

Chapter 10

Option 4—Representing the Department of Human Services: A Role for the VGSO in Protection Matters

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INTRODUCTION

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

THE SECRETARY’S STATUTORY FUNCTIONS¹

10.2 The *Children, Youth and Families Act 2005* (Vic)² gives the Secretary of the Department of Human Services (DHS)³ numerous functions and powers in relation to family services,⁴ child protection,⁵ and children and the criminal law.⁶

10.3 The Secretary’s many child protection functions include assisting families,⁷ promoting the prevention of child abuse and neglect,⁸ ensuring children receive appropriate care,⁹ conducting research into child welfare¹⁰ and developing policy.¹¹ The Secretary also has other functions and powers that range from keeping a register of out-of-home carers¹² and community services,¹³ preparing and reviewing case plans for children,¹⁴ to making determinations on reports received from mandatory reporters.¹⁵ The Secretary also has the power to conduct inquiries as he or she considers appropriate.¹⁶

10.4 The Secretary oversees the guardianship and custody of children,¹⁷ and the placement of children in care.¹⁸ The Secretary also has the power to apply for a temporary assessment order with or without notice¹⁹ and to make a protection application as a protective intervener.²⁰

THE DEPARTMENT OF HUMAN SERVICES LEGAL SERVICES

10.5 A range of in-house and procured legal service providers assist the Secretary to perform his or her many functions. The in-house legal service providers include:

- the Legal Services Branch
- regional court officers²¹
- in-house lawyers.

10.6 The Department’s Legal Services Branch (LSB) provides legal advice to child protection workers about child protection matters through the Community Services Team and the Court Advocacy Unit (CAU).²²

10.7 In addition to in-house services, DHS also procures legal services through the Government Legal Services Panel.²³ The Government Legal Services Panel involves a formal tender process for private law firms who are engaged on an occasional basis to provide services in metropolitan legal matters.²⁴

THE COMMUNITY SERVICES TEAM

10.8 The Community Services Team is responsible for matters involving former wards of state, applications under the Hague Convention on child abduction,²⁵ adoption, and VCAT matters in the guardianship list. It also provides legal advice in matters where there is no current child protection application before the court and a question of statutory interpretation arises.²⁶ This advice is provided with the assistance of the CAU, as it has expertise in operational matters.²⁷

THE COURT ADVOCACY UNIT

10.9 The CAU was formed in 1994 to incorporate both court officers and legal representatives within one unit.²⁸ The CAU was established as a unit within the LSB to maximise the integration and expertise brought to the full range of child protection matters,²⁹ and to ensure the legal professional privilege of the Secretary is preserved.³⁰

10.10 The CAU is currently composed of a manager, principal, senior solicitors, solicitors, paralegals and administrative staff.³¹ The CAU also briefs barristers to appear in protection applications in contested matters:³²

*In this instance, the CAU plays a portion of the role of instructing solicitor, particularly in the more complex or sensitive matters before the court. However, Child Protection practitioners play a significant role instructing counsel about the facts of matters and the outcomes sought and the rationales for them.*³³

10.11 The CAU provides legal and strategic operational advice in all jurisdictions where the Secretary is the applicant in a child protection application.³⁴ The Community Services Team and the CAU also provide duty services to regional and rural offices.³⁵ Each day, two CAU lawyers take duty calls on current or pending protection applications.³⁶

OPERATIONS OF THE COURT ADVOCACY UNIT

Metropolitan legal service delivery

10.12 The CAU represents or arranges representation for the Department in child protection proceedings in metropolitan Melbourne.³⁷ The CAU 'usually appear in mention matters, direction hearings and submission contests in the Children's Court'.³⁸

10.13 Child protection workers are required to 'seek legal consultation and advice at the earliest point of statutory intervention' in each case.³⁹ The Commission understands that the current model of early involvement of legal services is the Litigation Management Model (LMM).⁴⁰ The aim of the LMM is to ensure the identification and management of legal risk, and to achieve optimal outcomes at court.⁴¹ An important new feature of the model is that the same solicitor is responsible for the legal management of a matter after it is initially allocated.⁴²

Rural region legal service delivery

10.14 As discussed in Chapter 3, the Department's operations are divided into regions, including rural regions. Rural child protection workers can contact the CAU duty service that operates daily to provide legal advice.

