

28 April 2011

Justice Philip Cummins
Chairperson
Protecting Victoria's Vulnerable Children Inquiry

Email: childprotectioninquiry@cpiv.vic.gov.au

Dear Justice Cummins,

I appreciate the opportunity to make a submission on the effectiveness and quality of the child protection system in Victoria. I apologise for its delay.

The Australian Childhood Foundation is a national not for profit organisation which delivers specialist therapeutic programs for children and young people who have been affected by trauma arising from abuse and family violence. It has partnered with eighteen organisations in Victoria, South Australia, Western Australia, ACT and Tasmania to provide therapeutic foster care and therapeutic residential care services for children in the care or under supervision of state government departments. The Foundation is a Registered Training Organisation and runs professional education activities reaching 6000 health, welfare and education professionals each year nationally. It also conducts research with Monash and Deakin Universities.

Specifically, in Victoria, the Foundation has run a Child Trauma Service in the Eastern Metropolitan Region since 1991 for children and young people who have experienced abuse and family violence and/or who engage in problem sexual behaviour. It piloted Victoria's first therapeutic foster care program (Track) in 1991 in partnership with Anglicare Victoria and now is the therapeutic partner in eight therapeutic foster care programs.

It is my view that the Victorian child protection and out of home care system faces serious challenges.

In summary, the policy and legislative reform in the area has progressively diluted the conceptualisation of child abuse. Increasing levels of abuse and neglect are now tolerated by the system. The reform has led to a systemic ambiguity about the function of statutory child protection. It has increased the threshold of harm that a child must suffer before statutory action is initiated. It has entrenched a decision making culture that prioritises diverting notifications away from statutory child protection when it is not appropriate to do so. Community based professionals are left with the responsibility of addressing substantial degrees of risk to children without the statutory powers required to ensure their effective protection.

TALKING IS THE
BEST MEDICINE

Stop child abuse

WHAT IS
COUNSELLING
Counseling is also good
because it brings the family
back together.

Happy
People

When children are placed in out of home care, the system finds it difficult to implement planning continuity and placement stability, despite the clear intention of the legislation to achieve better outcomes for children and young people in out of home care. The reform agenda set to improve out of home care has stalled because of a lack of political and funding commitment.

At the heart of these challenges is a lack of transparency by the Department of Human Services. There is insufficient publicly available data about decision making patterns by all parts of the system. There are no published benchmarks against which the system can be judged or evaluated.

The submission from the Australian Childhood Foundation argues in favour of a system overhaul that is underpinned by the implementation of

- revised governing legislation which clarifies and emphasises the right of all children to be protected from abuse, violence and neglect;
- greater integration between child protection and the criminal justice system which ensures that abuse, neglect and violence towards children and young people are clearly treated as crimes;
- policy framework that commits all parts of the child protection system (including the Children's Court) to timely and decisive actions which promote protection and stability for children and young people who have experienced abuse, violence and neglect; and,
- a commitment to sustained reform of out of home care that builds the capacity of the system beyond the current preferred cycle of pilot programs which never move to full implementation;
- decision making practices that prioritise the developments in the knowledge base about the neurobiology of trauma; and,
- independent structures of accountability which enable continuous transparent review of and improvement to the child protection system.

I have listed in turn a summary of the critical systems issues that require attention.

1. The Children, Youth and Families Act 2005 is inadequate to protect children from abuse, family violence and neglect.

There is a broad definitional tension between a children's rights paradigm and a family welfare paradigm reflected throughout key areas of the Children, Youth and Families Act 2005 (Goddard and Tucci, 2008).

According to Goddard (1996):

"...Every development in knowledge of the problem of child abuse has been accompanied by disagreements about definitions to be used, the incidence of the problem, theoretical approaches to causation, the perpetrators of abuse, the effects on victims, efficient approaches to practice, the adequacy of child protection policies, and the appropriateness of methodologies chosen to ascertain the 'truth' about all of the above... (p. 9)"

The welfare paradigm explains child abuse and neglect as an outcome of societal structures of inequity that cause stress and hardship to families. As such, parents need support and resources to better care for their children. The principles of the legislation emphasise statutory intervention as the last resort. It strongly favours providing services to parents in order to assist them to look after their children protectively. It declares a preference for decision making by consensus and collaboration.

