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Proposed reforms to Victorian child protection legislation, policy and programs

The Victorian Government is proposing broad changes to legislation, policy and programs protecting children, the most significant being the consolidation of the Children and Young Persons and the Community Services Acts

In 2002, the Victorian Government began the process of reviewing the state's statutory child protection service. The review differentiated itself from previous reviews that have focused on "*the existing legislative and broad policy frameworks*" and instead "takes a more fundamental look at the appropriateness of the legislative, policy and program frameworks that determine the directions and boundaries of current policy and program responses" (Allen Consulting Group 2003, p. vi, emphasis in original).

The review was conducted in three stages comprising an initial report, community consultation and publication of a reform agenda. The first stage broadly examined: (a) the effectiveness of the Victorian child protection system for meeting the goal for which it was designed; (b) the effectiveness of Victoria's child protection service for meeting the current needs of vulnerable children and families (taking into account the social changes that have occurred since the implementation of the Children and Young Persons Act in 1989); and (c) the merits of the child protection versus the family service orientation to responding to child maltreatment at a global level.

The findings from this stage of the review were published in September 2003 in a report prepared by the Allen Consulting Group titled, "*Protecting children: The child protection outcomes project*". The report identified several potential areas for reform in the form of broad policy options.

The second stage of the review was a consultation process undertaken by a government appointed panel chaired by Mr Peter Kirby. (Mr Kirby has worked extensively with Corrections Victoria and has chaired reviews into *Suicide and Self Harm in Victoria's Prisons* and *The Management and Operation of Victoria's Private Prisons*.) The consultation took place between October 2003 and February 2004. The panel found broad agreement for the reform directions proposed in the child protection outcomes project.

The findings from this consultation process were published in April 2004 in a report prepared by the consultation panel titled *The report of the panel to oversee the consultation on Protecting children: The child protection outcomes project* (Frieberg, Kirby and Ward 2004). The consensus from the child protection outcomes project and consultation process was that "the most effective response to support vulnerable families and protect children from harm involves an integrated, unified, broad-based system of service which aims to promote child wellbeing and protect children" (p. 1).

In September 2004, the Victorian Government Department of Human Services released the third stage of the review process, a report titled "*Protecting children: Ten priorities for children's wellbeing and safety in Victoria: Technical options paper*" (Victorian Government 2004). The report outlines the reforms proposed for Victoria's child protection service, the Children's and Young Persons Act 1989, the Community Services Act 1970, and the Children's court in ten key areas, which are referred to in the report as "key components".

A selection of the specific options put forward under each of the ten key components are presented here in order to provide readers with a broad overview of the intent and nature of the proposed Victorian reforms. Readers wanting further detail can access a full copy of the technical options paper in PDF format at: www.dhs.vic.gov.au/protectingchildren

KEY COMPONENT

1

A cohesive policy and legislative framework

Problem: Currently there is a split between the child protection emergency intervention and provision of community services (for example, adult mental health or drug and alcohol services).

Recommendation: To develop a unifying policy framework formalising the process for jointly agreed goals, responsibilities and outcome measures. This would require a new Act for the children's and family service system consolidating the Children and Young Persons Act and the Community Services Act.

Specific options:

- Develop a whole of government policy framework for children and young people, with a particular focus on vulnerable children and their families and carers.
- A new Act that sets out a coherent set of principles for the children's and family service system to maximise child wellbeing and safety and provides separate guiding principles for: (a) delivery of community services to children and their families; and (b) protective intervention and decision making.
- Require all relevant services in exercising their normal functions, to have regard to children's wellbeing and safety and to participate in collaborative/partnership arrangements established on a regional basis. Relevant services could include health, mental health, disability, drug and alcohol, family violence, education, Victoria Police and public housing.

KEY COMPONENT

2

Enhanced strategic management of the service system

Problem: A lack of formal quality control measures and a lack of an integrated response between services exists.

