriginal children and families are broad and multifaceted. There is little room for negotiation with funding sources and little room for flexibility when the model does not work for Aboriginal children and families who are presenting with highly complex needs and multiple disadvantage (VACCA submission, p. 62).

Capacity

The *Positioning Aboriginal Services for the Future* report concludes that the majority of ACCOs in Victoria have very limited infrastructure and capacity in the areas of management, human resource management and industrial relations, finance, legal, policy and information technology. For example:

- Most ACCOs have extremely flat management structures, with staff from a variety of program areas reporting directly to the chief executive officer. Only a handful of organisations have a management team, and 12 organisations employ only one person in a management position.
- Only a handful of organisations have the resources to employ specialist staff such as a human resources manager, information technology manager, policy officers, training coordinators etc. In fact, the five largest organisations employ 64 per cent of all specialist staff.

Aboriginal organisations have difficulty in attracting, supervising and supporting appropriately qualified Aboriginal staff. This is in part because of the small number of Aboriginal people with appropriate skills and the preference of most organisations to employ Aboriginal people. Consistent with the *Positioning Aboriginal Services* for the Future report findings, submissions (VACCHO, p. 9; VACCA, p. 60; VACSAL, p. 6; Aboriginal Family Violence Prevention Legal Service Victoria (AFVPLSV), p. 11) to the Inquiry noted that the challenges for ACCOs providing child and family services included the following:

> Developing the professional capacity of our Aboriginal workforce includes staff in child and family welfare and organisational development areas, such as finance and human resources management.
>
> In the long term, programs which encourage Aboriginal participation in tertiary education for social work, community development, finance and human resource management are necessary to break down the dependence of Aboriginal child welfare agencies on non-indigenous professionals, government departments and mainstream organisations (VACCA submission, p. 60); and
>
> The *Positioning Aboriginal Services for the Future* project developed plans about what changes organisations and Governments might wish to make in order to ensure that ACCOs would be able to operate effectively over the next five to ten years. This report is one of a number where good plans made with Aboriginal services have not been implemented (VACCA submission, p. 60).

One of the key factors in retaining staff is having an appropriate work-life balance. This can be difficult for Aboriginal staff who are often part of the community they work in, facing the same issues of grief, loss and trauma that they are seeking to address (VACCA submission, pp. 59-60). As stated in one submission:

> Aboriginal workers who provide support for families often have little support regarding child protection issues. Non-Aboriginal colleagues have limited understanding about the unique position these workers hold in Aboriginal communities (East Gippsland Discussion Group submission, p. 3).

The joint submission from Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army. Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare (Joint CSO submission) supported the concept of developing a 10 year plan to build the capacity and coverage of Aboriginal organisations supporting children and families. This was articulated in the VACCA submission as a:

> 10 year plan to develop Aboriginal organisations so they provide universal, secondary and tertiary services for Aboriginal children and families (VACCA submission, p. 5).

Child and family welfare services

ACCOs are a significant provider of child welfare services for the Aboriginal community in Victoria both for secondary and tertiary services. There are 18 ACCOs providing child and family welfare services funded by DHS. There is an incomplete suite of Aboriginal family support services in areas where there are significant Aboriginal populations. Therefore, the availability and accessibility of Aboriginal family support programs to vulnerable Aboriginal families to provide early assistance with parenting and other issues is limited.

Child and family service providers must be registered and meet registration standards. DHS has provided funding to Aboriginal organisations over the past three years to assist them to meet registration requirements. DHS has advised the Inquiry that all the Aboriginal organisations that provide child and family services have been externally reviewed and re-registered during 2010.

ACCOs providing child and family services are registered and providing $3.6 million in family services.

12.7 International comparisons

Canada

As is the case in Victoria, Aboriginal children in Canada represent an increasing proportion of people living in Canada and continue to represent a far greater proportion of children in care than do non-Aboriginal children. (Note: in this section the term Aboriginal encompasses First Nations, Inuit and Metis peoples).

Legislation with respect to Aboriginal children differs across Canada's provinces; however, there is a trend towards tripartite negotiated agreements with Aboriginal peoples (Libesman 2004, p. 7). These agreements recognise the specificity of Aboriginal people's children's needs and the benefits of local control over children's services and decision making. In many instances in legislation, but otherwise in practice, the importance of including Aboriginal agencies in all aspects of decision making with respect to Aboriginal children is recognised.

Alongside the legislation in Canada there is a complicated patchwork of child welfare models serving Aboriginal children (National Collaborating Centre for Aboriginal Health 2010, p. 2). The most common models serving Aboriginal children are mainstream services and one of two Aboriginal models: either a partially delegated service delivery model that typically provides support services and guardianship, or a fully delegated service delivery that provides support and child protection services.

When delegation exists it involves the granting of specific powers for a specific purpose. Under a full delegation approach the province delegates the full range of child welfare services to the Aboriginal community or agency. Most Aboriginal people see delegated models as a transition to self-government (National Collaborating Centre for Aboriginal Health 2010, p. 2). Self-government includes not only Aboriginal service delivery but also Aboriginal self-governing authority over policy and funding.

There are 125 First Nations child welfare agencies including fully mandated agencies and agencies that provide partial support services. Outside of cities most First Nations families that live off reserves are likely to be receiving mainstream services.

Linesman considers that the effectiveness of the Canadian arrangements regarding the implementation of Aboriginal control over children's services and decision making is hampered by financial and other resource restraints and in some instances by the ad hoc implementation of reforms (Libesman 2004, p. 7).

In 2010 the Commission to Promote Sustainable Welfare noted that many experts link the inadequacy of funding with the growing numbers of Aboriginal children in care. The Canadian Incidence Study on Reported Child Abuse and Neglect has repeatedly found that Aboriginal children are investigated and their investigations are substantiated at higher rates than non-Aboriginal children. Aboriginal children are more likely to receive ongoing services after a substantiated investigation than non-Aboriginal children and Aboriginal children are more likely to be removed from their home than non-Aboriginal children.

The Commission notes that the significant over-representation of Aboriginal children in substantiated investigations and in child welfare placements has been found to be clearly correlated to the high level of caregiver, household and community risk factors (poverty, substance misuse, family violence, and poor housing conditions). The Commission concludes that if adequate funding was provided, structured in ways that support Aboriginal child welfare providers to target these risks, then there would be some promise of addressing the over-representation of Aboriginal children (Commission to Promote Sustainable Child Welfare 2010a, p. 33).

United States

American Indian children are over-represented in the child welfare system, especially in out-of-home care and non-kinship foster placements. High rates of removals of American Indian children have continued in many US communities despite the requirements of the *Indian Child Welfare Act 1978* (ICWA).

The ICWA is the national legislation that regulates welfare for Native American children in the US (Lucero 2007, p. 4). The legislation transfers legislative, administrative and judicial decision making to Indian bands where children live on a reserve. All state child welfare agencies and courts must follow the law when they are working with Indian families in child custody proceedings.

The ICWA was passed with the dual objective of protecting the best interests of Indian children and to promote the stability and security of Indian tribes, communities and families. The ICWA had two overall purposes:

- To affirm existing tribal authority to handle child protection cases (including child abuse, child neglect and adoption) involving Indian children and to establish a preference for exclusive tribal jurisdiction over these cases; and
- To regulate and set minimum standards for the handling of those cases remaining in state court and in state child social services agencies.

The ICWA is premised on recognition of limited tribal sovereignty and the collective interest of tribes in children. ICWA gives Indian tribes the right to be involved in deciding what should happen for Indian children who may be placed in foster care or adoptive placements. Tribes, state agencies and state courts do not always agree on what the best plan is for Indian children in foster care (McCarthy et al. 2003, p. 81).

ICWA gives state child welfare agencies certain responsibilities to protect parental rights:

- Before state child welfare agencies can take children from their families, ICWA requires the agency to make 'active efforts' to help keep children at home. 'Active efforts' means any kind of direct services and assistance that will help the family stay together. But if the situation is very dangerous, children can be removed immediately until it is safe for them to be returned;
- An Indian parent or Indian custodian and their tribe, must receive 'notice' by registered mail of all of the legal proceedings involving children. If the child must be removed from home, the state child welfare agency and state court must notify the parent and child's tribe(s). This must occur whenever a tribal member is involved in a child welfare proceeding;
- If an Indian parent is not able to afford legal counsel, under the ICWA, they have the right to have legal counsel appointed by the court. If a state does not provide legal counsel, the court is supposed to notify the US Secretary of the Interior. The Secretary is supposed to pay reasonable fees and expenses for legal counsel; and
- Before removing a child from home, the ICWA requires that an 'expert witness' testify in court that this placement is necessary. The expert witness is a person who is American Indian or who is experienced in working with Indian families.

When adopting or fostering Indian children, state courts must follow a preferred order of placement that is similar to the ACPP. The descending order of preference to be followed is: with a member of the child's extended family; with other members of the child's tribe; with another Indian family; and if the above three options are not possible, with a non-Indian family. An Indian child may be removed, under state law, for a limited period of time for emergency placement to prevent imminent physical harm.

Native American child welfare is delivered through a number of agencies including non-government organisations, tribal agencies, and state and federal agencies. Lucero asserts working successfully with American Indian families requires both system-level and direct practice interventions (Lucero 2007, p. 14). The identified system-level approaches include a:

- Focus on early identification of American Indian children at risk;
- Culturally appropriate training of child welfare staff;
- Commitment to kinship placements and supporting extended family systems;
- Commitment to maintaining children's cultural connections; and
- Developing collaborative partnerships to benefit American Indian families (Lucero 2007, p. 25).

Summary

In Canada and the US the child welfare systems responding to child abuse and neglect in First Nations communities face many similar issues to the Victorian system. One common feature of both jurisdictions is the development of mechanisms to include First Nations tribes or bands in decision making concerning Aboriginal children who have been abused or neglected and face removal from their birth family.

The challenges are also consistent with the Victorian experience:

- Growing numbers of Aboriginal children;
- The over-representation of Aboriginal children and families in the statutory child protection services;
- The difficulty of maintaining cultural connection;
- The determination and provision of adequate resourcing; and
- Designing approaches that can systemically accommodate the dual interest of the community or group and the individual rights of parents or the child.

12.8 Consultation

Chapter 1 provided details of the consultation process conducted by the Inquiry. In total, 12 different consultation events occurred including visits to metropolitan and regional Aboriginal organisations, as well as the consultation sessions with Aboriginal communities in Mildura, Shepparton, Dandenong, Warrnambool, Bairnsdale and Thornbury.

Themes raised in the consultations included the need for cultural competence training for child protection workers to understand the trauma from past practices and the psychological impact for previous generations. Participants said that child protection workers must be aware of protocols before entering the community, such as approaching the community before speaking with the families. They said that it is important for child protection workers to build trust and relationships with the community, and that communication had to happen earlier in the process, such as contacting the Aboriginal co-operatives when a child has to be removed.

Similarly, participants said that the community would greatly benefit from culturally appropriate counsellors, services, delivery models and materials, and that DHS should employ more Aboriginal staff and Aboriginal liaison workers in the community.

Another theme raised was the need for more support and communication before a child is removed. There should be stronger focus on prevention and early intervention, and on providing support such as respite care for families and carers in advance, instead of at crisis point. Ideally, parenting support should be available within the community, instead of having to go elsewhere to receive assistance. On that note, participants highlighted that physical access to services was an issue for the community and there was a sense that there was no planning for services in growth areas.

12.9 Inquiry submissions and consultations

Improvements to the various systems intended to support vulnerable Aboriginal children and families were a major focus the submissions and consultations with Aboriginal people during the Inquiry. Suggestions ranged from an increase in Aboriginal self-determination and culturally competent services to more practical matters of increasing school attendance and financial support for carers.

Increase self-determination

Increased self-determination for Aboriginal communities was presented as a foundational requirement to improve outcomes for vulnerable Aboriginal children by Aboriginal organisations and groups. As the VACCA submission noted:

> As an Aboriginal community controlled child and family service organisation, we believe that to protect vulnerable Aboriginal children and strengthen Aboriginal families and communities, we need a service system which respects Aboriginal self-determination and embeds Aboriginal culture into service provision (p. 1).

It was proposed that Aboriginal self-determination could be realised through Aboriginal governance, guardianship and the introduction of new mechanisms to oversee and promote systemic change in relation to vulnerable Aboriginal children and families.

New oversight mechanisms

The proposals for new oversight mechanisms included the following proposals:

- Establishing an Aboriginal governance body and an Aboriginal Children's Commissioner (submissions from Berry Street, p. 16; Centre for Excellence in Child and Family Welfare, p. 8; VACCA, p. 4; VACCHO, p. 11);

- The appointment of a Deputy Commissioner for Aboriginal Children with a specific portfolio on Aboriginal children and young people (Joint CSO submission, p. 81; VCOSS submission, p. 57);
- Establishing a Family Lore Council comprised of respected Aboriginal representatives to provide expert advice to the Secretary of DHS as well as undertake a range of functions related to transfer of guardianship (VACSAL submission, p. 8);
- An Aboriginal advisory body to oversee the steps taken to improve outcomes for Aboriginal and Torres Strait Islander children (AFVPLSV submission, p. 27); and
- The regular reporting to forums that act in the interest of the Aboriginal and Torres Strait Islander community including the Aboriginal Justice Forum, the Indigenous Family Violence Partnership Forum and the Regional Aboriginal Justice Advisory Committees (AFVPLSV submission, p. 27).

A key rationale in the submissions advocating for the establishment of an Aboriginal Children's Commissioner was to enable the independent oversight of the Aboriginal specific provisions in the CYF Act and the future development of the systems to support vulnerable Aboriginal children overall. The AFVPLSV considered that what is needed is:

> ... a process of independent and transparent oversight with respect to the protection and advancement of legal rights and wellbeing of Aboriginal and Torres Strait Islander children and families in the child protection system in Victoria along with capacity for systemic advocacy (AFVPLSV submission, p. 2).

Reduce the gap between policy and legislation and practice

A number of submissions specifically commented on the current gap between policy and legislation and practice (AFVPLSV, p. 9; East Gippsland Discussion Group, pp. 1-2; VACCA, p. 50). The East Gippsland Discussion Group submission stated:

> The consultative group's experiences lead us to believe that the child protection legislation and program policies are often ignored, given cursory acknowledgement or in some cases draw discriminatory comments from child protection workers. This would indicate at least varying degrees of effective implementation of legislation and initiatives (pp. 1-2).

Introduction of Aboriginal Children's Commissioner

The provision in the CYF Act that enables the transfer of guardianship of Aboriginal children to the Aboriginal chief executive officer (CEO) of an Aboriginal organisation (known as section 18) received support in the submissions (AFVPLSV, p. 9; VACCA, p. 5; VACCHO, p. 3; VACSAL, p. 8). As VACCHO commented:

> VACCHO supports the option of a section 18 placement where the agency and the CEO are resourced sufficiently to make this governance of the child placement effective (VACCHO submission, p. 3).

However, two main areas of concern about section 18 were identified. First, that the provision had not yet been utilised and, second, that there were a range of specific considerations and dilemmas that require further consideration for effective implementation to occur. The introduction of an Aboriginal Children's Commissioner was seen as a means to maintain a focus on initiatives such as the transfer of guardianship and to provide visibility on progress.

Some dilemmas that arise with this provision that were identified as needing further clarity included:

- The concern that the community governance of ACCHOs leaves them vulnerable to community backlash at a local level;
- The potential difficulties in protecting the privacy of the individuals concerned;
- That conflicts may also arise about the obligations as a service provider to the family and the policing role of statutory child protection services;
- The service will often be unable to speak publicly about its decisions in order to maintain integrity and confidentiality while the services and decisions critics are able to speak with impunity; and
- For a service provider, taking on responsibilities under section 18 may discourage parents from seeking support when they are in need, for fear of removal of their children (VACCHO submission, p. 5).

The Inquiry notes that Aboriginal community organisations are already preparing for responsibilities under section 18. A working group comprising ACCOs and DHS representatives has been meeting for the past four years to consider implementation issues. Recently there was a study tour to Canada to investigate first-hand how equivalent powers operate in that context.

Statutory child protection services

The performance of statutory child protection services featured prominently in the submissions from Aboriginal organisations and groups. The reaction of many Aboriginal families to statutory child protection services was observed to be fear, distrust and trauma.

The lack of adherence to, or poor progress in implementing, Aboriginal specific provisions in the CYF Act was raised in a number of contexts. It was raised as part of the rationale for an Aboriginal Children's Commissioner and in relation to how some aspects of current operations could be altered or enhanced to overcome current obstacles. The VACCA submission observed:

> Legislation that mandates consultation with an Aboriginal organisation about the protection of an Aboriginal child, adherence to the Aboriginal Child Placement Principle and development of cultural support plans for Aboriginal children in out-of-home care have not translated well into practice (p. 19).

In the provision of statutory child protection services the benefit and complexity of providing cultural advice was identified (AFVPLSV submission, pp. 22-23; East Gippsland Discussion Group submission, p. 5; Mungabareena Aboriginal Corporation supplementary submission, p. 1). The role of the Aboriginal Child Specialist Advice and Support Services in Victoria operated by VACCA and Mildura Aboriginal Corporation was discussed in the AFVPLSV submission. The submission noted that:

> The introduction of the unique Aboriginal Child Specialist Advice and Support Services in Victoria (ACSASS) through the VACCA has been a progressive step forward. However, community education aimed at clarifying the role of ACSASS, including in relation to the broader role of VACCA and its relationship with DHS child protection, is also urgently needed. In addition, it is clear these services are heavily underfunded to adequately meet the needs of Aboriginal and Torres Strait Islander women and children (p. 24).

This submission also raised the policy dilemma of VACCA providing services in a range of areas including specialist cultural advice to statutory child protection services through ACSASS. It was proposed that greater assurances of confidentiality between the two service streams was required alongside a renewed emphasis o n community education (AFVPLSV submission, p. 22).

The benefits of bringing the Aboriginal community and other service providers together to share responsibility for the safety and wellbeing of Aboriginal children were clearly expressed at the Dandenong Aboriginal community consultation:

> The best interest of the child is for us to work together as a team (Dandenong Aboriginal consultation).

Successfully involving the Aboriginal community in decision making about Aboriginal children and young people in statutory child protection services through using the Aboriginal Family Decision Making (AFDM) program was identified as a strength that could be further developed. The Victorian Aboriginal Legal Service (VALS) submission commented that:

> The AFDM program at Rumbalara is an example of a decision making forum for child protection matters that operates in a spirit of self-determination … this AFDM program settles issues from a whole of community perspective where collaboration is the key and responsibility for the success of agreed outcomes is shared (VALS submission, p. 4).

Out-of-home care

Consistent with the submissions summarised in Chapter 10 regarding out-of-home care the submissions from Aboriginal groups expressed the need to improve the options, quality and outcomes for children in out-of-home care when it is necessary that Aboriginal children are removed from their homes. VACCA commented:

> For Aboriginal children, the State has not been a good enough parent. We need better outcomes for Aboriginal children (VACCA submission, p. 2).

The challenges of providing quality out-of-home care services were discussed in the submissions and a variety of measures were identified to improve performance. This included the provision of immediate financial support for Aboriginal carers, therapeutic interventions, respite care and educational support.

> There are some things about caring for a child who has experienced trauma that we cannot control; however we can ensure that there is regular respite for carers, therapeutic support for placements, education support and adequate financial reimbursement (VACCA submission, p. 51).

The ACPP is a nationally agreed standard used in determining the placement of Aboriginal children within their own families and communities where possible. The principle has the following order of preference for the placement of Aboriginal and Torres Strait Islander children:

- Placement with the child's extended family (including non-Aboriginal family members);
- Placement within the child's Aboriginal community;
- Placement with other Aboriginal people; and
- Placement with non-Aboriginal carers.

As outlined in the VACCA submission the ACPP was established to ensure Aboriginal children's connection to their family and culture is promoted as a means of ensuring their safety and wellbeing. VACCA also noted:

> ... it was never the intent of the ACPP to place children with members of their family or community who presented a danger to them. If we do not protect Aboriginal children from abuse, the legacy will be a new generation of adults/parents who view abuse as normative rather than unacceptable and harmful (VACCA submission, p. 11).

The VACCA submission noted that the intent of the ACPP was for Aboriginal children to remain connected to their Aboriginal culture and community and proposed ways to improve compliance and reinforce the importance of partnership between ACSASS and statutory child protection services. These ideas included:

- Compliance with the legislative requirement to consult with ACSASS and comply with the ACPP is included as a monitored key performance indicator; and
- Child protection staff to be co-located with ACSASS staff within Aboriginal organisations.

Reunification

The importance of maintaining the cultural connection of Aboriginal children who were placed with non-Aboriginal carers through mainstream organisations was also an area identified as requiring continued efforts (VACCA submission, p. 54).

The importance of supporting Aboriginal families and reuniting Aboriginal children with their families after being placed in out-of-home care was highlighted to the Inquiry. The Victorian Aboriginal Health Services (VAHS) submission commented that:

> There is insufficient emphasis on reuniting families (p. 4).

At the Thornbury Aboriginal consultation it was stated that when an Aboriginal child is removed the Aboriginal community wants to see more reunifications and clarity about what needs to be done for the children to be placed back with their family.

When Aboriginal children cannot be reunited with their families, establishing permanent arrangements was considered crucial for Aboriginal children. It was put to the Inquiry that the DHS policy guidelines already have timeframes for considering permanent care, but due to staff turnover and workload pressures these timeframes were often not followed.

The role of Aboriginal men in families

The importance of including and working with Aboriginal men was raised during the Inquiry. At the Aboriginal consultation in Warrnambool the role of Aboriginal men in the lives of Aboriginal children and their place in families was discussed and the positive impact of a project called Mibbinbah was bought to the Inquiry's attention (see box). As stated at the consultation session:

> Children need fathers and more effort is needed in this area (Warrnambool Aboriginal consultation).

Mibbinbah's vision

Mibbinbah is a project that seeks to enable Aboriginal and Torres Strait Islander males to regain their rightful place in society through creating safe spaces for spirit healing, empowerment, celebration and education and training. Men's Safe Spaces were developed as a model to enable Aboriginal and Torres Strait Islander males to meet and discuss issues of concern to them. This includes discussing depression and anxiety in a non-stigmatising environment. The Men's Safe Places involve the facilitation of men's groups in the local community.

The Mibbinbah Indigenous Men's Project is a participatory action research project that aims to understand the factors that make Indigenous Men's Spaces safe and healthy places for men, and how this might benefit families and communities.

Sharing responsibility

In order to improve outcomes for vulnerable Aboriginal children, young people and families the need to reinforce the shared nature of responsibility across government was identified. As noted by VACCA:

> Responsibility for protecting vulnerable Aboriginal children needs to be shared across the community and reflected in service delivery approaches. Universal services in health, education and housing need to see themselves as part of this system (VACCA submission, pp. 22-23).

Early years support

In particular the importance of the early years of a child's life was emphasised. The submissions focused on improving the support to Aboriginal children and families in the early years with an emphasis on identifying at risk families early (Mungabareena Aboriginal Corporation supplementary submission, p. 2; VACCA submission, pp. 6, 28-31; VACCHO submission, p. 4).

The type of support that should be provided to Aboriginal children and families in the early years and who should provide the support was a key subject. Providing more holistic approaches and a continuum of care and support from the antenatal care of pregnant women through to support for parenting and child wellbeing in the early years was generally proposed. The Koori Maternity Service (KMS) was identified as an example of how this continuum of support could be achieved (VACCHO submission, p. 4).

Aboriginal community controlled health organisations role

The VACCHO submission (p. 10) asserted that the community role of ACCHOs means they are well placed to provide leadership in the prevention effort and in the protection of children at risk. It was proposed that every ACCHO needs to be resourced to function as a main source of preventative services.

Holistic approach to family violence

The issue of family violence in Aboriginal communities was discussed in many of the submissions to, and consultations with, the Inquiry. While not accepting family violence in Aboriginal communities, in general submissions sought a more holistic response from all services. This approach is exemplified in the following statements:

> There is a punitive approach taken by support services to women who experience family violence in cases where child protection intervention results. Aboriginal and Torres Strait Islander women victims are often being re-victimized by an unhelpful, blaming approach, rather than being supported to deal with and understand the broad ranging impacts of violence (AFVPLSV submission, p. 8); and
>
> The Aboriginal community does not excuse the unacceptable levels of family violence perpetrated by Aboriginal men. All perpetrators of family violence must be held accountable for their actions but also be supported effectively to stop the behaviour and be given the chance to become the man they can be; a warrior, free of anger and disconnection, culturally strong and proud (North Western Metro Indigenous Regional Action Group submission, p. 1).

Distribution of funds

The Inquiry was advised that the funding approaches of government departments can impede the development of timely and effective responses to vulnerable Aboriginal children. VAHS commented that they were unable to attract funds for additional enhanced MCH services due to the funds being distributed based on local government areas and not in relation to the needs of specific groups. VAHS stated that because they operate as a hub for child and family services for Aboriginal mothers from a wide range of localities this should be an effective way to reach vulnerable Aboriginal children (visit to Victorian Aboriginal Health Service).

Education

Another area of significant concern was about the accessibility of education to Aboriginal children and young people. The submissions focused on the need for DEECD to provide more support to Aboriginal children and families and more focus on the role of culture in education. It was highlighted that both Aboriginal children and their families require increased support from schools in order to participate successfully, make educational transitions and achieve:

> There is a need for increased support for children in schools to support their participation and performance in order to build a foundation of success at school, to keep children and families connected to schools and to assist school retention (VACCHO submission, p. 5).

The East Gippsland Discussion Group was particularly concerned about DEECD providing appropriate support for Aboriginal adolescents:

> Local anecdotal reports that indicate Aboriginal adolescents are school refusing from early adolescence and seem to be ignored by primary and secondary schools, and Department Education and Early Childhood Development. No action appears to be taken to address non-attendance and ensure that the factors contributing to school refusal are addressed (East Gippsland Discussion Group submission, p. 4).

The fragility and the importance of efforts to maintain a strong focus on the role of culture in education for Aboriginal children was identified by VACCA:

> Aboriginal students are spread across Victoria with 73 per cent of all schools having an Aboriginal student. Isolation is exacerbated by schools that do not see a role for culture in education or where school principals face demands from the education department or school communities to focus primarily on literacy and numeracy (VACCA submission, p. 38).

The importance of meeting the educational needs of Aboriginal children in out-of-home care was identified as requiring increased leadership and sustained commitment from DEECD. As the VACCA submission observed:

> There are still challenges with schools. Despite the new DEECD/DHS Partnering Agreement launched in 2010, Individual Education Plans for meeting children's needs are normally driven by VACCA rather than the teacher. Any changes to approach are precarious and dependent on individual teacher discretion, rather than being a strong curriculum focus (p. 53).

Family services

As outlined in Chapter 8, family services have an important role in early intervention to support vulnerable families to care for their children safely. The benefit of support services for vulnerable Aboriginal parents was highlighted in the AFVPLSV submission:

> In the experience of FVPLS Victoria, mainstream services such as Family First and Child FIRST are effective in assisting the furtherance of voluntary agreement families. In addition, Parenting Assessment and Skill Development Services (PASDS) are extremely beneficial to our clients to provide intensive in home support and on-going teaching skills. The 10-day parenting courses offered by the Queen Elizabeth Centre are particularly helpful to our clients as it is an excellent opportunity to be with staff to gain assistance and provide basic parenting skills (p. 25).

The issue of the reluctance of Aboriginal families to seek help from mainstream Child FIRST was commented upon in the Mungabareena Aboriginal Corporation supplementary submission:

> … there are still the same feelings about Child FIRST as there is about child protection. People feel like they are being targeted even if they are sent to Child FIRST (p. 2).

In the Public Sitting at Broadmeadows VACCA staff commented that this was due, in part, to the lack of specific Aboriginal family services:

> The effectiveness of an Aboriginal Child FIRST will depend on the range and availability of Aboriginal family services. Aboriginal families comprise 6.3% of families attending family support services. In the North East area, just over one third of these families receive an Aboriginal family service. An Aboriginal Child FIRST service that must refer around two in every three Aboriginal families to mainstream family services may be compromised in terms of achieving its potential (VACCA, Broadmeadows Public Sitting).

Cultural competence of service providers

Another strong theme in the submissions received from Aboriginal organisations and groups was the necessity for mainstream service providers to be culturally competent. Generally the submissions advocated for the provision of mandatory and uniform Aboriginal cultural competence training (AFVPLSV, p. 40; VACCA, p. 26; VACCHO, p. 7; VAHS, p. 4). The AFVPLSV submission argued that:

> Uniform and mandatory cultural awareness training would also contribute to better outcomes for Aboriginal and Torres Strait Islander children (p. 36).

As part of demonstrating cultural competence AFVPLSV also discussed the requirement for services to be more flexible in the provision of service:

> Our greatest concern with mainstream services is that they need to be more flexible in their intake criteria for Aboriginal and Torres Strait Islander families as well as with their scheduling (AFVPLSV submission, p. 25).

There was a call for the proper application of cultural competence as at times workers may mistakenly accept conduct as culturally appropriate in Aboriginal families that would not be acceptable in non-Aboriginal families.

Due to the over-representation of Aboriginal children in the statutory child protection system some submissions recommended that more Aboriginal staff need to be employed in statutory child protection services and greater attention given to professional development. The Royal Children's Hospital (RCH) Social Work Department proposed that:

> … greater priority be given to training and ongoing professional development for Aboriginal staff in this sector. In New South Wales for example, comprehensive training is provided to ensure Aboriginal staff are employed and retained in positions within the Department of Community Services (RCH Social Work Department submission, p. 3).

The Mungabareena Aboriginal Corporation supplementary submission stated that, they need Aboriginal workers or people who have worked with Aboriginal people and are accepted by the community in the statutory child protection services.

Protection for adolescents

The involvement in, and effectiveness of, statutory child protection services for young Aboriginal people was highlighted in the VACCA submission. VACCA informed the Inquiry that that Aboriginal young people aged 15 to 17 are significantly less likely to be statutory child protection clients that at any other time in their childhood:

> In 2009/10, they comprised 5.4 per cent of all CP [child protection] substantiations for Aboriginal children compared with 52 per cent for children under five years (VACCA submission, p. 54).

The reason for the absence of young Aboriginal people is not clearly understood; however, the VACCA submission explained that based on its experience, young Aboriginal people often return home at around age 15 after the discharge of a protection order and are then left vulnerable and without sufficient support (VACCA submission, p. 54).

The East Gippsland Discussion Group also raised a range of concerns about providing appropriate support for Aboriginal adolescents at risk. One of these concerns was:

> The Ways Forward report (1995) suggests the high rates of incarceration of young Aboriginal people, in part may represent higher rates of conduct disorders amongst Aboriginal young people…Child and Adolescent Mental Health Services in Victoria are very poorly equipped to provide effective therapy for conduct disorders and often are limited in providing culturally appropriate care (East Gippsland Discussion Group submission, p. 5).

12.10 Conclusion

As this chapter has outlined, vulnerable Aboriginal children are at heightened risk of abuse and neglect due to the prevalence of a range of risk factors in the Aboriginal community. As evident from the key data presented in section 12.5.2 and in the summary of the submissions to the Inquiry in section 12.9, significant improvement in the performance of systems that are intended to support vulnerable Aboriginal children and families is needed.

Achieving change in the outcomes for vulnerable Aboriginal children and families is a whole-of-government task, with the responsibility crossing over many areas of state government activity in addition to a significant Commonwealth Government role. The depth of the challenge to achieve improvement in the outcomes for vulnerable Aboriginal children is acknowledged at a national and state level through the existing policy frameworks.

COAG and the Victorian Government have established comprehensive approaches through the COAG *National Indigenous Reform Agreement* and VIAF to address areas of significant disadvantage that are consistent with improving the risk factors that would prevent child abuse and neglect. As outlined in section 12.4 the Inquiry affirms the VIAF and associated structures as the primary mechanism to drive action across government on the broad range of risk factors associated with Aboriginal children being at greater risk of abuse and neglect. Further, the Inquiry has recommended more detailed monitoring should be developed for the VIAF that provides reports on outcomes at the operational level regarding key areas of disadvantage.

Within the systems of early years, education, family services and statutory child protection services (including out-of-home care), Aboriginal children are experiencing very poor outcomes. These poor outcomes suggest the need for the development of specific Aboriginal responses to identify different ways to assist vulnerable Aboriginal children and improve outcomes. The adoption of specialist responses that can accommodate the special needs of the Aboriginal community is required to improve outcomes for children. Where specialist responses have been developed but outcomes for children are not improving it is essential that the responsible agencies analyse the reasons, engage with the Aboriginal community to develop alternative approaches (including funding arrangements), and make the necessary changes to the service responses and evaluate the impact of the service changes.

In light of the levels of disadvantage in the Aboriginal community, the growing numbers of infants and children and the service access issues for Aboriginal communities, one service delivery area that requires immediate consideration is the provision of enhanced MCH services to vulnerable Aboriginal children and mothers.

Education is a key area where outcomes for Aboriginal children require significant improvement. Educational participation and achievement are an essential part of meeting the needs of vulnerable Aboriginal children and young people and is vital for addressing social disadvantage.

Most importantly the educational achievement of Aboriginal children and young people is unacceptably lower than for non-Aboriginal students and it is DEECD's responsibility to develop strategies and interventions to improve this for Aboriginal children and young people at all year levels. It is concerning that Aboriginal children commencing school are significantly more vulnerable than their non-Aboriginal peers. This is an important area to tackle because this early vulnerability will influence educational outcomes over many years.

Improving education outcomes for Aboriginal children and young people is a key focus of the COAG *National Indigenous Reform Agreement* and the VIAF. It is considered that the strategies and interventions that DEECD employ should be measured, monitored and publicly reported in detail. It is considered by the Inquiry that, given the levels of disadvantage in Aboriginal communities in Victoriam, DEECD should adopt a place based approach to target strategies and measure progress.

Another area of significance is providing early support to vulnerable Aboriginal children and families. It is likely that the number of Aboriginal families participating in family services could be higher if there were not the historical barriers to engagement and if Aboriginal family services were available in all areas with significant Aboriginal populations. One of the identified barriers to the provision of this is the incomplete suite of support services in areas where there are significant Aboriginal populations. The availability and accessibility of Aboriginal family support programs and the community nature of ACCOs increases the likelihood Aboriginal families will seek help early to assist with parenting and other issues. It is considered important that this situation is remedied.

It is also clear that many vulnerable Aboriginal children and families will continue to receive a range of services from mainstream providers. As outlined in the submissions the cultural competence of mainstream service providers and child protection is critical to effectively engaging with and helping vulnerable Aboriginal children and families. As outlined in section 12.5.2 and in Chapter 16 on workforce issues, the Inquiry makes a number of recommendations to improve the cultural competence of mainstream providers.

In relation to statutory child protection services and out-of-home care, the numbers of Aboriginal children continues to be unacceptably high. However, it is acknowledged that the ability of statutory child protection services to address entrenched disadvantage is limited. Therefore, it is considered that renewed efforts to create an improved service responses are needed for the large numbers of Aboriginal children within statutory child protection services (including out-of-home care).

As part of these renewed efforts it is proposed that programs and approaches that are currently effective are continued and expanded. This includes use of programs such as ACSASS, AFDM and Aboriginal kinship care support.

Recommendation 34

The Government should expand the use and effectiveness of culturally competent approaches within integrated family services and statutory child protection services, through the Department of Human Services by:

- Establishing funding arrangements with the Aboriginal Child Specialist Advice and Support Service that enable cultural advice to be provided across the full range of statutory child protection activities;
- Using the Aboriginal Family Decision Making program as the preferred decision making process if an Aboriginal child in statutory child protection services is substantiated as having suffered abuse or neglect;
- Expanding family preservation and restoration programs so they are available to Aboriginal families in rural and regional areas with significant Aboriginal populations;
- Expanding Aboriginal kinship care support to provide support to all Aboriginal kinship carers; and
- Expanding Aboriginal family support programs so they are available to Aboriginal families in areas with significant Aboriginal populations.

In Chapter 16 the Inquiry recommends that statutory child protection services develop recruitment strategies to attract suitable candidates from Aboriginal backgrounds.

The Inquiry considers that there are two areas in relation to vulnerable Aboriginal children and young people where specific regular system oversight is required.

First, the implementation of specific provisions in the CFY Act, including cultural support plans, the ACPP and section 18, require increased transparency. Second, in key areas such as education and statutory child protection services, where progress is slow or hard to achieve, service development and performance reporting requires a consistent and sustained focus.

The Inquiry considers that the creation of a dedicated Aboriginal Children's Commissioner or Deputy Commissioner is necessary to address these two areas. This position would bring an increased focus to improving outcomes for vulnerable Aboriginal children in Victoria through monitoring, measuring and reporting publicly on progress against objectives for vulnerable Aboriginal children across all areas of government activity.

Recommendation 35

As part of the creation of a Commission for Children and Young People, an Aboriginal Children's Commissioner or Deputy Commissioner should be created to monitor, measure and report publicly on progress against objectives for vulnerable Aboriginal children and young people across all areas of government activity, including where government provides resources for non-government activities.

As part of renewed efforts to create an improved service responses for the large numbers of Aboriginal children within statutory child protection services (including out-of-home care) the Inquiry has considered a number of structural adjustments. First, it is considered that more effective outcomes for vulnerable Aboriginal children are likely to be achieved with greater Aboriginal self-determination in relation to vulnerable Aboriginal children. As part of this revitalising the efforts to implement section 18 in the CYF is considered a priority. While it is recognised that there are still a number of important and complex issues that need to be resolved in relation to this provision, making progress in this area is important. A clear strategy is required to establish a transparent process that seeks to delegate the guardianship of Aboriginal children removed from their families to Aboriginal communities.

Second, given that the number of children per adult is much higher in the Aboriginal community than in the non-Aboriginal community, and given the much higher proportion of Aboriginal children in care, this inevitably means it will be harder to find Aboriginal caregivers for Aboriginal children. When one considers the health status of many of the Aboriginal adults, and the burden of caregiving and social disadvantage that may already carry, it is highly likely that many Aboriginal children will continue to be placed with non-Aboriginal caregivers. In these circumstances maintaining the cultural connections of Aboriginal children is crucial. Therefore, it is considered that a progressive plan of transferring responsibility for the out-of-home care placements of Aboriginal children in non-Aboriginal placements to ACCOs will both enhance self-determination and provide a practical means to strengthen the cultural links for those children.

Recommendation 36

The Department of Human Services should develop a comprehensive 10 year plan to delegate the care and control of Aboriginal children removed from their families to Aboriginal communities. This would include:

- Amending section 18 of the *Children, Youth and Families Act 2005* to reflect Aboriginal community decision making processes and address current legislative limitations regarding implementation;
- Developing a sustainable funding model to support transfer of guardianship to Aboriginal communities that recognises the cost of establishing an alternative guardianship pathway. These arrangements would initially be on a small scale and require access to significant legal advice, legal representation, practice advice, specialist assessments and therapeutic treatment;
- Developing a statewide plan to transfer existing out-of-home care placements for Aboriginal children and young people from mainstream agencies to Aboriginal community controlled organisations and guide future resource allocation (with performance/registration caveats and on an area basis);
- Providing incentive funds for Aboriginal community controlled organisations to develop innovative partnership arrangements with mainstream providers delivering out-of-home care services to Aboriginal children to connect them to their culture;
- Targeting Aboriginal community controlled organisations capacity building to these activities i.e. guardianship, cultural connection and provision of out-of-home care services; and
- Providing increased training opportunities for Aboriginal community controlled organisation staff to improve skills in child and family welfare.

The proposed Aboriginal Commissioner or Deputy Commissioner for children and young people should report on performance against this plan.

Part 4: Major protective system elements

Chapter 13:

Meeting the needs of children and young people from culturally and linguistically diverse communities

Chapter 13: Meeting the needs of children and young people from culturally and linguistically diverse communities

Key points

- Victoria's multicultural society consists of more than 230 countries from around the world. Some migrant families experience challenges in parenting, and in trying to adapt to Australian norms and laws.
- Research indicates that there are cultural, structural and service-related barriers that ethnic minority families experience when they migrate to a new country. Migrants can experience hardships and stressors that can impinge on their ability to provide good care for their children.
- These factors are compounded by the challenges of parenting in a new culture. Many culturally and linguistically diverse families may not understand or necessarily agree with all of Australia's law and norms about gender equality, child rearing and parenting.
- There is a lack of data about culturally and linguistically diverse children and young people and their interaction with Victoria's system for protecting children.
- It is important to develop culturally appropriate policies and programs that uphold the rule of law in Victoria and Australia, yet recognise the importance of the values, beliefs, culture and background of different communities. There is a need to better integrate migrants through positive parenting and education programs about Australian culture and norms.
- Victorian child protection services intervene when child abuse and neglect is suspected. It is important that the family services and child protection workforce is culturally competent when managing these interventions with culturally and linguistically diverse communities.
- The Inquiry recommends that data be collected to help determine whether services currently provided are culturally appropriate. Recommendations are also made about including issues relating to culturally and linguistically diverse children in the Council of Australian Governments' national framework.

13.1 Introduction

The exact numbers of children and young people from culturally and linguistically diverse backgrounds involved in Victoria's system for protecting children is not known. There is no mandatory requirement for Department of Human Services (DHS) child protection practitioners to record a child's or young person's ethnicity when a report of child abuse and neglect is made. Completion of data fields such as the child's or parents' country of birth, or main language spoken at home other than English, or the child's cultural ancestry identity, is not mandatory. Analysis of 'country of birth' data from child protection reports in 2009-10 conducted for the Inquiry showed that this field was recorded in only 2 per cent of reports (unpublished DHS data). Due to the very small sample, the Inquiry has concluded that this data is not of sufficient quality to be useful in analysis about the number of children from culturally and linguistically diverse communities who are in Victoria's system for protecting children, and how they are treated.

However, the Inquiry did hear from members of culturally and linguistically diverse communities through its consultation processes and has considered the available research. Both suggest there are matters that need to be addressed. As part of one of the most culturally, linguistically and religiously diverse nations in the world (Victorian Government 2011d), with a sizeable migration program and international obligations to provide asylum for refugees, Victoria receives many families from around the world. Logic suggests these families may experience difficulties in settling in a new land and, without appropriate support, their children may become vulnerable to abuse and neglect.

Cultural diversity

For the purposes of this Inquiry, the term 'culturally and linguistically diverse' refers to a person who is born either overseas or in Australia, and whose parents originate from a country where English is not the main language at home.

Victoria's cultural diversity is reflected in the fact that of a population of 4,932,234 at the time of the 2006 Census:

- 23.8 per cent (1,173,204) were born overseas in more than 230 countries;
- 43.6 per cent (2,152,279) were born overseas or had at least one parent born overseas;
- 72.8 per cent (853,966) of those born overseas came from a non-English speaking background;
- 20.4 per cent (1,007,435) speak a language other than English at home;
- Approximately 20 per cent of Victoria's population aged 17 years of age or younger speak a second language at home (Australian Bureau of Statistics (ABS) 2006b); and
- 68.7 per cent (3,390,804) identify themselves as members of one of 120 different types of religions (ABS 2006b, in Victorian Multicultural Commission 2009, p. 10).

Migrants arrive in Victoria under different circumstances. In 2010-11, more than 21,000 people arrived to settle in Victoria. Of these almost 25 per cent were children and young people under the age of 18. The largest group of migrants (44.8 per cent) arrived under skilled migration or other workforce related programs; 41.5 per cent related to family reunification and 13.7 per cent were under the humanitarian category (Table 13.1). While not all of these migrants are likely to be of culturally and linguistically diverse background it can be expected that many are.

Table 13.1 Overseas migrant arrivals by migration category, Victoria, 2010–11

Type of migration	Adult population (18–65+)	Children and young people (0–17)	Total entrants
Family	7,531	1,397	8,928 (41.5%)
Skilled or workforce	6,855	2,772	9,627 (44.8%)
Humanitarian	1,749	1,186	2,935 (13%)
Total	**16,135**	**5,355**	**21,490 (100%)**

Source: Department of Immigration and Citizenship (DIAC) 2011a

13.2 Challenges for newly arrived families of culturally and linguistically diverse backgrounds

Migrants travel to new lands in search of opportunity for themselves and for their children. Families of culturally and linguistically diverse backgrounds bring different cultural experiences, religious faiths and societal norms when emigrating to Australia. This may present a number of challenges in parenting in a new culture. Furthermore, parents of culturally and linguistically diverse backgrounds may not understand or necessarily agree with all of Australia's laws and norms about gender equality, child rearing and parenting, for example, with respect to discipline or giving a child responsibility for the care of a younger sibling.

Research into African migrant families coming to Australia, for example, examined how parenting in a new culture is a pressing challenge for these families that often leads to family conflict (Renzaho 2009). This research highlighted issues that arise when two differing parenting styles collide. African migrant families come from a culture based on an authoritarian parenting style that centres on the collective family, respect of elders, corporal punishment and interdependence. Traditional gender roles and strong patriarchal structures are also common (The Victorian Foundation of the Survivors of Torture & Horn of Africa Communities Network Inc. 2007). This is in contrast to the Australian parenting style that promotes the individual, self-determination, independence and where the public debate on corporal punishment includes some suggestions of making smacking illegal, reflecting community ambivalence about this form of discipline.

A limited awareness of Australian child rearing norms and child protection laws may increase the likelihood that newly arrived culturally and linguistically diverse families come to the attention of child protection authorities. Many newly arrived migrant families find themselves with competing cultural priorities – that of their cultural heritage and Australian norms and rule of law.

Victoria has laws protecting children and young people that are related to Australian cultural norms. In relation to some norms, there have been very significant intergenerational changes, for example, a reduction in the use and acceptance of physical discipline. The degree of physical punishment that a parent or carer can use with a child is subject to legal regulation in Australia. In most states and territories, corporal punishment by a parent or carer is lawful, provided that it does not cause physical injury and is carried out for the purpose of correction, and that it is 'reasonable' having regarded the child's age and method of punishment. The Inquiry believes that cultural misunderstandings and sensitivities to cultural differences cannot mean that culturally and linguistically diverse children should be less protected in the way required by Australian law.

Many families of culturally and linguistically diverse backgrounds settle smoothly in Australia, however, some culturally and linguistically diverse families are highly vulnerable, particularly newly arrived refugees.

Refugees

Refugees often suffer physical, emotional and mental scars from their experiences of torture and trauma in their country of origin. They may have experienced war, famine, persecution or a range of other dangerous circumstances, including living and surviving in refugee camps for lengthy periods of time. Each year there are approximately 3,000-3,500 humanitarian entrants (refugees) in Victoria, most recently from the Horn of Africa, the Middle East and Afghanistan (Victorian Refugee Health Network 2010).

Australia is a signatory to the United Nations 1951 *Convention relating to the Status of Refugees* (the Refugees Convention) and is one of the few countries that take part in the United Nations High Commissioner for Refugees resettlement program, accepting quotas of refugees on an annual basis. The settlement experience for many refugees can be a very difficult time, with feelings of homesickness, isolation and culture shock having an impact on people's ability to start a new life in Australia.

This may be compounded by a background of poverty, low levels of formal education, and little or no knowledge of English. Their day-to-day existence before arriving in Australia may have been in a refugee camp and they may have no familiarity with aspects of life in a developed economy, for example, renting a house. Other factors that may increase vulnerability, include:

- Experience of psychological trauma (due to persecution, imprisonment or war);
- Experience of being a widow (most refugees are female-headed households);
- Culturally accepted views on family violence;
- Housing issues;
- Unemployment;
- Health issues;
- Language barriers; and
- Social isolation.

This was conveyed by a verbal submission to the Inquiry when Ms Marantelli stated that many refugee families that come to Australia from African and Middle Eastern countries have common experiences of trauma, dislocation and poverty. For many of these families, parenting styles that were normative in their countries of origin are not endorsed in Australia. Refugee families are also often bewildered and confused about the role of government in family life. In their home countries, governments rarely intervene in family matters, which are usually resolved by elders within the family unit, or by religious and community leaders. As a result, many people from culturally and linguistically diverse backgrounds experience significant challenges and barriers (Ms Marantelli, Melbourne Public Sitting).

13.3 Factors that impact on the vulnerability of children from culturally and linguistically diverse communities

While Australian and Victorian law and cultural norms are the environment in which children and young people are protected from harm, knowledge of the cultural beliefs and practices of different communities improves understanding of the potential vulnerability of children and of appropriate service responses.

Korbin has identified the cultural factors that are likely to increase or decrease the incidence of child abuse and neglect:

- Cultural value of children – when a culture values its children because they are bearers of tradition, because they perpetuate the family or lineage, and because of their economic contributions, they are likely to be treated well;
- Beliefs about specific categories of children – a cultural group may value children, but not necessarily all children. Some children may be considered inadequate or unacceptable to cultural standards and as a result fail to receive the same standard of care according to children in general;
- Beliefs about age capabilities and development stages of children – cultures vary in terms of the age at which children are expected to behave in certain ways. The age at which children have a sense of self may vary under different cultural beliefs, therefore punishment before the age of wrong-doing would be pointless; and
- Embeddedness of child rearing in family and community networks – a network of concerned individuals beyond the biological parents is a powerful deterrent to child abuse and neglect. If the community or a wide variety of individuals are concerned about the wellbeing of children, general standards of child care are more than likely to be ensured (Korbin 1981, pp. 205-209).

Very little research has been undertaken in Australia into specific cultural groups or cultural issues in Australian child protection. Relevant studies have been conducted in South Australia and New South Wales.

In 2005 the South Australian Department for Families and Communities commissioned the Australian Centre for Child Protection to examine the extent to which newly arrived refugee families were coming into contact with the child protection system and the issues and influences that brought them into contact with this system. The *Working with Refugee Families Project* found that the most predominant types of incidents and factors that contributed to child protection reports were concerned with alleged physical abuse, family violence and leaving children alone without adult supervision (supervisory neglect).

In 2007 the New South Wales Department of Community Services commissioned a large-scale research project on how to best meet the cultural and linguistic needs of children and families in the child protection system (Sawrikar 2009). The research comprised a review of international literature, which identified that the hardships and stressors migrants experience can impinge on their ability to provide good care for their children. Having an awareness of these stressors can help increase service sensitivity to their cultural needs. The stressors include:

- Migration stress – language barriers, financial insecurity, employment and housing, a lack of traditional support mechanisms such as family and friends, and racism or misunderstandings due to cultural differences;
- Acculturative stress – the conflict between cultural preservation and cultural adaptation;
- Displaced sense of belonging and cultural identity – a feeling of difference from other Australians because of cultural practices and beliefs, language, race, physical appearance, religion and skin colour;
- Racism and discrimination; and
- Intergenerational conflict – conflict between children and their carers can result if children reject traditional values and integrate with the local culture, which can bring culturally and linguistically diverse children to the attention of the child protection system (Sawrikar 2009).

Sawrikar identified three main hypotheses to explain why minority ethnic groups are over-represented internationally in child protection systems:

- Rates of abuse or neglect are higher in these culturally and linguistically diverse groups. The implication of this hypothesis is that a difference in culture is the cause of abuse or neglect, and which then introduces them into the child protection system;
- The increased likelihood of coming to the attention of child welfare agencies because of socioeconomic disadvantage. The implication of this hypothesis is that poverty, and not culture, reflects a systematic bias that introduces them into the child protection system; and
- Culturally inappropriate or insensitive service delivery. The implication of this hypothesis is that culturally biased institutional processes and organisational practices introduce culturally and linguistically diverse families into the child protection system (Chand & Thoburn 2005; Korbin 2002, in Sawrikar 2009, p. 9).

Importantly, this Inquiry is unable to identify whether reporting rates of abuse or neglect are higher in culturally and linguistically diverse communities or not due to the lack of data as identified in section 13.1. The absence of data about culturally and linguistically diverse children and young people and their interaction with the system for protecting children means that the extent of the problem of child abuse and neglect in culturally and linguistically diverse communities is unknown. This is not unique to Victoria and is an issue throughout the country. Previous inquiries into child protection have not addressed this issue. Importantly, lack of data also means there is no empirical evidence to inform system-level policy changes or service responses.

Submissions to the Inquiry have commented on the lack of data on culturally and linguistically diverse families and their interaction with Victoria's system for protection children.

> … the number of children and young people from culturally and linguistically diverse backgrounds coming to the attention of child protection authorities is unknown, that is across Australia, not just Victoria. It is not because culturally diverse families are not being reported to authorities, it is predominately because departments do not record demographic information of culturally and linguistically diverse families, yet they are able to record the status of Aboriginal and Torres Strait Islander families (Ms Kaur, Melbourne Public Sitting).

> … available data is structured in such a way that it is difficult for those working with migrant and refugee young people to drill down and establish the extent of the representation in Victorian child protection system, as well as how they are faring in regards to their physical health and wellbeing, social competence, emotional maturity, language and cognitive skills, communication skills and general knowledge (Ms Marantelli, Centre for Multicultural Youth, Melbourne Public Sitting).

As outlined in Chapter 4, the absence of data is an issue across the system. The Inquiry considers that it is important to address this data shortage as it is possible that vulnerability, and therefore the risk of abuse and neglect, is higher in some culturally and linguistically diverse communities than for the population as a whole.

Recommendation 37

To improve knowledge and data on vulnerable children of culturally and linguistically diverse backgrounds so that the appropriateness of current service provision can be considered:

- The Department of Human Services should collect data to record and track children and young people of culturally and linguistically diverse backgrounds who are involved with the child protection system, and the family services sector; and
- The Department of Education and Early Childhood Development should include data on the experiences of vulnerable children and young people of culturally and linguistically diverse backgrounds (including in Victoria's system for protection children) in *The State of Victoria's Children* report.

13.4 Legislative context

A number of Victorian statutes safeguard cultural diversity in Victoria while upholding the rule of law, the rights of children and outlining processes relating to their protection from abuse or neglect. The *Multicultural Victoria Act 2011* (MV Act) sits alongside the *Charter of Human Rights and Responsibilities Act 2006*, and the *Children, Youth and Families Act 2005* (CYF Act) in protecting the cultural rights and preserving cultural identity of culturally and linguistically diverse children in Victoria's system for protection children.

The MV Act enshrines a number of key principles under Section 4 that include:

- An entitlement to mutual respect and understanding regardless of background;
- A duty on all Victorians to promote and preserve diversity within the context of shared laws, values, aspirations and responsibilities; and
- A responsibility for all Victorians to abide by state laws and respect democratic processes.

The principles of multiculturalism in the MV Act most pertinent to protecting vulnerable children and their families from a culturally and linguistically diverse background are:

- Section 3 (e) – all individuals in Victoria have a responsibility to abide by the state's laws and respect the democratic processes under which those laws are made; and
- Section 4 – the Parliament further recognises that Victoria's diversity should be reflected in a whole-of-government approach to policy development, implementation and evaluation.

The MV Act also requires the preparation of cultural diversity plans by government departments that outline key developments relating to service provision to culturally and linguistically diverse communities. In summary, these provisions provide that diversity should be preserved, promoted and reflected in whole-of-government policy and implementation, and all Victorians should abide by the state's laws.

Under section 19 (1) of the *Charter of Human Rights and Responsibilities Act 2006*, all people from different cultural, religious, racial or linguistically diverse backgrounds must not be denied the right to enjoy his or her culture, to practise his or her religion, or use his or her language.

Under Section 10 of the CYF Act, the best interests of a child must always be paramount when making a decision, or taking action. These best interest principles apply to all children, no matter what their background. In addition consideration must be given to the child's cultural identity and religious faiths (if any) and, where a child with a particular cultural identity is placed in out-of-home care with a caregiver who is not a member of that cultural community, the desirability of the child retaining a connection with their culture.

Section 11 of the CYF Act requires the provision of information in the appropriate language, the provision of interpreters and the attendance of cultural supports during the statutory child protection intervention process. In particular the Secretary of DHS or community service must consider:

- That those involved in the decision making process should be provided with sufficient information, in a language and by a method that they can understand, and through an interpreter if necessary, to allow them to participate fully in the process (subsection (h), CYF Act); and
- If a child has a particular cultural identity, a member of the appropriate cultural community who is chosen or agreed to by the child or by his or her parents should be permitted to attend meetings held as part of the decision making process (subsection (i), CYF Act).

Section 176 of the CYF Act provides a mandatory requirement to develop cultural plans for Aboriginal children entering custody and guardianship orders. Cultural plans for Aboriginal children and young people enshrine the importance of being connected to their community and culture. The plans aim to educate children and young people about their heritage and provide them with a sense of belonging. In contrast, there is no mandatory requirement under the CYF Act for cultural plans for children and young people from culturally and linguistically diverse backgrounds – they are prepared at the discretion of the case worker. While no data is available, it is estimated that currently only a small minority of children and young people from culturally and linguistically diverse backgrounds have cultural plans. In ideal circumstances, best outcomes are also achieved by building partnerships with ethnic organisations to assist DHS in the development of cultural plans for culturally and linguistically diverse families.

The CYF Act also provides for the Minister for Community Services to determine performance standards for registered community service organisations (CSOs). The following standards applying to CSOs under Part 3.3 Division 4 of the CYF Act were gazetted by the Minister for Community Services in 2007:

- Standard 2 – support the provision of culturally competent services which are responsive to the needs of children, youth and their families; and
- Standard 3 – staff, carers and volunteers are culturally competent and demonstrate an awareness and appreciation of the needs of Aboriginal and culturally and linguistically diverse children, youth and families.

Finding 8

The Inquiry finds that compliance with Standards 2 and 3 relating to the provision of culturally competent services by community service organisations cannot be assessed reliably because of the lack of data and information on children of culturally and linguistically diverse background within Victoria's system for protecting children.

Child protection and out-of-home care services are also required to follow the *Charter for Children in Out-of-Home-Care*. This charter lists what a child can expect from those people who look after them and work with them when they are in care. It includes the right to be able to take part in family traditions and be able to learn about and be involved with cultural and religious groups that are important to the child or young person. Unfortunately the Inquiry has found that it is not possible to assess the extent to which children and young people in out-of-home care from culturally and linguistically diverse backgrounds are having their cultural and religious needs met.

13.5 Policy context and service provision

Both the Commonwealth Government and the Victorian Government have responsibilities for and deliver services to families and children of culturally and linguistically diverse backgrounds.

13.5.1 Commonwealth Government

Migration policy, refugee resettlement and multi-culturalism are the responsibility of the Commonwealth Government, in particular the Department of Immigration and Citizenship (DIAC). It is also worth noting that the Council of Australian Governments' *National Framework for Protecting Australia's Children 2009-2020* is silent on issues relating to children or young people of culturally and linguistically diverse backgrounds.

DIAC is also responsible for providing settlement support to newly arrived refugees and delivers this through the Humanitarian Settlement Services (HSS) program, which provides intensive settlement support to newly arrived humanitarian clients on arrival and throughout their initial settlement period (DIAC 2011b).

Support through the HSS program is tailored to individual needs, including the specific needs of young people. A case management approach oversees and coordinates the delivery of services to clients including airport reception and transit assistance, property induction and initial food provision, assisting clients to register with Centrelink, Medicare, banks, schools and an Adult Migrant English Program provider as well as assistance in relation to health needs. HSS endeavours to strengthen the ability of humanitarian clients to participate in the economic and social life of Australia and to access services beyond the initial settlement period.

An onshore orientation program is also available to all clients aged 15 and over that sets out critical skills and knowledge culturally and linguistically diverse clients need to live and function independently in Australian society.

Exit from the HSS program is based on clients achieving clearly defined settlement outcomes. These include:

- Residing in long-term accommodation (generally a lease of at least six months in duration);
- Being linked to the required services identified in their case management plan;
- School-aged children are enrolled in and attending school; and
- An assessment that clients have understood the messages of the orientation program and hold the skills and knowledge to independently access services.

It is expected these settlement outcomes will generally be reached between six to 12 months of a refugee's arrival.

13.5.2 Victorian Government

In Victoria the development of legislative and policy frameworks, as well as the delivery of services relating to culturally and linguistically diverse communities, is the responsibility of the Victorian Multicultural Commission (VMC), an independent statutory authority. Victorian government departments and agencies that have a role in the broader system for protecting vulnerable children have a range of policy and service approaches in dealing with issues affecting culturally and linguistically diverse communities.

Victorian Multicultural Commission

A key role of the VMC is to ensure a whole-of-government approach to multicultural affairs by ensuring Victoria's culturally and linguistically diverse community needs are represented in public policy and services. It is noteworthy that the Victorian Children's Council, a key advisory body to the Premier and the Minister for Community Services on children, does not have a member with expertise in the issues facing the culturally and linguistically diverse community. Chapter 20 recommends that this is addressed.

The VMC supports sustainable settlement outcomes in local communities for humanitarian entrants to Victoria through the *Refugee Action Plan* (approximately $1 million per annum). Metropolitan and regional partnerships are developed where refugees settle throughout Victoria under the plan, and funding is provided to key agencies to develop programs to meet local needs. The *Refugee Action Plan* aims to assist refugees to:

- Participate and engage with their new local community;
- Access services including meeting their health needs;
- Identify local issues and concerns;
- Plan tailored, community-owned projects to address issues;
- Improve skills and advocacy for refugees; and
- Enhanced local capacity and improved settlement outcomes.

Examples of *Refugee Action Plan* initiatives focused on parenting and family relationships are given in Table 13.2.

Table 13.2 Relevant *Refugee Action Plan* initiatives

Program	Agency	Communities	Description
Health and wellbeing information sessions	New Hope Foundation	Chin, Karen, Karenni, Burundi, Congolese, Sudanese, Liberian and East African women	Provision of information on health, family safety and wellbeing (with a family relationships component) to enable women to become better informed about the range of mainstream services that they can access for support.
Scienceworks mothers' group	New Hope Foundation	Chin, Karen, Karenni, Burundi, Congolese, Sudanese, Liberian and East African women	Link mothers of preschool-aged children to Scienceworks and provide an opportunity to connect and learn how to play with their children, learning about science together. The program aims to assist mothers: to bond and connect with their kids through play and education; to educate them on the importance of preschool education; and provide strategies that are not language constrained.
Information sessions about Australian services and systems	Ethnic Council of Shepparton and District	Iraqi, Afghani, Sudanese and Congolese	These are provided to improve access and reduce barriers to accessing employment services, the private and public housing system and relating to child protection law within Australia.

Source: Inquiry analysis

Other activities occurring through the R*efugee Action Plan* that aim to build the capacity of families and parents and link them into support services include: men's health and employment programs; women and children's playgroups; social outings for isolated women; Mother's Day celebrations; and other social activities.

The Inquiry notes that refugee settlement is a responsibility of the Commonwealth Government consistent with Australia's international conventions. The Inquiry considers that the adequacy of services for recently arrived humanitarian migrants, particularly with respect to parenting in a new culture and advice about parenting support services, requires further attention. This should be the responsibility of the Commonwealth and state governments. The Inquiry also considers that the needs of children and young people of culturally and linguistically diverse backgrounds should be addressed in the *National Framework for Protecting Australia's Children 2009-2020*.

Recommendation 38

The Victorian Government, through the Council of Australian Governments, should seek inclusion of the needs of recently arrived children and families of culturally and linguistically diverse backgrounds in the *National Framework for Protecting Australia's Children 2009-2020*, in particular:

- The need to provide advice and information about Australian laws and norms regarding the rights and responsibilities of children and parents; and
- Appropriate resettlement services for refugees to prevent abuse and neglect of refugee children.

Department of Human Services

The delivery of culturally appropriate, responsive and equitable services is an expectation across all DHS programs and funded CSOs. DHS' approach includes: a cultural diversity guide; a language services policy and interpreting services; the provision of a refugee program; support for family violence services for immigrant women; and specific placement practices discussed below.

Cultural Diversity Guide

DHS has developed the *Cultural Diversity Guide* (DHS 2006a) to assist programs and CSOs by:

- Supporting the human services system to meet obligations under whole-of-government reporting on responsiveness to cultural diversity;
- Identifying a range of strategies to improve cultural responsiveness and levers to effect cultural change;
- Illustrating the different strategies and levels with examples of good multicultural practice that are already in place; and
- Providing guidance on additional resources and supports for programs and agencies in managing diversity.

The *Cultural Diversity Guide* provides key strategies and best practice including:

- Understanding culturally and linguistically diverse clients and their needs;
- Building better partnerships with multicultural and ethno-specific agencies;
- A more responsive culturally diverse workforce;
- Using language services to best effect; and
- Encouraging participation and decision making with members of culturally and linguistically diverse communities.

Language Services Policy

DHS' *Language Services Policy* (DHS 2005) outlines the requirements necessary to enable people with low English proficiency to access professional interpreting and translating services when making significant life decisions and where essential information is being communicated. The three minimum language requirements of the policy are:

- Clients who are not able to communicate through written or spoken English have access to information in their preferred language;
- Language services are provided by appropriately qualified staff accredited by the National Accreditation Authority for Translators and Interpreters Inc.; and
- People, including family members under the age of 18, are not used as interpreters.

Interpreting services

Organisations that receive funding from DHS' Children, Youth and Families Division are eligible to access interpreters. Annual funding of approximately $90,000 provides interpreter services for program-specific needs for DHS funded agencies in:

- Family services;
- Sexual assault and family violence services;
- Family intervention services;
- Youth services and youth justice; and
- Placement and support services.

DHS child protection practitioners, on the other hand, can access interpreter services on a fee-for-service basis for which no dedicated funds are provided.

Information provided by DHS to the Inquiry indicates that the allocated budget does not meet demand and is exhausted quickly each month.

Refugee Minor Program

In addition, DHS has coordinated government departments to provide the Refugee Minor Program, which delivers a statewide service to support the settlement process of unaccompanied humanitarian minors and ensures they receive care arrangements. An unaccompanied humanitarian minor is defined as being under 18 years old, unaccompanied by their parents, holding a refugee or humanitarian visa and referred by DIAC. Referrals to the program come from DIAC, after the unaccompanied humanitarian minors have been assessed and granted a permanent visa. The Refugee Minor Program is jointly funded by the Commonwealth and Victorian Government at a total of $5 million per annum.

Unaccompanied humanitarian minors who arrive in Australia and do not have a close adult relative aged over 21 years are classified as wards of the Commonwealth Minister for Immigration. The Victorian Minister for Community Services has the delegated guardianship responsibility for all unaccompanied humanitarian minors living in Victoria designated as wards by the Commonwealth. To this extent, there is a joint responsibility of care for these young people.

The Refugee Minor Program provides support to highly vulnerable humanitarian minors from disadvantaged culturally and linguistically diverse backgrounds to transition into Australian cultural norms. The program provides direct services to clients to assist them (and their relatives or carers) to develop key settlement competencies while also establishing and maintaining partnerships with other key agencies in the community. Clients can be given assistance on a variety of issues ranging from accommodation and financial support to physical and emotional health needs, cultural and religious continuity, education, social and recreational needs and developing or maintaining client/family connectedness. According to data provided by DHS, the Refugee Minor Program currently assists 380 clients, of whom 218 are aged 15 to 18 years old.

Family violence services

Despite the lack of specific statistics on the prevalence of family violence in migrant families, it is known that being newly settled does expose families to stresses that increase the risk of intimate partner violence. Women from immigrant and refugee backgrounds face greater obstacles when attempting to escape family violence. These obstacles compromise their safety and wellbeing.

In 2010-11 DHS provided $874,000 to the Domestic Violence Resource Centre to provide a range of family violence services in Victoria. One of these services is the Immigrant Women's Domestic Violence Service (IWDVS), which provides:

- Joint case management with relevant family violence services and other relevant services in Victoria to support women and children experiencing family violence;
- Information, support and referral for women in crisis; and
- Secondary consultations to service providers.

The IWDVS brokers services in the family violence service system and works in conjunction with these services to provide support to the clients.

Placement practice

When DHS is undertaking a placement referral, there is a practice standard to encourage the identification of a child or young person's ethnicity, culture and religion. The matching process is informed by the information contained in the placement referral. The *Looking After Children – Care and Placement Plan* is intended to identify the child or young person's needs and describes how these needs will be met. Under this plan, carers and residential workers should be informed about how these children and young people will participate and sustain cultural and community events relevant to their background and observe and practice religious beliefs and activities.

However, feedback to the Inquiry indicates poor adherence to these practices. Children and young people are placed with families from different cultural and religious backgrounds, often without a cultural plan or advice about meeting a child's cultural and religious needs to assist the carers. Ms M, a respite and emergency foster carer, advised the Inquiry of a young Muslim boy who came into her care from a small country town. The boy was previously placed with a carer who struggled with his behaviour. It became apparent that the difficulties in caring for the child were related to cultural and religious differences and it was only after Ms M, by chance, was able to connect the child with an elder of the same cultural background that the placement ran smoothly (Ms M, Shepparton Public Sitting). This example highlights the need for care arrangements to address the cultural identity of children and young people, and for appropriate support to be given to carers and children.

Similarly, Mr Assafiri advised the Inquiry about the difficulties young Muslim children face when they are placed into non-Muslim foster care. Mr Assafiri outlined the cultural barriers he faced growing up as a young Muslim child in foster care from the age of six. Mr Assafiri explained that he grew up without a sense of identity and that this had lasting effects on his ability to finish his education, develop meaningful relationships and find a place to live that he called home.

> Although everybody's life is different, the one thing I have learned is the importance of establishing a connection with either an individual or a small community (Mr Assafiri, Broadmeadows Public Sitting).

Mr Assafiri suggested greater early intervention support with culturally and linguistically diverse families to assist them with life's challenges to find harmony between two competing cultures – the Middle Eastern and Western culture. Building supports for culturally and linguistically diverse families will not only benefit the parents and the children but the community as a whole by building resilience and respect (Mr Assafiri, Broadmeadows Public Sitting).

Department of Health

The Department of Health (DOH) provides a number of programs to provide general health and mental health services to refugees and their families. The Refugee Health Nurse Program ($1.8 million per annum) provides a response to the poor and complex health issues of arriving refugees. It aims to:

- Increase refugees' access to primary health services;
- Improve the response of health services to refugees' needs; and
- Enable refugee communities to improve their health and wellbeing.

The refugee health nurse is based in community health services and employs community health nurses, with expertise in working with culturally and linguistically diverse and marginalised communities to provide a coordinated health response to newly arrived refugees, including children and young people. The program:

- Operates in areas with high numbers of newly arrived refugees;
- Supports a coordinated model of care, and acknowledges the importance of early identification and intervention in health issues in the early stages of settlement; and
- Aims to improve the health of refugees through: disease management and prevention; the development of referral networks and collaborative relationships with general practitioners and other health providers; connection with social support; and orientation programs.

The Migrant Mental Health Taskforce is a joint venture between the Victorian Mental Health Reform Council and the VMC. It is a statewide program that improves access and responsiveness to mental health services for culturally and linguistically diverse communities. It includes the development of migrant community ambassadors to build culturally connected responses to mental health services, and to better coordinate funding and organisational activities by streamlining multicultural mental health services organisations.

DOH provides approximately $345,000 per annum to the Victorian Foundation for Survivors of Torture (Foundation House) to deliver a range of mental health and support services to people from refugee backgrounds who have survived torture or war-related trauma. Foundation House provides direct services to clients in the form of counselling, advocacy, family support, group work, psycho-education, information sessions and complementary therapies. Direct services to clients are coupled with referral, training and education roles aimed at developing and strengthening the resources of various communities and service providers.

Foundation House also:

- Offers training and consultancy to other service providers who have contact with survivors of torture and trauma;
- Develops resources to enhance the understanding of the needs of survivors among health and welfare professionals, government and the wider community;
- Works with government, community groups and other providers to develop services and programs to meet the needs of survivors;
- Works with the Commonwealth and state governments to ensure relevant policies are sensitive to the needs of survivors;
- Works with international organisations towards the elimination of torture and trauma; and
- Conducts and contributes to research through a partnership with La Trobe University's Refugee Health Research Centre.

Foundation House's primary locations are in Brunswick and Dandenong and a number of services are provided on an outreach basis across Melbourne and in regional areas of Victoria.

DOH also has also established the Victorian Transcultural Psychiatry Unit to enhance training, support and to assist with language and cultural barriers that present obstacles for culturally and linguistically diverse communities when accessing appropriate mental health treatment and care.

The Inquiry has been unable to ascertain the extent to which these services address risk factors that may impact on the involvement of children and young people of culturally and linguistically diverse backgrounds in the time available to the Inquiry.

Department of Education and Early Childhood Development

In 2010-11 approximately 3,400 school-aged children and young people of culturally and linguistically diverse backgrounds emigrated to Victoria, of whom approximately 900 were refugees (DIAC 2011a).

The Department of Educations and Early Childhood Development's (DEECD) multicultural strategy, E*ducation for Global and Multicultural Citizenship*, has a number of objectives including:

- Improving educational outcomes for all students relevant to global and multicultural citizenship;
- Developing the intercultural literacies that students, parents, educators and leadership groups need;
- Enhancing the engagement, wellbeing and sense of belonging for all students; and
- Building and sustaining school–community partnerships that prepare all students for global and multicultural citizenship (DEECD 2009a).

An example of this strategy in practice includes strengthened consultation with established culturally and linguistically diverse community groups to promote parental participation in schools and early childhood programs.

DEECD provides additional support to refugee students with disrupted schooling to improve educational outcomes and build the capacity of schools to meet the extra needs of these students. Multicultural education aides bridge the gap in knowledge and understanding between students and teachers, and between school and families. By working one-on-one, aides help students understand school and develop their learning and social skills. Refugee students also qualify for the Education Maintenance Allowance, a payment provided to families on a low income to support their child's education up to the age of 16.

DEECD also provides a range of maternal and child health (MCH) services to engage and sustain services to culturally and linguistically diverse communities that include the following:

- Additional home visits to mothers from culturally and linguistically diverse communities where there is a traditional 'lying in' period where both mother and baby have to stay at home for 40 days;
- Professional interpreters to enable accurate transfer of information and assistance to culturally and linguistically diverse clients;
- Cultural playgroups and women's groups to enhance parenting and family functioning, encourage families to attend MCH visits;
- Active recruitment of bi-lingual MCH nurses and supported playgroup facilitators;
- Translated health promotion materials to families;
- Assisting culturally and linguistically diverse clients to access other services such as Births Deaths and Marriages, Centrelink, housing services and child care; and
- Cultural competence training (provided in 2010-11 to 450 MCH nurses).

There is a vast array of programs across government agencies that promote and address the needs of culturally and linguistically diverse communities in Victoria – some involve engagement with the Commonwealth. However, many of these programs are unrelated. In the absence of data about the number of culturally and linguistically diverse communities involved and accessing parenting support services or responding to abuse and neglect, it is hard to draw conclusions on the effectiveness of these programs.

13.6 Culturally competent service provision

Meeting the needs of a diverse culturally and linguistically diverse population is a challenge for governments in Australia. Developing the cultural competence of the workforce and recognising the importance of values, beliefs and culture, as well as the background of different communities will result in improved service provision (see Chapter 12 for a definition of cultural competence). To effectively meet the needs of all children and young people, services must recognise cultural differences and, where appropriate, provide culturally competent support.

From an operational perspective, cultural competence is the integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices and attitudes used in suitable cultural settings, increasing the quality of services and producing better outcomes (Davis 1997).

Little is known about the extent to which families of culturally and linguistically diverse backgrounds access family services compared with other families, or whether the kind of service they receive meets their needs effectively. International literature points to three key barriers that ethnic minority families may experience (Sawrikar & Katz 2008, p. 6):

- Cultural barriers – includes language barriers, cultural norms that prohibit seeking extra-familial support, traditional gender roles that prevent men from engaging with services or discussing family difficulties, and fear of authorities;
- Structural barriers – includes practical barriers accessing services and lack of knowledge or understanding of available services; and
- Service-related barriers – a service is considered culturally inappropriate or is not perceived as relevant due to lack of cultural diversity in the workforce or there is a concern that they will not be understood or will be stereotyped or judged.

It is difficult for some families of culturally and linguistically diverse backgrounds to understand the role of family services agencies and child protection, particularly for those with a fear of authority and a lack of understanding of family services and child protection processes. This fear can mean that many parents are scared that their children will be taken away (The Victorian Foundation for Survivors of Torture Inc & Horn of Africa Communities Network Inc. 2007, pp. 23, 43-47). A lack of cultural awareness by workers around traditional childrearing practices was highlighted as an issue for refugee families settling in Australia (Lewig et al. 2009). Moreover, culturally and linguistically diverse families fear that case workers misunderstand or disrespect their cultural needs (Sawrikar 2009).

Addressing the needs of African families at a Melbourne Public Sitting, Mr Smith highlighted that greater communication with African communities was required to promote better understanding the Australian cultural norms and to prevent the need for DHS to become involved with these families (Mr Smith, Melbourne Public Sitting).

A major finding of the South Australian study was the 'critical significance of culturally competent child protection practice when working with refugee families' (Lewig et al. 2009). The researchers made recommendations for working appropriately with refugee families:

- Families needed support to build stronger relationships between parents and their children, including enhancing communication skills within the family, as well as stronger collaboration with parents and their children's schools;
- Parents also needed additional information on parenting practices in Australia and child protection laws; and
- Parents needed culturally appropriate information about services and supports available to assist them in their parenting roles.

Community participants in the research emphasised the importance of engaging collaboratively with communities in the development of interventions to support refugee families, especially encouraging the involvement of older community members and providing places for communities to gather socially.

Implications for child protection practice identified by Sawrikar (2009) include:

- Effective education and training in cultural competency will help case workers provide effective treatment for the culturally and linguistically diverse family, rather than attributing responsibility and blame to the family for the occurrence of the abuse or neglect to a culturally and linguistically diverse child;
- Individual relationships with the case worker and the culturally and linguistically diverse family is the most crucial aspect of culturally appropriate service delivery and systemic organisation change is required to ensure all culturally and linguistically diverse families that enter the child protection system can be provided this benefit; and
- Case workers should consider the appropriateness of case-matching when selecting an interpreter.

In Chapter 16, the Inquiry investigates the need for improving the level of cultural competence of integrated family services and statutory child protection services. A culturally competent workforce in this regard includes a better understanding of culturally and linguistically diverse communities through better education and training.

13.6.1 Themes arising from submissions

Feedback through the Inquiry's Public Sittings and written submission process on issues related to culturally and linguistically diverse communities and their interaction with child protection was surprisingly limited, given that culturally and linguistically diverse families are significantly represented in our general population. This Inquiry believes this is a result of a number of factors including the cultural barriers identified by Sawrikar (2009), as referred to earlier in this chapter:

> The challenge for culturally and linguistically diverse communities is their ability to navigate the child protection system and being able to identify their needs to policymakers for increased and improvement in service provision (Mr Kaur, Melbourne Public Sitting).

Nonetheless the Inquiry was informed by a number of verbal submissions, written submissions and by the consultation with community workers arranged by the Ethnic Communities Council of Victoria. Three key themes arose:

- The need for improved focus of prevention and early intervention services;
- Whether services should be delivered through mainstream agencies or targeted and;
- Culturally appropriate service provision.

Prevention and early intervention

Improved prevention and early intervention strategies focusing on culturally and linguistically diverse families were raised in a number of submissions. Children and families from culturally and linguistically diverse backgrounds are at high risk and yet there are very few preventative or early interventions designed to ensure they do not become involved with the tertiary end of the service system. Working with culturally and linguistically diverse communities requires outreach and community development. Community education and information is required to ensure culturally and linguistically diverse communities, particularly new arrivals from migrant and refugee communities, understand how child protection works in Australia, and what their rights and responsibilities are (Windermere Child and Family Services submission, p. 13).

The Victorian Council of Social Services (VCOSS) argued that while culturally and linguistically diverse families may attend initial MCH appointments, many of these families do not re-engage with universal services again until school, which means they may miss out on many early intervention and prevention supports. More assertive outreach services are required to ensure services more effectively reach out to these families (VCOSS submission, p. 28).

During a visit to the City of Hume MCH services clinic at Broadmeadows, the Inquiry was informed about the important role MCH nurses play in identifying and responding to vulnerable children and their families in need. On average more than 2,000 families in the City of Hume use the universal MCH service, with 99 per cent take up by mothers in the first year of their child's life. The Inquiry was advised that for many culturally and linguistically diverse families, in particular for those of a traditional Muslim background, this may be the only universal services being accessed and bringing isolated women outside their homes.

Mainstream or dedicated services

The Royal Children's Hospital (RCH) argued that all groups (including culturally and linguistically diverse) should have access to services that meet their individual needs in mainstream services to avoid these groups from being marginalised. Increased training in these universal services on cultural awareness is seen as more appropriate than a separate service (RCH submission, p. 3).

However, the Social Work Department of the RCH and Wadja Aboriginal Family Place submission (p. 3) argued that the child protection system is founded on Western, Anglo-Saxon values, policies and staffing. It strongly recommended that services for culturally and linguistically diverse families be enhanced.

VCOSS argued that there is a clear need for dedicated support to assist families to understand expectations about child-rearing practices and that this information cannot just be in written form as this will not target harder to reach communities (VCOSS submission, p. 28). VCOSS also called for resources to ensure ongoing cultural competence training for staff in universal services to ensure these services are better placed to work with these families.

Culturally appropriate service provision

A consistent theme raised in submissions concerned the variation in practice by DHS when dealing with families of Aboriginal or Torres Strait Islander background and of culturally and linguistically diverse background. In a verbal submission to the Inquiry, Ms Katar outlined that different placement processes apply when removing Aboriginal and culturally and linguistically diverse children from their homes. If an Aboriginal child is removed from their family, the order of placement is: first, the child's extended family; second, the child's indigenous community; and third, other Indigenous people. Only if an appropriate placement cannot be found within these three groups will the child be placed with a non-Indigenous carer. The same principles should apply to children from a culturally and linguistically diverse background (Ms Katar, Dandenong Public Sitting).

Imam Bardi advised the Inquiry that in Australia there are refugees from Sudan, Iraq, Kuwait, Bosnia and Kosovar, and stated that authorities have not recruited culturally diverse carers who would have a better understanding of the cultural competence in these communities (Imam Bardi, Shepparton Public Sitting).

The importance of children and young people of culturally and linguistically diverse backgrounds being connected with their culture and religion when placed in community care was outlined by Mr Taha, representing the Islamic Council of Victoria at the Melbourne Public Sitting, drawing on his work with troubled ethnic youth in prisons and detention centres (Mr Taha, Melbourne Public Sitting).

Care with Me, an organisation with the aim of engaging and supporting culturally and religiously diverse Muslim families by securing Muslim foster carers, organised written submissions and oral presentations by a range of speakers at numerous Public Sittings throughout Victoria. These submissions outlined the various needs of culturally and linguistically diverse communities in Australia, and highlighted the need for increased funding, training and specialised services. Care with Me made the following recommendations:

- Increased government funding for ethnic-specific family services and better out-of-home care support for culturally and linguistically diverse families;
- Support for ethnic CSOs to implement best practice cultural practices and matching for children and young people in out-of-home care;
- Improved standards of accreditation of DHS case workers that includes ongoing cultural training and a knowledge base to engage ethnic organisations for advice and assistance meeting specific cultural needs; and
- An evaluation of current cultural practices, record keeping and statistical reporting within DHS (Care with Me submission, p. 7).

The RCH and Wadja Aboriginal Family Place submission (p. 3) called for tertiary education places for students from culturally and linguistically diverse backgrounds to develop the capacity of the child protection and family services systems to meet the needs of culturally and linguistically diverse families. The submission suggests that DHS considers the appointment of cultural advisers from key culturally and linguistically diverse communities to better inform the department of cultural differences and norms. They also recommend that access to interpreters be improved through increased funding for interpreting services, arguing that, at present, there are situations where interpreters are not available or utilised thereby increasing the vulnerability and powerlessness of families entering Victoria's system for protecting children.

DHS has provided practice advice to practitioners about working with families of culturally and linguistically diverse communities. If the child has a particular cultural identity, a member of the appropriate cultural community who is chosen or agreed to by the child or by his or her parent should be permitted to attend meetings held as part of the decision making process. The Inquiry is unable to make a judgment on the use of this practice advice due to an absence of data related to the degree of compliance by statutory child protection staff.

13.6.2 Consultation with culturally and linguistically diverse community workers

In 2010 the Ethnic Communities' Council of Victoria (ECCV), the peak advocacy body representing ethnic and multicultural communities, was advised that newly arrived communities had become fearful of statutory child protection intervention and removal of children. After concerns had been discussed with culturally and linguistically diverse community members and workers in relation to vulnerable families and child protection practices, ECCV convened a roundtable between the workers and DHS in September 2010.

A summary paper prepared for the September 2010 roundtable with DHS contained recommendations in relation to:

- Developing culturally responsive practice for working with families from newly arrived refugee communities;
- Developing effective language strategies when working with families and children from newly arrived refugee communities;
- Strengthening the services offered to unaccompanied minors;
- Building the capacity of family services to appropriately manage the support needs of newly arrived refugee families;
- Improving methods of addressing family violence and sexual assault in newly arrived refugee communities; and
- Improving data collection across DHS' Children, Youth and Families Division to include the collection of refugee status, country of birth and preferred language.

It is understood that the change of government after the State election in November 2010, and the commencement of this Inquiry has placed these issues temporarily on hold.

The Inquiry notes that the ECCV's roundtable recommendations are supported by the Inquiry's own consultations and recommendations. A timetable for implementation of the Inquiry recommendations is contained in Chapter 22. The Inquiry has not, however, addressed all these recommendations in detail.

Matter for attention 8

The Inquiry draws the Government's attention to the need to continue discussions with groups such as the Ethnic Community Council of Victoria's community workers concerning the need to ensure services to protect children from abuse and neglect meet the needs of the culturally and linguistically diverse communities and are delivered in a culturally competent manner.

The Inquiry sought advice from the ECCV about how to best consult with communities on issues affecting culturally and linguistically diverse communities. As a result, the ECCV assisted the Inquiry to convene a consultation with culturally and linguistically diverse community and settlement workers and other representatives of newly arrived communities with experience working with vulnerable families engaging with child protection and related services.

The Inquiry's consultation with culturally and linguistically diverse workers was held in August 2011 and was attended by 12 community workers. The workers' comments reinforced earlier advice to the Inquiry about a lack of uniform DHS data on the ethnicity of clients. Further, they felt there was no systemic utilisation of cultural knowledge or systematic way to help a family that may have different cultural needs. The workers reported that there is a need for better support to culturally and linguistically diverse families to keep their children at home through culturally appropriate programs and, if placements are required, these should be made within their own cultural community. It was felt that child protection staff lack training in cultural issues and do not adequately engage culturally and linguistically diverse agencies.

The community workers reported that the Family and Reproductive Rights Education Program, a program funded by DHS to work with women from cultures in which female circumcision has traditionally been practised, is not integrated with child protection practice and there is little collaboration. A community worker provided an example of trying to work collaboratively with DHS to organise a meeting for families where female circumcision is an issue so that DHS could educate the community about its role. The child protection practitioners agreed to attend in business hours when families were unavailable due to work commitments.

13.6.3 Summary of consultation input

In summary, feedback from the Inquiry's consultation process about improvements to the system is that there is a need:

- To assist children and young people of culturally and linguistically diverse backgrounds to thrive and develop in their families, and local culture, while maintaining their place in their community, through providing support and education to vulnerable culturally and linguistically diverse families;
- To develop culturally appropriate community education programs that include a focus on positive parenting skills and family strengths for culturally and linguistically diverse families;
- For a community-wide acknowledgement that newly arrived culturally and linguistically diverse families are vulnerable when they first arrive in Australia and that culturally responsive services are required to manage their transition;
- For additional resources to fund support for culturally competent education and therapeutic programs to assist culturally and linguistically diverse families;
- To improve the collection of data and recording of information (ethnicity, culture and religion) by DHS and other government departments related to the prevalence of child abuse within culturally and linguistically diverse communities;
- For a culturally competent child protection intervention model using the Indigenous model that focuses on family and friendship connections as a starting point;
- For collaborative partnerships between statutory child protection and culturally and linguistically diverse community agencies;
- To attract more carers from culturally and linguistically diverse backgrounds to provide better placements for children of culturally and linguistically diverse backgrounds;
- For more appropriate use and availability of interpreters within the system for protecting children and young people;
- To improve cultural competence of child protection workers through better training and education; and
- The importance of capturing the history of the child or young person while in care.

13.7 Conclusion

The evidence before the Inquiry suggests there are particular problems confronting some families of culturally and linguistically diverse backgrounds in settling into a new culture. With social norms in Australia about parenting and the rights of children often being different from their homeland, some families of culturally and linguistically diverse background may become involved with statutory child protection services. However, the absence of data makes analysis of the extent of the problem impossible.

As some children (and their families) from culturally and linguistically diverse communities will find themselves within the statutory child protection system, workforces and programs engaging these families will need to meet the cultural and religious needs of children in a respectful and accommodating way.

Service provision must become more culturally appropriate and the workforce more culturally competent. The issue of cultural competence of the workforce is addressed further in Chapter 16.

Part 5: The law and the courts

Chapter 14:

Strengthening the law protecting children and young people

Chapter 14: Strengthening the law protecting children and young people

Key points

- Abused children are not adequately protected as they should be by the law. The crimes of child physical abuse and child sexual abuse should be recognised in the *Children, Youth and Families Act 2005*, and processed, as the crimes they are.
- Child abuse is a 'hidden crime', in that it is under-reported and under-prosecuted.
- There should be a stronger legislative link between the child protection and criminal justice responses to child physical and sexual abuse and serious neglect. Forensic child protection and Victoria Police investigators should be continuously trained in interviewing and evidence gathering, particularly when seeking evidence from a child or young person.
- The available data in Victoria does not provide a clear picture of the factors that influence the progress of each stage of the criminal justice process. This impedes the reporting and prosecution of child physical and sexual abuse and neglect.
- The mandatory reporting scheme is an important part of the legal framework protecting children from abuse. It is important that all mandated groups in the *Children, Youth and Families Act 2005* are progressively gazetted to report abuse, that they are appropriately trained, and that the system is adequately resourced to ensure it can cope with an increase in reports. Mandatory reporting should continue to be evaluated, preferably at both the national and state levels. There should also be ongoing monitoring of the *Working with Children Act 2005* to ensure organisations are complying with the legislation.
- State prescribed criminal reporting provisions, such as a reporting duty for ministers of religion and members of religious organisations, can overcome private and institutional hurdles to the reporting of child abuse.
- A formal investigation by government into how to best address criminal abuse of children in Victoria by religious personnel is justified and is in the public interest. Any such investigation should possess the necessary powers to compel the attendance of witnesses and the production of documentary and electronic evidence.
- Caution should be exercised in relation to the enactment of any new 'failure to protect' offence in relation to family members, particularly in situations of family violence. Consideration should be given to the better application and enforcement of section 493 in the *Children, Youth and Families Act 2005*.
- Children and young people aged under 18 should be capable of being the subject of a protection application under the *Children, Youth and Families Act 2005*.
- There is room to improve the interaction between the Commonwealth family law system, the State child protection system and State family violence laws including the way in which agencies and services interact with each other.
- Filicide is a most grievous crime and particularly so when committed as an act of spousal punishment or spousal revenge. The Inquiry considers that the appropriate sentencing standard for filicide committed with the intention of punishing the child's other parent or of denying that parent contact with the child or for spousal revenge is life imprisonment with no minimum term. There is a need to study the various cases across Australia to discern the factors likely to lead to acts of filicide and the early warning signs that can alert the relevant professionals who interact with parents and caregivers.

14.1 Introduction

Children have a right to be protected by the State from harm. This protection is not limited to child protection law, but extends to the criminal and broader civil law.

This chapter addresses the Terms of Reference relating to the interaction and the appropriate roles of departments and agencies, the courts and services providers in the delivery of services to children. In particular, the chapter considers submissions relating to the principles, objectives and aims of key pieces of legislation, perceived gaps in the protections offered by the State, and the nature of child sexual and physical abuse as a crime. Issues relating to the Children's Court and court processes in child protection proceedings are addressed separately in Chapter 15. This chapter also addresses, in part, the Terms of Reference relating to the processes of the courts referencing the reform options put forward by the Victorian Law Reform Commission (VLRC) in its *Protection Applications In The Children's Court: Final Report 19* (the VLRC Report).