It is this paradigm which has underpinned the application of the public health model to the child protection system in Victoria. The roll out of the Child FIRST model supports the early identification of problems within families that without any form of intervention could in turn lead to children being abused or neglected. Child FIRST aims to provide a more targeted and flexible support service for families whose problems have not reached the threshold for statutory child protection involvement.

Whilst this approach is constructive for families in which children have not yet been abused or neglected, it is not appropriate for those family circumstances in which children and young people have already experienced abuse or neglect.

It is the Foundation's view that the system currently has severe difficulties in distinguishing between the two categories of children and uses similar forms of intervention for both.

The result is a system that minimises the extent of abuse and neglect experienced by children. It redefines clear abuse as a family welfare concern with the aim to have it managed by the family support service system, which is perceived as less stigmatising for families. It also is deliberate in its intent to reduce the number of children who are defined as being notified as abused in an ideologically driven effort to decrease the need and size of the statutory service component of the system.

The confabulation of the family support service system and the statutory child protection system has led to questionable protective outcomes for children. For example, whilst there is no publicly available data, it has been suggested that notifications from Child FIRST to statutory child protection may be as high as 40% within six months of Child FIRST closure.

Similarly, the two track referral pathway for abused children is confusing for many professional reporters. The Foundation's staff have at times been caught between Child First and the Statutory Child Protection redirecting the report of a specific child to the other agency, with neither believing that it is within their scope to attend to the needs of the child. Such feedback has been repeated by other professionals seeking to ensure the protection of a child from abuse or neglect.

The welfare paradigm itself provides only a partial framework for organising intervention to protect children from abuse. For example, it is unable to explain the causes of child sexual abuse. It is also limited in its capacity to explain the chronic neglect of children (Flaherty and Goddard, 2008). It has little relevance to understanding the cycle of intimate partner violence within families (Bedi and Goddard, 2007). Finally, it only partially explains the causes of psychological (Tucci, 2004) and physical abuse of children.

A children's rights paradigm is more appropriate when children have actually suffered abuse and neglect. In this framework, the focus of intervention is the child. The child's needs are placed at the centre of decision making. Abuse is defined clearly and named for what it is. Individuals who are to be held responsible for the abuse being perpetrated are clearly recorded. The emphasis is on the protection of children through the establishment of clear expectations and time frames about the change required to be achieved by those responsible for the abuse and neglect. Physical abuse, sexual abuse and chronic neglect are treated as a crime. All notifications of sexual abuse, physical abuse and chronic neglect are reported to Victoria Police for investigation. Parents who commit a crime against their children are held

accountable for their behaviour, with prosecution and effective sentencing integrated into the child protection response.

Within a child's rights paradigm, the action undertaken by statutory child protection services to protect children is decisive and timely. When removal of children from the parents is warranted for their own protection, decision making processes focus on assessing and understanding the reparative needs of the children. Case plans are established which identify resources for children. Stability of care is the paramount planning principle. Whilst it can be argued that the current legislation provides these safeguards for children, the reality of how the Act is applied is far from achieving these outcomes for children.

In order to achieve this re-orientation of the child protection, a comprehensive review of the principles of the Act is required in order to ensure that it more clearly articulates its core objective to protect children from abuse, neglect and violence at the hands of their parents/guardians or adults with the responsibility to care for them.

These principles should be rewritten to give clearer direction within the legislation to prioritise the rights and needs of children over all other considerations. These rights and needs include: protection from abuse, violence and neglect; accountability of adults who hurt their children; stability and continuity of planning; and the establishment of reparative environments that resource the recovery of children from the trauma associated with their experiences of abuse, violence and neglect.

If the paradigm and therefore the wording of the Act were more consistent with a children's rights framework, the Act would integrate and legitimise the use of the words: abuse, neglect or violence. Children would be considered to have been abused or neglected not subject to harm. Parents/guardians would not only be described passively as being unable to protect children from harm as they are in the current Act, but they would also be positioned as actively responsible for causing such abuse or neglect.

