

Chapter 6

Reform Options

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INTRODUCTION

- 6.1 The Attorney-General has asked the Commission to review the processes followed in the Family Division of the Children's Court and to identify reform options that may minimise disputation while maintaining a focus on the best interests of children. The terms of reference also asked the Commission to consider practices followed elsewhere that 'take a more administrative case management approach to child protection issues'.
- 6.2 The formal legal rules that determine the processes followed in the Family Division of the Children's Court are set out in Chapters 4 and 7 of the *Children, Youth and Families Act 2005* (Vic) (CYF Act 2005). This scheme is designed for use in a predominantly adversarial system of litigation. In broad terms, those parts of the CYF Act 2005 that deal with matters of Children's Court procedure are similar to the relevant legislation in many other Australian jurisdictions.
- 6.3 The relevant statutory provisions in the CYF Act 2005 and the practices followed in the Family Division of the Children's Court are discussed at some length in Chapter 3 of this report. As revealed in Chapter 2, the formal processes followed in the Family Division of the Children's Court have evolved since the mid-19th century, when the first Victorian child welfare legislation, the *Neglected and Criminal Children Act 1864* (Vic), permitted police to apprehend and charge children with being a 'neglected child' and courts to order that they be detained in an industrial school.¹ The procedures in that early legislation mirrored those used in summary criminal matters.
- 6.4 Even though child protection laws have changed significantly over the past 146 years, the link with summary criminal law procedure remains strong. The current processes in the Family Division of the Children's Court are similar to the procedures used in criminal matters in the Magistrates' Court. The language used by legal practitioners who work in the field of child protection emphasises the connection with criminal procedure. During consultations, DHS was often referred to as 'the prosecution', the Victorian Bar described the child protection jurisdiction as 'quasi-criminal',² and Family Division proceedings concerning interim placement were described as being similar to bail applications.³
- 6.5 Family Division processes reflect key elements of our justice system. The adversary—or adversarial—system is one of those elements. That term describes a system of justice in which the judge is a neutral umpire whose role is 'to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large'.⁴ As the Children's Court points out in its submission, in an adversarial system, 'the parties, and not the judicial officer, have the primary responsibility for defining the issues in dispute and for carrying the dispute forward'.⁵ Although this approach to the delivery of justice promotes the likelihood that the decision maker is impartial, and is seen to be so, it is not the only means of achieving these important goals.
- 6.6 Our legal system is moving away from a strict adherence to the adversarial system and new models of justice are emerging. A number of different, but overlapping, mechanisms are responsible for this change. They include practices and approaches that have attracted the shorthand terms of 'appropriate (or alternative) dispute resolution', 'problem-oriented' courts, 'case management', 'restorative justice' and 'therapeutic jurisprudence'.⁶ Together, these and other mechanisms have been characterised as 'non-adversarial justice'⁷ and 'the comprehensive law movement'.⁸ At the same time, some courts have shown a strong interest in using more inquisitorial procedures and governments have legislated to encourage this development.⁹