Reporting and prosecution of child abuse in the criminal justice process is considered in the first part of this chapter, and is followed by a discussion concerning proposals for discrete areas of reform to the *Children, Youth and Families Act 2005* (CYF Act) including jurisdictional reform. The chapter also reviews the operation of mandatory reporting laws within the statutory protection system and the *Working with Children Act 2005* (WWC Act) and considers a potential criminal reporting duty. The latter part of the chapter considers the intersection of family law, family violence law and child protection, and the operation of suppression orders under the *Serious Sex Offenders (Detention and Supervision) Act 2009*, as well as the introduction of a new offence for the abuse of children through the electronic media, and sentencing standards for the killing of children by parents.

14.2 Child abuse is a crime

The Inquiry received submissions from organisations that argued that child physical and sexual abuse is not treated as a crime in practice (Australian Childhood Foundation (ACF), pp. 3-4; Goddard et al. Child Abuse Prevention Research Australia, p. 7).

The Inquiry considers that there should be no ambivalence. Wherever there is child physical or sexual abuse there is crime. However, while there has been a significant increase in reporting rates for child abuse over the past 20 years, the same cannot be said for the prosecution and conviction rates for the physical and sexual assault of children and young people.

This is not a problem that is unique to Victoria: prosecution and conviction rates for the physical and sexual assault of children across Australia are low compared with the rates for other offences. Studies show that, although sex offences against children have a higher conviction rate than those against adults, smaller proportions of incidents involving children resulted in the commencement of proceedings (Richards 2009, p. 2).

The issues that may hinder the prosecution of child abuse are now well known and, in the case of child sexual abuse, well documented. They include: low reporting rates; difficulties in obtaining evidence where the complainant is often the only witness and may be too young to communicate the abuse; variable quality of forensic interviewing; complainant or witness reluctance to give evidence regarding a perpetrator; the perception that a child's uncorroborated evidence is seen as unreliable; and traumatic court processes that may discourage complainants from pursuing criminal matters (Cossins 2006a).

A number of valuable reforms have been made to strengthen the criminal justice response to the low prosecution and conviction rates for child abuse, particularly for sexual assault offences. Reforms have largely aimed at addressing the difficulties encountered by children in court processes due to their age (Cossins 2006b). However, as prevention of child abuse is an aim of the criminal law, reform options should deal with the investigation and prosecution processes and outcomes. The following sections therefore examine the investigation and prosecution of child abuse crimes.

14.2.1 From child protection to the courts: the processes

The reporting process for child abuse as a matter for the Department of Human Services (DHS) is described in Chapters 3 and 9. Broadly speaking, under the current arrangements for all reports of concerns in relation to young people:

- Child FIRST receives wellbeing reports, and refers those to DHS if necessary;
- DHS receives protective intervention reports, and refers to police where reports involve allegations of sexual abuse, physical abuse and/or serious neglect; and
- Police receive reports of suspected offences from the general public, and reports of suspected offences from DHS. Where reports are not received by DHS, police notify DHS.

DHS child protection practitioners are required to notify Victoria Police of all reports of sexual and physical abuse and serious neglect of a child or young person (Victoria Police and DHS 1998). It should also be noted that Victoria Police may also receive reports of physical or sexual assault of children independently of DHS. In this case, Victoria Police notifies DHS of its suspicion that a child is in need of protection.

Currently, reports relating to child physical or sexual assault go to either Victoria Police Sexual Offences & Child Abuse Units (SOCAUs) or Sexual Offence and Child Abuse Investigation Teams (SOCITs). Police officers in SOCAUs take statements, complete reports, and may interview alleged offenders in conjunction with the Criminal Investigation Unit. SOCITs, which will replace SOCAUs as of February 2012, will undertake investigations. There are also two operational multidisciplinary centres (MDCs) in Victoria that operate as co-located services for SOCIT teams, Centres Against Sexual Assault (CASA) counsellors and advocates, DHS and medical examination facilities. The Inquiry notes that MDCs are a key Department of Justice (DOJ) initiative to address particular needs of sexual assault victims and victims of child abuse. The MDC model is referred to in Chapter 9 of this Report.

After an investigation into a matter, a Detective Senior Sergeant (in the case of physical abuse), or a specialist Detective Senior Sergeant (in the case of sexual assault) is responsible for authorising a brief on the case to be referred to the Director of Public Prosecutions (DPP) and Office of Public Prosecutions (OPP) for prosecution.

The DPP and OPP do not prosecute all referred matters. In deciding which matters to prosecute (the 'prosecutorial discretion'), the DPP applies guidelines that require the DPP to consider the interests of the victim, the suspected offender and the wider community, as well as the more general considerations of justice and fairness, and whether the prosecution can be conducted in an 'effective and efficient manner'.

14.2.2 The flow of information between the Department of Human Services and Victoria Police in relation to child abuse allegations

An effective response to child protection requires the interactive operation of both child protection and criminal intervention (Sedlak et al. 2006, pp. 657-658). It is therefore essential that DHS and Victoria Police have a coordinated and transparent response to physical and sexual abuse and serious neglect.

In the recent *Family Violence – A National Legal Response* report (Commissions' Report) into family violence law across Australia, the Australian Law Reform Commission (ALRC) and the New South Wales Law Reform Commission (NSWLRC) recommended that state and territory law enforcement, child protection and other relevant agencies should, where necessary, develop protocols that provide for consultation about law enforcement responses when allegations of abuse or neglect of a child for whom the police have care and protection concerns are being investigated by the police (ALRC & NSWLRC 2010, recommendation 20-2). The Inquiry notes that Victoria has an established protocol.

The *Protecting Children Protocol* between DHS and Victoria Police governs the roles of both agencies relating to allegations of sexual and physical abuse and serious neglect of children. DHS is the lead agency with responsibility for the care and protection of children under the CYF Act but must report all allegations and situations of suspected child physical and sexual abuse, as well as serious neglect, to police (Victoria Police & DHS 1998, p. 5). Police practice is also influenced by the *Code of Practice for the Investigation of Family Violence* (Victoria Police 2010).

The protocol notes that, in the interests of eliciting evidence of a standard appropriate to the prosecution of a criminal matter, it is 'crucial that police are involved at the earliest stage of notification of sexual abuse, physical abuse and serious neglect' (Victoria Police & DHS 1998, p. 9). The Inquiry understands that a review of the *Protecting Children Protocol* is being conducted. Given that the protocol predates the CYF Act by seven years, and does not reflect new practice at SOCITs and at MDCs and intake processes, the Inquiry draws attention to this review and considers its completion and subsequent updating, a priority.

Matter for attention 9

The Inquiry draws attention to the completion of the review of the *Protecting Children Protocol* between Victoria Police and the Department of Human Services, incorporating updated practices such as the rollout of the Sexual Offence and Child Abuse Investigation Teams and multidisciplinary centres. The completion of the review, and the subsequent updating of the protocol, is a priority.

At present, data limitations do not allow for an accurate measurement of whether the current *Protecting Children Protocol* is being rigorously applied. Police do not collect data on the source of their reports and so it is not possible to identify the proportion of recorded parent-child alleged offences for 2010-11 reported by DHS. The Inquiry has therefore considered data for 2010-11 on the flow of reports to DHS, from DHS to police and police data on the number of recorded alleged offences against victims aged 0 to 17 to gain an approximate understanding of the application of the Protocol. There are significant limitations on the use of this data. For example: a lack of comparability between police and DHS data due to recording practices; a filtering of reports which appear to police to lack sufficient evidence to warrant recording as a complaint and investigation; operational issues such as resources and competing police priorities; and past police practice and experience.

As the Inquiry noted in Chapter 3, 41,459 children aged under 17 were the subject of one or more reports to DHS in 2010-11. In 2010-11 DHS made 12,836 reports to Victoria Police of suspected physical and sexual abuse (8,732 involving reports of suspected physical abuse and 4,104 reports of suspected sexual abuse). These reports are not reflected in Victoria Police data on the number of recorded victims aged 0 to 17 of alleged physical and sexual assaults and other crimes against the person that occurred within the family context.

According to Victoria Police data, in 2010-11, there were 7,277 reported alleged offences of homicide, rape, sexual assault and physical assault against victims aged 0 to 17 in Victoria. Of these, 2,358 were alleged to have occurred within a parent-child or other family relationship and 1,738 family violence notices were issued in relation to total reported alleged offences.

The data, although limited, shows a gap in the number of reports made by DHS to police and the number of alleged child abuse crimes recorded and investigated by police either across the board, in relation to children and parents, or children and other family members. However, without further research it is not possible to accurately state the true extent of, or reasons for, this gap. Recommendation 40 addresses this issue.

14.2.3 Investigations and interviewing

Frequently, children are the only witness in relation to the abuse they suffer. The investigative or 'forensic' interviewing of alleged victims of abuse is therefore an essential part of the effective investigation, substantiation and prosecution of child abuse.

Where police receive a report of a suspected crime, they must undertake an investigation. There is no discrete data on investigations as, theoretically, the report and investigation figures should be the same. Therefore, the stage at which the investigation reaches may indicate the degree to which child abuse is treated as a crime by the police once they have received a report.

In interviewing children in relation to allegations of abuse, DHS and Victoria Police aim to: assess the safety of children's living arrangements; establish the credibility of allegations; record evidence; and evaluate the viability of prosecution or litigation. The forensic interviewing of victims is particularly difficult in the case of child complainants and, in the case of infants, impossible. Further, as noted by Associate Professor Snow at the Inquiry's Bendigo Public Sitting, in ideal circumstances, oral language skills emerge and develop in the context of a stable and warm family life. Children who suffer abuse have had experiences that fall well short of this ideal, and their language skills suffer as a consequence (Associate Professor Snow, Bendigo Public Sitting).

Local and international literature on appropriate interviewing techniques for children supports forensic interviewing protocols that aim for a comprehensive and, as far as possible, free narrative account of the circumstances surrounding the allegations of abuse, with little specific prompting from the interviewer (Lamb & Brown 2006; Powell & Snow submission, p. 3). Traditional conversational interviewing techniques may be suitable for testing information about which the interviewer has independent reliable evidence but unsuitable where the allegations are unsupported by physical or other evidence as may be the case in suspected child abuse. Interviewing techniques that are not appropriately modified and nuanced may miss information, or elicit information that may end as a composite of the interviewers' assumptions (Lamb & Brown 2006, p. 216). This becomes a problem when evidence is tested in court and, as is explored further in section 14.2.5, in the consideration of the evidence as warranting prosecution.

Time spent with children and young people during the process of assessing risk and gathering information is vital to the outcome of child protection and criminal investigations. Child protection practitioners, whose interviews frequently inform police investigations, receive little training on investigative interviewing, other than a course on interviewing skills. However, not all workers complete this course (Ms Perry submission, p. 2; Mr Perversi submission, p. 3).

The interviewing of children can be improved with specialist training. One submission received by the Inquiry noted that an effective training program for child protection practitioners should incorporate the following elements:

- The establishment of key principles or beliefs that underpin effective interviewing;
- The adoption of an interview framework that maximises narrative detail;
- Clear instruction in relation to the application of the interview framework;
- Effective ongoing practice;
- Expert feedback; and
- Regular evaluation of interviewer performance (Powell & Snow submission, p. 4).

Victoria Police interviewers are also informed by internal guidelines such as the *Crime Investigative Guidelines: Child Abuse*, and the *Crime Investigative Guidelines: Sexual Crimes*.

The Inquiry notes that, over the past 18 months, Victoria Police has established innovative interviewing technique training for SOCIT units. The 'whole story technique' of interviewing attempts to accommodate children's level of learning and development. It is aimed at eliciting information from victims and offenders beyond the specifics of an offence. Interviewees are asked open-ended questions that seek to establish broader contextual information that may be relevant to the events, such as the relationship between the alleged victim and offender, and situational factors, rather than directing children to specific incidents. A child may need to tell the story more than once so that interviewers can isolate various events and test the child's recollections.

The Inquiry was informed that the technique has not been extensively tested in court.

In the securing of evidentiary admissibility, the relevance of the whole story technique is the element of children's compliance. The method helps elicit why children comply with approaches by criminally-minded adults. It does so by eliciting the relationship between the child and the adult, in particular the child's dependence, malleability and vulnerability. It articulates the psychological power imbalance. It explains the child's vulnerability to manipulation, which is the method of the criminally minded adult.

A critical question is the interface between the whole story technique and the rules of admissibility of evidence. The rules of admissibility of evidence focus upon the nexus between the evidence sought to be elicited and the crime charged. The prosecution must demonstrate that nexus – that the evidence sought to be elicited is relevant and proximate to the proof of the crime charged. Otherwise the evidence is deemed not probative, or more prejudicial than probative. The key to admissibility of evidence obtained using the whole story technique is to demonstrate its psychological relevance and probativeness. Not only do sexual crimes against children begin in the mind of the offender, they are enabled by the mind of the child – by the child's vulnerability and compliance. For the method to achieve proper admissibility as evidence, the prosecution needs to be able to articulate the relevant psychological pathway of the child, and to link that pathway to the knowledge and intent of the offender. The evidence needs to be seen through the prism of psychology, not only overt acts. The Inquiry considers that attention should be given to the training of investigators in this method and of prosecutors in its presentation.

The Inquiry is advised that the success of the technique is yet to be properly evaluated, as its effect on reporting and prosecution rates is not likely to be established for another five to 10 years. Nevertheless, the Inquiry notes that the whole story technique is consistent with local and international literature on appropriate interviewing techniques for children who are alleged to have been abused. However, the Inquiry also notes that specialist training, whatever the model, should be ongoing if it is to be effective (Lamb et al. 2007, p. 1,209). Compulsory, ongoing training is necessary to increase interviewer competence (Associate Professor Snow, Bendigo Public Sitting). Ongoing training of Victoria Police interviewers is likely to increase opportunities for substantiation and prosecution of child abuse. Following the rollout of SOCITs it will be important to continue interviewing training and professional development.

The Inquiry also received submissions on the impact of child protection interviewing practice on potential criminal investigations.

In view of the crossover between child protection investigations and criminal investigations in allegations of child abuse, and in light of the Inquiry's recommendations relating to MDCs in Chapter 9, there is likely to be benefit in incorporating forensic interviewing training of the type offered to Victoria Police investigators into training modules for DHS child protection practitioners. This training would increase interviewer competence and assist in creating collaborative efforts.

Finding 9

The Inquiry considers there is likely to be benefit in extending forensic interviewing training of the type delivered to Victoria Police Sexual Offences and Child Abuse Investigation Team interviewers to Department of Human Services child protection practitioners and to provide prosecutors with relevant study in it.

14.2.4 Brief authorisation process

Victoria Police does not refer all allegations of abuse to the DPP. Generally speaking, Victoria Police makes that decision based on the evidence available, usually records of interview with the alleged victim and offender, and any corroborative evidence. Authorising police officers may also consider the opinions of investigators. This is what is known as the 'brief authorisation process'. The brief authorisation process is the system's first bridge between an allegation of child abuse and prosecution for abuse in the courts.

Following recommendations made by the VLRC in the *Sexual Offences: Final Report* published in 2004, Victoria Police made a number of changes to the investigative and brief authorisation process for child abuse allegations. In particular, the SOCIT and MDC models for child abuse investigation were developed and run as a pilot scheme in two locations. Initially, the pilot scheme only investigated alleged penetrative offences against adults and children. The old model SOCAUs continued to investigate allegations of indecent assaults against adults and children, and physical abuse of children.

A recent evaluation published by Deakin University and funded by Victoria Police considered the relative quality and detail of the brief authorisation documents, the length of investigations and complainant engagement for matters that were not authorised for prosecution from the piloted SOCITs and the old model SOCAUs over an 18 month period. The study, consistent with the scope of the SOCIT pilot, was limited to penetrative sexual offences, and considered 59 reports in relation to child complainants and 48 adult complainants.

Although no significant difference in the duration of investigations between the sites was found in the study, there was a difference in the quality and detail in investigation documentation. Complainant engagement levels, which were assessed on the basis of whether, how and when complainants had elected to state their disinclination to proceed with criminal charges by filling in a 'No Further Police Action' form, were similar at all sites. The study also considered that victims tended to engage in the process for a longer period of time at SOCITs than SOCAUs, and that longer engagement may suggest a positive difference in victim satisfaction with police responses to allegations (Powell & Murfett 2009).

The Inquiry was informed that as of February 2012, SOCITs will be operational across Victoria and will investigate both child physical and sexual abuse and serious neglect. The Inquiry considers that the quality of investigation and the brief authorisation process for child abuse should continue to be monitored. The Inquiry notes that without consistent monitoring and development it could be easy for police decision making to be over-reliant on an individual interviewer's perceptions of victim credibility, and to give insufficient consideration of the quality and process of interviewing on the information gathered from witnesses (Powell et al. 2010; Powell & Murfett 2009, p. 9). The danger in a lack of individual and systematic attention to the risk that interviewers may be employing inadequate interviewing practice is that allegations that could have been prosecuted are not.

The Inquiry notes that the specialisation of investigation of sexual and physical abuse is likely to increase not only the quality of evidence obtained from children and young people, but increase the level of scrutiny applied to interviewing techniques in the brief authorisation process.

As noted above, the brief authorisation process is conducted by a specialist Senior Sergeant in the case of child sexual assault, but a generalist Senior Sergeant in the case of physical assault. The specialisation of the brief authorisation process provides for a higher level of scrutiny and accountability in the referrals from Victoria Police to the DPP. As many of the issues with the collection of evidence in relation to sexual abuse are replicated in relation to physical abuse, this is an anomalous situation and should be rectified.

Recommendation 39

Victoria Police should change the brief authorisation process for allegations of child physical assault so that authorisation is conducted by a specialist senior officer.

14.2.5 Prosecution

The prosecution of child abuse in appropriate cases is an important part of Victoria's system for protecting children. As discussed in Chapter 3, the prosecution of offences, along with the punishment for those offences, provides important recognition to the victim of his or her hurt and suffering, acts as a deterrent, and provides legitimacy to the laws that are there to protect the community. It may also enable effective treatment and rehabilitation of the offender to occur and thus reduce the risk of reoffending. However, most fundamentally, the prosecution of the offences of child physical abuse and child sexual abuse should occur because the subject conduct, if proved, is criminal.

The Inquiry was advised that the OPP's principal source of data about the cases the OPP prosecute is the case management system Prosecution Recording and Information System (PRISM). The OPP does not collect data on the age of victims in matters prosecuted by the OPP in PRISM, except where the age of the victim is an element of the offence title, for example, 'indecent act with a child under 16'. This means that there is scant data on the prosecution of alleged physical and sexual abuse and serious neglect of children. The OPP advises that PRISM is capable of capturing data on the age of victims but that it is not current practice to do so.

As a result, it is not possible to say how frequently and to what end child abuse matters are prosecuted. The Inquiry considers that the collection of data would be a useful component of work undertaken by DOJ in implementing Recommendation 40.

Finding 10

The Inquiry finds that there are critical gaps in data in relation to the prosecution of suspected child physical and sexual abuse in the criminal justice system. While suspected child physical abuse is under-reported, under-investigated and under-prosecuted, the Inquiry considers that a full understanding of the reasons behind this require further investigation.

The Inquiry notes that the OPP is currently part way through a two-year project to implement a new practice management system that will replace PRISM. Part of the project is the specification of data fields and business rules around the collection of information. The new system will be developed and tested throughout 2012 and is expected to be commissioned for production use in the first half of 2013. The OPP advises that, for reporting capabilities and record keeping, the project team is recommending that victim details be recorded in the new system, at a minimum the victim's name, address, gender and date of birth. The Inquiry welcomes this change in reporting practice and considers that the data will contribute to a better understanding of the reasons for a lack of prosecution of suspected child physical and sexual abuse.

14.2.6 Convictions

The conviction and sentencing of a person for criminal child abuse or neglect is the final stage in the criminal justice process. A study of the numbers of and factors in convictions for child abuse and neglect in Victorian courts fell outside the scope of the Inquiry. The Inquiry notes that literature on child sexual abuse shows low rates of prosecutions and convictions as against victimisation studies of unreported crime, as well as recorded crime (e.g. Fitzgerald 2006) although, as noted previously, of all prosecuted sexual offences, child sexual offences have a higher conviction rate than adult sex offences (Richards 2009, p. 2).

The Sentencing Advisory Council (SAC) analyses and releases data on sentencing practice in the Victorian higher courts. Although the SAC presents data on assault and related offences, there is no data dealing discretely with the physical assault of children. The available SAC data for specific offences against children are summarised at Appendix 11.

The low conviction rates for child sexual abuse has generated considerable interest from the community, academics and policy makers in improving the criminal justice response to child abuse. Much of the research and literature and many of the reforms have been focused on improving the system response to child sexual abuse, often as a subset of sexual offences more generally. In relation to child sexual abuse there have been particular advances in reducing the traumatisation of child complainants during the trial process (Cossins 2006b, p. 319), as well as evidentiary reforms, such as the giving of recorded and closed-circuit television testimony, and the bringing of opinion evidence to counter jury misconceptions about children's ability to give truthful evidence and how children react to sexual abuse (ALRC & NSWLRC 2010, chapter 27).

The Inquiry considers, however, that there is a lack of data and research on both child physical and sexual abuse, and common problems in the criminal justice approach to both.

14.2.7 Data collection

As noted in the Commissions' Report, it is difficult to accurately measure rates of attrition in the criminal justice process for allegations of sexual assault, partly due to under-reporting, the different data collection approaches of various agencies, and the limitations of current methods of data collection and evaluation (ALRC & NSWLRC 2010, chapter 26). The Inquiry considers this is equally true for physical abuse and severe neglect of children.

The Inquiry notes that the development of a multidisciplinary approach to the investigation of child abuse and neglect presents many opportunities for developing collaborative approaches and system responses to child abuse and neglect, including the collection of data on criminal reporting and investigation.

Recommendation 40

The Department of Justice should lead the development of a new body of data in relation to criminal investigation of allegations of child physical and sexual abuse, and in particular the flow of reports from the Department of Human Services to Victoria Police. Victoria Police, the Office of Public Prosecutions, the Department of Human Services and the courts should work with the Department of Justice to identify areas where data collection practices could be improved.

14.2.8 Recognition of the crime of child abuse as a crime in the Children, Youth and Families Act 2005

Under section 83 of the CYF Act, the Secretary of DHS is required to report allegations regarding the physical or sexual abuse of a child in out-of-home care to Victoria Police. The provision appears in the context of the regulation of out-of-home care providers, and the processes that should be adhered to following the making of an allegation of abuse against a foster carer or an out-of-home care service.

The Inquiry received a submission from the Australian Childhood Foundation (ACF) that proposed this duty be extended to all allegations of physical or sexual abuse, whether in out-of-home care or not (p. 7). The Inquiry considers that an amendment of this nature is not desirable within the context of section 83 of the CYF Act. This particular section has a specific purpose, that is, to ensure that an independent investigation is facilitated in the case of allegations of abuse in out-of-home care.

However, the Inquiry considers it is of importance to signify the relevance and the priority of the criminal law in the criteria guiding decisions made under the CYF Act. In the best interests principles section (section 10) of the Act, the criterion 'the need to protect the child from harm' is stated as a required criterion (section 10(2)), but the category of criminal harm is not specified. In the relevant provision (section 10(3)) the category of criminal harm is entirely absent. Accordingly the Inquiry recommends that section 10(3) of the CYF Act be amended to signify the relevance and the priority of the criminal law in the criteria guiding decisions under the Act. The amendment is best placed in section 10(3) rather than in section 10(2) because the element of criminality is not always present in harm.

Recommendation 41

The best interests principles set out in section 10 of the *Children, Youth and Families Act 2005* should be amended to include, as section 10(3)(a), 'the need to protect the child from the crimes of physical abuse and sexual abuse'.

14.3 Proposals for discrete areas of reform to the *Children, Youth and Families Act 2005*

The Inquiry received a number of written and verbal submissions proposing amendments to various aspects of the CYF Act. The VLRC also proposed a number of amendments to the CYF Act.

Apart from the court-related amendments (considered in the following chapter), the proposals for reform fell into four main categories:

- The objectives and principles of the CYF Act;
- Evidentiary issues, including the grounds for, and standards of proof in, protection applications;
- The jurisdiction of the Family Division of the Children's Court; and
- Language in the CYF Act and in child protection practice.

14.3.1 Proposals for reform to the objectives and principles of the Children, Youth and Families Act 2005

While the Inquiry heard support for the current principles and objectives of the CYF Act and the *Child Wellbeing and Safety Act 2005* (CWS Act) (Bethany Community Support and Glastonbury Child & Family Services submission, p. 20), the Inquiry also heard calls for a re-evaluation of the objectives and principles.

Principles

In a joint submission to the Inquiry, Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army, Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare (Joint CSO submission) proposed that the principles of the CYF Act be reviewed to establish the State's intentions for children and young people within the statutory system, and establish 'the parameters within which services for those children and young people will be delivered' (p. 25).

The Joint CSO submission argued that a clarification would be best achieved by incorporating the principles from the CWS Act into the CYF Act (pp. 25-27). The ACF also made a similar proposal (ACF submission, pp. 3-4).

The CWS Act was introduced in order to provide a framework for a cohesive service system to provide appropriate responses to the changing needs of families, within a common set of goals and values (Parliament of Victoria, Legislative Assembly 2005a, p. 1,365). The common goals and values are set out as principles in the CWS Act. They are of general application and go to the development of policy as well as the development, design and provision of services to children and families, including those provided under the CYF Act. The CWS Act and the CYF Act should be read together. As such, the Inquiry considers that it would be a duplication to include the CWS Act principles in the CYF Act.

Objectives

Children and young people in care require a range of services to build on their wellbeing and resilience, such as early childhood services, education services and health services. Concerned that children and young people are missing out on these services, the Joint CSO submission also proposed that legislative responsibility for providing them be reviewed. The submission suggested that the objectives of the CYF Act be amended to acknowledge the roles and responsibilities of early childhood services, education and health services, including mental health and alcohol and drug services, for the protection and care of vulnerable children and young people (Joint CSO submission, p. 29).

The Inquiry notes that the issue raised by this submission should be considered as a matter of encouraging service providers to take responsibility for broader outcomes for children (e.g. the education of children in care), and secondly, for their responsibility to the children of adult clients when delivering services to those clients. The Inquiry considers that vulnerable children and young people could benefit from a clearer enunciation of various agencies' responsibilities to children in the provision of services. The Inquiry further considers that any specification of service provider and agency responsibilities to children and young people would be of greater utility if set out in the relevant Act (e.g. the *Disability Act 2006* (Vic) and the *Mental Health Act 1986* (Vic)).

Recommendation 42

The following Acts should be amended to ensure that service providers assisting adults also have a clear responsibility to the children of their clients:

- *Disability Act 2006;*
- *Education and Training Reform Act 2006;*
- *Health Services Act 1988;*
- *Housing Act 1983;*
- *Mental Health Act 1986;* and
- *Severe Substance Dependence Treatment Act 2010*.

14.3.2 Evidentiary issues: proposals for reform to the grounds for, and standard of proof in, making protection applications

'No fault' ground for intervention in the *Children, Youth and Families Act 2005*

In its 2010 report the VLRC expressed concerns that the current grounds for making a protection application, particularly sections 162(1)(c) - (f) of the CYF Act, that refer to situations in which a parent 'has not protected' or is 'unlikely' to protect a child from harm, implied the existence of parental fault. The VLRC noted that there may be a number of situations in which a parent was or is willing, but was or is unable to protect their child from harm and that a finding under section 162(1)(c) - (f) unduly stigmatises these parents. The VLRC further considered that fault-finding and the need to identify a grounds in cases where the need to protect is agreed is likely to 'increase disputation between the parties' (VLRC 2010, pp. 333-335).

The VLRC considered the introduction of a ground similar to that in section 52 of the *Children (Scotland) Act 1995* whereby a child could be considered to be at risk of harm on the basis that they were 'uncontrollable' (VLRC 2010, pp. 334, 338). The VLRC rejected this amendment on the basis that it would be inconsistent with the harms, rather than needs, focus of the CYF Act, and blur a sensible distinction between the criminal law and child protection law (VLRC 2010, p. 334). The Inquiry agrees with this conclusion.

Addressing these concerns under Option 2 detailed in its Report, the VLRC proposed that:

- Sections 162(1)(c) - (f) be amended to reflect situations where a parent is willing, but for some reason is unable, to protect the child from harm;
- A court be able to make a protection order in respect of a child on the basis that the child's behaviour is or is potentially harmful to himself or herself; and
- In situations where the parties agree that a child is in need of protection and it is in the child's best interests to do so, a court may make an order without specifying a specific ground (VLRC 2010, p. 339).

Other than those submissions that provided the Inquiry with a copy of submissions sent to the VLRC report on Option 2, no new material was presented to the Inquiry in submissions or consultations relating to the introduction of a no-fault ground.

Regarding the wording of section 162(1)(c) - (f), the Inquiry considers that, while there may be a perception that parents whose children are the subject of a protection application are at fault, the Inquiry does not consider that this perception is caused by the wording of the legislation.

As explained in Chapter 3 of this Report, a child will be considered to be 'in need of protection' if the Secretary of DHS can establish one of the grounds set out in section 162 of the CYF Act. Grounds include circumstances in which the child has suffered, or is likely to suffer significant harm as a result of certain forms of injury, and their parents have not protected, and are unlikely to protect, the child from that harm. Sections 162(1)(c) - (f) of the CYF Act do not imply fault. The sections simply set out the grounds for a finding of fact based on the harm that a child has experienced or is at risk of experiencing. Whether a parent did not (or will be unlikely to) protect their child either due to unwillingness or inability is irrelevant under the provisions. Likewise, the provisions do not require the Court to make a finding as to who has caused the harm. It is sufficient that the Court finds that the harm has occurred.

The VLRC's consideration of the no-fault ground raises the issue of at-risk adolescents and children with a disability, or special and complex needs, where the only protective concern is the child's parents' inability to provide the level of care required for that child or young person. The VLRC noted that protection applications are sometimes made in respect of a child so as to secure out-of-home care or other services for that child (VLRC 2010, pp. 335-336). This is indicative of a serious gap in service delivery, but the Inquiry notes that prioritising service delivery should not be the function of protection applications. If children are missing out on services provided under other Acts (e.g. under the *Disability Act 2006*) this should be addressed in prioritising services to children and young people under those Acts. The Inquiry expects that the implementation of Recommendation 42 will address this issue.

Standard of proof for findings of fact under the *Children, Youth and Families Act 2005*

Option 2 of the VLRC report also advocates the amendment of the CYF Act to clarify the application (or the perception of the application) of the standard of proof in Family Division matters, especially those matters involving allegations of sexual abuse.

As explained in the VLRC report, in protection applications involving allegations of past sexual abuse, the Court must decide the facts, including whether the abuse occurred. This is decided on the balance of probabilities test. This test is informed by the qualification as set in *Briginshaw v. Briginshaw* (1938) 60 CLR 336 and section 140 of the *Evidence Act 2008*. The qualification requires the Court, in determining facts that are of themselves serious allegations, to take into account the nature of the subject matter of the proceeding and the gravity of the facts alleged (VLRC 2010, pp. 340-341).

Submissions were made to the Inquiry that in matters involving allegations of sexual abuse, the Court is applying a higher standard of proof than the balance of probabilities (ACF, pp. 5-6; Humphreys & Campbell (b), pp. 3-4; Inquiry consultation with DHS). A higher standard of proof makes it more difficult to prove that a child is in need of protection. The Inquiry also heard that this perception is affecting DHS willingness to bring a protection application based solely on sexual abuse (submissions from ACF, pp. 5-6; Humphreys & Campbell (b), pp. 3-4; Inquiry consultation with DHS).

The Court submitted that this view is inaccurate (Children's Court submission no. 2, p. 41). In support of this, the Court noted that the determination rate of sexual abuse remains largely unchanged (Children's Court submission no. 2, p. 42).

In relation to protection applications involving allegations of a future risk of sexual abuse, the Children's Court considers whether there is 'a real possibility, a possibility that cannot be sensibly ignored having regard to the nature and gravity of the feared harm' that the allegations are true (VLRC 2010, p. 341, citing *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563). The VLRC argued, and the Inquiry agrees, that this further test adds unnecessary complexity to the determination of facts.

The Inquiry has considered the VLRC's proposed amendment to the CYF Act carefully. Allegations of sexual abuse carry potentially serious implications for the person against whom the allegations are made. Nonetheless, the proceeding is about determining the future risk of harm to the child based on alleged past facts. It is concerning that child protection services might have developed a practice to bring applications on alternative grounds, as submitted by the ACF and other stakeholders.

The Inquiry therefore considers there is a sound reason for amending the legislation to clarify the standard of proof required. The Inquiry relevantly notes that any judgment by the Court that a child was in need of protection on the grounds of sexual abuse, cannot be adduced as proof of sexual abuse in any subsequent criminal trial brought against the alleged abuser (*Hollington v. Hewthorn* [1943] 1 K.B. 587).

In the interests of a clear approach to the proof of facts of past and risk of future abuse, the Inquiry endorses the VLRC's recommendation to amend the CYF Act to state that the standard of proof required in Family Division matters is the balance of probabilities, and not any higher standard. The Inquiry considers that this will assist in righting any perception of improper application of the correct standard, as well as providing clear guidance to decision-makers. The Inquiry refers to Recommendation 43.

14.3.3 Proposals for jurisdictional reform

Age limit in protection applications under the *Children, Youth and Families Act 2005*

Under a long standing apparent anomaly in the CYF Act, the jurisdiction of the Court to make protection applications in respect of children and young people is limited to those children and young people under the age of 17 (section 3 of the CYF Act). The VLRC proposed to amend this to those children and young people under the age of 18 (VLRC 2010, pp. 344-346).

The Inquiry considers that the current jurisdiction of the Family Division in relation to children under the age of 17 is inconsistent with the Court's Criminal Division jurisdiction, its jurisdiction under the F*amily Violence Protection Act 2008*, the *Personal Safety Intervention Orders Act 2010* and the *Guardianship and Administration Act 1986*. It is also inconsistent with the *Age of Majority Act 1977*, the generally accepted definition of a 'child', international obligations under the *Convention on the Rights of the Child* (United Nations), and the jurisdiction of children's courts in other Australian jurisdictions. The Inquiry refers to Recommendation 43.

Two more reforms were proposed by the VLRC in relation to the jurisdiction of the Family Division. These were to allow the Children's Court to make a protective order allocating guardianship and/or custody to one parent to the exclusion of the other and to also extend the jurisdiction of the Court to make orders under the *Family Violence Protection Act 2008* where an adult is the affected family member on family violence application but children are not covered by the application. This is considered in more detail in section 14.6.2.

14.3.4 Amendments relating to emotional abuse grounds and bringing evidence relating to cumulative harm

As noted in Chapter 9, 'cumulative harm' is a child protection term that reflects an understanding that chronic child maltreatment or recurrent incidents of maltreatment over a prolonged period of time causes children to experience harm. Neglect and persistent emotional or psychological harm delay development and pose long-term difficulties with social functioning, relationships and educational progress, and can lead to serious impairment of health. In extreme cases, neglect can also result in death (Lazenbatt 2010, p. 3). Child neglect may go unreported or unsubstantiated until the cumulative effects of neglect have developed into a chronic and severe state (Berry Street submission, p. 1).

One of the significant changes in the CYF Act was the introduction of the notion of 'cumulative harm'. Section 162(2) of the CYF Act recognises that harm is not always caused by a single event but may result from an accumulation of acts, omissions and circumstances. Where a protection application is brought on the basis of physical injury, sexual abuse, emotional abuse or neglect (s. 162(1)(c) - (f) CYF Act), applicants may bring evidence of cumulative harm to prove any of the grounds set out in section 162(1)(c) - (f).

The Inquiry considered three distinct matters in relation to cumulative harm:

- Suitability of referrals to Child FIRST (see Chapter 9);
- The impact of workload in statutory child protection services (see Chapters 9 and 16); and
- The use of cumulative harm in protection orders made by the Children's Court.

Cumulative harm and protection orders

Chapter 9 lists the reasons suggested to the Inquiry for the perceived failure of the system to protect children from cumulative harm caused by child abuse. The issue was also considered by the Victorian Ombudsman in his 2009 report (Victorian Ombudsman 2009, p. 11).

Submissions argued that there is a perception that both DHS and the Court have failed to address issues of long-term child neglect and cumulative harm, leaving family services with inappropriate and unworkable responsibility for many such cases (CatholicCare, pp. 18-19; Grandparent Group, pp. 8-9; Humphreys & Campbell (b), p. 4). Others pointed to a perceived tendency of risk assessment models towards event-based rather than cumulative harm (Moonee Valley City Council, pp. 1-2).

The Inquiry notes that the Children's Court is of the view that cumulative harm is a concept well understood and applied by the Court (Children's Court submission no. 2, p. 23). Child protection practitioners reported that workers understand the concept only too well but that they feel that the Court gives insufficient weight to cumulative harm evidence (Inquiry consultation with DHS).

The Office of the Child Safety Commissioner (OCSC) conveyed anecdotal evidence to the Inquiry that there is an apparent reluctance among some child protection practitioners to pursue cumulative harm in child protection cases because they believe this evidence will not be accepted by courts. The OCSC proposed that further research should be undertaken to determine if such reluctance does exist and if it does how it can best be addressed (OCSC submission, p. 7). Such a project would require a qualitative analysis of child protection practitioner experience.

Matter for attention 10

The Inquiry draws attention to the need for further research into the way in which the concept of cumulative harm is understood and applied by child protection practitioners when bringing protection applications to the Children's Court.

14.3.5 Terminology in the Children, Youth and Families Act 2005 and child protection practice

The Inquiry notes that the words 'apprehends' or 'apprehension' are still used today in reference to children who are the subject of protection applications although not used in the CYF Act (for example see the DHS *Guide to Court Practice for Child Protection Practitioners 2007*, p. 34 and in the research materials published by the Children's Court on its website). Further the use of 'warrants' specified in sections 240-241 of the CYF Act with respect to action taken by protective interveners for a child in need of protection reflects a historical approach in this state between vulnerable children and criminal behaviour.

The Inquiry supports the VLRC's observations in relation to the outdated language of the CYF Act to describe protection processes (VLRC 2010, pp. 204, 209). The Inquiry considers the term 'emergency removal' should be used in lieu of 'safe custody' and the term 'warrant' should be replaced by 'emergency removal order'. No vulnerable child in need of protection should be 'apprehended'. The use of that term has no place in a system designed to meet the needs of children.

The Inquiry also considers there is scope for the language of the CYF Act to be more consistent with the Commonwealth *Family Law Act 1975* when describing relationships and circumstances between children and their parents or other people. For example, sections 283, 284 and 287 of the CYF Act use the term 'access' in relation to the level of contact between a child who is in the custody of a person other than the parent, and the parent or another person. The Inquiry recommends that words such as 'access' should be replaced with 'contact' consistent with the terminology used in the Family Law Act.

Recommendation 43

The *Children, Youth and Families Act 2005* should be amended to address the following issues:

- Section 215(1)(c) that requires the Family Division of the Children's Court to consider evidence on the 'balance of probabilities' should be amended to expressly override the considerations in section 140(2) of the *Evidence Act 2008* and to disapply the *Briginshaw* qualification that requires a court to take into account the nature of the subject matter of the proceeding and the gravity of the facts alleged;
- The definition of 'child' in section 3 should be amended to make it possible for protection applications in respect of any child under the age of 18 years; and
- Out dated terms in the *Children, Youth and Families Act 2005* associating child protection with criminal law should be modernised and consideration should also be given to using terms consistent with the *Family Law Act 1975*. This includes: substituting the term 'emergency removal order' for 'warrants'; the term 'protection application by emergency removal' for 'protection application by safe custody'; and the word 'contact' for 'access' when describing contact between a child and a parent or other person significant in the child's life.

14.4 Mandatory reporting

It is now more than 20 years since the tragic death of Daniel Valerio at the hands of his mother's de-facto partner in 1990. Daniel was seen by 21 professionals in the lead up to his death including doctors, nurses, a teacher and police, and yet no one acted to remove Daniel from his circumstances or to apprehend the perpetrator prior to Daniel's death. In response to Daniel's case, and following government reviews into other child deaths as a result of abuse, the then Minister for Community Services announced that the Victorian Government would amend the *Children and Young Persons Act 1989* (the CYP Act) to introduce a mandatory reporting scheme but noting it would require a phased introduction to enable adequate training of the mandated professionals to occur (Parliament of Victoria, Legislative Assembly 1993a, p. 47).

The CYP Act was amended in 1993 to introduce mandatory reporting for professional groups that were identified as the groups with the most significant contact with children and the most likely to become aware of child abuse (Parliament of Victoria, Legislative Assembly 1993b, p. 1,006). They were required to report where they formed a reasonable belief that a child was in need of protection due to physical injury or sexual abuse.

The *Children, Youth and Families Act 2005* provides that the mandated reporter must report where he or she forms the belief on reasonable grounds that a child is in need of protection on the ground that the child has suffered, or is likely to suffer, significant harm as a result of physical injury or sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from that harm (ss. 184 and 162 CYF Act). Both the belief and the reasonable grounds for the belief must be reported.

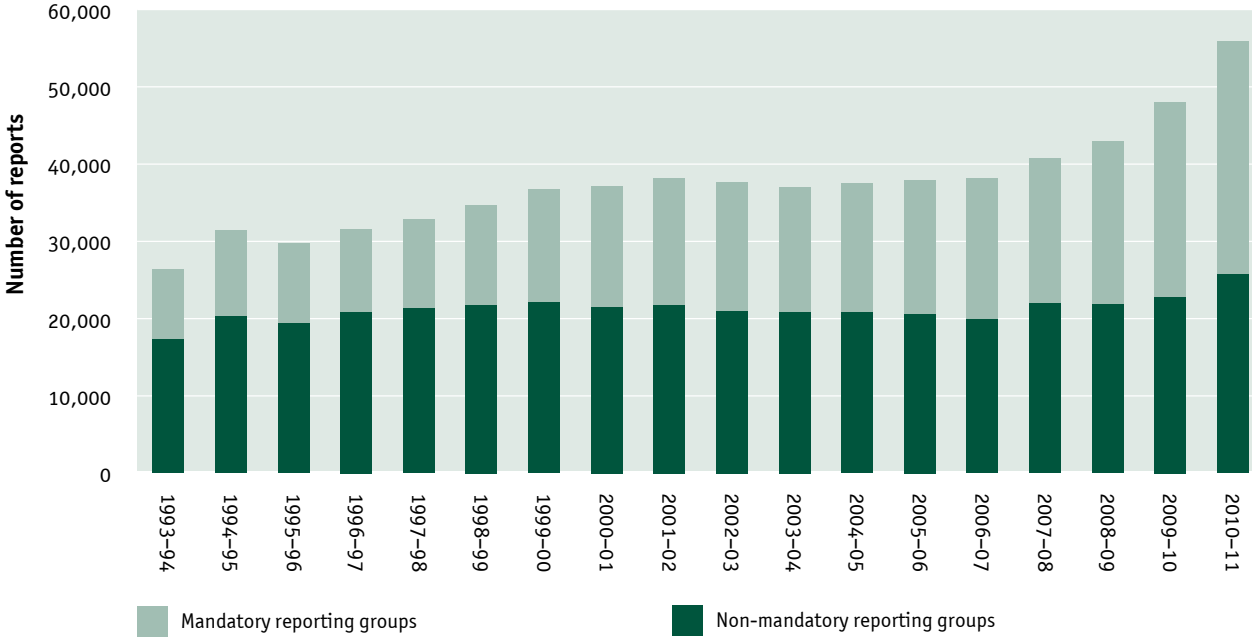
Reports from mandated reporters now comprise a significant proportion of reports of protective concerns made to DHS. As demonstrated in Figure 14.1, there has been a gradual increase in the proportion of reports from mandated reporters over the past decade (from 42 per cent of all reports in 2000-01 to 54 per cent in 2010-11).

14.4.1 Mandatory reporting: a system for protecting children from abuse where the family is unwilling or unable to provide protection

The mandatory reporting scheme was introduced in 1993 to 'uncover hidden but serious abuse and to underline the criminal nature of sexual abuse and severe physical abuse.' In introducing the Bill, the Victorian Government noted that children have a right to be protected from crime committed against them by 'family members or others from whom the family is unwilling or unable to provide protection' (Minister for Community Services, in Parliament of Victoria, Legislative Assembly 1993b, p. 1,005).

The reporting scheme as introduced in 1993 has been continued in substantively the same form through sections 182 and 184 of the CYF Act. The grounds for mandatory reporting are significant harm as a result of physical injury or sexual abuse. Mandated reporters may also voluntarily report protective concerns on other grounds, such as emotional and psychological harm, under section 183 of the CYF Act. Reports are made to the Secretary of DHS and mandated reporters are afforded protection from liability.

Figure 14.1 Child protection reports from mandated and non-mandated groups, Victoria, 1993-94 to 2010-11



Source: Information provided by DHS

Mandated reporters

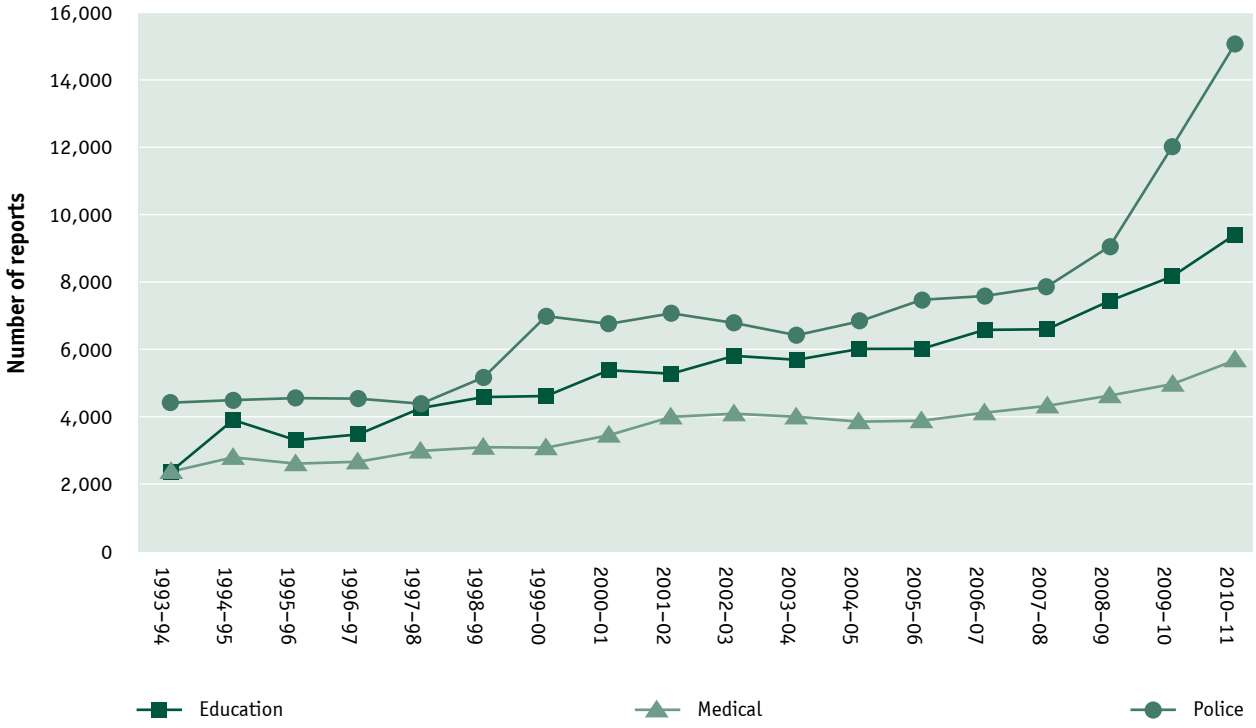
The CYF Act (and the CYP Act before it) outlines a scheme of mandatory reports from: members of the police; medical practitioners; psychologists; nurses; teachers; school principals; owners, operators and professional employees of children's service centres; appropriately qualified youth, social or welfare workers; youth and child care workers working for the then Department of Health and Community Services; probation officers; and youth parole officers. Midwives were added as a category of reporter in 2010.

The phased introduction of the mandatory provisions meant that only certain categories of reporters were actually mandated reporters at the commencement of the scheme. Those in the remaining categories were to become mandated reporters from a date that would be fixed by order published in the *Government Gazette*. In the 18 years that this scheme has been in force none of the other professions have been gazetted as mandated reporters. At the time of this Inquiry, the statutory scheme mandates only teachers, members of the police, medical practitioners, nurses and midwives. Figure 14.2 shows the number of reports (including for matters other than suspected child physical and sexual assault) received by category of mandated reporters since the introduction of the scheme.

Prior to the commencement of the Victorian mandatory reporting scheme on 4 November 1993, Mr Justice Fogarty noted that the significance of mandatory reporting scheme as a formalisation of moral and social responsibility to report protective concerns should not be considered in isolation, exaggerated or over-emphasised (Fogarty 1993, pp. 114-115).

Mr Justice Fogarty observed that it was an essential part of the government's responsibility to ensure the costs of implementation were met noting that it would be 'tragic if the reform was jeopardised by the lack of modest, but essential funding' and 'there is little point in setting up a system which encourages increased notifications if the overall system is unable to cope with that increase' (Fogarty 1993, p. 133). An increase in the number of children brought into the system is not meaningful if those children are not adequately supported. Furthermore, 'it then becomes doubtful whether the children had been advantaged by being involved in the process at all or whether they suffered additional abuse by the system set up to protect them' (Fogarty 1993, p. 134).

Figure 14.2 Child protection reports from mandated reporting groups, Victoria, 1993-94 to 2010-11



Source: Information provided by DHS

14.4.2 Mandatory reporting in Australia

Every Australian jurisdiction has a statutory mandatory reporting scheme. The schemes vary in terms of the types of abuse or neglect that are subject to reports, the categories of people who are mandated to report suspicions of abuse or neglect, and the legal tests for when a report should be made. For example:

- In the Northern Territory any person with reasonable grounds is mandated to report abuse and neglect (broadest coverage);
- In the Australian Capital Territory statutory officers such as the Public Advocate and the Official Visitor are obliged to report physical and sexual abuse; and
- In South Australia the reporting provisions extend to members of non-government organisations that provide sporting or recreational services for children and to ministers of religion (unique to South Australia).

The Inquiry notes there are no categories of mandated reporters in Victoria that are unique to this jurisdiction. In relation to the grounds of abuse or neglect that are the subject of mandatory reports, these vary in each jurisdiction and in some cases are linked to the type of reporting group. The Victorian and ACT schemes have the narrowest grounds on which reports are made – physical injury and sexual abuse – while the Northern Territory and New South Wales schemes have the broadest coverage thresholds including exposure to family violence. A summary of Australian mandatory reporting schemes appears in Appendix 12.

Under section 67ZA of the Commonwealth *Family Law Act 1975*, Family Court judges and court staff, federal magistrates and staff, and independent children's lawyers, family dispute resolution practitioners and family counsellors who have reasonable grounds for suspecting a child has been abused must report their suspicion to the relevant child protection authority.

To date, there has been no comprehensive cross-jurisdictional study of the performance of mandatory reporting schemes in Australian jurisdictions. Despite attempts by academics to gauge the performance of mandatory reporting schemes in various Australian jurisdictions including whether it has led to over-reporting, these have proven difficult due a lack of qualitative and quantitative data, varying statutory definitions and categories of abuse and neglect, changes to recording and disposition practices over time, and different data reporting practices (Mathews, in Freeman 2011 in press, pp. 14-15).

The Inquiry anticipates that short of a national statutory child protection scheme, there will not be uniformity in the area of mandatory reporting. While an in-depth analysis of the differences in the various schemes is beyond this Inquiry's mandate, it considers that jurisdictions should review this area of law with a view to achieving greater consistency across mandated reporting groups and the grounds on which reports should be made. This becomes more apparent when any meaningful attempt is made to evaluate the effectiveness of mandatory reporting, as a means of uncovering hidden incidents of abuse, as is discussed in section 14.4.1. The Inquiry considers that the Victorian Government should raise a review of mandatory reporting laws at the appropriate national ministerial forum. Recommendation 46 addresses this issue.

14.4.3 Submissions on mandatory reporting

Given the mandatory reporting scheme has only partially been implemented in Victoria and the diversity of schemes across Australia, the Inquiry sought to gauge community views on the performance of the current system. The questions asked by the Inquiry in its *Guide to Making Submissions* at the start of the consultation process were:

- What has been the impact of the Victorian system of mandatory reporting on the statutory child protection services?
- Have there been any unintended consequences from the introduction of the Victorian approach to mandatory reporting and, if so, how might these unintended consequences be effectively addressed?

Understandably, these questions evoked a range of responses to the Inquiry:

- There was opposition to mandatory reporting on the basis that mandatory reporters were not sufficiently skilled (Ms L, Geelong Public Sitting; Family Life submission, p. 18);
- Other submissions expressed significant concerns with the system's ability to cope with the scheme. It was submitted that there are insufficient resources to follow up on reports, and that the system should, but does not train or support reporters, with the result that the quality of reports are variable (submissions by Australian Nursing Federation (ANF) (Victorian Branch), pp. 36-37; Centre For Excellence in Child and Family Welfare, p. 53; Community and Public Sector Union (CPSU), p. 21; Dr Gall, pp. 9-10; Royal Children's Hospital (RCH), p. 8; Victorian Forensic Paediatric Medical Service (VFPMS), pp. 13-14);

- Some submissions, without expressly advocating the repeal of the scheme, queried its policy currency in the context of Victoria's various family support services networks and the Child FIRST referral pathway that seek to encourage vulnerable families to engage with services rather than fear being reported to authorities (Ms Burchell, p. 14; Connections UnitingCare, p. 5; GordonCare, pp. 1-2; UnitingCare Gippsland, pp. 20–21; Upper Murray Family Care, p. 5);
- Some submissions sought full implementation of the current range of mandated groups (ACF, p. 5; Goddard et al. p. 9); and
- Others were of the view that mandated groups should be extended to cover clergy (Melbourne Victim's Collective, Melbourne Public Sitting).

Some of the suggestions arising from these submissions were:

- Providing greater capacity for and support to DHS Child Protection to investigate mandated reports including matching any extension to, or full implementation of, the legislative scheme with adequate staff resources (CPSU, pp. 21-22);
- A need for DHS to provide feedback on the outcomes of its investigation progress to the mandated reporter and to maintain engagement with the mandated reporter to ensure everyone knows what is happening with the child or young person (Dr Gall, p. 10; VFPMS, p. 14);
- Extending the role of Child FIRST as a practical intake point for notifications, to determine and refer reports of physical or sexual abuse to DHS particularly if a mandated reporter does not want to engage with DHS (Ms Burchell, pp. 8-9); and
- Providing greater training and education to mandated workforce groups about their statutory obligations (ANF (Victorian Branch), p. 37; RCH, p. 4; UnitingCare Gippsland, p. 20-21).

Given the range of views expressed, the Inquiry's focus fell on three policy questions:

- Is there a policy basis for retaining a mandatory reporting system in Victoria?
- How effective is the current mandatory reporting system?
- Should section 182 of the CYF Act, which sets out the professions eligible to be mandatory reporters, be fully implemented?

14.4.4 Need for mandatory reporting

While the Inquiry has, through its consultation process, heard the debate as to whether mandatory reporting laws should be retained, fully implemented or repealed, it has not heard many voices in favour of expanding the scope of those laws.

Many have argued for the paring back of mandatory reporting laws as the emphasis should be on early detection, prevention or diversion, which requires resources to be invested in helping vulnerable families avoid reaching situations where a child's safety is at risk (Melton 2005, p. 14) rather than overburdening an already stretched child protection system. Others studies have argued that there is no evidence that these schemes have worked other than to increase notifications (Harries & Clare 2002, pp. 48-49).

Reports may also be made in respect of concerns that are not required under the legislation. For example, reporters may have a lack of understanding of the legislation, how the legislation applies in the circumstances, or of the signs of various forms of harm. Segmented surveys have been attempted of specific reporting groups in some jurisdictions.

In 2009 a cross-jurisdictional survey was attempted of teachers reporting suspected child abuse in New South Wales, Queensland and Western Australia. That study concluded that there were significant gaps in teachers' knowledge of their duties to report suspected child sexual abuse partly due to inconsistency of policies and practices with the legislative duty or due to their understanding of when abuse occurred (Mathews et al. 2009, pp. 809-810).

A survey of nurses across Queensland found that while there was high likelihood of nurses recognising abuse and neglect and reporting such cases, the reporting practice varied and was influenced by negative attitudes such as not having faith in child protection services, perceiving a number of organisational barriers to reporting and not believing a report would benefit the child or the family (Mathews et.al. 2010, p. 153).

However, there are countervailing policy arguments as to why these laws should be retained. These include that mandatory reporting laws do not allow society to ignore wrongs committed by adults against children, that mandatory reporting laws are based on an 'experiential approach' to children's rights that when entrenched into positive law will produce a less unjust society, and that these laws directly acknowledge and protect a child's right to safety (Mathews & Bross 2008, pp. 513-514).

The Inquiry has also considered this debate in the context of a child's needs which, as was discussed in Chapter 6, is informed by a child's rights-based approach including the right of a child to be protected from abuse and harm of all kinds. As has been put to the Inquiry, the mandatory reporting provisions are one of the few reminders of the traditional child's rights approach in the CYF Act in the context of that Act's strong child welfare focus (Inquiry consultation with ACF).

The reason mandatory reporting remains required is that, unless specified professionals like doctors are required to report suspicions of maltreatment, severe cases of abuse that are inflicted in private on young children are less likely to come to the attention of helping agencies (Mathews submission, p. 2). As noted by the then Minister for Community Services when introducing the scheme in 1993, the primary policy basis for mandatory reporting is to use professionals who have significant contact with children and are most likely to be able to detect abuse to bring such to the attention of authorities. While there may be a range of systems and responses available to support children and young people who are the victims of abuse and to deal with the perpetrators of the abuse, the laws are designed to ensure that child physical and sexual abuse is, as much as is possible, not one of society's hidden problems.

The Inquiry notes that the most recent interstate review of mandatory reporting laws by the Special Commission of Inquiry into Child Protection Services in NSW 2008 (the Wood Inquiry) concluded the requirement to report should remain as it also had the useful effect of overcoming privacy and ethical concerns by compelling the timely sharing of information where risk existed. Further, abolition of the scheme could weaken opportunities for interagency collaboration essential for an effective child protection system (Special Commission of Inquiry into Child Protection Services in NSW 2008, pp. 181-182). The Inquiry agrees with this analysis.

14.4.5 *The effectiveness of the current Victorian scheme*

The Centre for Excellence in Child and Family Welfare submitted that, although mandatory reporting is deeply entrenched in the Victorian response to vulnerable children and young people, the dilemmas of an under-resourced and poorly distributed system of prevention services remain (Centre for Excellence in Child and Family Welfare, p. 53).

The most problematic aspect in attempting to evaluate the performance of the mandatory reporting scheme, and readily acknowledged by academics, is the lack of empirical data (Mathews & Freeman 2011 in press, pp. 14–15).

Prior to the commencement of the mandatory reporting scheme Mr Justice Fogarty noted that the introduction of mandatory reporting to Victoria presented 'a once only opportunity' to evaluate mandatory reporting from the beginning (Fogarty 1993, p. 136). To date, no such evaluation has taken place.

DHS provided data to the Inquiry that shows total mandatory and non-mandatory reports that resulted in the proportion of substantiations. Table 14.1 summarises the data in relation to reports from 2010–11.

It should be noted that, although mandatory reporters are obliged to report on the grounds of requisite belief physical and sexual abuse, they can and do report on other grounds. Similarly, it should be noted that the 'reports substantiated' figure may or may not relate to the primary report made (that is, substantiation may be on any of the grounds in section 162 of the CYF Act).

The data shows a higher substantiation rate for mandated reports than for non-mandated reports. This suggests that mandatory reporters, especially those reporters in the medical group, are more reliable reporters than those in the general community.

Table 14.1 Substantiations of child abuse and neglect, by reporter group, Victoria, 2010-11

Reporter category	Reports	Reports substantiated
Mandated reporters		
Education	9,407	14%
Medical	5,676	20%
Police	15,066	15%
Total mandated reporters	**30,149**	**16%**
DHS workers		
DHS worker	1,682	36%
Non-mandated reporters other than DHS workers		
Agency*	6,280	17%
Courts and legal	675	8%
Family	14,468	8%
Anonymous/unknown	2,165	6%
Other	460	15%
Total non-mandated reporters	**24,048**	**10%**

Source: Information provided by DHS
* Includes Child FIRST, community service organisations and government agencies

Grounds and threshold for reporting

The Wood Inquiry found that the 'risk of harm' threshold that triggers the obligation to make a mandatory report was too low and led to a significant gap between the reports made by mandatory reporters and those which warranted statutory intervention. Apart from the overwhelming of a system with unnecessary reports, the Wood Inquiry observed that lower thresholds for reporting can precipitously trigger a statutory intervention in a child and child's family life that is, in and of itself, a serious matter (Special Commission of Inquiry into Child Protection Services in NSW 2008, pp.183–185). The Wood Inquiry therefore recommended that the threshold be raised to 'significant harm' (as operates in Victoria) (Special Commission of Inquiry into Child Protection Services in NSW 2008, p. 197).

As noted previously, the Victorian mandatory reporting provisions only relate to the grounds of physical and sexual abuse. The Inquiry considers that these grounds should not be expanded. In addition to the difficulties inherent in training professionals in identifying the other grounds of child abuse such as emotional harm and neglect, the Inquiry notes that the child protection system has limited resources for receiving, assessing and responding to those reports. Well-founded suspicions of abuse can become lost in an overwhelmed system. An appropriate system response is to improve the quality of reports and intake systems, and providing adequate resources to receiving and responding to those reports. Aspects of the system response and proposals for reform are considered in Chapter 9.

The Inquiry also considered the observations of various stakeholders raised in submissions. There were no comments expressly endorsing the current mandatory reporting scheme in Victoria. Most comments from the submissions outlined earlier in this section were primarily directed at issues such as the effectiveness of training and education of mandated reporters, the lack of a communication or feedback process between DHS and the reporter once a report had been provided, and government needing to ensure that DHS (particularly its after hours service) and Child FIRST were adequately resourced to properly refer and investigate reports.

A lack of comprehensive data in the effectiveness of mandatory reporting notwithstanding, mandatory reporting is a key legal response to hidden abuse of children. As a legal response, it enforces the right of a child to be protected from future acts of abuse. Accordingly, Victoria's mandatory reporting system should remain as a key component of the statutory child protection framework.

Finding 11

The Inquiry finds that the current mandatory reporting scheme for physical and sexual abuse should be retained in Victoria, and that the current grounds for reporting are appropriate.

14.4.6 Full implementation of section 182 of the Children, Youth and Families Act 2005

As the Inquiry has noted previously, the mandatory reporting scheme has been in place for 18 years but only some groups covered by section 182 have been mandated to report. The Inquiry assumes that this is largely due to concerns that, if all professions were mandated, that a spike in reporting numbers would overwhelm the system.

However, the Inquiry notes that all these reporting categories were chosen for their particular expertise in and window into the lives of children. The Inquiry is of the view that one way in which the current law can be strengthened to protect children is for the Victorian Government to gazette the remaining groups listed under section 182. Categories of reporters should be progressively gazetted to prevent unmanageable spikes in reports.

The expansion of reporters will create particular challenges in implementation both in a global sense and in each category of reporters. Child care workers who are listed under section 182(1)(f) of the CYF Act in particular, will provide a large increase in the pool of mandated reporters. While child care workers have frequent contact with infants and young children, signs of physical and sexual abuse in infants and young children are difficult to detect and are often only accurately assessed by paediatricians.

Child care workers are unlikely to receive targeted training on mandatory reporting in the course of their qualifications, as qualifications are attained through courses of shorter duration than many other mandated professionals, with less ongoing training required. Clear and specific guidelines in what constitutes a serious concern may assist child care workers in their duty as mandatory reporters.

The Inquiry notes that section 182(1)(f) of the CYF Act has not been amended since its enactment. However, there have been a number of amendments to the *Children's Services Act 1996* in the intervening period reflecting a greater degree of regulation over, and professionalisation of, the provision of children's services in Victoria. For example, when mandatory reporting was first introduced, only managers and supervisors of children's services had a post-secondary qualification. Under the current Children's Services Act, all child care workers must have a post-secondary qualification.

Further, the scope of children's services covered by the Children's Services Act has broadened since the enactment of the mandatory reporting provisions. If section 182(1)(f) were to be gazetted in its current form, the category of child care workers covered by the CYF Act and under section 3 of the Children's Services Act would be any child care worker employed by any child-minding facility for four or more children aged under 13 years. This would include not only child care centres, but also smaller child-minding facilities such as those attached to shopping centres and gymnasiums and family day care.

The Inquiry considers that in order to maintain the original policy focus of the mandatory reporting provision, amendments will be required to both the CYF Act and the Children's Services Act to ensure that the types of child-care professionals that should be the subject of the reporting requirement are licensed proprietors of, and qualified employees who are managers or supervisors of, a children's service facility that is a long day care centre.

Appropriate funding will be required to enable DHS or the new intake service recommended in Chapter 9 to manage the expected increase in reports and to provide appropriate training to the newly mandated groups. DHS should also ensure there is appropriate dialogue between mandated reporters and the appropriate child protection practitioner on what action DHS has taken once a mandated report is received.

Recommendation 44

The Victorian Government should progressively gazette those professions listed in sections 182(1)(f) - (k) of the *Children, Youth and Families Act 2005* that are not yet mandated, beginning with child care workers. In gazetting these groups, amendments will be required to the *Children, Youth and Families Act 2005* and to the *Children's Services Act 1996* to ensure that only licensed proprietors of, and qualified employees who are managers or supervisors of, a children's service facility that is a long daycare centre, are the subject of the reporting duty.

Recommendation 45

The Department of Human Services should develop and implement a training program and an evaluation strategy for mandatory reporting to enable a body of data to be established for future reference. This should be developed and implemented in consultation with the representative bodies or associations for each mandated occupational group.

Recommendation 46

The Victorian Government should obtain the agreement of all jurisdictions, through the Council of Australian Governments or the Community and Disability Services Ministers' Conference, to undertake a national evaluation of mandatory reporting schemes with a view to identifying opportunities to harmonise the various statutory regimes.

14.4.7 Mandatory reporting of protective concerns for personnel in religious organisations working with children

At its Public Sitting of 28 June 2011, the Inquiry heard from the Melbourne Victims' Collective about reporting practices and the response by the Catholic Church to past cases of child abuse. In particular, the submission called for the extension of the mandatory reporting obligations to cover clergy (Melbourne Victim's Collective, Melbourne Public Sitting). Following the publication of that submission on the Inquiry's website, four submissions were received from the Catholic Church that addressed those comments made by the Melbourne Victims' Collective (Catholic Archdiocese of Melbourne; Catholic Bishops of Victoria; O'Callaghan QC submission no. 1; O'Callaghan QC submission no. 2).

Although these submissions were made to the Inquiry in relation to complaints of abuse within the Catholic Church, the Inquiry, consistently with its Terms of Reference, did not receive submissions on, or investigate individual cases of, child abuse within any individual organisation. Neither does the Inquiry intend to critique specific compensation processes, the amounts of compensation awarded to victims of abuse from private organisations or the civil liability of such organisations. Rather, within its Terms of Reference, the Inquiry considered the following systemic issues:

- Whether the requirement of mandatory reporting of suspected child abuse should be extended in relation to religious personnel and if so, with what limitations;
- Whether the requirements of the Victorian *Working with Children Act 2005* should be extended in relation to religious personnel and if so, with what limitations; and
- Whether in churches or religious entities in Victoria there are processes, procedures, doctrines or practices which operate to preclude, deflect or discourage the reporting of child abuse by members of religious organisations to secular authorities.

This section deals with the question of whether mandatory reporting should be extended to religious personnel, which for the purposes of the following discussion the Inquiry refers to as 'ministers of religion' noting that this term encompasses clergy from all religious faiths and denominations. Section 14.5 considers the second and third issues relating to the WWC Act and the reporting of child abuse to secular authorities.

Under the CYF Act mandatory reports are made by designated professional groups in relation to the suspected physical or sexual abuse of children by parents or caregivers. This is because mandatory reporting is a function of the statutory child protection system rather than the criminal law. Generally, once DHS ascertains that the parents or caregivers are willing and able to protect the child from the alleged abuse by someone other than the parent or caregiver, the matter ceases to be a protective concern and is a criminal concern to be investigated by the police.

Religious personnel are currently not mandated reporters under the CYF Act. In section 14.4.2 the Inquiry noted that the South Australian mandatory reporting provisions extend to members of non-government organisations that provide sporting or recreational services for children and to ministers of religion and members of religious or spiritual organisations. There is little available research or commentary on the implementation and effect of this reporting requirement and there is no equivalent provision in other Australian jurisdictions.

The South Australian reporting requirement was introduced in 2005 following the Layton Report on the South Australian child protection system. That report stated:

> All church personnel including the clergy, with the exception of confessionals, are proposed for inclusion as mandated notifiers. This position is strongly supported by a number of major churches in light of the disclosures of abuse that have been made within Australia and overseas and the view that the public interest and the relationship of the church personnel to children and the wider community warrants this (Layton 2003, section 10.11).

Section 11(2) of the South Australian *Children's Protection Act 1993* places a reporting obligation on 'a minister of religion' and on 'a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes'. Section 11(4) exempts a priest or other minister of religion from divulging information communicated in the course of a confession. The report is from the mandated reporter to statutory child protection services. There is no direct obligation under the Act to report the abuse to the police.

As noted above, the Inquiry received written submissions from the Catholic Bishops of Victoria, Mr Peter O'Callaghan QC, the Independent Commissioner for the Catholic Archdiocese of Melbourne, and the Salesians of Don Bosco on whether or not mandatory reporting should be extended to cover religious personnel. While the Salesians of Don Bosco supported extending mandatory reporting on the basis that many of their members were already included, for example, teachers (Salesians of Don Bosco submission, p. 1), there was opposition to the concept by the Catholic Bishops of Victoria. The Catholic Bishops opposed extending mandatory reporting to religious personnel on the grounds that:

- It would have an unintended consequence of discouraging offender disclosures;
- It would place an impossible obligation on priests to violate the confessional;
- It would further burden a system that is already struggling to cope with increased reports and ineffective or inefficient responses from statutory child protection services to reports would dissuade notifiers from reporting (Catholic Bishops of Victoria submission, pp. 3-5).

The submissions from the Catholic Church also stated that the majority of clergy sexual abuse cases within the Melbourne Archdiocese relate to abuse committed decades ago. They stated that in nearly all cases the subject of complaints took place before the Archdiocese implemented its current procedures and processes to provide internal safeguards for the reporting of abuse and so the cases of abuse dealt with by the Catholic Church were ostensibly reports about an adult rather than a child (Catholic Bishops of Victoria submission, p. 5; O'Callaghan submission no. 1 p. 10-11).

The Inquiry agrees that mandatory reporting should be contemporaneous with reports of suspected physical or sexual abuse of children and young people and not of historical events where the child is now an adult.

Extending the mandatory reporting duty in section 182 of the CYF Act in line with the South Australian legislation may promote the objectives of the mandatory reporting scheme by including ministers of religion and the employees or volunteers of such organisations who, as part of their organisational duties, have frequent contact with children and young people. The consideration is that as a result of their frequent contact they may be more likely to suspect signs of child abuse than other members of the community.

However, the Inquiry considers that extending the mandatory reporting duty in this way could inappropriately extend the reach of section 182 of the CYF Act. Section 182 currently applies to identified professional groups that have training in and would be expected to have frequent contact with children and young people. Not all ministers of religion will have frequent contact with young people. Extending mandatory reporting to all ministers of religion would extend the reporting categories beyond that initially contemplated by the CYP and CYF Acts.

It is accepted that there will be a number of people who are employees and volunteers of religious organisations who already, by virtue of their profession, belong to mandated groups including those yet to be gazetted, for example, teachers (who may also be ministers of religion). The key focus for any policy reform is to ensure that mandatory reporting facilitates the reporting of suspected abuse by people best able to recognise signs of suspected child abuse. The Inquiry does not advocate a general extension that could lead to a significant spike in reports with few resulting substantiations. This may be the likely result if a reporting duty similar to the South Australian legislation was introduced into the CYF Act.

Across Victoria, religious communities have a great diversity in:

- Religious faiths and practices;
- Professional expertise of ministers of religion; and
- Experience that ministers of religion may have with children and young people.

Given this diversity, the Inquiry is also concerned that even if the reporting duty were to be solely confined to ministers of religion, the imposition of such a duty would not achieve the desired objective of facilitating an effective systemic statewide practice of identifying and reporting suspected cases of child physical and sexual abuse by religious personnel.

The Inquiry is reluctant, without broader input from other faiths, to make a recommendation extending mandatory reporting to religious personnel. In that context, the Inquiry believes Recommendation 44 to fully implement the current mandated groups in section 182 of the CYF Act would be a more effective response than if the reporting duty were to be further extended to cover all religious personnel.

Finding 12 relates to the provisions in the CYF Act that require a mandated reporter who forms a reasonable belief that a child has suffered, or is likely to suffer, physical or sexual abuse and whose parents have not protected, or are unlikely to protect, the child from that harm, to report the matter to the Secretary of DHS. The Inquiry considered whether it was appropriate to institute a legal requirement under the mandatory reporting provisions of the CYF Act for religious personnel to report suspected child physical and sexual assault occurring in religious organisations. The Inquiry decided extending this provision under the CYF Act would not achieve the desired aim of ensuring an appropriate investigation of suspected child physical and sexual assault by religious personnel in religious organisations. The Inquiry considered the *Crimes Act 1958* is the appropriate legislative mechanism to achieve the aim ensuring an appropriate investigation of suspected child physical and sexual assault by religious personnel in religious organisations. Section 14.5 and recommendation 48 address this matter.

Finding 12

The Inquiry considers that in the absence of:

- research into: the diversity of religious faiths and practices; the number of ordained or appointed ministers; and expertise and capacity of ministers of religion to report suspected cases of child physical and sexual abuse; and
- input from all religious and spiritual faiths across Victoria,

any proposal to extend the mandatory reporting duty under the *Children, Youth and Families Act 2005* to ministers of religion may not achieve the desired aim of facilitating an effective systemic statewide practice of reporting accurate protective concerns to the Department of Human Services.

14.5 Protecting children from abuse within religious organisations

The community is all too aware of the numerous cases of child abuse that have occurred within religious organisations or associations and the severe trauma caused by sustained and unreported episodes of abuse inflicted by ministers of religion and other trusted religious leaders. Churches and religious organisations have traditionally included the provision of many child-related services and activities. Public commentary on past incidents of child abuse within such organisations and the perceived inadequacies with organisational responses is frequent and often damning.

Section 14.4.7 has dealt with the issue of whether the mandatory reporting requirements of the CYF Act should be extended to religious personnel. The two further matters that the Inquiry has considered in the specific context of whether the current legal framework adequately protects vulnerable children within or who are in contact with religious organisations are:

- The application of the WWC Act to religious personnel; and
- Whether reports alleging child abuse are dealt with internally by religious organisations as opposed to being reported to the secular authorities.

14.5.1 Application of the Working with Children Act 2005 to religious personnel

Chapter 3 sets out a brief summary of the WWC Act. The Act provides for a system of checks to prevent people who are not suitable from working with children. The check is necessary for roles that involve regular contact with children. The check, which also applies to voluntary positions, looks for certain criminal offences and findings by certain professional disciplinary bodies such as the Victorian Institute of Teaching. DOJ publishes relevant statistics on its website. The department issued 820,982 assessment notices, 824 negative notices, and 1074 interim negative notices under the Act from April 2006 to September 2011 (DOJ 2011).

It is an offence under sections 33 and 35 the Act to work or volunteer in a role that involves regular contact with children without first obtaining an assessment notice (that is, a clear Working with Children Check), or to employ such a person without a check. At the Morwell Public Sitting, the Inquiry heard a submission that alleged there was a failure by Victoria Police to prosecute breaches under sections 33 and 35 of the WWC Act and confusion as to which agency had the responsibility to investigate and enforce breaches of the WWC Act with respect to a particular religious organisation (Mr Unthank, Morwell Public Sitting).

It is not appropriate for the Inquiry to comment on specific organisations and their compliance with the Act. The Inquiry notes that the WWC Act was gradually implemented and has only been fully operational since 1 July 2011. As noted in Chapter 3, the WWC Act extends to work done in connection with various services, bodies and activities including religious organisations. The Inquiry has heard on this point from the Catholic Church that in relation to that organisation, there is a blanket policy that all religious personnel and persons over the age of 18 associated with parish or school work require a check under the WWC Act (Catholic Bishops of Victoria submission, p. 5).

A review of the WWC Act was conducted in 2009, and a number of amendments were made to the Act in 2010 to improve the operation of the Act. The Inquiry makes no comment on the specific matter raised in the Public Sitting. The Inquiry considers that it is too soon within the full implementation of the Act to provide any meaningful comment on the level of compliance by religious organisations with the Act and on the investigation and enforcement processes in relation to possible offences committed under sections 33 and 35 of the Act.

The Act is an important element of the legal framework in place to protect vulnerable children. It is appropriate for there to be not only an effective response to any complaints of potential offences committed under the Act, which is the responsibility of Victoria Police, but also for there to be proactive administration of the Act by DOJ. In that regard, any future review of the operation of the Act would benefit with the recording and reporting of data in relation to investigations and prosecutions under the Act as well as the number of active audits undertaken by DOJ of religious and other organisations that involve working with children, on their level of compliance with the requirements of the Act.

As noted above, DOJ records data relating to the application and issue of Working With Children Checks and publishes these on its website. The recording and reporting of data on the number of investigations and prosecutions for breaches of the WWC Act is not recorded.

Finding 13

The *Working with Children Act 2005* clearly applies to persons in religious organisations who work or volunteer with children and young people. The collection and publication of data on the number of investigations and prosecutions for breaches of the *Working with Children Act 2005* could be a valuable indicator of the effectiveness of this Act as part of the legal framework protecting vulnerable children.

14.5.2 Internal processes, practices or doctrines that operate to preclude or discourage reporting of criminal abuse to authorities

A submission was made to the Inquiry that religious organisations and communities directly and indirectly pressure victims not to disclose abuse to the police (Ms Last, Melbourne Victims' Collective, Melbourne Public Sitting). The Inquiry did not investigate whether there are systemic practices in religious organisations in Victoria that operate to preclude or discourage the reporting of suspected child abuse to State authorities. With the exception of the Catholic Church, the Inquiry did not receive submissions from religious bodies, or from secular, volunteer or community organisations. The Inquiry did not specifically invite such submissions.

The Inquiry has considered more general research conducted by the Australian Institute of Family Studies (AIFS) into child abuse within large organisations (including out-of-home care). That research looked to identify factors that may contribute to children's vulnerability to abuse within large organisations, and strategies that could increase child safety within organisations (Beyer et al. 2005; Irenyi et al. 2006).

The research found that pre-employment screening for criminal histories for perpetrator risk factors such as substance abuse and violence, and clearly stated and enforced policies around bullying, violence and substance use in the workplace, can contribute to a safer organisational environment for children (Irenyi et al. 2006, p. 9). Similarly, a good organisational approach to risk management of child abuse would incorporate an understanding of:

- Patterns of child abuse perpetrator behaviour so that they may be identified;
- How theological beliefs and church structures that engender and maintain patriarchal views can operate to undermine the ability of a victim to speak up, and to expect that appropriate criminal action can take place;
- How the 'reverencing of church leaders' can lead to a reluctance of victims to speak up; and
- The role of civil authorities in prosecuting abuse (Irenyi et al. 2006, pp. 11, 15).

In relation to the handling of complaints of sexual abuse by churches, the AIFS study notes that, whatever the mandatory reporting obligations of religious personnel, religious organisations have a responsibility to encourage victims to report criminal behaviour to the police. This sends a clear message to a victim that she or he is not responsible for the activity and will be supported by the religious organisation, and removes the need for the religious organisation to act as investigator of the allegations, a role that is properly reserved for the police (Irenyi et al. 2006, p. 14).

The Catholic Archdiocese of Melbourne submitted that victims of abuse are encouraged to report their complaints to police, and that the church has implemented a number of initiatives to respond to allegations, such as the 'Melbourne Response' and the 'Integrity in Ministry' code of conduct (Catholic Archdiocese of Melbourne submission, pp. 3-4).

The Inquiry did not consider whether similar practices, policies or protocols operate in other religious denominations or faiths in Victoria. Accordingly, the Inquiry is unable to make any finding on whether there are current practices across religious organisations in Victoria that operate to divert claims of abuse from State authorities. This is a significant task that is beyond the capacity of this Inquiry to investigate within its reporting timeframe.

The Independent Commissioner appointed in 1996 by the Catholic Archbishop of Melbourne to inquire into and report on allegations of sexual abuse by priests, religious and laypersons within the Archdiocese, Mr O'Callaghan QC, in a submission to the Inquiry set out the terms of his appointment. They include that immediately upon a complaint of sexual or other abuse which may constitute criminal conduct, the Commissioner shall inform the complainant that he or she has an unfettered and continuing right to make that complaint to the police, and the Commissioner shall appropriately encourage the exercise of that right. Mr O'Callaghan informed the Inquiry that this is what he does and has done, without exception. A further term of appointment is that, except where the complainant expressly states that the complainant will divulge the relevant facts only upon the Commissioner giving his assurance not to disclose that evidence, the Commissioner himself may report the conduct which may constitute sexual abuse to the police (O'Callaghan QC submission no. 2, part 2).

The Inquiry, in accordance with its Terms of Reference, did not review individual organisations nor does it make recommendations in relation to them.

A number of significant issues relevant to the Inquiry's Terms of Reference, that is, systemic matters relating to protecting vulnerable children, arise from the Inquiry's consideration of this matter. First, whether or not private processes are conducted faithfully according to their own criteria, and the Inquiry makes no finding adverse to the Melbourne Response in this respect nor can it do so, the fundamental issue is that the processing of crimes against children should be the subject of state process. The Melbourne Response is a private initiative. Its processes and procedures are not public. Second, if children come before it, there is no public scrutiny of its processes including whether the scrupulous care exercised by the criminal courts to ensure victims are not confronted personally by their abusers in the hearing, is or is not followed. Third, there is no public knowledge whether the consent given by children to the process is informed consent as contemplated by the law.

Further, the Melbourne Response has processed a large number of matters. Mr O'Callaghan has publicly stated that he has found more than 300 cases of clerical sexual abuse established. It is not established how many of that substantial number concerned children and how many cases Mr O'Callaghan has reported to police. These are important questions for this Inquiry and are discussed in section 14.5.3.

The Inquiry notes that there is no longer a general common law duty to report crime to the police. Section 326 of the *Crimes Act 1958* only creates an offence where a person, knowing of the commission of a serious indictable offence and has information that might procure a prosecution or conviction, accepts any benefit for not disclosing that information. Mr O'Callaghan submitted to the Inquiry that the imposition of an obligation to refer a crime to the police would therefore be a 'draconian' measure and that:

- It is the victim's right to complain to the police and to have a say as to whether or not a complaint should be made;
- Many of the cases are in relation to past or historical incidents of abuse where the complainant is now an adult; and
- The sanctity of the confessional in a religious context and its current recognition under the law must be respected (O'Callaghan QC submission no. 2, part 1).

The Inquiry considers that, in the long term, the potential discomfort or distress to an individual victim caused by the mandatory reporting of the alleged abuse will be outweighed by the public interest in triggering a criminal justice response that holds the perpetrator publicly responsible and aims at deterring potential abusers from using the cover of large organisations and positions of authority or influence over children to commit abuse. The public criminal process would also have a significant public educative effect. However, the Inquiry is mindful of the right of an adult who was previously abused as a child to be able to choose whether or not they wish to lodge a complaint of criminal abuse. Accordingly, the Inquiry proposes the following reform.

A new statutory duty to report suspected acts of physical and sexual abuse of children and young people who are under the age of 18 by ministers of religion or members of religious and spiritual organisations should be created. The suspicion should be formed on reasonable grounds. The report should be directed to the police. The reporting provision should be crafted so that the duty operates prospectively. That is, the requirement to report should only cover reasonably suspected instances of physical and sexual abuse of a person who is under the age of 18 at the time a minister of religion or member of a religious or spiritual organisation forms the suspicion of such abuse.

Further, a statutory exemption to the reporting duty should be provided in relation to information received during a religious confession. In Victoria, information revealed during religious confessions is considered privileged when admitting evidence before courts. Section 127 of the *Evidence Act 2008* states:

> (1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.
>
> (2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.

Accordingly, the treatment of such information should be consistent with the current treatment of information made to a minister of religion in the course of a religious confession under the *Evidence Act 2008*.

The Inquiry considers that the Victorian Government should also impose an appropriate penalty for a failure to report suspected abuse. Consideration should be given to section 326 of the *Crimes Act 1958* and section 493 of the CYF Act (being a maximum of 12 months imprisonment) and/or a suitable fine. Consistently with its view that criminal acts should be recognised as such, the Inquiry considers the *Crimes Act 1958* the appropriate legislation for this reporting duty.

Recommendation 47

The *Crimes Act 1958* (Vic) should be amended to create a separate reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation. The duty should extend to:

- A minister of religion; and
- A person who holds an office within, is employed by, is a member of, or a volunteer of a religious or spiritual organisation that provides services to, or has regular contact with, children and young people.

An exemption for information received during the rite of confession should be made.

A failure to report should attract a suitable penalty having regard to section 326 of the *Crimes Act 1958* and section 493 of the *Children, Youth and Families Act 2005*.

14.5.3 Investigation into criminal abuse of children in Victoria by religious personnel

Finally, the Inquiry considered the matter of a need for a formal investigation into criminal abuse of children by religious personnel. There has been considerable media attention given to this question in Victoria, principally but not exclusively in relation to the Catholic Church. Such an investigation itself is beyond the scope of this Inquiry, and, in any event, to be effective would need the power to compel the elicitation of witness evidence and of documentary and electronic evidence, powers this Inquiry does not possess. However, the Inquiry has considered how the current processes within some religious organisations operate to conceal, intentionally or otherwise, criminal acts of child physical and sexual assault.

The Inquiry considers that a formal investigation into the current processes by which religious organisations in Victoria respond to criminal abuse of children by religious personnel is justified and is in the public interest for the following reasons. The investigation and prosecution of crimes is properly a matter for the State. Any private system of investigation and compensation which has the tendency, whether intended or unintended, to divert victims from recourse to the State, and to prevent abusers from being held responsible and punished by the State, is a system that should come under clear public scrutiny and consideration. In particular the private processing of matters involving children should come under clear public scrutiny. A private system of investigation and compensation, no matter how faithfully conducted, by definition cannot fulfil the responsibility of the State to investigate and prosecute crime. Crime is a public, not a private, matter. The substantial number of established complaints of clerical sexual abuse found by Mr O'Callaghan (many of which are likely to relate to offences committed against children), reveal a profound harm and any private process that attempts to address that harm that should be publicly assessed.

Further, the Inquiry considers that the often advanced argument that such a formal investigation would be merely 'historical' and would bring distress to adults who years ago were victims, is not persuasive. There is a strong public interest in the ascertainment of whether past abuses have been institutionally hidden, whether religious organisations have been active or complicit in that suppression, and in revealing what processes and procedures were employed. This is not a mere historical artefact. It can, and should, lead to present remedy of any deficiencies in the processes of investigation and to future prevention. Further, people who once were abused would be accorded proper acknowledgement and respect by being able to discuss and disclose their concerns about any deficient private processes. The Inquiry considers that is a most significant rehabilitative matter. Finally, it should not be forgotten that although the abuse may have occurred in years long past, the suffering of victims continues to this day, often most grievously. Such a formal investigation into the processes followed in this regard by religious organisations should not be confined to the Catholic Church. The Inquiry's consideration of relevant matters arising from the Melbourne Repose was occasioned by a submission made in relation to the Melbourne Response. However, the issues stated above are of general application, and of general public concern.

The Inquiry has confined itself to matters of principle as stated above. Such an investigation into the processes followed by religious organisations should possess the power to compel elicitation of witness evidence and of documentary and electronic evidence, powers this Inquiry did not possess.

Recommendation 48

A formal investigation should be conducted into the processes by which religious organisations respond to the criminal abuse of children by religious personnel within their organisations. Such an investigation should possess the powers to compel the elicitation of witness evidence and of documentary and electronic evidence.

14.6 Interaction of the Commonwealth family law system, child protection and family violence laws

14.6.1 Families in conflict: separation, divorce and family violence

Children are particularly vulnerable when parents are undergoing a separation or divorce. In some instances separation can engender violence, or threats or insulting behaviour between parties, although it is understood views differ about when such behaviour constitutes 'violence' (Parkinson et al. 2011, pp. 1-32). In addition, surveys of children indicate that witnessing separation or post-separation arguments leaves children frightened and vulnerable and where violence is present, they need more protection and support from sources outside their parents (Bagshaw et al. 2011, pp. 58-59). Chapter 3 provided a brief outline of the various Acts that play a role in this area including the Commonwealth *Family Law Act 1975*, the *Victorian Family Violence Protection Act 2008* and the CYF Act.

The interaction of the Commonwealth family law system, the Victorian statutory child protection system and Victoria's family violence laws raises particular complexity for vulnerable children and families. When a child (or an adult) suffers from, or is exposed to family violence the first priority is to ensure their safety and the second priority is to ensure that the secondary and tertiary systems equipped to support victims and prevent further recurrences are in place and are well coordinated.

The law and its legal institutions must be as simple and as accessible as possible to children and young people. Furthermore, the legal framework should set rules relating to the role of the State when the State must assume the role of a child or young person's parent, and should create and organise sub-systems for identifying and addressing situations where those parental obligations have not been met, and enable the various sub-systems to work as cohesively as possible.

It is acknowledged that these aims are not readily achieved when laws are organised in a federal framework of Commonwealth and state laws and the complex social problems faced by vulnerable families transcend those jurisdictional boundaries. However, the problems raised by the current interaction of family law, child protection and family violence laws are illustrated by a case study raised with the Inquiry by Domestic Violence Victoria (see box).

If this case example were expanded to encompass the scenario where the parents were also in the middle of divorce proceedings and seeking parental access and custody orders in the Family Court, there would be potentially four decision makers with respect to that one family. The central concern is that the child or young person's best interests, particularly their safety and wellbeing, are at the forefront of the decision making process of each institution, agency and service that play a role in the family law system and in promoting family safety.

A family violence case study

A mother and father both raised allegations of family violence against each other.

The father applied for interim intervention order against the mother in a regional sitting of the Children's Court, with the children listed on the order.

The mother applied for and was granted an interim intervention order against the father in a Magistrates' Court in Melbourne, with the children listed on the order.

DHS filed a separate protection application in relation to the children in the Melbourne Children's Court.

All the matters were scheduled to be heard separately, in separate courts within four days. Without the intervention of the family violence service who coordinated the adjournment of the two intervention orders to the Melbourne Children's Court for all matters to be considered by one magistrate, all courts would have ruled independently and quite possibly with contradictory rulings (Domestic Violence Victoria submission, p. 18).

14.6.2 Key themes and current responses

There are two key themes that arise from the interaction of the family violence, child protection and family laws and systems:

- The administration and, where relevant, the enforcement of the various laws by relevant statutory agencies, family support services and the courts are currently not as effectively coordinated (particularly in communication, referrals and resource sharing) as they could be; and
- The laws (and the policy underlining the laws) intended to protect vulnerable family members in each case, principally the Family Violence Protection Act, the CYF Act and the Commonwealth Family Law Act are not operating seamlessly to meet the needs of vulnerable children.