The principle of minimum intervention for families in which child abuse and neglect has occurred needs to be reviewed and modified. In the circumstances where children have been abused or neglected, the principle to guide decision making should be *mandatory intervention to protect children immediately and in the long term*. This would enshrine in law the involvement of services with children for as long as is required to ensure that the child is not further abused or neglected at any point. This re-orientation of the system is critical because there are too many instances in which statutory child protection service prematurely withdraw their involvement only to see the child re-abused.

In addition, a new ground should be added to the Act that defines the need for protection for children where "grave concerns" are held for the child's safety, wellbeing and development. This new ground would allow for circumstances where children are likely to have been abused or neglected but it is not possible to identify an individual as responsible for the abuse. This will enable intervention in situations where abuse is suspected but not able to be confirmed. It will also provide for the recording of information that can be used in subsequent protective assessments to identify patterns of victimisation of children that can lead to more substantial intervention.

Finally, mandatory reporting should be fully implemented. Victoria has the most confusing reporting paradigms of all jurisdictions, requiring only limited groups of professionals to report only physical and sexual abuse. In addition, its full implementation will cement an important clause that serves to balance the Act towards the rights of children to protection from violation. It connects community professionals through their obligation to report child abuse to the requirement of statutory child protection to investigate these reports effectively.

2. The threshold for triggering child protection involvement with children is set too high, is demand driven and subject to the resources available at a regional level.

The Foundation has advocated for a decade that the so called “risk threshold” which triggers a statutory child protection action is too high. “Threshold” is used as a concept to soften the severity of the outcomes of its use. The “threshold” is a euphemism for the level of abuse that the statutory child protection system will tolerate in notifications made to it before it will decide to initiate an investigation. Further into the investigation, it is also the extent of risk of further abuse occurring that it will tolerate in order to close its involvement with a notified child or young person.

This is an issue which alarmed the Victorian Ombudsman (2009):

“...the degree of tolerance of risk to children, referred to as the ‘threshold’, varies across the State according to the local department’s ability to respond. I located many examples of cases where I consider that the risk of harm to children was unacceptable... (p.10)”.

Rather than being “risk averse” as is often claimed, it is my view that the child protection system in Victoria is frequently “risk blind” (Goddard and Tucci, 2008).

It is without doubt that staffing problems and paucity of service networks in local regions shape the threshold. The fewer staff available to conduct investigations the higher the threshold needs to be in order for the system to be perceived as achieving its minimum requirements. Unfortunately, the lack of resources also act to put throughput pressure on child protection workers and their supervisors, leading to premature case closures and high re-notification rates.

The way in which the “risk threshold” is defined, described and used is a critical issue requiring the consideration of the inquiry. It should also be defined as one of a series of performance measures that can be used to evaluate the effectiveness of the child protection system in Victoria.

3. The focus and responsibility of the Children’s Court needs to be strengthened.

It is the Foundation’s view that the interpretation of the governing child protection legislation by the Children’s Court tends to be conservative and biased towards family preservation. It has led to chronic short term decision making in which the concept of risk has replaced the concept of harm. Instead of making a determination as to whether abuse has occurred at the time of the protection application, the Court has increasingly directed its attention to directly establishing ways to support parents to decrease the risk of abuse occurring again.

It also variably applies decision making criteria to matters before it, leading to what appears to be inconsistent outcomes.

The Children’s Court has involved itself in the administration of Orders or resulting case planning decisions for children and young people. This is not within its role. The primary function of the Court is to act as an independent review mechanism for the decision making of the Secretary and her delegates. If the Court becomes involved in administration of the Orders, then it can no longer fulfil this role.

In addition, it is our experience that there are very few protection applications proven in the Children’s Court on the grounds of sexual abuse. It seems as if, over time, the decision making basis of the Court in relation to child sexual abuse has moved away from the *Balance of Probabilities* to be more closely aligned with *Beyond a Reasonable Doubt*.

