

CHAPTER 2

CONTEMPORARY FRAMEWORK FOR CHILD PROTECTION – STRUCTURE, SERVICES AND PROCESSES

While some would argue that Australia's current child welfare system presents a marked attitudinal shift away from the Dickensian child care policies practised earlier this century, others could argue that nothing has changed from our colonial days where control and authority over children and families was the order of the day. There are a number of Australian child welfare and social policy analysts who have argued the history of state intervention in the area of child welfare has been one of control rather than the provision of assistance that might be in the best interests of the child or his/her family.¹

Australian society is already experiencing...an increasingly numerous 'underclass' with entrenched inter-generational deprivation and lack of social progress; an increasingly marginalised, disempowered subset of the community...this group is increasingly able to interact only with each other...the greatest cost to us as a broad community, is the untapped potential of these children and adults who are trapped in an environment where their talents, skills and abilities will not see the light of day except through exceptional effort and struggle.²

Introduction

2.1 As outlined in other chapters, the Committee heard evidence about many child welfare issues across Australia, much of it painting a dismal picture about child abuse in out-of-home care and institutions for children with disabilities and juvenile detention centres. Evidence related to many issues, including the unavailability of national data on child abuse; calls for national legislation for the care and protection of children; and the increasing number of children and young people from indigenous backgrounds and with disabilities who are being placed in juvenile justice centres.

2.2 This chapter considers the framework and processes of Australia's child protection system that entails the interaction of different laws and legal systems, not only between the federal arena and the States and Territories, but also among the States and Territories. As such, the Committee has considered aspects of the Commonwealth's *Family Law Act 1975* (FLA) and the relevant State and Territory child protection Acts.

1 *Submission 71*, p.12 (Catholic Welfare Australia), quoting Dickey B, 1987, *No charity there: a short history of social welfare in Australia*, Sydney, Allen & Unwin.

2 *Submission 160*, p.7 (Mofflyn).

2.3 The States and Territories each have a range of agencies which work to protect children, though their functions vary. Some bodies have investigatory powers while others take on advocacy and coordination roles.³ Some jurisdictions have children's commissioners and/or officials such as children's advocates or guardians and their responsibilities differ. As with other areas of service delivery in Australia, many programs to assist children and young people in need of care are administered by State-Territory and Commonwealth Governments, often with assistance from non-government agencies. It can be difficult to determine which sector or service provider has responsibility for some programs, irrespective of the jurisdiction. Overall, Australia's child welfare system has been described as:

...fragmented by numerous jurisdictions and a variety of responsible bodies. This often leads to less-than-ideal results for children where there are multiple agencies involved in their life with little coordination between them. The system is so disorganised at times that agencies can attempt to pass responsibility to others so as to minimise their workload, without cognisance of the impact on children and families.⁴

Legal and government framework for child protection

2.4 In 1997, the Australian Law Reform Commission (ALRC) noted over 230 pieces of Commonwealth, State and Territory legislation in Australia to deal with issues for children, with their administration beset by policy inconsistencies and duplication and gaps in services. The ALRC wrote that the division of responsibilities between different levels of government and departments within each level of government ensues in children and families often having to negotiate a complex web of agencies when they come into contact with legal processes.⁵

Commonwealth's role in child protection

Family Law

2.5 Under Australia's constitutional arrangements, the Commonwealth has a role in protecting children under the *Family Law Act 1975* (FLA) (the principal Act dealing with legal aspects of Australia's family law system). Part VII of the Act focuses on children, children's 'best interests', parental responsibility, and children's right to know and be cared for by both parents and have regular contact with both parents and any other person significant to their care, welfare and development, unless it is contrary to the child's best interests. Under the FLA the Commonwealth's substantial role in child protection arises through cases in Australia's Family Court and the Federal Magistrates Service (which deals with less complex cases) under the

3 Australian Law Reform Commission (ALRC), *Seen and heard: priority for children in the legal process*, Report No. 84, Human Rights and Equal Opportunity Commission, 1997, p.151.

4 Lynch, Francis, 'Australian needs a uniform national approach to child-protection legislation', *On line opinion*, Monday 15 April 2002.

5 ALRC 1997, pp.80-81.

FLA. Family law cases in Western Australia are dealt with under an independent State-based Family Court which was established in 1976 under the *Family Court Act* and which mirrors the FLA.⁶

2.6 The example below shows how the workings and responsibilities of the Family Court and the State and Territory child protection agencies can result in situations where children may be left unprotected, particularly regarding child abuse allegations.

2.7 Specifically, overlaps can occur in responsibility for some child protection matters between the State and Territory children's courts and the Family Court or Federal Magistrates Service. This can be particularly serious given that despite a quarter of the cases before the Family Court involve child abuse claims, that court has no independent power to investigate such allegations, and, less than 10 per cent of the allegations transpire to be false.⁷ While FLA provisions require that child abuse reports be made to the relevant State or Territory child protection authority, at times further action is not taken for reasons that include variances between some State and Territory legislation and the FLA regarding contact orders and other issues. As well, FLA definitions of 'abuse' are wide and may not be considered to be of the utmost seriousness or necessarily reportable under State or Territory legislation.⁸

2.8 The NSW Commission for Children and Young People raised an issue of concern, noting that the adversarial nature of many family law cases can result in a downplaying by State and Territory representatives of accusations of abuse of children in Family Court disputes.⁹ Therefore, a potential exists for children to be returned to unsuitable or unsafe circumstances because abuse allegations raised in family law proceedings are not followed up by a State child protection authority. It has been argued that the adversarial nature of many family law cases may reflect the often effective use by defence lawyers of the Parental Alienation Syndrome, which 'begins from the premise that children who allege serious abuse by a parent are lying and that they are made to lie by an apparently protective parent'. However, 'extensive empirical research findings [have shown] that false allegations of child abuse are very much the exception rather than the rule'.¹⁰

6 Kerin P and Murphy P, 'Overview of an emerging model of an integrated family court system', Paper presented at the Eight Australian Institute of Family Studies Conference, Melbourne, 12-14 February 2003, p.3.

7 Ellingsen P, 'Too close to home: the hidden horror of child abuse', *The Sunday Age*, 24 October 2004, pp.1-8.

8 Family Law Council, *Family Law and Child Protection*, Final Report, September 2002, pp.9-10, 34-35.

9 *Submission 35*, p.22 (NSW Commission for Children and Young People).

10 McInnes Elspeth 'Parental Alienation Syndrome: family law's paradigm for child abuse', *On Line Opinion*, 19 May 2003, pp.1-2.

2.9 A Family Law Council inquiry has found that neither the State or Territory child protection system nor the Family Court system necessarily protects children and that this systemic failure could have the most serious and damaging consequences for children's lives.¹¹ The Family Law Council has recommended measures including the establishment of a Commonwealth independent Child Protection Service (CPS) to investigate family law child abuse concerns and to avoid duplication with State and Territory child protection authorities' work. The CPS would be based on the Magellan Project, a Melbourne-trialled program that assists quick resolution of family law cases involving allegations of child abuse, independently of State and Territory child protection services.¹² Under the project, which includes agencies such as the Family Court, Legal Aid and Police, the Victorian Department of Human Services undertook to investigate all child abuse allegations and to provide a written report to the Court. As well, uncapped Legal Aid was made available to children, and other parties (subject to the normal means and merit test).¹³

2.10 Overall, the Magellan Project proved to be valuable especially for its ability to streamline processes and decrease the proportion of distressed children in the courts. Its other recorded attributes include: higher levels of satisfaction, both for parents and for their children; and an emphasis on minimising harm to the child and providing transparency processes for the child and his/her parents.¹⁴ Magellan has been implemented in all Family Court registries in all States except New South Wales¹⁵ and in Western Australia (where the Columbus Project provides case management similar to that undertaken by Magellan).¹⁶ The Commonwealth Government has not implemented the Family Law Council's call for a national child protection service; however, a number of inquiries into children's care and protection including the NSW Parliament's Standing Committee on Social Issues, have expressed support for the establishment of a national child protection service.¹⁷

International agreements and treaties

2.11 The Commonwealth Government has also supported, signed and ratified a number of international agreements regarding the rights of the child. The Human Rights and Equal Opportunity Commission (HREOC) has a statutory responsibility for promoting the United Nations Convention on the Rights of the Child (UN

11 Family Law Council 2002, p.49.

12 Family Law Council 2002, pp.24-25, 58-59.

13 Parliament of NSW, Legislative Council Standing Committee on Social Issues, *Care and Support: Final Report on Child Protection Services*, Report 29, December 2002, p.133.

14 Brown, Thea, 'Project Magellan', Paper presented at: Child sexual abuse: justice response or alternative resolution conference, convened by the Australian Institute of Criminology, Adelaide 1-2 May 2003, pp.7-9.

15 Family Court of Australia, *Annual Report 2003-2004*, p.3 – www.familycourt.gov.au

16 Kerin and Murphy 2003, p.3.

17 *Care and Support*, p.135.

Convention) in Australia. HREOC's work includes examining existing and proposed laws to ascertain their consistency with children's rights, advising governments and investigating complaints about Commonwealth practices that may be inconsistent with children's rights.¹⁸

Funding of programs

2.12 The Commonwealth has established and maintained initiatives for children, young people and families mainly through the Department of Family and Community Services (FaCS) which funds assistance and intervention programs. Many Commonwealth programs have been devolved to the States and Territories for services to families in crisis. Such programs are discussed later in this chapter.

State and Territory child protection

2.13 While the Commonwealth has some role in protecting children and young people and their families, the prime responsibility for children's courts and child welfare legislation and associated administrative bodies, particularly for abused and neglected children rests with State and Territory Governments. State and Territory Governments have branches within their community services departments to deal with issues related to children's care and protection. Examples of State and Territory departments which deal specifically with the care and protection of children are the NSW Department of Community Services (DoCS), the Queensland Department of Child Safety, Western Australia's Department for Community Development, the South Australian Department of Families and Communities and the Department of Health and Community Services in the Northern Territory. In the ACT since the Vardon Inquiry into the safety of children in care, an Office for Children, Youth and Family Support has been set up in the Department of Disability, Housing and Community Services.

2.14 When warranted, State or Territory child protection authorities may take action under their legislation in their children's or youth courts for determination if a child or children are in need of care and protection. Any subsequent child protection order may result in a child being removed from a family and placed in some type of out-of-home care such as foster or kinship care. The following legislation is in place in States and Territories; some of which is under review or being updated:

New South Wales	<i>Children and Young Persons (Care and Protection) Act 1998</i>
Victoria	<i>Children and Young Persons Act 1989</i>
Queensland	<i>Child Protection Act 1999</i>
Western Australia	<i>Children and Community Services Act 2004</i>
South Australia	<i>Children's Protection Act 1993</i>

18 ALRC 1997, p.142.

Tasmania	<i>Children, Young Persons and Their Families Act 1997</i>
Australian Capital Territory	<i>Children and Young People Act 1999</i>
Northern Territory	<i>Community Welfare Act 1983</i>

2.15 The legislation provides the legal framework for matters concerning children such as foster care arrangements, residential and professional care, processes to notify authorities about child abuse, and where appropriate, details of the appointment, roles and responsibilities of officials such as children's commissioners and children's guardians. They also outline the roles of administering departments and grounds under which children and young people may be placed by community services departments on care and protection orders, and the rights of parties in any legal proceedings for the protection of children and young people.

2.16 Some evidence has described the underlying tenets of Australia's welfare laws as out of date:

...the social mores and government priorities that have influenced the development of child welfare services in Australia during the last century...were inculcated into earlier child welfare legislation and practices. This...has [affected] the current child welfare laws, their administration, and the collective or corporate conscience of government officers...implementing child welfare and protection laws.¹⁹

2.17 As noted, there are differing legislative provisions among the States and Territories that govern children's care and protection. All Australian jurisdictions, except Western Australia have mandatory reporting of child abuse requirements,²⁰ however, even among those with mandatory reporting, variations exist about whom has been mandated and what incidents or circumstances require a mandated person to report.²¹ Regardless of the jurisdiction, Family Court personnel, counsellors, mediators or child welfare officers, who in the course of their work during family law proceedings, form a suspicion on reasonable grounds that a child has been abused, or is at risk of being abused, are subject to mandatory reporting rules.²²

2.18 State and Territory legislative provisions differ about when a child would be classified as being in need of care and protection or as being at risk. Some jurisdictions' Acts are more explicit and detailed than others. Definitions vary for the

19 *Submission 71*, p.12 (Catholic Welfare Australia).

