Submission by the Office of the Child Safety Commissioner to the Protecting Victoria's Vulnerable Children Inquiry

INTRODUCTION

The Office of the Child Safety Commissioner (OCSC) is particularly mindful of the fact that the Inquiry Panel has been charged with finding the *solutions* that will best support the wellbeing and safety of vulnerable children. The OCSC's legislative mandate sits well within this 'solutions focus'. The Child Safety Commissioner has particular legislated responsibilities under the *Child Wellbeing and Safety Act 2005* (CWS Act) which provides in section 17 that the overarching legislative objective of the Commissioner is to promote 'continuous improvement and innovation' in relation to the safety of all children in the community but with special emphasis on those particularly vulnerable children who have experienced abuse or neglect, including those living in out-of-home care. Further information about the work of the OCSC is available at <www.ocsc.vic.gov.au>.

This submission does not attempt to answer each and every question included in the Panel's *Guide to Making Submissions* but instead focuses on areas of highest priority. The recommended solutions are presented under the following headings:

- Government leadership for a shared community responsibility
- Prevention and early intervention
- Family services and child protection
- Out-of-Home Care
- Courts
- Oversight and transparency

The CWS Act defines 'child' to mean a person under the age of 18 years and all references to child in this submission include those up to the age of 18.

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GOVERNMENT LEADERSHIP FOR A SHARED COMMUNITY RESPONSIBILITY

The CWS Act includes a range of principles in section 5 which are to guide the development and delivery of services to children and families. According to the principles, such services should acknowledge the shared responsibility the entire community has to promote the wellbeing and safety of children, the right of all children to reach their full potential and the need to give the highest priority to the 'promotion and protection of a child's safety, health, development, education and wellbeing'. The experience of the OCSC is that while progress has been made since these principles were enacted in 2005, much still remains to be done. The embedding of these principles into practice across the whole of government services requires an unequivocal commitment of government to make the safety and welfare of children, particularly those most vulnerable children, the highest priority.

The unique opportunity presented by this Inquiry is its broad mandate to make recommendations for systemic reforms that cross over the many and diverse service systems that impact upon the safety and wellbeing of children. Implementing the Inquiry's recommendations will similarly require a whole of government response led from the centre of government. We have identified below some systemic reforms that would enable such a whole of government response and foster greater collaboration and coordination in the future.

Government leadership

State government leadership could be demonstrated through the development of a whole of government integrated approach to child-focussed decision-making. The objective is to ensure that all government agencies work together to ensure the needs of children are met. This is of particular importance for children who are placed in the care of the State. Currently these very vulnerable children are seen as being the responsibility of the Department of Human Services. In our view, neither one department nor one Minister can ensure that that these children receive the full range of supports they require. To address this longstanding systemic challenge, we propose that the office of the Premier, as the embodiment of the whole of government, assumes new responsibilities.

Our proposal is that the Premier undertakes responsibility for a whole of government *New Plan for Children in State Care*. In addition, legislative amendments would be made to provide that children in care will be under the custody or guardianship of the Premier rather than the Secretary of the Department of Human Services. Such a change would highlight that the State is entrusted with the responsibility of providing for the safety and wellbeing of these children. This approach will assist the Minister for Community Services to be supported by other Ministers to make children in the care of the State a priority for all areas of government. The Department of Human Services would retain operational responsibility for child protection and out-of-home care services but would have greater authority to call upon other arms of government to ensure children who experience out-of-home care receive priority access to and support from all government and government funded agencies.

This new approach would be coordinated by the Department of Premier and Cabinet whose responsibilities would include:

- Supporting a new interdepartmental committee, that is accountable to the Premier for monitoring and reporting to Cabinet on whole of government approaches to services for children, including the development and implementation of a New Plan for Children in State Care.
- Providing advice to the Premier on how departments are developing and delivering their departmental strategy as part of their commitment to the New Plan for Children in State Care, including the identification of any ongoing systemic challenges that require ministerial attention and action.

- Ensuring cabinet submissions for Social Development Committee of Cabinet consideration include a 'best interests of children statement' or 'child impact statement'.

Attachment A depicts in more detail the way in which these new roles would link to other government departments.

If the community truly wants to significantly reduce abuse and neglect of children, more also needs to be done to address the root causes of disadvantage. Many of the children who come to the attention of the OCSC through our inquiry and other work, have families who have experienced entrenched poverty and disadvantage including intergenerational contact with child protection. Reducing the number of children who are harmed though child abuse and neglect will require a government commitment to addressing the causes of poverty and related issues such as access to housing, education, health care and employment.

Funding

A recent editorial in The Age (14 April 2011, p. 12) reflecting on the state of child protection services in Victoria concluded that "the basic problem is inadequate funding and resources to meet demands on state care". Many of the solutions proposed in this submission will require additional resources to be invested in both preventing abuse and neglect and responding to the needs of those children who have been harmed. Investing early in preventing and redressing harm to children is not only the humane and morally correct response, it is also a cost effective one. If as a society we truly value children, all children, then more resources will need to be invested.

Working collaboratively

The principles which underpin the delivery of services to vulnerable children clearly articulate the value of collaboration and information sharing. For example, in Victoria the *Best Interests framework for vulnerable children and youth* (2007) emphasises the importance of service collaboration, shared responsibility and cooperation by diverse groups of professionals. Similarly *A Strategic framework for family services* (2007) highlights the importance of integrated, flexible and coordinated services. Despite the commitment to these principles, it is clear that 'silos' within and between departments and professional groups and services still exist. For example, a large percentage of cases reviewed by the OCSC include examples of inadequate collaboration and co-ordination between services and professionals, including issues such as lack of clarity regarding roles and responsibilities, inadequate communication and consultation, absence of case conferences and a lack of shared understanding of case direction. Strong government leadership from the centre of government described above will assist in breaking down these silos. Systemic reforms to the ways in which services are funded and designed and a review and reconsideration of privacy laws and practice would also assist in breaking down these silos and changing attitudes.

Service design funding and changed attitudes

The *Report of the Special Commission of Inquiry into Child Protection Services in New South Wales* includes recommendations in relation to information sharing and collaboration, concluding that some of the barriers could be addressed by legislation "but generally a change in attitude and approach including greater acceptance of working in collaboration, is needed." (Wood, J 2008, vol 1, p iv). Similar comments could be made in relation to the services available to children in Victoria. Creating an environment which fosters such a change in attitude will require other systemic reforms at the operational level including the following:

- A common framework for the assessment of risk and provision of support must be developed. For professionals and service systems (including child protection, ChildFIRST, family support services and universal services) to work collaboratively together to support vulnerable families and ensure the safety and wellbeing of children,

a common framework should be developed which includes a common risk assessment tool as well as shared case planning tools and responsibilities. Funding should be provided to enable the development of the framework as well as joint training to support its implementation.

- Financial and administrative incentives need to be created. All funding and service agreements, as well as individual work plans should include a requirement to evidence collaborative working relationships across disciplines and agencies. Key performance indicators, linked to funding, should be developed which identify minimum requirements for cross sector collaboration and multi-disciplinary consultations. Building collaborative relationships and partnerships should be seen as core business and resourced appropriately.
- Legislation guiding the provision of a broad range of services to children and their families should be reviewed. The review should aim to identify any obstacles to collaboration (for example, limits on the sharing of information); and opportunities to enhance collaboration and child and family centred services. For example, in section 5(3) of the *Disability Act 2006* there are a range of principles which apply to the provision of disability services. Several of these principles relate to the importance of family in the life of a person with a disability but the focus appears to be on the role of family in supporting and caring for the person with the disability. What is lost is the need to also support people with disabilities who are parents; to support their role as the carer, not just as the recipient of care within the family. The principles could be amended to acknowledge that disability services have a role in supporting parents with a disability to care for their children in the best interests of those children.
- New family centred service hubs should be created. The co-location of services through the creation of service hubs which include a range of diverse services and professionals (both commonwealth and state funded) can create greater opportunities to engage with vulnerable families and engender collaborative practice. Such services should be family and child focused and could be funded to provide joint training and planning for regional multi-agency and cross disciplinary services and committees.

Privacy laws and practice

At times the failure to share information and work collaboratively is defended on the basis of 'privacy' laws. In our experience there is at times a lack of understanding about what the law actually requires in relation to the confidentiality of information. We believe a review of privacy law and practice needs to be undertaken to determine the extent to which the barriers to information sharing arise from the requirements of the law itself or ignorance of the law. Whatever the cause, the barriers to appropriate information sharing need to be unlocked, to ensure the 'best interests of the child' are upheld.

PREVENTION, EARLY INTERVENTION AND SUPPORT FOCUSING ON ADULT, UNIVERSAL AND PRIMARY SERVICES

> *Although there have been long-standing debates about how much the early years really matter in the larger scheme of lifelong development, our conclusion is unequivocal: What happens during the first months and years of life matters a lot, not because this period of development provides an indelible blueprint for adult well-being, but because it sets either a sturdy or fragile stage for what follows.*[1]

Policy frameworks at both the state and national levels, supported by strong evidence, acknowledge the importance of high quality early childhood services, particularly for vulnerable children and early intervention for children at risk of abuse or neglect.

[1] National Research Council and Institute of Medicine (2000) From Neurons to Neighborhoods: The Science of Early Childhood Development. Committee on Integrating the Science of Early Childhood Development. Jack P. Shonkoff and Deborah A. Phillips, eds. Board on Children, Youth, and Families, Commission on Behavioral and Social Sciences and Education. Washington, D.C.: National Academy Press (p 4-5).

The experience of the OCSC over the past few years is that while early intervention is supported as an objective, at times the level of demand for early intervention and more targeted services exceeds capacity. As a result, the threshold to access 'preventative' services rises and scarce resources are targeted at the most needy with the consequence that services are not available at the early stage of a problem (when they could be most effective) but only provided once problems become acute.

For example, a number of our inquiries have involved cases where there have been multiple reports to child protection over extensive periods of time, many of which were initially responded to by referrals to preventative services for early intervention. Where such multi-problem families are managed by the voluntary sector and require intensive involvement to address acute issues, the capacity of such services to devote their limited resources to 'less urgent' cases is significantly reduced.

