

Part 2: Victoria's current system and performance

Chapter 3:

Victoria's current system

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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*).

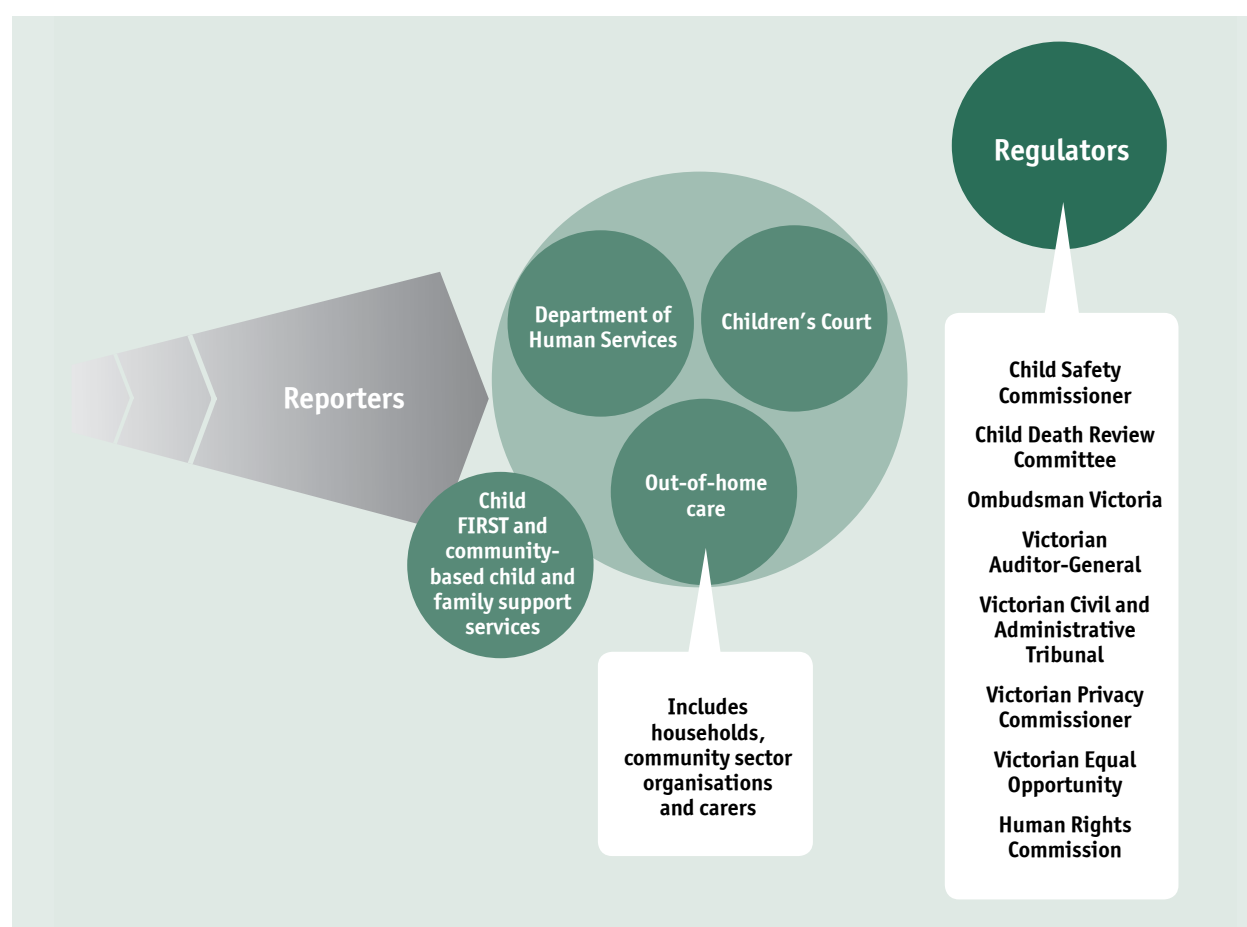
The above aggregate data masks significant differences for Victorian Aboriginal children, as the following data illustrates:

- 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.

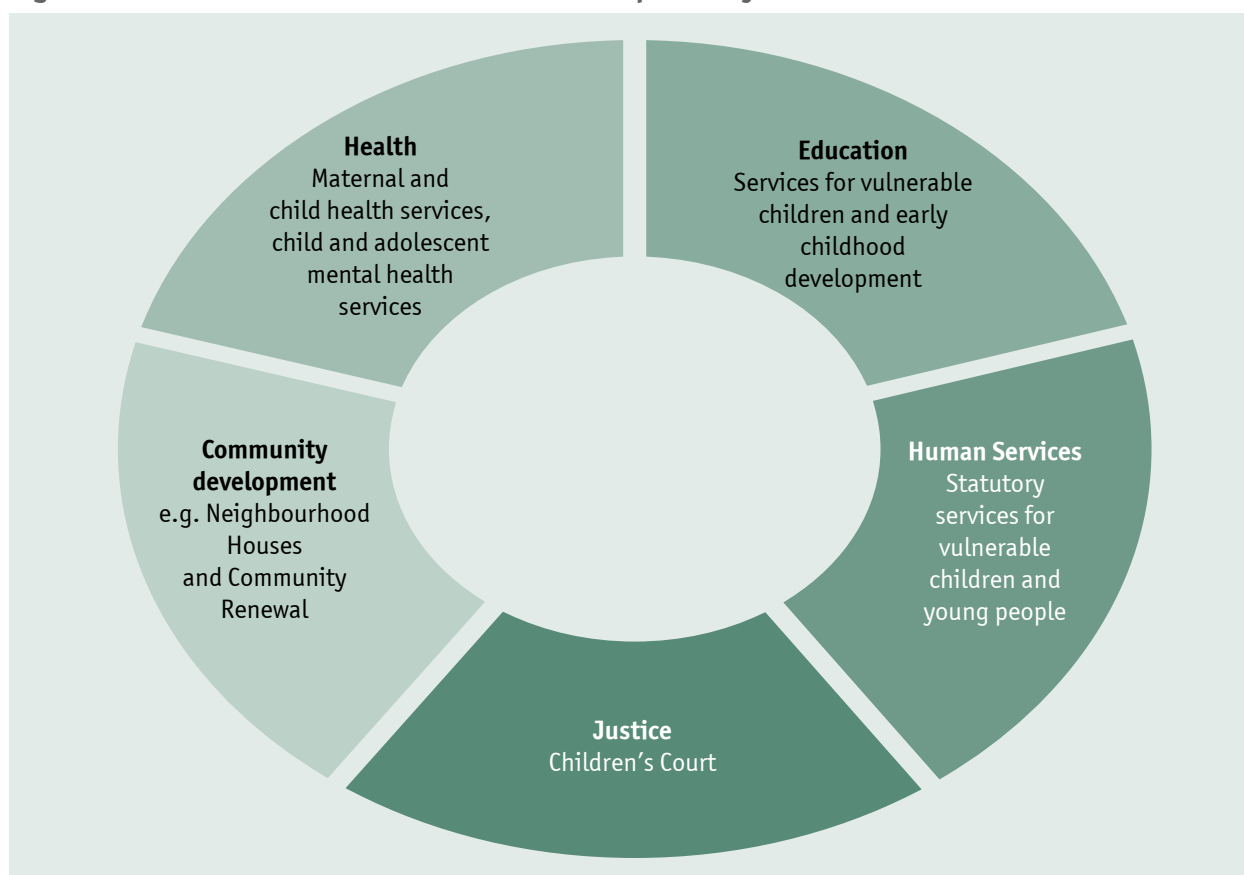
The adoption of these perspectives stems from: evidence that a multiplicity of parent/family, child, environmental and community factors are contributing or are associated with child abuse and neglect; the recurring nature of vulnerable children's interactions with the statutory child protection system; 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.