- 6.7 In the civil justice system, it is now commonplace to use mechanisms which actively promote a range of strategies that assist the parties to reach agreement rather than rely upon an adjudicated outcome. Agreement is facilitated by the use of structured processes, rather than as a by-product of preparing a case for hearing. These mechanisms also emphasise greater judicial control of cases, both prior to and during contested hearings when adjudication is necessary.
- 6.8 While these new processes are being adopted at different speeds and in different ways throughout the legal system, they are producing profound and lasting changes. They are attracting support at the highest levels of the judiciary. Former High Court Chief Justice, Murray Gleeson, recently said:
- The adversarial process, with a climactic trial as its final stage, is not the only procedure by which courts can resolve disputes fairly and efficiently. It is likely that, in the future, courts will continue to seek ways, consistently with the interests of justice, to modify their dependence on the trial process as a form of dispute resolution.*¹⁰
- 6.9 Civil procedure is experiencing rapid change, as demonstrated by the Civil Procedure Bill 2010 (Vic), which was developed in close consultation with the judiciary. The Attorney-General said that the proposed reforms sought 'to build a culture in which litigants were empowered to resolve their disputes without going to court, and would encourage the use of appropriate dispute resolution (ADR)'.¹¹
- 6.10 In criminal trials, which are often seen as the 'high point' of the adversary system, the courts are playing a much stronger role in directing the course of proceedings and in assisting the ultimate decision maker, the jury, to reach a verdict that is fair and just. Victoria's new *Criminal Procedure Act 2009* (Vic) contains many provisions that promote judicial case management and encourage greater judicial control over trials.¹² Problem-oriented courts such as Victoria's Neighbourhood Justice Centre and the Koori Court seek to use the authority of the court to address not only offender behaviour, but also the societal problems that lead to crime.
- 6.11 Many of the Child Protection Proceedings Taskforce's¹³ recommendations involve new ways of resolving child protection matters without using adversarial processes. The Taskforce recommended that three matters be referred to the Commission for consideration as part of this report. They are:
- Whether the CYF Act 2005 should be amended to enable the Children's Court to conduct less adversarial trials.
 - Whether any subsequent amendments to the CYF Act 2005 are needed to reflect the new approach to resolution conferences.
 - Whether it is in the best interests of an apprehended child that section 242(3) of the CYF Act 2005 be amended to extend the period within which DHS must bring a safe custody application from 24 hours to 72 hours.¹⁴
- 6.12 The first and third matters are considered at some length in Chapter 8. The second matter is considered within the discussion of family decision-making processes in Chapter 7. Many of the proposals within Chapters 7 and 8 may require amendments to the CYF Act 2005. The Commission has not listed these amendments individually, but has dealt with the matter by outlining the principles that should be taken into consideration when amendments are drafted.

- 1 *Neglected and Criminal Children Act 1864* (Vic) ss 13–15.
- 2 Submission 48 (The Victorian Bar).
- 3 Springvale Legal Service, *Lawyers Practice Manual Victoria* (2009) [6.2.403].
- 4 *Jones v National Coal Board* [1957] 2 KB 55 at 63–5 (Lord Denning).
- 5 Submission 46 (Children's Court of Victoria) 28.
- 6 These practices and related approaches are described and discussed in Michael King et al, *Non-Adversarial Justice* (2009).
- 7 *Ibid.*
- 8 Susan Daicoff, 'Law as a Healing Profession: The "Comprehensive Law Movement"' (2006) 6 *Pepperdine Dispute Resolution Law Journal* 1.
- 9 The 'less adversarial trial' (LAT) process in federal family matters is discussed in detail in Chapter 4.
- 10 Murray Gleeson, 'The Judicial Method: Essentials and Inessentials', (Paper presented at the District and County Court Judges' Conference, Sydney, 25 June 2009) 8.
- 11 Rob Hulls, Deputy Premier and Attorney-General (Victoria), 'Landmark Civil Justice Reforms to Change Court Culture' (Media Release, 21 June 2010).
- 12 See, for example, *Criminal Procedure Act 2009* (Vic) ss 179, 181–3, 222–5.
- 13 Child Protection Proceedings Taskforce, *Report of the Child Protection Proceedings Taskforce* (2010).
- 14 *Ibid.* 13.