20 Mandatory reporting is defined in relevant legislation. It specifies that persons must report child abuse to the relevant community services department. Reporting rules and what may warrant reporting, vary among jurisdictions. See: AIHW, *Child protection Australia 2003-04*, AIHW cat. no.24, Canberra:AIHW (Child Welfare Series no.36), 2005, pp.1; 69-71

21 Lynch 2002.

22 Family Law Council, *The best interests of the child? The interaction of public and private law in Australia*, Discussion paper no. 2, Family Law Council, October 2000, Appendix A.

reporting, investigation and intervention in cases of suspected abuse.²³ Differences exist among jurisdictions classifications of abuse, ie, physical, sexual, emotional or neglect. The definition of what constitutes child abuse and neglect has changed and broadened over the last decade. The focus of child protection in many jurisdictions has shifted away from the identification and investigation of narrowly defined incidents of child abuse and neglect towards a broader assessment of whether a child or young person has suffered harm.²⁴ Each jurisdiction has a point below which statutory child protection intervention is not warranted. These thresholds vary, with Victoria, NSW and South Australia respectively determining 'significant harm', 'in need of care' and 'at risk'. The differences are critical since more children might be assessed to be in 'need of care' than experiencing 'significant harm' and the threshold test is clearly the first decision that faces child protection workers in determining if they have a mandate to intervene. The variations across Australia lead to a lack of consistency as to whether a child's maltreatment allegation will be investigated.²⁵

2.19 The Tasmanian Commissioner for Children advised that the office had been seeking clarification about definitions, procedures and processes for investigating allegations and claims of abuse as there was a view that definitional elements may contribute to allegations being unsubstantiated. The Commissioner noted that in Tasmania, the standards of proof required for what would constitute child abuse vary among agencies including between the Tasmanian child protection system and the Tasmanian Police. The Commissioner stated that this can make situations difficult particularly where children's evidence is up against that of adults. The Commissioner also considered that even where the Police find an allegation of abuse of a child to be unsubstantiated, the Commissioner's office may nevertheless need to have a continuing role in assisting the child.²⁶

2.20 There are many other differences among jurisdictions' legislation including in relation to the age at which a person is classified as a child or young person and the types of court orders available.²⁷ Across jurisdictions court orders for children which include arrangements for accommodation, custodial and responsibility issues, contact and residency, ministerial timeframes for supervision of the child, restraining orders against certain persons, and short-term or long-term guardianship, all vary.²⁸ A tenet which shares common ground in legislation across jurisdictions is that which links a

23 Tomison, A, 'A history of child protection: back to the future', *Family Matters*, No 60 Spring-Summer 2001, Australian Institute of Family Studies, 50.

24 AIHW 2005, p.5. Also see pp.19-26, for details of classifications of forms of abuse, and information on children in the child and protection system.

25 Lynch 2002.

26 *Submission 277*, p.11 (Office of the Commissioner for Children Tasmania).

27 AIHW 2005, pp.63-68.

28 Family Law Council 2000, Appendix A.

child's need for care and protection to situations where no appropriate parent(s), guardians or relatives are available to care for the child.²⁹

2.21 Various inquiries into Australia's care and protection system have advised of the need to bring definitions into line across jurisdictions. South Australia's Layton Review considered legislative definitions of terms such as 'child abuse and neglect' for decisions where a child should be classified as 'at risk' and if such terms are explicit enough for agency staff to assess if certain situations warrant some form of intervention. The Layton Review considered that the combination of the definition of 'abuse and neglect' in section 6(1) and 'risk' in section 6(2) of the *Children's Protection Act 1993* (SA) were excessively complex and confusing and recommended that they be amended and replaced. The Review considered that a definitional concept based on the notion of risk of 'significant harm' using sections 9, 10 and 14 of the *Children's Protection Act 1999* (Qld) could serve as a suitable guiding precedent.³⁰

2.22 Evidence was received relating to how the 'best interests of the child' tenet was espoused in jurisdictions' legislation including that relating to parental rights. It was suggested that at times in some jurisdictions too much emphasis is placed on ensuring that children remain with their biological families. The Victorian Government noted that in circumstances where children are notified to the child protection services under s.119 of the Victorian *Children and Young Persons Act 1989*, decisions must be based on principles that include family preservation and the maintenance of family relationships to the extent that this is consistent with the child's safety and wellbeing, and families and children must be permitted to participate in the decision-making processes.³¹ However a number of groups including Centacare Catholic Family Services have described the Victorian Act as leaning more towards parents' than children's interests:

...the way in which it seems to be interpreted through the legal system and all of the parties to that, as well as child protection, is that the natural family, the mother and father, are the first consideration no matter what. That has been the experience that we have noticed – and certainly the experience that I noticed in my previous work as well. It has swung so far in favour of parents to the exclusion of children's needs.³²

2.23 Berry Street Victoria agreed 'to a point' that the pendulum has swung too far in favour of ensuring that children remain with their natural families, but also stressed the importance of early intervention programs to assist parents with difficulties associated with parenting.³³ The Tasmanian Commissioner for Children

29 AIHW 2005, pp.63-68.

30 South Government, *Our best investment*, A State plan to protect and advance the interests of children: Child Protection Review by Robyn Layton QC, March 2003, pp.23.10-23.13.
<http://www.dhs.sa.gov.au/childprotectionreview/cpr-report.asp>

31 *Submission* 173, p.21 (Victorian Government).

32 *Committee Hansard* 12.11.03, p.57 (Centacare Catholic Family Services).

33 *Committee Hansard* 12.11.03, p.78 (Berry Street Victoria).

acknowledged that under the Tasmanian *Children, Young Persons and Their Families Act 1997*, the best interest of the child principle can be a vexed issue:

This must of necessity focus on the rights of the child and not an emphasis on parents, carers or service system issues. However, the legislation clearly states that intervention to assist and support parents and those in their position, must be the first option, and this is a right and expectation that parents and carers can legitimately have. This is not the same as a parent having a right to have a child live with them in a neglectful or abusive parenting environment that compromises the care, protection, safety and stability of the child.³⁴

The NSW Commission for Children and Young people emphasised that the wellbeing of the individual child is fundamental to a responsive and effective out-of-home care and child protection system, rather than one focused on adults, bureaucratic or judicial processes.³⁵

2.24 The Committee was apprised of on-the-ground instances of legislation not being adhered to. The effectiveness of aspects of Australia's child protection laws have been questioned in other inquiries. Evidence to the Vardon Inquiry from an ACT Law Society legal practitioner in children's and mental health cited some workers' approaches to the legislation:

At times when I speak to child protection workers they respond in a way that leads me to think that they see the legal and regulatory framework in the Act as separate to and different from the child protection framework in which they operate.³⁶

2.25 The Vardon Report accepted that child protection workers and legal practitioners approach issues differently but noted that at times the former treated the regulatory framework as though it has been developed in an irrelevant vacuum, without reference to child protection principles.³⁷

2.26 Looking after indigenous children's best interests was commented upon with the Law Society of New South Wales considering that their best interests are often not taken into account by the NSW Department of Community Services (DoCS) and/or the courts which do not always comply with legislation in placing indigenous children in culturally-appropriate out-of-home care.³⁸ Further, the Committee received evidence about differences in the State-Territory legal frameworks which could result

34 *Submission 277*, p.7 (Office of the Commissioner for Children Tasmania).

35 *Submission 35*, p.3 (NSW Commission for Children and Young People).

36 ACT Commissioner for Public Administration, *The Territory as Parent: review of the safety of children in care in the ACT and of ACT child protection management*, May 2004 (Vardon Report 2004), p.11.

37 Vardon Report 2004, p.11.

38 *Submission 253*, pp.1-3 (The Law Society of New South Wales).

in on-the-ground inefficiencies, including for supervision or parental responsibility orders where difficulties can be encountered over inter-State relocations. As the welfare organisation, Mofflyn, noted:

...given the constraints on resources, there is no guarantee that an officer in one State will administer the responsibility of that order on behalf of another State.³⁹

2.27 The lack of cross-jurisdictional agreement between NSW and the Australian Capital Territory for State wards moving between the two areas can present problems:

Whenever there is such separateness, there may be the potential for children and families to be lost in the system and therefore at risk. If such legislation is to remain the responsibility of States, it would be necessary to obtain agreements and protocols to effectively manage movement of children and families.⁴⁰

2.28 Evidence highlighted a need to overhaul the social and legal framework governing Australia's child protection system. The Tasmanian Commissioner for Children reminded the Committee that the United Nations Committee on the Rights of the Child has expressed concern about Australia's lack of a comprehensive policy for children federally and monitoring mechanisms federally and locally and the disparities between jurisdictional legislation and practices.⁴¹ Anglicare Australia called for high priority to be given to establishing and adopting a national definition of child abuse and neglect, including what constitutes abuse and neglect in out-of-home care.⁴² As well, the use of language is crucial if one is to convey the intended meaning. The Committee recognises that the word 'abuse' can be a euphemism to describe actions which are abusive but not necessarily illegal yet can also describe offences such as rape or sexual assault of children which are, and always have been, criminal offences.⁴³

2.29 A further problem arising from the lack of an agreed definition of child abuse relates to the lack of comprehensive data. While organisations such as the Australian Institute of Health and Welfare and the Australian Institute of Family Studies collect data, figures are generated at State and Territory levels based on the different definitions for factors such as abuse, hence inconsistencies occur.⁴⁴

2.30 The lack of uniformity regarding child protection matters and the difficulties in collecting and assessing data were explained to the Committee:

39 *Submission* 160, p.15 (Mofflyn).

40 *Submission* 82, p.8 (Centacare-Sydney).

41 *Submission* 277, p.15 (Office of the Commissioner for Children Tasmania).

42 *Submission* 226, p.9 (Anglicare Australia).

43 *Committee Hansard* 12.11.03, p.51 (Senator Murray).

44 *Committee Hansard* 12.11.03, p.52 (Australian Council of Children & Youth Organisations).

Each state has its own way of handling reports. Each state has different ages of consent, different everything. So it just makes even statistically collecting the data impossible.⁴⁵

We in Australia, still do not have a uniform set of data collected around children in care or child protection. Some of the figures that have been quoted even this morning on substantiation rates are very difficult to compare across jurisdictions because of the way the legislation in different states is categorised, and the way the departments interpret that legislation means that trying to compare it is very fraught.⁴⁶

2.31 Mofflyn argued that the sharing of expertise among various government and non-government agencies and researchers is essential if children and families in Western Australia are to experience an equitable level of service and, as such, policies and systems are needed to ensure this happens.⁴⁷

Conclusion

2.32 While the Commonwealth has a role in child protection through the Family Law Act and the UN Convention, the prime responsibility for child protection rests with the States and Territories. Governments have enacted legislation to establish child protection systems to identify and aid those children who are suffering from or at greatest risk of abuse and neglect. However, evidence pointed to many instances where there are significant variations in the legislation. For example, there are differences in when a child would be classified as being in need of care and protection or as being at risk. There are differences in what would be classified as abuse and the age at which a person is classified as a child. There are also some instances when agencies within jurisdictions differ in their approaches to procedures and processes for investigating allegations and claims of abuse.

2.33 The Committee considers that an assessment of the effectiveness of standards, laws and programs to protect children and young people would be worthwhile. It could assist policymakers to devise and implement laws and programs that more effectively protect children than is presently the case and reduce the need to place children in out-of-home care. In addition, there would be a great benefit in gaining consistency with the various definitions across all jurisdictions.

2.34 The Committee's recommendations concerning the need for a national approach to child protection legislation and programs are contained in Chapter 7.

45 *Committee Hansard* 12.3.04, p.80 (Bravehearts).

46 *Committee Hansard* 9.12.03, p.28 (Mercy Community Services Inc).

47 *Submission* 160, p.15 (Mofflyn).

Child protection processes

2.35 Reports of abuse of children across Australia are all too common, including in out-of-home care. Below is a brief outline of care and protection agencies' processes to protect children.

Notifications, investigations, substantiations, mandatory reporting

2.36 Investigations of abuse allegations can be complex and protracted and involve many parties including the child, families, foster carers, child protection bodies and the courts. Children assessed to be in need of protection can come into contact with community services departments through a number of ways including via reports of concerns about a child from someone in the community, a professional mandated to report suspected abuse and neglect, the child or a relative. State and Territory child welfare departments' assessments of child protection notifications may result in an investigation, a referral to other organisations, or, no further protective action. On an investigation's finalisation, a notification is classified as 'substantiated' or 'not substantiated', the former being where it is concluded that the child has been, is being or is likely to be abused, neglected or otherwise harmed.⁴⁸

2.37 Of significance is that child protection policies and practices are continually changing and evolving. Trends in child protection numbers should be interpreted carefully, as such changes in policies and practices impact on assessing the numbers of children in the child protection system in different ways.⁴⁹

2.38 The WA Department for Community Development explained that in investigating allegations of maltreatment of children including those in care, priority 1 case investigations are commenced within 24 hours. Cases which have a priority 2 classification have less immediacy and it may be two to five days for the response and starting process. The department emphasised that it also investigates claims of abuse from earlier times:

If the child is still a child, yes, we would go through that process. But if it is an adult, it is really the responsibility of the police. If they are an adult making an allegation of abuse that happened to them in care when they were a child, they should really go to the police and then we would provide the information to the police.⁵⁰

2.39 As mentioned earlier, there are definitional inconsistencies in Australia's laws about what might constitute abuse or neglect. Some jurisdictions substantiate situations where child abuse and neglect have occurred or are likely to occur; others substantiate situations where the child has been harmed or is at risk of harm and the

48 AIHW 2005, p.2-3.

49 AIHW 2005, p.5.

50 *Committee Hansard* 9.12.03, p.22 (WA Department for Community Development).

parents have failed to act to protect the child.⁵¹ The Tasmanian Children's Commissioner considered that there is a possibility that investigations' procedures about abuse may be contributing to them being concluded as unsubstantiated. The Commissioner made the point that a non-substantiated outcome does not necessarily indicate whether abuse has occurred or not. The Commissioner noted that the mere fact that an allegation has been made can show that something is amiss in a child's life and therefore assistance of some kind may be required:

Non substantiation does not necessarily indicate that abuse did not occur, just that there is insufficient evidence. This is an entirely different matter to concluding that there has been no abuse.

We have to be conscious of the fact that these concerns are serious, as in most instances, these are children who would have already suffered abuse and neglect, prior to entry into care. Any abuse may well adversely impact on the child even if such alleged abuse cannot be substantiated. In cases where it is a child who makes a disclosure, I suggest that it is best practice to always assist the child, and not only provide assistance when there is substantiation.

Fabrication indicates a dysfunction in the past or in the present, and non substantiation must not result in no assistance to the child. There are three possibilities here: something may have occurred, and we cannot prove this; something has occurred but the child has no credibility; nothing occurred, but the child has a problem that needs attention. All three require a protective response to identify what is of concern.