Law enforcement and service responses

The Inquiry heard that the statutory child protection system does not recognise the significant risks experienced by children in the context of separation and divorce and the intersection of family violence across family law and child protection jurisdictions. Submissions argued that this has resulted in a lack of direction and training to promote responsiveness of Child Protection teams and workers (Family Life, p. 22). Concerns were expressed about the tendency for various services to operate in silos and not engage if they believe a matter is being dealt with by another jurisdiction. An example of this is the lack of sharing of facilities or resources (such as a child contact centre or family relationship centre) between the Commonwealth family law system and State child protection and family violence support services (Mr Rumbold, Upper Murray Family Care, Wodonga Public Sitting; Mallee Family Care submission, p. 22).

Measures suggested to address these issues were co-located agencies and services in the family violence and child protection context (Inquiry meeting with Domestic Violence Victoria; Ms Bunston, RCH, Ballarat Public Sitting), and the development and implementation of common risk assessment protocols and resources to enhance communication and planning for victims of family violence across schools, family violence services, family support services, health services and law enforcement services (Inquiry meeting with Darebin Family Violence Response Unit, Victoria Police; Inquiry meeting with Domestic Violence Resource Centre Victoria; Ms Maggs & Ms Trainor, Centre for Non Violence, Bendigo Public Sitting; Ms Howard, Peninsula Health, Melbourne Public Sitting; Ms Hendron, Grampians Community Health, Horsham Public Sitting).

The Inquiry, however, notes and supports the important work that has been started by Victoria Police in promoting a targeted and specialist response to victims of family violence under its *Strategy to Reduce Violence Against Women and Children 2009–2014*. The Inquiry met with members of the Victoria Police Violence Against Women Strategy Group and Darebin Family Violence Response Unit. The Inquiry considers that dedicated police family violence response units provide a greater opportunity for: more specialist and sensitive responses to incidents of family violence by police; better coordinated responses between police, DHS, family violence and other support services; and the ability for police to take a more direct role in the life of vulnerable families experiencing family violence. The expansion of family violence response services to vulnerable sections of the Victorian community can ultimately only serve to improve the safety of vulnerable children.

Matter for attention 11

The Inquiry notes the substantial benefits that have arisen for vulnerable children and families that are exposed to family violence through the use of specialist Victoria Police Family Violence Response Units. This model warrants further consideration by government as a way of more effectively reducing the harm to children exposed to family violence.

Law reform review

The 2010 report by the ALRC and the NSWLRC conducted a comprehensive review into the interaction of family laws, family violence laws and state child protection laws. The Inquiry does not propose to revisit the detailed discussion and analysis in that report. However, Part E of the Commissions' Report set out a number of key recommendations relevant to the child protection system (ALRC & NSWLRC 2010, pp. 31-33).

One of the recommendations in the Commissions' Report was that federal, state and territory governments should ensure the immediate and regular review of protocols between family courts, children's courts and child protection agencies for the exchange of information to avoid duplication in the hearing of cases, and that a decision is made as early as possible about the appropriate court (ALRC & NSWLRC 2010, recommendation 19-5). The Inquiry endorses this recommendation.

In July 2011 the Standing Council on Law and Justice, formerly the Standing Committee of Attorneys-General, agreed to develop a national response to the Commissions' Report on family violence. The Inquiry was informed that, at the time of this report, a ministerial working group has been convened to develop that response.

Orders allocating parental responsibility

The Inquiry notes that the VLRC has also commented on the intersection between child protection laws, family law and family violence laws. In particular the VLRC proposed two reforms. The first is that the range of protective orders under the CYF Act be expanded to enable the Court, where it finds that a child is in need of protection, also to make an order granting the guardianship or custody of a child to one parent where in the best interests of a child. This proposal is based on a similar 'Order allocating parental responsibility' available under section 79 of the New South Wales *Children and Young Person's (Care and Protection) Act 1998*. The rationale for this proposal, as put forward by the Family Law Council in 2002, was to allow the child to remain with family as far as possible and to strengthen the one-court approach to both family law and child protection matters and mitigate against the need for children to move in between courts (VLRC 2010, pp. 349-350). The Children's Court has indicated its support for the proposed reform and that it should be expanded to include third parties (Children's Court submission no. 1, p. 51).

The Inquiry notes that orders of the Family Court go to the longer term interests of the child. By contrast, orders of the Children's Court are frequently relatively short term. The Inquiry does not consider that the jurisdiction for making parenting orders is comparable with the jurisdiction of the Children's Court.

The VLRC also proposed that section 146 of the Family Violence Protection Act should be extended to permit the Court to exercise jurisdiction under that Act when a child who is the subject of a child protection application is a child of 'the affected family member' or 'the protected person' (VLRC 2010, p. 352, recommendation 2.24). This would occur in circumstances where the application for the family violence protection order for an affected adult family member did not list any children on the application but the court is concerned that children might also be affected by the family violence. Under this proposal, the Children's Court may on its own motion include the children on the family violence protection order. The Children's Court has indicated its support for this recommendation (Children's Court submission no. 1, p. 51). The Inquiry supports the VLRC's proposal.

Recommendation 49

Section 146 of the *Family Violence Protection Act 2008* should be extended to permit the Children's Court to exercise jurisdiction under that Act when a child who is the subject of a child protection application is a child of 'the affected family member' or 'the protected person'.

14.7 The Victorian Government's proposed 'failure to protect' laws

14.7.1 Victorian Government policy

On 23 November 2010 the Victorian Government announced as part of its pre-election commitments that it would be legislating to effectively mandate adults who are caregivers or are living in the same household as a child who is abused to either intervene to protect the child, remove the child from the abusive environment or report the abuse to the relevant authorities or face substantive penalties to be determined (Clark 2010).

The Victorian Government conducted a consultation process on the proposal reflected in a paper *Discussion Paper – 'Failure to Protect Laws'* (DOJ Discussion Paper) released by DOJ and a consultation conference with interested stakeholders. The proposal, in summary, will create two offences for adults who failed to take action in the following circumstances:

- Where the adult knows or believes that a child who they have custody or care of, or live in the same household as, is suffering sexual abuse or abuse that may result in serious injury or death; and
- Where the child living in the same household as the adult dies due to child abuse and that adult was aware of the abuse and its seriousness (DOJ 2011, p.1).

According to DOJ, the proposed offence would serve two purposes. First, to reinforce the responsibility of adults who are living with or care for a child to protect that child from harm. Second, in circumstances where it was not clear which parent was responsible for the abuse, the laws would allow the conviction of either or both parents under the proposed failure to protect laws (DOJ 2011b, p.1).

14.7.2 'Failure to protect' in the context of family violence

The Inquiry has concerns about the proposal. Children who are abused are often also exposed to family violence. Non-abusive parents may themselves be the victims of family violence, and may be unable to be act protectively towards their children. There is no recent data on the co-occurrence of child protection substantiations and family violence incidents. However, a number of submissions to DOJ during its consultation process suggested family violence is a factor in over half of substantiated child protection cases in Victoria (Women's Health Association of Victoria 2011, p. 3; Women's Legal Service Victoria (WLSV) et al. 2011, p. 9). This is based on data contained in *An Integrated Strategy for Child Protection and Placement Services* published by DHS in 2002.

As noted by the Victorian Equal Opportunity and Human Rights Commission, the proposed laws may be inconsistent with recent reforms concerning family violence (Victorian Equal Opportunity and Human Rights Commission (VEOHRC) 2011, p. 7). In particular, reforms addressing offender accountability may be waylaid by placing responsibility for abusive behaviour on a non-abusive parent. The Inquiry is also concerned that efforts in recent years to acknowledge that, for victims, putting an end to family violence is not as simple as 'walking away' could be undermined by laws that criminalise non-protective behaviour by vulnerable parents.

The Inquiry also notes that section 493 of the CYF Act already provides that it is an offence for a person who has a duty of care in respect of a child to intentionally fail to take action that does, or is likely to, result in harm to the child. Victoria Police advised the Inquiry that, between 1 July 2000 and 30 June 2010, there were 15 recorded alleged offences in relation to section 493 of the CYF Act and its predecessor under section 216 of the CYP Act.

It is important that the government consider, before introducing legislation, the reasons why section 493 of the CYF Act has rarely been enforced. A potential reason for the lack of prosecutions under section 493 of the CYF Act is that it includes an element of intention, so that a person is only charged with failing to protect a child if they have intentionally failed to take action to prevent the abuse. Intention can be difficult to prove, particularly in the context of child abuse and family violence. However, if intention is not an element of the offence, there is a risk that individuals who are themselves the victims of abuse or violence will be unfairly penalised. This is more so in vulnerable families where other factors may also contribute to the victim's circumstances such as mental health concerns, own life or childhood trauma, or drug and alcohol addiction. A general failure to protect offence, without an element of intention but with a significant jail sentence attached would, in the Inquiry's view, be disproportionate to the stated aims of the legislation.

'Failure to protect' regimes currently exist in jurisdictions such as the United Kingdom (UK), South Australia and New Zealand. The offences in these jurisdictions do not require intention on the part of the person who failed to take protective action. The failure to protect laws in other jurisdictions are summarised at Appendix 13.

One of the policy aims of the proposal is to overcome non-cooperation by the parents or primary caregivers or the provision of conflicting accounts to police. It was brought to the Inquiry's attention that a recent evaluation of the UK scheme found 'there is very little evidence of the new powers being used to frustrate collusive attempts to escape justice, and much more evidence of its application in circumstances where responsibility for homicide itself is not at issue' (Drakeford & Butler 2010, p. 1,430; Humphreys submission (a), pp. 18-19).

Another concern is that the introduction of these offences might have a dampening effect on help-seeking behaviour and the reporting of abuse. For instance, the reporting or referrals to child protection services in both the UK (in 2004-05) and in South Australia (2005-06) appear to have declined following the introduction of these offences in the two jurisdictions (VEOHRC 2011, pp. 3-4; WLSV et al. 2011, pp. 6-8). The Inquiry is unable to comment on whether the introduction of the offences in those jurisdictions was the sole cause for a decline in reporting in the relevant years.

The Inquiry notes that submissions to DOJ suggested that should the Victorian Government wish to proceed with the creation of this new offence, some form of legal recognition be provided to members of the household affected by family violence. Some recommended that this be done through the creation of a defence or special evidentiary grounds where the accused is a victim of family violence (Centre for Excellence in Child and Family Welfare 2011b, p. 8; Victoria Legal Aid 2011, p. 9; WLSV et al. 2011, p. 21) while other submissions to DOJ recommended that the prosecution be required to establish beyond reasonable doubt that the person accused of failing to protect was not under any duress to stay silent (Children's Protection Society 2011, p. 6; WLSV et al. 2011, p. 21). The Inquiry considers that, given the grave implications such an offence would have for victims of family violence, who are not intentionally complicit in the commission of the abuse, the prosecution should be required to prove as an element of the offence, and beyond reasonable doubt, the accused was not the subject of, or exposed to, relevant family violence.

The Inquiry also considers that careful consideration should be given to the flow-on effects for children or young people if one, or both, parents or caregivers are imprisoned as a result of one being prosecuted for perpetrating the abuse and the other for failing to protect the child.

Matter for attention 12

In considering whether a new 'failure to protect' law should be enacted, it is necessary that the current operation of section 493 of the *Children, Youth and Families Act 2005* be reviewed and consideration given to whether this section is sufficient to meet the policy objectives that the proposed new offence is being designed to address.

If a new 'failure to protect' law is enacted, it should provide that the prosecution is required to prove, as an element of the offence and beyond reasonable doubt, that the accused was not the subject of, or exposed to, relevant family violence.

14.8 Serious sex offenders and vulnerable children

14.8.1 Sex offenders, supervision and suppression orders

The *Serious Sex Offenders Monitoring Act 2005* (2005 Act) was introduced to address concerns that serious sex offenders were being released after the completion of their sentences and that the public was being exposed to a risk that sex offenders would reoffend. The 2005 Act built on the *Sex Offender Registration Act 2004* (SOR Act) to allow the State to closely monitor and regulate the living arrangements and behaviour of offenders after they had finished their sentences and were returned to the community. The 2005 Act was justified on the basis that sex offending, particularly that which involves child victims, is difficult to uncover and to prosecute, and has devastating and life-long consequences (Parliament of Victoria, Legislative Assembly 2005c, p. 9).

14.8.2 The supervision of serious sex offenders

The *Serious Sex Offenders (Detention and Supervision) Act 2009* (SSO Act) repealed the 2005 Act and provided for a new scheme of supervision and indefinite detention. Existing orders under the 2005 Act were maintained under the SSO Act. Some differences between the 2005 Act and the SSO Act are that the SSO Act applies to both child and adult sex offenders, and that proceedings under the SSO Act are civil in nature, rather than criminal as under the 2005 Act (section 79 SSO Act and section 26 of the 2005 Act).

Although all child sex offenders are eligible for an order under the SSO Act, not all child sex offenders will be subject to the Act. It will depend on whether the offender is thought to pose an 'unacceptable risk of offending'. The Adult Parole Board, established by the *Corrections Act 1986*, conducts a risk assessment of offenders before their release. The board then makes a recommendation to the Secretary of DOJ as to whether the offender poses an unacceptable risk of reoffending and whether an application should therefore be made for supervision or detention. Even where an offender is returned to the community, a condition of this may be that the offender is housed in a unit supervised by Corrections Victoria. Regardless of whether an order is made, child sex offenders will be registered under the SOR Act.

The purposes of the SSO Act 2009 are set out in section 1 of the Act. That section provides that the 'main purpose' of the Act is to enhance the protection of the community, and 'the secondary purpose' of the Act is to facilitate the treatment and rehabilitation of offenders.

14.8.3 Suppression orders

Suppression orders under supervision and detention laws

Part 13 Division 1 (ss. 182-186) of the SSO Act, entitled 'Suppression of publication', makes provision in relation to suppression orders. Section 182 provides that a person must not publish or cause to be published:

(a) any evidence given in a proceeding before a court under this Act; or

(b) the content of any report or other document put before the court in the proceeding; or

(c) any information that is submitted to the court that might enable a person (other than the offender) who has attended or given evidence in the proceeding to be identified; or

(d) any information that might enable a victim of a relevant offence committed by the offender to be identified

unless the court authorises publication under section 183. Section 183 provides that the court, if satisfied that exceptional circumstances exist, may make an order authorising publication. Section 184(1) provides that:

> In any proceedings before a court under this Act, the court, if satisfied that it is in the public interest to do so, may order that any information that might enable an offender or his or her whereabouts to be identified must not be published except in the manner and to the extent (if any) specified in the order.

Section 184(2) provides that an order 'may be made on the application of the offender or on the court's own initiative'. Notably, and in contrast to section 42(2) of the 2005 Act, the Secretary of DOJ has no locus to apply for a suppression order. Section 185 provides that, in deciding whether or not to grant a suppression order, the court must have regard to:

(a) whether the publication would endanger the safety of any person;

(b) the interests of any victims of the offender;

(c) whether the publication would enhance or compromise the purposes of this Act.

Section 186 provides monetary and custodial penalties for breach of a court order under the Division.

No submissions to the Inquiry were made on the justification for and prevalence of suppression orders issued under supervision and detention laws. Nevertheless, the Inquiry has considered this matter as an element of the overall system for protecting vulnerable children.

The constitutional validity of suppression orders for offenders under section 42 of the 2005 Act was recently authoritatively determined in *Hogan v. Hinch* (2010) 275 ALR 408 (Hogan v. Hinch). That provision was substantially similar, but not identical, to the provision in the SSO Act. The case arose from charges laid against radio broadcaster Derryn Hinch relating to breaches of suppression orders made under section 42 of the 2005 Act for publishing information that could identify supervised sex offenders. Mr Hinch challenged the provisions of the 2005 Act on the grounds that the suppression orders were contrary to the principles of open justice and of freedom of political communication implied in the Constitution. The issues were removed to the High Court pursuant to section 40(1) of the *Judiciary Act 1903* (Cwlth). The High Court found that section 42 of the 2005 Act was not constitutionally invalid.

The Court found that, although the 2005 Act limited the principle of open justice and the implied constitutional principle of freedom of political communication, these principles are not absolute. The limits the Act placed on the principles were reasonable, and open to Parliament

In his judgment Chief Justice French noted that the power to issue suppression orders in relation to supervision matters is particular to an order under that Act. Details of the original offence proceedings are not suppressed, unless by publishing the information it would reasonably lead to the identification of the person as prohibited by the order. His Honour also noted that the orders are reviewable. In a joint judgment, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ. found that section 42 did not impermissibly breach the principles of open courts or of freedom of political communication. Their Honours in particular accepted the submission of the Queensland Attorney-General that the regime established under the Act might be frustrated by the identification of the offender (at [75]).

The Inquiry has considered whether as a matter of policy, the retention of the current discretionary power of a court to issue a suppression order in section 184 of the SSO Act is in the best interests of vulnerable children and young people, and whether it reflects an appropriate balance between the principle of open justice and the need to preserve judicial discretion. Prior to addressing this issue it is appropriate to consider current practice by courts on the issuing of suppression orders under the SSO Act.

The data on suppression orders under the *Serious Sex Offenders (Detention and Supervision) Act 2009*

Contemporary media reports suggest that courts are increasingly issuing suppression orders in relation to sex offences. The question arising is whether the scheme has an indirect effect of shielding the identification of some sex offenders in a way that does not shield other types of offenders. An examination of the number of applications to orders suggests that suppression orders are not made by the courts as a matter of course.

The Supreme Court has data relating to suppressions orders generally issued by that court. However, the Inquiry was unable to determine how many orders were issued under the 2005 Act. The County Court began reporting on suppression orders from commencement of the SSO Act on 1 January 2010. The County Court informed the Inquiry that, in 2010, there were 28 applications for suppression orders in relation to proceedings under that Act, and 25 of those applications were granted. From 1 January to 11 October 2011 there were 75 applications for suppression orders and 17 of these were granted.

It is clear that, although the number of suppression order applications has almost trebled since 2010, the number of suppression orders actually issued has not. The Inquiry is of the view that it is too early in the history of section 184 of the SSO Act to make a finding on whether the issue of suppression orders in relation to sex offenders is increasing. If, contrary to the Inquiry's majority recommendation below, sections 182-186 SSO Act are not repealed, the Inquiry considers the number of suppression orders issued in relation to the SSO Act should continue to be monitored.

Suppression orders more generally

Suppression orders are available under sections 18 and 19 of the *Supreme Court Act 1986* and sections 80 and 80AA of the *County Court Act 1958* and the common law. Under these sections, a suppression order is available in criminal and civil proceedings if, in the Court's opinion, it is necessary to do so in order not to:

(a) endanger the national or international security of Australia; or

(b) prejudice the administration of justice; or

(c) endanger the physical safety of any person; or

(d) offend public decency or morality; or

(e) cause undue distress or embarrassment to the complainant in a proceeding that relates, wholly or partly, to a charge for a sexual offence within the meaning of the Criminal Procedure Act 2009; or

(f) cause undue distress or embarrassment to a witness under examination in a proceeding that relates, wholly or partly, to a charge for a sexual offence.

In contrast to the above sections, which lay down the test of necessity, the test in section 184 of the SSO Act is a test of 'public interest'. That is a wide and malleable test. It is not restricted to specific events or considerations, as in the Inquiry's majority view it should be. A provision impinging upon open justice should be limited to specific events and considerations, not cloaked in generality.

Reforms to suppression orders proposed by the Standing Council of Law and Justice

The Inquiry notes that, in May 2010, the then Standing Committee of Attorneys General (SCAG) endorsed the Draft SCAG Model Bill for Court and Suppression and Non-publication Orders Bill 2010 (SCAG Model Bill), which are a set of model provisions in relation to the issuing of suppression orders.

Under the SCAG Model Bill, the court must take into account 'that a primary objective of the administration of justice is to safeguard the public interest in open justice' (clause 6 of the SCAG Model Bill). The provisions also set out a number of grounds on which a suppression or non-publication order may be made, including that 'the order is necessary to protect the safety of any person' and that it is 'otherwise necessary in the public interest for the order to be made and that the public interest significantly outweighs the public interest in open justice' (clauses 8(1)(c),(e) of the SCAG Model Bill).

DOJ advised the Inquiry that reform on suppression orders is proceeding but that the reform is in the early stages of development, and it is not yet possible to say how closely the reforms will mirror the form of the model legislation.

Relevant considerations

There are a number of considerations supporting the existence of the power to make suppression orders provided by Part 13 Division 1 (ss. 182-186) of the SSO Act. First, the offender has concluded the sentence and yet is subject to ongoing restrictions including of residence, and the burden of publicity is a further and oppressive factor upon persons who have served their sentences, sometimes extremely so. Second, rehabilitation is always important and publicity, particularly as to residence, can impede orderly rehabilitation. Third, publicity can impede arrangements for rehabilitation made by the Adult Parole Board and impose administrative burdens, sometimes substantial, upon an already overstretched administrative system, a system that rightly is designed to treat offenders fairly and enhance rehabilitation. However, to this important matter, in contrast with the 2005 Act the SSO Act gives no locus to DOJ to apply for a suppression order prohibiting publication of an offender's identity or whereabouts (section 184(2)). Finally, the spectre of vigilantism is anathema to a decent society and should be prevented, not enabled.

On the other hand, there are powerful considerations militating against the existence of sections 182-186. First, there is a fundamental value in open courts. Courts being open 'keep the judge, while trying, under trial' to use the famous words of Jeremy Bentham (Bentham 1843). It keeps the administration of justice under public scrutiny. It keeps the administration of government under public scrutiny. These are deep-seated modern democratic values, and they should be affirmed and maintained. Suppression orders undermine, rather than enhance, public confidence in the courts. Second, parents and families have a right to know if a serious sex offender is residing among them. Third, the community has a right to be informed about the functioning of the system in relation to serious sex offenders. Fourth, as a group, paedophiles who are serious sex offenders are the most recidivist of all major categories of offenders. Fifth, the methodology of the paedophile is secrecy and the law should not itself provide a veil of secrecy to paedophiles. Finally, the risk of vigilantism can be guarded against by specific provision, such as section 85L of the Community Protection (Offender Reporting) Amendment Bill (No. 2) 2011 of Western Australia, that proscribes conduct intended or likely to create animosity towards or harassment of an identified offender.

In a majority decision, the Inquiry, having weighed the competing considerations set out above, has reached the conclusion that Part 13 Division 1 of the SSO Act (being sections 182-186) cannot be supported as policy and should be repealed. Repeal would enhance the protection of vulnerable children and would affirm the principle of open courts.

The Inquiry is conscious that courts, from the High Court to the Magistrates' Court, have applied the predecessor to sections 182-186 (section 42 of the 2005 Act (Vic)) that involved different procedures most of which differences for present purposes are immaterial) and have acted pursuant to it. The High Court ruled that the (precedent) legislation was not constitutionally invalid. The Magistrate, in July 2011, sentenced Mr Hinch pursuant to it. The decision of the High Court is authoritative, and the Magistrate acted faithfully in accordance with the existing legislation. The Inquiry makes no suggestion that the decisions of the courts were wrong. Rather, it is the legislation that is wrong, and the Inquiry by majority considers it should be repealed. Protection for victims and witnesses currently provided for in section 182(1) of the SSO Act can be secured pursuant to other existing legislation, including sections 18 and 19 of *Supreme Court Act 1986*, sections 80 and 80AA of the *County Court Act 1958* and the common law.

Recommendation 50 (By majority)

Sections 182-186 of the *Serious Sex Offenders (Detention and Supervision) Act 2009,* which provides for the making of supression orders, should be repealed.

Recommendation 50 is the recommendation of the Chair and one Panel member. The other Panel member's view is as follows.

The minority view did not support repealing sections 182-186 of the SSO Act. This view weighed the competing considerations differently. First, it gave salience to the potential to protect children through the rehabilitation of offenders being facilitated by suppression orders. Second, it recognised the importance of judicial discretion in selectively determining the circumstances of individual cases. In this respect it is noted that, in the past year, less than a quarter of applications to the County Court for suppression orders under these sections of the Act were granted.

14.9 Abuse of children through electronic media

The term 'electronic abuse' describes unlawful sexual behaviour involving children using computers or mobile phones. Sexual offences against children that are facilitated by the internet fall into two main categories:

- Using the internet to target and 'groom' children for the purposes of sexual abuse; and
- Producing and downloading indecent illegal images of children from the internet and distributing them (Davidson & Gottschalk 2011, p. 26).

The Australian Institute of Criminology notes that 'opportunities for child sexual offenders and other financially motivated criminals to sexually exploit children' are increasing with the advances in information and communications technologies (Choo 2009, p. 1). Like all physical and sexual abuse, the offences generally involve adult perpetrators and child victims, although may involve child perpetrators. The constitutional division of powers, as well as the ease of distribution of images through the telephone and internet, means that electronic abuse is legislated and prosecuted by the states and territories as well as by the Commonwealth.

Examples of electronic abuse are 'online grooming' and 'sexting'. Online grooming refers to the behavior of an adult who, using the internet, contacts a child under 16 for the purpose of sexual abuse. The relationship may continue online or in person (Virtual Global Taskforce 2011) and may be prosecuted under sections 474.26 and 474.27 of the *Criminal Code Act 1995* (Cwlth) in some instances. Victoria is the only Australian jurisdiction without online grooming laws.

'Sexting' is a term used to describe the sending of sexually explicit text messages or images via a mobile telephone or the internet. Where the images are of a child, the law views sexting as the production, distribution and possession of child pornography. Sexting may be prosecuted under the child pornography provisions of Division 1, Subdivision 13 of the *Crimes Act 1958* (Victoria) or Part 10.6 of the *Criminal Code Act 1995I* (Cwlth).

The Inquiry notes that, prompted by concerns that minors engaging in sexting are charged under state child pornography laws and consequently registered on the Sex Offender Register, the Victorian Parliamentary Law Reform Committee recently received a reference to conduct an Inquiry into sexting. The Terms of Reference are to consider: the incidence, prevalence and nature of sexting in Victoria; the extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting; and the appropriateness and adequacy of existing laws, especially criminal offences and the application of the sex offenders register (Law Reform Committee 2011).

Recommendation 51

The Victorian Government should, consistent with other Australian jurisdictions, enact an internet grooming offence.

14.10 Child homicide and filicide

14.10.1 Child homicide

In 2008 amendments to the Crimes Act recognised child homicide as an offence that is separate from other homicides. Under section 5A of the Crimes Act, child homicide is the killing of a child under the age of 6 years, where the circumstances are such that it would be considered manslaughter. The introduction followed a number of homicide convictions where the child victim was killed in the context of ongoing physical abuse, and where there was public outcry over the sentences, which were considered not to reflect the gravity of the offence (for example, *R v. McMaster* [2007] VSC133; *DPP v. David Scott Arney* [2007] VSCA 126).

Although the maximum penalty for child homicide is equal to that for manslaughter (20 years), the offence was introduced in an effort to encourage courts to increase the sentences that were being imposed for the killing of young children (Parliament of Victoria, Legislative Assembly 2007, p. 4,412). The government hoped that a discrete child homicide provision would allow, over time, a distance to be formed between the sentencing considerations applied in manslaughter and child homicide cases (Parliament of Victoria, Legislative Assembly 2007, p. 4,414). It is not yet possible to assess whether the provisions are having the desired effect.

14.10.2 Sentencing for filicide

Filicide is the killing of a child by the child's parent or de facto parent. Filicide is a category of murder. Tragically, in Victoria over the past 10 years, there have been a number of instances of this crime. A most disturbing fact is that within the category of filicide, there has been a number of instances of the crime performed with the intention of punishing the other parent of the child (in most instances the mother), whether to cause that parent long-suffering anguish, or to deny that parent their right of care of the child, or for spousal revenge, or for like intention. Further, the killings have been by parents who have had the full benefit of legal recourse, have been granted proper access, and have not been denied parental rights. The deliberate and intentional killing of a child by one parent to punish the other parent is in the worst category of murder.

Under section 3 of the *Crimes Act 1958*, the penalty for murder is imprisonment for life or for a fixed term of imprisonment. If the sentence imposed is life imprisonment, a minimum term of imprisonment before eligibility for parole is nearly always fixed. It is rightly an exceptional course to refuse to fix a minimum term. The Inquiry considers that filicide with the intention of punishing the other parent should be an exception to this normal standard.

The Inquiry considers that the normal sentence for the intentional and deliberate killing of a child by one parent to punish another parent should be life imprisonment with no minimum term. The offence is:

- In the worst category of murder;
- The killing of a vulnerable child;
- The most profound breach of trust;
- Executed to punish an innocent parent; and
- Normally contemplated or premeditated.

Turning to relevant sentencing principles, the Inquiry considers it is of limited relevance that the killer is otherwise of good character. The normal reductionist principle of reformation, so often of high importance in sentencing, is here of marginal relevance. The principle of special deterrence – that is, deterring the offender from further crime – is relevant. The principles of denunciation and of punishment have high relevance. The principle of general deterrence – that is, deterring others from like conduct – has the highest relevance of all. The offence of filicide starts in the mind of the offender. It develops over time. It is that psychological pathway to which the principle of general deterrence especially is applicable.

The present judicial standard for sentencing in this category of murder is life imprisonment with a lengthy minimum term before eligibility for parole. It is very much an exception that the sentence is life imprisonment with no minimum term. With every respect, the Inquiry considers that with this crime the converse standard should be the position. That is, the sentencing standard for this crime should be life imprisonment with no minimum term, and the exception should be life imprisonment with a lengthy minimum term. Such a judicial standard, in the Inquiry's considered view, would properly mark the character of this offence, and would do what the sentencing court, within proper principle, can do to protect vulnerable children.

In reaching its view, the Inquiry has had regard to the applicable principles as to head sentence and minimum term stated by the High Court in *Bugmy v. The Queen* (1990) 169 CLR 525 and the authorities there referred to. The Inquiry also has had regard to section 11(1) of the Sentencing Act 1991, which relevantly provides:

> [T]he court must, as part of the sentence, fix a period during which the offender is not eligible for parole unless it considers that the nature of the offence or the past history of the offender makes the fixing of such a period inappropriate.

The Inquiry considers that 'the nature of the offence' of intentional and deliberate killing of a child by a parent in order to punish the other parent is a crime that should attract the exception provided for in section 11(1).

The Inquiry does not recommend amendment to section 3 of the *Crimes Act 1958* for this crime, because the Inquiry supports judicial discretion in sentencing. Judicial experience demonstrates that there can be genuine exceptions to sound general rules, and room should be retained for the genuine exception. However, the Inquiry considers that the present judicial standard of sentencing for this most egregious category of murder should attain a higher level.

The above observations do not apply to persons found to be suffering relevant mental impairment at the time of the offence, because they would not be guilty of the offence of murder.

Unlike other sections in this Report, the Inquiry here makes no formal recommendation. It makes no recommendation to government to amend the relevant legislation, for the reasons stated above. It makes no recommendation to the judiciary, because it would be inappropriate to do so. Rather, the Inquiry expresses its considered view in the hope that it contributes to community understanding of the true nature of this crime, and to community expectation of the proper sentencing standard for it.

Greater attention needs to be given to the potential to prevent filicide of this nature. By analysing a number of such cases, nationally and over a period of time, it may be possible to identify common factors and early warning signs that family law practitioners, medical practitioners and others might use to identify risks and help to prevent such tragedies. The Inquiry recommends that such a study be undertaken by an appropriate body, such as the Australian Institute of Criminology.

In doing so, the Inquiry also considers that such a study can draw on current research being undertaken by organisations such as the Domestic Violence Resource Centre of Victoria.

Recommendation 52

A national study should be undertaken to improve current knowledge and understanding of the causes of filicide and the behavioural signs preceding filicide. Such a study could be undertaken by a research body such as the Australian Institute of Criminology.

14.11 Conclusion

Aspects of the legal framework designed to protect children are operating as intended. However, the Inquiry considers that the legal response to protecting children can and should be strengthened. A number of opportunities exist for the Victorian Government to do so.

Victoria's vulnerable children and young people have a right not only to protection, but also therapeutic intervention for both their own needs and the needs of their family members. Legislation that allows for the provision of services to children and their families should be amended to reflect that the best interest of children should be a consideration in the delivery of those services.

It should be made clear in legislation that the law intends to protect children from child abuse through the application of civil and criminal law. To ensure that this is reflected in consistent and robust responses, reporting should be supported and, in some cases, obliged. A legislative recognition of child abuse as a crime should be supported through better collection of use of data on the flow of reports, investigations, prosecutions and convictions for allegations of child abuse. It is also critical that the investigation of criminal allegations of child abuse continue to be improved.

Part 5: The law and the courts

Chapter 15:

Realigning court processes to meet the needs of children and young people

Chapter 15: Realigning court processes to meet the needs of children and young people

Key points

- Where a child is at the centre of a legal process, the law and its institutions should encourage the child's voice to be heard as much as possible. This can be done by formally recognising the child as a party to the protection proceedings in their own right, ensuring they are heard in all proceedings either through the child providing instructions to an appropriately trained and accredited children's lawyer or, where they do not have the capacity to provide instructions, by an appropriately trained and accredited lawyer representing the best interests of the child. However, a child should not be required to attend court unless the child has the capacity to understand the proceedings and expresses a desire to attend court.
- There are immediate opportunities to improve the court experience of children and their families by decentralising the Melbourne Children's Court and by improving existing court facilities to be more child and family friendly.
- The current legal processes under the *Children, Youth and Families Act 2005* should be modified to promote a more collaborative problem solving approach to protection applications with a focus on child-centred agreements. The Inquiry supports in-principle three of the five options raised in the Victorian Law Reform Commission's *Protection Applications In The Children's Court: Final Report 19*. These are Option 1, which proposes new structured and supported processes for achieving appropriate child-centred agreements; Option 2, which proposes a range of legislative reforms with respect to the protection application processes, case docketing and child legal representation; and Option 4, which proposes that the Victorian Government Solicitor's Office represent the Department of Human Services in protection matters.
- The Inquiry has not commented on every recommendation by the Victorian Law Reform Commission but has focused on those reforms the Inquiry considers fundamental to realigning current court processes to meet the needs of children. In some instances, the Inquiry has disagreed with, or proposed a modification to, the approach proposed under the Victorian Law Reform Commission's reform options.
- There are a number of protective orders available under the *Children, Youth and Families Act 2005* that serve different purposes but may lead to overlapping outcomes. Some orders are rarely used under the Act. The current range of orders should be reviewed with a view to removing those orders that are rarely used and consolidating those that may produce overlapping outcomes. The goal should be simpler and more easily accessible statutory child protection laws.
- A specialist Children's Court should be retained in the statutory child protection system. The scope and purpose of its role should be focused on: determining the lawfulness of the State's intervention in the life of a child; the appropriate remedy once the court has determined a child is in need of protection; and the conditions that affect a child's right to contact with their parents and others who are significant in the life of the child. The Court should be established and continued under a separate Children's Court of Victoria Act.
- Conditions relating to the long-term placement of a child with the Department of Human Services or a third party should be determined by the department, with the exception of a child's contact with parents and others who are significant in the life of the child. Such contact should be determined by a court. Any disputes over departmental decisions should be subject to ordinary administrative review processes.

15.1 Introduction

In developing recommendations to reduce the incidence and negative impact of child neglect and abuse in Victoria, the Inquiry was asked to consider the structure, role and functioning of the statutory child protection system and the interaction of the courts with government departments and agencies. The Inquiry was also asked to consider possible changes to the processes of the courts referencing the work of, and options put forward by the Victorian Law Reform Commission (VLRC) in its *Protection Applications In The Children's Court: Final Report 19*. Briefly, the options for reform raised by the VLRC were:

- Option 1 – New structured and supported processes for achieving appropriate child-centred agreements;
- Option 2 – A range of legislative reforms to the *Children, Youth and Families Act 2005* (CYF Act) with respect to the way protection applications were brought before the Children's Court, the way children are represented at court, and the way matters are heard at court;
- Option 3 – The creation of a new Office of Children and Youth Advocate to provide independent representation of children at all stages of the protection process and to convene the new pre-court conference model proposed by the VLRC;
- Option 4 – Reforming the representation model for the Department of Human Services (DHS) to enable the Victorian Government Solicitor's Office (VGSO) to represent the department; and
- Option 5 – Strengthening the current statutory oversight and reporting powers of the Office of the Child Safety Commissioner (OCSC).

Along with the written and verbal submissions made to the Inquiry on the Children's Court of Victoria (Children's Court) and the Victorian Civil and Administrative Tribunal (VCAT), the Inquiry also considered the Victorian Ombudsman's *Own motion investigation into the Department of Human Services Child Protection Program* Report (Ombudsman's 2009 Report).

The Ombudsman's 2009 Report was the catalyst for both the VLRC report and the creation of the Victorian Government's 'Child Protection Proceedings Taskforce' and its 2010 Report (Taskforce report). The Taskforce comprised the Secretaries of the Department of Justice (DOJ) and DHS, the President of the Children's Court, the Child Safety Commissioner and the Managing Director of Victoria Legal Aid (VLA).

The Children's Court of Victoria

While the Inquiry notes the role of the Supreme Court of Victoria and VCAT in relation to statutory child protection processes, the Children's Court was the focus of submissions to, and consultations by the Inquiry. The Inquiry therefore has largely confined its recommendations regarding the courts to the Children's Court. In doing so, the Inquiry consulted with the President and the magistrates of the Children's Court.

There were a range of views expressed to the Inquiry about the operation of the Children's Court by parents, carers, DHS staff, members of the legal profession, and community service organisations (CSOs). However, the Inquiry identified key (and, for the most part, common) issues arising in all these sources of information. These covered jurisdictional, process, environmental, institutional and cultural aspects of the Court, and fall into three categories that form the bases of the Inquiry's consideration of court processes in this chapter:

- Accessibility of the Court for children and young people, and their families (discussed in section 15.3);
- Adversarialism and the court environment (discussed in section 15.4); and
- Structural and statutory reforms in and of the Court (discussed in sections 15.5 and 15.6).

15.2 An overview of the Children's Court, court processes and key orders

Within the Australian legal framework, the High Court of Australia and the state and territory Supreme Courts have a broad, supervisory duty to protect the interests of children (*Secretary, Department of Health and Community Services v. JWB and Another* (1991) 175 CLR 218). In Victoria the CYF Act vests that role in the Children's Court. The Children's Court hears matters concerning children except in the context of family law disputes. These are heard in the Family Court of Australia or in the Federal Magistrates Court of Australia.

The Children's Court is headed by a President who holds the position of a County Court judge and comprises a number of full-time and part-time Magistrates. The Court sits on a full-time basis as the Melbourne Children's Court with a dedicated court building in Melbourne. It also currently sits at the Moorabbin Justice Centre and, on designated days using common court facilities administered by the Magistrates' Court, across regional Victoria.

As noted in Chapter 3, the Family Division of the Children's Court hears applications from DHS under the CYF Act for determining whether a child is in need of protection and for the granting of various protection and other orders related to children. The court processes are initiated through 'protection applications'. Protection applications are made when DHS believes, following a report and investigation, that a child is in need of protection. There are two ways in which a protection application can be made:

- 'By notice' – under section 243 of the CYF Act, where a notice is issued by a Registrar of the Court on application by DHS, to the parent(s) and the child or children requiring them to appear in court for the hearing of the application; and
- 'By safe custody' – under sections 241 and 242 of the CYF Act, where it is inappropriate to follow the notification process, DHS or Victoria Police act to remove the child from his or her parents or caregivers and take the child into 'safe custody'. This can be done with or without a warrant obtained from a magistrate or from a bail justice. A comprehensive description of the various applications and associated processes appears in chapter 3 of the VLRC report and on the Children's Court's website (Children's Court of Victoria 2011, chapter 5) and consideration of proposed reforms to this process is in section 15.5.4.

Figure 15.1 depicts the current process for initiating, negotiating and determining protection applications before the Family Division of the Children's Court.

If the Court has determined, on hearing a protection application, that a child is in need of protection, it can grant a number of protective and related orders under the CYF Act at the request of DHS. The key types of orders are set out in Table 15.1.

The Inquiry considers the protection application processes and the range of statutory orders available under the CYF Act in section 15.5.

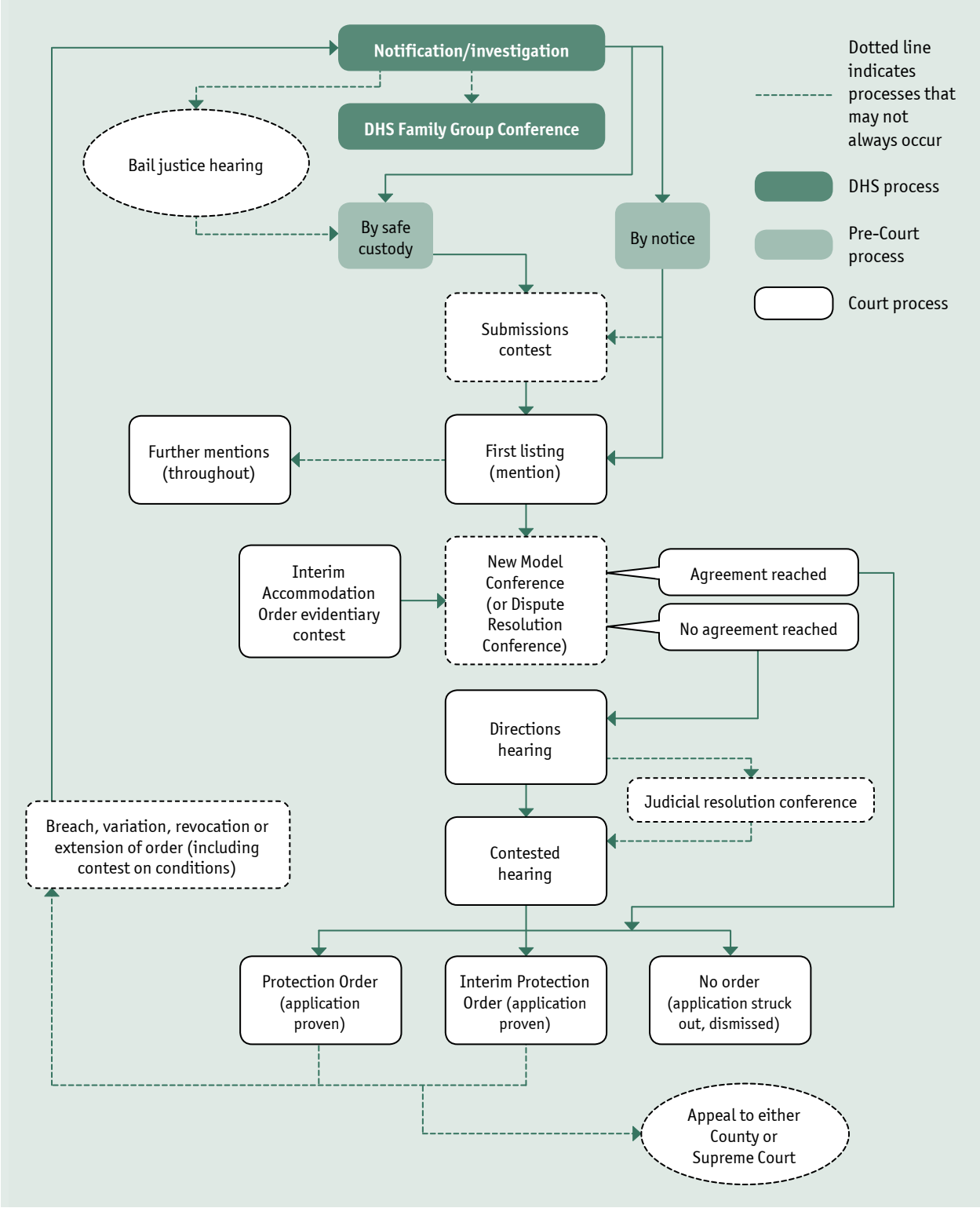
The Children's Court is more than a place where orders are made. It is a forum in which a child's voice can be heard, and where parents and DHS come to state their cases. The Court is also a physical environment in which legal and child protection professionals, magistrates, and children and their families interact.

Not all child protection matters go to court. In 2008-09, for example, less than 3 per cent of primary applications by safe custody and notice lodged in the Children's Court reached the stage of a 'contested hearing' between DHS and the parents before a magistrate (Children's Court submission no. 2, pp. 28-29). Nevertheless, as noted by the OCSC submission:

> ... the prospect of [contested] proceedings and the belief as to how they will be resolved casts a long shadow over child protection practitioners and vulnerable children and families (p. 12).

The current concerns around the processes, the decisions, the environment, and the perceived culture of conflict and disrespect between professionals within the court environment are acknowledged by the Inquiry.

Figure 15.1 Current process for child protection applications to the Family Division of the Children's Court



Source: Inquiry analysis

Table 15.1 *Children, Youth and Families Act 2005*: orders and enforceable agreements

Order type	Summary of order effect
Temporary Assessment Order	To allow DHS to undertake an investigation where it reasonably suspects a child is in need of protection and in circumstances where the parents do not cooperate.
Interim Accommodation Order	To enable a child to be placed with either a parent or another person or organisation on a temporary basis until the main or primary application by DHS is finalised.
Interim Protection Order	To test the appropriateness of a particular course of protective action before a final course of action is determined.
Undertaking	To require a parent or a person with whom a child is living to agree to do or refrain from doing certain things. This may include any condition the Court thinks appropriate. A protection application need not be proven by DHS for an undertaking to be entered into.
Protection Order Undertaking	To require a parent or a person with whom a child is living to agree to do or refrain from doing certain things. This may include any condition the Court thinks appropriate. A protection application must first be proven by DHS.
Supervision Order	To direct that a child remains in the care and custody of his or her parents. This arrangement is supervised by DHS for a certain period of time with any conditions the Court determines.
Custody to Third Party Order	To place a child in the care and custody of a named person that is not DHS or a community service organisation for a limited period of time.
Supervised Custody Order	To transfer a child to the care of a person other than his or her parent for a limited period of time. The ultimate goal of this order is reunification of the child with his or her parents.
Custody to Secretary Order	To place the child into the custody of the Secretary of DHS for a limited period of time. DHS determines where the child should live (either with a community service or foster carer). Reunification with the child's parents is not the ultimate goal of this order.
Guardianship to Secretary Order	To grant the custody and guardianship of the child exclusively to the Secretary of DHS for a limited period of time. The Court has no power to impose conditions on the order as the Secretary effectively exercises the rights of the parents.
Long-term Guardianship to Secretary Order	To grant the custody and guardianship of a child who is 12 years and over exclusively to the Secretary of DHS. This order may last until the child turns 18 years of age. Both the child and the Secretary must consent to the order being made.
Permanent Care Order	To grant the custody or guardianship of the child exclusively to a person or persons named in the order (not being the child's parent or the Secretary of DHS). This order may remain in force until the child turns 18 years of age or is married. It is available where the child's parent, or the child's surviving parent, has not had the care of the child for at least six months (or for periods totalling six months) of the last 12 months.

Source: Inquiry analysis

15.3 Children and the Children's Court: making the Court and the legal system more accessible and more sensitive to the needs of children

15.3.1 A child's right to be heard in child protection proceedings

Applications in the Family Division involve important decisions about children and young people's lives. It is a matter of policy, law and human rights that children have an opportunity to have their voices heard in matters that affect them (*DOHS v. Sanding* [2011] VSC 42 Bell J).

The Inquiry heard from many stakeholders as to how children's voices are best represented in court processes. Some options submitted to the Inquiry focused on broader system reforms to reflect children's needs, such as:

- Developing advisory committees, committees of management, service planning and service reviews, and through the resourcing and supporting of the establishment of family advocacy and self-help groups (Centre for Excellence in Child and Family Welfare, Melbourne Public Sitting);
- Better equipping intake officers and child protection practitioners with interviewing and assessment skills (UnitingCare Gippsland submission, p. 16); and
- Providing cultural training for child advocates (Bendigo and District Aboriginal Co-Operative, Bendigo Public Sitting).

Other submissions suggested options for reform targeted at incorporating the individual child into specific decisions that concern them such as:

- Using 'less adversarial processes' in order to properly hear the child's voice (Connections UnitingCare, pp. 3, 15; OCSC, attachment c.);
- Appointing an independent Children's Court advocate (Youth Affairs Council of Victoria, p. 18); and
- Giving age-appropriate explanations of court decisions to children (Goddard et al. Child Abuse Prevention Research Australia, p. 2).

The child as a party to protection proceedings

In Victoria children do not formally have the status of a party in relation to a child protection matter. In jurisdictions such as Western Australia, South Australia, Queensland, the Northern Territory and the Australian Capital Territory children are a party to protection proceedings and in most of those jurisdictions the status of the child being a party to the proceedings is linked to an entitlement to legal representation (VLRC 2010, p. 317).

The Inquiry endorses the proposal that a child who is the subject of a protection application be a party to the proceeding, regardless of the child's age (VLRC 2010, p. 317). This would require legislative amendment. In reviewing the legislation, consideration should be given to:

- Any negative effect that the usual court processes might have on children (for example, the service of certain documents detailing allegations could cause a child some distress); and
- Any conflicts of interest that may arise through the legal representation of both child and parent as parties to the proceedings.

Recommendation 53 of this chapter addresses this issue.

Representing the child in proceedings and capacity

Across Australian jurisdictions, the way in which children are represented by lawyers in child protection matters depends on whether a child is considered capable of understanding the issues and directing a lawyer as to the child's wishes. This is known as 'capacity to give instructions'. In most Australian jurisdictions and in England and in New Zealand capacity is not defined by reference to age in the legislation. In some states in the United States, the legislation specifies ages from between 10 years and over to 14 years and over (Hughes 2007).

In Victoria a child is represented by a lawyer (generally a VLA-employed or VLA-funded lawyer) if it is considered that the child is old enough to give instructions to the lawyer on their views (s. 525(1) of the CYF Act). This is known as a 'direct representation model'. In 1999 the Victoria Law Foundation, in conjunction with the Children's Court Clinic, developed guidelines for lawyers. These guidelines suggest that a child may be mature enough from the age of seven to give instructions to a lawyer, although every child will be different. Compared with other jurisdictions, this threshold is low and should be raised to be broadly consistent with other jurisdictions.

In New South Wales children under the age of 12 years are presumed to be incapable of giving instructions, unless it is shown otherwise. Children aged 12 or over are presumed capable of giving instructions unless shown otherwise (*Children and Young Persons (Care and Protection) Act 1998*).

The capacity of the child to provide instructions is subject to various factors pertinent to that child including factors such as development of cognitive ability, age, trauma experienced, and the levels of stress or anxiety they may experience when facing a court event and a lack of understanding of court processes (Block et al. 2010, pp. 660-661).

Further 'situational factors' to be highlighted are: the ways in which interviews with children are conducted to elicit their views and understanding of the issues, and addressing anxiety about the impact their accounts might have on familial relationships (Best 2011, pp. 23-24); risk that a child may experience interview fatigue if interviewed too many times by too many people or that their wishes may not represent their best interests (Commission for Children and Young People and Child Guardian 2009, p. 9) and the relational aspect between the child representative such as a lawyer and the child including the lawyer's own perception of the child and their competence (Cashmore & Bussey 1994, pp. 319-336).

As will be discussed below, the Inquiry considers that a child or young person should not be required in court unless they wish to attend, and have the capacity to understand the proceedings. Of course, there may be instances where the child's presence in court is unavoidable. In those cases, in line with the Inquiry's proposed simpler system, and endorsing the recommendation in the VLRC report, the Inquiry considers that the current combination of a direct representation model and a best interest model should continue.

The Inquiry considers, on balance, that the age of seven set out in the Victorian Law Foundation guidelines is too low a threshold as one of the guiding factors in assessing capacity. The Inquiry also considers that the New South Wales threshold of 12 years may unduly preclude, if not disenfranchise, children capable of providing instructions from being heard in proceedings. Acknowledging that there is no precise answer to this issue, the Inquiry considers that a more appropriate threshold of 10 years should be set in the legislation. However, recognising that various factors will determine a child's capacity to give instructions in the particular circumstances of the proceedings, the Inquiry supports the development of updated guidelines to assist decision-makers to assess capacity. Recommendation 54 of this chapter addresses these points. These guidelines should be reviewed periodically by the proposed Commission for Children and Young People to ensure their currency.

Representation of children by lawyers or others

There is no uniformity of rules relating to the representation of children in matters affecting them across Australian jurisdictions. A summary of the various approaches can be found in the VLRC report (VLRC 2010, appendix n, pp. 488-489.) The VLRC report and a number of submissions to the Inquiry commented on the possibility of introducing alternative models for the representation of children by lawyers (Connections UnitingCare submission, p. 12; Ms Tainton, VLA, Geelong Public Sitting; VLA submission no.1, pp. 15-16; VLRC 2010, pp. 325-331).

In South Australia a child must be represented in all child protection matters, unless they make an 'informed and independent decision' not to be represented. Children are represented on a direct representation model where they are mature enough, or otherwise on a best interests model.

In Western Australia the Children's Court may order a separate legal representative to act on the direct instructions of the child if the child is mature enough (determined by the Court on a case-by-case basis) and wishes to give instructions, and in any other case, on the best interests of the child. This approach is endorsed in the VLRC report, which also contains a comprehensive comparison of various Australian and international representation models (VLRC 2010, pp. 325-331).

In New South Wales where the child is not capable of providing instructions, an independent legal representative may be appointed and, in special circumstances, a 'guardian *ad litem*' may also be appointed to provide instructions to the independent legal representative (see box). A guardian *ad litem*, literally 'litigation guardian', is an adult appointed by a court or by law to stand in the shoes of another person who is incapable of representing him or herself as a party to the proceedings and to provide instructions to the lawyer.

While the Inquiry considered the merits of appointing child specialists to instruct on behalf of infants and children incapable of providing instructions, the Inquiry considers on balance that introducing a guardian *ad litem* system would entail an additional and expensive process in the statutory system without a demonstrable benefit over and above the use of properly trained and accredited lawyers. Accordingly, the Inquiry concludes that specialist lawyers should represent children in child protection proceedings either on a direct representation basis, where a child has capacity to give instructions, or on a best interests basis, where a child does not have capacity (see Recommendation 53).

The Inquiry considers that the accreditation and training process for specialist lawyers must involve a substantive component on infant and child development, child abuse and neglect, trauma and child interviewing techniques in order to be able to assess capacity. Training requirements for independent children's lawyers in the statutory child protection system should be aligned with the training required of, and provided to, independent children's lawyers practising in the family law jurisdiction.

Guardian *ad litem* appointments in New South Wales

Section 100 of the New South Wales *Children and Young Persons (Care and Protection Act) 1998* (the Act) enables the NSW Children's Court to appoint a guardian *ad litem* (guardian) for a child or young person when there are special circumstances to warrant the appointment and the child or young person will benefit from the appointment.

A guardian is responsible for instructing (not representing) in legal proceedings for a person, where that person is:

- Incapable of representing him or herself;
- Incapable of giving proper instructions to his or her legal representative; and/or
- Under legal incapacity due to age, mental illness or incapacity, disability or other special circumstances in relation to the conduct of the proceedings.

The NSW Department of Attorney General and Justice (DAGJ) established a panel structure for people eligible for appointment as a guardian in particular proceedings pursuant to an order of a court or tribunal. A panel was developed to provide guardians for Children's Court matters but it is understood this service has expanded to assist people with incapacity in all NSW courts.

It is understood that at present there are approximately 12 appointments under this panel structure mainly based in the Sydney metropolitan area, but the NSW Government is seeking to recruit statewide to provide guardians across the state. Guardians are required to apply to DAGJ for the position and if successful are appointed for three year terms. They are required to undergo a Working with Children Check. For appointments, the desired qualifications or experience are:

- Qualifications in social, health or behavioural sciences or related disciplines, or equivalent experience;
- Mediation, advocacy and decision making skills;
- Ability to communicate effectively with various professionals and family members;
- Basic knowledge of legal proceedings and the legal process; and
- Knowledge of issues affecting children and young people, people with illness, disability or disorder that may affect their decision-making capacity.

The NSW Government has also published a *Guardian Code of Conduct* and a Schedule of Fees depending on the activity required of the guardian.

Children attending court

Although reports, consultations and submissions argued that a child's voice must be incorporated into proceedings in the Children's Court, and that representation is a critical part of this, there was a broad consensus that children should not attend court unless it is absolutely necessary. For example, CREATE Foundation recommended that children under 13 years should not attend Court (CREATE Foundation submission, p. 13). The Law Institute of Victoria noted that children's attendance at court is not always desirable, particularly at the later stages of a case, but that they should be given the option of attending if they wish and as is appropriate to their level of maturity (Law Institute of Victoria submission, p. 7; appendix, p. 6).

Unlike other states and territories, in Victoria, children are required to appear at court if it is a protection application by safe custody, unless they are of 'tender years' (s. 242, CYF Act). If the application is by notice the Secretary of DHS may issue a notice directing the child and the child's parent to produce the child to appear at the application and failure to comply could result in the issue of a warrant to take the child into safe custody (s. 243, CYF Act). The CYF Act allows a child to be served a copy of the protection application if over 12 years of age and the child is not a party to the proceeding.

With the exception of the Northern Territory, across Australia a child who is the subject of child protection proceedings is not required, but has the right to, appear in matters that affect the child. In New South Wales and the Northern Territory, the court may order the child to appear. A summary of the state and territory provisions can be found in the VLRC report (VLRC 2010, appendix n, pp. 488-489).

In the federal family law system children are not present at court for proceedings (although they may attend to visit family members). Under section 100B of the *Family Law Act 1975* (Cwlth), there is no right of appearance for children in a family law proceeding unless a court order is made and the Inquiry notes that the Family Court and Federal Magistrates Court do not generally consider it appropriate for children to be at court (Family Law Courts 2011).

The Children's Court submitted that, although children should be represented in matters before the Court, children should not be required to attend Court unless the child has the capacity to understand the proceedings and has expressed a wish to be at court (Children's Court submission no. 2, p. 41). The Inquiry visited the Children's Court and witnessed the crowded corridors of the Family Division, with parents, workers, lawyers and children and the stressful environment for all concerned.

Consistent with this approach it is expected that VLA-funded lawyers will be made available to take instructions from the child in a suitable location, preferably the location at which they are being cared for, and not at court. While the Inquiry appreciates that in certain circumstances a court meeting is unavoidable the Inquiry considers it inappropriate for any court building to be used, as a matter of practice, as a de facto office by legal practitioners in this jurisdiction. A court is no place for a child or young person.

Recommendation 53

The *Children, Youth and Families Act 2005* should be amended to provide that:

- A child named on a protection application should have the formal status of a party to the proceedings;
- A child who is under 10 years of age is presumed not to be capable of providing instructions unless shown otherwise and a child who is 10 years and over is presumed capable of providing instructions unless shown otherwise;
- A child who is not capable of providing instructions should be represented by an independent lawyer on a 'best interests' basis; and
- Other than in exceptional circumstances, a child is not required to attend at any stage of the court process in protection proceedings unless the child has expressed a wish to be present in court and has the capacity to understand the process.

Recommendation 54

The Victorian Government should develop guidelines to assist the court, tribunal, or the independent children's lawyer to determine whether the child is capable of giving direct instructions and to provide criteria by which the presumption of capacity can be rebutted.

15.3.2 The environment at the Melbourne Children's Court

Facilities in the Family Division have been roundly criticised as being 'cramped, crowded and uncomfortable … not conducive to resolving what are deeply private sensitive and anxiety-provoking issues' (Anglicare Victoria submission, p. 38). Both the VLRC report and the Taskforce report identified a number of issues with the environment of the Children's Court. These comments are acknowledged by the Children's Court (Children's Court submission no. 2, p. 31; Victorian Government 2010a, p. 27; VLRC 2010, pp. 354-357).

These criticisms accord with the Inquiry's observations of the current environment at the Family Division of the Melbourne Children's Court. The environment is simply not conducive to productive outcomes for children and their families. Improving it should be a priority reform for the Victorian Government. The Inquiry considers that an adequately funded court decentralisation program (discussed further in section 15.3.3) should drive reforms on this issue.

The Children's Court advised the Inquiry that it expects to hear DHS Eastern region child protection applications in two designated court rooms at the newly developed William Cooper Justice Centre (Children's Court submission no. 2, p. 32). This should alleviate some of the burden on the over-crowded Melbourne court.

The Inquiry notes that, compared with the Family Division, the Criminal Division has a much lower volume of cases before it and rooms may be available for hearing Family Division matters. The Children's Court advised the Inquiry that where Children's Courts in regional Victoria do not have the infrastructure to be able to offer separate locations to each Division, the Court aims to keep the two Divisions separate through scheduling of different session times or days for hearings. The Children's Court further advised that, in recent times, the Melbourne Court now utilises one Criminal Division courtroom for the hearing of Family Division matters and, in times of high demand, intends to use these rooms for hearing Family Division matters.

The Inquiry understands that there are reasons for the physical division of the Melbourne Court into Family and Criminal divisions, such as the security concerns that are attached to the processes of any criminal court, and as a way of addressing the unfortunate and historical conflation of child protection with criminal law. In consultations, the Children's Court observed that the separation of the divisions protects Family Division parties from the potential violence and hostility of those attending the Criminal Division and that the constant presence of law enforcement in the Criminal Division could be upsetting for already distressed Family Division clients. However, given the volume of matters before the Melbourne Children's Court, the Inquiry notes that the hearing of matters in the Criminal Division, if appropriately managed, may be an appropriate short-term solution to the stretched resources of the Family Division.

15.3.3 Decentralisation of the Family Division of the Children's Court: meeting the needs of children in regional Victoria

The Children's Court sits at a number of locations in metropolitan and regional Victoria. However, the Family Division sits daily only in the Melbourne Children's Court and the Moorabbin Justice Centre. The Melbourne Children's Court deals predominantly with protection matters from the DHS North and West Metropolitan region and Eastern Metropolitan region, while the Moorabbin Court deals with matters from the DHS Southern Metropolitan region (unless there is a security risk or one of the parties is in custody in which case the matter would be heard at the Melbourne Children's Court). Magistrates sit as the Children's Court at other locations on set days as announced in the *Government Gazette*.

Although the Family Division has a presence in metropolitan and regional Victoria, infrequent sittings at the various court locations can mean that matters relating to children in outer metropolitan and regional Victoria must be heard in the Melbourne Children's Court. For example, where a matter has a 'return date' that does not fit in with the Court's sitting dates in the relevant region, or where there is not enough time in the sitting day to hear all matters from that suburb or region. In those cases, parties and, in many cases, children are required to travel into the city to have the matter heard.

Even where a child is not required to attend court, they and their siblings require care when their parents attend. If this care cannot be obtained it is likely that the child will accompany their parents. Reducing this outcome, and making the Children's Court more accessible for families should be a priority reform for the Victorian Government. Supervised play areas and recreational areas for older children should be developed at all courts in which children may be present.

Submissions to the Inquiry discussed the need for the Children's Court to 'decentralise' and sit with greater frequency in suburban and rural courts. The Taskforce report made similar recommendations, with the proviso that regional court facilities be refurbished appropriately to accommodate children and families. That report also noted that the courts could be appropriately serviced by VLA and private lawyers acting for families and children. The Children's Court itself acknowledges that some matters currently heard in the Melbourne court should be heard in regional courts but is particularly concerned that there are no suburban courts with the capacity (or facilities) to hear Family Division cases (Children's Court submission no. 2, p. 32). Table 15.2 shows the proportion of children under child protection orders by the region in which they live.

Table 15.2 Protective orders issued, by location of child, 2009-10

Child location (DHS region)	Location of children: protection orders issued in 2009–10 (%)
Barwon-South Western	11%
Eastern Metropolitan	12%
Gippsland	9%
Grampians	7%
Hume	9%
Loddon Mallee	13%
North and West Metropolitan	24%
Southern Metropolitan	15%
Interstate/overseas	Less than 1%
Total	**100%**

Source: Information provided by DHS

Decentralisation of the Family Division of the Court to a higher-volume metropolitan location would ease the pressure on the Melbourne Children's Court. The Victorian Government should provide the appropriate level of funding to the Children's Court to enable it to commence its decentralisation process in the immediate to medium term and to recruit and/or relocate specialist magistrates from the Melbourne court to these areas. The process should be mindful of the special needs of clients of the Family Division. For example, care should be taken to limit the cross-over of Family Division matters with criminal matters in general courts (where specialist Family Division facilities are not being established), and counselling support should be available.

The Inquiry supports recommendations 10 and 11 of the Child Proceedings Taskforce, which note that DOJ should, in improving the physical environment of the Children's Court, consider the amenity of courts for children and other court users and be guided by the principle that the Children's Court should operate on a decentralised model. The Inquiry is not proposing the establishment of new dedicated Children's Court facilities for each DHS region. Based on demand, decentralisation would mean scheduling more sitting days for the Family Division in locations outside the Melbourne CBD for those DHS metropolitan and regional areas with high demand. It would also mean adapting, where possible, existing Magistrate's Court facilities or other customised facilities to enable the Family Division to sit as a separate court.

Recommendation 55

The Children's Court should be resourced to decentralise the Family Division by offering more sitting days at Magistrates' Courts or in other customised facilities in those Department of Human Services regions with high demand. Existing court facilities should be adapted as appropriate to meet the needs of children and their families.

15.3.4 Decision making processes by the Children's Court

Submissions on decision making by tribunals

Some submissions argued that the Children's Court as a body is inherently inflexible, and that a new model of child protection proceedings is necessary to properly meet the needs of children and young people involved in the statutory protection system (Anglicare Victoria, pp. 37-38; The Salvation Army, p. 24). In its submission to the VLRC, the Children's Court argued that a tribunal structure is inappropriate for the decisions made in the Children's Court and reiterated those concerns to the Inquiry (Children's Court submission no. 2, appendix 1). These concerns are discussed later in this section.

The Centre for Excellence in Child and Family Welfare proposed a combination of 'Local Area Children and Young Persons Tribunals'. The tribunals would consist of panel members appointed by the Attorney-General to deal with orders not relating to custody or guardianship. Higher magnitude orders would remain with the Children's Court (Centre for Excellence in Child and Family Welfare submission, p. 29). A variation on this model was proposed by Connections UnitingCare, whereby the local area panel would make recommendations about the appropriate form of intervention, and submit this recommendation to the court for consideration (Connections UnitingCare submission, p. 12).

The OCSC recommended the establishment of a central 'Children's Safety and Wellbeing Tribunal'. The tribunal would be independent of the VCAT and would oversee eight regional tribunals supported by DOJ infrastructure. It would replace the Children's Court and would comprise a registrar and a panel of three members from a pool of members with diverse skill-sets (OCSC submission, attachment 2).

The Scottish panel model

In Scotland a children's hearing system convenes specialist volunteers on a case-by-case basis to decide protection and juvenile justice applications. This model was advocated by a number of community welfare bodies. A modified Scottish model was proposed by the joint submission by Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army, Victorian Aboriginal Child Care Agency (VACCA) and the Centre for Excellence in Child and Family Welfare (Joint CSO submission), under which a standing panel with a mix of full-time specialist panel members would be established, supplemented by volunteers on a case-by-case basis (Joint CSO submission, pp. 53-54). Others expressed support for a multidisciplinary expert panel-based or tribunal model instead of a court (CatholicCare submission, pp. 20-21; VACCA submission, p. 7). The purpose of a multidisciplinary model is to promote a non-legalistic child welfare solutions-focused hearing system when determining protection applications.

In its 2011 Interim Report, the United Kingdom's Family Justice Review discussed the potential for expanding the Scottish model of panels to child protection matters in England. The review noted that, while a combination of court and panel hearings may lead to quicker and more flexible decisions, the cost of such a model has been felt in the lack of consistency in panel decision making. The review also found that, because panels were required to review supervision requirements for care arrangements, children may have been experiencing a heightened sense of impermanence to their care arrangements. The review concluded that introducing a panel system in England and Wales would not offer sufficient advantage over a court-led process, and rejected suggestions for a tribunal system on similar grounds (Family Justice Review 2011, pp. 116-117).

Pursuant to its terms of reference, the VLRC considered the Scottish model for resolving statutory child protection disputes. The VLRC did not, however, make any recommendations in relation to whether the model should be adapted for use in the Victorian statutory child protection process. The Inquiry understands that this is linked to the VLRC's view that non-judicial determination models are inappropriate for the resolution of child protection disputes due to constitutional complexities, common law principles, and the nature of the rights of the parties involved (VLRC 2010, pp. 208-212). As will be discussed further in this section, the Inquiry agrees with this assessment.

Tribunal models in the Victorian statutory child protection system

The Inquiry also received submissions commenting that judicial, rather than non-judicial, member oversight was an appropriate or necessary safeguard in balancing and determining children's and families' rights (Aboriginal Family Violence Prevention and Legal Service Victoria (AFVPLSV), p. 9; Mr Fanning, p. 4; Victorian Forensic Paediatric Medical Service, p. 19; VLA submission no. 1, p. 4).

In principle, the Inquiry found no legal impediment to the statutory creation of a tribunal-based model. Victoria already uses tribunals such as VCAT to determine legal rights. In the Commonwealth sphere, there are tribunals such as the Administrative Appeals Tribunal and Fair Work Australia. These tribunals may comprise both judicial and non-judicial members that interpret and apply legislation and make binding, yet reviewable, decisions.

While VCAT's flexibility makes it an attractive option for dispute resolution, the Inquiry finds that a tribunal model is not the appropriate legal model for the determination of the lawfulness of State intervention in child protection matters and determining fundamental rights such as the alteration of a child's relationship with his or her parents. However, VCAT will have a greater role in reviewing the administrative decisions of DHS if the Inquiry's proposal to realign the role of the Children's Court in the statutory child protection system is implemented (see Finding 14 and Recommendation 64).

Child protection matters are not simple disputes between private parties. They involve a fundamental State intervention in family relationships. In Australia, the role of the courts is to provide independent oversight of administrative or executive decision making. This is known as the 'separation of powers' between the executive and the judiciary. It is pertinent to observe that currently in all Australian jurisdictions policy makers have determined through legislation that a specialist court should determine protection applications in the statutory child protection framework.

Another consideration is how a tribunal would interact under the legislative arrangements for recognising orders under the Commonwealth *Family Law Act 1975* and family violence legislation. As noted in the VLRC report, a further and significant difficulty with a tribunal deciding child protection matters is that VCAT is not a 'court' under Chapter III of the Australian Constitution and is therefore incapable of exercising Commonwealth powers such as those under the Family Law Act. The Children's Court has also flagged the difficulties arising when a tribunal has jurisdiction to issue protection orders under the CYF Act, but the courts have jurisdiction to make orders under the Family Law Act, the *Family Violence Protection Act 2008*, or the *Personal Safety Intervention Orders Act 2010*. The introduction of a tribunal model would have negative ramifications for an already fractured system of federal and state laws.

The Victorian Civil and Administrative Tribunal

VCAT was established under the *Victorian Civil and Administrative Tribunals Act 1998*.

It is headed by a Supreme Court judge and Vice Presidents who are County Court judges. The tribunal also consists of full-time, part-time and sessional non-judicial members with a range of backgrounds and expertise. All members are Governor-in-Council appointees for five-year terms.

VCAT sits in three divisions: the Administrative Division; the Civil Division; and the Human Rights Division. Within each division are specialist subject lists ranging from health and privacy, to mental health, to residential tenancies to planning and environment and guardianship. In 2010-11, 86,890 cases were lodged with VCAT of which 86,015 were finalised and VCAT used 95 hearing venues (VCAT 2011, p. 5).

VCAT is based in Melbourne but conducts hearings around Victoria using suburban and regional Magistrates' Court buildings, the Neighbourhood Justice Centre (NJC) in Collingwood, community centres and hospitals (particularly in the Guardianship and Mental Health lists if participants were unable to attend a VCAT venue). VCAT notes that it has sought to improve access by trialling twilight hearings to 7.00 pm at the NJC, piloting Saturday morning hearings in Broadmeadows and increasing service delivery by permanently locating staff at regional locations such as Bendigo, Geelong, Mildura and Moe with the aim of expanding to Ballarat, Wangaratta and Warrnambool (VCAT 2011, pp. 12-13).

VCAT currently plays a relatively small role within the statutory child protection system. It can review case plans prepared by DHS and review decision relating to information recorded on the DHS central register under sections 331 and 333 of the CYF Act when internal review processes have not resolved the dispute. These matters are considered within the General List of the Administrative Division. In 2009 VCAT reviewed 12 case planning decisions by DHS (VLRC 2010, p. 103) and in the 2010-11 financial year, nine applications were lodged with the Tribunal (Inquiry VCAT consultation).

Finding 14

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

15.4 Adversarial character of statutory child protection legal processes

'Adversarialism' means different things to different people (Victorian Government 2010a, p. 19). This means that the perception that the Children's Court is 'overly adversarial' can be difficult to comprehensively address. At its simplest, 'adversarialism' refers to the traditional common law method of presenting a case in court rooms that requires parties, not the judge, to define the issues in dispute, investigate their alleged facts and test each other's evidence through arguments put to the court. Adversarial principles are incorporated into Australian law through tradition, rules of evidence, and rules of civil and criminal procedure.

The adversarial system can be contrasted with the European inquisitorial system, where the judge or arbiter is responsible for advancing the matter. However, both adversarial and inquisitorial systems 'reflect particular historical developments rather than ... strict practices', and 'no country now operates strictly within the prototype models of an adversarial or inquisitorial system' (Australian Law Reform Commission (ALRC) 2000, p. 101). Furthermore, adversarial processes do not prevent the judge from managing a court and the fact-finding process. As noted in a paper presented at a conference hosted by the Australian Institute of Judicial Administration in May 2010:

> In a well-designed justice system the question should not be whether the judge should manage the fact finding process, but rather, when and how? (Cannon 2010, p. 10).

General criticisms of the adversarial system are that it does not account for resource imbalances that may be present between the parties, that it encourages lengthy trials, and that it concentrates on 'proof' rather than 'truth' (King et al. 2009, p. 3).

15.4.1 Adversarialism and the Children's Court

Almost all submissions commenting on the Children's Court considered whether the current adversarial model of litigation is appropriate in statutory child protection matters. Many of the submissions, including that of the Children's Court submission no. 1 (p. 47), called for an expanded use of alternative styles of litigation, such as the 'Less Adversarial Trial' (LAT) Family Court model.

A submission from the Centres Against Sexual Assault (CASA) argued that the effect of contest-driven dispute was that evidence and recommendations of child protection practitioners are discredited by lawyers for the parents, and that informed advice as to the best interests of children can be discarded (CASA Forum, p. 11). On the other hand, some submissions doubted whether an adversarial approach to a dispute is necessarily at odds with the best interests of the child (AFVPLSV, p. 5).

As mentioned above, adversarial processes are incorporated into Australian law through tradition, and rules of evidence and procedure. In relation to the Children's Court, section 215(1)(d) of the CYF Act states that the Family Division 'may inform itself on a matter in such manner as it thinks fit despite any rules of evidence to the contrary'. The VLRC notes that the Children's Court has taken a narrow interpretation of this provision, and that this narrow interpretation has prevented the exercise of more inquisitorial approaches to the admission of evidence by magistrates (VLRC 2010, pp. 90-91). The Court did not comment on this matter in its submissions to the Inquiry.

The Inquiry considers that, ultimately, a contests-driven culture will remain unless the judicial officer in charge of the hearing sets the expectations of how parties and lawyers should conduct their cases.

'Docketing' of cases

One method of encouraging a more inquisitorial approach to the admission of evidence and the management of matters through the court process is the use of a 'docket' system. A docket system simply assigns a matter to one judicial officer who is then responsible for monitoring the matter through the system. In the Family Division, in simple terms, this would mean 'one child, one magistrate'.

The benefit of a docketed court system is that magistrates become familiar with a child's individual circumstance. This may increase consistency in decision making relating to a child, and reduce the potential for issues to be re-litigated. The Inquiry also notes that a docketing system would assist in addressing concerns raised in submissions and

consultations going to the amount of time child protection practitioners and community service officers spend in preparing for and attending court. For example, a submission from community service provider Ozchild noted that community service workers sometimes spend long periods at the court waiting to be called as witnesses, which has a significant impact on workload management and resources (Inquiry DHS consultations; OzChild submission, p. 18; Victorian Alcohol and Drug Association submission, p. 12). The possibility of introducing a docket system was supported by the VLRC, although the VLRC noted that the Court would require support in piloting or otherwise introducing the system, and may be difficult in cases requiring emergency or short-term orders (VLRC 2010, p. 307-11).

In its submission to the Inquiry, the Children's Court considered that a form of docketing is being developed for matters involving Aboriginal families, and matters involving sexual abuse allegations. While matters would not be assigned to individual magistrates, matters would be assigned to specialist lists, which would allow for greater consistency and case management in matters of this kind. Specialist lists are a way by which courts can organise the various cases that come before them grouped around the specific subject matter of the case. These lists allow court resources (including judges or magistrates, court registry staff and other support staff) to be better organised and practised in managing the court process for those cases from their commencement at court to completion of hearing. The proposed creation of specialist 'Koori' and 'Sexual Abuse' case lists in the Family Division are discussed in greater detail in section 15.5.3. The Children's Court generally supported the introduction of a docketing system to the Family Division but considered that the introduction of such a system would need to be properly investigated and resourced, and particular attention given to how this would operate in regional Victoria (Children's Court submission no. 2, pp. 46-47).

Recommendation 56

The Children's Court should develop a case docketing system that will assign one judicial officer to oversee one protection matter from commencement to end. In order to evaluate the effectiveness of the system, the system should be piloted at an appropriate court location. The Department of Justice should support the Children's Court to establish the system.

The Less Adversarial Trial model

A much-discussed alternative to the contests-driven culture for child protection applications is the LAT model of the Family Court. Under Division 12A of the Family Law Act, judges of the Family Court use inquisitorial methods to focus on the issues and on arrangements that are in the best interests of the child. This is set out in Principles 1 and 2 of Division 12A (section 69ZN of the Family Law Act):

- Principle 1 – The court is to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings.
- Principle 2 – The court is to actively direct, control and manage the conduct of the proceedings.

Section 69ZX of the Family Law Act sets out the Children's Court's general duties and powers relating to evidence, such as giving directions and making orders about the matters in relation to which the parties may give evidence and how such evidence should be given.

The LAT model allows parties to speak directly to the judge and requires the judge (rather than the lawyers) to determine how the trial will run, for example, by limiting evidence to what the judge thinks is relevant to the issues in dispute (Family Court 2011, p. 2). Evaluations of the model in the Family Court have shown an increase in satisfaction with outcomes, particularly a greater contentment with the process and better emotional stability for children after court (Family Court of Australia 2011). The Inquiry also notes that both the Children's Court and the Law Institute of Victoria support the adoption of such a model (Children's Court submission no. 1, p. 47; Law Institute of Victoria submission, attachment 1, p. 9).

The VLRC found that the conduct of matters under Division 12A of the Family Law Act is an excellent model. The Inquiry agrees and considers that the model should be adapted for inclusion in the CYF Act. The Inquiry endorses the VLRC report's recommendations regarding the LAT model of the Family Court (VLRC 2010, pp. 314-317). The Inquiry notes that the VLRC is of the view that a docketing system should support such a case management approach.

The Inquiry recommends that the Children's Court be empowered, through legislative amendment, to conduct matters in a manner similar to the way in which the Family Court of Australia conducts matters under Division 12A of the Family Law Act. This is a medium-term recommendation that would be assisted by the evaluation of a pilot docketing system in appropriate court locations across Victoria.

Recommendation 57

The Children's Court should be empowered under the *Children, Youth and Families Act 2005* to conduct hearings similar to the Less Adversarial Trial model used by the Family Court under Division 12A of the Commonwealth *Family Law Act 1975*.

15.4.2 Court culture

Submissions to the Inquiry and Panel consultations reinforced the findings of previous reports that the Children's Court environment, particularly in the Melbourne Children's Court, is stressful for children and young people, their families, their carers, child protection practitioners, lawyers, and other professionals involved in the statutory child protection process.

The Inquiry makes recommendations in this chapter that aim to reduce children and young people's exposure to the Children's Court more generally, and at properly directing matters away from the currently chaotic corridors of the Melbourne Children's Court. In relation to the tension between child protection practitioners, lawyers and the Court, the Inquiry notes that stakeholders acknowledge that the culture between DHS, magistrates, private practitioners and VLA could be more collaborative, informed and respectful (Children's Court submission no. 1, p. 45; Children's Court submission no. 2, p. 32; Inquiry DHS Metro Workforce forums and consultations; Inquiry consultation with Law Institute of Victoria; Victorian Government 2010a, p. 26; VLA submission no. 1, pp. 5-6; VLA submission no. 2, p. 2; VLRC 2010, pp. 233-235; Victorian Ombudsman 2009, pp. 56-59).

The adversarial process itself is notoriously exacting on the already stretched resources of child protection practitioners. As one submission put it, 'few people speak well when under attack' (Humphreys & Campbell submission (b), p. 3). The Inquiry considered submissions that argued that child protection practitioners should be, but are not, treated as expert witnesses in the current adversarial process.

The Inquiry, in consultations with child protection practitioners, received almost universal input that at the Children's Court at Melbourne, but not elsewhere, they were not treated with respect by some magistrates, and often not by the legal profession. The Humphreys and Campbell submission (b) (p. 3) reflected this input, noting a 'court culture where denigration of child protection practitioners is part of the process'. The Children's Court, and the legal practitioners in it, do not agree with this input.

Child protection practitioners as witnesses

There are two elements to the role of child protection practitioners as witnesses in Children's Court proceedings. First, witnesses should always be treated with proper courtesy in giving evidence. There is no place in a court, or in legal conference, for bullying, sarcasm or denigration. Second, is the legal categorisation of a witness as an expert. As to this, the foundational principle is that a matter is appropriate for expert evidence if it is relevant, is beyond the competence of ordinary people, and requires special skill, knowledge or training. A witness is received as an expert if they are so qualified. Child protection practitioners, as a category, fulfil these criteria. Identifying and assessing the risk to a child's safety in the child's living arrangements is a key specialist task in child protection work. This involves collecting data, assessing it, and forming proper judgments about how the capacity of the parents or householders and the issues in the child's environment interact and will interact, and in turn how they are impacting, and will impact, upon the child's safety. This specialist skill is acquired through academic study and professional training, internal specific training in risk assessment, professional supervision and on-the-job experience. This is properly regarded by the law as expertise.

There are two further considerations.

Under section 215(1)(d) of the CYF Act the Family Division of the Children's Court 'may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary'. It is speculative whether this facilitative provision has had an unintended consequence of blurring the perception of child protection practitioners as the expert witnesses that in law they are. Second, child protection practitioners need to understand that testing, properly conducted and judicially controlled, of their evidence is both appropriate and necessary. In this respect, it is essential that child protection practitioners receive relevant and sufficient training in court process, both to assist the court and in fairness to themselves. The sufficiency of such training is important and should be a component of the training services provided by the new training body discussed in Chapter 16. Importantly, the completion of an accredited training course as contemplated in Chapter 16 should operate to qualify child protection practitioners as expert witnesses in the assessment of the current and future safety of a child in their living arrangements. The Inquiry also notes and supports current initiatives in this regard, including the Victorian Child Protection Legal Conference conducted in Melbourne in June 2011 under the auspices of VLA, DOJ and DHS.

The Inquiry considers that the Children's Court has a responsibility to ensure witnesses experience the court process in a way that minimises the stress that even experienced child protection professionals have reported that they feel in court. The Inquiry acknowledges the Children's Court submission no. 2 (p. 9) that the experience of child protection practitioners is also influenced by a range of factors, including their work environment and a lack of training in court processes. Nevertheless, the Children's Court has a responsibility to all witnesses to ensure that they understand court processes. The Inquiry notes that this responsibility extends to conference convenors and will be increasingly important with the adoption of less adversarial trial reforms.

Professional culture at court

Some submissions saw the experience of child protection practitioners as at least partly the result of a disjunction between the Court and the DHS approach to reunification and parental access. The Court was typically characterised as promoting higher levels of parental access than DHS. Proposed action to address this issue was the mentoring of regional magistrates (Foster Care Association of Victoria submission, p. 15) and training of magistrates in the impact of trauma, problematic attachment and cumulative harm on child development (OzChild submission, p. 19).Reforms aimed at improving this culture canvassed by submissions, consultations and previous reports include:

- Reporting 'bad behaviour outside the courtroom' to the judicial officer handling the case, to the President of the Children's Court, and or to the relevant professional bodies, such as the Law Institute of Victoria, the Legal Services Commissioner or the Bar Council (Children's Court submission no. 2, p. 32). In consultations, the Inquiry heard that such complaints are rarely received by the appropriate body or office;
- Funding the Children's Court to appoint a director who, along with other Court staff, will manage behaviour in the corridors of the Court (VLRC 2010, p. 361);
- Increased and formalised collaborative training to foster professional understanding (Victorian Government 2010a, p. 26; VLRC 2010, p. 235);
- The development of a memorandum of understanding between the VLA and DHS (Victorian Government 2010a, p. 12). The Inquiry understands that the development is underway, and that a code of conduct for practitioners is also in development (Inquiry DOJ consultation);
- Developing a process for accreditation of lawyers working in the Children's Court (Children's Court submission no. 2, p. 32). The Inquiry notes that this accreditation program is currently in development and supports this positive step taken by the government and the Law Institute of Victoria;
- A revised fee structure for private practitioners to provide incentives for lawyers to see children away from court (Victorian Government 2010a, p. 22);
- The introduction of accredited training of conference convenors (VLRC 2010, pp. 218-219);
- The expansion of the panel of lawyers practising at the Melbourne Children's Court (Children's Court submission no. 2, p. 32); and
- Increased training of child protection practitioners in court preparation, privacy and Appropriate or Alternative Dispute Resolution (ADR) processes (Victorian Government 2010a, pp. 33-35). Chapter 16 sets out the Inquiry's findings in relation to strengthening workforce capability.

Through its consultation with the OCSC and the Inquiry's Reference Group, the Inquiry heard that the first step required to establish a more collaborative and respectful culture is the development of a common language between professionals involved in child practice, including child protection practitioners and lawyers (Eastern Region Family Violence Partnership submission, p. 1).

The VLA expressed the view that joint training between lawyers and child protection practitioners should be mandated by statute (VLA submission no.1, cover letter to Inquiry). The Inquiry does not believe a statutory response is warranted as joint training programs should be capable of effective implementation by government without requiring prior legislative authority. However, the Inquiry notes as part of the ongoing work to foster collaboration and a common understanding between child protection practitioners and lawyers, the efforts by DHS, VLA and DOJ to promote joint training conferences such as the Child Protection Legal Conference held on 16 and 17 June 2011. The Inquiry considers that these conferences could be held more regularly with a view to implementing a more structured and accredited professional development program for both professions and could be part of the responsibilities of the new sector-wide training body proposed in Chapter 16.

The Inquiry endorses the measures outlined above and considers that specialisation training for legal professionals should be replicated with appropriate adaptions for magistrates sitting in the various locations of the Children's Court. Such training could usefully be developed with the courts, the Judicial College of Victoria and with the assistance of experienced professionals including from the Victorian Bar, the Law Institute of Victoria, DHS Principal Practitioners and the new statutory clinical board proposed in Chapter 18 and is addressed by Recommendation 58.

The issue of monitoring and the conduct of legal professionals was raised in the Melbourne Public Sitting of 28 June 2011. The Inquiry notes that there are three categories of legal professionals who work for or are associated with VLA in Children's Court matters: duty lawyers, in-house lawyers and private practitioners, who sit on a Children's Court practitioner panel that is convened under section 29A of the *Legal Aid Act 1978*.

In a submission to the Inquiry, VLA noted that it is not possible to exercise the same degree of control over the conduct of the 24 private legal practitioners who comprise the VLA's Children's Court panel as it does over the duty lawyers and in-house VLA lawyers (Ms Judy Small, VLA, Melbourne Public Sitting). However, the VLA submission also noted that a code-of-conduct (following a recommendation in the Taskforce report) being developed for all practitioners in the Children's Court was close to being settled and proposed for implementation in 2012.

Although private practitioners may be removed from panels (section 30(10) *Legal Aid Act 1978*), according to VLA this has rarely occurred as legal professionals are reluctant to complain about their colleagues, and reports of poor behaviour are often too vague to proceed with disciplinary action (Ms Judy Small, VLA, Melbourne Public Sitting). The Inquiry appreciates that lawyers may be hesitant to report conduct that may be fuelled by overwhelming caseloads and stressful environments. Nevertheless, lawyers are under professional obligations to maintain an appropriate standard of conduct under the *Legal Profession Act 2004* and the *Professional Conduct and Practice Rules 2005*. Legal professionals and stakeholders in the Children's Court are aware that clients within the Court are among the most vulnerable and disadvantaged members of the community and may be unlikely or unable to pursue complaints regarding conduct that falls short of acceptable professional levels. Complaints in relation to conduct that exacerbates the tensions of an already stressful environment can, and should, be made to the Victorian Legal Services Commissioner and, where relevant, to VLA.

In consultations, the Inquiry also heard that the workloads of VLA private practitioners are excessive. This is due in part to the fact that the pool of professionals on the Children's Court Panel is quite small and that the current levels of remuneration for practitioners in this jurisdiction are low - both factors impact on the quality of service (Ms Judy Small, VLA, Melbourne Public Sitting). The Inquiry also notes that the family law jurisdiction is often viewed as a more attractive area of practice for lawyers compared with the Children's Court jurisdiction. The Inquiry draws attention to the desirability of increasing the pool of practitioners sitting on the VLA Children's Court Panel, but notes that this will be difficult unless the current, relatively poor levels of remuneration offered to professionals operating in the Court is addressed.

Matter for attention 13

It is desirable that there be an increase in the current pool of legal practitioners sitting on the Victoria Legal Aid Children's Court Panel while consideration is given to improving the current levels of remuneration offered to lawyers practising in the Children's Court jurisdiction.

Recommendation 58

Appropriate training in infant and child development, child abuse and neglect, trauma, and child interviewing techniques should be developed and provided to lawyers practising in the Children's Court jurisdiction and in the Victorian Civil and Administrative Tribunal, having regard to the training offered to independent children's lawyers in the family law jurisdiction. This training should be a prerequisite for any lawyer seeking to represent a child on a direct representation or best-interests basis in proceedings before the Children's Court and should be an accredited course.

Appropriate education should be provided to judicial officers exercising the jurisdiction of the Children's Court and members exercising the jurisdiction of the Victorian Civil and Administrative Tribunal. The Victorian Government should consult with the relevant professional organisations and also seek the assistance of the Judicial College of Victoria in developing an appropriate professional education program.

15.4.3 Legal representation of the Department of Human Services in child protection proceedings

The VLRC report noted concerns about the ability of the Court Advocacy Unit (CAU) of DHS to effectively represent DHS in child protection proceedings. Based on the VLRC's consultations the report noted the following concerns:

- A conflicted role for DHS as it was both assisting children and families and then also initiating proceedings and seeking intervention orders (effectively switching from collaborative to adversarial);
- The current role of child protection practitioners included performing the type of work a solicitor would perform such as filing court documents and drafting affidavits; and
- The sometimes poor relationship between CAU lawyers and child protection practitioners particularly when CAU's legal advice was disregarded or CAU lawyers were forced to make untenable arguments to court (VLRC 2010, pp. 388-389).

As part of its reform options, the VLRC report proposed that the VGSO represent DHS and conduct child protection cases on behalf of the State in the Children's Court (VLRC 2010, option 4, p. 398). The benefits of the using the VGSO as identified by the VLRC included:The VGSO's independence from the department;

- VGSO lawyers' litigation and case management experience; and
- The respect for the VGSO among the judiciary and members of the profession (VLRC 2010, p. 394).

The VLRC qualified this recommendation by considering the possible use of a 'mixed representation' model if service capacity was compromised. The VLRC proposed that DHS could be represented in the metropolitan areas by the VGSO, by private law firms contracted through the Government Legal Services Panel (a panel of 20 law firms that are contracted to provide a range of services to government departments in various specialities of law), and by members of the CAU.

The VLRC also noted the mixed representation model would need to take account of the different representation practices in metropolitan and regional areas given VGSO and panel law firms only service DHS metropolitan areas and DHS consider continuing arrangements with private solicitor firms in the regional areas or consider whether VGSO solicitors should be posted to regional areas (VLRC 2010, pp. 398-399).