- 1 This section provides a brief overview of the Secretary's statutory functions in relation to child protection only. The Secretary also has functions in the areas of housing, disability and other community services.
- 2 An overview of the Act and participants in the child protection system is provided in Chapter 3.
- 3 See s 16 of the *Children, Youth and Families Act 2005* (Vic). The Secretary is given a broad power of delegation by s 17 of the Act. The *Children, Youth and Families Act 2005* (Vic) *Instrument of Delegation and Revocation* contains the delegations for each of the Secretary's functions and powers.
- 4 See *Children, Youth and Families Act 2005* (Vic) ch 3.
- 5 See *Children, Youth and Families Act 2005* (Vic) chs 4, 6, 7.
- 6 See *Children, Youth and Families Act 2005* (Vic) ch 5.
- 7 *Children, Youth and Families Act 2005* (Vic) s 16(1)(b).
- 8 *Children, Youth and Families Act 2005* (Vic) s 16(1)(a).
- 9 *Children, Youth and Families Act 2005* (Vic) s 16(1)(d)–(e).
- 10 *Children, Youth and Families Act 2005* (Vic) s 16(1)(h).
- 11 *Children, Youth and Families Act 2005* (Vic) s 16(1)(c).
- 12 *Children, Youth and Families Act 2005* (Vic) s 80(1).
- 13 *Children, Youth and Families Act 2005* (Vic) s 54.
- 14 *Children, Youth and Families Act 2005* (Vic) ss 166(1), 168.
- 15 *Children, Youth and Families Act 2005* (Vic) s 187.
- 16 *Children, Youth and Families Act 2005* (Vic) s 62.
- 17 *Children, Youth and Families Act 2005* (Vic) s 172(1).
- 18 *Children, Youth and Families Act 2005* (Vic) s 174.
- 19 *Children, Youth and Families Act 2005* (Vic) ss 229(1), 238(1).
- 20 *Children, Youth and Families Act 2005* (Vic) ss 181, 240.
- 21 The court officer role is discussed in Chapter 3.
- 22 These units are composed of twenty-four lawyers and four lawyers respectively.
- 23 Further detail on the Government Legal Services Panel and the Legal Panel Gateway for panel work is described in the section below.
- 24 The difficulties of extending the Government Legal Services Panel to regional areas are discussed in Beaton Consulting, *Report on the Legal Services to Government Contract* (2007) 36. The Commission understands that rural regions may choose to directly engage private solicitor firms for court work, as discussed below.
- 25 *Hague Convention on the Civil Aspects of International Child Abduction*, opened for signature 25 October 1980, Hague XXVIII (entered into force 10 December 1983).
- 26 Email from Department of Human Services (Victoria), 22 June 2010.
- 27 Ibid.
- 28 Email from Department Human Services (Victoria), 15 June 2010.
- 29 Email from Department of Human Services (Victoria), 16 June 2010.
- 30 Department of Human Services (Victoria), Email 22 June 2010, above n 26.
- 31 Ibid.
- 32 Chapter 3 discusses statistics in regards to the number of contested child protection matters.
- 33 Department of Justice (Victoria), *Guide to Court Practice for Child Protection Practitioners 2007* (2007) 6.
- 34 The jurisdictions covered are the Children's Court of Victoria, the Magistrates' Court of Victoria, the County Court of Victoria, the Supreme Court of Victoria and the Family Court of Australia.
- 35 Department of Human Services (Victoria), *Protecting Victoria's Children: Child Protection Practice Manual*, 'Legal Services Branch', Advice No 1337 (23 April 2007), from CD-ROM provided at 23 March 2010, 230.
- 36 During May 2010, the CAU took 288 duty calls: Department of Human Services (Victoria), Email 22 June 2010, above n 26.
- 37 Department of Justice (Victoria), *Guide to Court Practice*, above n 33, 5.
- 38 Ibid 6. These arrangements are discussed in detail in Chapter 3.
- 39 Department of Human Services (Victoria), *Protecting Victoria's Children: Child Protection Practice Manual*, 'Early Legal Advice', Advice No 1339 (23 April 2007), from CD-ROM provided at 23 March 2010, 233.
- 40 Department of Human Services (Victoria), Email 16 June 2010, above n 29.
- 41 Ibid.
- 42 Ibid. This issue is also discussed in the 'Ombudsman's Comment' section below.

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- 10.15 Rural departments have a different system for court matters.⁴³ They directly employ in-house solicitors and court officers who mostly work autonomously, subject to regular meetings and consultations with the CAU manager.⁴⁴ The role of rural solicitors is broadly similar to that of their counterparts in the CAU, but a larger portion of their time involves advocacy at various rural courts.⁴⁵ Rural solicitors generally take instructions directly from child protection workers.
- 10.16 Rural solicitors often travel long distances between sub-offices within their region.⁴⁶ This requirement limits the time solicitors can spend on their office work. Because of distance constraints, workloads and other commitments, rural regions may also employ barristers and private law firms to act on their behalf.⁴⁷ The engagement of private firms is usually coordinated by the Department's rural solicitor. If the rural solicitor is absent, the child protection manager in the regional office may take this responsibility.⁴⁸
- 10.17 The number of rural private legal practitioners with experience in child protection matters is quite small. Some of these solicitors also act for families on grants of legal aid. In some rural regions, child protection workers are required to draft orders and present uncontested matters to the court; that is, 'the rural practitioner is sometimes both applicant in the application and representative of the department before the court'.⁴⁹

OMBUDSMAN'S COMMENTS

- 10.18 In his November 2009 report to parliament, the Victorian Ombudsman noted that 'several witnesses expressed concern as to whether sufficient legal support was provided by the department to enable child protection workers to present cases to the best of their ability'.⁵⁰ He referred to concerns about whether all child protection workers were able 'to write court reports and to give competent evidence in the Children's Court'.⁵¹ The Ombudsman also mentioned concerns about 'the quality of the department's legal representation'.⁵² He highlighted issues with the current operating model, both regional and metropolitan, and noted recent Department initiatives designed to deal with some of those matters.⁵³ The LMM is an important recent initiative designed to address the issue of multiple lawyers in individual cases.

VIEWS IN CONSULTATIONS AND SUBMISSIONS

- 10.19 The Commission heard a range of views about the current system for conducting child protection applications on behalf of the Department. There was broad support for change.
- 10.20 The Children's Court and many others were of the view that DHS has too many child protection functions.⁵⁴ The Court stated in its submission:
- At present the Department performs a number of functions, including the inherently contradictory dual roles of both assisting children and families and initiating and conducting court proceedings involving those same families in child protection cases and sometimes in intervention order cases ... Given the conflictual [sic] nature of those two roles, it is not surprising that tensions often exist between the Department and the family members, particularly at court.*⁵⁵
- 10.21 Other submissions highlighted the many roles of child protection workers, noting that they often perform many of the tasks that a solicitor would perform, such as filing court documents (including subpoenas), drafting affidavits and preparing documents and reports for hearings.⁵⁶

DHS STAFF ATTRITION AND KNOWLEDGE OF LEGAL PROCESSES

- 10.22 It was suggested that some child protection workers, or their managers, do not accept the advice given by Departmental lawyers and instruct them to put untenable arguments to the Court. For example, some consultees expressed concern that Departmental lawyers could be 'held captive' by the unrealistic instructions of child protection workers.⁵⁷ One submission referred to 'protective workers regularly rejecting the advice of their own legal representatives'.⁵⁸
- 10.23 While there are many very experienced and dedicated lawyers working for the Department, there was anecdotal evidence of high turnover amongst DHS lawyers.⁵⁹ Some people expressed concern that this resulted in a lack of legal experience among Department legal staff.⁶⁰ Barristers in particular expressed concern about the inexperience of some Departmental lawyers, who must deal with legal practitioners for families who have 20 years or more experience in the jurisdiction.⁶¹

LEGAL REPRESENTATION

- 10.24 The Commission received submissions about the manner in which some of the Department's cases are presented in court. One submission suggested that the Department should seek independent legal advice about the strength of the evidence required in particular cases.⁶² The experience of some participants was that

*DHS workers or managers make the decision to commence proceedings without having provided DHS lawyers with the evidence upon which this decision is based or without heeding the advice of the lawyers as to the merits of the case.*⁶³

