

Chapter 1

Introduction



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INTRODUCTION

- 1.1 This is the Victorian Law Reform Commission's final report about protection applications in the Children's Court. In December 2009, the Victorian Attorney-General asked the Commission to review Victoria's child protection legislative and administrative arrangements in relation to Children's Court processes, and to recommend options for procedural, administrative and legislative changes that may minimise disputation and maintain a focus on the best interests of children.
- 1.2 A protection application is made when the Secretary of the Department of Human Services¹ has concerns about a child's wellbeing and applies to the Children's Court for state intervention.² If the Children's Court finds that a child is in need of protection, it may make orders ranging from supervision of the parents to removing a child from a family and giving the Secretary parental responsibilities.
- 1.3 The terms of reference asked the Commission to consider models that take a more administrative case management approach to child protection issues. The Commission was also asked to consider arrangements currently in place in other relevant jurisdictions, including the Family Court of Australia (FCA), England and Scotland. In the covering letter that accompanied the terms of reference, the Attorney-General emphasised that he sought reform options rather than one set of final recommendations.³
- 1.4 In conducting the review, the Commission was asked to consider:
 - the underlying aim of the child protection system to protect children in Victoria from abuse and neglect, and the objectives of the best interests principles set out in the *Children, Youth and Families Act 2005* (Vic) (CYF Act 2005)
 - the processes associated with the application for an order and the review of interim and ongoing disposition orders before the Family Division of the Children's Court
 - the previous reviews of Victoria's child protection system, particularly in relation to the models for the Children's Court, and the Government Taskforce's investigation of measures to immediately reduce court time and introduce less adversarial processes
 - the themes and principles of the Attorney-General's Justice Statement (2004) and Justice Statement 2 (2008), particularly the focus on appropriate dispute resolution and measures to reduce the adversarial nature of the justice system
 - the rights enshrined in Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- 1.5 The Commission was directed to consult the Children's Court of Victoria, the Department of Human Services, the Department of Justice, Victoria Legal Aid and other relevant stakeholders.
- 1.6 The reference to the Commission follows the November 2009 publication of the Victorian Ombudsman's own motion investigation into Victoria's child protection program.⁴ The Ombudsman's investigation highlighted several problems with the current system and focused particularly on the legal processes through which protection applications are determined in the Children's Court. The Ombudsman concluded his examination by recommending that

*The Attorney-General provide a reference to the Victorian Law Reform Commission to examine alternative models for child protection legislative arrangements that would reduce the degree of disputation and encourage a focus on the best interests of children.*⁵

- 1.7 In February 2010, the Commission produced an Information Paper. The Commission received 51 submissions in response to the Information Paper⁶ and engaged in 28 consultations with interested groups and individuals.⁷

SCOPE OF REPORT

- 1.8 This report does not deal with the entire Victorian child protection system. The Commission was asked to examine one aspect of the system: the manner in which child protection proceedings should be conducted in the Children's Court. In undertaking this task, the Commission has not sought to make conclusive findings about the current operations of the Children's Court or about the conduct of regular participants in court proceedings as might be expected of a commission of inquiry. The primary objective has been to develop options for reform that might minimise disputation and maintain a focus on the best interests of children.
- 1.9 Practical considerations, especially time, have limited the Commission's ability to examine Children's Court processes in jurisdictions other than those regularly examined when undertaking law reform activities. Consequently, the focus of comparative work for this report has been Australian states and territories and other common law countries such as the United Kingdom and New Zealand.
- 1.10 This reference does not consider the operations of the Children's Court Clinic, as it is the subject of a separate inquiry by the Secretary of the Department of Justice. This review is discussed briefly below.
- 1.11 Finally, a recurring question raised in submissions and consultations was whether the Children's Court criminal law jurisdiction should be viewed from a child welfare perspective, as it is in Scotland and New Zealand.⁸ This important issue is outside the current terms of reference.