Identified below are some immediate and some longer term systemic reforms which could assist in narrowing the gap between the rhetoric and the reality of early intervention and prevention for many vulnerable children and families. Talk about early intervention and prevention tends to be on the early years. While research suggests that this focus is important because of the heightened vulnerability of young children, it is also important not to forget appropriate early intervention to address the needs of adolescents who are experiencing difficulties.

Expanding early childhood services

Given the proven benefits of high quality early childhood services for vulnerable children, a substantial investment in the creation of such services in areas of highest need must be a priority for the state and commonwealth governments. An extremely promising model is the Child Protection Society's Specialist Integrated Child and Family Early Years Centre in Heidelberg, which is designed to provide access to vulnerable families to ensure they are better supported to care for their children, and transform the life outcomes of their children through attendance at a special purpose, developmental focused early education and care centre.

Creating new support services for parents

All parents need advice and support to guide them in their responsibilities. New service models, including online and new social media technologies, should be developed which provide advice and referral where appropriate. Such services can also help to overcome the stigma attached to being a parent who needs support.

Supporting outreach to families

The OCSC's inquiries and other work have highlighted the challenge of supporting families who are unwilling or unable to engage with services. For example, a number of inquiries have involved cases where families declined to engage with voluntary services to whom they were referred by child protection with the result that problems and risks to children escalated. The early engagement of vulnerable families in prevention programs often requires proactive and sustained outreach by workers who are highly skilled at engagement. Once a relationship between a service and family is established, the duration of the service provision should be based on the needs of the family rather than the throughput imperatives which sometimes drive the service system. Some particularly vulnerable families will require ongoing and sustained support. Some models to consider are:

- Establishing a Nurse-Family partnership Program building on the model developed by Professor David Olds in the United States which has been used to develop similar programs in Australia for Aboriginal and Torres Strait Islander mothers and their children.[2] Such programs involve home visits and the provision of information, advice

[2] Further information about the program is available at the Australian Nurse-Family Partnership Program website http://www.anfpp.com.au.

and referrals. The program should commence supporting mothers during pregnancy and continue the support for several years after the child is born.

New Mental Health Services

The OCSC recommends the creation of new models (and funding) for child-focussed outreach by Child and Adolescent Mental Health Services to both engage with children who have a mental illness as well as those children whose parents have a mental illness. One option would be to establish mobile outreach teams of mental health specialists to:

- Actively engage high risk adolescents for whom office based appointments and waiting lists are a significant obstacle to accessing services. This could be of particular benefit in some rural areas where considerable distances need to be travelled to access specialist services and transport is not readily available to such adolescents. The threshold for accessing these services should be set at a level which enables early outreach.
- Connect with children whose parents have mental health and wellbeing issues, to assist them to understand their parent's illness and provide strategies to assist them to maintain their own safety and wellbeing.
- Where there is a history of child abuse or neglect, to work with the family to address underlying dynamics that have contributed to the child's vulnerability, and to put in place strategies for their safety and wellbeing.

Redesigning youth homeless services

The OCSC is currently leading a project entitled *Linking Services – for Young People Under 16 and Alone* which is designed to improve the services to unaccompanied young people under 16 years of age who are trying to resolve or stabilise where they live and have their need for support met. Consultations to date have indicated that in many cases the experience of these young people consists of a string of temporary solutions that have given them no security and little opportunity to stabilise their living situation and begin working on other issues in their lives. Their experience reflects a trajectory that is all too familiar to workers dealing with young people in the sector; a client enters a service, receives a service which is time limited and ends regardless of whether the client's ongoing needs have been met. This approach has resulted in a merry-go-round of temporary and insecure accommodation and a lack of stability making it difficult to address the issues that are keeping clients there. As one young person said 'it is hard to concentrate on your future if you are struggling with today.' For these vulnerable children, the service system needs to be redesigned to focus on achieving long term stability for the young people who access these services.

Family Focused Adult Support Services

Developing a family focus in adult support services would enable better support to be provided to vulnerable children and families. Adult focussed services should be encouraged and supported to adopt a more family and child friendly focus. Services should be designed to identify and support those adult clients who have responsibility for the care of children. More needs to be done particularly within adult drug and alcohol and mental health services to enable workers to recognise and respond to the parenting needs and responsibilities of their clients. For this to occur, workers need to be aware of what family support services exist in their community. Last year the OCSC engaged with staff working in adult drug and alcohol services at a series of forums and was surprised to hear that not many of those workers had heard of ChildFIRST, let alone made a referral to them.

One way this might be facilitated is to co-locate professionals with expertise in child protection, child development and/or parenting support services within these adult services. Another option would be to up-skill those working within these sectors with knowledge of early child development and identification of risks and vulnerability. In the context of collaboration, opportunities should be created for those professionals who work within adult services to share their own expertise of successful engagement with their adult clients with those child protection and family support staff.

Enhanced Support to Victoria's Aboriginal communities

Aboriginal children and families continue to be over represented in the child protection and out-of-home care system and under represented in preventative family support services. A key focus of this inquiry must be directed to listening to and developing with Aboriginal communities strategies to improve the health, wellbeing and safety of Aboriginal children. A key focus of such strategies should be to strengthen and support Aboriginal families. The Victorian *Charter of Safety and Wellbeing for Aboriginal Children and Young People* identifies a range of important principles and objectives. The challenge now is to develop the structures on the ground that are required to make these a reality. Aboriginal communities need to be engaged in this process and the services appropriately resourced. Responsibility for monitoring the provision of services to vulnerable Aboriginal children and families, and encouraging the development of innovative, responsive and culturally appropriate services could be vested in a new position located within the OCSC.

FAMILY SERVICES AND CHILD PROTECTION

As with other areas of the service system, there is a disconnection between the principles and policy frameworks which underpin the statutory child protection system and the way in which those principles and policies are put into effect by workers and agencies on the ground. The gap will remain if the current inadequate levels of funding are not addressed. New approaches to the funding of child protection services should be considered including:

- establishing a mechanism for funding to child protection and out-of-home care services that will be automatically increased during a financial year if actual demand for services exceeds estimated demand; and
- developing funding models which reflect the true cost of providing high quality care to children in the out-of-home care sector including therapeutic residential care, access to counselling and health care and special education services.

ChildFIRST

One of the great strengths and promises of ChildFIRST services is their capacity to provide support to families and children prior to issues escalating to a level of severity that necessitates the intervention of statutory child protection services. To do this effectively, these services need to be suitably resourced to be able to respond quickly. Our understanding is that effective timely responses are at times hampered by the high demand for the services which results in the creation of waiting lists for services and undercuts their capacity to respond at the early stage of a problem. In addition, anecdotal evidence suggests that as a result of child protection workload management strategies, the threshold of child protection involvement appears to have risen, resulting in ChildFIRST services at times undertaking work beyond their level of skill and expertise.

A review of ChildFIRST Services should be undertaken to determine whether the services are in fact resourced and staffed at a level which enables them to achieve their objectives. Any deficits in resources should be addressed and strategies developed to protect ChildFIRST services from being asked to undertake work more properly the domain of child protection services. The review should include consideration of whether high caseload and demand for services results in a lack of effective services to families with chronic and longstanding issues who require sustained support for longer periods of time.

Cumulative harm

Anecdotal evidence provided to the OCSC 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.

Workforce reform

Resolving outstanding workforce issues lies at the heart of improving child protection services. In particular Child Protection, ChildFIRST and family support services all require:

- The professional development opportunities, support and supervision for staff to be enhanced, with priority given to increasing the skill and capacity of supervisors. A high priority should be placed on the establishment of new senior practitioner positions in all regions.
- The remuneration of child protection practitioners and residential care workers to be reviewed to better reflect the importance of the extremely challenging work they do and to attract and retain highly skilled staff.
- A concerted strategy to recruit experienced workers should be developed, including consideration of part time positions and other strategies that enable workers to better balance their own family commitments.

In addition, all those who work with children need the skills, resources and supports to truly deliver a child centred service system. The current legislation and policy direction in Victoria articulates a strongly child centred approach which in our experience has not always translated into practice. To better support this approach, the Department of Human Services should be resourced to provide all professionals at the front line opportunities to strengthen their capacity to form trusting professional relationships with children. Professionals working with children should be in a position to facilitate the expression of children's voices in respect of their wishes, feelings and 'lived experience', and make decisions in collaboration with children. Highly skilled professional practice with vulnerable children requires appropriate training, adequate support, high quality supervision, and practice leadership that privileges children. Steps to strengthen practice supervision and leadership must be adequate and urgently addressed.

Family Court

Parents, grandparents and other carers have told the OCSC of the many challenges they have faced in attempting to navigate the Family Court system when they have concerns for the safety and welfare of children in their care. As one kinship carer said:

> *"The father kept challenging the Family Court, it cost a lot of money and stress and we are worried that even with the final order he will keep taking us back to court."*

The intersecting jurisdictions of the Family Court, Children's Court and child protection practice raise an array of complex legal, financial and commonwealth/state issues. For purposes of this inquiry, the OCSC believes the Panel should particularly examine the way in which child protection services respond to families where proceedings have commenced or may be commenced in the Family Court. The development and implementation of a framework which is focused on the best interests of the children should be developed. Such a framework should provide for structured and consistent decision-making by Child Protection in terms of when they refer carers to the Family Court (rather than commencing child protection proceedings). The framework should be developed in conjunction with an overall enhanced framework for the assessment and support of kinship carers.

Opportunities to enhance collaboration, training and referrals between Family Court staff and Child Protection staff should also be explored. OCSC understands that the protocol between the Family Court and the Department of Human Services has recently been up-dated to better support appropriate child protection referrals. Providing co-training and development opportunities would assist to strengthen the operation of the protocol.

OUT-OF-HOME CARE

For those children who are in statutory out-of-home care services, the *Children, Youth and Families Act* provides that the Department of Human Services Secretary:

(a) *must have regard to the best interests of the child as the first and paramount consideration; and*

(b) *must make provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would; and*

(c) *must have regard to the fact that the child's lack of adequate accommodation is not by itself a sufficient reason for placing the child in a secure welfare service; and*

(d) *must have regard to the treatment needs of the child. (sec 174)*

As with other areas, the OCSC is aware of far too many instances when practice does not match the principles. We believe that the language of the Act, its promise to those children who are entrusted to the care of the Secretary, is that they will have access to at least the same level of support and care that 'a good parent' would provide. At a minimum one would expect this would include care by qualified adults with whom the child could develop a trusting and nurturing relationship, access to high quality dental care, health care (including mental health and disability support), dental care, education, emotional and behavioural development, and the opportunity to develop essential life skills and connections to people important to the child. This is not the reality for many children in care and the OCSC believes much can be done to improve the quality of the out-of-home care system. Some particular solutions are described below.