- 10.25 In the past, concerns have been raised about the often poor standard of presentations of suspected sexual abuse cases in court.⁶⁴ Child protection workers sometimes request that members of the Victoria Police Sexual Offences and Child Abuse Unit give evidence, rather than the workers.⁶⁵ An experienced solicitor suggested that proceedings had become more adversarial 'since the DHS Court Advocacy Unit assumed the role of representation from the Victorian Government Solicitor'.⁶⁶

- 43 The Commission notes that the CAU takes responsibility for rural region appeals: Department of Human Services (Victoria), Email 22 June 2010, above n 26.
- 44 Department of Justice (Victoria), *Guide to Court Practice*, above n 33, 6.
- 45 Ibid.
- 46 Office of the Victorian Ombudsman, *Own Motion Investigation into the Department of Human Services Child Protection Program* (2009) 56.
- 47 Department of Justice (Victoria), *Guide to Court Practice*, above n 33, 6.
- 48 The Commission understands that rural region child protection unit managers and team leaders meet twice a month to discuss issues. Senior CAU solicitors may also attend these meetings to consider the list of files held by teams and assess their complexity and need for legal management.
- 49 Department of Human Services (Victoria), *Protecting Victoria's Children: Child Protection Practice Manual*, 'Legal Representatives and Child Protection's Roles and Responsibilities in Court Proceedings', Advice No 1331 (23 April 2007), from CD-ROM provided at 23 March 2010, 196.
- 50 Office of the Victorian Ombudsman, above n 46, 55.
- 51 Ibid 57.
- 52 Ibid 56.
- 53 Ibid.
- 54 Submission 27 (CPS) noted that there is a 'prima facie case' for a potential conflict between the various functions of the Secretary, while submission 38 (VALS) refers to an '[i]nherent conflict of interest' in the roles of the Department. The concept of conflict was further highlighted in a number of submissions including submissions 26 (FVPLS Victoria), 41 (Australian Childhood Foundation), 46 (Children's Court of Victoria). Also highlighted was the lack of 'meaningful independent oversight of DHS, aside from the role that the Children's Court plays' (submission 45 (FCLC)). See also submissions 11 (VLA), 31 (Gatehouse Centre), 36 (FLS). Conversely, submission 22 (Anchor) maintained it is 'not clear whether the Secretary has too many functions'. Submission 37 (OCSC) considered the existing functions of the Secretary appropriate, but it was suggested that enhanced planning, review and accountability could improve certain areas.
- 55 Submission 46 (Children's Court of Victoria) 85.
- 56 Submissions 1 (Anonymous), 48 (Victorian Bar). A consultee in consultation 17 (Victoria Police) commented that police officers are often subpoenaed at very late notice, leaving insufficient time to prepare for court in two or three days' time.
- 57 Consultations 9 (Barristers), 17 (Victoria Police).
- 58 Submission 19 (Joe Gorman).
- 59 Consultations 3 (CAU), 7 (Private Practitioners 2), 9 (Barristers).
- 60 Consultations 9 (Barristers), 17 (Victoria Police).
- 61 Consultation 9 (Barristers).
- 62 Submission 48 (Victorian Bar).
- 63 Submission 45 (FCLC).
- 64 Victorian Auditor-General's Office, *Special Report No 43 Protecting Victoria's Children: The Role of the Department of Human Services* (1996) 194.
- 65 Consultation 17 (Victoria Police). Further, a recommendation of the Victorian Auditor-General's Office's report was that '[i]f joint multi-disciplinary teams were established, comprising specialist investigators from DHS and Victoria Police, the quality of evidence and presentation in Court would most likely improve. In addition, such teams would tend to develop evidence to a standard of "beyond reasonable doubt" which would enhance the ability to prove cases both within the Children's Court and criminal jurisdictions': Victorian Auditor-General's Office, above n 64, 194. The Commission notes that this statement is made in the context of dual protection/criminal prosecution proceedings.
- 66 Submission 19 (Joe Gorman).

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INDEPENDENT STATUTORY COMMISSIONER/OFFICE OF PUBLIC PROSECUTIONS MODEL

10.26 A number of people suggested that an independent statutory body, similar to the Office of Public Prosecutions (OPP), should conduct proceedings for the Department.⁶⁷ Some barristers suggested that independent legal representation for the Department would enhance the role of the child protection workers, who would then be able to concentrate on their investigative role.⁶⁸ The Children’s Court also supported an OPP model,⁶⁹ commenting that

*the Public Prosecutions Act 1994 (Vic) provides a good starting point for new legislation governing the functions, powers, terms and conditions of an independent statutory commissioner and the functions of his or her Office.*⁷⁰

10.27 A number of people, including private legal practitioners and Victoria Legal Aid duty lawyers, commented that an independent ‘prosecutor’ would be beneficial to the court process.⁷¹

10.28 The Children’s Court stated that, as a result of comments made to it, it was of the view that

*the CAU is not able to perform nearly as independent a role as it would like or as it should because its clients often do not accept its forensic legal advice.*⁷²

The Children’s Court said that it ‘strongly supports the establishment of an independent statutory commissioner—largely analogous to the Office of Public Prosecutions’.⁷³

10.29 The Court proposed that a lawyer working for an independent prosecutorial body

*would take instructions from a protective worker but would not be bound to follow them if he considered it was not in the best interests of the subject child to do so.*⁷⁴

Further, the body ‘would act as a truly independent model litigant on behalf of the State’.⁷⁵

10.30 One submission suggested that an independent statutory commissioner with a function equivalent to the OPP would ‘provide DHS with the opportunity to focus its attentions to promoting the best interest of the child’.⁷⁶ Other participants were concerned about the independence of any new ‘prosecutor’, suggesting that the body responsible for the carriage of proceedings ‘must look only to the best interests of the child and not the interests of the service system, its funding body or its providers’.⁷⁷

10.31 One submission suggested that functions should not be handed to another body ‘unless it would simplify issues that currently impede children’s lives’.⁷⁸ Other respondents felt that a new body might create more complexity⁷⁹ or gaps⁸⁰ in the system. The Gatehouse Centre questioned whether an additional body may create another layer of decision making,⁸¹ and submissions from the Australian Childhood Foundation and Anglicare Victoria suggested that a new body might further marginalise families by diluting lines of accountability.⁸²