Recommendation: A series of recommendations were made to overcome the identified problem, including: regulation prescribing minimum standards for service provision; development of a strategic plan explicitly linking the goals and priorities of different types and levels of service; forward-planned research and practice based learning; providing an advocate in children's care; legislating for continuous quality improvement (for example, accreditation); strengthening pre-employment screening; and legislating for a government administrator in instances where non-government organisations have failed to achieve minimum standards.

Specific options:

- Develop a strategic plan for the children's and family service system every three years. (The Department of Human Services would be responsible for development.)
- Establish a process to support local engagement and input into strategic planning for children's and family services.
- Legislate for the position of the Advocate for Children in Care and the core functions and responsibilities of the position focused on: (a) advocating on behalf of children and young people in out-of-home care, encouraging their active participation in decisions that affect them, and taking account of feedback about their experiences of care; (b) providing authoritative and expert advice to the departmental Secretary about the delivery of quality services to children and young people in out-of-home care; and (c) monitoring the standards and the quality of service delivery of out-of-home care services.
- Legislate for a charter of rights for children in care.
- Continuous policy improvement could be supported in legislation (for example, formal accreditation).
- Strengthen pre-employment screening through: (a) implementation of a new policy framework; (b) legislating to require compliance with this policy framework; and (c) the establishment of a centralised register of who should not be employed, maintained by the department, which must be checked as part of the pre-employment process.
- Legislate a power to appoint an administrator and include more explicit description of these powers in new legislation.

KEY COMPONENT

3

Reduced Aboriginal over-representation in child protection and alternative care systems; strengthening of self-management and an increased range of culturally-specific supports and services

Problem: Aboriginal services require a holistic approach that includes the community in problem solving. Aboriginal communities require culturally relevant policies and programs rather than ad hoc amendments to current policies and programs working within the broader community.

Recommendation: Legislate for culturally relevant policies and programs which empower Aboriginal communities to take part in decision-making and interventions impacting on children and families.

Specific options:

- Include the Aboriginal Child Care Placement Principle in legislation.
- Insert a provision in legislation that requires the Minister to assist Aboriginal communities to provide effective prevention and intervention strategies.
- Legislate for capacity to assign guardianship or custody of an Aboriginal child to a designated person in an Aboriginal organisation or agency.
- Develop strategies to strengthen the participation of Aboriginal families in decision-making processes.

KEY COMPONENT

4

A service system that supports earlier intervention and prevention

Problem: The current system provides a crisis response, however families experience complex problems, which if not addressed may lead to chronic child maltreatment.

Recommendations: Promote early intervention and long-term work with families and where necessary amend the current legislative, service and policy frameworks to facilitate this.

Specific options:

- New legislation to: (a) require community service organisations to participate in partnership structures (service networks); and (b) define the roles of the service networks in relation to intake and assessment and service coordination.
- Establish a 24-hour seven-day a week statewide help line responsible for receiving referrals conducting a risk assessment and referring cases to Child Protection or community services (either directly or through a community service intake arrangement).
- Provide a legislative base for and expand Child Protection responses to include: (a) providing consultation to community service organisations; (b) longer and more intensive work with families without the need for court orders; (c) more structured processes for diverting families into services, such as family group conferencing; (d) more flexible case planning responses to ensure families are engaged with community based services.

KEY COMPONENT

5

A differentiated range of service responses which form a service system

Problem: To meet the complex and differing needs of families, a wide range of services are required to be delivered across the state on the basis of need.

Recommendation: Clarify and redefine roles and responsibilities within the service system and implement new processes and structures so that services work together more effectively and better connect vulnerable children and families to appropriate services and supports.

Specific options:

- Legislate roles and responsibilities of the department and community service organisations.
- Legislate guiding principles and an obligation to participate in partnership structures established for the children's and family service system.
- Do not include in legislation the provision of a "caution" so as to further enable intermediate responses. (The "caution" refers to the requirement in the Children and Young Persons Act for a protective intervener who is investigating the subject matter of a notification to inform the child and the child's parents that any information they give may be used for the purposes of a protection application.) If the caution is to be retained, examine options for a more flexible approach to intermediate responses by Child Protection.
- Legislate to enable Child Protection to receive reports of concerns about unborn babies.
- Legislate to establish sexually abusive behaviour by children under 14 years old as a ground for intervention and as a ground for the Children's Court to make an order requiring the child to undergo treatment and their parents to assist in this.
- Development of models for out-of-home care service quality improvements taking into consideration future research.