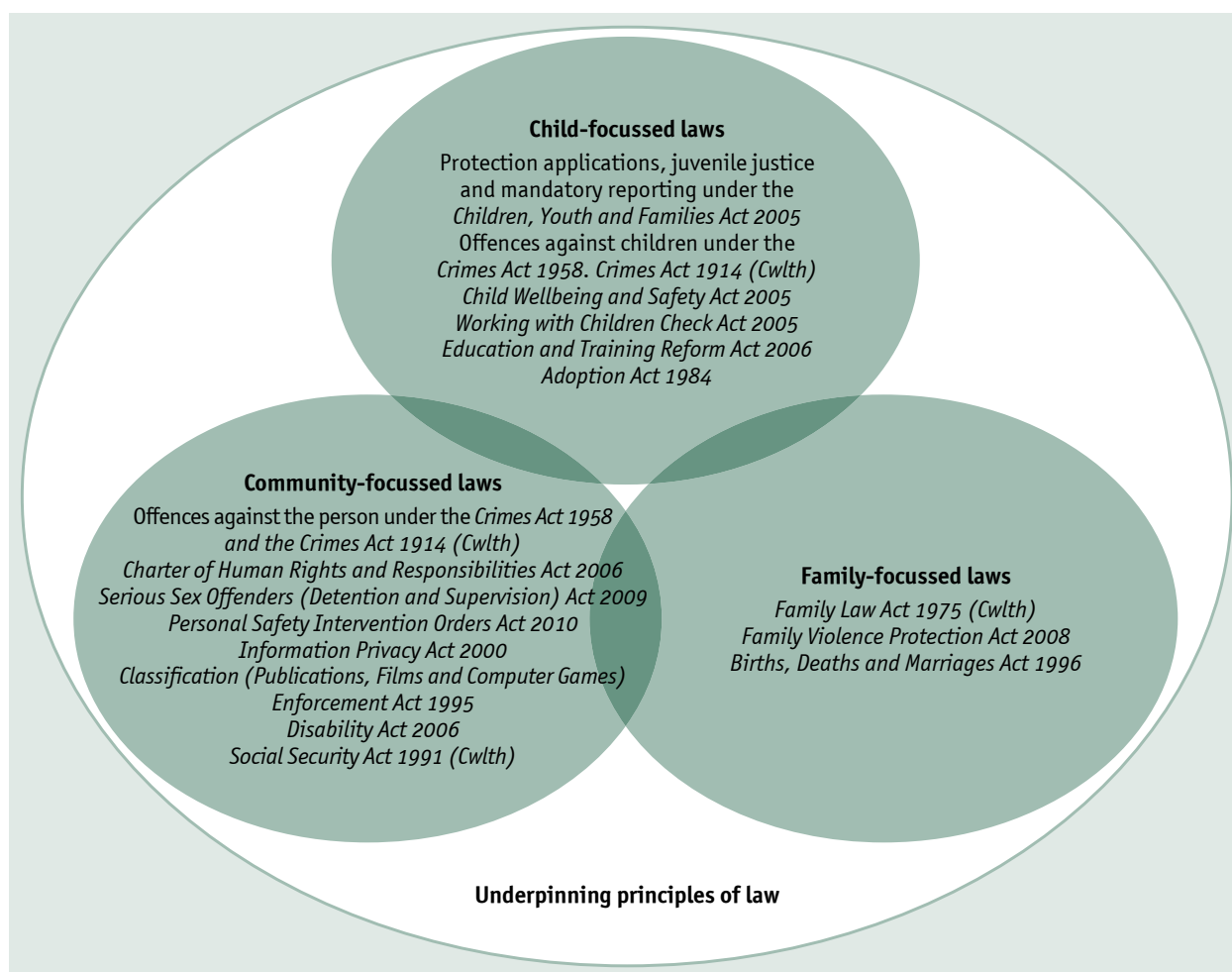
3.6 Legislation and the protection of children and young people in Victoria

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.