CONCURRENT AND RECENT REVIEWS OF THE CHILD PROTECTION SYSTEM

- 1.12 Child protection has been the subject of many recent reports by other Victorian, Australian and international bodies. The work of these bodies has informed the Commission's approach to the complex issues surrounding the child protection system and to Children's Court processes. These reports are discussed in Chapter 2.
- 1.13 Chapter 2 also examines a number of current reviews into various aspects of Victoria's child protection system. Some reviews have reported recently, such as the Child Protection Proceedings Taskforce. The brief of the Taskforce, formed on 26 November 2009, was more immediate than that of the Commission. It called for recommendations to reduce the adversarial nature of court processes, including options for appropriate dispute resolution (ADR), reduced time spent in court, and ways to better support child protection workers in court processes.
- 1.14 The Taskforce completed its report on 26 February 2010.⁹ It made a number of recommendations to change current Children's Court processes and the practices of legal practitioners and DHS in the Court.

1 Throughout this report, the Victorian Department of Human Services is referred to as 'DHS' or 'the Department' interchangeably. The terms 'the Secretary' and 'Child Protection' are used when referring to the powers of the Secretary of the Department of Human Services.

2 In practice, this power is delegated to child protection workers within the Department of Human Services: see *Children, Youth and Families Act 2005* (Vic) s 17. While the *Children, Youth and Families Act 2005* (Vic) also permits the Chief Commissioner of Police to commence proceedings as a protective intervener, this power is not exercised following a protocol between Victoria Police and the Secretary of the Department of Human Services.

3 Letter from Attorney-General Rob Hulls to Professor Neil Rees, 4 December 2009.

4 Office of the Victorian Ombudsman, *Own Motion Investigation into the Department of Human Services Child Protection Program* (2009).

5 Ibid 66. The Ombudsman's report is discussed in further detail in Chapter 2.

6 See Appendix A.

7 See Appendix B.

8 Consultation 1 (Children's Court of Victoria).

9 Child Protection Proceedings Taskforce, *Report of the Child Protection Proceedings Taskforce* (2010).

CHILDREN'S COURT CLINIC REVIEW

1.15 The Secretary of the Department of Justice is undertaking a review of the Children's Court Clinic. The scope of the review is broad and will examine organisational and management structures of the clinic as well as governance and quality assurance practices. It will look at practice in other jurisdictions and agencies to determine best-practice clinical service delivery models. The review will also investigate past and future demand for clinical services and examine service provision across the state.¹⁰ The Clinic review was expected to be completed by the end of June 2010.

DHS—STATE SERVICES AUTHORITY WORKFORCE REVIEW

1.16 The State Services Authority (SSA) is undertaking a review of the child protection workforce planning for the Secretary of the Department of Human Services. This review will look at current recruitment and retention of child protection workers across the state with a view to making recommendations that promote greater sustainability within the workforce.¹¹

DHS—KPMG REVIEW

1.17 The DHS Children, Youth and Families Division has engaged KPMG to undertake an evaluation of the Child and Family Service System Reforms. The timetable for this report is August 2008 to August 2011. The evaluation will focus on the reforms' overarching objectives, which include:

- intervening earlier through family services when families have difficulty protecting their children from harm and promoting their development
- ensuring all services focus not just on safety, but also on stability and child development
- improving the planning, coordination, targeting, delivery, quality and effectiveness of family services, child protection and out-of-home care services
- improving service responses for Aboriginal children and families and improving the cultural competence of services.¹²

CHILDREN'S COURT (FAMILY DIVISION)—Koori Family Support Program (KFSP)

1.18 For a number of years, Aboriginal Justice Forum (AJF) members have expressed concern about the high number of Koori children in the child protection system. In March 2009, the AJF commenced a project to investigate options for making the Family Division more accessible to Koori families and to improve outcomes for Koori children and families. In mid 2009, the Department of Justice (DoJ) established a project steering committee with representatives from across government, including Aboriginal agencies and organisations, the Children's Court of Victoria, the Magistrates' Court of Victoria, DoJ, and DHS. This committee is called the Koori Family Support Program (KFSP).¹³

1.19 The KFSP project is currently in its consultation phase and is considering a range of pre-court, at-court and post-court 'non-adversarial' strategies. Broadly, these include community education, improving access to Aboriginal Family Decision Making programs (AFDMs) and other pre-court case planning, improving access to legal advice and enhanced case management by the Court.¹⁴

OMBUDSMAN OUT-OF-HOME CARE REVIEW

- 1.20 Following the November 2009 investigation into the child protection system, the Ombudsman also reviewed Victoria's out-of-home care arrangements. This report was tabled in Parliament on 26 May 2010.¹⁵ DHS has accepted all but one of the Ombudsman's 21 recommendations. This report is discussed briefly later in this chapter.