The Inquiry has heard that there are difficulties with the current arrangement for DHS representation in some regional areas. For instance, a complaint raised by VLA was that in the Wimmera region child protection practitioners either had to represent the department themselves or use local private practitioners which in turn reduced the pool of available lawyers to represent children or families (VLA, Horsham Public Sitting). The Inquiry has also received submissions in support of VLRC's Option 4 (Children's Court no. 1, pp. 5-6; Federation of Community Legal Centres (Victoria), pp. 20-21; Youthlaw, p. 5).

DHS advised the Inquiry that it has recently restructured its legal services section. The CAU has been re-titled as the Child Protection Litigation Office (the CPL Office) to better reflect the nature of the case management and representation that is undertaken by that new unit and its central role within the DHS child protection program. Importantly, the CPL Office has also entered into arrangements for solicitors from the VGSO to be seconded to the department.

The Inquiry notes that while this arrangement should help ease the current burden on child protection practitioners appearing in regional courts and cover any shortfall in the capacity of the VGSO to represent DHS in all protection proceedings across the state in the immediate term, this arrangement does not fundamentally resolve the conflict of interest issue that has been raised by stakeholders.

In view of the steps that have already been taken by DHS and the VGSO to train and use VGSO solicitor advocates in child protection proceedings, the Inquiry recommends that, in the medium to long term, the VGSO represent DHS in all child protection proceedings before the Children's Court and at VCAT across the state. VGSO solicitors should also brief barristers engaged to represent DHS in contested hearings. A clear delineation between DHS staff and their legal representatives in contested proceedings is considered by the Inquiry to be a long-term benefit with respect to strengthening relationships between families and child protection practitioners, the more efficient conduct of a matter at court and to improving the relationships between the legal practitioners who practise in this jurisdiction.

However, the Inquiry considers there to be an ongoing role for in-house lawyers from the CPL Office. The in-house lawyers can play a valuable role in representing DHS at the new pre-court Child Safety Conferences canvassed in section 15.5.1 and in other pre-court negotiations where appropriate. In light of these proposed changes, the Inquiry considers the office should be renamed.

The Department of Human Services Child Protection Litigation Office

This recently created office is led by a newly appointed Assistant Director, Litigation who reports to the Director of DHS Legal Services. It is understood at present that there are 33 staff consisting of 25 lawyers, four paralegals and four administrative staff.

The structure of the CPL Office has been organised into four units: East, South, North, and West, each of which is responsible for the child protection work flowing from the corresponding regional offices of DHS. A unit is overseen by a unit manager to ensure files are properly allocated and to oversee any 'inactive files'. The members of each unit share responsibility for all the cases for their designated region, cover all court appearances, take urgent calls and do whatever is required to work in partnership with their region.

It is understood that senior lawyers in each of the units visit their designated regions to advise and support and, where possible, train groups of child protection practitioners in the regional offices. This allows legal issues to be discussed and addressed from the earliest point of statutory intervention, and enhances the quality of preparation of the matters that proceed to court. DHS advises that it anticipates a reduction in the number of instances where matters that have been listed before the court need to be withdrawn or rescheduled for want of more thorough legal preparation. DHS advises that there has been strong support from child protection practitioners and the staff of the CPL Office for the move to a regionally organised structure.

A rotating pool of four or five solicitor advocates seconded from the VGSO support the DHS solicitors. The primary role of the VGSO advocates is to handle many of the urgent safe custody applications and mentions that would otherwise have been briefed to barristers. The VGSO advocates are also allocated matters from each of the regions. DHS advises that as a result the CPL Office is no longer as reliant on briefing barristers for more straightforward applications and for urgent applications by safe custody.

The retainer arrangement with the VGSO is being reviewed on an annual basis. DHS advises that the intention is to continue this arrangement pending the next review in March 2012.

Recommendation 59

The Victorian Government Solicitor's Office should represent the Department of Human Services in all child protection proceedings in the Melbourne Children's Court and other metropolitan and regional Children's Court sittings and at the Victorian Civil and Administrative Tribunal. Department of Human Services lawyers should represent the department at the pre-court conferencing stage.

15.5 Structural and process reforms for protection applications and the Children's Court

The impact of legal proceedings on child protection practitioners has been made clear to the Inquiry as discussed in section 15.4.2. The broader impact of current court and legal processes under the CYF Act on the capacity of DHS to manage caseloads has also been highlighted in previous reviews of the statutory child protection system. For instance, the Taskforce report observed that protection applications by safe custody were likely to require more mentions at court than protection applications by notice and that safe custody applications were increasing as a proportion of overall applications. Cases were therefore taking longer to resolve and this conclusion was supported by analysis from the Boston Consulting Group (BCG). The BCG analysis indicated that while in 2002-03 around 19 per cent of primary applications were still pending resolution after six months, in 2008-09 this figure had increased to 31 per cent (Victorian Government 2010a, p. 18). This increase has had dual impact on both the resources of the Children's Court and on DHS.

The Children's Court itself has acknowledged the difficulty with time delays based on the number of applications it deals with, noting that in 2009-10, it resolved 46.8 per cent of primary applications within three months of the first hearing and 77.8 per cent of cases within six months of the first hearing but a significant proportion of cases involved the issuing of interim protection orders, which require the court to adjourn proceedings for three months before they can be finalised. The Children's Court further noted that in the small percentage of cases that proceed to contest the time delay between the date of a dispute resolution conference and date of final contest had doubled from nine weeks in 2002-03 to 18 weeks by the end of July 2011 (Children's Court submission no. 2, p. 13).

Accordingly, a number of structural reforms are canvassed in the following sections to help divert as many cases away from the court environment as appropriate and to clarify the role of the Children's Court in the statutory child protection system.

In summary, the reforms relate to:

- Early conferencing: pre-court conferencing;
- Early conferencing: conferencing as part of the court process;
- Specialist lists;
- Commencement of protection applications by DHS;
- Reviewing the current range of statutory protection orders under the CYF Act; and
- Realigned court processes for statutory child protection proceedings.

15.5.1 Early conferencing: pre-court conferencing

One of the key reforms canvassed in the VLRC report is the proposal for a new system for determining protection application outcomes. The reform would be based on a conferencing process built on 'a graduated range of supported, structured and child-centred agreement-making processes' (VLRC 2010, p. 214). At the centre of this reform would be a mandated early conference (in appropriate cases), once a protection application is initiated.

The driving principle behind early conferencing is to ensure that protection concerns can be discussed and agreement reached on outcomes that are based on the views of the child or young person, their families, carers, DHS and those whose expertise may assist the parties to reach agreement in a non-court and 'non-adversarial' setting. A criticism raised with the Inquiry by the Children's Court is that parties often will only seriously start talking with each other about resolving protection concerns in the court building. The VLRC noted the majority of protection matters are informally settled at court (VLRC 2010, p. 209). Every submission to the Inquiry that commented on the use of ADR processes supported the use of conferencing, in appropriate circumstances, to resolve protection concerns early. The Inquiry commends this principle.

The Family Group Conference model

The VLRC proposed a model based on the New Zealand Family Group Conference system promoting an early conferencing process and set out in some detail the critical aspects it believed was necessary for a similar Family Group Conference model to work in Victoria. The Inquiry notes that DHS currently conducts Family Group Conferences, although as stated by the VLRC and submissions to the VLRC, these are not mandated by the CYF Act, are not part of DHS statewide practice and are held in small numbers (VLRC 2010, pp. 238–239). The critical features of the Family Group Conference model proposed by the VLRC were:To entrench Family Group Conferences following commencement of a protection application as the general rule under the CYF Act unless exceptional circumstances existed (such as refusal to attend by a family member, convenor considers a Family Group Conference to be inappropriate, or where an emergency exists necessitating the matter being taken to court);

- To allow Family Group Conferences to be conducted in a three-stage process being: detailed information sharing between parties at the start of the conference; a time for private family deliberation during the conference; followed by the coordinator seeking the family group's agreement with the referral source (being DHS) on whether a child is in need of protection and if so, an appropriate strategy to address the need;
- To permit a wide group of people to attend the Family Group Conference including the child, parents, carers, extended family, professionals and members of that family's community with an interest in the child and the family to be determined by the conference coordinator in discussion with the parties;
- To require conference coordinators to be independent of DHS and the Court and to be accredited with appropriate qualifications and training (the VLRC considered VLA as suitable for developing and running the Family Group Conference model based on its experience in running the Roundtable Dispute Management program in the family law jurisdiction);
- To allow parties, particularly parents, access to legal representation and advice at the Family Group Conference; and
- To facilitate Family Group Conferences to be held at suitable locations around metropolitan and regional areas across the state, that are not at courts, and possibly using departmental facilities (VLRC 2010, chapter 7).

The Family Care Conference model

The Children's Court proposed to the Inquiry an alternative early conferencing model of Family Care Conferences based on the South Australian Youth Court practice. The critical difference would be that the Court Conferencing Unit would run the conferences and it would borrow on the current New Model Conferencing (NMC) practices that were being piloted in the Melbourne Children's Court through 2010-11. The advantages that the Court proposed a Family Care Conference would have over the Family Group Conference were: the independence of the Court as a facilitator; the similarity of the Family Group Conference to the pre-hearing NMCs currently run by the Court once a matter is in court; and the benefit of

utilising an established process with practice standards with an existing body and infrastructure rather than creating a new body to run the Family Group Conference process (Children's Court submission no. 1, pp. 37-38).

Signs of Safety Conference model

Another model that the Inquiry considered was the Signs of Safety (SOS) conferencing model that is in operation in Western Australia. This model was endorsed by the Taskforce in its report. The SOS model occurs once protective applications have been filed with the Children's Court and is a pre-hearing conference. It requires all parties to meet at a venue outside the court to discuss the protective concerns and proposals held by the Western Australian Department of Child Protection. The parties are legally represented but lawyers do not play an advocacy role in these conferences. The conferences are co-convened by a senior mediation accredited lawyer from Legal Aid Western Australia and a senior social worker from the Department of Child Protection. The conference uses a strengths-based approach to dispute resolution and adopts the SOS framework and language that both lawyers in this jurisdiction and child protection practitioners are trained to use.

The SOS conference model underwent a pilot phase in Western Australia and was evaluated in 2011. That evaluation found the SOS conferencing model to be successful, noting in particular that there was a high level of engagement with the pilot, cancellations of planned conferences were rare, that conferences had resulted in clear time and court savings, and had the confidence of the judiciary. The evaluation also noted that there were a lack of skilled and independent facilitators for the meetings and a lack of preparation often resulted in time delays or unclear expectations of participants at the conferences (Howieson & Legal Aid Western Australia 2011, pp. 9-11).

The Inquiry's proposed model

Having considered the detailed analysis in the VLRC report and the comments of DHS and the Children's Court, the Inquiry proposes the following for a new pre-court conference process.

DHS to continue with Family Group Conferences – The Inquiry notes that Family Group Conferences are currently conducted by DHS as an earlier intervention practice. The Inquiry believes the current model of department-run Family Group Conferences should continue as they are aimed at helping at-risk families with a view to averting a formal statutory child protection process. DHS should be adequately resourced to conduct Family Group Conferences in a more consistent and coordinated manner across the state.

New statutory Child Safety Conference prior to court – The CYF Act should mandate a conferencing process that occurs prior to court where possible and where appropriate. If an application has commenced through safe custody which, drawing on the VLRC report, the Inquiry proposes should be re-termed as an 'emergency removal', then the matter should still proceed, where appropriate, to a pre-court conference. It is important that this statutory mechanism be used to divert appropriate cases away from court.

There are circumstances in which a statutory pre-court conference would be inappropriate. These circumstances should be stated in the CYF Act. Consistent with the Inquiry's proposals in Chapter 9 for new statutory child protection processes in response to serious reports of abuse, such as physical or sexual abuse and family violence, it is likely to be inappropriate for protective concerns based on such allegations to be dealt with through a pre-court conference. In other cases, the conference might be deemed inappropriate on a case-by-case basis due to safety or security concerns. It may also be inappropriate where the parties agree due to the circumstances that such a conference would serve no purpose (for example, where a voluntary agreement has already been entered into at a DHS-convened Family Group Conference, or where the parties agree that a court order is more appropriate due to the parent's inability to comply with a voluntary agreement).

This new statutory conference could be named 'Child Safety Conference' to distinguish this from the current non-mandatory Family Group Conference convened by DHS and to reinforce the focus on the safety of the child. As the Child Safety Conference is intended to divert matters from court, administrative responsibility for the implementation of these conferences should be with DHS and not with the Children's Court. However, due to the proposed structure and conduct of these conferences as discussed below, DHS would be required to enter into an implementation agreement with VLA.

Structure and conduct of a Child Safety Conference – The Inquiry agrees with the principles put forward by the VLRC for the conduct of these conferences, which include: broader group participation; lawyer-assisted resolution; and use of appropriate and transparent conference practice standards. This early stage conference is designed to keep children, parents and other interested parties away from a court setting by achieving outcomes that are focused on the child's safety and wellbeing.

The Inquiry recommends that the conference adopt an aspect of the Western Australian SOS conference model, namely that the conference be co-convened by two convenors from VLA and DHS. In Western Australia, the co-convenors are a senior lawyer from Legal Aid Western Australia who is accredited in mediation and a senior social worker from the Department of Child Protection (DCP). A similar approach should be taken with the use of senior practitioners from VLA and DHS who have appropriate experience and qualifications in child protection and in mediation practice. However, the Inquiry is mindful of the concerns that may arise for the parties and indeed the convenors on the matter of independence. In order to ensure separation between the convenors and the parties and to minimise any perceptions of bias or identification with the parties, the Inquiry recommends that the convenors should be:

- Accredited in mediation and ADR practice;
- Appointed for fixed terms for the exclusive purpose of convening Child Safety Conferences; and
- As far as is possible, be based near the conference venues.

The benefit of this proposal is that government can draw on existing professionals to conduct these conferences and it does not require the creation of new statutory offices for conference convenors or a separate organisation to host the conferences. Accordingly, the Inquiry does not consider there to be a need for an Office of Children and Youth Advocate to convene these statutory conferences as proposed in Option 3 of the VLRC report.

As these conferences are intended to occur outside a court context the Inquiry does not agree with the recommendation by the Children's Court that the Court Conferencing Unit take responsibility for convening these conferences.

Hosting of conferences: metropolitan and regional areas – The Inquiry agrees with the VLRC that existing VLA facilities at the Dispute Roundtable Management program could be utilised to facilitate these conferences in Melbourne, while DHS facilities could be considered for hosting conferences in outer metropolitan or regional areas. However, the Inquiry recommends that where existing facilities are to be used, and those facilities are not currently configured for conferencing, they should be modified to ensure they provide appropriate child and family-friendly environment and are set aside for the predominant purpose of facilitating the conferences. VLA and DHS would need to coordinate the allocation and availability of conference convenors to facilitate conferences across the State.

This approach would also better enable the Children's Court and its conferencing unit to manage the proposed expansion of its current NMC services to other metropolitan areas and to regional courts.

Setting standards – Conference practice standards should draw on the SOS and NMC practice standards, with the basic structure and standards of the conference to be specified in the CYF Act. The Inquiry has viewed the 'strengths-based' conferencing practices that apply in both SOS and NMC conferences and considers these to be an effective way of drawing out the voice of children and their parents and allowing them to meaningfully engage to find solutions that would support their family.

A joint collaborative approach – Fundamental to the success of this conferencing model is the desire to collaborate by all practitioners and professionals involved with the conference. This clearly depends on the successful implementation of the training reforms discussed in section 15.4.3 and in Chapter 16.

15.5.2 Early conferencing: conferencing as part of the court process

Currently, the CYF Act allows the Court to refer a protection matter to a Dispute Resolution Conference (DRC). The Act enables a conference to be either: facilitative (where the parties with the assistance of convenors are encouraged to reach agreement on the action that is in the best interests of the child); or advisory, where the convenor considers and appraises the matters in dispute and provides a report to the Court on the facts of the dispute and possible outcomes (ss. 217 – 219, CYF Act).

The CYF Act already empowers the Children's Court to order the attendance of parties other than DHS and the parents including the child, other relatives of the child, if the child or parent is Aboriginal a member of their Aboriginal community with their agreement, or in the case of a child from an ethnic or culturally and linguistically diverse background a member of that child's community, or if the child or parent has a disability, an advocate for the child or parent (s. 222).

DRC convenors are Governor-in-Council appointments on the advice of the Attorney-General although the Inquiry notes the Children's Court has recommended to the Victorian Government an amendment to the CYF Act to allow convenors to be appointed by the President of the Court due to the administrative burden on the Court associated with preparing Governor-in-Council appointment documentation (Children's Court submission no. 2, p. 13). The Inquiry understands that this proposal is to be addressed by the Victorian Government.

New Model Conferences

Following the Taskforce report in 2010, the Children's Court, in conjunction with DHS and VLA developed its NMC program.

NMCs are currently held for protection matters at the Melbourne Children's Court arising from the DHS North and West Metropolitan region while traditional DRCs continue to be conducted by court registrars in Moorabbin and other regional courts. NMCs are held either at the VLA Roundtable Dispute Management (RDM) building or at the Melbourne Children's Court building. The Court advises that NMCs will be expanded for cases arising from Southern and Eastern Metropolitan DHS regions once facilities at the William Cooper Justice Centre in central Melbourne are made available (Children's Court submission, no. 2, p. 33).

The Children's Court issued detailed *Guidelines for New Model Conferences,* which took effect from 31 January 2011. In summary, the guidelines:

- Set out when the Court is likely to order a NMC with, as a general rule, cases unlikely to resolve expeditiously being referred for a NMC at the second mention;
- Require parties to undertake information exchange at least seven days prior to the NMC;
- Require the NMC to maintain a child focus and to hear the voice of the children directly or indirectly through the child's lawyer;
- Set out the responsibilities and role of the convenor as well as the parties during an NMC;
- Stress that lawyers are there in a non-adversarial capacity and to represent their client in a problem-solving environment; and
- Encourage families and relevant community members to be involved to contribute to a resolved outcome rather attending to advocate for any one party (Children's Court submission no. 1, appendix c).The Inquiry notes the guidelines could be strengthened by expressly recognising the contribution that other parties with an interest in the child's best interests can participate at a NMC (with the agreement of the parties). This should include elders or respected members of the Aboriginal community, senior representatives from newly arrived migrant communities or culturally and linguistically diverse communities and professionals (including CSOs).

The Inquiry notes that NMCs are currently held at the VLA's RDM building and at the Melbourne Children's Court building. The NMCs work on a strengths-based approach to allow the parent and the child or young person, if present, to 'take ownership' of their situation and to express their views throughout the conference. The legal representatives for the parents do not take an advocacy role at the conference but speak for their clients as needed and formalise negotiated outcomes. The facilities at the RDM building, a dedicated conferencing facility, are superior to the Children's Court conferencing facilities. The Inquiry notes the RDM building is predominantly used for family law conferences and the constraints on the court's ability to hold all NMCs off-site due to operational delays with the facilities at the William Cooper Justice Centre.

An issue of concern, as is acknowledged by the Children's Court in its submission, is the extraordinarily high rate of NMC cancellations. From the statistics provided by the Court close to 40 per cent of scheduled NMCs do not take place on their listed date (Children's Court submission no. 2, p. 35). The Children's Court's submission notes that cancellations have occurred for various reasons including the convenor, a party or representative from DHS being unavailable, a party being ill, a case not being ready or a Family Violence Intervention Order has been issued preventing the NMC from taking place.

Subsequent data provided to the Inquiry by the Children's Court indicated that from August 2010 to October 2011, of the 77 NMCs cancelled prior to the date of the conference:

- 53 per cent of cancellations were due to a party (other than DHS) being unavailable (reasons unspecified) or being ill;
- 13 per cent of cancellations were due to the case not being ready to proceed;
- 9 per cent of cancellations were due to DHS being unavailable;
- 8 per cent of cancellations were due to a convenor being unavailable; and
- 17 per cent of cancellations were due to other reasons.

The data also showed that for the same time period, of the 92 conferences that were cancelled on the day of the conference:

- a concerning 84 per cent of cancellations were due to a party (other than DHS) failing to attend (reasons unspecified) or due to illness;
- 8 per cent of cancellations were due to a party not having a lawyer or the case not being ready to proceed;
- 1 per cent of cancellations were due to DHS failing to attend; and
- 7 per cent of cancellations were due to other reasons (Inquiry consultation with Children's Court).

The Children's Court has advised that it is considering strategies to address this problem by allowing the conference intake officer to focus engagement with the parents, the sending of SMS reminders to conference participants, and also possibly listing a directions hearing one week prior to the scheduled conference to ensure it is ready to proceed on the date (Children's Court submission no. 2, p. 36). While the Inquiry considers the need for a directions hearing might add a further process burden, the Inquiry supports these initiatives by the Court.

The Inquiry considers that the legal representatives of the parties should bear greater responsibility in ensuring that their clients are able and willing to attend on the day. For instance, every time a client fails to attend a NMC, resulting in a cancellation without 24 hours prior notice, the Court may require the legal representative to explain to the magistrate why their client did not attend and what steps they took to secure their client's attendance. If those steps were inadequate, the Court should be communicating its concern to VLA. VLA should implement fee penalties for lawyers who fail to take adequate steps to ensure their client's attendance at the NMC, and lawyers who repeatedly fail to do so should not be engaged. This aspect should also be addressed in the code of conduct being proposed for practitioners in 2012.

The Inquiry also supports the proposals being developed by the Children's Court and DOJ in consultation with the Aboriginal community to use Aboriginal co-convenors for NMCs involving Aboriginal families and the creation of a specialist sub-committee to enable children to better participate in the NMC process. The Inquiry notes that this should be done in the context of the principle, which is supported by the Children's Court, that children should not be involved with the Court unless they express a desire and it is in their interests to do so. The Inquiry understands an evaluation process of the NMC program is currently being undertaken on behalf of the Court.

Recommendation 60

Protection concerns should be resolved as early as possible using a collaborative problem-solving approach with a child-centred focus and minimising where possible, the need for parties to go to court. This means that:

- The Department of Human Services should, where appropriate, use voluntary Family Group Conferencing as a matter of practice to prevent matters from reaching the protection application stage;
- Where a matter has reached the protection application stage, parties must try to resolve the protective concern, where appropriate, through a statutorily mandated Child Safety Conference set out in the *Children, Youth and Families Act 2005*; and
- Where a matter is before the Children's Court, parties should, where appropriate, go through a New Model Conference and the Children's Court should be supported to implement this model of conferencing across the state.

Finding 15

The Inquiry notes an evaluation of the Children's Court New Model Conference is being undertaken. The Inquiry generally supports the structure and process of the New Model Conference but is concerned with the current levels of cancellation due to non-attendance at these conferences.

Recommendation 61

Victoria Legal Aid should implement fee penalties for lawyers who fail to take adequate steps to ensure their clients' attendance at a New Model Conference and lawyers who repeatedly fail to do so should not be engaged by Victoria Legal Aid. This should also be addressed in the code of conduct being proposed for practitioners in 2012.

15.5.3 Specialist lists

Child sexual abuse allegations in protection matters

There is a need for children and young people who may have been the subject of sexual abuse to be treated with particular care. When these children are the subject of a protection application by DHS it is important for their safety and wellbeing that the protection application is resolved as expeditiously as possible in the Family Division of the Children's Court.

Submissions to the Inquiry have called for better court processes to expedite protection applications in the Family Division that involve an allegation of sexual abuse through the creation of a specialist list (OCSC, attachment c, pp. 9-10), with regard to the provision and testing of evidence (VLA submission no. 1, p. 19) and specialist training for magistrates hearing such matters (Humphreys & Campbell (b), pp. 4-6). As discussed in section 15.4.1, specialist lists assist the court to organise its resources and develop specialist expertise, based on the subject matter of the case, to better manage a case from commencement through to completion of hearing.

The issue arises in the context of a low rate of substantiations of sexual abuse, an issue that is discussed in Chapter 14, where the Inquiry recommends amendment to the CYF Act to make clear the standard of proof is the balance of probabilities and no further qualifications be added to that test. A model that has been raised by stakeholders and was considered by the VLRC was the Magellan program used in the Family Court and Federal Magistrates Court for family proceedings where allegations of abuse of children have surfaced (see box).

The Children's Court has indicated its strong support for the creation of a specialist list and notes its ongoing work with the assistance of a cross-disciplinary working group to develop a suitable model for implementation in the Family Division (Children's Court submission no. 2, p. 42). The Inquiry supports this work.

The Magellan case management program

The Magellan program was piloted in the Melbourne Registry of the Family Court in 1998 and has subsequently been implemented in all states and territories where the Family Court sits except in Western Australia, which has a state-based Family Court. That court runs its own specialist program called Columbus.

The program involves:

- A specialist team within the court registry that comprises one or two specialist judicial officers and dedicated staff to deal with cases involving sex abuse allegations;
- A steering committee comprised of key interagency stakeholders; and
- Interagency cooperation between police, child protection services, hospitals, private lawyers, community centres and counselling services (VLRC 2010, p. 161).

Some of the key aspects of the program are:

- A focus on children involved in the dispute;
- A judge leading and managing the proceedings from commencement to end and within tightly managed timeframes;
- A designated court-ordered independent children's lawyer for every child that is funded by legal aid (Family Court, Information Sheet).

The VLRC noted that recent reviews of the Magellan program identified the following benefits of the program since its introduction into the Family Court:

- The length of time to resolve matters was reduced through fewer court events and a reduction in disposition times;
- There was greater inter-agency collaboration and involvement; and
- Potentially lower levels of distress for the children involved (VLRC 2010, p. 161).

Koori list in the Family Division

Another area in which the care outcomes for a vulnerable sector of our community should be strengthened is the creation of a supportive and collaborative legal environment for Aboriginal children and youth who might be in need of care and protection. The over-representation of, and the particular issues facing, Aboriginal children in the statutory child protection system has been discussed in Chapter 12. One of the major themes for improvement from that chapter is the better take-up of Aboriginal Family Decision Making processes outside of the court environment and is the subject of Recommendation 34 in Chapter 12.

The Inquiry heard calls for the establishment of a specialist Koori list in the Family Division based on the Koori Court in the Criminal Division of the Children's Court to better meet the needs of Aboriginal children and their families in the court system (AFVPLSV submission, p. 23; VLA submission no. 1, p. 19). The strengths of such a list are:

- The creation of a space and environment for Aboriginal children and their families and potential carers to be heard in a culturally appropriate manner
- The training of magistrates to oversee the list;
- The provision of continuity with respect to cases; and
- The incorporation of aspects of the earlier conferencing or problem solving model that has been proposed by the VLRC and is supported in principle by the Inquiry.

Consultation with the Children's Court and stakeholders indicates that not all aspects of the Koori Court model can be translated into the Family Division, particularly with fully contested hearings, but considers that a trial list could be piloted at a suitable court location or locations to assess its level of success.

The Children's Court is currently working to investigate options to improve the processes for Aboriginal children and families at court (Children's Court submission no. 1, p. 22) and is seeking to develop a specialist list. It noted that it has sought, and not received, funding from the Victorian Government to appoint a Koori Support Program Manager as part of a DOJ sponsored Koori Family Support Program which has been ongoing since mid-2009 (Children's Court submission no. 2, p. 41). The program was established to consider various non-adversarial Aboriginal specific strategies at pre-court, court and post-court stages (VLRC 2010, p. 30).

The Inquiry endorses the work of DOJ, the Children's Court and key stakeholders to develop and implement specialist Sexual Abuse and Koori lists in the Family Division. A pilot program could be run in the Melbourne Children's Court or another suitable court location to evaluate the effectiveness of the lists.

Recommendation 62

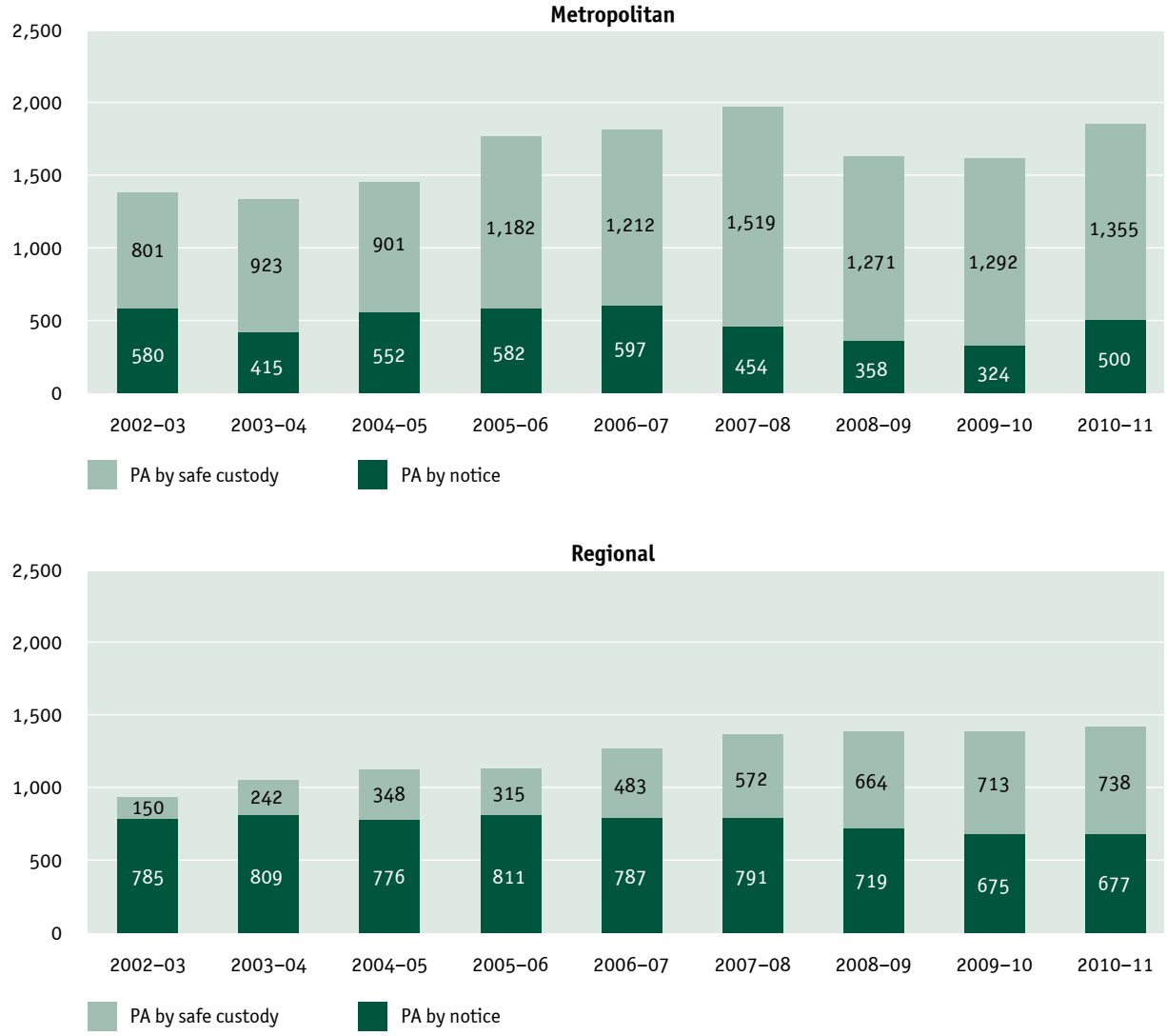
The Children's Court should establish specialist Sexual Abuse and Koori lists in the Family Division. The court should be resourced to create and implement these lists as a matter of priority. To ensure these lists are suitable for implementation across the state, a pilot could be run in the Melbourne Children's Court or another suitable court location.

15.5.4 Commencement of protection applications by DHS

The VLRC proposed a new way of commencing applications (VLRC 2010, Option 2). Under this option, all protection applications would commence by notice. However, the VLRC proposed that where a protective concern was formed, DHS would commence a formal action by requesting a Family Group Conference rather than filing an application at court. The VLRC considered that only in exceptional circumstances should DHS seek to remove a child by safe custody or, as termed by the VLRC, through an 'emergency removal'. Even where an emergency removal was required, the VLRC proposed that DHS should first obtain an 'emergency removal order' from the Court and if a child was removed without an order, the protective intervener should apply to the Court for an order within one working day of the removal (VLRC 2010, pp. 297-300).

The Inquiry supports the principle of commencing protection applications by notice but considers that such a reform proposal must also be flexible to reflect the nature of child protection intervention. A matter that links the court process to statutory child protection intervention is the way in which protection applications are brought by DHS to the Children's Court. The Inquiry notes the significant increase in the proportion of protection applications brought by safe custody compared with applications by notice from 2002-03 to 2010-11 (see Figure 15.2).

Figure 15.2 Protection applications to the Children's Court by notice and safe custody, metropolitan Melbourne and regional Victoria, 2002-03 to 2010-11



Source: Information provided by the Children's Court of Victoria

The Inquiry received submissions on the increasing proportion of protection applications made by safe custody as compared with those made by notice, and the impact of this trend on the court's ability to meet the needs of vulnerable children in a timely and efficient manner. The following reasons were suggested for the rise in applications by safe custody:

- An increase in DHS workload (Children's Court submission no. 1, p. 17);
- DHS 'is focusing on the hard cases' (Children's Court submission no. 2, p. 22);
- DHS 'continues to focus on 'event' based interventions rather than intervening earlier to support the family' (Children's Court submission no. 2, p. 23);
- DHS is seeing more children and families with increasingly complex, multiple needs and this results in a higher incidence of crisis events (Inquiry consultation with DHS);
- Applications by safe custody are given priority at court (Inquiry consultation with DHS); and
- Legal advice is given that there is insufficient evidence for an application that would have proceeded by notice. A crisis event then triggers the safe custody application process (Inquiry consultation with DHS).

The VLRC also noted in its report that from consultation with child protection practitioners, applications by safe custody offered benefits that were not readily obtainable with an application by notice, such as it was the only way to get the court to make an order immediately and to attach conditions. The VLRC noted:

> Compared to a safe custody application, a protection application by notice is a relatively slow and less certain way for a child protection worker to secure a court order with protective conditions (VLRC 2010, p. 290)

Given the variety of reasons put to the Inquiry, and acknowledging a statutory child protection system that is currently subject to significantly increasing demand, the Inquiry considers that mandating all protection applications to commence by notice would not properly reflect the range of circumstances that may give rise to a protection application. In all matters, the safety of the child must remain the paramount concern.

The Inquiry considers with the sum of recommendations proposed by the Inquiry for changing the current statutory child protection system in Chapter 9 and court processes in this chapter there should be less of an emphasis on obtaining court orders except in those cases that require a significant intervention. In future, when DHS files a protection application by notice, following the current process in the CYF Act, the Act will require the parties to attend a Child Safety Conference as part of the earlier statutory intervention process proposed in section 15.5.1. The Child Safety Conference is the process by which the parties can discuss protective concerns and what actions should be taken. The process of filing a protection application by notice with the court will allow tracking of how often a statutory intervention requiring a decision by the court is required after this conferencing process.

Clearly, protection applications requiring an emergency removal will continue to be required where the child's safety is at risk. However, once the immediate safety concern has been met, the parties and the court may decide that a Child Safety Conference is the most appropriate mechanism for resolving protective concerns if the immediate safety concerns have passed.

The Inquiry does not support the creation of new classes of orders (being emergency removal orders, interim care orders and short-term assessment orders) as proposed in Option 2 of the VLRC report. This would be inconsistent with Inquiry proposal to reduce the current range of orders and simplify the process (see sections 15.5.5 and 15.5.6 below). The Inquiry also considers that it is appropriate to retain the current 24 hour time limit in section 242 of the CYF Act when there is an emergency removal, particularly as a child or young person would no longer be required to attend court and the VGSO is to represent DHS in all child protection proceedings.

15.5.5 Reviewing the current range of statutory protection orders under the Children, Youth and Families Act 2005

The law and legal institutions should be simple and accessible to children and young people. In order for this to occur, the legislation should be clear as to when different institutions and decision makers should be engaged to meet the needs of children. The Inquiry considers that a court should not be involved in case management and case planning particularly in rapidly changing situations. There are other bodies with expertise more suited to case planning, provided that they are guided by transparent principles and practice, are accountable and are appropriately monitored. Chapter 21 proposes new oversight and regulation mechanisms and processes to ensure that this occurs.

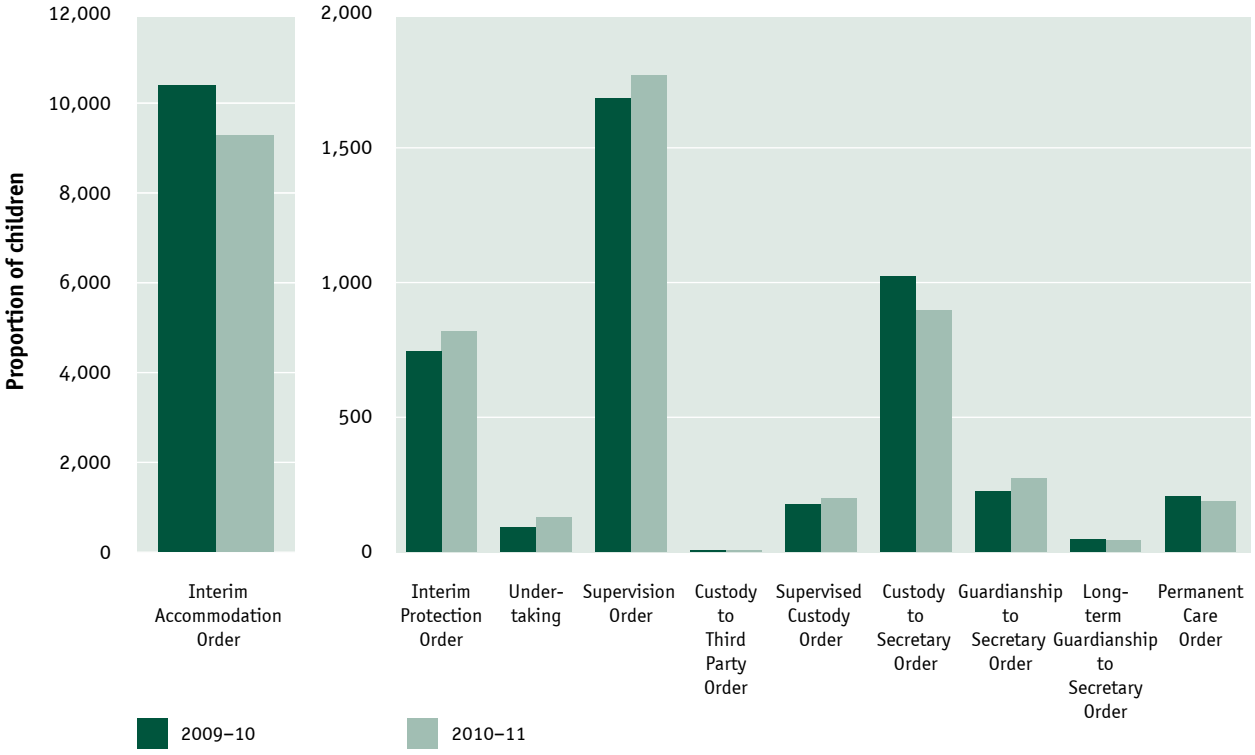
Further, the system of statutory orders should allow sufficient flexibility for DHS and the parties to best meet the needs of children. The current range of orders and the conditions that may be attached to these can lead to protracted negotiations or disputes that do not serve the interests of children and do not enable DHS to act quickly to protect children. The Inquiry is concerned about the number of court events that are currently attached to each protection application including changes to orders and disputes over conditions.

Current orders and conditions attached to orders

With that in mind, the Inquiry examined the current range of protection orders that DHS may seek from the court under the CYF Act from the protective intervention stage to the final order stage under Parts 4.8 to 4.10 of the Act. A summary of the 12 key orders or enforceable agreements is in section 15.2 (see Table 15.1). The Inquiry does not include secondary orders such as Therapeutic Treatment Orders and Therapeutic Treatment Placement Orders as part of this discussion. Figure 15.3 illustrates the orders most frequently the result of protection applications before the Court in 2009-10 and 2010-11. As previously noted in Chapter 9, the number of orders issued below does not reflect the number of children as more than one order may be made with respect to any one child or young person.

The total number of Interim Accommodation Orders issued in 2009-10 was 10,392 orders and in 2010-11 was 9,726 orders. The total number of final protective orders, issued in 2009-10 was 5,780 orders and in 2010-11 was 6,336 orders. Interim Accommodation Orders made up the majority of orders issued in 2009-10 and in 2010-11 followed by Supervision Orders and Custody to Secretary Orders.

Figure 15.3 Protective orders issued by the Children's Court, 2009-10 and 2010-11



Source: Information provided by DHS

The conditions attached to the orders will vary depending on the type of order sought by DHS, the particular circumstances of the child and their family and what type of matters DHS seek to address through its intervention. With the exception of Guardianship to Secretary Orders, where no conditions can be imposed by the Court, a list of standard conditions has been developed by the Court in consultation with key stakeholders that may be attached to various protection and related orders.

These conditions are contained in a *Standard Conditions on Family Divisions Orders* form or the 'Pink Form' (reproduced in VLRC 2010, appendix k, p. 471). There are 31 types of conditions outlined on the form and include:

- Visits from and cooperation with DHS;
- Accepting support services;
- Counselling;
- Anger management;
- No cohabitation or contact with child (other than during access);
- Psychological or psychiatric assessment and/or treatment;
- Paediatric assessment and/or treatment;
- Alcohol/drug assessment or testing;
- Abstinence from drugs or alcohol;
- Curfew on a child or young person;
- No physical discipline of child;
- Not exposing a child to violence;
- No threats to or assaults of DHS staff;
- Child's health check-ups or assessments – either with a doctor or with a Maternal and Child Health Nurse; and
- Attendance at school.

The form is used as part of negotiating conditions on court orders on a daily basis in the Children's Court. The form is filled in by the legal representative for DHS once negotiations with the parties are complete and it is then tendered to the court as part of the 'minutes' of consent.

DHS should typically seek conditions in the best interests of a child based on the particular circumstances of the case and the order being sought. The use of the standard form does not preclude DHS or another party requesting other conditions (such as respite care) in the child's best interests based on considerations in section 10 of the CYF Act.

Protection orders in other jurisdictions

The Inquiry considered the comparable categories of care and protection orders available under the equivalent statutes in certain other Australian jurisdictions (see Table 15.3).

Table 15.3 Principal categories of care and protection orders in other Australian jurisdictions

Jurisdiction	Types of orders
New South Wales	• Emergency Care and Removal Orders • Examination and Assessment Orders • Interim Care Orders • Other Interim Orders • Orders accepting Undertakings • Supervision Orders for 12 months • Order Allocating Parental Responsibility (to either one parent or to the Minister or to another specified party) • Contact Orders (with condition on frequency and duration, supervision or denying contact).
South Australia	• Investigation and Assessment Orders • Undertakings (12 months) • Custody Orders to various parties (12 months) • Guardianship Orders to the Minister or other parties (12 months) • Guardianship Orders to the Minister or other parties (to 18 years). The Children's Court is empowered to make ancillary orders to complement these primary orders.
Queensland	• Temporary Assessment Orders • Court Assessment Orders • A generic category of Child Protection Orders with different specified functions such as: – undertakings; – contact; – supervision; – custody to the Chief Executive or custody to a suitable person a member of the child's family but not being the parent; – short term guardianship to the Chief Executive; and – long term guardianship to the Chief Executive or to a suitable person being a member of the child's family, or a suitable third party.
Western Australia	• Supervision Orders • Time limited Protection Order (placement with Chief Executive Officer for up to two years) • Protection Order (placement with Chief Executive Officer, to the age of 18 years) • Special Guardianship Order (placement and parental responsibility with a person who is not the parent or the Chief Executive Officer, to the age of 18 years).

Source: Inquiry analysis

The Inquiry considered in some detail the statutory child protection scheme in Western Australia. Under the *Children and Community Services Act 2004* (CCS Act) the Children's Court of Western Australia is empowered to make four primary types of protection orders:

- A supervision order allowing a child to remain with their family where parents retain responsibility (with any conditions ordered by the court);
- A time-limited protection order being a maximum two year placement with the Chief Executive Officer (CEO) of DCP (with no provision for conditions);
- An order placing a child with the CEO of DCP up to the age of 18 years (with no provision for conditions); and
- A special guardianship order placing a child with parental responsibility with someone other than the CEO of DCP or the parents up to the age of 18 years, with the only condition attached being the level of parental contact.

For reporting purposes, DCP categorises time-limited protection orders where a child is placed with DCP and an order placing a child with DCP up to the age of 18 as 'care orders' (as the child is in the care of the CEO of that department). DCP categorises supervision orders and special guardianships orders as 'non-care orders' (as the child is with a parent or third party). In 2010-11, DCP made 847 new protection applications of which 613 resulted in care orders and 61 non-care orders for a total of 674 new orders being made by the Children's Court (DCP 2011a, p. 22).

In respect of all these orders DCP is required to file a plan for how the child's wellbeing will be managed during the order. Critically, there are no 'breach of conditions' provisions in the CCS Act requiring parties to return to the court. The only course available to the parties unhappy with the level of compliance with an order is to return to court to seek a discharge of the order. Every other decision by DCP with respect to the administration of the order can be subject to an internal DCP administrative review process (a Case Review Panel) or further review by the Western Australian State Administrative Tribunal, but not the court.

The Western Australian Children's Court may also make interim orders (section 133) with a broad discretion about what conditions that interim order may cover, noting that it is time limited and in force until parties return to court at a later date.

Generally, the range of orders in child protection legislation in different states serve similarly broad purposes: allowing the court to ensure the child's immediate safety on an interim basis; undertakings by parents; allowing the child to reside with one or both parents but with State supervision; transferring the care and custody of the child from the parents to another party for a specified time; or transferring care and guardianship of the child to another party until they reach the age of 18 years. The CYF Act is more prescriptive in relation to the scope and functions of the various orders that the Act provides.

Comments to the Inquiry on current orders under the *Children, Youth and Families Act 2005*

Very few submissions to, or consultations with, the Inquiry commented on the current range of orders under the CYF Act. The key bodies that commented to the Inquiry were the Children's Court and DHS. The Children's Court expressed the view that, with the exception of Temporary Assessment Orders and Custody to Third Party Orders that 'are used sparingly and seem to serve no current purpose', the current range of orders under the CYF Act were generally appropriate (Children's Court submission no. 2, pp. 39-40).

DHS provided the Inquiry with two options for simplifying the current range of orders. The first option was to collapse all orders into a generic category of 'Protective Orders'. Under this option, the court would make a protective order that would cover the following matters:

- The placement of a child with a person or organisation (such as parent, suitable person, out-of-home care service, secure welfare or declared parent baby unit or hospital);
- The custody of the child (for example, with parent(s), DHS, another suitable person such as kinship carer or an Aboriginal agency);
- The guardianship of the child (for example, with parent(s), DHS, another suitable person such as a kinship carer or an Aboriginal agency);
- The level of DHS involvement (whether DHS should remain involved); and
- The length of the order.

Under this option DHS would attach a case plan to the protective order but there would be no conditions attached to the order.

The second option proposed by DHS would realign court orders to relate only to the care and supervision of children. There would be two categories of orders:

- A 'Care Order' would involve the transfer of legal guardianship or custody to DHS or non-government agency, permanent carer or a suitable third party such as a kinship carer. The court would determine the length of the order and to which party guardianship or custody of the child is given. While a case plan would be attached to the order, there would be no conditions attached to the order. Due to the significance of the intervention, these orders would be sought as a last resort.
- A 'Supervision Order' would involve the child remaining under the responsibility of their parents or possibly a kinship carer while DHS is authorised to supervise or direct the level and type of care to be provided to the child. The court would determine the length of the order and a case plan will be attached to the order. However, there would be no conditions attached to the order (Inquiry consultation with DHS).

Proposed modification of orders under the *Children, Youth and Families Act 2005*

While the Inquiry is attracted to the options proposed by DHS for a simpler structure for orders, the Inquiry also considers that the role of the court should extend to determining those conditions that:

- Fundamentally alter the relationship between parents and their children or between children and siblings or other people significant in children's lives; and
- Might be considered more intrusive on an individual's rights.

The types of conditions that would fall in this category are conditions relating to child-parent or child-sibling contact, exclusion of individuals from a child's life, or conditions that involve the parents or caregivers undergoing some form of treatment or drug and alcohol screening.

To that end, the Inquiry considers the Western Australian scheme as instructive for minimising the role a court plays in care or case planning. This approach would not, however, signal a fundamental transformation to the current scheme in the CYF Act.

What this means for the current scheme of orders is:

- Maintaining the status quo with respect to shorter term orders - Supervision Orders, Undertakings and Interim Orders, that is, the Court determines all conditions and the length of order;
- Maintaining the status quo with respect to Short Term Guardianship to Secretary Orders and Long Term Guardianship to Secretary Orders, that is, the Court does not determine conditions;
- Modifying the current Permanent Care Order so that the Court can only make conditions on child-parent contact, sibling contact and contact with other people who are significant in the life of the child (removes power to make condition on incorporating a cultural plan for Aboriginal children);
- Modifying the current Custody to Secretary Order so that a Court can only make a condition concerning child-parent contact, sibling contact and contact with other persons who are significant in the life of the child and the length of order; and
- Modifying the current Supervised Custody Order so that a Court can only make a condition concerning child-parent contact, sibling contact and contact with other persons who are significant in the life of the child and the length of order.

However, the Inquiry considers the current range of orders can be better grouped using the terminology proposed by DHS under its Option 2. To reflect their temporal application, orders should be classified as 'Interim Orders' (to the point a protection application is proven) and 'Final Orders' (on proof of the protection application).

Further, those orders that involve the removal of a child from both parents should be termed 'Care Orders' and those that involve the child remaining with one or both parents should be termed 'Supervision Orders'.

In view of the key stakeholder comments provided to the Inquiry, the Inquiry considers that a consolidated system of orders would include:

- Removing Temporary Assessment Orders and Custody to Third Party Orders as specific categories of orders from the Act on the basis that these are rarely, if ever used;
- Creating a generic category of 'Interim Order' which may cover a broad range of matters including those currently provided for by Interim Accommodation Orders and Temporary Assessment Orders; and
- Renaming Interim Protection Orders as either a 'Temporary Supervision Order' or 'Temporary Care Order' depending on whether the child remains with one or both parents while testing the suitability of the proposed protective action.

The remaining protective orders would be organised as shown in Table 15.4.

Table 15.4 Consolidated categories of orders under the *Children, Youth and Families Act 2005*

Non-supervision/non-care	Supervision	Care
Undertakings (without supervision)	Undertakings (with supervision)	Temporary Care Order
	Temporary Supervision Order	Custody to Secretary Order
	Supervision Order	Supervised Custody Order
		Guardianship to Secretary Order (short and long term)
		Permanent Care Order

Source: Inquiry analysis

The Inquiry recognises that a number of stakeholders are concerned with the ability of DHS to consistently make the right decisions or set the right conditions when intervening. The Inquiry also notes that the VLRC proposed that the Children's Court be given concurrent jurisdiction with VCAT to hear case planning reviews (VLRC 2010, p. 344). However, the Inquiry considers, in view of its proposed reforms to DHS practices, the governance and oversight mechanisms, and the quality of the workforce, that DHS should have the future capacity to determine those conditions that do not fundamentally alter the relationship between children, their parents and other people who are significant in the life of the child or do not fundamentally intrude on individual rights.

Review of conditions set by the Department of Human Services

The CYF Act currently requires the Secretary to prepare and implement procedures for internal reviews of DHS decisions and a copy of the procedures to be given to children and parents (s. 331). In practice the review is done by a regional manager. Once that review process is completed a child or parent may apply to VCAT (s. 333).

As noted in section 15.3.4, VCAT currently has a small role in the current statutory scheme where it decides case planning reviews. If DHS is to play a greater role in setting conditions to orders, similar to the legislative scheme in Western Australia, it is feasible that more DHS decisions will be reviewed by VCAT.

While the Inquiry was unable to consider the resource implications for VCAT arising from an increase in reviews of DHS decisions, it wishes to note the following two matters for consideration and implementation by the Victorian Government.

Any case planning reviews are currently heard within the General List of the Administrative Division of VCAT. Given the specialist nature of child case planning decisions the Inquiry considers that the legal framework supporting children will be bolstered if VCAT, subject to future case demand, establishes a specialist Child Protection List. The Inquiry also considers that members on that list should have appropriate qualifications and experience in child abuse and neglect and in child health and wellbeing.

A related matter is a change to the representation model for parents and children who may be affected by case planning reviews at VCAT. The Inquiry notes that if parents or children require assistance for representation at VCAT reviews, they must seek special consideration under the current legal aid guidelines, as VLA does not routinely fund VCAT reviews (VLRC 2010, p. 342). This is an access to justice concern. The legal aid guidelines administered by VLA should be amended to enable children and parents who seek review of DHS decisions at VCAT to be eligible to legal aid representation without requiring special consideration.

Finding 16

The role of the Children's Court is to determine the lawfulness of the statutory intervention by the State and the appropriate order if a child is found to be in need of protection. Accordingly, the role of the Children's Court is to determine:

- Whether a child is in need of protection;
- The appropriate remedy or order to enable the State to intervene in the child's best interests;
- The length of the order (if appropriate to the type of order sought); and
- Conditions relating to child-parent contact or contact with siblings and other persons who are significant in the child's life (if appropriate to the type of order sought) and conditions that intrude on individual rights namely the exclusion of individuals from a child's life and drug and alcohol screening.

Recommendation 63

The current scheme of protective orders under the *Children, Youth and Families Act 2005* should be simplified. This can be achieved by reviewing the scope and objectives of each order and their current utility. Consideration should be given to:

- Removing Custody to Third Party Orders as a category of order from the *Children, Youth and Families Act 2005*;
- Removing Temporary Assessment Orders as a category of order from the *Children, Youth and Families Act 2005*;
- Creating a general 'Interim Order' which could incorporate the current functions of an Interim Accommodation Order and a Temporary Assessment Order;
- Renaming 'Interim Protection Order' as either a 'Temporary Supervision Order' or 'Temporary Care Order'; and
- Consolidating the current range of protection orders into categories of 'Interim' and 'Final' orders and into categories of 'Care' and 'Supervision' orders while maintaining the range of purposes that the various orders currently serve.

Recommendation 64

A specialist Child Protection List should be created in the Victorian Civil and Administrative Tribunal in order to hear any reviews of decisions by the Department of Human Services on conditions. The Victorian Civil and Administrative Tribunal should be resourced to ensure that the members who would determine disputes within that specialist list have appropriate qualifications and expertise in child abuse and neglect and child health and wellbeing. The current legal aid guidelines should be amended to enable parties who seek a review of decisions by the Department of Human Services at the Victorian Civil and Administrative Tribunal to be eligible to obtain legal aid representation without requiring special consideration.

15.5.6 Realigned court processes for statutory child protection proceedings

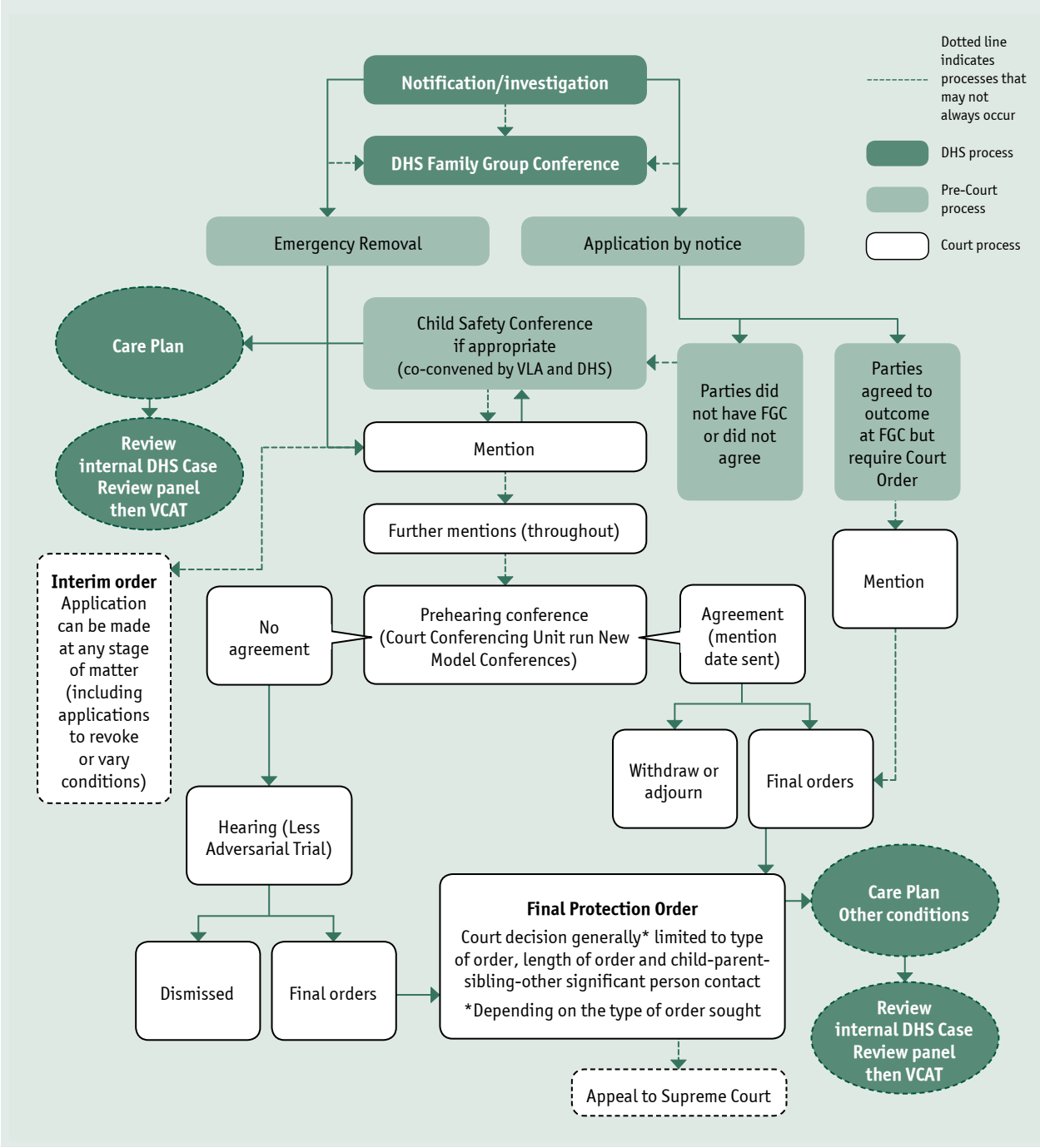
The Inquiry has recommended a reduction in the range of statutory orders and a redefinition of the Children's Court's role. The Inquiry has also recommended an increased emphasis on earlier conferencing to minimise, where possible, the need for parties to go to court to resolve their disputes. In section 15.2, the Inquiry sets out the current processes for determining protection applications (see Figure 15.1). Figure 15.4 depicts the Inquiry's proposed process for statutory intervention by DHS.

Process where the Department of Human Services issues a protection application by notice

Figure 15.4 outlines the following stages:

- The parties are mandated by the CYF Act to attend a new Child Safety Conference, unless it is inappropriate according to the Act. DHS puts forward a case plan with its proposed conditions.
- If there is agreement at the conference, the plan becomes a signed agreement (however, the plan does not necessarily have to be signed at the conference if, for example, the DHS proposed plan changes as a result of negotiations). The parties retain copies of the agreement. There is no court involvement.
- If there is no agreement on DHS proposed conditions or if there is a future dispute over the conditions, parties can seek an internal review through an internal case review mechanism administered by DHS. If there is no resolution following the case review mechanism, the review of the decision will be by VCAT.

Figure 15.4 Proposed protective intervention and application processes



Source: Inquiry analysis

Process where the Department of Human Services immediately acts to remove child – a protection application by emergency removal

Figure 15.4 outlines the following stages:

- The child is removed and DHS will bring an application to court within 24 hours as is currently the case under the CYF Act. The terminology for the CYF Act should, consistent with the findings of the VLRC, be updated to remove any criminal connotations associated with the issuing of warrants and undertaking protection applications by safe custody. A warrant should be re-termed an 'Emergency Removal Order' and the process should be renamed as an 'Emergency Removal'. However, the Inquiry does not agree with the substantive process reforms recommended by the VLRC in relation to emergency removals proposed under its Option 2.
- The Children's Court may decide to dismiss the application or issue an Interim Order covering interim accommodation and other matters that are necessary to ensure the child's safety and wellbeing and the situation at the parents' or primary caregivers' home. The Inquiry does not agree with the VLRC recommendation to create further specific categories of orders in relation to emergency removals as proposed under its Option 2. If the Court has issued an interim order or the emergency has passed and DHS believes the protection concerns still exist, the parties must attend a Child Safety Conference (unless it is inappropriate). DHS puts forward a case plan with proposed conditions.
- If there is agreement at the conference, a copy of the signed plan is filed with the Court, and if appropriate, the Interim Order is discharged and the protection application is settled. If there is disagreement on DHS proposed conditions in the case plan then parties can seek an internal review through the DHS case review panel or if unhappy with review decision, seek further review by VCAT.
- If there is no agreement on outcomes including the type of order that DHS might seek, then the protection application is revived or remains on foot and DHS proceeds to seek a final order from the Court.
- During the mention stage, the Court may decide that the matter could be resolved by further conferencing. As is currently the case, the Court will decide whether the matter be referred for negotiation through a NMC that is convened by the Court Conferencing Unit.
- If there is agreement at the NMC as to the order and, depending on the type of order, the attached conditions, an order by consent is made by the Court. The matter does not proceed to contested hearing.
- If there is no agreement, the matter proceeds to a contested hearing which, as proposed by the VLRC and the Inquiry, should now follow the LAT model.
- If there is a dispute over conditions then, depending on the type of order sought and whether or not the dispute is over contact between a child and parent/sibling/significant others, the dispute would be over an administrative decision by DHS that can be resolved by an internal DHS case review mechanism and finally by VCAT.

15.5.7 Court of record

It has been suggested to the Inquiry that making the Children's Court a 'court of record' would enable a body of case law to be developed to inform decision making within the system (Australian Childhood Foundation submission, p. 6). The Inquiry notes that the Perth Children's Court (s. 5, *Children's Court of Western Australia Act 1988*), the Children's Court of New South Wales (s. 4, *Children's Court Act 1987*), and the Youth Court of South Australia (s. 5, *Youth Court Act 1993*) are established as 'courts of record' under their legislation.

Due to the specialist nature of the Children's Court and the utility of its decisions for child protection practitioners and other professionals, the Inquiry also considers that in addition to making transcripts available, the Children's Court should be supported to publish its decisions. The Court has indicated to the Inquiry that it does not object to this occurring noting that all proceedings are currently recorded with transcripts available to the parties for a fee, and that some of its decisions are currently published in de-identified form on its website (Children's Court submission no. 2, pp. 40-41).

The Court has also stated that the types of decision that should be published for citation purposes are those that raise points of principle and are not fact – specific decisions (based on the Court of Appeal decision in *R v. Smith* [2011] VSCA 185 at [32, 33]). The Inquiry agrees that the type of decision of the Court that should be published is one that involves more than the application of settled principles to facts. However, the Inquiry also considers that the Court should make transcripts of all its hearings and decisions available to the public subject to the restrictions of section 534 of the CYF Act.

Recommendation 65

The *Children, Youth and Families Act 2005* should be amended to confirm the status of the Children's Court as a court of record. The Children's Court should be appropriately resourced to enable decisions to be published on the Children's Court's website in de-identified form. Transcripts should also be made available to the public in de-identified form.

15.6 The enactment of a separate Children's Court of Victoria Act

The Inquiry has previously considered and concluded that a specialist Children's Court is an important part of a statutory child protection system that meets the needs of children. It is appropriate and necessary for a judicial body to determine the lawfulness of State intervention in child protection matters and to determine fundamental rights such as the alteration of a child's relationship with his or her parents and siblings.

At present the Children's Court is formally constituted in the CYF Act. However, it is towards the end of the Act where the Court's existence is affirmed in section 504(1) which states:

> There continues to be a court called "The Children's Court of Victoria".

At a fundamental level, the Inquiry considers that it is appropriate to signify the status and character of the Children's Court as a part of the separate judicial arm of the State by having a separate Act relating to it. This legislative arrangement applies to the Children's Courts in all other states and the Inquiry considers it should apply in Victoria. It also applies to all other Victorian courts.

There are currently numerous substantive references to the Children's Court throughout the CYF Act before the provisions relating to the Court itself are found. A new Act would enable the rationalisation of the manifold sections embedded through miscellaneous parts of the CYF Act into a coherent unity. It would bring clarity and transparency to the functions and operations of the Court. It would facilitate the removal of DHS, a major litigant before the Court, from the administration of the legislation that supports the Court. As Mr Justice Fogarty correctly observed in his 1993 report *Protective Services for Children in Australia*:

> ... it is necessary for the Court to be independent and to be seen to be independent, especially from the Department which is a party in every proceeding before it. It must have the confidence of the parents who come before it and the confidence that it will act in an independent way in accordance with legislation (Fogarty 1993, pp. 142-143).

The Inquiry records the undoubted fact that the Children's Court is independent, and considers the legislative framework should reflect that independence.

Finally, the creation of a separate Act for the Children's Court would facilitate placement of the administration of the Court in the Courts Executive Service, or if applicable DOJ, as is the case with all other Victorian courts. Currently, the Children's Court is the only Victorian court whose legislation is administered by two ministers – the Minister for Community Services and the Attorney-General – and by two Departments, DOJ and DHS. A separate Act would address this anomaly.

The Inquiry is conscious that the present placement within the CYF Act of the provisions relating to the Children's Court reflects both historical development and the proper need for the Court to function within the complex of provisions for support and protection of children and young persons. The Inquiry reaffirms that need but considers that the need can be fulfilled by an appropriately drafted separate Act, reflecting the Court's relevant but separate part in the complex of provisions of support and protection for children and young people.

Accordingly, the Inquiry recommends:

- The creation of a separate Act entitled 'The Children's Court of Victoria Act';
- The Act contain the current provisions in the CYF Act relating to the Children's Court, appropriately modified; and
- Appropriate revision of the CYF Act consequent upon removal of the provisions relating to the Children's Court.

The Inquiry is conscious that this task would be a substantial legislative exercise. However, the Inquiry considers that both jurisprudential and practical considerations warrant that exercise.

The Inquiry further considers that the other legislative and administrative reforms recommended in this Report, including those relating to DHS and the Children's Court Clinic in Chapter 18, should not be treated as dependent upon the recommendations in this section being considered or implemented. Many of those reforms are time critical and should not be delayed by the implementation of Recommendation 66.

Recommendation 66

A new Children's Court of Victoria Act should be created and that Act should contain the current provisions in the *Children, Youth and Families Act 2005* relating to the Children's Court, appropriately modified. *The Children, Youth and Families Act 2005* should be revised consequent upon removal of the provisions relating to the Children's Court.

15.7 Conclusion

The Inquiry has focused on those areas in the statutory child protection system in which a child and their family's experience of the legal process can either be avoided, where appropriate, or made less traumatic. Those areas are: simplifying the legislation and the overall court processes; enhancing the experience of children, their parents or caregivers and all those with an interest in the safety and wellbeing of the child or young person in the legal system; and providing the best opportunity for the voices of children and young people to be heard.

In doing so, the Inquiry acknowledges the significant body of work that informed the VLRC reform options for court processes in the statutory child protection system. The Inquiry also notes the steps that have already been taken by key institutions, agencies and professional bodies to improve the current court environment, the relations between lawyers and child protection practitioners, and acknowledges the substantial resource commitment required from the Victorian Government to implement these reforms.

Nonetheless, the Inquiry considers that the implementation of the proposed reforms outlined in this chapter, particularly in relation to: giving a child a voice at court; placing greater emphasis on collaborative problem solving processes to resolving protection applications through process and training changes; and decentralising the court, will ensure that vulnerable children and their families will be afforded every opportunity to be heard and to build a more respectful and collaborative dialogue with DHS to ensure the best interests of these children are met.

Part 6: System supporting capacities

Chapter 16:

A workforce that delivers quality services

Chapter 16: A workforce that delivers quality services

Key points

- The child protection and family services workforce operates in a complex environment, dealing with some of the most difficult and complex cases of serious child abuse and neglect.
- Different components of the workforce contribute to protecting vulnerable children. They include:
  - a government workforce that is primarily focused on statutory child protection;
  - a community sector workforce that delivers a range of out-of-home care and intensive family services;
  - volunteers and households that support the family services activities and provide the vital foster and kinship care segments of the out-of-home care system; and
  - a wide range of other professions that interact with vulnerable children.
- While there are different issues affecting these components of the workforce, there is a set of key common issues that affect the workforce, including:
  - the need for increased skills and professional development;
  - the need to address issues with recruitment and retention; and
  - the need for clear pay structure and career pathways.
- There are a number of ongoing policy developments that may address some of the issues affecting the child protection and family services workforce, including reforms to the Department of Human Services structure of statutory child protection services and the equal remuneration case currently before Fair Work Australia.
- The Inquiry considers that a number of workforce issues can be addressed by improving the professionalisation of the child protection workforce via a process that is qualification-led.
- Two recommendations are made in relation to the education and professional development needs of the workforce, including the need for a training body to oversee development of an industry-wide workforce education and development strategy and the need for greater cultural competence training.

16.1 Introduction

The child protection and family services workforce deals with some of the most difficult and confronting cases of serious child abuse and neglect. They work with families with complex and often multiple problems. By its nature, the work they undertake can be disturbing, stressful and at times threatening, and it is in these circumstances that workers are expected to exercise a high degree of expertise, skill, and judgment. The work undertaken by the child protection and family services workforce is important, and when done effectively, it can have a significant effect on the lives of the children and families they work with, as well as the general health of the community.

The Inquiry had extensive consultation across Victoria with the child protection and family services workforce. It clearly emerged that there are many members of the child protection and family services workforce who are dedicated and committed to meeting the needs of vulnerable children and their families. Many positive and constructive outcomes are achieved, often unacknowledged and unpublished. It is also true that there have been serious failures and lapses by some who work in the sector, sometimes with tragic results. This Inquiry addresses ways of sustaining the good work performed by the workforce across Victoria, and of minimising the failures that have occurred.

Child protection and family services is not a normal labour market. The demands on individuals are dictated by often unexpected changes in the circumstances of the families they are working with. To be effective at protecting vulnerable children from the impacts of abuse and neglect, the child protection and family services workforce requires exceptional support from organisations that recognise the difficulties inherent with this kind of work and support the workforce accordingly. It is also reliant on the contribution made by the volunteer workforce, particularly those who work as carers for children in home-based care.

16.2 The child protection and family services workforce

The child protection and family services workforce includes both the government and non-government or community sectors. The government component of the workforce is employed by the Department of Human Services (DHS) and mainly supports the delivery of the statutory child protection program. The non-government or community sector component of the workforce is typically employed in community service organisations (CSOs) that are funded to deliver child protection and family services, including out-of-home care and intensive family services.

There is no industry classification unique to the child protection and family services sector, meaning that information on the sector workforce is often not readily available. Based on the Australian and New Zealand Standard Industrial Classification used by the Australian Bureau of Statistics (ABS), both the government and the non-government components of the workforce would most likely fall into the categories of 'Other Residential Care Services' and 'Other Social Assistance Services', but these classifications also include a broader range of social services, for example community mental health, some drug and alcohol services and relationship counselling (ABS & Statistics New Zealand 2006, pp. 348-349).

Based on information provided by DHS, the Inquiry estimates that the total child protection and family services workforce in Victoria is in the order of 3,000-4,000 people. The following sections provide a discussion of the government and non-government components of the workforce.

Beyond the specific child protection and family services workforce there is also a much broader workforce that contributes to the safety and wellbeing of vulnerable children. This broader workforce includes:

- Health and allied health professionals, including doctors, nurses, midwives, psychologists, social workers, occupational therapists and dentists;
- Education professionals, including primary and secondary teachers, principals and early childhood education providers;
- Legal and law enforcement professionals, including lawyers, police and the judiciary;
- Salaried and non-salaried carers; and
- Providers of social and family services.

The large and diverse number of professionals who play a role in the protection of children was highlighted in the recent Munro Review of Child Protection in the United Kingdom (UK), where a case study showed that a child may come into contact with no fewer than 46 people involved in their case within a relatively short period of time (Munro 2011a, p. 33). While the Inquiry has no similar Victorian evidence, it has heard from a number of agencies that spoke about the large number of individuals and service providers that a family may interact with.

The level of involvement that these other professions have in relation to child protection varies, some are legally required to report suspected abuse, while others interact with children who may have been the victims of abuse and neglect.

While this chapter is primarily focused on the issues facing the dedicated child protection and family services workforce in Victoria, it also considers issues facing this broader group and the role they play in protecting vulnerable children and young people.

16.3 The government workforce

The DHS employed child protection workforce consists of 1,180 full-time equivalent (FTE) child protection workers (CPWs) (June 2011). These CPWs are typically female (88 per cent) and are often relatively young, with 35 per cent aged 25 to 34 years. The workforce is structured into six levels (see Table 16.1). It is CPW-2 and CPW-3 workers who undertake the majority of case-carrying work, dealing directly with children and families. These workers make up just over 60 per cent of the total child protection workforce (see Figure 16.1).

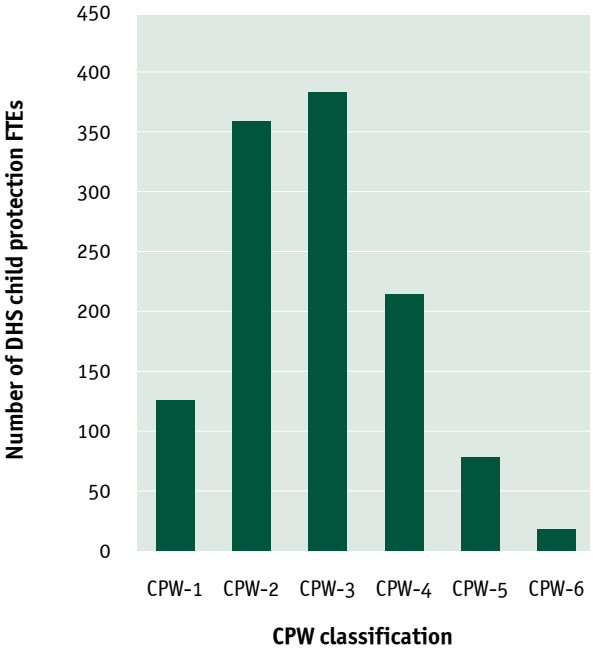
All DHS CPWs are tertiary qualified, with the exception of CPW-1 workers. The typical qualifications held by the workforce include Bachelor of Social Work, Diploma of Child Welfare or Bachelor of Psychology, with the Bachelor of Social Work being the most commonly held qualification. All graduates must have completed a practical component in their degree to be eligible for employment in child protection. Although tertiary qualified, the DHS case-carrying child protection workforce has not typically been employed in their roles for a long period of time. Historically high levels of turnover mean that 45 per cent of case-carrying workers have less than two years of experience in their roles, while only 23 per cent have greater than five years' experience.

Table 16.1 DHS child protection workforce: classifications and roles

Classification	Role (typical only)
CPW-1	Support role, non case-carrying
CPW-2	Entry level, case-carrying
CPW-3	Experienced case-carrying
CPW-4	Team leaders and specialists
CPW-5	Unit manager
CPW-6	Child protection manager

Source: Information provided by DHS

Figure 16.1 DHS child protection workforce, by classification, June 2011



Source: Information provided by DHS

The DHS child protection workforce is distributed between the eight DHS regions, including three metropolitan and five rural regions. Overall, 63 per cent of CPWs are located in the metropolitan regions, with the remaining 37 per cent in the rural regions (see Figure 16.2).

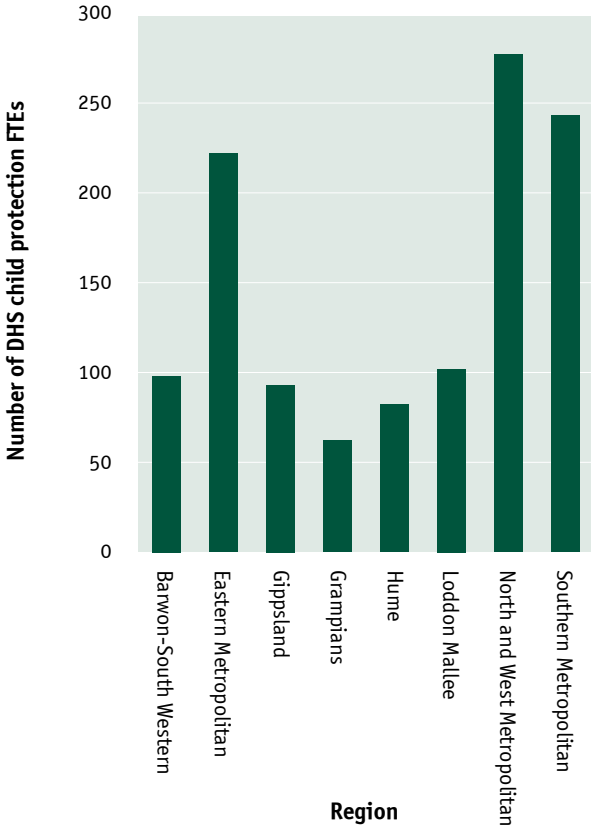
There has been significant growth in the DHS child protection workforce in recent years. Over the past five years the workforce has been growing by around 5 per cent per annum, resulting in an increase in the total number of FTEs of 26 per cent from June 2006 to June 2011. In absolute terms, this resulted in an additional 241 CPW FTEs in 2011, compared with 2006.

The majority of the increase in DHS child protection FTEs between 2006 and 2011 has been in the CPW-1, CPW-3 and CPW-4 classifications, while there has been a slight decline in the number of CPW-2 FTEs (see Figure 16.3).

Overall, between June 2006 and June 2011, the DHS case-carrying workforce (CPW-2 and CPW-3 levels) increased by 17 per cent but declined as a proportion of the total child protection workforce from 68 per cent to 63 per cent. To compare this with increases in child protection activity, over approximately the same time there has been a 27 per cent increase in child protection reports, a 16 per cent increase in investigations and 13 per cent decline in substantiations (Steering Committee for the Review of Government Service Provision 2011c, Table 15A.5). Caseloads and the capacity of the statutory system are discussed in more detail in Chapter 9.

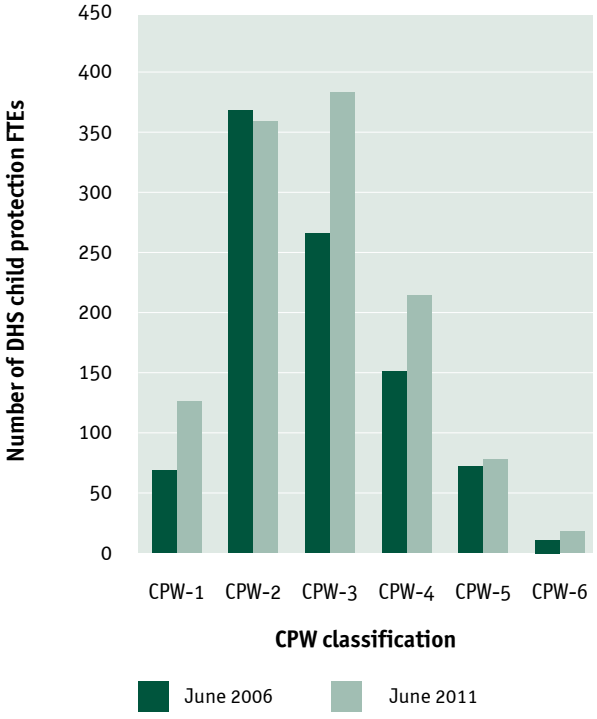
On a regional basis, the largest increases in CPW FTEs between 2006 and 2011 were in the three metropolitan regions, while the largest proportional increases have been in the Southern Metropolitan Region (39 per cent), Hume (37 per cent) and Grampians (33 per cent) (see Figure 16.4 and Table 16.2). Additional resources are generally allocated by DHS based on need using a variety of indicators. Resource allocation is discussed in more detail in Chapter 19.

Figure 16.2 DHS child protection workforce, by region, June 2011



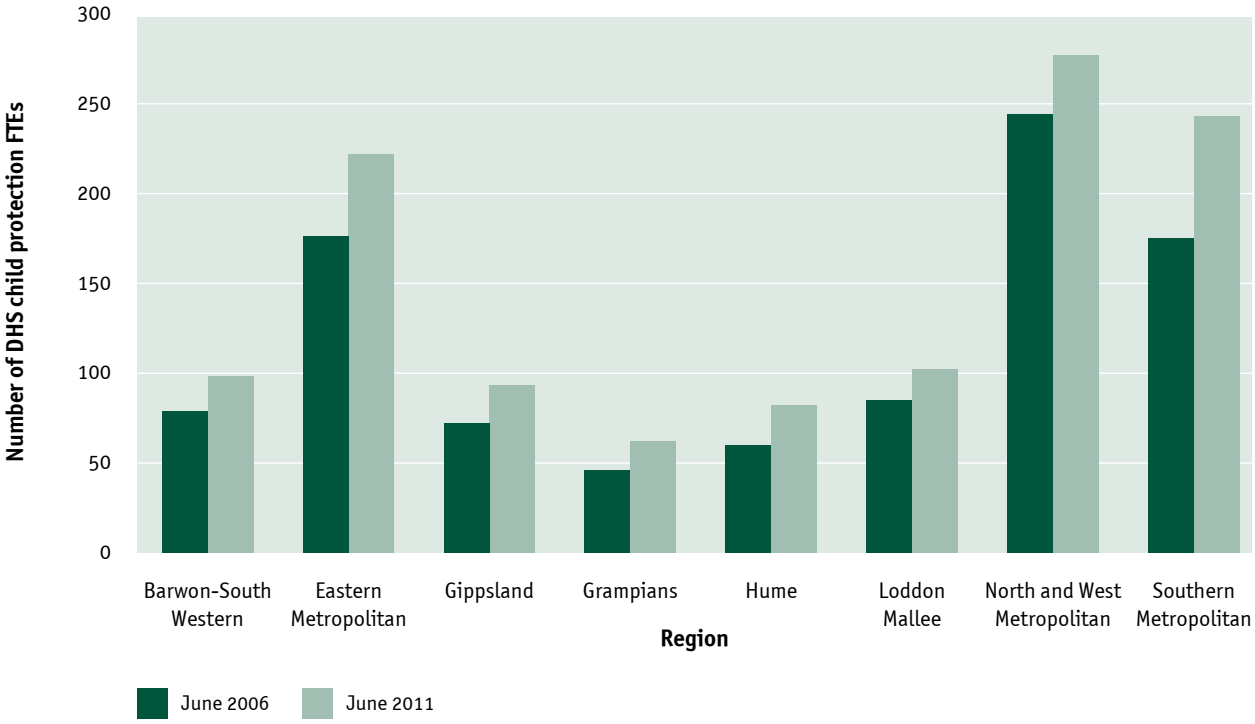
Source: Information provided by DHS

Figure 16.3 DHS child protection workforce, by classification, June 2006 and June 2011



Source: Information provided by DHS

Figure 16.4 DHS child protection workforce, by region, June 2006 and June 2011



Source: Information provided by DHS

Table 16.2 DHS child protection workforce by region, June 2006 to June 2011

Region	DHS child protection FTEs						
	2006	2007	2008	2009	2010	2011	Change 2006 to 2011
Barwon-South Western	79	84	80	87	84	98	23%
Eastern Metropolitan	176	190	189	205	206	222	26%
Gippsland	72	70	82	79	95	93	29%
Grampians	46	50	49	44	54	62	33%
Hume	60	62	67	71	90	82	37%
Loddon Mallee	85	104	101	106	96	102	19%
North and West Metropolitan	244	248	247	271	246	277	14%
Southern Metropolitan	175	194	220	192	229	243	39%
Total*	**938**	**1,002**	**1,036**	**1,055**	**1,100**	**1,179**	**26%**

Source: Information provided by DHS
* Figures may not sum due to rounding

16.3.1 Recruitment

The DHS child protection recruitment program operates on a monthly cycle for the recruitment of entry-level CPWs and advertises more senior positions as they become available. For entry-level positions, which account for the majority of child protection recruitment, the recruitment process takes approximately six weeks from date of advertisement to a formal offer of employment. The recruitment of CPWs may be coordinated centrally or at the regional level, in response to particular recruitment needs of a region. The Inquiry was made aware during the course of the consultations of the difficulty of attracting quality candidates in non-metropolitan areas.

DHS advertises for the recruitment of CPWs through a variety of channels, including newspapers, internet and social media.

DHS also provides a Student Placement Program, which provides tertiary-level students with an introduction to child protection work and acts as a significant source of supply to entry-level positions in child protection. In 2010, 181 students participated in the Student Placement Program, most of who were in the final year of study. At the conclusion of their placement, 30 of these students participated in an end-of-placement survey. These students were generally positive about a career in child protection, the majority of them had applied for a child protection practitioner position (56 per cent), or intended to apply in the future (39 per cent). Students were positive about a career in child protection for reasons, including:

- Working directly with families;
- The opportunity to develop interpersonal skills in high conflict/emotion situations; and
- Exposure to a range of practice interventions (DHS 2010c, pp. 2-6).

Since 1989 DHS has also conducted several recruitment campaigns aimed at attracting CPWs from overseas. This includes a centralised campaign in 2008 and 2009 attracting advanced practitioners from the UK and Ireland and a 2010 campaign organised by the Gippsland region aiming to address that region's specific recruitment and retention issues.

Overseas recruitment programs have been conducted in the UK, Ireland, Canada and New Zealand, and overseas employed candidates are primarily from these countries. A small number of CPWs have also been employed from the United States and South Africa.

The precise retention rate for overseas recruits is not available; however, according to DHS 186 CPWs have been recruited from overseas since 2008, with 138 currently employed. This would suggest that around three-quarters of overseas recruits have been retained in child protection, which is relatively high when compared with attrition rates in the sector.

Overseas recruitment, including travel relocation packages, marketing and administration, has cost DHS $1.64 million since 2008, equivalent to $8,800 per recruit. DHS has advised the Inquiry that the attraction and retention of domestic workers is the primary focus of child protection recruitment but that overseas recruited staff are likely to remain a small but consistent source of experienced practitioners for the Victorian child protection workforce.

16.3.2 Professional education and development

All case-carrying CPWs in the government sector are degree-qualified. There are also a range of professional education and development opportunities available to the government child protection and family services workforce, coordinated by DHS at the certificate, graduate and post graduate level, as well as other internal education and development programs. Some of these programs are also available to members of the non-government workforce within the CSO sector.

DHS provides three main streams of professional education and development, primarily for the government workforce. They are:

- Beginning Child Protection Practice;
- Advanced Child Protection Practice; and
- Leading Child Protection Practice.

Beginning Child Protection Practice

The Beginning Child Protection Practice program is provided to new entry-level practitioners and covers the first 18 months of practice. The program is also available to new child protection practitioners who enter the child protection workforce at advanced practitioner or team leader level. The program consists of three mandatory courses:

- Beginning Practice Clinics (formally known as Beginning Practice in Child Protection);
- The Prevention and Management of Occupational Violence; and
- Attachment Development and Trauma.

The Beginning Child Protection Practice program includes four days (out of a total of 12) dedicated to court processes. It aims to develop an understanding of the role of CPWs in a legal context. These sessions are provided by DHS, a DHS lawyer, a representative from Victorian Legal Aid (VLA) and a barrister. The training is also open to VLA lawyers.

Legal training for CPWs also includes preparation for Children's Court matters, as well as assessment of and intervention in child sexual abuse. The former is designed to provide a practical understanding of the roles and responsibilities of CPWs when interacting with the judicial system, while the latter is intended to provide an understanding of evidence required for the Children's Court regarding a sexual abuse investigation.

It is essential that CPWs receive relevant and sufficient training in court processes, both to assist the court and to equip them with knowledge of court processes and procedures. As discussed in section 16.5.2, court processes are an area of concern for many CPWs.

Advanced Child Protection Practice

The Advanced Child Protection Practice program is delivered with the intention of maintaining and further extending the training program for experienced practitioners. Training sessions are facilitated by the Child Protection Youth Justice Program Development Unit, in the form of full-day training in specific areas of practice, for example court skills.

Leading Child Protection Practice

The Leading Child Protection Practice program is provided for senior child protection workers in the roles of team leader, unit manager, child protection managers or specialist roles. Workers in these roles can also access the Advanced Child Protection Practice stream. It is compulsory for team leaders to undertake team leadership and supervision training (which also includes a court component), while other training is not mandatory but is highly recommended. The training is based on the *Child Protection Capability Framework* (DHS 2011d).

Graduate Certificate and Graduate Diploma courses

In 2009 DHS provided funding for the development of two graduate-level courses delivered by La Trobe University, namely:

- Graduate Certificate in Child and Family Practice; and
- Graduate Diploma in Child and Family Practice Leadership.

The goals of the courses are to enhance the quality of practice with vulnerable children and families and to further develop the professionalism of the workforce by integrating theoretical frameworks and research into practice. DHS anticipated the courses would improve staff retention and the perception of the Victorian community services sector as an attractive career choice.

The Inquiry received a joint submission by Associate Professor Frederico at La Trobe University, The University of Melbourne, Take Two Berry Street Victoria and the Victorian Aboriginal Child Care Agency. The submission stated that both courses provide the opportunity for the child protection and family services workforce to upgrade skills, enhance reflective practice, prevent burnout and further develop a professional career. The courses provide exposure to a range of specialised knowledge areas that are relevant to child protection and family services work, including substance abuse, social work, family therapy, trauma, attachment, developmental psychology and neuropsychology (Frederico et al. submission, p. 2).

The courses first began in the second semester of 2009. Both courses have had strong retention rates. In the case of the Graduate Certificate, 27 of the 30 students enrolled graduated in June 2010, including 17 child protection practitioners, nine family service workers and one Aboriginal community controlled organisation (ACCO) worker. In the case of the Graduate Diploma, 30 of the initial 35 continued to the second year of the course, including 20 child protection team leaders or unit mangers and 10 from family service organisations or ACCOs (Frederico et al. submission, p. 1).

An evaluation of the course provided to the Inquiry found that participation in the courses led to enhanced confidence and greater competence to operate as a front line case practitioner in child protection or family services as well as enhanced confidence and competence as a leader. The participation of both government and non-government workers was found to lead to a greater appreciation of their respective roles and responsibilities (Frederico et al. submission, p. 3).

Currently there are 31 students enrolled for the 2011 to 2012 intake of the Graduate Certificate course, and a further 31 students are enrolled for the 2011 to 2013 intake of the Graduate Diploma course. At present, neither of these training courses have recurrent funding.

The DHS Child Protection Capabilities Framework

The DHS *Child Protection Capabilities Framework* outlines the capabilities required to work within the statutory system, as well as the knowledge and skills required for child protection work. The capabilities identified by DHS include:

- Thinking clearly;
- Engaging others;
- Managing oneself;
- Delivering results; and
- Leading and inspiring.

The capabilities framework is incorporated into *Leading practice: A resource guide for Child Protection frontline and middle managers*.

16.4 The community sector workforce

There is generally less information available on the non-government, community sector workforce. This is partly due to the fragmentation of the sector. In 2009-10 there were 221 organisations that received funding from DHS to deliver child protection and family welfare services, ranging from multi-million dollar organisations to small volunteer organisations with no paid staff.

DHS does not collect information about the community sector workforce but provided the Inquiry with estimates of the size of the workforce, as being in the order of 2,000 people based on approximately 1,200 staff in out-of-home care and 700 FTEs working in Integrated Family Services. Although this figure is only an estimate, it suggests that the non-government child protection and family services workforce is in the order of 50 per cent larger than the government child protection workforce.

At the end of June 2011, there were 900 households providing foster care and 1,700 kinship care households. Many of these households were caring for more than one child or young person. As discussed in Chapter 10, Victoria does not operate a system of professional foster care where carers are paid a salary. As a consequence foster carers and kinship carers are generally not included in official workforce data or in surveys. Issues affecting foster and kinship carers are discussed further in Chapter 10.