At the very least there must be reassurance to the child and protective mechanisms put in place so that if abuse did occur, it does not occur again.

If abuse did not occur, mechanisms must be put in place to assess and address the child's issues, and resolve any placement or other issues that may arise.

In all these instances, where parents, relatives and carers have made these allegations, they too must be given such advice and assistance.

In accordance with best practice, all disclosures or allegations of abuse must at the very least be recorded and the child assisted. In Tasmania, my information is that all such allegations are documented, and as such can be referred to later in any later or further concerns about the same child or the same carer or institution.⁵²

2.40 The Australian Council of Children and Youth Organisations emphasised the importance of ensuring that in legislative interpretations, not only should events that occur in the legal stream which often lead to a notification of child abuse to a State

51 AIHW 2005, p.3.

52 *Submission 277*, pp.3-4, 10-11 (Office of the Commissioner for Children Tasmania).

child protection service be considered, but also account should be taken of the broader perspectives which are strongly linked to moral duty of care issues.⁵³

Number of notifications and substantiations of child abuse

2.41 The number of child protection notifications in Australia, 1 July 2003-June 2004 was more than 219 000, ranging from 115 541 in NSW to 1 957 in the Northern Territory.⁵⁴ The proportion of notifications that were investigated ranged from 96 per cent in Western Australia to 18 per cent in Tasmania. This range reflects differences in jurisdictional definitions and ways of dealing with notifications and investigations. For instance, in Tasmania, every call received is recorded as a notification and can be very broad and may include family issues that are responded to without the need for a formal investigation process.⁵⁵

2.42 Although the outcomes of investigations varied across the States and Territories, in all jurisdictions a large proportion of investigations were not substantiated. In other words, no reasonable cause was found to believe the child was being, or was likely to be, abused, neglected or otherwise harmed. For example, 61 per cent of finalised investigations in South Australia and 55 per cent in the Australian Capital Territory were not substantiated. The proportion of investigations that were substantiated ranged from 39 per cent in South Australian to 74 per cent in Queensland.⁵⁶

2.43 Across Australia, the number of child protection notifications increased by over 21 000 in the last year, rising from 198 355 in 2002-03 to 219 384 in 2003-04. The number of notifications increased in all jurisdictions except Victoria. The number of substantiations increased between 2002-03 and 2003-04 in every jurisdiction that provided data. Increases in the numbers of notifications and substantiations may be attributable to various factors. One may be an actual increase in the number of children who require a child protection response. This may be due to an increase in the incidence of child abuse and neglect in the community or inadequate parenting that causes harm to a child. It is most likely that it indicates a better awareness of child protection concerns in the wider community and more willingness to report problems to the child protection departments.⁵⁷

2.44 CBERSS cited figures from a 2002 Western Australian Legislative Council Inquiry showing that one in four girls and one in five boys had experienced serious

53 *Committee Hansard* 12.11.03, p.52 (Australian Council of Children & Youth Organisations).

54 As a child can be the subject of more than one notification, investigation or substantiation in a year, there are fewer children than there are total numbers of notifications, investigations and substantiations – AIHW 2005, p.14-16.

55 AIHW 2005, p.15.

56 AIHW 2005, p.16.

57 AIHW 2005, p.17.

sexual abuse by the age of 18 years. Other research quoted showed that approximately 28 per cent of females and nine per cent of males of 1 000 Australian students had been sexually abused.⁵⁸ The WA Department for Community Development noted that the number of children and young people in care in that State has increased by 43 per cent over the past five years and the number of notifications of child abuse has increased by 24 per cent over the same period. Indigenous children and young people represent the greater proportion of this increase.⁵⁹

2.45 However, Western Australia's Department for Community Development (DCD) stated that most concerns expressed to that department about the wellbeing of children do not warrant a statutory response. It quoted the following figures:

For 2 138 finalised child maltreatment allegation investigations conducted by the Department for Community Development in 2001-2002, harm to the child was substantiated in 49.6 per cent of cases.

A child is apprehended as in need of protection and care in approximately 16 per cent of investigated cases. These are the children who cannot be made safe within their families.⁶⁰

2.46 The DCD attributed its low rates of substantiated child abuse to a number of elements including some of the Department's preventative strategies:

We have been doing parenting strategies for 10 years, since the previous government. In addition to that...it is about a lot of work that is done both at field level and through non-government services around providing support to families. I am sure there is a need to do more of it, but we try to work with families to prevent them from coming into the system.⁶¹

Care and protection orders

2.47 Where a child has been the subject of a substantiation, a department may apply to the courts for a care and protection order for the child, especially when other options have been exhausted. Fewer children are placed on a care and protection order compared to the number who are the subject of a substantiation. Apart from particular legislative frameworks, various factors can influence departmental decisions to apply for such orders including the availability of other options for the child.⁶²

2.48 Examples of care and protection orders for children are: guardianship, custody and supervisory orders. Other orders of a more short-term nature, such as, interim and temporary orders, generally provide for a limited period of supervision and/or placement of a child. Apart from being different within jurisdictions, they vary from

58 *Submission 49*, p.10 (CBERSS).

59 *Submission 55*, p.18 (WA Department for Community Development).

60 *Submission 55*, p.23 (WA Department for Community Development).

61 *Committee Hansard 9.12.03*, p.23 (WA Department for Community Development).

62 AIHW 2005, pp.27-28.

one State to another. Western Australia does not have any orders that fit into the supervisory order category and the granting of permanent guardianship and custody of a child to a third party is issued only in some jurisdictions.⁶³

2.49 Children can be placed on a care and protection order for reasons other than abuse and neglect, including where family conflict may require 'time out'.⁶⁴ At 30 June 2004, the majority of children who were on care and protection orders were on guardianship or custody orders. This varied across jurisdictions. Most children on such orders lived in some type of home-based care (either foster care or living with relatives/kin). Living arrangements varied somewhat by State and Territory.⁶⁵ This issue is discussed further in chapter 3.

Numbers of children on care and protection orders – Australia

2.50 The number of children admitted to care and protection orders and arrangements across Australia in 2003-04 ranged from 2 938 in Queensland to 181 in the Australian Capital Territory. These figures do not include NSW. There were more children admitted to orders in every jurisdiction in 2003-04 than in 2002-03. Some children admitted to orders in 2003-04 had been admitted to a care and protection order or arrangement on a prior occasion. Among those jurisdictions where the information was available, the proportion of children admitted to orders for the first time ranged from 39 per cent in Tasmania to 97 per cent in Western Australia. Data on children admitted to orders show that the largest proportion of children admitted to orders in 2003-04 were aged under five years. Fewer children were discharged from care and protection orders in 2003-04 than admitted to these orders. While the rates varied, in all jurisdictions the rate of indigenous children on orders was higher than for other Australian children: in Victoria the rate was 11 times higher for indigenous children than for other children and in Western Australia it was over eight times the rate than for other children while in Tasmania such a rate was twice as high.⁶⁶

Mandatory reporting

2.51 All Australian jurisdictions, except Western Australia, have legislative requirements for the compulsory reporting to community services departments of harm to children from abuse or neglect. In most States and Territories, only members of a few designated professions involved with children are obliged to report. In the Northern Territory, anyone who has reason to believe that a child may be abused or neglected must report this to the appropriate authority. While Western Australia does not have mandatory reporting, it has protocols and guidelines that require certain occupational groups in government and funded agencies to report children who have

63 AIHW 2005, pp.28-29. See pps.28-40 for details of care and protection orders.

64 AIHW 2005, p.4.

65 AIHW 2005, pp.34-35.

66 AIHW 2005, pp.30-38.

been or are likely to be abused or neglected.⁶⁷ The Department for Community Development stated that in Western Australia such mandatory reporting only relates to reporting cases that involve children under 13 years who have a sexually transmitted infection.⁶⁸ As mentioned, various Family Law personnel are required to report cases of suspected child abuse which comes to light in the course of their employment.

2.52 Opinions differ about the merits or otherwise of mandatory reporting. In 2003, the Vardon Report in the ACT considered this issue and noted that South Australia's Layton Review had recommended an increase in the number of mandated persons on the basis that mandatory reporting creates a climate where the community can confidentially report suspected child abuse and the State will intervene to protect the child. In that context, it was argued that mandatory reporting provides accurate information with a higher substantiation rate, sends a clear message that child abuse will not be tolerated and resolves ethical dilemma issues associated with confidentiality. The Vardon Report considered various jurisdictions' stances on mandatory reporting and noted that some views are that it uses large amounts of resources for investigation and legal processes and does not necessarily inform the responsible government agency of all suspected child abuse so that a child in question may not be brought to a department's attention for an appropriate response.⁶⁹

2.53 Evidence suggested that mandatory reporting increases the number of reports about child abuse, many of which do not result in a substantiation of abuse. It also creates support demands for people involved which are often not able to be met by community services. Anglicare Victoria cited Victorian figures showing that of 40 000 reports per year, 11 000-12 000 were investigated and 2500 were substantiated, but very limited resources were provided to the welfare agencies for cases, substantiated or otherwise.

We know that we have these 2,500 to 3,000 children needing some additional support. We do not have the services to provide to them...we [do not] necessarily need to do away with mandatory reporting but...we have to devise a more efficient and effective way of actually dealing with the reports that come in.⁷⁰

2.54 A Queensland law academic, Dr Ben Mathews, noted that for mandatory reporting to work effectively, people who are mandated to report need training:

The key argument against extending a broad reporting obligation to teachers and other professional groups is obviously the increase in the number of reports...[it] is not a principled basis for opposing that extension of a broad obligation. It is really an argument against inaccurate reporting. That can be addressed through proper training, resourcing and support for

67 AIHW 2005, p.1.

68 *Committee Hansard* 9.12.03, p.18 (WA Department for Community Development).

69 Vardon Report 2004, p.116.

70 *Committee Hansard* 12.11.03, p.68 (Anglicare Victoria).

groups who are meant to report and for the investigative and treatment bodies.⁷¹

2.55 The WA Department for Community Development expressed similar sentiments to that of the Tasmanian Commissioner for Children that any allegations of abuse from a child or other person about a child, often show that the child requires assistance, irrespective of an investigation's outcome. The Department explained the rationale for the WA Government's policy in not having a legislative requirement for mandatory reporting:

What we want to have is a shared community concern around the issues of children needing care and protection. We want people to know how to bring that matter to us, but we do not want to overload the system with lots of concerns. The history of what tends to happen when mandatory reporting is in place is that there are many matters that get referred through because people think they are obliged to report, rather than people making some informed judgements.

We have extended the range of our child protection procedures with key government departments. We have also been working with our non-government services around having a better appreciation of what is required when children are at risk of significant harm... We certainly want issues of significant harm referred to the department, and we will act upon those, but we want to work with other agencies in taking a shared approach to the issue.

...What we do know is whilst...the rate of the reporting skyrockets with mandatory reporting, the rate of substantiation actually does not really change that much. You then have a great body of work more to do with family concerns – low-level concerns about parenting skills et cetera – and so you have a vast amount of work being put into quite intrusive child protection intervention where there is no substantiation of child maltreatment.

And there are no services provided to those families traditionally because when talking about resources getting dragged to the front end, mandatory reporting is a classic example: it pulls the resources out of the rest of the organisation in order to respond to the huge numbers that come in. In New South Wales last year there were something like 170 000 reports.

...That is why we introduced a differential response rather than mandatory reporting. It is not a child protection matter; it is a family support matter. Our resources can be targeted towards supporting families in a much less intrusive way... We found...where mandatory reporting is in place too much of the resources are spent in investigation which leaves few resources for work in all the other important areas that you have just identified.⁷²

71 *Committee Hansard* 12.3.04, p.107 (Dr Mathews).

72 *Committee Hansard* 9.12.03, pp.18-19 (WA Department for Community Development).

2.56 Dr Maria Harries explained that the more one increases the demands on people to report the more likely they will report anything 'because people are frightened of not reporting':

So...the less likely it is that you are actually reporting the seriously at risk and the more energy is going to the less seriously at risk. The consequence of that is that most places that have mandatory reporting put a cap on what they are actually going to investigate, so substantiation rates go down initially because there is so much been reported that is not serious. As they reduce the level at which they start investigating, the substantiation rates start going up because they are saying, 'We're only going to investigate if there is a physical injury, if the child is under six, et cetera'. So when I say it is a matter of numbers, substantiation rates are all to do with the thresholds of what is reported and who reports, and then what the agency has to be able to investigate.⁷³

2.57 Dr Harries noted that Western Australia's substantiation rates are seen as low because only high-risk cases are investigated. She noted that being able to locate and assist the children most at risk and their families is critical but mandatory reporting does not necessarily achieve that situation:

It varies all the time...So there is a two-pronged system that we are trying to develop in Western Australia...we have identified a group of families and their children who are in need and another group of families who appear to be harming their children, and those children have a different sort of need. We have tried to manage that two-pronged system. In the other states, they are put into one.

It is argued that WA has lower substantiation rates because it takes into its system as a substantiation something that is significantly a risk issue. It does not take all the other things into account as well. It is meant to be hiving off the in need ones earlier. In fact, substantiation rates are not a good measure of anything at all. Substantiation in one jurisdiction is not substantiation in another. That is what Francis Lynch was talking about earlier when he talked about national standards. In every state we have different standards for substantiation.⁷⁴

2.58 If a positive outcome of mandatory reporting were that it raised alarm bells for the departments and authorities about a child's need for help, then mandatory reporting would be more worthwhile. According to Dr Harries, the evidence is that mandatory reporting often does not necessarily reveal any problems which is significant given that irrespective of its findings, often no assistance is provided to the family anyway. Like the Tasmanian Commissioner for Children (mentioned earlier), she opined that just the allegation of abuse itself is an indication that the child and/or her family needs help. The reality is however, that often help is not provided:

73 *Committee Hansard* 9.12.03, p.48 (CBERSS).