AUSTRALIAN AND NSW LAW REFORM COMMISSIONS

- 1.21 In 2009, the Australian Law Reform Commission (ALRC) and the NSW Law Reform Commission (NSWLRC) received a joint reference in relation to family violence. The terms of reference

*have asked the Commissions to focus on laws and legal processes and to consider what improvements could be made to protect women and children from family violence.*¹⁶

- 1.22 The ALRC and the NSWLRC are examining the intersecting problems encountered by families in crisis and will consider

*the interrelationship in practice of at least nine sets of criminal laws, eight sets of child protection laws, eight sets of family violence laws and the Family Law Act, as well as evidence laws, sentencing laws and a range of other legal processes.*¹⁷

- 1.23 A Consultation Paper was released on 29 April 2010. The Commissions will submit their final report to the Commonwealth and NSW Attorneys-General on 10 September 2010.

PLANNED REVIEWS

- 1.24 In addition to current reviews, the Victorian Auditor-General's Office (VAGO) Annual Plan for 2010–11 indicates that 'early intervention for children at risk' is a prospective focus for a Human Services performance audit in the year 2012–13.¹⁸ The proposed audit is cited as being able to 'respond to emerging developments, enabling the audit to remain relevant and appropriate'.¹⁹ At this stage, the Commission is unaware of any further developments concerning this review.

OUR PROCESS

INFORMATION PAPER

- 1.25 In February 2010, the Commission published an Information Paper which contained a brief outline of four possible reform options and asked a number of questions about specific topics.

CONSULTATIONS AND MEETINGS

- 1.26 In addition to meetings with interested groups and individuals, the Commission employed the services of a number of organisations to undertake consultations with young people, foster and kinship carers, and parents from new and emerging communities. The reports of these consultations were published on our website.
- 1.27 The Commission intended to consult parents of children involved in protection applications, but the time required for Ethics Committee approvals made this impossible.²⁰

10 Letter from Penny Armytage, Secretary of the Department of Justice (Victoria), to Professor Neil Rees, 6 April 2010.

11 Email from Department of Human Services (Victoria), 31 May 2010.

12 Children, Youth and Families Division, Department of Human Services (Victoria), *Evaluation of Child and Family Services Reforms* (2010) <www.cyf.vic.gov.au/every-child-every-chance/evaluation-of-child-and-family-services-reforms> at 19 April 2010.

13 The steering committee membership comprises representatives of the following: Courts and Tribunals Unit, Department of Justice (Victoria); Koori Justice Unit, Department of Justice (Victoria); Children's Court of Victoria; Koori Court Unit, Magistrates' Court of Victoria; Child Protection, Department of Human Services (Victoria)—Youth Justice; Victorian Aboriginal Child Care Agency; Mildura Aboriginal Corporation; Victorian Aboriginal Community Services Association Ltd; Victorian Aboriginal Legal Service; Victorian Aboriginal Health Service; Aboriginal Family Violence Prevention and Legal Service Victoria; and Victoria Legal Aid.

14 Email from Rosemary Smith, Manager Koori Programs and Initiatives, Programs and Strategy, Courts and Tribunals Unit, Department of Justice (Victoria), 10 June 2010.

15 Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection—Out of Home Care* (2010).

16 Australian Law Reform Commission, 'ALRC/NSWLRC Release Consultation Paper on Family Violence Reform' (Media Release, 29 April 2010).

17 Ibid.

18 Victorian Auditor-General's Office, *Annual Plan 2010–11* (2010) 31.

19 Ibid 27.

20 The Commission explored the possibility of seeking permission from the Department of Justice Human Research Ethics Committee to use court premises to interview parents, but the timelines for proposals and approval did not match the delivery time given to the Commission. As such, the Commission could not follow this path of research.

