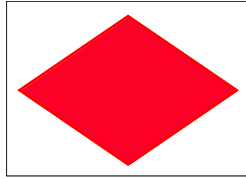


**Office of the Public Advocate**



**Submission to Protecting children: ten priorities  
for children's wellbeing and safety – position  
paper and technical options paper**

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## **Introduction**

Thank you for the opportunity to comment on the further policy developments in relation to the Child Protection system. The Office of the Public Advocate (OPA) welcomes the current plans to review the way in which the current Child Protection system operates. The Public Advocate welcomes the focus on changing Child Protection practice in order to better meet the needs of vulnerable families where the child may be at risk, as this is an area which needs significant improvement. The office is particularly concerned by the lack of understanding and support offered to vulnerable families where the parent also has a mental illness, intellectual disability, acquired brain injury or physical disability. (For the purpose of this submission this group will be referred to as having a disability).

In the technical options paper it is acknowledged that there has been a significant increase in the number of families where one or more of these characteristics are present. However there also appears to be a presumption that these parents are unable to meet the developmental needs of their children. Indeed the description of people who have a disability or mental illness as “having problems”, is of particular concern as there is a significant body of research which indicates that having a disability is not a predictor of capacity to parent. Indeed insufficient focus has been given to those parents with a disability who are successfully parenting. What this does reflect is a potential bias in the way in which these parents are viewed by the Child Protection system in relation to their capacity to parent.

However the Public Advocate is aware that there are some parents who do need assistance from the service system if they are to be able to effectively parent. For some years now the office has been concerned by the lack of adequate support for these families, resulting in the removal of children to a permanent care system that can be marked by frequent changes in placements which can have quite a negative impact on the child’s overall development.

## **Strengthening every family forum**

In response to this concern in July 2003 the Office of the Public Advocate and Victorian Parenting Centre (VPC) hosted a forum to consider the broad range of issues confronting parents with a learning difficulty. Whilst the specific focus of the forum were parents with a learning disability, it is acknowledged that families where the parent has a mental illness, acquired brain injury, or physical disability can experience similar problems in being adequately supported. A working party was formed from participants at the forum. This working party developed a strategic plan, which identified the following vision for what the service system supporting families should be seeking to achieve:

### **Vision**

A society that recognises the capacity of all individuals to be effective parents. This is achieved through both informal mechanisms and with the help of a service and support system that provides assistance to all parents including the most disadvantaged and vulnerable. This support focuses on the parents' strengths and acknowledges diversity of parenting styles and the changing needs of parents at different stages of their child's development.

To achieve this vision four key issues were highlighted which were seen as needing to be addressed if this vision was to be realized:

- 1. What enables parenting?**
- 2. Development and utilization of empirically validated supports and services.**
- 3. Services working together**
- 4. A legislative framework and legal system, which promotes support of the family whilst also ensuring adequate protection for children and young people at risk.**

This submission will address issues raised in both the position paper and technical options paper under each of the ten priority areas. In responding to these papers a

copy of the strategic plan developed by the Office of the Public Advocate in partnership with the Victorian Parenting Centre has been attached.

Before addressing the specific priority areas the Public Advocate would make a couple of overall comments. Firstly too much emphasis appears to be placed on restructuring the service system and legislative reform as a way of addressing deficiencies in current service practice. The concern with this approach is that it may not result in improved support of those vulnerable families where the parent has a disability. What is needed is greater focus upon issues such as staff recruitment, training, supervision and ongoing development in order to assist in the development of best practice.

The Public Advocate supports the emphasis in the *Children and Young Persons Act* (1989) that it is in the best interests of the majority of children to grow up with their families. Where they are removed reunification should be pursued as the immediate goal wherever possible. However the emphasis on being able to consider permanent placement at an earlier stage than is currently possible may, result in further exacerbating the current approach of Child Protection services in some cases to not actively pursue attempts to improve the functioning of the family unit, preferring to pursue permanent placement. This is also influenced by misunderstandings and at times active prejudice against parents with a disability, by Child Protection workers. The absence of sufficiently resourced and flexible family support services that can assist these families also adds to the potential for permanent placement of children outside the birth family to be considered the preferred option. Whilst the Public Advocate acknowledges that failed efforts at family reunification can have disastrous long-term impacts upon the child, the experience of this office is that this is often not attempted preferring to make a “clean break” with the family of origin.