PRACTICES IN OTHER JURISDICTIONS

AUSTRALIAN CAPITAL TERRITORY

- 10.32 Prior to 1994, the Youth Advocate, an independent statutory official, was responsible for the initiation and carriage of child protection proceedings in the ACT. The history of the ACT Youth Advocate is discussed in Chapter 2.
- 10.33 The Youth Advocate was given the sole power to initiate child protection proceedings, other than in emergencies, when the police retained the power to commence proceedings. The Youth Advocate had the ability to act on information provided by the public where it was suspected that child protection proceedings were necessary.⁸³ This model sought to improve inter-agency collaboration by drawing upon the Youth Advocate's knowledge of the various welfare services that might be of assistance.⁸⁴
- 10.34 The Youth Advocate was required to consult the Standing Committee of the Children's Services Council before initiating care proceedings.⁸⁵ The idea was that proceedings would only be commenced if the Youth Advocate 'was not satisfied that sufficient efforts had been made to reach an informal solution' in a particular case.⁸⁶ In practice, the Standing Committee was bypassed in some circumstances, with a tendency for welfare agencies to "'go it alone" and not to involve the Youth Advocate and other agencies in the examination of its more difficult cases'.⁸⁷ Partly as a result, the Youth Advocate was unable 'to make full use of his independence to hold the welfare agencies accountable for their handling of cases'.⁸⁸
- 10.35 In 1991, the Youth Advocate's functions were transferred to the Community Advocate.⁸⁹ In 1994, all of the Community Advocate's functions in care proceedings were transferred to the Director of Family Services,⁹⁰ accompanied by comments about the 'friction' between the Community Advocate and the Director, and the need for 'a clear line of authority or responsibility ... for managing child protection services in the Territory'.⁹¹
- 10.36 The ACT's experience with the Youth Advocate demonstrates the importance of placing the carriage of child protection proceedings with a body that specialises in litigation and case management. It also highlights the importance of establishing systems that assist child protection workers and their lawyers to work cooperatively by giving them complementary functions.

SOUTH AUSTRALIA

- 10.37 In South Australia, the Crown Solicitors Office represents the relevant department in child protection proceedings in the Youth Court.⁹² The Crown solicitors bring a 'whole of government' perspective to the task, and are able to advise child protection workers in particular cases that the basis for a protection order might be weak, generally due to a lack of evidence.⁹³
- 10.38 The level of experience of the Crown solicitors who work with the department varies, with personnel ranging from newly admitted practitioners to practitioners with up to 23 years of experience.⁹⁴ The difficulty of child protection work is acknowledged and addressed by incorporating other legal work, including administrative law, equal opportunity and Hague Convention (child abduction) work into the solicitors' case load.⁹⁵

- 67 Submissions 25 (LIV), 48 (Victorian Bar). The OPP is an independent statutory body responsible for preparing and conducting criminal prosecutions in Victoria on behalf of the Director of Public Prosecutions (DPP). The DPP has responsibility for prosecuting on behalf of the Crown all indictable offences under the laws of the State of Victoria in the High Court, the Supreme Court of Victoria and the County Court of Victoria: Office of Public Prosecutions (Victoria) <www.opp.vic.gov.au/> at 28 June 2010.
- 68 Consultation 9 (Barristers).
- 69 Submission 46 (Children's Court of Victoria) 89.
- 70 Ibid 87.
- 71 Consultation 7 (Private Legal Practitioners 2); submission 19 (Joe Gorman). Submission 19 specifically states: '[c]onsiderable Court time and resources are occupied unnecessarily as a result of DHS protective workers regularly rejecting the advice of their own legal representatives. As well as protracting proceedings, this inevitably results in the proceedings being more adversarial than is warranted'.
- 72 Submission 46 (Children's Court of Victoria) 88.
- 73 Ibid 84.
- 74 Ibid 89.
- 75 Ibid.
- 76 Submission 25 (LIV).
- 77 Submission 27 (CPS).
- 78 Submission 22 (Anchor).
- 79 Submission 34 (Victoria Police).
- 80 Consultation 10 (VFPMS).
- 81 Submission 31 (Gatehouse Centre).
- 82 Submissions 41 (Australian Childhood Foundation), 29 (Anglicare Victoria).
- 83 (Australian) Law Reform Commission, *Child Welfare*, Report No 18 (1981) 241.
- 84 Ibid 242.
- 85 John Seymour, 'The Youth Advocate' (1990) 15(4) *Legal Service Bulletin* 164, 166.
- 86 (Australian) Law Reform Commission, above n 83, 242.
- 87 Seymour, above n 85, 167.
- 88 Ibid.
- 89 See the *Community Advocate Act 1991* (ACT).
- 90 See the *Children's Services (Amendment) Act 1994* (ACT).
- 91 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 10 May 1994, 1364 (Gary Humphries). This debate concerned the introduction of the Children's Services (Amendment) Bill 1994 (ACT).
- 92 Robyn Layton, *Our Best Investment: A State Plan to Protect and Advance the Interests of Children* (2003) [7.4].
- 93 Discussion with Jennifer Olsson, Managing Solicitor in the Crown Solicitors Office, South Australia, 24 March 2010.
- 94 Ibid.
- 95 Ibid.

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NEW ZEALAND

- 10.39 As discussed in Chapter 5, the New Zealand child protection model is largely facilitated by family group conferences (FGC). FGCs are used in every case where statutory action might be warranted. The focus is on broader community involvement, supported by advice from professionals.⁹⁶ The relevant department, Child, Youth and Family (CYF), is not legally represented at FGCs.⁹⁷
- 10.40 Unless there has been emergency action, the court process begins ‘with an application for the Court to make a declaration that the child or young person is in need of care or protection’.⁹⁸ Subject to exceptions, an application cannot be made unless an FGC has been held.⁹⁹ A CYF social worker generally makes an application for a declaration.¹⁰⁰
- 10.41 Court action generally occurs where there is an immediate issue of child safety, or in cases of gross neglect.¹⁰¹ When an application is made to the court, FGC social workers generally prepare affidavits and arrange proceedings in consultation with CYF’s in-house lawyers.¹⁰²
- 10.42 Currently, an in-house lawyer is employed in each CYF office; private lawyers are not engaged by CYF. New Zealand’s Crown Solicitor once had carriage of proceedings, but this no longer occurs.¹⁰³

MODELS OF LEGAL REPRESENTATION

- 10.43 In this section, we consider a number of different models for conducting litigation on behalf of the state.