- 1.28 In response to the Information Paper, the Commission received 51 written submissions from a variety of organisations and individuals, including community representatives.²¹ The Commission conducted 28 first round meetings with interested groups and individuals.²² The Commission also conducted a number of second round meetings with stakeholder groups to explore further the options proposed in the Information Paper.²³ These groups included the President and members of the Children’s Court, senior managers from DHS, lawyers from the DHS Court Advocacy Unit and Children’s Court legal practitioners.
- 1.29 In order to better understand the Children’s Court processes, the Commission visited the Court in a number of metropolitan and regional venues, and other courts that exercise jurisdiction in relation to children.²⁴

STRUCTURE OF THIS REPORT

- 1.30 This report is divided into two parts.
- 1.31 **Part 1**, which encompasses Chapters 1–5, considers the historical background to this area of law, as well as current law and practice in Victoria and other jurisdictions, both within and beyond Australia. Chapter 2 describes the background to Victoria’s child protection system including the key legislation and reviews dating back to 1864. Chapter 3 examines current law and practice in Victoria. Chapter 4 considers other Australian jurisdictions, including relevant Commonwealth laws and the interaction between state and federal law. Chapter 5 examines the relevant law in New Zealand, England and Wales, and Scotland.
- 1.32 In **Part 2**, Chapters 6–11, we identify and discuss five options for reform. Chapter 6 introduces the options and explains how they fit together. The chapter also discusses the guiding principles behind the Commission’s reform options. Chapters 7–11 contain detailed discussion of the various proposals that fall within each of the reform options. The five options presented in this report are:
- **Option 1—A New System: Processes for achieving appropriate child-centred agreements**
This option includes the development of a graduated range of supported, structured and child-centred agreement-making processes which should become the principal means of determining the outcome of child protection applications, where appropriate.
 - **Option 2—A New System: Enhanced court practices and processes**
This option includes new processes for the manner in which protection applications are commenced and proceed through the Children’s Court, including new ways of conducting contested proceedings, new emergency procedures, a new approach to the representation of children, new grounds and an ‘agreement’ provision, and new powers for the Court.
 - **Option 3—The Office of the Children and Youth Advocate (OCYA): A new multi-disciplinary body to advance the interests of children and young people**
In this option, the Commission proposes that a new independent statutory commissioner be created to represent and promote the best interests of children and young people at all stages of the child protection process.

- **Option 4—Representing the Department of Human Services: A role for the VGSO in protection matters**

In this option, the Commission proposes a new system for conducting cases on behalf of the protective interveners in the Children’s Court.

- **Option 5—Broadening the role of the Child Safety Commissioner**

This option includes giving additional functions to the Child Safety Commissioner, and strengthening the Commissioner’s independence.

1.33 The Appendices contain detailed information about previous reports into Victoria’s child protection system and some important selected reports from other jurisdictions.

GUIDING PRINCIPLES

1.34 Sections 8–14 of the CYF Act 2005 contain the general principles that underpin the current legislative scheme. These include:

1. The best interests of a child should inform all decision making in relation to both process and outcomes.
2. Children’s rights should be protected, children should be protected from harm and they should be given opportunities to develop.
3. The central role of the family should be promoted and children should be removed from their family as a last resort only.
4. The views of Aboriginal communities should govern decisions about Aboriginal children whenever possible.

1.35 These statutory principles are sound and should continue to guide Victoria’s child protection system. The Commission believes that it is important to devise additional principles to guide the development of any new processes for dealing with child protection matters. We suggest the following principles:

1. The processes should actively encourage early resolution by agreement whenever appropriate.
2. The processes should be child-centred.
3. The processes should actively encourage inter-professional collaboration so that decision makers have access to the best information on child development and wellbeing.
4. The processes should actively promote outcomes that involve the least amount of compulsory intervention in the life of a family as required by the circumstances.
5. When an agreed outcome is not possible, a court should determine whether a child is in need of protection and the intervention required in order to promote the child’s wellbeing.
6. The Court should be an inquisitorial and problem-oriented decision maker.

These principles are discussed in Chapter 6.

21 Submissions are listed in Appendix A and are reproduced on the Victorian Law Reform Commission’s website <www.lawreform.vic.gov.au>.

22 Consultations are listed in Appendix B.

23 Stakeholders involved in these second round meetings are listed in Appendix B.

24 Staff of the Commission made visits to, and spoke with staff of, the following courts: the Neighbourhood Justice Centre, the Drug Court (Dandenong), the Family Violence list at the Melbourne Magistrates’ Court, the Federal Magistrates Court, Less Adversarial Trials and Magellan lists at the Family Court of Australia. The Commission thanks the various courts and the Department of Justice for arranging and facilitating these visits.