74 *Committee Hansard* 9.12.03, pp.48-49 (CBERSS).

...if it is a mandatory report, you are compelled to do a forensic investigation. You blast in, like police, and you verbally, psychologically, physically – however you do it – assault a family. You are investigating whether a crime or something terrible has happened. The impact on families is catastrophic. In the bulk of those investigations the report is not substantiated, so what have you done to that family? Secondly, even if you find that the family is in need...what do you say, 'No substantiation, case closed'. So you not only assault the family but you do not even offer support...what we are seeing with mandatory reporting worldwide, not just in Australia, is that in the forensic investigation of abuse we are further damaging families, we are not supporting families and children at all and, worse still, the bulk of children who die are known to agencies.⁷⁵

2.59 The resources are often so stretched that such help is not available. Dr Sachmann stated:

There is a growing amount of evidence to demonstrate that, where mandatory reporting is in existence, so much of the organisation structure is geared towards investigation, full stop.⁷⁶

2.60 Similar sentiments about mandatory report were expressed by the Queensland Crime and Misconduct Commission's inquiry into the Queensland foster care system:

Importantly, whatever the merits of the different views about mandatory reporting, there is little point to the extension of mandatory reporting in a system that cannot respond to the demands placed on it by such reporting.⁷⁷

Government funding – care and protection of children

2.61 Recurrent expenditure on child protection and out-of-home care services was at least \$1041.14 million across Australia in 2003-04, representing a real increase of \$110.8 million (11.9 per cent) from 2002-03. Nationally, out-of-home care services accounted for the majority (\$638.6 million – 61.3 per cent) of this expenditure. Some jurisdictions have difficulty in separating expenditure on child protection from that on out-of-home care services. Nationally, real recurrent expenditure per child aged 0-17 years was \$217 in 2003-04. This varied across jurisdictions, from \$296 in the ACT to \$131 in South Australia. Real recurrent expenditure on child protection and out-of-home care services per child aged 0-17 years increased in all jurisdictions between 2002-03 and 2003-04.⁷⁸

75 *Committee Hansard* 9.12.03, p.51 (CBERSS).

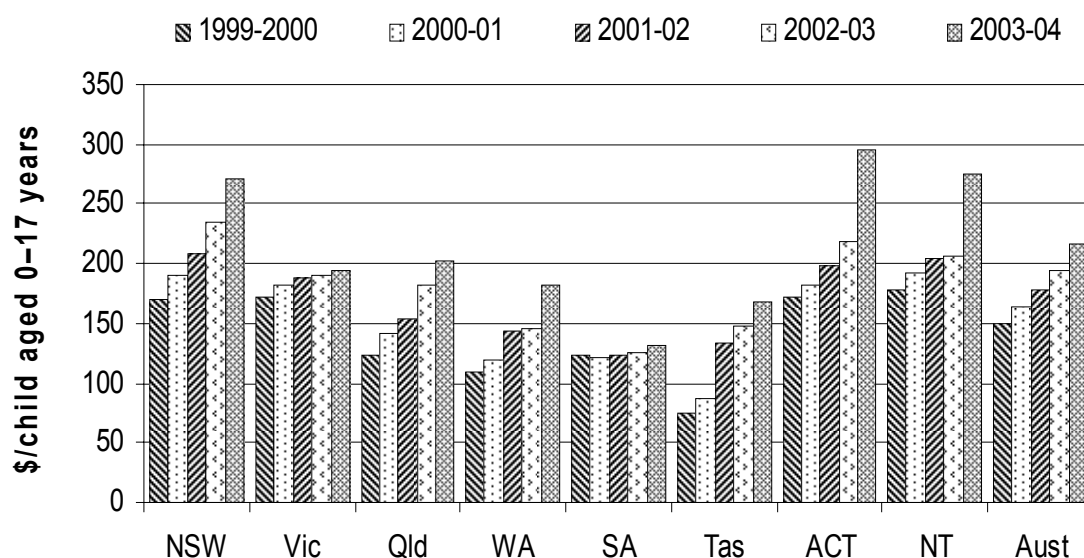
76 *Committee Hansard* 9.12.03, p.51 (CBERSS).

77 Crime and Misconduct Commission, Queensland, *Protecting Children: An inquiry into abuse of children in foster care*, January 2004 (*Protecting children* 2004), p.184.

78 Productivity Commission, *Report on Government Services 2005, Volume 2: Health, Community Services, Housing*, Canberra, January 2005, p.15.10.

2.62 Funding increases for programs to identify families at risk and prevent or at least stem abuse or neglect of children and young people has occurred across all jurisdictions. For example, in NSW, increases in allocations for child protection services include those for intervention and prevention approaches and accommodation for children requiring costly services, while Queensland's extra government funding has provided a range of initiatives including additional staff for the new Department of Child Safety.⁷⁹

Figure 2.1: Real recurrent expenditure on child protection and out-of-home care services (2003-04 dollars)



Source: Productivity Commission, *Report on Government Services 2005, Volume 2*, January 2005, p.15.11.

2.63 However, some welfare providers argued that governments were shirking their funding responsibilities and that out-of-home care providers were increasingly being pressed for funds to meet children's basic needs such as educational costs, uniforms and recreation:

The states and the Commonwealth, I believe, have neglected their responsibility to adequately resource a child welfare system in this state [Victoria] which would enable community service organisations and others to deliver the best quality practice that now the community, at least verbally, seems to be demanding.⁸⁰

...we subsidise it from our other areas...We are subsidising the present contract significantly over...We do not mind doing that...but if you repeat

79 A discussion of State and Territory funding increases for the care and protection of children appears in the Vardon Report 2004, pp.197-198.

80 *Committee Hansard* 12.11.03, p.62 (Anglicare Victoria).

that across all the non-government organisations in Australia, the shortfall is becoming huge...In this financial year we will probably subsidise the service to the extent of around \$100,000. Next year it will possibly be closer to \$200,000.⁸¹

2.64 Youth Off The Streets stated that it does not receive core government funding, even though it often provides community support programs for the NSW Department of Community Services when departments are unable to manage the young person's behaviour:

...despite an estimated number of more than 45,000 young people having used our services since our establishment in 1991, we have yet to receive core funding from the government.⁸²

2.65 Youth Off The Streets emphasised that it requires the certainty that core funding would provide. The organisation noted that short-term funding contracts under which DoCS presently allocates funding to groups such as Youth Off The Streets, are inadequate to meet children's requirements, which in reality are more often long term than *ad hoc*. That organisation regularly provides children and young people with ongoing residential, educational rehabilitation, therapeutic and community support outreach services. Youth Off The Streets quoted a 2003 NSW Ombudsman's out-of-home care funding report which recommended that DoCS identify the extent of need and appropriate models and costs for residential care services so that a policy and funding framework could be developed to guide the planning and provision of residential care.⁸³

2.66 The issue of funding for youth homelessness and juvenile crime prevention programs was also raised in evidence:

In our own state [Queensland]...for every \$1 we put into crime prevention work, we put \$58 into prisons and courts and all the rest of it. I think the same is true in the Commonwealth area with regard to the dollars that we put into counselling versus the dollars that we put into the Family Court. We are a reactive society, not a proactive society.⁸⁴

2.67 Some agencies noted that governments' accountability rules and procedures for funding to welfare groups, often add to pressures for the non-government sector in delivering effective programs and support to families:

Since the 1990s, it has increasingly been the case that funding parameters and shrinking resources, rather than best practice, have been the major drivers of change in the child-care sector. The pressure on the non-government sector to provide increased accountability in administrative

81 *Committee Hansard* 9.12.03, pp.29, 31 (Mercy Community Services Inc).

82 *Submission* 81, p.4 (Youth Off The Streets).

83 *Submission* 81, pp.3-5 (Youth Off The Streets).

84 *Committee Hansard* 12.03.04, p.47 (Father Dethlefs).

compliance has made it extremely challenging for agencies to remain focused on outcomes for children and families.⁸⁵

Getting support from government funding departments under the current tendering processes is costly and requires resources that would be better spent in the program area. Some government departments...refer young people to us but do not provide us with funding for these placements. We do not receive the maximum funding levels available for our schools commensurate with their status as 'special schools' from the Department of Education and Training because we need to provide detailed psychological reports on each child, which we cannot provide because of the lack of administrative resources and because pathologising children is inimical to our organisational philosophy.⁸⁶

2.68 Issues regarding a constant lack of resources for programs and the continual strains on the public purse were regularly raised. Mofflyn considered it vital to maximise efficiencies to achieve the greatest impact with the least possible financial outlay and ranked funding equity and quality of care issues highly. Funding needed to:

Be provided to pilot new initiatives or investigate, through evidence-based research, what modern children and families need by way of support and intervention...Be broad enough to enable agencies to provide services according to the child or family's individual need in order to be most successful...Recognise that training, support, supervision and the professional development of staff and volunteers are the key to providing quality care and important to core program outcomes⁸⁷

Conclusion

2.69 The causes of child abuse can often be traced back to problems and disadvantages in families' lives including drug and substance abuse, lack of finances, marriage breakdown and unemployment. Economic and social stress can also lead parents to become less nurturing and rejecting of their children and that children living in poverty have a high incidence of abuse and neglect. Evidence points to an increase in the number of notifications and substantiations of abuse and neglect.

2.70 All States and Territories except Western Australia have legislative requirements for mandatory reporting. Evidence for and against mandatory reporting was received. Arguments have been put that the resources for reporting could be more effectively directed elsewhere and that mandatory reporting generates unnecessary reporting and strains the system to the point where often assistance is not able to be provided for people who are in genuine need. Others have noted that any report of child abuse, irrespective of whether it is proved or not, is evidence that something is amiss in the life of that child and his or her family. If anything, this shows too that

85 *Submission* 160, p.9 (Mofflyn).

86 *Submission* 81, p.7 (Youth Off The Streets).

87 *Submission* 160, p.15 (Mofflyn).

effective support programs and early intervention measures must be available for families and young people and they must be properly promoted and advertised so that people know of their existence.

2.71 The Committee considers that the effectiveness of mandatory reporting as it currently operates in various jurisdictions needs to be assessed to ensure that resources are being effectively allocated to improve the protection of at risk children.

Recommendation 2

2.72 That State and Territory Governments consider reviewing the effectiveness of mandatory reporting in protecting and preventing child abuse, and in conducting such a review, they particularly focus on the successes of the various options used in care and protection systems, in comparison with mandatory reporting.

Children's commissioners, children's advocates, children's guardians, etc

2.73 In addition to the services provided through State and Territory welfare departments, various offices exist to promote and protect children and their rights. These include children's commissioners, children's advocates and children's guardians.

State and Territory children's commissioners

2.74 Currently, offices of commissioners for children and young people exist in NSW, Queensland and Tasmania. Discussions have occurred for the introduction of such an office in Victoria, South Australia and the ACT and a commission is to be established in Western Australia in 2005. While children's commissioners' powers vary across Australia, they operate under the principle of promoting and protecting children and their rights as defined in the UN Convention. The functions of the Australian models relate to systemic investigation and inquiry rather than individual advocacy for children. Witnesses suggested the establishment of a children's commissioner in each State to provide a legal service for children and those persons who were abused in care as children to reduce their disadvantages in seeking legal recourse.⁸⁸ As well, many individuals and groups suggested the establishment of a national children's commissioner. This issue is discussed later in the chapter.

New South Wales

2.75 Established under the NSW *Commission for Children and Young People Act 1998*, the NSW Commission's role relates to ensuring the safety, welfare and wellbeing of children, and a cooperative relationship between children, their families and the community.⁸⁹ The office's primary functions include promoting the participation of children in decision making, monitoring the wellbeing of children in

88 *Submission 223*, p.2 (Ms Janet Lowe).

89 *Submission 35*, p.3 (NSW Commission for Children and Young People).

the community, making recommendations to government and non-government organisations about legislation, policies and practices that affect children and young people, and monitoring people who are involved in child-related employment.⁹⁰

Queensland

2.76 The office of the Queensland Commissioner for Children and Young People and Child Guardian was established under the Queensland *Commission for Children and Young People and Guardian Act 2000*. The Commissioner's responsibilities include investigating and reviewing complaints from children or young people about government-funded services. The Commission's priorities relate to children and young people in some form of out-of-home care or detention centre and children who have no one to act on their behalf. The Commission assists indigenous children and young people and those who do not speak English, have a disability or are geographically isolated. The Commission's powers include advocacy, and monitoring and reviewing laws, policies and practices.⁹¹ The Queensland Commissioner has a statutory authority to investigate complaints that relate to services provided or required to be provided to a child who is subject to orders or actions under various State Acts such as the *Child Protection Act 1999* (Qld) or *Juvenile Justice Act 1992* (Qld). The Child Guardian's tasks include monitoring, auditing and reviewing agencies which provide services for children and young people in the care system.⁹²

Tasmania

2.77 The Commissioner for Children in Tasmania has a function under s.79(1)(d) of the *Children, Young Persons and Their Families Act 1997*, 'to increase public awareness of matters relating to the health, welfare, care, protection and development of children'. Under s.79(1)(f), the Commissioner can 'advise the Minister on any matters relating to the health, welfare, education, care, protection and development of children placed in the custody or under the guardianship, of the Secretary under this or any other Act'. As the Commissioner has noted:

This section gives me a function with respect to children in any welfare care, but in addition, it also gives me a role with respect to children and young people who are in juvenile justice custody.⁹³

2.78 The Commissioner's tasks are linked with s.124(1) of the *Youth Justice Act 1997*, for children and young people in custody, where the Secretary of the Department of Health and Human Services is responsible for their 'safe custody and well being'. Other roles of the office include notifying the Department's division of

90 ACT Government, *A position paper: for a proposed Australian Capital Territory Commissioner for Children and Young People*, Chief Minister's Department, September 2004, p.6.