THE RELEVANT INTERESTS

- 6.13 The terms of reference ask the Commission to ‘consider models that take a more administrative case management approach to child protection issues’. Before addressing this point, it is important to identify the interests at stake in child protection matters because the procedures that are used when legal rights and responsibilities may be altered are often determined, at least in part, by the nature of the interests in question.
- 6.14 As discussed in Chapter 3, child protection proceedings are neither criminal nor civil in nature. The Family Division of the Children’s Court exercises a unique jurisdiction dealing with at least three different, overlapping interests that are sometimes not easily reconciled. The three interests that arise in most cases are:
- the family’s interest to live as it chooses without external interference
 - the state’s interest in protecting its vulnerable members, such as children, and in promoting their human rights
 - the child’s interest in being treated as an independent person who has rights of his or her own which sometimes may differ from those of the family and the state, especially when that child’s future wellbeing is being determined.
- 6.15 In many cases, additional interests must be considered, such as those of other family members who may have a close relationship with the child and those of other people who are carers of the child.
- 6.16 The content of these various interests is prone to change as ideas about the relationships between children and their parents, and the state and its members evolve. It is difficult, for example, to define with any clarity the point at which the parents’ authority to raise their children according to their own dictates ceases and the state’s capacity to assume some or all of the parents’ responsibilities commences. It is also just as difficult to determine the point at which a child’s interest in remaining with his or her family, even in circumstances that are less than ideal, must give way to the state’s responsibility to protect its vulnerable members from abuse or neglect.
- 6.17 While the CYF Act 2005 provides that ‘the best interests of the child must always be paramount’ and contains a number of principles to guide decision makers, it does not seek to define the various interests involved in child protection proceedings or direct how they interact. The ‘best interests’ principle seeks to promote discretionary decision making by identifying important values that can be used to respond to the varying needs of each child.
- 6.18 Some critics of the ‘best interests’ principle suggest that it is too indeterminate and subjective to be of use in particular cases.¹⁵ The statement of the ‘best interests’ principle in section 10 of the Act is expressed in such broad terms that former Supreme Court justice Tim Smith reported in his submission that he had become ‘confused, mentally exhausted and had lost sight of what is the ultimate question’ when attempting to apply the section.¹⁶

- 6.19 The child protection jurisdiction has been characterised by two important but sometimes clashing approaches to the child's best interests. These approaches have been called the 'welfare' and the 'justice' views of child protection.¹⁷ Under the welfare view, the child's best interests are defined by the behaviour of the child and parents, individual and environmental influences, and the child's needs. In the justice view, the child's best interests are defined by statutory standards and determined by legally admissible evidence. Human rights considerations, especially the more recent acceptance of children's rights, have been incorporated into the justice view of child protection so that there is a strong emphasis on children and parents' rights to family life.¹⁸
- 6.20 The statement of best interests principles in section 10 of the CYF Act 2005 does little to address the differences between the welfare and justice approaches. While there appears to be widespread support for the paramountcy of the best interests principle, key participants in child protection matters do not always appear to have a shared view of how the principle should be applied in individual cases. Different parts of section 10 may be relied upon for an outcome that supports either a welfare or a justice view of child protection. Beyond sharing a commitment to children's best interests, there appears to be only limited debate among the major participants in the child protection system about the specific values behind the best interests principle and those that are most important in particular cases. There would be great value in establishing processes that encouraged ongoing discussion about this central issue.

ADMINISTRATIVE CASE MANAGEMENT

- 6.21 The capacity to take a more administrative case management approach to child protection issues is influenced by natural justice entitlements. The common law, the *Charter of Human Rights and Responsibilities 2006* (Vic) (the Charter) and international human rights instruments all require that an impartial decision maker give the primary interest holders in child protection matters—the parents and the child—a fair hearing before any decision that interferes with their interests is made. While these natural justice, or procedural fairness, obligations can be overridden by statute, it is highly unlikely that the Victorian Parliament would wish to do so.

Common law principles

- 6.22 Parents have complex common law rights and responsibilities. Those rights and responsibilities are also recognised in the Charter and in international human rights instruments. Children also have rights recognised by the common law, the Charter and in international human rights instruments, most notably the *Convention on the Rights of the Child* (CROC).¹⁹
- 6.23 In *J v Lieschke*, two members of the High Court sought to characterise some of the common law rights and responsibilities when considering the right of parents to be heard in child protection proceedings.²⁰ Both Justices Brennan²¹ and Deane²² suggested that a parent's rights and authority are similar to those of a trustee, because they must be exercised for the benefit of the child and because they can be overridden by the courts, either in the exercise of a statutory child protection jurisdiction or by use of the *parens patriae* power.²³ Justice Brennan also referred to a child's right to be nurtured, controlled and protected by his or her parents,²⁴ while Justice Deane referred to 'the right of both parent and child to the integrity of family life'.²⁵

15 See, for example, Patrick Parkinson, *Australian Family Law in Context: Commentary and Materials* (4th ed, 2009) 633–40; Anthony Dickey, *Family Law* (5th ed, 2007) 290–4.