BACKGROUND AND CONTEXT

- 1.36 Children and young people who are involved in the child protection system are among the most vulnerable people in our community. Many are victims of neglect, abuse (physical and emotional), family breakdowns and family violence. Disadvantage and struggle is often a defining feature of their lives.
- 1.37 As the Ombudsman noted in his recent report, children who are in out-of-home care 'tend to do poorly at school, are prone to mental health disorders, have poor health and have to deal with consequences of traumatic childhood experiences'.²⁵
- 1.38 Before dealing with matters of process, it is important to provide a brief overview of child protection system clients and of the life chances of children and young people in care.

PROFILE OF CHILDREN AND YOUNG PEOPLE IN THE CHILD PROTECTION SYSTEM

- 1.39 The Australian Institute of Health and Welfare (AIHW) publishes annual reports containing comprehensive child protection data and analyses.²⁶ Commentators suggest that this child protection data does not fully capture the prevalence of child abuse, maltreatment or neglect in Victoria because it only reflects those cases that are reported to the Department.²⁷

Notifications and substantiations

- 1.40 In Victoria, the Department received 42 851 notifications of suspected child abuse to in 2008–09.²⁸ In comparison to other Australian states, the number of notifications has remained relatively stable for the last couple of years.²⁹ During the same year, there were 6344 substantiated notifications.³⁰ Emotional abuse was the most common type of substantiated abuse.³¹ Single female parent families have the highest recorded rate of substantiations in Victoria.³²

Children on care and protection orders

- 1.41 On 30 June 2009, five in every 1000 Victorian children and young people were the subject of a care and protection order.³³ Of the children who were placed on protection orders in 2008–09, the largest proportion were those aged 0–4 years.³⁴ In all jurisdictions, the rate of Aboriginal children and young people on care and protection orders is higher than that for non-Aboriginal children and young people.³⁵

Out-of-home care

- 1.42 Victoria has the lowest rate of children and young people in out-of-home care in Australia; 4.3 per 1000 children and young people were in out-of-home care on 30 June 2009.³⁶ Almost all children and young people subject to care and protection orders were in home-based care, of which over half were in foster care.³⁷ Less than 10 per cent of children were in residential care or living independently.³⁸ In line with other statistics, Aboriginal children and young people are over-represented in out-of-home care.³⁹

FAMILIES

- 1.43 The profile of families involved in the child protection system is complex. Research suggests that children and families who are involved with the child protection system possess similar social and demographic characteristics, and parents share similar risk factors.

Socio-economic disadvantage

- 1.44 There is a clear relationship between socio-economic disadvantage and contact with child protection services.⁴⁰ Low-income families are more likely to be in contact with the Department than other families. The Department has found that 71 per cent of families investigated for suspected child abuse are low-income families, of which 65 per cent receive a government pension or benefit.⁴¹
- 1.45 An audit of children in out-of-home care found that the parents of those in the sample group were primarily aged between 30 and 39 years, Anglo-Australian, sole parents and reliant upon a government benefit or pension as the primary source of income.⁴² Socio-economic disadvantage is usually concentrated in neighbourhoods or geographic areas, creating corridors of disadvantage.⁴³
- 1.46 The low socio-economic status of families involved in the child protection system is also illustrated by statistics provided by Victoria Legal Aid (VLA). During 2008–09, VLA provided 5676 grants of legal assistance to families, and duty lawyer services to another 1674 in child protection matters.⁴⁴ Eligibility for these services is means tested. These figures demonstrate that the vast majority of families involved in matters before the Family Division of the Children’s Court are supported by publicly-funded legal aid services.

Family violence

- 1.47 The connection between family violence and child abuse is strong.⁴⁵ Studies have estimated that there is a very high co-occurrence rate of adult partner violence and child abuse.⁴⁶ As highlighted in previous reports by the Commission, children and young people can be affected by violence either by experiencing abuse themselves, or by witnessing a parent being abused.⁴⁷ Data collected by the Department between 1996 and 2001 highlights family violence as the most common risk characteristic recorded in substantiated cases of child abuse.⁴⁸ In 2000–01, 52 per cent of parents in substantiated cases had experienced family violence.⁴⁹