Entrusted to the care of the state

As noted earlier in this submission, children in care should be under the custody or guardianship of the Premier rather than the Secretary. Such a change would highlight that the State is entrusted with the responsibility of providing for the safety and wellbeing of these children and assist to underpin whole of government support to children in care.

Enhanced planning

A fundamental aspect of the placement of children and young people in out-of-home care, especially those who the Children's Court places on custody and guardianship to Secretary orders is the timely and appropriate 'Best Interests Case Planning'. Currently senior child protection staff within the relevant region chairs the case planning process. This approach lacks the appearance of independence and transparency as well as potentially undermining the quality of the planning process. An important structural reform to the case planning process would be to establish a panel of appropriately trained and independent of case planning chairpersons. The key focus of the independent chairperson would be to ensure actions are taken re the best interests of the child. Such independence would also ensure that the voice of the child is heard in relation to planing recommendations and directions. In developing the model consideration could be give to models used in the United Kingdom which are child and outcome focused.

In addition, decision-making structures and the need to enhance coordinated responses to very complex child protection cases have been highlighted as areas of concern in inquiries undertaken by the OCSC. A renewed focus on the opportunities to enhance the quality and transparency of decision-making as well as consideration of the best care team structures should be developed.

Therapeutic residential care

The need to develop therapeutic residential placements has been highlighted in the annual reports of the Victorian Child Death Review Committee. These recommendations need to be implemented. In our view, all children who have experienced the trauma of abuse or neglect should be able to access high quality and timely therapeutic care when they need it. To this end, immediate action needs to be taken to redesign and fund care models, particularly residential care. Children in residential care are the extreme end of the client continuum. All residential care placements should be therapeutic. Residential care placements should be

staffed by qualified staff who are trained and supported to respond to high risk taking behaviours by those children in their care.

Support to carers

Many carers including those who are statutory foster and kinship carers and those who are 'informal' kinship carers have expressed to us their concerns about:

- The inadequacy of information provided to them about the needs of the children placed in their care and the lack of sufficient support to meet those needs;
- Their feelings of powerlessness in 'the system' and in particular the sense that their voice is not heard, for example by being given insufficient opportunities to participate in case planning
- The continuing harm suffered by the children in their care because of long waiting lists for access to counselling and other services.

Resolving these challenges will require a commitment to providing more resources to enable services to be provided and a greater commitment by child protection and other professionals to engage carers in decision-making and case planning. Foster and kinship carers should also receive financial support to adequately compensate them for the costs they incur in caring for children.

Education

Overall, children who experience out-of-home care have poorer educational outcomes than other children. Much more needs to be done to improve the educational outcomes for children in care. Targets should be set and outcomes measured to encourage a greater focus on education. Alternative models of education as well as extra support in and out of school need to be provided.

Access visits

Parental contact is important to the wellbeing of children in care, providing that their safety and their wishes are properly taken into account. However, contact visits are often a complex and challenging task for a service system which is already overstretched. To assist in enhancing the quality of contact visits and reduce the burden on protective staff who supervise them, specialist contact centres should be created throughout the state, as is being developed for more challenging Family Court contact arrangements.

Health assessment and treatment

The importance of meeting the health care needs of children in out-of-home care, including ensuring these children receive comprehensive health checks when they enter care, has been acknowledged at the national level and is one of the measures reported on in the first annual report to the Council of Australian Governments on progress towards implementing *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020.* In Victoria much still needs to be done to put these principles into practice, including developing processes to ensure all children in care receive consistent high quality entry to care health assessments, regular health care checks and timely and appropriate follow up and monitoring of health assessments.

The capacity to give priority to the health needs of children in out-of-home care is clearly linked with having sufficient staff resources within the child protection system. The inquiry work and broader consultations with a range of professionals and carers undertaken by the OCSC confirms that there is a compelling case for the establishment of a system of comprehensive health assessments and treatment of children in out-of-home care. A focus on the health needs of children in out-of-home care and an integrated care management approach must be given priority attention. This priority needs to be reflected through such mechanisms as training and professional development, best interests practice guidelines and monitoring through case planning and quality assurance mechanisms. Child Protection

practitioners should also have access to secondary consultation with experienced medical practitioners, in order that they can have sufficient understanding to guide their case planning and management.

Kinship care

There has been significant policy development and program implementation in Victoria with regard to the fast growing category of out-of-home care by kinship carers. The Department of Human Services has developed a distinct framework to support kinship care and has implemented a state-wide kinship care program which is the subject of an external evaluation. More reform is required to ensure that the all children who are in out-of-home care (whether through statutory orders or informal kinship care) receive the care and support they need. Specific work is required to establish a comprehensive support system to kinship carers to ensure they are able to access the same level of support as foster carers For example, the conversion of kinship care cases to permanent care should not result in a reduction of services and specialised supports.

Given the important and distinctive place kinship care now fills in providing support to vulnerable children, the newly established peak body for carers Kinship Care Victoria needs to be properly resourced to assume an increasing role over time. In addition the Department of Human Services should develop information for kinship carers so that they can easily access up-to-date information on their entitlements, roles, and responsibilities and where to access support services.

Without adequate support and assistance to the existing kinship care program and kinship carers themselves, the risk of placements breaking down will increase which will further traumatise the children and increase pressure on other out-of-home care services.

COURTS

The strengths and weaknesses of the Children's Court system have been canvassed in the Victorian Ombudsman's *Own motion investigation into the Department of Human Services Child Protection Program* (November 2009) and the Law Reform Commission of Victoria's *Protection Applications in the Children's Court: Final Report* (October 2010). The implementation of recommendations by the Child Protection Proceedings Taskforce (of which the Child Safety Commissioner was a member) have been welcomed however, significant problems remain and need to be addressed through fundamental systemic reforms.

The OCSC agrees with the overarching objective identified by the Law Reform Commission of Victoria in its report as:

> *"The processes for determining the outcome of protection applications should emphasise supported child-centred agreements and should rely upon adjudication by inquisitorial means only when proceeding by way of supported agreement is not achievable or not appropriate in the circumstances." (p.17)*

The OCSC also generally supports the principles proposed by the Law Reform Commission which included child-centred processes, the encouragement of inter-professional collaboration and an inquisitorial approach to proceedings. Where we disagree with the Commission is in relation to the continued use of a court rather than a multidisciplinary tribunal as the ultimate decision-maker in those cases that cannot be resolved through mediation.

Our submission to the Law Reform Commission is attached. As you will note, the central reforms proposed by the OCSC were:

- The creation of a Family Solutions Roundtable which would aim to achieve a mediated agreement between the Department of Human Services and the child's family on how best to protect the child.
- The replacement of the Children's Court by a Children's Safety and Wellbeing Tribunal which would be based in regions throughout the state and comprised of a range of

professionals with backgrounds in areas relevant to children's wellbeing and development.

While only a relatively small percentage of reports to child protection result in contested proceedings in the Children's Court, the prospect of such proceedings and the belief as to how they will be resolved casts a long shadow over child protection practitioners and vulnerable children and families. If there is to be systemic reform focused on early intervention, collaboration and shared responsibility for children, the legal process needs to be consistent with these reforms. The implementation of a multidisciplinary tribunal and a strong focus on early, collaborative and effective mediation would be well aligned to such systemic reforms.

If there is support for large scale reforms to the structure of children's court proceedings the OCSC acknowledges that such reforms will take time to develop and implement. In the interim period, short term strategies should be implemented including enhancing opportunities for mediation through the use of highly skilled mediators and improvements to the physical fabric of the courts so that they become more child safe and friendly places.

OVERSIGHT AND TRANSPARENCY

As the Panel has noted, child protection services and other government and nongovernmental bodies may be subject to review through the statutory roles of the Ombudsman, Victorian Auditor General and the Coroner. We do not propose to comment in detail on the work of these organisations other than to note that through their review functions they have made important contributions to systemic reform and are an important part of monitoring the fairness and effectiveness of government and government funded services for children.

In addition to the important roles played by these statutory review bodies, it is also well recognised that there is a need for a specialised, independent advocate for, and monitor of services provided to children. In recognition of this need, Children's Commissioners have been created in all states and territories in Australia, each with their own unique set of functions.

In Victoria, the powers of the Child Safety Commissioner are articulated in the CWS Act. The OCSC's specific legislative functions are:

- Providing advice to the Minister for Community Services about child safety issues.
- Promoting child-friendly and child-safe practices in the Victorian community.
- Reviewing and reporting on the administration of the *Working with Children Act 2005* and educating and informing the community about that Act.
- In relation to children in out-of-home care:
  - ◊ promoting the active participation of those children in the making of decisions that affect them
  - ◊ advising the Minister and the Secretary on the performance of out-of-home care services
  - ◊ at the request of the Minister, investigating and reporting on an out-of-home care service.
- Conducting an inquiry and preparing reports:
  - ◊ in relation to children who have died and who were a Child Protection client at the time of their death or within twelve months of their death
  - ◊ in relation to children who are or were Child Protection clients where the Minister requests a review be undertaken and the Minister considers that the review will assist in improving child protection practices and enhancing child safety.

The *Ombudsman's Own motion investigation into Child Protection – out-of-home care* (May 2010) and the Law Reform Commission of Victoria's *Protection Applications in the Children's*

Court: Final Report (October 2010) include critical reflections on the relatively narrow legislated role of the Child Safety Commissioner in Victoria. The government has committed to addressing a number of these issues through the creation of an independent Children's Commissioner with an expanded set of functions. The OCSC supports these proposed changes.