91 *Submission 72*, pp.1-2 (Queensland Commission for Children and Young People).

92 ACT Government 2004, pp.6-8.

93 *Submission 277*, p.2 (Office of the Commissioner for Children Tasmania).

Children and Families of any abuse allegations for investigation and internal review. In such cases, the Commissioner's brief includes scrutinising systems issues related to policy, practice and service delivery, to ensure that they are carried out in accordance with the best interest of the child for matters such as health, care and welfare. The Tasmanian Ombudsman can also investigate such claims if they involve an administrative decision with which a child, parent or carer is dissatisfied.⁹⁴

Victoria

2.79 The Victorian Institute of Law has proposed the establishment of a Victorian Commissioner for Children and Young People with functions that include ensuring children's participation in decisions about themselves and their lives and that children's rights and interests are taken into account by parliamentarians, government and local authorities, public bodies and voluntary and private organisations in relation to services provider responses to complaints about services for children. The office's other roles include promoting and monitoring advocacy and other support services and ensuring wide consultation including a capacity for the Commissioner to review and inquire into laws, practices and policies that impact on children.⁹⁵

South Australia

2.80 In South Australia, the establishment of an independent Commissioner for Children and Young people was a key recommendation of the government report into child protection, the Layton Review. As in Queensland, the South Australian model proposed that the Commissioner have the ability to: be an advocate for children and young people; conduct inquiries; promote awareness of the rights of children and young people; influence law, policy and practices; intervene in legal cases involving the rights of children and young people at the systemic level; initiate test cases or support legal actions on behalf of children and young people; and conduct research.⁹⁶

Australian Capital Territory

2.81 Support for the establishment of an ACT Commissioner for Children and Young People can be traced back to an ACT Legislative Assembly committee report, *The rights, interests and well-being of children and young people*. In response to the more recent inquiry, the Vardon Report, the ACT Government is committed to establishing such an office where some of the Commissioner's tasks would include advocacy, standard-setting for government-funded services and powers to convene a tribunal to review decisions of government-funded services dealing with children and young people. A significant task would be the introduction of a review role relating to

94 *Submission 277*, pp.2-3 (Office of the Commissioner for Children Tasmania).

95 ACT Government 2004, p.10.

96 Kenny N and Tait A, 'Commissioners for children and young people: comparing state and territory statutory bodies for protecting the rights and interests of children', *NCPC newsletter*, vol 13, no. 1, Summer 2005, p.32.

people who plan to work in jobs associated with children or young people. The ACT Government is considering possible structures for a children's commissioner including roles that include integration with the Office of the Community Advocate.⁹⁷

Western Australia

2.82 In December 2004, the Western Australian Minister for Community Development announced the finalisation of a model for the State's new independent children's commission, to start work in 2005. The WA model includes 'special attention to indigenous children'. The proposed commission's role includes advocating for children and young people generally, promoting children's participation and the community's understanding of issues affecting children, monitoring and advising the government on legislation, policies and practices and conducting inquiries and research. The model has been developed after consultations with commission counterparts in NSW and Queensland as well as groups and individuals such as the CREATE Foundation, Professor Fiona Stanley, Magistrate Sue Gordon, Meerilinga and 231 children and young people across the State.⁹⁸

Children's guardians and other offices

Children's guardian - New South Wales

2.83 The NSW Office of the Children's Guardian was established under the NSW *Children and Young People (Care and Protection) Act 1998* to promote the best interests and rights of children and young people in out-of-home care in NSW. The need for an independent representative has been highlighted in instances of conflict of interest, such as where a Minister has the dual roles of responsibility for a facility where a child resides and is also the child's legal guardian.⁹⁹ Also included in the rationale for the appointment was the recognition of the lack of power of children in out-of-home care, especially those facing systems failure problems. The Guardian's functions include assuming the parental responsibilities of the Minister for a child or young person in out-of-home care, accrediting foster care agencies, removing children from inappropriate placements, participating in conferences about children's court processes and assisting with dispute resolution and departmental funding decisions.¹⁰⁰

97 ACT Government 2004, pp.4, 10-11.

98 McHale Sheila, 'Western Australia's independent children's commission model finalised', *Media Release*, 6 December 2004.

99 This was illustrated in *Bennett v Minister for Community Welfare* (1992) 176 CLR 408 where the High Court held that the Director of Community Welfare should have arranged for a boy to have independent legal advice on whether to bring a claim - Parkinson P, *The Children's Guardian* 1999, pp.5-6.

100 Parkinson 1999, pp.2-14.

Guardian for children and young people – South Australia

2.84 Although a commissioner for children has not yet been established in South Australia, that State recently appointed a Guardian for Children and Young People. The guardian has the role of advocate for all children and young people by advising the Minister for Families and Communities on whether the needs and interests of children are being met. The guardian will ensure that child protection and alternative care systems, and other government services such as health and education, are child focused and work to improve the wellbeing of all children. Unlike the Queensland Commission, the guardian will not receive and investigate complaints, conduct research, and there is no screening function for child-related employment.¹⁰¹

Advocate for Children in Care - Victoria

2.85 Established in April 2004, the office of the Victorian Advocate for Children in Care has a comprehensive role entailing advocacy and representation of children in out-of-home care. The role includes a focus on encouraging children's participation in decision-making processes and ensuring quality services, standards and compliance and monitoring of the sector. Among the Advocate's 'core functions' are those related to developing a Charter of Rights for Children in Care; undertaking independent and systemic quality reviews of case management and care planning for out-of-home care at the request of or with the approval of the departmental secretary; and, in conjunction with local Aboriginal communities, monitoring adherence to the Aboriginal Child Placement Principle for the placement of indigenous children in out-of-home care. The Advocate's office has identified major work priorities such as those to address children and young people as primary constituents and ensuring systemic quality improvement and the development of communication and relationships with stakeholders.¹⁰²

Office of the Public Advocate – Queensland

2.86 Created under the Queensland *Guardianship and Administration Act 2000*, the Queensland Public Advocate provides systemic advocacy for adults with a decision-making disability. This group includes people with a psychiatric disability, an intellectual disability, an acquired brain injury or some form of dementia. Included in the Public Advocate's legislative functions are those to promote and protect the rights of such adults from neglect, exploitation or abuse. The role of the Public Advocate is to identify widespread situations of abuse, exploitation or neglect of people with impaired capacity due to shortcomings in the systems or facilities of a service provider. The Public Advocate reports these findings to State Parliament.¹⁰³

101 Kenny and Tait 2005, p.32.

102 Department of Human Services Victoria, *Advocate for children in care: progress update, current activities and future directions*, Attachment 1, 8 December 2004.

103 Queensland Government, The Public Advocate – <http://www.justice.qld.gov.au/guardian/pa.htm>

Office of the Adult Guardian – Queensland

2.87 The Adult Guardian is an independent statutory officer operating under the *Queensland Guardianship and Administration Act 2000*. The Adult Guardian protects the rights and interests of adults with impaired capacity and supports and advises their guardians, attorneys, administrators and other people who provide informal assistance on matters including those related to health and finances. The Adult Guardian can investigate reports of complaints about exploitation, abuse or neglect of a person with impaired capacity or complaints against the actions of a person who has been given enduring power of attorney. If a person is found to have behaved irresponsibly, the Adult Guardian can suspend a power of the attorney, conduct an audit and obtain a warrant to remove an adult who is being abused, exploited or neglected.¹⁰⁴

Office of the Community Advocate – Australian Capital Territory

2.88 The Office of the Community Advocate (OCA) has a monitoring role towards children and young people in need of care and protection, under the *ACT Children and Young People Act 1999*. Under the *Community Advocate Act 1999* the Community Advocate provides systemic advocacy for children and young people in the ACT.¹⁰⁵ The OCA's powers and functions are wide and include those designated in various Acts including the *Mental Health (Treatment and Care) Act 1993* and the *Guardianship and Management of Property Act 1991* and those relating to services, facilities and supports for people with a disability. The OCA may engage in individual or systemic advocacy on behalf of children and young people but it is not a formal complaints agency.¹⁰⁶

Commonwealth, State and Territory Ombudsman Offices

2.89 The Commonwealth and State and Territory Governments have Ombudsman's Offices whose role includes investigating children's complaints about government authorities. The role of the Ombudsman has traditionally been focused on individual rather than systemic complaints. Ombudsman's offices such as NSW have become involved in broader policy issues including inquiring into juvenile detention centres. However, the central focus of an Ombudsman's role tends to be individual complaint investigation and resolution.¹⁰⁷ The following information outlines the Ombudsman's role in caring for and protecting children in a number of jurisdictions.

104 Queensland Government, The Public Advocate – <http://www.justice.qld.gov.au/guardian/ag.htm>

105 Vardon Report 2004, p.185.

106 ACT Government 2004, p.13.

107 ALRC 1997, p.143.

New South Wales

2.90 The New South Wales Community Services Commission merged with the office of the State Ombudsman in December 2002. Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the Ombudsman's office oversees and monitors the investigation of allegations of child abuse against employees of government agencies and certain non-government agencies. The functions provided by this Act and the *Ombudsman Act 1974*, have instigated a significant number of inquiries and investigations on aspects of out-of-home care and child protection. Such reports have identified critical issues in institutional and other forms of care for children and young people in New South Wales.¹⁰⁸

Australian Capital Territory

2.91 Under the *Ombudsman Act 1989*, the Ombudsman investigates complaints relating to actions of ACT public agencies. Since 1997, 159 complaints have been submitted to the ACT Ombudsman about the Department of Education, Youth and Family Services (DEYFS). Major complaints have included concerns regarding the removal of children from parents and/or carers by departmental staff; departmental responses to notification of concerns relating to the care and/or treatment of children; and response times to interested parties who make contact with DEYFS seeking intervention.¹⁰⁹

Comment on the operation of some offices

2.92 The above information briefly describes the roles and responsibilities of some public officials in Australia who represent the interests of children and young people. The Committee was not in a position to conduct in-depth analysis into how their work sits with that of other State-level officials in their own or other jurisdictions or with that of federal bodies. Various opinions were received about the work of such officials. The Association of Children's Welfare Agencies and UnitingCare Burnside expressed confidence in the work of the NSW Ombudsman in better practices and follow up than had happened in previous times:

Part of the Ombudsman's work is to make sure that all agencies have a robust and workable system. That level of scrutiny did not previously exist...while it can be onerous and demanding on agencies, it provides a level of protection that most people believe is necessary. It vastly reduces the chances of abuse by employees or care givers going unnoticed or being swept under the carpet.¹¹⁰

There is a requirement that there be a notification and a report which is signed off by the Ombudsman's office...It is not simply, 'Thank you very much; you've investigated that now. Go on doing what you're doing'. There

108 *Submission 13*, p.1 (NSW Ombudsman).

109 Vardon Report, pp.185-186.

110 *Committee Hansard 4.2.04*, p.14 (Association of Children's Welfare Agencies).

is actually a feedback loop that requires removal of the staff or person, notification of the staff or person and a change in the care plan or whatever it happens to be...it is inevitable, I think, that we will get more complaints about lack of care and/or abuse within foster care simply because more children are in foster care now than are in institutional care...I do think that probably the checks and balances around the system have increased.¹¹¹

2.93 Some evidence suggested that the operations of the Queensland Children's Commissioner are not broad enough as they only apply to children in care:

...the title should be the Commission for Children and Young People in Care. It does not have a universal statutory mandate. It can advocate on behalf of children who are not in care, but it has not got that statutory mandate...I come across 15- and 16-year-olds who are not receiving some of the benefits of being in care. The department will say, 'No, no way. This person is nearly 15 or nearly 16. They are too old.' Yet the law says that they have responsibility for young people in this state under the age of 17.¹¹²

2.94 Some disappointment was expressed about the workings of the NSW Children's Guardian and the possible loss of accountability of their services in relation to case plans for children and young people in out-of-home care.

Centacare notes with disappointment the proposed dilution of these roles for the Office of the Children's Guardian to a random review of care plans as opposed to the original intent of all care plans to be reviewed. Accreditation will mean that all out-of-home care service providers must comply with Standards of Practice to ensure best practice is consistently delivered in out-of-home care.¹¹³

Government and non-government child protection services

2.95 As was pointed out to the Committee, the United Nations has commented on ways to create a more protective atmosphere for children:

This initially needs increased information, support and assistance to parents to enable them to parent less abusively. The United Nations Committee suggested that we could do better with education and the dissemination of information about the Convention and the rights of the child. If we do this, we may well be able to promote a climate and culture where the abuse of children is not tolerated.¹¹⁴

111 *Committee Hansard* 4.2.04, p.26 (UnitingCare Burnside).

112 *Committee Hansard* 12.3.04, p.47 (Father Dethlefs).

113 *Submission* 82, p.7 (Centacare-Sydney).

114 *Submission* 277, p.15 (Office of the Commissioner for Children Tasmania).

Early intervention to assist families, children and young people

2.96 The following information briefly discusses some policies and programs which have been introduced to assist in addressing problems in the child protection sphere.