16 Submission 9 (Tim Smith).

17 Rosemary Sheehan, *Magistrates' Decision-Making in Child Protection Cases* (2001) 58, 63.

18 Human rights considerations in the context of child protection are discussed at length in Chapter 3.

19 *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990).

20 (1987) 162 CLR 447.

21 *Ibid* 458.

22 *Ibid* 463.

23 This is a power exercised by the courts, originally delegated from the sovereign, to care for children in need as the 'parent of the country'.

24 *J v Lieschke* (1987) 162 CLR 447, 458.

25 *Ibid* 463.

6.24 The entire Court concluded that parents have a common law right to be heard in child protection proceedings. After referring to the fact that parental rights have ‘deep roots in the common law’, Justice Deane said:

*In the absence of an unmistakable legislative intent to the contrary, they cannot properly be modified or extinguished by the exercise of administrative or judicial powers otherwise than in accordance with the basic requirements of natural justice.*²⁶

6.25 This issue is significant when considering models that take a more administrative case management approach to child protection issues. While many state decisions are made by administrative means, and while ‘a trial is not necessarily the best, or the fairest, or the most efficient, and it is usually not the most economical, way of making a decision’, judicial processes are important in determining significant interests because of the messages conveyed to the community ‘about process as well as outcome’.²⁷ As former Chief Justice Murray Gleeson has pointed out, the messages conveyed when the decision maker is a judge, a tribunal or a court are ‘independence, impartiality, certain standards of fairness and openness in the process, and apolitical decision-making’.²⁸

6.26 Any attempt to move toward a more administrative case management approach to child protection issues would need to address the common law rights of parents as well the human rights of children, parents and families as recognised in the Charter and CROC. Any legislation that interferes with fundamental common law rights, such as those of parents, would be measured against what has been referred to as the principle of legality and the clear statement principle.²⁹ In broad terms, this means that parliaments must legislate clearly and specifically if they want the courts to interpret legislation in a way that interferes with fundamental common law rights.³⁰

6.27 As pointed out in Chapter 3, the Charter contains the right to a fair and public hearing by a competent, independent and impartial court or tribunal when a person is charged with a criminal offence or is party to civil proceedings.³¹ Despite the unique nature of the child protection jurisdiction—it is neither truly civil nor criminal—the Charter right to a fair hearing clearly applies in these cases. Article 12 of CROC also provides that states parties shall allow a child to express views freely in all matters affecting him or her.³² This article requires that a child be provided with an opportunity to be heard in any proceedings affecting him or her, either directly or through a representative.³³ These Charter and CROC rights would need to be considered before an administrative case management approach was adopted in this jurisdiction.

6.28 Given the significance of the interests at stake in child protection proceedings, the Commission believes it is important that a decision maker with the attributes described by Chief Justice Gleeson, rather than an administrative body, should determine rights and responsibilities when parties are unable to reach agreement. Currently, in most child protection cases agreement is reached, albeit after a number of court events. The processes used in reaching those agreements, and in some cases the content of those agreements, generate concern among critics of the current system.