It is recommended that the Act be clarified to strengthen the responsibility of the Family Division of the Children's Court to make a determination to prove an application that a child is in need of protection from abuse and neglect. The determination itself acts as a record in law which confirms the experiences of trauma, disruption and violence experienced by the child. The clarity of the determination defines and communicates the mandate of the State to intervene in the child and family's life. Having made this determination, it must then consider the recommendations made by a protective intervener about the most effective way to ensure the protection of the child. Its role is to make Orders available in the Act and set out processes for review where appropriate.

The focus of the Court in making Orders should be on ensuring that the Orders it makes achieves the following:

- children and young people are not subject to any further abuse, neglect or violence;
- parents are clear, through the use of contracts, about the expected changes they are required to make before a child is considered safe enough to live in their care without statutory supervision or a child who has been removed for his/her own protection is returned to the care of their parents;
- the matter has been or will be referred to the Police for investigation if evidence is provided to the Court that a crime against a child has or is likely to have been committed; and,
- children and young people are provided with opportunities for reparative intervention that leads to a reduction in trauma based stress and be supported to achieve normative developmental milestones (Tucci, Mitchell and Goddard, 2010).

The introduction of a mechanism for mandated involvement that focuses on parental change to reduce the likelihood of abuse or neglect occurring will serve to rebalance the system towards a children's rights paradigm. It will validate the State's role in stopping the occurrence of abuse and neglect, whilst expanding the options available to child protection workers and community service organisations to use to effect real change in the lives of vulnerable children and young people, especially in those circumstances where parents are unwilling to engage voluntarily with forms of intervention aimed at strengthening their capacity to protect and care for their children.

The Children's Court should also be made a Court of Record so that a body of case law can be developed over time that will inform decision making within the system.

Finally, it is recommended that children always be separately represented by suitably qualified and independent legal practitioners. The legal practitioners should have access to specialist psychological resources to consult with in relation to contextualising the instructions provided by a child or young person. The Guardian ad Litem system in England has a number of positive elements which results in a more integrated approach to legal representation of children and young people in court processes. Consideration should be given to introducing these elements into the Victorian judicial process for children.

4. The system is not transparent or accountable for its decision making.

The Department of Human Services does not make available relevant and uncensored child protection data. As a result, it is virtually impossible to conduct any form of independent review of the effectiveness of the system in protecting children from abuse. The Victorian Ombudsman (2009) sharply criticised this lack of transparency and accountability.

Only one state system (Queensland) has publicly published a series of indicators against which its performance is evaluated. Victoria has not established a set of standards covering the key elements of child protection practice. It is not surprising then that the quality of child protection intervention varies widely from region to region.

Standards for operational practice are essential in measuring decision making drift for children who have experienced or at risk of abuse and neglect. Examples of standards include the period of time between notification and investigation, protocols for prioritizing the urgency of investigations, assessed level of harm requiring minimum statutory intervention, protocols for notification of police, protocols for notification of education system and the period of time before a court outcome needs to be finalized.

Research has consistently demonstrated that it is imperative that the application of standards for communicating and collaborating with professionals involved in a child's life is a critical prerequisite to effective protection. All too often there are failures in such communication leaving children vulnerable to further trauma (Goddard, Saunders, Stanley & Tucci, 2004).

5. There is insufficient priority given to child abuse being treated as a crime.

As argued in previous sections of this submission, a children's rights paradigm requires adults who abuse or neglect children to be held accountable for their behaviour. This is not only a matter of delivering justice for children and young people who are the victims of such crime, but it strengthens community understanding about the severity of child abuse and the need to participate in actions that stop it.

It is recommended that Section 83 of the Children, Youth and Families Act 2005 which requires the Secretary to report allegations of sexual or physical abuse of children in out of home care be extended so that the Secretary is required to report all allegations of sexual or physical abuse of children and young people to the Police.

6. There is a substantial lack of integration between child protection, family violence services, police, health, education and youth justice.