- 25 Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection*, above n 15, 10.
- 26 Australian Institute of Health and Welfare, *Child Protection Australia 2008–09* (2010) 4; Leah Bromfield and Mel Irenyi, National Child Protection Clearinghouse, Australian Institute of Family Studies, *Resource Sheet: Child Abuse and Neglect Statistics* (2009) No 1, 5.
- 27 Bromfield and Irenyi, above n 26, 5. See also Joe Tucci et al, *The Cost of Child Abuse in Australia* (2008) iii–iv.
- 28 Australian Institute of Health and Welfare, above n 26, table 2.3, 13.
- 29 *Ibid.*
- 30 Substantiation refers to the stage after the child protection worker has decided there is harm to the child’s safety, stability and development. If a matter is substantiated, the child protection worker may consider filing a protection application. If a matter is not substantiated, but there are still significant concerns for the wellbeing of a child, information, advice and referral assistance may be provided. If there are no concerns and the matter is not substantiated the case is closed. This is discussed further in Chapter 3.
- 31 Australian Institute of Health and Welfare, above n 26, figure 2.1, 15. During 2008–09 there were 2935 substantiations of emotional abuse. This was closely followed by 2438 substantiations of physical abuse, 518 substantiations of neglect and 453 substantiations of sexual abuse: table A1.1, 52.
- 32 *Ibid* table A1.6, 59—42.2 per cent; Boston Consulting Group, *Children’s Court of Victoria Demand and Capacity Review: Findings and Recommendations* (2007) 21.
- 33 Australian Institute of Health and Welfare, above n 26, table 3.1, 26—6100 children and young people in total.
- 34 *Ibid* figure 3.1, 28; table A1.7, 60.
- 35 Australian Institute of Health and Welfare, above n 26, 35.
- 36 *Ibid* table 4.2, 39.
- 37 *Ibid* table 4.5, figure 4.1, 42–3.
- 38 *Ibid.*
- 39 *Ibid* table 4.8, 46.
- 40 Bromfield and Irenyi, above n 26, 3; Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997) 422; Community Care Division, Department of Human Services (Victoria), *An Integrated Strategy for Child Protection and Placement Services* (2002) 25.
- 41 Community Care Division, Department of Human Services (Victoria), above n 40, 25.
- 42 Service Development Unit, Child Protection and Juvenile Justice Community Care Division, Department of Human Services (Victoria), *The Audit of Children and Young People In Home Based Care Services* (2002) 6.
- 43 Council of Australian Governments, *Protecting Children is Everyone’s Business: National Framework for Protecting Australia’s Children 2009–2020* (2009) 21.
- 44 Victoria Legal Aid, *Fourteenth Statutory Annual Report 2008–09* (2009) 24.
- 45 Consultation 15 (Koori Justice Unit); submission 46 (Children’s Court of Victoria); National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021* (2009) Ch 9; Victorian Law Reform Commission, *Review of Family Violence Laws: Report*, Report No 10 (2006) 22–3.
- 46 Jeffrey Edleson, ‘The Overlap between Child Maltreatment and Woman Battering’ (1999) 5(2) *Violence Against Women* 134, cited in National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021* (2009) 20.
- 47 Victorian Law Reform Commission, above n 45, 22.
- 48 Community Care Division, Department of Human Services (Victoria), above n 40, 27 (table 2.5).
- 49 *Ibid.*

Homelessness

- 1.48 A significant proportion of families who are at risk of homelessness or who experience homelessness have contact with child protection services or have children who are on care and protection orders.⁵⁰ The Fitzroy Legal Service's Empowering Vulnerable Women in the City of Yarra Project examined the legal needs of homeless women who had been involved with child protection services.⁵¹ While the project found a strong link between child protection and women's homelessness, there is little statistical evidence of the connection.⁵²

Alcohol abuse and substance abuse

- 1.49 Parental alcohol abuse and substance abuse is one of the most commonly identified problems associated with families involved in child protection matters.⁵³ Substance abuse and alcohol abuse are also associated with other issues frequently experienced in families involved in child protection matters, such as psychiatric illness and family violence.⁵⁴

