

28 April 2011

## **SUBMISSION TO PROTECTING VICTORIA'S VULNERABLE CHILDREN INQUIRY**

### **Introduction**

Our first submission dated 28 March 2011 refers to our concerns about the severe limitations of the Inquiry's Terms of Reference and Guidelines (see Appendix A).

This submission is made in the context of the enormous costs associated with the impact of child abuse. According to Access Economics, Child Abuse Prevention Research Australia and the Australian Childhood Foundation, these were estimated to be between \$10.7 to \$30.1 billion per year nationally in 2007 (Taylor, et al., 2008).

- To reduce these huge costs, it is critical that future public policy development should focus on children's needs for effective, ongoing protection from abuse and neglect.
- To achieve this goal, a complete policy paradigm shift is required. This must place children's needs at the core of decision-making.
- A public policy framework must be developed that does not rely solely on a welfare paradigm. It must also incorporate child abuse and neglect as a violation of children's rights, as a possible crime, and as a major contributory factor in impaired mental and physical health outcomes.

This submission strongly calls for a child-centred child protection system. It asserts that the current child protection system does not keep the child as the central focus and requires re-development using a child-centred framework.

This submission also calls for regular audits of every aspect of the child protection system utilising a child-centred framework. This would contribute to the creation of a transparent and accountable child protection service.

## What is a Child-Centred Framework?

- According to a major Canadian report, a child-centred framework is demonstrated inter alia by:
  - *respecting and valuing children as individuals.*
  - *seeing children as individuals with their own interests and abilities.*
  - *focusing on children's needs and interests, now and in the future.*
  - *respecting the competence of children and their developing ability to make decisions.*(Representative for Children and Youth and Ombudsperson, 2010, p. 5)
- Child-centred means 'a shared commitment to moving children and their experiences from the periphery, where they have traditionally been marginalized (barely seen and not heard at all), to the conceptual and practical center.' (Steinberg, Woodhouse, & Cowan, 2002, p. 120).
- A child-centred framework reflects a particular set of beliefs about the capacities, vulnerabilities and rights of children. This is recognised internationally in the United Nations Convention on the Rights of the Child. The Victorian Charter of Human Rights and Responsibilities Act, 2006 also 'reflects the understanding that children are particularly vulnerable members of our community and therefore should be afforded special attention.' (Ombudsman Victoria, 2009, p. 8).
- The four critical themes of a child-centred framework are that:
  - The developmental needs of children must be considered in all interventions;
  - Participation of children in all aspects of interventions must occur at developmentally appropriate levels;
  - Short time frames are essential and therefore all interventions and services must be offered as early as possible; and,
  - Collaboration and consistency among all professionals must occur to ensure protection and support of them and prevention of further harm (Winkworth, 2006).
- Giving children 'an active voice' ensures that 'decisions are better informed' (Representative for Children and Youth and Ombudsperson, 2010, p. 7). Their views are part of a 'best interest decision-making process' (Representative for Children and Youth and Ombudsperson, 2010, p. 37). This requires listening to children, seriously considering their views and providing age-appropriate explanations of decisions

- Drawing on the work of a number of researchers, Mudaly and Goddard have identified the advantages of involving children:
  - Upholding children's rights and recognizing that they are citizens and service users, and therefore share the same fundamental rights to participate;
  - Fulfilling legal responsibilities required by the United Nations Conventions on the Rights of the Child;
  - Allowing children the opportunity to practice making important life decisions; this promotes their growth and development;
  - Improving decision-making, as children's participation results in more accurate and informed decisions;
  - Increasing children's self-esteem and generating a more positive sense of themselves. Children have shown that, when involved, they can make a difference to the world around them. They have ideas, experience and insights that enrich adult understandings and enhance adult actions;
  - Involving children is a statement of respect for their individuality and autonomy, and recognizes them as unique persons (Mudaly & Goddard, 2006, pp. 153-154).
- In summary, processes must be 'child-centred, fair, open, accountable, accessible, timely, safe ...' (Representative for Children and Youth and Ombudsperson, 2010, p. 12). They must also be culturally sensitive and have a strong ethical foundation (Mudaly & Goddard, 2006).

