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The Hon Philip Cummins
Chair
Protecting Victoria's Vulnerable Children Inquiry
GPO 4708
MELBOURNE VIC 3001

Dear Justice Cummins

Supplementary Submission

Thank you for inviting me to participate in your inquiry's reference group.

I trust that the combination of Victoria Legal Aid's written submission and the oral submissions of senior staff in Melbourne, Shepparton, Horsham, and Geelong were helpful in explaining our role as a funder and provider of legal representation for parents and children in the child protection system.

The formal interface of the legal system with the child welfare system is an obvious point of tension for participants. If parents had been persuaded to do what the Department asked of them, there would be no need for independent expert opinion to be tested for determinative effect and proposals to make children safe, carefully evaluated. That some cases need legal oversight should be obvious. That this would involve expert and worker opinion being tested and evaluated should also be obvious. That participants experience this accountability, or their professional opinion being queried, as onerous or overly adversarial is regrettable. However, it cannot be the case that design of a system to make children safe should be solely focussed on improving the experiences of workers and experts who operate within it. It may be trite, but if there were consensus, there would be no dispute about what was best for a child and there would be nothing for a Judge or Magistrate to determine.

I say this, because in my view, much of what might be called 'professional disrespect', experienced as overly adversarial processes, has its genesis in role confusion. Addressing role confusion to ameliorate worker anxiety is best done through joint training of participants, hence the focus on these recommendations, by reference group members and in the 'Premier's Taskforce Report".

The inquiry has heard evidence of the large number of notifications and the much smaller number of substantiated applications deemed by the Department to warrant the involvement of the Children's Court. The Children's Court is clearly dealing with those cases where no agreement has been possible or where immediate unforseen intervention is warranted.

I start by illustrating one example of why it remains important to ensure formal legal proceedings 'get off to a good start' and the onus that falls upon the applicant Department to do so.

The Department takes an average six weeks from intake to apprehension[1], during which time they have engaged with but failed to persuade parents to agree to a suitable regime. The Department knows its case and its proposals. It has time but does not routinely prepare material to assist related legal professionals discharge their obligations, which would help the process 'get off to a good start'.

In Melbourne, despite having worked with the family for an average six weeks, approximately 80% of applications to the Court are initiated after 'some crisis' resulting in the child being removed. In approximately 50% of these cases, the child or children, return home with their parents after the first mention with or without interim orders, and ongoing case management, mentions, negotiations and court events then ensue.

It may be that the Court has made wise decisions to preserve relationships, poor decisions which render children unsafe, or that the Department has simply not made its case or presented sensible proposals for interim care. These assessments will lie in the eye of the beholder. However, what this 'first contact' with the legal system perhaps shows, is:

- a system of information disclosure in Court, not before Court;
- a system focused on 'determining' or outsourcing the holding pattern in the knowledge that protracted negotiations will ensue;
- a system designed to make children safe by coercing meaningful engagement from parents, or the extended family, with welfare concerns of the Department that have hitherto proved unsuccessful.

It may be the system we have, but none of this is designed to ameliorate the sense of crisis, or lack of information, that participants experience which militates against multi-disciplinary collaboration and respectful relationships. It does nothing to insulate the Court or the legal profession from these criticisms.

Further, the number of cases being initiated by safe custody means that in 80% of Melbourne cases, children are brought to the Court on the first court date. Were more cases to be initiated by notice, there would be no need for children to attend as a matter of course as they could be interviewed by their lawyers before the first court event and in much more child-friendly surroundings than those experienced at the Court. It may also allow changes to the way lawyers were allocated to cases, with a more traditional duty lawyer service able to be operated in cases were families were still intact, but required to navigate Court processes.

This is not to apportion fault or blame. It is simply true that the heaviest onus to ensure formal legal proceedings 'get off to a good start', as per the Taskforce report, rests with the Department.

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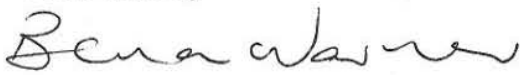
[1] Boston Consulting Group, page 72, 19 February 2010 for Premier's Taskforce.

The ability of a legal practitioner to discharge their professional obligations and to 'reality check' an adult or child client turns on their understanding of the Department's protective concerns and its proposals.

There is a demonstrable commitment in Western Australia, to improve information sharing and preparatory effort to make Court sponsored conferencing or mediation activities successful. Practice Direction No 3 of 2009, issued by the President of the Children's Court of WA and observed in daily practice by all of the parties to the jurisdiction well evidences this. It seeks to integrate legal disclosure obligations with the risk assessment or child protection framework that protective workers are trained to use.

I remain of the view that culture change in Victoria is possible, although it will necessarily follow the lived experience of participants. Changing the experience of professionals working in the jurisdiction will require roles to be better understood and a commitment to information sharing. Earlier and better disclosure suitable for good practice negotiations is essential.

Yours faithfully



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