## **Protecting children: Ten priorities for children’s wellbeing and safety in Victoria**

### **1. A cohesive policy and legislation framework**

Whilst the Public Advocate supports having a clear and comprehensive policy and legislative framework, to date the practice of the Child Protection service has not always been consistent with their own policy and legislative framework. For example the failure to inform parents of their rights and not pursuing family reunification in some cases. Consequently any changes in this area need to target the practice of both Child Protection workers and workers within family support agencies if we are to see improvements in this area.

The lack of an empirically based process for determining whether the parenting provided for a child or young person is adequate or inadequate suggests that greater emphasis should be placed upon practiced based research which will help develop a shared understanding of what enables competent parenting.

The Public Advocate supports the need for a more holistic measurement of children's wellbeing and safety. Unfortunately current assessments leave too much room for personal judgements of what is considered to be a desirable outcome for the child, which does not acknowledge the diverse range of parenting styles, and approaches, which currently exist in our community. The development of performance measures that encourage a greater focus on children and family outcomes is supportive of this approach.

In the technical options paper there appears to be a suggestion that the legislation, service system and Child Protection system needs to be more explicitly child centred in its approach. The current legislative framework appropriately places any concern for the child within the context of the family. The Public Advocate would be concerned if there was any attempt to less the importance of considering the welfare of the child within the family context. One of the difficulties with the current Child Protection service response to some cases is that it tends to view the needs of the child either in isolation from the family context or completely at odds with those of the family. Whilst at times the child's best interests may clearly be at odds with those of the family it is often difficult to make a clear separation. This approach appears to be promoted by the investigative nature of the Child Protection service involvement and the adversarial nature of the court process, which requires the obtaining of evidence and mounting a case against another

party. The Public Advocate supports the recommendation that all efforts should be made to maintain relationships between children and their birth families.

The Public Advocate supports the need for there to be greater emphasis on child and family participation in decision making. However to achieve this there will need to be greater emphasis upon providing families with the necessary information in an accessible way to help inform their decision making process. At times this may also require the involvement of independent advocacy.

The emphasis upon a strengths rather than a deficits approach is also to be welcomed, given that the deficits approach can be very destructive to the individuals concerned and tends to lead to a distorted assessment of the situation.

There is a clear recognition of the need to reshape the service responses given the increasing number of families experiencing patterns of long-term poverty and the deinstitutionalisation of people with a mental illness and disability. However the need for reforms to Child Protection services practices would be there even if these factors were not present. These factors simply add further weight to the need for Child Protection to improve the quality of the service it provides.

The emphasis upon assessing how well the whole system is achieving desired outcomes for vulnerable children and their families need to be more closely examined. Consideration should be given to some regular external process of evaluation. Too often there is a limited focus upon the investigation of alleged instances of child abuse, when in fact the outcome you are seeking to achieve and how best to achieve it has not been fully assessed.

Specific mention is made of the legislation addressing the issue of best interests of the child. Care needs to be taken to ensure that the reasons why a particular approach is recommended in the best interests of the child needs to be clearly articulated. It is not sufficient to simply state that the approach taken is “in the best interests” of the child.

## **2. Enhanced strategic management of the service system**

As part of improved strategic management of the service system there needs to be greater flexibility and obligation upon services to work with the most vulnerable families. These services should also have an obligation to make sure that families and children are informed of their rights and obligations in relation to the system, in a way in which they can understand this information.