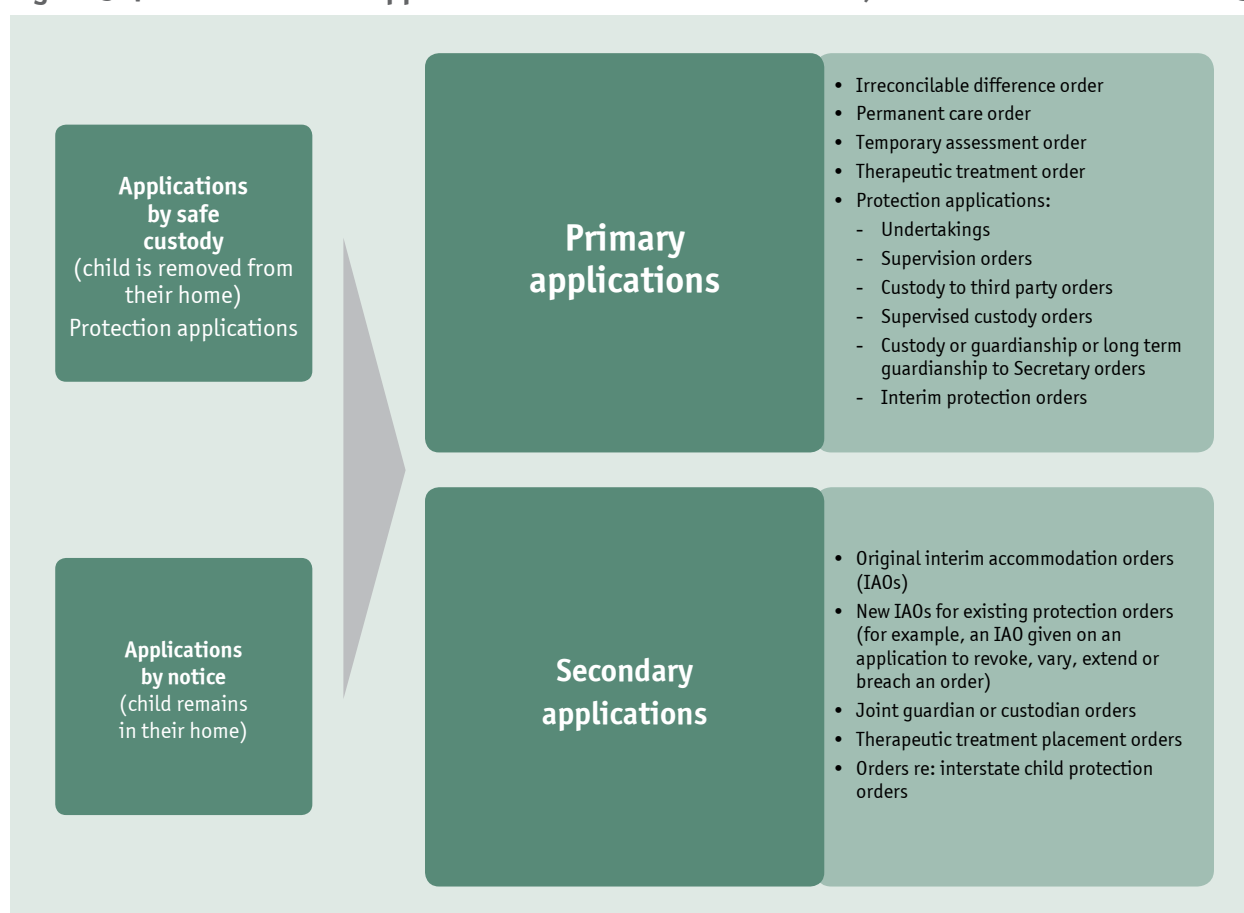
Working with Children Act 2005

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

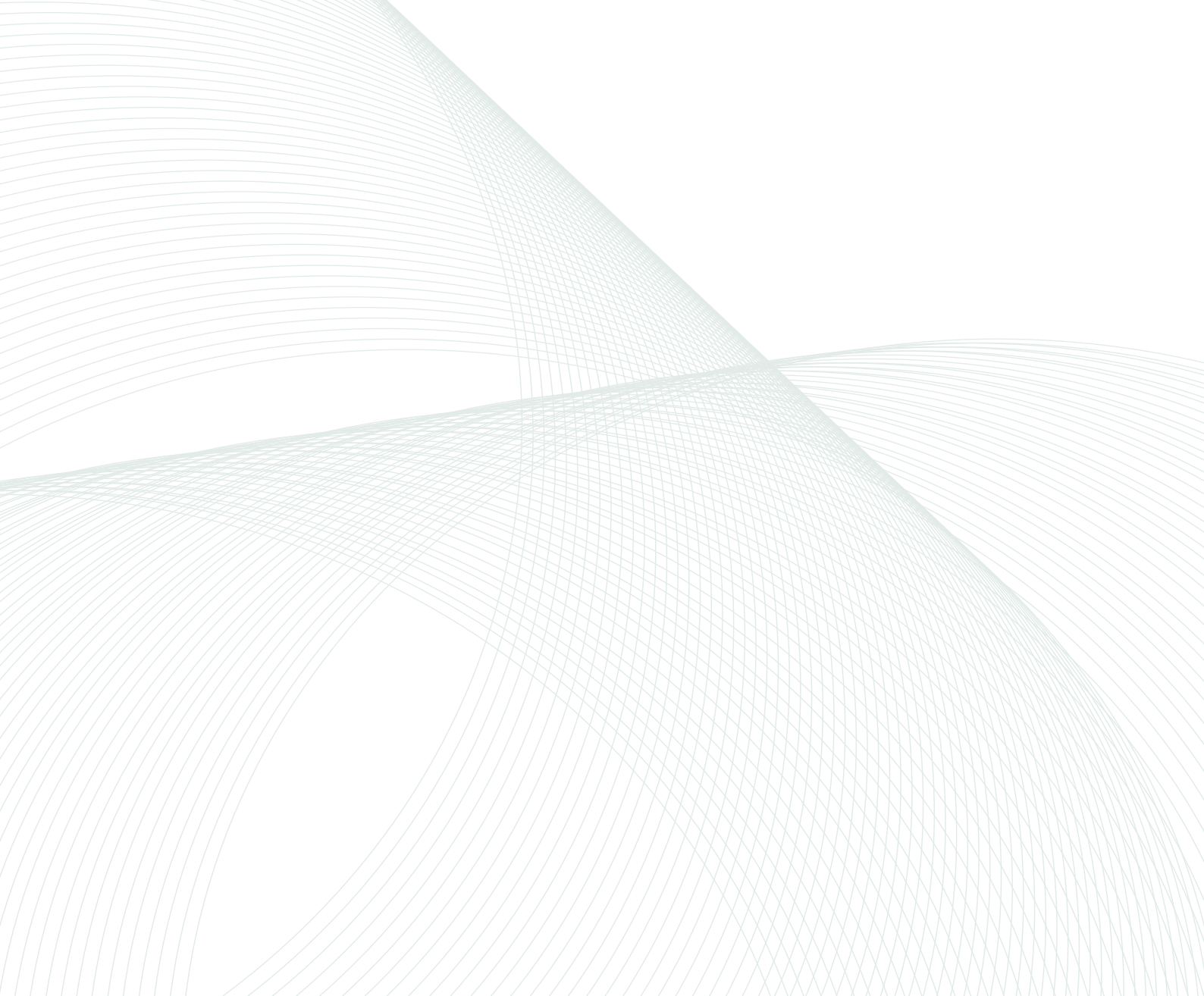
This chapter has sought to provide an overview of Victoria's system for protecting vulnerable children and the broader legal framework covering the safety and wellbeing of Victorian children and young people.