2.97 For example, governments are increasingly recognising the value of early-years supports and services to assist families with their children and reduce the need for government intervention later. Programs are targeted at different times of the child's life, ranging from when they are very young, through to their teenage years and possibly when they come under the protection of a welfare department. The WA Department for Community Development emphasised that the cumulative risk from the total number of risk factors to which children are exposed is the 'most powerful predictor of later problems' for children, rather than a specific risk factor. Therefore, the Department considers it imperative to target assistance and prevention measures to assist children at particular times of their lives.¹¹⁵

2.98 Regardless of sectoral responsibility, early intervention and prevention services are crucial for many people especially those who are financially disadvantaged, in culturally-diverse areas or who have children with a disability. As noted, a view was put that there is often too much emphasis on ensuring that children remain with their biological families and this can be counterproductive in situations of abusive families. Some witnesses emphasised that early intervention via the provision of parenting support skills can be beneficial:

I think what we really have to look at yet again but in more detail – certainly rigorously – are the causes that bring young people into out-of-home care...For a lot of parents who are not particularly good parents, it is not their fault, so an attempt to work with them and to parent the parent as well as the child is something that we are very mindful of.¹¹⁶

2.99 Given the ever-increasing cases of child abuse, there is a need to break the cycle and to work with parents and the child to assist people to become better parents. Families Australia highlighted prevention strategies, particularly since children under five years continue to be the group most affected by child abuse and neglect:

Research has shown that early intervention programs in the area of child abuse and neglect can work. It makes sense, socially and economically, for the Commonwealth to invest a comparatively small amount into such programs, rather than waiting for the much more expensive long-term costs to eventuate.¹¹⁷

2.100 Certainly, issues related to parenting ability have implications about how children are cared for. In a South Australian study, in 58 per cent of primary care

115 *Submission 55*, p.20 (WA Department for Community Development).

116 *Committee Hansard* 12.11.03, pp.78, 81 (Berry Street Victoria).

117 *Submission 175*, p.5 (Families Australia).

givers, parenting difficulties were identified as a priority area and those rose to 99 per cent for secondary care givers, 25 per cent of whom were identified as demonstrating destructive/abusive parenting. These figures are high given the importance of positive parenting on a child's development and emotional wellbeing.¹¹⁸

2.101 Some care leavers have described difficulties in their lives which they consider could have been stemmed had the right sort of early intervention programs been available for their families at the time. The following excerpt was received from a care leaver who, as a young girl, lived in an extremely dysfunctional household and spent time in institutions including Parramatta Training School for Girls. Nowadays, along with the responsibility of her own two teenage children, she cares for her late sister's three children. The care leaver's late sister experienced many difficulties in life, particularly when she became the single mother of twins when her first child was only 14 months old and the children's father returned to America. Suffering further adversities including post-natal depression, housing difficulties, no substantial support from welfare authorities and the loss of a very good friend, other problems emerged and she eventually became a heavy drinker and heroin user. At the age of 41 years, she had a 'lonely death in a park at Darlinghurst in the early hours of the last day of the Sydney Olympic Games'. Nowadays, with the wisdom and hindsight of her own experiences, the care leaver considers that if assistance has been provided, it could have assisted them significantly:

My sister and I were children from what was known as a broken home; a single parent family consisting of two brothers and four sisters, two of whom had intellectual/physical disabilities...We were disadvantaged, poor, ignored and constantly under the surveillance of the so-called welfare system.

A failure to address a traumatic childhood experience which she [her sister] suffered at the age of four eventually led to her lifelong self abuse through the use of drugs and alcohol. Her 'problem' was dismissed as that of an uncontrollable child and she was subsequently dealt with by the welfare system being committed to Reiby at the age of 14. This was the first of her many experiences of institutions.¹¹⁹

2.102 Youth Off The Streets emphasised the worth of early-intervention programs in assisting indigenous children and young people:

...Redfern Police and Redfern Aboriginal Legal Service have discussed with us the need for placements in our programs for youth who cannot be engaged successfully within existing community support and bail option programs funded by Juvenile Justice. Without exception, these youth have histories of significant abuse, serious criminal behaviour and often substance abuse and family breakdown...Some are as young as thirteen and they continue to commit serious crimes. Without immediate and appropriate intervention, many are undoubtedly facing significant time in detention

118 Layton Report 2003, p.3.7. <http://www.dhs.sa.gov.au/childprotectionreview/cpr-report.asp>

119 *Submission* 511, pp.1-2.

centres. This is an expensive and inappropriate response to youth who continue to commit crimes because the system cannot meet their real needs.¹²⁰

2.103 The Post Adoption Resource Centre – Benevolent Society highlighted the importance of guarding against inconsistency in a child's development and applauded the NSW Government's decision to increase funds to early intervention strategies to help keep families together. The organisation cited the Early Intervention Program and the First Five Years Program run by The Benevolent Society in the Sydney region as evidence that with support, children can remain with their families and that their families can learn to parent well.¹²¹

2.104 In the light of the above organisations' works, the importance for children of secure attachments with significant others in their lives so they might have a healthy childhood and positive long-term outcomes, cannot be overestimated. Experts on attachment theory regarding children, opine that children need to have bonds with significant others and emphasise that this is not an optional extra in a child's life but a core need. Of importance for a child is the combination of many elements such as affectionate bonds, liking, loving and trusting someone else and a sensible balance of psychological dependence. Unfortunately, it is noted that:

Often too, children in care may never have developed a foundation of trust, and have no clear understanding of what care means, as the link between their needs and having them consistently and reliably met was never established.¹²²

2.105 Therefore, children are hardly likely to develop a sense of trust in their carers and other attachment figures if they are insensitive, harsh or physically and psychologically absent for much of the child's life.

Commonwealth Government programs and services

2.106 The Australian Government funds early intervention and prevention measures to assist children and families, through the Commonwealth Department of Family and Community Services (FaCS). In late 2004, the Government announced a four-year extension to the \$365 million Stronger Families and Communities Strategy, with an additional \$112 million committed during the 2004 election campaign.¹²³

2.107 Under the Strategy's National Agenda for Early Childhood, the department conducts programs to assist in reducing the risk of child abuse and neglect in vulnerable families and to address the ever-emerging issues in the child protection

120 *Submission 81*, p.6 (Youth Off The Streets).

121 *Submission 53*, pp.4-8 (Post Adoption Resource Centre – The Benevolent Society).

122 McIntosh, Jennifer, 'The inside journey through care: a phenomenology of attachment and its loss in fostered children', *Children Australia*, vol 28, no. 3, 2003, p.12.

123 Department of Family and Community Services, Additional information, 4.1.05.

area, including those related to the increased numbers of children in out-of-home care. The Department is seeking to address some of the disadvantages of indigenous Australians through a \$3.4 million annual allocation to the Aboriginal and Islander Child Care Agencies for child protection, early intervention and protection activities for indigenous children. Some other departmental initiatives relate to support and funding for grandparents and other kinship carers who are providing primary care for grandchildren, an issue flagged by the Australian Government for discussion at 2005 Council of Australian Governments (COAG) meetings.¹²⁴

2.108 Examples of Commonwealth Government initiatives include:

- the Transition to Independent Living Allowance (TILA) which provides one-off assistance of up to \$1000 via non-government organisations across Australia to help disadvantaged young people make the transition from state-supported care to independent living; and
- approximately \$4.4 million for mentoring for young people. For example, the Mentor Market place programs use mentoring to increase positive outcomes for young people, particularly those at greatest risk of disconnection with their families, communities, education and work. One organisation contracted to deliver such services, the CREATE Foundation, uses mentoring to offer opportunities for young people who are in care, or have been in care, to gain skills and confidence to help them take action in their own lives and within their community.¹²⁵

2.109 FaCS has also introduced the Every Child Is Important campaign to promote attitudes in adults that are caring and supportive of children and to encourage a commitment from adults to develop safe and non-abusive relationships with children. The campaign consists of a range of communication elements including print, radio and television advertising, parenting education involving seminars, kits and booklets and newsletters and includes the use of ethnic media. At November 2004, the campaign had been launched nationally and in Queensland and the Northern Territory. More than 200 000 booklets were distributed and 22 parenting seminars have been held in NSW, ACT, Queensland and the Northern Territory.¹²⁶

State and Territory Government and non-government programs and services

2.110 State and Territory governments have a wide range of programs to assist children and young people in need of care, many of which are delivered by non-government organisations. In recent years, many State and Territory departments with responsibility for the care and protection of children and young people have introduced new legislation, policies and strategies to deal with problems which have been identified or come to light in various ways, including via public inquiries.

124 Department of Family and Community Services, Additional information, 4.1.05.

125 Department of Family and Community Services, Additional information, 4.1.05.

126 Department of Family and Community Services, Additional information, 23.2.05.

2.111 Evidence from the Queensland Government has outlined various measures in that State. Following the 1999 Forde Inquiry into children in Queensland institutions, the State Government allocated \$100 million over four years to implement many of the inquiry's recommendations. Along with various legislative, systems and policy reforms, the State Government introduced measures to improve access to educational opportunities and health care for children in State care.¹²⁷ Since the release in late 2003 of the Queensland Crime and Misconduct Commission's report from its inquiry into abuse of children in foster care in Queensland, further changes have been introduced including the establishment of the new Department of Child Safety, and funding for additional departmental staff; recruitment, payments and support for foster carers and for the needs of high-care children. The Queensland Government has introduced other reforms to the child protection framework including those for better services to children in care, including ways to meet the needs of indigenous children. The State's, *Partnership Agreement: Educating Children and Young People in the Care of the State*, seeks to increase the participation, retention and attainment of children and young people in the education system.¹²⁸

2.112 The Tasmanian Commissioner for Children advised of initiatives to assist children in care in that State including the establishment of the CREATE Foundation which advocates for children in care and maintains contact and liaison between children and other people to improve care experiences and outcomes. Other measures in Tasmania relate to law reforms and new legislation to address child protection and family violence issues. A policy, *Our Kids*, has been introduced to refocus service delivery to children aged under 12 years, to provide parents and children with support and ultimately reduce child abuse and increase children's wellbeing.¹²⁹

2.113 Western Australia's Department for Community Development (DCD) provided a detailed history of that State's welfare and out-of-home care inquiries and evaluations, dating back to the 1953 Hicks Report, which have informed government policies. In 2001, DCD commenced the Renegotiation Project to review service agreements with the non-government sector for funding out-of-home care and has advised that 11 metropolitan child placement services are operating in the not-for-profit sector that provide places for children aged 0-17 years in foster and group care.¹³⁰

2.114 The DCD provides funds for children who cannot live at home safely and for services to support families and individuals in crisis. The Department provides a continuum of services to minimise the need for children to enter out-of-home care including parenting skills services and intensive family support.¹³¹ The Department's

127 *Submission 125*, pp.1-6 (Queensland Government).

128 *Submission 125*, Supplementary Submission, pp.1-5 (Queensland Government).

129 *Submission 277*, p.8 (Office of the Commissioner for Children Tasmania).

130 *Submission 55*, pp.24-33 & 43 (WA Department for Community Development).

131 *Submission 55*, p.23 (WA Department for Community Development).

Care for Children and Young People Strategic Framework informs policymaking and it is setting up an interagency Child Protection Co-ordination Committee to work with other departments and the community. Its Strong Families approach was expanded with 2003-2004 budget increases, particularly since it was shown by the Gordon Inquiry to be effective. As with other States' departments, DCD works closely with the CREATE Foundation on policy and program development for young people.¹³²

2.115 Various jurisdictions and agencies have introduced the Looking After Children (LAC) program. This is a child focused guided best practice case management system developed in the United Kingdom. It provides a comprehensive system to record and track information about children in care such as dental visits and vaccinations. Various agencies have noted its merits:

The whole premise of...LAC...will be that all this information is collected in the one place...it actually belongs to the young person, and when they move...that information goes with them...they will have a history of who they are, where they have been, who their friends were and how often their mums visited.¹³³

[it] ensures that quality information is collected and maintained to inform decisions relating to the need for placement, enable safe and appropriate initial care, and guide the development of effective case plans; guides case practice and quality assurance processes and ensures the voices of children are heard.¹³⁴

LAC's design includes attention to identity formation, with the goal being that the child in care develops a sense of self as a separate and valued person. They will know their family background, will be connected as far as possible in positive ways to their immediate or extended family, and have an understanding of and connection to their own ethnic and cultural background...practitioners need to be creative with regard to how this is actually done...using lifebooks, scrapbooks, videos and recordings.¹³⁵

2.116 The WA Department for Community Development provided a field officer's perspective of the LAC:

It has been implemented only in recent times, but it is a very comprehensive way of recording the child's history while in care – not just facts about the child but who the child is and how they are progressing. It encourages and requires the case managers and other specialists and support staff to support that child in care, along with the carer or the other agency, and to work with that child and to get to know the child so that they will have a very comprehensive record from day one of that child coming into care until the child leaves. It is an interactive process and one that will build

132 *Submission 55*, pp.45-46 (WA Department for Community Development).

133 *Committee Hansard* 12.11.03, p.86 (Berry Street Victoria).

134 *Submission 55*, p.32 (WA Department for Community Development).