PURCHASER/PROVIDER MODEL

- 10.44 The purchaser/provider (or client/lawyer) model is the standard form of legal services provision. In Australia, the lawyer’s professional role ‘is exemplified largely in the notion of the client’s authority delegated to the lawyer through the agency contract’.¹⁰⁴
- 10.45 The lawyer will often consult with his or her client objectively, with a view to outlining the realistic expectations of the legal course of action. In conveying to clients what is legally realistic, ‘most lawyers patiently, but insistently, remind their clients of the constraints that the law imposes on both of them, that is, of law’s definition of reality’.¹⁰⁵
- 10.46 Joint decision making is a factor in the client–lawyer relationship. However, conventional accounts of lawyers’ work do not readily acknowledge the client’s production role in legal service delivery.¹⁰⁶ The client’s role is integral to the production, as well as the consumption, of legal services.¹⁰⁷
- 10.47 Tension occurs when the client attempts to control the legal service process. This may prevent the lawyer carrying out his or her role and may also jeopardise the validity of court proceedings. The interplay of power and control also damages the professional relationship. Legal academics William Felstiner and Austin Sarat note that some clients remain ‘suspicious about the depth of commitment lawyers bring to their cases and their own ability to control the content and timing of their lawyers’ actions’.¹⁰⁸

INDEPENDENT STATUTORY OFFICE: OFFICE OF PUBLIC PROSECUTIONS

10.48 Many people suggested that the Commission consider the model of legal service delivery provided by the Office of Public Prosecutions, which conducts legal proceedings on behalf of the Director of Public Prosecutions. The Victorian prosecutions service, which is established by the *Public Prosecutions Act 1994 (Vic)*, encompasses the Director of Public Prosecutions (DPP), the Solicitor for Public Prosecutions, the Office of Public Prosecutions (OPP) and Crown Prosecutors.¹⁰⁹ This service is 'responsible for preparing and presenting cases against people accused of serious crimes',¹¹⁰ and is funded (in the main) by grants from the Department of Justice.¹¹¹

10.49 The OPP represents the DPP, operating like a large legal firm with the DPP as its only client.¹¹² The DPP is appointed by the Governor in Council.¹¹³ The DPP briefs Crown Prosecutors, private barristers from the Victorian Bar, or its own solicitor advocates in court matters.¹¹⁴ Matters prosecuted by the DPP and the OPP play a crucial part in the fair and effective operation of the Victorian criminal justice system.¹¹⁵ The OPP prosecution policies and guidelines for staff cover, among other considerations:¹¹⁶

- prosecutorial ethics (including an excerpt from the Victorian Bar Rules of Conduct on the duties of the prosecution in criminal matters)¹¹⁷
- the prosecutorial discretion
- the Crown's role on plea and sentence
- appeals by the Director
- application of model litigant guidelines
- early resolution of cases.

10.50 As the agency responsible for carrying out functions set out by the Victorian Parliament in the *Public Prosecutions Act 1994 (Vic)*, the OPP is required to adopt and incorporate the model litigant guidelines.¹¹⁸ The application of the model litigant guidelines is 'kept under review and may be issued in amended form at a later date'.¹¹⁹ This is discussed in more detail below.

96 See generally Child, Youth and Family (NZ), *An Interagency Guide to Breaking the Cycle: Let's Stop Child Abuse Together* (2001).

97 Telephone discussion with Allan Cooke, Barrister, New Zealand, 19 May 2010.

98 Child, Youth and Family (NZ), above n 96, 38.

99 *Children, Young Persons, and Their Families Act 1989 (NZ)* s 70.

100 *Children, Young Persons, and Their Families Act 1989 (NZ)* s 68.

101 Cooke, above n 97.

102 Ibid.

103 Ibid.

104 Michael Robertson, 'Principal, Producer and Consumer: The Client's Role in the Co-Production of Lawyers' Services' (2002) 6(1) *Newcastle Law Review* 35, 44.

105 William Felstiner and Austin Sarat, 'Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions' (1992) 77 *Cornell Law Review* 1447, 1463-4.

106 Robertson, above n 104, 35.

107 Ibid 36.

108 Felstiner and Sarat, above n 105, 1455.

109 Office of Public Prosecutions (Victoria), *Annual Report 2008/09* (2009) 5.

110 Ibid 6.

111 Ibid 45.

112 Office of Public Prosecutions (Victoria), *Annual Report 2007/08* (2008) 3.

113 Office of Public Prosecutions (Victoria), *Annual Report 2008/09*, above n 109, 5.

114 Ibid.

115 Office of Public Prosecutions (Victoria), *Annual Report 2007/08*, above n 112, 3.

116 See Office of Public Prosecutions (Victoria), *Prosecution Policies and Guidelines* (2010) <www.opp.vic.gov.au/wps/wcm/connect/justlib/office+of+public+prosecutions/home/opp++prosecution+policies+and+guidelines+%28pdf%29> at 28 June 2010.

117 See Office of Public Prosecutions (Victoria), *1. Prosecutorial Ethics* (2010) Appendix A <www.opp.vic.gov.au/wps/wcm/connect/46622580404a14a3abdcfbf5f2791d4a01_Prosecutorial_Ethics_with_AppendixAB.pdf?MOD=AJPERES> at 28 June 2010.

118 Office of Public Prosecutions (Victoria), *15. Application of the Model Litigant Guidelines* (2008) [15.1.4] <www.opp.vic.gov.au/wps/wcm/connect/18c9ac00404a14a4abfafbf5f2791d4a/15_Application_of_model_litigant_guidelines.pdf?MOD=AJPERES> at 28 June 2010.