For the reasons described in our comments on the previous terms of reference, we believe it is important to consider child protection as part of a continuum of services. Protecting children is dependent on the interaction of many service systems, collaboration between people with diverse professional backgrounds and the wider community. If the objective is to achieve a more holistic response which begins with universal services and is underpinned by an ethos of collaboration, and proactive and engaging outreach to vulnerable families by all service sectors, then the mechanisms for 'oversight and transparency' must similarly have a broad focus and not be limited to child protection services. Such mechanisms should not become overly legalistic nor focus on casting blame, but rather should encourage open, critical and reflective practice across service providers and diverse professionals working with children and those who care for them.

Many of the themes identified in the terms of reference and questions for this Inquiry are similar to those which have been considered by previous reviews of child protection services. The establishment of more robust mechanisms for monitoring and reporting on the implementation of the recommendations arising from this Inquiry and the broader provisions of services to children and families will enhance the prospects for these reforms to have a more lasting and positive impact on the lives of all children, particularly those who are most vulnerable. Expanding the functions, powers and independence of a Children's Commissioner is an important step to achieving this goal.

Noted below are some particular areas where the OCSC believes changes to the role and functions of the Child Safety Commissioner could support enhanced oversight and transparency. We note that Children's Commissioners in other jurisdictions already have many of these or similar functions.

Conduct of inquiries

Currently the Commissioner undertakes both child death inquiries and, when requested by the Minister, special inquiries. The purpose and conduct of child death inquiries are quite distinct from inquests undertaken by coroners as they are not designed to determine the cause of death or determine culpability. Child death inquiries aim to "promote continuous improvement and innovation in policies and practices relating to child protection and safety" and to this end, the entire case history is examined. The findings and recommendations which arise out of the child death inquiries have informed broader systemic reforms to the child protection and related service systems as well as identifying more targeted practice enhancements. For example the emphasis on cumulative harm, therapeutic care and best interests have been influenced by these inquiries.

The Child Safety Commissioner supports the continuation of mandatory child death reviews where children known to child protection die. Currently, specified health and welfare services are required to provide information to assist with the conduct of an inquiry. We believe it would be appropriate to consider augmenting the scope of services which participate in reviews to better reflect a more collaborative approach to supporting vulnerable children.

The amendments to the Act which empower the Commissioner to undertake other inquiries at the request of the Minister are relatively new. The Act currently provides that special inquiries may only be undertaken at the request of the Minister and in relation to children who are or have been known to the child protection. We believe it is important for the Minister to continue to have the power to request inquiries be undertaken.

In addition to the existing inquiry functions, if the Children's Commissioner is to be, and be seen to be, independent, the Commissioner should be empowered to undertake own motion reviews. Consistent with the broader themes identified in this submission to enhance collaboration between diverse professionals and service systems and embed a shared

responsibility for vulnerable children, the OCSC supports broadening the Commissioner's inquiry and other powers to include 'vulnerable children'. The recent amendments to the legislative mandate of the Northern Territory Children's Commissioner include a broad based definition of 'vulnerable child' which could serve as a basis for reforms to the CWS Act in Victoria[3].

Such changes would be consistent with the objective of developing a more cohesive and coordinated response to vulnerable children described in more detail above. As with the current inquiry process, the approach to 'own motion' inquiries should be one which is designed to encourage all those involved to reflect honestly and critically on their own practice with the objective of promoting 'continuous improvement and innovation in policies and practices relating to' vulnerable children.

Complaints

The current Act is silent on the Commissioner's role in relation to the receipt and resolution of complaints. Over the years, the OCSC has received many enquiries from members of the public as well as professionals seeking information, guidance or assistance in resolving concerns about the safety and wellbeing of a child or children. These enquires provide an important window into the way in which services for children and families are operating. Formalising a complaint function in the CWS Act would assist in creating a more accountable and transparent service system for children. This role should primarily be directed to providing information and referrals and facilitating access to existing complaints mechanisms. In some cases, the Commissioner may elect to monitor the way in which a complaint is resolved by an agency and in exceptional cases, undertake an enquiry into the particular case.

It would also be appropriate for the Commissioner to have a role in encouraging all organisations to develop and promote their own complaints handling procedures and to ensure these are accessible to children or those acting on behalf of children. The Commissioner could have power to monitor and review these procedures and the manner in which organisations respond to complaints from and on behalf of children. For example, some people who contact the OCSC to express concerns about child protection or out-of-home care services are unaware that the Department of Human Services has its own processes for receiving, investigating and responding to complaints. Information about the Department's own complaints handling processes should be more widely disseminated and provided to all child protection clients.

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[3] The term vulnerable child is defined in the Northern territory *Care And Protection Of Children (Children's Commissioner) Amendment Act 2011* as follows:

2) A vulnerable child is any of the following:

(a) a child who is the subject of the exercise of a power or performance of a function under Chapter 2;

(b) a child who has been arrested or is on bail, or in relation to whom an order made under the Youth Justice Act is in force;

(c) a child in relation to whom an order made under the Volatile Substance Abuse Prevention Act is in force;

(d) a child who is suffering from a mental illness or is mentally disturbed, or has a disability;

(e) a child who has sought or is seeking child-related services, or for whom a family member of the child has sought or is seeking child-related services, for any of the following:

(i) the prevention of harm to, or exploitation of, the child;

(ii) the protection of the child;

(iii) care or support of the child;

(f) a person prescribed by regulation.

(3) In addition, this Act applies to a young person who has left the CEO's care as if the person were a vulnerable child.

Community visitors program

The establishment of a community visitors program for children living in out-of-home care, commencing with community visitors for residential care is a much needed reform to ensure the safety and wellbeing of children in Victoria. Community visitor programs are a well established part of protecting vulnerable people and already exist in Victoria (for example, the community visitor program for disability services which is managed by the Office of the Public Advocate). Community visitors with specific responsibility for visiting children in out-of-home care also exist in other jurisdictions.

The primary role for the community visitors should be to meet directly with the children in care, listen to their concerns and report back on both what is working well within the care system and what needs to be improved. Community visitors should be independent of service provision and annual reports of their activities should be included in either the Children's Commissioner's annual report or in a separate report.

Other Monitoring Activities

The Child Safety Commissioner currently undertakes a range of activities to monitor the provision of out-of-home care services to children. While these activities have provided important insights into the quality of care being provided and have helped to underpin reforms, the OCSC's capacity to robustly and proactively monitor the out-of-home care system, as well as broader child protection service systems, is limited by the relatively narrow scope of functions included in the Act. To enhance the oversight of, and public confidence in the child protection and out-of-home care service system, we support consideration of additional review functions and powers being granted to the Children's Commissioner including:

- capacity to undertake random case audits of child protection files;
- responsibility for undertaking reviews of community service organisations against standards set by the Minister under Division 4 of Part 3.3 of the *Children, Youth and Families Act*; and
- establishment of benchmarks to measure the outcomes being achieved for children who experience out-of-home care across key domains such as education, health, mental health, substance abuse, self harm, criminal activity, placement stability, and successful planning for leaving care.

The Act should provide that the annual report of the Children's Commissioner must include a report on the findings of each of these review activities.

Youth Justice

Although youth justice has not been specifically identified in the terms of reference, given the extreme vulnerability of the children who come within this sector, as well as the high proportion who have been or are clients of the child protection system, it is important that there be effective mechanisms for the oversight of this service system. To this end, the Children's Commissioner should be empowered to monitor the provision of these services to children. A range of monitoring options could be considered including a community visitors scheme and the conduct of inquiries in relation to the circumstances of a particular child or in relation to issues relating to the safety and wellbeing of these children.

Refugee unaccompanied minors

Children in this cohort are in need of specialist long term assistance. Current measures to 'house' them are short-term and problematic. At the very least their circumstances need to be monitored to ensure a 'best interests' ethos prevails.

Attachment A

Premier of Victoria

- Has custody/guardianship of children in the care of the state (delegated to the Secretary of DHS to operationalise)
- Has responsibility for a whole of government ***New Plan for Children in State Care***

Department of Premier and Cabinet

- Supports a body equivalent in function to the Children's Services Coordination Board/Victorian Children's Council/establishment of a new IDC, that is accountable to the Premier for monitoring and reporting to Cabinet on whole of government approaches to services for children, including the development and implementation of a ***New Plan for Children in State Care***
- Provides advice to the Premier on how departments are developing and delivering their departmental strategy as part of their commitment to the ***New Plan for Children in State Care***, including the identification of any ongoing systemic challenges that require ministerial attention and action
- Ensures cabinet submissions for Social Development Committee of Cabinet (SDCC) consideration include a 'best interests of children statement'/'child impact statement'

Department of Justice

- Has responsibility for the operations of the Children's Court that makes Custody and Guardianship Orders

Department of Human Services

- Has responsibility for the operations of Child Protection, Family and Early Parenting Services, Out-of-Home Care, Youth Justice, Disability Services Youth Services and Housing
- Has delegated operational responsibility for custody and guardianship of children placed in the care of the state, that includes planning and delivering therapeutic care for every child

Department of Health

- Has responsibility for ensuring children in the care of the state are provided with health checks that include: entry to care assessments; regular checks while in care; and assessments by a general practitioner, paediatrician, mental health professionals as well as dental and orthodontic care

Department of Education and Early Childhood Development

- Has responsibility for ensuring those in the care of the state are provided with early childhood, primary and secondary learning and development educational opportunities

Attachment 2

Submission to the Law Reform Commission

Review of Victoria's Child Protection Legislative Arrangements

Submission by

The Office of the Child Safety Commissioner

April 2010

Child Safety Commissioner
promoting the safety and wellbeing of children

1 April 2010
CSCD/10/188

Professor Neil Rees
Victorian Law Reform Commission
GPO Box 4637
Melbourne Victoria 3001

Dear Professor Rees,

Review of Victoria's Child Protection Legislative Arrangements

Thank you for the opportunity to contribute to this important review. My office has given considerable thought to what a new model might include. A diagram is provided in Attachment A, a set of principles in Attachment B and a response to the questions raised in your information paper in Attachment C.