As noted above the community sector workforce mainly delivers out-of-home care and family services. Like the government workforce, the non-government workforce is predominantly female (78 per cent) (ABS 2010a) but is typically older and more experienced than the government workforce, with a median age of 44 (Australian Services Union submission, p. 7).

Due to the fragmentation of the community sector workforce, information on the level of qualifications held by these workers is not readily available; however, based on figures for the broader community services sector, around 80 per cent hold some qualification, with 21 per cent being degree qualified (ABS 2010a).

A range of professional education and development programs are available to the community sector workforce (including some of the ones previously mentioned for the government workforce). Much of the training specifically provided to the non-government workforce by DHS is provided in the out-of-home care sector, relating to either residential or home-based care.

Residential care training and professional development

The level of training for workers in the residential care sector was frequently raised as an issue in submissions and during consultations, with many commenting that the most troubled children (those in residential care) are left in the care of the least qualified workers. The Inquiry has had difficulty sourcing up-to-date information on the qualifications of community sector workers generally; however, a study of these qualifications from 2006 would seem to confirm this assertion.

The study found that, while nine per cent of family services workers had no further qualification beyond secondary school, this figure rose to 24 per cent for residential care workers. Residential care workers were also less likely than other family services workers to have completed diploma or degree qualifications (DHS 2006b, p. 2 & appendix 1). In addition, issues with the recruitment of residential care workers have often led to the use of agency-based staff with minimal qualifications and experience.

Training for residential care is coordinated through the *Residential Care Learning and Development Strategy* (RCLDS). Recurrent funding for the strategy is currently around $520,000. Management of the strategy is contracted to the Centre for Excellence in Child and Family Welfare. The RCLDS has enabled CSOs and DHS to use the *Australian National Training Framework* to design and deliver competency based training to non-government, residential care workers.

Between 2008-09 and 2010-11 approximately 2,000 residential care workers participated in courses through the RCLDS. Training courses provided under the strategy are typically run for one to two days, with topics including:

- Youth mental health;
- Supervision skills for residential care managers;
- Conflict management;
- Managing sexually abusive behaviours; and
- Therapeutic care, including trauma and attachment theory.

Home-based care training and professional development

DHS provides home-based care training separately from the RCLDS. This training consists of mandatory training in foster care assessment, as well as training for a therapeutic approach to care. Table 16.3 outlines this training, and the funding allocated in 2010-11.

In relation to home-based care training, a major CSO observed that, 'while the RCLDS had been successful in the residential care setting, there is no equivalent ... for home based care staff and volunteers' (MacKillop Family Services submission, p. 17).

Chapter 10 discussed the need for more specialised therapeutic provision, training and support for out-of-home care staff and carers.

16.5 Issues raised in consultations and submissions

The Inquiry consulted on issues affecting the child protection and family services workforce with frontline workers from DHS and CSOs drawn from metropolitan and regional locations. A summary of these consultations is contained in Chapter 5.

The consultations revealed a high level of commitment from child protection and family services workforce in both the government and CSO sectors. When asked about the best parts of the job, workers from both sectors often cited 'working with families', 'facilitating change with those families' or the 'satisfaction of making a difference' (Inquiry workforce consultation).

The high level of workforce commitment to children and their families is well established. Surveys of the child protection workforce from 2010 show that 'making a difference' and 'working with children' were the main reasons for workers entering child protection (Hall & Partners 2010, p. 2).

In spite of this high level of commitment, the consultations with frontline workers revealed a number of common issues facing both the government and non-government workforce (Inquiry frontline worker consultation). These issues include:

- High caseloads;
- Difficulties with court processes;
- The challenge of working with difficult and complex families;
- The need for a defined career path and more training; and
- Difficulty with the administrative burden of their work.

Table 16.3 Home-based care and out-of-home care: training and funding, Victoria, 2010–11

Program	Funding 2010–11
Mandatory staff training in foster carer assessment, including: • Mainstream foster care; • Aboriginal foster care; and • Development of materials for the above.	$99,000
'A therapeutic approach to care', including: • Mainstream kinship care training; • Aboriginal kinship care training; and • Development of materials for the above.	$655,000
Total	**$754,000**

Source: Information provided by DHS

High caseloads

Caseloads were commonly raised as a significant issue for DHS and CSO frontline workers, with the perception that high caseloads were contributing to worker burnout and fatigue. CSO workers reported that they were being 'pushed' by DHS to take cases, while workers from both sectors raised the issue of balancing caseloads with the other tasks expected of child protection and family services workers, such as administration and court attendance. Consultation with DHS and CSO workers from regional Victoria revealed additional demand pressures associated with travelling large distances to visit clients or attend court proceedings.

The Inquiry was provided with information about the average caseload of DHS child protection workers from October 2009 to September 2011. The calculations provided to the Inquiry exclude non case-carrying workers, such as managers or intake workers. Since late 2009 there has slight decline in the average caseload, from around 13.5 to just over 12 cases per CPW, as shown in Figure 16.5.

There is considerable regional variation in the average caseload per region, as shown in Figure 16.6. The Barwon-South Western, Loddon Mallee and Gippsland regions had comparatively high average caseloads. An analysis of this variation showed that regional differences in average caseloads were persistent from October 2009 to September 2011.

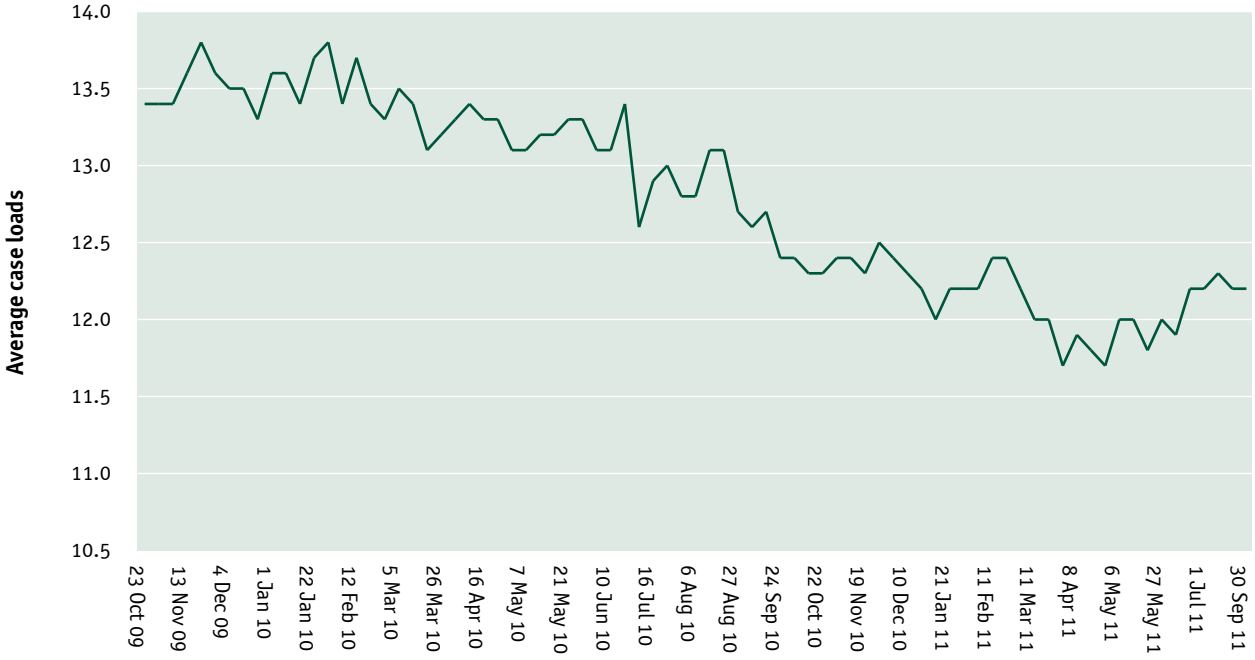
Average caseloads are influenced by a number of factors, including recruitment and retention patterns and the experience profile of the regional workforce. They are also influenced by the mix of cases and the phase of those cases.

DHS was not able to provide the Inquiry with a distribution of caseloads for individual staff; however, they advised that these caseloads are influenced by workers' level of experience, where less experienced workers are allocated fewer cases, and also by the resource intensiveness of cases.

The Inquiry also heard evidence of further regional differences in workloads as a result of providing after-hours services. A major issue raised during workforce consultations was the pressure to perform after-hours work in some non-metropolitan regions. The Inquiry heard that staff in some regions may be required for after-hours work, including on-call work, which may involve travelling lengthy distances. At times when staff are required to attend court the following morning they may have had little or no sleep. The after-hours on-call system was described during consultations as particularly burdensome and potentially dangerous for staff in rural areas where there was no dedicated after-hours service. This issue was not as prevalent in the metropolitan regions, which are covered by a dedicated after-hours service.

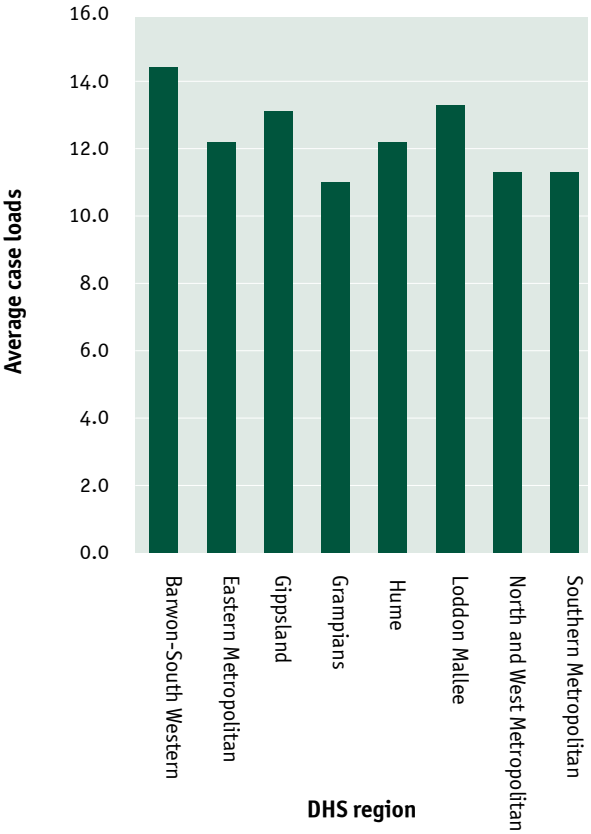
Chapter 9 discusses the capacity of the system in more detail, with reference to the workforce and other measures of capacity.

Figure 16.5 Average caseloads of child protection workers, Victoria, October 2009 to September 2011



Source: Information provided by DHS

Figure 16.6 Average caseloads of child protection workers, by region, year to September 2011



Source: Information provided by DHS

Difficulties with court processes

Workers, particularly frontline workers from DHS, consistently nominated issues around court processes as being one of the greatest difficulties they experience at work. At consultations with frontline workers, they frequently expressed a belief that CPWs' assessments are undervalued by some magistrates and lawyers and there is a lack of respect for the profession of CPWs. On the evidence presented to the Inquiry, this view was more likely to be held in metropolitan areas than rural ones.

The amount of time frontline DHS workers spend preparing for and attending court, including frequently for cases that are adjourned, was also raised during consultations. There is a perception from workers that these processes required them to take more time than is necessary away from assisting children and families. Similarly, feedback from CSO workers revealed frustration that Children's Court Clinic assessments were being given precedence in court over a foster care worker's assessment. These workers felt they had greater familiarity with the child or family and this should be fully considered by the court.

Some of these frustrations seemed to demonstrate a misunderstanding of the role of the of CPWs in the court setting. This may reflect insufficient training for the workforce in court processes. The Community and Public Sector Union (CPSU), in its submission to the Inquiry, reported a number of complaints from CPWs about the lack of time they spend in training, and the impact this has on covering important topics such as court or the *Children Youth and Families Act 2005* (CPSU submission, p. 18).

The Inquiry recognises that interactions with the courts are a significant issue for the child protection workforce and issues relating to court processes have therefore been given substantial consideration. The Inquiry has made several recommendations in this area, outlined in Chapter 15. The Inquiry also considers that more accredited professional education for CPWs to assist them with preparing for and attending court would increase the workforce's understanding of court processes and reduce the frustrations that the workforce experiences in this area.

Administrative burden

The amount of administrative work required by frontline workers from both DHS and the CSOs was also an issue raised frequently during workforce consultations. Several examples were provided, with one worker noting that kinship care referrals require the same data to be entered into three separate databases, while another worker reported that there were seven databases relating to foster care. An excessive amount of time spent on administrative tasks is seen as taking workers' time away from clients.

Frustration with DHS systems and processes was also raised in submissions. In relation to one key DHS system (the Client Relationship Information System or CRIS), the CPSU noted that workers have struggled to use the technology and that DHS had not factored sufficient training or sufficient time into the implementation of the system (CPSU submission, p. 18).

Career path and professional education and development

Concerns about career paths, as well as a lack of professional education and development opportunities for workers in child protection and family services, were a major issue raised in consultations with frontline workers. Participants felt that pay in the sector was low and that career progression usually involves 'moving away from direct client work'. This was particularly the case for CSO workers, who felt their pay was generally lower than DHS workers.

While mentoring is available for inexperienced workers, there was a perception that more could be done in this area, in particular to help workers 'debrief' about the personal impact of their work. There was a mixed perception of the Bachelor of Social Work, with some participants feeling that the qualification does not sufficiently prepare graduates for the specialised field of child protection. Some suggestions for improved training opportunities raised during the consultations included:

- More specific training for court attendances;
- Greater use of mentoring programs for inexperienced workers; and
- More training in risk management.

Consistent with the feedback from the workforce consultations, some CSOs submitted that a perceived lack of career path was a major issue affecting workforce retention. For example:

> Presently there is not a career path for the workforce in family services and out-of-home care. The model of skilled practitioners that exist [5] in education doesn't in our sector. There are no higher levels according to qualifications and expertise that allows for staff to remain in the program (Upper Murray Family Care submission, p. 4).
>
> Workers in the SACS [Social and Community Services] industry experience limited career paths and this is often cited as a reason for leaving the industry (Australian Services Union submission, p. 17).

The St Luke's Anglicare submission argued that workforce development was a key issue facing the non-government sector and this required serious resourcing and planning:

> We need a practitioner stream that staff can advance through, incentives and encouragement for staff to remain as practitioners and ensure staff are well remunerated for this professional decision (p. 26).

Further issues

In addition to the issues mentioned above, the public perception of CPWs in the statutory system was an issue frequently raised in consultation with DHS workers. Workers felt there was an 'unrealistic community perception of workers' and that media attention was solely focused on 'when things have gone horribly wrong'.

In addition to feeling under-valued by the courts, frontline CPWs frequently spoke of issues with the way the public value their work, and the sometimes adversarial nature of dealing with vulnerable children and families. This view was reiterated in submissions, for example, Odyssey House Victoria's submission reported that focus groups had found parents reporting mutual distrust with child protection and difficulties working with the service (p. 4).

Frontline CSO workers from both the regional and metropolitan consultations identified the collaboration they have with other agencies as one of the best parts of 'the job'. However, CSO workers expressed concern that DHS is sometimes slow to take action when they have identified a risk to one of their clients and that the level of inexperience of many DHS workers and high levels of turnover was seen as creating additional challenges for the relationship between DHS and CSOs.

16.6 Key issues, observations and recommendations

Based on the evidence presented above, the Inquiry has identified the following three categories of issues affecting the workforce:

- Skills and development;
- Recruitment and retention; and
- Pay structure and career pathways.

These issues and the Inquiry's observations and recommendations are discussed below.

16.6.1 Skills and development

Identifying and recognising the skills and development needs of the child protection and family services workforce is required to ensure the delivery of quality services and also to improving the overall professionalisation of the sector.

The Inquiry shares the view presented in a number of submissions that there is a need to improve the professionalisation of the child protection workforce and that this process should be qualification-led (Frederico et al. p. 1; Ms Johns, p. 1; Take Two Partnership, p. 4). Increased professionalisation will have a number of benefits, including enhanced standing before the court as an expert witness.

While there are a number of education and professional development programs available to the government and community sector workforce, currently these programs are not coordinated with the overall needs of the sector and are not always mindful of the intersection between their roles. There is presently no overarching workforce education and development strategy for the child protection and family services sector. This point was highlighted in the joint submission from Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army, Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare (Joint CSO submission):

> There has never been a comprehensive overview study of the role and responsibilities of the child protection workforce and/or the community sector workforce, no assessment or consideration of their intersecting roles and the consequences of this for requisite skills, further skill development, training or career structure, salary levels, and employment conditions.

> Given the increasing collaborative nature of the work undertaken by both sectors, we believe the time has come for a comprehensive workforce strategy (p. 83).

The Inquiry supports the recommendation put by The Salvation Army, which identifies the need to establish a training body to 'ensure that training is relevant across the human services sector' and to coordinate the training provided by a range of registered training organisations (RTOs), Technical and Further Education (TAFE) institutes, universities and industry providers (The Salvation Army submission, p. 27). In addition, the Inquiry has identified several areas where there is a need for additional workforce training and development. These are outlined below.

Supporting increased training for carers

In Chapter 10, the Inquiry recommended that the government establish a comprehensive plan for Victoria's out-of-home care system. Chapter 10 also identified the need for significant investment in the funding and support arrangements for out-of-home care, including mandating training and skill requirements for residential care workers as part of an overall move towards increasing the overall professionalisation of the out-of-home care system.

Addressing the need for increased education and training for carers, as described in Chapter 10, should be a priority of the recommended training body described above. This should include opportunities for foster, kinship and residential carers to participate in further training.

Training for professions that interact with vulnerable children

This chapter identifies a much broader workforce that contributes to the safety and wellbeing of vulnerable children. This workforce includes a diverse range of professionals from the health, education, legal and other sectors, who, in the course of their work, are likely to come into contact with vulnerable children and families.

The Inquiry recognises the important role that this broader workforce plays in protecting vulnerable children. In Chapter 14 the Inquiry recommended that the Government expand mandatory reporting requirements to include a broader range of professions named in the CYF Act that are not yet mandated. Not all of these professions are adequately skilled to fulfil this expanded role, for example, psychologists are not likely to have undertaken any specific units of study in the prevention, identification and professional response to child abuse and neglect (Crettenden et al. 2010, p. 1).

There is a need to identify the education and training requirements of the broader range of professionals who interact with vulnerable children and determine their ability and any training and development requirements for identifying and responding to child abuse and neglect. This training should also be made available to other professionals who come into contact with vulnerable children and families.

Recommendation 67

The Government should establish a child and family welfare sector training body to oversee development of an industry-wide workforce education and development strategy. This strategy should focus on consolidating the number of separate training budgets and strategies relating to child protection and family services.

This body should focus on:

- Developing the professionalism of the sector;
- Providing opportunities for continuing professional education including training and career path opportunities for workers entering at the Child Protection Worker-1 level;
- Addressing the education and training needs of the out-of-home care sector including carers;
- Overseeing and evaluating current training and development efforts, with an initial emphasis on assessing the adequacy of the Beginning Practice training offered to new child protection workers;
- Ensuring relevant training is consistent with national training frameworks and appropriately accredited;
- Identifying opportunities for providing combined training to government child protection workers, the community sector workforce and other professions;
- Coordinating the delivery of internal Department of Human Services courses;
- Procurement of other courses from external providers; and
- Collaborating with professional bodies and universities in disciplines that interact with vulnerable children to develop curriculum content relevant to the prevention of and response to child abuse and neglect.

The training body should be established as a public entity, with dedicated funding and staffing resources and governed by a board drawn from the government and non-government sector. It should be led by an independent chair with expertise related to the professional education and training needs of the sector.

Increasing the cultural competence of the child protection workforce

The Inquiry considered issues specific to Aboriginal children and children from culturally and linguistically diverse backgrounds in Chapters 12 and 13 respectively. Chapter 13 of this Report highlights the importance of culturally competent service provision and the need to improve cultural competence of child protection workers through better training and education. Chapter 12 observed that fewer than half of CSOs were rated as having met the registration standards for respecting Aboriginal children and youth's cultural identity.

Chapter 13 highlighted the diverse nature of Victorian families and the large number of culturally and linguistically diverse groups, while Chapter 12 identified some of the cultural issues that are unique the unique to working with Aboriginal families. While there is a need for all child protection and family services workers to have a level of cultural competence, it is not practical or efficient to provide the entire workforce with training that covers the breadth of cultural issues they may face. Opportunities for cultural competence training and access to cultural competence resources should therefore be made available to child protection and family services workers as they are required.

Recommendation 68

The Department of Human Services should improve the cultural competence of integrated family services and statutory child protection services, including through:

- Applying leadership accountability for culturally competent services and client satisfaction at regional service delivery level through performance agreements;
- Requiring cultural competence to be a component of all training;
- Providing culturally appropriate training, assistance and support to carers of children and young people from culturally and linguistically diverse backgrounds in the out-of-home care system;
- Encouraging local child and family services to draw links with relevant culturally and linguistically diverse communities as part of area-based planning reforms;
- Recruitment strategies to attract suitable candidates from Aboriginal and culturally and linguistically diverse backgrounds into child protection including through the use of scholarship schemes to undertake relevant tertiary-level training; and
- Exploring staff exchange and other joint learning programs on an area basis to build knowledge and respect for Aboriginal culture.

16.6.2 Recruitment and retention

Throughout the Inquiry, workforce recruitment and retention has emerged as a key issue in both the government and CSO sectors. Both of these sectors have highlighted difficulties in attracting skilled staff and retaining those staff. These can have a major impact on the delivery of child protection and family services.

Research has identified the relationship between child protection and family services workers and the families with whom they work as a key factor in protecting children and arguably the most important (Alexander 2010, p. 15).

This point has been further recognised by DHS:

> No single strategy is of itself effective in protecting children. However, the most important factor contributing to success was the quality of the relationship between the child's family and the responsible professional (DHS 2011f, p. 8).

Currently, in Victoria, 43 per cent of children subject to child protection orders for less than two years experienced three to five case workers, while 39 per cent who were subject to orders for greater than two years experienced six or more case workers (DHS 2011f, p. 8).

Clearly, high turnover has an impact on the quality of care that is provided. DHS has identified that frequent changes in case worker are likely to result in suboptimal system performance, namely:

- Compromised relationships between vulnerable children and young people, their families, carers and the allocated case worker;
- Loss of detailed knowledge of the child's circumstances and family history; and
- Less than optimal case outcomes and greater likelihood of adverse incidents (DHS 2011f, p. 8).

Retention

As identified earlier, the retention of CPWs in the government sector is unacceptably low, with one in four entry-level case-carrying workers leaving every year over the past five years.

Poor workforce retention has a significant impact on Victoria's system for protecting children. It affects practitioners and team leaders, who remain responsible for the workload of a colleague who has left until a replacement can be recruited and trained. It also affects the efficiency of the system. DHS estimates that recruitment costs $3,200 per FTE (estimate provided to the Inquiry), but this does not include significant costs associated with additional training or loss of efficiency. The low level of retention in the child protection workforce has previously been estimated to reduce workforce productivity across the whole workforce by as much as at 15 per cent and increase the cost of program delivery by around $5 million per annum (Boston Consulting Group 2006, p. 49).

There is less verifiable data available about retention rates in the CSO sector. This could be partly due to the fragmentation of the sector and also the difficulty separating retention rates in child and family services activities from other activities that CSOs may provide.

On the evidence that is available, there are similar difficulties with the recruitment and retention of staff in the CSO sector. One estimate of turnover, taken from the Australian Council of Social Services (ACOSS), in its *Annual Community Sector Survey 2011*, estimates that the average organisational turnover for child welfare services in Australia was 19 per cent but does not provide a figure for Victoria (ACOSS 2011, p. 44).

The Inquiry considered issues in relation to the child protection and family services workforce in an evolving policy context. Since the Inquiry was announced on 31 January 2011, the Minister for Community Services has released two key policy documents relating to workforce reform, *The Case for Change and Protecting Children, Changing Lives*. They are summarised below.

Retaining a quality workforce is difficult in any sector, particularly at a time of low unemployment. However, turnover rates in the child protection workforce of 25 per cent per annum are unacceptably high, and attempts to improve retention should be considered.

The Case for Change

The Case for Change was released in June 2011. Recognising the important role that the child protection workforce plays in protecting vulnerable children and families, *The Case for Change* draws on exit studies, workforce surveys and an independent evaluation of an alternative operating model in the Eastern Metropolitan Region to build the evidence base for reform of the child protection workforce.

Some key findings presented in *The Case for Change* include:

- There are many strengths of the child protection workforce, including an extremely high level of commitment to the work by current staff, rising levels of postgraduate qualifications and a commitment to continuous improvement through professional development; and
- That staff turnover in the child protection workforce is unacceptably high, with one in four entry-level workers leaving every year. High levels of staff turnover can compromise the client and practitioners relationship, including the loss of information of the child's circumstances and family history, increasing the risk of adverse events to the child

The Case for Change identified four critical areas for action:

1. Valuing the work and developing the professional;
2. More support for, and supervision of, frontline workers;
3. Reducing the statutory and administrative burden; and
4. Supporting staff to balance the demands of the job (DHS 2011f).

Protecting Children, Changing Lives

Following on from *The Case for Change* the Minister for Community Services released *Protecting Children, Changing Lives* in July 2011, which outlines reforms to the statutory child protection workforce model. These reforms aim to address the four critical areas for action identified in *The Case for Change*, and include changes to the existing child protection operating model, depicted in Figure 16.7.

Under the new model, practice guidance and support are intended to be provided by senior child protection practitioners, practice leaders and principal practitioners. All practice positions will also have a case-carrying component. DHS envisages that the new structure will provide less experienced practitioners with more support and better access to expert advice for complex case decisions. In particular, the principal practitioner role, of which there is to be one per region, is intended to provide child protection practitioners with more practice leadership and expert help on complex cases.

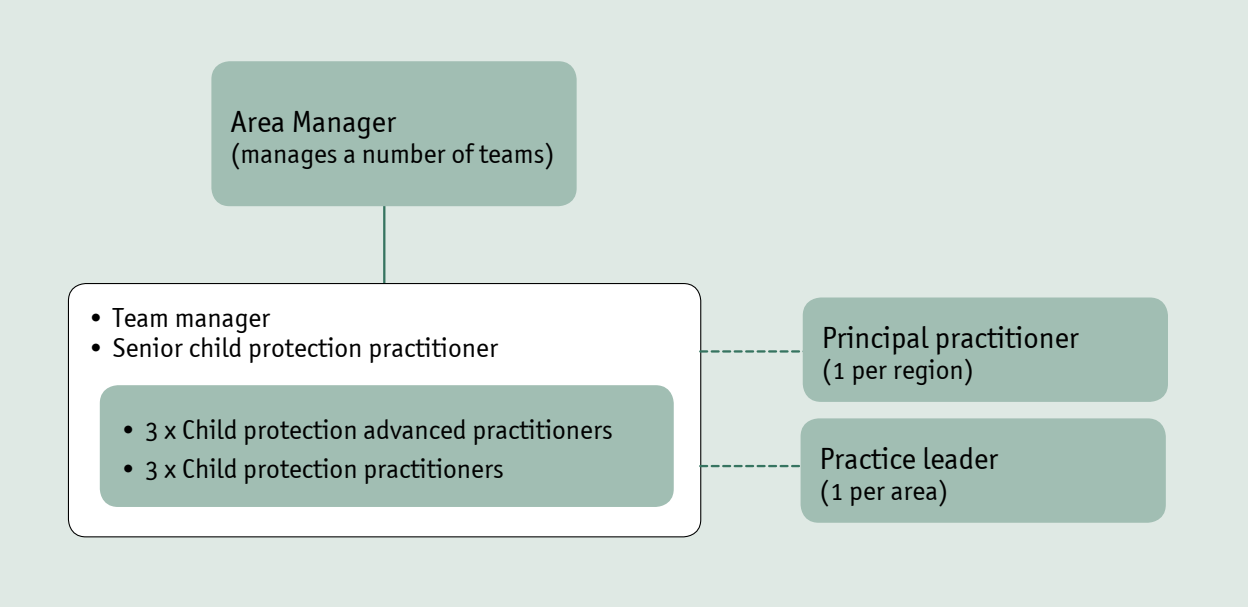
The role of senior child protection practitioner in the new structure is intended to provide better support for and more supervision of new or inexperienced child protection practitioners. Overall, the changes in workforce structure are expected to increase the involvement of senior practitioners with case work.

The new structure will result in the redeployment of a number of existing specialist roles to the roles described above. This includes existing high-risk infant specialists, adolescent specialist workers and family decision-making specialists. DHS has indicated to the Inquiry that the existing Aboriginal family decision-making specialists, community-based child protection workers and case contracting teams will be retained.

As part of *Protecting Children, Changing Lives*, DHS also proposes replacing the existing CPW structure with new classifications, known as child protection practitioners (CPPs), to more clearly define the career structure for the child protection workforce. The new CPP structure would be aligned to the Victorian public service (VPS) classifications; however, this is currently subject to the outcome of an enterprise bargaining process.

According to *Protecting Children, Changing Lives*, the changes are intended to address the reasons why staff leave child protection, including stress, lack of supervision, lack of access to professional development, and too much time spent on administrative work at the expense of working with children, young people and families.

Figure 16.7 Proposed Department of Human Services child protection operating model



Source: DHS 2011m, p. 14

Inquiry observations

The Inquiry's consultations with the DHS child protection workforce found it to be highly committed and motivated by the outcomes it achieves for clients. This is consistent with other research, for example the 2011 *Organisational Culture Survey* found 'high levels of commitment to the role and the Department', while workers consistently nominated the work they do as the thing they like most about working for DHS (Right Management 2011, pp. 17, 28).

Notwithstanding this level of commitment, the Inquiry's consultations with frontline DHS workers raised a consistent set of issues to those identified by DHS in *The Case for Change*, namely, that workers need:

- More training and development;
- More supervision and support;
- A healthier workplace culture;
- Assistance with paperwork and administration;
- Opportunities to debrief;
- Help to stabilise the demands of the job;
- More professional support;
- Less time in court; and
- More realistic perceptions of the child protection worker's role.

The workforce reforms announced by the Minister for Community Services in July 2011 will aim to address the issues impacting on retention in the government sector by:

- Creating a CPP job classification to replace the broader CPW classification, involving aligning the CPW-1 to CPW-4 levels with the VPS-2 to VPS-5 levels;
- Establishing of a 'principal practitioner' in each region;
- Funding to support 47 new practitioners and an increase in overall case carrying capacity of the workforce through changes to roles and reduced staff turnover;
- Improved pay and conditions, subject to agreement through the VPS Enterprise Agreement process; and
- A proposed new operating model for child protection, to give more support, greater flexibility, better pathways and more time with children and families.

The Inquiry acknowledges the government's work in developing *Protecting Children, Changing Lives*. These reforms are aimed at addressing a number of the workforce issues identified during the course of the Inquiry.

However, the proposed structure involves the integration of a number of previously specialist roles, for example, high-risk infant specialists, into more generic senior practice roles. As noted in Chapter 2, infants are a particularly vulnerable group who are over-represented in child protection reports. The Inquiry considers there is a need to monitor this integration closely to ensure that specialist skills are not diminished over time.

As discussed earlier, child protection and family services deal with a wide range of difficult and complex issues that may arise at any time and in an entirely unpredictable manner. As a consequence the organisational structure and workplace arrangements need to allow for significant flexibility in responding to these issues. In recent times a number of professional workforces have increasingly realigned their practices and arrangements to enable greater flexibility and effectiveness in responding to the needs of their client groups. In keeping with these trends, the Inquiry therefore considers that, in the longer term, there is a need for DHS to continue to explore and implement a range of flexible workplace practices that better responds to the needs of vulnerable children. In Chapter 10 the Inquiry has noted the limitations posed by current industrial structures in the development of salaried foster care.

Additionally, the scope of *Protecting Children, Changing Lives* only deals with issues affecting the DHS workforce and not the broader child protection and family services sector. As such, it does not propose changes based on the skills or requirements of the sector as a whole.

Matter for attention 14

The Inquiry brings to the Government's attention the need to monitor the integration of previously specialist roles into more generic senior practice roles to ensure that specialist skills are not diminished over time.

16.6.3 Pay structure and career pathways

The pay structure and career pathways available to child protection and family services workers were frequently raised in submissions and during consultations as a major issue affecting the government and community sector workforces.

The *Protecting Children, Changing Lives* reforms announced by DHS have the capacity to alleviate some of these issues in relation to the government workforce, although there are other issues that affect the community sector workforce.

While consultations and submissions revealed many issues common to the government and non-government workforce, the issue of remuneration was more frequently raised in relation to the community sector, as noted by one submission:

> The existing financial incentives are inadequate and symbolically send a message that current or prospective worker skills or contribution aren't respected or valued (Youth Support and Advocacy Service submission, p. 21).

The Australian Services Union (ASU) submitted to the Inquiry evidence that wages paid in the non-government sector are below the equivalent levels in the government sector. This was using a comparison of wages paid in the non-government sector, based on the Social and Community Services Award 2000, and the public sector comparator. The ASU submitted that wage rates for social workers in the community sector are 23 per cent lower for graduate-level staff and 30 per cent lower for more experienced staff than for the comparable CPW level in the government sector (ASU submission, p. 21).

In some cases differences in the level of salary for community sector workers may be somewhat offset by beneficial salary packaging arrangements that are available to community sector workers. An estimated one-third of community sector workers utilise these arrangements, compared with 13 per cent of the overall workforce (Equal Remuneration Case 2011).

There is evidence that inadequate pay levels are a significant contributor to high turnover in the non-government workforce. For example, salary was identified in the ACOSS *Australian Community Sector Survey* 2011 as the leading factor making attracting and retaining staff more difficult (68 per cent of respondents) (ACOSS 2011, p. 45). Other leading factors included job security (44 per cent) and career path (42 per cent).

Since the Inquiry was announced there have been significant developments in relation to community sector remuneration for social and community service workers through the Fair Work Australia pay equity case. The case is currently before Fair Work Australia.

Fair Work Australia Equal Remuneration Case

The case before Fair Work Australia was brought by unions seeking to correct what was argued to be a gender-based disparity between the pay of social and community service workers and employees in state and local government.

On 16 May 2011 a full bench of Fair Work Australia issued a decision that outlined its preliminary conclusions about the making of an equal remuneration order for the Social, Community, Home Care and Disability Services Industry Award 2010.

Fair Work Australia has preliminarily agreed that such gender-based disparities do exist in the social and community service industry and has sought further submissions from parties on the extent of changes to wage classifications needed to correct the gender bias (Equal Remuneration Case 2011).

The Equal Remuneration Case before Fair Work Australia may result in significant wage increases for non-government workers in the child protection and family services sector, potentially addressing some of the remuneration issues identified with respect to the non-government workforce. This increase, however, has the potential to have an impact on the delivery of services provided by the non-government child protection and family services workforce. Fair Work Australia did not take into account the benefits that some employees in the community sector may derive from salary packaging, as two-thirds of workers in the sector derive no benefit from this (Equal Remuneration Case 2011).

Child protection and family services delivered by the non-government sector are largely funded by the Victorian Government, as such, an increase in wages would increase the cost of delivering services provided by CSOs. In submissions to Fair Work Australia, the Commonwealth noted that 'any increase in wages for the industry could impose significant cost pressures that could have adverse impacts on service delivery' (Equal Remuneration Case 2011). A survey of CSO workers, undertaken by DHS in 2006, indicated that 55 per cent of CSO workers are covered by the Social and Community Service Award (DHS 2006b, p. 5).

In mid-November 2011 the Commonwealth Government announced that it would, with the ASU, make a submission to Fair Work Australia that argues for rates of pay that fairly and properly value social and community sector work. This was expected to affect 150,000 social and community sector workers at a cost to the Commonwealth Government of $2 billion.

Finding 17

The Inquiry notes the potential implications for all governments of the outcome of the Equal Remuneration Case currently being finalised by Fair Work Australia.

Nonetheless, the issues being addressed by Fair Work Australia are largely separate from those that are the focus of the Inquiry's report and recommendations, namely, reforming, enhancing and expanding Victoria's policy and service response to the needs of vulnerable children and families.

16.7 Conclusion

Victoria's child protection and family services workforce operates in a demanding and stressful environment, dictated by the circumstances of the families with whom they work. The Inquiry's consultations with workers revealed a workforce that is highly dedicated but affected by a range of issues that detract from their employment and in turn affect the performance of Victoria's system for protecting children.

Ongoing developments in the sector, such as the proposed reforms to the child protection operating system and the Equal Remuneration Case currently before Fair Work Australia, may address some of these issues. However, the Inquiry has identified a general need to improve the professionalisation of the sector by increasing the level of professional education and training that is available.

Part 6: System supporting capacities

Chapter 17:
Community sector capacity

Chapter 17: Community sector capacity

Key points

- Community service organisations have long played and continue to play a critical role in responding to and providing services to vulnerable families and children.
- Reflecting the changes over time in Victoria's approach to vulnerable children and families, the Government provides funding and is dependent on community service organisations to deliver critical services and interventions. In particular, community service organisations play the major role in providing out-of-home care and family services.
- Over time, government funding to community service organisations has increased significantly and represents the dominant source of funding for many community service organisations. The current pattern of Department of Human Services funding indicates a small number of community service organisations receive a significant proportion of the funding for family services and placement and support services, while a large number of community service organisations receive relatively small amounts of funding.
- The Inquiry considers that the structure and capacity of community service organisations needs to be strengthened if Victoria's approach to vulnerable children and families is to be improved and the broad strategic directions outlined in this Report are to be effectively implemented.
- The Inquiry also considers that the Government should adopt an updated and clearer framework for its relationship with the community sector in line with its policy leadership and accountability role.

17.1 Introduction

Community service organisations (CSOs) in Victoria have a long history in providing assistance and support to families and children in need. Indeed, the involvement of CSOs protecting and supporting vulnerable children and young people pre-dates that of government. Although major changes have occurred since the 1970s in Victoria's approach to protecting vulnerable children, as outlined in Chapter 3, CSOs continue have a pivotal role in protecting and supporting Victoria's vulnerable children and families.

In Victoria, more than 200 organisations, the majority of which are CSOs, are currently funded by the Department of Human Services (DHS) to provide a range of child, youth and families services including:

- Family and community services such as community-based child and family services (family services), placement prevention and reunification and family violence services; and
- Specialist support and placement services such as home based care, residential care and leaving care support services.

These organisations include some 22 Aboriginal community controlled organisations who are funded to provide family and community and specialist support and placement services to Aboriginal families, children and young people.

As outlined in Chapters 4 and 8, there has been a significant expansion in the funding provided to CSOs in recent years, arising from the establishment of Child FIRST and family services, the continued increase in the number of children and young people in out-of-home care and a range of early intervention, specialist support and leaving care initiatives.

This chapter considers, in turn, the broader context and roles of CSOs including: recent trends in the relationships with and perspectives of governments; key dimensions of the broad funding arrangements and the government funding of CSOs providing relevant child protection and family services in Victoria; the capacity and performance of CSOs including issues raised in submissions to the Inquiry and at Public Sittings; and the major conclusions and recommendations of the Inquiry on the roles and capacity of CSOs and the nature of the relationship between CSOs and government.

A number of aspects of the Inquiry's Terms of Reference are relevant to the consideration of the capacity of CSOs. In particular, the Terms of Reference require the Inquiry to consider ways to strengthen the capabilities of organisations involved in services and interventions targeted at children and families at risk. The Inquiry is also tasked with considering the more general issue of the appropriate roles and responsibilities of government and non-government organisations in relation to Victoria's child protection policy and systems.

17.2 An overview of community service organisations in Victoria

CSOs form part of the broader not-for-profit (NFP) sector in Victoria and Australia. As outlined in the Productivity Commission's 2010 *Contribution of the Not-for-Profit Sector* report, the NFP sector is made up of a diverse range of entities established for a wide range of purposes.

> NFPs deliver services to their members, to their clients or to the community more broadly, such as welfare, education, sports, arts, worship, culture and emergency services. Some NFPs build or maintain community endowments such as biodiversity, cultural heritage and artistic creations. Some engage in education, advocacy and political activities, while for others the focus is on activities that create fellowship (Productivity Commission 2010, p. xxv).

Compared with the NFP sector generally, CSOs in the human services sector are distinct in that they rely heavily on governments as their main source of funding. In turn, governments in Australia rely heavily on CSOs to deliver many human services in the aged care, disability, and child, youth and family support areas. For its 2010 report, the Productivity Commission conducted a survey of Commonwealth, state and territory government agencies with significant engagement with the NFP sector in the delivery of human services. The main findings were:

> The survey response confirmed the perception that high shares of many human services funded by government agencies are delivered by external agencies:
>
> - For all but two categories of human services (health and emergency), about half of the government agencies reported that at least 50 per cent of their services (by value) were delivered by external organisations;
> - NFP organisations are major providers in most human services areas. Of the services delivered by external organisations, almost half the government agencies reported that over 75 per cent of their program value is delivered by NFPs. Indeed, for 66 per cent of programs NFPs were the only non-government providers; and

- The most commonly cited reasons for this heavy reliance on NFPs were that they: provide flexibility in service delivery; are better able to package their services with other services for the target group; give value for money; and are representative of the clients the program is targeting (Productivity Commission 2010, Appendix D, p. D.1).

In Victoria, CSOs – more so than in many other states – are often the only providers of children's and family services in a number of key areas such as placement and support services and family support services. As outlined in Chapter 3, the current role of the community sector as provider of, largely government funded, child protection and family services stands in sharp contrast to their initial beginnings.

Berry Street, one of three largest providers of placement support and family services, indicate:

> Established in 1877 as the Victorian Infant Asylum, Berry Street's core activity has always been protecting children in need, and strengthening families, so they can provide better care for their children ...
>
> ... In the early days, our greatest challenges were high infant mortality and poverty. Our primary roles were supporting unwed or rejected mothers and their babies and finding new homes for babies and children who were abandoned (Berry Street 2010 p. 1).

Another significant service provider, MacKillop Family Services, indicates similar beginnings but also highlights the major changes it has seen over time in service orientation and overall governance:

> Over 150 years ago the Sisters of Mercy, the Christian Brothers and the Sisters of St Joseph commenced their work in Victoria and established homes for children who were orphaned, destitute or neglected and for mothers who were in need of care and support. Throughout the years, the original model of institutional care evolved into different support services. In 1997, MacKillop was formed as a re-forming of the earlier works providing a range of integrated services to children, young people and their families (MacKillop Family Services 2011).

Anglicare Victoria, formed in 1977, represents another major service provider established following the consolidation of several long standing child and family welfare agencies. The agency was formed by joining together three agencies – the Mission to St James and St John, St John's Homes for Boys and Girls and the Mission to the Streets and Lanes – that had a combined history of over 260 years in providing care and support to Victorian families and children.

These histories underscore the essential core feature of CSOs, namely their long established missions to focus on and assist disadvantaged groups. Berry Street describes their mission and values in the following terms:

> Today, our greatest challenges are: to help children and young people recover from the devastating impact of abuse, neglect and violence; to help women keep themselves and their children safe from violence; and to help struggling mothers and fathers to be the parents they want to be; and to contribute to, and advocate for, a fairer and more inclusive community.
>
> Berry Street's five core values are Courage, Integrity, Respect, Accountability and Working Together. These values guide everything we do and require us:
>
> - To never give up, maintain hope and advocate for a 'fair go': Courage
> - To be true to our word; Integrity
> - To acknowledge each person's culture, traditions, identity, rights, needs and aspirations: Respect
> - To constantly look at how we can improve, using knowledge and experience of what works, and ensure that all our resources and assets are used in the best possible way: Accountability
> - To work with our clients, each other and our colleagues to share knowledge, ideas, resources and skills: Working Together (Berry Street 2010 pp. 1, 2).

While the historical circumstances, scope and focus of CSOs and their size all vary, the overall mission of assisting the disadvantaged – regardless of the associated circumstances – and their non-profit nature are a common thread. In doing so, many CSOs access a range of funding and in-kind resources including volunteer workers.

Arising from the significant changes in the approach to child protection and support in the 1980s, particularly the move away from large state-run institutions and the growing involvement of governments in a broader range of social issues, Victorian governments have increasingly relied on and funded CSOs to deliver child, family and youth services. The growth in government funding of CSOs has reflected three factors:

- The outsourcing of services previously provided by government, particularly residential care;
- Increased funding of services already provided by CSOs, such as family support services; and
- The funding of new services in response to emerging trends and needs, such as, the provision of therapeutic care as part of placement and support services.

These trends in funding and service delivery arrangements have, in turn, led to a growing focus on the nature of the relationship between government and CSOs. In particular, explicit performance requirements, funding arrangements and detailed capability and accountability standards have been developed covering CSOs. An outcome of this focus has been the move from government funding of CSOs on a grants basis to the now widely adopted performance-based service agreement or contract basis covering a defined period.

The move to service agreements in the 1990s, and the associated debates regarding purchaser/provider and competitive tendering, has generated periodic concerns by CSOs about the alignment between their mission and values and being the delivery vehicle for government funded and specified services.

From their perspective, governments have recognised that dependence on CSOs as the major deliverers of human services, combined with the inherent nature of many of these organisations, requires a broader and longer term strengthening of both the relationship and the sector overall.

For example, at the departmental level in Victoria, DHS has an explicit commitment to partnership and collaboration with the community services sector. Under the banner of 'How we work with funded organisations', DHS describes the present approach as follows:

> The Department of Human Services is committed to working in partnership with our funded organisations to deliver high-quality community and housing services that are in line with the government's vision for making Victoria a stronger, more caring and innovative state.
>
> This is achieved by working cooperatively with funded organisations to sustain, strengthen and build working relationships that enable them to provide services that accommodate and value diversity, address the particular needs of vulnerable and marginalised people, recognise regional and rural differences and contribute to demonstrable high-quality outcomes in accordance with agreed standards.
>
> To support working cooperatively a number of protocols have been developed that reaffirm the ongoing commitment to shared vision and a strengthened relationship between the department and the sector. These protocols acknowledge that the best service outcomes are the product of collaboration, inclusive planning, efficient public policy and clear service funding agreements:
>
> - Human Services Partnership Implementation Committee (HSPIC); Memorandum of Understanding 2009 to 2012 between the independent health, housing and community sector and the Department of Human Services;
> - Partnership Protocol between the Department of Human Services, Department of Health and the Municipal Association of Victoria 2010; and
> - Collaboration and Consultation Protocol (HSPIC 2004).

The HSPIC, a joint committee of peak bodies and DHS established in 2004, is the governance structure that supports the implementation of a memorandum of understanding. An annual work plan is developed to guide the activities of the committee that, to date, have focused on reviewing and improving relevant business processes and providing a point of contact for discussions/negotiations on sector-wide funding issues, and hosting partnering dialogues to look at sector-wide issues and share learning.

The role and activities of the committee was not the subject of significant comment by the CSOs or representative organisations during the Inquiry process other than reference by Berry Street in their public submission to the role of the committee in the recent review of the pricing of family support services (Berry Street submission, p. 40).

In 2008 the Victorian Government, as part *The Victorian Government's Action Plan: Strengthening Community Organisations*, established the Office for the Community Sector to support the Victorian NFP sector to be sustainable into the future (Victorian Government 2008a). The office, which is located in the Department of Planning and Community Development, has two stated responsibilities: driving cross-government activity that reduces unnecessary burden related to government accountability and compliance requirements; and supporting the sector to build their capacity to continue to be responsive to the needs of Victorians. The office has focused on the following range of practical and supportive activities for the broader NFP sector:

- A common funding agreement to be used by all departments when funding NFPs;
- Developing a Victorian Standard Chart of Accounts to make accounting terms and definitions uniform throughout state government and agencies;
- Providing free publications and tools such as a workforce capability framework to help NFPs recruit, manage and develop their workforce;
- Assisting Victorian community foundations to enhance their profile, stimulate local fundraising and increase their grant-making capacity; and
- Funding, resources and training to enable community organisations to establish relationships with philanthropists and improve their fundraising effectiveness.

The focus on reducing and improving regulatory arrangements is also a priority of the Office for the Not-for-Profit Sector established by the Australian Government in October 2010. A key action in this regard has been the announcement of a national regulator for the NFP sector entitled the Australian Charities and Not-for-Profits Commission. The commission will commence operations from 1 July 2012 and will be responsible for determining the legal status of groups seeking charitable, public benevolent institution, and other NFP benefits on behalf of all Commonwealth agencies.

The Office for the Not-for-Profit Sector is also responsible for overseeing the National Compact between the Australian Government and the NFP sector. Launched in March 2010, the National Compact *Working Together* is a high-level agreement setting out how the Australian Government and the sector aim to work together in new and better ways to improve the lives of Australians (NSW Government 2010).

These developments, at the state and national levels, reflect the growing recognition dating back to the mid-1990s that the NFP sector and CSOs perform significant social, economic and community roles. This chapter is confined to the capacity of Victorian CSOs as part of the overall state response to families and vulnerable children. In doing so, it is acknowledged that CSOs often undertake a broader range of activities using various funding sources, resulting in significant community and individual benefits.

17.3 Government funding of community service organisations and community sector capacity: key issues and funding patterns

Against the background of community sector capacity, this section briefly identifies some key issues arising from and impacting on DHS as the sole funder or 'purchaser' of a range of key services for vulnerable children and their families such as Child FIRST, family services and out-of-home care. The section then analyses available information on the levels and patterns of DHS funding of CSOs.

17.3.1 Government funding of community service organisations in Victoria: key issues

The role of DHS as the sole funder or purchaser of services and the dependence by DHS on CSOs to deliver these services – in a complex area such as vulnerable children and their families – can give rise to a range of issues and interdependencies that adversely affect the effective and efficient delivery of services. As the sole or principal funder of the services, DHS has the dominant role in determining what services are provided, where and by which agency, and can significantly influence the structure and culture of the sector.

As noted in the previous section, this dominant funding role of government, coupled with the adoption of service performance-based agreements and contracts and increasing reliance on government funding, has been viewed by the NFP sector as having a number of negative consequences. The Productivity Commission in its 2010 report on the NFP sector summarised these concerns as follows:

- There is a strong perception in the sector that governments are not making the most of the knowledge and expertise of NFPs when formulating policies and designing programs.
- Many participants argued that, as a model of engagement, purchase of service contracting has some inherent weaknesses, including:
  - creating incentives for community organisations to take on the practices and behaviours of government organisations they deal with (or so called 'isomorphism');
  - distracting NFPs from their purpose thereby contributing to 'mission drift';
  - creating a perception in the community that NFPs are simply a delivery arm of government;eroding the independence of NFPs in ways that make it difficult for them to remain responsive and flexible to community needs; and
  - being inherently biased in favour of large organisations and thereby contributing to a loss of diversity in the sector (Productivity Commission 2010, pp. 309-310).

It is clear that governments as the sole purchaser or funder of services provided by CSOs can have an adverse impact on or introduce unnecessary impediments to effective service provision through, for example, overly prescriptive and short-term service agreements and contracts.

However, it is also clear that capacity and structure of CSOs can impact on or provide impediments to the overall quality of service provision being purchased and funded by government, particularly in complex human services areas. These aspects can include:

- Inadequate capacity among CSOs to meet the service needs of government and the specific needs of vulnerable children and their families, due to lack of resources, skills and knowledge and inadequate governance arrangements;
- Absence or scarcity of CSOs in key geographical areas; and
- Limited capacity or willingness of CSOs, due to size and other factors, to explore and adopt innovative or new approaches.

These limitations can be exacerbated by an inappropriate or immature regulatory framework that does not establish the appropriate standards or expectations of CSOs or promote a quality improvement approach to service provision.

Overlaying these considerations from the perspectives of the CSO sector and governments as the purchaser of services are the fundamental issues of achieving the best value in terms of overall client outcomes from the resources made available and meeting the public accountability requirements.

Government as the sole purchaser or funder of services has a broad set of public objectives and accountability requirements to meet. It also has the capacity through service specifications and funding arrangements to lead and encourage CSOs to achieve better outcomes and more effective and efficient service delivery. The complexity of the issues faced by vulnerable children and families, the unique attributes of CSOs and the inherent difficulties of achieving lasting impacts, underscores the need for government to work strategically with these organisations. However, this strategic relationship needs to be long term and based on an explicit understanding of the respective and different responsibilities and roles of government and the community sector.

17.3.2 Community service organisations and government funding patterns

The departments of Health and Human Services provided the Inquiry with information on the annual service agreement funding provided to organisations across a range of health and human services programs and activity areas for 2009-10. These programs cover a broad range of areas such as mental health, drug services, family services, Aboriginal family services, family violence services, enhanced maternal and child health, youth justice, placement and support services and homelessness services.

For these services, funding of around $243 million was provided to external organisations, the majority of which were CSOs, to deliver Aboriginal family services ($14 million), family services ($76 million) and placement and support services ($153 million). These services, along with the internal statutory child protection services, are key direct services areas.

An analysis of Victorian Government funding provided for these services indicates that 141 organisations in Victoria received funding for either family services (including Aboriginal family services) or placement and support services, with 106 organisations receiving funding for family services and 71 organisations receiving funding for placement and support services. In 2009-10, 36 organisations received funding for both family services and placement and support services.

A number of these organisations were also funded by DHS and the Department of Health to provide other human and health services. In 2009-10, about two-thirds of the organisations that were funded to deliver family services (including Aboriginal family services) or placement and support services also received funding for a range of other human and health services. These included:

- Homeless services (35 per cent of organisations);
- Drug services (33 per cent);
- Mental health (28 per cent);
- Youth justice (21 per cent); and
- Family violence (21 per cent).

Funding for these other services totalled $134 million in 2009-10, equivalent to just over half of the amount that these organisations received for providing family services and placement and support services.

Of the 10 organisations with the largest funding for family services and placement and support, nine received funding for at least one of the other services listed above. While these organisations received 55 per cent of family services and placement and support funding, they received 28 per cent of the $134 million funding provided to organisations for the provision of other human and health services.

This broader view of the other government funding received by CSOs who are funded to deliver family services and placement and support services raises a more general question about the consistency of the standard, service and performance requirements for the community sector and NFPs across all government departments. This matter is outside the Inquiry's Terms of Reference but nonetheless is an issue the Inquiry considers would benefit from consideration over time to ensure a consistent and uniform approach to the engagement of CSOs by government – directed at achieving better and more efficient outcomes.

The levels of funding received by organisations to provide family services (including Aboriginal family services) covered a wide range, with 27 organisations receiving family services funding of less than $100,000 and 23 organisations receiving funding of $1 million or more, of which three received funding in excess of $6 million (see Figure 17.1 for detailed information). The 10 organisations receiving the highest funding received nearly 60 per cent of the total funding for family services.

As with family services funding, the funding for placement and support services was also significantly dispersed, with 18 organisations receiving funding of less than $100,000 and 26 organisations receiving funding in excess of $1 million of which seven received funding in excess of $6 million (see Figure 17.2 for detailed information). The 10 organisations that received the highest funding received 65 per cent of the total funding for placement and support services.

Table 17.1 sets out the total funding received for family services and placement and support services at the regional level, the total number of funded providers and the proportion of funding received by the largest four providers.

As expected, a regional analysis indicates there are a considerably smaller number of providers of family services and placement and support services in non-metropolitan regions. For example in the Grampians region there are five funded providers of placement and support services with the four largest providers receiving over 99 per cent of the funding. In the Hume region, there are eight funded providers of placement and support services, with the four largest providers receiving 98 per cent of the funding.

Three major observations emerge from this analysis of the 2009-10 funding patterns of funded organisations:

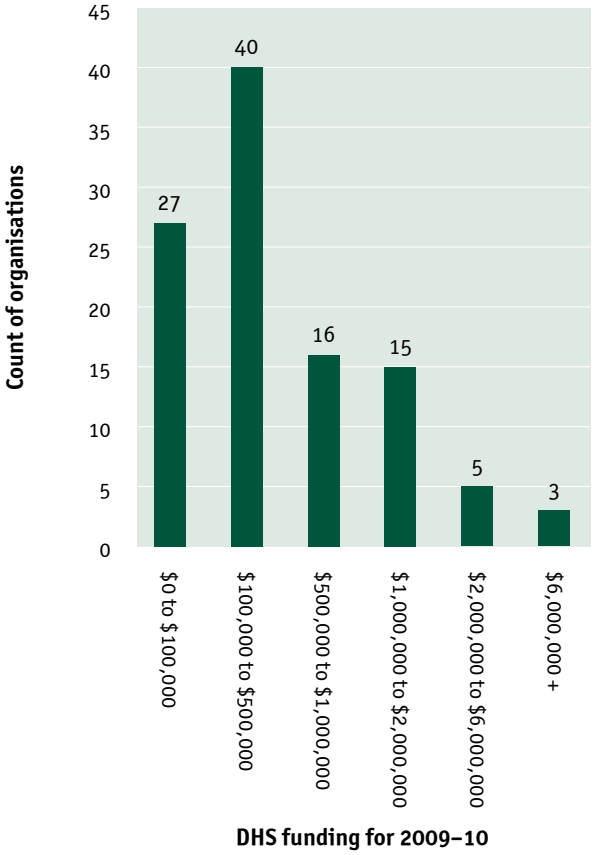
- There are a significant number of organisations, 33 or more than 25 per cent of service providers, that receive less than $100,000 of the total funding provided for family services and placement and support services;
- At the same time, a smaller number of organisations, 10 in total, receive significant amounts of funding (in excess of $6 million) for the provision of either or both family services and placement and support services, of which four organisations received funding excess of $16 million (which in total represented 40 per cent of the overall funding); and
- In non-metropolitan regions in particular, DHS is dependent on a small number of organisations to deliver, what is arguably the most complex of tasks, namely placement and support services aimed at reducing the impact of abuse and neglect.

Funding for the provision of family services and placement and support services involves the use of public funds to assist some of the most vulnerable children and their families in the community. Notwithstanding the history and mission of CSOs, these factors alone mean that assessment and verification of the capacity and performance of funded CSOs should be an essential feature of the policy and service delivery framework. Chapter 21 sets out, in detail, the legislative and other regulatory requirements relating to CSOs. These arrangements include that to be eligible for registration to provide out-of-home care services, community-based child and family services or other prescribed categories of services, a CSO must:

- Be established to provide services to meet the needs of children requiring care, support, protection or accommodation and of families requiring support; and
- Be able to meet the performance standards established under legislation that apply to CSOs.

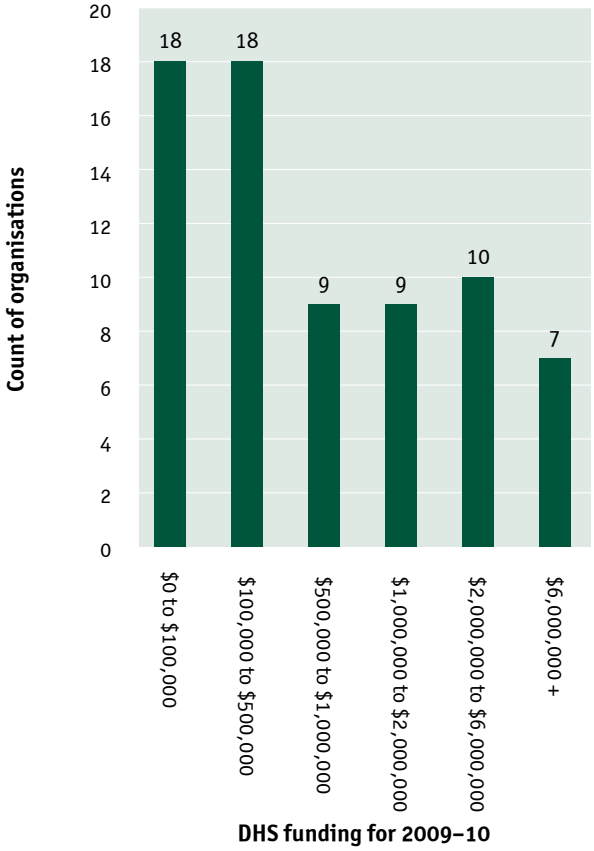
As part of the development of service-based funding arrangements (referred to as service agreements), DHS has instituted a requirement for funded organisations to report their financial position on an annual basis. These requirements are known as the financial accountability requirements and provide a check on the financial capacity of funded organisations. Relevant organisations are currently required to provide a certification by an authorised officer from the organisation, an annual report containing audited financial statements or, in lieu of financial statements, financial or cash indicator statements.

Figure 17.1 DHS funding of CSOs for family services (including Aboriginal family services), 2009–10



Source: Inquiry analysis of information provided by DHS

Figure 17.2 DHS funding of CSOs for placement and support services, 2009–10



Source: Inquiry analysis of information provided by DHS

Table 17.1 Family services (including Aboriginal family services), funding by region and number of funded organisations, Victoria, 2009-10

Region	Total funding for family services and placement and support	Funded organisations	Percent of regional funding to top four funded organisations
Barwon-South Western	$ 18,385,775	19	80%
Eastern Metropolitan	$ 30,724,029	25	74%
Gippsland	$ 20,400,452	17	66%
Grampians	$ 14,418,776	11	88%
Hume	$ 15,376,600	13	90%
Loddon Mallee	$ 23,006,934	24	67%
North and West Metropolitan	$ 66,048,535	42	56%
Southern Metropolitan	$ 48,314,737	30	49%
Statewide services funding	$ 6,542,132	5	NA
Total	**$ 243,217,970**	**141***	

Source: Information provided by DHS
* The total number of organisations is lower than the total of funded organisations by region as a number of organisations provide services in more than one region

DHS provided the Inquiry with a 2008-09 analysis of all DHS funded organisations. The analysis covered the total range of DHS funding: child protection and family services; housing and community building; concessions; disability services; and youth justice and youth services. The analysis, in line with the above analysis of 2009-10 funding, found that the child, youth and family services area funds a substantial number of small organisations and that the top 10 funded organisations accounted for more than half of the total expenditure. Compared with other areas, child, youth and family services had the most concentrated funding patterns.

In addition, the 2008-09 analysis examined the financial information provided as part of the financial accountability requirements. This analysis found:

- There was no apparent relationship between an organisation's financial viability and its level of dependency on DHS funding;
- The surplus of organisations that had a primary focus on children, youth and families services was an average of one per cent of total revenue, a significant decline on the average surplus in the previous year; and
- Overall the financial ratios, such as current assets to current liabilities, assets to liabilities and debt ratio, indicated a high level of financial stability within the sector.

Two interrelated factors influence the funding patterns identified in this section. These are the approach adopted by DHS to the specification and funding of services and the range and spread of available and interested CSOs with the capacity and the objective of assisting vulnerable children and their families. Given the policy responsibility for assisting vulnerable children and their families and the statutory child protection system, a legitimate issue for consideration by government is whether the separate funding of a large number of organisations represents or will continue to represent the most effective structure of service provision for Victorian vulnerable children and families.

17.4 Community sector capacity: roles, constraints and performance

17.4.1 Roles

The Inquiry considers that the expectations of CSO capacity should be linked to a clear and accepted understanding of their roles and responsibilities.

In submissions, a number of CSOs focused not only on factors that impact on their capabilities and capacity to provide effective and efficient services and interventions but also the capacities that CSOs bring to the issue of vulnerable families and children including broader policy and program development.

Jesuit Social Services summarised the role and capacity of CSOs in the following terms:

> Governments have a role to ensure the most vulnerable in the community are protected but as discussed throughout this submission, Jesuit Social Services would argue that a broad approach needs to be adopted to effectively pursue this outcome.
>
> There is an obvious role for Community Service Organisations (CSOs) to assist government achieve the aim of protecting vulnerable people.
>
> CSOs bring a range of community assets which would (generally) not otherwise be offered to government. CSOs motivate and facilitate the contribution of an organisations resources, mostly their people, to concerns of common interest.
>
> CSOs bring a community awareness and engagement (from members, supporters and media) that would not be available to government. Indeed CSOs' interest in child protection pre-dates that of governments.
>
> Jesuit Social Services has a history of opposing the for-profit sector entering into the direct provision of government services to vulnerable people and submits that the introduction of 'for profit sector' into child protection would be deleterious (Jesuit Social Services submission, p. 21).

The joint submission by Anglicare Victoria, Berry Street, MacKillop Family Services. The Salvation Army, Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare (Joint CSO submission) identified a set of outcomes to be achieved to better protect and care for vulnerable children and young people in Victoria including:

> *For the community services sector* – that it is the primary vehicle by which services are provided as part of a balanced and effective partnership with government to achieve positive outcomes for vulnerable children, young people and their families; and

> *For the government* – that it has overall responsibility through an effective partnership with the community services sector to reduce the incidents of harm and the numbers of children and young people requiring protection and care (p. 7).

Consistent with these perspectives, and particularly with their perception of demonstrated capacities, a number of CSOs proposed that the child protection system be fundamentally changed by focusing the work of statutory child protection on the forensic work of child protection and transferring the responsibility for casework with children, young people and families to CSOs, with appropriate oversight from the child protection service.

Berry Street submitted:

> From our perspective, allowing the Department of Human Services to do what it does best, statutory Child Protection work, and the sector to do what it does best, direct service delivery, is in the best interests of the child and young people (Berry Street submission, p. 49).

On the broader issue of the need for a relationship with government that recognises the capacities of CSOs in both policy development and service delivery, a number of submissions proposed formal arrangements to enhance the role of community sector and other key stakeholder organisations. On policy development, Berry Street recommended:

> That a formal mechanism or body involving all key stakeholders be established, if necessary under the Children, Youth and Families Act, for collaborative long term policy development on the care and protection of vulnerable children in Victoria (Berry Street submission, p. 49).

On the issue of service delivery, the Joint CSO submission proposed the establishment of Children's Councils to give effect to a multidisciplinary service response:

> The operating structures we envisage – which we call Children's Councils – could be aligned to the Child First catchments. While roles and responsibilities would need to be formalised, what we are proposing are joint governance arrangements at a local, regional and statewide level to deliver better outcomes for children, young people and families.
>
> Children's Councils would be led by government and community services sector jointly, and comprise all services that work with children and families including education and early childhood and health (and mental health services). Children's Councils would be responsible for developing a plan for addressing outcome deficits, implementing changes and approaches to address (sic) established in legislation (Joint CSO submission, p. 76).

On an enhanced role of CSOs in case management, Chapter 9 considered the issue of the transfer of case management responsibilities to CSOs and concluded that a robust case did not currently exist for the wholesale transfer of case management responsibility. However, it was also noted the adoption of a differentiated or segmented approach to the handling of child protection investigations and cases may facilitate increased case management by CSOs. The issue of community sector involvement in policy development and system planning is considered in the concluding section of the chapter.

17.4.2 Constraints

Regarding the factors impacting on their capabilities and capacity to deliver effective services to vulnerable families and children, relevant submissions commented on three main areas: funding levels and arrangements; workforce or skill constraints; and regulatory arrangements.

These issues are in line with the constraints on the growth and development of NFPs outlined in the Productivity Commission's 2010 report. The constraints, which were analysed at a more general level, can be summarised as:

- Regulatory constraints, particularly legislative constraints;
- Contracting constraints, for example, restrictions on the delivery of the funded activity including specification of quality standards and staff and volunteer qualifications;
- Funding and financing constraints, which, for example, make it difficult to make investments such as information systems, housing, training for staff and major capital investments; and
- Skill constraints, for example, in the community services sector related to low wages and lack of career paths.

In the area of skills constraints, the report also identified the need for governing boards of CSOs to develop their governance skills as their tasks become more complex with delivery of government funded services and demands by donors, members and clients for greater accountability. The Productivity Commission referred to research that found that many NFP failures stem from inexperienced, weak or sympathetic supervisory groups and the important role that boards play in ensuring robust decision making and appropriate controls (Productivity Commission 2010, pp. 25-26).

Chapters 16, 19 and 21 consider workforce and skill constraints, funding levels, funding arrangements and regulatory arrangements issues in more detail and generally from an overall system perspective. However, the following extracts from submissions convey the perspectives of the community sector on the constraints arising or potentially arising from funding arrangements and regulatory approaches.

On funding levels and funding arrangements, the Centre for Excellence in Child and Family Welfare submitted:

> While some progress has been made by the Department of Human Services in the development of Funding and Service Agreements and in the development of Unit Costing for key program areas including family support services and out-of-home care, these programs are not fully funded ...
>
> Additionally, The Centre believes greater consideration around funding models is required. Systems focused on targets alone enforce a greater emphasis on records administration adherence as opposed to demonstrating improved outcomes for children, young people and families. A move to funding outcomes and with greater flexibility at the service delivery level for implementing the necessary service mix to achieve outcomes is the next obvious step. An approach that would result in specified levels of funding from government should be based on new resource allocation methodologies, for the achievement of outcomes (Centre for Excellence In Child and Family Welfare submission, pp. 46-47).

On the issue of regulation, the Victorian Council of Social Services (VCOSS) emphasised:

> A key issue for the Panel will be to ensure that any reforms do not increase the regulatory burden on community service organisations. VCOSS wishes to highlight to the Panel the significant work that is underway at both a State and national level regarding reducing the regulatory burden in the not-for-profit sector ...
>
> Any systems change must reduce regulatory burden to improve service delivery and in turn outcomes for children. As we move towards a more integrated and cross-Departmental, agency and jurisdictional way of service delivery, it is vital that processes are put in place to ensure quality service delivery and accountability (VCOSS submission, pp. 51-52).

17.4.3 Performance

From a practical perspective, a test of the capacity of a CSO is their performance in achieving client outcomes or, as an intermediate measure, meeting service standards and quality expectations. A range of anecdotal evidence indicates that there are gaps in the current capacities of a number of CSOs to meet these standards or reasonable performance expectations.

Chapter 21 sets out in detail a range of information on the performance of CSOs covering performance in relation to registration standards and the number of quality of care complaints.

The results of the first external reviews of organisations registered to provide relevant services under the *Children, Youth and Family Services Act 2005* indicated that nine of the 99 CSOs were found not to be meeting one or more standards. The nine were re-registered on the condition that they complete an action plan within six months to address the relevant shortcoming, and a subsequent reassessment found the nine CSOs had met or partly met the relevant standards.

Chapter 21 also sets out the available information on quality of care concerns. This includes information on the quality of care reviews held as a result of quality of care concerns relating to 159 clients in out-of-home care in the period from July 2009 to June 2010. The most significant issues of concern in these reviews were inappropriate discipline (30.8 per cent), issues of carer compliance with minimum standards (17.6 per cent) and inadequate supervision of child (14.5 per cent). The majority of these reviews related to residential care services for vulnerable children and young people.

Quality of care in residential facilities has also been the basis for interventions in 2011 in three CSOs funded by DHS to provide residential care services. All three organisations focused largely on residential care and were small or medium-level agencies in terms of funding received. To date, the total funding received by two of the organisations has been transferred to two other currently funded service providers while DHS is continuing to intervene and support the operations of the other two agencies.

While a range of trends and factors impact on the recruitment, screening and shortage of foster carers, it is also relevant to point out responsibility for the recruitment of suitable foster carers rests largely with CSOs.

17.5 Conclusion

CSOs have long played and continue to play a vital role in responding and providing services to vulnerable children and families. In particular, they are overwhelmingly the major providers of the statutory out-of-home care services and the community based child and family services covered by the *Children, Youth and Families Act 2005*. Their capabilities and capacities are obviously critical to the performance of the system for protecting Victoria's vulnerable children, as they are in a number of other health, human services, justice and community development areas.

As outlined in Figures 17.1 and 17.2 many CSOs receive considerable funding from the Victorian Government. Therefore, it is reasonable to expect and demand that they have the appropriate governance and other arrangements in place to provide effective services and be fully accountable for protecting vulnerable children and achieving positive outcomes. At the other end of the spectrum, relatively small amounts of funding are provided to a significant number of smaller and largely single service agencies. Their size and relatively low levels of funding impact on their governance and infrastructure capacity.

The Inquiry received a number of submissions seeking to expand the role of CSOs in service delivery to vulnerable families and children and in the policy development and service planning processes, particularly at the area level.

The history and involvement of CSOs delivering services funded by and on behalf of government, particularly for statutory functions such as out-of-home care, has and continues to raise significant public accountability issues. The provision of these major services is outside the traditional structures of public administration governance; however, DHS remains accountable for both the performance and ethical conduct of the CSOs concerned. These issues have implications for proposals emphasising the partnership nature of the relationships between government and CSOs and the arrangements for joint responsibility for planning, implementation and oversight. At the same time the capacities and capabilities of CSOs need to be recognised and harnessed to achieve improved, sustainable outcomes for Victoria's vulnerable children and their families.

The Inquiry considers that these issues surrounding policy leadership and, ultimately, public accountability for service delivery and expenditure of public funds, require that the relationship between CSOs and the Victorian Government should be viewed as a long-term collaboration, not from a joint partnership or joint responsibility perspective. An important element for this long-term and effective collaborative relationship, which is considered further in Chapter 19, is fair and equitable service-based funding of CSOs.

Recommendation 69

The future relationship between the Department of Human Services and community service organisations should be based on a model where:

- The Victorian Government is responsible for the overall policy leadership and accountability for the structure and performance of the child, youth and family support and service system; and
- The capacities and service delivery roles of community service organisations for the provision of vulnerable children and families are reflected in collaborative service system planning and performance monitoring at a regional and area level.

The Inquiry considers that to effectively engage in the policy planning and service delivery framework, CSOs will need to consider and collectively strengthen their capacity to represent their interests in these forums and in any statewide arrangements. While the Inquiry received many valuable submissions from CSOs, particularly the larger CSOs, on major aspects of the Inquiry's Terms of Reference, there were very few submissions that presented considered positions on the totality of the Terms of Reference, the relationship between government and CSOs and the perspectives of the community sector as a whole as opposed to individual CSOs.

As outlined, DHS both funds and is dependent on CSOs to deliver critical services and interventions on behalf of government. However, the Inquiry considers that this dependence, and the underlying missions of CSOs, should not implicitly or explicitly act as a deterrent to penalise poor performance. In Victoria, a relatively small number of sizeable organisations provide the major share of family services and placement and support services. These organisations should validly be expected to have strong governance arrangements around critical risks and performance areas for their organisations, for example, in areas such as the quality of foster care and residential care. If there is clear evidence that CSOs are failing to address the needs of vulnerable children, then government has a clear obligation to intervene – in whatever way is necessary – to ensure that these services are provided to Victoria's vulnerable children and young people and their families.

At the same time, the Inquiry acknowledges that there are a large number of small CSOs currently funded by DHS, many in non-metropolitan regions. The Inquiry considers, therefore, there is a strong case for government to take a more proactive role than it has to date, aimed at improving the overall structure and capacity of CSOs. A focus for these activities would be the governance, quality, financial viability and the number and capacities of these small service providers.

Recommendation 70

The Department of Human Services should review and strengthen over time the governance and performance requirements of community service organisations providing key services to vulnerable children and their families, while also playing a proactive facilitation and support role in community services sector organisational development.

In Chapter 10, the Inquiry recommended a more comprehensive service approach be adopted, including client-based funding. This will have implications for the service capacity expectations of CSOs including the capacity to provide a broader range of services or link with other service providers.

Recommendation 71

The Department of Human Services should:

- Consult with the community services sector on the implications of the future system and service directions outlined in this Report for the future structure of service provision and requirements of community service organisations; and
- Establish one-off funding and other arrangements to facilitate the enhancement and adjustment of community service organisations.

Part 6: System supporting capacities

Chapter 18:
Court clinical services

Chapter 18: Court clinical services

Key points

- A statutory clinical service that provides expert advice during child protection proceedings has an important role in assisting vulnerable children and their families, carers and decision-makers to understand the child's health and wellbeing needs during a traumatic time in their lives.
- There is an ongoing need for a statutory clinical service; however the current clinical service model should be reformed. The current governance, quality assurance, structure, statutory processes and location of the Children's Court Clinic does not meet the needs of vulnerable children and their families. In particular, the current model is failing children and families from regional Victoria.
- There are divided views as to the quality of current clinical assessments and the performance of the current Children's Court Clinic, but there is insufficient research or data to support an Inquiry finding on this aspect.
- A newly created statutory clinic should consist of a clinic board of eminently qualified professionals with a range of expertise to coordinate and monitor the provision of future clinical services. The Inquiry considers the new board should determine the most effective arrangements for the delivery of services.
- The ultimate goal is for the new statutory clinical service to undertake a broader role within the statutory child protection system by assisting the Department of Human Services and parents to reach agreement early on proposed interventions by the Department of Human Services without first requiring a court order.
- As an immediate priority a statutory board should be established and responsibility for the current Clinic transferred from the Department of Justice to the Department of Health. The current Clinic should be physically relocated from the Melbourne Children's Court to another location to remove it from a litigious environment to one that is more child and family friendly.
- Under the guidance of the new board, there should be an increase in the level of statutory clinical services provided in rural and regional Victoria either at the child's home or from easily accessible, child-friendly facilities.

18.1 Introduction

The Children's Court of Victoria (the Children's Court) deals with some of Victoria's most vulnerable children, both in the Family and Criminal Divisions.

Within the Family Division, the Court's decision making process is focused on what is in the best interests of the child. Once protection matters reach the Court, very serious decisions may be made, such as whether a child should be removed from their parents, or the setting of contact hours between children and parents. Like any decision which requires the application of clear and distinct rules to complex, changeable and opaque situations, the Court's decision will be assisted by expert evidence.

The evidence of expert clinicians will often be provided by the parties. However, in considering the best interests of the child, the Court may also wish to seek psychological and psychiatric assessments and advice on the circumstances of the child and their families or carers that are independent of any clinical assessments or evidence provided by the parties. Since 1994, the Children's Court Clinic (the Clinic), in its current form, has provided this advice to the Court.

This chapter considers whether the current clinic model, as the current system for providing assessments, advice and recommendations to the Court, is the best model for assisting parties to make care decisions that meet the needs of children and young people. The chapter considers comments provided to the Inquiry through consultations and submissions, and the *Review of the Children's Court Clinic: Report to the Secretary* prepared by Mr Peter Acton (DOJ Report) on behalf of the Department of Justice (DOJ).

18.2 Status and structure of the Children's Court Clinic

The Clinic, which sits within DOJ, is established by section 546(1) of the *Children, Youth and Families Act 2005* (CYF Act). The Clinic has operated in one form or another for over 60 years (Clinic 2010a, p. 4). The Clinic was formally recognised by statute by section 37 of the *Children and Young Persons Act 1989* (CYP Act). At that point, the Clinic was located within the Department of Health (DOH). In 1993 the Clinic was moved into the Protective Services Division of the amalgamated Department of Health and Community Services - now the Department of Human Services (DHS).

Following debate about the positioning of the Clinic within DHS, the Clinic was relocated to the Courts Administration division of DOJ. The Clinic is physically located in the Melbourne Children's Court, and is funded from the court's budget (Children's Court submission no. 2, p. 46). The Clinic operates on a budget of approximately $1.2 million per annum. The Clinic presents an annual report on their business as an addendum to the Children's Court annual report.

The Clinic is headed by a Director, who is a Senior Technical (Child Clinical/Forensic) Specialist. The Director oversees the work of three full-time senior clinical psychologists and three drug clinicians. The Clinic also engages approximately 50 private clinicians on a 'sessional' basis to assist with case work as necessary (Children's Court Clinic 2010a, p. 7). The Director reports to the Chief Executive Officer (CEO) of the Magistrates' Court (who is also, at present, the CEO of the Court). The current organisational structure of the Clinic is set out in Figure 18.1.

Figure 18.1 Children's Court Clinic: organisational structure

Source: Adapted from Acton 2011, p. 16

Independent status of the Clinic

The Inquiry notes that the Clinic's work remit is perceived as being activated solely through the jurisdiction of the Court:

> The Clinic … sees its role as working only for the judges and magistrates and not for any party in proceedings before the Court (Children's Court of Victoria 2007, chapter 12.2).

Under section 560(b) of the CYF Act in relation to protection matters in the Family Division, a Clinic report is formally a report from the Secretary of DOJ to the Children's Court and is made on the order of the Court. However, as noted in the DOJ Report, it is not clear from the legislation that the Clinic should be reporting exclusively to the Court, that it be independent of the parties to the proceeding, or whether such independence can only be achieved if the Clinic is part of the Court (Acton 2011, p. 14).

The focus of court processes and clinical services should be on the best interests of the child or young person. The idea that the Clinic must be independent (in the sense that it works only for the Court) assumes that their expert reports are more impartial than those expert reports provided by DHS or families, and is anchored in a traditional, adversarial approach to Family Division court proceedings. The Inquiry notes that a strictly adversarial approach to court processes and clinical services is inconsistent with the new direction for proceedings before the Family Division promoted by the Victorian Law Reform Commission (VLRC) and by key stakeholders including the Court.

In Chapter 15, the Inquiry canvasses a new, less adversarial model for resolving disputes arising from protection applications based on the findings of the VLRC's *Protection Applications in the Children's Court: Final Report 19*. The shift away from court-centred outcomes means a broader role for any clinical service provided as part of the statutory child protection system. For example, in the interests of an early solutions focus, it should not be necessary for parties to first seek a court order to obtain a clinical assessment.

Clinical services provided in the course of protection applications should be directly engaged with DHS and families. Subject to appropriate safeguards, clinic services should be available to assist DHS and families to reach an early resolution of their differences.

Under the new model, clinical services will demonstrate independence through a clear governance structure and by the capacity to provide frank assessments to a requesting party, even where those assessments might be prejudicial to the requesting party's case.

The Inquiry sets out its recommendations regarding the future provision of clinical services at section 18.7. It is not contemplated that a 'user pays' arrangement would apply for clinical services in the proposed new system nor is it considered appropriate to do so.

18.3 Clinic assessments and treatment

The Clinic's functions are stated in section 546(2) of the CYF Act to: make clinical assessments of children; submit reports to courts and other bodies; provide clinical services to children and their families; and carry out any other functions prescribed by regulations. No additional functions are currently prescribed under the Act. The Clinic also offers treatment services in selected cases. The court also describes the Clinic as a teaching facility (Children's Court of Victoria 2010, p. 32).

Assessments for the Criminal Division of the Court

In the Criminal Division of the Court, if ordered by the Court under section 571 of the CYF Act, the Clinic provides pre-sentence reports to the Court under section 572 of the Act. The Inquiry understands from its consultation with the Court and the Clinic that the Court does not refer to the section under which it is making a referral to the Clinic in its order. However, the Clinic deems referrals from the Criminal Division as 'assessments' under section 546(2) of the CYF Act. In 2009-10, the Clinic made 337 assessments and in 2010-11, the Clinic made 300 assessments.

Although the Inquiry has received some comments on the role of the Clinic as it relates to the criminal jurisdiction of the Court, the focus of this chapter is the provision of clinical services within the Family Division of the Court. As was noted in the DOJ Report, 'views on the Clinic's contribution to Criminal Division cases are generally positive and criticisms are minor' (Acton 2011, p. 12).

Assessments for the Family Division of the Court

The Clinic, through the Secretary of DOJ, provides reports to the Family Division of the Court as an 'additional report' under section 560(b) of the Act. An additional report is provided when a disposition report is required to be provided by the Secretary of DHS under section 557(1) of the CYF Act and the Court is of the opinion that an additional report is necessary to enable it to determine the proceeding.

It is understood, following consultation with the Court and the Clinic, that the Court does not refer to the section under which it is making a referral to the Clinic in its order and that the Clinic deems Family Division referrals as 'assessments' under section 560(b).

In 2009-10 the Clinic made 725 assessments (approximately 7 per cent) from a total 9,915 protection applications before the Family Division and in 2010-11, the Clinic made 613 (approximately 6 per cent) of a total 10,483 protection applications.

As demonstrated in Figure 18.2, the number of Clinic referrals from the Family Division over a 10 year period from 2000-01 to 2010-11 has generally been steady but has decreased in proportion to the total number of applications before the Court.

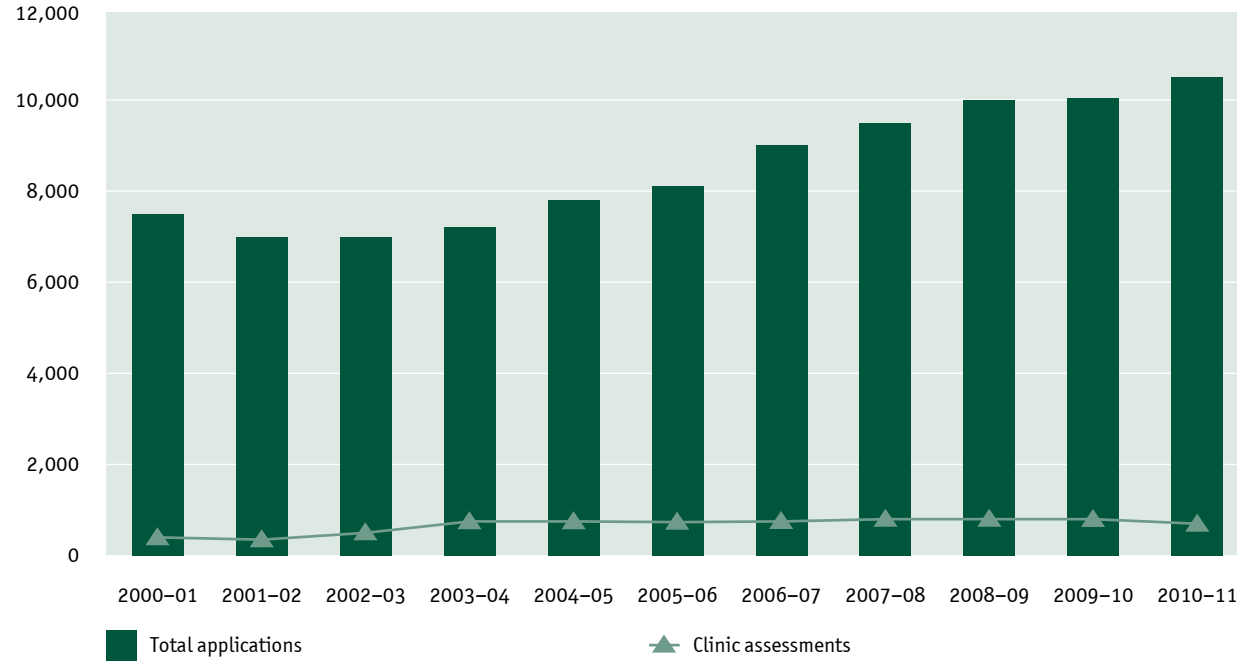
18.3.1 The use of clinical assessments in the Family Division

Within the Family Division, clinical assessment of a child will typically include an assessment of his or her parents and family. The purpose of an assessment is to give the Court a more informed view of the child's circumstances, including any factors that may affect their emotional and psychological wellbeing, such as parental drug or alcohol abuse, the presence of any protective factors within the family, the willingness of parents or caregivers to engage in therapeutic intervention, and the relative risk to the child's long-term emotional and psychological wellbeing if she or he is removed from the family home. Assessments may also be used to gauge what degree of contact between a child and his or her parents is in that child's best interests. The Clinic also makes disposition recommendations to the Court and this is considered further in section 18.6.

Section 562(2) of the CYF Act permits the Clinic, if it is of the opinion that information contained in a Clinic report could be prejudicial to the physical or mental health of a child or a parent of the child, to forward a statement to that effect to the Court with the report. Section 562(3) requires the Court to release a copy of the report to the child, the parent, DHS, a party to the proceeding or any other person specified by the Court. However, under section 562(4)(a), the Court may refuse to release all or part of the report to DHS, if satisfied the release of the report could cause significant psychological harm to the child.

The Inquiry notes that the restriction on the release of information was introduced with the CYF Act. The Inquiry is concerned that this provision presumes that DHS' knowledge of a child's assessment could cause psychological harm to a child without any explanation as to its purpose and effect and, that in some way, sharing the knowledge with DHS would not be in the child's best interest. From the extrinsic material attached to the legislation (and its predecessor) it is unclear in what types of circumstances the Court would make a finding that issuing all or part of a report to DHS would cause psychological harm to a child. The Inquiry also understands following consultation with the Court that the Court is not aware of any application having ever been made under section 562(4)(a) at least at the Melbourne Children's Court and at the Moorabbin Children's Court. The Court also noted it is extremely unlikely to make such a determination of its own accord without some form of trigger – such as a statement from the Clinic under section 562(2) of the Act.

Figure 18.2 Total applications in the Children's Court and Children's Court Clinic assessments, 2000-01 to 2010-11



Source: Information provided by the Children's Court of Victoria

This provision appears inconsistent with the obligation on DHS under section 8 of the CYF Act to make decisions in accordance with the best interest principles, and particularly when full access by DHS to clinical reports would best assist DHS to fulfil its responsibility under section 8 of the Act. Moreover, this prohibition would be made redundant by the new model for the provision of clinical services that is discussed in in the following sections of this chapter.

Recommendation 72

Section 562(4)(a) of the *Children, Youth and Families Act 2005,* which confers a discretion on the Children's Court to not release all or part of a clinical report to the Department of Human Services if satisfied that the release of the report could cause significant psychological harm to a child, should be repealed.

18.3.2 Clinical treatment services to children, young people and their families

The Clinic is empowered to provide clinical services to children, young people and their families under section 546(2)(c) of the CYF Act. Where a child or young person is in the Criminal Division of the Children's Court and presents with substance misuse the Court may order the Clinic to provide therapeutic treatment through its Children's Court Clinic Drug Program (CCCDP). This program provides treatment services either in conjunction with the Australian Community Support Organisation or a local community drug treatment agency (Children's Court of Victoria 2007, chapter 12.4.6). In 2009-10 there were 55 referrals to the CCCDP from the Criminal Division (Children's Court Clinic 2010b, p. 1).

The Inquiry notes that in the Family Division the Clinic also provides a short-term treatment service where the Court, on the recommendation of the Clinic, believes it is an appropriate condition of an interim order. This includes treatment services to parents with drug problems (Children's Court of Victoria 2007, chapter 12.3.4) and in 2009-10 there were 45 referrals from the Family Division (Inquiry consultation with Clinic).

18.4 Comments to the Inquiry on the Clinic's role

In addition to submissions that were made to the Inquiry on the Clinic, the Inquiry also met with the Director and the Acting Director of the Clinic and the CEO of the Magistrates' Court of Victoria and discussed its role. The Inquiry has also received comments on the Clinic from DHS. Stakeholder perceptions of and experience with the Clinic are varied.

DHS raised the following with the Inquiry:

- The Clinic makes recommendations without consulting DHS. This means that the Clinic sometimes makes assessments that miss crucial information. The processes by which the Clinic accesses and uses relevant information from child protection practitioners and other professionals to inform their assessments and recommendations should be clear and publicly available;
- The Clinic is not perceived as having a consistent approach to assessments and recommendations. A framework that outlines the clinical service approach to assessments and recommendations would assist in addressing this perception. A framework would include guiding principles consistent with the best interest principles outlined by section 10 of the CYF Act;
- The Clinic would benefit from a formal clinical governance structure comprising mental health experts and other experienced professionals who would provide some clinical oversight of the Clinic's work;
- There is currently no formal mechanism to issue a complaint about the professional practice of the Clinic. A formal clinical governance structure could support and oversee a formal complaints mechanism whereby clinical practice by clinicians could be subject to scrutiny and review; and
- The Clinic, being located at the Children's Court, is not an ideal environment for children. Presently, children and families and child protection workers from regional areas are required to travel to Melbourne to participate in assessments as there is little use of local area-based professionals. Clinical services should be flexible and, where appropriate, assess children and families in their home environment.

Submissions and comments made in Public Sittings

It was also asserted to the Inquiry that the Clinic does not appear to approve of, or accept, permanent care as an option for children and the Clinic often adopts a position that there is a relationship between birth parents and children that should be promoted and preserved notwithstanding the evidence of its destructiveness in some situations (Ms Smith submission, p. 5).

The Victorian Forensic Paediatric Medical Service (VFPMS) contended that reports from the Clinic should be subject to the same level of scrutiny and cross-examination by parties as is the case with other professional reports produced by parties and that magistrates should not be 'quasi-delegating' their decision making to the Clinic in protection matters (VFPMS submission, p. 19).

