

# Submission for the Exposure Draft of the Children Bill

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## GENERAL COMMENTS

*The National Child Protection Clearinghouse recognises the important contribution to the wellbeing of Victorian children that the Victorian government and in particular staff within the Department of Human Services have made in undertaking this legislative review process and drafting of the Children Bill exposure draft. The National Child Protection Clearinghouse provided comment on the Protecting Children Technical Options Paper in the previous stage of the legislative review process and appreciates the opportunity to provide comment on the exposure draft of the Children Bill. The Clearinghouse supports the intent of the new legislation to provide a more integrated service system that prioritises the best interests of the child above all else. However, the Clearinghouse does have concerns about some specific aspects of the new legislation; these are discussed below.*

## ENTRENCHING CHILDREN'S BEST INTERESTS

s.11b – We support the inclusion of the ‘best interests of the child’ principles in the legislation.

We support the inclusion of a reference to cumulative harm in the principles. However, we note that although ‘cumulative patterns of harm’ are explicitly addressed in the list of issues that must be taken into consideration when determining the best interests of the child, that these are not supported by a corresponding change in the grounds for intervention (s.98). We recommend that s.98 be amended to reflect the need to intervene to ensure a child’s safety in response to chronic instances of maltreatment as evidenced by cumulative patterns of harm (even when such instances considered in isolation may not be deemed to cause significant harm and meet the threshold for intervention).

## NEW INTAKE PROCEDURES AND SECONDARY SERVICES

At present, Victoria has a central entry point in each region for children in need of protection (i.e., child protection), however there is not an equivalent service structure for children (and their families) in need of support to be referred to secondary services. As a consequence many families who would be more appropriately served by community-

based services are being referred to child protection. The new legislation aims to provide notifiers (and families) with visible entry points for both child protection and secondary services with a coordinated response between child protection and secondary services to ensure families are referred to the most appropriate service structure. The Clearinghouse supports the establishment of a statewide service structure that will ensure children (and their families) will have access to secondary services where this is appropriate. An adequate secondary service system is an important element in child abuse prevention. Integration between family support and child protection to enable a coordinated response is also an ideal situation. This represents a significant positive shift in the delivery of services to Victorian families. However, this also requires a corresponding significant shift in service structure and service delivery, and requires careful consideration in terms of new operational structures designed to achieve these aims. The Clearinghouse has focused its scrutiny on these new frameworks.

At a broad level this shift appears to have the intention of filtering out many of the families currently being referred to child protection where there are concerns for the child's wellbeing but where the child is unlikely to experience significant physical or psychological harm as a consequence of child maltreatment and providing these families with a more appropriate service response through the community service sector. This will need to be matched with appropriate resources as the focus shifts from child protection to family support as the primary form of service delivery for vulnerable families. It is important that the new service structure does not result in an overwhelmed community service sector that is unable to meet the needs of vulnerable families.

In general, we support the shift to enable statutory child protection workers rather than the notifier to determine whether a 'report' constitutes a notification (as defined by s.98 of the Children Bill). It is the hope of the Clearinghouse that this change will result in a corresponding drop in the administrative and caseload of statutory child protection intake workers, thus freeing up resources for more appropriate referrals.

Protocols and processes for consultation and transfer of 'cases' between the two streams for intake (community-based family support vs. child protection) have not been articulated. We have some concerns in relation to the "on-going consultation and possible referral" stage of the new intake procedures. As mentioned above, under the new legislation statutory child protection intake workers will have the ability to decide that a referral does not constitute a notification. It is not clear whether the registered community based intake and referral service will have a corresponding ability to decline a referral from child protection. The concern of the Clearinghouse is that Child Protection will be able to use these arrangements to gate keep and manage workload, whereas the community sector will not.

A similar scenario within a different area of the child protection and out-of-home care sector was apparent in South Australia under the Funder-Purchaser-Provider (FPP) model. The FPP model was supposed to lead to greater competition and therefore more efficient services, but the FPP did not fix the fundamental problems in the system (that is, a lack of carers, supports for carers, services, etc.). It just outsourced the whole problem

to non-government service providers who were unable to refuse referrals from the department. The non-government providers argued that they were being asked to do more work for less money. The FPP model distanced the department from the consequences of their decision-making. We are not suggesting that this will happen or that this is the intent of the department, however we believe that legislation needs to account for the worst case scenario of inter-agency collaboration and not only the best case scenario. The child protection practitioner may have the power to refuse to accept a referral on the basis that it does not meet the threshold for a notification, despite assessment by the community-based intake team that it does warrant protective involvement, leaving responsibility to rest with the community based service provider. The Clearinghouse believes that where possible it is important to learn from the lessons of other jurisdictions. Without adequate protection put in place for the registered community based intake service there is a risk of these services being overwhelmed.