You will see that I support:

- The Children's Court being replaced by a Children's Safety & Wellbeing Tribunal that would operate as a panel in each region comprising a minimum of three members. The regional panels would be required to:
  - make decisions in the best interests of the child;
  - grant a range of protective orders;
  - adopt an inquisitorial rather than an adversarial approach;
  - seek input on the specific needs of the individual child;
  - review administrative decisions and existing orders as requested by DHS, families, carers and children and the Independent Commissioner;
  - nominate children to be placed on the DHS Statewide High Risk Register and conduct periodic reviews of their situation as required; and
  - be independent of VCAT.
- The Secretary to the Department of Human Services retaining the current functions provided for in the *Children, Youth & Families Act 2005*, but would assume more functions relevant to the operation of a Statewide High Risk Register, ensuring the independence of caseplanning activity and providing a report to the Independent Commissioner on caseplanning outcomes.
- The establishment of an Independent Commissioner by statute that would report directly to the Victorian Parliament on a broad range of monitoring and auditing activity relevant to the safety and wellbeing of vulnerable children and young people.

The model provides for Protective Services being able to lodge a Protection Application with the Tribunal who then refer the matter to a Family Solutions Roundtable; a body that would aim to achieve a mediated agreement between the Department of Human Services and the child's family on how best to protect the child. Any urgent matters involving applications for safe custody would be made directly to a Tribunal Registrar who would be required to immediately act and then refer the matter to the Roundtable.

level 20, 570 bourke street melbourne victoria 3000 t 61 3 8601 5884 f 61 3 8601 5881

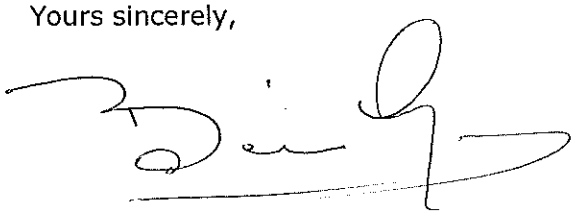
State Government Victoria

The model assumes that families will be advised to seek legal advice prior to participating in a Family Solutions Roundtable or a Tribunal panel process, as lawyers will not be involved in either of these processes.

The Roundtable would be chaired by a trained & accredited mediator. In attendance would be a regional child protection worker, members of the child's family, a carer, the child (if it is considered appropriate), a community person to act in the child's best interests, and a Guardian Ad Litem (as based on the Northern Ireland model). The Roundtable would be able to call upon additional experts as required. A Roundtable agreement may result in considerable professional and community support being provided to the child and their family, without the matter being referred to the Tribunal. All agreements are to be officially lodged with the Tribunal Registrar. Matters where agreement can't be reached will proceed to the Children's Safety & Wellbeing Tribunal.

I look forward to having an opportunity to discuss this very important opportunity for reform in more detail with you in the near future. To arrange a suitable time, I invite your office to make contact with my Executive Assistant Ms Margaret Synon on 8601 5886 or email: margaret.synon@ocsc.vic.gov.au.

Yours sincerely,



Bernie Geary
Child Safety Commissioner

Attachment A

LAW REFORM COMMISSION REVIEW: CHILD PROTECTION LEGISLATIVE ARRANGEMENTS

VULNERABLE CHILD

Reported by education, police, family, community, or others to Child Protection or Child First

Child Protection /Child First
Receives concerns and investigates. Protective Services to lodge a Protection Application with the Tribunal who refers the matter to the FSR within two working days.
Provides reports to, and attends FSR meetings and Tribunal hearings.

By notice

Legal advice to be sought by the family prior to the process

Urgent decisions referred to the Registrar

Family Solutions Roundtables (regionally based)

Mediator (chair) , CP worker, family members, child (if considered appropriate), a community person who will act in the child's best interests and a Guardian Ad-Litem

Matters referred

Agreements lodged

Experts to be called upon as required

Solution reached Tribunal consideration is not required

A CHILDREN'S SAFETY & WELLBEING TRIBUNAL

To replace the Children's Court. To comprise a central Tribunal that oversees 8 regional tribunal panels that are supported by DOJ regional infrastructure

Established by statute with defined powers, the Tribunal will:
- perform the current functions of the Family Division in the Children's Court (making protective orders)
- make decisions in the best interests of the child
- adopt an inquisitorial rather than an adversarial approach
- seek expert input on the specific needs of an individual child
- review administrative decisions and existing orders as requested by DHS, families, carers and children and the Independent Commissioner
- be able to nominate a child being placed on the DHS Statewide High Risk Register and to conduct periodic reviews of their situation as required.
- be independent of VCAT

Operation:
Panels of the Tribunal will be established in each DHS region supported by DOJ regional infrastructure.

A Tribunal Registrar who will:
- make urgent decisions and refer matters to the FSR,
- manage the list of Tribunal hearings,
- lodge FSR negotiated agreements and any breaches
- establish regional panels drawn from local pools of membership with a background in any of the following: administrative review, law (chair), child care, child protection, child welfare, health, cultural diversity, education, aboriginal services, psychology or social work, community experience of working with vulnerable children and young people

Children and their families are to be invited to attend and participate in hearings, to be held in a child and family friendly environment.

DHS SECRETARY

To retain current functions and have some additional responsibilities

Statewide High Risk Register – enhanced planning and reviews

Operate a statewide register, that contains details of highly vulnerable children who require intensive support and current support plans. To provide advice to the Tribunal to enable it to conduct periodic reviews of those on the register. To provide advice to the Independent Commissioner as required.

Caseplanning – enhanced accountability

Professionals who are independent of DHS to chair the caseplanning and review meetings

DHS regional offices to provide reports to the Independent Commissioner on its overall achievement of case plan actions within agreed timeframes, and to identify thematic concerns in regard to individuals/groups of children and regional service delivery infrastructure

INDEPENDENT COMMISSIONER

To provide independent advice and undertake monitoring/auditing

To be established by statute with defined powers

To communicate with children in undertaking a range of activities

To report to the Parliament on all of its activities on an annual basis

To provide advice to the Minister on a range of activities relevant to the safety and wellbeing of children

To have a broad range of audit/monitoring and review functions prescribed in legislation to enable the Independent Commissioner to be able to effectively consider how well vulnerable children are progressing. This will require the Commissioner to have the legal capacity to be able to:
- request and receive regular DHS reports about children placed on its high risk register,
- nominate a child that needs to be placed on the register (following receipt of advice about critical incidents and reports from senior practitioners) and
- request and receive regular DHS regional reports on caseplanning outcomes
- request the Tribunal to be able to review orders.

Attachment B

Principles for Reform of Victoria's Child Protection Legislative Arrangements

- The current adversarial system of the Children's Court does not serve children's best interests and should be replaced by a collaborative approach.
- The Children's Court should be replaced by a Children's Safety and Wellbeing Tribunal that will adopt an inquisitorial rather than an adversarial approach.
- A Registrar at the Tribunal will hear urgent applications for safe custody by Protective Services. The Registrar will be required to immediately act and then refer the matter to a Family Solutions Roundtable for further consideration.
- Before any matter is referred to the Children's Safety and Wellbeing Tribunal for a hearing, it should be referred to the Family Solutions Roundtable (FSR) to seek to achieve a negotiated agreement which satisfies a requirement of being in the best interests of the child. A successful outcome will not require referral to the Tribunal.
- The Family Solutions Roundtable membership will include: a mediator who is the chairperson, child protection workers, family members, the child if it is considered appropriate, a community person who will act in the best interests of the child, and a Guardian Ad Litem (Northern Ireland model). The Roundtable will also be able to call upon external experts as required.
- Families are to be encouraged to seek legal advice prior to attending a Roundtable or Tribunal panel process, as lawyers will not participate in either of these processes.
- If the Family Solutions Roundtable process does not result in achieving a satisfactory partial or fully negotiated agreement between Protective Services, parents, carers, extended family members, significant others and service providers, then the matter must be referred to the Tribunal for a hearing.
- Agreements negotiated with the family will be lodged with the Tribunal Registrar, as will any notice of agreement breakdown, or a breach that requires action.
- The Tribunal will operate panels of a minimum of three members in eight DHS regions supported through the Department of Justice infrastructure.
- A Tribunal Registrar will establish panels drawn from pools of members acknowledged in the fields of: administrative review, law (chair), child care, child protection, child welfare, health, cultural diversity, education, aboriginal services, psychology or social work, community experience of working with vulnerable children and young people.
- Following the granting of an order by the Children's Safety and Wellbeing Tribunal or finalization of a negotiated agreement through the Family Solutions Roundtable, a Case Plan meeting will be held in the region.
- Case Plan and Case Review meetings will be chaired by professionals independent of DHS, who can objectively assess the implementation of goals derived from the Tribunal Order or FSR negotiated agreement.
- The Department of Human Services will maintain a Statewide High Risk Register of children and young people. The Tribunal will be able to nominate those children who should be placed on the Register. DHS will be required to inform the Independent Commissioner of the status of children on the Register. The Independent Commissioner will be able to nominate children for placement on the Register perhaps informed by Critical Incident Reports and Senior Practitioner's Reports.
- An Independent Commissioner will audit the achievement of caseplanning outcomes to ensure children's safety and wellbeing needs are being met consistent with a best interests framework.
- An Independent Commissioner will report to Parliament.
- An Independent Commissioner will provide advice to the Minister on a range of activities relevant to the safety and wellbeing of vulnerable children.

Attachment C

Option 1

New processes that may assist the resolution of child protection matters by agreement rather than by adjudication.

1.1 Do you think that the current dispute resolution conference procedure in the Family Division of the Children's Court operates effectively?

No. The current dispute resolution conference procedure does not operate effectively because it is accessed near the end of proceedings, often as an alternative to a contest, rather than at the commencement of proceedings where it can act as a diversionary mechanism. The current system of dispute resolution procedures also does not have the capacity to include a range of interested parties. Streamlining of the process to enable family and community involvement in problem solving at the initial stages to achieve a negotiated agreement through a Family Solutions Roundtable (as proposed in Attachment A) offers a much more flexible and responsive child-focussed model.

1.2 How could the current dispute resolution procedure be improved?

The Family Solutions Roundtable should be viewed as the primary and preferred method for dealing with issues that have led to Child Protection intervention and an application being made to the Children's Safety and Wellbeing Tribunal. The Family Solutions Roundtable should be used as the first step in all situations, with the exception of safe custody applications where an urgent decision is required to ensure the child's immediate safety when the matter would be referred to a Registrar of the Tribunal. Following a resolution of the immediate concerns in such matters, a follow up referral should be made to the Family Solutions Roundtable for further agreements to be negotiated. Once agreements have been negotiated, they should be lodged with the Tribunal Registrar.