Aboriginal children and over-representation in the child protection system

- 1.50 Research demonstrates that Aboriginal children and young people are over-represented at each point of the child protection process. Aboriginal children and young people are 10 times more likely than non-Aboriginal children to be the subject of a substantiated notification of neglect or abuse.⁵⁵
- 1.51 On 30 June 2009, 825 Aboriginal children and young people were the subject of care and protection orders,⁵⁶ and 734 Aboriginal children and young people were in out-of-home care.⁵⁷ In accordance with the Aboriginal Child Placement Principle,⁵⁸ almost 60 per cent of Aboriginal children are placed either with relatives/kin or other Aboriginal caregivers, or by Aboriginal agencies.⁵⁹
- 1.52 Reasons for the over-representation of Aboriginal children and young people in child protection statistics are multifaceted. The 1997 *Bringing them Home Report* by the Human Rights and Equal Opportunity Commission identified some causes including:
- inter-generational effects of previous separations from family and culture
 - poor socio-economic status
 - systemic racism in the broader society
 - cultural differences in child rearing practices.⁶⁰

LIFE CHANCES OF CHILDREN IN CARE

- 1.53 Children and young people placed in out-of-home care are widely reported to experience poorer life chances and outcomes in comparison to other children.⁶¹ The Ombudsman said in his recent report:

*Young people leaving care are at risk of negative experiences in their adult lives. These include unemployment, homelessness and contact with the criminal justice system.*⁶²

- 1.54 Many factors influence the life chances of children and young people in care, including the age that children enter care, the number of care placements, the environment of the care placement and support provided by carers and social workers. Children and young people entering care are likely to have experienced severe abuse or neglect, significant life disruptions and socio-economic disadvantage.⁶³

Health and welfare

- 1.55 Research also indicates that children and young people in care are likely to experience poor physical, mental and developmental health,⁶⁴ including mental health issues, physical injury as the direct result of abuse, higher rates of teen pregnancy, increased rates of risk-taking behaviour and substance abuse, and behavioural problems.⁶⁵
- 1.56 The rate of mental health issues for young people in care was found to be marginally above the average for the general population in the same age group. Eighteen per cent of children in home-based care were diagnosed with a mental health issue in the 2001 Audit of Children and Young People in Home Based Care Services.⁶⁶ In the same sample, 14 per cent reported that they had threatened suicide.⁶⁷
- 1.57 Drug and alcohol abuse by children and young people in care and after leaving care is significant. The final report by the Australian Housing and Urban Research Institute on the housing experiences and outcomes of young people leaving care found that 53 per cent of participants reported a lifetime problem with substance abuse and had experienced or were experiencing homelessness.⁶⁸

Education and employment

- 1.58 In 2006 the CREATE Report Card on Education found that children and young people in care do not perform as well as their peers at school and are more likely to be older than their peers in class.⁶⁹ Further, changing care placements greatly affects school attendance of children and young people in care, and increases the number of schools attended during their education in comparison to their peers.⁷⁰ CREATE also found that children and young people in care are less likely to attend university or TAFE than others.⁷¹ A pilot study undertaken by the AIHW found that children on guardianship or custody orders across all year levels achieved much lower mean test scores for reading and numeracy than their peers.⁷² The length of orders was not a significant factor in academic results.⁷³ Almost a third of the young people transitioning from care who responded to the CREATE 2009 Report Card stated they were unemployed and looking for work.⁷⁴ Another third stated they were working: 15.4 per cent were working full-time and 12.6 per cent were in casual or part-time employment.⁷⁵ Only a small number were studying at TAFE (11 per cent) and university (2.8 per cent).⁷⁶