The omission of co-located child protection workers in the registered secondary services is problematic. Our understanding was that the success of the Innovations pilot projects was in part due to the feature of a statutory child protection worker located within the family support agency, where the negotiation of case referrals can occur in a collegial and professional environment, and where role-clarity and positive communication can also occur. A co-located child protection intake worker may also assist to alleviate the concerns raised in relation to the potential for gatekeeping of community based intake service referrals by child protection.

One of the objectives of the new intake procedures and secondary services is “to create an integrated child, youth and family service system, with visible and clear entry points”. The Clearinghouse is concerned that the similar language used to identify community based intake and child protection referral may lead to a lack of clarity in relation to entry points for community members and professional notifiers. s.98 (the grounds for intervention) of the Children Bill defines a child in need of protection as a child who has suffered or is likely to suffer *significant harm*. This is not significantly differentiated from the suggested criteria for referral to a community based intake service; that there be a “significant concern for a child’s wellbeing”. As a ‘reporter’ a member of the public, or one of the mandated reporters may not be readily able to differentiate between the two streams (family support cf. child protection). Given that the family support stream is not mandated, we consider that it should not be called a ‘report’, and the focus should be on a family in need of support (rather than using words such as ‘significant concern for a child’s wellbeing’).

The development of common assessment tools between child protection and family support services appears laudable – and is particularly important given the proposed service structure will require community based intake services to make an assessment in relation to the child’s safety and refer to child protection where appropriate. However, we believe that there are several potential problems with this suggestion that non-government organisations may need to be aware of to prevent their occurrence.

Firstly, the screening and assessment role of registered secondary services may result in community perceptions of these organisations as an extension of child protection. This may have implications for families' willingness to work with these agencies and to seek support.

Second, there is a danger that the use of a child protection assessment procedure may impact upon the organisational culture of community based organisations resulting in their becoming focused on risk assessment and risk management and impacting the work that is undertaken with families. Spratt (2001) wrote of the Northern Ireland experience where workers in both family support and child protection were required to make a determination about whether or not the child was in need of protection or in need of support. Spratt's research showed that the focus shifted to become an assessment of whether or not a child was 'in need of protection' and those that were not 'in need of protection' were considered to be 'in need' of community based support by default. The focus in UK secondary services became focused on the assessment of risk and Spratt's research showed that this had a corresponding impact on the services provided, to the extent that there was little difference between the services provided in secondary and tertiary services – both of which developed a risk management focus.

We believe that senior managers within community-based organisations need to monitor the cultural climate in their organisations to ensure that secondary services do not become focused on risk management compromising their ability to engage in a therapeutic relationship with clients (as Spratt's research suggests occurred in the UK). Further, that common assessment frameworks include two elements:

- (a) is the child in need of protection?
- (b) is the family in need of support (and if so, what support)?

The new intake procedures appear to comprise a significant change to how notifications are made. It appears that a 'report' will not be deemed to be a 'notification' until after an assessment has been made (and reports that are deemed to be family support concerns are referred to community-based services). This change, in combination with the shift to enable child protection workers as opposed to the notifier to define a report as a notification is likely to lead to an immediate drop in the number of notifications recorded in Victoria. This has implications for national reporting of child protection data, and it should be made clear at what point in the continuum that data will be captured on 'reports' as defined by the Australian Institute of Health and Welfare.

## CHILDREN IN NEED OF PROTECTION

The grounds for intervention in relation to sexual abuse remain unchanged: significant harm has to be demonstrated to have occurred or to be likely to occur (s.98.d). However, other jurisdictions have removed the need to demonstrate harm and only require that sexual abuse be found to have occurred given the wealth of literature documenting the delayed onset of the negative impact of sexual abuse. We suggest that the Children Bill be amended to remove the reference to harm in relation to child sexual abuse so that sexual abuse need only be found to have occurred to warrant intervention.