NEW PROCESSES FOR CHILD PROTECTION MATTERS

- 6.29 The Commission believes that Victoria should move away from child protection procedures that closely resemble those used in summary criminal prosecutions. The processes used in child protection matters should be designed specially for this unique jurisdiction. Much can be drawn from experiences elsewhere in the legal system to guide procedural changes that may minimise disputation while maintaining a focus on the best interests of children.
- 6.30 New procedures should reflect the fact that most child protection cases will be resolved by agreement. This is clearly a desirable outcome in proceedings of this nature when the parties will usually have important ongoing relationships. As the Children’s Court said in its own submission:

*The Court accepts that the Court should be an option of last resort. It is, therefore, supportive of the establishment of best practice ADR being conducted prior to applications being lodged in court, where appropriate.*³⁴

- 6.31 At present, there is a substantial gap between the design of the Court’s processes and the realities of most cases. Current procedures are based on the assumption that most child protection applications will proceed to hearing. The procedures do not reflect the fact that most matters will be resolved by agreement, yet more than 97 per cent of cases are settled.³⁵ These agreements are often reached informally and without external assistance or systematic protections as part of the process of moving towards a contested hearing through a mention process.
- 6.32 The mention process can be long and difficult. Research indicates that during 2008–09 protection applications commenced by way of safe custody at the Melbourne Children’s Court required an average of 4.9 mentions before they were resolved. Protection applications commenced by way of notice required an average of 3.4 mentions.³⁶
- 6.33 Procedures specially designed for use in child protection matters can draw upon the non-adversarial mechanisms used in other parts of the legal system to assist people to reach agreement rather than rely upon an adjudicated outcome. The Children’s Court acknowledged the significance of these mechanisms in its submission:

*The Court is of the strong view that child protection hearings should be able to be conducted in a less adversarial way and that this can best be achieved in three ways. First, by strengthening its ADR processes. This is likely to result in cases being resolved more expeditiously and may also result in a reduction in contested hearings. Second, by adopting most of the legislative provisions which underpin the Less Adversarial Trial initiative of the federal jurisdiction in relation to children. Third, by adopting innovative ‘problem solving’ approaches in the Family Division.*³⁷

AN OVERARCHING OBJECTIVE

- 6.34 The Commission believes that it is useful to identify an overarching objective for new procedures that are specially designed for use in child protection matters. That objective is:

The processes for determining the outcome of protection applications should emphasise supported child-centred agreements and should rely upon adjudication by inquisitorial means only when proceeding by way of supported agreement is not achievable or not appropriate in the circumstances.

- 6.35 This objective is reflected in the five options for reform that are identified in this chapter and which are developed later in this report.

26 Ibid 447, 463–4.

27 Gleeson, above n 10, 12.

28 Ibid 13.

29 James Spigelman, ‘Principle of Legality and the Clear Statement Principle’ (2005) 79 *Australian Law Journal* 769.

30 Ibid.

31 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 24(1). This right is modelled on article 14(1) of the ICCPR: *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, art 14(1) (entered into force 23 March 1976); Explanatory Memorandum, *Charter of Human Rights and Responsibilities Bill 2006* (Vic) 18.

32 *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, art 12(1) (entered into force 2 September 1990).

33 Ibid art 12(1).

34 Submission 46 (Children’s Court of Victoria) 42.

35 Ibid 23.

36 *Boston Consulting Group, Child Protection Proceedings Taskforce: Children’s Court Data* (2010) 11.

37 Submission 46 (Children’s Court of Victoria) 30.

PRINCIPLES THAT HAVE GUIDED THE DEVELOPMENT OF THE OPTIONS

6.36 Sections 8–14 of the CYF Act 2005 contain the general principles that underpin the entire legislative scheme. These principles were discussed at length in Chapter 3. Some of the principles that are of particular relevance when considering matters of process are:

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

6.37 The Commission believes that it is useful to devise principles to govern the processes used when determining whether a child is in need of protection. The principles are:

- The processes should actively encourage early resolution by agreement whenever appropriate.
- The processes should be child-centred.
- The processes should actively encourage inter-professional collaboration so that decision makers have access to the best information on child development and wellbeing.
- 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.
- When an agreed outcome is not possible, a court should determine whether a child is in need of protection and the intervention that is required in order to promote the child's wellbeing.
- The Court should be an inquisitorial and problem-oriented decision maker.