Berry Street raised concerns about the quality of the information and advice from the Clinic and suggested that Clinic advice was unreliable and often based on a less complete understanding of a child's trauma experiences, circumstances and development than could be obtained from the collaborative input of agencies, the Take Two program and child protection (Berry Street submission, p. 119).

On the other hand, the Inquiry also received favourable feedback on the work of the Clinic. For instance, the Law Institute of Victoria noted the Clinic provided vital support to children and families in the Family Division and recommended the possibility of tasking DHS with sourcing funding for the Clinic and overseeing its maintenance and expansion (Law Institute of Victoria submission, p. 11). Others commended the need for independent mechanisms such as the Clinic to strengthen the more inquisitorial approach needed to get to the heart of a dispute (Mr Noble, Bendigo Public Sitting).

The Court acknowledged the work of the Clinic in providing expert reports and its independence of all the parties involved with the case (Children's Court submission no. 1, p. 6) and noted that the Clinic required additional resources to maintain its ability to provide high-quality services to the Court (Children's Court submission no. 2, p. 46).

Inquiry consultation with the Clinic

At a meeting with the Acting Director of the Clinic and the CEO of the Magistrates' Court of Victoria, it was put to the Inquiry that there have been a number of assertions and anecdotal comments about the Clinic and the quality of its service. These should be evidence based and properly tested. The Inquiry has viewed preliminary independent research commissioned by the Court indicating that the allegation that magistrates are somehow quasi-delegating or adopting Clinic recommendations without independent judicial consideration is unfounded (Children's Court submission no. 2, pp. 45-46).

The Clinic and the Courts Administration Division note that current funding constraints do not allow the Clinic to conduct in-home assessments and provide regional outreach services. This results in traumatised children and their families from regional areas having to travel considerable distances into Melbourne in order to obtain a clinic assessment. This is an aspect of the current clinic model that is of particular concern to the Inquiry as it clearly does not meet the needs of children and young people in regional Victoria, nor does the Inquiry consider that this is in the child's best interests.

The Inquiry also sought and has been assisted by additional materials provided by the Court and DOJ but acknowledges that aside from the DOJ Report, there is little available longitudinal research or commentary on the role and performance of the current Clinic. This means the Inquiry is unable to make any conclusive findings on the quality of current clinical assessments without first undertaking, or having recourse to, a detailed review of Clinic case files and its reports over a period of time.

18.5 Review of the Clinic

Two reviews preceding this Inquiry in 2010 by the Child Protection Proceedings Taskforce and by the VLRC did not comment in detail on the Clinic, but both reports noted a separate internal review was being undertaken by DOJ (Child Protection Proceedings Taskforce 2010, p.18; VLRC 2010, p. 30). The DOJ Report was provided to the Inquiry on 17 October 2011.

The Inquiry highlights the following themes brought to light by the DOJ Report:

- The Clinic provides a service to the Children's Court that is highly regarded by Magistrates but contentious among others;
- There are several opportunities for the Clinic to adopt best practice in relation to governance, management and service delivery;
- The Clinic's role needs to be aligned with the new directions for conflict resolution identified by the VLRC;
- In the short term, the Clinic should not (organisationally) continue to be located within the Courts Administration Division but in the first instance become an independent unit within DOJ in the same way as the Office of the Public Advocate;
- In the short term, the Clinic should come under the direction of a board that includes at least one appropriately qualified psychiatrist and one psychologist;
- In the longer term, the Clinic could build formal arrangements with universities or teaching institutions for sharing resources and promoting research-based knowledge transfer and better peer group interaction with a view to the Clinic being incorporated into the academic faculty of a leading university. The Clinic's board could then be part of that larger peer organisation's board or council and could sit as a sub-committee;
- The Clinic could align with the Victorian Institute of Forensic Medicine and other forensic organisations such as Forensicare to strengthen its research collaborations and professional development but also to establish a comprehensive centre of forensic excellence in Victoria;

- The appointment responsibility of sessional experts for the Clinic should come under the Clinic board and there should be a board committee including external experts that define appropriate tests and protocols for selecting sessional experts;
- The current fee scale of $44 per hour for sessional experts is significantly lower than that paid in the New South Wales (NSW) Children's Court Clinic (at $130 per hour) and in other types of services such as for Medicare (at $206 per hour) and Transport Accident Compensation or WorkCover assessments (at $175 per hour);
- The Clinic board should either formalise a process for complaints to be directed to the Health Services Commissioner or other appropriate body, or establish its own complaints process involving a panel of respected professionals not connected with the Clinic;
- The Clinic lacks formal training and induction processes for clinical staff and sessional providers about assessment practices and should introduce a formal program including formal guidelines or a handbook;
- Clinical services should be involved early in the dispute resolution process. Consistent with the principles outlined by the VLRC for child-centred, agreement-focused outcomes at court, the Clinic should contribute its expertise earlier in the process, should make its assessment available to all parties, and except as agreed between the parties/their representatives, DHS should be empowered to release Clinic assessments to carers and to other organisations associated with case management;
- With the guidance of the Clinic board and subject to stringent recruitment criteria, clinical services should operate from four or five important centres from regional Victoria and recruit a number of clinicians in each area on a part-time basis to carry out at least 80 per cent of assessments expected from those regions; and
- The Clinic should be physically relocated from the Melbourne Children's Court to another location, preferably with access to parkland or playgrounds, or share premises with another facility that already provides an enjoyable and safe environment for children.

The Inquiry also considered comments in response to the DOJ Report from the Children's Court Clinic. While the Clinic disagreed with certain findings in, and the research methodology of the DOJ Report, the Clinic agreed that:

- A new governance board was required;
- It needed more funding to provide quality clinical services in regional Victoria; and
- There was the need to review the current salary and payment schedules for Clinic staff and sessional providers (Inquiry Children's Court Clinic consultation).

Independent expert advice

When making far-reaching decisions that affect a child or young person and their families, it is appropriate for the Court to have recourse to independent sources of expert advice in order to assist the Court to determine what is in the best interests of the child. Indeed, no submissions to the Inquiry argued for the abolition of court clinical services, or that the Court should rely only on expert evidence provided by the parties to a protection matter.

The Inquiry considers the ability of the parties to access an independent service that provides expert clinical assessments would help avoid lengthy contested disputes between protective interveners and families over expert evidence called on behalf of each party during court proceedings and further damage relationships in an already tense environment. A clinical service that is accessible to the Court, as well as to DHS and families, is consistent with a problem solving and less adversarial approach to resolving protection matters. A clinical service should also assist the Court to work with parties to address the child or young person's needs. However, as discussed next, this does not mean acting as a 'third advocate' to the proceedings.

18.6 Disposition recommendations by the Clinic

Section 557 of the CYF Act requires DHS to provide a 'disposition report' to the Court under certain circumstances set out in that section. A disposition report is an outline of what one party thinks the Court should order, and what would happen under such an order. For example, a DHS disposition report might include recommendations concerning the order that DHS believes the Court should make, a draft case plan, and an outline of the sorts of services that DHS would provide to the child and their family.

Under section 560(b) of the CYF Act, in any proceeding where a DHS disposition report is required, the Court can order the preparation and submission of an 'additional report', including a report from the Clinic through the Secretary of DOJ. While the Act (and its predecessor) does not specify what matters this additional report should address, consultation with the Court and the Clinic would suggest that as a matter of practice, section 560(b) is also used by the Clinic to make disposition recommendations and the Clinic almost always makes disposition recommendations in reports to the Family Division.

Currently, the Clinic makes disposition recommendations to the Court. According to the Children's Court, the recommendations in the report will be discussed with the child's legal representative and DHS, if the recommendation made is one that would involve DHS. In making the recommendations, the Clinic maintains the right to offer opinions to the Court that differ from those of the other parties/ agencies (Children's Court of Victoria 2007, chapter 12.3.3).

However, the Inquiry queries the ability of the Clinic to make well-informed disposition recommendations due to the current resource constraints preventing clinicians from conducting in-home assessments and spending as much time with the family and the child as DHS workers when preparing their assessments. Further, as is noted in the DOJ Report, the Clinic may be dealing with families and children who may have travelled some distance to be assessed and their behaviour on the day may be atypical (Acton 2011, p. 10).

The Inquiry considers that the provision of disposition reports to the Court by the Clinic is an inappropriate practice. This is because reports from the Clinic are, formally, reports from the Secretary of DOJ to the Court. This means that the Court is hearing what DHS considers is in the best interests of the child, what the parent(s) believe is in the best interests of the child and what, in effect, DOJ considers is in the best interests of the child. In this situation there are two agencies of the State working under the CYF Act to meet the needs of a child or young person, yet potentially providing conflicting views on those needs to the Court. This is an untenable arrangement and perpetuates nothing more than an artificial concept of independence that has led to some of the more questionable practices by the Clinic in an effort to reinforce its independence of the parties. The system should be simpler.

It is properly up to the parties or to the Court or the Victorian Civil and Administrative Tribunal (VCAT), based on the parties' involvement with the child, or on the court or tribunal's independent decision-making, to decide what outcomes would be in the child's best interest. These decisions are taken using various sources of information, which may include Clinic assessments.

In the statutory child protection system, clinical services should be focused on the Clinic's observations of the child, the interactions between the child and his or her family or caregivers, and should include any historical information provided by the parties that may assist the Clinic in making its observations.

The Inquiry considers that involving clinical services in disposition recommendations creates the perception that the clinical service is involved in the substance of the litigation. An independent clinical service should not make disposition reports.

Victorian Medical Panels

The Inquiry considers the Medical Panels assessments process under the *Wrongs Act 1958* as instructive. Under the Wrongs Act, a specialist medical panel is convened to determine whether a claimant's degree of impairment (either physical or psychiatric) meets a statutory threshold for impairment set under that Act. A Medical Panel does not make a recommendation on damages or recommendations on future treatment of the claimant or what the claimant should be doing to improve their current condition. The statutory threshold determines eligibility for damages and a court decides what damages are appropriate. The Wrongs Act specifies the use of the *American Medical Association Guide to Permanent Impairment (Fourth Edition)* by the Medical Panel to assist parties understand how Medical Panels assessments are undertaken.

Recommendation 73

The Children, Youth and Families Act 2005 should be amended to:

- Empower the clinical service provider to provide a report at the request of the Children's Court, or at the request of the Victorian Civil and Administrative Tribunal, or at the request of the parties to the proceedings;
- Prohibit the clinical service provider from making any disposition recommendations in its report;
- Enable the Department of Human Services to release clinic reports to carers or case managers who have a direct involvement with the child or young person subject to appropriate safeguards around the use and dissemination of those reports; and
- Require a clinical assessment to take into account information provided to the clinical assessor by the parties, particularly where the clinical assessor is unable to assess the child, young person or the family within their home environment.

18.7 A new child-friendly model of court clinical services

The Inquiry is unable to comment on the quality and practice of current clinical assessments due to an inability to examine this matter within the Inquiry's reporting timeframe. However, the DOJ Report reiterates some of the concerns expressed by DHS to the Inquiry, which includes a lack of formal assessment protocols and guidelines, and a lack of formal training and induction programs for new staff and sessional assessors. The DOJ Report observed that these practices are not in keeping with peer bodies such as the NSW Children's Court Clinic, the Victorian Mental Health Review Board or Forensicare (Acton 2011, pp. 35-36).

The Inquiry has confined its consideration to whether the current Clinic model is the most contemporary and most suitable model for the provision of independent expert advice to the Court and to the parties to protection applications. Based on the views and material put to the Inquiry, and in light of the Inquiry's proposals for a new system for early dispute resolution of protection applications as outlined in Chapter 15, the Inquiry considers that the current Clinic model, both in its legislative and administrative setting, is not the optimal model for providing children, families, protective interveners and the Children's Court with independent expert advice.

The Inquiry, with the benefit of reviewing the DOJ Report, agrees with that report's findings at least with respect to the deficiencies to be addressed in the short term. Some of these matters have also been identified to the Inquiry by the Clinic and by the Children's Court. As a result, the following areas for reform should be prioritised:

- Reforming the current structure and governance model for the Clinic including the removal of the Clinic from the Courts Administration Division of DOJ;
- Facilitating greater provision of clinical assessment services for children and families in outer metropolitan Melbourne and in regional Victoria;
- Increasing remuneration rates for the current pool of sessional clinicians and permanent clinical staff and considering other ways in which to expand the pool of experts available to assist children and families, particularly in regional Victoria;
- Physically re-locating the Clinic away from the Melbourne Children's Court building, having regard to other organisations or buildings with existing child-friendly spaces and facilities; and
- Implementing formal assessment protocols, guidelines in the form of a practice handbook and formal training programs for clinical staff and sessional assessors.

It is critical that a framework that would uphold the quality of service provided to the parties and the courts in the statutory child protection system is established. This requires a strong level of clinical service oversight and direction based on the most contemporary professional standards. This necessitates the provision of professional peer review and some form of clinic assessors' accreditation process that requires staff and assessors to undertake continuing professional development.

From its meeting with the CEO of the Magistrates' Court and the Clinic, the Inquiry understands that planning is underway to address some of the concerns, particularly regarding governance and oversight and the appointment of sessional assessors with the development of a business plan. The Inquiry has also been advised by DOJ that it is proposed to remove the current Clinic from the Courts Administration Division of the department and to amalgamate the Clinic with two other business units under a new Forensic Health Services Unit. This new unit will be headed by a Director and will comprise the current Clinic, the current Justice Health Unit and the National Coronial Information System.

In view of the broader role the Inquiry conceives for a new statutory clinical service, the Inquiry does not support the continued placement of the current Clinic within DOJ and considers that the government should first address the options put forward in this Report.

The Inquiry has identified the following options for improving the current Clinic model:

- Abolish the Clinic and, in the short term, establish a statutory Clinic board which oversees a clinical unit within DOH. In the medium to long term, retain the board but abolish the Clinic as an administrative unit within government. The role of the board will be to:
  - engage suitable external service providers to provide clinical services to the Children's Court consistent with contemporary standards of clinical practice;
  - ensure appropriate clinical services are available throughout Victoria; and
  - support the development of a range of suitable service providers across Victoria.
- Abolish the Clinic as an administrative unit within government but re-establish a similar model of clinical services provision within an independent institution such as a teaching hospital or university and subject to clear governance arrangements (as contemplated by the DOJ Report); and
- Abolish the Clinic model altogether and establish a recognised panel from existing service providers that can be called upon by the Children's Court, or by the parties, depending on the type of expertise and assessments required.

These options are discussed below.

18.7.1 Option 1: Abolish the current Clinic and re-establish as an administrative unit within the Department of Health

Under this option, which would broadly resemble the model of clinical service delivery in NSW, the Clinic and its staff would be relocated as a business unit within DOH. Ministerial responsibility for the provision of clinical services in the statutory child protection system would be transferred from the Attorney-General to the Minister for Health. The Clinic would be headed by a director who reports to the Secretary of DOH. However, specialist oversight of, and directions for the Clinic, its appointment processes, the performance of its statutory functions and the quality of its assessments would lie with an independent statutory Clinic board as contemplated by the DOJ Report (Acton 2011, pp. 17-18). The Inquiry considers that a multidisciplinary board must consist of eminently qualified professionals with expertise in: infant, child and adolescent physical and mental health; child abuse and neglect and trauma; children's law; youth justice; and public administration and management. The clinic would retain permanent clinicians and use external sessional clinicians in accordance with protocols established by the board. The sessional clinicians will be based throughout the state and be available, where possible, to assess children and young people closer to that child or young person's location.

The Inquiry sees a broader role for a Clinic within the realigned court processes outlined in Chapter 15. The Clinic would provide services not only to the court but also to the parties. Pre-court or pre-tribunal clinical assessments should be provided to the child (or their representative as appropriate), DHS, the parents and any other non-party who has a relevant interest in the child's safety and wellbeing. To ensure a degree of structure around the commissioning of reports, consideration should be given to allowing a clinic assessment to be requested by DHS or by one or both parents or primary caregivers who are a party to the proceedings. This could happen prior to, or during a Child Safety Conference, where parties believe a clinic assessment would help resolve conditions around intervention and care planning. The Clinic would retain its statutory functions with respect to supporting the Criminal Division of the Court.

As the Clinic would retain its statutory ability and authority to provide reports to the Court or VCAT at the request of those bodies and retain its independence, as discussed in section 18.2, there is no reason why the integrity of Clinic reports provided at an earlier stage of the application process should be called into question. Indeed, it would be expected that the earlier use of Clinic reports will further reduce the number of matters that ultimately proceed to contest.

The Inquiry acknowledges, however, that with an expanded role, there will be demand pressure on the clinical service providers to meet the requirements of the Children's Court, VCAT and the parties to the proceedings. The concern is the potential for delays in protection proceedings due to a lack of clinical services. The Inquiry considers that in circumstances of high demand, where clinical resources are to be prioritised, the Children's Court and VCAT should be accorded a higher priority for clinical assessments and services.

Further, the Inquiry considers that appropriate protection is required against potential misuse of clinical resources by parties in order to delay or otherwise frustrate child protection proceedings. The Inquiry considers that a key aspect of the oversight and governance function of the board would be to monitor and intervene where necessary to protect against the misuse of clinical services. These are matters that should also be addressed in the formal guidelines or handbook that should be published as stated earlier in this section.

The Inquiry considers that the transfer of the Clinic from DOJ to DOH would be an improvement on the current system for the following reasons:

- The relocation of the Clinic from DOJ to DOH would bring a degree of independence to its involvement and would satisfy the concerns of stakeholders' – it would not be relocated to DHS, it would not be perceived as being too closely aligned to the Children's Court, and it would reflect a service being provided by health professionals not just in support of the Court but to the parties within the statutory child protection system;
- The direction and role of the Clinic would be more easily adaptable to any future policy changes in the statutory child protection system; and
- Historical and current data collected by the Clinic would remain easily accessible by the government and, where appropriate, the new Commission for Children and Young People and should be used to inform future reforms.

However, the Inquiry considers that this option means that the State, which is responsible for intervening in a child and their family's life, will continue to be responsible for providing day-to-day clinical assessments that may determine the outcome of a protection application. Although the future clinic will not make disposition recommendations, its assessments would amount to a service provided by DOH to the Court and now, under the processes proposed in Chapter 15, also directly to all parties to the application.

The maintenance of a unit within DOH also means two reporting lines for the Clinic, on operational matters to the Secretary of DOH and on policies and practices to the statutory board. Further, there is likely to be some overlap between the DOH governance structure and the statutory board on issues such as handling complaints or disciplinary matters. In the long term, this option is not the Inquiry's preferred option for an independent clinical service provider. The Inquiry's long-term option is canvassed in Option 3.

18.7.2 Option 2: Abolish the Clinic as an administrative unit within government and re-establish as a separate statutory entity

Under this option the Clinic would be constituted by a statutory board supported by a secretariat of clinical and administrative staff but attached to a paediatric teaching hospital or university with established expertise in child health and clinical practice. The Clinic secretariat could draw in staff on a permanent or rotational basis, including graduate students. Even though the entity would be located within that organisation, staffing arrangements should include local area-based or accessible sessional assessors for outer metropolitan and regional locations. The Clinic would also retain its statutory functions with respect to supporting the Criminal Division of the Children's Court.

Organisational relocation of the New South Wales Clinic

In 2008 the *Report by the Special Commission of Inquiry Into Child Protection In New South Wales* (the Wood Inquiry) made the following key recommendation concerning the New South Wales (NSW) Children's Court Clinic:

- That there should be a feasibility study into the transfer of the Clinic [from the Department of Attorney-General and Justice (DAGJ)] to NSW Justice Health that should also investigate ... an extension of the matters dealt with in current assessments so as to provide greater assistance in case management decisions (Special Commission of Inquiry into Child Protection Services in NSW 2008, p. 462).

The Wood Inquiry also made the following findings:

- The work of the Clinic should be expanded to assist caseworkers' decision making and be used as a basis for discussion between the parties which may result in matters being finalised without a court order (Special Commission of Inquiry into Child Protection Services in NSW 2008, pp. 455-456); and
- That the NSW Children's Court should advise parties when a Clinic report is received and the Court should be empowered to release a copy to a person who is not a party to the proceeding but nevertheless had an interest in the safety and wellbeing of the child or young person (Special Commission of Inquiry into Child Protection Services in NSW 2008, p. 457).

In early 2011, due to the changes of the structure of NSW Health with the formation of Local Health Districts, the NSW Government reviewed the operational location of the NSW Clinic. Following discussions between NSW Health and Sydney Children's Hospital Network (SCHN) it was agreed that the Clinic would be administratively located within the SCHN when transferred from the DAGJ to NSW Health.

While it is understood that the NSW Government's consideration of the Wood recommendation initially raised considerable anxiety for staff at the Clinic, particularly as NSW Justice Health dealt with the assessment and treatment of prisoners and those recently released from prison, the proposed move to the health portfolio through the SCHN addressed some of that anxiety. The Inquiry understands that access by clinical staff to like-minded professionals within the SCHN was viewed by the NSW Government as a positive outcome.

The new arrangements took effect on 1 July 2011 when responsibility for the Clinic was transferred from the Attorney-General's portfolio to the Minister for Health.

A critical advantage of this option is that it would allow an ongoing dialogue between clinicians and related professionals to ensure contemporary professional knowledge and standards are maintained. Further, it would allow Clinic staff to engage with broader research work undertaken at the facility. It would also enable a system of peer reviews to be undertaken between the clinical body and other members of the teaching hospital or university and facilitate the accreditation of assessors. In turn, assessors would be able to undertake continuing professional development courses to maintain accreditation. This option was recommended in the DOJ Report (Acton 2011, p. 19).

The Inquiry considered this to be a strong model for the provision of future clinical services in the long term. However, the disadvantage of this model is that the Clinic would be tied to one organisation and may not have the benefit of accessing a range of knowledge, viewpoints or practice cultures that might be offered through a range of providers or expert bodies.

18.7.3 Option 3: Abolish a single clinic service model and establish a statutory clinical board that would oversee service provision by a panel of providers

Under this option the Clinic would be constituted by a statutory board supported administratively by DOH. The legislation will provide the structure and process for the board to enter into services tender arrangements with established and respected service providers depending on the treatment or assessment required to meet the particular needs of the child or the family. The board would be responsible for determining the direction of, and monitoring the quality of, services. It would have regard to the expertise offered by the service providers and their ability to meet the needs of children and families in outer metropolitan and regional Victoria.

As it is contemplated that there may be more than one clinical service provider under this option, consideration would need to be given to ensuring that the authorised service provider or providers are capable of providing the necessary expert clinical assessments to the Criminal Division of the Court. The board would need to consider specific arrangements in consultation with the Court to ensure that the service model is appropriate for that jurisdiction.

In the long term, the Inquiry prefers this option as its model for the provision of clinical services within the statutory child protection system. The Inquiry considers this model to offer the following benefits:

- Clinical assessments are provided by organisations and individual practitioners whose professional focus is children's health services;
- The responsibility for sourcing clinical assessors will lie with organisations external to the State, and subject to the qualification and appointment criteria overseen by an independent statutory board;
- There should be greater opportunity for developing the flexibility and capacity for the provision of in-home clinical services and consistent services to all parts of Victoria; and
- The availability of a broader range of practice experience, expanded knowledge and research base, and exposure to peer review, than would be available under a single Clinic model.

To ensure there is consistency in conducting assessments and meeting the needs of the parties and the Court in the statutory child protection system, the Board would be responsible for developing and publishing guidelines, directions, and assessment criteria in consultation with the Children's Court and DHS. Further, the board would be responsible for monitoring authorised service providers' performance against the guidelines and criteria and would be responsible for determining complaints against individual practitioners or organisations.

Recommendation 74

The scope, governance and oversight of the provision of clinical services in the statutory child protection system should be reformed:

- As an immediate priority, the current Children's Court Clinic should be abolished and re-established as an administrative unit within the Department of Health; and
- In the medium to long term, the administrative unit should be replaced by a statutory clinical services board that will oversee service provision by a panel of providers. The parties to protection applications or the Children's Court or the Victorian Civil and Administrative Tribunal, should be able to use a panel clinical service provider to provide a clinic report.

Recommendation 75

The Government should implement the following legislative and administrative changes to support the recommended reform of clinical services.

Scope and governance

The *Children, Youth and Families Act 2005* should be amended to:

- Set out the new statutory board's and clinical service provider's objectives and tying these objectives, where appropriate, to the best interest principles in the Act;
- Define the type of clinical services to be provided within the statutory child protection system and the services to be provided within the criminal justice system; and
- Require the statutory board to publish an annual report.

Clinic access and environment in the immediate term

- The administrative unit should be relocated from the Children's Court but the Government should ensure the Court still has access to on-site counselling and support services to deal with children, youth, and families who may be experiencing acute stress in the court environment; and
- Clinical services should be decentralised as a priority to ensure the needs of children, young people and their families are met across Victoria, as outlined in the 2011 report on the Children's Court Clinic prepared for the Department of Justice.

Resourcing of the Clinic in the immediate term

- The administrative unit should be resourced to: expand the current pool of assessors available to the Clinic; provide the proper level of remuneration to both permanent and sessional Clinicians commensurate with their professional expertise; implement the process and quality assurance reforms as recommended in the 2011 report on the Children's Court Clinic prepared for the Department of Justice; and provide therapeutic treatment services, where appropriate, for children, young people and their families by agreement of the parties, or at the request of the Court, or the Victorian Civil and Administrative Tribunal; and
- The Government should, in consultation with the new statutory board, ensure the new administrative unit is properly funded and resourced to provide the necessary services to meet its statutory objectives with a view to establishing a panel of clinical service providers in the medium to long term.

18.8 Conclusion

There is an urgent need to reform the current model for the provision of clinical services to the Children's Court. The Inquiry considers the changes are required to create robust governance and clinical structures to support high-quality assessments to assist vulnerable children and their families, carers and decision-makers to understand the child's health and wellbeing needs during protective proceedings.

The reforms proposed will take place in a system realigned to meet the needs of children in statutory intervention and protection proceedings before the Children's Court and VCAT as contemplated in Chapter 15. Reforming the structure, services, accessibility, governance and oversight of future clinical services is another step in strengthening Victoria efforts to protect vulnerable children.

Part 6: System supporting capacities

Chapter 19:
Funding arrangements

Chapter 19: Funding arrangements

Key points

- There is evidence of increasing demand for services in all areas of statutory child protection and family services. These increases have been driven by a variety of longer term factors, including changes to the *Children, Youth and Families Act 2005*, a broadening of the definition of abuse and neglect, the introduction of mandatory reporting, as well as population increases.
- Funding for statutory child protection and family services is not explicitly linked to past or projected demand for those services.
- The Inquiry has identified a strong geographical component to vulnerability in Victoria. While the Department of Human Services already allocates funding based on a formula that incorporates a measure of disadvantage, there is no consistent approach to the regional distribution of statutory child protection and family services funding.
- The current system of funding community service organisations is predominantly service-performance based, where community service organisations are provided with funding to provide a level of services output, based on a uniform unit price.
- Community service organisations have requested more flexibility in their funding, advocating for some form of outcomes or client-centric funding.
- The flexibility of service funding and a fair and appropriate basis for service funding are critical to the future effective, innovative and robust provision of services to vulnerable children and families.

19.1 Introduction

The Inquiry's Terms of Reference and the approach adopted in this Report places emphasis on statutory child protection being viewed as part of a broader policy and service framework focused on Victoria's vulnerable children and families.

Consistent with this approach, a comprehensive analysis of funding arrangements would necessarily involve a consideration of a broad range of programs and services spanning the human services, health and education domains. Included would be: public health (including mental health, disability and maternal and child health services); housing and homelessness; education; family violence, juvenile sex offenders and crime prevention; drug and alcohol and other adult-focused services; Aboriginal health and social services; child care and early childhood services; and employment and income security.

However, as outlined in this Report, the issues of vulnerable children and their families are complex and represent the outcome of a wide range of factors and influences. As a consequence, the issues of vulnerable children and families often form an element or component of a wider set of objectives and issues being addressed by the wide array of public health, education and other programs.

This chapter on funding arrangements focuses on the programs and services of the Department of Human Services (DHS) that form part of or are directly linked to the statutory child protection system. The chapter is organised as follows:

- First, an overview of the current funding arrangements for statutory child protection and family services, including the amount of funding provided, how this funding is distributed and the process of funding community service organisations (CSOs) for delivering services;
- Second, a description of the recent trends in funding for statutory child protection and family services and the relationship between funding and the level of service provision; and
- Third, the chapter identifies key issues in relation to funding, including the adequacy of existing funding, the distribution of funding and the method of funding services.

The chapter contains a number of recommendations relating to the key issues identified by the Inquiry.

19.2 Current funding arrangements

There are two main program and government funding streams for Victoria's child protection and family services activities. These are:

- The government operated statutory child protection services; and
- Out-of-home care and family services largely delivered by community service and other non-government organisations.

There is some cross-over between the services provided by DHS and CSOs; for example, DHS provides or oversees components of out-of-home care services such as secure welfare services and a proportion of case management of kinship care.

19.2.1 Aggregate funding for Child Protection and Family Services

DHS is allocated funding for Child Protection and Family Services as part of annual Victorian Government budgetary processes. In line with the output budgeting approach, DHS receives funding to deliver an agreed range of services, with performance measured against targets.

Total funding allocated for Child Protection and Family Services in Victoria for 2010–11 was $651.6 million, with the majority of funding ($330.9 million) being spent on Placement and Support (out-of-home care). The overall level of funding in 2011-12 is expected to increase to $702.9 million (refer to Table 19.1).

Overall, funding for Statutory Child Protection, Placement and Support, and Family and Community Services outputs equates to slightly less than 2 per cent of the total Victorian State Budget.

Table 19.1 Funding for Child Protection and Family Services outputs in Victoria, 2009–10 to 2011–12

Output area	2009–10	2010–11 expected outcome	2011–12 target
Statutory Child Protection ($ m)	151.1	160.7	170.8
Placement and Support ($ m)	313.1	330.9	362.3
Family and Community ($ m)	147.8	160.0	169.8
Total	**612.0**	**651.6**	**702.9**

Source: Victorian Government 2011b, pp. 222-224

19.2.2 Regional funding allocations

DHS allocates the funding it receives for Statutory Child Protection on a regional basis across the eight DHS regions, while funding for Placement and Support and relevant Family and Community Services forms part of the separate service agreement process with funded organisations.

Regional funding for Statutory Child Protection is based on a DHS assessment of need in an area, known as the Equity Resource Allocation Formula, or equity formula. The formula, which is based mainly on the number of children in families receiving Family Tax Benefit A, was phased in by DHS from 1998-99. In recognition of the additional service delivery costs and other considerations, the formula also contained a loading for rural regions, as well as for the Aboriginal population.

When the equity formula was introduced in 1998-99, there was a very strong correlation between child protection activity (measured by reports to child protection) and families receiving this particular tax benefit. At the time of its introduction, the equity formula was intended by DHS to be used as the method for allocating future funding for child and family services; however, this has not always been the case, as is demonstrated in the example in the box.

While the equity formula has been used as the basis for the allocation of child protection funds, the formula is not updated regularly, due in part to difficulties obtaining Family Tax Benefit information from Centrelink. As a consequence, the Inquiry understands that funding continues to be allocated based on either historical levels or on the basis of a point-in-time assessment of the needs of each region.

19.2.3 Funding for the delivery of services through community service organisations

In dollar terms, CSOs deliver around 60 per cent of the child protection and family services budget allocation. Funding for CSOs is generally provided on a service-performance basis, with organisations receiving funding from DHS based on the number of services they provide and the unit price of those services.

DHS operates a standard three-year service agreement process with funded organisations and the current three-year cycle is from 1 July 2009 to 30 June 2012. Organisations are offered three-year service agreements except where:

- The funding is time limited and commences after or ceases before the three-year cycle; or
- Other circumstances exist that warrant a shorter agreement period with the reason(s) advised to the organisation.

Allocation of additional Child FIRST funding

In 2009, when additional funding was made available for Child FIRST, this funding was distributed between the 24 Child FIRST catchments on the basis of an assessment of demand for Child FIRST services. According to DHS, regions reported back on overall demand pressures in the Alliances and the strategies undertaken to manage demand pressure and, from this, DHS assessed demand in the catchments as being either:

- Very high demand pressures – demand management strategy implemented;
- High demand pressures – demand management strategy implemented;
- Demand pressures – demand management strategy not implemented; and
- Consistent demand.

The demand assessment was combined with regional population forecasts to distribute additional Child FIRST funding, rather than by using the equity formula (information provided by DHS).

In the time since the introduction of the equity formula there have been some significant changes to the formula, including some driven by changes to eligibility for Family Tax Benefit A, which is determined by household income. The income thresholds to be eligible for the benefit vary depending on the number of children in the household and the age of those children.

As outlined in Chapter 17, more than 200 organisations receive funding to provide child protection and family services. It is not uncommon for these organisations to also receive funding to deliver other DHS services, for example disability services or housing assistance.

Funded organisations vary in size from multi-million dollar, often church-based or philanthropic organisations such as Berry Street, MacKillop Family Services, Anglicare Victoria and the Uniting Church, to smaller community-based organisations. As outlined in Chapter 17, a relatively small number of large organisations deliver the majority of funded services.

Funding allocation

A variety of approaches have been used by governments in funding not-for-profit organisations for specific services or other activities. These include:

- Funding renewal;
- Direct allocation;
- Advertised submissions;
- Invited submissions; and
- Competitive tender.

In relation to DHS funding of child protection and family services, the most common form of funding allocation is 'renewal', which is used when performance management and needs-based planning processes demonstrate that CSOs are meeting a continuing need and the agreed service specifications, and are operating efficiently and effectively. When new funding is being allocated DHS will generally invite submissions from existing providers to compete on quality of service or innovation in service delivery. Open competitive tendering is rarely used by DHS, except in cases where competition on price is a desired outcome and outputs can be tightly specified. Competitive tendering can be seen as counter to the (often) collaborative nature of community service provision between CSOs (Special Commission of Inquiry into Child Protection Services in NSW 2008, p. 1,011).

Funding is provided in the form of set unit prices paid by DHS for specific service outputs. Service providers receive payment for outputs delivered as set out in their service agreement with DHS.

Determining unit prices

Unit prices are applied consistently for all funded organisations delivering the same services or outputs. Outputs are generally measured in terms of the number of clients receiving a service. In the case of out-of-home care, this is measured as placements, with an additional unit price per fortnight of care. Unit prices vary depending on the level of care provided, for example in relation to foster care the rate of caregiver reimbursement for general home-based care for a child aged 0 to 7 is $261.83 per fortnight, while the equivalent rate for intensive home-based care is $316.38 per fortnight (DHS 2010b, p. 74).

Unit prices for the funding of all child protection and family services are determined annually by DHS and have been indexed since 2003. This indexation is based on the non-government organisation indexation rate, which is calculated by the Department of Treasury and Finance (DTF). The rate is based on a formula of 85 per cent salaries and 15 per cent operational costs, with the salaries component indexed according to Victorian Government wages policy, and the operational component indexed according to the Departmental Funding Model, based on the Consumer Price Index.

In addition to the indexation arrangements, unit prices are reviewed periodically based on feedback from the sector or the following factors:

- Evidence of substantial increases in costs;
- Evidence of technological changes that have a significant impact on service delivery and costs;
- Evidence of structural changes in inputs such as qualifications and staff ratios now required by service standards;
- Practical considerations such as the size and date of the last review, materiality and complexity of the review in light of price reviews already underway; and
- Evidence of the substantial redevelopment of a service model, new legislation significantly impacting on the service model or changes in client complexity (DHS 2008b, p. 2).

Unit prices are largely determined by DHS (usually involving consultation with the community services sector) based on a calculation of salaries, on-costs and operational costs that are incurred in providing units of service. DTF plays a review role with respect to DHS activity prices, when they are part of an overarching budget proposal. This role is focused on analysing the various cost drivers underpinning proposed activity unit prices. Where a budget proposal is ultimately implemented, the activity unit price is then applied to the relevant activity.

19.3 Recent trends in funding arrangements

In nominal terms, the overall level of funding for Child Protection and Family Services has more than doubled over the past decade, from just over $300 million in 2001-02 to an estimated $700 million in 2011-12. Over this time the proportion of funding available to Family and Community Services has stayed relatively constant, at about 25 per cent of the Child Protection and Family Services budget. Funding for the child protection components of the system (including Statutory Child Protection and Placement and Support Services) accounts for the remaining 75 per cent of funding (see Figure 19.1).

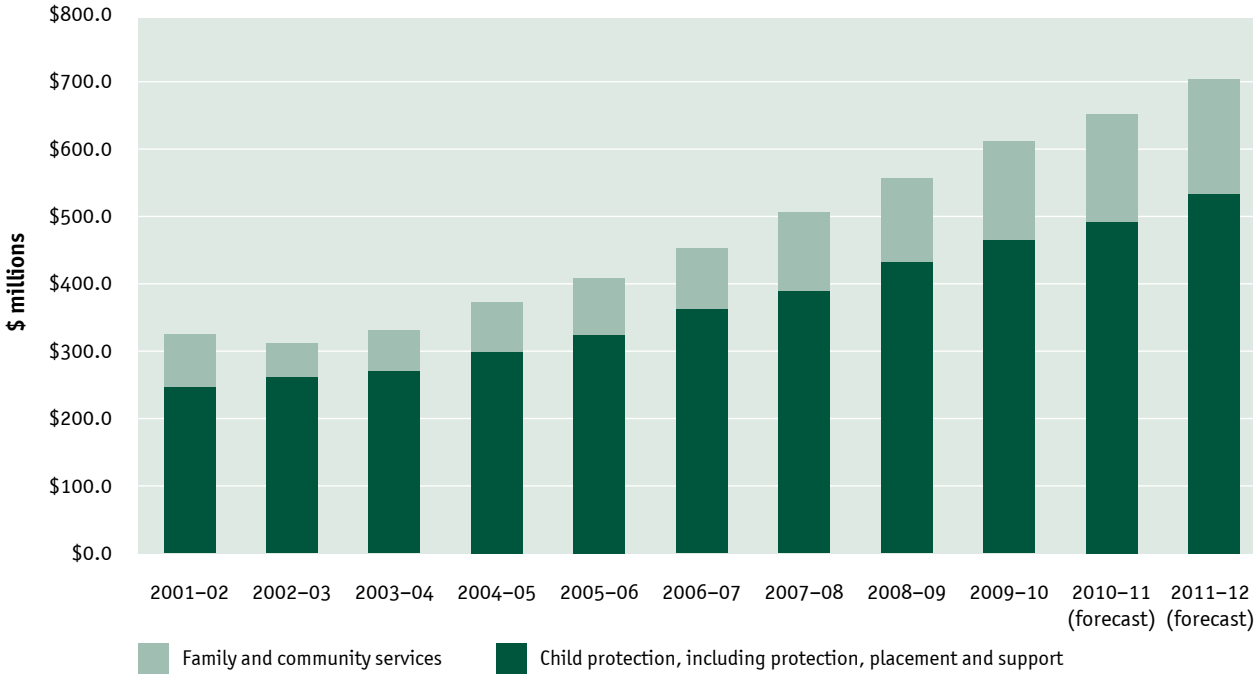
In real terms, after approximate allowance for inflation (measured by the Consumer Price Index), funding for child protection, including placement and support services and family and community services, increased by 5.3 per cent and 5.1 per cent per annum respectively over the period 2001-02 to 2009-10.

19.3.1 Child protection funding

Funding for the child protection components of the system, including Statutory Child Protection and Placement and Support, increased from $246 million in 2001-02 to $464 million in 2009-10 (see Figure 19.2).

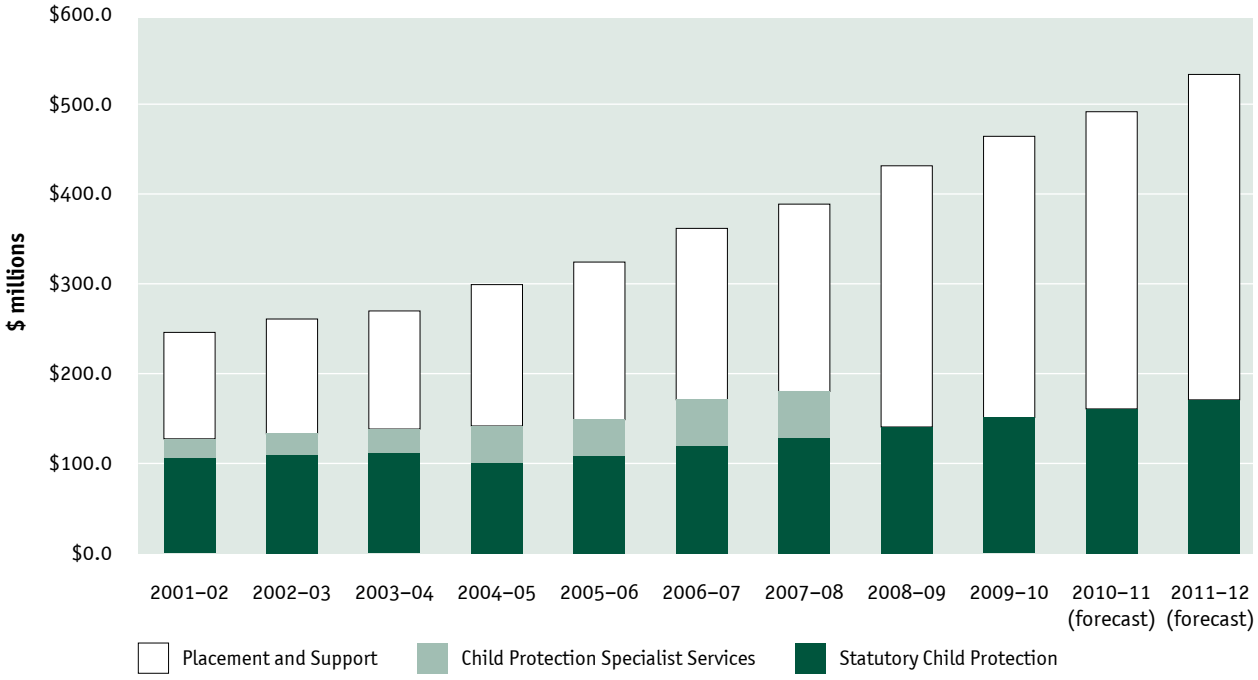
The majority of this additional investment has been directed towards Placement and Support services, which includes out-of-home care. Funding for these services has more than doubled from $119 million in 2001-02 to $313 million in 2009-10. As a result of the increase in funding for Placement and Support, the proportion of total Child Protection and Family Services funding directed to Statutory Child Protection has decreased from 43 per cent of statutory care costs to 32 per cent.

Figure 19.1 Victorian Government funding for Child Protection and Family Services, 2001-02 to 2011-12



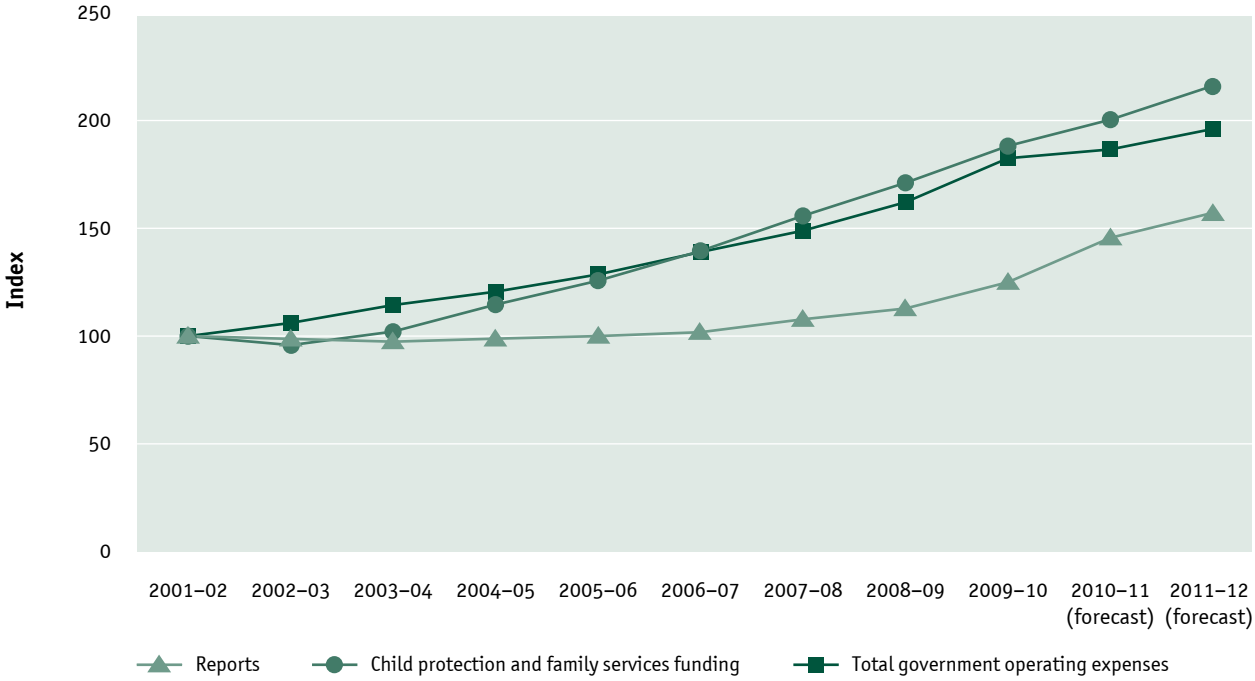
Source: Victorian Government, *Victorian Budget* (multiple editions 2001-12)

Figure 19.2 Victorian Government funding for Statutory Child Protection, 2001-02 to 2011-12



Source: Victorian Government, *Victorian Budget* (multiple editions 2001-12)
Note: Child Protection Specialist Services category discontinued in 2008-09 and largely absorbed within Placement and Support.

Figure 19.3 Child protection reports, Victorian Government funding for Child Protection and Family Services and total Victorian Government operating expenses, 2001-02 to 2011-12: Indexed to 2001-02 values



Source: Analysis of information provided by DTF

Funding for child and family services has increased significantly over the decade to 2011-12 (by an average of 8 per cent per annum). In nominal terms, the recent growth in expenditure has outpaced growth in total government expenditure over the past decade by about 1 per cent per annum. Expenditure growth has also outpaced growth in the number of reports of suspected child abuse, which has increased by about 4.3 per cent per annum over the past decade (see Figure 19.3).

After approximate allowance for inflation, the increases in funding have not been as significant. While the number of reports received by DHS increased by around 45 per cent from 2005-06 to 2010-11, real funding for Statutory Child Protection services increased by 28 per cent. Real funding for Child Protection and Family Services increased by 31 per cent over this time, mainly due to additional expenditure on Placement and Support.

Future outlook

The 2011-12 Victorian Budget projects that child protection reports to DHS will increase by a further 7 per cent in 2011-12 to 59,700. This comes on top of growth of 13 per cent and 15 per cent in 2009-10 and 2010-11 respectively. In 2011-12, real funding for Statutory Child Protection is expected to increase by only 6 per cent, while real funding for the overall, Child Protection and Family Services output is expected to increase by 8 per cent.

While increases in the number of reports and substantiations give an indication of increasing demand for child protection services, there have also been increases in activity in other areas of the statutory system. Table 19.2 shows that in June 2008 there were 11,815 active cases, while three years later this figure had increased by 6 per cent to 12,543.

Although significant, the increase in the number of open cases understates the increase in workload. Most noticeably there have been increases in the number of cases in the investigation, protective intervention and protective order phases (the activities relating to each of these phases are explained in Chapter 9).

The increase in open cases in these stages is somewhat offset by a 53 per cent decrease in the less resource-intensive closure phase. Case closure is a largely administrative exercise aimed at ensuring it is appropriate to cease child protection involvement with the child and family and that all necessary activities associated with the case have been completed. It may also include referrals to appropriate support services.

Table 19.2 Open child protection cases, by phase of case, June 2008 to June 2011

Case phase	June 2008	June 2011	Change
Intake	1,637	2,085	27%
Investigation	2,011	2,303	15%
Protective intervention	1,696	1,926	14%
Protective order	5,152	5,614	9%
Closure	1,319	615	-53%
Total	**11,815**	**12,543**	**6%**

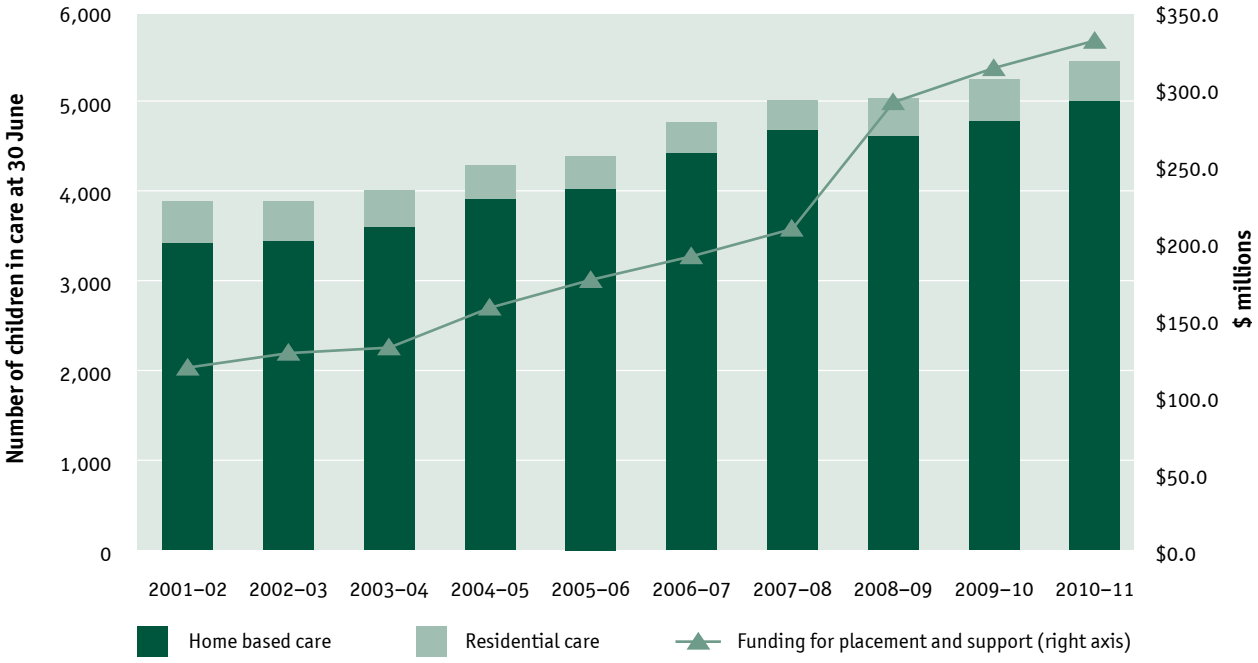
Source: Information provided by DHS

19.3.2 Placement and support funding

Similar demand issues exist in relation to out-of-home care. Funding for placement and support services has increased substantially over the past decade, more than doubling between 2001-02 and 2010-11. Although funding has increased, there has also been a significant increase in demand for out-of-home care services, with the number of children in care increasing by 45 per cent from 2001 to 2011, including by 29 per cent since 2005.

As illustrated in Figure 19.4, the growth in nominal funding for out-of-home care has outpaced the growth in the number of out-of-home care placements.

Figure 19.4 Children in out-of-home care and Victorian Government funding for placement and support, 2001-02 to 2010-11



Source: Steering Committee for the Review of Government Service Provision 2011c, Table 15A.57 and information provided to the Inquiry by the DTF

19.4 Key issues relating to funding arrangements

The adequacy and distribution of funding for statutory child protection and family services has been a key issue for the Inquiry and was raised numerous times in submissions and during the Inquiry's public consultation process.

This addresses three key issues identified by the Inquiry relating to funding, namely the:

- Adequacy of existing funding;
- Distribution of funding; and
- Method of funding services.

19.4.1 The adequacy of existing funding

In Victoria funding for statutory child protection and family services is allocated annually as part of the annual budget process; however, there is no automatic link between funding and the level of demand for services. The disjunction between funding and demand can mean it is often difficult to quickly respond to increases in demand for services, without first having regard to issues of capacity.

Linking funding to the level of demand

Funding child protection services based on the actual or projected level of demand for those services would potentially enable decisions about the appropriate pathways for children, whether through family services, statutory child protection or other interventions to be made with less regard to system capacity at a given point in time. Adoption of a demand-driven approach, it is argued, would mean these decisions would be focused on the needs of the child, rather than the system capacity at a point in time.

A number of submissions also argued that the disconnection between demand and the level of funding available extends beyond the statutory system, affecting performance in other areas. The Berry Street submission argued that:Setting a somewhat arbitrary and capped figure for out-of-home care, including Kinship Care and Permanent Care, funding for each financial year across the system simply rations those available resources between children and young people in the system in a particular year ... It also perpetuates the increasing use of responses which are unplanned and temporary and further damage children (pp. 42-43).

Similarly, the submission received from Anglicare Victoria notes that 'excess demand for Child FIRST services has resulted in a capping of referrals at a number of service locations, particularly in ... Melbourne's growth corridors where the demographic reflects a high proportion of families with children and a high birth rate'. Citing concerns about future growth in demand for Child FIRST services, Anglicare Victoria recommended that a 'family welfare service formula' be developed to address the expected growth for Child FIRST operations in growth corridors (pp. 10-11).

Demand-based funding in Western Australia

Western Australia has moved some way towards a demand-based funding mechanism for its statutory child protection services. In Western Australia the Department for Child Protection caps case loads per worker and ties demand into the funding model.

The Western Australian Department for Child Protection advises that the case-capping model highlights when resources do not match demand and provides a basis for linking funding to case service requirements (Inquiry meeting with Department for Child Protection).

Capping case loads was supported by the Community and Public Sector Union (CPSU) in their submission to the Inquiry. The CPSU stated that without case-caps staff, who are already under pressure with a high number of cases, are being assigned more cases as the unallocated list grows and there is increasing political pressure to be seen to be getting the unallocated list down (p. 53).

Case-capping has not been supported by DHS in the past. Case-capping can be seen to reduce flexibility within the child protection workforce, including:

- Not taking adequate account of differences in the complexity of cases and the impact this has on workloads – there are examples of cases where the complexity, or risk to the child requires the almost full-time attention of a worker, whereas others may be reaching the closure phase and require much less time from workers; and
- Reducing the flexibility of DHS to respond to significant child protection events within prescribed caps – for example, in May 2010 it was found that there were some 300 registered sex offenders that were living with, or had unsupervised contact with children, requiring an additional 739 investigations by DHS in a short period of time (Victorian Ombudsman 2011b, p. 19).

While case-capping has been the main mechanism used by Western Australia to incorporate demand into their funding model, ensuring that demand is properly funded can be achieved without the need for case-capping. The Inquiry's preferred position is that increases in the level of demand for child protection and family services be incorporated into Victoria's system for protecting children through improved planning and anticipation of these increases.

Summary

Chapter 9 considers in detail the question of statutory intervention capacity and the range of relevant factors and considerations that need to be taken into account in arriving at an informed assessment. In particular, Chapter 9 identifies that, while up-to-date information on many of these issues is not available, there is prima facie evidence of increasing demand for services in all areas of statutory child protection and family services.

These increases have been driven by a number of long-term factors, including changes to the *Children, Youth and Families Act 2005*, a broadening of the definition of abuse, the introduction of mandatory reporting as well as population increases. Specific increases have been seen in the number of child protection reports received by DHS annually, the number of children in out-of-home care and also the over-representation of Aboriginal children in Victoria's system for protecting children.

While statutory child protection and family services funding has increased substantially over the past decade, new budget initiatives and capacity funding have generally come as a response to demand pressures, rather than in anticipation of them. The Inquiry expects the demand for child protection and family services will continue to increase for the foreseeable future and additional funding will be required to address meet this increase in demand. Over time the reforms and enhancements proposed by the Inquiry will impact on this growth in demand.

Recommendation 76

Future funding of child protection and family services should recognise and anticipate the underlying growth in demand in future budget processes for statutory child protection, out-of-home care and family services.

19.4.2 The distribution of funding

Concerns and issues with the geographical distribution of funding were raised in a number of submissions to the Inquiry. The matters raised included:

- Problems with historical resource allocation;
- Planning for regional growth;
- Inadequate funding for rural and remote areas; and
- Inadequate funding for indigenous services.

Problems with historical resource allocation

A joint submission prepared from Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army, Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare (Joint CSO submission), noted that:

> The location of services for vulnerable children, young people and families is largely historically driven and the distribution of services has not matched patterns of population shift and growth. The result of this is that there are large areas of the state, often the areas that vulnerable families reside, that have no support services available (p. 41).

These concerns with the current method of resource allocation are reiterated by the Victorian Ombudsman. In 2009 the Ombudsman commented that:

> [T]he threshold of risk to children tolerated by the department varies across regions and according to the department's capacity to respond. In my opinion it is unacceptable that the geographic location of a child should dictate the risk to their safety that is considered (Victorian Ombudsman 2009, p. 11).

Planning for regional growth

In its submission to the Inquiry, CatholicCare identified issues with the adequacy of funding allocated to growth areas, including the western corridor of the North and West Region and the Southern Region. According to CatholicCare, their programs are 'unable to cater for the population growth now, with ongoing population projections a cause for concern'. In the Southern Region, CatholicCare has had to implement case load controls in response to Child FIRST being 'overloaded' (CatholicCare submission, p. 9).

Inadequate funding for rural and remote areas

The Take Two Partnership observed particular difficulties with providing adequate coverage of services in rural areas, noting that current recruitment and funding models 'commonly underestimate the additional demands placed on rural staff due to reduced access to infrastructure, greater distances for travelling and fewer services to collaborate with' (Take Two Partnership submission, p. 8).

Inadequate funding for Aboriginal services

The submission prepared by the Victorian Aboriginal Child Care Agency (VACCA) cites the need for funding to be weighted in recognition of factors that uniquely affect Aboriginal Victorians, including 'ongoing trauma arising from past government policies and practices', the 'complex family size and structure', 'disadvantage within families and communities', as well as 'more limited fundraising capacity' in Aboriginal communities (p. 55).

Further, submissions also raised issues with the current funding arrangements for CSOs, often in connection with broader governance issues. This included issues with the level of administrative burden associated with the funding and delivery of services:

> Where a large sum of money is involved, it is naturally accepted that tender and acquittal processes will be comprehensive. Where tender and acquittals are for smaller amounts Jesuit Social Services would submit that there should be a proportionate reduction in the administrative processes (Jesuit Social Services, p. 16).

Alternative methods of resource allocation

There are many options available for determining the regional allocation of resources that may enhance the current model used by DHS, including the Socio-Economic Indexes for Areas developed by the Australian Bureau of Statistics to facilitate assessments of the welfare of Australian communities. An option that was not available to DHS when the equity formula was developed is the Australian Early Development Index (AEDI). Incorporating the AEDI into the resource allocation model for child protection and family services is one of a number of options for channelling funds to the neediest areas of Victoria.

The Australian Early Development Index

The AEDI is a population measure of young children's development. Similar to a census, it involves collecting information to help create a snapshot of children's development in communities across Australia. Teachers complete a checklist for children in their first year of full-time school, measuring five key areas, or domains, of early childhood development:

- Physical health and wellbeing;
- Social competence;
- Emotional maturity;
- Language and cognitive skills (school based); and
- Communication skills and general knowledge.

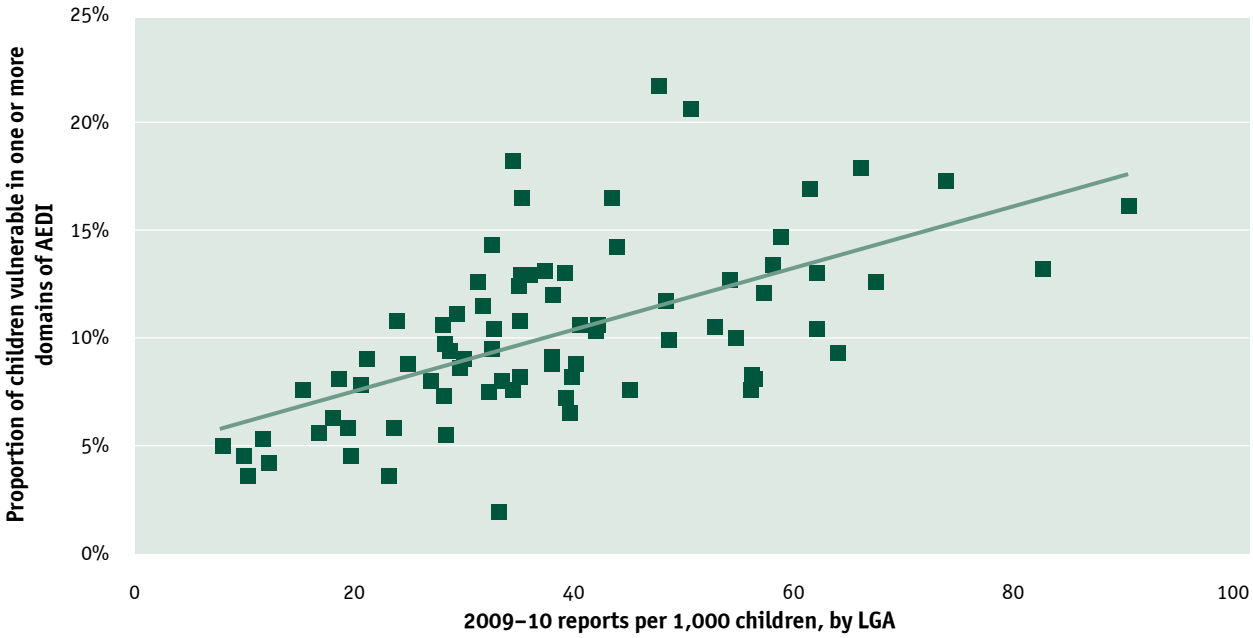
These areas are closely linked to the predictors of good adult health, education and social outcomes.

Although the AEDI is completed by teachers, results are reported for the communities where children live, not where they go to school. AEDI results allow communities to see how children are doing relative to, or compared with, other children in their community, and across Australia.

The AEDI ranks children as being either developmentally vulnerable (below the 10th percentile), developmentally at risk (between the 10th and 25th percentile) or developmentally on track (above the 25th percentile). A preliminary analysis of the relationship between child protection reports to DHS and the results of the AEDI, by local government area (LGA) suggests there is a strong correlation between the two.

Figure 19.5 shows that, in LGAs where the rate of reports per 1,000 children is higher, the proportion of children that are vulnerable in one or more domains of the AEDI is also likely to be higher. The AEDI may be an appropriate alternative to the current system of allocating funds based on Family Tax Benefit A. It is scheduled to be updated every three years.

Figure 19.5 Relationship between child protection report rates and vulnerability, as measured by the Australian Early Development Index, Victorian local government areas, 2009-10



Source: Information provided by DHS, Department of Planning and Community Development Preliminary Population Projections (unpublished) and AEDI information provided by the Department of Education and Early Childhood Development

Geographic mechanisms

Other measures that could be incorporated into resource allocation include the geographic size of the region. DHS and CSO workers in regional areas often travel large distances to visit children, or to attend court hearings or supervised visits, increasing demand on the amount of resources required to deliver services in these areas.

The method for allocating resources employed in Alberta, Canada provides a useful example of one potential way to incorporate geography into one distribution of resources. In addition to measures of population and poverty, in Alberta, 5 per cent of resources for child protection are distributed based on the land mass of the service regions.

In Chapter 2 of this Report, the Inquiry found evidence of a strong geographic component to the distribution of abuse and neglect in Victoria. In developing the broader policy framework (Chapter 6) the Inquiry found that an area-based policy and program design and delivery is most likely to address vulnerability and to protect Victoria's vulnerable children. The Inquiry recommended area-based policy and program design and delivery, reflected in the proposed Vulnerable Children and Families Strategy.

Regional resource allocation in Alberta, Canada

The Canadian province of Alberta determines regional funding allocations for the 10 Child and Family Services Authorities based on the following formula:

1. The child population of the region – 45 per cent of regional funding;
2. The rate of poverty (measured by the percentage of the region's population living below the Low Income Cut Off) – 50 per cent of regional funding; and
3. Access to services (measured by the region's percentage of total provincial land mass – 5 per cent of regional funding.

Alberta also reserves 0.5 per cent of the total funds available for regions to be invested in innovative means of delivering services based on the region's local priorities and unique operating environments.

Source: Commission to Promote Sustainable Child Welfare 2010b

Recommendation 77

Funding for child protection and family services should be distributed in accordance with an area-based approach and according to a common methodology.

The Department of Human Services should develop this methodology so that funding is distributed on an equitable basis to the areas that need it most. The methodology should take into account :

- The population of children in a region;
- The level of vulnerability of these children, including the Aboriginal population; and
- Factors that increase the cost of service delivery in regions, such as remoteness and the geographic size of the area.

The method should be able to be regularly updated and should be incorporated into future system planning.

19.4.3 The approach to funding services

Many submissions by CSOs and representative organisations cited a lack of flexibility in the current output and service agreement funding approach, expressing the view that the funding of services outputs is overly prescriptive compared with an outcomes-based or a more client-centred approach.

The alternative governance framework advocated by some of the largest CSOs argued there is a need to move to funding for outcomes, and with greater flexibility at the service delivery level for implementing the necessary service mix to achieve outcomes.

Alternatives to the current funding model

Models for funding statutory child protection and related services vary significantly by jurisdiction across Australia. As noted above, the Victorian approach is to fund CSOs on the basis of their level of service activity, or output, with total funding for services determined based on unit prices for services and the number of services provided.

Outcomes-based funding

Outcomes-based funding can be construed in a number of ways. However, generally an outcomes-based approach aims to shift the emphasis from the services that are provided to what outcomes they will achieve. An outcomes-based approach can link the level of funding to performance against these outcomes, but this is not a prerequisite of an outcomes-based approach.

Several submissions, including the Joint CSO submission, have argued for a switch to an outcomes-based method of allocating funding for statutory child protection and family services. These submissions were supportive of a model providing more flexible funding to purchase services aimed at achieving a desired outcome, rather than one that directly link the level of funding to the outcomes of their activities. The Joint CSO submission stated that:

> An outcomes-based funding model could potentially involve outcomes related to health, wellbeing and emotional development, being looked after, safety, educational attainment and participation in social and community life (p. 59).

A number of submissions by CSOs argued that changing from the current approach of funding outputs to a system of funding based on outcomes is consistent with an approach focused on 'the needs of the child'.

> Outcomes-based funding is seen as allowing a more tailored service response or course of action to be adopted in conjunction with child protection to support placement prevention. One example provided is that of a depressed single mother whose two primary school aged children are not receiving regular meals or attending school. Under the current funding approach, if the assessment is that the children are suffering significant harm and there are no suitable relatives to provide care, foster care may be considered the only option. Under a more flexible outcomes-funded approach, an alternative pathway could be developed that could include intensive support. A worker might visit daily and assist in parenting tasks and caring for the children by, for example preparing the evening meal, supervising homework and other services. It is argued that this level of assistance can be more effective and provided over a much longer period of time for the same cost of a short-term placement in foster care (Joint CSO submission, p. 59).

There are a number of practical considerations that flow from the implementation of any change in the funding arrangements for CSOs, such as the implementation of outcomes-based funding, including:

- Difficulty of defining, agreeing and accurately measuring 'outcomes' or success; Broader system impacts, including consistency with DHS and Victorian Government funding practices;
- The cost of implementing changes compared with the benefits that are hoped to be achieved; and
- Many outcomes can only be observed in the long term.

Jurisdictional comparisons

In practice, reforms to secondary support programs in Western Australia provide an example of a system focused on achieving outcomes, within what ultimately remains an output-based funding mechanism.

Western Australia is currently reforming its procurement of secondary family support programs, including shifting the focus of funding inputs to outcomes. However, in the *Western Australia Review of Secondary Family Support Funding Programs*, it is noted that 'it is not possible to purchase outcomes. They occur later and the extent to which they are achieved is the measure of the effectiveness of the purchased service' (Department for Child Protection 2011b, pp. 38-40).

Western Australia is instead proposing that future service agreements define the outputs that agencies are contracted to deliver in order to achieve desired outcomes but with sufficient flexibility in funding arrangements for those outputs to be renegotiated as new needs emerge or more effective service responses become evident (Department for Child Protection 2011b, pp. 38-40).

Other jurisdictions in Australia are also moving towards more output-based funding mechanisms for community services. For example, in Queensland the Department of Communities is transitioning its disability funding from an input-based mechanism based on the resources required to produce an output, that service providers must acquit against line items in a budget at a program or grant level (Department of Communities 2011).

Similarly, in New South Wales, development of fixed prices for CSOs delivering out-of-home care is an ongoing process as part of a broader reforms to out-of-home care resulting from the *Keep them safe report* (Family and Community Services 2011).

19.5 Conclusion

Having reviewed the merits of an outcomes-based approach, the Inquiry does not consider that an overall transition to outcomes-based funding would be of practical benefit to Victoria's vulnerable children, young people and families, nor is it practical to administer an outcomes-based approach.

However, the Inquiry has identified a number of improvements that could be made to the funding arrangements for statutory child protection and family services delivered through CSOs, including (as outlined in Chapter 10):

- Increasing the flexibility of funding arrangements through greater use of client-based funding for out-of-home care; and
- Referring the design of a client-based funding approach to the Essential Services Commission (ESC).

As discussed in Chapter 17, DHS both funds and is dependent on CSOs to deliver critical services and interventions on behalf of government. CSOs are in turn dependent on government, as the sole purchaser of the services they deliver, to fund them at price levels that are sufficient to meet performance standards set by DHS. Currently there is no independent oversight over the pricing of services delivered to CSOs.

Moreover, the Inquiry accepts the general view put forward in a number of submissions from CSOs that there is a need for a more flexible approach across the board to the funding of the services these organisations deliver.

The Inquiry considers these two issues of the flexibility of service funding and a fair and appropriate basis for service funding are critical to the future effective, innovative and robust provision of services to vulnerable children and families. DHS has, over time, modified the range of discrete services that are funded and included in the service agreements with CSOs. However, particularly in the placement and support area, there is a significant range of discrete placement types and add on services (discussed in more detail in Chapter 10). This will be addressed by the recommendation to move to a client-based funding approach. However, the Inquiry considers there are other service areas where adopting a more generic or broad-banded approach will facilitate more client centric services.

Recommendation 78

The Department of Human Services should review the list of individual placement and support, and community and family services activities provided by community service organisations. The number of these activities and their funding arrangements should be consolidated as part of adopting a more client-focused approach based on broader service types.

An appropriate basis for service funding requires consideration of all relevant and indirect costs including, for example, relevant staff development and infrastructure.

In this regard, the Inquiry agrees with the general position put forward in the recent Productivity Commission research report on the contribution of the not-for-profit sector.

> Australian governments should, in the contracting of services or other funding of external organisations, determine and transparently articulate whether they are fully funding particular services or activities undertaken by not-for-profit organisations, or only making a contribution towards the associated costs and the extent of that contribution.
>
> Australian governments should fully fund those services that they would otherwise provide directly (allowing for co-contributions from clients and any agreed contributions by service providers). In applying this criterion, governments should have regard to whether the funded activity is considered essential, as part of the social safety net or an entitlement for eligible Australians (Productivity Commission 2010, p. 290).

In particular, the Inquiry considers the provision of statutory-related services to vulnerable children and their families represents a core and essential role of governments and the CSOs providing them should be funded accordingly.

Recommendation 79

The Government should adopt an explicit policy of fully funding child protection and family services delivered through community service organisations, including provision for infrastructure and other relevant indirect costs.

On an ongoing basis, there should also be a greater level of independent oversight of the Government's role as the sole purchaser of services delivered through community service organisations. The Essential Services Commission should be given an ongoing role to periodically determine the appropriate prices for child protection and family services that are delivered through community service organisations.

Part 7: System governance

Chapter 20:

The role of government agencies

Chapter 20: The role of government agencies

Key points

- Tackling vulnerability before it manifests in child abuse and neglect requires a sustained and dedicated level of effort from all relevant government agencies. Stronger accountability mechanisms are required to ensure these agencies treat the often complex and challenging needs of vulnerable children as a priority.
- Where child abuse or neglect is reported to the Department of Human Services or a child is in the care of the State, agencies must not abrogate their responsibilities for those children to the Department of Human Services.
- Departments and agencies must move beyond vague and imprecise notions of joined-up government and work together more effectively if there is to be a strategic and effective response by government to the needs of vulnerable children. This requires a new sophisticated level of inter-agency coordination.
- This chapter suggests two distinct principles for the role of government agencies:
  - each department or agency needs to be held accountable for the delivery of their particular services to vulnerable children and young people; and
  - the relevant departments and agencies need to work together to coordinate activities, where it makes sense, and is achievable.
- A number of recommendations are made in this chapter to address these two key messages and ensure government agencies better meet their commitments to vulnerable children. The key issues addressed in the recommendations include:
  - better accountability can be achieved by a Commission for Children and Young People reporting publicly on government performance in addressing vulnerability;
  - the Department of Education and Early Childhood Development should be given responsibility for the educational outcomes of children in out-of-home care;
  - the Department of Health should be given responsibility for the health outcomes of children in out-of-home care;
  - better agency accountability can be achieved with the oversight of a specific purpose Committee of Cabinet on Children's Services;
  - coordination of government services can be improved with a stronger and clearer role for the Children's Services Coordination Board, including coordination of area-based activities; and
  - the Victorian Children's Council needs its role strengthened and clarified to ensure that it is effective.

20.1 Introduction

Much recent work in government and academia has focused on the need to better coordinate government programs and services. In the area of child protection this need is particularly acute. As this Report shows, 'child protection' is much more than the tertiary end of the statutory child protection service involving the Department of Human Services (DHS) and the courts. The problems in the lives of vulnerable children that may, down the track, necessitate such interventions often begin years before – and therefore, may be prevented through other means and through thoughtful and professional early intervention by government agencies, and those that they fund. In addition, supporting the needs of children identified as vulnerable is a responsibility for a number of government agencies other than DHS. This chapter primarily addresses the Inquiry's Term of Reference concerning the interaction of departments and agencies and how they can better work together to support at-risk families and children.

Better early intervention and support of vulnerable children and young people will involve significant new efforts by all relevant government agencies, some of whom have not, in the past, been focused on the specific and often complex needs of Victoria's vulnerable children and young people. The needs of vulnerable children do not 'belong' to one government portfolio or department, and new approaches require more than just notions of 'joined-up government'. Responses require government agencies to stretch their ambit to reach all children in need.

The Inquiry's focus on the role of government agencies in this chapter has two distinct messages:

- Each department or agency needs to be held accountable for the delivery of their services to vulnerable children and young people; and
- The relevant departments and agencies need to work together to coordinate activities, where it makes sense, and is achievable.

This chapter provides an analysis of the issues and challenges with the current role of government departments and bodies in delivering or advising on the needs of vulnerable children by providing:

- An overview of the roles and responsibilities of relevant government agencies including DHS, the Department of Health (DOH), the Department of Education and Early Childhood Development (DEECD), the Department of Justice (DOJ), Victoria Police, the Department of Planning and Community Development (DPCD), local government, the Department of Premier and Cabinet (DPC) and the Commonwealth, in terms of meeting the needs of vulnerable children;
- An overview and analysis of coordination of government services, including the Children's Services Coordination Board (CSCB);
- An overview and analysis of Victorian Children's Council (VCC); and
- Comment on the weaknesses in the current structure, and how they can be addressed.

This chapter provides recommendations to address these weaknesses in the current arrangements, principally in the areas of:

- Accountability of government agencies for outcomes for vulnerable children and young people, including individual agency goals and a whole-of-government framework for improving outcomes for vulnerable children, and the role of ministers and a Commission for Children and Young people;
- Coordination of government services and the future role of the CSCB; and
- The future role of the VCC.

20.2 Overview and direction for reform

The Victorian Government, like most similar jurisdictions, allocates policy responsibilities by portfolios, which are reflected in the budgets and accountabilities for departments and agencies. In terms of the overall population this works well. For example, on the whole, children are generally educated to a very high standard in Victoria and that standard generally continues to increase year-on-year. However, the outcomes of vulnerable children with particular needs are much worse than the overall population. Data provided by DHS shows that children in out-of-home care are significantly less likely to meet statewide educational benchmarks than the rest of the Victorian population. In a study in the United Kingdom, the Sure Start program showed that comprehensive, population-based strategies appear to offer fewer benefits to the most disadvantaged participants than the less disadvantaged. It is always likely that the most disadvantaged families will not benefit without extra resources (Katz & Valentine 2009, p. 38). The situation in Victoria is the same.

More accountable and working more effectively together

Properly addressing the needs of Victoria's vulnerable children will require government departments and agencies to be better held to account for their required contribution to vulnerable children and young people, and for the government to have in place better mechanisms for coordination of services for them.

Large service delivery departments generally cater well to the mainstream population. Unfortunately, departments do not always address the needs of vulnerable children and families or work collaboratively enough to respond to the needs of these children and families. What is needed are stronger mechanisms and institutions to hold departments to account for finding those vulnerable children and families that have or are likely to fall through the cracks, address their needs, and better coordinate service planning and delivery.

Chapter 3 and Chapter 8 provide some detail on various aspects of government activity with respect to vulnerable children and families. Section 20.3 provides further details of the various roles and responsibilities of relevant government agencies, with respect to vulnerable children and families, to facilitate an analysis of opportunities for reform.

20.3 Roles and responsibilities of key government agencies

20.3.1 Department of Human Services

The specific responsibilities of DHS have been outlined, in particular in Chapter 3 and Chapter 9. The most obvious and high-profile role of DHS in protecting vulnerable children is that of administrator of the statutory child protection service.

The Secretary of DHS, under the *Children, Youth and Families Act 2005*, has powers in relation to decision making on the custodianship of children and young people in the statutory child protection system. In this function, the Secretary reports to the Minister for Community Services, the portfolio minister responsible for the statutory child protection service. The Secretary also has a much broader leadership role in the department's responses to vulnerable children, including through the registration, oversight and monitoring of Child FIRST family service providers and out-of-home care providers.

The Secretary is supported in this role by an executive director for Children, Youth and Families. The Children, Youth and Families division plays a key role in the planning and provision of services to vulnerable Victorian children and their families. Services include youth justice and youth services, family services, and statutory child protection services. The statutory child protection service is specifically directed at those children and young people at risk of harm or where families are unable or unwilling to protect them.

The main functions of DHS regarding child protection are to:

- Investigate matters where it is alleged that a child is at risk of harm;
- Refer children and families to services that assist in providing the ongoing safety and wellbeing of children;
- Take matters before the Children's Court if the child's safety cannot be ensured within the family;
- Supervise children on legal orders granted by the Children's Court;
- Provide and fund accommodation services, specialist support services; and
- Enable adoption and permanent care of children and adolescents in need (DHS 2011a).

Disability and housing services

DHS provides and funds services for people with intellectual, physical, sensory, cognitive and neurological disabilities. Services include:

- Individual packages and supports for people and families and carers to access services based on choice; and
- Accommodation support provided to groups of clients in community-based settings and centre-based residential institutions.

DHS provides a range of housing support services for Victorians in need including:

- Crisis and transitional accommodation for people who are homeless or at risk of homelessness; and
- Long-term affordable and accessible public and social housing (DHS 2011a).

As discussed in Chapter 2, having a parent or caregiver with a disability, or the child themselves having a disability, is a risk factor to vulnerability. In addition, situational stress, such as that brought about by homelessness or the risk of homelessness, is a risk factor in vulnerability. As such, DHS disability and housing services engage with a significant number of vulnerable people.

At present, the siloed structure in DHS between the Children Youth and Families, Disability Services, and Housing and Community Building divisions, does not allow for optimal sharing of resources and focusing on the needs of vulnerable children. Chapter 8 makes suggestions for individual programs across sectors to come together to form a comprehensive, coherent and coordinated system of early interventions that addresses the needs of vulnerable children and their families.

Child Safety Commissioner

The Office of the Child Safety Commissioner was established by the *Child Wellbeing and Safety Act 2005* (CWS Act) and is a portfolio agency of DHS. The Commissioner's objectives are to promote continuous improvement and innovation in policies and practices relating to child safety and the provision of out-of-home care services for children. The office undertakes work in three major streams: out-of-home care monitoring unit; inquiry and review unit (including inquiries into the deaths of children known to the statutory child protection service); and promotion and policy unit (including legislative and policy analysis of issues affecting children).

The government has made clear that it supports a stronger and more independent Commission for Children and Young People. The Inquiry makes recommendations with regard to this proposed Commission and its role in the regulation and oversight of government agencies in Chapter 21.

20.3.2 Other government agencies

Department of Education and Early Childhood Development

In 2007 the former government created the Department of Education and Early Childhood Development (DEECD), integrating a number of functions from the Office for Children (formerly in DHS) with the former Department of Education to oversee the management of children's early years and education services across the state.

DEECD's overall responsibility is for the development and learning of all Victorian children, from birth and into adulthood. It is the major provider, funder and regulator of early education and care, school education, and adult education and training services throughout the state. DEECD is also a significant funder and provider of child health and disability services in the early years. DEECD has advised the Inquiry that it recognises that protecting children from significant harm caused by abuse and/or neglect is a shared responsibility for parents, care providers, schools, communities, government organisations, and police and community agencies.

In particular, DEECD's interface with vulnerable children is through: primary and secondary schools; funding of local government maternal and child health centres; and integrated children's centres. All of these universal services are vital not only for the educational and health wellbeing of the general population but also, importantly, for the early intervention and care of vulnerable children and families, as outlined in Chapter 8. DEECD also advised the Inquiry that, as the department with the widest responsibilities for children and young people, it also leads whole-of-government efforts to monitor how children are faring, including children from vulnerable or chronically disadvantaged backgrounds, and to coordinate government efforts to improve outcomes for these children.

Monitoring outcomes

DEECD has a data collection and reporting tool called the Victorian Child and Adolescent Monitoring System (VCAMS), which collects, analyses and is used to prepare reports on how children and young people in Victoria are faring. Its development was informed by national standards developed by the Australian Institute of Health and Welfare (AIHW), and advice and input was also sought from the Australian Bureau of Statistics (ABS). Data collected through VCAMS is published through a variety of reports including the annual *The state of Victoria's children* reports. As noted previously in this Report, *The state of Victoria's children* reports provide an evidence base for service planning and policy development, and the Inquiry notes that VCAMS data is very valuable and should be a component of any whole-of-government policy framework.

Coordination and advice

DEECD provides administrative support for the CSCB, which brings together the key decision makers across Victorian government departments, to ensure coordination of activities impacting on children (DEECD 2011a). An analysis of the CSCB, including recommendations for reform, is at section 20.5.

DEECD also provides administrative support for the VCC, which provides high level policy advice to the Premier and the Ministers for Children, Early Childhood Development and Community Services (DEECD 2011a). An analysis of the VCC, including recommendations for reform, is at section 20.6.

Department of Health

Until 2009 health portfolio activities were also in the larger DHS. While DHS has a focus on child protection activities, DOH continues to have responsibilities in relation to vulnerable children. DOH is the government agency responsible for the health of all Victorians – this includes vulnerable children and families. However, currently its efforts towards vulnerable children and families appears limited to the Vulnerable Children Program and the Community Health Services program. As discussed in Chapter 8, the Inquiry considers that these programs do not dedicate the resources required for DOH to fulfil its obligations to vulnerable children and young people.

Vulnerable Children's Program

Health service providers, such as hospitals, can contribute to the provision of early intervention to children and young people and their families who are identified as at risk of abuse and neglect. This includes antenatal services. DOH's Vulnerable Children Program supports health services in the early identification of, and response to, children and young people at risk of child abuse and neglect. The program has produced and distributed a best practice framework for health services that provides information and guidance on issues relating to children and young people at risk of abuse and neglect.

As discussed in Chapter 8, the Inquiry considers that the level of government investment in the Vulnerable Children's Program is not sufficient, as there is less than one full-time staff member attached to the program. It is unclear whether this program has been successful or whether health professions are generally responding to children and young people at risk of abuse and neglect.

Community health services

Community health services (CHS) are a network of agencies delivering care in local government areas across the state. As discussed in Chapter 8, the Inquiry found that CHS can play a significant role in early identification of vulnerable children and young people through support services. However, the Inquiry notes that the CHS program does not currently have a clear function regarding vulnerable children and families, including monitoring of vulnerable children and families. In addition, CHS has assessment planning and resource allocation activities occurring independently of other areas of government activity.

Other responsibilities

Importantly, DOH should take the lead responsibility for ensuring the provision of health services to vulnerable children and families. This should not be left to community service organisations (CSOs) or DHS child protection staff. One glaring example of this is the health assessments of children in out-of-home care. Responsibility for these assessments and consequential health plans currently rest with the Secretary of DHS. The Inquiry makes a recommendation to amend responsibility for this in section 20.4.

DOH also needs to consider where adult specialist services it funds, such as mental health and alcohol and drug treatment, can better interact with patients who are parents. The Inquiry notes that the children of the clients of such services are often very vulnerable. The Inquiry notes that it is incumbent on DOH to ensure these health services are taking into account the needs of vulnerable children when treating adults in families. This is addressed in Chapter 8.

Department of Justice

DOJ has responsibility in a number of portfolio areas that interface with the most vulnerable children and young people, in particular: the prisons system; the Children's Court of Victoria (Children's Court); the Children's Court Clinic; and family violence (along with DPCD and the police).

Corrections and courts

Corrections Victoria operates Victoria's adult corrections system, including prisons and Community Correctional Services. Corrections Victoria responds to a number of issues involving prisoners with vulnerable children, including children who are born and live in prison for a time. These children and young people are in vulnerable positions, given their family and other circumstances (Robinson 2011).

DOJ has portfolio responsibility for the courts. As discussed in Chapter 3 and in more detail in Chapter 15, the Children's Court was established as a specialist court with two divisions to deal with matters relating to children and young people. The Family Division of the Children's Court hears applications relating to the protection and care of children and young people at risk, as well as and applications for intervention orders by DHS. The Criminal Division of the Children's Court hears matters relating to criminal offending by children and young people. The Inquiry's findings in relation to the Children's Court are in Chapter 15.

The Children's Court Clinic is an administrative unit in DOJ pursuant to the *Children, Youth and Families Act 2005*. The Clinic's primary function is to make clinical assessments of children and families for Children's Courts across Victoria in both child protection and criminal cases and to submit reports to the court requesting the assessments. It is a statewide service that supplies clinical psychological and psychiatric opinions for the judicial officers of the court, and treatment programs. Examples of treatment offered by the Clinic are counselling and the provision of drug program services (Children's Court of Victoria 2008). The Inquiry's recommendations relating to the Children's Court Clinic are in Chapter 18.

Family violence

Family violence is a significant contributor to health and welfare problems, especially among women and children. Exposure of children to family violence is one of the most common forms of child abuse. Family violence is also linked to a multitude of other societal issues that cost the community. This includes substance abuse, mental illness, poverty, homelessness and crime (Australasian Police Leadership 2008, p. 2). While DPCD leads the whole-of-government framework around the government's response to family violence, DOJ plans key components of the government's responses, particularly where Victoria Police respond to incidents.

Victoria Police

Victoria Police respond to a number of incidents and allegations that may involve vulnerable children and families, and Victoria's statutory child protection system. These include family violence, child sexual and physical assault, and offences relating to child pornography.

Family violence

The police are often the people who first respond to critical incidents involving family violence. Victoria Police attempts to address family violence in Victoria in the following ways:

- Providing safety and support to victims;
- Identifying and investigating incidents of family violence and prosecuting people accused of criminal offences arising from family violence;
- Assisting in the prevention and deterrence of family violence in the community by responding to family violence appropriately; and
- Ensuring people are referred to support services and further assistance.

Family violence has been discussed in detail in Chapter 2, where the Inquiry notes that family violence is both a risk factor that may cause a child or young person to be vulnerable, and is a form of abuse of a child or young person if that child or young person witnesses the violence.

Sexual and physical assault of children and young people

All police have a role in protecting children. However, clear areas of responsibility have been established for the investigation of child abuse matters. The Sexual Offences and Child Abuse Unit members work closely with DHS child protection practitioners. A set of protocols has been developed between Victoria Police and DHS to assist protective workers and police in ensuring that a coordinated response is provided during protective and criminal investigations of child abuse. In addition to this collaboration between agencies, is the pilot of multidisciplinary centres (MDCs).

MDCs are an innovative way for a whole-of-government response to sexual offences. The centres are characterised by the use of police investigators co-located with child protection workers, sexual assault counsellor/advocates and with strong links to forensic medical personnel. These specialist professionals work collaboratively within one location to provide responses to adult and child victim/survivors of sexual assault and child physical abuse.

In Victoria two MDCs comprising police and sexual assault support services have been operating in Frankston and Mildura since 2007. Child protection workers have been co-located at the Frankston site since 2008. A third MDC, in Geelong, is scheduled to commence service shortly. The Inquiry visited the MDCs in Mildura and Frankston. At a meeting with staff at Frankston, staff commented to the Inquiry that having police co-located with child protection workers has helped with cross-fertilisation of skill sets and training. In addition, the centre has helped break down cultural barriers in place between each agency.

The Inquiry notes that MDCs have demonstrated outcomes in relation to child sexual assault and physical assault including:

- Increased rates of children disclosing abuse;
- Higher rates of offender conviction;
- Increased rates of engagement of non-offending family members in believing and supporting the child;
- Higher rates of children and families linked to specialised support; and
- Anecdotal evidence of higher rates of retained contact with known sexual offenders.

The Inquiry accepts that a key part of a successful centre will be the building chosen to house the professionals involved. It must appear open and accessible to a local community – unlike a government building – as well as being low key and friendly in appearance – unlike a police station – to fit in with the community.

MDCs are jointly funded by Victoria Police and DHS. The Inquiry notes that further roll-out of the centres depends on locality, region and available resourcing. The Inquiry notes that a further rollout of the centres would require a more substantive governance structure. These centres, or any co-located service requires cross-agency board-like oversight and monitoring at a senior level, along with funding and service provision plans. However, MDCs provide an innovative model for outcomes that can be achieved when different government agencies pool their resources and expertise in a coordinated manner. Recommendations related to MDCs are discussed in Chapter 9.

In regard to child pornography offences, the Victoria Police Sexual Crimes Squad, in addition to investigating and prosecuting child pornography offences under the *Crimes Act 1958*, maintains an intelligence database on individuals or groups involved in child pornography, as well as maintaining a liaison function with other areas of the force and other government and external agencies such as the Australian Federal Police and the Australian Crime Commission.

Department of Planning and Community Development

Family violence reforms

As noted in the above section on DOJ, DPCD leads the policy coordination on family violence matters since the recent reforms.The Victorian Family Violence Reforms are unique in Australia and represent a sustained effort to build an integrated response by departments, agencies and service providers working across and outside of government. The Victorian policy context for family violence reforms is complex because it involves different departments and portfolio areas across government, multiple settings across the community and a suite of different policies and programs. Prior to the reforms there was fragmented service provision and no clearly defined family violence service system or cohesive policy framework.

The Inquiry notes that addressing family violence is a key component of a holistic systems approach to the issues of child vulnerability. The Inquiry also notes the anecdotal evidence that the family violence reforms are succeeding because of the coordination of government programs and services under a consistent framework.

Community development and planning

Chapter 7 discusses the importance of promoting community connectedness as a protective factor to vulnerability, while Chapter 2 identifies the community environment around a child as a key component in that child's development. The benefits of activities that make communities stronger have been well documented. People who live in disadvantaged areas often have limited social networks and fewer opportunities, which impacts on the wellbeing on individuals and the community as a whole (DPCD 2011).

DPCD, together with local governments, has a major role in planning communities so they are connected and socially inclusive. This includes strategic urban planning to integrate transport, shops, parks, libraries and other social infrastructure, without which socially disadvantaged families may become vulnerable. Vulnerable children and families, in particular, can benefit from good transport connections so they can attend school and other services, access employment opportunities and reduce financial stress that may be related to car ownership, as well as meet other families and attend community activities, so that they do not become socially isolated.