## **A Child-Centred Child Protection System**

- A child-centred child protection system incorporates a public policy framework that does not rely solely on a welfare paradigm. As noted above, such a system must also incorporate child abuse and neglect as a violation of children's rights, as a possible crime, and as a major contributor to impaired mental and physical health outcomes.
- The welfare paradigm explains child abuse and neglect as an outcome of societal structures of inequity that cause stress and hardship to the most economically and socially disconnected groups within the community. In fact, child abuse and neglect are also significant contributors to poverty in later life (Frederick & Goddard, 2007). Prevention is based on provision of greater resources to families. It also emphasises programs which may identify vulnerable children early in order to offer parents support, for example, parenting education and community engagement.
- Such primary prevention efforts may be helpful in improving the overall health and well being of children, but may only partially prevent child abuse and neglect. It may in fact identify more cases. Any such approaches require rigorous external research and evaluation.

- The welfare paradigm is unable to explain the complex causes of child sexual abuse, for example. It is also limited in its capacity to explain the cycle of intimate partner violence, and the causes of psychological and physical abuse of children.
- As noted in the Guidelines for this Inquiry, a public health approach is frequently promoted as a model in the field of child protection. However, the effectiveness of such a model requires robust data. No such data appear to be available in Victoria.
- The four steps to obtaining accurate and timely data concerning violence as recommended by the World Health Organisation are:

- 1. To define the problem through the systematic collection of information about the magnitude, scope, characteristics and consequences of violence.*
- 2. To establish why violence occurs using research to determine the causes and correlates of violence, the factors that increase or decrease the risk for violence, and the factors that could be modified through interventions.*
- 3. To find out what works to prevent violence by designing, implementing and evaluating interventions.*
- 4. To implement effective and promising interventions in a wide range of settings. The effects of these interventions on risk factors and the target outcome should be monitored, and their impact and cost-effectiveness should be evaluated.*

(World Health Organisation, 2011)

These steps apply equally to child abuse and neglect. Krieger has emphasised ‘If you don’t ask, you don’t know, and if you don’t know, you can’t act’ (Krieger, 1992, p. 412).

- Currently, there are vast variations in the way different states and territories report, investigate and substantiate cases of child abuse and neglect (Goddard & Tucci, 2008). For example, rates of substantiated abuse varied from 5.2 per 1000 children in Victoria to 16.6 per 1000 children in the Northern Territory (Australian Institute of Health and Welfare, 2011). Similarly, there is wide variation in how definitions are applied to prove reports of abuse and neglect. For example, substantiations of sexual abuse vary from 8.2 per cent in Victoria to 20.2 per cent in New South Wales, and emotional abuse from 46.9 per cent in Victoria to 21.2 per cent in the Northern Territory (Australian Institute of Health and Welfare, 2011). It has been reported to us that suspected child sexual abuse may even be recorded in Victoria as emotional abuse.
- Definitions of abuse are generally applied as separate types, without appropriate recognition that child abuse and neglect frequently co-exist (Stanley & Goddard, 2004). There is an overemphasis on single type classifications. The complexity of children’s actual experiences of harm are ignored (Goddard & Tucci, 2008).

## **Children Have Separate Rights and Needs**

- Childhood has to be viewed as equal to adulthood if its status is to change. Its specific appeal and place in human development must be legitimised (Mudaly & Goddard, 2006, p. 157).
- Children have separate rights and needs. When children are conceptualised as dependents, ‘they are subsumed within families and excluded’ (Mayall, 1994, p. 4).
- The disproportionate emphasis on the rights of parents (often expressed as the needs of families, as in the Guidelines to this Inquiry) has contributed to the continued abuse of and silencing of children (Mudaly & Goddard, 2006).

## **Preventing Re-Abuse of Children**

- The current overemphasis on family preservation results in children being repeatedly harmed by parents and the system.
- An overemphasis on parents’ rights has removed adoption as a viable option for children. This must be reviewed to prevent multiple placements.
- Every child requires an entry to care plan that includes consideration of permanency planning, and adoption and his or her therapeutic needs.

## **Services Specifically Designed for Children**

- An integrated system of specialist therapeutic services for children is essential to ensure their safety plans and improve outcomes for recovery.
- The reality is very different. ‘The emphasis appears to be on making the child fit into the services...’ (Goddard, 1996, p. 186). There are extremely limited specialist resources available to assist child victims of abuse and violence recover from the trauma of their experiences (Tucci, Mitchell, Goddard, & De Bortoli, 2005).
- All services and programs must adopt procedures which fit within a child-centred framework. These include the environment in which children are attended to, the people who communicate with them, the language used, the activities employed to engage them, and regular reviews of all interventions (Mudaly, 2002).