The main principles that would underpin the Family Solutions Roundtable are:

- The voice of the child must be heard where possible, with meaningful participation in decisions about their life.
- Extended family and community members need to be actively involved in making decisions and taking responsibility for the child's safety and wellbeing.

Voice of the Child

- Wherever possible, the child or young person should be invited to participate in the Family Solutions Roundtable, with guidelines to be developed about how this will be managed. If the child is too young to attend or needs support to have their say, a significant person in that child's life should be tasked with that role by the mediator.
- Consideration should also be given to the appointment of a Guardian Ad Litem (as used in Northern Ireland) to represent the child's voice. Whilst recognizing the complexity of this role, this person could be utilized in the session to:
    - Represent the interests of the child,
    - The wishes and feelings of the child regarding their circumstances, and
      The preferred outcome of the process.
- In complex cases, where specialist expertise is required the Roundtable will be able to request input relevant to the specific needs of the child. Experts will be drawn from a range of specialist services in the community.

Family and Community Engagement

Under current legislation there is not an expectation that all of the extended family members and other significant people in a child's life will attend the dispute resolution conference. However, as in the case of family decision making approaches, these are precisely the people that need to be involved in making major decisions about what is in the best interests of the child. Parents, extended family members, other significant people and professionals will together need to reach agreement about how best to support the child to reach their maximum potential in a safe and nurturing environment.

As is the case in Family Dispute Resolution in the Family Court, parties should have access to independent legal advice prior to the session, but legal representatives should not be present during the session.

1.3 What other ADR[1] processes could be used for child protection matters?

As described above, a Family Solutions Roundtable is the preferred process for dealing with child protection matters. The Roundtable is based on the model developed in Family Decision Making which recognizes the importance of extended family members being involved in decisions impacting on children's lives, because they are the people that the child will be connected to long after professional intervention ceases and they leave alternative care.

The Family Law reforms have promoted the development of child focussed and child inclusive dispute resolution and the application of these techniques to child protection matters would be of assistance, particularly in situations where there is strong disagreement between parties with the risk of the "child getting lost". The processes could be adapted to suit the specific requirements of child protection issues.

In child focused practice, the practitioner tries to get the parties to focus on the needs of the child, bringing back this focus as required, sometimes through the use of a representation such as a photo. It is important to get parents to view the situation from the child's perspective. Child focussed work indirectly includes the child, and extends throughout the life of the case. It is an educative process suitable for all child related cases, which ensures child focussed decisions. Child focussed work can be used in conjunction with child inclusive work.

Child inclusive practice involves the use of a Guardian Ad Litem to actually involve the child directly in the process, through consulting with them to ensure their views and wishes are heard. Professional training will assist with this role. Children are not pressured to attend and do not attend the mediation sessions with their parents. Parents are the decision makers and not the children; it is simply a process to assist in ensuring their voices are heard.

Child inclusive practice is only undertaken if:

- deemed suitable following assessment,
- is confidential,
- the child is able/willing,
- the parents/others have disparate views about the child's needs,
- if the child will benefit from talking to someone else,
- the parents' have a commitment/capacity to hear the child's views, and
- can provide an accurate representation of the child/ren's needs

1 ADR means appropriate or alternative dispute resolution. It is a generic term which is used to describe a broad range of processes, such as mediation and conciliation, where an impartial person assists the parties to resolve the issues between them by agreement rather than by adjudication.

1.4 Are there some matters that are better suited to ADR than others, such as questions concerning conditions that should be attached to any final order?

ADR (Alternative Dispute Resolution) has been shown to work for a wide range of disputes, for example, see the results of an evaluation of Family Relationship Centres in The Age 26.02.10

ADR should not be restricted to areas such as conditions being attached to any final order.

The use of a Family Solutions Roundtable to reach negotiated agreements should be undertaken as a first step before any inquisitorial processes and used by the Children's Wellbeing and Safety Tribunal whenever possible.

1.5 When is ADR inappropriate for child protection matters? What protections need to be incorporated into the processes to protect vulnerable parties?

There would be an expectation that matters would be referred to the Family Solutions Roundtable in the first instance (except in safe custody applications which would be referred to the Registrar of the Tribunal) and if judged inappropriate during initial assessment by the mediator, or at any stage in the process, then referred through to the Children's Safety and Wellbeing Tribunal for decision making.

1.6 At what stage(s) should ADR processes be used in child protection matters?

Family involvement in reaching negotiated agreements regarding children's care should be used as soon as possible in child protection matters, to ensure early and effective intervention and minimization of the need for statutory involvement. In situations where a Protection Application is necessary, participation in a Family Solutions Roundtable should be the first step, and it may be appropriate to use this process at each stage of decision making to ensure effective agreements that support the best interests of the child are made throughout child protection involvement and beyond.

1.7 Who should conduct ADR processes? What qualifications and standards of practice should ADR facilitators be held to?

Family Solutions Roundtable facilitators need to meet the accreditation standards set for mediators by the Federal Attorney General's Department under the National Mediation Accreditation Scheme as set from 1 July 2009, being the full Vocational Graduate Diploma in Family Dispute Resolution or competency in the six compulsory units in this qualification.

1.8 Who should be present during ADR processes?

Parents, extended family members, significant others and professionals involved in the child's life and a Guardian Ad Litem should be present during Family Solutions Roundtable processes. There should also be the capacity to call in experts in specific fields as consultants as the need arises. Consideration should be given to the appropriateness of the child themselves being present, taking into consideration the need to balance their right to participate in decision making against the need to prevent trauma. Other innovative approaches may include shuttle sessions, separate entrances, telephone or video conferencing.

Legal representatives for the parties should not be present during Family Solutions Roundtable sessions; parties should seek independent legal advice prior to the session.

1.9 What role (if any) should lawyers play in ADR processes?

Legal representatives for the parties should not be present during the Family Solutions Roundtable sessions; parties should seek independent legal advice prior to the session.

1.10 Where should ADR processes in child protection matters take place?

Family Dispute Roundtable processes (consistent with Family Group Conferences) for resolution of child protection matters should take place in as informal an environment as possible, with consideration given to utilization of local centres such as community health services. It is important that decision making about children's lives be conducted in as much of a child and family friendly environment as can be arranged.

The Family Relationship Centres (FRC's) associated with the Family Court provide a model of service delivery that could be adapted to meet the needs of children and young people and their extended families as the primary clients, rather than a couple in dispute.

Ideally, an environment such as that provided at the Neighbourhood Justice Centre (NJC), which is welcoming, well appointed and child friendly would be replicated at a range of locations accessible by public transport for clients. The recent establishment of regional offices of the Department of Justice could provide the infrastructure to support such a model of service delivery.

1.11 To what extent should ADR processes be confidential?

Family Solutions Roundtable processes should be confidential to a similar degree as it is proposed that FDR (Family Dispute Resolution) processes be made (see editorial *The Age,* 26.02.10, p.14 and recent media articles by Chief Justice Diana Bryant and former Chief Justice Alistair Nicholson, *The Age,* 2 March 2010, p.11).

Mediators should be given protection from giving evidence in judicial proceedings, except where this is "required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person" (European Union directive 2008).There should be mandatory reporting requirements in relation to information that a child is at risk of significant harm, or that another person is at risk of significant harm, as well as consideration of how to manage information indicating that a crime has been committed.

The development of detailed and workable agreements about the child's care, connection and support needs is the primary goal of the process.

Clear guidelines need to be provided to mediators regarding the circumstances of provision of information to the Children's Safety and Wellbeing Tribunal. Some of the dilemmas to be taken into consideration in formulating such guidelines include:

- Mandatory reporting of child abuse,
- A history of family violence,
- Disclosure that a crime has been or will be committed,
- Frank and honest discussion of the current situation,
- How to promote a capacity to engage all participants in discussion, and
- How to address the nature and detail of the protective concerns.

Option 2

New grounds upon which State intervention in the care of a child may be authorised and reform of the procedures followed by the Children's Court when deciding whether to provide this authorisation.

New grounds

2.1 Are the existing grounds for finding that 'a child is in need of protection' in s 162 of the Children, Youth and Families Act 2005 adequate?

No, there are situations/circumstances which could be catered for with the addition of extra grounds as described in 2.2 below.

Consideration could also be given to possible rewording of the ground relating to emotional abuse, given the long held and universal view that this is a very difficult ground to substantiate and present to court. This ground is usually used in conjunction with other grounds such as physical abuse, sexual abuse or neglect. Perhaps the ground of emotional abuse should be able to stand alone for cases where other grounds are not present. e.g. Severe social isolation or extreme forms of continued belittling, bullying or denial of participation.

Current wording

(e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;

2.2 Should there be additional grounds for finding that 'a child is in need of protection' which do not involve proof of fault on the part of a child's parent or other primary carer?

Yes, consideration could be given to provision of two additional grounds which do not involve proof of fault on the part of the child's parent/carer, where the carer may have motivation, but not the capacity to ensure the child's safety:

1. Older children whose behaviour has escalated to the degree that the family/carer cannot manage their care and the child is at risk of significant harm.

2. Where the family/carer has a mental impairment (due to intellectual disability, physical disability) or possibly severe alcohol or drug addiction, which severely impairs their capacity to parent, whether they are motivated to provide appropriate care or not.

Case Example

Adolescent male with an ABI (Acquired Brain Injury) whose highly motivated and caring mother was unable to manage his behaviour given his physical destruction of their home to the point that it became physically dangerous for him to remain there. This led to a Protection Application on the grounds of physical harm.

2.3 Should there be a new set of grounds for earlier state intervention in the life of a child where removal of a child is not necessary but where some state supervision or assistance is appropriate?

Earlier and more intensive prevention and intervention is always preferable and this would seem to be the role of Child First, suggesting increased resourcing for this service may be most appropriate. However, for those situations where even

assertive outreach is insufficient to engage parents in accepting assistance, there is some question as to whether agencies will be able to effectively manage the child's safety and wellbeing needs.

2.4 Could such a basis for state intervention, authorised by the court, be that 'a child is in need of assistance' or 'at risk of harm'?