KEY COMPONENT

6

Information sharing in an integrated system of children's and family services

Problem: A new Act consolidating the Children's and Young Persons Act and the Community Services Act will require technical amendments to existing legislation to allow for the sharing of information between service providers without breaching privacy clauses currently contained within the Children's and Young Persons Act, the Information Privacy Act or the Health Records Act. New legislation will assign part of the responsibility for receiving and assessing information regarding the protection of children to community service organisations. Notifiers to community service organisations will require identity protection on par with that provided to notifiers to child protection services within the Children's and Young Persons Act.

Recommendation: Legislate to protect the identity of the notifier to child protection services *and* to community service organisations. Legislate to allow for information sharing between defined classes of people. Inform the parent and young person about information collected, except where to do so would put the child at risk.

Specific options:

- Empower the Secretary to authorise people or classes of people to share information with Child Protection where Child Protection has case planning responsibility for a child or young person.
- Enable the Secretary to authorise people or classes of people to share information with a community service intake for the purposes of making initial screening assessment and identifying appropriate service provision.
- Protect the identity of people reporting concerns about children, whether the concern is reported to Child Protection or another community service intake mechanism.
- Inform young people about information collected about them for the purposes of promoting their wellbeing and safety, except where to do so would jeopardise their wellbeing and safety.
- Inform parents of information collected about their adolescent child, except where to do so would jeopardise the wellbeing and safety of the young person.

KEY COMPONENT

7

Enhanced Child Protection practice and out-of-home care services

Problem: In order to provide integrated children's and family services, Child Protection will need to retain its emergency response role, and expand its responsibility to provide consultancy, case planning and case management to community services involved in the provision of children's and family services.

Recommendation: Redesign Child Protection to enable it to retain its emergency response role but to also offer advice and consultancy services to families with complex entrenched problems and to have a stronger focus on the cumulative effect of child maltreatment.

Specific options:

- Child Protection to have explicit advice and referral capacity.
- Families to be informed where a notification is not being investigated.
- Redesign Child Protection practice to have a stronger focus on the cumulative effect of parental actions and behaviour on children's development, especially in response to renotifications.

KEY COMPONENT

8

The Family Division of the Children's Court and alternative dispute resolution models

Problem: The current system offers little flexibility for working with complex families long-term. It is difficult to achieve safety for the child within an adversarial environment and is more likely to be perceived by parents as intrusive rather than supportive. There has been a significant increase in the number of interim accommodation orders while awaiting a Children's Court outcome. This has resource implications for the Department of Human Services and may adversely affect the child.

Recommendation: Legislate for court diversion and alternate dispute resolution. Legislate for timely and efficient response by the children's court. Allow magistrates to make enquiries into evidence.

Specific options:

- Insert a principle that states it is beneficial to a child for their court proceeding to be dealt with in a timely and efficient manner.
- Legislate principles for alternative resolution, including mediation, pre-hearing conferences, family group conferences and a problem-solving approach to child protection matters.
- Legislate for magistrates to have a clear power to subpoena witnesses or documents in the Family Division of the Children's Court.
- Introduce specialised training and potential accreditation of practitioners who represent children and young people in the Children's Court.
- Clarify in legislation who has "custody" of a child while the child is in hospital.
- Legislate to enable Child Protection to provide relevant information to the Family Court of Australia.
- Allow the Children's Court to post de-identifying cases on its website.

KEY COMPONENT**9***Enhanced stability for children*

Problem: The negative impact of the cycle of removal and reunification on children's development and attachment. Children may be damaged more by insecure placement than by the original problem that brought about their removal and placement into care.

Recommendation: Simultaneous planning for permanent care and reunification; if timelines for reunification goals are not being achieved, transfer to permanent care plan.