## **A Transparent and Accountable Child Protection System**

- The Victorian Ombudsman (2009, p. 15) has stated that: ‘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 expectations.’
- A child-centred, accountable and transparent child protection service would provide readily available information on all aspects of interventions in children’s lives. These would include the numbers of placements children have, number and type of contacts workers have with children, and duration of placements in secure welfare. Much of this information is freely available in other systems, for example in the United Kingdom.
- Of particular importance is the data concerning time-frames employed in decision-making. For example, how long children remain in intake, how long investigations take, and the length of time in out-of-home care.
- Other important data includes the use of secure accommodation.
- Such information should also include genuine data on unallocated cases.
- Regularly auditing data can identify systemic issues. Information from such audits must be publicly available. This not only improves transparency and accountability but will assist in creating public confidence in the child protection system (Representative for Children and Youth and Ombudsperson, 2010).

## **Child Protection Managers in Government Departments**

- Every relevant government department should be required to appoint a child protection manager to ensure that children’s welfare is always given priority.
- The views of children should be used to assist in all service development.
- Clear lines of accountability for child protection should be publicly available for each relevant government department.

## **The Complexity of Child Protection Work**

- Child protection work is one of the most important tasks society undertakes to care for children. It is extremely complex, difficult, stressful and may be dangerous to the workers (Mudaly, 2002).
- Confronting parents or carers about evidence of abuse, monitoring cases and working with the conflicts among the different disciplines and professionals places

an enormous burden on protective workers (Stanley & Goddard, 2002).

- These complexities require a highly qualified, experienced and skilled child protection work force. This must be the key to an effective child protection service.
- The Ombudsman (2009) has identified the need to address the issues of recruiting and retaining staff.
- There are significant variations in educational backgrounds and professional experiences of child protection workers. Children's safety and protection rest on the assessments of risk by sometimes inexperienced workers (Mudaly, 2002; Stanley & Goddard, 2002).

## **Supervision of Child Protection Workers**

- Skilled, competent, accessible and regular supervision is required for all front-line child protection staff.
- A clear message from Victorian research with child protection workers is that supervision was overwhelmed by management demands: 'getting the paper work done' and 'pushing through cases' (Stanley & Goddard, 2002, pp. 174-175).
- The Victorian Ombudsman found 'variable compliance' with departmental supervision standards. He stated that supervision is 'a primary means by which the department monitors the service being provided to vulnerable children and the quality of its interventions' (Ombudsman Victoria, 2009, p. 13). This is another important element in transparency and accountability.

## **Child Abuse as a Crime**

- Much serious child abuse involves criminal behaviour. There is considerable ambivalence, however, about the use of the criminal law (Goddard, 1996).
- One Victorian study found that only three perpetrators went to jail and in each of those cases the child died (Goddard, 1996).
- The laws that are in place to protect children must be enforced and those who offend should be prosecuted.

## Children's Commissioner

- Too often our responses in Victoria to child abuse have been partial and tokenistic. The role of the Child Safety Commissioner and the Child Death Review System are cases in point.
- A Victorian children's commissioner 'could help improve the lives of children... through policy and law reform, independent inquiries, research, public education and awareness. (It) could provide leadership, and support coordination and consistency in policies and laws among government departments and organisations working with children' (Save The Children, 2011, p. L & C1).
- A Victorian children's commissioner will provide a voice for children.

## Child Death Review

- The Victorian response to the need for child death reviews has been similarly tokenistic.
- Newton et al. (2010, pp. 1011-1012) make five recommendations in relation to effective processes for Child Death Review Teams (CDRTs):

*First, the remit of all CDRTs countrywide should be widened to include siblings, prenatal deaths, and also serious injury.*

*Second, CDRTs should be empowered to monitor the implementation of their recommendations.*

*Third, the agencies named in any review should be legally obligated to act on child death review recommendations.*

*Fourth, the reporting of CDRT recommendations should always be made public, rather than merely reported internally within the government agencies.*

*In short, fifth, CDRTs should always be empowered to act independently (that is, purposefully work at their own behest to investigate child deaths and engage in activity that will prevent future child deaths), as opposed to merely being empowered to advise ministers; we are struck by the particular inadequacy of Victorian legislation in this regard.*

(Newton, et al., 2010)



## **Further Important Issues**

### ***Children's Rights to Education***

- It has repeatedly been reported to us that non-school attendance is a major problem in Victoria. It appears that action is rarely taken to address this issue.
- Not attending school severely limits children's development and potential. Furthermore, school can provide a protective environment for children (Frederick & Goddard, 2010).