Despite a series of reports which have recommended the need for better integration of responses between the key pillars of the child protection system in Victoria, it remains an area of significant concern. Improved service co-ordination around the needs of children and young people will more likely result from top down policy and management leadership. It is recommended that Senior Child Protection Policy Officers be employed within each of the core government departments/units of Police, Justice, Health, Education, Youth Justice and Safe at Home to work together under the leadership of the Secretary of the Department of Human Services to develop and implement a whole of government policy platform aimed at reducing the incidence and harm of child abuse and neglect. This policy led integration had some success in Queensland immediately following the release of the recommendations of the Crime and Misconduct Commission Inquiry into Child Protection.

7. Reform to the out of home care system has stalled.

There is clear evidence that the out of home care system in Victoria continues to be under significant stress. The number of placements available for children and young people are inadequate. Some placement environments are stressful and indeed cause additional harm to already traumatised children and young people. Carers are under increasing stress to manage and meet the needs of an increasingly complex and significantly traumatised population of children and young people in care. Carers have received limited training and little ongoing specialist support to be able to create relationship environments for children that can stabilise children's behaviour and over time resource their recovery and wellbeing. There is little

attention to matching the skills and styles of carers to the needs of children and young people placed in care.

The Department of Human Services set out an ambitious reform agenda to improve out of home care outcomes for children and young people under the care of the State. It introduced a series of pilot programs aimed at building the therapeutic capacity of the whole of out of home care system. Based on the Foundation's Track Therapeutic Foster Care Program, it funded regionally based Circle Therapeutic Foster Care Pilot Programs. It was supposed to implement a simultaneous evaluation protocol as the basis for a more comprehensive roll out. However, the evaluation funding was withdrawn with advice in April 2011 that funding has now again been allocated to undertake the long overdue evaluation.

It introduced a series of therapeutic residential care pilot initiatives. However, it funded partial initiatives due to limited resources.

It funded a regional trial of an assessment protocol for all children who entered care. However, after a successful pilot phase, the initiative has not been extended or rolled out across the system due to a lack of funding.

The Department's reform agenda in out of home care for Victoria has a strong vision and will result in positive outcomes for children and young people. However, it will not be achieved if competing funding priorities and the changing interests of the Department's leadership stall it. At some stage in the cycle of policy development and execution, pilot programs need to be fully funded and implemented. If not, the reform agenda itself is jeopardised and the momentum for change is not realised.

8. Lack of Safeguarding Children agenda in Victorian organisations.

There is currently limited emphasis placed on standardizing the capacity of organizations/ services to protect children and young from abuse by employees or volunteers whilst they access a service or activity.

The Working with Children Check is only one of a suite of policies and practices that are required by organizations to ensure that they are able to safeguard children for whom they have a duty of care. NSW has an advanced configuration of roles and responsibilities which include the statutory oversight by the NSW Ombudsman and Commission for Children and Young People. It also involves provisions for investigations of employee and volunteer misconduct against children which do not constitute crimes but nevertheless can be harmful and exploitative of children. This level of compliance in NSW is more robust and effective in its intent to protect children from abuse and exploitation within organisations for who there is a duty of care.

It is recommended that the Victorian Government fund and implement an accreditation scheme for organisations/companies that provide any service or activity to children and families. The Australian Childhood Foundation's Safeguarding Children accreditation program is an example of the way in which such schemes operate to share responsibility for child protection to broader neighborhoods and communities.

8. There is insufficient resourcing of child trauma services for children and young people who have experienced abuse and family violence.

The Foundation consistently runs long waiting lists for its specialist trauma services for children who have experienced abuse and neglect. With the increasing push to have children and families supported by community agencies, it is imperative that additional resources be invested in building the capacity of the network of therapeutic services for children across the state. This will enable better co-ordination of specialist intervention using the emerging knowledge base about the neurobiology of trauma and attachment.

9. Conclusion.

The submission of the Australian Childhood Foundation has focused on encouraging a review of the principles of the child protection system so that it becomes more child serving. A major policy paradigm shift is required in order to achieve substantial improvement in the operational outcomes of child protection. In addition to the summarized content, I would welcome the opportunity to provide additional information if required by the Committee in its deliberations. I can be contacted via email at jtucci@childhood.org.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Joe Tucci', with a stylized flourish at the end.

Dr Joe Tucci
CEO

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