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 Sitings 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

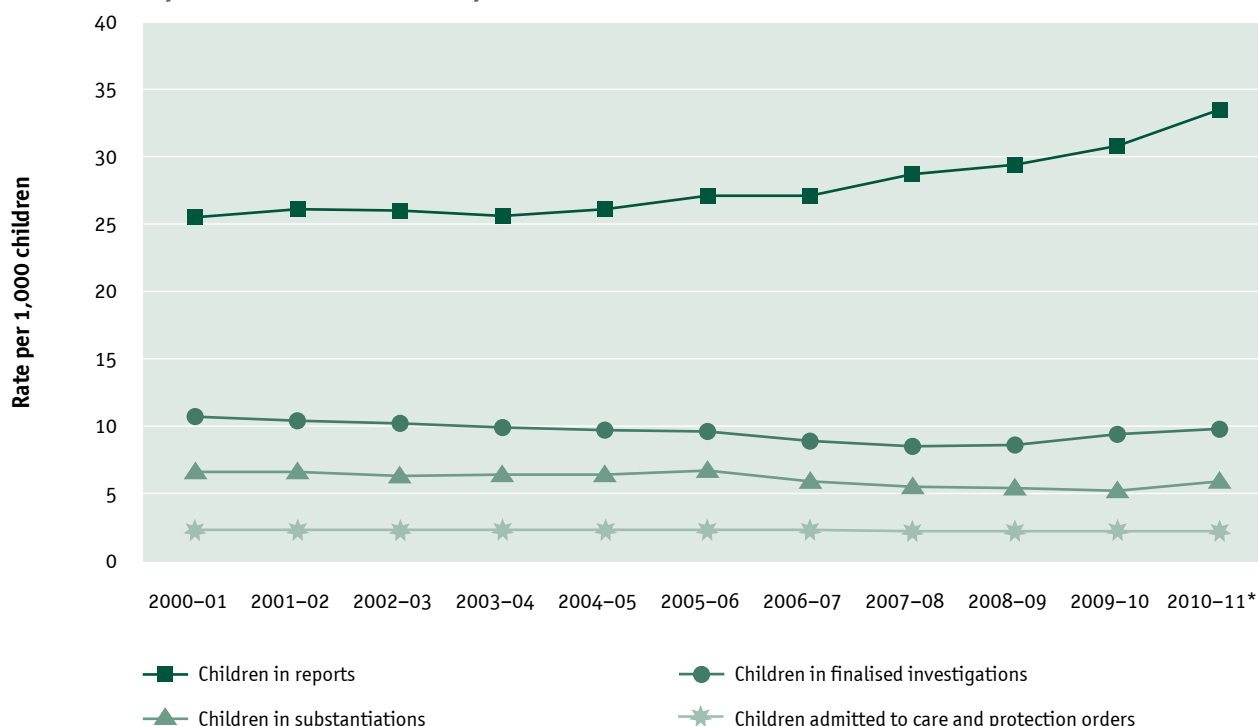
In line with the significant limitations identified in the preceding section, the headline performance information and assessments presented here are based on:

- 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 Sitings, 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-of-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.

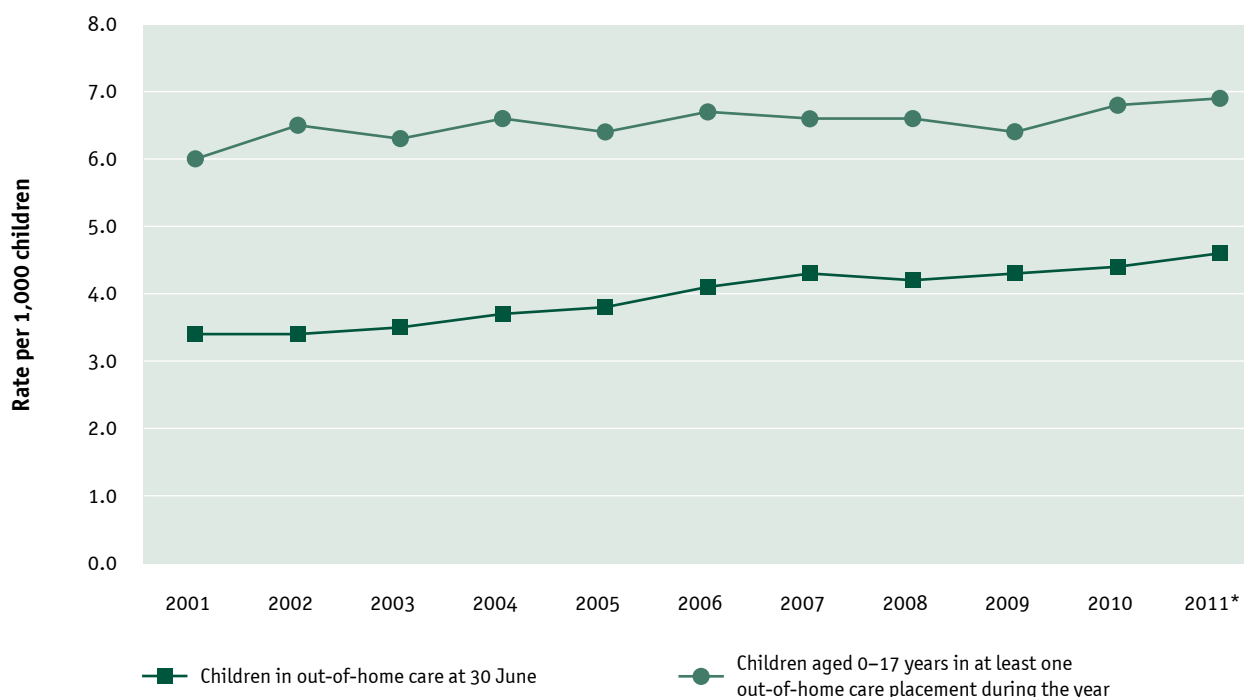
As outlined in Chapter 10:

- 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.

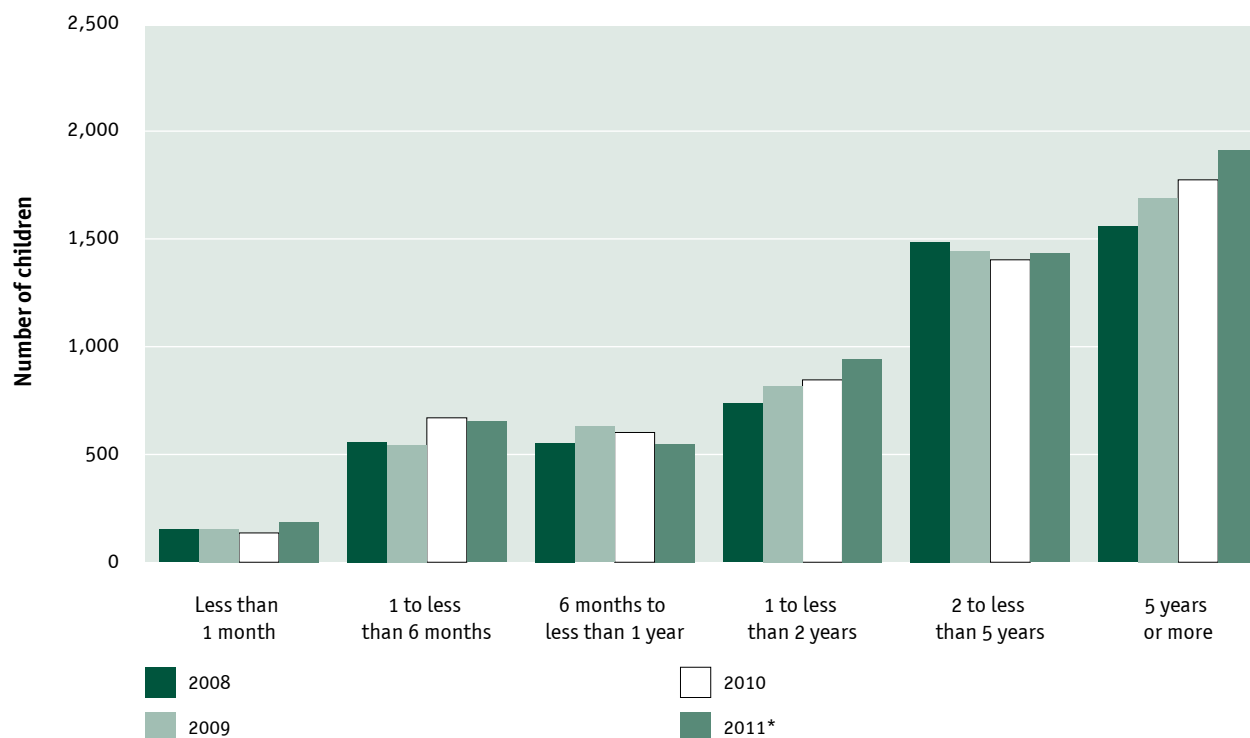
Figure 4.2 Children in out-of-home care at 30 June, rate per 1,000 children aged 0-17 years, Victoria, 2001 to 2011



Source: SCRGSP 2011c, Table 15A.57

* Provided to the Inquiry by DHS

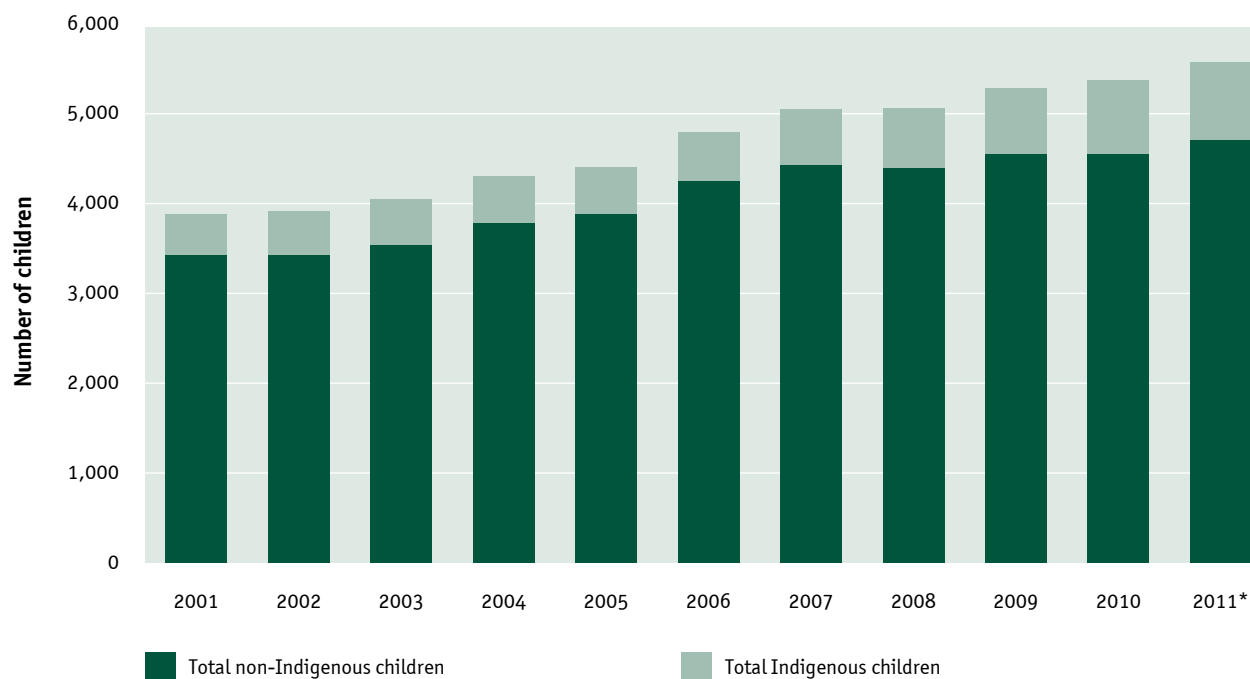
Figure 4.3 Children in out-of-home care at 30 June, by length of time in continuous care, Victoria, 2008 to 2011