### ***Mandatory reporting***

- The term 'mandatory reporting' in essence means that particular groups of people are legally required to report.
- The introduction in Victoria involved another partial and tokenistic response. The laws have never been fully implemented, leaving many, including Department of Human Services workers, not mandated to report.
- In spite of many examples of failure to report by mandated professionals, to our knowledge there has only been one prosecution.
- While there is no comparable available data in Victoria, the NSW figures clearly demonstrate that it is failures of responding, not reporting, that inundate the system (Sammut, 2010).

### ***Research***

- A transparent and accountable child protection system, that places the safety of children at the centre of its activities, will encourage and facilitate independent research and evaluation.
- Currently, a closed system operates.
- As part of regular audits, child protection should publish annually a comprehensive list of all research projects undertaken.

## **Conclusion**

In conclusion, this inquiry presents an opportunity to create a child-centred child protection service.

- It will be recognised that children have rights and needs of their own.
- It will also be recognised that some child abuse and neglect involves criminal behaviour and be prosecuted as such.
- It will ensure that every child has an entry to care plan, including consideration of permanency planning and adoption.
- It will create a truly independent Children's Commissioner.
- It will provide rigorous data that facilitates transparency and accountability.
- It will also encourage independent research and evaluation.
- A child-centred framework will allow Victoria to assume a leadership role in the protection of children.

Adjunct Professor Chris Goddard

Dr Neerosh Mudaly

Dr John Frederick

## Appendix A

29 March 2011

The Hon. Philip Cummins  
Chair, Inquiry Panel  
Protecting Victoria's Vulnerable Children Inquiry  
GPO Box 4708  
Melbourne  
VIC 3001

Dear Sir,

We are writing to express our concerns about the 'Guide to making submissions' to Protecting Victoria's Vulnerable Children Inquiry and its apparent lack of focus on the child.

A child-centred review would recognize children's particular vulnerabilities. For example, the Ombudsman's report on the investigation into Victoria's child protection service in 2009 states that the Charter of Human Rights and Responsibilities Act 2006 'reflects the understanding that children are particularly vulnerable members of our community and therefore should be afforded special attention'.

We contend that the 'Guide to making submissions' does not reflect this vulnerability. As it stands, it has critical omissions relevant to children's rights, needs and well-being. It is therefore likely to lead to misjudgements about responses to, challenges for and experiences of children within the current child protection system. A child-centred approach attempts to understand how the world looks from a child's perspective and recognises that children's rights and needs are the primary focus at all times.

The Guide strongly invites comments on the role of families and institutions involved with children and ideas on how these can be strengthened. Whilst children grow and develop as part of families, communities, cultures and societies, an emphasis on perspectives primarily from these institutions may result in an adult ideology, and approaches and procedures which, may in fact, fail children. Conceptualising children as dependents subsumed within families risks making children's rights and needs subordinate to or lost within that of the family's.

Our view is reinforced by detailed analysis of the Guide. Many issues critical to children's protection, their rights and needs appear to be completely omitted or only partially mentioned in the Guide. For example, although some child abuse involves criminal behaviour, the role of the police is barely mentioned. We could find no reference at all to the words 'crime', 'criminal', 'assault', or 'prosecution'. There are other examples of what appears to be a failure to understand the full impact of child abuse on children. Perhaps the most glaring is

the fact that ‘domestic violence’ is described merely as a ‘risk factor’ rather than as a form of abuse. Specific therapy for child victims of abuse also receives no mention.

Our concern is that the Guide reflects a narrow perspective that does not fully acknowledge the seriousness of abuse and neglect for children. Recent reports from the Ombudsman have confirmed this limited perspective in Victoria’s child protection system. For example, children were recorded as seen when the parents had merely been telephoned. More recently, the Ombudsman reported that the consent of sex offenders was required prior to release of vital information to the Department of Human Services, even though children were believed to be at risk.

While we acknowledge the difficulties in preparing a comprehensive Guide, we are concerned that the absence of a clear child-centred perspective will result in submissions that do not reflect what should be the central focus of child protection.

Yours faithfully,

Professor Chris Goddard

Dr Neerosh Mudaly

Dr John Frederick

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