In the OPA/VPC strategic plan it was acknowledged that whilst there are a range of resources and programs, few have been systematically developed to determine their efficacy, sustainability and efficiency. Many services feel poorly equipped to respond to the needs of these families. Consequently there is a clear need for the establishment of a forward agenda for practice based research and the utilisation of empirically validated supports and services for families where the parent has a disability. This could be incorporated into the suggested accreditation program for children and family services. This may encourage a greater emphasis upon quality but this should not be the only factor encouraging an improved quality of service.

Indeed developing strategies to foster practice based learning, knowledge and good practice sharing between services is seen as being critical to improved practice and service delivery in this area. This quality approach should also be applied to Child Protection services.

In relation to review mechanisms the Office welcomes the creation of the Advocate for Children in Care. However being located within the Dept. of Human Services potentially compromises this role. Consideration needs to be given to whether this role can be more effective if it is located externally to the Dept. of Human Services. This may enable independent advice to be more effectively given. Consideration should also be given to providing the Advocate with the authority to enter any out of home care service without requiring the direction of the Secretary of the Dept. of Human Services.

### **3. Reduced Aboriginal over-representation**

The Public advocate supports the need to address the overrepresentation of Aboriginal families in the system acknowledging that there are a wide range of factors, which contribute to this. However there should be similar undertaking in relation to the overrepresentation of parents with a disability in the Child Protection system. This appears to deny the range of other socio-economic factors such as living in poverty, which can potentially have a much greater impact upon parenting than disability. Presumably a similar undertaking is not made in relation to parents with a disability because of a perception that this group is likely to have difficulties parenting. This is despite a wide body of research suggesting the contrary.

The emphasis upon strengthening families capacity to provide nurturing care and belonging within their family group and working in partnership to enhance family strengths and the potential to care for their child should be applied to all families, not just those from the Aboriginal community.

#### **4. A service system that supports earlier intervention and prevention**

The fragmented and poorly coordinated service response described in this area is again highlighted in the strategic framework developed by OPA and VPC where the need for services to work together was highlighted.

There is a clear need to not only identify vulnerable families and children before they start to encounter significant problems but also offer flexible long term assistance to these families. This is critical if there is to be a shift from the current Child Protection system to one of child welfare. The need to move away from an emergency protective response with a limited range of community based supports that are not well co-ordinated to a more comprehensive response to the issue is critically needed. Equally involvement with child protective services should not be seen as a prerequisite to being able to access some services as currently occurs.

This will require a greater range of early intervention programs, together with more accessible and flexible respite services for families. This will also involve collaboration with universal services such as hospitals, schools and community

health centres, having greater responsibility and accountability for identifying and targeting vulnerable families. Part of this requires there to be the availability of alternatives to statutory service provision and entry to the court system.

Building links with, mental health, disability and acquired brain injury services, is also seen as important in making these services more family focused in their approach, as well as improving the understanding and capacity of general family support services to respond to the needs of these families more effectively.

The office is aware that some regions have a designated position responsible for assisting greater collaboration between Child Protection and these services. The use of this and other models should be encouraged.

The link between community services and child protective services needs to be carefully managed if these services are going to be considered accessible by vulnerable families who may fear the involvement of child protective services. For example a concern about the help line is that whilst it may be independent of the Child Protection service, the fact that matters can be referred to Child Protection or the police may deter some callers from using the service. The extent to which risk assessments can effectively be conducted over the phone is debatable particularly in relation to people who have a disability, as their capacity to communicate effectively over the phone may be quite limited.

As mentioned in the opening remarks any development of the service system to be able to respond earlier in a more preventative way will require adequate staff training, development and support, as well as ongoing research in order to develop standards of best practice in this area. This will involve ongoing evaluation of approaches in this area.

An example of an element of best practice is the recognition of taking strengths based approach to working with families. However the risk assessment framework described on page 54 does not appear to be consistent with strengths based approach to supporting these families.