Section 98 (c to e) includes a clause within each ground “that the child’s parents have not protected or are unlikely to protect the child from harm of that type”. The focus on parents’ failure to protect their children as a necessary clause for intervention means that blaming parents becomes a gatekeeper for access to services. We advocate that the grounds for intervention be modified to exclude the reference to parents being unable or unwilling to protect, and that instead, these issues are assessed as part of the procedural documents (e.g., protocols between police and child protection about referral of non-parental maltreatment cases) as is the case in Tasmania, South Australia, Western Australia and New South Wales. The apparent reason for a clause such as this is to clarify the role of child protection to intervene to protect children from familial omissions or commissions and the role of the police to investigate and respond to violations of the law. However the clause has the effect of restricting child protection’s role to intervene to protect victims of parental abuse or neglect. In cases such as sibling physical or sexual abuse there is no ground for child protection to intervene to protect the victim unless they do so on the grounds that a parent has failed to protect their child from harm of this type.

#### STRENGTHENING CHILD PROTECTION RESPONSES

The Clearinghouse commend the grounds that enable child protection to receive a report (a) on a child exhibiting sexually abusive behaviour who is in need of therapeutic treatment (s.113 and ss.168-176) and (b) on an unborn child (s.28).

The inclusion in legislation of the responsibility for the Secretary to assist in the transition from out-of-home care to independent living is to be commended, however we advocate for care leavers to be eligible for this assistance up to age 25 – consistent with services in NSW for care leavers, the definition of ‘youth’ as up to age 25 under federal government benefit arrangements and shifts within the general community that have resulted in young people staying in the parental home longer.

#### CLEARER RULES ABOUT INFORMATION SHARING

We support the legislative framework that will enable information sharing between child protection and community based intake services to better integrate child protection with local service networks. In relation to consultations with professionals (particularly those in adult-centred services) we believe that professionals in these organisations should be required to share any concerns they have in relation to the child’s safety or wellbeing with child protection or a registered secondary service regardless of whether the case is being responded to by child protection or the secondary service in the intake, investigation or case management phase of service delivery.

From our reading of the legislation, we cannot see how the registered community based intake services have been empowered to effectively undertake an assessment (to require other professionals to provide them information during assessment) that would enable them to determine whether the referral involves a ‘child or family in need of support’ or a ‘child in need of protection’. We believe that there is a danger that registered secondary

services will be at risk of making assessments based on incomplete information and thus under-estimate the danger to the child. In our view it is only child protection that is adequately empowered under the Act to undertake a thorough assessment of child safety. In saying this, we are also reluctant to suggest more power be devolved to secondary services without investigating the advantages and disadvantages.

#### IMPROVING CHILDREN'S STABILITY

We broadly support the changes designed to improve children's stability, but would note that these changes really only extend to children under six, and that arrangements for children aged seven and older have not changed significantly.

#### NEW QUALITY ASSURANCE ARRANGEMENTS

We support quality assurance mechanisms, however these mechanisms must be accompanied with appropriate resources to enable secondary service to meet the requirements made of them.

#### CHILD WELLBEING AND SAFETY BILL — PRINCIPLES

In the list of proposed principles for the Child Well-being and Safety Bill (as listed in Appendix 2 of the White Paper), the fourth principle states that responsibility for strengthening the capacity of families is shared between "communities, community services and government". While we agree that such responsibility should be shared, we consider that the onus should rest with the Secretary of the Department to ensure coordination of delivery of services through local service networks. This is particularly so in relation to ensuring the cooperation of adult-centred services in linking families to appropriate supports (many of these adult-centred services fall within program areas within the Department of Human Services). An onus on the Secretary to ensure coordination of service delivery will assist in achieving one of the objectives of the new intake procedures and secondary services to "build stronger networks of services as a local level, which work together better to tailor responses to the needs of children, young people and families, and establish clearer pathways between services and supports". Without this provision there is a risk that registered community based intake services will be charged with the responsibility of achieving this objective without the power to achieve this aim.

#### REFERENCE

Spratt, T. (2001), "The influence of child protection orientation on child welfare practice", *British Journal of Social Work*, vol. 31, pp. 933-954.