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

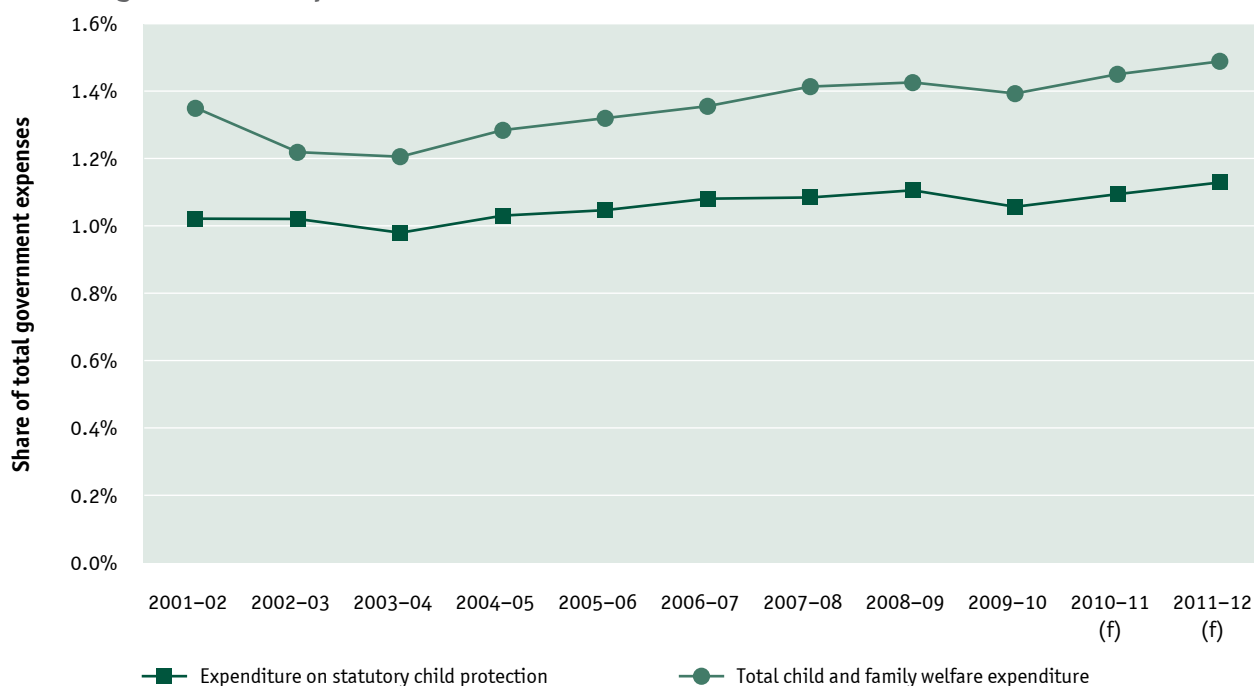
* Provided to the Inquiry by DHS

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

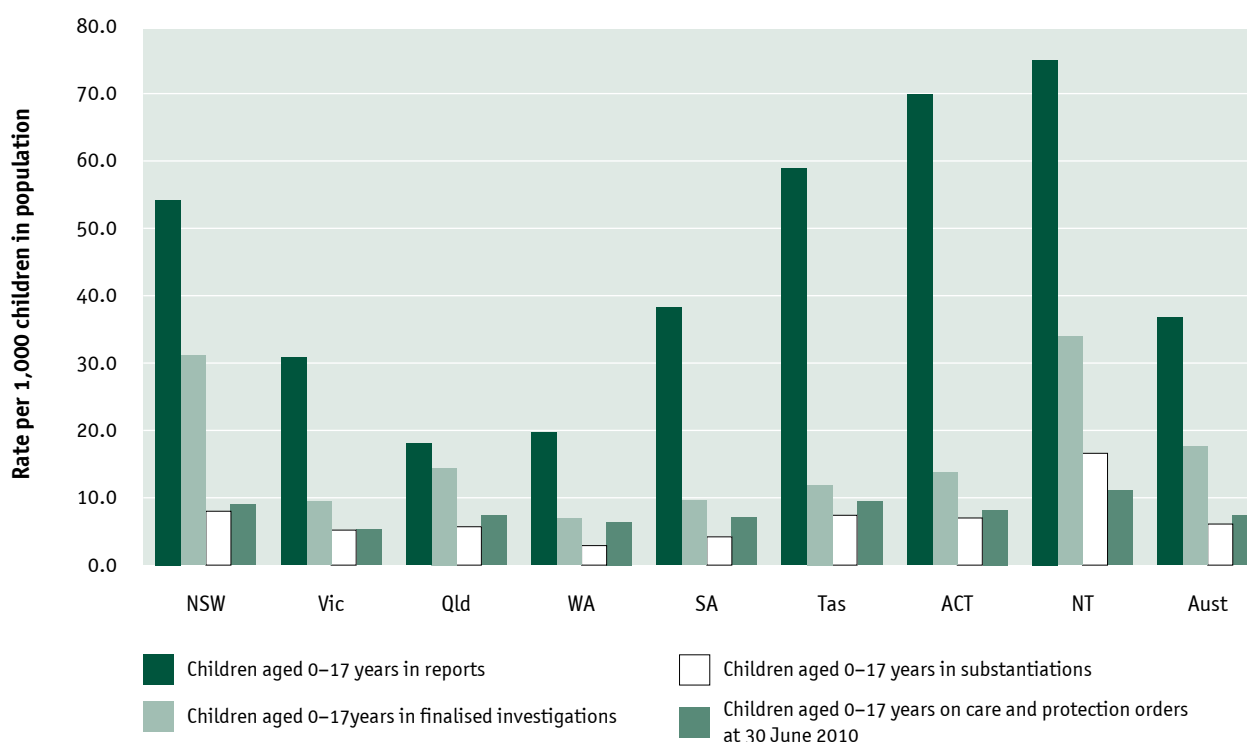
service responses to vulnerable children and their families and the extent to which these responses form part of statutory child protection services. In Victoria, the development of Child FIRST and Integrated Family Services and the historical importance of community service organisations (CSOs) are 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