If it was felt that "a child was in need of assistance" or "at risk of harm", these grounds would form the basis for referral to a Family Solutions Roundtable, which would enable agencies to collaborate with parents and extended family members to develop a negotiated agreement to address the child's safety and wellbeing needs. As with the other (current) grounds for intervention, if the Roundtable was found to be inappropriate, the matter would be referred to the Children's Safety and Wellbeing Tribunal for decision making. If the matter needed urgent decision making as in the case of a safe custody application, it should be referred to a Registrar of the Children's Wellbeing and Safety Tribunal to address these issues, and then referred on to the Family Solutions Roundtable to address the child's longer term needs.

2.5 Should it be possible for there to be formal parental responsibility contracts, approved by the Court, in circumstances where the parties agree that a child is in need of assistance?

Rather than a contract, a preferred option would be to have formal accountable undertakings (similar to Family Law Parenting Plans) whereby parents reach a negotiated agreement with DHS/Child Protection/Child First through a Family Solutions Roundtable (or through the Tribunal if necessary), which is subject to regular monitoring of progress (positive and difficulties) by the supervising Children's Safety and Wellbeing Tribunal. (A similar system may currently operate in the Drug Court and the Parenting Orders Program POP in the Family Court.)

The aim of the Family Solutions Roundtable is to facilitate a negotiated agreement, which would most likely incorporate a Parenting Agreement which would be signed off by Child Protection, parents/carers/family members and any agencies or other parties involved, at the conclusion of the process. This agreement should be lodged with the Tribunal Registrar. Similarly, a Parenting Agreement could be signed off by the parties as part of consent orders made by the Children's Safety and Wellbeing Tribunal.

2.6 If 'yes', what sanctions should apply if a contract is breached?

If a variation of the Parenting Agreement was sought by any of the parties, for example if the family's situation had changed, the matter could be returned to the Family Solutions Roundtable to renegotiate the agreement. On the other hand, if the Parenting Agreement was breached, the matter should be returned to the Children's Safety and Wellbeing Tribunal for further decision making

2.7 Should it be possible to have parental responsibility contracts or orders by consent at any stage of proceedings?

Yes, it should be possible to negotiate Parenting Agreements via a Family Solutions Roundtable, or through consent orders in the Children's Safety and Wellbeing Tribunal, at any stage of proceedings.

Specific court processes

2.8 Should the present time requirement that protection applications commenced by taking the child into safe custody be brought to Court (or before a bail justice) within 24 hours be retained?

Protection Applications by Safe Custody

It is acknowledged that the current system of requiring that Protection Applications by Safe Custody be brought to Court (or before a bail justice) within 24 hours is not satisfactorily achieving the important aim of ensuring Child Protection is accountable through providing the opportunity for independent judicial scrutiny of the protective concerns necessitating removal of the child from their family's care. As described previously, such applications should come before the Registrar of the Children's Safety and Wellbeing Tribunal.

What currently occurs in practice is that Protection Applications are often presented at the Children's Court by After Hours staff, who may have had little sleep due to the actions being undertaken during the course of the night, and a limited opportunity to compile formal documentation. The inevitable result is adjournment of the matter until a later date (often for 3 weeks) to enable the compilation of this material, with interim arrangements hastily put together about where the child will live and who they will have contact with. This process limits the opportunity to make arrangements to have support services involved, as the primary areas of focus are proving the Protection Application and making the interim arrangements.

Protection Applications by Notice

It is important that the whole focus of review is not placed upon Protection Applications by Safe Custody which are the minority of applications made to the Children's Court. It is also critical that the issue of controlled urgency and timeliness is applied to Protection Applications by Notice, which would be referred to a Family Solutions Roundtable in the first instance.

All matters in the Children's Safety and Wellbeing Tribunal need to be governed by ensuring compliance with best interests principles, with the actions taken by Child Protection able to be justified within the terms of the *Children, Youth and Families Act 2005.*

Consideration could also be given to specifying that matters be brought to court within a time limit of working days rather than a specified period of hours.

2.9 If not, what period of time should apply before Children's Court authorisation of this state intervention is required?

It is crucial that the Children's safety and Wellbeing Tribunal authorization of state intervention is conducted in as short a timeframe as possible given the need for independent scrutiny of decision making and justification of the rationale for their actions by Child Protection. However, as discussed above, this should not be at the cost of appropriate arrangements being made for the child's care and support, which can be a consequence when a current standard arrangement of 24 hours is applied.

Consideration could be given to specifying 72 hours or a maximum of two working days.

2.10 Should children be required to attend Court when a safe custody application first comes before the Court?

It is recognized that in some situations children may be required to come to the Children's Safety and Wellbeing Tribunal in person when a Safe Custody application first comes before the Tribunal Registrar. This situation would arise primarily because for older children, their legal representative needs to meet with them to receive instructions. However, this should be seen as a course of action of last resort, with the preference being that the legal representative meet with their child client at their own offices at least initially, and then discuss matters by phone if possible.

Ideally, there would be a facility beside the Tribunal which is child focussed, in having appropriate facilities for children including activities available for a range of ages. Such a facility would be much more appropriate in terms of providing a suitable environment both physically and emotionally for children compared to that of a traditional court/tribunal. Legal representatives and Guardians Ad Litem would be able to meet with children and ascertain their views in a much less threatening environment.

At all times, best interests principles should apply when considering whether children are required to attend the Tribunal. The child's right to participate in major decisions being made about their lives needs to be balanced against the disruption to their routine – school, preschool, recreational or other activities. Thus the child's views need to be sought, but with the proviso of being mindful of avoiding disruption of their routine as much as possible.

2.11 Should children be required to attend Court at later stages?

Children should be given the option of attending the Family Solutions Roundtable if they wish to do so, with guidelines governing their attendance to be developed. Whether the child attends or not, it is imperative that their voice is heard, a Guardian Ad Litem should be appointed to present both the child's best interests and their wishes and work through any conflicts between these two concepts.

It should not be necessary for children to attend the Children's Safety and Wellbeing Tribunal at later stages, although they should be given the option to do so if they wish to. It is the role of the Guardian Ad Litem to work with the child to ascertain his or her views on their experiences and their wishes. This person is then in a position to provide this material to the Tribunal.

2.12 How should children be represented in proceedings before the Family Division of the Court?

It is critically important that children have a voice in the major decisions that are made about their lives in a Family Solutions Roundtable and by the Children's Safety and Wellbeing Tribunal. It is not sufficient for older children to be in a position of instructing a lawyer (who may have received little training in working with children) in proceedings they are unlikely to understand, and which may have such profound implications for their lives. In the case of younger children, who are perceived as too young to be competent to provide instructions, they are not formally legally represented under the current system.

A greatly preferable system requires that the voice of all children, regardless of their age and development, is heard and decisions made taking **both** their wishes and their best interests into account. A model that is recommended is that of the Guardian Ad Litem Agency of Northern Ireland, whereby Guardians Ad Litem have responsibility for:

- Representing the child's best interests.
- Reporting the wishes and feelings of the child regarding their circumstances.
- Proposing the preferred outcome of the proceedings.

The Victorian Guardians Ad Litem would be independent officers of the Roundtable and Tribunal who has training and experience in working with families and an understanding of advocacy, trauma and attachment issues.

2.13 Do directions hearings serve their intended function or are there better ways of identifying contested issues and managing cases?

The existing system of directions hearings does not seem to be serving the intended function of assisting resolution of matters, but simply adding a further step in this process. If directions hearings were to continue being held, they should be heard by a Registrar from the Children's Safety and Wellbeing Tribunal, with a focus on specifying the issues in dispute and what information/evidence would assist in reaching a resolution in a timely manner.

An alternative to directions hearings would be the institution of an alternative dispute resolution pathway whereby the parties were invited to attend a Family Solutions Roundtable to negotiate an agreement. Any such agreement would be subject to bottom line requirements in relation to ensuring the child's physical and emotional safety. Even if the Family Solutions Roundtable was only able to result in a partial agreement and clarify the specific issues still in dispute, a narrower range of issues would need to be adjudicated upon by the Children's Safety and Wellbeing Tribunal.

By utilizing the Family Solutions Roundtable process as much as possible to achieve negotiated agreements, the Children's Safety and Wellbeing Tribunal would be freed up to hear the most serious and intractable matters in a more timely way.

2.14 To what extent (if any) should the Children's Court adopt an administrative case management[2] approach to child protection matters?

The Children's Safety and Wellbeing Tribunal should adopt any strategies that assist with the timely resolution of matters, whilst retaining the best interests of the child as the paramount consideration.

The "case management approach" as adopted in the Family Law Court has three main phases: prevention, resolution and determination (these functions would overlap between the Family Solutions Roundtable and the Children's Safety and Wellbeing Tribunal). The judicial officers control the management of cases through the court through close oversight of the number and timing of events required to move the case from commencement to final disposition (which would be undertaken by the Tribunal Registrar managing the list). This approach has been used in the Magellan Project in the Family Court, which includes cases involving serious allegations of physical or sexual abuse of children. The coordinated, interagency approach employed in the Magellan Project aims to ensure that investigations of allegations of abuse occur in a timely fashion, and the report detailing the findings of the investigation is available to the Court at the earliest opportunity. The advantages of the Magellan Project are seen to include this earlier resolution, lower cost and less trauma to children than occurs using the traditional approach.

2 "Case management" refers to processes used by judicial officers to control the management of cases through a court and involves the court managing the number and timing of events necessary to move cases from commencement to final disposition.

2.15 Should all (or some) of the provisions of Division 12A of Part VII of the Family Law Act 1975 (Cth) which seek to encourage Less Adversarial Trials be adopted in the Children's Court?

The provisions of Division 12A of Part VII of the *Family Law Act 1975* refer to a range of principles for conducting child-related proceedings, being:

1. The Court is required to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings.

2. That the court is to actively direct, control and manage the conduct of the proceedings.

3. That the proceedings are to be conducted in a way that will safeguard

4. The child against family violence, child abuse and child neglect.

5. The parties to the proceedings against family violence.

6. That the proceedings are, as far as possible, to be conducted in a way that will promote cooperative and child-focussed parenting by the parties.