DPCD, with local government, also delivers programs and services to make towns and cities safer and more family friendly so that families and young people feel safe and encouraged to use civic facilities such as parks and gardens. DPCD implements policies to support Liveable Communities where everyone can be actively involved in the place where they live by:

- Promoting participation from all sections of the community;
- Using a community development approach to ensure all sections of the community are able to engage in land use and urban planning processes;
- Providing good regional and local governance that give communities the opportunity to decide their priorities and act on them;
- Encouraging investment in community development through funding programs and partnerships with government, private, philanthropic and local resources; and
- Aiming for sustainability so that communities continue to grow and improve.

The issue with many of the above strategic plans and policies formulated by DPCD is that while the objectives are sound, there are often no measurable goals in place to track progress against those objectives. Locally based action plans, such as that in the City of Bendigo, discussed below, are examples of measurable outcomes in community development.

Local Government Victoria

Local Government Victoria (LGV) is a business unit within DPCD and works cooperatively with Victoria's 79 local councils to ensure that Victorians enjoy responsive and accountable local government services. Through partnerships with councils and local government associations, LGV encourages and supports best practice and continuous development in local governance and local government service delivery. Through LGV, DPCD is responsible for service delivery outcomes in local government and compliance with government legislation and policies.

Local government

Child Friendly Cities

Many local governments in Victoria have developed Child Friendly City plans, based on the framework developed by the Municipal Association of Victoria. The City of Wodonga states that its plan is designed to provide a strategic direction for the development and coordination of educational care and health programs, activities and other local developments that impact on children aged up to eight years in the municipality. The plan is over a three-year period, complementing council's planning cycle. It is a guide for the long-term planning, development and evaluation of early years' programs, activities and facilities across all council departments. It enables Wodonga Council to make informed decisions and maximise its resources (City of Wodonga 2008).

The Bendigo City Council also has a Child Friendly City Plan. Auspiced by St Luke's Anglicare on behalf of the Bendigo Child Friendly City Leadership Group, is *The State of Bendigo's Children* report. Produced in March 2011, this report was funded through the 'local champions' Australian Early Development Index project in DEECD. This report benchmarks the outcomes of children and young people in Bendigo against the Victorian average applying an ecological perspective (discussed in Chapter 2), in a profile unique to Bendigo. Outcomes measured by the report will help the community decide where to:

- Focus existing resources;
- Make a case for additional resources; and
- Act as a baseline for knowing whether a difference has been made over time (Bendigo Child Friendly Leadership Group 2011).

The Inquiry notes that this is an excellent local initiative, facilitated by the state government.

Early childhood services

Local government also have a crucial role working with vulnerable children in maternal and child health (MCH) centres. The MCH service is free for all Victorian families with children aged under six. There are MCH centres in every local government area in the state.

The MCH service is funded in a shared arrangement between local governments and DEECD. MCH centres offer a universal primary health service for all Victorian families with children from birth to school age, focused on promotion, prevention and early detection of physical, emotional or social factors affecting young children and their families, and intervention where appropriate.

The Inquiry notes that given MCH centres are so important in early intervention with vulnerable children, it is problematic that the local government areas (LGAs) with the greatest need are in the lowest socioeconomic areas and have the least amount of local government funding, that is, because those LGAs have a low rating base for MCH services. A recommendation is made in Chapter 8 regarding the need for the state government to consider further injections of capital to assist better provision of MCH in disadvantaged communities.

In addition, local governments, along with some community and private sector organisations, deliver kindergartens and playgroups across Victoria. These state-funded services are another critical point for early intervention services.

Department of Premier and Cabinet

DPC is responsible for the Premier's *Families Statement*. First released in 2011, the *2011 Families Statement* was a discussion with Victorian families, with the central tenet that families are the cornerstone of our communities (DPC 2011). From 2012, benchmarks will be put in place so that the 2012 *Families Statement* will be a whole-of-government framework to help the government identify the outcomes it wishes to measure for families. Beyond 2012, the statement will be reviewed and released annually. The Inquiry notes that the Families Statement provides an opportunity for vulnerability outcomes to be measured as a key component of outcomes for Victorian families.

DPC is also the government's central coordinating department, and has a role in policy coordination of many of the above activities in this section.

Essential Services Commission

Reporting to the Minister for Finance, the Essential Services Commission (ESC) is Victoria's independent economic regulator of essential services supplied by the electricity, gas, water/sewerage, ports, and rail-freight industries. In addition to its regulatory decision making role in these sectors, the ESC also provides advice to the Victorian Government on a range of regulatory and other matters such as taxi fares. Its objective is to promote the long-term interests of Victorian consumers and seeks to achieve this objective by having regard to the price, quality and reliability of essential services.

In addition to those traditional industries above, the ESC has recently completed a review of the fee and funding model arrangements for vocational educational and training in Victoria. Because of its unique skills and perspective as an independent pricing regulator, the Inquiry has made recommendations in Chapter 19 about the suggested role of the ESC in regulating and advising the government on price settings for out-of-home care services. This will allow government to fund those services at the most efficient price. The issue of funding out-of-home care services is also discussed in detail in Chapter 10.

Commonwealth Government

At the national level in Australia, the Council of Australian Governments (COAG) initiated and agreed in 2009 on *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*. The framework outlined the importance of a broad approach extending beyond statutory child protection services to vulnerable children and their families. The framework identified a set of actions and strategies to achieve the high-level outcome that 'Australia's children and young people are safe and well' including six supporting outcomes:

- Children live in safe and supportive families and communities;
- Children and families access adequate support to promote safety and intervene early;
- Risk factors for child abuse and neglect are addressed;
- Children who have been abused or neglected receive the support and care they need for their safety and wellbeing;
- Indigenous children are supported and safe in their families and communities; and
- Child sexual abuse and exploitation is prevented and survivors receive adequate support (COAG 2009e).

As noted in Chapter 2, the COAG framework does not change the responsibilities of governments. States and territories retain responsibility for statutory child protection, as the Australian Government retains responsibility for providing income support, health and welfare services through such agencies as Centrelink, Medicare and Family Assistance. However, there is significant room for improvement where Commonwealth services and Commonwealth funded services interact with state programs and services to address the needs of vulnerable children and families.

As discussed in Chapter 13, the Commonwealth Department of Immigration and Citizenship is responsible for providing settlement support to newly arrived refugees and delivers this through the Humanitarian Settlement Services (HSS) program. Many culturally and linguistically diverse families settle smoothly in Australia. However, some families of culturally and linguistically diverse backgrounds are highly vulnerable, particularly newly arrived refugees. An onshore orientation program is also available to all clients aged 15 and over that sets out critical skills and knowledge culturally and linguistically diverse people need to live and function independently in Australian society, and to continue their settlement beyond the HSS program. Exit from the HSS program is based on clients achieving clearly defined settlement outcomes.

It is expected these settlement outcomes will generally be reached between six and 12 months after the refugee's arrival.

The Inquiry considers that the Commonwealth should do more to ensure the settlement of refugees and that the *National Framework for Protecting Australia's Children 2009-2020* should be reconsidered by COAG to include reference to culturally and linguistically diverse communities. Recommendations relating to this are outlined in Chapter 13.

Summary

What is clear is that protecting Victoria's vulnerable children is a very complex multilayered task that cuts across many portfolios and government agencies. This includes, for example: early intervention and support by a MCH nurse; a conversation about a child's needs at a parent's medical appointment for their mental health problems; working with an incarcerated parent; referring a mother to a community support service after family violence; or, where necessary, seeking custody of a child or young person for the child or young person's protection and wellbeing – ensuring that this child or young person is provided with health, education and other support services – and trying, where possible, to reintegrate that child or young person back into their family, where that is determined to be in the best interests of the child.

What is needed then for governments to properly address vulnerability is:

- Very strong accountability mechanisms to ensure government agencies are fulfilling their prime responsibilities in relation to vulnerable children and young people; and
- A very high degree of inter-agency cooperation and coordination to support government departments and agencies to pull in the same direction.

20.4 Accountability of government agencies for outcomes for vulnerable children and young people

As stated above, several government agencies are responsible for services that affect outcomes for vulnerable children and young people. At present, agencies (other than DHS) are not directly held to account for meeting their responsibilities to vulnerable children, nor is it clear to the Inquiry that these agencies have specific and well-resourced initiatives that would enable then to meet their responsibilities to vulnerable children.

Stronger accountability and scrutiny of agencies' performance will encourage and promote a clearer focus on achieving outcomes for vulnerable children, leading to better outcomes for vulnerable children. The Inquiry acknowledges government is bound by traditional roles of portfolio responsibility, and that the matter of vulnerability cannot be captured by one ministerial portfolio or department. The Inquiry believes that in fact individual agencies need to be more accountable for their specific delivery of services in relation to vulnerable children and families.

There is also room for urgent and significant improvement in the way in which government agencies and bodies are collectively held to account for addressing the needs of vulnerable children. As well as much stronger accountability of independent agency goals, the Inquiry notes that there must also be stronger accountabilities in place for whole-of-government goals. There is currently no whole-of-government framework to coordinate and drive government efforts to improve outcomes for vulnerable children. There are no agreed objectives, reform directions, priorities or performance measures. There is no agreed definition of what constitutes vulnerability.

As discussed in Chapter 6, the Inquiry considers that Victoria's system for protecting vulnerable children requires a unified policy and service delivery framework that sets out defined policy objectives and indicators for evaluating progress. In Chapter 6, the Inquiry recommends that this accountability could be achieved by the government developing and adopting a whole-of-government framework for improving outcomes for vulnerable children. This framework could include whole-of-government objectives, performance measures, and responsibilities, with defined departmental responsibilities and protocols for coordinated service delivery at the local level (a whole-of-government Vulnerable Children and Families Strategy). In Chapter 6, the Inquiry recommends the development and implementation of this framework.

Government departments should be more accountable to ministers for delivery of coordinated services consistent with whole-of-government strategies. Ideally, relevant ministers should set the direction and hold departments to account for their performance. This could be achieved through a Cabinet Committee to oversee the development of the Vulnerable Children and Families Strategy, with a clear accountability framework, and monitoring of departmental performance against this framework.

Recommendation 80

The Government should establish a Children's Services Committee of Cabinet comprising the minsters responsible for community services, children, education, health, community development and justice to oversee:

- The development and implementation of the whole-of-government Vulnerable Children and Families Strategy;
- The coordination of the service delivery by government agencies, particularly to vulnerable children and their families; and
- Holding government agencies accountable for their delivery of services with regard to vulnerable children.

As stated above, government departments each require stronger independent agency goals to direct their efforts to vulnerable children and young people. As discussed earlier in this chapter, DEECD is responsible for educating the general population of children in Victoria. However, it is not currently responsible, under the *Children Youth and Families Act 2005*, for the educational outcomes of children in out-of-home care. This should not be the responsibility of DHS. Likewise, DOH should be responsible for the health outcomes of children in out-of-home care – as it is for all other Victorians. This should not be the responsibility of DHS.

Recommendation 81

The Government should amend relevant legislation to provide that the Secretaries of the Department of Education and Early Childhood Development and the Department of Health are responsible for the education and health outcomes, respectively, of children and young people in State care, with responsibility for these services under the *Children Youth and Families Act 2005* being removed from the Secretary of the Department of Human Services.

The Inquiry considers that additional accountability for individual agency and whole-of-government goals could be achieved if the progress against the whole-of-government Vulnerable Children and Families Strategy could be publicly reported upon by the proposed Commission for Children and Young People. The proposed Commission for Children and Young People, which is discussed in more detail in Chapter 21, would report directly to Parliament on the overall performance of all government agencies, thus providing strong accountability for departments to improve their efforts and transparency around outcomes against an agreed set of government objectives.

Recommendation 82

Government performance against the whole-of-government Vulnerable Children and Families Strategy should be reported on by the Commission for Children and Young People.

20.5 Inter-agency cooperation – role and accountability of the Children's Services Coordination Board

The implementation of the whole-of-government Vulnerable Children and Families Strategy will require a high degree of inter-agency cooperation and coordination. The CSCB is the most appropriate body to undertake this function; however, the Inquiry considers that, the CSCB will need to be much more effective than it has been to date and will need to be held to account for its performance, if it is to effectively implement the Vulnerable Children and Families Strategy.

The CSCB is established under the CWS Act and brings together key decision makers across agencies and aims to ensure coordination of activities impacting on children.

The CSCB is comprised of the Secretaries of DPC, DTF, DEECD, DHS, DOH, DPCD and DOJ, and the Chief Commissioner for Police. The CSCB is chaired by the Secretary of DEECD.

The role of the CSCB is to coordinate the efforts of different programs and consider how to best deal with cross-portfolio issues and specifically to:

- Review annually and report to the minister on the outcomes of government actions in relation to children, particularly the most vulnerable children in the community; and
- Monitor administrative arrangements to support coordination of government actions relating to children at local and regional levels (s. 15, CWS Act).

The CSCB meets at least three times a year and administrative support is provided by DEECD. The CSCB does not have any dedicated resources (DEECD 2011a). The major areas of CSCB work have been:

- Annual reporting to government on child and youth outcomes through *The state of Victoria's children* reports, most recently on Aboriginal children. These reports are provided to the Minister for Children and Early Childhood Development and the Minister for Community Services for submission to Cabinet. To date, four reports have been published;
- Sponsorship of the development of VCAMS, drawing on administrative data from across government and new collections developed in partnership

between departments, which also supports local and statewide reporting and a growing and regularly updated catalogue of evidence;

- A web-based delivery system to make VCAMS data accessible across government and increasingly to the public is also being developed;
- Development of proposals for joined-up action to address youth disengagement and youth vulnerability, in particular leading to the Youth Partnerships initiatives;
- Consideration of proposals for joined-up action targeting young sole parents, school-leavers with an intellectual disability, and families affected by bushfires; and
- Monitoring local and regional coordination, including by research in specific LGAs and across local government.

While the datasets and reporting of outcomes listed above are valuable tools that have better informed service delivery, the CSCB needs to come together to broker solutions and develop substantive plans to improve implementation and coordination of government services for vulnerable children. This will be particularly important if the Vulnerable Children and Families Strategy is to be successful.

There is significant scope to improve the coordination of service delivery across agencies to drive improved outcomes for vulnerable children. In his submission to the Inquiry, the Child Safety Commissioner states that:

> Despite the commitment to [principles of collaboration, shared responsibility and cooperation], it is clear that 'silos' within and between departments and professional groups still exist (Office of the Child Safety Commissioner, p. 3).

In another example, the Victorian Ombudsman found in 2010 that there was very poor compliance with the requirements of the DEECD-DHS partnering agreement to improve educational outcomes for children in out-of-home care (Victorian Ombudsman 2010, p. 96).

Members of the CSCB advised the Inquiry that engagement by Secretaries in its work has been variable and that the CSCB needs a different mandate and needs to be more operational. Ideas for change were suggested including that its activities need to be reflected in the performance plans of Secretaries and the CSCB should be chaired either by the Secretary of DPC or by an independent chair appointed by the Premier. The Inquiry notes that at its meeting with the CSCB, of the eight members or acting members in attendance, only three were of Secretary level: one Secretary and two acting Secretaries. The other five acting members included an acting Deputy Commissioner of Police, two executive directors and two directors.

The Inquiry met with the new chair of the CSCB, the newly appointed Secretary of DEECD in November 2011, who suggested a number of improvements to increase the effectiveness of the CSCB, including: an annual work plan; a set of performance indicators for vulnerable children; and broader reporting arrangements. These suggested improvements align with the Inquiry's recommendations and should be implemented immediately.

A stronger role for the CSCB with greater accountability to ministers could achieve improvements in coordination of government services, with regard to vulnerability. This could be done by requiring the CSCB to submit a work plan and a report of achievements on performance to the proposed Children's Services Committee of Cabinet. The CSCB should also implement the Vulnerable Children and Families Strategy and report on its progress of this to the Cabinet Committee.

Finding 18

At present there is no evidence that the Children's Services Coordination Board is effective in its role of coordinating and driving government action to address the needs of vulnerable children.

The Inquiry finds that amendments to the role and accountabilities of the Children's Services Coordination Board may achieve the cultural changes required to improve collaboration and coordination at an agency level. This will be particularly important if the proposed Vulnerable Children and Families Strategy is to be successful.

Area-based service delivery and coordination

Delivery of public services in Australia has traditionally been provided by a mix of the public, private and not-for-profit sectors, depending on the prevailing economic and political circumstances (Keast & Brown 2006, p. 41). Over time there has been increased contracting out of the delivery of traditional public services to the private or not-for-profit sectors. In addition, governments have also sought to deliver programs and services through networks and partnerships involving local government and local area providers.

The aim of local area partnerships, according to a study of the Organisation for Economic Cooperation and Development (OECD), is to identify synergies that draw on local knowledge and goodwill to better coordinate the delivery of existing government services. The OECD further argues that local area partnerships seek better policy outcomes through increasing coordination between not only policies and programs but also between government-funded services and across levels of government and adapting them to local conditions (OECD, in Curtain 2002, p. 50).

Across different regions significant differences in quality of life outcomes persist, making area-based partnerships an attractive proposition to governments and to local and regional communities. Local area partnerships allow local actors to participate in the policy and program strategies for their local area (Curtain 2002, p. 52).

Currently, the Victorian Government has broadly categorised Victoria into eight administrative regions: three for metropolitan Victoria, and five for rural and regional Victoria. Each region has a Regional Management Forum (RMF) that is 'championed' by a departmental Secretary. The RMFs meet to share information and encourage cooperation between departments and local government, as well as working with local communities to determine and deliver key priorities.

Regional service delivery by government, in partnership with local government, other local service providers and communities, can be a very effective way of developing tailored policy solutions, particularly where there are regional characteristics to problems, such as those involving vulnerable children and young people.

To succeed, the proposed Vulnerable Children and Families Strategy must be linked to the actual circumstances in Victorian communities. This means that the supporting performance measures or indicators need to be framed by not only statewide goals and measures, but also framed on an area basis to provide a more granular progress update on how the state is faring. As a further support, Chapter 8 proposes Area Reference Committees to oversee the monitoring, planning, coordination and management of operational issues between locally based CSOs and DHS staff.

Recommendation 83

The *Child Wellbeing and Safety Act 2005* should be amended to give the Children's Services Coordination Board greater operational responsibility for coordinating policy, programs and services that affect children and young people. Activities would include:

- Overseeing implementation by government agencies of the Vulnerable Children and Families Strategy and reporting on this to the Children's Services Committee of Cabinet;
- Proactively fostering the development of local area partnerships, through the regions and Regional Management Forums, to assist in the coordination and delivery of area-based policies and services to address the needs of vulnerable children, including structuring and reporting on area-based performance indicators;
- Proposing an annual work program for approval the Cabinet Committee;
- Reporting annually on activities and achievement; and
- Functioning as a source of advice on budgetary matters regarding vulnerable children.

Sharing of information between agencies

Appropriate sharing of information between agencies is vital to achieving good outcomes for vulnerable children and young people. Without appropriate sharing of information, agencies and service providers may not have all of the necessary information about a child or family that could assist with their situation.

The legislative impediments to sharing of information, due to privacy restrictions, regarding child protection cases were formally addressed in the 2005 legislative amendments. Once a child or young person has been referred to Child FIRST or notified to statutory child protection, staff in the relevant CSO or DHS or the police have the legislative ability to share relevant information about that child or young person. Despite this, the Inquiry has received submissions from stakeholders that indicate there are still some issues in the sharing of information between and within government agencies. The Inquiry notes that deficiencies in the execution of sharing of information between agencies, once a child or young person has been reported, to some extent can be addressed through better workforce training and education.

The Inquiry also notes that there are weaknesses in information sharing between agencies or providers at the early intervention stage, where that information sharing would be voluntary, that is, where there is no notification to statutory child protection or Child FIRST. In these cases, the adult in question's permission would be required before a service provider could share information. For example, at a MCH visit the nurse may think it would be useful to speak to the mother's doctor to ascertain information about her health to help with the child's health or development problems. The nurse in this case would need permission from the person in question. This is an appropriate privacy protection for the person in question. However, the Inquiry considers that there are some beneficial effects from sharing this sort of information at the early intervention stage. The Inquiry notes that what is required is a cultural change and strong protocols so that service providers and health care professionals seek to explain to clients why sharing of information with other agencies is beneficial and seek their permission to do so. The Inquiry, however, acknowledges the importance of confidentiality in relation to children and young people who can be adversely affected by inappropriate sharing of information.

Finding 19

Legislative changes in 2005 addressed the legal impediments to sharing of information, due to privacy, regarding child protection cases. However, some organisational barriers to the appropriate sharing of information between and within government agencies still exist. The Inquiry finds that matters such as this should be addressed and resolved by the Children's Services Coordination Board.

In addition, a cultural change by some health and other service providers, led by government, is required to facilitate better information sharing to improve the outcomes of vulnerable children and young people.

20.6 The role of the Victorian Children's Council

The VCC, established under the CWS Act, was created to provide high-level policy advice to the Premier, the Minister for Children and Early Childhood Development and the Minister for Community Services. The VCC is a ministerial advisory body.

VCC members are recognised experts in a broad range of children's policies and services. They have been selected as individuals and not as representatives of their organisations or interest groups. The Child Safety Commissioner is a member ex-officio (s. 9, CWS Act).

The VCC is intended to be a source of advice to government on all matters relating to children aged 0 to 18 years in Victoria. Its mandate is to be forward looking, acting as an active advisor to government on how to meet key challenges facing Victorian families and to improve child outcomes, particularly in relation to vulnerable children.

The VCC attempts to actively engage with Victorian Government planning, to help families give their children the best start in life, and to support young people in the transition to adulthood. The VCC is involved in assisting Victorian government departments to build a stronger evidence base and understanding of how to improve child outcomes and opportunities. The VCC meets every two months or as required and is supported by DEECD. The VCC does not sponsor initiatives or have its own budget or any dedicated staff (DEECD 2011a).

The VCC is not part of the coordinating framework for directing government services to address the needs of vulnerable children and young people. However, an effective VCC could be very important in advising government in the development of such policies as those to be contained in the proposed whole-of-government Vulnerable Children and Families Strategy.

The VCC met five times in 2011 and has identified a number of themes that it will be addressing in forthcoming meetings, including: integration of major cross-portfolio issues; how universal services have an impact on disadvantage; and identification of gaps in monitoring how children are faring and the effectiveness of service systems.

The Inquiry is concerned that the VCC is not currently playing an effective role in advising the government or working proactively to address strategic opportunities for addressing the needs of vulnerable children.

The Inquiry met with the then Acting Chair (now Chair) of the VCC and with the VCC. The VCC stated to the Inquiry that it was seeking to clarify its role. The Inquiry believes the VCC can play an important role in providing independent advice to the government.

The Inquiry considers that the VCC can be strengthened in a number of areas. Government should receive an annual work plan from the VCC. This will allow government to ensure the VCC has an appropriate focus and authority from government to conduct its work. In addition, the VCC should be given the ability to receive references from government, and the ability to be a source of expert advice for the proposed Commission for Children and Young People, if requested by the Commission. This will ensure that the advice of the VCC is a part of the systems approach to addressing vulnerability.

There are two points relating to membership of the VCC that have been considered by the Inquiry. First, the Inquiry notes that the VCC does not currently have an expert on the needs of children from culturally and linguistically diverse communities. This should be addressed by the government appointing a person to the VCC with expertise in this area in order to improve outcomes for vulnerable children and young people from culturally and linguistically diverse backgrounds.

Second, it is noted that the current Child Safety Commissioner is an ex-officio member of the VCC. Given the role and function of the Commission for Children and Young People recommended in Chapter 21, the Inquiry considers that it is inappropriate for a Commissioner to have membership of the VCC.

Further, the government should review the performance of the VCC after two years to ensure the Inquiry's recommended reforms are effective.

Recommendation 84

The Government should strengthen and clarify the role of the Victorian Children's Council by:

- Requiring the development of an annual work plan to be signed off by the Premier;
- Providing for the Premier and Ministers for Children, Early Childhood Development and Community Services to refer matters to the Victorian Children's Council for consideration;
- Allowing it to also provide advice to the proposed Commission for Children and Young People, if requested by the Commission; and
- Appointing of a person with expertise in the needs of children of culturally and linguistically diverse backgrounds.

Further, the *Children Youth and Families Act 2005* should be amended to remove the Child Safety Commissioner, or the successor commission, from the membership of the Victorian Children's Council.

The Victorian Children's Council should be reviewed after two years.

20.7 Conclusion

This chapter has provided analysis of the current roles and responsibilities of government agencies. It shows that there is an urgent need for improvement by government departments and bodies in delivering and advising on the needs of vulnerable children. There is little evidence that the CSCB service delivery effectively. The VCC's role can be important but is currently unclear. Both of these bodies have a vital role in relation to vulnerable children.

This chapter has provided recommendations to reform accountability arrangements with defined departmental responsibilities and protocols for coordinated service delivery at the local level (a whole-of-government Vulnerable Children and Families Strategy), to be developed with oversight from a new Cabinet Committee and publicly reported on to Parliament by the proposed Commission for Children and Young People. These reforms would provide strong accountability for government departments to improve their efforts and transparency around outcomes against an agreed set of government targets.

In addition this chapter has provided recommendations for better coordination and advice through improvements to the arrangements of the CSCB and the VCC. The CSCB should be responsible for implementing the proposed Vulnerable Children and Families Strategy and the proposed Cabinet Committee should hold it to account for this task. The changes to the VCC should ensure it plays an effective role, with a review to ensure this occurs. Reform to both of these bodies will assist Victoria to move to a holistic systems approach to tackling the needs of vulnerable children.

Part 7: System governance

Chapter 21:
Regulation and oversight

Chapter 21: Regulation and oversight

Key points

- Regulation and oversight are essential functions in the system for protecting Victoria's vulnerable children and young people. External scrutiny of service delivery can provide independent assurance that services are well managed, safe and fit for purpose, and that public money is being used properly.
- The Department of Human Services' (DHS) current approach to regulating community service organisation (CSO) performance does not do enough to identify, address and prevent the major and unacceptable shortcomings in the quality of out-of-home care. In seeking to reduce the regulatory burden on CSOs, DHS has failed to maintain an adequate level of external scrutiny of CSO performance. In particular, it is unacceptable that:
  - all CSOs are subject to the same cycle of one independent external review every three years, regardless of their performance; and
  - there is no program of unannounced inspections to act as a quality assurance mechanism to prevent incidents or concerns from arising.
- The Inquiry recommends that DHS should adopt a risk-based approach to the regulation of CSO performance.
- Given that DHS relies on CSOs to deliver services that are central to DHS achieving its core objectives, the Inquiry recommends that DHS retain responsibility for the regulation and monitoring of the CSOs, provided this function is independent and subject to independent oversight.
- The Inquiry considers there to be insufficient independent oversight of Victoria's system for protecting vulnerable children. The Child Safety Commissioner has limited powers and functions compared with commissioners and guardians in other states and territories.
- The Inquiry recommends that the Government establish a Commission for Children and Young People. The new Commission would oversee and report to ministers and Parliament on all laws, policies, programs and services that affect the wellbeing of vulnerable children and young people. The Commission would replace the existing Child Safety Commissioner, but retain the Commissioner's current roles and functions. The Commission would also assume the powers currently granted to the Ombudsman under section 20 of the *Children, Youth and Families Act 2005*.
- The data reported by DHS and external agencies do not provide the basis for a comprehensive assessment of the performance of child protection, out-of-home care and family services, in particular with regard to their effect on the incidence and impact of child abuse and neglect. The Inquiry recommends improved public reporting to help ensure government agencies are accountable for their actions, and to support continuous improvement in individual services and across the sector.
- The Child Safety Commissioner and the Victorian Child Death Review Committee make an important contribution to overseeing the system through reviewing child deaths. However, the Inquiry recommends that the current two-stage review arrangements be streamlined into a single process undertaken by the proposed Commission for Children and Young People.

21.1 Introduction

Regulation and oversight are essential functions in the system for protecting Victoria's vulnerable children and young people. External scrutiny of service delivery can provide independent assurance that services are well managed, safe and fit for purpose, and that public money is being used properly. In this way, regulation and oversight are essential to ensuring that the delivery of services for vulnerable children and young people and their families is fair and accountable to Parliament and the public (Crerar 2007, p. 4).

Regulation and oversight have an important role to play in improving the transparency of the overall system. Reporting the outcomes of regulatory and oversight activity can provide Parliament, ministers and departments with additional information about the performance of the system and outcomes for clients. This can support government efforts to focus services more effectively on client needs. External scrutiny can also be a catalyst for improvements in the way that individual providers deliver services (Crerar 2007, p. 18). Effective regulation and oversight are therefore to the long-term benefit of vulnerable children and young people and their families.

Several submissions to the Inquiry maintained that the unhelpful nature of some media reporting and the public debate concerning the system for protecting Victoria's vulnerable children had contributed to a loss of public trust and confidence in the system (for example, Gippsland Centre Against Sexual Assault submission, p.5). Transparent regulation and oversight, with better public reporting or information about the performance of the system, is fundamental to restoring and maintaining public trust.

The Inquiry considers regulation and oversight to be separate and distinct functions within the system for protecting Victoria's vulnerable children.

Regulation

Regulation is one of the key instruments available to government to achieve its social, economic and environmental objectives and to respond to community needs (Victorian Competition and Efficiency Commission 2011, p. XXIII). While there is no single definition of regulation or the range of measures and mechanisms that it comprises, it is commonly held that government regulation involves an intentional measure or intervention by a government agency that seeks to influence the behaviour of individuals, businesses and not-for-profit organisations (Freiberg 2010, p. 21).

Many government regulators employ a narrow conception of regulation that focuses on legal instruments such as primary and delegated legislation. Under broader definitions, a range of non-rule based mechanisms – such as economic incentives, education and information – are also considered to be forms of regulation that are used by government to achieve its goals.

The rationale for government regulation may be to raise economic welfare, or to achieve social or environmental objectives. Economic regulation generally seeks to improve economic outcomes by addressing market failures, whereas social regulation seeks to manage the risk of harm to individuals or the community, to pursue government's policy objectives, or to maintain public confidence and trust in government and the services in question.

This chapter examines the system of registration, monitoring, investigation and review of community-based family services (family services) and out-of-home care services delivered by community service organisations (CSOs) and individual carers on behalf of the Department of Human Services (DHS). The delivery of statutory child protection services, a form of regulation of the family's care for the child, is examined in Chapter 9.

The government is responsible and accountable for protecting vulnerable children and families and improving their wellbeing. To meet these responsibilities, the government funds CSOs to provide effective family services and out-of-home care. CSOs and individual carers play a critical role in responding to the needs of vulnerable children and their families. The processes put in place by government to fund and regulate CSOs and carers help to ensure Victoria's vulnerable children are protected from harm and that CSOs meet their obligations to deliver effective services.

Oversight

Oversight involves an external body reviewing the conduct and decisions of government agencies and public officials. The review may take the form of an investigation, inspection or audit and can be based on a complaint, a legal obligation or the oversight body's own discretion.

Oversight seeks to maintain the integrity of government agencies and public officials by holding them accountable for actions and decisions they make while carrying out their duties. Accountability is a keystone of representative government, as it both enhances public confidence in government and helps ensure government is responsive to the interests of the public (NSW Ombudsman 2010, p. 1).

In Victoria there are two primary oversight bodies that have the power to investigate, review and audit government agencies and public officials: the Victorian Ombudsman and the Auditor-General. The Child Safety Commissioner provides an additional layer of oversight regarding children in out-of-home care, on the basis that they 'are a particularly vulnerable group and require an extra voice on their behalf' (Parliament of Victoria, Legislative Assembly 2005a, p. 1,367). Many other jurisdictions have established commissioners for children and young people with broader oversight powers.

Prior to the 2010 election, the Victorian Government (then in opposition) committed to establish an independent Children's Commissioner who would report directly to Parliament and would be able to initiate reviews regarding children who have been abused or neglected (Victorian Liberal Nationals Coalition 2010, p. 19).

Structure of the chapter

This chapter addresses the Inquiry's Term of Reference relating to the oversight and transparency of the child protection, care and support system, and whether changes are necessary in oversight, transparency and/or regulation to achieve an increase in public confidence and improved outcomes for children. The chapter describes and assesses the existing regulatory arrangements that apply to the delivery of family services and out-of-home care, including the governance of those regulatory functions, and examines the oversight and transparency of the system for protecting Victoria's vulnerable children.

21.2 Regulation of family services and out-of-home care

The *Children, Youth and Families Act 2005* (CYF Act) provides for CSOs to deliver services on behalf of DHS to 'meet the needs of children requiring protection, care or accommodation' (s. 44). Chapters 8 and 10 describe how DHS engages CSOs to deliver family services and out-of-home care.

The regulation of family services and out-of-home care is a form of social regulation with several overlapping objectives:

- To reduce the risk of harm to, or to protect, vulnerable children and their families, with the priority on the child's best interests;
- To support government policies related to improving the wellbeing of vulnerable children and young people; and
- To contribute to public trust and confidence in the system protecting Victoria's vulnerable children.

The *Victorian Guide to Regulation* (Victorian Government 2011e, pp. 2-3) notes that it is not possible for government to guarantee a completely risk-free society, or to prevent every event that might cause harm. Risk-focused regulation is therefore concerned primarily with the management of *unacceptable risk* (Freiberg 2010, p. 13). Under a risk-based approach, rather than regulation involving a series of ad hoc and episodic responses to incidents as they occur, risk assessment and management become the central organising principles underpinning regulatory strategy.

The measure of unacceptable risk is the probability of harm. Regulators often make complex judgments in an environment containing a high degree of uncertainty. When making assessments of risk, regulators can overestimate or underestimate the actual degree of danger. Low probability events can occur. With the benefit of hindsight, it is easy to look back at an adverse event and overestimate how visible the signs of danger were (Munro 2011b, p. 18). This is sometimes described as hindsight bias.

Over recent years there have been significant changes in governments' understanding of good regulatory practice. There has been a shift away from prescriptive regulation – that specifies in relatively precise terms what is required to be done – towards more flexible approaches, such as performance-based regulation, which specifies desired outcomes or objectives but not the means by which they must be met (Freiberg 2010, pp. 88-89).

There are a number of factors that makes the regulation of family services and out-of-home care different to the regulation of most other markets. The government is the sole funder of the services, and clients often do not have the opportunity or capability to choose between service providers. In the case of out-of-home care, most services are provided by individual carers at arm's length from CSOs, and the CSOs effectively act as quasi-regulators of these carers. Part of the regulatory task, therefore, is to ensure there is adequate public accountability for the delivery of these services.

The capacity of the community sector has a bearing on the government's regulatory task. As described in Chapter 16, some CSOs are relatively large not-for-profit enterprises that receive significant funding from DHS and can be reasonably expected to have appropriate governance arrangements in place to provide for effective service provision and proper accountability. There are a significant number of smaller CSOs, however, that receive small amounts of funding and are more likely to have weaker governance and less capacity for quality assurance.

Victoria's approach to regulating family services and out-of-home care is similar to that adopted in other sectors serving vulnerable clients, such as residential aged care, home and community care, disability services, and early childhood education and care (see Table 1 in Appendix 14). Consistent with the trend towards more performance-based approaches, these regulatory systems typically consist of four main elements:

- Registration, licensing or accreditation of service providers;
- A set of performance standards that service providers must meet;
- Monitoring and review of service providers' performance against the standards; and
- Some system of sanctions for noncompliance.

Most other Australian states and territories adopt a similar approach to Victoria to regulating out-of-home care, involving licensing or accreditation of providers, approval or registration of foster carers, and monitoring of providers' compliance with a set of performance standards. In 2011 the Commonwealth, states and territories agreed to national standards for out-of-home care, that aim to ensure children in need of out-of-home care are given consistent, best practice care, no matter where they live (Department of Families, Housing and Community Services and Indigenous Affairs 2011).

The regulatory framework applying to family services and out-of-home care in Victoria is made more complex by the number of related processes that DHS administers in order to fulfil its other roles and responsibilities. Several of these processes also constitute a form of regulation. These include:

- Registration and disqualification of carers;
- Investigation of critical incidents;
- Investigation of abuse in care and quality of care concerns; and
- Monitoring of CSOs as a result of their service agreements.

Figure 21.1 illustrates the connections between these processes, and illustrates how issues are escalated if they are not addressed by the CSO.

21.2.1 Registration and monitoring of standards

Registration of CSOs

Under the CYF Act, the Secretary of DHS may register a CSO to provide: out-of-home care services; community-based child and family services; or other prescribed categories of service (s. 47). To be eligible for registration, a CSO must:

- Be established to provide services to meet the needs of children requiring care, support, protection or accommodation and of families requiring support; and
- Be able to meet the performance standards that apply to CSOs under the Act.

CSOs are registered for a period of three years. The register of CSOs containing contact details and the category of registration is publicly available on the DHS website.

As at June 2011, there were 107 CSOs on the DHS register. Fifty-six CSOs were registered to deliver out-of-home care and 88 CSOs were registered to deliver community-based child and family services. Thirty-seven CSOs were registered to deliver both out-of-home care and community-based and family services. A further 18 'light touch' CSOs are not required to be registered because they receive less than $100,000 from DHS to deliver family services.

Performance standards

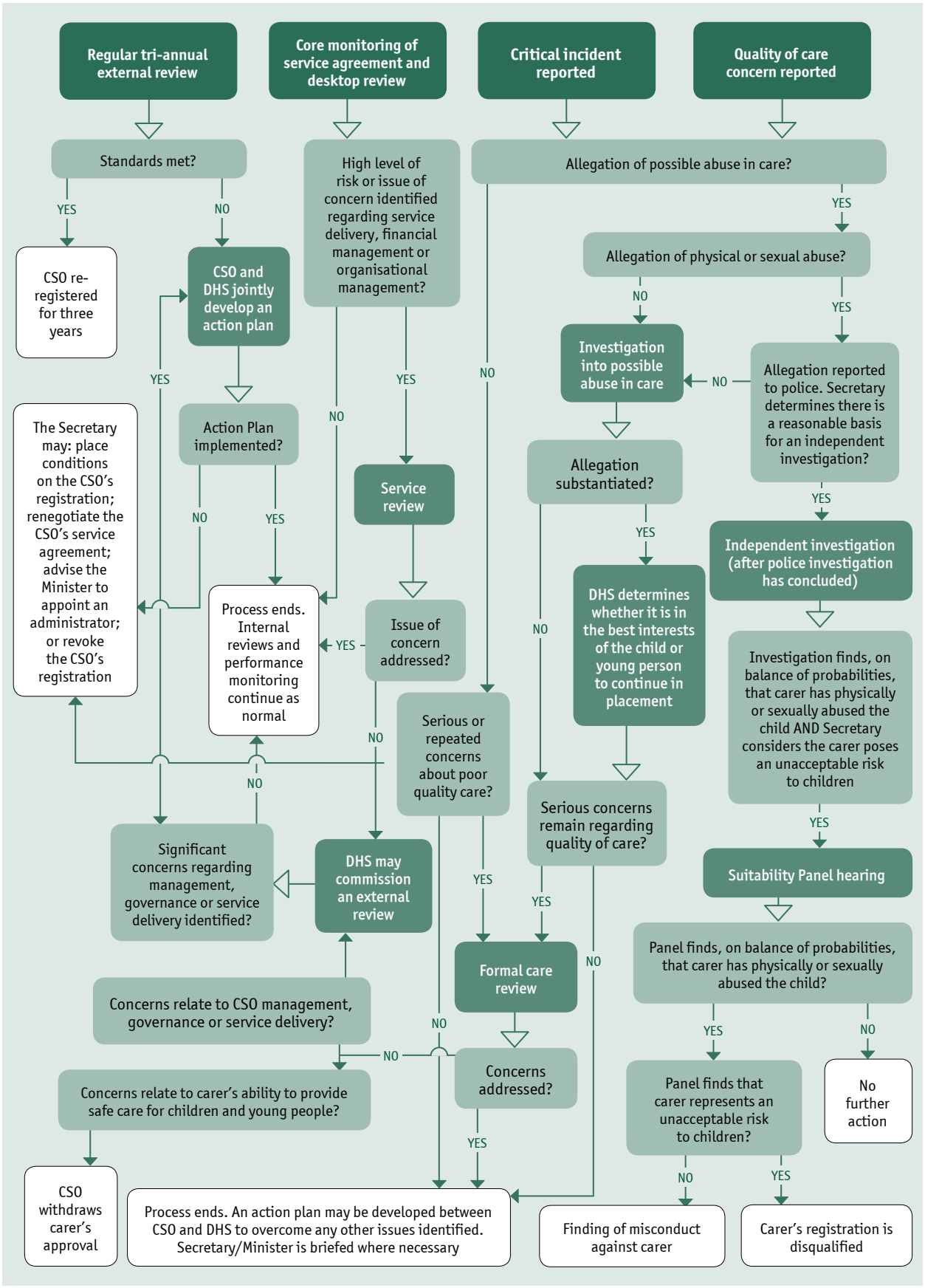
The CYF Act allows the Minister to determine performance standards to be met by registered CSOs. The standards came into effect in May 2007, and apply to both family services and out-of-home care services. They were developed with the aim of:

- Ensuring consistency in quality for family and out-of-home care services;
- Setting an organisational framework to help support CSOs to provide quality services for children, youth and families;
- Defining the standards of care/support that children, youth and their families can expect;
- Providing guidance about best practice approaches to support services to achieve their organisational goals; and
- Enabling services to monitor and review performance on an ongoing basis that can inform service improvement (Victoria Government Gazette 2007).

Table 2 in Appendix 14 summarises the standards and performance criteria that apply to CSOs.

DHS has announced that in July 2012 it will implement a single set of standards to apply to all funded organisations delivering out-of-home care and family services, homelessness assistance services and disability services (see Table 3 in Appendix 14). The DHS standards will replace the performance standards that currently apply to these service providers. The DHS standards comprise four standards and 16 criteria – a significant reduction on the eight standards and 37 performance criteria under the existing standards.

Figure 21.1 Victoria's system for regulating family services and out-of-home care



Source: Adapted from DHS 2007, pp. 12-14

The intention is to reduce the regulatory burden on funded organisations, so that for the purposes of registration, they need only be independently reviewed once every three years regardless of the number of departmental programs they are funded to provide. The Inquiry's concerns regarding this arrangement are discussed in section 21.2.8.

In addition to performance standards, section 61 of the CYF Act requires registered CSOs to:

- Provide services in a manner that is in the best interests of the child;
- Ensure the services provided are accessible and made widely known to the public; and
- Participate collaboratively with local service networks.

Monitoring and review of standards

The CYF Act grants DHS extensive powers to monitor and review the performance of registered CSOs. This includes the power to:

- Visit a CSO at any time to:
  - inspect its premises, documents and records;
  - see any child who is receiving services;
  - make inquiries relating to the care of children; and
  - make any other necessary inspections regarding the management of the CSO (s. 64); and
- Undertake inquiries relating to the performance of a CSO (s. 62); and
- Conduct an independent review of the performance of a CSO (s. 63).

In practice, most CSOs are subject to an external review once every three years, as part of their re-registration process. DHS appoints a panel of independent organisations to undertake external reviews. DHS does not regularly conduct unannounced inspections of CSOs. An irregular external review of a CSO may be commissioned if an issue of concern is identified and not addressed by the CSO. The circumstances in which this may arise are discussed in section 21.2.3, section 21.2.4 and section 21.2.5.

Terms of reference for an external review

External reviews evaluate the quality of services provided by a CSO in relation to the performance standards. Other terms of reference for an external review would depend on any identified concerns regarding the CSO. Terms of reference can include:

- Examination of client management system and safety polices;
- Suitability of corporate governance arrangements;
- Evaluation of strategic and business planning and management;
- Evaluation of effective management of funds; and
- Examination of specific client or community complaints (DHS 2007, p. 13).

A number of sources are used to inform external reviews, including:

- Desktop reviews examining the CSO's most recent internal review report and other documents;
- On-site inspections;
- Client and staff file reviews;
- Interviews with staff, volunteers and board members; and
- Interviews with clients (DHS 2011n, p. 13).

The first external reviews following the introduction of the performance standards were completed between May 2009 and March 2010. External reviews of 99 CSOs were undertaken. The reviewers' contracts with DHS expired following this period, and no further external reviews were undertaken in 2010 or 2011. New organisations were engaged in 2011 to undertake a second round of external reviews, prior to the introduction of the DHS standards.

In the years that CSOs are not subject to an external review, they are required to undertake a self-assessment, or internal review, in order to show they meet the standards. DHS has published an *Evidence Guide* (DHS 2011h) to assist CSOs to prepare for both self-assessments and external reviews. DHS states that:

> This mix of internal and external reviews provides an integrated quality improvement and quality assurance process that enables a CSO to both internally assess its strengths and use emerging practice to reflect on and refine the way services are delivered, and to have an external critique of its service delivery that builds community confidence (DHS 2011h, p. 1).

The results of CSOs' internal reviews are provided to DHS to allow DHS staff to work with CSOs to improve the quality of services provided. The reviewers submit the findings of external reviews to both the CSO and DHS. The performance summary and action plan arising from the internal and external reviews of out-of-home care providers are also provided to the Office of the Child Safety Commissioner, together with regional summaries of key issues and a report identifying statewide trends.

Where an external review finds that the CSO is meeting the performance standards, it is eligible for re-registration for a further three years. If an internal or a regular external review finds that a CSO is not meeting certain registration standards and the review identifies concerns about a CSO's governance, management or service delivery, in the first instance DHS will consider whether it can work with the CSO to address these concerns. The CSO and DHS will jointly develop an action plan that addresses the standards identified as not yet being met. If the concerns are more serious, DHS can apply a range of actions to address the issue (DHS 2007, p. 13). These are discussed in section 21.2.6.

In the external reviews conducted in 2009 and 2010, nine of the 99 CSOs were found not to be meeting one or more standards. As this was the first time that some CSOs had had their performance externally assessed, DHS sought to support all CSOs to demonstrate how they were meeting the registration standards to maintain its registration. The nine CSOs were re-registered on the condition that they complete an action plan within six months to address the standards they did not meet. The CSOs were reassessed by the independent reviewers with respect to those standards only. All nine CSOs were assessed to have met or part met the relevant standards, and the conditions on their registration were therefore removed (DHS 2011n, p. 21). DHS advised the Inquiry that one of the nine CSOs has since been subject to a service review (see section 21.2.5). As of December 2011, the CSO was implementing an action plan to address the issues identified in the service review.

In July 2011 DHS established a Standards and Registration Unit to undertake the registration, monitoring and review of CSOs in family services, out-of-home care, disability services and homelessness support. This dedicated regulatory unit was introduced by DHS as part of its transition to a single set of DHS standards, and as a response to the Victorian Ombudsman's finding – discussed in section 21.2.9 – that there was a conflict between DHS responsibility for regulating CSOs and its reliance on the same CSOs to meet DHS' statutory obligations.

Initially the unit will manage the review of CSOs against existing performance standards. It will develop a DHS Quality Standards Framework and a consistent registration policy for funded organisations, including integrating the registration requirements under the *Disability Act 2006* and the CYF Act. From July 2012, the unit will manage CSO compliance with the new DHS standards. It will be responsible for:

- Registration of funded organisations;
- Managing independent review bodies and ensuring quality procedures are in place for reviews;
- Responding to compliance issues in partnership with regions;
- Representing Victoria in the development of national quality frameworks;
- Evaluating independent review reports to identify trends in performance against standards; and
- Training funded organisations and departmental staff in relation to the DHS Quality Standards Framework.

21.2.2 Registration and disqualification of carers

Screening and registration of out-of-home carers

The screening of out-of-home carers is the responsibility of CSOs, with DHS responsible for maintaining a register of carers.

The CYF Act requires out-of-home care providers to have regard to a person's suitability before approving them to act as a foster carer, or employing or engaging them as a carer or as a provider of services to children in residential care facilities (such as a private tutor) (ss. 75-76). This includes checking the person's criminal record and history and consideration of their suitability and fitness, health, skills, experience and qualifications. The CSO must also check whether a person is disqualified from registration as an out-of-home carer. All kinship carers are assessed by DHS and are required to have a criminal records check and a Working with Children Check.

The CYF Act requires DHS to keep a register of home-based foster carers, lead tenant carers and residential carers (s. 80). Kinship carers are not required to be registered. Out-of-home care providers are required to ensure all carers' details are placed on the register and updated or removed as required. The carer register can be accessed by CSOs but is not publicly available. Only currently approved or employed carers are kept on the carer register.

These arrangements effectively give CSOs a role as the quasi-regulator of carers. DHS does not require proof of a CSO's ability to screen and monitor carers, nor does it regularly monitor CSOs' compliance with their responsibilities, other than through its general monitoring of CSO performance against the standards. The existing CSO standards include a standard relating to pre-employment and pre-placement checks of carers. The DHS standards that will apply from July 2012 are broader and do not specifically refer to screening and monitoring of carers but include a criterion that services are provided in a safe environment for all people, free from abuse, neglect, violence and/or preventable injury. It will be important that the DHS standards are applied in such a way that specific requirements such as the screening and registration of carers continue to be monitored.

Disqualification of out-of-home carers

If there is an allegation of physical or sexual abuse against a registered carer involving a child or young person in his or her care, the CYF Act requires DHS to report the allegation to police (s. 81) and determine whether there is a reasonable basis for conducting an independent investigation (s. 84). An independent investigation is a separate process from an Investigation of Abuse in Care, which can investigate allegations of any form of abuse (see section 21.2.4). DHS has established a panel of authorised independent investigators to undertake these investigations and to report all findings directly to the Secretary. An independent investigation does not proceed until any police investigation has been concluded (s. 97, CYF Act).

Following the independent investigation, the Secretary must decide whether to refer the matter for hearing by the Suitability Panel. The Suitability Panel is established under the CYF Act to determine whether a person should be disqualified from being placed on the register of out-of-home carers (s. 101). Up to six panel members are appointed by the Governor-in-Council on the recommendation of the minister. The Chairperson of the Panel must be a legal practitioner, with other members appointed with regard to the need for the Panel to have expertise in law, social work, psychology, the treatment of sex offenders or any other discipline required for the Panel to perform its functions.

The Secretary can only refer a matter to the Suitability Panel if the investigation contains a finding that, on the balance of probabilities, the carer has physically or sexually abused the child, and the Secretary considers that the person poses an unacceptable risk of harm to children.

The Panel must first determine whether, on the balance of probabilities, the allegation that the person has physically or sexually abused the child is proved. If the Panel finds that an allegation is proved, it must make a finding of misconduct against the person and then determine whether, on the balance of probabilities, the person poses an unacceptable risk of harm to children. If the Panel does find the person poses an unacceptable risk of harm to children, the person is disqualified from registration as an out-of-home carer. Decisions of the Suitability Panel are not made public.

DHS advised the Inquiry that the Suitability Panel heard one case in 2009-10 and nine cases in 2010-11. Two cases resulted in the carer being disqualified. One case resulted in a finding of misconduct against the carer but no disqualification. The remaining seven cases were not proven.

A person may apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of a finding or determination of the Suitability Panel. A person may also apply to the Suitability Panel for the removal of disqualification. An application for removal of disqualification must set out the way in which the applicant's circumstances have changed and why the applicant no longer poses an unacceptable risk of harm to children.

The Inquiry received a submission from the Suitability Panel in late December 2011, too late for the Inquiry to consider the issues it raises. The submission is published on the Inquiry's website.

21.2.3 Investigation of critical incidents

DHS requires that all incidents that involve or impact upon clients and staff are reported to the department and investigated. Reporting of incidents is compulsory to ensure DHS meets its legal obligations, insurance obligations and public expectations of accountability.

The responsibility for the management of an incident rests at the local level. As out-of-home care includes care delivered directly by DHS, care delivered by CSOs and kinship care, incident reports can be the responsibility of departmental staff, CSO staff, kinship carers or lead tenants. Home-based caregivers and residential staff are required to report incidents to their CSO, while kinship carers and lead tenants report incidents directly to DHS. Incident report forms are primarily completed by the most senior member of staff or carer present at the time of the incident, with a representative of the agency management reporting on action taken in response to the incident to address any safety risks and what will be done to prevent the incident from happening again.

Incident reports are graded according to the degree of impact on clients and staff, and the potential future risk to clients and DHS. There are three categories of reportable incidents. Category one incidents are those that have the most serious outcomes such as a client death or serious injury to a client or staff member, allegations of sexual or physical assault of a client or staff member, or have the potential to involve the minister or be subject to a high level of public or legal scrutiny. Category two incidents involve events that seriously threaten clients or staff but do not meet the category one definition. In contrast, a category three incident has minor impacts on clients and staff with the significance of the incident not extending beyond the workplace or facility, such as minor neighbourhood complaints, minor property damage, or an injury not requiring medical treatment (DHS 2010a, pp. 15-17).

In 2010-11 there were 1,134 category one critical incidents reported to DHS relating to child protection clients. This represented a 82 per cent increase on 2008-09, when there were 621 category one critical incident reports. There were 912 category one critical incidents reported in 2009-10. It is not known how many clients were involved in incidents, as this was not recorded for 72 per cent of incidents.

The most common type of critical incidents are shown in Table 21.1. A range of low-frequency incidents accounted for the remaining 32 per cent of incidents, including 27 client deaths.

Table 21.1 Category one incidents by incident type, 2010-11

Incident type	Proportion of total category one incidents
Alleged physical assault	27%
Alleged sexual assault	21%
Attempted self-harm or suicide	6%
Dangerous or sexual behaviour	6%
Poor quality of care concerns	5%
Drug and alcohol use	4%
Breach of privacy and confidentiality	4%

Source: Unpublished DHS data

Forty per cent of category one critical incidents involving child protection clients involved clients of residential care. There were 452 category one critical incidents involving clients of residential care in 2010-11, representing almost one incident for each of the 454 children in residential care in June 2010. In contrast, 280 incidents (25 per cent) involved clients of home-based care, representing one incident for every 16 children in home-based care in June 2010. One-third of incidents involved child protection clients in juvenile protective services, and 2 per cent involved clients in secure welfare services (unpublished DHS data).

DHS undertakes quarterly analysis of critical incident data but does not currently report publicly on critical incidents. Up to 2009-10, the Child Safety Commissioner also produced a quarterly report on category one critical incidents involving clients of out-of-home care, until the Commissioner determined this was duplicating the analysis of DHS. The Office of the Child Safety Commissioner continues to collect and monitor critical incident data, which it uses to reconcile DHS' data. The Commissioner continues to identify concerns for individual clients, together with any emerging themes or patterns. The Inquiry considers that DHS should report annually on critical incidents, including a breakdown by region, by incident type and by the placement or service type in which incidents occur. The Inquiry's recommendation on this issue can be found in section 21.3.2.

DHS Regional Directors are responsible for ensuring that all relevant DHS managers and CSOs comply with the *Department of Human Services Incident Reporting Instruction* (DHS 2010a). The responsibilities of DHS regional staff include:

- Ensuring accuracy in categorising and investigating incidents to identify lessons and make recommendations for reducing risk to future clients and staff;
- Systematically reviewing incidents and investigating where appropriate, focusing on the root cause of the incident rather than the immediate event; and
- Undertaking compliance checks to assess the ongoing implementation of incident reporting policy. A compliance check will involve a review of documentation, data analysis from information systems and discussions with staff to determine the extent of compliance with the policy.

Other DHS staff have the following roles and responsibilities:

- DHS Program and Service Advisers are responsible for ensuring CSOs are aware of and comply with the incident reporting instruction;
- Where the department holds case management or statutory responsibility for clients, the case worker or case manager is responsible for ensuring that an appropriate planned response is undertaken to a critical incident, and that the CSO has informed all relevant authorities;
- Divisional program managers are responsible for reviewing incident data in consultation with regions, to inform policy development, practice and policy implementation; and
- The Service Delivery and Performance Division oversees the quality of reporting, compliance, and the identification of systemic issues arising from reports and referral.

Where incidents are considered to be of a serious nature and appear to be the result of problems with management systems or practices, the Secretary may commission an external review of the CSO (see section 21.2.1).

21.2.4 Quality of care concerns

Quality of care concerns refer to a broad range of concerns about the care given to a child or young person living in out-of-home care. Concerns can range from minor quality issues through to possible physical or sexual abuse.

Quality of care concerns can be raised by any person, including the children and young people themselves. Information can also be raised by people who have left care, including adults reporting quality of care concerns from their own experience living in out-of-home care as a child or young person, or by a query from the Office of the Child Safety Commissioner. Information may be received by DHS, CSOs or the police (DHS 2009b).

DHS has published *Guidelines for responding to quality of care concerns in out-of-home care* (DHS 2009b). The guidelines describe the approach that DHS and CSOs should use when responding to all issues that may be reported as quality of care concerns. The concerns can range from minor quality issues to possible physical or sexual abuse. All concerns about possible physical abuse or sexual abuse, neglect or poor quality care of a child or young person must be screened by DHS in consultation with the responsible CSO to determine the exact nature of the concern and the most appropriate response.

The guidelines outline four possible responses to quality of care concerns:

- Take no further action – if it can be clearly established that the report of the concern is inaccurate or there is no basis for concerns about the safety of the child or the quality of care the child is receiving;The CSO manages concerns by supporting and supervising the carer – if there are issues to be addressed that do not warrant an investigation or formal care review (the guidelines indicate that this will be the most appropriate response to the majority of quality of care concerns);
- Conduct an investigation into allegations of possible abuse in care; or
- A formal care review – when there are serious or repeated concerns about possible poor quality care provision that do not involve an allegation of possible abuse or neglect.

The current DHS database does not allow for the recording of all quality of care concerns reported to DHS. As a result, DHS reports only the number of investigations undertaken, and the number of formal care reviews (this data is discussed below). The Inquiry considers this to be inadequate. The Inquiry considers that DHS should record and report on the number of quality of care concerns raised, the number of investigations of abuse in care and the number of formal care reviews, including the outcomes of investigations and reviews and their timeliness. There should be breakdowns by region, by allegation type or quality of care concern type and by placement type. The Inquiry's recommendation on this issue can be found in section 21.3.2.

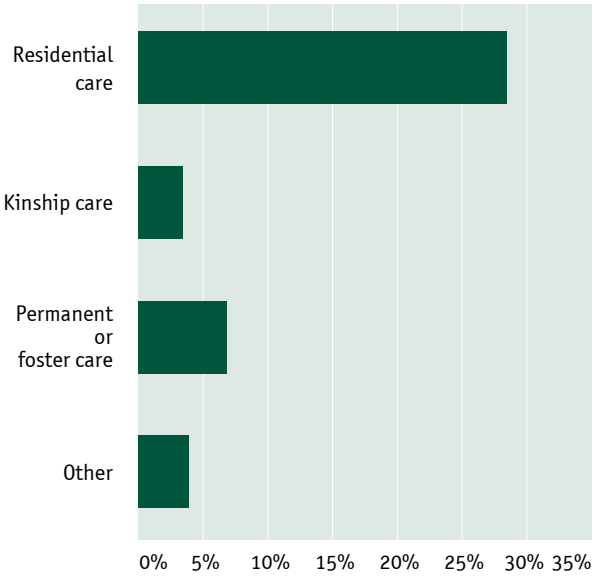
Investigations of abuse in care

Investigations into allegations of possible abuse or neglect are led by DHS and conducted in partnership with the CSO. There may also be a police investigation. There is a range of procedures in place to ensure coordination or cooperation between the police, DHS and CSOs throughout the investigation process.

In 2009-10, there were allegations of possible abuse or neglect relating to 363 clients in out-of-home care, about 4.4 per cent of clients who spent time in out-of-home care that year. These allegations related to 279 reported incidents. About 61 per cent of allegations related to physical assault and 15 per cent related to sexual assault (DHS 2011e, p. 2).

Figure 21.2 shows that children in residential care were much more likely to be involved in allegations of possible abuse or neglect than children living in other placement types. Overall in 2009-10 there were 131 allegations involving children in residential care, 154 involving children in permanent care or foster care, 77 involving children in kinship care and one allegation involving a child in a lead tenant placement (DHS 2011e, pp. 5-6).

Figure 21.2 Allegations of possible abuse and neglect in out-of-home care, by placement type, Victoria, 2009-10



Allegations of abuse or neglect in care in 2009–10, as proportion of children in care as at June 2010

Source: DHS 2011e, pp. 5-6

The guidelines require DHS investigations to be completed within 28 working days of the allegation being received by the department. However, only 51 per cent of investigations into possible abuse in care in 2009-10 were completed by June 2010, and only 61 per cent of the completed investigations were completed within the required 28 day period (DHS 2011e, p. 9). DHS advised the Inquiry that some cases were delayed by lengthy police investigations, while for others there was a delay in child protection managers endorsing the reports due to competing work requirements.

Of the 185 investigations that were completed in 2009-10, 56 (30 per cent) were substantiated (DHS 2011e, p. 7). This substantiation rate is substantially lower than the rate for child protection investigations (52.7 per cent in 2009-10) (see Chapter 9).

When an investigation finds an allegation of abuse or neglect in home-based care is substantiated, DHS determines whether it is in the best interests of a child or young person (including other children or young people residing in the placement) to continue in that placement. The decision to remove a child or young person from a placement may take place at any time before, during or after an investigation. When an allegation of abuse or neglect in residential care is substantiated, it is the carer who would usually be removed from the residential unit, rather than the child or young person. When an allegation of abuse or neglect has been substantiated, DHS and the CSO also decide how to address any remaining quality of care concerns that were not determined to be abuse or neglect.

In 2009-10, 48 investigations resulted in a carer's approval being withdrawn, representing 26 per cent of completed investigations. Forty-six investigations (25 per cent) resulted in a change in placement for the child or young person. A total of 130 allegations were reported to police, resulting in 40 police investigations (DHS 2011e, pp. 7-8).

In 2009-10, 129 completed investigations did not substantiate the allegations of abuse in care. When the investigation finds the allegation is not substantiated, there are three possible outcomes:

- A formal care review – if serious concerns remain about the capacity of a carer to provide care to an appropriate standard (this occurred just four times in 2010-11, representing 3 per cent of unsubstantiated allegations);
- The CSO manages concerns by implementing recommendations made as a result of the investigation (33 per cent of unsubstantiated allegations); or
- No further action (64 per cent of unsubstantiated allegations).

Of the 129 allegations that were not substantiated:

- 83 (64 per cent) required no further action;
- 42 (33 per cent) required the implementation of recommendations made as a result of the investigation, for example, regarding the CSO's support and supervision of the carer); and
- Four (3 per cent) were referred to a formal care review (DHS 2011e, p. 7).

Formal care reviews

The purpose of a formal care review is to comprehensively assess the nature of a significant or repeated quality of care concern (including allegations of abuse or neglect) and to develop an action plan to address the concern where possible, or to withdraw a carer's approval. The DHS *Guidelines for responding to quality of care concerns in out-of-home care* state that:

> While the objective of a formal care review is to address quality of care concerns so that placements are not disrupted and carers continue in the role, in some circumstances a formal care review may recommend that the carer should not continue in the role if it is not possible to ensure the safety, stability and development of children or young people in their care (DHS 2009b, p. 102).

Where an incident has been reported or an allegation received by DHS that involves a performance issue by the CSO, this can also be investigated as part of a formal care review.

Formal care reviews are conducted jointly by the DHS Child Protection Unit manager, the DHS Quality of Care Coordinator and the CSO. The CSO has lead responsibility to coordinate and complete the review. The review must determine whether:

- The quality of care concerns have been addressed and no further action should be taken;
- The concerns should be addressed by implementing an action plan over a three-month period; or
- The concerns identified have not and are unlikely to be addressed and there are concerns about the carer's ability to provide safe care for children and young people. If this is the assessment of the review panel, it is the responsibility of the CSO senior regional manager to determine the most appropriate course of action to take with respect to the carer's ongoing role within the organisation.

In 2009-10 formal care reviews were held as a result of quality of care concerns relating to 159 clients in out-of-home care, which amounted to about 1.9 per cent of clients who spent some time in out-of-home care that year. The concerns related to 94 reported incidents. The most common issues of concern involved the use of inappropriate discipline (31 per cent), carer compliance with standards (18 per cent) and inadequate supervision of the child (15 per cent) (DHS 2011e, p. 11). Allegations of assault by one child or young person against another child or young person in care are excluded from this data.

Almost two-thirds of formal care reviews related to permanent carers or foster carers (103 reviews or 65 per cent). This represented one review for every 22 children in permanent care or foster care in June 2010. Thirty-four reviews (21 per cent) related to residential carers, representing one review for every 13 children in residential care in June 2010. Kinship carers were involved in only 16 reviews, representing 10 per cent of all reviews and one review for every 136 children in kinship care at the end of June 2010. Six reviews (4 per cent) related to other people, including people known to the carer (DHS 2011e, p. 11).

Only 86 (54 per cent) of the 159 quality of care reviews were completed in 2009-10. Sixty-three reviews (75 per cent) found evidence of quality of care concerns. Of these 63 reviews:

- 24 reviews (38 per cent) required no further action as the concerns had been addressed;
- 27 reviews (43 per cent) required an action plan to be implemented to address the concerns; and
- 12 reviews (22 per cent) resulted in the carer's approval being withdrawn (DHS 2011e, p. 15).

The DHS guidelines describe the objective of an action plan as ensuring the safety, stability and wellbeing of children placed with the carer (DHS 2009b, p. 109). The review panel should detail the specific quality of care concerns to be addressed, how they are to be addressed (including tasks, roles, responsibilities and timelines), and the required outcomes. Action plans should also address any wider CSO management or service delivery issues found in the review (DHS 2007, p. 11).

The review panel is required to review the carer's progress against the action plan within three months. If quality of care concerns still exist, the panel must determine whether it is likely that the carer has the capacity to make the required improvements within a further three-month period, or if the carer is unable to provide an acceptable level of care to children and young people placed with them. If the carer is unable to address the concerns, it would be usual for the CSO to determine that the carer can not continue in their role.

If a formal care review substantiates concerns regarding the performance of the CSO and the review panel finds that further action is warranted, the Secretary may commission an external review of the CSO (see section 21.2.1).

21.2.5 Performance monitoring and desktop review

DHS monitors organisations that receive funding through service agreements. Each CSO delivering family services or out-of-home care has a service agreement with DHS that outlines the agency's service requirements and the associated funding it receives to deliver those services. CSOs have a single service agreement with DHS, even if they receive funding from other DHS program areas.

Under the DHS monitoring framework, DHS works in partnership with CSOs to monitor organisation service sustainability, to assist in early identification of risks, and to ensure the ongoing provision of human services and avoid the costs of service failure. Monitoring coordinators, usually a Program and Service Adviser located in a DHS regional office, are responsible for implementing the framework.

The framework is made up of three core components:

- Core monitoring – regular monitoring of all CSOs, in terms of their financial sustainability, service delivery and client safety and wellbeing;
- Desktop review – an annual review of the overall performance of all CSOs in the previous year, including service delivery, financial management and organisational management. This is conducted by DHS with no CSO involvement. The review comprises a short series of questions designed to consider key areas of risk. Only a few questions relate to performance. For most CSOs, the review will indicate that current service delivery and the relationship with DHS are adequate; and
- Service review – where the desktop review identifies a high level of risk or issues of concern, DHS and the CSO will meet, jointly raise issues or concerns, and develop solutions. This is a service review. An action plan may be developed as a result. Service reviews are undertaken in partnership and are not adversarial or punitive (DHS 2007, p. 3).

Between July 2010 and September 2011, service reviews were undertaken for four registered CSOs and three 'light touch' agencies. Sanctions arising from these service reviews are discussed in the following section.

If concerns raised in the service review are addressed, the process will finish and core monitoring will continue as normal. Where concerns are not addressed, the Secretary may commission an external review of the CSO (see section 21.2.1).

21.2.6 Sanctions available to the Department of Human Services

When an external review or other review process identifies serious concerns about a CSO's governance, management or service delivery that DHS and the CSO have not been able to resolve through implementation of an action plan, the Secretary can take the following actions:

- Request the CSO to develop a joint action plan in partnership with DHS to overcome the identified issues;
- Place conditions on the CSO's registration – possible conditions could include CSOs having to demonstrate compliance with certain standards in a set period or for the CSO to be reviewed at a future date;
- Renegotiate funding to be received for certain services through the CSO's service agreement;
- Advise the Minister to appoint an administrator; and
- Revoke the CSO's registration – a consequence of the revocation of registration would be the cessation of funding of the CSO, in compliance with the conditions of the service agreement.

DHS (2007, p. 13) indicates the action taken by the Secretary will depend on a number of factors, including:

- The success of other strategies to improve performance, including the development and implementation of prior actions plans by the CSO and the strength of communication between the department and the CSO;
- The CSO's circumstances and if it is likely to be able to swiftly and appropriately remedy the problem;
- The CSO's internal planning and whether it wishes to continue to provide the service or focus on other functions;
- The performance issue and whether it places children or youth safety, stability and development at risk; and
- Whether serious breaches of registration standards and requirements are unresolved.

The chief executive officer or board of the CSO will be consulted regarding the Secretary's decision. DHS will also consult with other organisations from which the CSO receives funding, including other divisions of DHS, the Commonwealth and other states. These discussions will help to determine the most appropriate strategy to improve the performance of the CSO.

Appointing an administrator

If the Minister is satisfied that a registered CSO is inefficiently or incompetently managed, the Minister may recommend to the Governor-in-Council that an administrator of the CSO be appointed. The appointment of an administrator is considered where other options have been exhausted or where there are reasonable grounds for believing an action plan cannot be agreed or implemented.

On the appointment of an administrator, the members of the board or other governing body of the CSO cease to hold office. The administrator may exercise all the powers and is subject to all the duties previously held by the board (ss. 67-69, CYF Act). The appointment of an administrator allows the CSO to continue to deliver services, and funding continues to be provided by DHS.

If DHS and the administrator consider the CSO is meeting service delivery standards, the Minister can recommend to the Governor-in-Council that the appointment of the administrator be revoked. A new board or committee of management is then elected in accordance with the CSO's constitution.

Recent actions taken against community service organisations

DHS advised the Inquiry that, since 2007, nine CSOs have had conditions placed on their registration, as discussed in section 21.2.1. There have been no administrators appointed to CSOs, and no CSO has had its registration revoked.

In 2011 funded out-of-home care services and family services delivered by two CSOs were transferred to other CSOs. These actions followed service reviews of the agencies. In one case, the legal entity governing the CSO remains registered, as other bodies under its structure continue to provide services. The other CSO had its out-of-home care services transferred to other CSOs but remains registered as it continues to deliver family services. A service review of a third CSO has also resulted in action by DHS, and DHS advisers have been appointed to work with the CSO to improve its management and service delivery.

21.2.7 Performance of regulatory framework

Drawing upon the *Victorian Guide to Regulation* (Victorian Government 2011e) and the work of the United Kingdom (UK) Better Regulation Task Force (2005, pp. 26-27), the Inquiry has assessed Victoria's regulatory arrangements for out-of-home care and family services against five principles of 'good regulation' that test whether any regulatory system is fit for purpose:

- Accountability – regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistency – government rules and standards must be joined up and implemented fairly;
- Transparency – regulators should be open and keep regulations simple and user friendly;
- Proportionality – regulators should only intervene when necessary (remedies should be appropriate to the risk posed, and costs identified and minimised); and
- Targeting – regulation should be focused on the problem, and minimise side effects.

Overall, the Inquiry considers that the regulatory framework for out-of-home care and family services performs well in terms of accountability and consistency, although there is scope for greater scrutiny and reporting of regulatory decisions. Reforms are required to improve transparency, proportionality and targeting.

Accountability

The principle of accountability requires all those affected to be consulted before final decisions are taken. There should be effective complaints and appeals procedures, and regulators should have clear lines of accountability to the Minister, Parliament and the public (Better Regulation Task Force 2005, pp. 26-27). The enforcement of regulation should be monitored, with the results being reported to the public on a systematic basis (Victorian Government 2011e, pp. 3-2), though it is noted that privacy laws and restrictions on identifying people involved in court orders may place some constraints on public reporting of child protection outcomes.

DHS advises that it consults with CSOs regarding any significant regulatory decisions. CSOs can apply to VCAT for a review of a decision by the Secretary to refuse to register or to revoke the registration of a CSO. Similarly, carers can apply to VCAT for a review of findings of misconduct or disqualification by the Suitability Panel.

Like all government activity, the regulation of family services and out-of-home care is potentially subject to parliamentary and public scrutiny via the Victorian Ombudsman and the Victorian Auditor-General. While the *Child Wellbeing and Safety Act 2005* (CWS Act) grants the Child Safety Commissioner responsibility for monitoring out-of-home care services, these powers do not extend to oversight of the regulation of out-of-home care services. The Commissioner does not oversee family services. The oversight responsibilities of the Commissioner are considered in detail in section 21.3.1.

DHS does not, as a matter of course, publish its regulatory decisions concerning, for example, the placement of conditions on a CSO's registration, the appointment of an administrator, or the revocation of registration. The outcomes of these decisions may be announced by the Minister. The Inquiry considers the accountability of the system would be further enhanced if DHS published regulatory decisions regarding such matters and explained how and why those decisions were reached. The Inquiry's recommendation on this issue can be found in section 21.3.2.

Consistency

The principle of consistency requires regulators to be consistent with each other, and work together in a joined-up way. Regulation should be predictable in order to give stability and certainty to those being regulated. DHS should apply regulations consistently across Victoria (Better Regulation Task Force 2005, pp. 26-27).The Victorian Ombudsman's 2010 investigation of out-of-home care reported that representatives of the sector had stated that:

> ... the several compliance regimes imposed on community service organisations in relation to various services they were funded by government to provide often overlapped and that this resulted in unnecessary burden (Victorian Ombudsman 2010, p. 54).

DHS has responded to this issue by introducing a single set of service quality standards to apply to all funded organisations delivering out-of-home care and family services, homelessness assistance services and disability services from July 2012. The aim is to reduce red tape by streamlining accreditation, monitoring and evaluation processes, and to help to ensure a consistent quality of service no matter which DHS-funded service people access.

The Standards and Registration Unit in DHS central office is administering the standards. External reviews of CSOs will be conducted by a panel of approved independent review bodies. These arrangements will help to ensure consistent application of the standards across Victoria.

Transparency

The principle of transparency requires the objectives of regulation to be clearly defined and effectively communicated to all interested parties. CSOs should be made aware of their obligations, with law and best practice clearly distinguished. CSOs should be given the time and support to comply, and the consequences of noncompliance should be made clear. Regulators should clearly explain how and why regulatory decisions have been reached (Better Regulation Task Force 2005, pp. 26-27).

While DHS has been diligent in publishing a number of documents to describe the regulatory processes applying to out-of-home care and intensive family services and the obligations of CSOs, the transparency of the regulatory system is compromised by its complexity. Section 21.2 shows that there are five separate regulatory processes applying to CSOs and carers. Responsibility for these processes is dispersed across DHS. The number of different types of investigation or review is even larger. As shown in Figure 21.1, there are many instances where one investigation or review process will give rise to a second or third review process.

The Inquiry considers that the transparency and effectiveness of the regulatory system would be enhanced if DHS were to simplify, reduce duplication and improve the coordination of regulatory processes.

Proportionality and targeting

The closely related principles of proportionality and targeting require regulations to be focused on the problem and proportionate to the risk of harm to children and young people. As the regulator, DHS should focus primarily on those whose activities give rise to the most serious risks. Where appropriate, regulators should adopt a 'goals-based' approach, with CSOs given flexibility in deciding how to meet clear, unambiguous targets (Better Regulation Task Force 2005, pp. 26-27).

DHS' regulatory activity is not informed by a systematic analysis of the risk posed by CSOs and, as a result, is not targeted to where it is needed most. It does not, for example, consider factors such as the size of the CSO or its track record in meeting performance standards. All CSOs are subject to the same cycle of one independent external review every three years. This cycle will be maintained under the new DHS standards. While irregular external reviews may be commissioned if an issue of concern is identified and not addressed by the CSO, this is likely to occur only after a critical incident, a quality of care concern or an allegation of abuse in care. Inspections of CSOs are almost exclusively in response to an incident or allegation, rather than acting as a quality assurance mechanism to prevent incidents or concerns from arising.

In addition, the available evidence suggests that DHS often does not respond to issues of concern in a timely fashion. Section 21.2.4 shows that, despite the requirement for investigations into possible abuse in care to be completed within 28 days, only half of the investigations in 2009-10 were completed by June 2010, and only 57 per cent of the completed investigations were completed within the required period. A similar proportion of quality of care reviews had been completed by the end of the year.

The Inquiry considers these arrangements to be inadequate given that, as demonstrated in Chapter 10, there are major and unacceptable shortcomings in the quality of care and outcomes for children and young people placed in out-of-home care.

One approach to applying a risk-based approach to regulation is known as *earned autonomy*. An earned autonomy approach has been adopted by a number of regulators to ensure their effort is focused on monitoring higher risk agencies. For example, under the *National Quality Framework for Early Childhood Education and Care*, which will come into effect in 2012, the number and frequency of inspections of an early childhood education and care service will depend on the service's record and any events associated with a risk or change in practice that indicate a service might not be meeting quality standards (Early Childhood Development Steering Committee 2009, pp. 7-8). It is anticipated that the frequency of assessments of services will be as follows:

- Excellent or high-quality services – every three years;
- National quality standard services – every two years;
- Foundation services – at least once each year; and
- Unsatisfactory services – more frequent visits.

The *National Quality Framework* also provides for state-based regulatory agencies to make unannounced inspections of services to complement the regular full assessments.

Scotland's new regulator of care, social work and child protection services, Social Care and Social Work Improvement Scotland (SCSWIS), is also applying a risk-based approach. The regulator states that it will organise its scrutiny and improvement activity, including inspections, around risk. Poorly performing services and high-risk services will be inspected more and improvement demanded. Better performing services will be inspected less often, but there will be more random inspections (SCSWIS 2011, pp. 3-4).

The recent Munro Review of Child Protection in the UK endorsed the role that inspection can play in improving the quality of services for children and promoting accountability. The Munro Review found that the proportionality of the UK's children's service inspection system would be improved through greater use of unannounced inspections instead of announced inspections, and adopting a risk-based approach to the programming of inspection. The Review found that these changes would reduce the need for preparation for announced inspections, thereby reducing regulatory burden (Munro 2011b, p. 83).

In its submission to the Inquiry, the Victorian Council of Social Service (VCOSS) emphasised that the reforms proposed by the Inquiry should not increase the regulatory burden on CSOs (VCOSS submission, pp. 51-52). Similarly, Jesuit Social Services argued that the administrative burden on CSOs could be more consistently proportionate:

> Where a large sum of money is involved it is naturally accepted that tender and acquittal processes will be comprehensive. Where tenders and acquittals are for lesser amounts ... there should be a proportionate reduction in the administrative processes whilst still meeting all requirements to be accountable for the expenditure of public money. There have been some positive developments in this area but inconsistencies are still experienced (Jesuit Social Services submission, p. 16).

21.2.8 Future regulatory approach

In seeking to reduce the regulatory burden on CSOs, DHS has failed to maintain an adequate level of external scrutiny of CSO performance. In particular, it is unacceptable that:

- All CSOs are subject to the same cycle of one independent external review every three years, regardless of their performance; and
- There is no program of unannounced inspections to act as a quality assurance mechanism to prevent incidents or concerns from arising.

Finding 20

The Department of Human Services' current approach to monitoring and reviewing community service organisations performance does not do enough to identify, address and prevent the major and unacceptable shortcomings in the quality of out-of-home care.

The Inquiry recommends that DHS should adopt a risk-based approach to the monitoring and review of CSO performance. DHS should assess the risk of CSOs not meeting performance standards, with a focus on the risk of harm to children and young people in their care. The frequency with which DHS reviews the performance of a CSO should be proportionate to the CSO's risk rating. Higher risk CSOs should be reviewed more frequently than once every three years. Support should be available to CSOs to meet performance standards and to raise the quality of service provided to children and young people in their care.

Complementing the regular program of performance reviews, DHS should also undertake unannounced inspections. All CSOs would be subject to inspections, regardless of their risk level. The purpose of the inspections would be as a quality assurance mechanism to prevent incidents or concerns from arising. Inspections would seek to assess the risk of harm to clients, and might involve a check of whether the CSO was meeting selected standards. It would not involve a full assessment of the CSO's performance.

DHS does not, as a matter of course, publish its regulatory decisions concerning, for example the placement of conditions on a CSO's registration, the appointment of an administrator, or the revocation of registration. The outcomes of these decisions may be announced by the Minister. The Inquiry considers the accountability of the system would be further enhanced if DHS published regulatory decisions regarding such matters and explained how and why those decisions were reached.

Recommendation 85

The Department of Human Services should adopt a risk-based approach to monitoring and reviewing of community service organisation performance, involving greater use of unannounced inspections and reviewing the performance of higher risk agencies more frequently than lower risk agencies.

21.2.9 Governance of regulatory functions

This section considers whether DHS is the most appropriate agency to undertake the core regulatory functions of registering, monitoring and reviewing the performance of CSOs delivering family services and out-of-home care.

The CYF Act places significant responsibility for the protection of children at risk on the Secretary of DHS (see Chapter 9). DHS is also responsible for implementing the broader policy objectives of the government. As a consequence, DHS has multiple responsibilities for the planning, delivery, funding and regulation of family services, statutory child protection services and out-of-home care. In some instances, the Secretary also is the legal guardian of children placed in out-of-home care.

The multiplicity of responsibilities held by DHS is not unique to Victoria. The equivalent regulatory tasks are undertaken by a departmental regulator in most states and territories. The exception is New South Wales, where the independent Children's Guardian is responsible for the accreditation and quality improvement of statutory out-of-home care agencies.

Ombudsman recommendation

The 2010 Ombudsman investigation into out-of-home care found that there is a conflict between DHS' role in regulating CSOs and its reliance on those same CSOs to meet its statutory responsibilities (Victorian Ombudsman 2010, p. 57). The Ombudsman considered that any finding by DHS that a CSO is providing an inadequate standard of care may reflect that DHS has failed to meet its obligations in regard to those children that the Secretary has personal statutory responsibility. Such a finding may also raise issues regarding DHS' contract management and resource allocation.

The Ombudsman's view was echoed by the Centre for Excellence in Child and Family Welfare and VCOSS in their submissions to the Inquiry (Centre for Excellence in Child and Family Welfare, p. 24; VCOSS, p. 51).

The Ombudsman recommended that DHS:

> Transfer the function of registering community service organisations to an independent Office which has no reliance on the services being provided by the agency being registered (Victorian Ombudsman 2010, p. 58).

DHS did not accept the Ombudsman's recommendation. In response to the Ombudsman, the Secretary disagreed that there was a conflict between DHS' multiple roles, on the basis that DHS' regulatory and funding activities have a common objective of achieving quality services for children, youth and families. The Secretary also argued that the creation of a new regulatory body for out-of-home care was not cost-effective given the small scale of the sector (Victorian Ombudsman 2010, p. 58). More recently, as discussed in section 21.2.1, the Secretary has sought to separate the registration, monitoring and review of CSOs from the funding of CSOs within DHS, with the creation of a dedicated Standards and Registration Unit.

Principles of good governance of regulators

In 2010 the Victorian Government released a framework for good governance of Victorian regulators (Department of Premier and Cabinet (DPC) 2010). The framework is concerned primarily with the external governance of regulators – the roles, relationships and distribution of powers and responsibilities between Parliament, the Minister, the department, the regulator's governing body and regulated entities.

The framework provides an objective basis for assessing the adequacy of the governance arrangements applying to the regulation of family services and out-of-home care. The framework consists of six sets of principles of good governance that should apply to all regulators. The principles are:

- Role clarity;

- Degree of independence;
- Decision making and governing body structure for independent regulators;
- Accountability and transparency;
- Engagement; and
- Funding.

The full list of 34 principles is shown in Table 4 of Appendix 14.

The concerns raised by the Ombudsman relate primarily to the degree of independence of DHS as the regulator. In discussing this principle, the good governance framework provides the following guidance on the threshold issue of whether regulatory decisions are best made by an independent regulator or a departmental regulator (DPC 2010, pp. 9-10):

- Independent regulatory decision making, at arm's length from ministers and their departments, is preferable where there is a need for the regulator to be seen as independent, to maintain public confidence in the objectivity and impartiality of decisions. This is likely to be important when the decisions of the regulator can have a significant impact on regulated entities or other parties; and
- A departmental regulator is likely to be more appropriate where the regulatory function is closely integrated with other departmental functions and there are benefits to retaining the specialist knowledge and expertise within government.

A further consideration is the role clarity of DHS as the regulator. Granting a regulator responsibility for service delivery, funding of regulated entities or industry development functions as well as its regulatory functions can present conflicts of interest that may reduce the regulator's effectiveness, divert resources and management attention away from the regulatory task, and undermine public confidence in the system. The framework requires that a regulator should hold potentially conflicting functions only if there is a clear public benefit in combining these functions and the risks of conflict can be managed (DPC 2010, p. 20).

The Inquiry is also concerned that the lead role given to CSOs in conducting formal care reviews in partnership with DHS is not appropriate. As CSOs are the employers of residential carers and approve foster carers, this may require CSOs to investigate themselves.

Future governance arrangements

The Inquiry has considered the recommendations of the Ombudsman and the Secretary's response to the Ombudsman in the context of the government's framework for good governance of Victorian regulators. The Inquiry has concluded that where a government agency such as DHS relies on CSOs for the delivery of services that are central to the agency achieving its core objectives, it is appropriate that the agency be responsible for the regulation and monitoring of the CSOs. Allowing an external agency to register and monitor a CSO could allow DHS to avoid responsibility for the performance of a CSO.

The Inquiry therefore recommends that DHS retain responsibility for regulation of out-of-home care services and family services, provided that:

- The regulatory function is independent and structurally separated from those parts of the Children, Youth and Families Division responsible for child protection and family services policy and funding of CSOs;
- The director of the unit reports directly to the Secretary; and
- DHS is subject to independent oversight of the conduct of its regulatory function by the Commission for Children and Young People recommended in section 21.3.3.

Recommendation 86

The Department of Human Services should retain responsibility for regulating out-of-home care services and family services. This function should be independent and structurally separated from those parts of the department responsible for child protection and family services policy and funding of community service organisations. The director of the unit should report directly to the Secretary.

The Inquiry considers that CSOs have a potential conflict of interest in leading formal care reviews, which they conduct in partnership with DHS. While it is appropriate for CSOs to use their own internal processes to address minor issues related to placements and carers, DHS should have lead responsibility for the review of serious or repeated quality of care concerns. CSOs would support DHS in undertaking the reviews. This would bring the formal care review process into line with investigations of possible abuse or neglect in care.

Recommendation 87

The Department of Human Services should take lead responsibility for formal care reviews.

21.3 Oversight and transparency

> We cannot continue to have reviews in Victoria every few years (Mr Justice Fogarty 1993).

Despite Mr Justice Fogarty's comment 19 years ago, Victoria's system for protecting vulnerable children has continued to be subject to a large number of reviews and inquiries in the intervening years. As discussed in Chapter 9, the cumulative impact of these reviews and inquiries, together with ongoing media coverage, has been to contribute to a sense of perpetual review and a sector and workforce in crisis.

> Creating a space where a child welfare system can be accountable but have a degree of protection from sensationalist media coverage could create a more open system that is better able to expend effort interrogating its own processes and performance and supporting practice enhancing research (Connolly submission, p. 2).

An objective of oversight and transparency arrangements should be to provide for regular independent scrutiny and public reporting on the performance of the system. Regular external oversight and reporting can be an important part of a system that supports continuous improvement in individual services and across the sector.

21.3.1 Existing oversight arrangements

A number of government agencies have roles, powers and responsibilities for overseeing the delivery of family services, statutory child protection services and out-of-home care. These are summarised in Table 21.2 and then explored in more detail.

DHS Child Protection Standards Compliance Committee

In 2010 DHS established a Child Protection Standards Compliance Committee to:

- Improve the department's operational compliance with child protection legislation, regulations, practice standards and guidelines; and
- Review and comment on the systems the department has in place to monitor compliance and carry out targeted compliance checks.

The Committee was established in response to the recommendation from the Ombudsman's 2009 investigation into the statutory child protection program that DHS establish arrangements for the independent scrutiny of the department's decision making regarding significant wellbeing and protective intervention reports.

The Committee advises the Secretary on DHS' compliance with child protection practice standards and guidelines, and submits an annual report to the Secretary on the progress of the Committee's work.

The Committee is chaired by an independent chair with expertise in the fields of monitoring and accountability. The panel includes seven other independent members and two DHS officers - the Principal Practitioner, Child Protection and the Deputy Chief Psychiatrist, Children and Youth Mental Health.

Victorian Ombudsman

The Victorian Ombudsman is an independent officer of the Victorian Parliament who investigates complaints about state government departments, most statutory authorities and local government. The Ombudsman is responsible to Parliament, rather than the government of the day, and can only be dismissed by Parliament.

Table 21.2 Government agencies with oversight of family services, statutory child protection services and out-of-home care

Agency	Role
DHS Child Protection Standards Compliance Committee	Advises the Secretary on DHS' compliance with child protection practice standards and guidelines
Victorian Ombudsman	Broad powers to investigate complaints about government agencies
Auditor-General	Audits the performance of government agencies
Child Safety Commissioner	Reports to the Minister on the performance of out-of-home care services Conducts inquiries in relation to deaths of children who were clients or recent clients of child protection at the time of their death Conducts inquiries into other child protection clients at the request of the Minister
Victorian Child Death Review Committee	Reviews the deaths of children and young people who were clients of the Victorian statutory child protection service at the time of their death or within 12 months of their death
State Coroner	Investigates particular categories of deaths

The Ombudsman investigates complaints about administrative actions and decisions taken by government authorities and about the conduct or behaviour of their staff. Complaints can be made to the Ombudsman by any member of the public. The Ombudsman will not usually intervene until the aggrieved person has raised their concerns with the responsible government authority.

The Ombudsman's powers to conduct investigations are deliberately broad. Unlike specialist review tribunals or commissions, the Ombudsman reviews the lawfulness of agencies' actions or decisions, as well as the reasonableness and fairness of these actions in the circumstances (Victorian Ombudsman 2011a).

Victoria's system for protecting vulnerable children has been a significant source of complaints to the Ombudsman over many years (Victorian Ombudsman 2009, p. 8). In addition to the Ombudsman's general investigation power over government agencies, since 2007 the CYF Act (s. 20) has given specific powers to the Ombudsman to investigate:

- CSOs that are registered to deliver family services and out-of-home care;
- Officers of CSOs who are authorised under the CYF Act to act on behalf of the Secretary;
- Independent agencies that are authorised by the Secretary to conduct external reviews of CSOs; and
- Independent investigators who are authorised by the Secretary to investigate an allegation of abuse against an out-of-home carer.

The Auditor-General

The Auditor-General provides independent assurance to the Victorian Parliament on the accountability and performance of the Victorian public sector. The Auditor-General is an independent officer of Parliament appointed to examine and report to Parliament and the community on the efficient and effective management of public sector resources, and provide assurance on the financial integrity of Victoria's system of government. The Auditor-General's functions, mandate and powers are set out in the *Audit Act 1994*.

The Auditor-General fulfils his or her responsibilities by publishing a range of audit reports and publications. The primary publications are performance audit reports and reports on the results of financial statement audits. The Office's audit clients comprise over 600 public sector entities (Victorian Auditor-General's Office 2011a).

Child Safety Commissioner

The Child Safety Commissioner was established in 2004 to provide a strong and independent voice for children, to promote their safety and wellbeing and to provide advice to the Minister for Community Services and the Minister for Children. The Commissioner is appointed by the Premier for a specified period and can be removed from office by the Premier. The functions and powers granted to the Commissioner under the CWS Act are shown in the box.

Functions and powers of the Child Safety Commissioner

The functions and powers of the Child Safety Commissioner relating to out-of-home care, statutory child protection services, and other functions are outlined below.

The Commissioner's functions in relation to out-of-home care are:

- To promote the provision of out-of-home care services that encourage the active participation of those children in the making of decisions that affect them;
- To advise the Minister and the Secretary on the performance of out-of-home care services; and
- At the request of the Minister, to investigate and report on an out-of-home care service.