119 Ibid [15.3.1].

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THE ROLE OF THE VICTORIAN GOVERNMENT SOLICITOR'S OFFICE AND THE GOVERNMENT LEGAL SERVICES PANEL

- 10.51 Many Victorian Government departments and agencies use the services of the Victorian Government Solicitor's Office (VGSO) when conducting litigation. In 1989, a Legal and Court Advisory Unit was established within DHS, consisting of solicitors out-posted from the VGSO, and Child Protection staff.¹²⁰ Restructuring in 1993 saw the creation of a new court unit, and the Department's arrangement with the VGSO ceased.¹²¹
- 10.52 The VGSO is the primary source of legal services to the Victorian Government and its statutory authorities.¹²² In contrast to the state-funded OPP, the VGSO is funded by fees earned from the provision of legal services¹²³ and 'displays all the characteristics of a whole-of-government in-house legal function for the State'.¹²⁴
- 10.53 The VGSO is a Victorian administrative office.¹²⁵ The Premier appoints the Victorian Government Solicitor on the recommendation of the Attorney-General.
- 10.54 The role of the VGSO is to help clarify and articulate legal issues, and to establish the most effective way to meet particular legal service or advice requirements, whether through one of the Government Legal Service Panel firms, barristers or the VGSO itself.¹²⁶ The VGSO maintains experience in whole-of-government issues, statutory interpretation, and issues requiring a high level of understanding of the Victorian Government.¹²⁷
- 10.55 There are many reasons why the VGSO may be a suitable 'vehicle' for the carriage of the Department's proceedings in the Family Division of the Children's Court. These include:
- the VGSO's independence
 - VGSO lawyers' litigation and case management experience
 - the significance of the VGSO being the Victorian Government's primary legal service provider
 - respect for the VGSO among the judiciary and members of the profession.
- 10.56 The VGSO has a practice of staff rotation in order to ensure that lawyers gain experience in a range of practice areas. This practice could be particularly important in an emotionally-charged jurisdiction such as child protection, where 'burn out' might contribute to high levels of staff turnover.
- 10.57 The VGSO continues to gain recognition as a competitive service provider in the legal services market.¹²⁸ Talented lawyers are increasingly attracted to practice in government law due to the variety of legal issues and rewarding career opportunities.¹²⁹

Government Legal Services Panel

- 10.58 A factor in the breadth of the VGSO's expertise is the implementation of the Government Legal Services Panel through the Legal Panel Gateway (LPG).¹³⁰ The LPG is a web-based interface that coordinates the arrangements for, manages and monitors the delivery of legal services to Victorian Government departments and participating statutory bodies. Access to the LPG is organised by a contract manager within each participating agency.¹³¹ All engagements of legal services under the panel arrangements must be arranged through the LPG.¹³²

- 10.59 Twenty firms are currently engaged on the Government Legal Services Panel.¹³³ All panel firms must participate in a formal tender process and are required to follow the model litigant guidelines (see further discussion below).¹³⁴
- 10.60 The Department currently uses the Government Legal Services Panel for metropolitan matters. In 2007, the Department was one of the top five purchasers of government legal services.¹³⁵ Additionally, in the financial year 2005–06, one third of the total Government Legal Services Panel usage of barristers was by clients directly briefing barristers, and slightly over half of these briefs were provided by the Department’s CAU.¹³⁶ The Department continues to utilise government legal services by directly briefing barristers through the LPG.¹³⁷

THE MODEL LITIGANT GUIDELINES

- 10.61 All legal practitioners have a duty to the administration of justice, the client, and the court as provided in the Law Institute of Victoria’s *Professional Conduct and Practice Rules 2005*¹³⁸ and the Victorian Bar Practice Rules.¹³⁹
- 10.62 As representatives of the state, the Department’s legal representatives are also required to uphold the *State of Victoria’s Obligation to Act as a Model Litigant* (the model litigant guidelines).¹⁴⁰
- 10.63 Model litigant guidelines acknowledge the nature of public bodies and ‘the resource and power advantages they enjoy over individual citizens’.¹⁴¹ They provide guidance to ensure that public agencies do not use their position to exploit litigants who are not as well resourced or as powerful.¹⁴²
- 10.64 The model litigant guidelines comprise three sections. First is a requirement that ‘[i]n order to maintain proper standards in litigation, the State of Victoria, its Departments and agencies behave as a model litigant in the conduct of litigation’.¹⁴³ Second, the guideline obligations are set out. Third are a number of notes that further elaborate on the guidelines.
- 120 Department of Human Services (Victoria), Email 15 June 2010, above n 28.
- 121 Ibid. See also submission 46 (Children’s Court of Victoria) 89, footnote 172: ‘It should be remembered that prior to May 1993, the task of representing the Department in the Family Division was performed by the Victorian Government Solicitor. Observations from that time by magistrates who still sit in the Children’s Court are that the process was efficient and served the Court well. At that time, the workload of the Court was confined to five courts (including Family and Criminal Division matters). Since then the case load in the Children’s Court has “exploded” and now 11 courts (including Moorabbin JC) are required to deal with cases in both Divisions, cases which appear to be becoming ever more complex and difficult. Now, more than ever before, an independent, specialised group of lawyers is required to conduct the Department’s cases in the Family Division.’
- 122 Department of Justice (Victoria), *Victorian Government Solicitor’s Office* (2009) <www.lawreform.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/about+us/our+organisation/justice+agencies/justice++victorian+government+solicitors+office++home> at 28 June 2010.
- 123 Zoe Lyon, ‘The Attraction of Going Public’ *Lawyers Weekly* (17 June 2009) <www.lawyersweekly.com.au/blogs/special_reports/archive/2009/06/17/the-attraction-of-going-public.aspx> at 28 June 2010.
- 124 Beaton Consulting, above n 24, 19.
- 125 See Information Victoria, *Victorian Government Directory* (35th ed, 2008) 297.
- 126 Department of Justice (Victoria), above n 122.
- 127 Victorian Government Solicitor’s Office, *More Than Just a Legal Adviser* (2009) <www.vgso.vic.gov.au/about-vgso/more-just-legal-adviser> at 28 June 2010.
- 128 Beaton Consulting, above n 24, 20.
- 129 Lyon, above n 123.
- 130 See Victorian Government Purchasing Board, *Legal Services Panel* (2010) Victorian Government Procurement <www.vgpb.vic.gov.au/CA2575BA0001417C/pages/state-contracts-legal-government-legal-services> at 28 June 2010.
- 131 Ibid.
- 132 Victorian Government Purchasing Board, *How to use this Contract: Guidance for Obtaining Legal Services* (2010) Victorian Government Procurement <www.vgpb.vic.gov.au/CA2575BA0001417C/pages/state-contracts-legal-government-legal-services-how-to-use-this-contract> at 28 June 2010.
- 133 Victorian Government Purchasing Board, *Legal Services Panel*, above n 130.
- 134 Department of Justice (Victoria), *Government Legal Services Annual Report 2007–2008* (2009) 3.
- 135 Ibid.
- 136 Beaton Consulting, above n 24, 18. The Commission understands that the high rate of barrister use by the Department is due to insufficient CAU resources to cover the average of 3000 applications each year: Department of Human Services (Victoria), Email 22 June 2010, above n 26.
- 137 See generally Department of Justice (Victoria), *Government Legal Services Annual Report*, above n 134.
- 138 Rule 13.1 reads: ‘A practitioner must not act as the mere mouthpiece of the client or of the instructing practitioner and must exercise the forensic judgments called for during the case independently, after appropriate consideration of the client’s and any instructing practitioner’s wishes where practicable.’
- 139 See The Victorian Bar, *Rules of Conduct & Compulsory Continuing Legal Education Rules* (effective 22 September 2009).
- 140 The guidelines are widely available, but can be found in the Standard Legal Services to Government Panel Contract and appear in the *Guide to Court Practice for Child Protection Practitioners 2007*. An outline of the guidelines appears in the section below.
- 141 Camille Cameron and Michelle Taylor-Sands, ‘“Corporate Governments” as Model Litigants’ (2007) 10(2) *Legal Ethics* 154, 154.
- 142 Ibid.
- 143 State Government of Victoria, *Guidelines on the State of Victoria’s Obligation to Act as a Model Litigant* (2004).