Specific options:

- Adoption of a parallel planning model which specifies principles and timeframes.
- Specialist services could be required to provide prioritised access to parents who have court orders.
- Provide a pool of funds to Child Protection to secure access to services for parents subject to a court order.
- Include a strong focus on continuity and maintenance of relationships between siblings in a framework for stability planning.
- Legislate that children's developmental needs is to be a paramount consideration.
- Legislate timeframes for decision-making, differentiated by the department according to children's age and developmental needs.
- Strengthen support for carers to enhance placement stability including options such as peer groups to offer respite, educational support and case manager support to resolve conflicts.

KEY COMPONENT**10***Meeting the needs of young people, including those leaving care*

Problem: Reforms to the current legislation will also impact upon young people whose needs are different from those of families with younger children. There is a need to involve young people in decision-making. However, there are also some young people at such high levels of risk that intervention must be imposed for their own safety.

Recommendation: Amend the current legislation, policy and service framework to provide Child Protection greater flexibility in responding to the needs of young people.

Specific options:

- Consider raising the age for notifications to Child Protection to include 17-year-olds.
- Strengthen the involvement of services for young people in local service networks.
- Develop dispute resolution models to apply in cases where young people are in conflict with their parents, which are aimed at negotiating a solution without the need for Child Protection or Children's Court involvement.
- Introduce a new ground of Child Protection intervention for children who are in need of protection because they are placing themselves at risk of significant harm.
- Legislate the Secretary's responsibility for ensuring young people in care are assisted to acquire life skills and given appropriate educational, health and social opportunities as well as good standards of care.

- Legislate a more specific responsibility on the Secretary for appropriate leaving care planning and legislate a responsibility on the Secretary to support young people leaving care to make the transition to independent living.

IMPLEMENTATION

The Victorian government is undertaking further consultation in relation to the specific options outlined and intends to introduce new legislation into the Parliament in 2005. Service development and system redesign are proposed for implementation over the next three to five years.

References

Allen Consulting Group (2003), *Protecting children: The child protection outcomes project*, Allen Consulting Group, Melbourne.

Victorian Government (2004), *Protecting children: Ten priorities for children's wellbeing and safety in Victoria: Technical options paper*, Community Care Division, Victorian Government Department of Human Services, Melbourne.

Frieberg, A., Kirby, P. & Ward, L. (2004), *Report of the panel to oversee the consultation on protecting children: The child protection outcomes project*, Victorian Government Department of Human Services, Melbourne.

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The goal of the *Child Abuse Prevention Newsletter*, published twice a year by the National Child Protection Clearinghouse, is to promote the exchange of information and ideas and encourage scholarly debate of child maltreatment and child protection research, policy and practice issues.

Appropriate topics for contributions include

- child maltreatment and child protection research, policy and practice issues
- education and training issues
- notices about upcoming conferences, workshops, events, etc.
- book reviews, pointers to new publications
- online papers, and resources/links, websites, etc

Author instructions

- The *Child Abuse Prevention Newsletter* is published bi-annually in Summer (February) and Winter (August).
- Contributions must be submitted four months in advance of publication to allow for review, revision, typesetting and printing timelines.
- The average length of contributions is 1000-1500 words, but may be as short as 300-500 words. If you are unsure about the appropriateness of a contribution, contact the Clearinghouse to discuss your submission.
- Every Newsletter comprises at least one major contribution (up to 3000 words). If you would like to submit a major contribution, please contact the Clearinghouse prior to submission.
- Contributors are also requested to submit a title and "lead-in" (a short abstract) to each article, along with a short author biography (of about 50 words).

- Acceptance of all material is subject to a review process. Consideration will be given to whether articles are relevant, clearly written, jargon-free and accessible. Consideration will also be given to the following criteria: timeliness of article; significance of the topic; factual accuracy; clear presentation and logical organisation of material; conclusions substantiated by convincing analytical argument; argument supported by references; quality and balance of the argument or information presented; and balance and relevance of any policy implications drawn.

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