The Commissioner's functions in relation to statutory child protection services are:

- To conduct inquiries in relation to children who have died and who were child protection clients at the time of their death or within 12 months of their death; and
- To conduct inquiries in relation to a child protection client, at the request of the Minister.

The Commissioner's other functions are:

- To provide advice and recommendations to the Minister about child safety issues, at the request of the Minister;
- To promote child-friendly and child-safe practices in the Victorian community;
- To review and report on the administration of the *Working with Children Act 2005* and, in consultation with the Department of Justice, to educate and inform the community about that Act.

The Child Safety Commissioner must submit an annual report on the conduct of his or her functions to the Minister for Community Services. The report must be tabled in each House of Parliament.

As noted previously, the Victorian Government has committed to establish an independent Children's Commissioner who would report directly to Parliament and would be able to initiate reviews regarding children who have been abused or neglected. The future role of the Commissioner is considered in section 21.3.3.

A Bill to establish a Commonwealth Commissioner for Children and Young People was introduced to the Senate in 2010. An Inquiry into the Bill by the Senate Legal and Constitutional Affairs Legislation Committee recommended in 2011 that the Bill should not be passed, noting that the Australian Government is currently considering the role of a National Children's Commissioner under the *National Framework for Protecting Australia's Children*.

Victorian Child Death Review Committee

The Victorian Child Death Review Committee (VCDRC) is an independent, multidisciplinary ministerial advisory body that reviews the deaths of children and young people who were clients of the Victorian child protection service at the time of their death or within 12 months of their death. The VCDRC has 10 current members, including the DHS Principal Child Protection Practitioner, representatives of Victoria Police and the Coroners Court, and a number of independent members.

In undertaking its reviews, the VCDRC's role is to:

- Identify any themes, trends or patterns that emerge from the review process and advise the Minister for Community Services of their implications for policy and practice in child protection and related services; and
- Identify particular groups of child deaths that may benefit from further investigation and oversee a group analysis process to gain a more comprehensive understanding of the issues involved and best practice responses.

The VCDRC does not express an opinion about the factors leading to a child's death nor does it determine culpability. Responsibility for these matters rests with the State Coroner and Victoria Police. The primary source materials used by the VCDRC are the reports of the Office of the Child Safety Commissioner's inquiries into the deaths of children known to statutory child protection services. The Office also provides a range of administrative support services to the VCDRC, but the VCDRC operates as an independent ministerial advisory body. If the VCDRC identifies a theme or issue that is common across cases, it can request the Office of the Child Safety Commissioner to undertake a more comprehensive analysis of issues arising from a particular group of deaths. Since the inception of the VCDRC in 1995, seven such analyses have been undertaken. In 2011 the Office undertook an analysis of responses to the co-existence of family violence, parental substance abuse and parental mental illness (VCDRC submission, p. 8).

The VCDRC submits an annual report to the Minister for Community Services that is tabled in Parliament. This report is the means by which the number of deaths of children known to child protection becomes public.

State Coroner

The State Coroner is required to investigate any 'reportable death' that is in some way connected to Victoria. Reportable deaths include:

- Deaths that appear to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from an accident or injury;
- Deaths of a person, who immediately before their death, was a person placed in 'custody or care';
- Deaths of a person under the control, care or custody of the Secretary to the Department of Justice or a member of the police force; and
- Deaths that occurred during a medical procedure; or following a medical procedure where the death is or may be causally related to the medical procedure and the death would not reasonably be expected to occur as a result of the procedure.

The Coroner is also responsible for investigating 'reviewable deaths' which is defined to mean the death of a second child (under 18 years age) of a parent where the child lived in Victoria or where the child died in Victoria. The Coroner investigates reviewable deaths to find the identity of the child who died, the cause of their death and the circumstances, assess the family's health needs and assess with other agencies the needs of living siblings or any risk to other children.

The Coroner's Court performs three functions relevant to protecting Victoria's vulnerable children: it investigates and reviews the causes and circumstances of notifiable deaths and makes preventative recommendations for the future; it enables public education on such matters; and it contributes to relevant law reform. The Coroner's Court has an overall function of scrutiny of the system of child protection, where a death occurs, and of ensuring its transparency.

21.3.2 Transparency and reporting

Transparent reporting about the performance of the system for protecting Victoria's vulnerable children is essential to the maintenance of public confidence and trust in the system. Regular public reporting helps to ensure government agencies are accountable for their actions, and is an important part of a system that supports continuous improvement in individual services and across the sector. However, when considering what information should be reported publicly, the desire for transparency must be balanced by the need to protect the privacy of the children involved. There cannot be complete transparency at the individual level.

At present DHS itself reports limited data on the performance of family services, statutory child protection and out-of-home care, or on the outcomes of children in the care of the State. The main reporting by DHS is against the performance measures set out for DHS' outputs in the State Budget. These provide measures of the quantity, quality, timeliness and cost of statutory child protection services, out-of-home care and family services. The same performance measures are published in the DHS annual report. While these measures provide a useful indication of the volume of services provided to clients, they are poor measures of system performance and do not attempt to measure client outcomes in any meaningful way.

There is considerable external reporting of data on child protection, out-of-home care and family services, based on data provided by DHS. The annual *Report on Government Services* compares the performance of states and territories against the Productivity Commission's indicators of the effectiveness and efficiency of child protection services and out-of-home care. The report's performance indicator framework, presented in Chapter 9 of this Report, also provides for indicators of equity and access, but these are yet to be developed. The Australian Institute of Health and Welfare also publishes a comprehensive annual report on state and territory child protection, out-of-home care and family services.

Chapter 4 provides an overview of the available data on the performance of the system for protecting Victoria's vulnerable children. It finds that the available data do not provide the basis for a comprehensive assessment of the performance of child protection, out-of-home care and family services, in particular regarding the critical measure of their effect on the incidence and impact of child abuse and neglect. Chapters 8, 9 and 10 provide more detailed analyses of the performance of family services, statutory child protection and out-of-home care respectively.

Ombudsman findings

The Ombudsman has also found deficiencies in the transparency and reporting of information on the system for protecting Victoria's vulnerable children. In his 2009 investigation into the statutory child protection program, the Ombudsman found that:

> [T]he data provided in the department's reports to the Secretary, Department of Treasury and Finance and the Minister for Community Services is insufficient to allow recipients to adequately consider the performance of the department. Further the information that is reported is largely focused on compliance with timeframes, with little emphasis on measuring the extent of the department's success in exercising its duty of care to the children for whom it is responsible (Victorian Ombudsman 2009, p. 125).

The Ombudsman again raised concerns regarding transparency and reporting in his 2010 investigation into out-of-home care:

> I consider there is a lack of transparency and independent oversight in relation to the quality of care and safety being provided in the out of home care system. At present the department releases limited information regarding its performance in providing safe and appropriate placements. It does not report on quality of care investigations and reviews in its annual report and does not report publicly on any analysis regarding incident reports for children in out of home care. In my view, the community should have access to this information to assist it to understand the issues faced by the out of home care system (Victorian Ombudsman 2010. p. 12).

As a result of the recommendations of the two Ombudsman reports, from 2010-11 DHS has begun to publish the following additional data in its annual report:

- The proportion of child protection practitioners receiving regular supervision;
- The proportion of unallocated child protection clients;
- The proportion of children in out-of-home care who are aged under 12 years and placed in residential care;
- The number of investigations undertaken in relation to quality of care concerns; and
- The number of substantiated quality of care concerns.

The publication of this data is welcome and enhances the transparency of DHS' performance. However, there remains a fundamental gap in data on the impact of programs and services on the outcomes of vulnerable children, including the incidence and impact of child abuse and neglect. In addition, this chapter has demonstrated there is a lack of transparency and public reporting regarding DHS' regulatory activities.

The Vulnerable Children and Families Strategy

The whole-of-government Vulnerable Children and Families Strategy recommended by the Inquiry in Chapter 6 could play a critical role in improving transparency and accountability. The strategy could identify the indicators and performance measures to be used by government to measure its performance in protecting vulnerable children and families and improving their wellbeing. Chapter 20 recommends that a new Commission for Children and Young People monitor and publicly report on departments' performance.

The Inquiry also recommends that DHS should publicly report on its regulation and monitoring activities to ensure these are transparent and subject to adequate scrutiny. DHS should also publish its decisions to take regulatory action against CSOs, such as the placement of conditions on a CSO's registration, the appointment of an administrator, or the revocation of registration. DHS should explain how and why those decisions were reached.

The public reporting of information on DHS' monitoring and regulatory activities can play an important role in rebuilding public confidence and trust in the system for protecting Victoria's vulnerable children, as well as increasing the scrutiny on DHS' execution of these functions.

Recommendation 88

The Department of Human Services should produce a comprehensive annual report on its regulation and monitoring of community service organisations. This report should include information on:

- The registration of community service organisations and their performance against the standards;
- The registration and disqualification of out-of-home carers;
- Category one critical incidents;
- Quality of care concerns, investigations of abuse in care and formal care reviews; and
- Actions taken against community service organisations.

In addition to this annual reporting, the Department of Human Services should immediately publish any decisions to take regulatory action against community service organisations, such as the placement of conditions on a community service organisation's registration, the appointment of an administrator, or the revocation of registration.

21.3.3 Enhancing oversight and scrutiny

While the Child Safety Commissioner is often regarded as the independent scrutineer of Victoria's child protection program, the Commissioner's independence and oversight powers and functions are limited compared with commissioners and guardians in other states and territories. For example, Victoria's Child Safety Commissioner:

- Is the only commissioner or guardian employed as a public servant by the Premier rather than appointed as an independent officer by the Governor;
- Monitors only the provision of out-of-home care, unlike the Commissioners in New South Wales, Queensland and Western Australia, who have a much broader scope of responsibilities;
- Is unable to conduct own-motion inquiries, unlike the equivalent bodies in Queensland, South Australia and Western Australia; and
- Is the only such body in Australia unable to table a special report to Parliament on issues arising from its functions.

Table 5 in Appendix 14 summarises the roles, functions, inquiry powers and reporting arrangements of selected commissioners for children and child guardians in other Australian states.

Victoria's statutory child protection services are not subject to systematic independent oversight. The Child Safety Commissioner's powers do not include monitoring or review of statutory child protection services, and the Commissioner does not have the ability to initiate inquiries. While DHS is subject to investigation and audit by the Ombudsman and the Auditor-General, these do not provide the regular independent scrutiny and public reporting that is required to ensure DHS is meeting its obligations, or to support continuous improvement in service delivery.

Victorian Law Reform Commission proposal

In 2010 the Victorian Law Reform Commission (VLRC) proposed that the Child Safety Commissioner have additional responsibility for oversight and review of child protection services, with authority to investigate and report to Parliament and the Minister on the operation of the CYF Act (VLRC 2010, p. 416). The VLRC argued that:

> An independent body with specialist expertise in child protection can play a significant role in highlighting systemic problems in this key area of governmental responsibility. This step may overcome the need for so many external reviews by independent experts and statutory authorities such as the Ombudsman and this Commission (VLRC 2010, p. 410).

The VLRC proposed that the Child Safety Commissioner should also have the following additional powers and functions:

- Advocate for children and young people across government and throughout the community;
- Liaise with Victorian Aboriginal communities in order to ensure the Commissioner is able to effectively advocate for Aboriginal children;
- Promote awareness of children's and young people's rights; and
- Consult children and young people about the performance of the Commissioner's functions (VLRC 2010, pp. 417-419).

Finally, the VLRC proposed that the independence of the Child Safety Commissioner should be strengthened. It proposed that:

- The Commissioner be appointed as an independent statutory officer by the Governor-in-Council for a period not exceeding five years;
- The Commissioner be required to report to Parliament on an annual basis; and
- The Attorney-General be the Minister responsible for the Commissioner, in order to maintain an arm's-length relationship from DHS.

Ombudsman findings

The Ombudsman's 2009 Investigation into the statutory child protection program found most child protection cases receive limited if any external scrutiny (Victorian Ombudsman 2009, p. 14). The Ombudsman recommended that DHS establish arrangements for ongoing independent scrutiny of the department's decision making regarding significant wellbeing and protective intervention reports, with particular attention to:

- How the urgency of reports is categorised;
- The consistency of thresholds applied across regions; and
- The appropriateness of the thresholds applied by DHS (Victorian Ombudsman 2009, p. 17).

The DHS Child Protection Standards Compliance Committee is a welcome initiative in response to the Ombudsman's recommendation. The Inquiry considers, however, that the system for protecting Victoria's children would be enhanced if statutory child protection services were subject to independent external scrutiny from a body such as the Commissioner, as part of its broader oversight responsibilities.

The Ombudsman's 2010 investigation into out-of-home care services found that there are also limitations to the Child Safety Commissioner's capacity to provide independent scrutiny of out-of-home care. These include that the Commissioner:

- Has no coercive powers to investigate matters and relies on the cooperation of DHS and other agencies to perform his or her functions;
- Reports directly to the Minister; and
- Is unable to table a special report to Parliament on issues arising from his or her functions.

The Commissioner does not have any powers with respect to family services.

Stakeholder views

The Inquiry met with key stakeholders in the course of gathering information including the Victorian Ombudsman, the Child Safety Commissioner, the Chair of the Victorian Child Death Review Committee, the Queensland Commissioner for Children and Young People and the Western Australia Commissioner for Children and Young People.

The Child Safety Commissioner's submissions to the Inquiry and the VLRC review argued that the independent children's commissioner's legislated functions should be extended to include:

- A broad range of audit/monitoring and review functions to enable the Independent Commissioner to effectively consider how well vulnerable children are progressing;
- Undertaking own-motion reviews;
- Undertaking random case audits of child protection files;
- A formalised complaint function, primarily directed to providing information and referrals and facilitating access to existing complaints mechanisms, but also extending to monitoring of agencies' handling of complaints; and
- Reporting annually to the Victorian Parliament.

Several stakeholders expressed their support for an independent children's commissioner with expanded monitoring and reporting powers (submissions from Berry Street, p. 20; Centre for Excellence in Child and Family Welfare, p.30; The Salvation Army, p. 24). The joint submission by Anglicare Victoria, Berry Street, MacKillop Family Services, The Salvation Army, Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare submitted that:

> Victoria lags behind other jurisdictions and that the time has come for an independent Commissioner for Children to be established in the State of Victoria (pp. 80-81).

The Aboriginal Family Violence Prevention and Legal Service Victoria (AFVPLSV) argued that there is inadequate oversight of the situation of Aboriginal children in Victoria's system for protecting vulnerable children and inadequate independent systemic advocacy (AFVPLSV submission, p. 9).

The Child Safety Commissioner argued for the establishment of a community visitor program for children living in out-of-home care, commencing with community visitors for residential care. Similarly, Jesuit Social Services submitted that the Commissioner should coordinate community visitors to child protection residential units and youth justice centres (Jesuit Social Services submission, p. 27). The Salvation Army and Open Place submissions also supported monitoring of services by visitors independent of DHS (The Salvation Army, p. 10; Open Place, p. 4).

A Commission for Children and Young People

The Inquiry considers there to be insufficient independent oversight of Victoria's system for protecting vulnerable children. The Child Safety Commissioner has limited powers and functions compared with commissioners and guardians in other states and territories. As a public servant with no powers to conduct own-motion inquiries, there are also important constraints on the Commissioner's independence.

While the Ombudsman and the Auditor-General play an important role, they have responsibility for overseeing all government agencies. They cannot provide the specialist, regular oversight and scrutiny that is warranted by the vulnerability of the children in question and the statutory responsibilities of the Secretary of DHS.

The government's commitment to establish an independent Children's Commissioner is a step in the right direction, but the Inquiry considers that further changes are required. As discussed in Chapter 20, several government agencies are responsible for delivering services that support vulnerable children and young people but are not directly held to account. It is of particular concern to the Inquiry that there is no systematic independent scrutiny of statutory child protection services.

The Inquiry recommends that the government establish a Commission for Children and Young People. The new Commission would oversee and report to ministers and Parliament on all laws, policies, programs and services that affect the wellbeing of vulnerable children and young people. The Commission would hold agencies to account for meeting their responsibilities as articulated in the proposed Vulnerable Children and Families Strategy and performance framework.

The Commission will also identify and focus attention on the need for research programs that are anchored in improving service responses adressing the needs of children and young people.

The Commission would replace the existing Child Safety Commissioner, and retain the Commissioner's current roles and functions. To avoid duplication, the specific powers granted to the Ombudsman under section 20 of the CYF Act should be transferred to the Commission.

The Commission's powers and functions would be broadly similar to the New South Wales Commission for Children and Young People and the Western Australian Commissioner for Children and Young People. Like those bodies, the Commission would be required by legislation to give priority to the interests and needs of vulnerable children as it carries out its functions.

The Inquiry recommends the establishment of a Commission rather than a single Commissioner because the scope of these powers and functions are too broad to be carried out by a single office holder. A Commission would provide flexibility for the number of Commissioners to be adjusted in response to changes in the Commission's work program. The appointment of multiple Commissioners would also provide the Commission with a broader range of expertise. For example, the Inquiry has recommended the appointment of an Aboriginal Commissioner. The Commissioners would also require public administration and legal expertise, knowledge of the policy and service environment relating to children and their families, an ability to engage with children and young people and advocate on their behalf, and an understanding of the needs of children from culturally and linguistically diverse communities.

Table 6 in Appendix 14 summarises the governance arrangements for seven existing Commissions in Victoria. Each of the Commissions are independent bodies, with Commissioners appointed by the Governor-in Council. The Commissions can do all things necessary or convenient to perform their functions and achieve their objectives, with only minor caveats.

Given the expanded role of the proposed Commission and the greater use of unannounced inspections of CSOs recommended by the Inquiry in section 21.2.8, the Inquiry does not propose the adoption of a community visitor scheme at this time. This is, however, something that the Commission for Children and Young People could consider in the future.

Recommendation 89

The Government should amend the *Child Wellbeing and Safety Act 2005* to establish a Commission for Children and Young People, comprising one commissioner appointed as the chairperson and such number of full-time and part-time additional commissioners as the Premier considers necessary to enable the Commission to perform its functions. Commissioners would be appointed by the Governor-in-Council.

The Commission should have responsibility for overseeing and reporting to Ministers and Parliament on all laws, policies, programs and services that affect the wellbeing of vulnerable children and young people. The Commission would hold agencies to account for meeting their responsibilities as articulated in the Vulnerable Children and Families Strategy and related policy documents. The Commission would also retain the current roles and functions of the Child Safety Commissioner. The Commission would be required by legislation to give priority to the interests and needs of vulnerable children.

The Commission should have authority to undertake own-motion inquiries into systemic reforms necessary to improve the wellbeing of vulnerable children and young people.

The specific powers granted to the Ombudsman under section 20 of the *Children, Youth and Families Act 2005* should be transferred to the Commission.

21.3.4 Review of child deaths

Victoria has a two-stage system of examining the deaths of children who were known to child protection – that is, 'children who have died and who were child protection clients at the time of their death or within 12 months of their death' (s. 33, CWS Act). In 2010 there were 29 deaths of children known to child protection (see Chapter 4).

In the first stage, the Office of the Child Safety Commissioner conducts an inquiry in relation to the child's death. Under the CWS Act, the objective of the inquiry is to promote continuous improvement and innovation in policies and practices relating to child protection and safety. The inquiry must relate to the services provided, or omitted to be provided, to the child before his or her death (s. 33). There is no legislative timeframe for the completion of child death inquiries, but the practice has been for them to be completed within 12 months of notification of the death (VCDRC submission, p. 6). The reports arising from Child Safety Commissioner inquiries are provided to the Secretary, the Minister and the VCDRC.

In the second stage, the VCDRC undertakes independent, multidisciplinary review of child deaths. The VCDRC does not have any investigative role, and therefore relies on the reports of the Child Safety Commissioner and other available documentation. The VCDRC provides written advice to the Minister concerning each child death inquiry, including comments on the report's findings and recommendations (VCDRC submission, p. 7).

The Inquiry considers that while both the Child Safety Commissioner and the VCDRC make an important contribution to the review of child deaths, there would be merit in streamlining the current two-stage review arrangements into a single process. A single process would allow child deaths to be reviewed more quickly, allowing advice to participants, services, DHS and the Minister to be more timely and therefore more meaningful. It would also overcome the current unwieldy arrangement that sees the Minister receive two sources of independent advice regarding child deaths.

The VCDRC's submission to the Inquiry offers some support for the concept of a single child death review process:

> The establishment of an independent Children's Commissioner clearly provides opportunities for change to organisational arrangements concerning the VCDRC. A multidisciplinary review committee which considers individual CDI [Child Death Inquiry] reports could be convened and chaired by the Children's Commissioner. Alternatively, a multidisciplinary committee could retain the status of a Ministerial Advisory Council and be chaired by the Children's Commissioner (VCDRC submission, p. 27).

Consistent with the first suggestion of the VCDRC, the Inquiry considers that the VCDRC should cease to play its current review function. Instead, a multidisciplinary committee such as the VCDRC should be convened by the proposed Commission for Children and Young People. The committee would be consulted by the Commission during the course of its inquiries and provide advice regarding child deaths.

In his recent investigation into the child protection program in the Loddon Mallee Region, the Ombudsman recommended that the CWS Act be amended to broaden the circumstances in which a child death review is conducted. The Ombudsman raised the case of a death of an infant who was not within the legislative scope of the child death review process despite the infant's siblings having been the subject of 10 child protection reports to DHS. The infant was not 'known to child protection' because he was not born at the time of the reports, the last of which was made while the mother was pregnant. The Ombudsman found this represented 'a shortcoming in the current system of external scrutiny in the child protection system' (Victorian Ombudsman 2011c, p. 58).

The Inquiry endorses the Ombudsman's recommendation and notes that it has been accepted by DHS.

Recommendation 90

The Commission for Children and Young People should convene a multidisciplinary committee such as the Victorian Child Death Review Committee to provide advice to the Commission during the course of the Commission's inquiries into child deaths. This committee should replace the Victorian Child Death Review Committee.

21.4 Conclusion

The Victorian Government has a duty to meet the needs of vulnerable children and young people when the child's family is unable to provide satisfactory care and protection. It is essential that there is scrutiny of the actions of government – and the CSOs that act on government's behalf – to ensure they meet their responsibilities to protect vulnerable children and families and to improve their wellbeing.

The Inquiry has found that the regulation and oversight of Victoria's system for protecting vulnerable children need to be strengthened. The Inquiry's recommendations would result in DHS adopting an approach to regulating CSOs that assesses the risk of harm to children and targets its activity accordingly, so that more is done to identify, address and prevent the shortcomings in the quality of out-of-home care.

The recommendation that the government establish an independent Commission for Children and Young People with broad monitoring and reporting powers would introduce the regular, specialist oversight of government decisions and services that is currently lacking, and bring Victoria into line with New South Wales, Queensland and Western Australia. The Commission would play an important role in holding all relevant government agencies to account for meeting their responsibilities as articulated in the proposed Vulnerable Children and Families Strategy and performance framework.

The Inquiry considers the recommendations in this chapter to be important safeguards for ensuring the Victorian Government meets its responsibilities to vulnerable children, and that improved accountability and reporting can help to rebuild public confidence and trust in the system.

Part 8: Implementation and conclusion

Chapter 22:
Implementation and prioritisation

Chapter 22: Implementation and prioritisation

Key points

- The Inquiry has made 90 recommendations on measures to reduce the incidence and negative impact of child abuse and neglect in Victoria in ten major system reforms areas.
- The reform areas are:
  - a Vulnerable Children and Families Strategy – a whole-of-government vulnerability policy framework with the objective of focussing on a child's needs (overseen by government through a Cabinet sub-committee);
  - clearer departmental and agency accountability for addressing the needs of vulnerable children, in particular, health and education;
  - an expanded Vulnerable Children and Families Services Network;
  - an area-based approach to co-located intake with clear accountability for decision making on statutory intervention;
  - strengthening the law and its institutions;
  - out-of-home care funding and services aligned to a child's needs;
  - improved community sector capacity, with clearer governance and regulatory framework;
  - a strengthened regulatory and oversight framework;
  - a plan for practical self-determination for guardianship of Aboriginal children in out-of-home care and culturally competent service delivery; and
  - a sector-wide approach to professional education and training and a greater development and application of knowledge to inform policy and service delivery.
- The recommendations and reforms will generate significant change in the broad systems to protect Victoria's children. What is important in reform of this nature is to maintain a balance between the changes that will drive and sustain the reform efforts while attending to the areas identified by the Inquiry as requiring immediate or urgent attention.
- The implementation of these recommendations require many parts of the Victorian Government and government funded community service organisations to work together and share responsibility to protect Victoria's vulnerable children.
- It will be important that the impact of the recommended system changes are monitored, evaluated and reported upon.

22.1 Introduction

In fulfilment of the Terms of Reference that focus on reducing the incidence and negative impact of child abuse and neglect in Victoria, the Inquiry has nominated four system goals, made 90 recommendations and identified 10 system reforms.

The four major system goals are:

- Reducing the incidence of child abuse and neglect;
- Reducing the impact of child abuse and neglect including addressing the immediate and long-term needs of the child:
  - safety;
  - health;
  - development;
  - education; and
  - to be heard.
- Over time, reducing the growth in the number of children and young people in out-of-home care in line with the overall growth in the population of Victoria's children and young people; and
- Clear and transparent public accountability.

The achievement of these goals will occur through the implementation of the Inquiry's 90 recommendations to the state government which relate to at least one of the following 10 major system reforms identified throughout the Report:

- A Vulnerable Children and Families Strategy – a whole-of-government vulnerability policy framework with the objective of focussing on a child's needs (overseen by Government through a Cabinet sub-committee);
- Clearer departmental and agency accountability for addressing the needs of vulnerable children, in particular, health and education;
- An expanded Vulnerable Children and Families Services Network;
- An area-based approach to co-located intake (to be piloted) with clear accountability for decision making on statutory intervention;
- Strengthening the law and its institutions;
- Out-of-home care funding and services aligned to a child's needs;
- Improved community sector capacity, with a clearer governance and regulatory framework;
- A strengthened regulatory and oversight framework;
- A plan for practical self-determination for guardianship of Aboriginal children in out-of-home care and culturally competent service delivery; and
- A sector-wide approach to professional education and training and a greater development and application of knowledge to inform policy and service delivery.

The recommendations and reforms will generate significant change across the broad range of systems to protect Victoria's children. What is important in a reform program of this nature is to maintain a focus on the changes that will drive and sustain the reform efforts while attending to the areas identified as requiring urgent attention. This requires a balanced approach and a phasing of effort so as not to overwhelm any individual aspect of the system. The phasing of effort is within, and across, the 10 reform areas.

A crucial aspect of any change process is leadership. To achieve real change in the protection of vulnerable children, leadership is required that demonstrates shared commitment and responsibility to protect vulnerable children across government agencies and government funded services. A number of recommendations focus on the entities required to drive the envisaged reforms.

Finally, the Inquiry considers the recommendations will collectively create the momentum and direction for wide-ranging improvements in Victoria's system for protecting vulnerable children.

The purpose of this chapter is to provide an overview of the implementation requirements for the Inquiry's major system reforms.

22.2 Implementation and priorities

The Inquiry has prepared a high-level Implementation Plan that is presented in Table 22.1. The plan identifies:

- The recommendations that contribute to the system reform or supporting capability;
- The key actions required for implementation;
- The time period for implementation (immediate, medium or long term as required by the Terms of Reference);
- The funding implications of the recommendations; and
- The responsible lead agency and other related agencies with supporting responsibilities.

It should be noted that the recommendations, while presented in full, are not listed sequentially as they appear in the Report. Rather, they are listed on the basis of their contribution to the system reform or supporting capability. Further, while some recommendations might contribute to more than one system reform, they are listed under the reform to which they align most closely.

Should the government accept the recommendations of the Inquiry, a range of actions will be required in the immediate, medium and long term.

Many of these actions are interrelated; in some cases the implementation of one action will be required before another can proceed.

The large-scale nature of some of the reforms, such as the development of a broad Vulnerable Children and Families Services Network, will require a phased approach to implementation over a number of years. Similarly, a 10 year plan has been proposed to delegate the care of Aboriginal children to Aboriginal organisations. Consequently, as the Implementation Plan shows, many matters will take in excess of three years to implement fully. However, implementation of many initiatives can commence immediately. It is expected that some work could be undertaken to commence implementation of every recommendation in year one.

The Inquiry is mindful that the existing systems will continue to provide services to vulnerable children and their families during the change processes. In some areas, where the timeframes for change are longer, there is a need to strengthen the existing arrangements to improve service delivery and provide the building blocks for the development of new arrangements. For example, improvements to the governance arrangements for Child FIRST are identified as an area for immediate improvement and a basis to progressively build improved intake arrangements.

Implementation timeframes are not identical to priorities. The Inquiry has found that particular parts of the broad system that should protect children are not performing as they should.

The Inquiry recommends that the government prioritise the implementation of recommendations that:

- Establish a Children's Services Committee of Cabinet and develop a whole-of-government vulnerable children's strategy (Recommendations 2 and 80);
- Commence a legislative change program to clarify departmental responsibilities, and the responsibilities of government funded services, to act in the best interests of children and young people, and to prioritise service delivery to vulnerable children, young people and their families (Recommendations 18, 42 and 81);
- Change the processes associated with the Children's Court to be child centred, with an emphasis on protective concerns being resolved as early as possible using collaborative problem solving approaches (Recommendations 53 to 65 inclusive);
- Strengthen the governance arrangements for Child FIRST (Recommendation 16);
- Develop area-based planning and coordination of government funded services to establish catchment-based networks of services for vulnerable children and families, including child protection, family services, specialist adult services, health services and enhanced universal services (Recommendation 17);
- Clearly establish that the Victorian Government is responsible for the overall policy leadership and accountability for the structure and performance of the child, youth and family support and service system (Recommendation 69);
- Undertake a collaborative approach to the development of the capacities and service delivery roles of CSOs for the provision of vulnerable children and families (Recommendation 69);
- Commence a pilot to examine co-location of intake functions carried out by the Department of Human Services (DHS) and by Child FIRST on an area-basis throughout Victoria (Recommendation 19);
- Establish a comprehensive five year plan for Victoria's out-of-home care system based on the goal, over time, of reducing the growth in the number of Victorian children and young people in care in line with the overall growth in the population of Victorian children and young people, and the objective of improving the stability, quality and outcomes of out-of-home care placements (Recommendation 25);

- Establish a comprehensive 10 year plan to delegate the care and control of Aboriginal children removed from their families to Aboriginal communities (Recommendation 36);
- Establish funding arrangements that recognise and anticipate demand for statutory child protection services, out-of-home care and family services (Recommendation 76); and
- Establish a Commission for Children and Young People to oversee and report on all laws, policies, programs and services that affect the wellbeing of vulnerable children and young people (Recommendation 89).

The successful implementation of the Inquiry's recommendations will require considerable collaboration by community organisations and all levels of government. In Victoria eight agencies of the government DHS, Victoria Police, the Department of Health (DOH), the Department of Education and Early Childhood Development (DEECD), the Department of Justice (DOJ), the Department of Premier and Cabinet (DPC), the Department of Planning and Community Development (DPCD) and the Department of Treasury and Finance (DTF)) will be required to work together to achieve better outcomes for vulnerable children. Some reforms will also require cultural and behavioural change within organisations and there may be a need to create incentives for change. For example, realigning court processes to meet the needs of children through greater use of collaborative problem solving approaches will require considerable changes to existing practices.

Reform of a system needs to be carefully planned, stakeholders involved in the change need to be consulted about implementation and required legislation and institutions need to be put in place. Importantly, it also requires strong leadership. The Inquiry also considers that progress in implementing reform of the system should be independently reviewed or evaluated after a period of consolidation.

22.3 Funding implications

The system for protecting vulnerable children requires significant attention, as evidenced by the Inquiry's recommendations, and this will require substantial investment by government. As shown in Chapter 19, funding of child protection in Victoria is lower than comparable Australian jurisdictions. The additional investment will enhance existing service provision to meet the needs of vulnerable children and families in Victoria.

Table 22.1 provides a high-level indication of the individual funding impacts of each recommendation made by the Inquiry. Some recommendations do not require additional funding and can be implemented through existing departmental appropriations. These are listed as policy and legislative reforms under the funding column.

Where new funding is required, the investment required has been described according to three key categories: minor, moderate and significant. The reforms are categorised by estimating the nature of the funding, such as one-off funding or recurrent funding, and the likely extent of funding required.

Despite the substantial investment required, the Inquiry anticipates that the reforms will provide a long-term financial gain for the Victorian community. The full implementation of the Inquiry's recommendations are expected to produce considerable cost savings over time to the government and the Victorian community. As outlined in Chapter 2, Deloitte Access Economics has estimated the overall lifetime cost of child abuse and neglect that occured in Victoria for the first time in 2009-10 to be up to $1.9 billion. In addition, abuse was also associated with loss of wellbeing and premature mortality, which was valued at up to $1.2 billion (lifetime cost).

As more investment is directed to prevention and earlier intervention, there will be a reduction in the proportion of Victorian children who are the subject of abuse or neglect. This will benefit increasing numbers of Victoria's vulnerable children and young people and enhance their overall health, wellbeing and future prospects.

Table 22.1 Implementation plan

System reforms	
Vulnerable Children and Families Strategy - A whole-of-government policy framework	
80. The Government should establish a Children's Services Committee of Cabinet comprising the ministers responsible for community services, children, education, health, community development and justice to oversee: • The development and implementation of the whole-of-government Vulnerable Children and Families Strategy; • The coordination of the service delivery by government agencies, particularly to vulnerable children and their families; and • Holding government agencies accountable for their delivery of services with regard to vulnerable children.	
2. The Government should develop and adopt a whole-of-government Vulnerable Children and Families Strategy. The objective of the strategy will be to establish a comprehensive government and community approach for improving Victoria's performance in responding to Victoria's vulnerable children and families at risk. The key elements are: • A definition of vulnerable children and young people; • Identified whole-of-government objectives, including specific roles and responsibilities for departments, both individually and collectively, in addressing vulnerability in children and young people; • A performance framework, or list of the accountabilities, performance measures or indicators to be used by government to measure the efficiency and effectiveness of the strategy; and • Accountability structures that set out appropriate oversight for monitoring the implementation of the strategy by departments and agencies, including reporting on such implementation to government and the public.	
83. The *Child Wellbeing and Safety Act 2005* should be amended to give the Children's Services Coordination Board greater operational responsibility for coordinating policy, programs and services that affect children and young people. Activities would include: • Overseeing implementation by government agencies of the Vulnerable Children and Families Strategy and reporting on this to the Children's Services Committee of Cabinet; • Proactively fostering the development of local area partnerships, through the regions and Regional Management Forums, to assist in the coordination and delivery of area-based policies and services to address the needs of vulnerable children, including structuring and reporting on area-based performance indicators; • Proposing an annual work program for approval the Cabinet Committee; • Reporting annually on activities and achievement; and • Functioning as a source of advice on budgetary matters regarding vulnerable children.	
3. Performance against the objectives set out in a Vulnerable Children and Families Strategy, including information on the performance of government departments and statutory child protection services should be published regularly through *The state of Victoria's children* report.	

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Cabinet Committee established			Policy reform	DPC	DEECD DHS DOJ DPCD DOH
	WoG Strategy adopted			Policy reform	DPC	DEECD DHS DOJ DPCD DOH
	CWS Act amended			Policy reform	DHS	DPC DEECD Members of CSCB
		Performance published		Policy reform	DEECD	DPC DHS DOJ DPCD DOH

Government decision required

Policy Development → Implementation

Government decision - requires legislation

Policy Development → Implementation

Other agency to implement (i.e. Commonwealth Government or CSOs)

Policy Development → Implementation

Table 22.1 Implementation plan (continued)

System reforms
82. Government performance against the whole-of-government Vulnerable Children and Families Strategy should be reported on by the Commission for Children and Young People.
4. Area-based policy and program design and delivery should be used to address vulnerability and protect Victoria's vulnerable children and young people. In particular, an area-based approach should be adopted for assessing outcomes specified in a Vulnerable Children and Families Strategy and for reporting on progress against performance indicators.
5. In preparing the whole-of-government Victorian Alcohol and Drug Strategy, the Department of Health should consider the impact of alcohol and drug abuse on the safety and wellbeing of children in families where parents misuse substances.
Clearer departmental and agency accountability for addressing the needs of vulnerable children, in particular, health and education
18. The Government should ensure the legislation governing relevant services establishes the responsibilities of services to act in the best interests of children and young people, and to prioritise service delivery to vulnerable children, young people and their families. In addition, health services and specialist adult services should be required to adopt family-sensitive practice guidelines.
81. The Government should amend relevant legislation to provide that the Secretaries of the Department of Education and Early Childhood Development and the Department of Health are responsible for the education and health outcomes, respectively, of children and young people in State care, with responsibility for these services under the *Children Youth and Families Act 2005* being removed from the Secretary of the Department of Human Services.
42. The following Acts should be amended to ensure that service providers assisting adults also have a clear responsibility to the children of their clients: • *Disability Act 2006;* • *Education and Training Reform Act 2006;* • *Health Services Act 1988;* • *Housing Act 1983;* • *Mental Health Act 1986;* and • *Severe Substance Dependence Treatment Act 2010.*

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
			Performance report by commission	Policy reform	CCYP	WoG
	Policy designed			Policy reform	DPC	DEECD DHS DOJ DPCD
		Impacts on strategy considered		Policy reform	DoH	DEECD DHS DOJ DPCD
	Guidelines adapted	Responsibilities clarified		Moderate investment	DoH	DHS DEECD CSOs
	Departmental responsibilities clarified			Legislative reform	DPC	DEECD DHS DOH
	Acts amended			Legislative reform	DEECD DHS DoH	

Government decision required

Policy Development → Implementation

Government decision - requires legislation

Policy Development → Implementation

Other agency to implement
(i.e. Commonwealth Government or CSOs)

Policy Development → Implementation

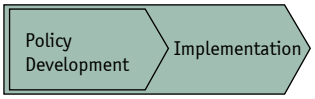
Table 22.1 Implementation plan (continued)

System reforms
84. The Government should strengthen and clarify the role of the Victorian Children's Council by: • Requiring the development of an annual work plan to be signed off by the Premier; • Providing for the Premier and Ministers for Children, Early Childhood Development and Community Services to refer matters to the Victorian Children's Council for consideration; • Allowing it to also provide advice to the proposed Commission for Children and Young People, if requested by the Commission; and • Appointing of a person with expertise in the needs of children of culturally and linguistically diverse backgrounds. Further, the *Children Youth and Families Act 2005* should be amended to remove the Child Safety Commissioner, or the successor commission, from the membership of the Victorian Children's Council. The Victorian Children's Council should be reviewed after two years.
13. The Department of Education and Early Childhood Development should improve its capacity to respond to the needs of vulnerable children and young people by: • Undertaking a comprehensive evaluation of whether existing school-based programs are meeting the needs of vulnerable children and young people; and • Introducing a population health and wellbeing questionnaire of students as they make the transition from childhood to adolescence, and publishing the outcomes in *The state of Victoria's children* report.
14. The Department of Health should amend the framework for monitoring the performance of health services to hold services accountable for support they provide to vulnerable children and families, consistent with their responsibilities under the recommended whole-of-government Vulnerable Children and Families Strategy.
38. The Victorian Government, through the Council of Australian Governments, should seek inclusion of the needs of recently arrived children and families of culturally and linguistically diverse backgrounds in the *National Framework for Protecting Australia's Children 2009-2020*, in particular: • The need to provide advice and information about Australian laws and norms regarding the rights and responsibilities of children and parents; and • Appropriate resettlement services for refugees to prevent abuse and neglect of refugee children.
An expanded Vulnerable Children and Families Services Network
17. The Government should expand upon the existing local Alliances of family services and statutory child protection services to develop broader Vulnerable Child and Family Service Networks – catchment-based networks of services for vulnerable children and families, including statutory child protection, family services, specialist adult services, health services and enhanced universal services.
6. The Department of Education and Early Childhood Development should implement strategies designed to encourage greater participation by the families of vulnerable children in universal services.
11. The Department of Education and Early Childhood Development should implement the recommendations from the Auditor-General's report on early childhood services by the end of 2012.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	CWS Act amended			Legislative reform	DEECD	DPC
	DEECD capacity improved			Policy reform	DEECD	
	Health performance framework amended			Policy reform	DoH	DEECD DTF CSOs
	Strengthened CALD Support			Policy reform	DPC	DHS DEECD
	Network Developed			Policy reform	DHS	DEECD DOH
	Universal services enhanced			Policy reform	DEECD	DHS
	Early childhood recommendations implemented			Policy reform	DEECD	DHS

Government decision required

Government decision - requires legislation



Other agency to implement (i.e. Commonwealth Government or CSOs)

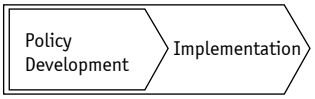


Table 22.1 Implementation plan (continued)

System reforms
7. The Government, through the Department of Education and Early Childhood Development, should: • Examine the capacity of local governments in low socioeconomic status areas to provide appropriate Maternal and Child Health and Enhanced Maternal and Child Health services, consistent with the concentration of vulnerable children and families, particularly as the current funding formula for Maternal and Child Health is based on a 50 per cent contribution by local government; and • Increase investment and appropriate infrastructure in universal services including maternal and child health, kindergarten and community playgroups, to communities that have the highest concentration of vulnerable children and families to increase the participation of vulnerable children in these services. The increased investment in maternal and child health and enhanced maternal and child health should focus on: • Enhanced support to families whose unborn babies are assessed as vulnerable to abuse or neglect, especially as a result of pre-birth reports; and • A more intensive program of outreach to families of vulnerable children who do not attend maternal and child health checks, particularly in the first 12 months of life.
16. As part of a strategy to improve services for vulnerable children and families in need, the Department of Human Services should strengthen area-based planning and coordination of family services and accountability arrangements under Child FIRST by: • Establishing Area Reference Committees to oversee the monitoring, planning and coordination of services and management of operational issues within each catchment. The Committees would be co-chaired by the Department of Human Services area manager and the chief executive officer or area manager of the lead community service organisation, and comprise a representative of each community service organisation in the local Alliance; and • Ensuring the funding arrangements for Alliance lead agencies clearly specify the agencies' responsibilities for receiving referrals, undertaking an initial assessment of clients' needs, and facilitating an appropriate service response, with appropriate performance indicators.
8. The Department of Health should develop and lead a consistent statewide approach for antenatal psychosocial assessment so that problems such as family violence, parental mental illness and substance misuse in pregnancy can be more effectively addressed.
12. The Government should fund the expansion of early parenting centres to provide services to a greater range of vulnerable families and to improve access to families living in outer Melbourne, regional and rural areas.
9. The Department of Education and Early Childhood Development, in partnership with the Department of Human Services, should develop a universal, evidence based parenting information and support program to be delivered in communities with high concentrations of vulnerable children and families, at key ages and stages across the 0 to 17 age bracket.
10. The Department of Education and Early Childhood Development should develop a wide-ranging education and information campaign for parents and caregivers of all school-aged children on the prevention of child sexual abuse.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Pre-birth and early childhood services			Moderate investment	DEECD	DOH DHS DTF Local Govt
	Governance of Child FIRST enhanced			Policy reform	DHS	CSOs
	Statewide approach adopted			Minor investment	DOH	DHS
	Early parenting centres expanded			Moderate investment	DHS	DOH DTF DEECD
	Parenting support program implemented			Minor investment	DEECD	DHS DOH
	Education campaign implemented			Minor investment	DEECD	DHS DOH

Government decision required

Policy Development → Implementation

Government decision - requires legislation

Policy Development → Implementation

Other agency to implement (i.e. Commonwealth Government or CSOs)

Policy Development → Implementation

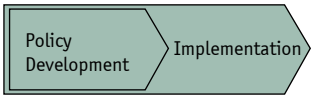
Table 22.1 Implementation plan (continued)

System reforms
An area-based approach to co-located intake with clear accountability for decision making on statutory intervention
19. Following adoption of the Child FIRST governance changes and using a piloted approach, intake functions carried out by the Department of Human Services and by Child FIRST should be physically co-located on an area basis throughout Victoria. Statutory child protection intake should remain a separate process to child and family support services intake, but there should be an increased focus, particularly with common clients, on improving collaboration between statutory child protection and family support services and greater joint decision making about risks presenting to vulnerable children and young people. Following implementation and evaluation of co-located intake throughout Victoria, and provided the key challenges and risks have been addressed appropriately, the Department of Human Services should aim to move towards a consolidated intake model where Child FIRST and statutory child protection intake processes are combined.
20. The Department of Human Services should introduce differentiated pathways as part of the statutory child protection response, with some increased case management by community service organisations. The two pathways that should be adopted immediately should involve first-time contact families and the use of multidisciplinary centres to respond to suspected child sexual abuse victims. Following collaboration between the Department of Human Services and key stakeholders, two additional pathways should be adopted to address the needs of families that have repeated contact with the Department of Human Services and families experiencing chronic and entrenched vulnerability.
21. The Department of Human Services should simplify case planning processes and improve collaboration and pathways between statutory child protection services and other services, particularly family violence and disability services. The Department of Human Services should increase case conferencing with other disciplines and services related to child protection issues including housing, health, education, drug and alcohol services and particularly for family violence and disability services. In relation to family violence, consideration should be given to the evidence base for establishing differentiated pathways that lead to improved outcomes along the lines of those pathways discussed in Recommendation 20. The protocol between statutory child protection and disability services should be strengthened, with more explicit statements around the roles and responsibilities of the different service agencies.
22. The Department of Human Services should simplify practice guidance and instructions for child protection practitioners. The Department of Human Services should reduce practice complexity by consolidating and simplifying the number of standards, guidelines, rules and instructions that child protection practitioners must follow. This process should investigate and apply learnings from comparatively high-risk sectors such as health or aviation in the approach taken to risk management and adverse events.
Strengthening the law and its institutions
A more accessible and less adversarial Children's Court
55. The Children's Court should be resourced to decentralise the Family Division by offering more sitting days at Magistrates' Courts or in other customised facilities in those Department of Human Services regions with high demand. Existing court facilities should be adapted as appropriate to meet the needs of children and their families.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Pilot conducted			Significant investment	DHS	DEECD DOH DTF CSOs
	New pathways implemented			Moderate investment	DHS	DOH Victoria Police
	Case planning enhanced	Collaboration pathway enhanced		Policy reform	DHS	DOH Victoria Police CSOs
	Guidance simplified			Policy reform	DHS	
	Court reforms implemented			Significant investment	DOJ	

Government decision required

Government decision - requires legislation



Other agency to implement
(i.e. Commonwealth Government or CSOs)

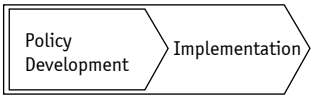


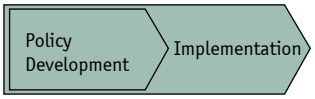
Table 22.1 Implementation plan (continued)

System reforms
65. The *Children, Youth and Families Act 2005* should be amended to confirm the status of the Children's Court as a court of record. The Children's Court should be appropriately resourced to enable decisions to be published on the Children's Court's website in de-identified form. Transcripts should also be made available to the public in de-identified form.
57. The Children's Court should be empowered under the *Children, Youth and Families Act 2005* to conduct hearings similar to the Less Adversarial Trial model used by the Family Court under Division 12A of the Commonwealth *Family Law Act 1975*.
53. The *Children, Youth and Families Act 2005* should be amended to provide that: • A child named on a protection application should have the formal status of a party to the proceedings; • A child who is under 10 years of age is presumed not to be capable of providing instructions unless shown otherwise and a child who is 10 years and over is presumed capable of providing instructions unless shown otherwise; • A child who is not capable of providing instructions should be represented by an independent lawyer on a 'best interests' basis; and • Other than in exceptional circumstances, a child is not required to attend at any stage of the court process in protection proceedings unless the child has expressed a wish to be present in court and has the capacity to understand the process.
54. The Government should develop guidelines to assist the court, tribunal, or the independent children's lawyer to determine whether the child is capable of giving direct instructions and to provide criteria by which the presumption of capacity can be rebutted.
56. The Children's Court should develop a case docketing system that will assign one judicial officer to oversee one protection matter from commencement to end. In order to evaluate the effectiveness of the system, the system should be piloted at an appropriate court location. The Department of Justice should support the Children's Court to establish the system.
62. The Children's Court should establish specialist Sexual Abuse and Koori lists in the Family Division. The Children's Court should be resourced to create and implement these lists as a matter of priority. To ensure these lists are suitable for implementation across the state, a pilot could be run in the Melbourne Children's Court or another suitable court location.
59. The Victorian Government Solicitor's Office should represent the Department of Human Services in all child protection proceedings in the Melbourne Children's Court and other metropolitan and regional Children's Court sittings and at the Victorian Civil and Administrative Tribunal. Department of Human Services lawyers should represent the department at the pre-court conferencing stage.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	CYF Act amended			Minor investment	DOJ	
	CYF Act amended			Legislative reform	DOJ	
	CYF Act amended			Legislative reform	DOJ	DHS Victoria Police
	Guidelines developed			Policy reform	DOJ & DHS	
	Pilot conducted			Minor Investment	DOJ	
	Specialists lists implemented			Minor investment	DOJ	DHS
	DHS legal representation enhanced			Moderate investment	DHS	VGSO

Government decision required

Government decision - requires legislation



Other agency to implement
(i.e. Commonwealth Government or CSOs)

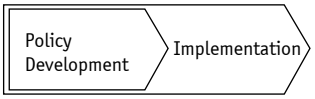


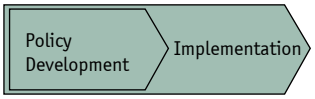
Table 22.1 Implementation plan (continued)

System reforms
58. Appropriate training in infant and child development, child abuse and neglect, trauma, and child interviewing techniques should be developed and provided to lawyers practising in the Children's Court jurisdiction and in the Victorian Civil and Administrative Tribunal, having regard to the training offered to independent children's lawyers in the family law jurisdiction. This training should be a prerequisite for any lawyer seeking to represent a child on a direct representation or best-interests basis in proceedings before the Children's Court and should be an accredited course. Appropriate education should be provided to judicial officers exercising the jurisdiction of the Children's Court and members exercising the jurisdiction of the Victorian Civil and Administrative Tribunal. The Victorian Government should consult with the relevant professional organisations and also seek the assistance of the Judicial College of Victoria in developing an appropriate professional education program.
61. Victoria Legal Aid should implement fee penalties for lawyers who fail to take adequate steps to ensure their clients' attendance at a New Model Conference and lawyers who repeatedly fail to do so should not be engaged by Victoria Legal Aid. This should also be addressed in the code of conduct being proposed for practitioners in 2012.
66. A new Children's Court of Victoria Act should be created and that Act should contain the current provisions in the *Children, Youth and Families Act 2005* relating to the Children's Court, appropriately modified. The *Children, Youth and Families Act 2005* should be revised consequent upon removal of the provisions relating to the Children's Court.
A stronger, more child-focused statutory child protection legal scheme 43. The *Children, Youth and Families Act 2005* should be amended to address the following issues: • Section 215(1)(c) that requires the Family Division of the Children's Court to consider evidence on the balance of probabilities' should be amended to expressly override the considerations in section 140(2) of the *Evidence Act 2008* and to disapply the Briginshaw qualification that requires a court to take into account the nature of the subject matter of the proceeding and the gravity of the facts alleged; • The definition of 'child' in section 3 should be amended to make it possible for protection applications in respect of any child under the age of 18 years; and • Out dated terms in the *Children, Youth and Families Act 2005* associating child protection with criminal law should be modernised and consideration should also be given to using terms consistent with the *Family Law Act 1975*. This includes: substituting the term 'emergency removal order' for 'warrants'; the term 'protection application by emergency removal' for 'protection application by safe custody'; and the word 'contact' for 'access' when describing contact between a child and a parent or other person significant in the child's life.
41. The best interests principles set out in section 10 of the *Children, Youth and Families Act 2005* should be amended to include, as section 10(3)(a), 'the need to protect the child from the crimes of physical abuse and sexual abuse'.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Training implemented			Minor investment	DOJ	DHS
	Penalties implemented			Policy reform	VLA	
	Children's Court Act created			Legislative reform	DOJ	DHS
	CYF Act amended			Legislative reform	DHS & DOJ	
	CYF Act amended			Legislative reform	DHS	

Government decision required

Government decision - requires legislation



Other agency to implement
(i.e. Commonwealth Government or CSOs)

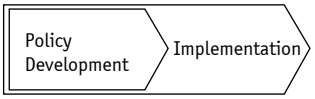


Table 22.1 Implementation plan (continued)

System reforms
60. Protection concerns should be resolved as early as possible using a collaborative problem solving approach with a child-centred focus and minimising where possible, the need for parties to go to court. This means that: • The Department of Human Services should, where appropriate, use voluntary Family Group Conferencing as a matter of practice to prevent matters from reaching the protection application stage; • Where a matter has reached the protection application stage, parties must try to resolve the protective concern, where appropriate, through a statutorily mandated Child Safety Conference set out in the *Children, Youth and Families Act 2005*; and • Where a matter is before the Children's Court, parties should, where appropriate, go through a New Model Conference and the Children's Court should be supported to implement this model of conferencing across the state.
63. The current scheme of protective orders under the *Children, Youth and Families Act 2005* should be simplified. This can be achieved by reviewing the scope and objectives of each order and their current utility. Consideration should be given to: • Removing Custody to Third Party Orders as a category of order from the *Children, Youth and Families Act 2005*; • Removing Temporary Assessment Orders as a category of order from the *Children, Youth and Families Act 2005*; • Creating a general 'Interim Order' which could incorporate the current functions of an Interim Accommodation Order and a Temporary Assessment Order; • Renaming 'Interim Protection Order' as either a 'Temporary Supervision Order' or 'Temporary Care Order'; and • Consolidating the current range of protection orders into categories of 'Interim' and 'Final' orders and into categories of 'Care' and 'Supervision' orders while maintaining the range of purposes that the various orders currently serve.
44. The Victorian Government should progressively gazette those professions listed in sections 182(1)(f) - (k) of the *Children, Youth and Families Act 2005* that are not yet mandated, beginning with child care workers. In gazetting these groups, amendments will be required to the *Children, Youth and Families Act 2005* and to the *Children's Services Act 1996* to ensure that only licensed proprietors of, and qualified employees who are managers or supervisors of, a children's service facility that is a long day care centre, are the subject of the reporting duty.
45. The Department of Human Services should develop and implement a training program and an evaluation strategy for mandatory reporting to enable a body of data to be established for future reference. This should be developed and implemented in consultation with the representative bodies or associations for each mandated occupational group.
64. A specialist Child Protection List should be created in the Victorian Civil and Administrative Tribunal in order to hear any reviews of decisions by the Department of Human Services on conditions. The Victorian Civil and Administrative Tribunal should be resourced to ensure that the members who would determine disputes within that specialist list have appropriate qualifications and expertise in child abuse and neglect and child health and wellbeing. The current legal aid guidelines should be amended to enable parties who seek a review of decisions by the Department of Human Services at the Victorian Civil and Administrative Tribunal to be eligible to obtain legal aid representation without requiring special consideration.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	CYF Act amended			Moderate investment	DHS & DOJ	
	CYF Act amended			Legislative reform	DHS	DOJ
	Mandatory reporting extended			Policy reform	DHS	
	Training program established			Moderate investment	DHS	
	Court reforms implemented			Significant investment	DOJ	

Government decision required

Policy Development → Implementation

Government decision - requires legislation

Policy Development → Implementation

Other agency to implement (i.e. Commonwealth Government or CSOs)

Policy Development → Implementation

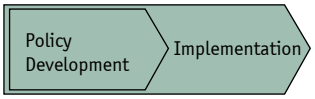
Table 22.1 Implementation plan (continued)

System reforms
46. The Victorian Government should obtain the agreement of all jurisdictions, through the Council of Australian Governments or the Community and Disability Services Ministers' Conference, to undertake a national evaluation of mandatory reporting schemes with a view to identifying opportunities to harmonise the various statutory regimes.
A new model for clinical services to support child protection proceedings 74. The scope, governance and oversight of the provision of clinical services in the statutory child protection system should be reformed: • As an immediate priority, the current Children's Court Clinic should be abolished and re-established as an administrative unit within the Department of Health; and • In the medium to long term, the administrative unit should be replaced by a statutory clinical services board that will oversee service provision by a panel of providers. The parties to protection applications, or the Children's Court or the Victorian Civil and Administrative Tribunal, should be able to use a panel clinical service provider to provide a clinic report.
73. The *Children, Youth and Families Act 2005* should be amended to: • Empower the clinical service provider to provide a report at the request of the Children's Court, or at the request of the Victorian Civil and Administrative Tribunal, or at the request of the parties to the proceedings; • Prohibit the clinical service provider from making any disposition recommendations in its report; • Enable the Department of Human Services to release clinic reports to carers or case managers who have a direct involvement with the child or young person subject to appropriate safeguards around the use and dissemination of those reports; and • Require a clinical assessment to take into account information provided to the clinical assessor by the parties particularly where the clinical assessor is unable to assess the child, young person or the family within their home environment.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	National agreement negotiated			Policy reform	DHS	DPC
	Clinic reforms implemented			Moderate investment	DHS & DOJ	
	CYF Act amended			Legislative reform	DHS & DOJ	

Government decision required

Government decision - requires legislation



Other agency to implement (i.e. Commonwealth Government or CSOs)

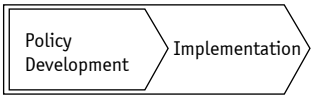


Table 22.1 Implementation plan (continued)

System reforms
75. The Government should implement the following legislative and administrative changes to support the recommended reform of clinical services. *Scope and governance* The *Children, Youth and Families Act 2005* should be amended to: • Set out the new statutory board's and clinical service provider's objectives and tying these objectives, where appropriate, to the best interest principles in the Act; • Define the type of clinical services to be provided within the statutory child protection system and the services to be provided within the criminal justice system; and • Require the statutory board to publish an annual report. *Clinic access and environment in the immediate term* • The administrative unit should be relocated from the Children's Court but the Government should ensure the Court still has access to on-site counselling and support services to deal with children, youth, and families who may be experiencing acute stress in the court environment; and • Clinical services should be decentralised as a priority to ensure the needs of children, young people and their families are met across Victoria, as outlined in the 2011 report on the Children's Court Clinic prepared for the Department of Justice. *Resourcing of the Clinic in the immediate term* • The administrative unit should be resourced to: expand the current pool of assessors available to the Clinic; provide the proper level of remuneration to both permanent and sessional clinicians commensurate with their professional expertise; implement the process and quality assurance reforms as recommended in the 2011 report on the Children's Court Clinic prepared for the Department of Justice; and provide therapeutic treatment services, where appropriate, for children, young people and their families by agreement of the parties, or at the request of the Court, or the Victorian Civil and Administrative Tribunal; and • The Government should, in consultation with the new statutory board, ensure the new administrative unit is properly funded and resourced to provide the necessary services to meet its statutory objectives with a view to establishing a panel of clinical service providers in the medium to long term.
72. Section 562(4)(a) of the *Children, Youth and Families Act 2005,* which confers a discretion on the Children's Court to not release all or part of a clinical report to the Department of Human Services if satisfied that the release of the report could cause significant psychological harm to a child, should be repealed.
Improving criminal justice responses to child safety 39. Victoria Police should change the brief authorisation process for allegations of child physical assault so that authorisation is conducted by a specialist senior officer.
40. The Department of Justice should lead the development of a new body of data in relation to criminal investigation of allegations of child physical and sexual abuse, and in particular the flow of reports from the Department of Human Services to Victoria Police. Victoria Police, the Office of Public Prosecutions, the Department of Human Services and the courts should work with the Department of Justice to identify areas where data collection practices could be improved.
49. Section 146 of the *Family Violence Protection Act 2008* should be extended to permit the Children's Court to exercise jurisdiction under that Act when a child who is the subject of a child protection application is a child of 'the affected family member' or 'the protected person'.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Legislative and admin. changes implemented			Significant investment	DHS & DOJ	
	CYF Act amended			Legislative reform	DHS & DOJ	
	Authorisation processes changed			Policy reform	DOJ	Victoria Police
	Data created			Minor investment	DOJ	DHS Victoria Police
	FVP Act amended			Legislative reform	DOJ	DHS

Government decision required

Policy Development → Implementation

Government decision - requires legislation

Policy Development → Implementation

Other agency to implement (i.e. Commonwealth Government or CSOs)

Policy Development → Implementation

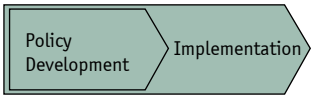
Table 22.1 Implementation plan (continued)

System reforms
47. *The Crimes Act 1958* (Vic) should be amended to create a separate reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation. The duty should extend to: • A minister of religion; and • A person who holds an office within, is employed by, is a member of, or a volunteer of a religious or spiritual organisation that provides services to, or has regular contact with, children and young people. An exemption for information received during the rite of confession should be made. A failure to report should attract a suitable penalty having regard to section 326 of the *Crimes Act 1958* and section 493 of the *Children, Youth and Families Act 2005*.
50. Sections 182-186 of the *Serious Sex Offenders (Detention and Supervision) Act 2009*, which provide for the making of supression orders, should be repealed (Recommened by majority).
51. The Victorian Government should, consistent with other Australian jurisdictions, enact an internet grooming offence.
48. A formal investigation should be conducted into the processes by which religious organisations respond to the criminal abuse of children by religious personnel within their organisations. Such an investigation should possess the powers to compel the elicitation of witness evidence and of documentary and electronic evidence.

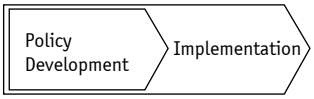
	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
		Crimes Act amended		Legislative reform	DOJ	DPC
		SSO Act amended		Legislative reform	DOJ	
		Legislative reform implemented		Legislative reform	DOJ	
		Investigation completed		Legislative reform	DOJ	DPC

Government decision required

Government decision - requires legislation



Other agency to implement
(i.e. Commonwealth Government or CSOs)



System reforms

Align out-of-home care funding and response to a child's needs

25. The Government should, as a matter of priority, establish a comprehensive five year plan for Victoria's out-of-home care system based on the goal, over time, of the growth in the number of Victorian children and young people in care being in line with the overall growth in Victorian children and young people and the objective of improving the stability, quality and outcomes of out-of-home care placements. The key elements of the plan should include:
    - Significant expansion in placement prevention initiatives to divert children from out-of-home care. In particular, increased investment in placement diversion and re-unification initiatives, when the safety of the child has been professionally assessed, involving intensive and in-home family support and other services for key groups such as families of first-time infants and young children;
    - More timely permanent care where reunification is not viable;
    - All children and young people entering out-of-home care undergo comprehensive health, wellbeing and education assessments;
    - All children in out-of-home care receive appropriate therapeutic care, education and other services;
    - Progressive adoption of client-based funding to facilitate the development of individual and innovative responses to the needs of child and young people who have been the subject of abuse and neglect;
    - The introduction over time of a professional carer model to provide improved and sustained support for children and young people with a focus on lowering the use of residential care;
    - Significant investment in the funding and support arrangements for:
        - home-based care including a common service and funding approach across foster care, kinship and permanent care and improved carer training, support and advocacy arrangements;
        - residential care including mandating training and skill requirements for residential and other salaried care workers (i.e. the proposed professional care model); and
    - The adoption of an area-based approach to the planning, delivery and monitoring of out-of-home care services and outcomes involving the Department of Human Services, community service organisations and other relevant agencies.

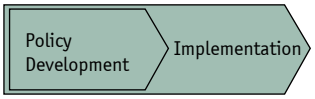
    Given the underlying trends and quality issues, implementation of this plan will require significant investment.

23. The Department of Human Services should identify and remove barriers to achieving the most appropriate and timely form of permanent placements for children unable to be reunited with their biological family or to be permanently placed with suitable members of the extended family by:
    - Seeking parental consent to adoption, and where given, placing the child in a suitable adoptive family;
    - Pursuing legal action to seek the dispensation of parental consent to adoption for children whose circumstances make them eligible under section 43 of the *Adoption Act 1984*;
    - Resolving the inconsistency between practical requirements for child protection practitioners to simultaneously plan for reunification while contemplating permanent care arrangements; and
    - Reviewing the situation of every child in care who is approaching the stability timeframes as outlined in the *Children, Youth and Families Act 2005*, to determine whether an application for a permanent care order should be made. Where it is deemed not appropriate to do so (for example, where a child's stable foster placement would be disrupted), the decision not to make application for a permanent care order should be endorsed at a senior level.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	5 Year plan implemented			Significant investment	DHS	DEECD DOH DTF CSOs
	Permanent care reforms implemented			Minor investment	DHS	DEECD DOH DTF CSOs

Government decision required

Government decision - requires legislation



Other agency to implement
(i.e. Commonwealth Government or CSOs)

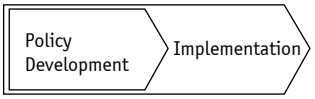


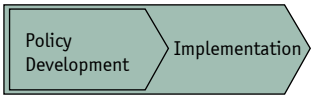
Table 22.1 Implementation plan (continued)

System reforms
26. To provide for the clear and transparent development of a client-based funding, the Government should request the Essential Services Commission to advise on: • The design of a client-based funding approach for out-of-home care in Victoria; and • The unit funding of services for children and young people placed in care.
27. The Victorian Government should, as a matter of priority, give further detailed consideration to the professional carer model and associated arrangements and request that the Commonwealth Government address and resolve, as a matter of priority, significant national barriers associated with establishing this new category of worker including industrial relations and taxation arrangements.
29. The Department of Human Services should have the capacity, including funding capacity, to extend the current home-based care and residential care out-of-home placement and support arrangements, on a voluntary and needs basis, for individual young people beyond 18 years of age.
30. The Department of Human Services should: • Ensure all leaving care plans identify stable initial accommodation options and that a 'no discharge to temporary and inappropriate accommodation policy' is adopted; • Review the levels and range of leaving and post-care financial assistance provided to care leavers as part of the development and implementation of the proposed Leaving Care Employment and Education Access Program, including appropriate representations to the Commonwealth Government on their current employment and education assistance programs; and • Assess the impact of the current leaving care services and programs, as a matter of priority, to determine whether the necessary access to, and integration of, post-care support across the full range of health, housing and other services is being achieved.
31. The Government should consider, in the medium term, the availability of post-care support and periodic follow-up being extended, on a needs basis, until a young person reaches the age of 25 years.
24. The Department of Human Services and community service organisations should continue to support the Who Am I Project on out-of-home care record keeping to enable children and young people to access all records of relevance and, as appropriate, be provided with a personal record when leaving care.
28. The Department of Human Services should collect regular information on the experiences of young people leaving care and their access to leaving care and post-care services and report the initial findings to the Minister in 2012 and thereafter on an annual basis to the proposed Commission for Children and Young People.
87. The Department of Human Services should take lead responsibility for formal care reviews.

Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
Client-based funding implemented			Policy reform	DHS	DTF CSOs ESC
Professional carer model established			Policy reforms	DHS	DPC DTF CSOs Commonwealth Government
Support arrangements extended			Moderate investment	DHS	DTF CSOs
Leaving care arrangements reviewed			Policy reform	DHS	DEECD DOH DTF CSOs
	Post-care support extended to 25 years of age		Policy reform	DHS	DTF CSOs
Records updated			Policy reform	DHS	CSOs
Findings reported			Moderate investment	DHS	CSOs
Responsibility transferred			Policy reform	DHS	CSOs

Government decision required

Government decision - requires legislation



Other agency to implement (i.e. Commonwealth Government or CSOs)

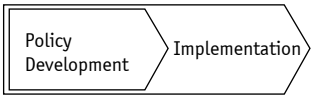


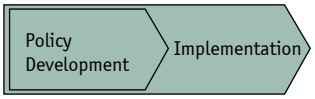
Table 22.1 Implementation plan (continued)

System reforms
Improved community sector capacity with clearer governance and regulatory framework
69. The future relationship between the Department of Human Services and community service organisations should be based on a model where: • The Victorian Government is responsible for the overall policy leadership and accountability for the structure and performance of the child, youth and family support and service system; and • The capacities and service delivery roles of community service organisations for the provision of vulnerable children and families are reflected in collaborative service system planning and performance monitoring at a regional and area level.
70. The Department of Human Services should review and strengthen over time the governance and performance requirements of community service organisations providing key services to vulnerable children and their families, while also playing a proactive facilitation and support role in community services sector organisational development.
71. The Department of Human Services should: • Consult with the community services sector on the implications of the future system and service directions outlined in this Report for the future structure of service provision and requirements of community service organisations; and • Establish one-off funding and other arrangements to facilitate the enhancement and adjustment of community service organisations.
78. The Department of Human Services should review the list of individual placement and support, and community and family services activities provided by community service organisations. The number of these activities and their funding arrangements should be consolidated as part of adopting a more client-focused approach based on broader service types.
79. The Government should adopt an explicit policy of fully funding child protection and family services delivered through community service organisations, including provision for infrastructure and other relevant indirect costs. On an ongoing basis, there should also be a greater level of independent oversight of the Government's role as the sole purchaser of services delivered through community service organisations. The Essential Services Commission should be given an ongoing role to periodically determine the appropriate prices for child protection and family services that are delivered through community service organisations.
85. The Department of Human Services should adopt a risk-based approach to monitoring and reviewing community service organisation performance, involving greater use of unannounced inspections and reviewing the performance of higher risk agencies more frequently than lower risk agencies.
86. The Department of Human Services should retain responsibility for regulating out-of-home care services and family services. This function should be independent and structurally separated from those parts of the department responsible for child protection and family services policy and funding of community service organisations. The director of the unit should report directly to the Secretary.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Relationship clarified			Policy reform	DHS	CSOs
	Capacity implementation			Moderate investment	DHS	CSOs
	Capacity implementation			Moderate investment	DHS	DTF CSOs
	Funding arrangements considered			Policy reform	DHS	DTF CSOs
	Funding policy implemented			Significant investment	DHS	DTF ESC CSOs
	Risk-based approach implemented			Policy reform	DHS	CSOs
	DHS regulatory arrangements implemented			Policy reform	DHS	CSOs

Government decision required

Government decision - requires legislation



Other agency to implement
(i.e. Commonwealth Government or CSOs)

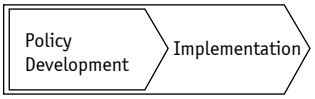


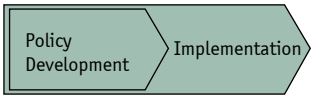
Table 22.1 Implementation plan (continued)

System reforms
88. The Department of Human Services should produce a comprehensive annual report on its regulation and monitoring of community service organisations. This report should include information on: • The registration of community service organisations and their performance against the standards; • The registration and disqualification of out-of-home carers; • Category one critical incidents; • Quality of care concerns, investigations of abuse in care and formal care reviews; and • Actions taken against community service organisations. In addition to this annual reporting, the Department of Human Services should immediately publish any decisions to take regulatory action against community service organisations, such as the placement of conditions on a community service organisation's registration, the appointment of an administrator, or the revocation of registration.
A strengthened regulatory and oversight framework
89. The Government should amend the *Child Wellbeing and Safety Act 2005* to establish a Commission for Children and Young People, comprising one commissioner appointed as the chairperson and such number of full-time and part-time additional commissioners as the Premier considers necessary to enable the Commission to perform its functions. Commissioners would be appointed by the Governor-in-Council. The Commission should have responsibility for overseeing and reporting to Ministers and Parliament on all laws, policies, programs and services that affect the wellbeing of vulnerable children and young people. The Commission would hold agencies to account for meeting their responsibilities as articulated in the Vulnerable Children and Families Strategy and related policy documents. The Commission would also retain the current roles and functions of the Child Safety Commissioner. The Commission would be required by legislation to give priority to the interests and needs of vulnerable children. The Commission should have authority to undertake own-motion inquiries into systemic reforms necessary to improve the wellbeing of vulnerable children and young people. The specific powers granted to the Ombudsman under section 20 of the *Children, Youth and Families Act 2005* should be transferred to the Commission.
90. The Commission for Children and Young People should convene a multidisciplinary committee such as the Victorian Child Death Review Committee to provide advice to the Commission during the course of the Commission's inquiries into child deaths. This committee should replace the Victorian Child Death Review Committee.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Regulation report published			Policy reform	DHS	CSOs
	CYF Act amended → Commission established			Significant investment	DPC	WoG CSOs
		Process streamlined		Policy reform	CCYPC	DHS CSOs

Government decision required

Government decision - requires legislation



Other agency to implement
(i.e. Commonwealth Government or CSOs)

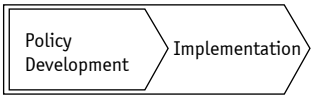


Table 22.1 Implementation plan (continued)

System reforms
A plan for practical self-determination for guardianship of Aboriginal children in out-of-home care and culturally competent service delivery
36. The Department of Human Services should develop a comprehensive 10 year plan to delegate the care and control of Aboriginal children removed from their families to Aboriginal communities. This would include: • Amending section 18 of the *Children, Youth and Families Act 2005* to reflect Aboriginal community decision making processes and address current legislative limitations regarding implementation; • Developing a sustainable funding model to support transfer of guardianship to Aboriginal communities that recognises the cost of establishing an alternative guardianship pathway. These arrangements would initially be on a small scale and require access to significant legal advice, legal representation, practice advice, specialist assessments and therapeutic treatment; • Developing a statewide plan to transfer existing out-of-home care placements for Aboriginal children and young people from mainstream agencies to Aboriginal community controlled organisations and guide future resource allocation (with performance/registration caveats and on an area basis); • Providing incentive funds for Aboriginal community controlled organisations to develop innovative partnership arrangements with mainstream providers delivering out-of-home care services to Aboriginal children to connect them to their culture; • Targeting Aboriginal community controlled organisations capacity building to these activities, that is, guardianship, cultural connection and provision of out-of-home care services; and • Providing increased training opportunities for Aboriginal community controlled organisation staff to improve skills in child and family welfare. The proposed Aboriginal Commissioner or Deputy Commissioner for children and young people should report on performance against this plan.
35. As part of the creation of a Commission for Children and Young People, an Aboriginal Children's Commissioner or Deputy Commissioner should be created to monitor, measure and report publicly on progress against objectives for vulnerable Aboriginal children and young people across all areas of government activity, including where government provides resources for non-government activities.
32. More detailed monitoring should be developed for the *Victorian Indigenous Affairs Framework* that provides reports on outcomes at the operational level regarding key areas of disadvantage (such as education attainment or family violence) and in specific localities with high prevalence rates of risk factors for abuse and neglect.
33. Aboriginal cultural competence should be a feature of the Department of Human Services standards for community service organisations. Further, the performance of agencies in relation to cultural competence should be an area of specific focus in the next cycle of community service organisation registration.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	10 Year plan implemented			Significant investment	DHS	DEECD DOH DPCD
	Aboriginal Commissioner established			(See recommendation 89)	DPC	DHS
	Detailed monitoring framework developed			Policy reform	DPCD	DHS CSOs ACCOs DTF
	Detailed monitoring framework developed			Policy reform	DHS	CSOs

Government decision required

Policy Development → Implementation

Government decision - requires legislation

Policy Development → Implementation

Other agency to implement (i.e. Commonwealth Government or CSOs)

Policy Development → Implementation

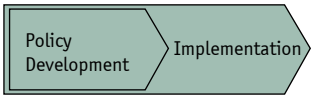
Table 22.1 Implementation plan (continued)

System reforms
34. The Government should expand the use and effectiveness of culturally competent approaches within integrated family services and statutory child protection services through the Department of Human Services by: • Establishing funding arrangements with the Aboriginal Child Specialist Advice and Support Service that enable cultural advice to be provided across the full range of statutory child protection activities; • Using the Aboriginal Family Decision Making program as the preferred decision making process if an Aboriginal child in statutory child protection services is substantiated as having suffered abuse or neglect; • Expanding family preservation and restoration programs so they are available to Aboriginal families in rural and regional areas with significant Aboriginal populations; • Expanding Aboriginal kinship care support to provide support to all Aboriginal kinship carers; and • Expanding Aboriginal family support programs so they are available to Aboriginal families in areas with significant Aboriginal populations.
A sector-wide approach to training with greater development and application of knowledge to inform policy and service delivery
1. The Government should consider, as a matter of priority, investing resources in: • The information management systems spanning vulnerable families and children including the statutory child protection system to incorporate information on the major demographic characteristics (including culturally and linguistically diverse and Aboriginal status) and the presenting issues of vulnerable families and children; • The regular publication of information on the characteristics of families, children and young people who have multiple interactions with the statutory child protection system to facilitate research and transparency about the performance of the system; and • Conducting cost-benefit and feasibility assessments, including the possible governance arrangements of: – instituting cohort or longitudinal surveys of families and children following their involvement with statutory child protection services and, over time, related services for vulnerable children and families; and – the approach developed in Western Australia of linking de-identified health data to de-identified data from the departments of Child Protection, Education, Disability Services and Corrective Services and Housing and Community, as a means of identifying for policy and program development purposes, the factors linked with child protection reports and the nature and dimensions of the subsequent experiences and issues.
37. To improve knowledge and data on vulnerable children of culturally and linguistically diverse backgrounds so that the appropriateness of current service provision can be considered: • The Department of Human Services should collect data to record and track children and young people of culturally and linguistically diverse backgrounds who are involved with the child protection system, and the family services sector; and • The Department of Education and Early Childhood Development should include data on the experiences of vulnerable children and young people of culturally and linguistically diverse backgrounds (including in Victoria's system for protection children) in *The state of Victoria's children* report.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Enhanced cultural competence			Policy reform	DHS	CSOs ACCOs DTF
	Information systems established			Significant investment	DEECD	WoG
	Data collection enhanced			(See recommendation 1)	DHS	DEECD DHS DOJ DPCD

Government decision required

Government decision - requires legislation



Other agency to implement (i.e. Commonwealth Government or CSOs)

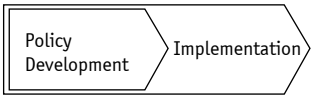


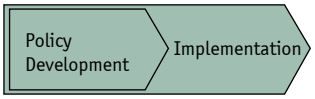
Table 22.1 Implementation plan (continued)

System reforms
67. The Government should establish a child and family welfare sector training body to oversee development of an industry-wide workforce education and development strategy. This strategy should focus on consolidating the number of separate training budgets and strategies relating to child protection and family services. This body should focus on: Developing the professionalism of the sector; • Providing opportunities for continuing professional education including training and career path opportunities for workers entering at the Child Protection Worker-1 level; • Addressing the education and training needs of the out-of-home care sector including carers; • Overseeing and evaluating current training and development efforts, with an initial emphasis on assessing the adequacy of the Beginning Practice training offered to new child protection workers; • Ensuring relevant training is consistent with national training frameworks and appropriately accredited; • Identifying opportunities for providing combined training to government child protection workers, the community sector workforce and other professions; • Coordinating the delivery of internal Department of Human Services courses; • Procurement of other courses from external providers; and • Collaborating with professional bodies and universities in disciplines that interact with vulnerable children to develop curriculum content relevant to the prevention of and response to child abuse and neglect. The training body should be established as a public entity, with dedicated funding and staffing resources, and governed by a board drawn from the government and non-government sector. It should be led by an independent chair with expertise related to the professional education and training needs of the sector.
52. A national study should be undertaken to improve current knowledge and understanding of the causes of filicide and the behavioural signs preceding filicide. Such a study could be undertaken by a research body such as the Australian Institute of Criminology.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Training body established			Moderate investment	DHS	DOJ DTF CSOs
	Study completed			Policy reform	DOJ	Commonwealth Government

Government decision required

Government decision - requires legislation



Other agency to implement (i.e. Commonwealth Government or CSOs)

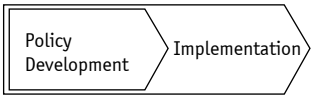


Table 22.1 Implementation plan (continued)

System reforms
68. The Department of Human Services should improve the cultural competence of integrated family services and statutory child protection services, including through: • Applying leadership accountability for culturally competent services and client satisfaction at regional service delivery level through performance agreements; • Requiring cultural competence to be a component of all training; • Providing culturally appropriate training, assistance and support to carers of children and young people from culturally and linguistically diverse backgrounds in the out-of-home care system; • Encouraging local child and family services to draw links with relevant culturally and linguistically diverse communities as part of area-based planning reforms; • Recruitment strategies to attract suitable candidates from Aboriginal and culturally and linguistically diverse backgrounds into child protection including through the use of scholarship schemes to undertake relevant tertiary-level training; and • Exploring staff exchange and other joint learning programs on an area basis to build knowledge and respect for Aboriginal culture.
Investment
76. Future funding of child protection and family services should recognise and anticipate the underlying growth in demand in future budget processes for statutory child protection, out-of-home care and family services.
77. Funding for child protection and family services should be distributed in accordance with an area-based approach and according to a common methodology. The Department of Human Services should develop this methodology so that funding is distributed on an equitable basis to the areas that need it most. The methodology should take into account: • The population of children in a region; • The level of vulnerability of these children, including the Aboriginal population; and • Factors that increase the cost of service delivery in regions, such as remoteness and the geographic size of the area. The method should be able to be regularly updated and should be incorporated into future system planning.
15. The Government should enhance its capacity to identify and respond to vulnerable children and young people by: • Evaluating the outcomes of pre-birth reports to statutory child protection and pre-birth responses to support pregnant women; • Providing funding to support universal early childhood services, schools, health services (including General Practitioners) and specialist adult services to identify and respond to the full range of risk factors for child abuse and neglect. This should include increased investment in the Department of Health's Vulnerable Children's Program; and • Providing funding to support specialist adult services to develop family-sensitive practices, commencing with an audit of practices by specialist adult services that identify and respond to the needs of any children of parents being treated, prioritising drug and alcohol services.

	Immediate 0–12 months	Medium 1–3 years	Long 3+ years	Funding	Lead agency	Related agencies
	Strategy implemented			Moderate investment	DHS	DPCD DEECD DOH CSOs
	Growth funding implemented			Significant investment	DHS	DTF DPC
	Area based funding implemented			Policy reform	DHS	DTF DPC
	Improved service response			Significant investment	DEECD & DOH	DHS DTF

Government decision required

Policy Development → Implementation

Government decision - requires legislation

Policy Development → Implementation

Other agency to implement (i.e. Commonwealth Government or CSOs)

Policy Development → Implementation

Part 8: Implementation and conclusion

Chapter 23:
Conclusion

Chapter 23: Conclusion

Child abuse and neglect have a devastating impact on the lives of children. The Inquiry has presented system-level evidence of the extent of the problem but has also heard the experiences of children and young people involved with child protection, their families and foster and kinship carers. The Inquiry has also heard from adults who experienced state care as children.

The Inquiry has concluded that prevention and early intervention are essential to avoid the long-lasting permanent trauma and poor outcomes for many individuals who experience abuse or neglect. At a system level, the Inquiry has also concluded that, over time, it is more effective for government to invest in prevention and early intervention, than to continue to increase investment in child protection and family services or to absorb the lifetime costs to society of child abuse and neglect.

The past 20 years have seen a large number of reviews and inquiries seeking improvements in the policy and service delivery framework put in place by government for protecting Victoria's vulnerable children. The Victorian Ombudsman has presented a number of major reports to Parliament highlighting concerns about various aspects of statutory child protection services and the provision of out-of-home care. Significant changes have been made over that period, but changes have also been made incrementally in response to issues. It is tempting to see each issue as requiring a separate solution. This Inquiry had the benefit of wide Terms of Reference which enabled identification of common risk factors, examination of a wide range of pertinent issues and facilitated a holistic response.

The number of reports of concern made about children and young people to the Department of Human Services (DHS) stands at 55,000 for 2010-11 and is expected to continue to rise.

The number of children and young people in out-of-home care has also increased over the past decade and this has been driven by an increase in the amount of time children are spending in care when it is not safe for them to return to their birth families.

Child abuse and neglect can occur in any family in Victoria, but the Inquiry has found that child vulnerability is particularly visible in certain geographic areas, especially in regional areas. Additionally, Victoria's Aboriginal children and young people have markedly higher interactions with the statutory child protection system.

The Inquiry has heard that vulnerable children and their families from culturally and linguistically diverse backgrounds have difficulty interacting with family service providers and statutory child protection services when their cultural and religious differences are not understood.

The extent of their involvement with child protection and family services is not known, due to a lack of data. This has inhibited the development of recommendations by the Inquiry in relation to children, young people and families from culturally and linguistically diverse backgrounds.

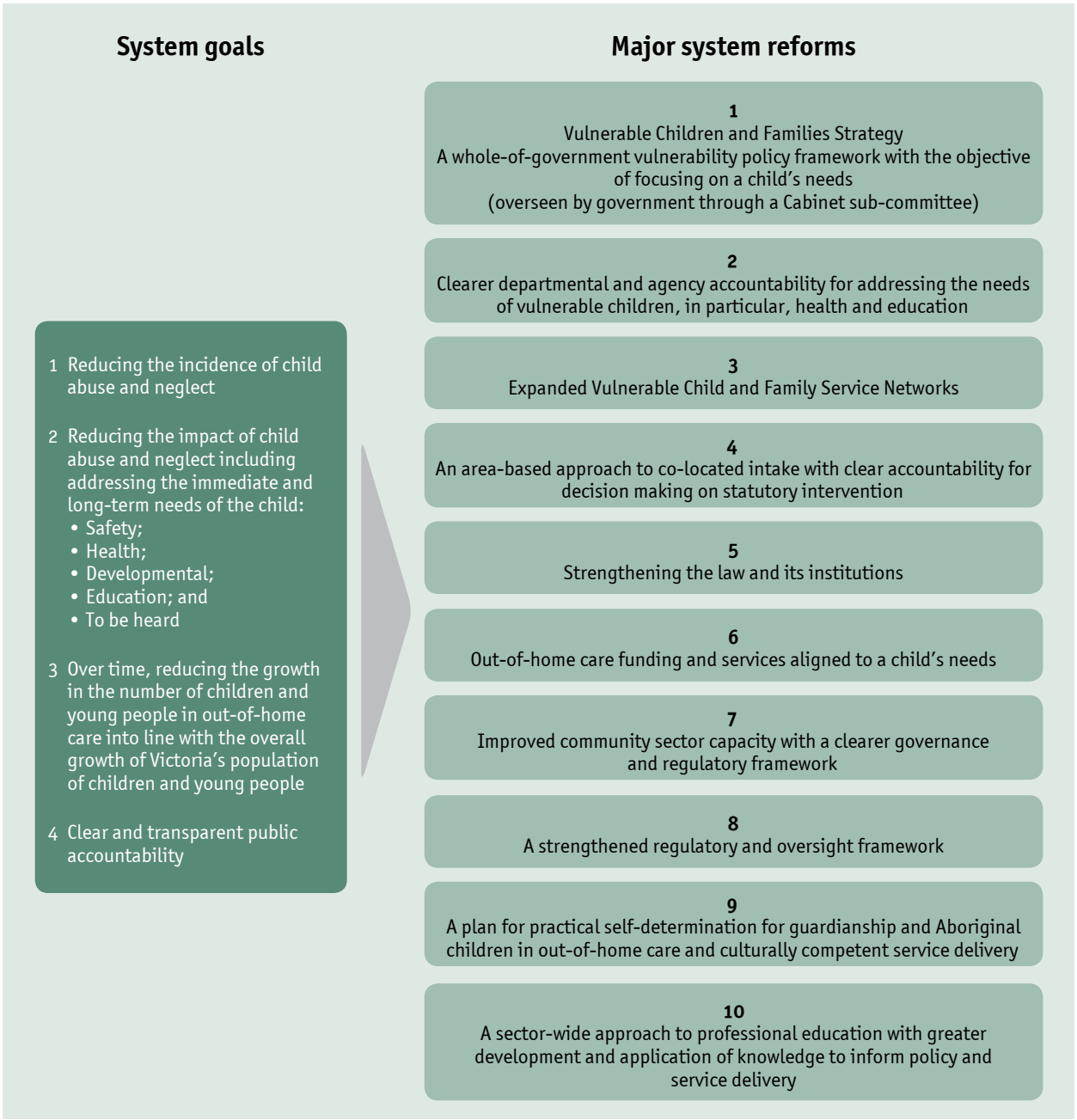
The Inquiry considers that the recommendations set out in this Report will equip Victoria's system for protecting children to become:

- More focused on meeting the needs of children and young people in Victoria's system for protecting children, including those placed in out-of-home care, through family services and through specialist adult services whose clients may be parents and, importantly, how their needs and views are addressed through processes related to the Children's Court;
- More responsive to families needing parenting support and guidance;
- More forward-looking over time as the Vulnerable Children and Families Strategy is developed, new information systems are developed and better data is collected and demand based funding models are developed and implemented;
- More accountable, with the responsibilities of government agencies, and as the role of CSOs and the focus and function of a broader range of government funded services in reducing and addressing vulnerability becoming clearer. A new Commission for Children and Young People holds key agencies to account for their performance; and
- More transparent as more information is released publicly by DHS about the child protection system.

The Report concludes that there has been a significant failure to recognise the crimes of child physical and sexual abuse. The Report shows the way forward for this recognition, for holding perpetrators responsible, and for the protection of vulnerable children from these crimes.

The 10 major system reforms (see Figure 23.1) contain major changes to address the contributing factors to child abuse and neglect and the potential for increased prevention through effective, coordinated early interventions. This requires a whole-of-government strategic approach, driven at Cabinet level by government, supported by a strengthened Children's Services Coordination Board and overseen by a Commission for Children and Young People. The implementation of the Inquiry's recommendations requires many parts of Victorian Government, its departments and agencies, and government funded CSOs to work together and share responsibility to protect Victoria's vulnerable children.

Figure 23.1 Major system reforms for protecting children through a system that prevents and responds to child abuse and neglect



The recommendations proposed cover a spectrum of areas, ranging from strengthening early intervention services, to more collaborative problem solving approach to protective concerns in the Children's Court, to the way reports of concern about children are handled and referred by DHS, to funding mechanisms for out-of-home care service delivery and workforce reforms.

For these reforms to be successful, they will rely on the foundations found in all effective service systems. These foundations include strong leadership, clear accountability mechanisms for reporting on progress against objectives, adequate levels of resourcing and a skilled and stable workforce.

Skilled staff are required not only in child protection services but also in related family, health and legal services and sectors. An effective workforce is supported through change or reform, provided with appropriate professional education and an operating environment that promotes collaboration.

The reforms will also require the willing collaboration of community service organisations with enhanced capacity to engage with the new service environment outlined in the recommendations.

Collaboration is also a major focus for how DHS and other departments must operate in the future. All agencies and departments across government that provide services to children and families must accept their particular responsibility and be held to account for the ways in which they work together to more effectively address the needs of Victoria's vulnerable children.

Victoria relies heavily on its community sector for delivery of a wide range of services for vulnerable children and young people. A future system for protecting children will build community sector capability and provide a clear and transparent accountability and regulatory framework to promote responsive and high quality service delivery.

The Inquiry observed first-hand the dedication and commitment of those individuals involved in working with vulnerable children and their families, sometimes on a voluntary basis, to improve their experiences and chances in life. These individuals reflect the powerful role that community and families can play in supporting and protecting our vulnerable children.

The resilience of our communities and family and friendship networks can ultimately make the difference between a family that is struggling to meet the needs of its children, and one that can cope with and manage what might seem like intolerable and insurmountable challenges. The Inquiry recognises the role of the community and emphasises that the nature of child abuse and neglect is a problem that society and government share responsibility for addressing.

The problems seen by DHS and statutory child protection services are an indicator of the complex difficulties experienced by some Victorian families that cut across social, economic and cultural boundaries. Successfully addressing these issues will demand commitment by the many other portfolios of government including health, education, justice and housing. These problems cannot be tackled solely by the child protection system. The recommendations contained in this Report acknowledge this and propose a more holistic framework for better responding to child abuse and neglect.

At the heart of the Inquiry's recommendations, is a focus on meeting the needs of Victoria's vulnerable children and young people. Adopting such a focus will be critical for ensuring the success of a lasting reform agenda to address child abuse and neglect of Victoria's most vulnerable citizens.