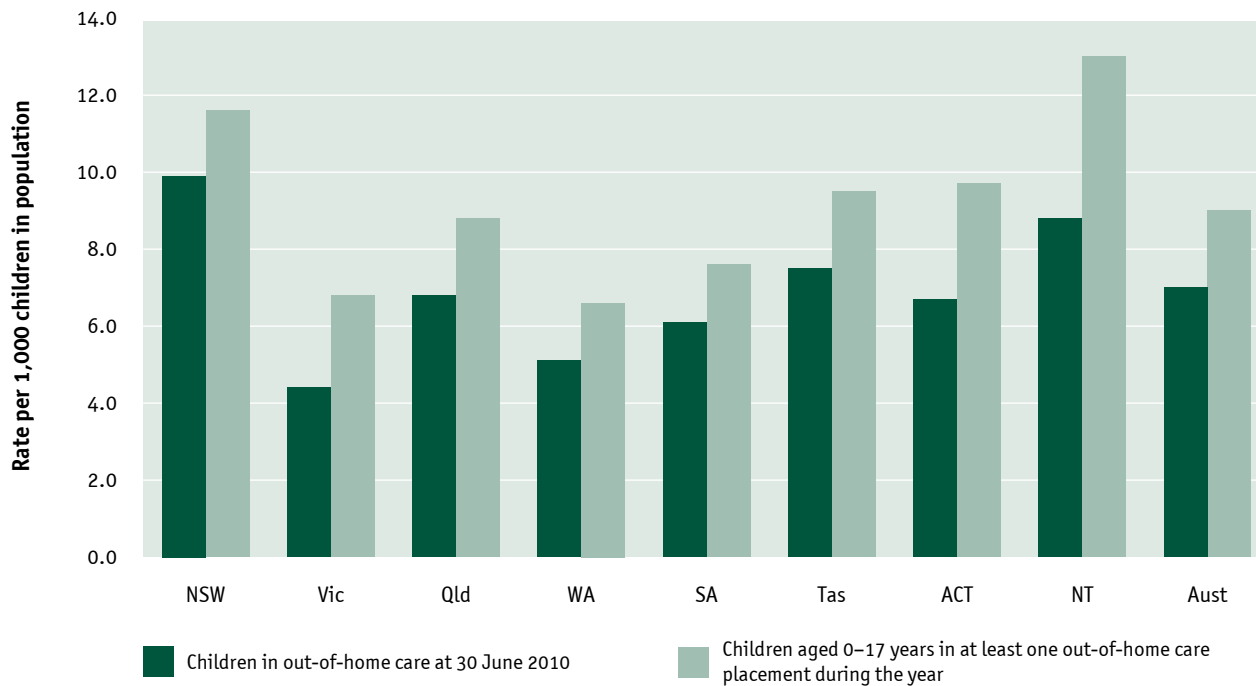
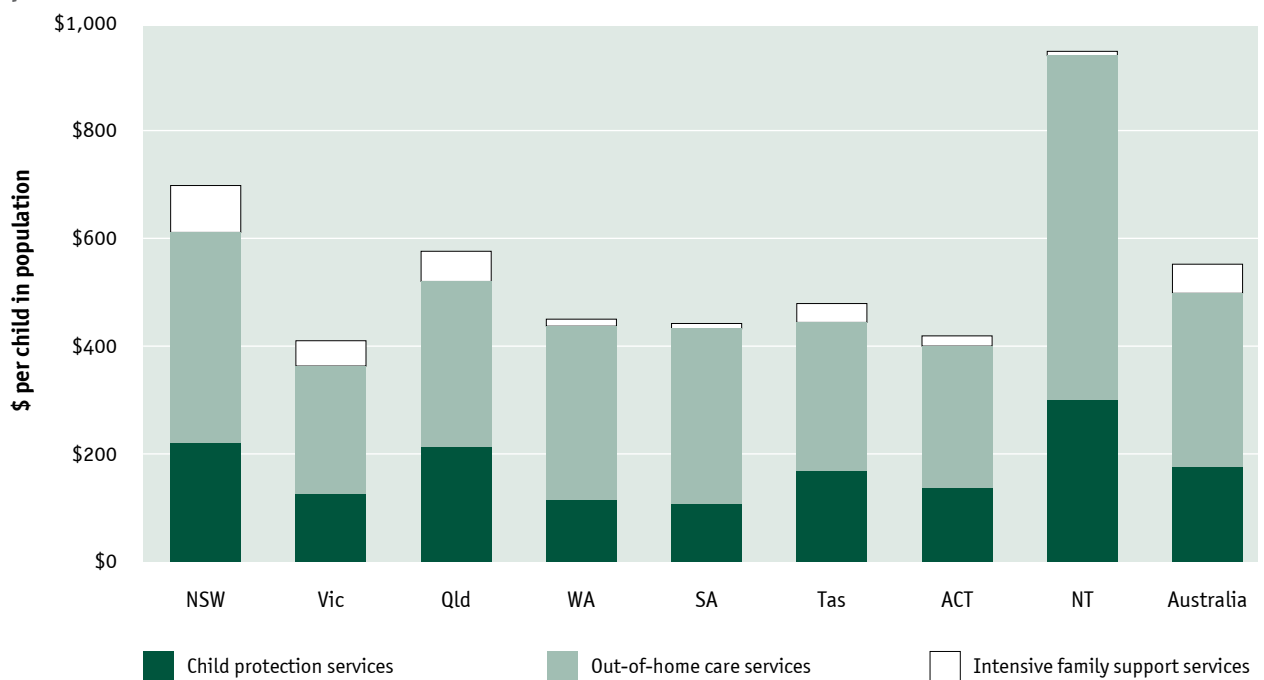