135 *Submission 50*, p.19 (MacKillop Family Services).

relationships. We believe it is going to meet some of those needs that have not been addressed in the past.¹³⁶

2.117 Berry Street Victoria emphasised the importance of education because of the 'severe deficits in education' that young people in out-of-home care often experience. In caring for some of Victoria's most vulnerable children, young people and their families, the organisation focuses on educational services and programs.¹³⁷ Youth Off The Streets reinforced the pivotal role that education has in a young person's life:

A decade of experience has taught us that education is the most effective way to break the cycles of abuse that can trap young people. Our new National Schools Program now delivers innovative drug prevention and early intervention programs to schools Australia wide.¹³⁸

2.118 Berry Street Victoria described its programs including Early Learning is Fun which encourages reading at an early age. As well, a Victorian Department of Human Services-funded early-intervention program using a consortium of church groups and agencies for Strengthening Vulnerable Families Innovations Project, has helped the State's most vulnerable families. Berry Street Victoria cited other programs to assist children and families such as Connect for Kids which is a resilience program to strengthen families and an arts youth project.¹³⁹

2.119 Among the wide range of programs provided by Centacare-Sydney to assist children and families are:

- ALIVE (Adolescents Living Independently Via Empowerment) leaving care/after care program which assists Department of Community Services agencies and young people with leaving care plans and young people who have left care with services.
- Community Placement Program which provides supportive accommodation options and intensive caseworker support for young people aged 12-18 years who are no longer able to live at home.
- Family Network Program for parents and children providing foster care placements for up to 12 months while parents focus on achieving goals in order to resume caring for their children. Referrals are via the Department of Community Services for children from 0 to 12 years in Inner West and South Western areas.

136 *Committee Hansard* 9.12.03, p.20 (WA Department for Community Development).

137 *Committee Hansard* 12.11.03, p.76 (Berry Street Victoria).

138 *Submission* 81, p.19 (Youth Off The Streets).

139 *Committee Hansard* 12.11.03, pp.78-79 (Berry Street Victoria).

- Permanent Placement Program for permanent foster care for children 0-12 years who are unable to live with their family of origin. This program covers metropolitan Sydney.¹⁴⁰

2.120 Many member organisations of Catholic Welfare Australia provide alternative care for children and young people, including the MacKillop Family Services in Victoria. The MacKillop service, St Anthony's Family Centre, provides services including preventative in-home support to children and families to avoid children being placed in out-of-home care. MacKillop's services include models for care including for emergency or temporary situations and programs that encompass foster care, residential and specialised home-based care programs for babies, children and young people.¹⁴¹

2.121 Anglicare Brisbane advised of its intensive foster care trial in Brisbane, which entails foster carers taking high-needs children with the help of young workers, therapeutic professionals and respite assistance and supports children and carers. Foster carers are not given a wage but are paid \$600 per week to assist with some of the additional costs associated with caring for children with high needs.¹⁴²

2.122 The Salvation Army's care options include diverse residential and home-based models, including a pilot program for substitute care in Victoria's southern metropolitan region. This has involved the full range of specialist workers in mental health, drug and alcohol and education and guidance for a team to work continuously with a young individual in various family and other settings. The Salvation Army has cited the example of case managing a young person with extremely challenging behaviour in stable home-based care. While expensive, government funds were used successfully to purchase him supports including a support worker, additional school and after-school care, specialist psychiatric back up and regular respite care. The organisation's LASA outreach program provides advocacy to enable young people to remain with family networks. The organisation has embarked on partnerships with other organisations to provide services for children in need of care.¹⁴³

Effectiveness of programs and services

2.123 The Committee received positive comment about various programs. For example, the CREATE Foundation recommended that the Commonwealth program, Transition to Independent Living Allowance (TILA), be expanded to become a more comprehensive package for young people.¹⁴⁴

140 *Submission* 71, p.19 (Catholic Welfare Australia). Centacare-Sydney programs are listed on pp.19-20.

141 *Submission* 71, pp.18-19 (Catholic Welfare Australia).

142 *Submission* 226, p.3 (Anglicare Australia).

143 *Submission* 46, pp.3-6 (Salvation Army).

144 *Submission* 69, p.31 (CREATE Foundation).

2.124 Various testimonies from former participants of Youth Off The Streets programs were highly supportive:

I came to Youth Off The Streets at the age of 16. At this time, I was in a very bad way. I was heavily addicted to heroin, was in a co-dependent and abusive relationship and was living on and off the streets of the King Cross area...As soon as I arrived at Lois House a friendly and caring staff greeted me. I was assigned a caseworker that I could talk to any time I needed help. Every day I attended alcohol and other drug groups and positive peer culture. These groups were based upon the issues that the other girls in the program and I were facing. These groups helped me to deal with drug, crime, low self esteem and anger management issues. There was also a family worker who helped me to retie the broken bonds between my family and me. I went to school every day and achieved my Year 10 Certificate and HSC. I broke away from drugs and my abusive drug-using boyfriend...I have been clean for two and a half years. I have a steady job and will be starting university soon.¹⁴⁵

2.125 Ms Cummings from Berry Street Victoria spoke of the positive results of programs to assist vulnerable children, including in the 'very depressed, deprived area' of Victoria's Latrobe Valley:

In the Latrobe Valley, because it is one of these red flag areas, there have been three urban renewal projects in some of the worst of the ministry of housing areas. Already the Department of Human Services is reporting that the number of notifications [of child abuse] is starting to fall because of the committee development focus and that sense of belonging, identity and self worth and all those sorts of things...we have to look at what we can do at the front end...we should have this whole approach rather than just one at the tertiary end.¹⁴⁶

2.126 A care leaver who had been sexually abused as a child over a three-year period by a foster parent in Western Australia's Mofflyn, attributed having a good education to an ability to recover and deal with the experience of that trauma:

I value enormously my education. I think my degree was the beginning of my recovery...I would like to stress that education and counselling have been the two tools that I have used to create a healthy, functional life for me and my son. Thank you to the organisations that are out there working in this area.¹⁴⁷

2.127 However, a number of welfare groups expressed concerns about some programs' effectiveness in protecting children particularly given the heavy demand for services, tendency for constant changes and the lack of proper targeting of programs.

145 *Submission* 81, p.13 (Youth Off The Streets).

146 *Committee Hansard* 12.11.03, p.79 (Berry Street Victoria).

147 *Committee Hansard* 9.12.03, pp.61-62.

Criticisms tended to be related to the operational aspects of programs rather than their content:

But youth refuges in the nation are full and there is a waiting list. It has taken a long time to get the federal government and Queensland Governments to do something about prevention programs.¹⁴⁸

In New South Wales in this last decade we have seen three major changes in direction of the department. The first was to try to keep children in their families, then there were prevention services, which came after the Wood Royal Commission, and already that is gone; that is only five years. So they did an about-turn and went in another direction, and now we are seeing that they are trying to extinguish parental rights and push kids into adoption, under the guise of permanency planning.¹⁴⁹

Families where there is drug and alcohol abuse or mental health issues, especially single young mothers and their children, resulting in neglect or mental health issues, do not seem to be supported...the Department for Community Development refers all families and determines the hours of support that will be funded for each family...[it] brings with it a tendency for the program to be reactive rather than proactive...[and] restricts...the amount of support that can be provided.¹⁵⁰

2.128 As well, some agencies considered that government departments' practices are often counterproductive. Mercy Community Services said that the incorrect focus of a Western Australian government agency led to negative outcomes for children:

Departmental case managers are observed to spend most of their efforts ensuring that the investigation of child maltreatment is not criticised by the courts or the media. Ensuring that children, once in care, are provided with appropriate services and nurturance always seems to be a lower priority within the risk management culture. There is little emphasis placed within the departmental system about what is going to promote wellbeing for children who are in care.¹⁵¹

2.129 Concern was expressed about the actions or inaction of various government departments. For example, one person described a situation where her sister had recently died and her efforts to locate her sister's children only to find them with a neighbour who, as it transpired, was her sister's 'dealer, and who was very well known to DoCS'.¹⁵²

148 *Committee Hansard* 12.03.04, p.49 (Father Dethlefs).

149 *Committee Hansard* 4.2.04, p.32 (Positive Justice Centre).

150 *Submission* 160, p.10 (Mofflyn).

151 *Submission* 61, p.16 (Mercy Community Services Inc).

152 *Submission* 511, p.2.

2.130 A further concern related to problems in rural areas which are often perceived as places where the need for services is not as high as in metropolitan areas. As Berry Street Victoria noted:

I am talking about particularly high-risk adolescents, because that has been my specialty of 26 years. I find it very disappointing that there is a perception that regional and rural kids will not be as difficult and will not get into the drug scene. I believe it is a perception rather than a reality, having worked in both the southern metropolitan suburbs of Melbourne and down in this rural region. The rural issues are monumental, because there are not the support services around. There is no-one to refer to quite often, and so you have to do it yourself. There are also other costs. For us, most of our telephone contacts are STD. So a lot of these things are not understood, because if you just look at the number of young people using heroin and you compare a country town with the city, you say, 'oh well, obviously'. But in comparison to the culture in that country town, these young people are highly marginalised and need all the support they can get.¹⁵³

2.131 Suggestions were received for more cross-fertilisation of ideas and information exchange about what works best. Anglicare Australia called for increased funding to determine the effectiveness of out-of-home care and child protection services and for national data collection.¹⁵⁴ Mofflyn considered it essential in achieving service and policy efficiencies and equity nationally that all participants in the child welfare sector including individual researchers, share their expertise.¹⁵⁵ The CREATE Foundation recommended that New South Wales and Western Australian after-care services provided by contracted non-government agencies be provided nationally for young people aged 18 to 25 years.¹⁵⁶

Conclusion

2.132 The Committee was advised of a variety of programs which are assisting children and young people and their families in various stages of their lives. Assistance strategies to identify at-risk families are crucial, but any assistance measures for parents and families, need to be offered at a time when they are likely to be receptive to such support. The reality is that parents encountering difficulties and crisis situations are likely to be stressed and they may overreact when faced with the prospect that their children are to be removed and placed in out-of-home care. Ideally, strategies need to be devised to show at-risk families that successful outcomes can be achieved, irrespective of their problems in caring for children.

2.133 The Committee also considers that governments could play a role in encouraging more community connectivity for families and parents who may be

153 *Committee Hansard* 12.11.03, p.80 (Berry Street Victoria).

154 *Submission* 226, p.11 (Anglicare Australia).

155 *Submission* 160, p.15 (Mofflyn).

156 *Submission* 69, p.30 (CREATE Foundation).

experiencing difficulties, given that many may be financially disadvantaged, residing in poor-quality and inadequate housing (possibly in new barren suburbs) and feeling isolated from their traditional support networks and the community. Given the difficulties in adapting to parenthood and the struggles involved in caring for children, often with little resources, involvement in activities such as play groups and young parents' programs can be productive.

2.134 The Committee received much evidence of the range of programs available. However, because of the disparate nature of their implementation across Australia, it would seem productive to ascertain the effectiveness of programs and their potential to assist children and young people in various regions. The Committee's comments on a national approach to child protection are contained in chapter 7.

National approach

Practical division of responsibilities

2.135 During the inquiry, the Committee heard evidence that eight welfare systems administering eight different sets of child welfare laws is both difficult, inefficient and leads to some children not receiving the optimum level of protection. As the following excerpts show, some groups described the system as 'fractured', having different agendas and existing in a milieu where governments shift responsibility to the community sector:

...[it is] a fractured welfare system, an under-resourced system, a system where children and parents are invisible, and a system in need of national standards and approaches.¹⁵⁷

What we see happening throughout Australia is a shift of government responsibility to the community sector: "Take on this responsibility and do this work, and the next time there's an abuse or neglect issue, we can blame you...We actually don't have to own it as a government or a community"...The wellbeing of our children, the healthy state of our families...is not the responsibility of the community sector or government; it is a broader community responsibility.¹⁵⁸

2.136 Many calls for national legislation and a whole-of-government approach to policies and resource allocation were put forward. The development of national standards was seen as a good starting point for national child welfare legislation:

...the need for standards must surely be warranted on the basis of the high degree of responsibility that government and service providers have in regard to the care for children...[and] might be a useful beginning to the process of creating a uniform national framework of child welfare legislation in Australia.¹⁵⁹

157 *Submission 61*, p.1 (Mercy Community Services Inc).

158 *Committee Hansard 12.11.03*, p.63 (Anglicare Victoria).

159 *Submission 61*, p.18 (Mercy Community Services Inc).

The Federal Government...should establish uniform child protection policies and legislation, with minimum standards of care and full auditing of the effectiveness of every aspect of child protection. It should commence nationally coordinated child abuse and neglect–prevention programs.¹⁶⁰

2.137 Difficulties in coordinating services such as police and justice across State and Commonwealth levels were noted. Various groups considered that the care and protection of children warrants the weight of more than one department:

It is evident from the "Pathways to Prevention" framework that "lining up" or "joining together" diverse elements within government, societal institutions, the not-for-profit welfare sector and the community to deliver an integrated and effective child abuse prevention and response strategy is beyond any one particular authority or department.¹⁶¹

...regardless of whether they are in the care of the Department of Community Services here in New South Wales, all departments – the Department of Health, the Department of Transport, the Department of Housing – have a responsibility to give priority access to this child or young people or their families...the state is their parent.¹⁶²

2.138 Irrespective of which department has responsibility for particular child protection responsibilities, many people would simply want problems remedied. One witness reminded the Committee:

...nearly all wards are wards of one of the states, not of the Commonwealth, but there is such an overlap of responsibilities and funding between the two tiers of government that it is not really relevant to say where the buck stops...wards should be the sole financial responsibility of the federal government so that there is a unified and even treatment of children in need across Australia.¹⁶³

National legislation

2.139 The Committee received many calls for the introduction of national child protection legislation. The following care leaver who spent his childhood in orphanages gave his view of the importance of the Commonwealth's role:

...most of the state authorities with responsibility in this area are chronically under resourced which reflects a lack of political will to do anything necessary to guarantee the duty of care implied in the relationship between vulnerable children and the authorities. The periodic media outrage of child abuse or neglect creates a short-term moral panic in the community

160 *Submission 44*, pp.1-2 (Professor Chris Goddard).

161 *Submission 35*, pp.14-15 (NSW Commission for Children and Young People).

162 *Committee Hansard 4.2.04*, p.66 (CREATE Foundation).