## **5. A differentiated range of service responses which form a service system**

As mentioned in relation to the previous priority area the Public Advocate supports the need for a more enhanced array of services across universal, specialist agencies and Child Protection services. The Public Advocate agrees that any review of the way in which our society protects children from abuse must have at its core a primary focus on ways to strengthen family support services in order for them to be able to provide flexible, responsive and where necessary long term assistance to families. This may also require a more intensive level of support and assistance to these families. This is particularly important for some disadvantaged families where the parents may have a mental illness, intellectual disability or acquired brain injury. This has resource implications for the system, which will need to redress the current imbalance where a significantly greater level of funding is currently provided to Child Protection than the services designed to support vulnerable families.

In order to achieve this joined up service system response a clear policy framework will need to be developed in partnership with these various services. Part of this framework should outline clear processes for how these agencies are to work together and where necessary who the lead agency should be, particularly if more than one agency is providing support to a family. This will need to also occur at a regional level given the different service configurations, which exist, in each region. This consultation should bring together universal services such as hospitals and schools, together with family support agencies, and agencies such as mental health and disability services in order to build a more integrated service response.

The promotion and funding of programs which can work with families for longer without the need for a court order need to be more fully explored, together with more structured approaches for diverting families into services such as through mediation or family group conferencing or a court process that is more inquisitorial than adversarial.

## **6. Information sharing in an integrated system of children's and family services**

The Public Advocate supports the effective flow of information between services in order to ensure adequate protection for children as well as assisting to inform an appropriate and coordinated service response to the needs of families. However currently where this does occur child protective services does not always share their information with other services. Where information is provided by mental health or disability services, Child Protection can sometime use this information in a way which seems to denigrate any efforts by the parent to seek help through such means as counselling, medication or support services as a sign of the persons inability to cope with the demands of parenting. This can reflect a lack of understanding by Child Protection staff of what it means to have a mental illness or disability. Consequently there is a clear need for any information sharing to be based on collaborative relationships between Child Protection and specialist services such as disability and mental health, ensure that the information is appropriately used and understood.

In relation to this point in the technical options paper in figure 12 there did not appear to be a clear two way link between Child Protection and other services such as disability and mental health. In agencies such as disability services sharing information with Child Protection it is equally important that Child Protection provide information to these agencies if they are to be encouraged to have more family focus to their services.

In the interests of natural justice, transparency and accountability it is also important that this information be shared with parents and the child, except in cases where it can be argued that disclosure would jeopardise the wellbeing and safety of the young person.

## **7. Enhanced Child Protection practice and out-of-home care services**

As mentioned previously there is a clear need to improve Child Protection staff practice in relation to parents with a disability. This needs to occur through improved staff training and ongoing development as well as developing stronger links with specialist disability and mental health agencies. This also requires the Child Protection service to be more flexible in order to provide information and

advice to family support and indeed other agencies. They also need to be able to facilitate the involvement of families with other support services. These services need to be able to provide longer and more intensive support to families without having to have a court order to achieve this.

The risk assessment approach currently used by the Child Protection service needs to involve a greater focus upon outcomes for the child and less focused on the presence of disability as a potential risk factor.

The Public Advocate believes that the caution should be retained in the legislation. The cautioning of child and parents needs to occur in a way that will ensure that parents with a mental illness or cognitive disability understand. This may require the presence of an independent advocate to help ensure that this occurs.

In relation to the issue of extending the notification process to unborn children the Public Advocate questions whether this needs to be Child Protection in the first instance where there are not significant concerns for the child. It may be possible for another agency to engage the mother in relation to offering an appropriate level of support. This would also require a change in Child Protection practice, which can sometimes assume incapacity to parent based on previous experiences.

Whilst the Public Advocate has concerns about legislation enabling reports to Child Protection in relation to unborn babies, I would not be opposed to Child Protection engaging with the mother following the birth, if the level of risk was considered sufficiently great.

In relation to options for investigation and intervention the Public Advocate would support Child Protection having a more flexible role through ongoing consultancy, case planning and case management without a court order where appropriate. This offers less restrictive and potentially less intrusive options to Child Protection. However there should be clear processes for reviewing this involvement so that this does not become ongoing involvement of Child Protection in certain families, as this may lead to sustained pressure on the family. As part of a review process

this role could potentially be handed to a family support agency if it was felt that the level of risk was sufficiently low.