Figure 4.8 Real recurrent expenditure on child protection and out-of-home care services, per child, states and territories, 2009-10



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.

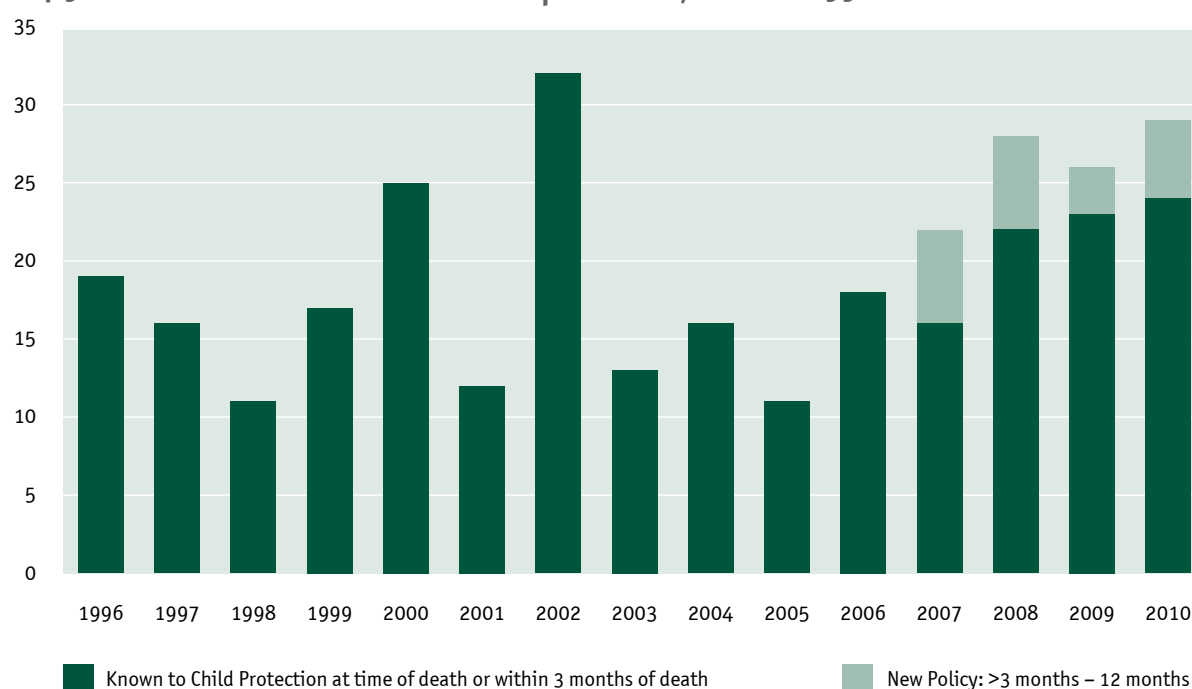
The main categories of death were: acquired/congenital illness, accounting for 33 per cent of all deaths; due to accident (19 per cent); attributable to sudden infant death syndrome (SIDS) (15 per cent); non-accidental trauma (8 per cent); substance abuse, suicide/self-harm/risk-taking behaviour of young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

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

Key points

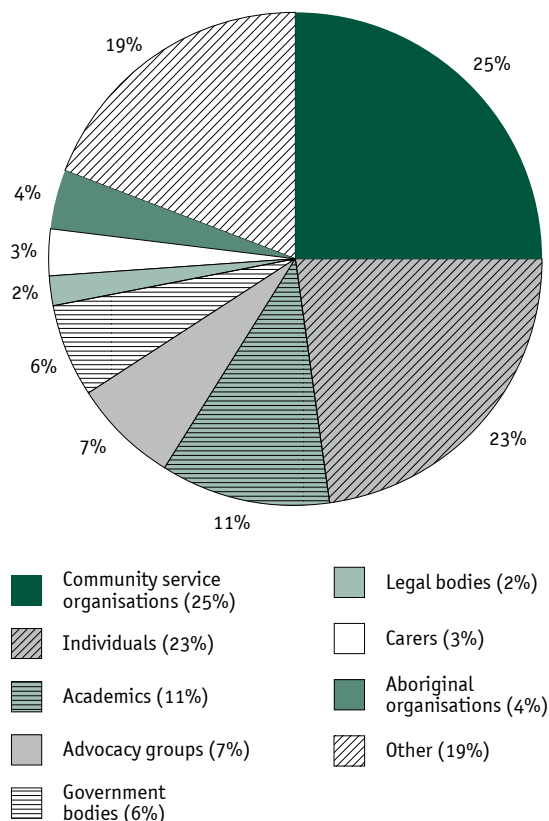
- The Inquiry received submissions from a wide range of individuals and organisations involved in different aspects of Victoria's system for protecting children.
- Hearing from children and young people who have experienced Victoria's system for protecting children was important to the Inquiry. The Inquiry 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 Sitings 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 Sitings 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 Sitings. 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 Sitings.

5.4 Themes raised in submissions, Public Sitings 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 identity 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; VCOS, 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 Sitings 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.