163 *Committee Hansard 12.11.03*, p.20.

but too often the resolve to do better for children at risk is allowed to evaporate once the publicity subsides.¹⁶⁴

If those standards or set of principles were given the weight of the Commonwealth, it would be more difficult for state authorities to opt out of their responsibilities.¹⁶⁵

2.140 Some groups argued that the increasing levels of child abuse and neglect demonstrate the need for a national approach akin to something like the National Drug Strategy or National Mental Health Strategy:

...the issue of child abuse and neglect sits at the crossroads of several major Commonwealth Government initiatives: the Stronger Families and Communities Strategy, the (still evolving) Early Childhood Agenda and to a lesser extent Welfare Reform.¹⁶⁶

...efforts should be made nationally to streamline the care and protection system in Australia...the Commonwealth Government should take a lead role...this would require the cooperation of the States and would take some time to achieve. The benefits are likely to be evidenced in a better coordinated and more efficient system to support children and families.¹⁶⁷

2.141 Suggestions were put to the Committee that the Commonwealth invoke its powers under the Constitution's external affairs power [section 51(xxix)] to introduce national child protection legislation in line with the United Nations Convention on the Rights of the Child. Various groups noted that domestic legislation giving affect to the articles of the Convention should be enacted.¹⁶⁸ A relatively recent precedent of the Commonwealth invoking the external affairs power in line with a UN Convention occurred with the introduction of the 1983 *World Heritage Properties Conservation Act*.¹⁶⁹ Then, because the federal government was a signatory to the UN Convention, the World Heritage Convention, it was able to invoke the external affairs power to introduce national legislation to prevent the damming of Tasmania's Franklin River.

2.142 A number of respondents expressed doubt about the feasibility of using the UN Convention as a basis on which to peg national legislation. As Dr Mathews explained:

It is obviously a very complex issue and it would need a lot of other resourcing and infrastructure associated with that as well as policy. At the

164 *Submission* 18, p.39.

165 *Committee Hansard* 11.11.03, p.36.

166 *Submission* 175, p.3 (Families Australia).

167 *Submission* 61, p.16 (Mercy Community Services Inc).

168 *Submission* 70, p.7 (National Children's and Youth Law Centre).

169 This subsequently went to the High Court: *Commonwealth v State of Tasmania* (1983) 158 CLR 1 (the Dams Case).

moment, the UN convention is, apart from the legitimate expectation it raises in administrative law, pretty toothless.¹⁷⁰

2.143 The Committee is aware that the ratification of the Convention by the Australian Government in 1990 does not mean that the Convention automatically becomes part of Australian law. However, it is worth noting that in the case of *Minister for Immigration v Ah Hin Teoh* (1995) 128 ALR 353, the High Court ruled that while the Convention had not been incorporated by legislation into Australian law, it nevertheless still has effect. One writer has noted that options exist for the Commonwealth to pursue national uniform child welfare legislation, including exploring precedents set by the decisions of States to refer their right to legislate on corporate matters or by securing the agreement of jurisdictions on a 'model law' for identical legislation in each jurisdiction.¹⁷¹

National Plan for Foster Children, Young People and their Carers

2.144 During the course of the Committee's inquiry, the National Plan for Foster Children, Young People and their Carers was endorsed by the Community and Disability Services Ministers. The Plan followed a meeting in 2002 of Commonwealth, State and Territory Ministers to develop a national plan for foster carers and young people in care. In a joint media release, the Ministers stated:

All Ministers are committed to working towards a National Plan that will provide directions for whole of Government approaches to enhance the support and services available for Australia's 17,000 children in foster care and their foster families.

Ministers discussed the need for stronger collaboration between the Commonwealth, States and Territories with a focus on training, research, uniform data collection and support.

A focus on the identified areas will assist in achieving better outcomes for children in care and their carers.

Ministers acknowledged the critical role played by foster carers and the need to support them to continue to provide quality care for children. Foster care remains an essential response for children unable to live with their families.¹⁷²

2.145 A national working party was established to oversee the development of the plan. After consultation with key stakeholders, the working party prepared a final draft plan. The plan was endorsed and released at the Community and Disability Services

170 *Committee Hansard* 12.3.04, p.107 (Dr Mathews).

171 Lynch 2002. A discussion of the Commonwealth's obligations regarding the UN Convention appears in the ALRC's report, *Seen and heard* pp.74-79. See also the Joint Standing Committee on Treaties, *United Nations Convention on the Rights of the Child*, 17th Report, 1998.

172 Portfolio Ministers, Australian Department of Family and Community Services, *Media Release*, 'Working together for children in foster care', 1.11.02.

Ministers' Conference in July 2004. Implementation of the National Plan will occur over a two-year period (2004-2006), coordinated by a working group with representatives from all governments, led by the ACT.

2.146 The National Plan focuses on improving the wellbeing and life chances of children and young people in home-based foster care. It has been developed and implemented against a background of:

- responsibility for children and young people's welfare rests primarily with State and Territory Governments. The Australian Government has an interest in longer-term outcomes for all Australian children and young people;
- increasing numbers of children and young people in out-of-home care with indigenous children over-represented in out-of-home care;
- an increase in the level and complexity of the need of many of those entering out-of-home care;
- fewer people becoming foster carers;
- there is a significant trend towards relative/kinship care;
- a need for new models of foster care to be developed and tested;
- greater awareness of the many points at which children and young people in foster care are particularly vulnerable, including the transition of young people out of foster care to independent living;
- several States and Territories have moved from direct service delivery to purchased provision through non-government agencies; and
- links to other International and National Plans such as the UN Convention, the National Agenda for Early Childhood, the National Mental Health Plan and the National Drug and Alcohol Plan require exploration.

2.147 In developing and implementing the National Plan, governments have committed to a set of principles which include that improved outcomes for children and young people will be achieved; service delivery will be flexible, innovative and matched to the real needs of children and young people; the role, status and commitment of foster carers will be respected and supported; and governments will work collaboratively on the implementation of the National Plan and respect any relevant resource constraints.

2.148 Key areas of action and proposed outputs have been identified for each of the four areas of focus:

- *Training*: safe environments and quality outcomes for children and young people require the promotion and sharing of good practice in recruitment,

training and assessment of foster carers. This includes action on positive promotion of foster care and active, effective recruitment of a diverse pool of capable foster carers;

- *Research*: further targeted, quality information on foster care in Australia would more effectively inform policy and program development. This includes action on an agreed foster care research agenda and ways of influencing relevant research;
- *Uniform data collection*: different legislation, policies and practices across jurisdictions mean it is difficult to compare data at a national level. Work is being undertaken by the National Child Protection and Support Services (a subgroup of Community Services Ministers' Advisory Council's (CSMAC) National Community Services Information Management Group), the Productivity Commission and the Australian Institute of Health and Welfare to improve national out-of-home care reporting. The National Plan seeks to endorse and encourage these existing mechanisms. This includes action to standardise statistical definitions, data collection processes and reporting and cross-jurisdiction information on foster carers; and
- *Support*: the National Plan encompasses support for children and young people in foster care and support for foster carers. Areas of action include strengthening case management; over-representation of indigenous children and young people in foster care; and examining ways of supporting relative/kinship care.¹⁷³

2.149 Unfortunately, the Committee did not receive extensive evidence regarding the plan, however, the Western Australian Department for Community Development commented about the Plan:

This will be an important contribution to the wellbeing of children and young people in care. The department is keen to progress the proposed actions in conjunction with other jurisdictions.¹⁷⁴

National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities

2.150 In June 2004, the Council of Australian Governments agreed that 'the extent of family violence and child abuse among indigenous families continues to be a matter of grave concern for both governments and indigenous communities'. COAG indicated that jurisdictions would work cooperatively to improve how they engage with each other and work in partnership with indigenous communities to tackle this

173 For details of key areas of action and proposed outcomes, see [http://www.facs.gov.au/internet/facsinternet.nsf/via/national_plan_foster_children/\\$file/NationalPlanFosterChildren.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/via/national_plan_foster_children/$file/NationalPlanFosterChildren.pdf)

174 *Committee Hansard* 9.3.04, p.3 (WA Department for Community Development).

issue under a new National Framework on Indigenous Family Violence and Child Protection. Bi-lateral arrangements between the Commonwealth and State and Territory Governments will underpin the Framework.

2.151 Jurisdictions' action to prevent family violence and child abuse in indigenous families will be based on the following principles:

- safety;
- partnerships;
- support;
- strong, resilient families;
- local solutions; and
- address the cause.

A national commissioner for children and young people

2.152 The Committee received many suggestions for the appointment of a national children's commissioner with a brief that includes establishing national standards for all voluntary and professional carers and a capacity to screen people who work or volunteer with children and young people.

2.153 As the following excerpts show, evidence has emphasised the importance of a national children's commissioner along with increased Commonwealth Government involvement in standard setting for the care and protection of children:

An Australia wide Children's Commissioner should be supported. We must all be vigilant about listening to children.¹⁷⁵

The National Children's Commission should be established and function independent of any government department.¹⁷⁶

There is general recognition among out-of-home care providers on the need for the States and Territories together with the Federal Government to further develop a National Agenda for children. Ongoing services and support for people who have been in out-of-home care should be one focus of that Agenda.¹⁷⁷

Urgent steps need to be taken to appoint a Children's Commission and to establish a national research agenda.¹⁷⁸

...preferably additionally, they could establish a National Commissioner for Children and Young People, who could work towards the standardisation of

175 *Submission 53*, p.8 (Post Adoption Resource Centre – The Benevolent Society).

176 *Submission 160*, p.16 (Mofflyn).

177 *Submission 82*, p.14 (Centacare-Sydney).

178 *Submission 44*, pp.1-2 (Professor Chris Goddard).

child protection laws, policies and practices across all the States and Territories.¹⁷⁹

We think [it] is absolutely essential...to increase children's and young people's entitlements such as through a children's commissioner, which of course would assist in hearing the voices of all children. That would be of particular significance to the disadvantaged children that we work with...Whilst a children's commissioner would be of benefit to children and young people more broadly in the community, specifically it would be of assistance to children in care.¹⁸⁰

2.154 The Australian Medical Association (AMA) has been a strong proponent of establishing a national children's commissioner. The AMA has emphasised the increasing rate of reported/suspected and substantiated cases of child abuse and neglect in Australia, particularly among indigenous children and highlighted the serious health implications of child protection issues and the correlation between adverse childhood experiences and later health problems.¹⁸¹ CBERSS quoted studies that consistently show a link between people's experiences of childhood abuse and problems in later life including depression, substance abuse and relationship disturbances, problems that often become inter-generational.¹⁸² These and other long-term social and economic effects were described in detail in chapter 6 of *Forgotten Australians*.

2.155 In 1997, the Australian Law Reform Commission (ALRC) and HREOC contended that the 'most pressing need at this stage is a national body located within government to co-ordinate policy development and service delivery for children'. That inquiry noted that HREOC 'already undertakes the functions that would be expected of a Commissioner for Children' with attributes that include independence in law, experience with government and non-government bodies, record in speaking out in defence of children and experience scrutinising legislation and policies to ensure their accord with the principles of the UN Convention.¹⁸³

Conclusion

2.156 The Committee notes that the National Plan for Foster Children, Young People and their Carers was endorsed by the Community and Disability Services Ministers and that COAG has agreed to the National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities. While these are major steps forward in improving child protection services, witnesses pointed to many areas

179 *Submission 70*, p.7 (National Children's and Youth Law Centre).

180 *Committee Hansard* 12.11.03, p.76 (Berry Street Victoria).

181 Australian Medical Association, 'More must be done to protect our children from abuse and bullying', *Media Release*, 17 September 2004.

182 *Submission 49*, pp.7-8 (CBERSS).

183 ALRC 1997, pp.148-149.

where there is a need to review legislation and considered that a national approach to child protection was required. The Committee's recommendations concerning a national approach are contained in chapter 7.

2.157 The definitional disparities among State and Territory care and protection laws result in many children in abusive situations in some jurisdictions not having the protection that others may provide, a concern which has been highlighted by various inquiries which have shown that some practitioners are unaware of the relevance of legal applications in their daily child protection work. Further, while the 'best interests of the child' principle underpinning policies and legislative provisions is often invoked with the very best of intentions, by policymakers and programs managers, it seems to be bandied around to the point where it risks becoming a cliché.

2.158 The Committee was also concerned at information from Professor Freda Briggs that child protection and development issues are an unexplored area of policy research.¹⁸⁴ While the Commonwealth Government has established a Chair in Child Protection at the University of South Australia, no university in Australia teaches its social work degree students about the many issues in child protection, including child abuse. The Committee considers that given the enormity of problems which continue to come to light there is a need to ensure that there are adequate numbers of well-trained child care professionals. The Committee recommended in *Forgotten Australians* (recommendation 39) that the Commonwealth and other Australian governments co-operate to establish courses at selected tertiary institutions that focus on child protection.

2.159 The Committee also considers that the conduct of a well-targeted public education campaign by State and Territory Governments about their legislation may be worthwhile in ensuring that care and protection workers are fully informed of their legislative responsibilities towards children.

Recommendation 3

2.160 That, as recommended in *Forgotten Australians*, the Commonwealth, State and Territory Governments establish courses of study at selected tertiary institutions that focus on child protection and related issues, especially early childhood and family studies, psychology, conflict management, the impact of institutional care and social policy, to address issues in these areas. [Rec 39 in *Forgotten Australians*]

Recommendation 4

2.161 That awareness of child protection issues, the effects in the longer term for a child or young person in care and related issues be included as components of teacher education courses conducted at the tertiary level.

184 *Committee Hansard* 9.12.03, p.16 (Senator Murray).