7. That the proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible.

All of these principles are quite relevant and desirable in any proceedings to be held in the Children's Safety and Wellbeing Tribunal.

It is seen that the positive features of Less Adversarial Trials (LAT) which result are:

- In parenting cases, the focus is on the children and their future.
- Flexibility that allows the trial to meet the needs of the particular situation.
- Less costly compared to traditional trials and requiring less time in court.
- Less formal than is usually the case in court.
- It is more inclusive as parties are involved in the process.

(All of these features would be incorporated within the Family Solutions Roundtable and Children's Safety and Wellbeing Tribunal model.)

The judge, rather than the parties or their lawyers, decides what information is put before the Court and how the trial is run.

Chief Justice Diana Bryant (28.11.09) has described LAT as being a process of identifying the issues on Day 1, the parties are given 10 minutes to tell the judge their issues. The parties are then allowed to submit affidavits and all information gathered by the family consultant is classified as being reportable. It is a child inclusive process, checking what effect the dispute is having on the child. An Issues Assessment Report is completed and the court then looks at getting an expert report on the relevant issues.

The rules of evidence do not apply unless the Court decides they should apply for this case.

There is merit in considering any strategies which would make processes in the Family Solutions Roundtable and the Children's Safety and Wellbeing Tribunal more of an inquisitorial rather than an adversarial process.

Further Comment:

The proposed model also includes a Statewide High Risk Register (similar to the former CARR (Children At Risk Register) system) which will maintained centrally by DHS, with the function of enhancing planning and review for those children who are particularly vulnerable. The bodies which could nominate a child to be included on this Register would be the Children's Safety and Wellbeing Tribunal and Family Solutions Roundtable, DHS regional offices and the Independent Commissioner.

Placement on the Register would mean more regular and intense scrutiny of agreements negotiated through the Family Solutions Roundtable, orders made by the Children's Safety and Wellbeing Tribunal and attendant case planning processes. The scrutiny would seek to ensure accountability and encourage better compliance by placing obligations on parents to accept assistance, and upon agencies to provide individualized services, to ensure the child's care needs are met.

Option 3

The creation of an independent statutory commissioner who would have some of the functions currently performed by the Department of Human Services.

3.1 Does the Secretary of the Department of Human Services have too many functions under the Children, Youth and Families Act 2005?

The existing functions the Secretary has are considered to be appropriate. However, in our model we propose additional functions be considered that support:

A. Enhanced planning and reviews relevant to the operation of a **Statewide High Risk Register** that contains details of highly vulnerable children who require intensive support and current support plans.

   New functions would be needed to:

   - require DHS to provide advice to the Tribunal to support the conduct of periodic reviews of those children placed on the register, and
   - require DHS to provide advice to the Independent Commissioner on the status of children on the register.

B. Enhanced accountability in regard to **caseplanning** decisions.

   New functions would be needed to:

   - require Regional Directors to establish a pool of experts independent of the Department of Human Services to act as caseplanning and review chairpersons.
   - require DHS regional offices to provide reports to the Independent Commissioner on the overall achievement of case plan actions within agreed timeframes, and identification of thematic concerns in regard to individuals/groups of children and regional service delivery infrastructure.

3.2 If yes, should some of those functions be given to an independent statutory commissioner?

In our model we propose giving an Independent Commissioner the following functions established by statute:

- To be required to communicate with children in undertaking a range of activities;
- To report to the Victorian Parliament on all of its activities on an annual basis;

- To have a broad range of audit/monitoring and review functions prescribed in legislation to enable the Independent Commissioner to effectively consider how well vulnerable children are progressing. This would include the Independent Commissioner having the capacity to:
    - be able to request and receive regular DHS reports about children placed on the Statewide High Risk Register;
    - be able to nominate a child that needs to be placed on the Statewide High Risk Register (following receipt of advice about critical incidents and reports from senior practitioners);
    - request and receive regular DHS regional reports on caseplanning outcomes for all cases within a specified time period; and.
    - Request the Tribunal to review an order.
- To provide advice to the Minister on a range of activities relevant to the safety and wellbeing of children.

3.3 Could the commissioner have a role to play in any pre-court ADR mechanisms?

No. The model proposed by this office includes the creation of a Family Solutions Roundtable and a Children's Safety and Wellbeing Tribunal.

The Family Solutions Roundtable model proposed would be a solution focussed process as opposed to a dispute resolution process that would use a trained and accredited mediator to achieve outcomes in the best interests of the child. It would refer matters to the Tribunal as required.

The Tribunal would be responsible for:

- Performing the current functions of the Family Division of the Children's Court;
- Making decisions in the best interests of the child;
- Adopting an inquisitorial rather than an adversarial approach;
- Seeking input on the specific needs of the individual child;
- Reviewing administrative decisions and existing orders as requested by DHS, families, carers and children and the Independent Commissioner;
- Nominating children to be placed on the Statewide High Risk Register and conducting periodic reviews of their situation as required; and
- Being independent of VCAT.

3.4 Could the commissioner be responsible for the carriage of proceedings before the Children's Court?

In our model, the Independent Commissioner would **not be** responsible for the carriage of proceedings before the Children's Safety & Wellbeing Tribunal.

3.5 Could the commissioner have the 'first instance' capacity to authorise State intervention in 'safe custody' cases?

In our model, the Children's Safety and Wellbeing Tribunal Registrar would do this.

3.6 Could the commissioner be capable of appointment as the guardian or custodian of a child in need of protection if there is no other suitable person?

In our model, the Secretary to the Department of Human Services remains the guardian or custodian of a child in need of protection, if there is no other suitable person; because we see clear benefits in the Secretary being both the service provider/funder and being responsible for the recipients of those services. Our model also provides for accountability through the Independent Commissioner auditing and monitoring caseplanning outcomes.

3.7 If the commissioner is appointed as the guardian or custodian of a child, could the commissioner have the authority to exercise some functions currently fulfilled by the Children's Court such as issues of access?

See 3.6 above.

3.8 Should decisions of the commissioner be subject to merits review in the Children's Court?

In our model, the decisions of the Independent Commissioner would not be subject to merits review by a Tribunal, because the Independent Commissioner reports directly to the Victorian Parliament.

3.9 How should the independence of any new statutory commissioner be secured?

An Independent Commissioner needs to be established through statute with clearly defined powers that include being required to report to the Victorian Parliament.

Option 4

Changing the nature of the body which decides whether there should be State intervention in the care of a child so that it includes non-judicial as well as judicial members.

4.1 Is the function of deciding whether 'a child is in need of protection' an exercise of judicial power?

Our model assumes the Children's Safety & Wellbeing Tribunal will replace the Family Division of the Children's Court, and sit as a panel in each of the DHS regions supported by the Department of Justice infrastructure.

Decision making assumes a staged process:

- For urgent decision making (safe custody) a referral is to be made by Protective Services to the Tribunal Registrar.
- Other matters are to be referred to the Family Solutions Roundable (FSR) - a mediated process involving key stakeholders to consider how the child's protection needs can be best supported. The Tribunal Registrar will also refer those urgent matters involving applications for safe custody to the FSR for longer term decision making.
- The FSR would be chaired by a trained & accredited mediator. Others attending would include a child protection worker, members of the child's family, a carer, the child (if considered appropriate),a community person who is important to the child and who will act in the child's best interest, and a Guardian Ad Litem. An FSR agreement to be lodged with the Tribunal Registrar may result in community support being provided to the child and the family, and the matter not being referred to the Tribunal. Other matters will proceed to the Children's Safety & Wellbeing Tribunal for its consideration.

4.2 Is it desirable to change the composition of the Family Division of the Children's Court to include people other than judicial officers in decision-making panels?

As discussed the Children's Court would be replaced by a Family Solutions Roundtable and a Children's Safety and Wellbeing Tribunal.

A Tribunal Registrar would be required to establish panels of the Children's Safety & Wellbeing Tribunal in eight regions from a pool of members with a background in any of the following: administrative review (chair)/law (chair), child care, child protection, child welfare, health, cultural diversity, education, aboriginal services, psychology or social work, community experience of working with vulnerable children and young people. It is proposed that:

- the Tribunal must be constituted by a minimum of 3 members with at least 1 legally qualified member;
- a compulsory conference must be heard by at least 2 members, at least 1 of whom is a legally qualified member;
- if a child to which a proceeding before the Tribunal relates identifies as Aboriginal or Torres Strait Islander, the Tribunal hearing the matter must include, if practicable, a member who is Aboriginal or Torres Strait Islander, and
- the Registrar may choose a member to constitute the tribunal for a proceeding if they consider the member is:
    - committed to the principles of 'acting in the child's best interests', and has extensive professional knowledge and experience of children; and

- has demonstrated knowledge of and has experience in one or more of the fields of: administrative review, law, child care, child protection, child welfare, health, cultural diversity, education, aboriginal services, psychology or social work, community experience of working with vulnerable children and young people.

4.3 What people other than judicial officers should comprise decision-making panels?

Please see response to 4.2 above.

4.4 What qualifications, if any, should they have?

Please see response to 4.2 above.

4.5 Upon what terms should any non-judicial members of the Family Division of the Children's Court be appointed?

Please see response to 4.2 above.

4.6 If some or all of the functions currently performed by the Family Division of the Children's Court are to be performed by panels of people should those functions be retained by the Children's Court or should they be exercised by a tribunal?

Please see response to 4.2 above.

4.7 If these functions are to be exercised by a tribunal should that tribunal be a division or specialist list of VCAT?

It is vital the Tribunal is seen as an independent specialist body that provides a child and family friendly environment, is not purely administrative in nature, and is supported by those who have expertise in issues impacting on the safety and wellbeing of vulnerable children. It must be independent of VCAT.

4.8 If these functions are to be exercised by a tribunal should a new Protective Tribunal be established to deal with a range of matters where the state intervenes in the lives of people for their protection?

We are proposing the establishment of a Children's Safety & Wellbeing Tribunal that would be resourced appropriately to expertly and specifically respond to the needs of vulnerable children and young people. The model precludes any consideration of making it a generic decision-making body for the purposes of responding to the needs of adults with a disability and those that have decision making impairments. What is most desirable is that a specialist tribunal is established and resourced appropriately to meet the needs of vulnerable children and families.