In relation to family group conferencing this has the potential to be a more effective way of engagement with the family in planning ways to address issues of concern. This also raises a broader practice issue with current Child Protection practice about the extent to which families are effectively engaged in the case planning process, particularly if their disability makes understanding more difficult.

The Public Advocate supports the development of quality frameworks to improve Child Protection practice in relation to out of home care as too often this is seen as the easy solution to a situation when in fact it may expose the child to increased levels of vulnerability.

## **8. The family division of the Children's Court and Alternative Dispute Resolution (ADR) models**

The Public Advocate welcomes the emphasis upon offering a range of ways of resolving disputes including alternate dispute resolution models which offer a problem solving focus as well as making the court process more solution focused.

In relation to alternative dispute resolution models care needs to be taken to ensure that power imbalances between parties are addressed in the way the model operates. How this process relates to the court process also needs to be carefully considered and made clear to all parties. This is an issue, which is not confined to the use of ADR because parents are not always fully informed of their rights when Child Protection services become involved. There is a clear need to redress this deficiency in the current system as currently the process can lack natural justice for many of the families where their understanding can be affected by mental health or cognitive disability issues. An example of this is the need for greater clarity about the process for reunification in applications for extensions of custody orders.

In relation to the approach taken by the court whilst it is recognised that the more adversarial approach may be appropriate for some matters before the court, greater consideration needs to be given to the possible application of a more inquisitorial approach by the court. Too often the adversarial approach forces parties to take opposing positions, which can be quite destructive on the family relationships in the long term. In the context of parents with a disability, efforts to seek support in this context may be presented to the court by Child Protection services as evidence to suggest that the person is not a competent parent.

Our own experience with the more inquisitorial model used by the Guardianship List of the Victorian Civil and Administrative Tribunal and indeed our own work as guardians and advocates is that such an approach has the potential to preserve relationships more than the more traditional adversarial approach.

The recommendation that the legislation should stipulate that the Child Protection service should case plan both before and indeed after an application to the Children's Court whilst having some benefit may not be the most effective way of addressing the practice issues related to Child Protection workers. Recruitment, training, support and supervision of workers are obviously other critical elements of effecting change in this area.

In summary the Public Advocate supports a review of current processes used by the Children's Court in order to move from an adversarial approach to a more problem solving approach. This should explore alternative dispute resolution methods, whether this is through greater use of family group conferencing or altering the court process to be more inquisitorial in approach. This should have at its core a problem solving approach rather than a forensic focus on evidence and should be accessible to any type of application before the court.

## **9. Enhanced stability for children**

As mentioned previously in relation to the risk framework, the current focus on parenting capacity needs to be broadened to consider outcomes for the child. This is because parenting capacity can be problematic to assess, particularly where the

parent has a disability. Such an assessment needs to consider the services that could be put in place to assist with this development of parenting capacity.

Whilst the Public Advocate acknowledges the centrality of the child's development needs in any care decisions the ongoing involvement of the birth family in the child's life whether that be a primary carers or significant others needs to be carefully planned. Family should be actively engaged in this planning process wherever possible. There is a need for renewed recognition of the importance of maintaining ongoing connections with the birth family where the child is placed in permanent care as too often a clean break approach appears to be adopted by the Child Protection service. Sometimes the family of origin may be blamed for behaviour from the child, which may result from the insecurity experienced, by the child since being in care.

In this context reunification also needs to realistically consider the levels of support required. Too often reunification fails due to inadequate supports being put in place.

Consequently care needs to be taken in the timely resolution of permanency so that permanent placement does not become a more hastily considered option when there may be particular challenges in providing adequate support to the parent.

## **10. Meeting the needs of young people including leaving care**

In providing appropriate care and support for children in care it is important that the Dept. of Human Services ensure that any children with a disability who have any specific needs are appropriately supported.

There also needs to be appropriate transitional support for children leaving care, which in the case of children with a disability may require consultation with a relevant specialist disability agency.