Option 4—Representing the Department of Human Services

10.65 The guidelines require that the State of Victoria, its Departments and agencies:

- (a) *act fairly in handling claims and litigation brought by or against the State or an agency*
- (b) *act consistently in the handling of claims and litigation*
- (c) *avoid litigation, wherever possible*
- (d) *pay legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid*
- (e) *where it is not possible to avoid litigation, keep the costs of litigation to a minimum, including by:*
 - i. *not requiring the other party to prove a matter which the State or the agency knows to be true and*
 - ii. *not contesting liability if the State or the agency knows that the dispute is really about quantum,*
- (f) *do not rely on technical defences unless the State's or the agency's interests would be prejudiced by the failure to comply with a particular requirement*
- (g) *do not take advantage of a claimant who lacks the resources to litigate a legitimate claim; and*
- (h) *do not undertake and pursue appeals unless the State or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest.*¹⁴⁴

10.66 The state must behave as a model litigant regardless of

*which Court, which claim, which area of law the claim involves, whether the ... State is plaintiff, defendant or third party, whether the claim is pre-litigation, interlocutory, trial appeal or even in a costs-recovery phase.*¹⁴⁵

10.67 As the Children's Court pointed out in its submission, the Department has a number of functions in relation to Family Division proceedings. The Department is:

- a party to proceedings
- the agency that generally initiates and conducts the proceedings
- the investigating body for reports made to the Department, and
- the body responsible for delivering assistance to children and families.¹⁴⁶

10.68 The Children's Court suggested that this range of functions is 'not entirely complementary', which sometimes results in the Department

*demonstrating a lack of objectivity in the way in which matters are litigated by it in the Children's Court and sometimes makes it difficult for the Department to perform properly the function of a model litigant.*¹⁴⁷

10.69 The strength of the model litigant guidelines is that there is an obligation to avoid litigation, or at least to keep the costs of litigation to a minimum. The model litigant principles are also important as they help ensure 'that the public has good reason to trust its public officials and the way its public officials and lawyers conduct litigation affecting rights of its own citizens'.¹⁴⁸ The guidelines suggest that there must be 'reasonable grounds' to issue any proceedings. 'Reasonable grounds' must include evidence and not merely a personal belief that a child is in need of protection.¹⁴⁹

- 10.70 A shortcoming of the model litigant guidelines is their commercial focus. Given the unique nature of child protection proceedings, it appears highly desirable to develop specific guidelines for use in this jurisdiction that recognise the state's obligations, parents' responsibilities and rights, and the need to always consider the child's best interests.
- 10.71 Another interesting development is the 2009 Victorian Parliamentary Law Reform Committee's *Inquiry into Alternative Dispute Resolution and Restorative Justice*.¹⁵⁰ The Law Reform Committee made two recommendations regarding model litigant guidelines, including the amendment of Victoria's model litigant guidelines to include requirements 'that the State of Victoria, its departments and agencies:
- cannot commence court proceedings until ADR [appropriate dispute resolution] processes have been considered
 - continue to consider using ADR and other settlement methods throughout the litigation process
 - participate fully and effectively in all appropriate ADR processes applicable to the dispute.'¹⁵¹
- 10.72 The Committee also recommended an annual review of compliance with the model litigant guidelines, and the publication of the review's results.¹⁵² The Victorian Government has accepted both of these recommendations in principle.¹⁵³ The Attorney-General is currently reviewing the model litigant guidelines.¹⁵⁴
- 10.73 In June 2010, the Attorney-General announced that all firms on the Victorian Government's Legal Services Panel and the VGSO had signed a pledge to promote ADR among their clients.¹⁵⁵ The Commission believes that the developments regarding the model litigant guidelines, including the emphasis on ADR, are particularly important for child protection proceedings.¹⁵⁶

THE COMMISSION'S VIEWS

- 10.74 The Commission acknowledges that many people and organisations, most particularly the Children's Court, supported the creation of a new statutory commissioner who would have the carriage of protection proceedings, in a way broadly similar to that in which the Director and the OPP conduct criminal proceedings on behalf of the state.
- 10.75 While the Commission sees some merit in the views raised, we do not believe that it is helpful to continue to view protection proceedings through a criminal law lens, or to adapt criminal law processes for use in this jurisdiction. We need to re-cast the way in which protection proceedings are characterised and devise processes that are specifically designed for use in that new model.
- 10.76 Commentators have referred to the possible tension that arises between in-house lawyers and their clients, largely because the employer is also the client.¹⁵⁷ The in-house lawyer may feel that their employment is jeopardised if they refuse to follow the client's instructions. Similar issues were raised in the Australia Law Reform Commission report *Privilege in Perspective: Client Legal Privilege in Federal Investigations*.¹⁵⁸
- 10.77 The role of in-house lawyers is often multilayered,¹⁵⁹ with the in-house lawyer 'more likely to act for purposes unrelated to legal proceedings than an external solicitor'.¹⁶⁰ The Commission believes that the Department's in-house lawyers sometimes feel under pressure to present arguments in Children's Court proceedings that have little merit. This is a matter of particular concern in regional offices because of the line management of the Department's lawyers.