- 50 Submission 44 (CHP).
- 51 Chelsea Candy, Fitzroy Legal Service, *Final Report to the Legal Services Board: Empowering Vulnerable Women in the City of Yarra* (2009); Submission 36 (FLS).
- 52 Candy, above n 52.
- 53 Allen Consulting Group, *Protecting Children: The Child Protection Outcomes Project* (2003) 11.
- 54 Community Care Division, Department of Human Services (Victoria), above n 40, 27.
- 55 Australian Institute of Health and Welfare, above n 26, 21.
- 56 Ibid.
- 57 Ibid 35.
- 58 *Children, Youth and Families Act 2005* (Vic) s 13.
- 59 Australian Institute of Health and Welfare, above n 26, table A1.16, 67.
- 60 Human Rights and Equal Opportunity Commission, *Bringing Them Home: The Stolen Children Report* (1997).
- 61 See generally Tucci et al, above n 27, 11–16; Service Development Unit, Child Protection and Juvenile Justice Community Care Division, Department of Human Services (Victoria), above n 42.
- 62 Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection*, above n 15, 16.
- 63 Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA) together with National Framework Implementation Working Group (Australian Government), *National Standards for Out of Home Care: Consultation Paper* (2010) 9–10.
- 64 Royal Australasian College of Physicians, *Health of Children in "Out-of-Home" Care* (2006) 5; Leah Bromfield et al, National Child Protection Clearinghouse, Australian Institute of Family Studies, *Out-of-Home Care in Australia: Messages from Research* (2005) 34–7.
- 65 See, for example, Tucci et al, above n 27, 12–14; FAHCSIA together with National Framework Implementation Working Group (Australian Government), above n 63, 10.
- 66 Service Development Unit, Child Protection and Juvenile Justice Community Care Division, Department of Human Services (Victoria), above n 42, 28–9, 35.
- 67 Ibid 31, 35.
- 68 Guy Johnson et al, Australian Housing and Urban Research Institute (AHURI), *Pathways from Out-of-Home Care: Final Report*, No 147 (2010) 45.
- 69 Jadyne Harvey and Paul Testro, CREATE Foundation, *Report Card on Education* (2006) 22–30.
- 70 Ibid.
- 71 Ibid. Similar statistics about attendance of university and TAFE found in Joseph McDowall, CREATE Foundation, *CREATE Report Card 2009 Transitioning from Care: Tracking Progress* (2009) 55–6; Johnson et al, above n 68, 29.
- 72 Australian Institute of Health and Welfare, *Educational Outcomes of Children on Guardianship or Custody Orders* (2007) 10–26.
- 73 Ibid 15–18.
- 74 McDowall, above n 71, 55–28.5 per cent.
- 75 Ibid.
- 76 Ibid. Another four per cent of participants indicated they were thinking about undertaking a TAFE course.

Involvement with the criminal jurisdiction

1.59 Many submissions drew attention to the number of children and young people in care who were involved with the juvenile justice system, especially Aboriginal children and young people.⁷⁷ Previous reports concerning child protection⁷⁸—and recently the Drugs and Crime Prevention Committee, Parliament of Victoria—identified and considered the correlation between juvenile offending and time spent in care.⁷⁹ A number of witnesses to the Drugs and Crime Prevention Committee expressed concern about the current operation of the child protection system and the effects of revolving care placements.⁸⁰ In evidence to the Committee, Judge Bourke from the Youth Parole Board of Victoria estimated that around 20–30 per cent of young people who come into contact with the Youth Parole Board have been on child protection orders.⁸¹ The long-term consequences of involvement with the criminal jurisdiction as a juvenile can significantly influence a young person's life chances, and for many it leads to continuing involvement with the criminal justice system.⁸²

ADDRESSING DISADVANTAGE

1.60 Many factors and life circumstances cause families to encounter the child protection system. DHS is acutely aware of the complexity:

*Ongoing social, economic and demographic changes place further burdens on families, making them more vulnerable due to lack of support. Many human services are reporting an increasing complexity in clients accessing services, including individuals and families with multiple problems and needs. These families often have simultaneous contact with multiple services, which need a better integrated and coordinated service response.*⁸³

1.61 The Department's strategic framework for family services outlines how the Department, along with other key stakeholders, is trying to work in a more integrated and coordinated way to meet families' needs. This includes having a common assessment framework 'to improve identification of need and matching to appropriate service responses'.⁸⁴

77 Submissions 24 (WHCLS), 26 (FVPLS Victoria) and 38 (VALS).

78 Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, above n 40, 103–4, 457; James Wood, *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (2008) vol 2, 556–7.

79 Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism in Young People*, Parl Paper No 218 (2009) 116–18.

80 Ibid.

81 Evidence of Judge Michael Bourke, Chair, Youth Parole Board, Department of Human Services (Victoria), to the Drugs and Crime Prevention Committee, above n 79. Similar statistics were also stated in Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, above n 40, 103.

82 A Queensland study found that 91 per cent of juveniles who had been subject to a care and protection order progressed to the adult system: Mark Lynch, Julianne Buckman and Leigh Krenske, 'Youth Justice: Criminal Trajectories' (2003) 265 *Trends and Issues in Crime and Criminal Justice* 1, 1.

83 Office for Children, Department of Human Services (Victoria), *A Strategic Framework for Family Services: Every Child Every Chance* (2007) 2.

84 Ibid.