OPTIONS FOR REFORM

6.38 The Commission has devised five options for reforming the processes used in child protection matters. These options reflect the general principles that govern the entire legislative scheme concerning the protection of children. They have also been guided by the specific principles devised by the Commission concerning the processes used for determining the outcome of protection applications.

6.39 The options 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 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.

6.40 These options are discussed in detail in Chapters 7 to 11 of the report. The Commission has advanced a number of proposals within each option. The reasons for each proposal are also fully explained in these chapters.

HOW THE OPTIONS INTERACT

6.41 Although all five options could be adopted, they are not presented as a single integrated scheme. Some, all, or parts of the options may be chosen to bring about a new system for dealing with child protection matters.

6.42 The options are designed to change the processes associated with protection applications with the aim of minimising disputation while maintaining a focus on the best interests of children.

6.43 Options 1 and 2 involve no changes to the overarching structure of the current system. They do involve significant change to the way in which protection applications are conducted in the Children’s Court and to the steps that should usually occur before an application is commenced. Option 2 contains a number of separate, but connected proposals for change. Options 1 and 2 overlap and are preferably adopted together.

6.44 Option 3 involves a significant change to the overarching structure of the current system. If this option is chosen, as well as all or part of Options 1 and 2, the proposals that fall within Options 1 and 2 will need to be modified slightly in order to operate within the new framework. Some of the important new roles and functions that are proposed in Options 1 and 2 could be performed by the Office of the Children and Youth Advocate.

6.45 Option 4 involves change to the way in which protection applications are conducted on behalf of the Secretary of DHS. Option 5 involves change to the functions and powers of the Child Safety Commissioner.

38 Victorian Law Reform Commission, *Review of Child Protection Legislative Arrangements Information Paper* (2010).

39 Child Welfare Practice and Legislation Review, *Report: Equity and Social Justice for Children, Families and Communities* (1984) vol 2, 239.

WHERE THE COMMISSION'S FINAL OPTIONS DEPART FROM THE INFORMATION PAPER

6.46 In February 2010, the Commission published an Information Paper describing the background to the reference and containing a number of questions concerning possible reform options. The Commission noted that

We have identified four areas where reform may be possible. Identification of these areas does not represent any final thinking on the part of the Commission.

No doubt, there are different ways of characterising the many components of our child protection system and different aspects of that system that may benefit from reform other than those identified in this paper.³⁸

6.47 The Commission also noted that within the short period allocated to the reference we would consult as broadly as possible and encourage submissions from all Victorians with an interest in child protection legislative arrangements.

6.48 We have now had time to consider the many views advanced in submissions and during consultations. As a result, the Commission has chosen not to pursue one of the options identified in the Information Paper. A second option has been refined following further research and consultation.

Options not being pursued

6.49 In the Information Paper, the Commission asked whether it would be advisable to change the membership of the ultimate decision maker in child protection matters so that it includes both judicial and non-judicial members. The Carney Committee originally advanced this proposal in 1984.³⁹

6.50 The Commission has not pursued this alternative for two reasons. First, it proved to be a highly controversial option that threatened to place too much emphasis upon adjudicated outcomes and draw attention away from the widespread support for processes that emphasise supported child-centred agreements whenever possible. Secondly, this option raised a number of constitutional complexities because of the interaction between Commonwealth family law and Victorian child protection laws. It seemed unwise to imperil the operation of a new procedural scheme by including proposals which could have been open to the uncertainties and delay associated with a constitutional challenge.

6.51 The Commission also asked whether some of the functions currently performed by the Secretary of DHS should be given to an independent statutory commissioner. One of the functions identified was the carriage of child protection proceedings on behalf of the state before the Children's Court. The Commission has not pursued this alternative for two reasons. First, the Commission concluded that this option, with its parallels to the Director of Public Prosecutions' process for criminal proceedings, had the potential to maintain historical, but unhelpful, connections between child protection applications and criminal prosecutions. Secondly, the Commission has developed a simpler alternative proposal in Option 4 that an existing body with professional separation from DHS should conduct child protection proceedings on behalf of the state.