- 144 Ibid.
- 145 Stephen Lee, 'The State as Model Litigant' (Paper presented at the 'VGSO Lunchtime Seminar', Melbourne, 28 September 2006) 1.
- 146 Submission 46 (Children's Court of Victoria) 87.
- 147 Ibid.
- 148 Lee, above n 145, 3.
- 149 Department of Justice (Victoria), *Guide to Court Practice*, above n 33, 9.
- 150 Law Reform Committee, Parliament of Victoria, *Inquiry into Alternative Dispute Resolution and Restorative Justice* (2009).
- 151 Ibid 158.
- 152 Ibid.
- 153 Victorian Government response to Law Reform Committee, Parliament of Victoria, *Inquiry into Alternative Dispute Resolution and Restorative Justice* (2009) 10 <www.parliament.vic.gov.au/images/stories/committees/lawreform/alternate_dispute/govt_resp.pdf> at 28 June 2010.
- 154 Rob Hulls, Deputy Premier and Attorney-General (Victoria), 'Landmark Pledge Commits Lawyers to Dispute Resolution', (Media Release, 18 June 2010) <www.premier.vic.gov.au/newsroom/10814.html> at 28 June 2010.
- 155 Ibid.
- 156 Refer to Chapter 7 for detailed discussion of ADR (called 'family decision-making') in child protection proceedings.
- 157 Maxine Evers and Jason Harris, 'The Duties of In-House Counsel: The Bold, the Bright and the Blurred?' (2009) 37 *Australian Business Law Review* 267.
- 158 Australia Law Reform Commission, *Privilege in Perspective: Client Legal Privilege in Federal Investigations*, Report No 107 (2008) [3.83]-[3.88], [8.101]-[8.103].
- 159 Evers and Harris, above n 157, 268.
- 160 *Sydney Airports Corp Ltd v Singapore Airlines Ltd* [2005] NSWCA 47 (Unreported, Spigelman CJ, Sheller JA and Campbell AJA, 9 March 2005) [24], quoted in Evers and Harris, above n 157, 268.

Option 4—Representing the Department of Human Services

UTILISING THE SERVICES OF THE VICTORIAN GOVERNMENT SOLICITOR'S OFFICE

- 10.78 The Commission believes that steps should be taken to overcome some of the current concerns about the way in which proceedings are conducted on behalf of the Secretary. The VGSO is well placed to provide Department staff with an independent assessment of evidence and frank advice about the merits of particular cases. It should also be able to ensure that lawyers are rotated at reasonable intervals, and that appropriately experienced solicitors conduct cases on the Department's behalf. Finally, because other members of the legal profession and the judiciary hold the VGSO in high regard, interaction with other lawyers and the Court might be easier with VGSO involvement than is presently the case.
- 10.79 For these reasons, the Commission believes that the VGSO is the most appropriate body to conduct child protection cases on behalf of the state in the Children's Court.

Possible mixed service provision

- 10.80 In 1999, the Commonwealth Government took the step of allowing private firms to complete Commonwealth Government litigation work by tender.¹⁶¹ This arrangement provides government agencies with a wider choice 'between in-house or external lawyers', with the selection of external lawyers primarily dependent on individual agencies.¹⁶² This also allows private law firms more variety in the type of work they offer.¹⁶³
- 10.81 Private tender and panel arrangements (such as the Government Legal Services Panel discussed above) offer government agencies a 'greater flexibility in a market competing to provide quality services at the best value, while ensuring that appropriate safeguards are in place'.¹⁶⁴ Panel arrangements are also common in the private sector, with large firms dividing legal work between their in-house legal team and external providers. This was discussed in the *Report of the Review of Commonwealth Legal Services Procurement*:
- Key to best practice in private sector organisations is a clear definition and understanding of the role of in-house lawyers, a sound knowledge of the market from which external services are purchased and the ability and willingness to cost work rigorously.*¹⁶⁵
- 10.82 One approach may be for the Department to conduct a trial of a mixed provision model, with the VGSO providing legal services to the Department in metropolitan matters. Government Legal Services Panel firms and the Department's in-house lawyers could supplement the VGSO's services. It is the Commission's view that a new model of mixed service provision will encourage competition and, in doing so, lift the standard of legal service provision as a whole. Moreover, a mixed model utilising the VGSO would have the added benefit of attracting a range of professionals to undertake child protection work but allow the development of professional skills through exposure to other areas of practice via rotation. It is the Commission's understanding that this approach has worked well for the Victoria Police/VGSO model.

Accommodating metro and regional considerations in a new operating model

- 10.83 Regardless of whether a mixed service provision model is adopted, the Commission recognises that due to practical necessity, a different model of legal representation is required in rural regions. One reason for this is that the VGSO and Government Legal Services Panel only service the Department's metropolitan areas.
- 10.84 The implementation of the proposed VGSO model would need to take into account the differences between rural and metropolitan practice. This may involve the continued negotiation of arrangements with some private solicitor firms in rural regions, or the arrangement for VGSO solicitors to be out-posted to rural regions. In preparing the model litigant guidelines, thought should be given to how the guidelines apply to private practitioners representing the Department in rural regions.

Proposal 4.1: The Victorian Government Solicitor should be primarily responsible for conducting proceedings on behalf of protective interveners in Victoria.

Proposal 4.2: The Victorian Government Solicitor should prepare, in conjunction with the protective interveners, and after consulting the Managing Director of Victoria Legal Aid and the President of the Children's Court, model litigant guidelines which are specifically designed for protection applications in the Children's Court.

Proposal 4.3: In preparing these guidelines, regard should be had to the following:

- a) the model litigant guidelines prepared by the State of Victoria
- b) relevant guidelines prepared by the Office of Public Prosecutions and the Director of Public Prosecutions
- c) relevant rules of the Victorian Bar Association and the Law Institute of Victoria.

Proposal 4.4: The model litigant guidelines should be evaluated and reviewed after they have been in operation for three years.

161 Prior to this, private firms could carry out most government legal work, apart from litigation.

162 Daryl Williams, 'Greater Competition for Commonwealth Legal Work' (1999) 26(8) *Brief* 23, 23.

163 *Ibid.*

164 *Ibid.* 'Appropriate safeguards' include model litigant guidelines.

165 Anthony Blunn and Sibylle Krieger, *Report of the Review of Commonwealth Legal Services Procurement* (2009) 30.

